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ALBANY, NEW YORK

May 2, 1995

11:04 a.m.

REGULAR SESSION

SENATOR JOHN R. KUHL, JR., Acting President

STEPHEN F. SLOAN, Secretary

1 P R O C E E D I N G S

2 ACTING PRESIDENT KUHL: Senate
3 will come to order. Find your places.

4 Ask everybody in the chamber to
5 rise with me and say the Pledge of Allegiance to
6 the Flag.

7 (Whereupon, the Senate and those
8 present joined in the Pledge of Allegiance to
9 the Flag.)

10 In the absence of clergy, may we
11 bow our heads in a moment of silence.

12 (Whereupon, there was a moment of
13 silence.)

14 Reading of the Journal.

15 THE SECRETARY: In Senate,
16 Monday, May 1. The Senate met pursuant to
17 adjournment. Senator Kuhl in the chair. Prayer
18 by the Rabbi Butman. The Journal of Sunday,
19 April 30, was read and approved. On motion,
20 Senate adjourned.

21 ACTING PRESIDENT KUHL: Hearing
22 no objection, the Journal stands approved as
23 read.

1 Presentation of petitions.
2 Messages from the Assembly.
3 Messages from the Governor.
4 Reports of standing committees.
5 Reports of select committees.
6 Communications and reports from
7 state officers.
8 Motions and resolutions.
9 Chair recognizes Senator Farley.
10 SENATOR FARLEY: Thank you, Mr.
11 President. On behalf of Senator Velella, please
12 remove the sponsor star from Calendar 222.
13 ACTING PRESIDENT KUHL: At the
14 request of the sponsor, the star will be removed
15 on Calendar Number 222.
16 Senator Bruno.
17 SENATOR BRUNO: Mr. President.
18 Can we at this time adopt the Resolution
19 Calendar?
20 ACTING PRESIDENT KUHL: The
21 question is on the Resolution Calendar.
22 All those in favor of adopting
23 it, signify by saying aye.

1 (Response of "Aye.")

2 Opposed, nay.

3 The Resolution Calendar is
4 adopted.

5 The Chair recognizes Senator
6 Bruno.

7 SENATOR BRUNO: Mr. President.
8 We're offering up a resolution. It's at the
9 desk. Move that it be read in its entirety and
10 move its immediate adoption.

11 ACTING PRESIDENT KUHL: Secretary
12 will read the privileged resolution at the desk,
13 by Senator Bruno, in its entirety.

14 THE SECRETARY: Legislative
15 Resolution, by Senator Bruno. Legislative
16 Resolution condemning the ruthless bombing of
17 Oklahoma City Federal Building and the tragic
18 death and injury of innocent citizens, and
19 calling for the prompt and certain prosecution
20 of justice.

21 Whereas, America has been shocked
22 and repulsed by a senseless assault upon life
23 and property in Oklahoma City, Oklahoma; an

1 incomprehensible and cowardly attack within the
2 country's heartland which has defiled the very
3 ideals and values upon which our society and
4 nation was founded.

5 With the blast of a massive bomb,
6 terrorists rained death and destruction upon
7 hundreds of defenseless children, employees and
8 visitors, within the Alfred P. Murrah Federal
9 Building on the morning of Wednesday, April 19,
10 1995.

11 This cruel and despicable act has
12 brought tragedy and anguish to countless
13 families, unleashed a national sense of
14 injustice and brought forth a great outpouring
15 of compassion from concerned citizens across
16 this great state and nation.

17 Among those bringing aid and
18 comfort to the grateful citizens of Oklahoma
19 City were the highly skilled and dedicated
20 members of the EMS and law enforcement teams
21 from the State of New York.

22 The passing days have revealed
23 the enormity of this tragedy and its impact upon

1 not only the people of Oklahoma City but an
2 entire nation; through the mirror of media,
3 America has watched the anguish of families torn
4 by missing, dead, and injured members; the
5 far-reaching destruction of buildings and
6 businesses; and a new disturbing presence of
7 fear within a people whose faith in public
8 safety has been so violently shaken.

9 While a weary yet determined
10 cadre of emergency personnel continued their
11 skillful and courageous mission of mercy, a
12 prayerful nation joined hands and hearts in
13 response to the declaration of a National Day of
14 Mourning on Sunday, April 23, 1995; a day
15 dedicated not only to mourning but a day for
16 extending comfort, hope, and strength to others,
17 and a day of rededication to the values which
18 have given strength to, and so justly
19 personified, the character of America.

20 The full measure of law
21 enforcement has been firmly dedicated to the
22 application of swift, certain and severe
23 justice, and now the task of hopeful citizens

1 and its leadership to put anger aside, to seek
2 the harmony of tolerance and fellowship and to
3 insure the preservation of the rights of all
4 citizens in a society dedicated to good will and
5 good citizenship; now, therefore, be it

6 Resolved, That this Legislative
7 Body declare this... terrorist bombing of the
8 Oklahoma City Federal Building and the tragic
9 loss of life and injury to its victims; adding
10 its grateful praise for the distinguished work
11 of the EMS and the law enforcement teams from
12 New York State as well as the heroic efforts of
13 all who responded to help; calling for the swift
14 application of justice upon all perpetrators;
15 and extending the deepest condolences and
16 heartfelt prayers of the citizens of the State
17 of New York to the brave people of Oklahoma
18 City, Oklahoma; and be it further

19 Resolved, that copies of this
20 resolution, suitably engrossed, be transmitted
21 to President Bill Clinton, Attorney General
22 Janet Reno, Oklahoma Governor Frank Keating, and
23 Governor George E. Pataki and the members of the

1 New York State Congressional Delegation.

2 ACTING PRESIDENT KUHL: The Chair
3 recognizes Senator Bruno on the resolution.

4 SENATOR BRUNO: Thank you, Mr.
5 President. On the resolution.

6 Mr. President. What happened in
7 Oklahoma City is like the worst nightmare that
8 anyone could ever imagine, and it is still hard
9 for us all here in this state and all over the
10 country to comprehend the pain, the suffering,
11 that's been created. We can think about it and
12 we can talk about it, but it's almost impossible
13 to just fully appreciate what has happened to
14 those families -- 150 people dead. 15 babies.
15 You think about that happening as someone's
16 malicious act, it's kind of hard to comprehend.

17 But it's fitting that we
18 recognize for these moments that tragedy. It's
19 fitting, Mr. President, that we think about the
20 victims, their lives which have been shortened
21 in this tragic way, but we also think about
22 families, their friends, all of the survivors
23 that mourn; and that we remember these people in

1 our thoughts and in our prayers; and that we
2 pray that time will truly heal those wounds that
3 are so open now for the people that were close
4 and for the people all over the country, all
5 over the world, that can't help but focus and
6 think about the pain and suffering that's there,
7 and it goes on and on and on.

8 So we pray for the victims. We
9 pray for the families, and we pray for their
10 friends, and we recognize them in this way on
11 this floor as they will be recognized and
12 remembered all over this great country of ours;
13 and, hopefully, by focusing attention on this,
14 we might in some way inhibit any of the
15 tragedies that might occur in the future,
16 causing people to just think about what they're
17 doing to innocent people.

18 Mr. President. I would at this
19 time suggest that we open up this resolution and
20 its sponsorship to any of the members that are
21 in the chamber today.

22 Thank you, Mr. President.

23 ACTING PRESIDENT KUHL: Senator

1 Bruno, I see that there are several members that
2 would like to be on it. Why don't we take the
3 position that we put all the members, because of
4 the delicateness of this resolution, on the
5 resolution except for those who would signify to
6 the desk later that they don't wish to be on the
7 resolution.

8 The chair recognizes Senator
9 Paterson on the resolution.

10 SENATOR PATERSON: Mr.
11 President. I think it is a tremendous gesture
12 that we are making today in the Senate by
13 pausing in our deliberations to recognize such a
14 horrible tragedy in this country.

15 Last Wednesday, which was the one
16 week anniversary, we opened our session an hour
17 earlier so that at 10:02 a.m. eastern time we
18 were able to comply with the President's wish
19 that at 9:02 central time which was the one week
20 anniversary of that horrible disaster that we
21 paused in a moment of silence. I thought that
22 was a wonderfully sensitive gesture on the part
23 of our Majority Leader, Senator Bruno.

1 There have been a few very
2 unfortunate incidents that have occurred,
3 personally to some of our members and also in
4 the world, that we have recognized this year,
5 and I am very grateful for that.

6 You have to wonder about the
7 personality or the mind-set that feels
8 comfortable being the catalyst for such a
9 horrible, terrible disaster. You have to really
10 dismiss any ideological certainty that is being
11 advanced by such an act. One wonders what kind
12 of government these individuals, terrorists
13 around the world, whether they be in the Middle
14 East, whether they be right here in the United
15 States, whether it be at the World Trade Center
16 or from whatever source it's coming, what kind
17 of government are they suggesting that we live
18 in where those who are trying to change the
19 government destroy lives, destroy children,
20 destroy the hopes and dreams of a whole
21 community, a whole city and put an everlasting
22 blemish on our country's history.

23 It is really one of the saddest

1 state of affairs that we could ever be
2 addressing in this chamber, and yet as public
3 servants we have to address it. These are
4 issues that are actually happening in our
5 society now. With all of our advanced
6 technology, with all of our increased humanity,
7 we are still fighting the inability of human
8 beings to recognize each other's right to live
9 on this planet.

10 And, certainly, we should never
11 in any way compare the disagreements that we
12 have in this chamber with any kind of
13 endorsement of these types of acts because the
14 philosophy that the individuals may be spouting
15 as they commit these acts has nothing to do with
16 the acts themselves. They are just convenient
17 excuses and avenues to violence, because that's
18 all it really is. Violence that is manifested
19 in the conduct that is so loathsome and
20 despicable that we just notice is really coming
21 from a sick and twisted mind or a group of sick
22 and twisted minds.

23 So I am very happy that we would

1 have this resolution today. I hope that the
2 families and the survivors who were injured in
3 that disaster will somehow try to take something
4 from what we're offering today. We are really
5 offering in our own small way, in our own human
6 way, the gesture that we care.

7 ACTING PRESIDENT KUHL: Senator
8 Dollinger on the resolution.

9 SENATOR DOLLINGER: Mr.
10 President, just briefly.

11 I want to commend Senator Bruno
12 for taking the leadership on this issue and
13 sending a message to the people of Oklahoma that
14 we in New York, who had our own experience with
15 terrorism, understand what the devastation is
16 that's wreaked on the families by these
17 villainous acts.

