NEW YORK STATE SENATE

THE

STENOGRAPHIC RECORD

ALBANY, NEW YORK

March 29, 1999

3:01 p.m.

REGULAR SESSION

LT. GOVERNOR MARY O. DONOHUE, President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will come to order. I ask everyone present to please rise and repeat with me the Pledge of Allegiance.

(Whereupon, the assemblage recited the Pledge of Allegiance to the Flag.)

THE PRESIDENT: In the absence of clergy, may we bow our heads in a moment of silence.

(Whereupon, the assemblage respected a moment of silence.)

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Sunday, March 28, the Senate met pursuant to adjournment. The Journal of Saturday, March 27, was read and approved. On motion, Senate adjourned.

THE PRESIDENT: Without objection, the Journal stands approved as read.

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Kuhl, from the Committee on Education, reports:

Senate Prints 2245, by Senator Stachowski, an act to amend the Education Law;

2754, by Senator Holland, an act to amend the Education Law;

3257, by Senator Leibell, an act to legalize, validate, ratify and confirm;

3268, by Senator Saland, an act to authorize the apportionment of state building aid;

3387, by Senator Volker, an act to amend Chapter 198 of the laws of 1978;

3532, by Senator Farley, an act in relation to the calculation of average daily attendance;

4116, by the Committee on Rules, an act to amend Chapter 45 of the laws of 1996.

All bills directly for third reading.

THE PRESIDENT: Without objection, all bills directed -- ordered direct to third reading.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Kuhl?

SENATOR KUHL: Yes, Madam President.

On behalf of Senator Meier, on page 10 I offer the following amendments to Calendar Number 163, Senate Print 1908A, and ask that said bill retain its place on the third reading calendar.

THE PRESIDENT: The amendment is received and the bill will retain its place on the third reading calendar.

SENATOR KUHL: Also, Madam President, on behalf of Senator Maltese, on page 26 I offer the following amendments to Calendar Number 420, Senate Print 2613, and ask that said bill retain its place on the third reading calendar.

THE PRESIDENT: The amendments are received and the bill will retain its place on the third reading calendar.

SENATOR KUHL: Also, Madam

President, on behalf of Senator Nozzolio, I wish to call his bill up, Print Number 636 recalled from the Assembly, which is now at the desk.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Nozzolio, Senate Print 636, an act to amend the Penal Law.

SENATOR KUHL: Madam President, I now move to reconsider the vote by which the bill passed the house.

THE PRESIDENT: The Secretary will call the roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 48.

SENATOR KUHL: I offer the following amendments.

THE PRESIDENT: The amendments are received.

SENATOR KUHL: Thank you.

SENATOR SKELOS: Madam President -

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: -- I believe

there are some substitutions to be made.

THE PRESIDENT: Yes, Senator.

The Secretary will read the substitutions.

THE SECRETARY: On page 20, Senator Maziarz moves to discharge, from the Committee on Health, Assembly Bill Number 6968 and substitute it for the identical third reading, 356.

On page 27, Senator Volker moves to discharge, from the Committee on Codes, Assembly Bill 5203 and substitute it for the identical third reading, 425.

On page 23, Senator Kuhl moves to discharge, from the Committee on Investigations, Taxation and Government Operation, Assembly Bill Number 824 and substitute it for the identical third reading, 383.

THE PRESIDENT: The substitutions are ordered.

Senator Skelos?

SENATOR SKELOS: Madam President, there will be an immediate meeting of the Environmental Conservation Committee in the

Majority Conference Room.

THE PRESIDENT: There will be an immediate meeting of the Environmental Conservation Committee in the Majority Conference Room.

Senator Skelos.

SENATOR SKELOS: Madam President, if we could take up the noncontroversial calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 1, by Senator LaValle, Senate Print S28, an act to amend the Education Law.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2. This act shall take effect January 1st, the year 2000.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number

117, by Senator Larkin, Senate Print 2105A -

SENATOR PATERSON: Lay it aside.

