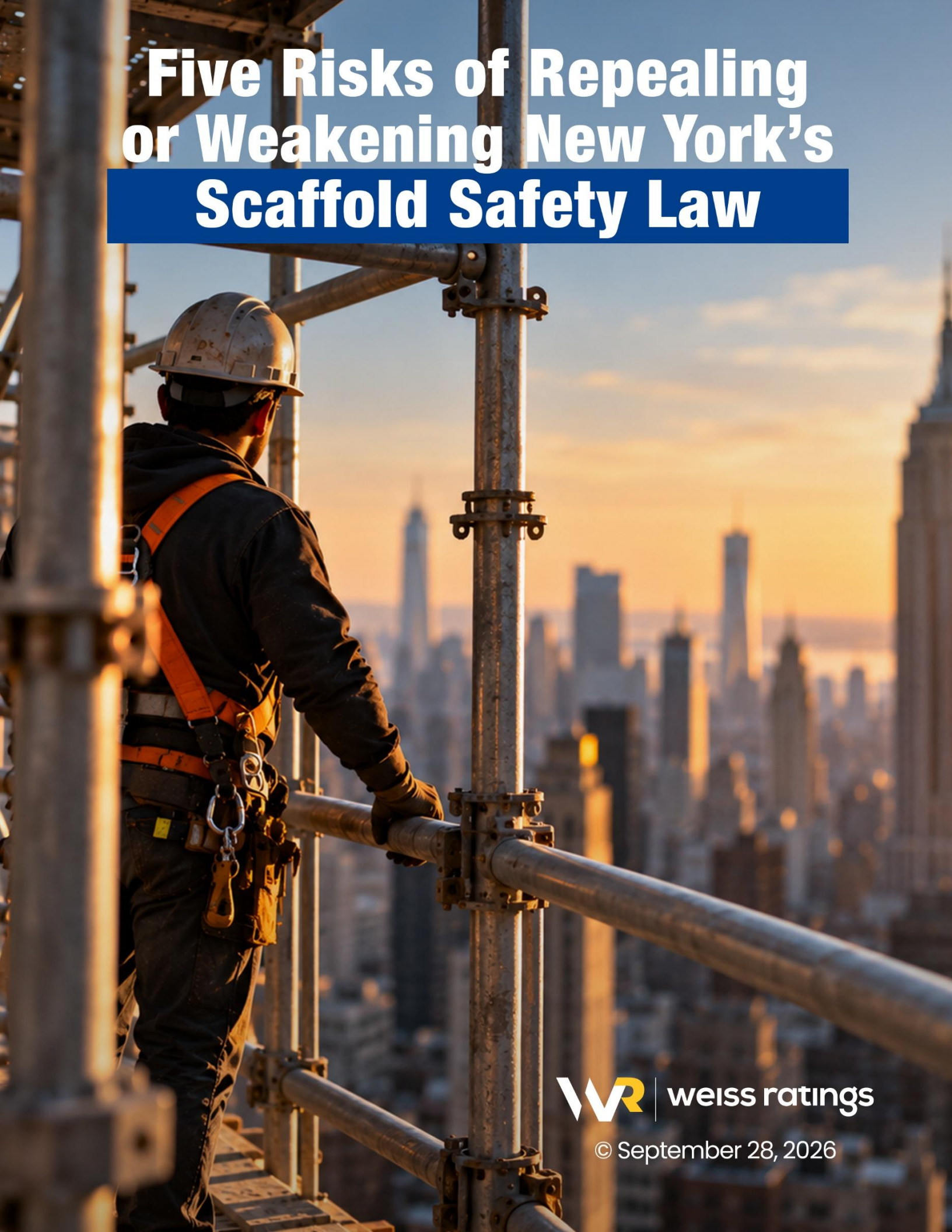
Five Risks of Repealing or Weakening New York's Scaffold Safety Law



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Executive Summary

The context. New York is building at a historic pace. New York City reported record affordable-housing production in fiscal 2025, and citywide housing completions in 2025 reached their highest level since at least 2010 — all with the Scaffold Safety Law in full force. Meanwhile, the U.S. property and casualty insurance industry has just reported one of the most profitable years in its history, including its strongest underwriting results in at least a decade.

Yet opponents of the Scaffold Safety Law contend that it makes construction unaffordable. They have not produced verifiable data demonstrating that weakening worker protections would reduce housing costs. Neither the insurance industry nor the construction industry has made public the §240-specific premium, loss and expense data needed to substantiate their claims, and New York does not require insurers to report those data to the Department of Financial Services.

This report finds that weakening or repealing New York's Scaffold Safety Law (Labor Law §240) would expose New York to five major risks:

Risk 1 — Injured workers will lose some or all of their second line of protection. Workers' compensation, a first line of protection, is already weak. New York workers' compensation claims reported as closed without payment more than doubled from 17.1% in 2021 to 39.4% in 2025. Plus, other workers' comp problems are endemic. And when workers' compensation claims are denied or delayed, the costs of the injury do not disappear — they shift to injured workers, their families and the public health care system. Weakening the Scaffold Safety Law, the second line of protection, will only make these problems worse.

Risk 2 — Savings will flow to insurers first, with no assurance that any of them will reach builders, property owners or tenants**.** New York's 2025 Other Liability loss ratio was 50.6%, compared with 58.7% in Pennsylvania and 60.9% in Illinois. More importantly, the insurers that hold the §240-specific data on premiums, losses and expenses have not disclosed them — and coverage written through captive insurers and project "wrap-up" programs is even less visible. Consequently, policymakers cannot determine how much changes in the law would reduce premiums — or how much in savings, if any, would ultimately reach contractors, owners and consumers.

Risk 3 — Scaffold Safety Law saves lives: Rollbacks will put workers' lives at greater risk. Despite New York's unusually vertical construction environment, its 2024 construction injury and fatality experience compares favorably with Illinois and Pennsylvania. After applying two different adjustment methods for vertical-construction exposure, we find that New York has substantially lower comparative injury and fatality indexes under both methods. Rolling back the law will weaken the legal incentive that requires owners and contractors to provide fall protection before a worker ever leaves the ground.

Risk 4 — The costs of additional accidents could far exceed any insurance savings. In NYCHA's project-cost model, all insurance represented approximately 1% of construction costs, while labor and materials represented 61%. Meanwhile, stress tests based on Pennsylvania's higher accident experience produce an illustrative $1.1 billion to $1.4 billion annual economic burden from additional injuries and fatalities. By contrast, the most §240-specific estimate in the frequently cited Rockefeller study put annual §240 claims and legal costs at roughly $110 million.

Risk 5 — Tort reform will reduce workers' recoveries, with no assurance of proportionate premium relief — and could increase litigation**.** Historical experience with tort reform in Florida property insurance and in national medical malpractice demonstrates that reducing litigation or insurer claim payments does not automatically produce premium reductions. Any projected §240 savings therefore must be traced from lower claims to lower premiums, then to contractors and owners, and ultimately to construction and housing costs. And replacing the Scaffold Safety Law's liability standard with comparative negligence would turn many cases now resolved on summary judgment into contested trials over each worker's share of fault.

Moreover, the case for weakening the Scaffold Safety Law rests on cost claims that have not been tested against §240-specific data. Insurers have not disclosed what share of their premiums, losses, defense costs and reserves is attributable to the law. Coverage on many large projects runs through captive insurers and owner- or contractor-controlled "wrap-up" programs whose results do not appear in the public statutory data at all. And the most widely cited cost estimate — the 2013 Rockefeller Institute study, commissioned and paid for by the New York Civil Justice Institute — derived its $2.275 billion headline figure from an assumed 7% cost factor, not from §240 claims data.

Recommendations. New York should preserve the Scaffold Safety Law and require the insurance industry to substantiate its claims. We recommend enacting the Construction Insurance Transparency Act; requiring every insurer that covers §240 liability — including captive insurers and wrap-up programs — to report §240-specific premiums, losses and expenses to DFS; stronger accident prevention and enforcement of safety rules against serious and repeat violators; investigation of workers' compensation outcomes; faster resolution of legitimate disputes; and permanent public reporting of both the costs and the benefits of the law.

Introduction

On a September afternoon in 1926, our founder's father got his first job on Wall Street. Babe Ruth and the Yankees were heading for the World Series. The stock-market boom of the Roaring Twenties was gathering momentum. And a few miles to the north, the Paramount Building was rising above Times Square — a new skyscraper that would eventually reach 33 stories and become one of Broadway's iconic landmarks.

Meanwhile, one New York institution was not new: The state's Scaffold Safety Law for protecting worker safety was already 41 years old and particularly relevant to the metropolis taking shape in the 1920s. Picture men erecting steel frames hundreds of feet above street level, raising heavy materials with hoists and derricks, climbing temporary ladders and scaffolds, working along open edges where a single equipment failure could be fatal. The Scaffold Safety Law could not eliminate those dangers. But it did place legal responsibility for elevation-safety equipment and training on owners and contractors.

Now, a century later, the Paramount Building still stands. So do thousands of others erected, repaired, painted, cleaned and altered by generations of New York construction workers. How many workers went home to their families during these 141 years who otherwise might have been killed or permanently disabled? How many falls never happened because an owner or contractor knew that proper scaffolding, ladders, hoists or fall protection were a must?

No one can say with precision. But we can do something more meaningful than speculate. We can examine the evidence that exists today. We can compare New York's construction injuries and fatalities with those of states that do not have a Scaffold Safety Law. We can adjust those comparisons for New York's extraordinary concentration of high-rise and multifamily construction. We can examine what insurers collect in premiums and pay in claims. We can investigate workers' compensation outcomes. We can measure how much insurance really contributes to construction costs. And we can study what happened elsewhere when lawmakers responded to high insurance premiums by restricting the rights of injured consumers and workers.

That is the purpose of this report. After 141 years, the question should not be whether the Scaffold Safety Law is old. The question is whether it works — what it costs, what it prevents, where it falls short, to what degree it impacts housing affordability, and how New York can make the entire system work better not only for consumers, but also for builders, owners and insurers.

Risk 1
Injured Workers Will Lose a Second Line of Protection

Risk 1 Summary: This section examines whether workers' compensation alone provides sufficient protection for injured construction workers if access to §240 recoveries is reduced. The most striking finding is that New York workers' compensation claims closed without payment increased from 17.1% in 2021 to 39.4% in 2025.

At the same time, workers' compensation costs and benefits have been reduced sharply. New York approved a 21.9% reduction in workers' compensation loss costs for 2026, following a 13.2% reduction for 2025, the tenth consecutive annual reduction. NYSIF reported $793.5 million in 2024 net income, $916.8 million in investment income and $11.407 billion in workers' compensation surplus.

Workers' compensation is ordinarily the first line of financial and medical protection for a construction worker injured on the job. When its statutory requirements are satisfied, the Scaffold Safety Law (Labor Law §240) then provides a separate, second line of protection through third-party actions against covered owners, contractors and their agents.

The two systems are different, but they intersect at the injured worker. And what we've found in New York's workers' compensation data raises a pivotal question: How well can injured construction workers rely on that first line of protection if their rights under the second are weakened?

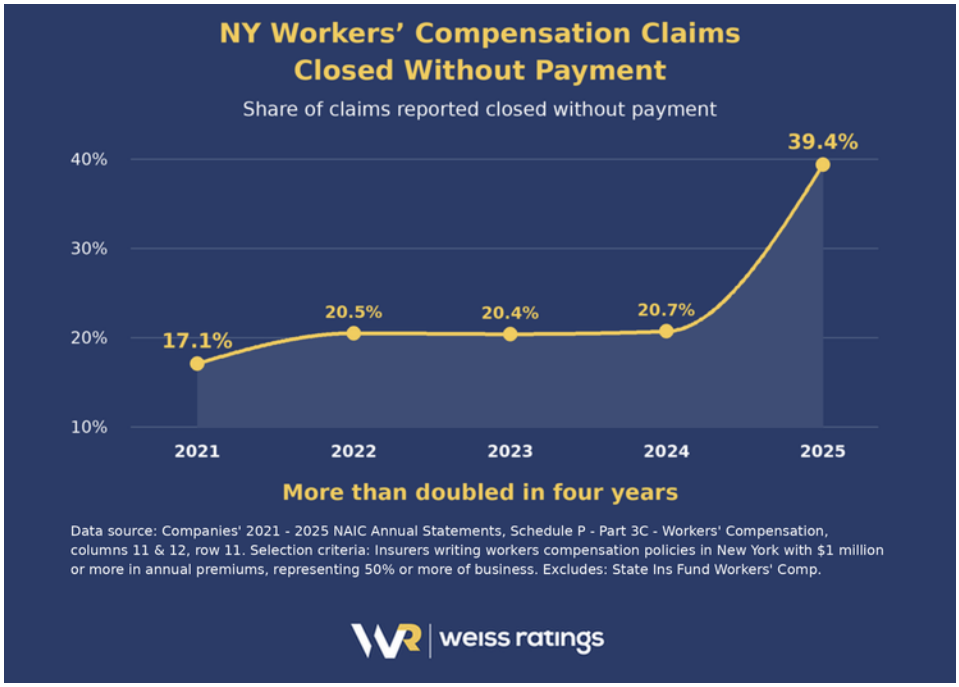
Here's a central finding: According to the NAIC data compiled for this report, the proportion of New York workers' compensation claims reported as closed without payment increased from 17.1% in 2021 to 39.4% in 2025 — more than doubling in four years.

Before interpreting that as evidence of increasing insurer denials, however, an important definition must be clarified: NAIC's "closed without payment" is not synonymous with "valid injured-worker claim denied."[1] So, the increase is not proof of insurer misconduct. But it *is* a red flag with a clear warning: *Don't rip apart the second safety net before repairing holes in the first.*

That can start with an investigation that probes two fundamental questions.

1. What powers do insurers have to close claims without payment and how are they using those powers?

2. What changed? If insurers were able to limit closed claims without payment to less than one-fifth of total closed claims in 2021, why did they close nearly two-fifths without payment in 2025?



A related concern: There's evidence that insurers in other business lines often use hidden tactics to delay, deny and discount claims in multiple ways.[2]

1. Insurers are empowered to controvert the entire claim. New York expressly allows a carrier to controvert (initially deny) the entire claim. For example, they can assert that the injury was not work-related or that the employee is not injured to the extent claimed. Once controverted, the dispute goes before a Workers' Compensation Law Judge, who can hear testimony, obtain depositions and evaluate medical evidence.[3]

This can delay benefits from the outset, and the financial consequence to the worker can be substantial. The Board itself explains that when an insurer controverts a claim, the injured worker receives no workers' compensation benefits while the claim is being litigated.[4]

Meanwhile, the financial incentive for insurers to controvert claims is not inconsequential: While the dispute is held up in court, the delays alone can help New York workers' comp insurers earn an estimated $3.1 million in investment income per day or $92.1 million per month.[5]

2. Insurers are empowered to dispute how disabled the worker really is. This is potentially more important than outright denial. The carrier may acknowledge that an accident happened but dispute whether all claimed injuries resulted from the accident, whether the worker remains disabled, whether the worker can return to duty, whether requested medical treatment is necessary, and whether a permanent impairment is as severe as the worker's treating physician reports.

The Workers' Compensation Board expressly identifies disagreement over whether an employee is injured "to the extent claimed" as a basis for controverting a claim.[6] This means that, even if a claim is closed with some payment, it could be substantially less than the claimant and treating physician believe appropriate.

3. Insurers are empowered to use the Independent Medical Examination as a possible leverage point. The carrier has the right to send an injured worker for an Independent Medical Examination (IME). Despite the term "independent," the physician examines the worker at the *insurer's* request, and the Board explicitly warns workers that the resulting IME report may be used to determine the degree of disability, which could affect benefits.[7]

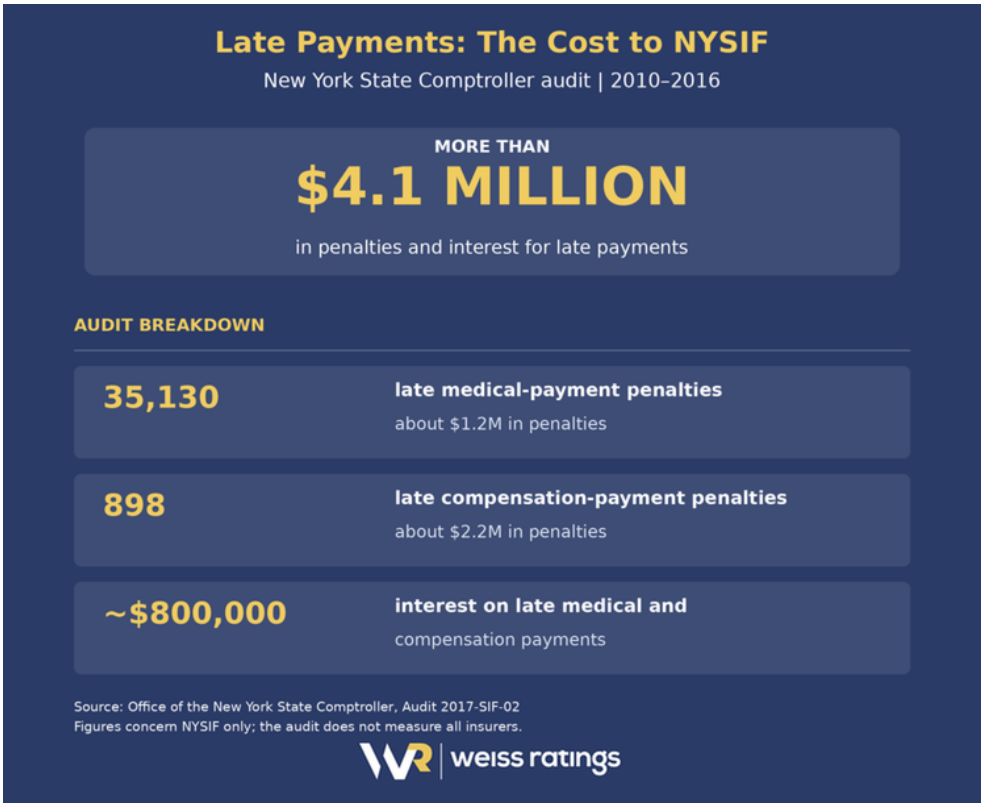
If abused, an IME can therefore become a mechanism for insurers to reduce or dispute benefits if the examiner reaches conclusions different from the treating physician. How often does this happen? The Board's own rules indicate that this happens often enough to require procedural safeguards: Workers generally must receive at least seven business days' notice; they may videotape the examination; they may bring another person; and the examination must generally be reasonably close to home.[8] But many injured workers may not be aware of these rights — or understand their importance.

