NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

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3:30 p.m.

REGULAR SESSION

SENATOR DAVID J. VALESKY, Acting President

ANGELO J. APONTE, Secretary

P R O C E E D I N G S

ACTING PRESIDENT VALESKY: The Senate will come to order.

I ask everyone present to please rise with me and recite the Pledge of Allegiance.

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

ACTING PRESIDENT VALESKY: The invocation today will be delivered by Father Peter G. Young, of Mother Theresa Community in Albany.

REVEREND YOUNG: Thank you. Thank you, Senator.

Let us pray.

God never fails to provide our citizens with dedicated Senators. May God pour forth His blessing on our legislators and provide them with the spirit of courage to accept the many demands of their elected offices.

Today's announcement of our John Marchi's death brings back warm memories of his fifty years of the service to the state

and this chamber as the longest-serving legislator in our entire country. He respected all opinions expressed on the Senate floor, and he was always eager to, again, welcome not just his constituents but all others.

His warmth and intelligence will be missed by all of those members who have served with him in this chamber but will be always then holding him up as the example of the most dedicated public servant that he was.

God has given us a marvelous example of charity and called us then to love one another. Send down Your blessing on Your Senators who graciously and generously devote themselves to helping our New York State citizens.

Amen.

ACTING PRESIDENT VALESKY: Thank you, Father.

The reading of the Journal.

The Secretary will read.

THE SECRETARY: In Senate, Sunday, April 26, the Senate met pursuant to

adjournment. The Journal of Saturday, April 25, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT VALESKY: 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 Klein.

SENATOR KLEIN: Mr. President, I have two amendments.

The first is to restore an amended Senate bill to its original previous print on behalf of Senator Addabbo. I move to amend Senate Bill Number 3254B by striking out the amendments made on 4/21 and restoring it to its previous print number, 3254A, on behalf of Senator Addabbo.

ACTING PRESIDENT VALESKY: So ordered.

SENATOR KLEIN: The second is a motion to amend a bill on the calendar third reading. On page number 12, I offer the following amendments to Calendar Number 45, Senate Print 1742, and ask that said bill retain its place on the Third Reading Calendar, on behalf of Senator Stavisky.

ACTING PRESIDENT VALESKY: So ordered.

Senator Klein.

SENATOR KLEIN: Would you please recognize Senator Libous.

ACTING PRESIDENT VALESKY: Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President.

On behalf of Senator Little, I wish to call up her bill, Print Number 739, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT VALESKY: The Secretary will read.

THE SECRETARY: Calendar Number 57, by Senator Little, Senate Print 739, an act to authorize.

SENATOR LIBOUS: Mr. President, I now move to reconsider the vote by which this bill was passed.

ACTING PRESIDENT VALESKY: Call the roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

SENATOR LIBOUS: Mr. President, I now offer up the following amendments.

ACTING PRESIDENT VALESKY: Amendments received.

Senator Klein.

SENATOR KLEIN: Mr. President, I believe Senator Libous has a resolution at the desk. I ask that the resolution be read in its entirety and move for its immediate adoption and allow Senator Libous to speak on his resolution.

ACTING PRESIDENT VALESKY: The Secretary will read.

THE SECRETARY: By Senator

Libous, legislative resolution paying just tribute and remembering the 13 victims who lost their lives to a gunman during the American Civic Association tragedy on Friday, April 3, 2009.

"WHEREAS, This Legislative Body recognizes the tragic incident that took place at the American Civic Association in Binghamton, New York, and the loss of life that has been sustained by the victims as well as the heartache and suffering of their loved ones; and

"WHEREAS, 13 people, comprised of two employees and 11 immigrants who were inside the upstate New York immigration center, were shot and killed by a single gunman on Friday April 3, 2009; and

"WHEREAS, The community center was used in great part to teach people from countries as far away as Kazakhstan and Uzbekistan to speak and write English, with the goal of gaining U.S. citizenship; and

"WHEREAS, The deceased include Parveen Nin Ali, Binghamton, New York; Dolores

Yigal, Binghamton, New York; Marc Henry Bernard, Endicott, New York; Maria Sonia Bernard, Endicott, New York; Li Guo, Binghamton, New York; Hong Xiu Mao, Greene, New York; Lan Ho, Binghamton, New York; Hai Hong Zhong, Endwell, New York; Maria Zobniw, Binghamton, New York; Roberta "Bobbie" King, Binghamton, New York; Almir O. Alves; Jiang Ling, Endicott, New York; and Layla Khalil, Binghamton, New York; and

"WHEREAS, This Legislative Body is moved with great respect and reverent esteem to pay tribute to the heroic actions of each and every victim, knowing that their memory will forever remain with their families; and

"WHEREAS, Armed with a humanistic spirit, imbued with a sense of compassion, and comforted by loving families, each of these 13 brave individuals leaves behind a legacy which will long endure the passage of time and will remain as a comforting memory to all they befriended; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to pay just

tribute to the 13 victims who lost their lives as the result of the senseless action of a gunman during the American Civic Association tragedy, and to express sincere condolences to their families and the Binghamton community; and be it further

"RESOLVED, That copies of this resolution, suitably engrossed, be transmitted to the families of the 13 victims."