18 I have only one suggestion. I'm
19 not sure it needs to be put on the resolution,
20 but I would recommend that we send a copy of
21 this resolution not only to those who are listed
22 on the resolution but to the families of the
23 victims, as well, so that they will have an

1 expression from us that we in New York recognize
2 that we are a nation of families. We share
3 their family's grief. We share their family's
4 disappointment and distress, and that we will
5 send a clear message to them that we in the New
6 York family do not tolerate violence in any
7 form.

8 I just recommend that we send it.
9 I'm sure we can get a list of families that lost
10 someone and, perhaps, send it to the parent or
11 the spouse so that they will have a memorial
12 from us of the importance of the American family
13 and our tradition against violence.

14 ACTING PRESIDENT KUHL: The
15 question is on the resolution. All those in
16 favor signify by saying aye.

17 (Response of "Aye.")

18 Opposed, nay.

19 The resolution is unanimously
20 adopted.

21 Senator Bruno.

22 SENATOR BRUNO: Mr. President.
23 Can we return to reports of standing committees,

1 and I believe there is a report from the Finance
2 Committee at the desk.

3 ACTING PRESIDENT KUHL: There is
4 a report of a nomination at the desk, Senator
5 Bruno. I will ask the Secretary to read.

6 THE SECRETARY: Senator Stafford
7 from the Committee on Finance offers up the
8 following nomination: Member of the New York
9 State Racing and Wagering Board, Jerry Bilinski,
10 DVM, of North Chatham.

11 ACTING PRESIDENT KUHL: Chair
12 recognizes Senator Bruno on the nomination.

13 SENATOR BRUNO: Mr. President, on
14 the nomination. I am very pleased to be able to
15 stand in support of this nominee. I have known
16 Dr. Jerry Bilinski for a lot of years, as I have
17 known his wife Darlene that joins him here in
18 the chamber today.

19 I know him to be a true
20 professional in his field of veterinary
21 medicine. I know him to be a business person
22 who has had one of the more successful
23 veterinary clinics in the state. I know him as

1 a horse person, raising horses, brood mares,
2 standing stallions, one of the most outstanding
3 stallions in the state.

4 So it is very refreshing to have
5 someone take on a position of responsibility
6 that is as important to the people of this state
7 as this one is, and it's especially worth noting
8 that Dr. Bilinski is extremely successful in his
9 business world and in his professional world and
10 has a lot of things that he could be doing with
11 his time if he so chooses. He is choosing to do
12 this public work on behalf of the great majority
13 of the people of this state. I want to commend
14 him for that.

15 I commend his wife, who has
16 supported him in all of his activities, and just
17 want to urge the support of all of my colleagues
18 in the chamber because we have a person in Dr.
19 Bilinski that will do all of the good things
20 that need to be done for an industry that needs
21 a lot of attention, a lot of help, a lot of
22 sophistication, a lot of knowledge, a lot of
23 enthusiasm, a lot of energy, and Dr. Bilinski

1 possesses all of those qualities and attributes.

2 So I am pleased to move his
3 nomination, Mr. President.

4 ACTING PRESIDENT KUHL: Chair
5 recognizes Senator Nozzolio on the confirmation.

6 SENATOR NOZZOLIO: Thank you, Mr.
7 President.

8 Mr. President. My colleagues. I
9 rise to echo the comments of my Majority Leader
10 in support of this nomination. It's an
11 extremely important position and the challenges
12 ahead are great and significant. I haven't in
13 or near my Senatorial District Fortune 500
14 companies like Kodak and Xerox, but the largest
15 private sector employer in my district is the
16 Finger Lakes Racetrack. It's an important
17 component not only to the employment directly
18 but also the very important aspect of tourism in
19 our Finger Lakes Region. I'm very pleased in my
20 conversations with Dr. Bilinski that he
21 recognizes the importance of this economic
22 entity and its important contribution to the
23 Finger Lakes economy.

1 The discussions -- I'm also
2 pleased that the nominee, Dr. Bilinski, is
3 committed to working with us here in the
4 Legislature to do more, to do better, on behalf
5 of those horse interests and racing interests in
6 our state.

7 Mr. President, I support this
8 nomination and urge my colleagues to do
9 likewise.

10 ACTING PRESIDENT KUHL: Chair
11 recognizes Senator Farley on the confirmation.

12 SENATOR FARLEY: Thank you, Mr.
13 President. I rise to support this nomination.
14 Racing is one of the most important industries
15 in this state. Very important to Senator Bruno
16 and myself that we share with Saratoga County,
17 and I know of Senator Bruno's love of horses and
18 his recommendation of the good doctor is
19 significant because, of course, horses do play a
20 large part of the racing industry.

21 And I am pleased to support this
22 nomination. I think, of course, the doctor is
23 eminently qualified and will serve us well, and

1 I applaud the Governor on this outstanding
2 appointment.

3 I vote aye.

4 ACTING PRESIDENT KUHL: The
5 question is on the nomination of Dr. Jerry
6 Bilinski of North Chatham to the position as a
7 member of New York State Racing and Wagering
8 Board.

9 All those in favor of the
10 nomination, signify by saying aye.

11 (Response of "Aye.")

12 Opposed nay.

13 (There was no response.)

14 The nominee is confirmed.

15 We are very pleased to be joined
16 by Dr. Jerry Bilinski. He's in the gallery with
17 us, together with his wife, Darlene.

18 Dr. Bilinski, congratulations and
19 good luck.

20 (Applause.)

21 Senator Bruno, that brings us to
22 the calendar.

23 SENATOR BRUNO: Mr. President.

1 Can we at this time take up the noncontroversial
2 calendar.

3 ACTING PRESIDENT KUHL: Secretary
4 will read the noncontroversial calendar.

5 THE SECRETARY: Calendar Number
6 97, by Senator Goodman, Senate Print 926A, an
7 act to amend the Tax Law, in relation to
8 additional tax on receipts from the sale of
9 parking services rendered in certain cities.

10 ACTING PRESIDENT KUHL: Secretary
11 will read the last section.

12 THE SECRETARY: Section 4. This
13 act shall take effect immediately.

14 ACTING PRESIDENT KUHL: Call the
15 roll.

16 (The Secretary called the roll.)

17 THE SECRETARY: Ayes 42.

18 ACTING PRESIDENT KUHL: The bill
19 is passed.

20 THE SECRETARY: Calendar Number
21 103, by Member of the Assembly Tokasz, Assembly
22 Print 2444, an act to amend the Education Law,
23 in relation to the practice of optometry.

1 SENATOR PATERSON: Lay it aside.

2 ACTING PRESIDENT KUHL: Lay the
3 bill aside.

4 THE SECRETARY: Calendar Number
5 155, by Member of the Assembly Tonko, Assembly
6 Print 2331, an act to amend the Civil Service
7 Law, in relation to notifying candidates.

8 ACTING PRESIDENT KUHL: Secretary
9 will read the last section.

10 THE SECRETARY: Section 3. This
11 act shall take effect on the first day of
12 January.

13 ACTING PRESIDENT KUHL: Call the
14 roll.

15 (The Secretary called the roll.)

16 THE SECRETARY: Ayes 42.

17 ACTING PRESIDENT KUHL: The bill
18 is passed.

19 THE SECRETARY: Calendar Number
20 204, by Senator Saland, Senate Print 2598, an
21 act to amend the Family Court Act, in relation
22 to extensions of child placement and child
23 protective proceedings.

1 ACTING PRESIDENT KUHL: Secretary
2 will read the last section.

3 THE SECRETARY: Section 2. This
4 act shall take effect on the 90th day.

5 ACTING PRESIDENT KUHL: Call the
6 roll.

7 (The Secretary called the roll.)

8 THE SECRETARY: Ayes 42.

9 ACTING PRESIDENT KUHL: The bill
10 is passed.

11 THE SECRETARY: Calendar Number
12 206, by Member of the Assembly Pillitiere,
13 Assembly Print 917, an act to amend the
14 Navigation Law, in relation to vessel lighting
15 and the operation of personal water craft.

16 SENATOR DeFRANCISCO: Would you
17 please lay that aside for the day.

18 ACTING PRESIDENT KUHL: Lay the
19 bill aside.

20 THE SECRETARY: Calendar Number
21 275, by Member of the Assembly Lopez, Assembly
22 Bill 5097A, an act to amend the Private Housing
23 Finance Law, in relation to housing loans.

1 ACTING PRESIDENT KUHL: Secretary
2 will read the last section.

3 THE SECRETARY: Section 2. This
4 act shall take effect immediately.

5 ACTING PRESIDENT KUHL: Call the
6 roll.

7 (The Secretary called the roll.)

8 THE SECRETARY: Ayes 42.

9 ACTING PRESIDENT KUHL: The bill
10 is passed.

11 THE SECRETARY: Calendar Number
12 303, by Senator Levy, Senate Print 364, an act
13 to amend the Vehicle and Traffic Law, in
14 relation to imposing an additional fine,
15 imprisonment for DWI offenses.

16 ACTING PRESIDENT KUHL: Secretary
17 will read the last section.

18 THE SECRETARY: Section 2. This
19 act shall take effect first day of November.

20 ACTING PRESIDENT KUHL: Call the
21 roll.

22 (The Secretary called the roll.)

23 THE SECRETARY: Ayes 42.

1 ACTING PRESIDENT KUHL: Announce
2 the results when tabulated.

3 THE SECRETARY: Ayes 41. Nays
4 1. Senator Kuhl recorded in the negative.

5 ACTING PRESIDENT KUHL: The bill
6 is passed.

7 THE SECRETARY: Calendar Number
8 320, by Senator Saland, Senate Print 2118, an
9 act to amend the Domestic Relations Law, in
10 relation to orders for child custody and
11 support.

12 ACTING PRESIDENT KUHL: Secretary
13 will read the last section.

14 THE SECRETARY: Section 2. This
15 act shall take effect in 120 days.

16 ACTING PRESIDENT KUHL: Call the
17 roll.

18 (The Secretary called the roll.)

19 THE SECRETARY: Ayes 42.

20 ACTING PRESIDENT KUHL: The bill
21 is passed.

22 THE SECRETARY: Calendar Number
23 358, by Senator Trunzo, Senate Print 3655, an

1 act to amend the Retirement and Social Security
2 Law, in relation to providing that vested
3 members shall not lose vested status.

4 ACTING PRESIDENT KUHL: Secretary
5 will read the last section.

6 THE SECRETARY: Section 3. This
7 act shall take effect immediately.

8 ACTING PRESIDENT KUHL: Call the
9 roll.

10 (The Secretary called the roll.)

11 THE SECRETARY: Ayes 42.

12 ACTING PRESIDENT KUHL: The bill
13 is passed.

14 THE SECRETARY: Calendar Number
15 367, by Senator Skelos, Senate Print 520, an act
16 to amend the Education Law, in relation to
17 notification to parents of an elementary school
18 pupil's absence from school.

