NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

May 15, 2007

3:05 p.m.

REGULAR SESSION

SENATOR CARL L. MARCELLINO, Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT MARCELLINO: The Senate will come to order.

I would 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.)

ACTING PRESIDENT MARCELLINO: In the absence of clergy, may we take a moment of silence.

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

ACTING PRESIDENT MARCELLINO: Reading of the Journal.

THE SECRETARY: In Senate, Monday, May 14, the Senate met pursuant to adjournment. The Journal of Sunday, May 13, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Fuschillo, why do you rise?

SENATOR FUSCHILLO: Mr. President, on behalf of Senator Larkin, on page number 11 I offer the following amendments to Calendar Number 27, Senate Print Number 224A, and ask that said bill retain its place on Third Reading Calendar.

ACTING PRESIDENT MARCELLINO: The amendments are received and adopted, and the bill will retain its place on the Third Reading Calendar.

SENATOR FUSCHILLO: On behalf of Senator Larkin, on page number 39 I offer the following amendments to Calendar Number 773, Senate Print Number 4040, and ask that said bill retain its place on Third Reading Calendar.

ACTING PRESIDENT MARCELLINO: The amendments are received and adopted, and the

bill will retain its place on the Third Reading Calendar.

Thank you, Senator Fuschillo.

Senator Skelos.

SENATOR SKELOS: Mr. President, are there any substitutions at the desk? If we could make them at this time.

ACTING PRESIDENT MARCELLINO: Yes, there are, Senator.

The Secretary will read.

THE SECRETARY: On page 26, Senator Little moves to discharge, from the Committee on Health, Assembly Bill Number 2377 and substitute it for the identical Senate Bill Number 1247, Third Reading Calendar 508.

On page 43, Senator Robach moves to discharge, from the Committee on Judiciary, Assembly Bill Number 3386 and substitute it for the identical Senate Bill Number 1922, Third Reading Calendar 833.

And on page 43, Senator DeFrancisco moves to discharge, from the Committee on Judiciary, Assembly Bill Number 7376 and substitute it for the identical Senate Bill Number 4210, Third Reading Calendar 835.

ACTING PRESIDENT MARCELLINO: The substitutions are approved.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could adopt the Resolution Calendar, with the exception of Resolutions 2155 and 2260.

ACTING PRESIDENT MARCELLINO: All in fave of adopting the Resolution Calendar, with the exception of Resolutions 2155 and 2260, signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MARCELLINO: Opposed, nay.

(No response.)

ACTING PRESIDENT MARCELLINO: The Resolution Calendar is adopted.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could take up Resolution 2155, by Senator Griffo, have it read in its entirety, move for its immediate adoption. And if you would then recognize Senator Griffo.

ACTING PRESIDENT MARCELLINO: The Secretary will read.

THE SECRETARY: By Senator Griffo, Legislative Resolution Number 2155, congratulating the Mohawk Valley Community College Women's Basketball Team and Coach Bobby Allison on its outstanding 2006-2007 season.

"WHEREAS, It is the sense of this Legislative Body to pay tribute to those exemplary teams that have distinguished themselves through notable achievements and representing the great Empire State with pride and determination; and

"WHEREAS, Attendant to such concern, and in full accord with its long-standing traditions, this Legislative Body is justly proud to congratulate the Mohawk Valley Community College Women's Basketball Team and Coach Bobby Allison on its outstanding 2006-2007 season; and

"WHEREAS, For the second consecutive year, the Mohawk Valley Community College Hawks Women's Basketball Team were the runners up in National Junior College Athletic Association Division III and won the District A and Region III tournaments for the

third year in a row, as well as four of the last five years; and

"WHEREAS, The Hawks also won the Mountain Valley Conference for the fourth straight year and currently have won 84 consecutive regular season games and 43 consecutive home games; and

"WHEREAS, The athletic talent displayed by this team is due in great part to the efforts of Coach Bobby Allison and his team of outstanding assistant coaches, skilled and inspirational tutors who have done a superb job in guiding, molding and inspiring the team members toward their goals; and

"WHEREAS, The hallmarks of the Mohawk Valley Community College Women's Basketball Team during the 2006-2007 season were a sisterhood of athletic ability, of good sportsmanship, of honor and of scholarship, demonstrating that these team players are second to none; and

"WHEREAS, Sports competition instills the values of teamwork, pride and accomplishment, and Coach Bobby Allison and the outstanding athletes on the Mohawk Valley

Community College Women's Basketball Team have clearly made a contribution to the spirit of excellence which is a tradition of their school; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to congratulate the Mohawk Valley Community College Women's Basketball Team, its members -- Sarah Bushey, Shantel Dunston, Cassandra Fiorillo, Tekesha Hanson, Jessica Jenkins, Manda Lynch, Christina Mann, Chalonda McElveen, Ikuyo Morito, Shanai Norman, Jessica Reynoso, Cara Rowlands, Leah VanVoorhis and Amanda Wilsey -- Assistant Coaches Crystal Bass, Tom Torchia and Mike Fanelli, and Coach Bobby Allison upon the occasion of capturing the 2006 NJCAA championship; and be it further

"RESOLVED, That copies of this resolution, suitably engrossed, be transmitted to the Mohawk Valley Community College Women's Basketball Team and to Coach Bobby Allison."

ACTING PRESIDENT MARCELLINO: On the resolution, Senator Griffo.

And if we could have some order in the chamber, please. If you would take your

conversations outside. Staff take your seats. Thank you.

Senator Griffo.

SENATOR GRIFFO: Thank you, Mr. President.

Today we are joined by a group of these outstanding student athletes who have really done some significant and great things over the last several years, not only as athletes. As we discussed specifically the achievements, the Region III tournament really is equivalent to an entire state championship in this play for community colleges, and the District A is the Northeastern championship. So truly they have excelled across the entire Northeast in winning that championship as well as finishing second in the nation over the last couple of years.

They're a group of student athletes that come from all over New York State -- I believe Staten Island, Brooklyn as well as Oneida County and Queens, many of the towns and villages of Oneida County -- where Mohawk Valley Community College is located, in the city of Utica -- as well as one from Vermont.

We have an export from the state of Vermont who chose to come to New York.

So I sincerely appreciate Coach Bobby Allison, who is here along with Assistant Coach Tommy Torchia, who are both here, who have served together over the last four to five years. And today we want to express our appreciation for them because they are not only, as I said, outstanding athletes but they are exceptional individuals.

I think they really epitomize what is good about our community and young people. They're all aspiring to continue their education to a four-year school. They all have a number of interesting pursuits and possible majors that they are considering, eventually to join the workforce.

So today we want to pay tribute to not only to your outstanding athletic success and, coaches, for the outstanding work you have done in bringing this team together and teaching them a lot of things beyond athletic prowess, today we want to also recognize how you have really done well academically but, more importantly, how you have really proven

to the community that we represent, as well as across this state and Northeast, how you can be exceptional role models for young people to follow.

So I congratulate you, compliment you, and wish you the best of luck as you continue your education and ultimately you pursue professions in whatever you may choose. Congratulations and best wishes.

ACTING PRESIDENT MARCELLINO: On the resolution, Senator Farley.