ACTING PRESIDENT VALESKY: Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President.

Mr. President, on April 3rd we were all in this chamber debating budget bills, and I got a call from the Governor, who shared with me about the senseless killings that were taking place in Binghamton at the time we were in this chamber debating budget bills.

At that time he had not known the severity of injuries or if anyone had lost their life, but he told that there was a gunman and that they believed that at that time four people were killed.

Shortly thereafter, this house was extremely gracious, under Senator Smith's leadership, and allowed me to vote, and the Governor and Senator Smith arranged for transportation for me to go back to Binghamton.

Mr. President, there were 13 victims. Eleven immigrants were killed, men and women who came to this country for an opportunity. They were taking a class in English. They were learning how to speak English so that they could contribute to this country, our society, in the right way, in the way that it's supposed to be done, not illegally, but to become very proud legal American citizens.

They were gunned down in the English class. It was a horrific sight, Mr. President. It was tragic, horrific, shocking. You can't put into words what took place that day.

Two other victims were employees. Roberta "Bobbie" King, a well-established teacher in the Binghamton School District who

volunteered and taught English classes at the American Civic Association where the tragedy took place, was killed in the classroom. Another woman, Maria Zobniw, a worker who wasn't supposed to work that day -- a very proud member of the Ukrainian community, an active worker, volunteer, participant at the American Civic Association -- was also killed.

All heroes, in my estimation, all the men and women, the two workers who wanted to help others get a better life. Certainly those who lost their lives in this tragedy wanted to become what we all are, as American citizens. They wanted a piece of the American dream just like we've been able to share.

Mr. President, the American Civic Association has for many, many years -- I believe since 1939, and I may be off a few years -- been the place in the Binghamton area, the Triple Cities, where men and women could come from another country -- like my grandparents, who came from Lebanon, used the services of the American Civic Association, like thousands of others -- an organization

that helped people to share and become part of that American dream.

Our community was shocked that day and is still stunned. Binghamton, New York, is a small town in upstate New York. It's a wonderful place to live. I was born and raised in the area, certainly lived in the city for many, many years. My grandfather, when he came to this country, opened up a business, a grocery store, and it fed our families for over fifty years.

It's a community that didn't expect anything like this. And I'm sure that there are no communities in our great country that ever expect anything like this.

We have come together, the response from the community, and certainly the men and women and public officials, from the Governor on down, and the charities that came to help, everybody has come together to mourn and to try to get through this tragedy. Our goal is to make sure that the American Civic Association can again be that beacon that will open the door for those who choose to come to

this country and to get a little bit of that American dream.

When I went back home and tried to do whatever little I could do to help, on Sunday -- the tragedy took place on a Friday. On Sunday, there was a vigil mass. Several thousand people attended. And it didn't really hit me until I saw the members of the families -- from all difficult religious denominations, different countries, ethnic backgrounds -- and I saw the children, the two young kids who lost their mother and father. That's when it really hit me. It hit me as to what happens for them next. How do we take care of them, how do we provide for them, how do we give them that opportunity for the dream that their mother and father or their loved ones wanted?

And that's what our goal is, Mr. President and members of this body. The goal of our community is to try and make sure that the family members do experience that American dream to become citizens of this country, to be able to enjoy this land, so

that the lives that were lost were not lost in vain, that there was a purpose and there was a real serious purpose.

So, Mr. President, I stand before this body today with a very heavy heart for the family members and certainly the two workers who lost their lives on this very tragic day in Binghamton.

ACTING PRESIDENT VALESKY: Thank you, Senator Libous.

Are there any other Senators wishing to be heard on the resolution?

Seeing none, the question is on the resolution. All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT VALESKY: Opposed, nay.

(No response.)

ACTING PRESIDENT VALESKY: The resolution is adopted.

At the request of Senator Libous, the resolution is open for multisponsorship by the entire Senate. Any member wishing not to

be a multisponsor should notify the desk.

Senator Klein.

SENATOR KLEIN: Mr. President, at this time can we move to a reading of the Senate Calendar Number 38.

ACTING PRESIDENT VALESKY: The Secretary will proceed with a reading of Senate Calendar Number 38.

