NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

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3:05 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 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: With us this afternoon to give the invocation is Pastor David Thomason, from South-West Oswego Baptist Church in Oswego, New York.

PASTOR THOMASON: Let me start by quoting the second inaugural address of President Grover Cleveland, who served as mayor of Buffalo and also as governor of the great state of New York. On March 4, 1893, he said this: "I know there is a Supreme Being who rules the affairs of men and whose goodness and mercy have always followed the American people, and I know He will not turn from us now if we humbly and reverently seek His powerful aid."

Let's do that.

Heavenly Father, we pray for Your

blessings on this group. We pray that Your power, Your love, Your comfort and Your grace might be extended to these folks; Lord, that Your will might be made known, that it might be made clear, and that we might follow it.

Please bless, we pray, in Jesus' name. Amen.

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Monday, March 22, the Senate met pursuant to adjournment. The Journal of Saturday, March 20, 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 Fuschillo, from the Committee on Consumer Protection, reports:

Senate Print 3118, by Senator Morahan, an act to amend the General Business Law;

5010, by Senator Fuschillo, an act to amend the General Business Law;

5154, by Senator Little, an act to amend the General Business Law;

5533, by Senator Little, an act to amend the General Business Law;

And Senate Print 6409, by Senator Fuschillo, an act to amend the General Business Law.

Senator Maltese, from the Committee on Cities, reports:

Senate Print 2043, by Senator Padavan, an act to amend the General City Law;

4373A, by Senator Leibell, an act to make certain parents;

5352, by Senator Padavan, an act to amend the Administrative Code of the City of New York;

5353, by Senator Padavan, an act to amend the Administrative Code of the City of New York;

And Senate Print 5816, by Senator

Golden, an act to amend the Administrative Code of the City of New York.

Senator Kuhl, from the Committee on Transportation, reports:

Senate Print 1054, by Senator Padavan, an act to amend the Vehicle and Traffic Law;

1117A, by Senator LaValle, an act to amend the Vehicle and Traffic Law;

1272, by Senator Meier, an act to amend the Vehicle and Traffic Law;

1355, by Senator Marchi, an act to amend the Vehicle and Traffic Law;

3596, by Senator Hoffmann, an act to amend the Vehicle and Traffic Law;

5075, by Senator Kuhl, an act to amend the Highway Law;

5117, by Senator Padavan, an act to amend the Vehicle and Traffic Law;

5479A, by Senator Bonacic, an act to amend the Vehicle and Traffic Law;

5502A, by Senator Trunzo, an act to amend the Public Authorities Law;

5746, by Senator Trunzo, an act to amend the Vehicle and Traffic Law;

6129, by Senator Rath, an act to amend the Vehicle and Traffic Law;

6131, by Senator Rath, an act to amend the Vehicle and Traffic Law;

6136, by Senator McGee, an act to amend the Highway Law;

6161, by Senator Marchi, an act to amend the Public Authorities Law;

6175, by Senator Johnson, an act to amend the Transportation Law;

6321, by Senator Volker, an act to amend the Highway Law;

6331, by Senator Little, an act to amend the Highway Law;

6336, by Senator Little, an act to amend the Highway Law;

And Senate Print 6542, by Senator Kuhl, an act to amend the Public Authorities Law.

Senator Little, from the Committee on Local Government, reports:

Senate Print 825, by Senator LaValle, an act in relation to authorizing;

956, by Senator Larkin, an act to amend the Real Property Tax Law;

5584A, by Senator Padavan, an act to amend the Real Property Tax Law;

5895, by Senator Johnson, an act to authorize;

5920, by Senator Trunzo, an act to amend the Town Law;

5932, by Senator Balboni, an act to amend Chapter 354 of the Laws of 2003;

5972, by Senator Morahan, an act to authorize;

5981A, by Senator LaValle, an act designating state-owned lands;

6109A, by Senator Trunzo, an act to authorize;

6116, by Senator Marcellino, an act to authorize;

6144A, by Senator Saland, an act to amend Chapter 208 of the Laws of 1983;

6158, by Senator Flanagan, an act to authorize;

6179, by Senator Skelos, an act to amend the Real Property Tax Law;

6183, by Senator McGee, an act to amend the General Municipal Law;

6258, by Senator Little, an act to

change the name;

And Senate Print 6386A, by Senator Wright, an act to relation to creating.

All bills ordered direct to third reading.

THE PRESIDENT: All bills are ordered direct to third reading.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Skelos.

SENATOR SKELOS: Madam President, I believe there are substitutions at the desk, if we could make them at this time.

THE PRESIDENT: Yes, there is.

The Secretary will read.

THE SECRETARY: On page 11, Senator Seward moves to discharge, from the Committee on Transportation, Assembly Bill Number 1154C and substitute it for the identical Senate Bill Number 697C, Third Reading Calendar 248.

On page 14, Senator Maziarz moves to discharge, from the Committee on Commerce,

Economic Development and Small Business, Assembly Bill Number 9701 and substitute it for the identical Senate Bill Number 5857, Third Reading Calendar 285.

On page 33, Senator Paterson moves to discharge, from the Committee on Higher Education, Assembly Bill Number 9837 and substitute it for the identical Senate Bill Number 6241, Third Reading Calendar 537.

And on page 34, Senator LaValle moves to discharge, from the Committee on Higher Education, Assembly Bill Number 10125 and substitute it for the identical Senate Bill Number 6364, Third Reading Calendar 540.

THE PRESIDENT: Substitutions ordered.

Senator Skelos.

SENATOR SKELOS: Madam President, at this time I'd like to move that we adopt the Resolution Calendar, with the exception of Resolution 4014.

THE PRESIDENT: All in favor of adopting the Resolution Calendar, with the exception of Resolution 4014, please signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The Resolution Calendar is so adopted.

Senator Skelos.

SENATOR SKELOS: Madam President, at this time if you would read Resolution 4014, by Senator Balboni, in its entirety, which will be open for cosponsorship.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Balboni, Legislative Resolution Number 4014, expressing condolences for the victims, their families and friends, and the people of the Kingdom of Spain for the loss suffered during the terrorist attacks on Madrid on March 11, 2004.

