NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

March 26, 2003

11:13 a.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 please 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, Tuesday, March 25, the Senate met pursuant to adjournment. The Journal of Monday, March 24, 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.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Bruno.

SENATOR BRUNO: Are there any substitutions at the desk, Madam President?

THE PRESIDENT: Yes, there are, Senator.

SENATOR BRUNO: Can we make them at this time.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: On page 6, Senator Robach moves to discharge, from the Committee on Civil Service and Pensions, Assembly Bill Number 4971 and substitute it for the identical Senate Bill Number 2316, First Report Calendar 322.

And on page 23, Senator Marchi moves to discharge, from the Committee on Environmental Conservation, Assembly Bill Number 5282 and substitute it for the

identical Senate Bill Number 2036, Third Reading Calendar 317.

THE PRESIDENT: Substitutions ordered.

Senator Bruno.

SENATOR BRUNO: Madam President, can we ask for an immediate meeting of the Finance Committee in the Majority Conference Room.

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

Senator Bruno.

SENATOR BRUNO: Madam President, can we at this time have the noncontroversial reading of the calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 157, by Senator Kuhl, Senate Print 597, an act to confirm, ratify, validate and legalize.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 33.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 158, by Senator Volker, Senate Print 834, an act to authorize approval of certain transportation contracts.

THE PRESIDENT: There's a local fiscal impact note at the desk.

Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 33.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 159, by Senator Seward, Senate Print 1136, an act in relation to legalizing, validating, ratifying and confirming certain acts and proceedings.

THE PRESIDENT: Read the last

section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 33.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 171, by Senator Johnson, Senate Print 529, an act to amend Chapter 250 of the Laws of 1999 relating to authorizing.

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, 35.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 176, by Senator Wright, Senate Print 2758A, an act to amend the Public Service Law, in relation to references to the St. Lawrence

Eastern Ontario Commission.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 36.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 196, by Senator Skelos, Senate Print 1019, an act to amend the Correction Law, in relation to petitions for relief.

SENATOR SCHNEIDERMAN: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 299, by Senator Fuschillo, Senate Print 3292, an act to amend the Public Health Law and the Education Law, in relation to the regulation of smoking in certain public areas.

SENATOR SCHNEIDERMAN: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 307, by Senator Johnson, Senate Print 3218, an act to amend Chapter 303 of the Laws of 1988 relating to the extension of the state commission.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 40.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 317, substituted earlier today by Member of the Assembly Lavelle, Assembly Print Number 5282, an act to amend Chapter 395 of the Laws of 1978.

SENATOR SCHNEIDERMAN: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 329, by Senator Hannon, Senate Print 3252, an act to amend Chapter 629 of the Laws of 1986 amending the Social Services Law.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 40.

THE PRESIDENT: The bill is passed.

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

SENATOR BRUNO: Madam President, can we at this time take up Calendar 196.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 196, by Senator Skelos, Senate Print 1019, an act to amend the Correction Law, in relation to petitions for relief.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 41. Nays, 1. Senator Duane recorded in the negative.

THE PRESIDENT: The bill is passed.

Senator Bruno.

SENATOR BRUNO: Madam President, can we at this time take up Calendar Number 317.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 317, substituted earlier today by Member of the Assembly Lavelle, Assembly Print Number 5282, an act to amend Chapter 395 of the Laws of 1978.

THE PRESIDENT: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Yes, Madam President, briefly on the bill.

THE PRESIDENT: You may proceed on the bill, Senator.

SENATOR SCHNEIDERMAN: Thank you.

This is a renewal of a piece of legislation originally passed in 1973 in response to an explosion on Staten Island which killed 40 people. The explosion was at a liquid natural gas tank.

However, it has since been determined that there was a defect in the Mylar lining, and cleaning solvents entered into the lining. And it was actually a defect in that particular tank and nothing to do with the safety of liquid natural gas.

The difficulty is that in a reaction to that accident we've been renewing a ban on the siting of facilities for transporting and storing of liquid natural gas in New York City for a very long time. Every other state and every other part of the state has repealed any such limitations.

There are serious environmental problems all over the city of New York, particularly in low-income communities. And asthma problems in my district and in many other districts are really at epidemic proportions. Partially, these are caused by

diesel pollution.

There is an effort all over the United States to replace diesel-burning engines with liquid natural gas. We are unable to implement that program in New York City.

I think this is an example of a strong reaction to tragic circumstances controlling our rational decision-making for many decades after the need for any sort of ban and any sort of inquiry has passed.

I personally am going to vote against this bill. I think it's very important that we develop the facilities for bringing liquid natural gas into the city of New York.

I sympathize with anyone still bearing the scars of the tragedy in 1973. But this is a safe product. There are plants all around New York City -- Holtsville, Long Island; there are plants in Westchester. And if it was not safe, I'm sure we would not allow the storage and transportation elsewhere in the state.

It's time to move along. I'm going

to be voting no. I think it's time to bring liquid natural gas into the city so we can begin to address these environmental problems.

Thank you, Madam President.

THE PRESIDENT: Does any other member wish to be heard on this bill?

Then the debate is closed.

