S T A T E  O F  N E W  Y O R K

2855

2009-2010 Regular Sessions

I N  A S S E M B L Y

January 21, 2009

Introduced by M. of A. SCHIMMINGER, MAGEE -- Multi-Sponsored by -- M. of A. GALEF, HAWLEY, KOLB, RABBITT, TOWNS -- read once and referred to the Committee on Codes

AN ACT to amend the civil practice law and rules, in relation to the applicability of certain provisions with respect to persons injured in the use of scaffolding and other devices for use by employees

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The civil practice law and rules is amended by adding a new section 1414 to read as follows:

S 1414. APPLICABILITY TO CERTAIN ACTIONS. 1. IN ANY ACTION OR PROCEEDING TO RECOVER DAMAGES FOR PERSONAL INJURY, INJURY TO PROPERTY, OR WRONGFUL DEATH PURSUANT TO SECTION TWO HUNDRED FORTY, SUBDIVISIONS ONE THROUGH FIVE OF SECTION TWO HUNDRED FORTY-ONE, OR SECTION TWO HUNDRED FORTY-ONE-A OF THE LABOR LAW, WHERE SAFETY EQUIPMENT OR DEVICES HAVE BEEN MADE AVAILABLE, AND A PERSON EMPLOYED OR OTHERWISE ENTITLED TO THE PROTECTION OF THE PROVISIONS OF SUCH SECTION HAS FAILED TO FOLLOW SAFETY INSTRUCTION OR SAFE WORK PRACTICES IN ACCORDANCE WITH TRAINING PROVIDED, OR FAILED TO UTILIZE PROVIDED SAFETY EQUIPMENT OR DEVICES, OR ENGAGED IN A CRIMINAL ACT OR WAS IMPAIRED BY THE USE OF DRUGS OR ALCOHOL, AND SUCH FAILURE, ACT OR IMPAIRMENT IS A PROXIMATE CAUSE OF AN INJURY TO SUCH PERSON, THE CONDUCT ATTRIBUTABLE TO SUCH PERSON SHALL NOT BAR RECOVERY, BUT THE AMOUNT OF DAMAGES OTHERWISE RECOVERABLE SHALL BE DETERMINED IN ACCORDANCE WITH SECTION FOURTEEN HUNDRED ELEVEN OF THIS ARTICLE TO THE EXTENT THAT SUCH CONDUCT RELATES TO THE COMMISSION OF A CRIMINAL ACT, IMPAIRMENT CAUSED BY THE USE OF DRUGS OR ALCOHOL, THE FAILURE TO USE SAFETY EQUIPMENT OR DEVICES, THE FAILURE TO COMPLY WITH INSTRUCTIONS OR TRAINING REGARDING THE USE OF SAFETY EQUIPMENT OR DEVICES OR THE FAILURE TO OTHERWISE COMPLY WITH SAFE WORK PRACTICES IN ACCORDANCE WITH SAFETY TRAINING PROGRAMS PROVIDED TO SUCH PERSON. SUCH TRAINING PROGRAMS SHALL INCLUDE, BUT SHALL NOT BE LIMITED TO, COURSES IN

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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CONSTRUCTION SAFETY AND HEALTH CERTIFIED BY THE UNITED STATES OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION OR THE DEPARTMENT OF LABOR.

2. NOTHING CONTAINED IN THIS SECTION SHALL BE DEEMED TO IMPOSE OR CREATE LIABILITY UNDER SUCH SECTIONS OF THE LABOR LAW REFERRED TO IN SUBDIVISION ONE OF THIS SECTION, WHERE A PERSON EMPLOYED OR OTHERWISE ENTITLED TO THE PROTECTION OF THE PROVISIONS OF SUCH SECTIONS HAS FAILED TO FOLLOW SAFETY INSTRUCTIONS OR SAFE WORK PRACTICES IN ACCORDANCE WITH TRAINING PROVIDED, OR FAILED TO UTILIZE PROVIDED SAFETY EQUIPMENT OR DEVICES, OR ENGAGED IN A CRIMINAL ACT OR WAS IMPAIRED BY THE USE OF DRUGS OR ALCOHOL, AND SUCH FAILURE, ACT OR IMPAIRMENT IS THE SOLE PROXIMATE CAUSE OF AN INJURY TO SUCH PERSON.

3. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO ACTIONS OR PROCEEDINGS WHEREIN THE PERSONAL INJURY, INJURY TO PROPERTY, OR WRONGFUL DEATH IS ALLEGED OR SUBSEQUENTLY DETERMINED TO HAVE OCCURRED, OR ARISEN OUT OF AN OCCURRENCE, WITHIN A CITY HAVING A POPULATION OF ONE MILLION OR MORE INHABITANTS.

S 2. This act shall take effect immediately and shall apply to all causes of actions accruing on or after such date.