4. Insurers are empowered to deny or only partially approve medical treatment. The same process operates on the medical side. For treatments requiring prior authorization, an insurer can approve the treatment, grant it only in part, or deny it entirely. Medical denials move to a physician reviewer employed or retained by the insurer, and some disputes can then proceed to Workers' Compensation Board medical or adjudicatory review.[9]

These four mechanisms for delaying, denying or reducing payments and treatments do not establish improper conduct by all insurers or at every step of the way. But it should be clear that compensation benefits are not simply triggered by the occurrence of an accident. There are multiple decision points at which insurers can contest causation, disability, duration, medical necessity and treatment. And at each one, insurers have the legal, financial or operational means to reduce their liability, while boosting their investment income. Most injured workers do not.

How often do payment delays occur? A New York State Comptroller audit examined NYSIF penalties for late medical and compensation payments. During 2010–2016, NYSIF incurred more than $4.1 million in penalties and interest, including:

- 35,130 penalties for late payments to medical providers;
- 898 penalties totaling approximately $2.2 million for late compensation payments to injured workers; and
- approximately $833,000 in interest on late payments.



The audit provides documented evidence — not anecdotes — that delayed payments occurred on a substantial number of claims.[10] And today, the Board also operates a formal Payer Compliance system that monitors carriers for timely first reports, initial payments, installment payments, controversies and suspensions and imposes penalties for untimely filings.[11] That's a strength. But it's a system designed to identify failures to meet deadlines, not one to fix their systemic causes.

In reviewing payer filings, the Board found that a large percentage of claims contained partial-denial filings, many citing lack of medical evidence. And it cautioned that waiting for medical reports can indefinitely delay indemnity benefits that ultimately will be paid, specifying the limited circumstances in which a partial denial should be used.[12] This is noteworthy because it's *not* a plaintiffs' lawyers' allegation. It comes from the regulator administering the workers' compensation system, while identifying precisely the mechanisms that could be used for consumer abuse. Indeed, a claim need not be permanently denied for insurers to impose a cost on the worker. Delaying a benefit that ultimately must be paid can itself deprive an injured worker of income during the period when it's most needed.

The Board's own assistance form reveals recurring problems, inviting workers to request intervention when:

- a judge has ordered an insurer to pay an award, but more than ten days have passed without payment;

- a physician wants to perform treatment but has not received insurer authorization;
- medical or transportation reimbursement has been denied or not responded to; or
- medical evidence indicates a permanent or changed condition requiring further action.[13]

As with traffic rules, these preventative steps are created to reduce the frequency and severity of violations. But they can rarely eliminate more than some portion of them. In this context, we see three parallel trends that warrant close examination:

Trend #1. Workers' compensation insurance costs in New York have been moving sharply downward. For policies effective October 1, 2026, New York approved a 21.9% reduction in workers' compensation loss costs, the tenth consecutive annual reduction, following a 13.2% reduction for 2025.[14]

Trend #2. Benefits have lagged wages substantially. NYCIRB's 2024 *State of the System* reports that average accident-year indemnity severity rose only 6% — from $47,857 in 2018 to $50,747 in 2023. During the same period, New York's average weekly wage increased 25.4%. If average indemnity severity had merely kept pace with New York wages after 2018, the average 2023 benefit would be $60,013. Instead, it was only $50,747, or 15% below the wage-adjusted benchmark.[15]

Trend #3. Carrier underwriting results have strengthened, and in 2024, their underwriting profits exceeded $763 million. NYSIF, meanwhile, reported $793.5 million of 2024 net income, $916.8 million of investment income and $11.407 billion of workers' compensation surplus, up from $10.452 billion in 2023.[16]

To sum up, claim costs are falling, employer loss costs are falling, and indemnity severity has badly lagged wages. Yet the workers' compensation system still contains substantial mechanisms for contesting, reducing and delaying benefits. This raises a legitimate question: Why have workers' compensation costs fallen so sharply while the NAIC percentage of claims closed without payment has risen so sharply? How much reflects more denials, reduced disability determinations, enhanced medical-treatment restrictions, and tougher settlement practices?[17]

No one should assume they're "normal." And everyone should be aware of this basic rule: If the first safety net is fraying, you can't take the second one away.

Denied claims don't eliminate costs. They shift them.

A workers' compensation claim that is denied, delayed or underpaid does not make the cost of a workplace injury disappear. The medical bills, the lost wages and the long-term care needs remain. What changes is who pays them.

As noted above, when an insurer controverts a claim, the injured worker receives no workers' compensation benefits while the dispute is litigated. During that period — and permanently, if the claim is ultimately denied or closed without payment — the costs fall on four groups:

First, injured workers and their families, who absorb lost wages, out-of-pocket medical costs and the unpaid caregiving that serious injuries demand.

Second, health insurers and the public health care system, including Medicaid and, for workers who become permanently disabled, Medicare — which end up paying for treatment that workers' compensation was designed to cover.

Third, taxpayers, through Social Security Disability Insurance and other public programs that support workers who can no longer earn a living. For seriously injured construction workers, these are not small sums. As discussed in Risk 4, among people alive five years after a moderate or severe traumatic brain injury, more than half of those who were employed at the time of injury are no longer working, and one-third rely on others for everyday activities.

Fourth, union benefit funds, the jointly trusteed (Taft-Hartley) health, disability and pension funds that union construction workers earn through collectively bargained employer contributions. A union welfare fund may pay medical bills and weekly disability benefits while a workers' compensation claim is contested, and a member who can never return to the trade may qualify for a disability pension years before normal retirement, drawing down assets that also support active and retired members. Many of these funds are self-funded and seek reimbursement from a member's recovery against a responsible third party — for a fall from height, often a §240 action.[18] Weakening the law would shrink that source of reimbursement, leaving more of the cost with the funds and, ultimately, their members.

This is why the Scaffold Safety Law matters as a second line of protection. When the first line fails, the law places the cost of a preventable fall on the owners and contractors responsible for providing safety equipment — not on the worker, the worker's family or the public. Weakening the law will not reduce those costs. It will move more of them onto the people least able to bear them.

Beyond acting as the first line of defense, the workers' comp environment can also serve as a window into what might be happening with Scaffold Safety Law claims.

The connections and overlaps are fourfold:

First, the same accident can generate both proceedings.

Second, both systems require insurers and their representatives to evaluate the worker's medical condition, causation, disability, treatment, future medical needs, earnings loss and credibility.

Third, both have financial incentives to distinguish compensable from noncompensable loss and to limit claim severity. And …

Fourth, both can involve disputes over medical evidence and the extent of damages.

Thus, claim-handling problems visible in workers' compensation can provide a parallel empirical window for irregularities that may be occurring in the application of the Scaffold Safety Law. Workers' compensation does not tell us how a Scaffold Safety Law claim will be decided. But because it handles many of the same workplace accidents and evaluates many of the same injuries, it provides rich data on how insurers respond to construction-worker injuries before those same accidents reach the third-party liability system.

Consider recent Scaffold Safety Law cases: A preliminary review of recent §240 litigation reveals a different but related source of friction: insurance coverage disputes among owners, contractors, subcontractors and their insurers after a worker is injured.

For example, in *Sarante v. Courtlandt Development* (2025), a worker was injured when a chain-block pulley system used to hoist a heavy steel beam collapsed. The First Department upheld §240 liability, while the case simultaneously involved contractual indemnification and an alleged failure by a subcontractor to procure required insurance.[19]

In the 2026 *Church of St. Andrew v. Western World Insurance* case, the court found an insurer's denial of additional-insured coverage legally insufficient because the insurer relied on a contractual requirement that was not actually contained in its policy. The court also addressed whether another exclusion had been timely asserted.[20]

Meanwhile, New York courts have repeatedly had to police delayed liability-insurance disclaimers. Insurance Law §3420 requires insurers denying certain bodily-injury coverage to provide written notice as soon as reasonably possible. The Court of Appeals has held that an unexcused 48-day delay can be unreasonable as a matter of law when the insurer already knows the basis for disclaimer.[21]

These are coverage disputes rather than proof that injured workers' valid §240 damages are routinely denied. So, they should not be characterized as direct equivalents of workers' compensation denials. But they demonstrate a meaningful parallel: after a serious construction accident, significant disputes can arise not merely over whether the worker was hurt, but over which insurer must pay, whether coverage exists, whether an exclusion applies, whether another contractor must indemnify the defendant, or whether notice or tender was timely. And all this can often add another layer of litigation between accident and ultimate payment.

Risk 2

Insurance Savings Will Go to Insurers First — With No Assurance They Will Reach Builders and Property Owners

Risk 2 Summary: New York's 2025 Other Liability loss ratio was 50.6%, compared with 58.7% in Pennsylvania and 60.9% in Illinois. These differences raise an important question about how much of the premium dollar is required to pay losses.

More importantly, New York does not comprehensively report §240-specific premiums, losses, defense expenses, reserves, reinsurance and claims. Without those numbers, legislators and regulators cannot determine the actual insurance cost of the Scaffold Safety Law, how much weakening it would reduce premiums, or how much of any savings would ultimately reach contractors, property owners and consumers. The insurers that hold this information have not made it public. The proposed Construction Insurance Transparency Act would provide much of the information needed to answer those questions.

A "loss ratio" is essentially how much an insurer pays out in claims for every dollar it collects in premiums. Typically, for insurance companies, the lower the loss ratio the better. But for policyholders, it's usually the opposite: It means they're getting less value for each dollar they pay in premiums. Or simply, it's a signal their policy could be more expensive than it's worth.

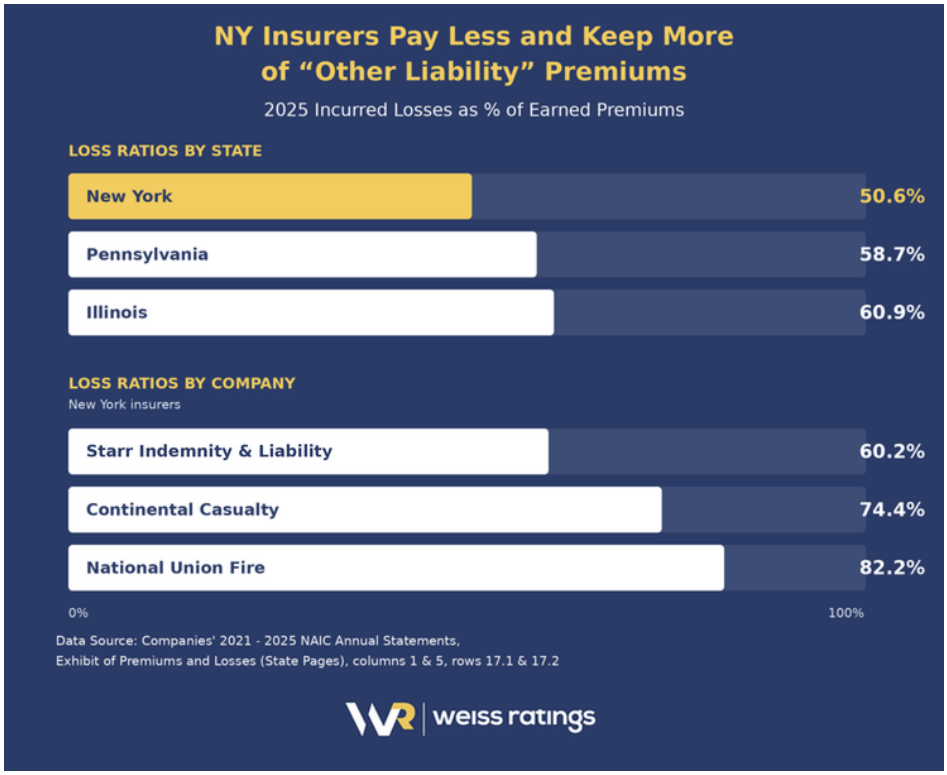
One of the principal arguments for changing the Scaffold Safety Law is that liability insurance is too expensive. But that argument raises a threshold question: How much of New York's insurance burden reflects payments to injured workers, and how much reflects rising premiums earned by insurers despite lower claims payments? How much is bigger profits?

NAIC data provide an important window into that question, and the relevant statutory category is "Other Liability."[22] This category is broader than Scaffold Safety Law insurance. It includes liability exposures that are not directly related to construction and the Scaffold Safety Law. Consequently, the data cannot tell us how much insurers collect specifically to cover §240 risk. But that limitation is itself important. New York currently has detailed regulatory information on the broad insurance bucket containing §240 losses, while lacking comparable public data that isolate §240 itself.

Our analysis of insurers' 2025 New York statutory data found an Other Liability loss ratio of 50.6%. In other words, for every dollar of premiums collected during the year, they paid out 50.6 cents in claims.

The comparable ratio in Pennsylvania was 58.7%, or 8.1 percentage points higher than New York's, while the ratio in Illinois was 60.9%, or 10.3 percentage points higher. These differences

deserve examination because Pennsylvania and Illinois provide real-world examples of liability insurance markets operating without any equivalent to New York's Scaffold Safety Law.



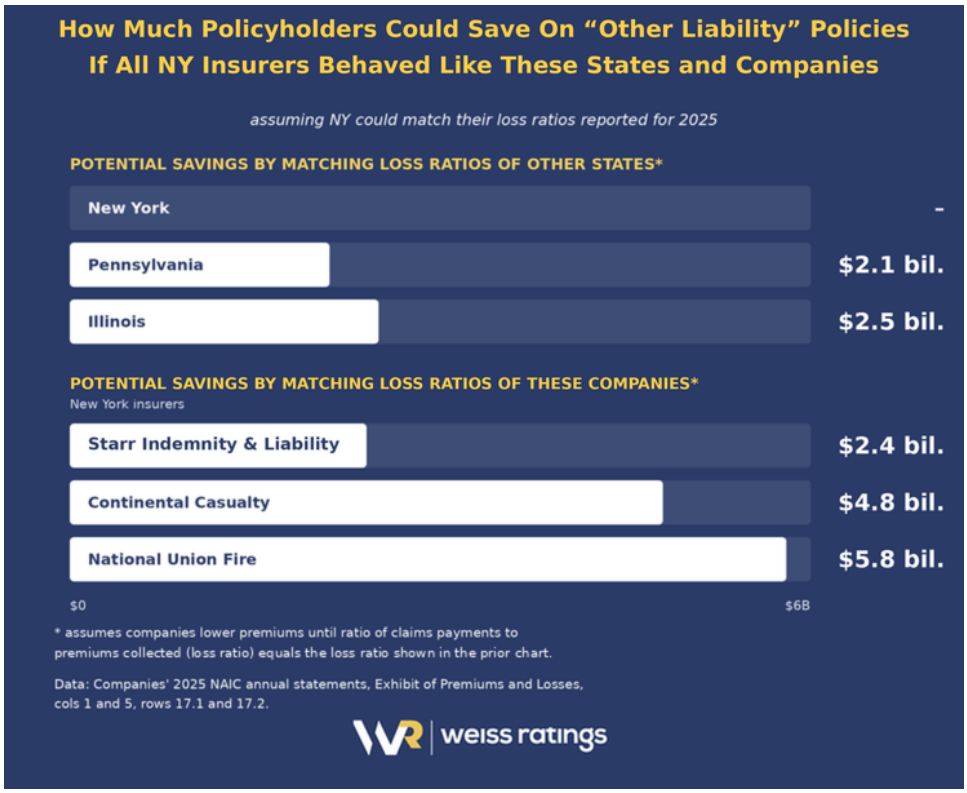
What might New York premiums have been if the same losses had been supported by the same 58.7% payout ratio as Pennsylvania's rather than New York's 50.6%? The math is straightforward: If losses remain unchanged, the required premium = incurred losses ÷ target loss ratio.

For this situation, we take the underlying 2025 New York losses. We assume a reduction in premium rates until the loss ratio matches Pennsylvania's 58.7%. And we ask, "How much could policyholders potentially save in that scenario?" *The answer: $2.1 billion in premiums.*

Moreover, the potential savings would have been $2.5 billion if New York insurers matched the payout for Other Liability in Illinois, which was 60.9%.[23]

Individual New York insurers provide an even more striking comparison.

