NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

March 7, 2011

3:14 p.m.

REGULAR SESSION

SENATOR JOHN J. FLANAGAN, Acting President

FRANCIS W. PATIENCE, Secretary

P R O C E E D I N G S

ACTING PRESIDENT FLANAGAN: The Senate will come to order.

I ask everyone present to please rise and repeat the Pledge of Allegiance.

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

ACTING PRESIDENT FLANAGAN: In the absence of clergy, I would ask that we all bow our heads in a moment of silence.

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

ACTING PRESIDENT FLANAGAN: Reading of the Journal.

THE SECRETARY: In Senate, Sunday, March 6, the Senate met pursuant to adjournment. The Journal of Saturday, March 5, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT FLANAGAN: 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 Libous.

SENATOR LIBOUS: Thank you, Mr. President.

I believe that Senator Skelos has a privileged resolution at the desk. I ask that we have the title read and move for its immediate adoption.

ACTING PRESIDENT FLANAGAN: The Secretary will read.

THE SECRETARY: By Senator Skelos, legislative resolution commemorating the 100th Anniversary of the Village of Lynbrook.

ACTING PRESIDENT FLANAGAN: The question is on the resolution. All those in please signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT FLANAGAN: Opposed, nay.

(No response.)

ACTING PRESIDENT FLANAGAN: The resolution is adopted.

Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President.

I believe there is another privileged resolution at the desk by Senator Peralta. May we please have the title read and move for its immediate adoption.

ACTING PRESIDENT FLANAGAN: The Secretary will read.

THE SECRETARY: By Senator Peralta, legislative resolution commemorating the 60th Anniversary of the East Elmhurst-Corona Civic Association.

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

(Response of "Aye.")

ACTING PRESIDENT FLANAGAN: Opposed, nay.

(No response.)

ACTING PRESIDENT FLANAGAN: The resolution is adopted.

Senator Libous.

SENATOR LIBOUS: Mr. President, at this time I'd like to take up the noncontroversial calendar, please.

ACTING PRESIDENT FLANAGAN: The Secretary will read.

THE SECRETARY: Calendar Number 65, by Senator Bonacic, Senate Print 2141, an act to amend the Penal Law.

ACTING PRESIDENT FLANAGAN: Read the last section.

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

ACTING PRESIDENT FLANAGAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT FLANAGAN: The bill is passed.

THE SECRETARY: Calendar Number 80, by Senator Fuschillo --

SENATOR BRESLIN: Lay it aside.

ACTING PRESIDENT FLANAGAN: The bill is laid aside.

THE SECRETARY: Calendar Number

96, by Senator Hannon, Senate Print 1920, an act to amend the Real Property Tax Law.

ACTING PRESIDENT FLANAGAN: Read the last section.

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

ACTING PRESIDENT FLANAGAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT FLANAGAN: The bill is passed.

THE SECRETARY: Calendar Number 110, by Senator Perkins, Senate Print 1365, an act to amend the Penal Law.

ACTING PRESIDENT FLANAGAN: Read the last section.

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

ACTING PRESIDENT FLANAGAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT FLANAGAN: The

bill is passed.

THE SECRETARY: Calendar Number 113, by Senator Skelos, Senate Print 1999, an act to amend the Criminal Procedure Law.

ACTING PRESIDENT FLANAGAN: Read the last section.

THE SECRETARY: Section 6. This act shall take effect on the first of November.

ACTING PRESIDENT FLANAGAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53. Nays, 1. Senator Perkins recorded in the negative.

ACTING PRESIDENT FLANAGAN: The bill is passed.

THE SECRETARY: Calendar Number 114, by Senator Flanagan, Senate Print 2476, an act to amend the Penal Law.

ACTING PRESIDENT FLANAGAN: Read the last section.

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

ACTING PRESIDENT FLANAGAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT FLANAGAN: The bill is passed.

THE SECRETARY: Calendar Number 116, by Senator Saland, Senate Print 2599, an act to amend the Penal Law.

ACTING PRESIDENT FLANAGAN: Read the last section.

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

ACTING PRESIDENT FLANAGAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT FLANAGAN: The bill is passed.

THE SECRETARY: Calendar Number 118, by Senator Addabbo, Senate Print 1247, an act to amend the Labor Law.

ACTING PRESIDENT FLANAGAN: Read the last section.

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

ACTING PRESIDENT FLANAGAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT FLANAGAN: The bill is passed.

THE SECRETARY: Calendar Number 123, by Senator Fuschillo, Senate Print 1998, an act to amend the Judiciary Law.

ACTING PRESIDENT FLANAGAN: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 60th day.

ACTING PRESIDENT FLANAGAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT FLANAGAN: The bill is passed.

THE SECRETARY: Calendar Number 134, by Senator Bonacic, Senate Print 3100, an act to amend the Vehicle and Traffic Law.

ACTING PRESIDENT FLANAGAN: Read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT FLANAGAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT FLANAGAN: The bill is passed.