THE SECRETARY: Calendar Number 116, by Senator Onorato, Senate Print 3357, an act to amend the Labor Law, in relation to providing notice.

ACTING PRESIDENT VALESKY: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the --

SENATOR LIBOUS: Lay it aside, please.

ACTING PRESIDENT VALESKY: The bill is laid aside.

THE SECRETARY: Calendar Number 139, by Senator L. Krueger, Senate Print 2967A, an act to amend the Real Property Law, in relation to definition.

ACTING PRESIDENT VALESKY: Read the last section.

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

ACTING PRESIDENT VALESKY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT VALESKY: The bill is passed.

THE SECRETARY: Calendar Number 161, by Senator Adams, Senate Print 2644B, an act to amend Chapter 15 of the Laws of 1998 relating to authorizing.

ACTING PRESIDENT VALESKY: Read the last section.

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

ACTING PRESIDENT VALESKY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT VALESKY: The bill is passed.

THE SECRETARY: Calendar Number 166, by Senator Stavisky --

SENATOR LIBOUS: Lay it aside.

ACTING PRESIDENT VALESKY: The bill is laid aside.

THE SECRETARY: In relation to Calendar Number 169, Senator Sampson moves to discharge, from the Committee on Judiciary, Assembly Bill Number 2578 and substitute it for the identical Senate Bill Number 2975, Third Reading Calendar 169.

ACTING PRESIDENT VALESKY: Substitution ordered.

THE SECRETARY: Calendar Number 169, by Member of the Assembly Weinstein, Assembly Print Number 2578, an act to repeal Section 516 of the Family Court Act.

ACTING PRESIDENT VALESKY: Read the last section.

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

ACTING PRESIDENT VALESKY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT VALESKY: The bill is passed.

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

SENATOR KLEIN: Mr. President, can we at this time move to a reading of the controversial calendar.

ACTING PRESIDENT VALESKY: The Secretary will ring the bells.

I ask all members to proceed to the chamber so that we may commence with the controversial reading of the calendar.

The Secretary will continue.

THE SECRETARY: Calendar Number 116, by Senator Onorato, Senate Print 3357, an act to amend the Labor Law.

SENATOR DeFRANCISCO: Explanation.

ACTING PRESIDENT VALESKY: Senator Onorato, an explanation has been requested by Senator DeFrancisco.

SENATOR ONORATO: Mr. President, this would require employers to give written

consent, notice to the rate of pay and the regular payday upon hiring, and get written acknowledgment thereof from each of the employees.

This bill would allow workers to know whether their paychecks properly show the regular and overtime hourly wages that their employers agreed to at the time of hiring.

Many workers are paid on a weekly basis. They receive a paycheck showing a lump sum for wages for their regular and overtime work. This makes it difficult to know what their overtime rate of pay is and whether their employer has properly included overtime in the paycheck.

The current law does not go far enough to many employees, since employers can just give verbal notice of the hourly rates at the time of hiring. If the employee understands the wage rates to which they are entitled, it will help prevent confusion between an employer and employee regarding overtime pay.

This bill was introduced by the

Department of Labor because of widespread violations throughout New York regarding underpayment of regular and overtime wages to workers. The bill will help the Commissioner of Labor to better enforce the wage laws and properly compute the overtime rate to which the employee is entitled.

And I believe this bill was past last year by the Assembly unanimously.

SENATOR DeFRANCISCO: Would Senator Onorato respond to a couple of questions, please.

ACTING PRESIDENT VALESKY: Senator Onorato, do you yield?

SENATOR ONORATO: Yes, I will.

ACTING PRESIDENT VALESKY: The sponsor yields.

SENATOR DeFRANCISCO: Senator Onorato, presently every employer is required to provide a pay stub with a paycheck to the employee; is that not correct?

SENATOR ONORATO: It is.

SENATOR DeFRANCISCO: Would Senator Onorato respond to another question?

ACTING PRESIDENT VALESKY: Senator, do you continue to yield?

SENATOR ONORATO: Yes.

ACTING PRESIDENT VALESKY: The Senator yields.

SENATOR DeFRANCISCO: Senator Onorato, is there anything preventing the Department of Labor presently from making an inquiry as to the rate of pay that an employer pays to an employee as well as the rate of overtime?

SENATOR ONORATO: No, there's nothing to prevent them.

SENATOR DeFRANCISCO: And one last question.

ACTING PRESIDENT VALESKY: Senator, do you continue to yield?

SENATOR ONORATO: Yes, I do.

ACTING PRESIDENT VALESKY: The sponsor yields.

SENATOR DeFRANCISCO: Isn't it true, Senator Onorato, that at the time of employment the law requires an employer to inform the employee of his rate of pay and the

rate of any overtime pay?

SENATOR ONORATO: It is.