Some insurers selling Other Liability policies in New York in 2025 also generated higher loss ratios than the statewide average.



Starr Indemnity & Liability, for example, reported a loss ratio of 60.2%. If other insurers operating in New York State could lower their premiums until their loss ratios were the same, the resulting premium reduction in New York State would have been about $2.4 billion in 2025.

Continental Casualty reported an even higher loss ratio of 74.4%. If other companies did the same, the resulting premium reduction in the state would have been approximately $4.8 billion. And …

National Union Fire Insurance topped them all, reporting a loss ratio of 82.2%. If that were the statewide average, policyholders would have in effect saved $5.8 billion.

Did these companies have to lose money to deliver those advantages to policyholders? No. All three had at least 30% of their business in the Other Liability category, and all three were profitable in 2025.

These calculations do not establish that every insurer could safely operate at these loss ratios. But they establish something worth investigating: Is the 50.6% statewide New York loss ratio an unavoidable consequence of paying liability claims? Or do other states — and other insurers in the same state — offer clues on how to save substantial sums for policyholders *without tort reform?*

At the very minimum, these data shift the affordability issue from "How much must injured workers give up?" to "What really accounts for the difference between premiums collected and

losses incurred?" and "Why can't insurers afford to pay out more in claims while still earning good profits?"

Nor is the industry as a whole under financial strain. In 2025, U.S. property and casualty insurers posted their strongest underwriting results in at least a decade — an underwriting gain of more than $60 billion on a combined ratio of about 93, meaning they paid roughly 93 cents in claims and expenses for every premium dollar before counting any investment income. Commercial insurers more than doubled their underwriting income.[24] Fitch Ratings reported record industry net income of $135.9 billion.[25] Industry analysts attribute part of the improvement to an unusually light catastrophe year, and other tallies using different methods show net income below 2024's level.[26] But by any measure, the liability-insurance affordability debate is taking place against a backdrop of strong insurer profitability, not insurer distress.

Why Other Liability Data Matter — and Where They Fall Short

Why does a category as broad as Other Liability matter to the Scaffold Safety Law debate? Because Scaffold Safety Law claims are paid out of it. When an owner or contractor is sued under §240, the claim is typically covered by commercial general-liability and excess policies and reported, without separate identification, in the Other Liability line. If the law were materially driving up insurance costs, the effect would have to appear somewhere in that line — in losses, reserves, defense costs, reinsurance or insurer margins.

If, as opponents claim, Scaffold Safety Law claims are costly enough to justify weakening worker protections, what portion of Other Liability premiums, losses, reserves and expenses is actually attributable to §240? The public data cannot answer that question — and the insurers that hold the underlying claim files have not answered it either. The missing data are themselves a central finding of this report: *New York lawmakers are being asked to evaluate the costs and benefits of changing the Scaffold Safety Law while lacking the insurance data needed to determine precisely what the Scaffold Safety Law costs.*

The proposed Construction Insurance Transparency Act of 2025 is critical: It would require insurers providing coverage against §240 claims to report detailed annual financial and claims information to the Department of Financial Services.[27]

The recommended disclosures under the Act are remarkably close to the data needed for this investigation. They include premiums attributable to §240 coverage, investment income, business expenses, salaries, commissions, consulting expenses, legal expenses, risk-management expenses, claims and settlements paid, and claims closed with or without payment. The insurer's CEO would attest to the accuracy of the submission, and DFS would make the information publicly available.[28]

Most importantly, this is not a newly discovered data problem. Versions of the legislation have been proposed repeatedly since at least the 2013–2014 legislative session.[29] Thus, more than a

decade of legislative debate over Scaffold Safety Law insurance costs has occurred without establishing a permanent public reporting system capable of isolating those costs.

What Has Not Been Provided — and Why It Matters

To our knowledge, neither the insurance industry nor the construction industry has provided the Department of Financial Services — or made public — any of the following §240-specific data, by insurer or in aggregate. A Scaffold Safety Law reporting system should require all of them:

1. §240-attributable earned and written premiums
2. incurred and paid losses
3. open and closed claims
4. claims closed without payment
5. defense and cost-containment expenses
6. other loss-adjustment expenses
7. case reserves and IBNR
8. reinsurance costs and recoveries
9. number of claims by accident year
10. average and median paid claim
11. settlements versus judgments
12. claims by injury severity
13. amounts attributable to §240 versus §241 and ordinary negligence
14. contractual-indemnification recoveries; additional-insured recoveries
15. insurer underwriting expenses associated with the coverage

That would allow several extraordinarily important ratios to be calculated for the first time:

1. §240 losses ÷ §240 premiums
2. (§240 losses + defense expenses) ÷ §240 premiums
3. §240 premiums ÷ construction value
4. §240 claim costs ÷ construction value
5. §240 insurance costs ÷ total housing-development cost

Those are the numbers needed to evaluate claims that the Scaffold Safety Law materially contributes to New York's housing-affordability problem.[30]

Why these data matter. These are not technical details. Without §240 premiums, no one can calculate what share of a contractor's liability premium is attributable to the law. Without §240 losses and defense costs, no one can tell whether that share reflects payments to injured workers or insurer expenses and margins. Without counts of claims closed with and without payment, no one can tell whether insurers are resisting valid claims — the same question Risk 1 raises about workers' compensation. And without reserve and reinsurance data, no one can tell

whether reported “costs” reflect actual payments or conservative estimates that may later be released into insurer earnings, as reserve releases helped boost industry results in 2025.

Why industry claims cannot be independently verified. Opponents of the law point to rising premiums and to the Rockefeller study’s cost estimates. But premium increases have many drivers — including property catastrophe exposure, reinsurance costs, broader claim-cost inflation and the insurance pricing cycle — and the City’s own figures on affordable housing combine property and liability insurance. The information that would isolate the Scaffold Safety Law’s share sits in insurers’ claim files. Because insurers are not required to report it and have not volunteered it, their claims about the law’s cost cannot be tested by regulators, legislators, independent researchers — or a court.

Captive insurers and wrap-up programs: the least transparent corner of the market. Many large New York construction projects are insured through owner-controlled or contractor-controlled insurance programs (OCIPs and CCIPs, often called “wrap-ups”), sometimes backed by a captive insurer that the project owner itself owns. The Metropolitan Transportation Authority, for example, insures its capital-program construction through an OCIP in which its captive insurer, First Mutual Transportation Assurance Company, reimburses deductibles and manages claims.[31] Captive insurers generally do not file the NAIC statutory statements on which this report’s Other Liability analysis is based. New York-licensed captives file annual statements with DFS in a form prescribed by the Superintendent,[32] and captives domiciled in other states often report to regulators that treat those filings as confidential by statute.[33] Large deductibles and self-insured retentions add a further layer: losses paid within them never appear as insurer losses at all. Even where a public owner’s captive publishes audited financial statements, those statements do not separate §240 claims from other liabilities.

The implication is direct: a meaningful part of the §240 claims experience — potentially including that of some of the largest projects cited as evidence of the law’s cost — is invisible in public insurance data. Any transparency requirement must therefore reach captive insurers, wrap-up programs and self-insured retentions, not only conventional insurers.

Here’s the problem: New York has debated changing the Scaffold Safety Law partly because of its alleged insurance cost for decades. Yet neither the state nor the insurance industry has published the basic data needed to isolate that cost from the much broader Other Liability insurance market. Without that information, policymakers cannot know how much a reduction in §240 liability would reduce premiums — or how much of the savings would remain within the insurance system rather than reaching contractors, owners and ultimately construction consumers.

Risk 3

Scaffold Safety Law Saves Lives: Rollbacks Will Put Workers' Lives at Greater Risk

Risk 3 Summary: In 2024, estimated injury-only construction rates were 137 per 10,000 FTE workers in New York, 147 in Illinois and 343 in Pennsylvania. After adjusting for New York's much greater high-rise density, the comparative indexes become 137, 237 and 888. Using multifamily construction activity as an independent adjustment produces 137, 345 and 1,084, respectively.

Fatalities show the same pattern. Actual construction fatality rates were 8.9 per 100,000 FTE in New York, 8.4 in Illinois and 11.9 in Pennsylvania. After the two vertical-construction adjustments, Illinois rises to 13.5–19.7 and Pennsylvania to 30.8–37.6, versus New York's 8.9. These are comparative indexes, not official accident rates, and by themselves they cannot measure precisely how many lives the law saves. But both independent adjustments point in the same direction — and they are consistent with what the law is designed to do: require owners and contractors to provide fall protection before a worker ever leaves the ground.

We embark here on a detailed three-step analytical process with some startling conclusions.

Step 1. Based on the accident rates in comparable states with no equivalent to New York's Scaffold Safety Law, we build two separate Adjustment Factors to estimate the potential impact of a Scaffold Safety Law repeal on the frequency of accidents in New York State.

Step 2. We apply each of those adjustment factors to two sets of data for New York State: The frequency of injuries and of fatalities. For each adjustment factor, we then create what we call the **Injury Index** and the **Fatality Index**.[34]

Step 3. We then explore what the additional injuries and fatalities might cost the State of New York.

Illinois and Pennsylvania are the two states that provide the most useful and contrasting benchmarks for New York: All three states are large, mature industrial states with major metropolitan centers, substantial construction industries, significant stocks of older buildings, plus meaningful amounts of high-rise and multifamily construction.

More importantly, they can provide two somewhat different legal perspectives: Illinois once had a special construction-safety statute, the Structural Work Act, which imposed duties concerning scaffolds and other construction hazards, but repealed it in 1995. Pennsylvania, by contrast, has not had a comparable statutory liability regime equivalent to the Scaffold Safety Law.

Illinois therefore provides a comparison with a state that moved away from a special statutory construction-safety regime, while Pennsylvania provides a comparison with a major neighboring state operating without the history of such a law.

The comparison is also practical because consistent 2024 BLS construction injury, employment and fatality data are available for all three states, while Chicago, Philadelphia and Pittsburgh provide substantial urban construction environments against which New York's much greater concentration of vertical construction can be measured.

Other large construction states — notably California, Texas and Florida — could provide useful additional sensitivity tests, but their construction environments, climate, development patterns and metropolitan structures introduce additional differences that are outside the scope of this three-state analysis.[35]

Undeniably, New York construction workers operate in an unusually vertical environment with New York City's greater density of high-rise buildings than either Chicago or the principal Pennsylvania cities. So, a greater share of the construction environment involves the kinds of elevation hazards — scaffolds, ladders, hoists, roofs and elevated work surfaces — that New York's Scaffold Safety Law is specifically intended to address.[36]

Elevation hazards remain a major source of serious construction accidents in New York City. The New York City Department of Buildings reported that more than half of the construction injuries and work-site fatalities it recorded in 2024 resulted from worker falls**,** which remained the leading construction-site hazard. DOB also noted that falls can occur on projects of any size and that even falls of only a few feet can cause serious injury or death.[37]

How the Scaffold Safety Law Saves Lives

The Scaffold Safety Law works by placing the cost of an elevation-related injury on the parties best positioned to prevent it. Owners and contractors who fail to furnish proper scaffolding, hoists, ladders and other safety devices are liable when a worker is hurt as a result, and the worker's comparative negligence is not a defense.[38] That gives every owner and general contractor on a New York job site a direct financial reason to ensure that fall protection is provided and used — not merely a regulatory obligation enforced by occasional inspections.

Weakening that liability will weaken that incentive. That is why rollbacks will put workers' lives at greater risk, even though no study can predict the precise number of additional deaths. The comparative evidence that follows is consistent with that conclusion.

Clearly, a state dominated by lower-rise construction does not present the same elevation-related exposure as New York, and that difference makes a simple comparison of state accident rates incomplete.

First Step. Adjustment Factors

To adjust injury and fatality data for these differences, here are the two methodologies we pursued:

Adjustment #1. Based on the number of high-rise buildings in existence compared to the population.

Adjustment #2. Based on the number of housing units authorized in 2024 for buildings containing five or more units compared to the number of construction workers.

Despite New York's substantially greater exposure to vertical construction, its construction injury and fatality rates are not unusually high. Moreover, under both adjustment methodologies, New York has substantially lower comparative injury and fatality indexes than either Illinois or Pennsylvania. Although the interstate comparisons alone cannot establish causation, these findings are consistent with the conclusion that the Scaffold Safety Law contributes substantially to worker safety.[39]

Adjustment #1 — Existing High-Rise Density

Existing high-rises per 100,000 population

State	Major Metro Area	High-Rises per 100k Population	High-Rise Density Adjustment Factor
New York	New York City	78.6	**1.00x**
Illinois	Chicago	48.9	**1.61x**
Pennsylvania	Philly and Pittsburgh	30.3	**2.59x**

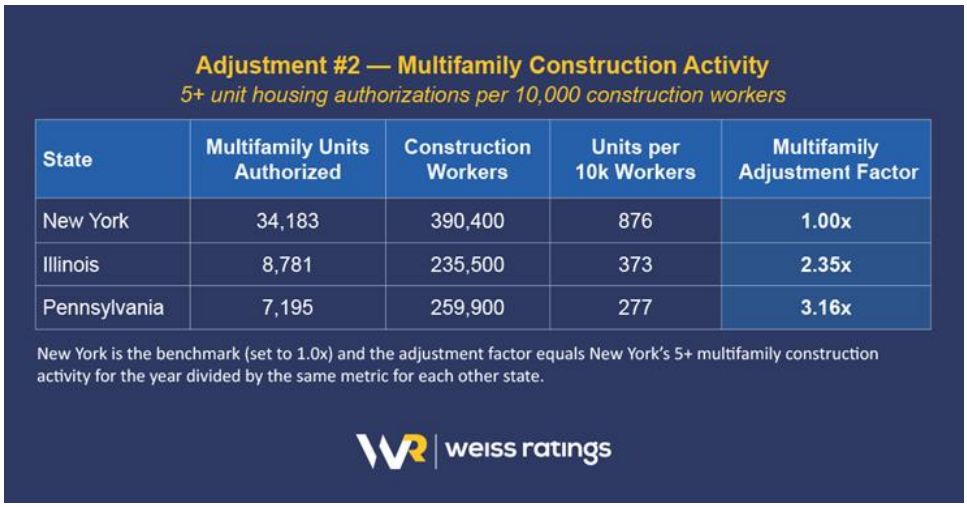
New York is the benchmark (set to 1.00×), and the adjustment factor equals New York's high-rise density divided by each state's density. Thus, the adjustment factor for Illinois is 78.6/48.9 = 1.61x, and for Pennsylvania, it's 78.6/30.3 = 2.59x. High-rise density is used as a proxy for vertical-construction exposure.

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New York's vertical-density measure is set as the benchmark. Reported Illinois and Pennsylvania BLS rates are then scaled upward in proportion to the difference between their high-rise concentrations and New York's. The result is an index designed to help compare apples to apples, placing the three states on a more similar footing with regard to vertical construction.

Relative to each 100,000 in population, New York had 78.6 high-rises, compared to 48.9 in Illinois and 30.3 in Pennsylvania. This then produces adjustment factors of 1.61× and 2.59×, respectively.[40]

Next, let's look at Adjustment #2 — multifamily construction activity:



Here are the key facts to glean from this comparison:

1. The 2024 Census data show that 34,183 housing units were authorized in buildings containing five or more housing units in New York State, compared with 8,781 in Illinois and 7,195 in Pennsylvania.[41]
2. BLS reports 2024 annual-average construction employment of 390,400 in New York, 235,500 in Illinois, and 259,900 in Pennsylvania.[42]
3. Thus, for each 10,000 workers, New York authorized 876 new 5+ units in 2024, Illinois authorized 373, and Pennsylvania authorized 277.
4. To normalize for multifamily construction activity in 2024, which we use as a proxy for vertical-construction exposure, we adjust the accident rates by 2.35× for Illinois and 3.16× for Pennsylvania.