19 ACTING PRESIDENT KUHL: Secretary
20 will read the last section.

21 THE SECRETARY: Section 3. This
22 act shall take effect on the first day of
23 September.

1 ACTING PRESIDENT KUHL: Call the
2 roll.

3 (The Secretary called the roll.)

4 THE SECRETARY: Ayes 42.

5 ACTING PRESIDENT KUHL: The bill
6 is passed.

7 THE SECRETARY: Calendar Number
8 380, by Member of the Assembly Luster, Assembly
9 Print 1541, an act to amend the Criminal
10 Procedure Law, in relation to authorizing the
11 presence of a counselor.

12 ACTING PRESIDENT KUHL: Secretary
13 will read the last section.

14 THE SECRETARY: Section 2. This
15 act shall take effect immediately.

16 ACTING PRESIDENT KUHL: Call the
17 roll.

18 (The Secretary called the roll.)

19 THE SECRETARY: Ayes 42.

20 ACTING PRESIDENT KUHL: The bill
21 is passed.

22 THE SECRETARY: Calendar Number
23 382, Member of the Assembly Gromack, Assembly

1 Print 3039, an act to amend the Criminal
2 Procedure Law, in relation to conferring peace
3 officer status.

4 ACTING PRESIDENT KUHL: Secretary
5 will read the last section.

6 THE SECRETARY: Section 2. This
7 act shall take effect immediately.

8 ACTING PRESIDENT KUHL: Call the
9 roll.

10 (The Secretary called the roll.)

11 THE SECRETARY: Ayes 42.

12 ACTING PRESIDENT KUHL: The bill
13 is passed.

14 THE SECRETARY: Calendar Number
15 395, by Senator Trunzo, Senate Print 3983, an
16 act to amend the Civil Service Law, in relation
17 to the adjournment of certain arbitration
18 proceedings.

19 ACTING PRESIDENT KUHL: Secretary
20 will read the last section.

21 THE SECRETARY: Section 2. This
22 act shall take effect immediately.

23 ACTING PRESIDENT KUHL: Call the

1 roll.

2 (The Secretary called the roll.)

3 THE SECRETARY: Ayes 42.

4 ACTING PRESIDENT KUHL: The bill
5 is passed.

6 THE SECRETARY: Calendar Number
7 396, by Senator Trunzo, Senate Print 3984, an
8 act to amend the Retirement and Social Security
9 Law, in relation to providing ordinary death
10 benefit coverage.

11 ACTING PRESIDENT KUHL: Secretary
12 will read the last section.

13 THE SECRETARY: Section 11. This
14 act shall take effect immediately.

15 ACTING PRESIDENT KUHL: Call the
16 roll.

17 (The Secretary called the roll.)

18 THE SECRETARY: Ayes 42.

19 ACTING PRESIDENT KUHL: The bill
20 is passed.

21 THE SECRETARY: Calendar Number
22 417, by Member of the Assembly Gottfried,
23 Assembly Print 3826A, an act to amend the Public

1 Health Law and the Insurance Law in relation to
2 radiation therapy.

3 ACTING PRESIDENT KUHL: Secretary
4 will read the last section.

5 THE SECRETARY: Section 10. This
6 act shall take effect on the 30th day.

7 ACTING PRESIDENT KUHL: Call the
8 roll.

9 (The Secretary called the roll.)

10 THE SECRETARY: Ayes 42.

11 ACTING PRESIDENT KUHL: The bill
12 is passed.

13 THE SECRETARY: Calendar Number
14 418, by Member of the Assembly Gottfried,
15 Assembly Bill 5759, an act to amend the Public
16 Health Law, in relation to prohibition of
17 financial arrangements.

18 ACTING PRESIDENT KUHL: Secretary
19 will read the last section.

20 THE SECRETARY: Section 2. This
21 act shall take effect immediately.

22 ACTING PRESIDENT KUHL: Call the
23 roll.

1 (The Secretary called the roll.)

2 THE SECRETARY: Ayes 42.

3 ACTING PRESIDENT KUHL: The bill
4 is passed.

5 THE SECRETARY: Calendar Number
6 425, by Senator Saland, Senate Print 2113, an
7 act to amend the Family Court Act and the
8 Criminal Procedure Law, in relation to
9 authorizing the court to permit a petitioner.

10 ACTING PRESIDENT KUHL: Secretary
11 will read the last section.

12 THE SECRETARY: Section 8. This
13 act shall take effect on the 90th day.

14 ACTING PRESIDENT KUHL: Call the
15 roll.

16 (The Secretary called the roll.)

17 THE SECRETARY: Ayes 42.

18 ACTING PRESIDENT KUHL: The bill
19 is passed.

20 Senator Skelos, that completes
21 the noncontroversial calendar.

22 SENATOR SKELOS: Yes, Mr.

23 President. Is there any housekeeping at the

1 desk at this time before we go to the
2 controversial calendar?

3 ACTING PRESIDENT KUHL: There is
4 none at the desk reported by The Secretary.

5 SENATOR SKELOS: If we could
6 proceed then with the controversial calendar.

7 ACTING PRESIDENT KUHL: Secretary
8 will call the controversial calendar.

9 THE SECRETARY: On page 9,
10 Calendar Number 103, by Member of the Assembly
11 Tokasz, Assembly Print 2444, an act to amend the
12 Education Law, in relation to the practice of
13 optometry.

14 ACTING PRESIDENT KUHL: Senator
15 Skelos, an explanation.

16 SENATOR SKELOS: May we stand at
17 ease for a moment. I believe Senator Volker is
18 in the Finance Committee meeting, and we'll get
19 him in.

20 I know that a couple of members
21 would like to vote at this time. If we could
22 call the roll for purposes of Senator Trunzo
23 voting.

1 ACTING PRESIDENT KUHL: Secretary
2 will read the last section on Calendar Number
3 103.

4 THE SECRETARY: Section 6. This
5 act shall take effect on the 120th day.

6 ACTING PRESIDENT KUHL: Call the
7 roll.

8 (The Secretary called the roll.)

9 ACTING PRESIDENT KUHL: Senator
10 Trunzo, how do you vote?

11 SENATOR TRUNZO: Yes.

12 ACTING PRESIDENT KUHL: Senator
13 Trunzo will be recorded in the affirmative.

14 Secretary will withdraw the roll
15 call.

16 SENATOR SKELOS: May we just
17 stand at ease for a moment.

18 ACTING PRESIDENT KUHL: We will
19 stand at ease momentarily, awaiting Senator
20 Volker.

21 (The Senate was at ease.)

22 ACTING PRESIDENT KUHL: The
23 Senate will come to order.

1 Chair recognizes Senator Skelos.

2 SENATOR SKELOS: I believe you
3 have another report from the Finance Committee.

4 ACTING PRESIDENT KUHL: We do.
5 We have called up Calendar Number 103, Senator
6 Skelos, so why don't we lay that aside
7 temporarily. We'll return to reports of
8 standing committees. We have a report of the
9 Finance Committee. I will ask the Secretary to
10 read.

11 THE SECRETARY: Senator Stafford
12 from the Committee on Finance reports the
13 following bill: Senate Print 4579, Budget Bill,
14 an act to provide for payments to certain
15 municipalities under the Municipal Assistance
16 Program and making an appropriation therefor.

17 ACTING PRESIDENT KUHL: Without
18 objection, the bill is reported to third
19 reading.

20 Senator Skelos, do you wish to
21 take this up at this time?

22 SENATOR SKELOS: Mr. President.
23 Is there a message of necessity at the desk?

1 ACTING PRESIDENT KUHL: Yes. I
2 will ask the Secretary to read the bill, and
3 then we will have a substitution, and then we
4 will take the message.

5 Secretary will read.

6 THE SECRETARY: Senator Stafford
7 moves to discharge from the Committee on Finance
8 Assembly Bill Number 7485 and substitute it for
9 the identical Senate Bill 4579.

10 ACTING PRESIDENT KUHL: Secretary
11 will -- substitution is ordered.

12 Senator Skelos.

13 SENATOR SKELOS: Yes, is there a
14 message of necessity at the desk?

15 ACTING PRESIDENT KUHL: There is
16 a message of necessity on the Assembly bill,
17 Senator Skelos, at the desk.

18 SENATOR SKELOS: Move to accept.

19 ACTING PRESIDENT KUHL: The
20 motion is to accept the message of necessity.
21 All those in favor, signify by saying aye.

22 (Response of "Aye.")

23 Opposed, nay.

1 (There was no response.)

2 The message is accepted.

3 Secretary will read the last
4 section.

5 THE SECRETARY: Section 2. This
6 act shall take effect immediately.

7 ACTING PRESIDENT KUHL: Call the
8 roll.

9 (The Secretary called the roll.)

10 THE SECRETARY: Ayes 47.

11 ACTING PRESIDENT KUHL: The bill
12 is passed.

13 Chair recognizes Senator Skelos.

14 SENATOR SKELOS: There will be an
15 immediate meeting of the Tourism Committee in
16 Room 332 of the Capitol.

17 ACTING PRESIDENT KUHL: There
18 will be an immediate meeting of the Tourism
19 Committee in the Majority Conference Room, Room
20 332.

21 SENATOR SKELOS: And at this
22 time, Mr. President, if we can take up Calendar
23 Number 103, Senate 1186.

1 ACTING PRESIDENT KUHL: Secretary
2 will read Calendar Number 103.

3 ACTING PRESIDENT KUHL: Chair
4 recognizes Senator Saland.

5 SENATOR SALAND: Thank you, Mr.
6 President. I was out of the chamber at a
7 Finance meeting, and would request unanimous
8 consent to join you, Mr. President, in the
9 negative on Calendar 303.

10 ACTING PRESIDENT KUHL: Without
11 objection, Senator Saland will be recorded in
12 the negative on Calendar Number 303.

13 SENATOR SALAND: Thank you, Mr.
14 President.

15 ACTING PRESIDENT KUHL: Secretary
16 will read Calendar Number 103.

17 THE SECRETARY: Calendar Number
18 103, by Member of the Assembly Tokasz, Assembly
19 Print Number 2444, an act to amend the Education
20 Law, in relation to the practice of optometry.

21 ACTING PRESIDENT KUHL: Senator
22 Volker, an explanation of the bill was asked for
23 when it was brought up the last time by Senator

1 Dollinger.

2 Chair recognizes Senator Volker
3 for an explanation.

4 SENATOR VOLKER: Mr. President.
5 First of all, let me say and I think this
6 certainly is a very important bill.

7 ACTING PRESIDENT KUHL: Senator
8 Volker, excuse the interruption.

9 Ladies and gentlemen, may we have
10 the members please take their chairs and take
11 the conversations out of the chamber. It's
12 extremely noisy in here. We won't proceed until
13 it quiets down.