"WHEREAS, The people of the State of New York know firsthand that the suffering caused by ruthless acts of terrorism is never forgotten in the hearts of the families who suffer the greatest pain of losing loved ones to terrorism; and

"WHEREAS, On March 11, 2004, a violent, massive, and coordinated series of bombing attacks were directed against the commuter rail network in Madrid at the height of morning rush hour, marking one of the worst terrorist attacks in the history of the Kingdom of Spain; and

"WHEREAS, The cowardly attacks consisted of ten bomb explosions at the Santa Eugenia and El Pozo stations in Madrid and aboard a train entering Madrid's crowded central Atocha station; and

"WHEREAS, Tragically, at least 200 individuals were killed, and at least 1,200 individuals were injured in the terrorist attacks; and

"WHEREAS, These acts of murder were a cowardly and brutal manifestation of international terrorism; and

"WHEREAS, The atrocious acts of violence committed on March 11, 2004, against the people of Spain show yet again that terrorism knows no borders; and

"WHEREAS, We stand together with the people of Spain during this time of

mourning, recognizing our unity with the people of Spain in our mutual hope for the world to be free from the fear and destruction of terrorism; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to express its condolences to the families of the individuals killed in the terrorist bombing attacks in Madrid that occurred on March 11, 2004, and express its deepest sympathy to the individuals injured in such attacks and to the people of the Kingdom of Spain; and be it further

"RESOLVED, That copies of this resolution, suitably engrossed, be transmitted to the Ambassador of the Kingdom of Spain to the United States, His Excellency Javier Ruperez, and to the Consul General of the Kingdom of Spain in New York City, Juan Manuel Egea Ibanez."

THE PRESIDENT: Senator Balboni.

SENATOR BALBONI: Madam President, as is so often the case in this Capitol and in this Legislature, we tend to perhaps lose sight of the reasons for why we

do things. And last week when we passed a package of bills on terrorism, I felt that it was important to bring the discussion back to the motivation behind the passage of those bills. And that is that the bombings in Madrid remind us of that horrific day of September 11th. And indeed, the nexus is very clear -- exactly 911 days after September 11th, they struck in Madrid, striking at innocence.

You know, perhaps in this day and age we become so callous, so desensitized by all the images we see on television that we become disconnected from the actual pain and terror that occurs as a result of an act of violence on these scales. But we should never, ever accept the fact that a message of whatever kind should be perpetrated through the killing of innocent men and women on their way to work. That's what happened in New York. That's what happened in Madrid.

Two million people took to the streets after the bombings in Madrid, 2 million. Our hearts and our prayers go out to the people of Madrid as they seek to

recover, just as we did after September 11th. And let us never forget that we are all under this terrible scourge of terrorism.

Thank you, Madam President.

THE PRESIDENT: The question is on the resolution. All in favor please signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: Madam President, if we could put every member on the resolution. If somebody wishes not to sponsor it, they should notify the desk.

THE PRESIDENT: Any member who does not want to be a sponsor of the last resolution, please notify the desk.

Senator Skelos.

SENATOR SKELOS: Madam President, if we could go to the reading of the noncontroversial calendar.

THE PRESIDENT: The Secretary

will read.

THE SECRETARY: Calendar Number 41, by Senator Volker, Senate Print 3508A, an act to amend the Penal Law, in relation to the possession and sale of firearms.

SENATOR SCHNEIDERMAN: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 119, by Senator Kuhl --

SENATOR SKELOS: Lay it aside for the day, please.

THE PRESIDENT: The bill is laid aside for the day.

THE SECRETARY: Calendar Number 413, by Senator Saland, Senate Print 1279A, an act to --

SENATOR SCHNEIDERMAN: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 467, by Senator Nozzolio, Senate Print 433, an act to amend the Vehicle and Traffic Law, in

relation to the application for court orders.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 30th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 473, by Senator McGee, Senate Print 2861, an act to amend the Vehicle and Traffic Law, in relation to requiring suspension and revocation.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the first of November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 492, by Senator Velella, Senate Print 3134, an act to amend the Penal Law, in relation to impersonation or misrepresentation to gain access to a dwelling.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the first of November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 509, by Senator Maziarz, Senate Print 930A --

SENATOR SCHNEIDERMAN: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 518, by Senator Meier, Senate Print 6358, an act to amend Chapter 534 of the Laws of 2000 relating to clarifying the definition of work

activities.

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, 52.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 534, by Senator McGee, Senate Print 6240, an act to amend the Alcoholic Beverage Control Law, in relation to the forfeiture of the registration deposit on kegs.

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, 52.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number

536, by Senator Padavan, Senate Print 2073B, an act to amend the Education Law and the Insurance Law, in relation to the practice of physical therapy.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 9. This act shall take effect on the 180th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 540, substituted earlier today by Member of the Assembly Paulin, Assembly Print Number 10125, an act to amend Chapter 253 of the Laws of 2002, relating to temporarily allowing.

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, 52.

THE PRESIDENT: The bill is passed.

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

SENATOR SKELOS: Thank you, Madam President. If we could go to the reading of the controversial calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 41, by Senator Volker, Senate Print 3508A, an act --

SENATOR SCHNEIDERMAN: Explanation.

THE PRESIDENT: Senator Skelos, an explanation has been requested of Senator Volker's bill.

SENATOR SKELOS: Madam President, if we could just lay that aside temporarily and take up Senator Saland's bill, Calendar Number 413.

THE PRESIDENT: The bill is laid aside temporarily.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 413, by Senator Saland, Senate Print 1279A, an act to amend the Insurance Law and the General Obligations Law, in relation to the use of lands for recreational activities.

SENATOR SCHNEIDERMAN: Explanation.

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

SENATOR SALAND: Thank you, Madam President.

This bill does basically two things. On the one hand, the first section of the bill directs the Superintendent of Insurance to, within 18 months of the effective date of this legislation, to effectively determine the cost of property and liability coverage for those landowners who make their land and water areas available to the public for recreational and conservation purposes and, more appropriately, how we go about controlling those costs.

Secondly, and perhaps more at issue here, is the expansion of this bill, of the portion of Section 9-103 of the General

Obligations Law. What that section does, it enumerates some 18 or 19 specific categories of recreational activity for which a landowner, if he or she permits the use of their premises, doesn't charge a fee, is not willful or malicious in attempting to secret dangerous conditions, will otherwise be free of liability.

What this is all about is perhaps best stated in the legislative intent section, which reads as follows: "The Legislature reaffirms the purpose of this section, which is to encourage property owners to make land and water areas available to the public for recreational or conservation purposes by limiting their potential liability exposure towards persons entering thereon for such purposes. Its provisions should be construed to accomplish those objectives."

And that's, in essence, the long and the short of the purpose of this legislation, to encourage private landowners to let others avail themselves of the opportunity to seek recreational opportunities on their premises without being concerned

about being sued in some court of law in the event that something should occur to somebody who avails themselves of that opportunity.