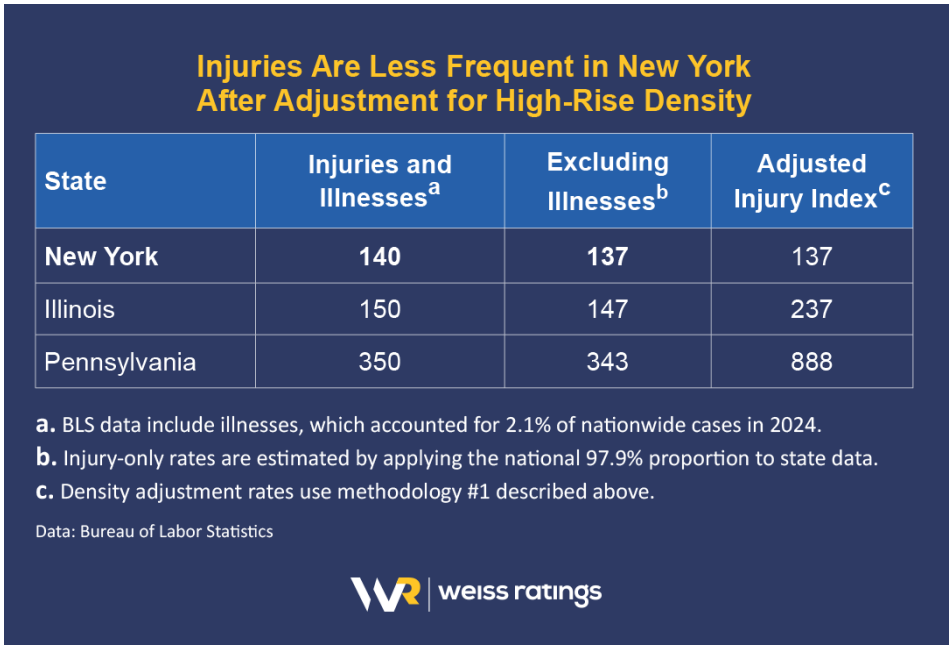
Second Step. Injury Index and Fatality Index

We now proceed to apply these adjustment factors to two sets of BLS data:

A. Construction worker injuries
B. Construction worker fatalities

A. Construction Worker Injuries

The Bureau of Labor Statistics (BLS) reports that, for every 10,000 FTE construction workers, New York State reported 140 nonfatal injuries and illnesses, compared with 150 in Illinois and 350 in Pennsylvania.[43] The unadjusted data show New York with a slightly lower rate than Illinois and a substantially lower rate than Pennsylvania:



Because the BLS figures include occupational illnesses as well as injuries, we estimated injury-only rates by removing the 2.1% national illness share. The resulting estimates are 137 per 10,000 workers in New York, 147 in Illinois and 343 in Pennsylvania.[44]

The benefit of the Scaffold Safety Law becomes more clearly apparent when adjusting for density. Based on the High-Rise Density Adjustment Factor #1, assuming the vertical density in Illinois and Pennsylvania were equivalent to New York's, the resulting injury index is 237 in Illinois and 888 in Pennsylvania. In sum, based on 2024 official data, we find that:

1. New York, the only state in the nation with a Scaffold Safety Law in place, was able to limit its accident rate to 137 per 10,000 construction workers;
2. Illinois, which had a comparable law, the Structural Work Act, but repealed it in 1995[45], suffered an adjusted accident index that was 73% higher than New York's; and
3. Pennsylvania, which has not had a similar law, suffered an adjusted accident index that was 548% higher.

The New York picture now comes into clearer focus: *Higher buildings; fewer injuries.*

Next, we apply the second adjustment index based on multifamily construction activity in 2024.

We find that:

1. New York was able to limit its accident rate to 137 per 10,000 construction workers;
2. Illinois had an adjusted accident index of 345, or 152% higher than New York's; and
3. Pennsylvania had an adjusted accident index of 1,084, which was 691% higher.

Injuries Are Even Less Frequent in New York After Adjustment for Multifamily Activity

State	BLS Injuries & Illnesses	Excluding Illnesses	Multifamily Adjustment	Adjusted Injury Index
New York	**140**	**137**	**1.00x**	**137**
Illinois	150	147	2.35x	**345**
Pennsylvania	350	343	3.16x	**1,084**

Data: Bureau of Labor Statistics

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Neither the high-rise density nor multifamily adjustment is a direct measure of worker-hours at elevation, and neither establishes causation. But both produce the same directional result: New York has substantially lower comparative construction-injury indexes than Illinois and Pennsylvania, especially after adjusting for differences in vertical-construction exposure.

B. Construction Worker Fatalities

The Bureau of Labor Statistics reports that in 2024, for every 100,000 FTE construction workers, New York State suffered 8.9 fatalities, compared with 8.4 in Illinois and 11.9 in Pennsylvania.[46] Thus, before any adjustment, New York's fatality rate was slightly higher than Illinois's but substantially lower than Pennsylvania's.

As you can see from the chart below, applying the high-rise-density adjustment produces comparative fatality indexes of 8.9 for New York, 13.5 for Illinois and 30.8 for Pennsylvania.[47]

Fatalities Are Less Frequent in New York After Adjustment for High-Rise Density

State	Fatalities (BLS)	Density Adjustment Factor	Adjusted Fatality Index
New York	**8.9**	**1.00x**	**8.9**
Illinois	8.4	1.61x	**13.5**
Pennsylvania	11.9	2.59x	**30.8**

Data: Bureau of Labor Statistics

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The significance of New York's comparatively favorable fatality experience becomes more apparent when adjusting for this density. Based on High-Rise Density Adjustment Factor #1, when the exposure in Illinois and Pennsylvania is normalized to New York's, we find that:

1. With its Scaffold Safety Law in place, New York's construction fatality rate was 8.9 per 100,000 FTE construction workers.
2. Illinois, which repealed its comparable law in 1995, had an adjusted fatality index of 13.5, or 52% higher than New York's.
3. Pennsylvania, which has not had a comparable Scaffold Safety Law, suffered an adjusted fatality index of 30.8, or 246% higher than New York's.

BLS cautions that these industry fatality rates are not directly comparable because industry composition differs from state to state. Nevertheless, the adjustment analyses here are considered useful to explore one important dimension of that difference — New York's unusually concentrated vertical construction environment.

Fatalities Are Even Less Frequent in New York After Adjustment for Multifamily Activity

State	Fatality Rate	Multifamily Activity Factor	Adjusted Fatality Index
New York	**8.9**	**1.00x**	**8.9**
Illinois	8.4	2.35x	**19.7**
Pennsylvania	11.9	3.16x	**37.6**

Data: Bureau of Labor Statistics

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This second adjustment produces the same directional result, but larger differences: Illinois's comparative fatality index rises to 19.7 and Pennsylvania's to 37.6, versus New York's 8.9. Thus, Illinois's adjusted index is 122% higher than New York's, and Pennsylvania's is 322% higher.[48]

Although helpful in achieving a better apples-to-apples comparative framework, neither the high-rise-density nor the vertical-construction-activity adjustment is a direct measure of construction worker-hours at elevation. They are therefore treated as indexes for analysis rather than official fatality rates.

Nevertheless, both approaches produce the same directional result. Under Adjustment #1, the comparative fatality indexes are 8.9 for New York, 13.5 for Illinois and 30.8 for Pennsylvania. Under Adjustment #2, they are 8.9, 19.7 and 37.6, respectively.

Thus, the 2024 evidence establishes an important factual point: despite New York's unusually vertical construction environment, its observed construction fatality rate was *not* unusually high. Moreover, when two different proxies are used to normalize the comparison for vertical construction exposure, New York clearly has the lowest resulting fatality indexes of the three states.

We save the third step in our analysis for the next section.

Risk 4

Rollbacks Will Shift Costs, Not Eliminate Them — And Accident Costs Could Far Outweigh Any Savings

Risk 4 Summary: In NYCHA's 2023 project-cost model, labor and materials represent 61% of construction costs, while all insurance represents approximately 1%. The portion specifically attributable to §240 must therefore be only part of the applicable insurance component.

The often-cited Rockefeller study, commissioned and paid for by the New York Civil Justice Institute, estimated $2.275 billion in annual Scaffold Safety Law-related costs — $785 million public and $1.49 billion private — but relied heavily on an assumed insurance-cost factor of about 7% of construction value. Its own project-level MTA analysis reported incurred Labor Law claims of approximately 0.28%–0.91% of construction value. Meanwhile, stress tests using Pennsylvania's higher adjusted accident experience produce approximately 29,000–37,000 additional injuries and 85–112 additional deaths, with an illustrative annual economic burden of approximately $1.1–$1.4 billion.

One of the principal arguments for weakening the Scaffold Safety Law is economic: It's said that the Scaffold Safety Law increases liability-insurance costs, those costs increase the price of construction, and ultimately, New Yorkers pay the price through more expensive housing. True? Data from multiple sources indicate that this argument is far less clear-cut than its proponents suggest.

High insurance costs have not stopped New York from building. New York City reported record affordable-housing production in fiscal 2025 — 33,715 affordable homes financed through new construction and preservation[49] — and citywide housing completions in 2025 reached their highest level since at least 2010, according to NYU's Furman Center.[50] (Affordable new construction alone declined in 2025, according to the New York Housing Conference, while total affordable production edged up from 2024.[51]) All of this occurred with the Scaffold Safety Law in full force.

Yes, insurance costs in New York have been rising. Indeed, New York City has recently taken steps specifically aimed at reducing insurance expenses for affordable and rent-stabilized housing. In 2026, the City said property and liability insurance premiums for affordable housing had more than tripled since 2017 and announced a $100 million initiative intended to reduce premiums.[52] But that does not answer two important questions:

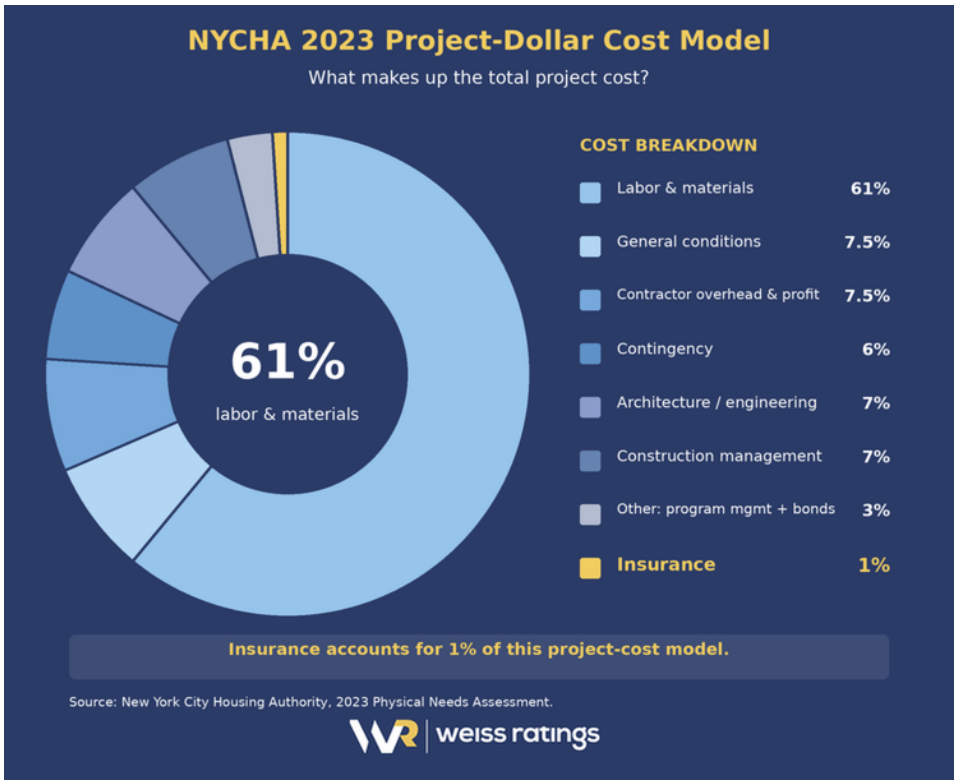
First, how much of the extraordinarily high cost of housing construction in New York can be attributed to construction insurance in general, and more specifically, how much can be connected to Scaffold Safety Law liability?

Second, if the Scaffold Safety Law helps prevent additional injuries and deaths, what economic costs would New York incur if the Scaffold Safety Law were repealed and those additional accidents occurred?

1. In NYCHA's project-cost model, insurance represents approximately 1% of construction costs.

It's true that New York City's construction costs are high. Turner & Townsend's 2025 international survey ranked New York the most expensive of 99 construction markets worldwide, with average construction costs of $5,744 per square meter. Chicago's was $4,695 and Philadelphia's $4,604. New York's labor costs alone were estimated at an extraordinary $131.40 per hour.[53]

So, yes, the affordability problem in New York is very real, especially in New York City. But attributing a substantial share of that affordability problem to the Scaffold Safety Law requires considerably more evidence. In the real world, insurance overall — including various forms of coverage that are *outside* of the Scaffold Safety Law — is estimated to represent *no more than about 1 cent out of every dollar spent on construction projects.* The best evidence comes from the New York City Housing Authority (NYCHA) in its 2023 Physical Needs Assessment of construction costs, shown in the chart below.



Just one cost category in this study — labor and materials — consumed 61% of construction costs, or approximately 61 times the total cost of all insurance.[54] The remaining costs made up

38% of the total, or about 38 times the total cost of insurance. And overall, roughly 99% of every project dollar in 2023 went to cover expenses *other* than insurance.[55]

The NYCHA tabulation demonstrates that the overwhelming majority of the construction dollar goes to costs other than insurance — including labor, materials, management, architecture and engineering, contractor overhead and profit, contingencies and bonds.[56] But even the NYCHA estimates exclude other critical costs:

- Private housing development adds still another layer of cost categories that are not fully captured by that NYCHA construction model, including land acquisition, financing costs and interest, legal expenses, title expenses, real-estate taxes during development, zoning and entitlement costs, environmental review, marketing and developer fees.
- The NYU Furman Center similarly defines housing-development "soft costs" as including land and permits, construction-loan interest, marketing, insurance, taxes, architecture, engineering and legal expenses.[57]
- In addition, the NYC Comptroller has documented another particularly important cost — *time.* Affordable-housing projects involving rezonings can take years to work through approval and predevelopment processes before construction closing, all while developers are required to carry staff, professional and other expenses during the process.[58]

What About the "Rockefeller" Study and Its Widely Cited Number?

Any serious examination of the Scaffold Safety Law's alleged impact on construction costs must address what has become known as the "Rockefeller study" (due to its association with the Nelson A. Rockefeller Institute of Government).[59] The study was commissioned and paid for by the New York Civil Justice Institute (NYCJI),[60] which worker-safety advocates have described as a group created by an alliance working on behalf of employer and industry interests.[61] The study estimated that the Scaffold Safety Law imposed approximately $785 million annually in public-sector costs and another $1.49 billion in private-sector costs — a combined $2.275 billion per year. Subsequently, those figures have been cited in New York legislative materials, insurance and construction-industry publications, news reports and, most recently, by proponents of Scaffold Safety Law reform or repeal. The study also concluded that the law increases construction injuries — the opposite of the evidence presented in Risk 3 — a conclusion that critics, including Cornell University labor economist Richard Hurd, challenged on methodological grounds.[62]

But what happens when we look under the hood? We find that the $2.275 billion was not derived from a statewide database showing §240 premiums, §240 claims, §240 losses or §240 litigation expenses. In fact, no such comprehensive database existed.

Instead, the study's large cost estimate depended critically on one assumption: that 7% of relevant construction spending represented insurance-related costs associated with work at

height. Next, for public construction, the researchers applied that percentage to estimated "at-height" capital spending to arrive at approximately $785 million.

And then came an even greater leap of faith. For private construction, the researchers acknowledged they lacked more specific information and *again assumed 7%,* applying it broadly to three categories of nonresidential construction. That produced the additional $1.49 billion estimate. In other words, the widely repeated $2.275 billion figure was not a measurement of what the Scaffold Safety Law actually cost New York. It was largely the mathematical consequence of applying a blanket 7% assumption to billions of dollars of construction activity.

Meanwhile, the study's own empirical evidence tells a much more complicated story. For Metropolitan Transportation Authority construction programs where actual construction value and incurred Labor Law claims could be compared, the study reported Labor Law claim costs ranging from approximately 0.28% to 0.91% of construction value — not 7%. Big difference. Furthermore, in the study's attempt to estimate §240 claims and associated legal costs more specifically, the resulting statewide figure was approximately $110 million annually — again, dramatically lower than the $2.275 billion.[63]

None of those smaller figures establishes the true statewide cost of the Scaffold Safety Law either. Each has limitations of its own. But together they reveal the fundamental problem with treating the Rockefeller headline estimate as an established fact: New York did not have the data needed to measure the statewide cost of the Scaffold Safety Law in 2013. And it still does not have them today. This underscores why the proposed Construction Insurance Transparency Act is so important. More than a decade after the Rockefeller study, New York is still debating the Scaffold Safety Law without routinely collecting the §240-specific premium, loss, expense and claim data needed to determine what the law actually costs (many of which exist outside of the Scaffold Safety Law).

The distinction is pivotal: rising insurance costs, total construction-insurance costs and §240-specific insurance costs are three different quantities. The NYCHA model places all insurance at approximately 1% of its project cost, and the Scaffold Safety Law necessarily represents only a portion of relevant liability coverage. That leaves the other side of the economic equation:

What Would Be the Cost of More Construction Accidents in New York?

Our model uses New York's approximately 390,400 construction workers as its base.

Under the high-rise-density-adjusted scenario,

- increasing the injury rate from 137 to 888 per 10,000 implies approximately 29,319 additional injuries annually, while
- increasing the fatality rate from 8.9 to 30.8 per 100,000 implies approximately 85 additional deaths annually.