14 Senator Volker.

15 SENATOR VOLKER: First of all, I
16 might say, I think that is important bill; and,
17 in a sense, I want to apologize to my colleagues
18 and at the same time thank my good friend
19 Senator Ken LaValle for the hard work that he
20 did on this bill and also for the fact that,
21 very honestly, this bill should have been signed
22 into law last year and would not even be here.

23 This bill passed the Senate by a

1 vote of 49 to 11 last year. It was not a real
2 controversial bill. It was agreed to by
3 virtually everybody involved.

4 But like so many other areas,
5 especially areas where there is turf involved,
6 one of the parties involved who had agreed to
7 it, some of the members of that organization
8 started backing around and saying, "We don't
9 know if this was such a good idea," and some
10 very powerful members of that organization then
11 got to the medical society and said, "You know,
12 if you let this happen, why other groups will be
13 coming in and wanting to impinge on us," and so
14 forth and so on. The next thing you know, the
15 medical society that had been very quiet all of
16 a sudden got involved.

17 So what has happened here is that
18 we have a situation where you might be
19 interested to know there are 48 states in the
20 Union -- 48 -- that allow for the kind of
21 statutes that we presently have, that allow, in
22 other words, some form of drug use for eyes in
23 the -- that we do in this state already. There

1 are 41 states in the Union that provide some
2 form of therapeutic drug treatment contrary to
3 what some of the nonsense that has been -- that
4 has been distributed around.

5 In fact, interesting statistic
6 that I found out was that two of the three
7 examinations that are done in this state are
8 done by optometrists and not by
9 ophthalmologists, which I think may give you an
10 idea of one reason why some ophthalmologists are
11 concerned here.

12 Let me just, if I might, read
13 you -- and there's a reason why I'm doing this.
14 I am going to read you a little statement of how
15 we came about here, partly because I think it is
16 important to this issue and also because I think
17 there is just so much misunderstanding about
18 what has happened. So I'm going to give you
19 just a brief history of what's before us.

20 An almost identical bill passed
21 this house last year. The chair of the Assembly
22 Higher Education Committee, Ed Sullivan, asked
23 for a few technical amendments which were

1 included in the chapter amendment. That chapter
2 amendment failed to get a message of necessity,
3 and those of you that were here then obviously
4 remember there were some problems at the end of
5 last session with messages of necessity.

6 Those chapter amendments have
7 been included in this bill; and except for the
8 effective date, the bill is the identical to the
9 marriage resulting from the original piece of
10 legislation that was passed and the chapter
11 amendments' technical amendments.

12 The chairs of the Higher
13 Education Committees, Senator Ken LaValle and
14 his counterpart in the Assembly, had previously
15 asked the Education Department to conduct an
16 analysis of the issues surrounding optometric
17 use of therapeutic drugs. The Department's
18 report, which was issued in June of 1993, became
19 the framework for almost a year's effort in
20 developing a bill which reflected public need,
21 the Education Department's proposals, and the
22 position of optometry and ophthalmology and the
23 chairs of the legislative committees.

1 The bill currently before us has
2 the support of the Education Department. The
3 Health Department -- that is, the new Health
4 Department -- has taken no position. Optometry
5 is strongly supportive and the representatives
6 of ophthalmology had indicated they had signed
7 off on the legislation. In fact, they were part
8 of the discussions that went on for a long
9 period of time.

10 The medical society has begun to
11 voice objections to the bill asking for a
12 collaborative agreement. The only physicians
13 with whom the optometrists could possibly have a
14 collaborative agreement would be the
15 ophthalmologists, and they have agreed to this
16 legislation in the past. While there may be
17 individual optometrists and ophthalmologists who
18 are unhappy with the negotiations, the bill
19 does, in fact, reflect the final position of
20 both of those organizations.

21 I am convinced that the medical
22 society is fighting a battle on nurse
23 practitioners and nurse anesthetists and others

1 who are looking to expand their scope of
2 practice to include areas heretofore the
3 exclusive purview of physicians. So other than
4 the medical society as a whole, the other
5 components including that group of medical
6 practitioners most directly affected have
7 actively participated and have been instrumental
8 in developing this proposal and had no objection
9 to this legislation.

10 The bill redefines optometry by
11 permitting those optometrists who have the
12 requisite clinical training to use certain
13 specified drugs. The drug utilization is
14 divided into two phases. In the first phase,
15 topical medication is used for relatively common
16 routine diseases such as inflammation of the
17 eye. Before an optometrist may participate in
18 Phase I, he or she must have acquired a minimum
19 of 300 hours of clinical training.

20 Ophthalmologists are actively participating in
21 this review process as they are in an evaluation
22 committee which will assist in determining if
23 optometrists who apply for certification have

1 the necessary clinical experience.

2 There are particular procedures
3 to be followed in the event that steroids or
4 antiviral medications are dispensed or
5 prescribed. The language and protocols for
6 these medications were developed in consultation
7 with the Education Department, members of the
8 New York State Medical Board, and the
9 ophthalmological society's representatives. All
10 parties concurred with the approach in this
11 bill.

12 During the first 12 months of
13 this Phase I utilization, all optometrists
14 prescribing drugs must advise a review committee
15 of the illness treated, the medication
16 provided -- prescribed and the outcome.
17 Ophthalmologists are actively engaged in this
18 component as they are in the committee which
19 will write the initial report on the experience
20 of optometrists prescribing medication.

21 In Phase II, optometrists are
22 permitted to use certain glaucoma medications;
23 however, glaucoma patients must be co-managed

1 with an ophthalmologist during the first three
2 years but not for fewer than 75 patients. The
3 issue raised by the medical society on
4 collaborative agreements was resolved by
5 optometry, ophthalmology, and the chairs of the
6 committees by requiring this co-management
7 relationship between ophthalmologists and
8 optometrists.

9 Optometrists must have an
10 additional 100 hours of clinical training solely
11 in glaucoma management prior to being authorized
12 to use Phase II drugs. Optometrists must have a
13 notification in their office advising patients
14 of the condition in which they are practicing.
15 They will be held to the same standards to which
16 physicians in the community are held. They must
17 participate in conditioning education programs.

18 Similar legislation has been
19 enacted in 41 other states. New York is late to
20 the authorization although the SUNY College of
21 Optometry has been one of the premier clinical
22 programs in the country. The Education
23 Department has submitted a memorandum in support

1 while the new Commissioner of Education has
2 taken no position -- Commissioner of Health.
3 I'm sorry. The Health Department in prior years
4 has endorsed this legislation stating, "The
5 authorization of optometrists to use drugs will
6 encourage and facilitate greater access to
7 health care services; may also reduce or limit
8 the increase in costs of vision care services
9 provided by publicly financed health care
10 programs."

11 This bill is an evolutionary step
12 in the development of scope of practice for
13 ancillary health care providers. It has been
14 carefully reviewed, negotiated by the chairs of
15 the Senate and Assembly Higher Education
16 Committees.

17 I want to especially thank
18 Senator LaValle for not only all the work that
19 he did but also because -- those of you who may
20 remember that a major reason why the bill was
21 late in last session is that it occurred after I
22 had had some major surgery, and I had
23 anticipated coming back before the end of the

1 session. Unfortunately, that didn't work out,
2 and I was not able to come back by the end of
3 the session; and as a result, Senator LaValle
4 moved the bill late in the session and did a
5 Herculean job; and if wasn't for some of the
6 things that occurred, really, outside the -
7 outside of our control, the bill would have,
8 presumably, been signed into law and we would
9 not have this bill before us today. So I just
10 wanted to make that clear.

11 And I will be glad to try to
12 answer any questions anybody might have.

13 SENATOR DOLLINGER: Mr.
14 President. If Senator Volker will yield to a
15 couple of questions?

16 SENATOR VOLKER: Sure.

17 ACTING PRESIDENT KUHL: Senator
18 Volker, do you yield to a question from Senator
19 Dollinger?

20 The Senator yields.

21 SENATOR DOLLINGER: First of all,
22 Senator, I appreciate your effort with this
23 bill. I know this has been a long time in

1 working through. I'd just like to go through
2 and make sure I understand a couple components
3 of it.

4 First of all, with respect to
5 glaucoma, which is an issue that, at least to my
6 recollection, was not at least clearly
7 understood by me last year when we did the bill,
8 and I know that the medical society, the
9 ophthalmological society have come forward with
10 information that suggests that glaucoma is a
11 slightly different animal in this arranged
12 pattern of diseases that affect the eye and,
13 frankly, that there are different treatments.

14 Just for the record, how many
15 states in the United States now permit
16 optometrists to treat glaucoma? Do you know how
17 many? You have used the number of 41. I
18 believe that applies to general therapeutic
19 drugs. My question is, what about the issue of
20 glaucoma?

21 SENATOR VOLKER: I think
22 general -- I think that's true, and I think that
23 there are a great number of those that do,

1 although I don't know if we have an exact
2 number. There are 30 -- 30 states, according to
3 the information I have, allow some form of
4 treatment of glaucoma. Not all, of course, in
5 the same vein allow it. Some allow it in
6 collaboration with ophthalmologists; some allow
7 it separately, but all of 30 states allow
8 treatment of glaucoma.

9 SENATOR DOLLINGER: Again,
10 through you, Mr. President.

11 ACTING PRESIDENT KUHL: Senator
12 Dollinger is asking Senator Volker to yield.
13 Senator Volker, do you yield?

14 SENATOR VOLKER: Certainly.

15 ACTING PRESIDENT KUHL: Senator
16 yields.

17 SENATOR DOLLINGER: Senator, are
18 you familiar with the characteristics of
19 glaucoma and why the ophthalmological society is
20 concerned about having optometrists, even with
21 the additional training, treat glaucoma and its
22 effects?

23 SENATOR VOLKER: Yes, I think I

1 am, and I think -- keep in mind that the
2 treatment of glaucoma is in the second phase
3 here and we have set up a system whereby it
4 would be done in conjunction with
5 ophthalmologists as a co-management type of
6 operation. You are aware of that, I assume.

7 And the reason for that is to
8 allay some of the concerns that some of the
9 ophthalmologists had; and, remember, that this
10 bill was the result of a long and tortuous
11 process that did involve both ophthalmologists,
12 optometrists and so forth, as well as the
13 legislative people, and that that's where this
14 agreement came from.

15 I think what has happened is
16 that -- and let's face it. I think some of this
17 is obviously turf, not that there aren't people
18 that are concerned, but I think what has
19 happened here is that some people on both sides,
20 the ophthalmologists and the optometrists -- the
21 optometrists think this didn't go far enough;
22 the ophthalmologists think maybe this went too
23 far. It is, I think, one of the classic cases

1 of people not involved directly in the process
2 who are saying, "Well, maybe we shouldn't have
3 done this," but their basic -- both groups,
4 agreed to this.