SENATOR DeFRANCISCO: Thank you, Senator Onorato.

On the bill.

ACTING PRESIDENT VALESKY: Senator DeFrancisco, on the bill.

SENATOR DeFRANCISCO: You know, we have just gone through a budget process which raised taxes on so many things and made New York State even more inhospitable to business.

I periodically voted against many of the notice bills where you have to post some kind of notice for this or post some kind of notice for that, because in many instances I believe it's just another onerous burden placed upon people -- usually businesses in this state -- that really is just an unnecessary expense. And I've opposed Republican bills as well along the same line.

We're now one of the least, I think -- according to some groups, the second least favorable state for business to operate

in. We're surpassed only by California.

Right now the law requires individuals to be notified of their rate of pay, notified of the overtime pay. They get a pay stub which indicates their pay rate and what pay they got.

The Department of Labor is also allowed, under current law, to make any inquiries they choose to make with respect to an employment situation as to whether overtime pay is being used.

To require an acknowledgment from an employee in writing seems to me just another piece of paper that has so little importance. And whatever importance it might have or benefit it might have is clearly outweighed by another needless requirement of employers in the State of New York.

If this was a school district, we'd call it an unfunded mandate. What it basically is is another cost to business which either raises the product or ends up requiring the employer to cut somewhere else. And it may be that very employee or one of those very

employees' jobs who now really doesn't need an acknowledgment to be produced and provided, doesn't really need anything in writing that isn't already provided through the pay stub.

And it just seems to me that this is a bill that just adds to the cost of business and will hasten our steps towards being the least hospitable state for business in this union. And that doesn't bode well for employees. And employees is who we want. We want to create jobs. And this is one of the many little bills that makes it more difficult for businesses to do that.

So when the time comes, I intend to vote no.

ACTING PRESIDENT VALESKY: Thank you, Senator DeFrancisco.

Senator Ranzenhofer.

SENATOR RANZENHOFER: Yes, Mr. President. Will Senator Onorato yield to a few questions?

ACTING PRESIDENT VALESKY: Senator Onorato, do you yield?

SENATOR ONORATO: Yes, I do.

ACTING PRESIDENT VALESKY: The sponsor yields.

SENATOR RANZENHOFER: Thank you.

Through you, Mr. President. When you talked about the different types of rates of pay that we're dealing with, does that also apply to holiday pay?

SENATOR ONORATO: No, it would just require that regular hourly pay and overtime. The current law does not cover overtime pay. It does not cover overtime.

SENATOR RANZENHOFER: It does not cover overtime?

SENATOR ONORATO: It doesn't cover the specifics of the time and a half. And if the employee doesn't know about it, he won't be able to complain about it.

SENATOR RANZENHOFER: Mr. President, does an employee normally receive overtime pay when he or she works on a holiday?

SENATOR ONORATO: I can't hear you.

SENATOR RANZENHOFER: Does an

employee usually receive overtime pay when he or she works on a holiday?

SENATOR ONORATO: It all depends on the contract that they're working for. Not all pay time and a half for holidays, unless maybe it's part of the union contract.

SENATOR RANZENHOFER: So holidays would not be included in this bill?

SENATOR ONORATO: It's not included in the bill, no.

SENATOR RANZENHOFER: Okay. And one other question, through you, Mr. President.

ACTING PRESIDENT VALESKY: Senator Onorato, do you continue to yield?

SENATOR ONORATO: Yes, I do.

ACTING PRESIDENT VALESKY: The sponsor yields.

SENATOR RANZENHOFER: When it talks about a written acknowledgment, I know that last week we were debating acknowledgments and whether or not -- normally, when you talk about an acknowledgment, that has to be signed before a

notary public. That's the normal legal term when something has to be acknowledged.

So when you use the written acknowledgment here, does that document now have to be notarized, as is normally meant by a written acknowledgment in the law?

SENATOR ONORATO: It does not have to be notarized.

SENATOR RANZENHOFER: Okay. Thank you.

ACTING PRESIDENT VALESKY: Thank you, Senator Ranzenhofer.

Senator Huntley.

SENATOR HUNTLEY: Yes, Mr. President.

I would like to commend the Senator for this bill. I think this bill -- in a lot of communities where they have a large immigration population, this happens. There are many times when immigrants who collect their paycheck or the hours that they're working, they're denied. It's been in the newspapers all over the city for the past ten years.

And I think with a bill like this, this would be helpful mainly to our immigrant population. And I think it's a good bill, and I will vote yes for it.

ACTING PRESIDENT VALESKY: Thank you, Senator Huntley.

Senator Saland, on the bill.

SENATOR SALAND: Thank you, Mr. President. Would Senator Onorato yield, please?