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: Those recorded in the negative on Calendar Number 317 are Senators Breslin, Diaz, Duane, L. Krueger, Montgomery, Onorato, Parker, and Schneiderman. Ayes, 35. Nays, 8.

THE PRESIDENT: The bill is passed.

Senator Duane.

SENATOR DUANE: Thank you, Madam President. I'd like unanimous consent to be recorded in the negative on Calendar Number 307.

THE PRESIDENT: Hearing no

objection, Senator, you will be so recorded as voting in the negative.

Senator Bruno.

SENATOR BRUNO: Madam President, can we at this time return to reports of standing committees. I believe there's a report from the Finance Committee at the desk. I would ask that it be read at this time.

THE PRESIDENT: Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Johnson, from the Committee on Finance, reports the following bill direct to third reading:

Senate Print 3377, Senate Budget Bill, an act to amend Chapters 50, 53, 54 and 55 of the Laws of 2002.

THE PRESIDENT: The bill is ordered direct to third reading.

Senator Bruno.

SENATOR BRUNO: Madam President, can we take up at this time Calendar 334.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number

334, Senate Budget Bill, Senate Print 3377, an act to amend Chapters 50, 53, 54 and 55 of the Laws of 2002, making appropriations and reappropriations for the support of government.

SENATOR BRUNO: Madam President, is there a message of necessity from the Governor?

THE PRESIDENT: Yes, there is, Senator Bruno.

SENATOR BRUNO: I would move that we accept the message.

THE PRESIDENT: All in favor of accepting the message of necessity please indicate by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The message is accepted.

Senator Bruno.

SENATOR BRUNO: Lay it aside temporarily.

THE PRESIDENT: The bill is laid aside temporarily.

SENATOR BRUNO: Thank you.

THE PRESIDENT: Senator Bruno.

SENATOR BRUNO: Madam President, can we request a short conference, in the neighborhood of 15 minutes, in the Majority Conference Room for the Majority, and --

SENATOR SCHNEIDERMAN: -- in the Minority Conference Room for the Minority.

SENATOR BRUNO: The Senate will stand at ease, Madam President.

THE PRESIDENT: The Senate stands at ease.

SENATOR BRUNO: Thank you.

(Whereupon, the Senate stood at ease at 11:30 a.m.)

(Whereupon, the Senate reconvened at 12:19 p.m.)

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT MORAHAN: Senator Skelos.

SENATOR SKELOS: Mr. President, at this time would you please call up Calendar Number 334.

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: Calendar Number 334, Senate Budget Bill, Senate Print 3377, an act to amend Chapters 50, 53, 54 and 55 of the Laws of 2002.

SENATOR SCHNEIDERMAN: Explanation.

ACTING PRESIDENT MORAHAN: Senator Johnson, an explanation has been requested.

SENATOR JOHNSON: Yes, Mr. President.

This bill is essentially an appropriation to pay the bills for operation of the government for the next week, until the 31st of March.

You want a further explanation than that?

SENATOR SCHNEIDERMAN: The explanation is satisfactory.

SENATOR JOHNSON: Thank you.

ACTING PRESIDENT MORAHAN: Any other Senators wishing to be heard on the bill?

The debate is closed.

Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT MORAHAN: The bill is passed.

SENATOR DUANE: Mr. President.

ACTING PRESIDENT MORAHAN: Senator Duane.

SENATOR DUANE: Thank you, Mr. President. If I could have unanimous consent to be recorded in the negative on S3377. I'm not sure what the calendar number is.

ACTING PRESIDENT MORAHAN: Without objection, you will be recorded in the negative, Senator Duane, on 334.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time take up Calendar Number 299.

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: Calendar Number

299, by Senator Fuschillo, Senate Print 3292, an act to amend the Public Health Law and the Education Law, in relation to the regulation of smoking in certain public areas.

SENATOR SCHNEIDERMAN: Explanation.

ACTING PRESIDENT MORAHAN: Senator Bruno.

SENATOR BRUNO: On the bill, Mr. President and my colleagues.

Senator Fuschillo is going to go into the detail of the legislation that is before us on the floor. And he has done an outstanding job of negotiating this legislation that, when passed and it becomes law, will accrue to the benefit of every single person in the state of New York.

We have since '89 been, in this Legislature -- and the Governor -- passing no-smoking-in-certain-places legislation. We have been passing bills since '89 of great consequence to the people here in this state.

This bill is said to be one of the toughest in the whole country. It can be said to be one of the very best antismoking pieces

of legislation that's ever been contemplated by a municipality in New York State or anywhere else.

Now, all of the arguments -- and Senator Fuschillo will go into the detail of the bill. But all of the arguments that can be made have been made over these last several years as we have debated people's rights, people's individual rights: This is a free country. If I want to smoke, I ought to be able to smoke. Who are you in the Legislature to tell me I can't?

Well, it is a free country. But it's not that free that you can inflict harm on other people. No, that's against the law. It's against the law everywhere you turn. That's why we have police enforcing laws. You cannot do whatever it is you'd like to do.

Now, does that take your civil liberties? I don't think so. This relates to healthcare. Healthcare. That's what the issue is.