Under the multifamily-adjusted scenario,

- increasing the injury rate from 137 to 1,084 implies approximately 36,971 additional injuries annually, while
- increasing fatalities from 8.9 to 37.6 implies approximately 112 additional deaths annually.[64]

How much would these additional injuries cost? BLS reported approximately 5,100 recordable construction injury-and-illness cases in New York in 2024, of which approximately 3,400 involved days away from work. Thus, roughly two-thirds of New York construction's recordable cases were serious enough to result in time away from work.[65] If the additional injuries in New York occurred at the same adjusted frequency as Pennsylvania's, here's a plausible scenario of what the impact would be:

Additional Injuries and Deaths if New York's Construction Accident Rate Matched Pennsylvania's, a State with No History of Scaffold-Type Laws

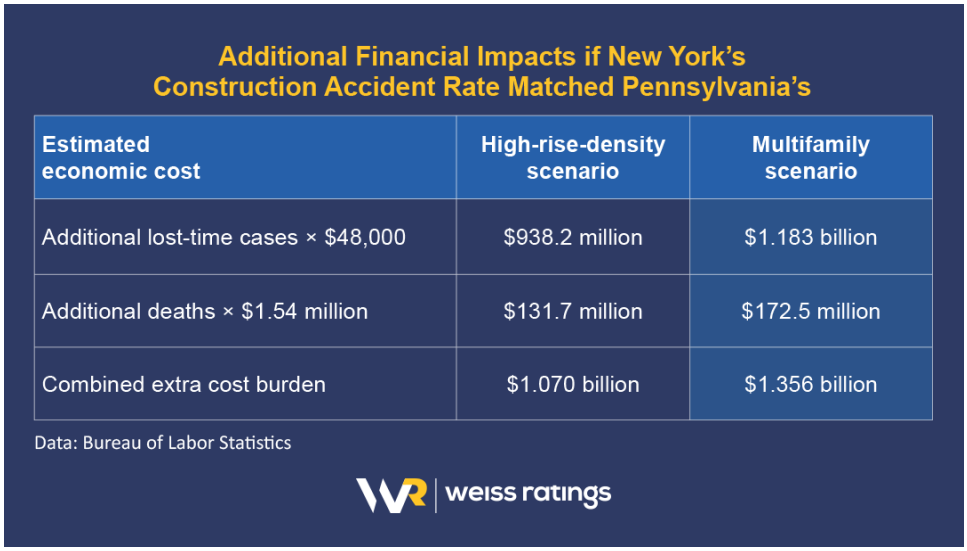
Adjustment factor	Additional recordable injuries	Approx. additional lost-time cases	Additional deaths
High-rise-density adjustment	29,319	19,546	85
Multifamily-activity adjustment	36,971	24,647	112

Data: Bureau of Labor Statistics. These are stress-test calculations, not forecasts of the consequences of changing §240. They apply the severity distribution observed in New York construction to the additional injuries implied by the two Pennsylvania-adjusted indexes.



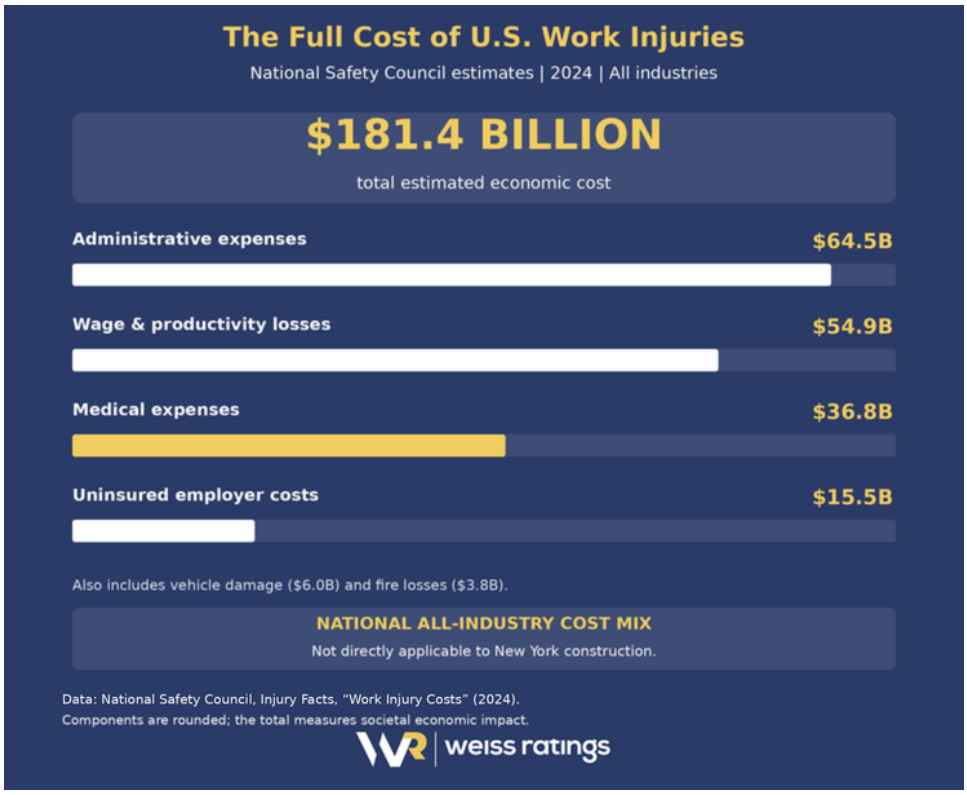
Next, we ask: How much would these additional impacts cost? A relatively conservative estimate is based on the National Safety Council review of 2024 economic costs associated with a medically consulted occupational injury at $48,000 and the cost per occupational death at $1.54 million.[66] In addition, rather than applying the $48,000 benchmark to every additional recordable injury, we apply it only to the estimated additional cases involving days away from work.

As illustrated in the next chart, the result of this modeling is an additional annual economic burden of approximately $1.1 billion to $1.4 billion. Neither the interstate analysis nor the NSC data establishes a direct causal link. So, we warn against those who might describe these estimates as dollars "saved by the Scaffold Safety Law." Rather, we use them as a benchmark for the economic exposure associated with weakening — let alone repealing — the law.



National Safety Council estimates show workplace injury costs flowing through several channels: medical treatment; wage and productivity losses; insurance and claims administration; employer investigation and disruption; replacement-worker and coworker costs; and other uninsured employer expenses.

In 2024, NSC estimated total U.S. work-injury costs of $181.4 billion, including $64.5 billion of administrative expense, $54.9 billion of wage and productivity losses, $36.8 billion of medical expenses and $15.5 billion of uninsured employer costs.[67]



These national categories should not be blindly allocated to the New York scenarios because national all-industry cost composition is not necessarily representative of New York construction.

They do, however, demonstrate that the insured medical claim is only one part of the economic burden. Moreover, we wish to stress that this analysis is supported by two other critical considerations:

First, work disruption is not just a "theoretical cost." It's real, and it's large.

OSHA's Safety Pays methodology identifies a series of accident costs that fall under the rubric of work disruption. These include training replacement workers, accident investigation, workers' compensation administration, lost productivity of the injured employee, disruption to coworkers and supervisors, wages paid for unproductive time, liability claims and damaged equipment or property. Moreover, construction projects can be especially vulnerable because work is sequential: an accident affecting one trade can delay the work of others.[68]

The National Safety Council estimates that occupational injuries resulted in 102 million lost workdays during 2024, including days lost from injuries occurring in earlier years. Injuries occurring in 2024 generated 69 million days lost during the year, with another 54 million days expected to be lost in future years because of deaths and permanently disabling injuries occurring in 2024.[69]

Second, falls are especially expensive in construction.

This is particularly relevant to the Scaffold Safety Law because falls to a lower level are among the largest causes of serious workers' compensation losses. Liberty Mutual's 2025 Workplace Safety Index reports that these falls — along with struck-by incidents — generated nearly $11.6 billion in annual direct costs.[70] And the Scaffold Safety Law in particular is directed toward elevation-related hazards capable of producing unusually severe injuries.

Another big factor: The cost of catastrophic cases can last a lifetime, while average injury costs obscure the long tail of catastrophic falls. A worker who falls from a scaffold or roof can suffer traumatic brain injury, spinal injury, paralysis or multiple orthopedic injuries requiring surgery, hospitalization, rehabilitation, home modification, assistive equipment, attendant care and years — sometimes a lifetime — of continuing treatment.[71]

The most defensible costs we can quantify are medical treatment, lost earnings and productivity, workers' compensation and claims administration, employer disruption and fatality-related economic losses. Trouble is, there are other major consequences that are economically real but harder to quantify. These include lifetime attendant care, home modifications, family caregiving, lost household production, retraining, Social Security Disability, Medicaid and Medicare costs, psychological consequences to workers and families, project delays, recruitment and replacement of skilled workers, and lost quality of life. These costs are

not added to the $1.1 billion to $1.4 billion benchmark unless already captured by the NSC methodology. But their exclusion should not be interpreted to mean that they are small.

Clearly, the housing-affordability debate should not ask only how much the Scaffold Safety Law adds to liability-insurance premiums. Rather, it should ask how large that increment is relative to land, labor, materials, financing, taxes, regulatory delay, architecture, engineering, contractor overhead, profit and the many other costs of constructing housing. It should separately ask what medical, disability, productivity, project-disruption, public-program and human costs may be avoided to the extent that elevation-related accidents are prevented.

The evidence cited here does not conclusively establish that the Scaffold Safety Law itself causes New York's comparatively favorable safety results. Nor does it establish precisely how much construction insurance premiums would fall if the Scaffold Safety Law were weakened. But it does establish several facts:

Fact #1. New York is among the world's most expensive construction markets for a broad range of reasons. In the NYCHA project-cost model examined here, 99% of the project dollar consisted of costs other than insurance, with labor and materials alone accounting for 61%. Insurance costs, including those unrelated to the Scaffold Safety Law, were no more than 1%.

Fact #2. The insurance share itself must be separated from the narrower §240 share. The Rockefeller study's project-level claims evidence placed incurred Labor Law claims in the listed MTA programs at approximately 0.28% to 0.91% of construction value, while its most §240-specific statewide calculation was approximately $110 million annually.

Fact #3. Workplace injuries impose substantial costs of their own. Using Pennsylvania to help replicate a scenario with no Scaffold Safety Law equivalent, the more conservative benchmark for New York State leads to an estimate of approximately $1.1 billion to $1.4 billion in additional economic burden annually. And that's before adding costs that, although probably large, cannot be reliably estimated.

These findings do not prove that the Scaffold Safety Law saves New York up to $1.4 billion per year. However, they demonstrate why a serious economic evaluation must keep two questions separate and examine both: the incremental cost attributable specifically to §240 and the economic burden associated with construction accidents.

A cost shifted is not a cost saved.

Risk 5

Tort Reform Will Cause More Financial Losses, Injuries and Deaths Among Workers, While Increasing Litigation and Disrupting the Insurance Marketplace

Risk 5 Summary: Following Florida's 2022–23 property-insurance tort reforms, policyholder lawsuits increased from 12.4% of claims closed without payment in 2022 to 12.9% in 2024 and 14.3% in 2025. This is precisely the opposite trend of what tort reform was promised to produce. By the measure that best isolates insurer-policyholder disputes, Florida's reforms have not delivered what was promised.

Medical malpractice tort reform provides a second case study. A 2003 Weiss Ratings report for the U.S. Congress found that, after tort reform, median payouts were 15.7% lower in states with damage caps, benefiting insurers. But that benefit was not passed on to doctors. In fact, it had the opposite effect: From 1991 through 2002, median premiums for three high-risk medical specialties increased 48.2% in states with caps versus only 35.9% in states without caps. This shows how lower insurer losses do not necessarily result in lower policyholder premiums. They are separate events. This concern could be even more pronounced with Scaffold Safety Law rollbacks because any savings would have to flow through insurers, owners, and contractors before ultimately reaching consumers in the form of reduced housing costs. Finally, introducing comparative negligence into Scaffold Safety Law cases would make the worker's share of fault a contested question in every disputed case — a likely recipe for more litigation, not less.

When insurance premiums become expensive, one recurring policy response is to restrict litigation or reduce the amount injured claimants can recover. The economic theory is straightforward: fewer lawsuits or smaller awards reduce insurer losses, and those savings should ultimately produce lower premiums.

But the second step does not necessarily follow from the first. Historical experience shows that tort reform can reduce insurer liabilities without producing proportionate premium relief for policyholders or lower downstream costs for consumers.

Two historical episodes are particularly relevant to New York's consideration of the Scaffold Safety Law. A third issue — comparative negligence — is specific to New York's law.

1. Florida Homeowners: The promise of tort reform was a reduced rate of policyholder lawsuits. The result has been precisely the opposite.

Florida's 2022–23 property-insurance reforms sharply restricted policyholder litigation remedies.[72] These reforms have now been fully in force for more than two years. What remains

to be decided is whether they are working or not. To address that question, there are two possible tests:

Test 1. Florida insurance companies, most Florida legislators and other proponents of tort reform focus on the raw number of lawsuits by homeowners against their insurance providers. If the number goes down, they declare victory. But this test can often be misleading when used by itself; it varies enormously along with the number of claims and the severity of hurricanes. So, a year with fewer claims can naturally produce fewer lawsuits even if the relationship between insurers and policyholders has deteriorated.

Test 2. The National Association of Insurance Commissioners uses a different approach. For its Market Conduct Annual Statement (MCAS), the NAIC asks: Among homeowners whose claims were closed without payment, what percentage resort to litigation? The answer to this question is what helps measure the effect of tort reform apart from the frequency and intensity of storms. And it's this measure that we use for comparing home insurance markets over time and among states.

The proponents of tort reform legislation promised that Florida's lawsuit rate would go down, and based on Test 1, they say it has. But using the second test, supported by the NAIC data, we find that, in fact, the post-reform results have gone in the opposite direction. Specifically …

In **2022**, the last full year before the reforms, the MCAS data show that Florida homeowners filed an average of 12.4 lawsuits for every 100 claims closed without payment. In **2024**, the first full post-reform year, the rate increased to 12.9%.[73] And in **2025**, after a second year under the new legal regime, the lawsuit rate increased *again,* this time to 14.3%.[74]

Thus, the significant finding is not that Florida had a particular number of lawsuits. It's that the probability of litigation conditional on an unpaid claim did not decline after tort reform; it actually rose. That distinction is critical.

FLOIR's raw litigation counts answer the question: How many lawsuits were filed? And yes, those numbers describe a decline in the total number of lawsuits filed. But they do *not* establish that insurers and policyholders are having fewer disputes per comparable insurance claim. And in fact, the NAIC's MCAS numbers show they are having *more* disputes per claim.

Someone looking only at lawsuit counts could announce a 40% decline in litigation. But an individual claimant encountering the relevant dispute would actually be 20% more likely to sue. As you can see, Florida's enormous variation in catastrophe claims makes the denominator indispensable.

With its MCAS surveys, the NAIC answers the more pertinent question for evaluating insurer-policyholder conflict: How frequently did an unpaid claim result in litigation? This is the right question to ask. And it's the answers to this question that illustrate the failure of tort reform in Florida so far.

The Interstate Comparison Is Even More Striking

The 2024 NAIC MCAS data give the Florida number considerably more context. Florida's rate was 12.9%. But among states without Florida's particular property-insurance tort-reform regime, our compilation of NAIC's MCAS data shows the following comparison:

After Tort Reform, Florida Homeowners Continue to Sue Their Insurers Far More Frequently Than in Other States

State	Lawsuits as % of claims closed without payment	State	Lawsuits as % of claims closed without payment
Florida	**12.90%**	Washington	1.42%
Connecticut	2.88%	Illinois	0.93%
Louisiana	2.81%	Virginia	0.70%
New Jersey	2.10%	Minnesota	0.60%
California	1.93%	Georgia	0.52%
Pennsylvania	1.80%	North Carolina	0.43%
Massachusetts	1.49%	Nebraska	0.24%



The comparison is extraordinary. Florida's 12.9% rate was approximately four and a half times Connecticut's, six times New Jersey's, seven times Pennsylvania's, 14 times Illinois's, and more than 21 times Minnesota's. Moreover, across all jurisdictions outside Florida, we calculated approximately 1.1 lawsuits per 100 unpaid claims, versus 12.9 in Florida — roughly a 12-to-1 difference.[75]

The Florida experience with tort reform demonstrates that restricting litigation rights is not sufficient by itself to produce the low litigation rates already achieved in numerous states without comparable restrictions.

The Other Half of the Equation: A Jump in Unpaid Claims

The lawsuit denominator — closed claims without payment — also deteriorated. Using insurer statutory Schedule P data, we found that Florida insurers closed 40.0% of homeowners' claims without payment in 2022. But by 2024, that had increased to 46.7% — a 17% increase in the rate.[76]

Meanwhile, the NAIC MCAS dataset, which covers a somewhat different insurer population, shows the same direction: 35.4% in 2022 versus 40.3% in 2024, a 14% increase.[77] Moreover, the insurer-level Schedule P data show that this was not merely one carrier distorting the statewide

result. Consider these large increases in closed claims without payment at major Florida insurers:

- **People's Trust:** Claims closed without payment jumped from 38.8% to 75.4%.
- **Kin:** Up from 44.0% to 68.3%.
- **American Integrity:** From 43.9% to 64.6%.
- **State Farm Florida:** From 46.4% to 59.2%.
- **Castle Key Indemnity:** From 47.1% to 57.2%.
- **Slide:** From 30.6% to 50.3%.

In fact, all 14 Florida insurers we identified as closing more than half their claims without payment in 2024 had higher rates than in 2023.

Plus, high rates of closed claims without payment persisted in 2025: Citizens closed 61% of claims without payment; State Farm Florida, 53%; Castle Key Indemnity, 55%; Castle Key, 51%; and Slide, 50%.[78]

In sum, Florida's post-reform experience contains two distinct trends: First, many insurers closed a larger percentage of homeowners' claims without payment. Second, among homeowners experiencing those zero-payment closures, the percentage resorting to litigation increased rather than decreased.