5 SENATOR DOLLINGER: Again,
6 through you, Mr. President, if Senator Volker
7 will yield.

8 ACTING PRESIDENT KUHL: Senator
9 Volker, do you continue to yield?

10 SENATOR VOLKER: Sure.

11 ACTING PRESIDENT KUHL: The
12 Senator continues to yield.

13 SENATOR DOLLINGER: The issue of
14 the co-management, as you describe it, Senator,
15 with respect to glaucoma, raises a troubling
16 question of liability and malpractice; and that
17 is, how do you apportion, how do you deal with
18 the malpractice issue that flows from
19 co-management versus what is currently the
20 singular management by a physician for
21 glaucoma?

22 SENATOR VOLKER: I think the way
23 you would deal with it were if the proper

1 procedures are followed and if the training and
2 so forth is -

3 SENATOR DOLLINGER: Mr.
4 President. I am kind of having a problem
5 hearing.

6 ACTING PRESIDENT KUHL: So am I,
7 Senator Dollinger, and you raise a good point.
8 Why don't we see if we can get the members to
9 take their conversations out of the chamber, see
10 if we can get the sergeant-at-arms to the close
11 the doors so we don't have noise coming in.

12 SENATOR DOLLINGER: Thank you,
13 Mr. President.

14 SENATOR VOLKER: I think,
15 Senator, that what I was about to say was that
16 as long as you use the standard of care that is
17 normally used by any physician -- in fact, right
18 in the bill on page 2, line 34, where it talks
19 about standard of care, it says, "An optometrist
20 authorized to use pharmaceutical agents for use
21 in the diagnosis, treatment or prevention of
22 ocular disease shall be held to the same
23 standard of care and diagnosis, use of agent and

1 treatment, as that degree of skill and
2 proficiency commonly exercised by the physician
3 in the same community."

4 So what you would have is a
5 situation where that optometrist would be held
6 to the same standard; and as long as the -- or
7 as long as he complied -- he or she complied
8 with the rules as set forth in this bill and
9 practiced in the normal -- with the normal care,
10 that would comply with those kinds of -- those
11 kinds of issues.

12 SENATOR DOLLINGER: Again,
13 through you, Mr. President, if Senator Volker
14 will yield.

15 ACTING PRESIDENT KUHL: Senator
16 Volker, do you continue to yield?

17 SENATOR VOLKER: Yes.

18 SENATOR DOLLINGER: In these
19 co-management situations between optometrists
20 and ophthalmologists, does the bill specify -
21 and I apologize for perhaps not being able to
22 cite chapter and verse here, but does the bill
23 specify who is the primary care provider or who

1 is the primary manager of the care to be
2 provided?

3 I'm simply -- and, again, through
4 you, Mr. President, I'm simply trying to decide
5 who, by law, are we apportioning the major
6 responsibility for treatment so that in the
7 event of a malpractice action we have some -
8 are we in any way tinkering in this law with
9 that, the apportionment of liability
10 responsibility?

11 SENATOR VOLKER: We're not
12 tinkering. I think what we're doing here is
13 that the -- what we're doing -- we have a
14 section, by the way, that deals with
15 consultation, and that's on page 3, Section 6,
16 and it talks about how the consultation is set
17 up, and so forth, and I think what we would be
18 doing was, as long as there was compliance with
19 the rules, I think the question would be -- if
20 there was some sort of malpractice, I guess the
21 question would be, if it was on behalf,
22 obviously, of the optometrist, it didn't comply
23 with the agreement, he or she, quite clearly,

1 would probably be the one primarily responsible;
2 where, I suppose, if the ophthalmologist didn't
3 act -- or didn't act in compliance, then there
4 could be some question as far as the
5 ophthalmology but primarily the optometrists
6 would take the heavy risk as long as he or she
7 would comply with the consulting but didn't
8 properly do it, then that person would, under
9 the rules of -- common rules of evidence and so
10 forth, I suppose, would be primarily
11 responsible.

12 SENATOR DOLLINGER: Again,
13 through you, Mr. President, if Senator Volker
14 will continue to yield.

15 ACTING PRESIDENT KUHL: Senator
16 Volker, do you continue to yield?

17 The Senator continues to yield.

18 SENATOR DOLLINGER: Does this
19 bill, in any way, deal with the issue of a claim
20 against an optometrist and the coverage through
21 the excess medical liability coverage that we
22 now have in place for physicians? At least it's
23 my understanding it's for physicians. In a

1 claim against an optometrist, would the victim
2 of malpractice have access to the medical
3 liability umbrella that we now put in place for
4 physicians?

5 SENATOR VOLKER: I think the
6 answer to that is, probably no, because they are
7 not a physician and, therefore, they wouldn't
8 technically be -- that wouldn't be applicable to
9 them.

10 Of course, they have their own
11 coverages and the coverages of optometry now, as
12 I understand it, is not as extensive because
13 they don't do the kind of invasive type of thing
14 that a medical physician would do. Keep in mind
15 that despite the fact that we are expanding the
16 practice of optometry here, we are not expanding
17 it to anywhere near what an ophthalmologist
18 could or would do. We are not, for instance,
19 doing the kind of invasive type of thing that an
20 ophthalmologist does now. This is very
21 limited.

22 I have been told that there are
23 some states in the Union, by the way, that go

1 considerably beyond what we are proposing to do
2 here in allowing optometrists to practice.

3 SENATOR DOLLINGER: Just, again,
4 through you, Mr. President.

5 ACTING PRESIDENT KUHL: Senator
6 Volker, do you continue to yield?

7 SENATOR VOLKER: Sure.

8 ACTING PRESIDENT KUHL: Senator
9 continues to yield.

10 SENATOR DOLLINGER: Is my
11 understanding correct, that if there were a
12 claim brought against an optometrist who was a
13 co-manager under the system that we have, and it
14 was determined that the optometrist was liable
15 for loss of sight, which is -- as I think
16 everybody recognizes, is a significant
17 compensable injury, that the victim would not
18 have access to the excess coverage that we now
19 have available for physicians, and that the
20 purpose of that pool is to both shield the risk
21 from individual physicians and to pool the
22 insurance so that we have funds available for
23 those kinds of judgments?

1 Is my understanding that the
2 optometrists would not have access to that and
3 they would only be relying on the primary
4 coverage?

5 SENATOR VOLKER: I think that's
6 true. But, of course, remember that it is
7 excess to start with and that the medical -- a
8 physician has his own primary coverage to start
9 with, that the excess coverage is in additional
10 to their regular coverage, so that the
11 optometrist clearly would have his or her own
12 coverage; and, presumably, one of the things
13 that will happen here -- as the scope of risk
14 increases, they will probably have to have
15 increasing coverage, it is true. But, again, I
16 say not to the same extent as a physician would
17 because an optometrist would not be allowed to
18 do the kind of invasive treatment and so forth
19 that an ophthalmologist would.

20 SENATOR DOLLINGER: Again,
21 through you, Mr. President. One thing that this
22 bill does do, however, is it increases the role
23 of the optometrist as a diagnostician, and that

1 is in the sense of his ability to diagnose and
2 to treat ailments that can progressively lead
3 from one form of disease rapidly to another, at
4 least as I understand the physiology of the eye.

5 SENATOR VOLKER: It doesn't
6 really increase it that much. They're doing it
7 right now. What happens now is, if an
8 optometrist looks at somebody's eye and makes a
9 determination that that person, for instance,
10 has glaucoma, or whatever, he refers him to an
11 ophthalmologist; and, in fact, what would happen
12 here is now -- and this is at the request, in
13 fact, of the ophthalmological people. You have
14 the consultation that goes on here; and
15 presumably, in severe cases, you would still
16 have to reference to an ophthalmologist because
17 there are many things that an optometrist still
18 will not be able to do, and one of the things
19 that this bill will do, by the way, is do
20 something -- and I think it may be extremely
21 important in the medical field in this area; and
22 that is, develop a much better relationship -
23 although the relationship has been much better

1 than I think people realize, between
2 optometrists and ophthalmologists.

3 For instance, I don't believe I
4 have ever been to an ophthalmologist. I think
5 my entire history has been to optometrists,
6 which I think most of us don't realize because,
7 fortunately, I don't believe I have ever had any
8 disease or anything. I just had examinations
9 and so forth, because most of the examinations
10 that are done in this state, as I say, are done
11 by optometrists themselves; and it's only when
12 there is an indication of some disease or
13 something of that nature that ophthalmologists
14 come into play.

15 SENATOR DOLLINGER: Again,
16 through you, Mr. President.

17 ACTING PRESIDENT KUHL: Senator
18 Volker, do you continue to yield?

19 SENATOR VOLKER: Sure.

20 ACTING PRESIDENT KUHL: Senator
21 yields.

22 SENATOR DOLLINGER: That really
23 highlights my concern is that under this bill

1 the optometrist becomes not only the first stop
2 in detection, which as, I agree with you, under
3 the current practice optometry may be, but it
4 also becomes the first stop in the treatment
5 process because they will have treatment
6 abilities for certain types of diseases, which
7 if untreated or improperly treated could lead to
8 more severe consequences.

9 That's my concern in this bill,
10 is the effect of creating this first level of
11 treatment for optometry, especially when -- at
12 least from what I understand about the diseases
13 of the eyes is that they are often progressive
14 in nature. What starts out as X Y Z ends up
15 moving, if improperly treated, to something else
16 with relative rapidity.

17 SENATOR VOLKER: Yes, it was
18 pointed out to me that the -- that the treatment
19 is limited to three basic types of drugs, beta
20 blockers, alpha agonists and direct acting
21 chlorogenic agents. The reason for that is -
22 and that was one of the things that the
23 ophthalmologists wanted was to keep the

1 treatment -- whatever treatment was going to be
2 made by the optometrists would be in a very
3 limited vein, so that anything after that would
4 clearly go and would be referred to the
5 ophthalmologists; and, remember, that these
6 would be done in consultation with the
7 ophthalmologists to start with, initially, and
8 that you have all sorts of training that ensues,
9 and so forth, to increase the ability of these
10 people to deal with these kinds of things.

11 But I think the answer is, I
12 think you should understand this, that nothing
13 in this bill is going to give optometrists
14 unfettered ability to make decisions as far as
15 treatment to any massive extent. That still is
16 going to be in the hands of ophthalmologists
17 even after this bill passes, consultation or
18 not. The prime responsibilities for disease
19 control and for treatment is still going to be
20 in the hands of ophthalmologists.