The issue doesn't relate to business, because you can argue with me on the business aspects of this legislation. And I

respect each and every individual in this chamber that has a strong opinion on this issue.

You can tell me that you've got taverns and you've got bars and people want to smoke in those bars. I respect that. And you can tell me that people have a right to do whatever they want to do. I respect that; I won't debate it with you. And you can tell me that the politics are such that you're better off voting against this legislation. I respect that.

But I'm going to ask you to think about the public good and the public health. And as the leader here in the Senate, I don't relish getting up a lot of times on very sensitive issues. But this is an issue that I feel very strongly about, very personal about, and very almost emotional about.

Because like everyone in this chamber, you have known people and you know people right now who are dying from the effects of smoke. There isn't a person in this chamber that doesn't know someone that has died or is now dying because they smoked

or they inhaled secondhand smoke. Not a person.

And if you don't know anyone, I'll share some stories with you about people in my family and my closest friend, who I was out with on a Saturday night. And on Sunday night, living next door to me, in a place that we now own, who died in his middle 60s.

And after we were out, and he's smoking like a smokestack, I saw red lights at 2:00 in the morning and went over. And his wife's standing next to him, and he's leaning against the station wagon in the garage not being able to breathe.

And I watched that man -- they couldn't put him on a stretcher because he couldn't breathe. And that man was dead in ten minutes. And I was talking to him, standing there next to him, trying to console his wife, and he was dead within ten minutes because he couldn't breathe. They put oxygen on him and they did everything they could. He suffocated.

Many of you knew Senator Schermerhorn, in this chamber. Senator

Schermerhorn was a big, 6'2", 6'3," 220-pound individual. Macho. Smoked. And he said, "You gotta die sometime. Gonna die sometime."

Well, Senator Schermerhorn got throat cancer. For those of you that knew him -- and many of you did -- and you watched Senator Schermerhorn, over two years, die from the effects of smoking. And I was at his funeral and at his eulogy and watched his wife and small child.

And nobody can debate the health effects of smoking. Nobody. They kill people. Four hundred and thirty some thousand people a year die in the United States from the effects of smoking. Cancer and Lung Society has statistics. 65,000-plus die from secondhand smoke. Now, think about that. A half a million people a year die from the effects of smoke.

Now, if that isn't compelling enough, many of those people, before they die, spend billions of dollars in healthcare. The latest numbers are $6.3 billion spent on healthcare -- 8 percent of the total costs -- as relates to smoking illnesses,

smoking-related illnesses.

There are over 4,000 chemicals in a cigarette. Many of them on that pack tell you, "You smoke, and it can kill you." It's an addiction. We know it's an addiction, or people wouldn't be harming themselves.

So we want to talk about civil rights, we'll talk about civil rights. And you know, we pass laws here every week infringing on people's rights to make their own decisions. Think about it.

Every time I go on a double solid line coming into work, it disturbs me. I can see a mile up the road, no cars coming. I'd like to pass and go around that double solid line. I can't. Why can't I? It ought to be my right. But I can't. It's against the law. Why is it against the law? Studies were made that that double solid line protects the public good.

We used to use asbestos in buildings. Why don't we use it now? Because asbestos kills people. We found that out. So now it's against the law. We used to use lead paint. Now it's against the law.

Guess what? You are infringing on people's civil rights, you in this chamber, in the Assembly, the governors that sign this legislation. Every time you stop at a stop light, stop light or stop sign, somebody is infringing on your rights to go ahead right through that intersection. Why? Because it's for the public good. That's why. And anybody can get up here and mention hundreds and hundreds of other places where we have passed laws.

So I respect your opinion about civil rights, each and every one of you, about civil rights. But nobody has a right to injure or make sick an innocent person working in an establishment, standing there or working there, nobody has that right.

And you know what? People don't have a right to hurt themselves. They don't have a right to do that. That's against the law. You can't hurt yourself. It's against the law. Some people can't help themselves.

But when you take a look at the billions of dollars in healthcare -- and we are wrestling now with a budget that is out of

control. The greatest number in that budget is healthcare. And the best thing we can do in this chamber and the other chamber and the Governor is to do something about smoking if you want to do something about the escalating costs of healthcare.

Over $5 billion is estimated in lost time for people who can't work because they have smoke-related illnesses, $5.3 billion. Now think about that.

Almost $12 billion. People have a right? Sure, they have a right. But I don't think people have a right to drive our healthcare costs out of control. I don't think so. You're paying the bills, employers are paying the bills, your families are paying the bills.

Now, if somebody wanted to take themselves out in isolation and move to an island, surround themselves with cartons of cigarettes and have a great time for their short life, it ought to be their prerogative. It's legal. But that's not the case. Nobody does that.

So I am sharing with you my

personal feelings. And I am asking my colleagues here to support this legislation, as difficult as it may be.

And I want to commend the leadership in the Minority for your stance and for your position. And I've talked to Leader Paterson, Senator Paterson, and he has indicated his support. And I thank you for that.

I thank my colleagues in my conference, those that can support this. And I respect those, if they can't, that can't. That's a decision everyone has to make in their own hearts with their own emotions and with their own minds. And I will respect the judgment that anyone makes.