ACTING PRESIDENT VALESKY: Senator Onorato, do you yield?

SENATOR ONORATO: Yes, I do, Mr. President.

ACTING PRESIDENT VALESKY: The sponsor yields.

SENATOR SALAND: Senator Onorato -- through you, Mr. President. Senator Onorato, I don't see anything in this bill that deals with the number of employees that an employer must have before this requirement is imposed upon them.

Is there any type of a threshold or is any employer -- is an employer of one

person required to comply?

SENATOR ONORATO: Actually, it doesn't cover that because --

SENATOR SALAND: I'm sorry?

SENATOR ONORATO: It does not state that, because under the current law it's already covered. This is only a clarification for the actual written notice.

SENATOR SALAND: So anybody --

SENATOR ONORATO: Prior to this, they could do it verbally.

SENATOR SALAND: I'm sorry?

SENATOR ONORATO: Prior to this law, they could have done it verbally.

SENATOR SALAND: So anybody to whom the current law applies would be subject to your proposed changes?

SENATOR ONORATO: Yes.

SENATOR SALAND: And if the Senator would continue to yield.

ACTING PRESIDENT VALESKY: Senator Onorato, do you continue to yield?

SENATOR ONORATO: Yes, I will.

ACTING PRESIDENT VALESKY: The

sponsor yields.

SENATOR SALAND: Under the existing law, the current law, is there a threshold for number of employees who must receive the current notice?

SENATOR ONORATO: No, not under this nor under the old one.

SENATOR SALAND: So then anybody who employs -- if you'll continue to yield.

ACTING PRESIDENT VALESKY: Senator, do you yield?

SENATOR ONORATO: Yes, I will.

SENATOR SALAND: Anybody who employs a person will be required to go through this process?

SENATOR ONORATO: Yes, they would.

SENATOR SALAND: And if you would continue to yield.

SENATOR ONORATO: Yes, I will.

SENATOR SALAND: I see in here that there is provision for -- it says: "Such acknowledgment shall conform to any requirements established by the commissioner

with regard to content and form."

If you know -- if you'd continue to yield -- will there be some provision or is there a provision in some other part of the law as to how long these acknowledgments must be maintained on file?

SENATOR ONORATO: No, there isn't.

SENATOR SALAND: Thank you, Senator Onorato. Thank you, Mr. President.

Mr. President, in an already extraordinarily challenged environment, and in a world in which we all acknowledge that small business is the key to business growth, and in a climate, a national climate which already defines New York as a poor place to do business, as was noted a bit earlier by Senator DeFrancisco, I'm extremely concerned that if there is to be a policy decision requiring this type of written notice, this type of recordkeeping, that in fact there should be some effort not to burden small businesses. I don't think we ought to be burdening large businesses, but certainly not

to burden small businesses.

I think the idea that somehow or other people don't know what they're being paid, that people are not aware of what their pay stub tells them somehow sort of defies logic.

I'm very troubled by what is yet another nail in the coffin of business, particularly small business in this state, and I would not be able to support this measure when it's called for a vote. Thank you.

ACTING PRESIDENT VALESKY: Thank you, Senator Saland.

Senator Marcellino.

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

ACTING PRESIDENT VALESKY: Senator Marcellino, on the bill.

SENATOR MARCELLINO: Some years ago I wrote and passed some legislation that I think passed this house probably unanimously, and I believe Senator Onorato at the time would have voted for it, probably did. Senator Huntley wasn't part of the chamber at

that time.

But, Senator Huntley, you mentioned the fact of people not being able to understand the language, perhaps, in having language difficulties who might not understand a piece of paper that they were handed or something like that.

We passed legislation called the Unpaid Wages Act back then, which allows anyone -- union members, relatives, friends anybody -- to intercede on behalf of any group or worker who felt or feels that they were being cheated or ripped off by an unscrupulous employer, to go in and do an appeal for them and arbitrate for them and work as their agent, if you will, applying the RICO conditions -- in other words, treble damages could be applied to any employer who was found guilty of unscrupulous tactics, not paying employees, cheating them, ripping people off, and so forth.

So that bill I know is on the books right now and has been utilized in many cases where an employer will pick up someone -- a

day laborer, for example -- and use them and then refuse to pay. Or pick up or hire someone, a youngster or a college student for summer employment, say at a particular rate, and then deny the rate that they promised and deny paying them the full wages under some scenario that they make up.

They have grounds, under the Unpaid Wages Act now, to go into court and to sue that employer and to get RICO damages applied to that employer and, you know, get proper recompense at the point.

So I just bring that up because I think that adds to the fact that this chamber has many times addressed the plight of workers who were taken advantage of by unscrupulous employers in the workforce.

Thank you.