THE PRESIDENT: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Madam President. If the sponsor would yield for a few questions.

THE PRESIDENT: Senator, do you yield?

SENATOR SALAND: Yes, Madam President.

THE PRESIDENT: Go ahead, Senator Schneiderman, with a question.

SENATOR SCHNEIDERMAN: Thank you.

This legislation refers to an owner, lessee or occupant of premises and provides that the owner, lessee or occupant of premises essentially has liability for everything other than malicious acts removed when the premises are made open for any recreational use.

Are premises in any way limited in this legislation to outdoor areas, wild areas, wilderness areas, or in any other way limited?

SENATOR SALAND: I would think, if one takes a look at the existing language, if you look up above in Section 2 where there already is reference to keeping the premises safe for entry for others, whatever the law currently is, the law currently is.

And I'm not quite sure any issues have been raised with regard to what shall constitute premises. If that should be a problem, I would be very happy to attempt to address it. But I'm not aware of any case law that has raised that issue.

And the case law that I have seen has generally dealt with outdoor recreational activities. And I'm assuming it's outdoor recreational activities.

SENATOR SCHNEIDERMAN: Through you, Madam President, if the sponsor would continue to yield.

THE PRESIDENT: Senator Saland, do you continue to yield?

SENATOR SALAND: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Schneiderman.

SENATOR SCHNEIDERMAN: I think the concern I'm raising is that the earlier version of the law limited this provision by listing a certain number of activities that only can really take place in outdoor wilderness recreation areas. Once you change that and provide for any recreational use -- where I come from, that could mean skateboarding in an empty lot.

And if "premises" is as broadly defined as it is in this legislation, the way I read it, this would allow someone who owns an industrial site, a commercial site, an empty lot with broken bottles and lumps of concrete in it to be exempt from liability if they simply say it's open for recreational purposes.

SENATOR SALAND: I would think not. I would certainly think that if somebody invited somebody to use premises that were littered with, as you describe, broken bottles or whatever, there would be certainly an element of willfulness or wantonness that would in effect get whomever would make such an offer outside the parameters of this

legislation.

SENATOR SCHNEIDERMAN: Well, if someone in a wilderness area were to invite someone into property for hiking and camping and there was a broken bottle lying on a trail because someone who'd just used it had left it there, would that then subject the owner of the premises who invited people on for hiking or camping to liability under this bill?

SENATOR SALAND: I would think that would be a question of fact different from the one in which you talked about a lot that was littered with bottles, broken bottles. You're talking about somebody who left the bottle on a trail. I'm not quite sure, there might not be an element of assumption of risk there. But again, I think vastly different on the facts from, you know, a lot strewn with broken bottles.

There is, incidentally, an Appellate Division case, a First Department case which would certainly seem to imply that this is outdoor recreational property. And I'm referring to Russo v. The City of New York. I won't read you the particulars of the

analysis of the fact pattern, but the court states -- and here I'll quote -- "The narrow strip of land on which the plaintiff was injured is located in a densely populated and highly developed area not within the purview of General Obligations Law 9-103, and the ordinary standards of negligence should apply."

SENATOR SCHNEIDERMAN: Thank you.

Through you, Madam President, if the sponsor would continue to yield.

THE PRESIDENT: Senator, do you continue to yield?

SENATOR SALAND: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Schneiderman, with a question.

SENATOR SCHNEIDERMAN: I appreciate that.

My concern is that a subsequent amendment of the law such as you're proposing today certainly could result in new case law.

And as I read it -- and maybe let's take away the litter of bottles and concrete -- is there anything here that

restricts the application of this law to wilderness areas or would preclude an owner from asserting this as a defense if they, in a suburban area or an urban area or any other area of the state, had some open concrete space, an old parking lot or any other premises that was open to use for recreational purposes?

SENATOR SALAND: Well, certainly I don't want to be so provincial as to say that this legislation is limited to wilderness areas. That may reflect a view of New York that I don't subscribe to. I don't exactly live in a wilderness area. And there are a number of opportunities for people in the suburbs to access, under the existing law, opportunities for open space.

The bottom line here is that there is nothing that has been done that in any way, shape or form changes the interpretation of "premises." And if in fact the courts have ruled -- which I think they should rule -- that this generally applies to open space areas, then that's in fact what it is.

If the courts have decided that

there are other recreational opportunities that people might avail themselves to or of to which this applies, then that goes to the existing law. Because the existing law enumerates these 18 or 19 categories. I propose to expand that by prefacing that with the language "including, but not limited to." And so the base remains the same: the premises.

SENATOR SCHNEIDERMAN: Thank you.

Through you, Madam President, on the bill.

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

SENATOR SCHNEIDERMAN: I'd like to thank the sponsor for his answers.

I have voted against this bill in the past. I will vote against it again for several reasons. The issue that I was just raising I think is something that probably can be corrected, but I think it is a serious problem.

The old form of the law made it clear by delineating certain types of activities that really take place in exurban

settings, primarily -- I hope people aren't involved in hunting in urban areas -- but gleaning, canoeing, boating, trapping, hiking, cross-country skiing, tobogganing, sledding, and things like that. I think the interpretation of the old law was clear.

Once you broaden it to say any recreational use, I'm afraid that that really is too broad. I mean, that includes -- I hope "recreational use" includes other types of activities such as playing basketball or skateboarding or other things that people are more likely to do in areas of my district -- and, now that I know Senator Saland's district is a center of more urban activity, in his district as well.

I think this particular problem is something that probably is easily remedied by language, but it is an issue. But the reason it's an issue is that -- relates to another problem with this legislation, which is that this is a broad exemption from liability for people who open their premises up for any recreational purpose and are thereby exempt from liability for any sort of negligence.

They're no longer responsible for taking the care that all the rest of us are responsible for in our premises, the duty of reasonable care to keep property safe.

The only circumstances under which a property owner who opens it for recreational purposes under this bill would be liable is for willful or malicious acts. And as indicated by the colloquy we just had, the question of whether or not broken bottles lying around is a willful or malicious act might, you know, be subject to a different interpretation by a court in any of a number of cases.

The fact of the matter is you shouldn't be able to exempt yourself from liability for allowing an area to get into disrepair, for negligence in maintaining areas, for allowing broken bottles to lie around, for allowing bridges to become unsafe. Even if you know there are dangerous circumstances here because you haven't taken the care required to maintain the premises in a safe condition, you could be exempt from liability. That's a fundamental problem.