SENATOR FARLEY: Thank you, Mr. President.

Senator Griffo, let me congratulate you on honoring this outstanding team. I am a graduate of Mohawk Valley Community College. I didn't play on any of the girls' basketball teams, but they never won any great championships like you have.

I'm so proud of that school and what it has accomplished. I'm proud of you. And let me just say congratulations. Senator Griffo said it all: You are not only a credit to your school, but you're a credit to your families and yourself with what you've

accomplished. Great things will come of what you have done.

And to the coaches, congratulations. That's quite an accomplishment.

And I'm very, very proud to support this resolution.

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

(Response of "Aye.")

ACTING PRESIDENT MARCELLINO: Opposed, nay.

(No response.)

ACTING PRESIDENT MARCELLINO: The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: We welcome you to the gallery. Would you please stand up?

(Applause.)

SENATOR SKELOS: Mr. President, Resolution 2260, by Senator Larkin, is at the desk. If we could have it read in its entirety, move for its immediate adoption, and open it up for sponsorship.

ACTING PRESIDENT MARCELLINO: The Secretary will read.

THE SECRETARY: By Senator Larkin, Legislative Resolution Number 2260, memorializing Governor Eliot Spitzer to proclaim May 2007 as Military Appreciation Month in New York State in conjunction with National Military Appreciation Month.

"WHEREAS, Many citizens of the great State of New York honored this country by serving valiantly in the United States Armed Forces and their reserve components; and

"WHEREAS, Residents of this state can never forget the courageousness with which these servicemen and women fought and provided essential services on battlefields, in jungles, in the air and at sea; and

"WHEREAS, The Legislature of the State of New York is justly proud of its commitment to those in the military who served in the time of active conflict and in times of peace. It is the sense of this Legislative Body to memorialize Governor Eliot Spitzer to proclaim May 2007 as Military Appreciation Month in New York State in conjunction with

National Military Appreciation Month; and

"WHEREAS, National Military Appreciation Month, as designated by Congress, provides a period of encompassing both the history and recognition of our armed forces with an in-depth look at the diversity of its individuals and achievements; and

"WHEREAS, National Military Appreciation Month allows New Yorkers to educate each generation on the historical impact of our military through the participation of the community with those who serve, encouraging patriotism and love for America; and

"WHEREAS, The month of May gives the nation and state a forum, a framework, a time and place on which to focus, to draw attention and express our appreciation for our armed forces and to recall our history; and

WHEREAS, May 2007, National Military Appreciation Month, includes VE Day, Military Spouse Day, Loyalty Day, Armed Forces Day, Armed Forces Week, National Day of Prayer and Memorial Day. This important month, therefore, honors those Americans who have

given their lives in the defense of our nation's freedom and the men and women now serving in uniform; and

"WHEREAS, National Military Appreciation Month recognizes those on active duty in all branches of the services, the National Guard and Reserves, military retirees, veterans and all their families; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to most gratefully acknowledge the servicemen and women, veterans, military retirees and all their families, and respectfully memorialize Governor Eliot Spitzer to proclaim May 2007 as Military Appreciation Month in the State of New York in conjunction with National Military Appreciation Month; and be it further

"RESOLVED, That a copy of this resolution, suitably engrossed, be transmitted to the Honorable Eliot Spitzer, Governor of the State of New York."

ACTING PRESIDENT MARCELLINO: On the resolution, Senator Larkin.

SENATOR LARKIN: Thank you,

Mr. President.

May, since the year 1990, always included an Armed Forces Day. This last year all the military organizations, both active and retired, Guard and Reserves, all stated that there was something special about our armed forces. And that we hear all the stories about "I support the troops." Well, you know, unless you've really been there, you really don't know what you're supporting.

But I think it's something that we must take a step back and recognize the fact that without the support of our armed forces, those that are engaged in combat today, those that were there before, we stand up and we say something about them.

And we tell our young people in the gallery here we're talking about the young men and women who have left our shores during World War I, World War II, Korea, Vietnam, Kosovo, Serbia, Gulf I, now Gulf II, and other places where our men and women have served. Served for a great reason, because they love America. And they want to make America safe so each and every one of you up there, and the

members in this gallery down here, can understand and give attention to what our military has done and provided us.

It's a along way from talking, but it's a short distance to say thank you. Every one of you ever see a man, a woman in uniform or with identification that they've served in our armed forces, you ought to walk up to them and say thank you. Thank you for your service to our country, thank you for making America safe so that we can all enjoy the life that we had hoped for.

National Military Appreciation Month is something that I think we ought to make sure that our media knows about it. Whether they'll print it or not is a horse of a different color. But I think that we have a responsibility to go back out and make sure that people understand what they've done.

Read the resolution. It says very clearly that we're thankful for what they have done for us. Mr. President, I think it's a very noble gesture that we've done, supported by the Majority Leader. And I think that the people in the gallery should know the Majority

Leader of this house served in combat in '52 and '53 with the 30th Infantry Regiment, the 25th Infantry Division in Korea. And look what he became: the Majority Leader of this great house.

Thank you for being here this afternoon. And thank you, Mr. President.

ACTING PRESIDENT MARCELLINO: Thank you, Senator Larkin.

On the resolution, Senator Fuschillo.

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

I just want to rise and compliment Senator Larkin for this resolution that we passed today and his steadfast support of the military. A just recognition, Senator Larkin.

And you mentioned the children up there. I want to recognize the kids on the left, who are from my hometown elementary school, where my children attend and still one attends, from Chatterton Elementary School, who won first prize in the "I Am a Green Nation."

I salute the kids, and I welcome

you to the Capitol and welcome you to the Senate chambers. I hope you enjoyed your day.

Thank you, Senator Larkin.

ACTING PRESIDENT MARCELLINO: On the resolution, Senator Leibell.

SENATOR LEIBELL: Thank you, Mr. President.

I want to join with Senator Larkin in commenting on this resolution. We will, especially in the next few weeks, take some time to pause, as we should throughout the year, to think about those who have served in the military. It's particularly apropos today, as we have hundreds of thousands of young Americans, young men and young women who are in harm's way around the world, in active combat in the Middle East and in Afghanistan.

And beyond that, there are many hundreds of thousands who serve in other places, many of them in squadrons and ships at sea, on distant bases -- not in combat zones, but certainly very difficult.

You know, our military, we take our young people and we take them away from home, they volunteer to serve but they do it under

difficult circumstances, in the vast majority of cases away from their families, their communities and their friends. So it's important that we pause to thank them, as we should every day of the year, for the services they have rendered.

I can tell you that as chairman of the committee that represents veterans, I'm particularly proud to stand here and say what a great, great presence we have from the American military. We look forward to honoring our veterans, and we look forward to thanking them as they come home to a grateful nation.

Thank you.

ACTING PRESIDENT MARCELLINO: Thank you, Senator Leibell.

Senator Padavan.

SENATOR PADAVAN: Thank you, Mr. President.

This resolution highlights and focuses on participation of the National Guard and the Reserves, which is part of our tradition that goes back to Bunker Hill and Concord, the Minute Men of their day. The

Minute Men of this day, and women, are serving all over the world.

