

4899

2009-2010 Regular Sessions

I N S E N A T E

April 27, 2009

Introduced by Sen. AUBERTINE -- read twice and ordered printed, and when printed to be committed 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:

1 Section 1. The civil practice law and rules is amended by adding a new
2 section 1414 to read as follows:
3 S 1414. APPLICABILITY TO CERTAIN ACTIONS. 1. IN ANY ACTION OR
4 PROCEEDING TO RECOVER DAMAGES FOR PERSONAL INJURY, INJURY TO PROPERTY,
5 OR WRONGFUL DEATH PURSUANT TO SECTION TWO HUNDRED FORTY, SUBDIVISIONS
6 ONE THROUGH FIVE OF SECTION TWO HUNDRED FORTY-ONE, OR SECTION TWO
7 HUNDRED FORTY-ONE-A OF THE LABOR LAW, WHERE SAFETY EQUIPMENT OR DEVICES
8 HAVE BEEN MADE AVAILABLE, AND A PERSON EMPLOYED OR OTHERWISE ENTITLED TO
9 THE PROTECTION OF THE PROVISIONS OF SUCH SECTION HAS FAILED TO FOLLOW
10 SAFETY INSTRUCTION OR SAFE WORK PRACTICES IN ACCORDANCE WITH TRAINING
11 PROVIDED, OR FAILED TO UTILIZE PROVIDED SAFETY EQUIPMENT OR DEVICES, OR
12 ENGAGED IN A CRIMINAL ACT OR WAS IMPAIRED BY THE USE OF DRUGS OR ALCOHOL,
13 AND SUCH FAILURE, ACT OR IMPAIRMENT IS A PROXIMATE CAUSE OF AN
14 INJURY TO SUCH PERSON, THE CONDUCT ATTRIBUTABLE TO SUCH PERSON SHALL NOT
15 BAR RECOVERY, BUT THE AMOUNT OF DAMAGES OTHERWISE RECOVERABLE SHALL BE
16 DETERMINED IN ACCORDANCE WITH SECTION FOURTEEN HUNDRED ELEVEN OF THIS
17 ARTICLE TO THE EXTENT THAT SUCH CONDUCT RELATES TO THE COMMISSION OF A
18 CRIMINAL ACT, IMPAIRMENT CAUSED BY THE USE OF DRUGS OR ALCOHOL, THE
19 FAILURE TO USE SAFETY EQUIPMENT OR DEVICES, THE FAILURE TO COMPLY WITH
20 INSTRUCTIONS OR TRAINING REGARDING THE USE OF SAFETY EQUIPMENT OR
21 DEVICES OR THE FAILURE TO OTHERWISE COMPLY WITH SAFE WORK PRACTICES IN
22 ACCORDANCE WITH SAFETY TRAINING PROGRAMS PROVIDED TO SUCH PERSON. SUCH
23 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.

LBD03949-01-9

1 CONSTRUCTION SAFETY AND HEALTH CERTIFIED BY THE UNITED STATES OCCUPA-
2 TIONAL SAFETY AND HEALTH ADMINISTRATION OR THE DEPARTMENT OF LABOR.
3 2. NOTHING CONTAINED IN THIS SECTION SHALL BE DEEMED TO IMPOSE OR
4 CREATE LIABILITY UNDER SUCH SECTIONS OF THE LABOR LAW REFERRED TO IN
5 SUBDIVISION ONE OF THIS SECTION, WHERE A PERSON EMPLOYED OR OTHERWISE
6 ENTITLED TO THE PROTECTION OF THE PROVISIONS OF SUCH SECTIONS HAS FAILED
7 TO FOLLOW SAFETY INSTRUCTIONS OR SAFE WORK PRACTICES IN ACCORDANCE WITH
8 TRAINING PROVIDED, OR FAILED TO UTILIZE PROVIDED SAFETY EQUIPMENT OR
9 DEVICES, OR ENGAGED IN A CRIMINAL ACT OR WAS IMPAIRED BY THE USE OF
10 DRUGS OR ALCOHOL, AND SUCH FAILURE, ACT OR IMPAIRMENT IS THE SOLE PROXI-
11 MATE CAUSE OF AN INJURY TO SUCH PERSON.
12 3. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO ACTIONS OR
13 PROCEEDINGS WHEREIN THE PERSONAL INJURY, INJURY TO PROPERTY, OR WRONGFUL
14 DEATH IS ALLEGED OR SUBSEQUENTLY DETERMINED TO HAVE OCCURRED, OR ARISEN
15 OUT OF AN OCCURRENCE, WITHIN A CITY HAVING A POPULATION OF ONE MILLION
16 OR MORE INHABITANTS.
17 S 2. This act shall take effect immediately and shall apply to all
18 causes of actions accruing on or after such date.