I am giving you my judgment and my feelings. And in deference to your time, I am not going to go on, Mr. President, because this is breakaway day and getaway day. But if anyone would like to have a further discussion and you have a few hours, I'd be happy to spend them with you.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank

you, Senator Bruno, for that introduction.

Senator Fuschillo, an explanation has been requested.

SENATOR FUSCHILLO: Thank you very much, Mr. President.

This bill is an amendment to the Public Health Law and the Education Law here in the State of New York. As Senator Bruno so eloquently stated, its intent is to limit the exposure of secondhand smoke to individuals.

I look at the children that are up here today, the young adults in the gallery. By coincidence, they're from my district and Senator Johnson's district. But this is about the future. Because if you're smoking today and you've been smoking for many years and you stop, it's not going to prolong your life. But as Senator Bruno had stated, it's about protecting individuals. It's about protecting the citizenry of this great state of ours.

And you're witnessing the passage, the soon passage of probably the strongest public health policy in the state of New York. And that's what it is, a public health policy.

And when we're out on the circuit,

we use words like "we pass bills to protect and preserve your quality of life." You could throw in the word "enhanced," because that's what we're doing.

And this legislation specifically expands the restrictions on smoking in bars, restaurants, and all public places of employment, with exceptions -- private homes, private residences and private automobiles, a hotel or motel room, a retail tobacco business, outdoor areas of restaurants with no permanent roof, separate enclosed rooms of residential healthcare facilities, adult care facilities, community residences' areas and day treatments, membership associations where all services are provided by volunteers, preexisting cigar bars, and tobacco sampling events limited to two per facility during the year.

If the waiver is continued, the effective date would be 120 days following the enactment.

Under current state law, which as Senator Bruno stated was enacted in 1989, restaurants are required to meet customer

demand for a nonsmoking area by setting aside seats in a contiguous nonsmoking area.

The practical effect of this law is that nonsmokers are being contaminated by harmful secondhand tobacco. Numerous studies have documented that secondhand smoke harms nonsmokers, including children, and causes lung cancer, heart disease, and respiratory problems in exposed nonsmokers.

Studies have shown that the separation of smokers and nonsmokers within the same room does not protect them against the health dangers associated with secondhand smoke.

The EPA in 1992 classified secondhand smoke as a Group A carcinogen, a class of chemicals known to cause cancer in humans. There is no safe level of exposure of a Group A toxin.

They concluded that secondhand smoke causes 3,000 lung cancer deaths each year in nonsmokers and that in infants and children there are approximately 150,000 to 300,000 cases of lower respiratory tract infections found annually.

The Department of Human and Health Services has declared that secondhand smoke is known to be a human carcinogen, based on studies in humans that indicate the relationship between passive exposure to tobacco smoke and human lung cancer.

The American Heart Association has declared secondhand smoke to be the third leading cause of preventable deaths in this country.

Restaurant employees are at least 30 percent to 50 percent more likely to get lung cancer than the general public.

And the National Institute of Occupational Safety and Health recommends that in order to protect a nonsmoker in enclosed areas, smoking must be eliminated.

Senator Bruno, let me thank you for your convictions, your belief, and your compassion with this issue and your courage for bringing it to the floor.

Today is truly an historic day in New York State to ensure greater protection for the residents of our great state. I ask for all your support on this important public

health policy.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator Fuschillo.

Any other Senator wish to be heard on the bill?

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Mr. President. On the bill.

I support this legislation. I realize that there are people who are conflicted about it. There are a lot of businesses that feel concerned about the impact of elimination of smoking on their economic well-being.

But I think that what Senator Bruno and Senator Fuschillo have pointed out is a fundamental point about our government and the evolution of our government: Secondhand smoke kills people. There is no such thing as a free choice of an employee to say: I'm not going to work in this place, I'm going to hold out for a location where there's no smoking.

And this is a major public health step, to move beyond the awareness that

smoking kills smokers to the awareness that smoking also kills innocent bystanders.

The economic arguments that have been made and I believe hyped by the tobacco industry to many of us over the last few days in my view are wholly without merit. And I would call everyone's attention to a study by the American Lung Association which reviewed 97 separate studies of the economic impact of prohibitions on smoking.

This is an extraordinarily detailed work. It was done in October 2002. It concluded that all of the studies that had controls and peer review and met the highest standards concluded there was no economic impact, and went on to conclude that the only studies that found an economic impact were those studies funded by the tobacco industry.

In fact, not one of the studies with independent funding found a significant economic impact, and 94 percent of the studies funded by the tobacco industry found there was a significant economic impact.

So if you want to talk about spin and you want to talk about distortion of the

evidence before us, I think that study says it all.

I think this is an important step forward for our state. I think people will learn to adjust to this. And this is another step forward in a long line of legislation that, Senator Bruno has pointed out, may provide some restrictions but provides freedom for a larger group of people.

And the State of New York in fact has led the way historically on such legislation. Child-labor laws restricted people's ability to do business. New York State led the way. Regulation of the quality of food, drugs, restricts people's ability to do business. New York State led the way.