The unit that I was honored to serve in and command at one time is now in Iraq for the second time -- we pray they'll all return -- all reservists from the metropolitan New York City area and some of its component units from as far north as Watertown and places like Kingston, the 411 Engineer Brigade.

They and their National Guard counterparts are doing the job that has to be done, because there's no one else to do it. Without them, our effectiveness in any theater of operation -- and certainly it's true in Afghanistan and Iraq -- would be diminished. They are essential to our national defense.

So when we introduce the legislation, I'm grateful to Senator Larkin for having done so, acknowledging the contribution these brave men and women have made and continue to make, I stand in support of that resolution.

And as I look around this chamber, there are many individuals who served their

country, retired from many different branches -- Senator Leibell in the Army -- the Navy, excuse me. I thought he'd catch me, but he didn't. Senator Larkin, the Army. Myself in the Army, Senator Maltese in the military, the Army. And I'm sure there are many others here who have served their country various times in their lives and are here serving their state and their communities as citizen soldiers.

So, Mr. President, I thank again Senator Larkin for presenting this resolution to us and indicate my strong and enthusiastic support.

ACTING PRESIDENT MARCELLINO: Thank you, Senator Padavan.

Senator Skelos.

SENATOR SKELOS: Mr. President, if I could just interrupt for a moment, there will be an immediate meeting of the Rules Committee in the Majority Conference Room.

ACTING PRESIDENT MARCELLINO: There will be an immediate meeting of the Rules Committee in the Majority Conference Room. That's Room 332.

We'll continue on the resolution.

Senator Nozzolio.

SENATOR NOZZOLIO: Thank you, Mr. President.

I rise with great enthusiasm to support this resolution and thank its sponsors for calling attention to this body the wonderful sacrifices of our brave men and women who are serving in the armed forces.

Later today we will be considering legislation to create a memorial to the fallen veteran, a veteran who contributed to their nation, but this memorial to be a fitting memorial in the county of the birthplace of Memorial Day. That is Waterloo, New York, the federally designated birthplace of Memorial Day, truly a national day, but one that I am very proud of the Waterloo community.

This veterans cemetery, a place where over 400,000 sailors and airmen trained to participate in World War II and Korea, is a hallowed ground, a ground that they shed their blood, in many cases not to return.

That I very much support this resolution and say thank you to our armed

forces. We cannot do enough to support their efforts. We will continue to strive to support them and thank them for providing us with the freedom that we enjoy here in this great democracy in New York State.

Thank you, Mr. President. It's a wonderful resolution. I fully support it.

ACTING PRESIDENT MARCELLINO: Thank you, Senator Nozzolio.

Senator Morahan, on the resolution.

SENATOR MORAHAN: Thank you, Mr. President.

I rise to thank Senator Larkin for commemorating this day for armed services and asking the Governor to declare the whole week Armed Forces Week in New York.

You know, we're unique in that we have three separate days set aside in our calendar across this state. We have Veterans Day in the fall, for those of us who served and returned; we have Memorial Day, which we celebrate very shortly, for those who served but did not return; and Armed Forces Day, which we're celebrating today, really is to say thank you for those who serve currently,

the Guard, the Air Force, the Coast Guard, all of our Army and Marine personnel who were on the frontlines even before Iraq, serving on the Demarcation Zone in Korea, serving around the globe, preventing, serving as a deterrence.

So it's those who we thank today, we will thank our veterans in the fall, and we will commemorate and memorialize those who died in the service of their country. Those who went off to serve were kids. They weren't the veterans you see today with the white hair or the bowed back. They were kids who served in delicatessens, they served in restaurants, they served in the hardware store. They took off their smocks, if you will, and went to the aid of their country, some never to come back.

So I think it's fitting to tell those who stand guard today across this globe and around the globe that we thank you for protecting us, we thank you for defending our way of life, we thank you for protecting this greatest and safest nation in the world -- safest primarily because of them -- this nation of laws.

Thank you, Mr. President.

ACTING PRESIDENT MARCELLINO: Thank you, Senator Morahan.

The resolution, at the request of the sponsor, has been opened to all who wish to be on it. If anyone wishes not to be on it, just let us know at the chair.

On the resolution, all in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MARCELLINO: Opposed, nay.

(No response.)

ACTING PRESIDENT MARCELLINO: The resolution is passed.

Senator Wright.

SENATOR WRIGHT: Mr. President, may we go to the noncontroversial reading of the calendar.

ACTING PRESIDENT MARCELLINO: The Secretary will read.

Senator Wright.

SENATOR WRIGHT: Mr. President, while we're waiting, could we move to the report of the Rules Committee, please.

ACTING PRESIDENT MARCELLINO: The Secretary will read the report of the Rules Committee, which is at the desk.

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

Senate Print 5490A, by Senator Marcellino, an act relating to limited exemptions.

SENATOR WRIGHT: I move to accept the report of the Rules Committee.

ACTING PRESIDENT MARCELLINO: All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MARCELLINO: Opposed, nay.

(No response.)

ACTING PRESIDENT MARCELLINO: The report of the Rules Committee is accepted.

SENATOR WRIGHT: Mr. President, now may we go to the calendar.

ACTING PRESIDENT MARCELLINO: Yes. The Secretary will conduct the noncontroversial reading of the calendar.

SENATOR WRIGHT: Thank you.

ACTING PRESIDENT MARCELLINO: You're welcome.

THE SECRETARY: Calendar Number 84, by Senator Maziarz, Senate Print 1616, an act to amend the Labor Law and others, in relation to prohibiting municipalities.

ACTING PRESIDENT MARCELLINO: Read the last section, please.

THE SECRETARY: Section 8. This act shall take effect immediately.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59. Nays, 1. Senator DeFrancisco recorded in the negative.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 485, by Senator Maltese, Senate Print 4249, an act to amend the Labor Law and the Education Law, in relation to prohibiting public universities.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 508, substituted earlier today by Member of the Assembly Sayward, Assembly Print Number 2377, an act to authorize certain healthcare professionals.

ACTING PRESIDENT MARCELLINO: Read the last section.

THE SECRETARY: Section 2. This act shall take effect July 18, 2007.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 522, by Senator Golden, Senate Print 3440A, an

act to amend the Civil Rights Law, in relation to prohibiting certain felons.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 642, by Senator Libous, Senate Print --

SENATOR DUANE: Lay it aside, please.

ACTING PRESIDENT MARCELLINO: The bill is laid aside.

THE SECRETARY: Calendar Number 657, by Senator Volker, Senate Print 4295, an act to amend the Penal Law and the Criminal Procedure Law, in relation to creating the crimes of electronic stalking.

ACTING PRESIDENT MARCELLINO: Read the last section, please.

THE SECRETARY: Section 9. This act shall take effect on the first of November.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 690, by Senator Maltese, Senate Print 4472, an act to amend the Labor Law and the State Finance Law, in relation to September 11th bidders registry.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number

691, by Senator Maltese, Senate Print 4473, an act to amend the Labor Law, in relation to requiring the special task force on the apparel industry.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 693, by Senator Maltese --

SENATOR DUANE: Lay it aside, please.