21 I believe Senator DiCarlo -
22 ACTING PRESIDENT KUHL: Senator
23 Dollinger, please excuse the interruption.

1 Chair recognizes the Acting
2 Majority Leader, Senator DiCarlo.

3 SENATOR DiCARLO: Thank you, Mr.
4 President. There will be an immediate meeting
5 of the Environmental Conservation Committee in
6 Room 123, and any members on that committee who
7 wish to vote now, please let us know.

8 ACTING PRESIDENT KUHL: There
9 will be an immediate meeting of the
10 Environmental Conservation Committee in Room
11 123, immediate meeting.

12 Chair recognizes Senator Tully.
13 Do you wish to vote?

14 SENATOR TULLY: Yes, Mr.
15 President.

16 ACTING PRESIDENT KUHL: Secretary
17 will read the last section.

18 THE SECRETARY: Section 6. This
19 act shall take effect on the 120th day.

20 ACTING PRESIDENT KUHL: Call the
21 roll.

22 (The Secretary called the roll.)

23 ACTING PRESIDENT KUHL: Senator

1 Tully, how do you vote?

2 SENATOR TULLY: No.

3 ACTING PRESIDENT KUHL: Senator

4 Tully in the negative.

5 Senator Farley, how do you vote?

6 SENATOR FARLEY: No.

7 ACTING PRESIDENT KUHL: Senator

8 Farley in the negative.

9 Senator Leichter, how do you
10 vote?

11 SENATOR LEICHTER: Yes.

12 ACTING PRESIDENT KUHL: Senator

13 Leichter in the affirmative.

14 Senator Stachowski, how do you
15 vote?

16 SENATOR STACHOWSKI: Yes.

17 ACTING PRESIDENT KUHL: Senator

18 Stachowski in the affirmative.

19 Senator Sears, how do you vote?

20 SENATOR SEARS: Yes.

21 ACTING PRESIDENT KUHL: Senator

22 Sears in the affirmative.

23 Senator Hoblock, how do you

1 vote?

2 SENATOR HOBLOCK: No.

3 ACTING PRESIDENT KUHL: Senator
4 Hoblock in the negative.

5 Senator Goodman, how do you
6 vote?

7 SENATOR GOODMAN: No.

8 ACTING PRESIDENT KUHL: Senator
9 Goodman in the negative.

10 Senator DeFrancisco, how do you
11 vote?

12 SENATOR DeFRANCISCO: Negative.

13 ACTING PRESIDENT KUHL: Senator
14 DeFrancisco in the negative.

15 Senator Oppenheimer, how do you
16 vote?

17 SENATOR OPPENHEIMER: No.

18 ACTING PRESIDENT KUHL: Senator
19 Oppenheimer in the negative.

20 Any other committee members on
21 that wishing to vote?

22 (There was no response.)

23 Roll call is withdrawn. Debate

1 is resumed.

2 Chair recognizes Senator
3 Dollinger.

4 SENATOR DOLLINGER: Again, with
5 Senator Volker's continuing indulgence, just one
6 last line of questions.

7 ACTING PRESIDENT KUHL: Senator
8 Volker, do you continue to yield?

9 SENATOR VOLKER: Sure.

10 ACTING PRESIDENT KUHL: Senator
11 yields.

12 SENATOR DOLLINGER: Senator, as I
13 understand it, the effect of this bill will be
14 to create, in essence, four categories of
15 optometrists: Those who are bound by current
16 law, who have the options available under
17 current law; those who are diagnostic
18 optometrists who have some access to drugs and
19 drug therapy; therapeutic optometrists who will
20 deal with a more expanded scope; and then those
21 that have the glaucoma powers. This bill
22 establishes a series of additional training for
23 those who participate or qualify for those

1 additional responsibilities.

2 SENATOR VOLKER: Additional hours
3 eventually.

4 SENATOR DOLLINGER: Additional
5 hours of training.

6 SENATOR VOLKER: Right.

7 SENATOR DOLLINGER: My question
8 is, what procedure is set up under this bill to
9 notify the consumer of the varying levels of
10 expertise that will now be available for these
11 various optometrists?

12 SENATOR VOLKER: First of all,
13 there is in the bill when the optometrist is
14 initially enabled to practice, and so forth,
15 under the new rules, there is a -- in the bill,
16 it speaks of posting on the wall a notice that
17 tells exactly what the scope of the optometrist
18 is; and, for instance, when the optometrist is
19 in the second phase and dealing with the co
20 management or consultation with the
21 ophthalmologist, that that notice must be placed
22 for anyone to see to make sure that there is an
23 understanding by anyone that is treated by that

1 person as to exactly what the scope of that
2 optometrist is; and the idea of that is to make
3 it clear as to exactly how this person -- what
4 this person's scope is; and then at the end of
5 the process, there is also a notice where the
6 optometrist will be able then to notify his
7 clients that he has been certified -- he or she
8 has been certified to exactly what their scope
9 of authority is, and so forth.

10 So there is an attempt in the
11 bill -- and by the way, there is -- there is a
12 continuing process that goes on, a committee
13 that is set up as a continuing education
14 process, not only to review what is occurring as
15 time goes on, also there is a course of a
16 committee set up for certification and things of
17 that nature with two optometrists and two
18 ophthalmologists on it and a third person that
19 is set up for a review committee, person
20 appointed by the SUNY Chancellor through the
21 Education Department, to certify people. But
22 all that is going to be noticed to the public,
23 and the optometrist has to clearly notify his

1 patients as to what his authority is.

2 Just one more thing, Senator
3 LaValle noted to me that on page 4, Section 8,
4 on the notice to the patient, it lists a
5 detailed area which the medical society
6 requested, a series of language options that the
7 medical society requested to make it very clear
8 as to what the scope and authority of an
9 optometrist is, and that's Section 8, from lines
10 3 through line 24.

11 SENATOR DOLLINGER: On the bill,
12 Mr. President.

13 ACTING PRESIDENT KUHL: Senator
14 Dollinger on the bill.

15 SENATOR DOLLINGER: I thank
16 Senator Volker for continuing my enlightenment
17 through this process. I think I have been
18 talked to by just about every ophthalmologist in
19 Rochester and by every optometrist in Rochester
20 about this bill and what it means.

21 But I think, as my questions to
22 Senator Volker indicate, I am concerned about a
23 number of things in this bill. One is the issue

1 of liability and access to liability insurance.

2 I know that one of the reasons
3 why -- at least it's my understanding -
4 optometry is a less expensive form of diagnosis
5 and treatment for some illnesses of the eye is
6 because, frankly, they are not carrying the
7 liability exposure that physicians carry.

8 In addition, I'm fearful that if
9 there were claims against optometrists under
10 this bill, that they wouldn't have access to the
11 medical liability coverage that we now provide
12 for physicians as excess coverage in the event
13 that there's significant judgments.

14 I note that that system is in
15 place as a way to shield physicians from
16 significant increases in their malpractice
17 policy, but I would like to think that consumers
18 who are perhaps unfortunately victimized, if
19 they would be -- by malpractice by optometrists,
20 would have access to the same availability of
21 funds.

22 I think optometry may also find
23 that once it gets in the business of providing

1 these kinds of treatments that its malpractice
2 premiums significantly expands and the cost
3 savings that optometry might have experienced
4 will no longer be present because they will have
5 to pick up large increases in malpractice
6 insurance.

7 In addition, Senator Volker
8 pointed out at one point in response to my
9 question that the person who continues to bear
10 primary responsibility is the ophthalmologist,
11 and my concern is that the ophthalmologists will
12 only bear responsibility in instances in which
13 the optometrist may have already begun
14 treatment; and if there are conflicts between
15 the ophthalmologist and the optometrist about
16 the course of treatment or professional
17 judgments made by the ophthalmologist that the
18 treatment was inappropriate, we may have a very
19 serious apportionment problem in the liability
20 of malpractice claims brought by those who are
21 victimized, and I think, as we all know, the
22 danger in optometry and in ophthalmology is you
23 are dealing with sight. It's, frankly,

1 something that, if you were to lose your sight,
2 I am fearful of significant judgments.

3 The final question that I am
4 concerned about is the classes of optometry and
5 how that system is going to work. I understand
6 that there has been a lot of effort put into
7 it. For myself, in dealing with scope of
8 practice issues, I agree, they are the most
9 difficult ones possible, because I am not an
10 ophthalmologist. I'm not a physician. I don't
11 have really any good information that I have in
12 my own personal experience about how to treat
13 eye disease, about how to treat problems whether
14 they be minor or major problems.

15 I do know that the physiology of
16 the eye is such that untreated or improperly
17 treated problems in the eye can cause very, very
18 significant consequences, and I sometimes
19 wonder, when we are called on to make these
20 scope of practice determinations. I don't know
21 that there is a right answer. I appreciate
22 those who have been working to try to get to
23 that right answer or whatever it may be.

1 But at least on this one I'm
2 convinced that the training that an
3 ophthalmologist gets gives them a particular
4 expertise that in dealing with eye treatments we
5 ought to continue to respect.

6 I know that 12 states agree with
7 New York and prohibit any of the uses that are
8 contained in this bill. I think still there is
9 value in that. I think that as technology
10 expands, as we get further down the road, we
11 might be in a position three years, five years
12 from now, where we would look at this issue
13 again.

14 But at least at this stage, based
15 on the liability problems, the apportionment
16 problems, the prime responsibilities still rest
17 with an ophthalmologist. He is going to be held
18 liable for the primary care and the treating,
19 and yet he may run into problems in dealing with
20 the optometrist and the treatment in the course
21 of the treatment.

22 I still think that the thing to
23 do in this particular case is to say that we

1 will continue to allow ophthalmologists to
2 provide the care and treatment for the eyes that
3 they have been trained to do.

4 So under those circumstances, I
5 will be voting in the negative.

6 ACTING PRESIDENT KUHL: Chair
7 recognizes Senator LaValle.

8 SENATOR LAVALLE: Thank you, Mr.
9 President.

10 As Senator Volker indicated, this
11 house last year passed this bill I would say
12 overwhelmingly, and the bill for really
13 technical reasons at the end of the legislative
14 session got caught up in a little administrative
15 detail like a message of necessity, or else this
16 bill would have been on the Governor's desk and
17 the final result, I don't know what would have
18 happened. I presume that the Governor would
19 have signed the bill.

20 I would first like to start by
21 thanking as I did last year the Committee on
22 Higher Education that has been really terrific
23 on matters of scope of practice issues. Many

1 cases, there's a willingness to duck these
2 issues because they are very complex and they
3 deal with, very honestly, economics, many times
4 shifting dollars from one profession to another,
5 and so the committee last year developed a very
6 innovative procedure in bringing to Albany and
7 putting at the table those individuals who are
8 out in the marketplace dealing with patients,
9 and that is optometrists and ophthalmologists,
10 and it goes to Senator Dollinger's point that we
11 many times -- most times -- do not have the
12 expertise to deal with these matters, and so we
13 really were facilitators at the table to resolve
14 problems between the two professions, but in
15 every instance, we honored the expertise that
16 was brought to that table by the professions.