ACTING PRESIDENT VALESKY: Thank you, Senator Marcellino.

Are there any other Senators who wish to be heard?

Senator Huntley.

SENATOR HUNTLEY: Mr. President,

I was not talking about a language barrier.

Not long ago in the City of New York there were several restaurants that had like twenty employees -- small business, because that's what you would call twenty employees. What happened is they were told that they were making a certain amount, and they were told when they work on holidays that they would be paid time and a half. And under the law that Senator Marcellino is talking about, it took them almost 16 years to collect their money.

So my point is if a person gets that in their hand, then they don't have to prove they have it. Because it was between the owner and the employees that they were not making that amount of money, it was back and forth for five years. And it took them a long time to collect. So I just felt this would be a way where that would not occur again.

Thank you.

ACTING PRESIDENT VALESKY: Thank you, Senator Huntley.

Senator Marcellino.

SENATOR MARCELLINO: I just have to make one correction.

Senator, the law that I was referring to hasn't been in effect for 16 years, so it could not have been under the law I was referring to. That law was passed in 1997 or 1998. I can get you the exact date. But it was not in effect for 16 years.

It was passed to deal with just what you were talking about, that it took too long and it was impossible to get restitution for people who were cheated by an unscrupulous employer. So we do have protections under the law that would allow for prompt dealing with people who try to cheat people who go and try to work for an honest day's wage.

Thank you, Mr. President.

ACTING PRESIDENT VALESKY: Thank you, Senator Marcellino.

Seeing no other Senators who wish to be heard, the debate is closed.

The Secretary will ring the bells.

The Secretary will read the last section.

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

ACTING PRESIDENT VALESKY: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT VALESKY: Senator Schneiderman, to explain his vote.

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

I'm very proud to vote for this bill. And I have to say that listening to the discussion here today, Senator Onorato should be commended for taking a very basic step to ensure that the working men and women of the State of New York have minimum protections when it comes to enforcing wage and hour and work condition laws.

All this does is provide them with written notice so they can prove, if it should come to that, what the rate of pay is and the regular payday that they're going to be receiving it.

This is a great common-sense bill. I vote yes. I really, frankly, have a

difficult time understanding the opposition to something like this. This is something that we should be doing. And we should be expanding the rights of the working men and women in this state, and I hope we'll continue to do so.

And congratulations to Senator Onorato on a fine bill.

ACTING PRESIDENT VALESKY: Senator Schneiderman will be recorded in the affirmative.

Senator DeFrancisco, to explain his vote.

SENATOR DeFRANCISCO: To help Senator Schneiderman understand the opposition to the bill, you don't need to provide any kind of notice if there's no employees. And the concept is that we want to grow business in this community.

And if the employees already have sufficient information by way of a pay stub, by way of the Department of Labor being able to inquire and enforce violations, I think the least we can require of employees is to read

the pay stub and figure out if the pay meets what they were promised, rather than imposing another burden which, when added to all the other burdens, it makes us the second least desirable state to do business in.

And I hope we never get to the last spot, but we're headed towards it.

ACTING PRESIDENT VALESKY: Senator DeFrancisco to be recorded in the negative.

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 116 are Senators DeFrancisco, Nozzolio, Ranzenhofer, Saland, Volker and Winner.

Ayes, 56. Nays, 6.

ACTING PRESIDENT VALESKY: The bill is passed.

THE SECRETARY: Calendar Number 166, by Senator Stavisky, Senate Print 1376A, an act to amend the General Business Law.

SENATOR LIBOUS: Mr. President.

ACTING PRESIDENT VALESKY: Senator Libous.

SENATOR LIBOUS: I believe Senator LaValle has an amendment at the desk. I would ask that you waive its reading and please call on Senator LaValle.

ACTING PRESIDENT VALESKY: Senator LaValle, there is an amendment at the desk. The reading is waived, and you may be heard on the amendment.

SENATOR LaVALLE: Thank you, Mr. President.

This amendment makes a good bill even better. And it prohibits, proscribes entities from sending out, financial institutions from sending out credit card applications, whether they be preapproved written solicitations or -- to individuals under the age of 21.

And we have passed in this house a law -- I think it was Senator Maziarz's bill -- allowing solicitations on college campuses. This amendment applies to all those who are under the age of 21, so that there's no solicitations.

I know in chatting with Senator

Flanagan, who has young people in his household, he said they are flooded with solicitations for credit cards to his children and I'm sure others here in this house.

I would also add that Senator Dodd, through his committee, has similar provisions in a bill that he had reported from his committee but yet to be enacted. And we know how long it takes, many times, for Congress to act.

So I think this is a good amendment to a good bill and would strengthen it even further.