The data establish that the increase in lawsuit propensity continued or even intensified after tort reform. They do not by themselves establish that tort reform *caused* insurers to close more claims without payment or homeowners to sue more frequently. Other factors — including the composition and severity of claims — could contribute. However, it's also possible that insurance companies, enabled by tort reform, pursued denials, delays and benefit cuts more aggressively, prompting a larger percentage of policyholders to go to court for satisfaction.

Interstate differences in regulation, catastrophe exposure, policy forms, insurer mix, claims practices and legal culture prevent attributing these differences to tort law alone. But the evidence demonstrates that restricting litigation does not by itself guarantee lower litigation rates: through 2025, Florida's measured lawsuit rate per unpaid claim moved in the opposite direction.

Why This Is Relevant to the Scaffold Safety Law

The conventional Scaffold Safety Law argument can be expressed as follows: "Too many lawsuits cause excessive insurer losses and high premiums. Therefore, the solution is to restrict lawsuits."

Florida presents a warning about beginning the analysis at the lawsuit rather than at the underlying claim dispute, and the reason should be obvious: If lawsuits principally arise because

the parties disagree about whether and how much an insurer should pay, suppressing access to court does not necessarily resolve that underlying disagreement.

The lesson for New York: Before changing the injured party's legal rights in order to reduce litigation, has the state established that the litigation itself — rather than the insurance practices and unresolved claims producing the litigation — is the underlying problem?

2. Medical Malpractice: Damage Caps Fail to Deliver Promised Premium Relief.

The medical-malpractice insurance crisis of the early 2000s provides a second important historical test of the recurring rationale for tort reform.

At the time, physicians in many states were facing steep increases in malpractice premiums. One widely proposed solution was to limit the amount injured patients could recover for noneconomic damages with a premise that seemed straightforward: damage caps would reduce insurers' claim costs, which in turn would reduce or restrain the premiums charged to physicians.

A 2003 nationwide study by Weiss Ratings tested whether that relationship was actually evident in the data.

The study, *Medical Malpractice Caps: The Impact of Non-Economic Damage Caps on Physician Premiums, Claims Payout Levels, and Availability of Coverage*, examined malpractice premiums and claims experience in states with and without noneconomic-damage caps.[79]

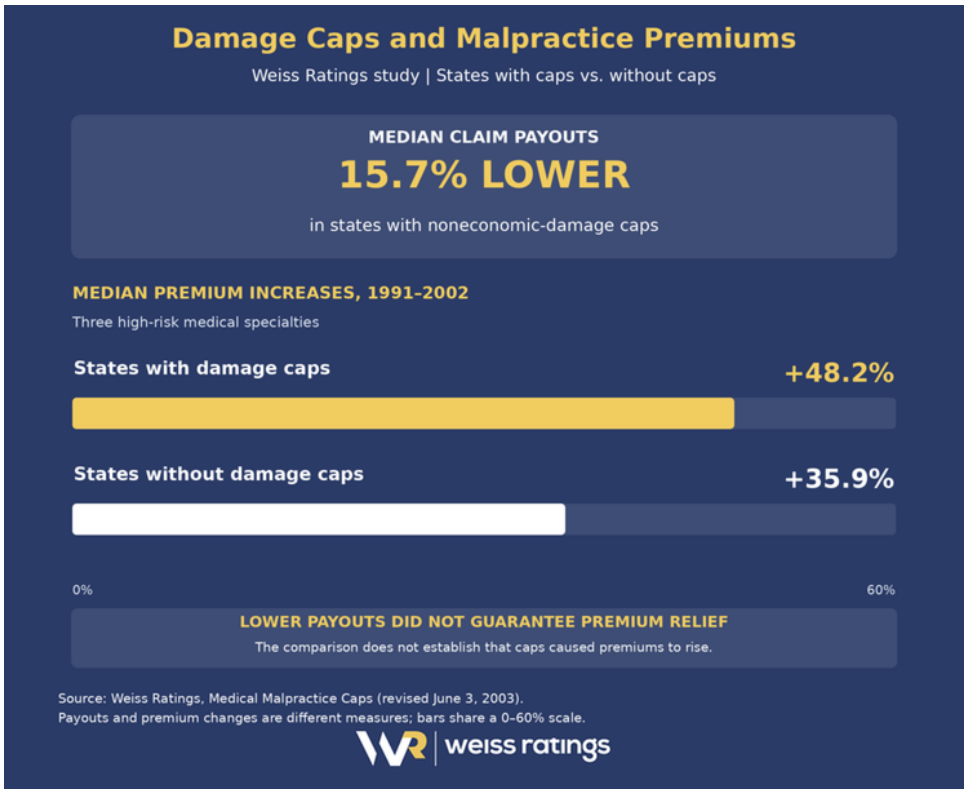
Result: Yes, damage caps reduced payouts. Median payouts were 15.7% lower in states with caps than in states without them.

But the corresponding premium relief expected by physicians did not materialize in the same way: From 1991 through 2002, median malpractice premiums for three high-risk medical specialties rose 48.2% in states with damage caps**,** while rising only 35.9% in states without damage caps. Thus, during the period studied, states that restricted patients' noneconomic recoveries experienced larger — not smaller — median premium increases than states without such caps.

This does not mean that damage caps *caused* premiums to rise. Nor does it establish that caps could never restrain premiums under different market conditions. But it demonstrates something equally important: *reducing insurers' liability payments did not necessarily produce a corresponding reduction in the premiums paid by physicians.*

The study identified other important influences on malpractice pricing, including the insurance underwriting cycle, reserve adjustments, medical-cost inflation, investment income, insurer financial condition and changes in the supply of available insurance. The experience exposed a

serious weakness in the simplistic equation that “lower recoveries lead to lower insurer costs, and then to lower premiums.”



On July 8, 2003, Senator Edward M. Kennedy discussed the Weiss research on the Senate floor during debate on medical malpractice tort reform. He emphasized that the study came from an independent financial-rating organization rather than from one of the principal advocacy groups fighting over malpractice legislation.[80]

“Doctors and patients,” he said, “are both victims of the insurance industry.” The Weiss study shows that tort reform without ensuring that insurance savings reach the policyholder “risks the sacrifice by consumers plus a continuing — and even worsening — crisis for doctors.”

The significance of his argument was economic rather than merely legal. Restricting compensation to injured patients could demonstrably reduce insurer liabilities. But unless the resulting savings were passed through in lower premiums, the group the legislation was ostensibly intended to help might receive substantially less benefit than anticipated. Or worse, they could be hurt even more in the end.

Florida subsequently put the theory to a real-world test.

Florida also enacted substantial medical-malpractice reforms in 2003, including limits on noneconomic damages. A decade later, the Florida Supreme Court examined what had happened.

In *Estate of McCall v. United States*, 134 So. 3d 894 (Fla. 2014), the court considered Florida's cap on noneconomic damages in medical-malpractice wrongful-death cases. In holding the particular cap unconstitutional under Florida's equal-protection guarantee, the court examined both the original justification for the legislation and subsequent evidence.[81]

Plus, the court expressly discussed the earlier Weiss study, including its finding that malpractice premiums had increased 48.2% in states with caps compared with 35.9% in states without them. Moreover, the post-reform Florida experience provided an additional test. According to evidence discussed by the court, following Florida's reforms:

- malpractice actions filed declined by more than 60%**;**
- closed malpractice claims declined 30.3%**;**
- noneconomic-damage payments declined 27.7%**;** and
- malpractice insurers had experienced nine consecutive profitable years by 2012.

All apparently good results, except one big problem: Physician malpractice premiums did not fall correspondingly. The court cited Florida Office of Insurance Regulation information indicating that Florida premiums remained among the highest in a nine-state comparison, ranking first or second in nearly every scenario examined.

This produced a revealing economic sequence: Fewer claims → fewer lawsuits → lower damage payments → improved profitability for insurers. But the anticipated final step — substantially lower premiums for physicians — did not materialize as expected.

The Florida record also contains a noteworthy warning from within the insurance industry itself: Robert White, president of First Professionals Insurance Company, testified during the 2003 Florida debate that a proposed $500,000 cap would accomplish "virtually nothing" toward stabilizing malpractice insurance rates. He also stated that no responsible insurer could simply cut rates upon enactment of a damage cap and estimated that even caps that were "effective" might ultimately reduce average premiums by no more than a disappointing 16%.

This testimony again illustrates an important distinction often obscured in tort-reform debates: A statutory reduction in potential liability is not the same thing as an equivalent reduction in insurance premiums. This is because premiums involve numerous factors beyond current claim payments. These include expected future losses, defense expenses, reserves for prior accident years, reinsurance, operating expenses, investment returns, capital requirements, market competition and expected underwriting returns.

Texas provides another important example. After sweeping medical malpractice reforms in 2003, yes, liability exposure and claim payments declined substantially. But research examining Medicare expenditures found no evidence that the reform produced the anticipated reduction in health-care costs. And other research found little persistent effect on private health insurers' losses per enrollee.[82]

The historical evidence therefore supports a more precise conclusion than either side of the tort-reform debate sometimes advances: Tort reform can reduce liability payments. What does not automatically follow is that the resulting savings will be passed through — in comparable magnitude — to insurance buyers, businesses or ultimately consumers. That distinction is particularly important when evaluating changes to the Scaffold Safety Law. If reducing §240 liability lowers insurer claim costs, that establishes only the first link in a longer economic chain. To establish a benefit to construction affordability, it would also be necessary to determine how much of the reduction becomes lower liability premiums, how much of those premium reductions reaches contractors and developers, and how much ultimately reduces the cost of housing. The medical malpractice experience illustrates why those separate links should be measured rather than assumed.

3. Comparative negligence: A recipe for more litigation, not less

A frequently proposed change to the Scaffold Safety Law would replace its current liability standard with comparative negligence, allowing defendants to reduce their liability by arguing that the injured worker was partly at fault. Proponents present this as a way to reduce litigation costs. The structure of New York law points the other way.

Under current law, a worker's comparative negligence is not a defense to a Scaffold Safety Law claim.[83] The central liability question is comparatively narrow: Was the required safety device provided, and did its absence or failure cause the fall? Defendants are not liable when the worker's own conduct was the sole proximate cause of the accident. But when the facts show that a scaffold collapsed or that no proper device was provided, courts can and do resolve liability on summary judgment, without a trial. In *Pirozzo v. Laight Street Fee Owner* (2022), for example, the First Department affirmed summary judgment for a worker whose scaffold collapsed, holding that his alleged failure to lock the scaffold's pins would amount only to comparative negligence, which is not a defense.[84]

Comparative negligence would change that. Apportioning fault is a question of fact, and questions of fact go to juries. Every contested case would add a second inquiry — what percentage of the fall was the worker's fault? — requiring additional depositions, expert testimony on work practices and reconstruction of the accident. Many cases that are now resolved on liability early will instead be litigated through trial. In our assessment, that is likely to increase, not reduce, defense costs and the time it takes to resolve claims — even as it reduces recoveries for injured workers. Proponents argue that comparative fault would deter some marginal claims and encourage lower settlements, and it may reduce the size of some awards. But the Florida experience shows that restricting claimants' remedies does not necessarily reduce disputes, and no proponent has produced New York data showing that savings from smaller awards would outweigh the added cost of litigating fault in every contested case. Here, too, the burden of proof belongs with those seeking to change the law.

Lower claims. Lower premiums. Lower construction costs. No step can be taken for granted. Each step must be proved.

Recommendations:
Build on 141 Years of Worker Protection While Strengthening the Systems Around It

Recommendations Summary: The Scaffold Safety Law should be preserved, and the insurance industry should be required to substantiate its claims about the law's cost. New York still lacks comprehensive data isolating the costs and outcomes associated specifically with §240. The proposed Construction Insurance Transparency Act would require reporting of important §240 financial and claims information, while additional reporting could capture premiums, paid and incurred losses, defense expenses, reserves, reinsurance and claims.

Other recommendations include investigating the increase in workers' compensation claims closed without payment; examining insurance pricing and whether savings actually reach policyholders; strengthening accident prevention and enforcement against serious and repeat safety violations; creating a unified construction-accident database; and accelerating legitimate claims and dispute resolution.

The evidence examined in this report points to a clear course: preserve the Scaffold Safety Law's protection against elevation-related hazards in full, while improving the insurance, enforcement, safety and data systems surrounding it.

The Scaffold Safety Law itself imposes a direct obligation on covered owners, contractors and their agents to furnish or erect scaffolding, hoists, ladders, slings, ropes and other devices that provide workers with proper protection.[85] These protections must not be weakened. Reform efforts should focus instead on enforcing safety requirements more effectively and on requiring the data needed to hold insurers accountable.

The findings in this report suggest several priorities.

1. Preserve the Scaffold Safety Law and require insurers to substantiate their claims.

The most critical finding of this report is that the evidence indicates the Scaffold Safety Law has had a positive impact on worker safety — even with the gaps in the enforcement of safety codes against contractors discussed in Recommendations 5 and 6 below — and that the economic cost of the additional accidents a rollback would invite could far exceed any reduction in insurance costs. This should not come as a surprise.

What *is* surprising is this fact: After decades of debate about the alleged insurance cost of the Scaffold Safety Law, New York still lacks public insurance data to determine that cost with confidence.

The NAIC Other Liability data examined in this report cover a broader universe of liability exposures. They cannot isolate §240. The frequently cited Rockefeller analysis, commissioned and paid for by the New York Civil Justice Institute, likewise had to rely heavily upon speculative assumptions rather than a comprehensive statewide database of §240 premiums and losses.

Weakening a 141-year-old worker-protection law on the basis of cost claims that its opponents have not substantiated would put the policy decision ahead of the evidence. The burden of proof belongs on those who would weaken the law — and on the record available today, that burden has not been met.

Preserve the law. Demand the data.

2. Enact Scaffold Safety Law insurance transparency.

The proposed Construction Insurance Transparency Act provides a ready starting point. S8200/A5811 would require insurers providing coverage against §240 claims to report detailed financial and claims information to the Department of Financial Services. Among other things, the legislation calls for disclosure of premiums attributable to §240 coverage, investment income, expenses, legal costs, risk-management expenses, claims and settlements, and claims closed with or without payment. And all this information would be made publicly available.[86]

The reporting system should also capture the §240-specific premium, loss, expense, reserve, reinsurance and claims measures identified in Risk 2, allowing regulators to calculate §240 loss ratios and its insurance cost as a percentage of construction value and total project cost.

The reporting requirement must reach every entity that bears §240 risk — captive insurers, owner- and contractor-controlled insurance programs and large-deductible or self-insured arrangements — not only conventional insurers filing NAIC statements. Pending enactment, DFS should use its existing authority to require special reports from insurers writing §240 coverage, and should ask the industry to produce the data underlying any cost claims it presents to the Legislature.

The current bill remains in the Senate Insurance Committee, and its Assembly counterpart remains in the Assembly Insurance Committee in the 2025–2026 session.[87] It raises a practical question: *How can legislators evaluate changes to a 141-year safety* law without the §240-specific information that the bill would provide?

3. Examine insurance pricing before assuming that reduced worker recoveries will reduce construction costs.

The interstate and insurer-level loss-ratio differences documented in the Risk 2 section of this report raise a separate question deserving regulatory scrutiny: how much of the liability premium dollar is attributable to losses, defense expenses, reinsurance, reserves, operating

expenses and underwriting returns? The existing comparisons do not establish overcharging, but they demonstrate why premium pricing should be examined alongside claim costs.

Accordingly, *DFS should examine the full premium dollar before policymakers assume that reducing an injured worker's recovery is the principal available route to lower construction-insurance costs.*

4. Make any claimed savings measurable — and verify whether they reach policyholders.

The medical-malpractice experience examined in this report shows why reducing insurer liability and reducing premiums are two different events. Any proposal to reduce insurer losses by changing the Scaffold Safety Law depends on four links that its proponents have not demonstrated:

1. How much can §240 losses decline?
2. How much can premiums decline?
3. How much can owners and contractors actually save?
4. And how much, if any, of those savings ultimately reduce public construction costs or housing-development costs?

Without that evidence, policymakers cannot even guess whether a reduction in worker recoveries becomes a reduction in construction costs or instead remains elsewhere in the insurance and development chain.

5. Strengthen accident prevention rather than relying principally on compensation after an accident.

The best §240 claim is an accident that never occurs. This report's safety analysis indicates that falls remain a major source of construction injuries and fatalities. It also cites research associating safety performance with planning, management commitment, owner involvement, training and the actual use of fall protection.

New York should therefore combine legal accountability with more aggressive prevention: targeted inspections of high-risk projects and repeat violators; better fall-protection planning before elevated work begins; stronger documentation of scaffold, ladder and fall-arrest systems; expanded worker and supervisor training; and greater coordination among owners, general contractors, subcontractors and safety personnel.

Recent enforcement cases demonstrate that serious violations have not disappeared. In one New York case resolved in 2026, OSHA found that a contractor had exposed workers to falls of up to 22 feet and failed to provide personal fall-protection equipment at a site where a worker suffered a fatal 18-foot fall.[88]

The existence of the Scaffold Safety Law therefore should not substitute for vigorous enforcement of safety requirements before an accident occurs. Instead of weakening or repealing the law, lawmakers must work diligently to make enforcement of safety requirements more effective.

