

S.621 (Sanders) / A.4947 (Bichotte Hermelyn)

STAFF CONTACT : Frank Kerbein | Director, Center for Human Resources | 518.455.7180

BILL S.621 (Sanders) / A.4947 (Bichotte Hermelyn)
SUBJECT Enacts Carlos' Law; Relates to Crimes Involving the Death or Injury of a Worker
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OPPOSE

Since OSHA's establishment in 1971, workplace fatalities have been cut by 60 percent and occupational injury and illness rates by 40 percent. At the same time, U.S. employment has nearly tripled from 56 million workers at 3.5 million worksites to 164 million workers at nearly 6.9 million sites. While the sponsors of this bill claim that deaths and serious injuries in the construction workplace remain “commonplace,” the facts say otherwise.

The Federal Occupational Safety and Health Administration (OSHA) remains one of the most effective governmental agencies – state or federal – at preventing serious workplace injuries and deaths. While, tragically, deaths still occur in the workplace, their occurrence is rare and certainly not “commonplace.” No business or industry could survive if that claim were true.

This bill purportedly seeks to protect workers from "supervisors" that negligently fail to comply with safety protocols by amending the Penal Law to create new offenses as well as substantially increasing the fines that can be imposed upon a corporate defendant convicted of certain crimes.

Specifically, these broadly defined “supervisors” can be subject to charges ranging from a Class A Misdemeanor for exposing a worker to a hazardous situation to a Class D Felony for engaging in “criminally negligent” behavior that causes the death of a worker.

The state’s existing Penal Law §15.05 defines “criminal negligence” as when a person “...fails to perceive a substantial and unjustifiable risk that such result will occur or that such circumstance exists. The risk must be of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.”

Supervisors that behave in such a reckless manner are already liable for criminal charges under current state law, as well as under the Federal Occupational Health and Safety Act. Employers can also be held accountable. Therefore, the practical effect of this bill is not the application of criminal penalties to these circumstances, but to increase financial penalties on employers.

In particular, we are concerned with the proposal to increase criminal penalties in the event of a corporate conviction from \$5,000 to \$300,000 for a misdemeanor, in instances where the action resulted in the threat of an injury but no workplace injury actually occurred.

Finally, while employers understand their obligation to exercise control over the worksite and their “supervisors,” it is possible to envision a scenario where the supervisor may be acting on their own initiative and disregarding long-standing employer defined safety standards that result in a worker injury. That supervisor will be held accountable under law and to their employer for such criminal negligence. The employer is responsible under the Workers’ Compensation system for lost wages, medical expenses, and death benefits. To expand the scope of financial penalties in this case to the employer – with fines of up to \$500,000 – based on the actions of rogue supervisors is not warranted.

This legislation is expected to have a significant impact on the construction industry, and would result in a dramatic increase in costs for all construction projects in NYS as employers struggle to find insurance carriers already hesitant to provide coverage in New York due to the Scaffold Law and other mandates. Recovering from the greatest economic upheaval in 90 years, this bill puts an additional substantial roadblock on the path to recovery.

For these reasons, The Business Council, on behalf of its more than 2,300 members, opposes this bill.