THE SECRETARY: -- an act in relation to the amount of the New York State -

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 120, by Member of the Assembly Brodsky, Assembly Print 2597, an act to amend the General Business Law in relation to avoiding.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 159, by Senator LaValle, Senate Print 2578, an act to amend the Education Law in relation to mandatory continuing education.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 3. This act shall take effect January 1st, the year 2000.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 184, by Senator Maltese, Senate Print 2191A, an act to amend the Penal Law in relation to clarifying.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 1st day of November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number

218, by Senator Padavan, Senate Print 1905, an act to amend the Real Property Law in relation to occupation.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53. Nays, 1. Senator Duane recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 328, by Senator Lack, Senate Print 2542, an act to amend the Insurance Law in relation to a guarantee.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

THE PRESIDENT: The bill is

passed.

THE SECRETARY: Calendar Number 339, by Senator Kuhl, Senate Print 1723, an act to amend the Agriculture and Markets Law in relation to persons exempt from certain regulation.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 356, substituted earlier today by Member of the Assembly Clark, Assembly Print 6968, an act to amend Chapter 81 of the laws of 1995.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

THE PRESIDENT: The bill is passed.

THE SECRETARY: In relation to Calendar Number 393, Senator Holland moves to discharge, from the Committee on Social Service, Assembly Bill 7165 and substitute it for the identical third reading, 393.

THE PRESIDENT: Substitution ordered. Read the last section.

The Secretary will read.

THE SECRETARY: Calendar Number 393, by Member of the Assembly Ramirez, Assembly Print 7165, an act to amend the Social Services Law.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number

431. In relation to Calendar Number 431, Senator Meier moves to discharge, from the Committee on Veterans and Military Affairs, Assembly Print 7107 and substitute it for the identical third reading, 431.

THE PRESIDENT: Substitution ordered. Read the last section.

The Secretary will read.

THE SECRETARY: Calendar Number 431, by Member of the Assembly John, Assembly Print 7107, an act to amend Section 76 of Chapter 435 of the laws of 1997.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

THE PRESIDENT: The bill is passed.

Senator Skelos, that completes the reading of the noncontroversial calendar.

SENATOR SKELOS: Madam President, if we could take up the controversial

calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 117, by Senator Larkin, Senate Print 2105A, an act in relation to the amount of the New York State Thoroughbred Breeding and Development Fund.

Senator Dollinger.

SENATOR DOLLINGER: Madam President, rather than ask for an explanation, if Senator Larkin will just yield to one simple question and explain to me why this bill is different from the one that we did in committee -- I understand it's been amended - just a brief explanation of that.

THE PRESIDENT: Senator Larkin, do you yield?

SENATOR LARKIN: Yes.

THE PRESIDENT: Go ahead, Senator Dollinger.

SENATOR LARKIN: Richard, what happened is in 1998 the breeders' fund earned $70,135 more than the cap that was set on it. This is the money that's supposed to go back

to the breeders. They had anticipated what the maximum would have been. Instead, it came in at $70,000 over.

And this is going back. Because it helps the economy, it helps agriculture, it helps the breeders. It's going to them, it's not going into a pot of money for somebody else.

SENATOR DOLLINGER: Again through you, Madam President, if I could just ask one follow-up question.

The bill we saw in committee was a percentage, was it not? This is an exact dollar amount, is that not correct?

SENATOR LARKIN: Yes.

SENATOR DOLLINGER: Thank you, Madam President.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

THE PRESIDENT: The bill is

passed.

THE SECRETARY: Calendar Number 120, by Member of the Assembly Brodsky, Assembly Print 2597, an act to amend the General Business Law.

SENATOR DOLLINGER: Explanation.

THE PRESIDENT: Senator Lack, an explanation has been requested.

SENATOR LACK: Thank you, Madam President.

Senator Dollinger, this is merely a chapter amendment to the Donnelly Act, the bill we passed last year. It's passed the Assembly 142 to 1.

