NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

February 28, 2007

11:05 a.m.

REGULAR SESSION

LT. GOVERNOR DAVID A. PATERSON, President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will come to order.

I would ask everyone to please rise and recite with me the Pledge of Allegiance to our Flag.

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

THE PRESIDENT: In the absence of clergy, we will observe a moment of silence.

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

THE PRESIDENT: The reading of the Journal.

THE SECRETARY: In Senate, Tuesday, February 27, the Senate met pursuant to adjournment. The Journal of Monday, February 26, was read and approved. On motion, Senate adjourned.

THE PRESIDENT: Without objection, the Journal stands approved.

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: Mr. President, I have a resolution at the desk. I would ask that it be read in its entirety and move for its immediate adoption.

THE PRESIDENT: Most certainly. The Secretary will read.

THE SECRETARY: By Senator Bruno, Legislative Resolution Number 635, memorializing Governor Eliot Spitzer to proclaim February 25 through March 3, 2007, as Eating Disorders Awareness Week in the State of New York.

"WHEREAS, Eating disorders, such as anorexia nervosa, bulimia nervosa and binge eating disorder, can have life-threatening consequences for both males and females; and

"WHEREAS, In the United States there are reported cases of anorexia nervosa and bulimia nervosa that affect nearly 10 million women and 1 million men, primarily

teens and young adults; and

"WHEREAS, The vast majority -- more than 90 percent -- of those afflicted with eating disorders are adolescent and young women, with a peak onset among girls ages 14-18. Approximately 5 percent of adolescent and adult women have an eating disorder, with as many as 1 in 10 college women suffering from a clinical or nearly clinical eating disorder, and 15 percent of young women have substantially disordered eating attitudes and behaviors; and

"WHEREAS, Those suffering from anorexia nervosa refuse to maintain a healthy body weight for height, body type, age and activity level, and there is usually an intense fear of weight gain and extreme concern with body weight and shape; and

"WHEREAS, Anorexia nervosa has a fatality rate 12 times higher than the annual death rate due to all causes of death among females ages 15-24 and is often associated with other serious health consequences, including heart and kidney failure and osteoporosis; and

"WHEREAS, Bulimia nervosa is an eating disorder characterized by excessive food consumption followed by inappropriate compensatory behaviors, such as self-induced vomiting, misuse of laxatives, fasting or excessive exercise; and

"WHEREAS, Bulimia nervosa is often associated with cardiac, gastrointestinal and dental problems, including irregular heartbeat, gastric rupture, peptic ulcer, and tooth decay; and

"WHEREAS, Binge eating disorder is characterized primarily by periods of uncontrolled, impulsive or continuous eating beyond the point of feeling comfortably full. While there is no purging, there may be sporadic fasts or repetitive diets and often shame following a binge which can lead to binge eating again, creating a cycle of binge eating; and

"WHEREAS, Binge eating disorder is often associated with obesity, heart disease, gallbladder disease and diabetes; and

"WHEREAS, There are other eating disorders which may include some combination

of the signs and symptoms of anorexia nervosa, bulimia nervosa, and binge eating which may be physically and psychologically dangerous; and

"WHEREAS, Eating disorders usually appear in adolescence and are associated with substantial psychological problems, including depression, substance abuse, and suicide; and

"WHEREAS, Eating disorders can have a negative impact on all aspects of life, and educational efforts to prevent eating disorders are of primary importance, and

"WHEREAS, With the support of a number of groups in New York State, along with the National Eating Disorders Association and the National Association for Anorexia Nervosa and Related Disorders, raising awareness and offering care and treatment to individuals suffering from eating disorders and their families, a landmark program is now being implemented to provide for Northeastern, Western New York and Metropolitan Comprehensive Care Centers for Eating Disorders to provide for individualized and coordinated care, information and referral, community outreach and education, prevention

and research activities; and

"WHEREAS, Now in its 20th year, National Eating Disorders Awareness Week will highlight the fact that body size and shape are strongly influenced by biological factors such as genetics, while also calling attention to some of the new discoveries surrounding the role of genetics in the development of eating disorders; and

"WHEREAS, Further outreach, support and awareness are necessary for citizens throughout the state; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to memorialize Governor Eliot Spitzer to proclaim February 25 through March 3, 2007, as Eating Disorders Awareness Week in the State of New York; and be it further

"RESOLVED, That copies of this resolution, suitably engrossed, be transmitted to The Honorable Eliot Spitzer, Governor of the State of New York, the National Eating Disorders Association and Northeastern, Metropolitan and Western New York Comprehensive Care Centers for Eating

Disorders."

THE PRESIDENT: Senator Bruno, on the resolution.

SENATOR BRUNO: Thank you, Mr. President and colleagues.