We shouldn't allow people to exempt themselves from taking care for their property when you're opening it up to children, you're opening it up to senior citizens, you're opening it up to people who easily could be injured by any of a number of circumstances that could present themselves, and you're essentially providing a blank check to a negligent property owner. That is another problem with the bill, and a more fundamental problem.

And, finally, I would suggest that the notion that we have a piece of legislation that directs the Superintendent of the Insurance Department to study and make recommendations to the Governor on the issue of insurance liability under these circumstances, but then doesn't wait for that study to be conducted to propose a dramatic change in the law relating to property that the study presumably would address, is really very peculiar anywhere except in Albany.

I believe that this is a study that is probably a very good idea. If this was stripped out of the bill, I think it would

pass overwhelmingly in both houses. Report to the Governor and the Legislature, and let's have the experts in the Insurance Department collect the facts and make recommendations to lawmakers.

There's no reason to relieve a landowner of their duty of care simply because they permit public access on their property. The list of potential tragedies is very long. One death or serious injury is simply, in my view, too great a price to pay for an increase in lands available for recreational use.

But as long as we're talking about studying the issue, let's do the study before we make a dramatic proposal that could potentially put people at risk. I've voted no on this before, I will vote no on it again, I urge everyone also to vote in the negative.

Thank you, Madam President.

THE PRESIDENT: Senator Diaz.

SENATOR DIAZ: I yield to Senator Krueger.

THE PRESIDENT: Senator Krueger.

SENATOR LIZ KRUEGER: Thank you, Madam President. If the sponsor would yield,

please.

THE PRESIDENT: Senator Saland, will you yield for a question?

SENATOR SALAND: Yes, Madam President.

THE PRESIDENT: You may proceed with a question, Senator.

SENATOR LIZ KRUEGER: Thank you, Madam President.

Under the current law, if I am a landowner and I don't give permission for you to use my property so you trespass to use it, and you get hurt on my land -- let's say there is a walking bridge that is in disrepair and it collapses and you fall into a gorge -- under current law, am I, the landowner, liable for someone who trespasses being hurt?

SENATOR SALAND: There is nothing in the current law or in the proposed amendment that in any way, shape, or form changes or alters the existing common law with respect to whatever the duty might be owed to a trespasser. There's nothing here that changes that.

And I won't begin to propound what

I think the law is, because some of my more active colleagues at the bar might correct me and I'd merely be embarrassed. But suffice it to say that the bottom line is that there's nothing here that changes whatever currently is the law with respect to someone who trespasses upon property.

SENATOR LIZ KRUEGER: Thank you.

Madam President, on the bill briefly.

THE PRESIDENT: Go ahead on the bill, Senator Krueger.

SENATOR LIZ KRUEGER: Thank you, Madam President.

Well, my understanding or what I've been advised on common law and existing law is that if I don't open my property, someone trespasses and they get hurt, that there is liability on me as a property owner. And you didn't disagree with that. You said that perhaps we should leave it to others to debate it. But it's my understanding that I would be liable.

But under your proposed law, if I open up my land so that you are not a

trespasser because I have given a de facto permission to you or anyone to use my land, and they get hurt on the same walking bridge in the example I gave before, then I would not be liable.

And so my concern with this legislation, in addition to the concerns that were raised by Senator Schneiderman earlier, is that in an odd way, with this piece of law, we would actually be, under the rubric of encouraging people to open up their lands to make them available for public recreation, setting up a scenario where somebody who makes their land available is not liable for anything that happens on their land, while someone who chooses perhaps the more cautious approach of saying: No, it's my private land and I don't think it's a good idea for people to trespass on it, and I'm not sure about all the conditions" -- and it could be very large tracts of land, as you know -- so I'm not sure about the safety, so I'm going to not allow people to trespass -- excuse me, I'm going to mandate it is a trespass, not open my land, so I'll be liable, when somebody who opens up

their land is not liable -- that seems, to me, to fly in the face of protecting the public good, and it seems to set up a very inconsistent and, I might add, sort of odd structure of liability.

So I don't think that I could support this bill, because I'm not sure that I think most of us would agree with the answer that this bill would lead us to, that people who say "No, you can't use my property" have liability and people who say "Yes, you can use my property" don't have any liability. And I don't think that's in the best interests of the public, so I'll be voting no.

Thank you, Madam President.

THE PRESIDENT: Senator Diaz.

SENATOR DIAZ: Thank you, Madam President. Through you, would the sponsor yield for a question?

THE PRESIDENT: Senator Saland, will you yield for a question?

SENATOR SALAND: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator.

SENATOR DIAZ: Senator Saland, there are many religious organizations and not-for-profit groups who happens to have big portion of lands, and they would like to open those properties for the use of the public. Some of them, they are afraid of a big lawsuit if something happens.

How would this bill help a religious institution that would like to open their property for the use of the public?

SENATOR SALAND: One of the purposes of this bill, if not the principal purpose, is to encourage the opening of those types of large parcels or other parcels, by saying as long as you're not charging a fee, as long as you're not being willful or malicious in, in effect, hiding a condition that would otherwise be dangerous, you would not have to concern yourself with liability.

This is about encouraging people with the protection of not being sued as long as they avoided those particularly proscribed -- I'll call them things not to do which are already in the existing law, then that, I would think, would be an inducement to

an organization such as that.

And again, that's what the bill is about. And there's nothing that we're doing here that is that dramatic. We are saying that the law already says that there are some 18 or 19 categories. And they're in the bill. I'm not going to bother to put my glasses back on and read what they are. But they're listed in the bill, in 9-103. And we're saying we want other recreational opportunities, that that 18 or 19 is just to be an example and not be the end-all.

And I'm not aware and no one has ever pointed out that somehow or other the existing 9-103 is being abused. And I would just think what this, again, would do would be to encourage the kinds of folks that you're talking about to open up their property and encourage people to recreate on that property.

SENATOR DIAZ: Thank you.

On the bill.

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

SENATOR DIAZ: I think that -- referring to Senator Krueger's comment on the

inaccuracies of both issues, I think that if a person trespasses a property and he or she gets hurt in that trespassing accident, the landlord, the owner of the property should not be liable because someone trespassed without permission to that property. I think that the law should be changed that relieves the homeowner or the landowner from being liable if someone trespasses and gets hurt on the property.

On the other hand, the bill that Senator Saland is proposing is opening the door for Jewish organizations, Catholic organizations, evangelical organizations, many other not-for-profit groups that would like to open and give the opportunity to the community to use their property.