ACTING PRESIDENT MARCELLINO: The bill is laid aside.

THE SECRETARY: Calendar Number 695, by Senator Robach, Senate Print 4828, an act to amend the Workers' Compensation Law, in relation to presumption.

ACTING PRESIDENT MARCELLINO:

Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 704, by Senator Seward, Senate Print 4074, an act to amend the Insurance Law, in relation to reporting on insurance agent licensing exams.

ACTING PRESIDENT MARCELLINO: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 120th day.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 755, by Senator Fuschillo, Senate Print 5050,

an act to amend the General Business Law, in relation to creating a consumer bill of rights.

ACTING PRESIDENT MARCELLINO: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the first of January next succeeding.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 768, by Senator Griffo, Senate Print 2594, an act to amend the Highway Law, in relation to correcting the designation.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 781, by Senator Robach, Senate Print 5287 --

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

ACTING PRESIDENT MARCELLINO: Lay the bill aside for the day.

THE SECRETARY: Calendar Number 806, by Senator Fuschillo, Senate Print 3541, an act to authorize Hands Across Long Island, Inc.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58. Nays, 2. Senators Bonacic and Larkin recorded in the negative.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 808, by Senator Saland, Senate Print 4132, an act to authorize the Hudson Veterans of Foreign Wars Post 1314 to file an application.

ACTING PRESIDENT MARCELLINO: Read the last section, please.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 831, by Senator DeFrancisco, Senate Print 1479, an act to amend the General Obligations Law, in relation to statutory short form power.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 833, substituted earlier by Member of the Assembly Heastie, Assembly Print Number 3386, an act to amend the Real Property Law, the Criminal Procedure Law and the Family Court Act.

ACTING PRESIDENT MARCELLINO: Read the last section, please.

THE SECRETARY: Section 7. This act shall take effect on the 60th day.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 835, substituted earlier today by Member of the Assembly Weinstein, Assembly Print Number --

SENATOR SKELOS: Lay it aside for

the day, please.

ACTING PRESIDENT MARCELLINO: Lay the bill aside for the day.

THE SECRETARY: Calendar Number 837, by Senator Lanza, Senate Print 4260, an act to amend the Lien Law, in relation to the sale of property.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 840, by Senator DeFrancisco, Senate Print 4780, an act to amend the Family Court Act, in relation to acknowledging.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO:

Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 856, by Senator Nozzolio, Senate Print 3756, an act authorizing the Commissioner of General Services.

ACTING PRESIDENT MARCELLINO:

Read the last section, please.

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

ACTING PRESIDENT MARCELLINO:

Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT MARCELLINO: The bill is passed.

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

SENATOR SKELOS: Thank you, Mr. President.

Calendar Number 693, by Senator

Maltese, if we could lay that aside for the day.

ACTING PRESIDENT MARCELLINO: That bill will be laid aside for the day.

SENATOR SKELOS: And if we could go to the controversial reading of the calendar, Calendar Number 642, by Senator Libous.

SENATOR CRAIG JOHNSON: Explanation.

ACTING PRESIDENT MARCELLINO: Can we have the bells rung, please. Let the members know.

THE SECRETARY: Calendar Number 642, by Senator Libous, Senate Print 2146, an act to amend the Penal Law.

SENATOR CRAIG JOHNSON: Explanation, please.

ACTING PRESIDENT MARCELLINO: Senator Libous, an explanation has been requested by Senator Johnson. Senator C. Johnson, for the record.

SENATOR LIBOUS: Thank you, Mr. President.

This bill deals with large

quantities of alcohol. And we pass it unanimously every year at this time. And what it does is it deals with those unfortunate situations that are going to occur again this year where someone purchases large quantities of alcohol for minors and a party will take place either at someone's home or somewhere in a field or in a backyard, and one of those minors is going to either take their own life or take the life of someone else.

So, Mr. President, this bill deals with that issue. It makes a tougher penalties on the individual who purchases the large quantities. And the large quantities are outlined in the bill.

ACTING PRESIDENT MARCELLINO: Senator Craig Johnson, why do you rise?

SENATOR CRAIG JOHNSON: Will the sponsor yield for a question, Mr. President.

SENATOR LIBOUS: I will, Mr. President. Thank you.

ACTING PRESIDENT MARCELLINO: The Senator yields.

SENATOR CRAIG JOHNSON: Thank you, Mr. President.

Mr. President, my first question is, why aren't persons under the age of 21 not liable under this law? There are instances of persons under 21 using a fake ID who purchase or make available or aid in the procurement of alcoholic beverages of this size.

So my question again is, why don't we include persons under the age of 21 for this bill?

SENATOR LIBOUS: Mr. President, I think the simple answer is that it's illegal for them to purchase now. This bill deals with those of legal age who are purchasing and providing to minors.

SENATOR CRAIG JOHNSON: Will the sponsor continue to yield for a question?

SENATOR LIBOUS: I will, Mr. President.

ACTING PRESIDENT MARCELLINO: The Senator yields.

SENATOR CRAIG JOHNSON: Could the sponsor define or explain what the term he means by "make available"?

SENATOR LIBOUS: Make available?

SENATOR CRAIG JOHNSON: Make

available.

SENATOR LIBOUS: Well, "make available" I think is spelled out, Mr. President, in the bill. And basically, if an adult over the age of 21 purchases beverages and he makes those beverages available in the quantities that are outlined here to minors, "making available" would be providing, making available.

SENATOR CRAIG JOHNSON: Mr. President, will the sponsor continue to yield for a question?

SENATOR LIBOUS: I will, Mr. President.

ACTING PRESIDENT MARCELLINO: The sponsor yields.

SENATOR CRAIG JOHNSON: I don't think that really answered it. What I'm trying to get an understanding of is -- and I don't want to play law professor and give hypotheticals.

But does "make available" mean that if a person's home is opened up and that adult has three liters of liquor and their child gets the liquor, takes it out and puts it into

a field, has that parent or that guardian made that liquor available to be prosecuted for an E felony under this law?

SENATOR LIBOUS: That is not the intent of the law, Mr. President.

SENATOR CRAIG JOHNSON: Okay. So will the sponsor continue to yield for a question?

I'm not trying to be picky, but I think it's important that we understand what the definition is of "make available" other than just trying to get a sense of it's made available.

I think it's very important because my understanding of the law is that the law right now could be endangering the welfare of a child, which is a Class A misdemeanor. Now, this is a new law, and it's got great intent. But I think we need to be crystal clear for our prosecutors as to how they can use this statute. So I'm trying to be very careful in establishing what "make available" is.

So with respect to you, Senator Libous, I don't think your explanation of what "make available" is is adequate.

But my next question is, can you also tell me what "aid in the procurement" of alcohol is?

SENATOR LIBOUS: Well, Mr. President, I think --

ACTING PRESIDENT MARCELLINO: Can you hold on, Senator.

Can we have some order in the house, please? Thank you.

SENATOR LIBOUS: Thank you, Mr. President.

Let me try to help Senator Johnson here. This bill was written, I think, pretty plainly. "Procurement" means to purchase and provide the alcohol to minors. He obviously, Mr. President, is doing his own legal interpretation, which I certainly respect and he's entitled to.