It's a three-way-agreed-upon amendment to conform the Donnelly Act amendment that we passed to the wishes of the Governor and, actually, to the sponsors. The Governor signed the bill upon agreement that we would propose that we would pass this amendment.

Which merely states that where an indirect purchaser who's sustained damages - that the courts are required to consolidate claims where claims by both direct and

indirect purchasers have been asserted against the defendant.

It's, as I said, a three-way agreement amongst the houses.

SENATOR DOLLINGER: Through you, Madam President -

THE PRESIDENT: Senator -

SENATOR DOLLINGER: -- just one question for Senator Lack.

SENATOR LACK: Yes.

SENATOR DOLLINGER: My understanding was that in the 1998 bill, we instructed the courts to do everything possible to consolidate them.

This actually tells them to consolidate them, is that correct? Or am I misreading that? I mean, is this -

SENATOR LACK: No, this says a defendant shall be entitled to -- to show that it's been passed on to others. It doesn't - in effect doesn't require them, but it has the same effect to do just that, by showing that the damages have been passed on to others who are entitled to recover, to avoid duplication in the recovery of damages.

It just, Senator, underscores what we did and suggested last year in terms of the bill that passed.

SENATOR DOLLINGER: Again, through you, Madam President.

So if you're a direct-

THE PRESIDENT: Senator Lack, do you yield?

SENATOR LACK: Yes.

THE PRESIDENT: Go ahead, Senator.

SENATOR DOLLINGER: I apologize, Madam President.

So if you're a direct purchaser and you pass the cost on, you have no claim? It's those people who in essence have paid the extra cost; is that correct?

SENATOR LACK: No. No, Senator, that's not correct. It is nothing that functions so directly.

All this simply says, that -- is, Madam President, in actions where both direct and indirect purchasers are involved, a defendant shall be entitled to prove as a partial or complete defense to a claim that

the illegal overcharge has been passed on to others who are themselves entitled to recover.

SENATOR DOLLINGER: Thank you, Madam President.

Explanation satisfactory.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

THE PRESIDENT: The bill is passed.

Senator Skelos, that completes the reading of the controversial calendar.

SENATOR SKELOS: Is there any housekeeping at the desk?

(Pause.)

THE PRESIDENT: The Senate is standing in waiting, Senator Skelos.

SENATOR SKELOS: Would you please recognize Senator Paterson?

SENATOR PATERSON: Madam President, I would like -

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: -- I would like the desk to be aware that, according to the U.S. Naval Observatory master clock, the Senate clock is two minutes slow.

(Laughter.)

SENATOR PATERSON: Thank you.

SENATOR SKELOS: Madam President, that's so the Minority can catch up to the Majority.

(Laughter.)

THE PRESIDENT: Thank you for that clarification.

The Senate is still standing at ease, Senators.

(Pause.)

SENATOR SKELOS: Madam President.

THE PRESIDENT: Senator Skelos?

SENATOR SKELOS: If we could return to reports of standing committees, I believe there's a report of the Environmental Conservation Committee at the desk. I ask that it be read.

THE PRESIDENT: Reports of standing committees. The Secretary will read.

THE SECRETARY: Senator Marcellino, from the Committee on Environmental Conservation, reports:

Senate Print 2973B, by Senator Marchi, an act to amend Chapter 395 of the laws of 1978, and Senate Print 4151, by Senator Marcellino, an act to repeal Title 17 of Article 23 of the Environmental Conservation Law.

Both bills directly for third reading.

THE PRESIDENT: Without objection, all bills ordered direct to third reading.

Senator Skelos.

SENATOR SKELOS: Is there any housekeeping?

THE PRESIDENT: No, there is not, Senator.

SENATOR SKELOS: There being no further business, I move we adjourn until Tuesday, March 30th, at 3:00 p.m.

THE PRESIDENT: On motion, the Senate stands adjourned until Tuesday, March 30th, 3:00 p.m.

(Whereupon, at 3:17 p.m., the Senate adjourned.)