And I think that I will support this bill, and I'm asking that we try to change the law in protecting the homeowner when someone trespasses on their property.

Thank you.

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 3. This act shall take effect on the 180th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 413 are Senators Andrews, Breslin, Brown, Connor, DeFrancisco, Dilán, Duane, Hassell-Thompson, L. Krueger, C. Kruger, Lachman, Montgomery, Morahan, Onorato, Parker, Paterson, Sabini, Sampson, Schneiderman, M. Smith, and Stavisky. Ayes, 38. Nays, 21.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 509, by Senator Maziarz, Senate Print 930A, an act to amend the Environmental Conservation Law --

SENATOR LIZ KRUEGER: Explanation.

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

SENATOR MAZIARZ: Yes, thank you very much, Madam President.

This legislation lowers the age from 14 to 12 that is required to obtain a junior archery license. By lowering the age to 12, we are keeping the minimum age consistent with obtaining a junior small-game license.

A junior archery license allows a holder to hunt with a longbow during both archery and the regular hunting season. An individual who has a junior archery license must be accompanied by a parent or legal guardian or by a person age 18 or over who has had at least one year's experience in hunting by longbow, and such person holds a license to hunt big game.

There are numerous criteria that an individual must pass before becoming eligible for a junior archery license. Included among this is the passage of a hunting and safety responsibility course.

Thank you, Madam President.

THE PRESIDENT: Senator Krueger.

SENATOR LIZ KRUEGER: Thank you, Madam President. If the sponsor will yield, please.

THE PRESIDENT: Senator Maziarz, will you yield for a question?

SENATOR MAZIARZ: Yes, Madam President.

THE PRESIDENT: You may proceed with a question, Senator.

SENATOR LIZ KRUEGER: Thank you, Madam President.

Do we know what the average weight of a 12- and 13-year-old is?

SENATOR MAZIARZ: Do I know what the average weight of a 12- or 13-year-old is? No, I do not know what the average weight is.

SENATOR LIZ KRUEGER: If the sponsor will continue to yield, Madam President.

THE PRESIDENT: Senator Maziarz, will you --

SENATOR MAZIARZ: Yes, I do, Madam President.

THE PRESIDENT: He continues to yield, Senator.

SENATOR LIZ KRUEGER: Do we know what the average weight of a bear is?

SENATOR MAZIARZ: No, I don't

know what the average weight of a bear is.

SENATOR LIZ KRUEGER: Madam President, if the Senator would continue to yield.

THE PRESIDENT: Senator, do you continue to yield?

SENATOR MAZIARZ: Yes, I do, Madam President.

THE PRESIDENT: You may proceed with a question, Senator Krueger.

SENATOR LIZ KRUEGER: Could we agree that bears are larger than 12- and 13-year-olds?

SENATOR MAZIARZ: We would agree that bears are much larger than 12- and 13-year-olds.

SENATOR LIZ KRUEGER: Thank you.

Madam President, on the bill.

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

SENATOR LIZ KRUEGER: Thank you.

And thank you, Sponsor, for your comments.

We had this debate last year, and so I -- and I know and people are welcome to

be critical of my position yet again. But I'm just going to lay out the arguments as I see them against this bill.

I have no problem with 12- and 13-year-olds practicing archery in a variety of different places to train to learn to be better and safer hunters when they are older.

However, I will continue to argue that from a child-welfare perspective we should not be allowing 12- and 13-year-olds, most of whom have not even gone through puberty or had a growth spurt, to be in the woods attempting to hunt large game, bear and deer -- and deer can be quite large also, but obviously the argument was for bear in this case.

This is an unsafe sport. It puts children at risk. It puts relatively physically small children at risk. There are other activities they can participate in in learning how to be safe hunters later in life. But that changing the age from 14 to 12 puts our children at risk.

The statistics on casualties from hunters are disproportionately higher for

children hunters, both two-party casualties, self-inflicted casualties, and casualties where the animal, so to speak, wins in the fight -- particularly bears, when being hunted by bow and arrow.

I heard the arguments last year, and I respect them, that hunting can be a bonding experience and a valuable sport for parents and children to participate in together. And they can start that at 14 when we're talking about hunting big game. There are many other activities for children to be participating in with their families, physical activities in the great outdoors.

I urge my colleagues to rethink both their own children and what size they were when they were 12 and 13 versus 14, the dangers that are inherent in dealing with a child versus a bear in the woods.

For the record, the argument that children are hunting bear for food is not an acceptable argument. Yet again, I will say on the floor of the Senate if your constituents are sending their children out in the woods at the age of 12 and 13 to hunt for food, I would

be happy to go over eligibility for the food stamp program with each and every one of you, an underutilized program in the state of New York.

This is not good public policy. We should not be encouraging our 12- and 13-year-olds from participating in sports that in fact can be dangerous and put their lives at risk. Fourteen is a young enough age. There are other activities, including other sports activities and training with bow and arrow, that can take place, and we should not allow this law to be lowered to the age of 12.

Thank you, Madam President. I'll be voting against the bill.

THE PRESIDENT: Senator Stavisky.

SENATOR STAVISKY: Madam President, if the sponsor would yield to one or two questions.

THE PRESIDENT: Senator Maziarz, will you yield for one or two questions?

SENATOR MAZIARZ: Yes, Madam President.

THE PRESIDENT: You may proceed with a question, Senator.

SENATOR STAVISKY: Are there any statistics that show an increase in accidents involving the 12-to-14-year age group? Has there been an increase perhaps nationwide or in those states that permit 12-to-14-year-olds to participate in this program under this license?

SENATOR MAZIARZ: In the states that permit it? I'm not aware of any in the states that permit it. Of course there haven't been any in New York, because in New York 12- and 13-year-olds are not licensed to do this activity.

SENATOR STAVISKY: I'm referring to the states that do permit junior archery licenses.

SENATOR MAZIARZ: No. No.

I think most of the statistics that Senator Krueger cited are statistics involving firearms, not involving archery, if she's citing the same statistics that she cited last year during this debate.

SENATOR STAVISKY: That's the purpose of my question.

The second part of the question,

then, is I know that firearms are permitted for that age category. Has there been an increase in accidents involving children between the ages of 12 and 14?

SENATOR MAZIARZ: No. Not that I'm aware of, Senator, no.

SENATOR STAVISKY: Thank you.

SENATOR MAZIARZ: Thank you.

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 5. This act shall take effect on the 90th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: Senator Hoffmann, to explain your vote?

SENATOR HOFFMANN: Yes, thank you.