But I think it's fairly clear that what this bill spells out, quite frankly, is that if an individual who is over the age of 21 purchases the amounts of alcohol and provides that alcohol to minors that are spelled out in the bill, that it's fairly clear that it would be illegal and it would be

a Class E felony.

You know, there are no distinctions for volume. And that the result, that the same property applies to a person if they provide a 12-ounce beer or a 16-gallon keg to a person under 21 years of age. So I think the bill is very clear.

And I certainly respect that Mr. Johnson has his own legal interpretation, but I would suggest that if we asked all the lawyers in this chamber to get together and read it, they probably all would give us their own interpretation, as Mr. Johnson is.

SENATOR CRAIG JOHNSON: Will sponsor continue to yield to a question?

SENATOR LIBOUS: I will do so.

ACTING PRESIDENT MARCELLINO: Senator Libous yields.

SENATOR CRAIG JOHNSON: Thank you.

I think that's important. But as some of us lawyers understand, when we look at law, we go to legislative history. And when we look at legislative history, they will have an opportunity to look at debate. So I'm just

trying to make the record clear, because the intent is a great intent.

So again, I repeat my question, is what constitutes "aid in the procurement"? I can give examples or I can give a hypothetical. If a person over the age of 21 lends a car to somebody who's over 21 who goes out and purchases a keg, a keg of beer that has to be transported, has that person who provided the motor vehicle aided in the procurement of the keg of beer?

SENATOR LIBOUS: Mr. President, could I ask Mr. Johnson a question?

ACTING PRESIDENT MARCELLINO: If Mr. Johnson will yield.

SENATOR CRAIG JOHNSON: I'll be glad to yield, on the proviso that Senator Libous will also answer my question.

ACTING PRESIDENT MARCELLINO: I'm sure you'll mutually answer each other's questions.

SENATOR CRAIG JOHNSON: Absolutely.

ACTING PRESIDENT MARCELLINO: Senator Libous.

SENATOR LIBOUS: Senator, what words would you prefer to use?

SENATOR CRAIG JOHNSON: Well, I think what's important is to sit down and carefully craft a statute. Perhaps the word "knowingly" would be an appropriate adverb to add into the statute. That way if someone knowingly sells or knowingly aids in the procurement, that would be a great word.

But the problem is I don't know what "aid in the procurement" is. I don't know what we're trying to intend to do. I understand that we're trying to prevent the situation of somebody over 21 going out and buying the keg. Great. I understand the situation of giving the keg. Great. But the fact is is that I'm trying to tighten the law.

And so what I'm trying to just get an understanding of is, before we pass the law, we should understand what the words are meaning. So certainly the word "knowingly" would be important.

But again, going back to the question, is what is "aids in the procurement"? And, which really hasn't been

answered, what is "makes available"?

SENATOR LIBOUS: Mr. President, I think the bill is clear, and I'm not going to sit here and debate words with Senator Johnson.

This bill has passed this house on numerous occasions unanimously. And I think it speaks for itself, and it's pretty simple.

Simplistically, it's that if someone over the age of 21 purchases a large quantity of alcohol is they procure the alcohol, they provide to minors, and there are incidents that take place.

Now, that's how they understand it in my district. I'm not sure they understand it that way in Senator Johnson's. But I think the bill speaks for itself, and I'm not going to sit here and nitpick and debate over how a bill is drafted or whether the bill drafter or the legal counsel who aided the bill drafter used the right words.

SENATOR CRAIG JOHNSON: Will the sponsor continue to yield for a question?

SENATOR LIBOUS: No, Mr. President.

ACTING PRESIDENT MARCELLINO: The Senator does not yield, Senator.

Senator Duane, why do you rise, sir?

SENATOR DUANE: Thank you, Mr. President. Will Senator Johnson yield, please.

SENATOR CRAIG JOHNSON: I will gladly yield.

ACTING PRESIDENT MARCELLINO: He will yield, Senator.

SENATOR DUANE: Thank you, Mr. President.

I'm wondering what the good Senator -- what is the issue which he's trying to bring forward to us that this bill may or may not be addressing.

SENATOR CRAIG JOHNSON: I'm trying to strengthen the law of a problem that's not only focusing upon high schools but also colleges and universities.

My problem is is that I think that, first of all, the bill, while the intent has tremendous amounts of merit, also contains real loopholes that aren't really even

addressed. And my questions to the sponsor would have probably brought this out.

For instance, why do we put in the provision of the phrase "within a 24-hour period of procuring the liquor"? Now, I understand with a keg of beer maybe there's an issue of refrigerating it. But if you look more in the proposed bill, the bill also covers 3 liters of liquor.

There is no reason why there should be a provision of a time frame of within 24 hours. Why aren't we punishing or preventing a Class E felony for somebody who's over the age of 21, goes out on a Wednesday and buys three liters of vodka that serves it on a Saturday in a field to a bunch of 18-year-olds? Under Senator Libous's bill, that person would not be liable for a Class E felony.

In this particular situation, it should be strengthened, because we're trying to prevent binge drinking. We can read countless situations where young men and young women in high school or in college die of alcohol poisoning, alcohol poisoning because

of the drinking of hard liquor.

Under this bill, if somebody provided that hard liquor 48 hours or 40 hours or 25 hours prior to this incident, that person, whether they made available or whether they aided in the procurement, would not be liable for the Class E felony. I don't know what they would be liable for. So we have to look at strengthening it.

Another thing that's a question that would have been great to ask Senator Libous is trying to understand this affirmative defense. The affirmative defense seems to apply --

SENATOR DUANE: Through you, Mr. President, if the sponsor would continue to yield.

ACTING PRESIDENT MARCELLINO: I've got a feeling he'll yield, Senator.

SENATOR CRAIG JOHNSON: Oh, I will yield, Mr. President.

ACTING PRESIDENT MARCELLINO: He yields.

SENATOR DUANE: Suppose Senator Johnson, myself, Senator Stavisky and Senator

Sabini were all sharing a house together. And Senator Krueger, but she'd have to be in the basement. Or the attic.

(Laughter.)

ACTING PRESIDENT MARCELLINO: Senator Duane, is this germane?

SENATOR DUANE: Yes, Mr. President.

And suppose, though, we're close to this age. Suppose we were all 20 years old. And suppose Senator Savino -- suppose we brought a keg into the house and invited all of our friends over, of all political persuasions and sexual orientations.

And suppose Senator Sabini decided that he wanted to go to a different party because he thought our party -- mistakenly -- was going to be a dud, and something bad happened at the party to someone who none of us knew, wasn't a friend of ours, just happened to walk in.

In that scenario, Senator Johnson, would Senator Sabini still be responsible for what happens in our house?

SENATOR CRAIG JOHNSON: Under

this law, Mr. President, under this law, the answer is they would not be liable, so to speak, for a Class E felony, or what Senator Libous is trying to address, because of all of them are under the age of 20. And what I see as "makes available," which all four of you made available the keg of beer, you would not be, because you're not over the age of 21.

If we eliminated the 21-year-old requirement, you would be liable for a Class E felony. Because, as all of us have attended college, people make liquor available at all ages. And because we're in college, we assume that they are responsible for their actions, and thus we should make them liable for this type of Class E felony.

