

# CRAIN'S

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### OPINION

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LETTER TO THE EDITOR

## Need more reasons to fix the scaffold law? You got 'em

Insurance industry pro offers insider's view on NY's stupidest statute



Photo: Getty Images

To the editor:

While attempting to drum up support for the proposed Construction Transparency Act, Assemblyman Francisco Moya misrepresented several key points in his letter to the editor headlined, "[Shedding light on construction deaths](#)."

Ultimate transparency seems to be a popular position to take, and the intentions are certainly noble, but inevitably the same results will be reached. Oceans of measurable data have already concluded that the [scaffold law](#) costs billions of dollars and increases work-related injuries and fatalities in New York state.

Defenders of the scaffold law frequently lead the charge against the insurance companies to “open their books.” This notion is overlooking the actuarial business model of the carriers. The astronomical claim payouts are the sole reason for most insurers exiting the New York marketplace. Insurers are making a calculated decision to not write construction insurance here, but they do write these same risks in every other state they are licensed to do business in.

This fact dramatically drives up the cost of doing business here and will ultimately have a profound negative impact on economic development in New York state.

It’s absurd to suggest that insurers are taking advantage of consumers when they are leaving the market and not writing policies. The scaffold law has led to lack of choices which in turn leads to lack of competition between insurers which then leads to higher insurance costs for construction.

There is also an administrative cost that the scaffold law imposes on construction companies that doesn’t get much press. The lengths that general contractors and property owners have to go to in order to contractually transfer the scaffold law risk exposures down to their subcontractors are crushing to these organizations as well as their subs, most notably MWBEs.

Several insurance companies will write an insurance policy for a contractor in New York state, but will exclude scaffold law coverage. Teams of risk managers are burdened with the task of vetting the subcontractor’s policies to ensure that they have coverage for this only-in-New-York risk. If they don’t, then the claim will have an impact on their loss history which will drive up their short- and long-term insurance costs.

Because of this necessity to transfer the risk, general contractors and property owners are also requiring astronomical umbrella liability limits for their subs. Some of these companies are not large enough (again, particularly MWBEs) to afford the excess limits and have to walk away from work. If you are a property owner or general contractor in New York and allow an exterior contractor to do work on your premises with an umbrella limit lower than \$10 million, you are playing Russian roulette with your risk management program.

Each year that passes there are fewer and fewer insurance companies writing construction policies in New York state. The books are open for regulators to see, but each year there are fewer books to open.

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