6. Concentrate enforcement on repeat and serious safety violations.

Not every contractor presents the same risk. A more efficient safety regime should increasingly use inspection, citation and accident histories to identify contractors, subcontractors and projects presenting unusually high fall risk. That means distinguishing an otherwise responsible contractor experiencing an isolated incident from an employer repeatedly cited for exposing workers to the same hazard.

Federal enforcement demonstrates why this distinction matters. OSHA has documented employers repeatedly cited for fall-protection failures and, in sufficiently serious circumstances, has used willful violations, substantial penalties and its Severe Violator Enforcement Program.[89] New York can build on the same principle: *focus the greatest preventive attention on the workplaces where evidence indicates that workers face the greatest risk.*

7. Create a unified construction-accident database.

One of the recurring difficulties encountered throughout this investigation is data fragmentation. Workers' compensation contains one piece of an accident. Liability insurance contains another. Courts contain another. OSHA and safety regulators contain another. Owners and contractors may have still more information. As a result, the same fall can appear as a workers' compensation claim, §240 lawsuit, OSHA investigation, liability-insurance claim, additional-insured dispute and contractual-indemnification proceeding without those records being readily connected.

New York should establish a de-identified accident-level research database capable of linking these systems while protecting personal and confidential information. For serious elevation accidents, researchers and regulators should eventually be able to determine:

1. What happened?
2. What safety equipment was provided?
3. What violation was found?
4. What injury resulted?
5. What did workers' compensation pay?
6. Was a §240 action filed?
7. What did liability insurers spend defending and resolving it?
8. How long did resolution take?
9. And what ultimately happened to the worker?

That would transform the Scaffold Safety Law debate from competing anecdotes into measurable outcomes.

8. Investigate the workers' compensation warning signs.

The sharp increase in workers' compensation claims closed without payment documented in the Risk 1 section of this report warrants further investigation. The State could determine how much reflects administrative closures, claim mix and reporting changes, and how much reflects disputes over compensability, treatment, disability or other claim-handling decisions. The same investigation should measure treatment denials, partial approvals, IME outcomes, delays and permanent-disability determinations.

Strengthening this first layer of worker protection can reduce hardship regardless of what happens in a subsequent §240 action.

9. Treat faster, fairer resolution as a benefit to everyone.

Lengthy disputes can impose costs on injured workers, contractors, owners and insurers alike. Workers wait for compensation. Contractors and owners live with unresolved liabilities. Insurers incur defense and administrative expenses. Courts devote resources to litigation. Reserves remain open.

New York should therefore examine procedural changes that can resolve legitimate disputes earlier without changing the substantive level of protection provided by the Scaffold Safety Law.

Possibilities include earlier exchange of accident reports and medical records, accelerated resolution of insurance-coverage and additional-insured disputes, earlier mediation where liability or damages remain genuinely contested, and stricter enforcement of deadlines for insurers and litigants.

Efficiency should mean reducing unnecessary friction in the system — not simply reducing compensation.

10. Do not treat dollars paid to an injured worker as an economic loss to New York.

The affordability analysis demonstrates the importance of accounting for both sides of the ledger: A serious construction accident generates medical expenses, disability, lost wages, lost productivity, project disruption, administrative expense and sometimes lifelong care. Those costs do not disappear when liability is restricted. Instead, they are often shifted — to workers and their families, workers' compensation, employers, union health, disability and pension funds, health insurers, Medicare, Medicaid or other public programs.

And the biggest danger of all should be obvious from our comparisons with Illinois and Pennsylvania: Any weakening of New York's Scaffold Safety Law will raise the risk of more

nonfatal and fatal accidents — and of the significant additional costs that come with them — not to mention the added human suffering they inevitably cause.

The report's Pennsylvania stress tests illustrate the magnitude of the potential exposure. Any future fiscal analysis of the Scaffold Safety Law should therefore count both insurance costs and accident costs, including costs transferred from one payer to another.

11. Establish a permanent §240 data and review program.

The most useful reform may ultimately be institutional rather than ideological: DFS, the Department of Labor and the Workers' Compensation Board could jointly publish an annual New York Construction Safety and Insurance Report containing §240 claims, premiums and losses; construction injury and fatality rates; fall-related accidents; workers' compensation outcomes; insurance loss ratios; defense costs; average time to claim resolution; enforcement activity; and construction-cost indicators.

The goal: Help lawmakers determine over time whether worker safety is improving, whether insurance costs are declining, whether enforcement is working and whether reforms elsewhere in the system are producing measurable results.

Conclusion: Don't kill the law. Reform the systems around it.

New York's Scaffold Safety Law has survived for 141 years because it addresses a danger that has not disappeared: construction workers continue to fall from scaffolds, roofs, ladders and other elevated work surfaces, sometimes with catastrophic consequences.

That longevity does not prove that the law works perfectly. Nor does it imply that every cost attributed to it is justified. Insurance can be expensive. Litigation can be slow. Coverage and indemnification disputes can consume substantial resources. And the workers' compensation system itself can involve delays and contested benefits.

But the evidence examined in this report identifies five distinct risks that weigh heavily against repealing or weakening the Scaffold Safety Law.

Risk 1: Injured workers will lose a critical second line of protection. Workers' compensation ordinarily provides the first line of financial and medical protection following a workplace injury. But New York's sharp increase in workers' compensation claims closed without payment, together with the multiple points at which benefits and treatment can be disputed, raises questions about how completely that system protects seriously injured workers. The Scaffold Safety Law provides a sorely needed separate avenue of recovery when its statutory requirements are satisfied.

Risk 2: Insurance savings will go to insurers first, with no assurance they reach builders and property owners. New York's Other Liability data show that premiums and losses are not the

same thing. Yet the state still lacks the §240-specific data needed to determine precisely how much of the liability premium dollar is attributable to Scaffold Safety Law claims. Without those data, no one can know how much reducing §240 liability would lower premiums — or how much of any savings would ultimately reach contractors, owners and construction consumers. And it's especially difficult to measure the harm and cost of unexpected consequences, such as increasing neglect of safety measures in the wake of tort reform.

Risk 3: The Scaffold Safety Law saves lives; rollbacks will put workers' lives at greater risk. New York already operates in a substantially more vertical construction environment than Illinois and Pennsylvania. Yet its observed construction injury and fatality experience compares favorably with those states, particularly after applying the two adjustments examined in this report. These comparisons cannot by themselves measure the law's precise effect. But they are consistent with what the law is designed to do — and with the conclusion that it contributes substantially to worker safety.

Risk 4: Rollbacks will shift costs, not eliminate them — and accident costs could far outweigh any savings. The economic equation has two sides. Reducing liability could lower some insurance costs. But additional serious accidents could impose a surge in costs in terms of medical treatment, disability, lost earnings and productivity, work disruption, claims administration and fatalities. The stress tests in this report illustrate how large that exposure could become under higher accident-rate scenarios. Apparent savings will in large part represent cost transfers — to injured workers and their families, employers, workers' compensation, union benefit funds, health insurers and public programs — rather than costs eliminated from the economy.

Risk 5: Tort reform will reduce recoveries, with no assurance of the promised premium relief. The historical examples of tort reform examined in this report demonstrate why lower insurer liabilities and lower premiums must be treated as separate events. Tort reform can reduce lawsuits, claim payments or recoveries without producing proportionate reductions in the premiums ultimately paid by policyholders. Any projected Scaffold Safety Law savings therefore depend on a chain of events: lower §240 losses must produce lower premiums; those premium reductions must reach contractors and owners; and those savings must ultimately reduce public construction or housing costs. And replacing the law's liability standard with comparative negligence is likely to increase litigation over fault rather than reduce it.

Taken together, these five risks point to one overriding problem: the case for weakening the Scaffold Safety Law rests on cost claims that the insurance industry has not substantiated with data.

After decades of debate, the state does not routinely publish comprehensive §240-specific data on premiums, losses, expenses, claims, reserves and insurer profitability. Nor can the available interstate safety comparisons establish precisely how much of New York's construction-safety experience is attributable to the Scaffold Safety Law itself. The proposed Construction

Insurance Transparency Act and the additional reporting measures discussed in this report would help close important parts of that information gap.

The same principle applies beyond insurance. Better accident data, stronger prevention and enforcement, closer examination of workers' compensation outcomes, faster resolution of legitimate disputes, and measurements of whether insurance savings actually reach policyholders would allow future policy to be judged against observable results.

The evidence in this report does not prove that every cost attributed to the Scaffold Safety Law is justified. Nor does it prove that every observed safety advantage is caused by the law. It establishes something more fundamental: weakening the Scaffold Safety Law will have consequences far beyond lawsuits — for worker safety, workers' compensation, insurance losses and premiums, construction costs, and ultimately who bears the economic burden when a worker is seriously injured. Yet New York still lacks the §240-specific data needed to evaluate those consequences.

After 141 years, that's the problem New York can — and must — solve, while keeping the law's protections intact. Measure what it costs. Measure what it saves. Then follow who pays.

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[1] New York State Workers' Compensation Board, "Using eCase." The Board's case-status definitions distinguish "Administratively Closed" cases and "Case Cancelled" cases, including duplicate cases combined with another case.

[2] Weiss Ratings, "Insurers Are Using These 6 Tactics To Stiff Homeowners," The Weiss Ratings Press Team, December 15, 2025.

[3] New York State Workers' Compensation Board, "Controverting a Claim." Describes grounds and procedure for controverting a workers' compensation claim, including adjudication before a Workers' Compensation Law Judge.

[4] New York State Workers' Compensation Board, "Controverting a Claim," addressing the precise procedure.

[5] How we estimated investment income during payment delays: First, among insurers that wrote workers' comp policies in 2025, we calculated the workers' comp share of business. Second, we applied that share of business to estimate the average invested assets and investment income earned. Third, we determined the baseline annual investment yield by dividing the total investment income earned by the average invested assets. Fourth, we converted the annual investment yield to daily investment yield. Finally, we found the estimated earnings of payment delay per day and per month by applying the compound interest method using the daily yield and the total amount of claims payment in 2025. Data source: Each company's 2025 NAIC Annual Statement, Assets, columns 3 and 4, row 12; Statement of Income, column 1, row 9; Exhibit of Premiums and Losses (Grand Total), columns 1, 2 and 5, row 16.

[6] New York State Workers' Compensation Board, "Controverting a Claim." The Board identifies disputes over whether the employee is injured to the extent claimed among grounds for controversion.

[7] New York State Workers' Compensation Board, "Health Care," section on Independent Medical Examinations (IMEs).

[8] Ibid., "Health Care," section on IME rights and procedures, including notice and examination safeguards.

[9] New York State Workers' Compensation Board, "OnBoard: Payers Overview." Describes payer responses to prior-authorization requests, including approval, partial approval and denial.

[10] Office of the New York State Comptroller, "Examination of Penalties and Interest Payments," New York State Insurance Fund, Audit 2017-SIF-02, issued August 1, 2018. The audit found more than $4.1 million in penalties and interest for late medical and compensation payments during 2010–2016, including 35,130 late-medical-payment penalties and 898 late-compensation-payment penalties.

[11] New York State Workers' Compensation Board, "What Payers Need to Know," Payer Compliance.

[12] New York State Workers' Compensation Board, Subject No. 046-808, guidance on SROI-PD partial-denial filings, issued October 26, 2015. The Board cautioned that waiting for medical reports can indefinitely delay indemnity benefits that ultimately will be paid and specified the limited circumstances in which a partial denial is appropriate.

[13] Ibid., "Request Assistance," current worker-assistance form and instructions.

[14] New York Compensation Insurance Rating Board (NYCIRB), R.C. 2654, "Notice of Upcoming New York State Workers' Compensation Loss Cost Filing," May 7, 2026; NYCIRB, R.C. 2633, 2025 loss-cost revision. R.C. 2654 states that NYCIRB voted to file for a 21.9% overall loss-cost decrease effective October 1, 2026. This follows a 13.2% reduction for October 1, 2025. DFS approved the filing on July 15, 2026 (NYCIRB R.C. 2659).

[15] New York Compensation Insurance Rating Board (NYCIRB), 2024 State of the System, "Indemnity Severity Trends." The $60,013 benchmark is our calculation: the 2018 average indemnity severity of $47,857 increased by the 25.4% growth in New York's average weekly wage.

[16] New York State Insurance Fund, *2024 Annual Report,* Financial Highlights, p. 3. NYSIF reports 2024 Workers' Compensation Fund net income of $793.536 million, net investment income of $916.808 million, and surplus of $11.407 billion, versus $10.452 billion in 2023.

[17] New York State Workers' Compensation Board, "Modernization Projects Yield Sustainable Results," *2025 Annual Report*, p. 16. The annual report states that the Board issued 498,566 claim resolutions in 2025 and that 64.5% were resolved through informal methods.

[18] *Iron Workers Locals 40, 361 & 417 Health Fund v. Dinnigan*, 911 F. Supp. 2d 243 (S.D.N.Y. 2012) (self-funded union health fund, governed by ERISA, seeking reimbursement of plan-paid medical expenses from a beneficiary's third-party tort recovery); New York State Department of Financial Services, Office of General Counsel, Opinion No. 10-12-04 (union benefit fund's lien, based on a subrogation agreement, against a member's recoveries for disability benefits paid by an ERISA-governed multi-benefit plan that substituted for statutory disability benefits). Whether a particular fund pays benefits while a workers' compensation claim is contested, and the scope of its reimbursement rights, depend on the terms of each plan.

[19] *Sarante v. Courtlandt Development, LLC*, 238 A.D.3d 619, 2025 N.Y. Slip Op. 03149 (App. Div. 1st Dep't May 22, 2025), New York State Law Reporting Bureau.

[20] *Church of St. Andrew v. Western World Insurance Co.*, Index No. 151975/2023, 2026 N.Y. Slip Op. 50131(U) (Sup. Ct. Richmond Cnty. Jan. 22, 2026). Justia Law.

[21] *First Financial Insurance Co. v. Jetco Contracting Corp.*, 1 N.Y.3d 64 (2003), decided November 20, 2003. The Court of Appeals held that an unexcused 48-day delay in disclaiming coverage was unreasonable as a matter of law. Cornell Legal Information Institute.

[22] National Association of Insurance Commissioners, "Line of Business Matrix," current UCAA/industry reference. The statutory Other Liability category includes lines 17.1 (Occurrence) and 17.2 (Claims-Made).

[23] This is a counterfactual premium scenario, not a finding that insurers earned $2.5 billion of excess profit. It illustrates the mathematical premium reduction associated with holding losses constant and applying an Illinois-level loss ratio. Loss ratios alone do not establish an actuarially appropriate premium because premiums also fund loss-adjustment expenses, commissions, operating expenses, taxes, reinsurance, capital costs and underwriting return.

[24] Chad Hemenway, Insurance Journal, July 27, 2026, reporting AM Best's 2025 U.S. property/casualty results: the industry posted its best underwriting profit and combined ratio in a decade, with a 2025 combined ratio of 93 and underwriting income of about $61.2 billion; commercial-lines insurers more than doubled underwriting income, to $19.2 billion.

[25] Business Insurance, "Record earnings in property/casualty industry in 2025: Fitch," reporting Fitch Ratings' finding of record industry net income of $135.9 billion and a 93.0% combined ratio in 2025, helped by a quiet hurricane season and higher reserve releases.

[26] Josh Recamara, "US P&C insurers post strongest underwriting result in years," Insurance Business, March 25, 2026, reporting Verisk/APCIA preliminary 2025 results: an estimated net underwriting gain of about $63 billion, net income after tax of $148 billion versus $169 billion in 2024 (reflecting lower realized capital gains), and analysts' attribution of the underwriting result largely to unusually low catastrophe losses.

[27] New York State Senate, S.8200, 2025–2026 Regular Sessions, "Construction Insurance Transparency Act of 2025," introduced May 20, 2025; current status: Senate Insurance Committee. Assembly companion: A.5811. NYSenate.gov.

[28] Ibid., S.8200, 2025–2026 Regular Sessions, bill text and summary. The bill would require annual reporting by insurers providing coverage for Labor Law §240 liability, including specified financial and claims information, with public disclosure by the Department of Financial Services.

[29] New York State Assembly, A.5811, 2025–2026 Regular Sessions, "Construction Insurance Transparency Act of 2025," "Versions Introduced in Other Legislative Sessions." The bill page lists predecessor versions beginning in the 2013–2014 session (A.8745/S.6700).

[30] Michael R. Hattery, with R. Richard Geddes and David L. Kay, *The Costs of Labor Law 240 on New York's Economy and Public Infrastructure: Final Report to New York Civil Justice Institute*, December 31, 2013; New York State Senate, S.8200 (2025–2026). The 2013 study relied on assumed insurance-cost percentages because comprehensive §240-specific statewide insurance data were unavailable; the pending transparency legislation seeks detailed §240-specific reporting.

[31] Metropolitan Transportation Authority, Board staff summary on the Owner Controlled Insurance Program (OCIP), describing a deductible-reimbursement policy written by the MTA's captive, First Mutual Transportation Assurance Company (FMTAC), and the Board's authorization for the captive to manage OCIP claims, safety and administrative expenses; New York State Department of Financial Services, Report on Examination of First Mutual Transportation Assurance Company (a New York pure captive wholly owned by the MTA).