17 After a very, very long and
18 arduous set of negotiations, both the
19 optometrists and the ophthalmologists agreed
20 that this was in the best interest of their
21 projections. As Senator Volker said and as we
22 all know, practically, associations and groups
23 can support a bill but there will always be

1 individuals who will have a disparate view on
2 that bill and that certainly was the case last
3 year and I think that is what has really driven
4 some of the debate this year.

5 Senator Dollinger, in listening
6 to the exchange that you and Senator Volker had,
7 I would simply say this. There are many things
8 that Senator Volker read into the record on the
9 patient notice. That language was put in very
10 specifically at the request of the medical
11 society, and there were other provisions,
12 whether it be standard of care or a very, very
13 restrictive and lockstep procedure on how you
14 get to treat a patient with glaucoma; and even
15 there, the field is narrowed to a set of drugs.

16 And so as we know, you can't have
17 both a sword and a shield at the same time in
18 terms of language. You can't say I want this
19 and then hide behind it and say, well, there is
20 possible litigation when you developed specific
21 standards of care, developed the educational
22 standards, the clinical standards, the
23 continuing education standards. All this was

1 done in a give-and-take process.

2 This bill is not only the most
3 innovative in the country, but it is also very,
4 very restrictive. Part of the problem in this
5 debate is not the bill. It is the innovative
6 points that have been developed; and as Senator
7 Volker said, the real issue here is not the
8 issue between the ophthalmologists and the
9 optometrists but it is for future issues and
10 future debates and scope of practice. That's
11 what this debate in 1995 is all about.

12 We could not have listened to
13 people who negotiated a bill in '94 and then
14 listened in '95 and hear different things? Were
15 we deaf to these things that were being said?
16 Were we blind to what was being negotiated? The
17 answer is "not." Nor were the members who voted
18 for this bill. This bill did not change in the
19 period from 1994 to 1995.

20 There are provisions here as
21 Senator Volker issued that establish a review
22 process to say we have to go slow in our
23 deliberations here because we are moving in a

1 very innovative way, even though we have
2 established a lockstep procedure in moving from
3 the use of Phase I drugs to Phase II drugs to
4 the kind of training and the number of patients
5 that you have to see in a clinical way of no
6 less than 75 patients -- the written
7 consultation.

8 I would say to you, Senator, that
9 we all respect your legal skills, but I would
10 say that, you know, in terms of the consultation
11 agreement, doesn't that contractual agreement
12 establish some sort of duty of care for the
13 parties? We have locked in the standard of
14 care, the level that we expect each person to
15 perform in that relationship, and so there will
16 always be issues to be argued in the courts for
17 those people who feel they've been harmed, but I
18 think that's outside of what this bill is all
19 about.

20 This bill is a scope of practice
21 bill. This bill is not a malpractice bill.
22 This bill deals with trying to provide some very
23 innovative things in broadening the level of

1 care for our patients.

2 I remember last year Senator
3 Markowitz brought to the floor, as he does, in a
4 very spirited way, what does this mean for his
5 constituents? This means that for his
6 constituents there will be more opportunities to
7 diagnose eye problems, and it provides a very
8 specific lockstep procedure on how that patient
9 can get the best care should there be a
10 complicated situation.

11 This body, this Legislature, put
12 into law the fact that optometrists could use
13 topical drugs for diagnostic purposes. We
14 debated that very, very arduously, but it has
15 worked over these many, many years, and so we
16 say now we're ready for an additional step.

17 The work that Senator Volker has
18 done on this bill is exemplary. I think that
19 the people who had confidence in this bill, in
20 this language, in 1994 should have the same
21 level of confidence. Nothing has changed. The
22 words have not changed. The negotiations that
23 took place between the experts, the optometrists

1 and the ophthalmologists are the same
2 negotiations and the same words in this bill.

3 So I would hope that the people
4 who supported this bill in 1994 will stay the
5 course because you were right in '94 and I think
6 you will be right in 1995.

7 ACTING PRESIDENT KUHL: Senator
8 Kruger.

9 SENATOR KRUGER: Yes, will
10 Senator Volker yield to a question?

11 ACTING PRESIDENT KUHL: Senator
12 Volker, do you yield to a question?

13 SENATOR VOLKER: Sure.

14 ACTING PRESIDENT KUHL: Senator
15 yields.

16 SENATOR KRUGER: Senator Volker,
17 it's a well-documented fact that both the
18 therapeutic as well the diagnostic drugs that
19 are used by the optometrists can and could have
20 an acute adverse effect on the patient. What
21 mechanism has been built in to deal with
22 problems like tachycardia, possible asthmatic
23 attack, mental status changes, that are

1 associated with the use of some of these drugs?

2 SENATOR VOLKER: What method is

3 -- well, first of all, remember, that the

4 second phase of the bill, which I think is -

5 and there really isn't good documentation as to

6 extreme problems in the initial phase, the

7 optical phase -- and, by the way, there is a

8 nationwide experience on this that has shown

9 that there have been comparatively few problems

10 resulting from this type of limited, extremely

11 limited treatment.

12 But in the therapeutic side,

13 which is the second side, one reason why the

14 decision was made to use the collaborative -

15 the collaborative association with an

16 ophthalmologist -- let me also point out to you,

17 Senator, that the training of an optometrist is

18 very extensive. I think that it should be

19 understood that those that graduate from the

20 school of optometry have four years of post

21 graduate training and have treatment or have

22 education in how to deal with some of the very

23 problems that in fact you are talking about,

1 very, very similar to what medical people have
2 to deal with; and so should there be any
3 untoward problems that they are advised -- that
4 they are advised, and they do learn about the
5 possibility of how to deal with that stuff on an
6 initial basis.

7 Clearly, they would then be
8 referred to a primary physician if there were
9 any such problems; and as they point out within
10 the bill, there is language in the bill that
11 talks about the need to refer those people
12 within five days, obviously, to an
13 ophthalmologist; and keep in mind that during
14 the period of the therapeutic treatment, you
15 have these limited -- the consultation and the
16 limited observation and so forth.

17 In addition to that, as part of
18 this bill, we have the continued training
19 occurring which will deal with -- continually
20 deal with some of those issues as the
21 optometrist gets into these issues which, you
22 know, could result in a potential for more
23 serious situations.

1 I just want to while -- and in
2 response to you, because I think it's
3 important. I received a letter in September of
4 1992 from the vice-president of the Great
5 American Insurance Company, and he said, "For
6 years, we have monitored the experience in
7 therapeutic states versus nontherapeutic
8 states. Our data indicates that there are not
9 significant differences in the number and
10 severity of claims between therapeutic and non
11 therapeutic states."

12 The reason I mentioned that is
13 there have been states that have had therapeutic
14 treatment for many, many, many years; and, of
15 course, Senator, as you may be aware, our first
16 bill that passed this house and became law,
17 sponsored by Senator Kehoe that dealt with the
18 use of diagnostic drugs, was in 1983, and it has
19 been, you know, on the books of New York since
20 then, and the experience as far as anyone knows
21 and even the ophthalmologists admit has been
22 very, very good, and we have not had, to the
23 knowledge of virtually anyone, any severe

1 problems.

2 We have had some certain
3 ophthalmologists who have come up with some
4 stories about problems with optometrists much of
5 which seems to be turf fighting more than
6 anything else, and that I think is part of the
7 problem here, so I think the answer to your
8 question is that there are a lot of -- not only
9 built into this bill but I think built in the
10 body of law already, what must be done should
11 anything of untoward nature happen.

12 SENATOR KRUGER: Again through
13 Mr. President.

14 ACTING PRESIDENT KUHL: Senator
15 Volker, do you continue to yield?

16 SENATOR VOLKER: Sure.

17 ACTING PRESIDENT KUHL: Senator
18 yields.

19 SENATOR KRUGER: Senator Volker,
20 on a hypothetical level, a patient comes into an
21 optometrist. The optometrist wants to perform
22 certain diagnostic procedures using these drugs
23 that we're talking about today. That

1 individual, that patient, has an adverse
2 reaction to any of those drugs. If that same
3 patient was in the office of an ophthalmologist,
4 that ophthalmologist would obviously have life
5 saving drugs. He would also be able to
6 counteract some of the effects of the drugs that
7 were being used. He would also be able to
8 resuscitate a patient if need be. Where on the
9 other side of the coin, an optometrist's scope
10 of practice is very limited. His ability to use
11 any resuscitation or any other drugs is
12 nonexistent. What would happen in that kind of
13 a circumstance?

14 SENATOR VOLKER: Senator, I can't
15 think of an indication. We have not heard of
16 any such situation where an optometrist because
17 of the -- because of his observation, has been
18 in that kind of a situation, and I think the
19 ophthalmologists would probably be in a very
20 similar situation to what an optometrist would
21 be; and that is, would probably be consulting -
22 if he got an adverse reaction, would probably be
23 consulting a hospital or whatever to take that

1 person there and to provide further treatment.

2 I think what you are saying to me
3 is if somebody has an adverse reaction, would he
4 be able to get further medical treatment, and
5 the answer is the ophthalmologist might not be
6 able to give him that further medical treatment
7 immediately either and would have to consult a
8 hospital or whatever to take that person because
9 he would not be able to deal necessarily with
10 every emergency.

11 The optometrist, I think, is
12 educated to then refer that person or get
13 immediate help for that person just, I think, as
14 an ophthalmologist would. I don't think the
15 ophthalmologists necessarily would be able to
16 deal with the absolute emergency any more than
17 an optometrist would.

18 SENATOR KRUGER: On the bill, Mr.
19 President.

20 ACTING PRESIDENT KUHL: Senator
21 Kruger on the bill.

22 SENATOR KRUGER: Mr. President.
23 Everyone seems to be raising the issues that

1 have been discussed many, many times concerning
2 this particular piece of legislation. If we
3 look at the current status of it, the Medical
4 Society of the State of New York is opposed to
5 this bill that is in front of us today.

6 Secondly, when we want to raise
7 issue with the question of standard of care, an
8 individual, a consumer, a patient, that is
9 coming to an optometrist is coming to an
10 optometrist, theoretically, for a cursory eye
11 examination and perhaps being fitted for
12 glasses.

13 We do now approach the question
14 of glaucoma with mass screening tests, which is
15 basically nothing more than a puff of air to
16 determine whether or not there is a measurable
17 difference and, consequently, the person would
18 be referred to an ophthalmologist for further
19 examination and treatment.