I am very happy to support this bill. And I want to compliment the sponsor once again for raising it and speaking to it in such a reasoned way.

Those of us who know families that

are involved in archery think that it is a wonderful way for families to enjoy quality time together. There's really no age at which someone is too young to enjoy learning about the outdoors. And for many families, archery has become a way of life and a great shared experience.

It's always distressing to hear statistics misused on the floor. Statistics regarding guns have no merit on this particular discussion. And statistics, unattributed, relating to injuries involving children also have no merit.

There really is very little statistical evidence to indicate that there is any danger to young people who would engage in archery hunting for small game accompanied by a parent or a guardian who is duly licensed to engage in bow hunting.

THE PRESIDENT: The Secretary will announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 509 are Senators Diaz, Duane, L. Krueger, Morahan, Onorato, Padavan, Parker, Sampson,

Schneiderman, A. Smith, and Stavisky. Ayes, 49. Nays, 11.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 41, by Senator Volker, Senate Print 3508A, an act to amend the Penal Law, in relation to the possession and sale of firearms.

SENATOR SCHNEIDERMAN: Explanation.

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

SENATOR VOLKER: Madam President, this is a bill -- a Governor's program bill. And in keeping with my new policy of total truth, I want to say -- having read the memo, I want to assure my friends from upstate New York that this bill does not exactly do what the memo says it does.

It is a bill that, frankly, increases the penalties substantially for the sale of illegal firearms. The statement in this memo that says that the 2000 anti-gun violence legislation has brought the crime rate down -- personally, I'd like to see the

evidence. I know of no evidence of that. And I certainly realize that in New York City it's popular to say that, but there's just no evidence that it has had any impact. But illegal sale of weapons is illegal sale of weapons. And it's wrong.

This has no impact on honest citizens who have legal weapons, who use them in an honest way, just as -- you know, there are many people that run around and say if you could just get rid of every gun in the state, everything would be fine. Well, unfortunately, no state that's ever done that has ever found that that works. But that's beside the point.

This is a Governor's program bill 2004. And it dramatically increases penalties, in one case from a D felony to a B felony. And one of the things that the New York City people have told us is the difficulty is that the highest penalty relates to a large number of firearms. And because of the difficulties in dealing with some of these illegal firearms dealers, they have asked the Governor and asked us to reduce numbers from

20 or more firearms, illegal sale, to 10 or more. And the idea is that sometimes it's difficult to keep track of all the guns that are involved.

There are gun dealers, there's no question -- traditionally, they may deal with more terrorist organizations than regular criminals, but they still should be penalized severely. They should be gotten off the streets.

And -- so that's basically what this bill does. I frankly think that the illegal gun trafficking is overdone. Although New York City gets a tremendous amount of illegal firearms from the South, and that's true. But most of those are used for different activities than in the streets. But they are used, and some of them end up in Europe. I know that. And the FBI knows that, and we all do.

And that was the problem with the New Jersey Turnpike, which is -- not only did drugs come down the New Jersey Turnpike to New York City, but guns and tobacco and all sorts of things. And resulted in the death of

a whole bunch of New Jersey state troopers. And then allegations of racial targeting and all that stuff. But a lot of people died in that. And thankfully that has decreased dramatically, as has the crime rate in New York City, by the way.

Except that, as I was going to point out to Senator Parker, since the Diallo case, the murder rate in his area has increased because the numbers of New York City police in the special squads, once that decreased, the murder rate increased almost immediately. And unfortunately, that's one of the results of some of the things that we do unwittingly.

Senator Schneiderman?

SENATOR SCHNEIDERMAN: Well, thank you, Senator.

SENATOR VOLKER: You're welcome.

ACTING PRESIDENT FUSCHILLO: Senator Schneiderman, why do you rise?

SENATOR SCHNEIDERMAN: Thank you, Mr. President. I believe that there is an amendment at the desk. I'd like to waive its reading and ask to be heard on the amendment.

ACTING PRESIDENT FUSCHILLO: Senator Schneiderman, we've reviewed your amendment and found it to be germane. The reading is waived, and you may speak on the amendment.

SENATOR SCHNEIDERMAN: Thank you.

Today we're going to be talking a great deal about the illegal sale of guns. And we have had scheduled for today for some time a motion to petition to try and bring to the floor the most critical piece of legislation that we could possibly enact in order to stop the flow of guns from the legal market into the illegal market, which we will deal with somewhat later.

Senator Volker has -- who I know has to balance his support of gun ownership with his support for tough law enforcement; in this case, I'm pleased that tough law enforcement has won out -- has acknowledged that the sale of illegal guns is a problem. We may disagree about the magnitude.

But I think that it is fair to say that in the last two or three years, through a series of lawsuits by cities and by

individuals injured by guns and by public interest organizations, a record has been developed clearly documenting the illegal market in guns.

What we know now that we didn't know several years ago is the following. And I will read to you from the affidavit of Robert A. Ricker, who was the distributor of government affairs and then executive distributor of the American Shooting Sports Council, a trade association promoting guns.

He stated, under oath, in one of these cases: "The firearm industry, including the defendants in this action, has long known that the diversion of firearms from legal channels of commerce to the illegal black market occurs principally at the distributor level. Many of those firearms pass quickly from licensed dealers to juveniles and criminals through avenues such as straw sales, large-volume sales to gun traffickers, and various other channels by corrupt dealers and distributors who go to great lengths to avoid detection by law enforcement authorities. Leaders in the industry" -- referring to the

gun industry -- "have long known that greater industry action to prevent illegal transactions is possible and would curb the supply of firearms to the illegal market. However, until faced with the serious threat of civil liability for past conduct, leaders in the industry have consistently resisted taking constructive voluntary action to prevent firearms from ending up in the illegal gun market and have sought to silence others within the industry who have advocated reform."

So before us today is an opportunity to do something about this diversion of guns from the legal market to the illegal market. We all know there is a legal market in guns where millions of Americans buy and sell guns, use them safely. No one is arguing about that today. What we're talking about is the fact that we also know there is a vast illegal market that the gun industry has refused to cut off even though they know that they could.

My amendment today would add to Senator Volker's bill -- which seeks to close

a loophole whereby savvy gun dealers have been able to evade prosecution -- a provision requiring that federally licensed firearm dealers be the only people in New York State who can buy and sell any type of firearms. This adds long guns, rifles and shotguns to the same provisions that we have passed in this house not so long ago to cover handguns.