I am happy to support this legislation. I'm proud of the work that Senator Bruno and our leader, Senator Paterson, have done to bring this to the floor and bring it to what I believe will be a successful vote.

And I urge all of those concerned about its impact to withhold judgment, and I think at the end of the day we'll see, as

people in other jurisdictions have seen, that we improve people's health, we improve people's quality of life, and that the harms that people fear, the damage that people suggest is really not going to come to very much at all when you compare it to the benefits.

I'm voting yes, commend the sponsor, and I urge everyone to vote yes for this bill.

ACTING PRESIDENT MORAHAN: Read the last section.

Senator Lachman.

SENATOR LACHMAN: Yes, I'd like to speak on this bill as well.

It's almost inconceivable that it was less than ten years ago that major corporations in America, tobacco corporations, stood before the U.S. Congress and said tobacco is does not impact negatively upon America's population, it has no impact upon addiction.

These major corporations, tobacco corporations, are now admitting that they were wrong. Or they're having their public

relations people say, well, they did not say what everyone heard them say.

I look upon this as a major advancement, a major advancement in the area of medical addiction, which inflicts its negative results upon those who are most vulnerable -- children, teenagers, high school students, the poor.

This bill is long overdue. And I commend both the leaders of the Majority and Minority parties for working in cooperation to pass this nonpartisan, pro-health, anti-addiction bill.

Thank you.

ACTING PRESIDENT MORAHAN: Read the last section.

Senator Duane.

SENATOR DUANE: Thank you, Mr. President.

I am going to vote in favor of this bill. And I was very interested to listen to the Majority Leader's comment, particularly where he said that he respected the -- respects your opinions about civil rights, but no one has the right to injure an innocent

person.

And I think that that's a philosophy which we would be well served to follow in this body on other issues in addition to the secondhand smoke issue. For instance, those who have been victimized by clergy abuse or those children in schools who are victimized at the hands of other children or administration, in some cases.

So I'm pleased to hear of this philosophy. I think that it certainly applies in this case. But I am hopeful that we will apply that same standard as it applies to other people who are being victimized in our society as well.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator Duane.

Read the last section.

THE SECRETARY: Section 16 --

SENATOR CONNOR: Mr. President.

ACTING PRESIDENT MORAHAN: Senator Connor.

SENATOR CONNOR: Yes, on the bill, please.

I find this a very, very difficult vote to contemplate. No one can quarrel with the statistics on the health effects of smoking. I look down here and there's this little hole [indicating desk]; this is the old America.

If you look at the history of smoking as I viewed it, you know, my grandparents' generation, not that many people smoked. My parents' generation, they all smoked. It was glamorous in the thirties and forties. And when you were in the service, they gave you cartons of cigarettes. If you didn't smoke when you went in, you certainly smoked before you got out.

When I first joined this chamber, not only did people sit here and smoke, people would light up -- members would light up big cigars and smoke pipes. And it was somehow viewed as a civil right. Then, of course, the statistics on secondhand smoke were not known. But by then certainly the effects on the smokers were well known.

I just have a particular concern with where we're going on policy. I have no

quarrel with the policy that says let's protect the health of employees. They shouldn't be forced to be exposed to secondhand smoke.

And I have no quarrel, for example, with the law the city has adopted, which allows an establishment to have a separately sealed, ventilated room where the employees don't serve drinks, don't have to go in. Many people have invested in that.

So you now have establishments that have contracted for two and three hundred thousand dollar renovations that this law would say kiss that money goodbye, you can't have a separately enclosed, ventilated whatever.

The problem with that is there there's no one unwillingly being exposed to secondhand smoke.

Cigar bars, I have a real constitutional problem with that. That got into the city law, that exemption for the five or six cigar bars existing in Manhattan, because Rudy Giuliani called Mayor Bloomberg and said, "Hey, I go to these cigar bars, cut

them some slack." So the law grandfathered them in.

Now, either a cigar bar is a harmful environment for the people who work there -- although I suppose if you've got a real problem with being near smoke, the last thing you're going to do is apply for work at a place that calls itself a cigar bar. I know if I were allergic to peanuts, the last place I would want to go work is a place where I had to handle peanuts, where they roasted peanuts.

I don't know constitutionally, though, why, if I can qualify for a liquor license, et cetera, et cetera, et cetera, and get a space four blocks away from Club Macanudo and open up the identical operation, why am I being told I can't compete with Club Macanudo?

Either we ought to close the cigar bars or let everyone that qualifies and meets whatever the standards are for those cigar bars compete with them. If the public doesn't want to go to cigar bars, they won't compete successfully and they'll go out of business.

If we're giving to certain cigar

bars that existed in this legislation in the year 2002 an exclusive monopoly, then I think we're missing the boat. We ought to have a franchise fee for that. We have a budget problem. Why should they just pay for their liquor license and be able to be a cigar bar and have the only game in town, free from all competition?

Either cigar bars are bad, they're a bad environment, we want to make a public policy statement, we don't want cigar bars, we don't want those kind of venues to exist and close them all -- or say, here are the standards to be a cigar bar, anyone can compete.