You heard a resolution that talks about a very serious problem here throughout this country. And this week is Eating Disorder Awareness -- hopefully leading to prevention -- Week.

And I just rise because I think almost everybody here will have been touched in some way, have been or will be, by people who are seriously afflicted with an eating disorder. There are about 10 million people in this country with anorexia or bulimia, about a third of them in a very serious, life-threatening way. It's mental, it is physical, it is both. It disrupts families, it destroys families, it destroys people.

And I have seen professional after professional who is afflicted. About 10 percent are men, and the age groups are really up to 18 or 20, primarily. And then there are 25 million who are having problems

with binging, which creates all kinds of health issues and catastrophes also in people's lives.

So we want to help make people aware. There is help out there. We did, with your help, some legislation two years ago creating three pilots in this state where people with anorexia, bulimia, can go through a complete treatment.

Up until now -- and these are not fully operative, because it's very complicated. Up till now, people have to go to Oklahoma, Arizona, New Jersey, Philadelphia, Boston, Naples, Florida, just to mention a few where I have had personal experience with a family member having to be treated in those facilities.

So I thank you for your support. We have resources here in this state. Through awareness, through prevention, we will save lives.

Karen Carpenter is probably one of the most notable. You think about a gifted woman in her early thirties who dies from anorexia and bulimia. Think about that, a

person with everything in the whole world to live for. Now, why did she die? Because she couldn't help herself. And no one else could help her, because it is what it is.

And about a third of the people that are afflicted, and that's several million, have that kind of potential serious malady, to die.

So thank you, Mr. President. And thank you to my colleagues. And this is an important resolution to people's lives in this state and throughout the country, really.

And anyone that would like to join on this resolution, I would appreciate it. And I know all of the people that relate in some way to this would also appreciate it.

Thank you, Mr. President.

THE PRESIDENT: Thank you very much, Senator Bruno.

Senator Rath.

SENATOR RATH: Yes, Mr. President and my colleagues.

I'd like to first of all thank the Governor for calling attention to the critical, critical issue in front of us by

designation of this particular week as Eating Disorders Week, and thank Senator Bruno for his leadership, particularly on the anorexia side of this issue, which is as critical as the obesity issue, though not as widespread, I don't believe, as the obesity issue.

But I rise to draw attention to some of the items that have been in the news this week. You all saw the little boy who was so grossly overweight, you saw the concerns that the child might be taken away from his parents because of child abuse. You see the airlines talking about charging people two tickets if they are overweight, for two seats.

We have an emerging crisis in this country. And one of the things that I think through the work that I've done -- and for those of you who don't know me well, my basic background was as a home ec teacher. So I've been watching this issue for all of my life -- and I think it's the opportunity for all of us to share in the goodwill of our lifetimes and our lifestyles with wonderful foods. It's part of our ethnic traditions, all of our ethnic traditions. And it's just gotten away

from us, and it's gotten away from the rest of the country.

That part of it as well as the fast food part of it and the trans fats issue, they're all there and they're all kind of boiling, if you'll let me use that phrase.

So I stand to suggest to all of you that we keep this on the top of our thoughts one way or another, looking for ways out of this dilemma that is -- it's there, and it's going to catch up with us. And we're going to have to take some dramatic and strategic moves if we don't take care of it in the early stages.

And I am again grateful to the Governor and grateful to Senator Bruno and the eating disorders centers that are there. So let us -- again, I urge you to keep this in your thoughts and help all of us help ourselves.

Thank you.

THE PRESIDENT: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you, Mr. President.

I rise in support of this resolution and also to commend the Governor and Senator Bruno for the leadership that they have taken.

Senator Rath began to talk about the concerns that I also had, and that is that we have created an image in this country of what people should in fact look like. And in an effort to meet that standard, we have given our children too much latitude and we've given advertisers a lot of latitude in terms of how they project.

We cannot legislate every action of people, but certainly we have a monitoring responsibility to ensure that companies are reporting properly the food intake contents and that we're doing a better job in educating our parents in terms of how to help children eat balanced diets and not allow them to believe that because their incomes are small, that this should affect the way in which children eat.

We have a tremendous responsibility to our kids, because we're looking at outstanding numbers of children who are

developing juvenile diabetes and early stages of cancer because of overweight, overeating. So eating has become something that we do not out of necessity, but it is a substitute for those things that we are missing in our society.

Here in this chamber we look at things, we look at things politically. But we need to begin to look at things more from a perspective of humanity and what we're doing to our next generation of children.

So I commend both our Governor and Senator Bruno for their leadership, and I hope that this is just a first step in the things that we do together to ensure that we pay more attention to what is happening to the generation behind us.

THE PRESIDENT: Senator DeFrancisco, on the resolution.

