



March 17, 2021

The Honorable Andrew Cuomo
Governor of New York State
Executive Chamber
State Capitol
Albany, New York 12224

The Honorable Andrea Stewart-Cousins
Majority Leader
New York State Senate
State Capitol – Room 330
Albany, New York 12247

The Honorable Carl Heastie
Speaker
New York State Assembly
932 Legislative Office Building
Albany, New York 12248

RE: Adult Use Cannabis, Worker Safety, Testing and “Scaffold Law” Ramifications

Dear Governor Cuomo, Majority Leader Stewart-Cousins and Speaker Heastie:

As negotiations proceed to legalize adult use cannabis in New York State, the construction industry is gravely concerned about the ramifications of worker safety, worker impairment, drug testing and scaffold law related insurance claims.

The legalization of adult use cannabis in New York State is particularly troubling for the entire construction industry due to the safety concerns for workers. Cannabis and its derivatives are potent drugs that impair an individual's judgement posing a significant danger to themselves, co-workers, and the public. While a construction safety supervisor or law enforcement professional may be able to smell an individual that recently smoked cannabis, its derivatives such as vaping and edibles are not as easily detectable.

Current unregulated cannabis testing technologies and drug recognition methods do not provide a clear indication of worker impairment which will jeopardize workplace safety. The unregulated testing technologies can only detect the presence of cannabis for a short period of time and drug recognition experts are limited to highly skilled law enforcement professionals. Furthermore, the adult use cannabis proposals from the Executive and Legislature do not establish a standardized impairment level complicating an employers' duty to provide a safe working environment.

Adult use cannabis poses an unmanageable insurance risk for contractors, property owners, and governmental entities because of New York's "Scaffold Law." The tremendous costs and limited availability of the commercial general liability insurance have an impact across New York because construction costs go up, fewer workers are hired, consumers pay higher prices for goods and services, and the economy suffers. The "Scaffold Law" (NYS Labor Law sections 240/241) imposes absolute liability for gravity-related injuries on contractors, property owners and governmental entities engaged in construction, repair, or demolition work. Absolute liability means that the contributing fault of an injured worker, such as consuming cannabis at the workplace will be virtually irrelevant in court.

The current standard of "absolute liability" must be replaced with a standard of comparative negligence—generally or at a minimum in cases where the worker had cannabis or another impairing substance in their system at the time of the accident. Under this standard, liability is apportioned by a judge or jury, in proportion to actual fault. This common-sense reform would not prevent injured workers from bringing lawsuits for their injuries. It would simply give New York contractors, property owners, and governmental entities the chance to defend themselves in court when a worker's own negligence or impairment is a contributing factor in an accident. This is the way every other state and virtually every other area of our civil justice system functions.

We strongly urge you to include "Scaffold Law" reform in the final agreement on adult use cannabis.

Very truly yours,

A.J. Baynes, CEO/ President
Amherst Chamber Of Commerce

Michael J. Elmendorf II, President & CEO
Associated General Contractors of
New York State

Scott Hobson, Assistant Vice President,
Government Relations
Big I New York

Grant Loomis, Vice President, Gov't Affairs
Buffalo Niagara Partnership

Aaron Hilger, President
Builders Exchange of Rochester

Brad Walters, Executive Director
Builders Exchange of the Southern Tier

John O'Hare, Managing Director
Building Contractors Association

F. Matthew Pepe, Executive Director
Building Contractors Association of Westchester
and Mid-Hudson Region

Earl R. Hall, CEO
Building Industry Employers of NYS

Thomas J. O'Connor, Vice President,
Government Relations
Capital Region Chamber

Alan Seidman, Executive Director
Construction Contractors Association

Earl R. Hall, Executive Director
Construction Employers Association of CNY

Joseph Benedict, Executive Director
Construction Exchange of Buffalo & WNY

John T. Cooney Jr, Executive Director
Construction Industry Council of Westchester
and Hudson Valley Inc.

Todd G. Helfrich, President & CEO
Eastern Contractors Association

Mike Durant, President & CEO
Food Industry Alliance of New York State

Robert Wessels, Executive Director
The General Contractors Association of
New York, Inc.

Stacey Duncan, President & CEO
Greater Binghamton Chamber of Commerce

Bob Duffy, President
Greater Rochester Chamber of Commerce

Tom Stebbins, Executive Director
Lawsuit Reform Alliance of New York

Mitchell Pally, Chief Executive Officer
Long Island Builders Institute

Marc Herbst, Executive Director
Long Island Contractors' Association

Randy Wolken, President
MACNY, The Manufacturers Association

Greg Biryla, NY Senior State Director
National Federation of Independent Business

Lewis A. Dubuque, President
New York State Builders Association

Lindsey Mills, Chairman
New York State Council of NECA

Mark Dorr, President
New York State Hospitality & Tourism
Association

Rita Ferris, President
Northeastern Retail Lumber Association

Michael Misenhimer, Executive Director
Northeastern Subcontractors Association

Bradford J. Lachut, Director of Gov't &
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Earl R. Hall, Executive Director
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Kendra Hems, President
Trucking Association of New York

Justin Wilcox, Executive Director
Upstate United

Ken Thomas & Jason Cintron
Co-Managing Directors
Minority & Women Contractors and
Developers Association

Courts have repeatedly ruled worker impairment is not a valid defense to a claim brought under the Scaffold Law.

Keane v. Sin Hang Lee (188 A.D.2D 636)

- “None of the defendants’ assertions concerning the plaintiff’s contributory negligence, including his use of marihuana on the afternoon in question, can be interposed as a defense to a claim of liability under Labor Law §240(1)”

Samuel v. Simone Development Company (13 A.D.3D 112)

- “Plaintiff’s alleged drug use amounts, at most, to comparative negligence which is not a defense to a §240(1) claim.”

Hodge v. Crouse Hinds Div. of Cooper Indus. (207 A.D.2D 1007)

- “None of the defendant’s assertions concerning the plaintiff’s contributory negligence, including the plaintiff’s ingestion of prescription drugs on the afternoon of the accident, constitutes a defense to a Labor Law §240(1) cause of action.”

Tate v. Clacy-Cullen Storage Co, Inc (171 A.D.2D 292)

- “Could plaintiff Harold Tate’s alleged intoxication as a contributing cause of the happening of the accident be a defense to the cause of action? The short answer is ‘no.’”