I know it's illegal to purchase liquor under the age of 21, but this bill does not address that, nor is it supposed to. It's selling or making available or aiding in procurement.

The intent, which is the right one, is to stop binge drinking of our junior high school students -- because that's where we're seeing it today -- of our high school students

and of our college students. But to do so, we need to fix the proposed legislation in order to address what the problem is.

It's not just the 21-year-olds who are procuring it, but it's the 20-year-olds, the 19-year-olds and the 18-year-olds who all -- you know, not all, but who certainly have access to fake IDs. And once they have it and put it into a house, it's now made available.

I'd like to see them responsible for their actions. I would hope Senator Libous would want to do that as well, and I'm sure he does. And that's why what we should do is amend this proposal, amend it appropriately, and address it accordingly.

SENATOR DUANE: Through you, Mr. President, if Senator Johnson will yield.

SENATOR CRAIG JOHNSON: I will yield, Mr. President.

ACTING PRESIDENT MARCELLINO: He yields, Senator.

SENATOR DUANE: I'm wondering, Senator Johnson, if you would be willing to work with the sponsor of this legislation and

Mothers Against Drunk Driving and other organizations to try to get at the problem, which I understand is the issue of binge drinking among young people as well as the illegal procurement and spreading around of alcoholic beverages.

SENATOR CRAIG JOHNSON: Absolutely, Senator. I would be honored to.

SENATOR DUANE: Thank you. Thank you, Mr. President.

SENATOR CRAIG JOHNSON: On the bill, Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Johnson, on the bill.

SENATOR CRAIG JOHNSON: Thank you.

I support wholeheartedly measures to eliminate binge drinking. I support wholeheartedly measures to protect our young people from the dangers of alcohol when they're under the age of 21.

Last Friday I arrived home with my wife, and when we pulled into -- when we were about to pull into our driveway, we saw a police car in our driveway. And as the

parents of a 5-year-old and a 2-year-old, our hearts instantly jumped out, because we thought something had happened to one of our children.

When we exited the car we saw a police car in our driveway, but a police car in our neighbor's driveway and two police cars right up the road. A number of police officers on my neighbor's property as well as mine. The police officer who I approached, who I happened to know, instantly calmed me down and said, "Nothing is wrong, it's at your neighbor's house."

When I inquired what was going on, he said, very simply: "We've had another high school party. We've had another high school party, we had hundreds of kids out on the property, out in the house, and obviously got the complaints. And we've shown up, and we broke up the party and called all the parents and told them to come over and pick up their kids.

"We had kegs inside the house, multiple kegs inside the house, and we're taking steps to address the particular issue.

We're here just making sure there's nobody hiding out in your property or your neighbor's property or this property to restart the party afterwards."

The parents were not home; the parents were away for the night. I have no idea who purchased that keg. The boy who lives in that house is 16 years old. I highly doubt that it was a 16-year-old who -- it was a 21-year-old or somebody older who bought him that keg. In all likelihood, and taking a stab, it might have been a senior, somebody who's 18 with a fake ID. Or a senior who went out and purchased the keg who wasn't even ID'd.

That person, maybe that 18-year-old, maybe that 19-year-old, made that alcohol available, aided in that procurement, and put not just those teenagers at risk but potentially my children at risk, my neighbor's children at risk. Who knows who else if they got into a car. We have all heard the examples of young children who get sick and die when they binge drink, who get into a car and smash it up, kill people, kill themselves,

kill their passengers.

We need to stop that. We need to take steps to stop that. And I applaud Senator Libous for taking what appears to be a good first step. The problem is we should really make it not just a first step, but a leap. And it's a leap to stop binge drinking and make the people who set up these situations responsible for binge drinking truly responsible.

At the age of 18 you can serve our country proudly in Iraq and Afghanistan. In almost all counties but maybe Nassau County, maybe a couple of other counties, you can actually smoke a cigarette at the age of 18 or legally buy cigarettes.

And now what you can also do when you go to college is you can make available or aid in the procurement of kegs of beer, liters of liquor. And yet we don't seem to want to make them responsible when they should be. They should be responsible for the Class E felony that we are making 21-year-olds responsible for. 18- and 19-year-olds, 20-year-olds are doing the same exact thing.

And we know they're doing it, because they're doing it in college.

And in fact what's interesting is if you look at the bill, what I look at is an affirmative defense, which I think is what we call a fraternity party affirmative defense. And I would have asked Senator Libous to explain the affirmative defense, but I wasn't getting a yield from Senator Libous.

But it seems to me we're just taking one step when we should go all the way. I mean, that might sound a little bit harsh. But from a parent, a 36-year-old parent who seeing sees firsthand in his town the consequences of binge drinking, who sees the consequences in college from binge drinking, we should really make those efforts to stop binge drinking and make those persons, whether they're 22 years old or 18 years old, responsible for the same crime.

We do it in other instances. We do it in other instances. We make those 18-year-olds liable for the same penalties as the 22- and 23-year-olds. So let's do it here. Let's not stop with this bill.

My mere fact about raising these questions that, you know, Senator Libous had difficulty addressing, I regret that. But I'm doing it to protect all of us and to protect our children and to make sure that they are kept safe.

So I will vote for this bill. I will because there's nothing else being offered. I will gladly amend it and work with Senator Libous to do that. But it seems to me there may not be a wherewithal to do it. Because I thought that's what we do in debate when we yield and we ask questions, to try and do that. I actually offered a way to do it by offering the word "knowingly."

So, Senators, I urge all of us today to really take the step forward of ending binge drinking by our minors, by our college students, and to punish those -- not just adults over the age of 21, but also those under the age of 21 who are just as responsible, who we allow them to be responsible, from doing that.

So I thank you, and I will vote yes. Thank you, Mr. President.

ACTING PRESIDENT MARCELLINO: Thank you.

Senator Klein.

SENATOR KLEIN: On the bill, Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Klein, on the bill.

SENATOR KLEIN: I rise in support of this legislation but agree wholeheartedly with my colleague Senator Craig Johnson. I think he raised some concerns which would have made the intent of this bill much easier to carry out.

I do believe this is one aspect of dealing with the problem of underage drinking. Just the other day I read, unfortunately, a very startling fact, that 42 percent of high school juniors drink on a regular basis. So clearly somehow they're still able to get alcohol.

I think we need to enhance penalties. I think another aspect is more education about the dangers of underage drinking. But I think one thing we should be dealing with, and it's something that myself

and my colleague Senator Marty Connor raised -- we also attended hearings that the Senate held on this issue -- is really trying to do something about fake or phony IDs.

You can go to almost any corner in any town, any city, especially in New York City, and get these phony IDs. There's absolutely no penalty for the individuals who produced these IDs. And I think that's something that we need to look at.

Another area which I think is just as effective is legislation that I passed several years ago which created a program in the State of New York which allowed merchants who sell alcohol in bars, or even those who sell cigarettes, to have scanning devices. These scanning devices have become very advanced, where they can instantly spot a phony ID.