ACTING PRESIDENT VALESKY: Thank you, Senator LaValle.

I have reviewed your amendment and listened to your explanation. However, I rule it out of order as not germane to the original bill at hand.

SENATOR LaVALLE: Mr. President, our Senate rules -- and I just looked at it -- on the issue of germaneness, there is nothing that if you look at the section dealing with amendments that allows for germaneness, you

have to go to the section overall. And that talks about as long as it relates to the question under debate.

I have here from Mason's Legislative Manual, Section 402, paragraph 3: "To be germane, the amendment is required only to relate to the same subject. It may entirely change the effect or be in conflict with the spirit of the original motion or measure and still be germane to the subject."

So I think that this amendment amends the General Obligations Law, it's in the same spirit as the original bill. And I believe that to act, I need to know why you are ruling that this is not germane.

ACTING PRESIDENT VALESKY: Senator Klein, why do you rise?

SENATOR KLEIN: Point of order, Mr. President.

ACTING PRESIDENT VALESKY: State your point of order.

SENATOR KLEIN: According to my reading of germaneness under Rule 9, Section 3-A, and also Senate Rule 6,

Section 4-B, it requires any amendment to a bill to be germane to the original object or purpose of the original bill in order for the amendment to be allowed.

Senator Stavisky's original legislation increases the maximum liability to $400 from $100. While Senator LaValle's goal in his amendment is laudable, it has nothing to do with that maximum liability. It deals with a completely other topic which would require that no solicitations take place for anyone under 21.

So I believe that the amendment is not germane under these sections that I cited.

ACTING PRESIDENT VALESKY: Senator Klein, the chair does concur that the subject matter of the amendment that is at hand, regarding the unsolicited mailing of the credit card applications to persons under the age of 21, deals with a different topic than Senator Stavisky's bill.

SENATOR LaVALLE: No, excuse me, Mr. President. If I may, Mr. President.

ACTING PRESIDENT VALESKY:

Senator LaValle.

SENATOR LaVALLE: The rule that Senator Klein read does not say "topic," it says "object or purpose."

ACTING PRESIDENT VALESKY: Excuse me, Senator LaValle.

Senator Stavisky, why do you rise?

SENATOR STAVISKY: I rise on a point of order.

ACTING PRESIDENT VALESKY: State your point of order.

SENATOR STAVISKY: My point of order is that my bill does not amend the General Obligations Law but the General Business Law.

SENATOR LaVALLE: I have that here, both bills may do the same thing. I had that.

But, Mr. President --

ACTING PRESIDENT VALESKY: Senator LaValle.

SENATOR LaVALLE: My point in terms of object and purpose is to protect the consumer. Both bills relate to that, as it is

to credit card loans.

ACTING PRESIDENT VALESKY: Senator LaValle, I understand your comments. However, the ruling is that the amendment is out of order as being not germane to the bill.

If you wish to appeal that ruling, you certainly have that opportunity.

SENATOR LaVALLE: I wish to appeal the ruling of the chair, Mr. President.

ACTING PRESIDENT VALESKY: Okay. The question before the house is whether the decision of the chair shall stand. Those in favor of overruling the decision of the chair should indicate by raising your hand.

The Secretary will announce the results.

THE SECRETARY: Ayes, 30. Nays, 31.

ACTING PRESIDENT VALESKY: The ruling of the chair is sustained, and the appeal is denied.

On the bill, read the last section.

Senator Saland.

SENATOR SALAND: Can we please

have an explanation of the bill.

ACTING PRESIDENT VALESKY: Senator Stavisky, an explanation of the bill has been requested by Senator Saland.

SENATOR STAVISKY: This is one of the simplest bills you can imagine. It changes the number "1" to the number "4." In other words, if there's a billing error, the liability shall not be greater than $400 where previously it was $100.

The bill was amended or was written and drafted in 1973. And what we did was we tracked the Consumer Price Index for the period between 1973 and 2008 or 2009. And it was I think 479 percent, which is where we got the $400 figure.

SENATOR SALAND: Would Senator Stavisky yield to a question?

ACTING PRESIDENT VALESKY: Senator Stavisky, will you yield?

SENATOR STAVISKY: Yes.

ACTING PRESIDENT VALESKY: The sponsor yields.

SENATOR SALAND: The only thing,

Senator Stavisky, that I see as being amended in this bill is, as you point out, the amendment from "1" to "4."

But this was not the same bill that I saw in committee, which I had voted for in committee. Could you tell me what the difference is between the committee bill and the bill that's on the floor?

SENATOR STAVISKY: Yeah. I believe it was 200, I had changed it from 100 to 200, and then the thought occurred to us as we thought about it that it might make more sense for us to track the Consumer Price Index for that period of time. Which is why we made it $400. That was the only amendment.