SENATOR DeFRANCISCO: Yes, I rise in support of the resolution and want to take this opportunity to commend Mary Ellen Clausen and all the fine people of Ophelia's Place in Syracuse, New York, who organized and continue to run a facility that they actually created

themselves as a result of personal involvement with family members with these diseases.

And it's extremely successful and extremely helpful to people to obtain information and also to obtain how to get the services that these young people truly need.

It is a very important resolution. And the efforts beyond the resolution to provide the centers and information centers, such as what Mary Ellen Clausen does at Ophelia's Place, is so important because so few people truly understand the nature of the disease and what has to be done to help people who have that disease.

THE PRESIDENT: Senator C. Johnson.

SENATOR CRAIG JOHNSON: Thank you, Mr. President.

I rise today to also not only commend our Governor and Senator Bruno, but to thank Senator Bruno for his leadership on this issue.

As a father of two young children, our friends, who also have young children, and primarily daughters, are starting to see their

daughters as young as 6, 7, 8 already talking about dieting, because they're conscious of their body image. They see the advertisements, even in the young miss and all those young magazines that are focusing on the children, and the women -- the models are all stick-thin. And they are already wanting to talk about dieting and losing weight. Six, 7, 8 years old. This is what we're talking about in Port Washington and Roslyn around the dinner table, and our concern for our children.

And it is about education. The other day I was watching the TV news and there was a discussion about in the elementary schools they had a group of children sitting around a table and they picked up a picture, one a stick figure with a very thin girl, and one with a more full-figured young girl. And they said: "Who do you want to be friends with?" And uniformly the girls picked the thin girl. They didn't want to be friends with the fat girl.

And so we're seeing it's not just about the health issues that we talk about and

the fast food, but we're talking about it expands. We're talking about bullying issues. And it's all these things that focus upon, that bring about the eating disorders, the mental problems and the physical problems.

So it's about moving just on prevention and education, but really working with the advertisers in New York State to get them to stop at such a young age having our children focus on a thin figure, and to work with our food and our service industries to make sure we provide healthy foods -- not just to buy in the fast food, but in the schools.

Because if you look at the food quality that is given in a number of our schools, it is such poor quality that they're going to gain weight, and of course the cycle begins.

So I thank you, Senator Bruno, for this resolution. I strongly support it. And I hope we can move forward and really address these issues going forward.

Thank you.

THE PRESIDENT: Is there any other member that would like to speak on the

resolution?

Hearing none, the question is on the resolution. All those in favor please indicate so by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

And the chair notes Senator Johnson, Senator DeFrancisco, Senator Rath, Senator Hassell-Thompson, and the wonderful remarks by Senator Bruno. The resolution is adopted.

Senator Bruno did indicate previously that we would open the resolution to all members. Any who would not like to be on the resolution may indicate so at the desk.

Thank you, Senator Bruno.

SENATOR BRUNO: Mr. President, I believe there's a resolution at the desk by Senator Robach. I would ask that the title be read and move for its immediate adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Robach, Legislative Resolution Number 649, commemorating the 75th anniversary of the Aquinas Institute Mission Bouts.

THE PRESIDENT: On the resolution, all those in favor.

(Response of "Aye.")

THE PRESIDENT: Opposed.

(No response.)

THE PRESIDENT: The resolution is adopted.

Senator Bruno.

SENATOR BRUNO: I believe, Mr. President, that there is another resolution at the desk, by Senator Leibell. I would ask that the title be read and move for its immediate adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Leibell, Legislative Resolution Number 650, commending Hudson River HealthCare and the Park Street African Methodist Episcopal Zion Church as they honor the legacy of Harriet Tubman on March 2, 2007.

THE PRESIDENT: All those in favor please indicate by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

Senator Bruno.

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

THE PRESIDENT: The Secretary will begin the noncontroversial reading of the calendar.

THE SECRETARY: Calendar Number 103, by Senator Morahan, Senate Print 249, an act to amend the General Business Law, in relation to requiring.

THE PRESIDENT: Last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: Results.

THE SECRETARY: Ayes, 50. Nays,

1. Senator DeFrancisco recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 107, by Senator Flanagan, Senate Print 695, an act to amend the General Business Law, in relation to prohibiting the sale.

THE PRESIDENT: Last section.

THE SECRETARY: Section 2. This act shall take effect on the 60th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 109, by Senator Fuschillo, Senate Print 1547, an act to amend the General Business Law, in relation to increasing the civil penalty.

THE PRESIDENT: The Secretary will please 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 PRESIDENT: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Mr. President. To explain my vote.

I think Senator Fuschillo's bill is a first step towards addressing an issue that requires a lot more attention from this house, from the Legislature and the Governor in general.

The issue of price gouging has come up repeatedly in the context particularly of energy prices. And it's an area in which our law is really not up to the challenge. This piece of legislation is a good step, but the Attorney General needs more power, needs clarification of their authority in the absence of a gubernatorial declaration of an emergency. And, frankly, we need to get more people involved.