And the point is very simple. If you don't have a federally licensed dealer selling a firearm, there's no background check. If you don't have a federally licensed dealer, you don't have the tracing of the weapon that is possible through the Bureau of Alcohol, Tobacco and Firearms, because there's no way to trace the trail by which the weapon was bought and sold.

This is a loophole that should be closed, just as Senator Volker is seeking to close a loophole whereby people would sell two illegal guns and then two more and then two more and thus evade prosecution under the existing statute.

But the fundamental issue before us today on this amendment on Senator Volker's

bill and on our motion to petition is this. We know that there are thousands of people dying from illegal guns. We're not talking about legal weapons or hunting accidents or anything else. We're talking about the illegal market that, according to a study by the Violence Policy Center, now represents at least 15 percent of the guns produced or imported for sale in the United States.

Now, that's a lot of gun sales and that's a lot of profits. It is clear the gun industry does not want to voluntarily take action to stop the illegal market, so it's up to us.

Let's take that step. I'm going to support Senator Volker's bill today. But I would urge that we make it better by plugging a second loophole and adding my amendment requiring federally licensed gun dealers to be the only people who can sell guns in New York State.

And I would also urge that the same applies to the motion to petition which we will bring shortly to impose civil liability on gun dealers who refuse to take simple,

voluntary steps to stop the flow of illegal weapons, to stop their legally produced weapons from entering the illegal market, and to stop the well-documented death and devastation that's caused.

I don't think Senator Volker would argue with us when we say that there are many thousands of people injured by guns in crimes every year. There are many people killed by guns in crimes every year. And stopping the illegal market in guns is something we should all agree on, whatever our view of hunting with bows or guns or other illegal uses of guns is.

So I would urge the adoption of this amendment, Mr. President, and then would seek to be heard on the bill.

Thank you.

ACTING PRESIDENT FUSCHILLO: Senator Krueger, why do you rise?

SENATOR LIZ KRUEGER: Thank you, Mr. President. I rise to speak on the bill.

ACTING PRESIDENT FUSCHILLO: On the amendment or the bill?

SENATOR LIZ KRUEGER: Excuse me,

on the amendment to the bill. Excuse me. Thank you.

Although I will say, for the record, that I am happy to support Senator Volker's bill. It is an approach to dealing with the out-of-control situation of too many guns on our streets, too many illegal possessions of guns. But again, Senator Volker's bill deals with penalizing people who already possess the guns.

Senator Schneiderman's amendment -- and why I feel that it is such an excellent and complementary approach to the bigger-picture issue of too many illegal guns out there is that Senator Schneiderman's amendment and his own bill that he'll be talking about later today in fact is an attempt at a prevention model. Let's stop those guns from getting out there, being in the hands of people who then might be found guilty under new criminal charges under Senator Volker's bill.

So that I see this as a continuum where Senator Schneiderman's proposal for a standard of conduct on gun manufacturers is,

to some degree, an approach of preventive medicine on the issue of too many guns in the hands of the wrong people in the state of New York.

That again, having criminal charges to apply to people who illegally have guns or use guns, is the end of the story. The beginning of the story would be better served for the people of New York if we could ensure that no one had these guns in the first place, that they were not illegally in possession of guns and they were not then, in fact, potentially reselling them illegally.

And I also view this not just as a prevention model but, if you look through what the standards of conduct are, it's parallel to sometimes we talk in this chamber about issues of fraud in government programs -- health care fraud, Medicaid insurance fraud. You can't participate in Medicaid fraud unless you have a provider involved, somebody who's authorized to process that illegal Medicaid reimbursement.

The same is true in guns. If we don't have penalties and we don't have

standards applied that make sure that people can't get these guns and sell them without any penalty on themselves for not following the laws or not following the correct standards, you increase the chance that these guns are going to be out there.

So the fact is that under Senator Schneiderman's amendment, which is his bill 5730, it prohibits the sale of weapons to bad dealers. It's preventive medicine. It's saying: Bad dealers, you aren't going to be allowed to get access to these guns, because we know what happens down the road when you do have them.

It prohibits gun-show sales without a background check. Because we know that that has been a major loophole in the law. And we should all be concerned that in certain locations in the state of New York or in other states you have easier access to buy guns without a background check than in other locations.

It only permits firearm sales to dealers who maintain a fixed address for their store and an electronic database, including

the specifications of the guns in inventory or for sale and the names and the numbers of all gun buyers. That's just smart.

We require the DMV to keep track of who you are and where you are when we let you have a license to drive a car, because we recognize that it can be a dangerous vehicle. We should have the same standards for allowing somebody to have a gun, which we know is a dangerous implement.

It limits the purchases by one person to one weapon per 30 days. Seems pretty reasonable. It requires the implementation of a security plan for securing weapons in transit. It requires gun manufacturers to provide full access of records to law enforcement and government regulators.

Senator Balboni started off today talking about the fact that we are living in a different world, a world with higher security needs and risks. Senator Volker's bill ensures an increase in criminal penalties when you have these guns. It seems not only the logical step but the right step for us to be

taking in ensuring that we are applying this same model of preventive health care in the state of New York to make sure that bad people don't get guns and aren't allowed to sell guns.

So I urge my colleagues to support Senator Schneiderman's amendment to Senator Volker's bill.

Thank you, Mr. President.

ACTING PRESIDENT FUSCHILLO: Those Senators in agreement with the amendment please signify by raising your hand.

THE SECRETARY: Those recorded in agreement are Senators Andrews, Breslin, Duane, Hassell-Thompson, L. Krueger, Lachman, Montgomery, Onorato, Parker, Paterson, Sabini, Sampson, Schneiderman, A. Smith, M. Smith, and Stavisky.

ACTING PRESIDENT FUSCHILLO: The amendment is lost.

Read the last section.

THE SECRETARY: Section 8. This act shall take effect on the first of November.

ACTING PRESIDENT FUSCHILLO:

Senator Schneiderman, why do you rise?

SENATOR SCHNEIDERMAN: Thank you, Mr. President. Very briefly on the bill.

ACTING PRESIDENT FUSCHILLO: Senator Schneiderman, on the bill.

SENATOR SCHNEIDERMAN: I think that eventually we are going to have to do something about the illegal market in guns. I note that this piece of legislation Senator Volker has been carrying has been around for a while.

Very recently, the mayor of the City of New York has chosen to raise this as an issue and call on us to tighten up the loophole that is addressed by Senator Volker's legislation. I hope that the mayor will strengthen his efforts to deal with the sale of illegal guns. There is a lot of work before us, as indicated by my amendment and by the aspects of law that are addressed in our motion to petition.