20 There is a question now, not the
21 question of turf, but the question of what is
22 appropriate care for a patient to get when
23 they're visiting that particular physician. We

1 wouldn't go to a podiatrist if we had a broken
2 leg. The same way is we shouldn't go to an
3 optometrist if there is an eye problem. An eye
4 disease should be treated by a doctor, a doctor
5 that has premed, a doctor that has gone to
6 medical school, a doctor that has a fellowship
7 in ophthalmology, and a doctor that hopefully is
8 board certified in ophthalmology.

9 Today, we have an opportunity to
10 raise issue with, when we talk about managed
11 care, the direction that health care will take
12 in the future, because what we're doing is we're
13 opening up a door; and we're opening up a door
14 to what I call paramedicine, whether it's a
15 paralegal that is going to take more and more
16 workload off of an attorney or whether it's
17 another health care professional that is going
18 to take an additional workload and additional
19 patient care away from the person that is most
20 trained to handled that particular medical
21 problem, in this case, a licensed physician, an
22 ophthalmologist.

23 I think this is a bad bill. It

1 is a bad bill for a lot of reasons; but, most
2 importantly, I think it's a bad bill because
3 we're not addressing one issue and one issue
4 only, the question of quality of care and scope
5 of care; and I think that the Medical Society of
6 the State of New York has made a very persuasive
7 argument that the question should be revisited
8 and we should not in any way support this
9 legislation today.

10 Thank you.

11 ACTING PRESIDENT KUHL: The
12 Secretary will read the last section.

13 Excuse me. Senator Volker.

14 SENATOR VOLKER: Mr. President.
15 Let me just finish up by saying very quickly -

16 ACTING PRESIDENT KUHL: Senator
17 Volker to close.

18 SENATOR VOLKER: I understand the
19 concern and I think Senator LaValle, I think,
20 put it much better than I would really be able
21 to have been able to put it; and that is, that
22 this is an historic bill, although historic as
23 it may be, it is not as if this is something

1 altogether new; and when you start talking about
2 treatment of eyes or examinations, it's
3 something that has been done in this state since
4 1983.

5 And I think that -- I guess in
6 response to Senator Kruger, let me tell you,
7 Senator, the education that is done today of
8 optometrists is altogether different from what
9 was done some years ago. An optometrist in the
10 college of optometry, particularly in this
11 state, which is considered one of the 12 major
12 optometry colleges in the country, gets
13 basically the same kind of training that an
14 ophthalmologist gets. Maybe not on the same
15 detail, but on the other hand the scope of
16 authority that is given even by this bill is
17 much, much more limited.

18 The experience in states that
19 have had even broader bills than this one has
20 been that the kind of problems that you are
21 describing just have not occurred or have
22 occurred in extremely limited fashion. The
23 truth is that what this bill will do is to

1 expand the ability of people in many areas of
2 this state to get further and, in many cases,
3 better treatment not because the optometrists
4 can necessarily give totally better treatment
5 than the ophthalmologists but the
6 ophthalmologist is not available. Certainly
7 will cause the cost of health care in this area
8 to decrease because a lot of the treatment that
9 is being done by ophthalmologists, I think many
10 who are familiar with the field would agree, is
11 not necessarily necessary.

12 Let me just quote to you, and I
13 hesitate to do this, because ophthalmologists
14 get upset when this is done, but it's a fact of
15 what happened last year. The president of the
16 ophthalmological society said after this bill
17 was agreed to and he had said grudgingly because
18 of turf problems and so forth that he was
19 reluctant, but he admitted that this bill was
20 the most innovative and restrictive bill in the
21 country; and despite the fact that he knew some
22 of his members had problems, he had to admit
23 that this bill was a move in the right

1 direction, depending I guess on your perspective
2 and especially I think because of something, as
3 I said, you should understand, that two out of
4 three examinations that are made in this state
5 of eyes are made by optometrists anyway, and we
6 have to move to deal with those kind of issues,
7 otherwise we may in the long run be creating
8 greater problems for ourselves.

9 Let me just read to you -- a note
10 was handed to me here. I was just about to read
11 to you something which -- a statement from the
12 Health Department. Now, this Health Department
13 under the present governor has not yet taken a
14 position, but the Health Department under the
15 past Commissioner, Axelrod, stated, "This
16 legislation will encourage and facilitate
17 greater access to health care of services while
18 insuring the quality of services provided by
19 health care providers. We believe this
20 legislation will promote better access to vision
21 care services in New York State, including among
22 segments of our population which have been
23 historically underserved and in underserved

1 geographic areas. This legislation may also
2 reduce or limit increase in the cost of vision
3 care services provided by publicly financed
4 health care programs for eye care for the
5 beneficiaries of such programs."

6 I can give you some other
7 statements, but I think that speaks for itself.
8 I would not, in fact, sponsor or support
9 legislation like this unless I truly believed
10 that this legislation is in the best interest of
11 the consumers of this state and of the health
12 care of the people of this state.

13 Thank you.

14 ACTING PRESIDENT KUHL: Secretary
15 will read the last section.

16 THE SECRETARY: Section 6. This
17 act shall take effect on the 120th day.

18 ACTING PRESIDENT KUHL: Call the
19 roll.

20 (The Secretary called the roll.)

21 ACTING PRESIDENT KUHL: Those in
22 the negative please raise their hands.

23 The chair recognizes Senator

1 Hoffmann to explain her vote.

2 SENATOR HOFFMANN: Thank you, Mr.
3 President.

4 I listened with great interest to
5 what Senator Volker said and, as always, it is a
6 very thoughtful and well-researched issue as he
7 presented it, but I have in my hands a copy of a
8 letter from the chairman of the Department of
9 Ophthalmology at the State University of New
10 York Health Science Center in Syracuse in which
11 he restates his position and that of the
12 department in opposition to this bill, and I
13 will just recap one brief element of this letter
14 in which he states -- this is Dr. John A. Hepner
15 -- states that allowing nonphysicians to
16 practice medicine seriously compromises the
17 quality of medical eye care in New York State
18 and unnecessarily poses a potential significant
19 threat to public safety.

20 I did listen to the list of drugs
21 that would be allowed to be prescribed by non
22 physicians under this measure, if passed, and it
23 causes me great concern, and I will, therefore,

1 respect the wishes of Dr. Hepner and the
2 Department of Ophthalmology, once again, and I
3 will cast my vote in the negative.

4 ACTING PRESIDENT KUHL: Senator
5 Hoffmann in the negative.

6 Senator Jones to explain her
7 vote.

8 SENATOR JONES: Yes. I would
9 just like to explain that Senator LaValle said
10 something about somebody being blind and deaf.
11 I am willing to admit that I was last year. I
12 was of the opinion that it was agreed upon, and
13 yet that's not the information I am getting this
14 year. My concerns, and I've listened to both
15 sides of this debate -- but my concerns continue
16 to be -- Senator Dollinger asked about how I
17 would know as a consumer when I go to the
18 optometrist whether or not they were Phase I or
19 Phase II. I guess I am uncomfortable that a
20 sign on the wall is going to be enough.

21 I'm also concerned that no one
22 brought up today the issue of HMOs. I guess I
23 feel as we're clearly headed more and more to

1 that system, I guess the referral process in
2 here is a concern to me. We would now have a
3 nonphysician in charge of this referral; and,
4 currently, you go to your family doctor that is
5 a doctor, and he is the one who says you need a
6 specialist. I'm concerned how this would play
7 out under an HMO system.

8 I did contact the current
9 Commissioner of Health because, again, I admit
10 I'm not a medical person, and I don't have that
11 kind of expertise, so I did put it in writing to
12 the Commissioner of Health and ask for her
13 opinion on this particular bill; and as you
14 indicated, she has not, obviously, come up with
15 a position yet.

16 So with the information that I
17 have this year, I definitely do not feel
18 comfortable supporting this bill, so I'm going
19 to be voting in the negative.

20 ACTING PRESIDENT KUHL: Senator
21 Jones in the negative.

22 Announce the results.

23 THE SECRETARY: Those recorded in

1 the negative on Calendar Number 103 are Senators
2 Babbush, Cook, DeFrancisco, Dollinger, Farley,
3 Goodman, Hoblock, Hoffmann, Jones, Kruger, Levy,
4 Marcellino, Maziarz, Nozzolio, Oppenheimer,
5 Padavan, Present, Saland, Skelos, Stafford and
6 Senator Tully. Ayes 37. Nays 21.

7 ACTING PRESIDENT KUHL: The bill
8 is passed.

9 Chair recognizes Senator Skelos.

10 SENATOR SKELOS: Yes, Mr.
11 President. There will be an immediate meeting
12 of the Crime Victims Committee in Room 332
13 followed by a Transportation Committee meeting
14 in Room 332; and a reminder that the Education
15 Committee will meet at 1:00 o'clock in Room
16 124. Energy Committee will meet 1:00 o'clock in
17 Room 307 of the LOB.

18 Mr. President. Could you
19 recognize Senator Montgomery.

20 ACTING PRESIDENT KUHL: For those
21 listening, there will be an immediate meeting of
22 the Crime and Corrections in Room 332 to be
23 immediately followed by the Transportation

1 Committee in the same room, 332. There will be
2 an Energy Committee meeting at 1:00 o'clock in
3 Room 307 of the Legislative Office Building, and
4 there will be an Education Committee meeting in
5 Room 124 of the Capitol.

6 Chair recognizes Senator
7 Paterson.

8 Excuse me. Senator Montgomery.

9 SENATOR MONTGOMERY: Thank you.
10 Mr. President, I would like unanimous consent to
11 be recorded in the negative on Calendar 367.

12 ACTING PRESIDENT KUHL: Without
13 objection, Senator Montgomery will be recorded
14 in the negative on Calendar Number 367.

15 Senator Johnson.

16 SENATOR JOHNSON: Without
17 objection, I ask to cast my vote in the negative
18 on Calendar Number 303.

19 ACTING PRESIDENT KUHL: Without
20 objection, Senator Johnson will be recorded in
21 the negative on Calendar Number 303.

22 Senator Skelos.

23 SENATOR SKELOS: Mr. President.

1 Is there any other housekeeping at the desk?

2 ACTING PRESIDENT KUHL: Secretary
3 informs me that all the housekeeping has been
4 taken care of, Senator Skelos.

5 SENATOR SKELOS: Therefore, there
6 being no further business, I move we adjourn
7 until Wednesday, May 3, 1995, at 10:00 a.m.
8 sharp.

9 ACTING PRESIDENT KUHL: Without
10 objection, the Senate stands adjourned until
11 tomorrow, Wednesday, May 3, at 10:00 -- I
12 repeat, 10:00 a.m.

13 (Whereupon, at 12:40 p.m., Senate
14 adjourned.)
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