Again, if the market won't stand for tripling the number of cigar bars, then the people who invest in that will go out of business. That's called the free market, Mr. President.

I don't know why we're giving an exclusive franchise to certain cigar bars. You can be for the strictest antismoking legislation and find that provision totally objectionable, or you can be for no

restrictions on smoking and find that particular provision reprehensible. I just don't understand, as a matter of policy, why are we doing this.

Is it because Rudy Giuliani did a contract in New York City to let the five cigar bars existing stay open? I thought that was wrong then. You should have fifty cigar bars if the market will support it. Or, if you don't think cigar bars are a good thing, then close them all down.

So I don't understand where the policy of protecting people from secondhand smoke or employees from secondhand smoke fits that. And I do see where that offends all notions. You know? Why are we giving an exclusive to these cigar bars? Makes no sense whatsoever, Mr. President.

I find some other faults with this bill, because I understand people want to discourage smoking. We, the same Legislature that balances our books on the backs of smokers, that increases tobacco taxes or authorizes New York City to increase tobacco taxes so we get more revenue, don't really

want anybody to buy tobacco products. Then ban them. Prohibit them. Come up with a comprehensive program to provide support for nonsmoking programs, for even more intensive education.

And I have to say the educational efforts in the past, some of which were assisted by this state government, many were the work, the fine work of the many, many organizations who have been fighting the curse of smoking all these many years -- they have an effect. We now have a generation coming up by and large that understands the tremendous adverse health consequences of smoking and is generally antismoking.

That's a good thing. We should do more of that. We should do more of that leading to a prohibition of tobacco. Why need it be a legal product?

I warn my colleagues, though, these same health statistics, many of them were available about the consequences of alcohol in the early part of the last century. And they led to Prohibition. And that was a failed experiment. And I can give you terrible

health statistics about the effects of alcohol even today, and nobody says ban it. So I mean it's a dilemma, as legislators, we face.

Mr. President, I offer a modest proposal. I intended to do an amendment, but I think I'll do a separate bill. It's a modest proposal in the real sense of that. I hope my colleagues are literate enough to know from whence I speak.

The modest proposal is I can show you statistics from virtually every agency that Senator Fuschillo mentioned that show probably the number-two cause of heart disease and death in America is obesity and poor diet -- fat, cholesterol, et cetera. Yet we sit here in this Legislature and do nothing about that.

Now, I'm not proposing, Mr. President, that we tell people what they should prepare and eat in their own homes. That's still a man or a woman's castle, as it is under this bill.

But did you ever go to a restaurant, Mr. President, and they bring out enormous portions -- and for those who are

prone to obesity, they just can't help digging in. Why don't we legislate that the meals offered in restaurants have to include no more than 4 ounces of lean meat, legumes, a grain, two servings of fruit? We could do that.

These restaurants are licensed. We could tie it to the liquor license, we could tie it to their consumer affairs license. And we could save a lot of lives, Mr. President, a lot of lives if we did that.

Mr. President, unfortunately, the answer to a lot of these self-inflicted health problems, be it obesity, be it consequences of smoking for smokers -- and I'm not talking about subjecting nonsmokers to secondhand smoke -- really can't be legislated against. They require education. They require some healthcare expenditures for that education, prevention, et cetera. But you just can't legislate it.

And there are elements of this bill that I think go a little too far because they are not expressing a directly related rationale to protecting the health of nonsmokers, employees, workers, the public in

public gatherings.

They express -- and I warn my colleagues against it. And on balance, I'll probably vote for this. But I warn my colleagues that to embrace certain elements that really do no more than express the shared moral outrage at the consequences of smoking, at people who don't recognize the consequences, at the decades-long -- many of which have been put to a stop -- abuse in advertising, misadvertising, misrepresentation and marketing by Big Tobacco, as it's called, takes us into dangerous waters.

Impossible to enforce. I mean, this bill, I can't figure out what's the penalty. How do you enforce it? Localities can? What if some locality says, okay, it's a dime, ten-cent fine every time somebody smokes in a bar. Just put the can up on the bar with the little slot in it, drop your dime in.

I don't know. I'm not suggesting loopholes to people. But I don't see where this bill would stop that.

So I just warn my colleagues, we tread down these paths of political

correctness. They have a lot of basis in real need and fact. There's a real case to be made. There's certainly a case to be made for protecting people from secondhand smoke. There's no doubt that the case is made about the consequences, the bad consequences of smoking both for smokers and for nonsmokers exposed to secondhand smoke.

But some of these things just don't make any sense. Either a cigar bar is a bad thing or it's a legal thing and people ought to be able to compete if they meet the same qualifications. Because -- and, Mr. President, because the existing -- let's face it, existing cigar bars are not for Joe Sixpack. They're not a good place to get, as one vice president talked about, a nickel cigar. I guess a nickel cigar would be a $2 cigar today. They're a place for $25 cigars.

So what are we saying here? If it's been in a privileged venue of those who can afford $25 cigars and expensive brandy, where the elite meet and smoke, it's okay, but you can't open up any more? I don't understand the policy behind that.