Senator Volker's bill is a good step. But let's acknowledge that tightening up the prohibitions, just requiring that someone can be prosecuted for having a few

illegal guns, is really not that great a step forward. I'm glad we're reducing the requirement from 20 to three, but there's a lot more that needs to done if we're going to deal with the problem of the market in illegal guns in New York City and elsewhere in the state.

I support the legislation, Mr. President. Thank you.

ACTING PRESIDENT FUSCHILLO: Read the last section.

THE SECRETARY: Section 8. This act shall take effect on the first of November.

ACTING PRESIDENT FUSCHILLO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT FUSCHILLO: The bill is passed.

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

SENATOR MORAHAN: Any housekeeping at the desk, Mr. President?

ACTING PRESIDENT FUSCHILLO: No.

SENATOR MORAHAN: Will you recognize Senator Schneiderman, please.

ACTING PRESIDENT FUSCHILLO: Senator Schneiderman, why do you rise?

SENATOR SCHNEIDERMAN: Thank you, Mr. President. I have a motion at the desk, and I would like to have it called up at this time.

ACTING PRESIDENT FUSCHILLO: The Secretary will read.

THE SECRETARY: By Senator Schneiderman, Senate Print 5730, an act to amend the General Obligations Law.

ACTING PRESIDENT FUSCHILLO: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

This is a motion to put on the Senate calendar Senate Bill 5730, which would establish a code of conduct for gun manufacturers, for safe marketing practices of their firearms.

It would address an issue that was recently raised in Congress when the National Rifle Association and their allies tried to

pass federal legislation to prevent states, to prevent state legislatures and state courts from imposing any civil liability on gun manufacturers, no matter how irresponsible their practices, for death and injury caused by their firearms.

Our colleagues in Washington defeated the NRA's effort to grant this unprecedented federal immunity. This gives us the opportunity here in the State of New York to take action. But if we don't take action, our federal colleagues' good work will have been in vain.

It is absolutely clear that under the law in the State of New York, legislative action is required before gun manufacturers can be held liable for the use of their weapons once they fall into the hands of criminals. And that was most clearly stated in the case of NAACP v. Accusport, in a detailed decision issued last July by federal Judge Weinstein, where he stated: "The evidence presented at trial demonstrated that the defendants, the gun industry, are responsible for the creation of a public

nuisance and could, voluntarily and through easily implemented changes in marketing and more discriminating control of the sales practices of those to whom they sell their guns, substantially reduce the harm occasioned by the diversion of guns to the illegal market and by the criminal possession and use of those guns."

Now, the judge went on to find the Court of Appeals held that New York law does not provide for suits against gun manufacturers for their improper marketing practices but invited, the Court of Appeals invited legislative action to correct that.

My bill that I'm seeking to bring to the floor today, and that we will continue to seek to bring to the floor, would fill that requirement set forth by the Court of Appeals.

What would the bill do? It would provide that if you're a gun manufacturer and you follow a code of safe marketing practices, no one can sue you for the illegal use of your firearms, for injury or death caused by the illegal use of your firearms.

But if you don't follow a code of

safe marketing practices, if you're one of those manufacturers that continues to sell to dealers even though their guns keep showing up, keep showing up as being guns used in crimes, then you are subject to liability.

Keep in mind the fact that -- and I believe that our good mayor again has weighed in on this issue, although perhaps not as strongly as on the last one -- in an article that the mayor wrote, he identified the fact that 1.2 percent of the gun dealers in this country are responsible for 57 percent of the guns used in crimes. Think about that: 1.2 percent of the dealers are responsible for 57 percent of the guns used in crimes.

We know who the bad dealers are. Gun manufacturers know who the bad dealers are. They can cut them off.

So our code of conduct would require that gun manufacturers stop selling weapons to dealers who have sold more than 20 weapons in any 12-month period in the past five years that have been used in crimes. That's a pretty broad standard, 20 weapons. It could be smaller, but we're trying to be

reasonable.

It prohibits the sale of weapons at gun shows -- it has to require that manufacturers stop selling arms through gun shows -- and requires manufacturers to sell to dealers only who maintained a fixed address for their store. Now, think about that. There are major gun manufacturers who sell to dealers operating out of their cars. This all prevents us from stopping the flow of illegal weapons.

This would require also manufacturers and the dealers they sell to to provide full access of records to law enforcement. Well, that is hard to argue with.

And it also prohibits manufacturers from selling to dealers who do not limit a purchase by persons to one weapon for 30 days, stopping the phenomenon of straw-man sales, people buying weapons over and over again to sell to people who aren't allowed to buy weapons under our current law.

And, finally, it requires manufacturers to implement a security plan for

securing weapons in transit.

These are totally reasonable steps. And as stated in the Accusport litigation and as stated by Mr. Ricker, the former gun industry executive, these could easily be voluntarily undertaken by the gun industry. They refuse to do so, so we have to act legislatively.

I respectfully submit that the citizens of our state should not be barred by technicalities of law from suing a gun manufacturer that disregards all safe practices, sells guns repeatedly to dealers who they know are selling guns to criminals. We should allow people to sue those manufacturers.

And it is acknowledged by the gun industry that the threat of civil liability is the one thing that could get them to adopt safe practices. So that's what this motion is about. This bill, 5730, would impose that code of conduct and open the door to civil liability for manufacturers who do not follow the code of conduct.

I would urge everyone that we

should support this and move forward to protect our citizens and to give back an advantage to responsible gun owners and gun manufacturers and gun dealers vis-a-vis those who sell to the illegal market.

Thank you, Mr. President.

ACTING PRESIDENT FUSCHILLO: Thank you, Senator Schneiderman.

All those in favor of the petition out of committee please signify by raising your hand.

THE SECRETARY: Those recorded in agreement are Senators Andrews, Diaz, Dilán, Duane, Hassell-Thompson, L. Krueger, Montgomery, Onorato, Oppenheimer, Paterson, Sabini, Sampson, Schneiderman, A. Smith, M. Smith, Stavisky. Also Senator Brown. Also Senator Lachman.

ACTING PRESIDENT FUSCHILLO: The petition is lost.

Senator Skelos.

SENATOR SKELOS: Mr. President, there being no further business to come before the Senate, I move we stand adjourned until Wednesday, March 24th, at 11:00 a.m.

ACTING PRESIDENT FUSCHILLO: On motion, the Senate stands adjourned until Wednesday, March 24th, at 11:00 a.m.

(Whereupon, at 4:20 p.m., the Senate adjourned.)