The legislation I passed years ago only enabled stores to use these on a volunteer basis. I think the time has come to make these machines mandatory. The price has gone down substantially. Originally, when I wrote the law, they were about $2,500, $3,000

per machine, which probably would have been very cumbersome for the local bodega, grocery store, convenience store. Now they're about $800. They're even cheaper if it works in with the computer at your establishment.

This I think is really the way to go. I think we have to start cracking down on the phony identifications through these scanning devices. And one of the interesting parts of the scanning devices, it also gives the local bar owner or merchant an affirmative defense if they actually practice due diligence in training their employees on how to use these scanning devices.

So while I think the intent of this legislation is a good one, I think we should be dealing with some of the other problems and the way we can correct the problem of underage drinking.

I vote yes, Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Padavan, please.

SENATOR PADAVAN: Thank you, Mr. President.

As I understood the discussion that

we heard earlier, the suggestion was made that a purchaser under the age of 21 should be subjected to the same penalty as someone over 21. Is that correct? Just nod yes.

SENATOR CRAIG JOHNSON: Yes.

SENATOR PADAVAN: Thank you. That's all.

Now, as a sponsor of the bill that became law many, many years ago raising the drinking age to 21 -- and we have a report that has a lot of dust on it which I'll be glad to share with you -- there was a great deal, a great deal of debate over a period of time. As a matter of fact, we had to do it in two steps. We raised it to 19 when Governor Carey was here in the Capitol, and then a couple of years later, when Mario Cuomo became governor, we raised it to 21.

Why did that happen? Because basically on this side of the aisle, in the main, and a few on this side of the aisle, were very concerned about criminalizing our young people. And when we dealt with the penalty provisions, there was a great deal of discussion and debate that we certainly didn't

want to put our 18-year-olds in jail. And if we made it a felony, we'd have a big part of every college campus in the local hoosegow. A very impractical thought, to say the least.

And so that is why the current law does not have the penalty that you would like to see in this new proposal. It has that historical perspective and I think a perspective that is based in reality.

Our emphasis was, number one, to go after the person who provided the alcohol to an underage individual, whether it be a bar, a buddy, a friend or whomever. And more recently, we put on the statutes this bill known as the Keg Bill, where these kegs are now registered and you can find out right away where the keg came from. And when the police arrived at that neighbor's home of yours and they had their hands on the keg, they could find out exactly where it was purchased and go back there and find out to whom it was sold, and they could deal with the person who was responsible, or persons.

So what Senator Libous is doing is increasing the penalty for the 21-year-old

person.

Now, I understand exactly what the bill stands for. An 18-year-old drives into a 7/11 parking lot, he's got his buddy who's 21, he goes in there and buys a couple of six-packs, comes back in the car and throws them on the seat, and off they go and party. Pretty clear to me what intent was, who was 21 and who wasn't. And then of course the 18-year-old, as all too often happens, gets drunk and crashes his car, hurts or kills himself or somebody else. That's what this is all about.

So we can quibble about definitions and words and do all that, but I think any intelligent jurist, any intelligent judge, any person who's a prosecutor, anybody in any area of involvement in this complex issue would understand specifically and precisely what the intent of this legislation is.

I also agree with Senator Klein. He's absolutely right, the availability of forged and fake IDs is pervasive. And how we can crack down on that and do serious harm to those who sell those IDs is an issue that

certainly bears an awful lot of attention.

So again, Senator Libous, I thank you for introducing this bill and making that old law even better.

ACTING PRESIDENT MARCELLINO: Any other Senator wishing to be heard?

Seeing none, can we please the ring the bells, make sure everybody is in their seats.

Read the last section, please.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MARCELLINO: Senator Libous, to explain his vote.

SENATOR LIBOUS: Thank you, Mr. President.

I actually didn't expect all the excitement over this bill, because I thought it was fairly simple. I wasn't here to solve every alcohol abuse problem we have in the state. Its intent is pretty simple, and I'll

just restate it. And I certainly restate the wishes of all my colleagues as to their opinions, although, Senator Johnson, I do disagree, and I think the bill is pretty clear.

But I think Senator Padavan summed it up best. What this bill's intent is to do is very simple, is to go after that individual who purchases large quantities of alcohol where, somewhere over the course of the next several months, someone will lose a life, one someone will take another's life because a minor was served by someone who purchased large quantities and provided it.

The National Institute of Health reports that -- this is just in college alone -- 1400 college kids will lose their life this year. That's just college kids. Five hundred thousand will be injured due to alcohol-related incidents.

This is something that is very, very important to me. We have had incidents in our community, like we have had in every community of this state. It is extremely unfortunate. But as I said at the outset,

someone will lose their life or take someone else's life in the next couple of months because someone purchased alcohol in large quantities and provided it to minors.

Mr. President, I vote aye.

ACTING PRESIDENT MARCELLINO: Senator Libous will be recorded in the affirmative.

Senator LaValle, to explain his vote.

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

I want to congratulate Senator Libous on pursuing this very, very important legislation. And, Senator Libous, I'm glad that we had an opportunity to discuss this bill. And I think the members, each member, regardless of what tack they took in supporting this legislation, it's important to have this discussion.

As chairman of the Senate Committee on Higher Education, I am very, very concerned -- as everyone here in this chamber is -- about drinking at college campuses. And when I hear the statistics that you quoted in

the number of deaths of our college students and the other damage that they do, it's very, very alarming.

So out of this debate we don't realize sometimes that we send a very strong message out into the highways and byways of our state, out into society, to say that this Legislature feels this is important, we have to deal with it.

Senator Klein brought up a very important point, and Senator Padavan reiterated it. The proof and documentation that students have today, I mean, they literally laugh because they can get it for five bucks or whatever, and they are drinking when they shouldn't be.

And we have to remember that we passed these laws because these are young people. They don't have the maturity, they don't have the judgment. Today the college environment is very, very stressful, and so drinking is a real problem, and drugs and other kinds of things.

So this bill has passed the Senate before. It has died in the Assembly Codes

Committee. And I hope you will prevail. If you don't over in the Assembly, we have charted a course, we hopefully will stir debate beyond this chamber here at the Capitol and out in our communities.

I vote aye, Mr. President.

ACTING PRESIDENT MARCELLINO: Senator LaValle will be recorded in the affirmative.

Senator Morahan, to explain his vote.

We have a list for those who wish to explain your vote. Senator Connor will be next, and then Senator Johnson. But right now Senator Morahan. He passes.

Senator Connor, to explain his vote.

SENATOR CONNOR: Thank you, Mr. President.

You know, I wasn't going to say anything. And I'm going to vote for this bill because I think what Senator Libous is trying to get at is important.

But, you know, all due respect to Senator Padavan, I was against that when we

raised that drinking age. I got suckered into doing the one at 19 because some high school teacher said, "Oh, my seniors come back after lunch and they've had a couple of beers and they fall asleep."

When I went to college, the drinking age was 18. When most of us did, it was 18. Did college students drink beer then? Sure. Why are we shocked that they drink beer now?

In Heidelberg in medieval times they were drinking beer and carousing around the town, and they were doing it in the first universities in Italy in the Middle Ages. And if you look at my district in Lower Manhattan, Columbia University was there, the students would be out -- and it was a religious school then, King's College -- out carousing and drinking beer and whatever. That's what college students do.