SENATOR SALAND: Thank you.

ACTING PRESIDENT VALESKY: Are there any other Senators who wish to be heard?

Seeing none, the debate is closed.

The Secretary will ring the bells.

The Secretary will read the last section.

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

November.

ACTING PRESIDENT VALESKY: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT VALESKY: Senator Stavisky, to explain her vote.

SENATOR STAVISKY: I just want to indicate that Senator LaValle's bill is an excellent bill. Credit card reform is desperately needed. And I believe that there are a number of bills pending. I know Carolyn Maloney, in Congress, is a sponsor of some credit card reform bills.

But that's not this bill, that's a totally different bill. And hopefully we will get to do both this session.

Thank you. I vote aye.

ACTING PRESIDENT VALESKY: Senator Stavisky to be recorded in the affirmative.

Announce the results.

THE SECRETARY: Ayes, 62. Nays, 0.

ACTING PRESIDENT VALESKY: The

bill is passed.

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

SENATOR KLEIN: Mr. President, I believe there's a motion to discharge at the desk. I ask that we take up the motion at this time.

ACTING PRESIDENT VALESKY: The Secretary will read.

THE SECRETARY: Senate Print 2632, by Senator Padavan, an act to amend the Criminal Procedure Law.

ACTING PRESIDENT VALESKY: Senator Padavan.

SENATOR PADAVAN: Thank you, Mr. President.

You know, there's a class of criminals out there whose rap sheet is their resume. Year after year they commit crimes -- serious crimes, misdemeanors -- and never see the inside of a jail.

I think it's important that we consider legislation, as we have for the last two years, that puts a limit on the number of

Class A misdemeanors that an individual can commit so that at a certain point in time he's now subject to a new category, which is called the Class E felony/aggravated criminal conduct, which has a four-year maximum penalty.

And that is the essence of this bill. It says if someone within a 10-year period has committed three or more A misdemeanors or felonies, they will be subject to this new penalty, this new category, and be put in jail for a reasonable period of time.

Now, what are these Class A misdemeanors? Well, there are pages of them if you look through the books: criminal possession of a weapon, arson, assault, auto stripping, criminal impersonation, endangering the welfare of a child, identity theft. The list goes on and on and on.

So we're not talking about minor acts of criminality, we're talking about serious acts of criminality where the individual has been found guilty.

This bill passed last year in this

house 52 to 10, and the prior year 53 to 7. So obviously it has enjoyed overwhelming bipartisan support. And hopefully we can get it out of committee and get it back out on the floor and pass it again this year.

Thank you, Mr. President.

ACTING PRESIDENT VALESKY: Thank you, Senator Padavan.

Are there any other Senators that wish to be heard on the motion to discharge?

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

I just wanted to let the sponsor or proponent of the motion know that we are going to be taking up a similar bill dealing with the issue of persistent misdemeanor defendants in the Codes Committee. Not exactly the same, but dealing with the substance of these issues. So it will be proceeding forward on that track as well.

Thank you, Mr. President.

ACTING PRESIDENT VALESKY: Thank you, Senator Schneiderman.

The question is on the motion to discharge the Committee on Codes from consideration of Senate Print Number 2632. All those in favor of the motion please signify by raising your hand.

Announce the results.

THE SECRETARY: Ayes, 35. Nays, 27.

ACTING PRESIDENT VALESKY: The motion carries.

Senator Smith.

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

Colleagues, I know that we're coming to the end of session today. And before we adjourn, as we all know, one of our colleagues, Senator Marchi, has passed away.

While I know that we will be doing formal resolutions and showing tribute to his family, I thought it was only fitting, since this is the first time we have all gathered today since his passing, that we would have a moment of silence in the chamber in respect to where he was last sitting in this chamber.

Senator Stachowski has vacated his seat so that we can show a symbol of where he last sat in this particular chamber for all the members to note.

We thought it would be fitting if we could have a moment of silence in recognition of the contribution he's made to this state, to Staten Island, and to so many of us individually, that we would have a moment of silence with respect to the empty chair where Senator Marchi once sat.

ACTING PRESIDENT VALESKY: I ask everyone in the chamber to please rise as we honor the memory of the late Senator John Marchi.

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

SENATOR SMITH: Mr. President, is there any further business at the desk?

ACTING PRESIDENT VALESKY: There is none, Senator Smith.

SENATOR SMITH: There being none, I move that we adjourn until Tuesday, April 28th, at 3:00 p.m.

ACTING PRESIDENT VALESKY: On a motion by Senator Smith, the Senate stands adjourned until Tuesday, April 28th, at 3:00 p.m.

(Whereupon, at 4:33 p.m., the Senate adjourned.)