So I have a proposal, and there's others who have proposals to involve local district attorneys. We don't have an effective mechanism in this state for ensuring that price gouging doesn't take place. I hope

that energy prices go down, but I don't believe they will in the long term. And I think that this is an issue that will come up again and again and again.

And so I commend Senator Fuschillo for trying to keep the issue on the table, but this is something where we do need to take further action before the next crisis occurs.

I will be voting yes, Mr. President.

THE PRESIDENT: Senator Schneiderman will be recorded in the affirmative.

The Secretary will announce the results.

THE SECRETARY: Ayes, 51.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 117, by Senator Little, Senate Print 1099, an act in relation to directing the Law Revision Commission.

THE PRESIDENT: Last section.

THE SECRETARY: Section 4. This act shall take effect on the 30th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 124, by Senator Leibell, Senate Print 2377, an act directing the Commissioner of Labor to issue a report.

THE PRESIDENT: 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, 51.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 134, by Senator Larkin, Senate Print 1918, an act to amend the General Business Law and others, in relation to peddling New York agricultural products on the streets.

THE PRESIDENT: Last section.

THE SECRETARY: Section 5. This act shall take effect on the 180th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 135, by Senator Skelos, Senate Print 2041, an act to amend the General Business Law, in relation to the sale of laser pointing devices.

THE PRESIDENT: Last section.

THE SECRETARY: Section 5. This act shall take effect on the first of September.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: Senator Craig Johnson.

SENATOR CRAIG JOHNSON: Thank you. I wish to take this opportunity to explain my vote.

I commend Senator Skelos on this law, and I support this law. I just do think that in the process, if the Assembly puts something together and puts it through, they

should maybe put a couple of things in there that we can address.

In reviewing the law, one concern I have is that there's no exception in the terms of school for educational purposes. You know, I've recently -- or compared to the members of this body, I'm probably one of the more recent graduates of high school. And laser pointers are used for educational purposes in terms of slide presentations, Power Points.

Under this law, in theory merely walking into a school they can be confiscated if a principal wants to, you know, assert a violation against them. So there's no educational exception for the purpose of the schools.

The second thing, in reading the justification, and those instances are horrible in terms of the police. And when you put these out there and the potential lives that could be lost in terms of them, the justification when looking at the law doesn't really go to what the purpose of the law is.

I think we should ban them entirely in the possession of 18-year-olds. We have a

number of laws in local counties which prohibit -- it's not just the sale, but let's stop the possession. Because if you look at the justification, when these instances were used, it was outside of the school grounds. It was in people's homes, it was on a school bus, which technically actually I don't think would be covered under this bill, because a school bus is not a school building.

But I think we need to go a little bit further. And hopefully Senator Skelos will put something forward or we can work together to put something forward that would actually prohibit children under the age of 18 to possessing these things outside of a school, because there's no purpose for them to have them outside of the school.

So I commend Senator Skelos, I support the bill, and I look forward to its enactment by the Assembly.

Thank you.

THE PRESIDENT: Senator Craig Johnson will be recorded in the affirmative.

Results.

THE SECRETARY: Ayes, 53.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 147, by Senator Marcellino, Senate Print 603, an act to amend the Criminal Procedure Law, in relation to evidence.

THE PRESIDENT: Last section.

THE SECRETARY: Section 2. This act shall take effect on the 30th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 153, by Senator Trunzo, Senate Print 884, an act to amend the Penal Law, in relation to prohibiting stalking.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 4. This act shall take effect on the first of November.

THE PRESIDENT: The Secretary will call the roll.

(The Secretary called the roll.)

THE PRESIDENT: The Secretary will announce the results.

THE SECRETARY: Ayes, 53.

THE PRESIDENT: The bill is passed.

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

SENATOR BRUNO: Mr. President, is there any further business to be done by this body at this time?

THE PRESIDENT: There is no further business to be attended to, Senator.

SENATOR BRUNO: Then we are going to ask the Majority members to have an immediate conference on the break of session, which is imminent. And it will be short and direct. And productive. And something that you don't want to miss.

THE PRESIDENT: There will be an immediate meeting of the Senate Majority in the Majority Conference Room, Room 332. It will be short, direct, and productive, right after session.

SENATOR BRUNO: And,

Mr. President, there being no further business to come before the Senate, I would move that we stand adjourned until Monday, March 5th, at 3:00 p.m., intervening days to be legislative days.

Thank you.

THE PRESIDENT: The Senate is adjourned and will reconvene on Monday, March 5th, at 3:00 p.m., intervening days being legislative.

Senate is adjourned.

(Whereupon, at 11:31 a.m., the Senate adjourned.)