What we did that I think is silly is we put it out in the back room. Kids hide out behind dorms or in dorm rooms and chug all the beer they can before they get caught by campus security, and that's why they're binge

drinking.

When I went to college, and I went to the Catholic University of America, we had a pub on campus where we could drink beer and wine, and we went there and shared a pitcher darn near every night. And you could dance there. And you know what? If you got out of hand, somebody was there to call you in the next day and say, Hey, you've got to watch your drinking.

We put in, we put it in secret. I think we're responsible for having the binge drinking, because there's no opportunity to teach an 18-or-19-year-old student social drinking.

So I'm going to vote for this bill, but I hate to hear this "Oh, my God, I'm shocked, college students are drinking beer." They've been doing it since they first invented universities.

(Applause.)

ACTING PRESIDENT MARCELLINO: The chair is pleased that Senator Connor has testified.

Senator Johnson.

SENATOR CRAIG JOHNSON: Thank you.

Perhaps I'm like on the extreme ideological spectrum on drinking than Senator Connor, because I'm trying to actually toughen the law.

Senator LaValle talked about the IDs and how in today's technology you're able to create these wonderful IDs. If a 20-year-old with a fake ID goes out, buys 3 liters of alcohol, waits five days and then serves it, makes it available at a fraternity party or something like that, a house party or whatever it is, the 20-year-old who made it available, caused the situation, maybe put somebody in harm's way, is not liable for the E felony under this bill.

That's what I want to do. That's what I want to do. I want to strengthen the law because we give responsibility to our 18-year-olds, our 19-year-olds, our 20-year-olds. We give them all this responsibility. We should also, quite frankly, make them responsible for creating the binge drinking situation that they know

what goes on in these schools and these high schools and in these colleges.

But while I'm trying to do that, I'm also trying to make the law understandable. And with all due respect to the sponsor, and I congratulate the sponsor for addressing this issue, phrases like "makes available" isn't enough just to say, well, "makes available" makes available because it makes available. And "aid in the procurement," we need to know.

And with all due respect to Senator Padavan, you know, intelligent jurists differ and disagree. That's the great thing about our justice system, is what one judge thinks is one thing, another judge thinks another. One prosecutor thinks one thing, another prosecutor thinks another or defense attorney thinks another.

I'm trying to strengthen the law. I'm trying to stop binge drinking and hold responsible not just the 21-year-olds and 22-year-olds but also those 18-year-old seniors who know better, who know better and yet make that alcohol available to the

14-year-olds and to the 15-year-olds.

So again, I support the one-step-at-a-time approach. I want to see a giant leap. And that's why attacking this bill and raising questions about this bill, I want this bill to go farther.

So I'll vote yes for the first step, but I hope we start to see legislation like holding parents responsible for -- when their homes are opened up to parties. And I hope we address these issues like making minors responsible when they provide this alcohol in this type of situation.

So I do vote yes. Thank you, Mr. President.

ACTING PRESIDENT MARCELLINO: Senator C. Johnson will be recorded in the affirmative.

Senator Larkin, to explain his vote.

SENATOR LARKIN: I've listened to this debate on this bill for a couple of years now. And when Senator Johnson came in, I thought he was giving a class to his colleagues on that side of the aisle, because

when we talked about a couple of other issues here, it was start me and go over and over.

What we're trying to do here is correct an issue. And as long as we're trying to correct it, I think Senator Libous deserves great credit for putting this bill on the floor. Now all of a sudden I hear, after an hour and 20 minutes of debate, "but I'm going to vote for it."

You know, I think what we ought to do if we're not talking to the gallery, we ought to start talking about the bill and what the bill does and what the bill says. I think that it's nonsense. This is a good sounding bill. We're talking about human lives.

I am very proud to vote, Tom, with you, and I vote yes.

ACTING PRESIDENT MARCELLINO: Senator Larkin will be recorded in the affirmative.

Senator Skelos.

SENATOR SKELOS: Mr. President, to explain my vote.

I'm going to be supportive of this legislation. What I find absolutely amazing

from my good friends on the other side of the aisle is when we propose legislation that would raise certain acts by pedophiles and others, that they're shocked that we would make it a felony, failure to report. And I can go on and on, where we look to strengthen Megan's Law and they'll vote against it.

But now they are supporting a bill and would want to go even further by putting a kid on a basketball team -- not that it's right -- who purchases a keg of beer, to make that a felony.

So I would hope, as we go through our entire criminal justice package, you examine your conscience and your voting records and find out if it really is equivalent to a kid buying a keg of beer as long as it may be -- you know, maybe we should be looking at their licenses and other things that really mean something to them.

But yet you will stand up in shock and horror because we're looking to raise the penalties from misdemeanors to felonies, even E felonies, for those who would sodomize our kids, fail to report, and do other horrendous

acts.

So, Senator Libous, I support your bill.

ACTING PRESIDENT MARCELLINO: Senator Skelos will be recorded in the affirmative.

Senator DeFrancisco, to explain his vote.

SENATOR DeFRANCISCO: I guess the point I wanted to make, I'm in favor of this bill. It's been passed here repeatedly for years and years.

And I guess the only thing I would say is that if this bill, as is, has not gotten out of committee in the Assembly, and everyone here thinks it's a wonderful bill, then who in God's name thinks that it would ever, ever get on the floor of the Assembly if we're going to have a child with a felony record for this type of activity?

So let's talk real world. Sometimes we've got to get half a loaf. Even if we're in favor of strengthening this bill, we can't even get half a loaf.

So I think the efforts of Senator

Johnson should really be directed to the Assembly. If this bill is the first step, and it's a right step, let's get this done. Then we can worry about steps two, three and four. And maybe he can impose upon his colleagues in the other house to pass this very important bill that Senator Libous has brought to the floor.

ACTING PRESIDENT MARCELLINO: How do you vote, Senator?

SENATOR DeFRANCISCO: I vote yes.

ACTING PRESIDENT MARCELLINO: Senator DeFrancisco will be recorded in the affirmative.

Are there any other Senators wishing to be explain their votes? Seeing none, the Secretary will announce the results.

THE SECRETARY: Ayes, 61. Nays, 0.

ACTING PRESIDENT MARCELLINO: The bill is passed.

Senator Skelos.

SENATOR SKELOS: If we could lay aside Calendar Number 969 for the day.

ACTING PRESIDENT MARCELLINO:

Excuse me, Senator. I'm sorry, could you repeat that?

SENATOR SKELOS: Mr. President, if we could lay aside Calendar Number 969 for the day.

ACTING PRESIDENT MARCELLINO: The bill will be laid aside for the day.

SENATOR SKELOS: Is there any further business to come before the Senate at this time?

ACTING PRESIDENT MARCELLINO: No, there is none, Senator Skelos.

SENATOR SKELOS: There being none, I move we stand adjourned until Wednesday, May 16th, at 11:00 a.m.

ACTING PRESIDENT MARCELLINO: There being no further business, on motion, the Senate stands adjourned until Wednesday, May 16th, at 11:00 a.m.

(Whereupon, at 4:27 p.m., the Senate adjourned.)