I suggest, Mr. President, that the sponsors have just gone too far in their righteous zeal. And, I mean, I appreciate Senator Fuschillo's efforts in this area. I think fashioning an appropriate bill is a good thing, and bringing it to the floor and overcoming political obstacles.

I just think we've gone a bit too far here. And I don't know that it tips the balance for me, but I do have these very, very sincere concerns, Mr. President.

ACTING PRESIDENT MORAHAN: Senator Sabini.

SENATOR SABINI: Thank you, Mr. President. On the bill.

I admire the sponsor, Senator Fuschillo, and the work he has done on behalf of the people of the State of New York and the zeal with which people have supported this bill. It's a good thing for public health to cut down on smoking.

But there are so many inconsistencies in our state's policy if we enact this bill and, indeed, I feel so much unfairness to many New York City business

owners who are trying right now to comply, as we speak, with the upcoming implementation of the New York City law, that I don't think this is a particularly good idea at this time.

There are people who have carefully studied the New York City law and have found that the opportunity to have separate ventilation systems was there, so they started installing them.

There are people who have invested in bars in New York City who felt that they could now have an exclusive franchise to have a smoking bar because of the four-partner worker rule. Which says, in the recently passed legislation at the New York City level, that if a bar, a tavern had four partners and they were the only employees in the bar, that that bar would be exempted.

And there are people who have actually invested substantial amounts of money in trying to buy those establishments so they could have four-partner bars. And now this legislation undoes it.

The entire state revenue stream right now is sort of dependent on, in some

ways -- or at least a portion of it is -- a healthy tobacco industry, because we're depending on a settlement. And yet we try to make it harder for people to smoke.

And it's probably a good thing we do that, but maybe we should think of the broader picture. Maybe cigarettes should be banned in New York State. Maybe their sales should be banned. What we would do with our budget then, I'm not sure of. But it's sort of a little inconsistent to collect tax on it and yet encourage people not to use it, I feel.

I noted in the sponsor's memorandum for support it talked about the California Health Department study. And it said in that study that after California banned smoking in bars, people spent more time in bars.

Well, is that a particularly good thing? Do we want people going home with more in them than they should? I'm not sure. But that's an unintended consequence.

I noticed we got a memorandum in opposition from Western OTB, where smoking will be banned in teletheaters and OTB

parlors. Now, I hope none of us are Pollyannish enough to think that there aren't alternatives for people who want to bet on horses in this state to then go elsewhere besides OTB, which generates revenue for this state. And I'm afraid in some cases they will.

In fact, in many places in this state they can watch TV from the comforts of their own home. They can choose to bet with OTB or with someone else. And I'm afraid that many of them may wind up with someone else.

Our Native American casinos will be exempt from this, because they'll be allowed -- under the federal law, they'll be allowed to ignore this law.

And what does that say to some of the restaurants and bars nearby those casinos that are -- now we're trying to get ancillary businesses in places like Niagara Falls and places like Oneida and hopefully in the Catskills? What does that say to them, that people will be able to smoke and stay and spend their money in the bars and restaurants in those casinos and not in the surrounding

community?

I worry about the inconsistencies here. Perhaps the most ironic inconsistency is in Section 4 of the bill. And I quote from the bill, that it talks about "exempting certain events whose primary purpose is the promoting or sampling of tobacco products."

Well, I ask you, my colleagues, why are we encouraging the promotion and sampling of tobacco products in one case if we're banning their usage in public in another? I find this really inconsistent.

I know what that language is about, and it harkens to what Senator Connor mentioned about sort of allowing the elite to meet, eat and smoke. But again, I just find it ironic that in a bill that's designed to keep people from smoking, we're encouraging the promotion of their products.

So I don't plan to support this bill, although I don't -- certainly don't impinge on the intentions of those -- I think there are good public health intentions of people that want to cut down on smoking and preserve our state's budget by cutting down on

healthcare costs. But I think in many ways we're sort of working both sides of the street, as they say in some neighborhoods of the city of New York. And so therefore I intend to vote no.

Thank you.

ACTING PRESIDENT MORAHAN: Thank you, Senator Sabini.

Senator Duane.

SENATOR DUANE: Thank you, Mr. President.

Generally I don't stand up and speak twice on a piece of legislation. But this is really my only opportunity to speak on this bill, and there are some other issues which I think need to be addressed.

I am still voting for this legislation, although I think that there are some flaws in it. I don't think there should be exemptions for the cigar bars. And I don't think there should be exemptions for, you know, cigar conventions or whatever those things are.

And I'm okay with the exemption for residential treatment facilities, that there

will be a place to smoke, but I have some concerns about how that will be implemented. Because I think mental health patients and those in substance abuse treatment facilities, that special attention needs to be paid to how their success will be. And I think that is not something which can be treated lightly and needs to be left up to the individual health-care providers on those -- in those facilities.

I do think, though, in general that while this bill is generally a good bill, in the sense that it will protect people from secondhand smoke, I also think it's a pathetic bill. And the reason I think it's a pathetic bill is because I look at the sponsors and all of the sponsors in both houses are, I believe, Majority party members. As I look at the Assembly members, I think they all are, although I can't swear to that. So let me just talk about the Senate.