[32] N.Y. Insurance Law §7006 (annual reports of captive insurance companies, in the form prescribed by the Superintendent).

[33] See, e.g., Mont. Code Ann. §33-28-107(3) (captive financial statements to be treated as confidential); Hawaii Office of Information Practices, Opinion Letter No. 90-32 (captive insurer financial information given confidential treatment).

[34] We use the term "Index" to underscore that these do not represent forecasts of what will or could happen. Rather, they are provided as preliminary indications to encourage further research.

[35] Selection of Illinois and Pennsylvania does not imply that they are identical to New York, nor does the comparison by itself establish that differences in accident rates were caused by differences in their liability laws. Therefore, in this report, we separately adjust the comparisons using two different proxies for vertical-construction exposure and present the resulting figures as comparative indexes rather than official accident rates.

[36] These closely track the hazards expressly addressed by Labor Law §240. The statute requires owners and contractors engaged in covered work to provide scaffolding, hoists, ladders, slings, ropes and other devices giving workers proper protection. A recent example illustrates the type of accident involved: in *Bustamante v. BSD 370 Lexington*, L.L.C., 247 A.D.3d 710, 2026 N.Y. Slip Op. 01180 (App. Div. 2d Dept Mar. 4, 2026), a renovation worker fell five to six feet when his Baker scaffold toppled; the court found evidence that the scaffold lacked safety railings; and it confirmed that the worker had not been provided another device to protect him from falling.

[37] New York City Department of Buildings, *2024 NYC Construction Safety Report*, April 25, 2025. The report covers building-construction trends, incidents, injuries, fatalities and DOB enforcement activity during 2024.

[38] Zimmer v. Chemung County Performing Arts, Inc., 65 N.Y.2d 513, 521 (1985); Stolt v. General Foods Corp., 81 N.Y.2d 918, 920 (1993) (a plaintiff's comparative negligence is not a defense to a Labor Law §240(1) claim); Blake v. Neighborhood Housing Services of New York City, Inc., 1 N.Y.3d 280 (2003) (no liability where there is no statutory violation and the worker's own conduct is the sole proximate cause of the accident).

[39] The vertical-density adjustments in this report are analytical sensitivity measures applied to official 2024 BLS data. They do not alter the underlying BLS observations and should not be interpreted as official BLS injury or fatality rates.

[40] High-rise density is used as a proxy for relative exposure to elevated construction hazards, not as a direct measure of worker exposure. Completed high-rise counts are from the SkyscraperPage Global Cities & Buildings Database: New York City (6,918), Chicago (1,343), Philadelphia (414) and Pittsburgh (163). Population denominators are from the U.S. Census Bureau, 2020 Census: New York City 8,804,190; Chicago 2,746,388; Philadelphia 1,603,797; Pittsburgh 302,971. These produce 78.6, 48.9 and 30.3 high-rises per 100,000 residents for New York City, Chicago and Philadelphia-plus-Pittsburgh, respectively, and comparative factors of 1.00, 1.61 and 2.59. SkyscraperPage cautions that inventories may not be fully comprehensive and city boundaries are not uniformly defined; population is also not a measure of construction employment or worker-hours at elevation. The adjusted figures are therefore comparative indexes and sensitivity measures, not official government rates.

[41] U.S. Census Bureau, Building Permits Survey, 2024 annual data, privately owned residential construction. The 5-or-more-unit authorizations used in the report are a proxy for vertical construction activity; they do not measure actual worker-hours at elevation. Final 2024 annual estimates were released May 1, 2025.

[42] U.S. Bureau of Labor Statistics, State and Metro Area Employment, Hours, and Earnings (Current Employment Statistics), construction sector, 2024 annual averages for New York, Illinois and Pennsylvania. New York series (NYCONS) via FRED.

[43] U.S. Bureau of Labor Statistics, Survey of Occupational Injuries and Illnesses (SOII), 2024 state-industry incidence-rate data. BLS reports total-recordable-case rates for construction of 1.4 per 100 FTE workers in New York, 1.5 in Illinois and 3.5 in Pennsylvania. The report multiplies those rates by 100 to express them as 140, 150 and 350 per 10,000 FTE workers. BLS incidence rates are based on hours worked, with 200,000 hours representing 100 full-time-equivalent workers.

[44] Because occupational illnesses are typically not caused by accidents, how might the inclusion of such illnesses in the BLS data obscure the possible effect of the Scaffold Safety Law? Rather than address this difficult-to-quantify question, we have chosen instead to estimate the number of events excluding illnesses. Across all states, only 2.1%

of injury-and-illness events were illnesses in 2024, and based on this national average, we have excluded an estimate of the 2024 illnesses in each state.

[45] Illinois Public Act 89-2, approved and effective February 14, 1995, repealing the Structural Work Act; *Atkins v. Deere & Co.*, 177 Ill. 2d 222 (Ill. 1997). The comparison with Illinois does not itself establish that subsequent accident or fatality differences were caused by repeal. See *Atkins v. Deere & Co., Supreme Court of Illinois (1997).*

[46] U.S. Bureau of Labor Statistics, Census of Fatal Occupational Injuries (CFOI), "Fatal Injury Rates by State of Incident and Industry, All Ownerships, 2024," released February 2026. Construction fatality rates were 8.9 per 100,000 FTE workers in New York, 8.4 in Illinois and 11.9 in Pennsylvania. Unlike the nonfatal SOII figures above, these fatality rates are already published by BLS on a per-100,000-FTE basis and therefore require no conversion.

[47] With its data on fatal injury rates by state, BLS cautions that state industry fatality rates are not directly comparable because industry composition differs, so these adjusted figures should be treated as comparative indexes rather than official fatality rates.

[48] Because new multifamily housing activity is only a proxy for vertical-construction exposure, Adjustment #2 is best viewed as a sensitivity test rather than an estimate of actual fatality rates. Both independent adjustments nevertheless produce the same directional ranking among the three states.

[49] New York City Department of Housing Preservation and Development, "Mayor Adams' Administration Shatters Affordable Housing Records (Again)," reporting 33,715 affordable homes in FY 2025, including 28,281 through HPD and HDC and 5,434 through NYCHA's PACT program.

[50] NYU Furman Center, State of New York City's Housing and Neighborhoods, 2025 Report, "State of the City's Housing Stock." Furman reports that 2025 residential completions were the highest since it began tracking the measure in 2010, while government-subsidized completions fell by almost 10%.

[51] New York Housing Conference, NYC Housing Tracker 2026, reporting 13,605 affordable units produced through new construction in 2025 (13% fewer than in 2024) and 29,721 affordable units produced in total, new and preserved (1% more than in 2024).

[52] New York City Mayor's Office, "Mamdani Administration Unveils First-of-its-Kind Insurance Program to Reduce Operating Cost of Housing Across New York City," April 16, 2026. The City stated that property and liability insurance prices for affordable and rent-stabilized housing had more than tripled since 2017 and announced a City-backed program supported by $100 million.

[53] Turner & Townsend, "US Cities Most Expensive Places to Build Globally," July 8, 2025; Arcadis, "NYC and San Francisco Most Expensive US Cities to Build," May 13, 2025. Turner & Townsend's 99-city survey reports average construction costs of $5,744/m² in New York, $4,695 in Chicago and $4,604 in Philadelphia; Arcadis separately identifies dense urban conditions, high land values and specialized construction methods among cost pressures in New York. Turner & Townsend's figures are from its Global Construction Market Intelligence Report 2025.

[54] New York City Housing Authority, *2023 Physical Needs Assessment Final Report*, June 22, 2023, §8.1.3, "2023 Hard and Soft Costs," Table 8, p. 46. NYCHA's project-dollar model assigns $0.61 to labor and materials, $0.01 to insurance, and $0.38 to all other listed hard and soft costs.

[55] Ibid., the 1% insurance share is a NYCHA project-cost assumption for the PNA model; it should not be read as a universal estimate for every private or public construction project.

[56] Ibid., the table covers the listed NYCHA hard and soft construction costs; it does not purport to be a comprehensive private-development pro forma including land acquisition, financing, taxes, entitlement and marketing costs.

[57] NYU Furman Center, *Directory of NYC Housing Programs*, glossary entry "Soft Costs." Furman defines soft costs as development expenses not directly related to construction and lists land and permits, construction-loan interest, marketing, insurance, taxes, architecture, engineering and legal fees as examples.

[58] Office of the New York City Comptroller, *Building Blocks of Change: A Blueprint for Progress at NYC's Housing Preservation and Development*, February 8, 2024. The report documents project backlogs and increased predevelopment timelines and discusses carrying costs associated with development delays.

[59] Michael R. Hattery, with consultants R. Richard Geddes and David L. Kay, *The Costs of Labor Law 240 on New York's Economy and Public Infrastructure: Final Report to New York Civil Justice Institute*, December 31, 2013. The report identifies Hattery as Director of Local Government Studies at the Nelson A. Rockefeller Institute of Government. For an example of subsequent legislative use of the $785 million public-sector and $1.49 billion private-sector estimates, see New York State Senate, S.6876 (2017–2018), sponsor memorandum.

[60] Insurance Journal, "Study Says N.Y. 'Scaffold Law' Drives Up Construction Costs, Causes Injuries," February 27, 2014 (study commissioned by the New York Civil Justice Institute); "Obscure N.Y. law drives up construction insurance costs" (study paid for by the New York Civil Justice Institute).

[61] Safety+Health, "Safety coalition: 'Scaffold Law' study is flawed," April 18, 2014, reporting on an April 17, 2014 report by the Center for Popular Democracy and the New York Committee for Occupational Safety and Health.

[62] Richard W. Hurd, "Opinion: Study Suggesting N.Y. Scaffold Law Causes Injuries Misuses Statistical Techniques," Insurance Journal, March 15, 2014.

[63] Ibid. The report's project-level MTA analysis compares incurred Labor Law claims with construction value; it also develops separate estimates of Labor Law/§240-related claims, awards and transaction costs. The smaller figures cited in the body should be understood as the study's own estimates, not as audited statewide §240 accounting.

[64] The additional-injury and fatality figures are stress-test calculations, not predictions of what would occur if §240 were repealed or weakened. They mechanically apply the Pennsylvania-adjusted comparative indexes developed in Risk 3 to New York's construction-workforce base.

[65] U.S. Bureau of Labor Statistics, news release on 2024 employer-reported workplace injuries and illnesses in New York, February 10, 2026, and accompanying state industry tables for construction.

[66] National Safety Council, Injury Facts, "Work Injury Costs." NSC estimates the 2024 cost per medically consulted work injury at $48,000 and the cost per death at $1,540,000.

[67] Ibid. The $181.4 billion total also includes $6.0 billion in motor-vehicle damage and $3.8 billion in fire losses. NSC notes that its cost estimates reflect the impact to society, not specifically to employers.

[68] U.S. Department of Labor, Occupational Safety and Health Administration, "Business Case for Safety and Health: Costs," and OSHA's $afety Pays Program. OSHA lists indirect costs of workplace injuries that include training replacement employees, accident investigation and implementation of corrective measures, lost productivity, and repairs of damaged equipment and property.

[69] National Safety Council, Injury Facts, "Work Injury Costs." The 102 million days lost in 2024 comprise 69 million days from injuries occurring in 2024 and 33 million days from permanently disabling injuries in prior years. NSC projects another 54 million days lost in future years from 2024 deaths and permanently disabling injuries.

[70] Liberty Mutual Insurance, 2025 Workplace Safety Index, released July 15, 2025. Struck by object or equipment and falls to a lower level together accounted for nearly $11.6 billion (about $5.8 billion each) in workers' compensation costs for injuries causing more than five days away from work. The 2025 index reflects 2022 data.

[71] Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, "About Potential Effects of a Moderate or Severe TBI," updated May 15, 2024. CDC reports that among people alive five years after a moderate or severe traumatic brain injury, 57% are moderately or severely disabled, 55% of those employed at injury are no longer employed, 50% return to a hospital at least once, 33% rely on others for everyday activities, and 12% reside in nursing homes or other institutions.

[72] Florida Senate Bill 2-A, passed in a December 2022 special session, eliminated one-way attorney fees and assignment of benefits in property-insurance disputes. House Bill 837, signed March 24, 2023, repealed Florida's one-way attorney-fee statutes more broadly and made other tort changes, including shortening the statute of limitations for negligence actions. See The Florida Bar News, "Legislature passes property insurance package"; Casualty Actuarial Society, Actuarial Review, "The Verdict on Florida's Tort Reforms."

[73] Weiss Ratings, Florida Homeowners Again Sue Their Insurers at an Increasing Rate Despite Tort Reform, July 22, 2026. Based on NAIC MCAS data, the report states that Florida homeowners filed 129 lawsuits per 1,000 claims closed without payment in 2024, up from 124 in 2022.

[74] Ibid.

[75] Weiss Ratings, "Homeowner Lawsuits as a Portion of Claims Closed with No Payment," 2024 interstate analysis/map, based on NAIC Market Conduct Annual Statement data. Florida's 2024 rate was 12.90%, compared with 2.88% in Connecticut, 2.10% in New Jersey, 1.80% in Pennsylvania, 0.93% in Illinois and 0.60% in Minnesota.

[76] Weiss Ratings, "Florida Hurricane Season Strikes Insurance Industry in Turmoil," *Weiss Ratings*, September 5, 2025. Using insurers' statutory Schedule P data, Weiss reported Florida claims closed without payment at 40.0% in 2022 and 46.7% in 2024. The report also notes that NAIC MCAS data, covering a somewhat different insurer population, show the same direction.

[77] Weiss Ratings, "14 Florida Insurers Closed Over Half of Homeowner Damage Claims with Zero Payment in 2024," April 3, 2025. The company-level table reports, among others, People's Trust 75.4% in 2024 versus 38.8% in 2023; Kin 68.3% versus 44.0%; American Integrity 64.6% versus 43.9%; State Farm Florida 59.2% versus 46.4%; Castle Key Indemnity 57.2% versus 47.1%; and Slide 50.3% versus 30.6%.

[78]2025 statutory filings. "Closed without payment" should not automatically be equated with an improper denial. Deductibles, exclusions, duplicates and other legitimate circumstances can produce zero-payment closures. But the sharp increase remains an important measure of claims outcomes.

[79] Martin D. Weiss, Melissa Gannon and Stephanie Eakins, *Medical Malpractice Caps: The Impact of Non-Economic Damage Caps on Physician Premiums, Claims Payout Levels, and Availability of Coverage*, Weiss Ratings, revised June 3, 2003.

[80] *Congressional Record*, 108th Cong., 1st sess., July 8, 2003, Senate debate on medical-malpractice legislation, including discussion of the Weiss Ratings study.

[81] *Estate of McCall v. United States*, 134 So. 3d 894 (Fla. 2014). The Florida Supreme Court discussed the 2003 Weiss study, Florida malpractice-claim and payment trends, insurer profitability, and testimony by First Professionals Insurance Company president Robert White.

[82] Myungho Paik, Bernard S. Black, David A. Hyman and Charles Silver, "Will Tort Reform Bend the Cost Curve? Evidence from Texas," Journal of Empirical Legal Studies 9, no. 2 (2012): 173–216; Patricia H. Born, J. Bradley Karl and W. Kip Viscusi, "The Net Effects of Medical Malpractice Tort Reform on Health Insurance Losses: The Texas Experience," Health Economics Review 7 (2017).

[83] Zimmer v. Chemung County Performing Arts, Inc., 65 N.Y.2d 513, 521 (1985); Stolt v. General Foods Corp., 81 N.Y.2d 918, 920 (1993); see also Blake v. Neighborhood Housing Services of New York City, Inc., 1 N.Y.3d 280 (2003) (sole-proximate-cause rule).

[84] Pirozzo v. Laight St. Fee Owner LLC, 209 A.D.3d 596, 2022 N.Y. Slip Op. 05964 (App. Div. 1st Dep't Oct. 25, 2022).

[85] New York Labor Law §240(1).

[86] New York State Senate, S.8200, 2025–2026 Regular Sessions, "Construction Insurance Transparency Act of 2025," bill text and summary; Assembly companion A.5811.

[87] New York State Senate S.8200, 2025–2026 Regular Sessions; New York State Assembly, A.5811, 2025–2026 Regular Sessions. As reflected on the cited session pages, S.8200 is in the Senate Insurance Committee and A.5811 is in the Assembly Insurance Committee.

[88] U.S. Department of Labor, Occupational Safety and Health Administration, news release, "New York roofing contractor enters into settlement agreement with US Department of Labor after willfully failing to protect worker in 2021 fatal fall," January 26, 2026. The release concerns DME Construction Associates Inc., a Long Island contractor, and the fatal fall at a Town of Oyster Bay municipal worksite.

[89] U.S. Department of Labor, Occupational Safety and Health Administration, Region 2 news release, March 21, 2024, documenting repeat/willful fall-protection enforcement and use of OSHA's Severe Violator Enforcement Program. The release is titled "New York roofing company withdraws contest notice after vigorous litigation by Department of Labor, affirming egregious willful citations, $687K fine" (ALJ Home Improvement). For an example of OSHA placing a repeat fall-protection violator in the Severe Violator Enforcement Program, see its December 10, 2024 release on RRC Home Improvement.