They're all Majority members. So even those of us who have supported legislation in the past which restricts people's exposure and workers' exposure to

secondhand smoke were not allowed to be on this bill. And I think that's despicable, frankly.

And I also think that the reason -- another reason why I'm speaking twice on this is because I don't recall us having any hearings on this bill. Now, I know when the New York City Council passed legislation on smoking laws, they had three or four days of hearings, 12-hour days, everyone had their say -- the public, healthcare professionals, restaurant workers, restaurant owners. Everybody had their say.

And yet somehow here in the Legislature we believe that we don't have to listen to the people about these things. Oh -- oh, yes, I did get memos. I got memos. But what I didn't get was hearings.

And I would have liked to have heard in person from the regional OTB personnel. I would have liked to have heard both from the management and from the people who work there. I would have liked to have heard from the tavern owners. I would have liked to have heard from the unions

representing the restaurant workers.

I would have liked to have heard from average citizens, those who smoke and supported this kind of legislation and those who smoke who oppose this kind of legislation, those who don't smoke who supported this legislation and those who don't smoke who oppose this legislation.

But we didn't hear from any of those people. Maybe we did individually, people came into our offices and said what they thought about it. And we got memos. Oh, boy, did we get memos. Memos, memos, memos. But what we didn't get was any testimony from real people.

And I so know that we think we know better than everybody. I still think that it can't hurt for us every once in a while to hear a few little tidbits of wisdom from just regular people before we pass this kind of sweeping legislation.

So again, I'm going to vote for this bill, but I think some of my colleagues raised some very important issues that they had with the bill. But there was no forum for

people who agree with my colleagues on those issues to come forward and express their views.

So I'll vote for it, but I am hoping that maybe someday, someday my colleagues here in the Legislature, particularly in the Senate, will understand the wisdom of actually hearing from the people of the state of New York.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator Duane.

Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 299 are Senators Connor, Gonzalez, Sabini, and M. Smith. Ayes, 57. Nays, 4.

ACTING PRESIDENT MORAHAN: The

bill is passed.

Senator Bruno.

SENATOR BRUNO: Is there any housekeeping at the desk, Mr. President?

ACTING PRESIDENT MORAHAN: There is no housekeeping, Senator Bruno.

SENATOR BRUNO: Mr. President, at this time if you could recognize Senator Breslin.

ACTING PRESIDENT MORAHAN: The chamber will come to order, please.

Senator Breslin.

SENATOR BRESLIN: Mr. President, I believe I have a motion at the desk. I ask that it be read.

ACTING PRESIDENT MORAHAN: Are you waiving the reading, Senator?

SENATOR BRESLIN: No, I ask that it be read.

ACTING PRESIDENT MORAHAN: The Secretary will read.

A little courtesy, please.

The Secretary will read the title.

THE SECRETARY: By Senator Breslin, Senate Print 214, an act to amend the

General Obligations Law and others.

SENATOR BRESLIN: Mr. President, I ask that I be heard on --

ACTING PRESIDENT MORAHAN: Senator Breslin.

SENATOR BRESLIN: Mr. President, since 1997, on an annual basis, I have introduced legislation called an HMO liability bill.

Simply put, it's a bill to place health maintenance organizations into the same category if they commit negligent acts as a doctor would be in, or an accountant would be in, or a lawyer.

HMOs are constantly making decisions of a medical nature, much like physicians make those kinds of decisions. But we have a law in New York State, 4410 of the Health Law, which restricts any recovery from a decision made by an HMO to a breach of contract.

That's wrong. HMOs are making decisions about treatment, about the types of care that they give patients in their organizations, and some of those decisions and

recommendations are based on a bottom line, a profit motive.

We have to make sure that we bring HMOs into a liability sphere so that if they make medical decisions, medical decisions that affect patients and those decisions are negligent, that they're liable for those decisions.

We're blessed with many fine HMOs. I happen to be a member of CDPHP, which I think is the best in the state. But there are others that do not have the same kinds of performance levels. And this bill will change that.

And I urge all of my Democrat and Republican friends in this house to vote for this motion.

ACTING PRESIDENT MORAHAN: Thank you, Senator Breslin.

Those Senators who are in agreement with the petition of the bill out of committee will please signify by raising your hands.

THE SECRETARY: Those recorded in agreement are Senators Andrews, Breslin, Brown, Diaz, Dilán, Duane, Gonzalez,

Hassell-Thompson, L. Krueger, Lachman, Montgomery, Onorato, Oppenheimer, Parker, Paterson, Sabini, Schneiderman, A. Smith, and M. Smith.

ACTING PRESIDENT MORAHAN: The petition out of committee is lost.

Senator Bruno.

SENATOR BRUNO: Mr. President, there being no further business to come before the Senate, I would move that we stand adjourned until Monday, March 31st, at 3:00 p.m., intervening days to be legislative days.

Travel well and travel safely.

ACTING PRESIDENT MORAHAN: On motion by Senator Bruno, the Senate stands adjourned until Monday, March 31st, at 3:00 p.m., intervening days being legislative days.

(Whereupon, at 1:18 p.m., the Senate adjourned.)