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

SENATOR LIBOUS: Mr. President, in one moment we're going to go to the controversial reading of the calendar.

I believe that moment has come, and we will do it now.

ACTING PRESIDENT FLANAGAN: Thank you, Senator Libous.

May we have the reading of the controversial portion of the calendar.

THE SECRETARY: Calendar Number 80, by Senator Fuschillo, Senate Print 525, an act to amend the General Business Law.

SENATOR SQUADRON: Explanation.

ACTING PRESIDENT FLANAGAN: Senator Fuschillo, an explanation has been asked for.

SENATOR FUSCHILLO: Thank you very much, Mr. President. Who had asked for the explanation?

ACTING PRESIDENT FLANAGAN: Senator Squadron requested the explanation.

SENATOR FUSCHILLO: Okay. Senator, the original Itinerant Vendor Bill was adopted in 1995. And in dealing with -- when I chaired Consumer Protection for 10 years in the Senate, and dealing with the Retail Council and law enforcement authorities, they were concerned about certain products that were still being sold essentially on a black market, as they called it, in flea markets, such as baby products and other products that they feel could be contaminated when they're not properly refrigerated or taken care of, and there were some other items there as well.

And as a result of dealing with law enforcement and the Retail Council for a number of years, this bill came out of discussions with that to further protect the public.

SENATOR SQUADRON: Thank you for

the explanation.

Will Senator Fuschillo yield for a question.

ACTING PRESIDENT FLANAGAN: Senator Fuschillo, will you yield to a question by Senator Squadron?

SENATOR FUSCHILLO: I'd be happy to.

SENATOR SQUADRON: Senator Fuschillo, first of all, I think it's an admirable point, and certainly some of the items in here I think do need to be regulated and the law does need to be updated.

I would ask, though, it's a pretty broad set of prohibitions, including herbal products, dietary supplements, botanical extracts, vitamins. For those items, what's the definition of those items? Does it exist elsewhere in the law, or is there another way that as a Legislature we can direct to understand that?

SENATOR FUSCHILLO: In answer to your question, we got that from the Retail Council many years ago as we were negotiating this with the Assembly. That is in the

federal law, and that's how they clearly define some of these languages which we're going to try to adopt in state law.

We're not at it yet, we're not at an agreement, Senator, with the Assembly. I'd be happy to work with you to clarify any questions you may have, or any ambiguity in language here, because I think this is too important for the public's concern as a consumer protection issue that the Assembly doesn't take this up. I'll be happy to work with you in further talks and negotiations.

SENATOR SQUADRON: Through you, Mr. President, one final question, if Senator Fuschillo will yield.

ACTING PRESIDENT FLANAGAN: Senator Fuschillo, will you continue to yield?

SENATOR FUSCHILLO: Yes.

ACTING PRESIDENT FLANAGAN: Senator Squadron.

SENATOR SQUADRON: Thank you. And I appreciate that offer, and I look forward to it.

And the definition of cosmetics does seem as if it is pulled from somewhere

and does have some sort of existing basis. Does it, or is that just sort of a very specific definition?

SENATOR FUSCHILLO: I'm sorry, I didn't hear your question.

SENATOR SQUADRON: The definition of cosmetics in the bill does seem to have a specific basis.

SENATOR FUSCHILLO: Very specific to the concerns that the Retail Council has raised based on experiences with law enforcement and what they experienced was really being sold illegally. You know, a lot of these products are being bought illegally and then sold at flea markets, and this is very specific to the language that law enforcement was concerned about.

SENATOR SQUADRON: Thank you, Senator.

On the bill.

ACTING PRESIDENT FLANAGAN: Senator Squadron on the bill.

SENATOR SQUADRON: Thank you.

As I say, I think that Senator Fuschillo's goal here is one that I share. It

makes a lot of sense. I think that certainly -- I'm not sure if I've personally been victimized by it, but I know many who have, who have gotten those dead batteries. And nothing is more frustrating. Certainly that's a consumer protection issue that needs to be dealt with when you talk about things like food for infants, for those under two.

But, you know, I'm very concerned about the fact that this definition seems quite broad, especially as applies to -- as I said to Senator Fuschillo, the cosmetics definition seems quite specific. I would hope that it has some basis also in federal law or in some sort of common practice. It seems likely that it does.

The other definitions, as relates to dietary supplements, botanical extracts, vitamins, herbal substances, seems simply too unspecific to be enforceable. And one of the great goals here that I'm sure Senator Fuschillo shares with myself and many members of this house is to have something enforceable so that we all protect what we need to protect.

I fear that the bill in its current form doesn't. It's so broad as to be ineffective. And as a result, I'll be voting no.

Thank you, Mr. President.

ACTING PRESIDENT FLANAGAN: Thank you, Senator Squadron.

Senator Marcellino on the bill.

SENATOR MARCELLINO: Yes, thank you, Mr. President.

I commend Senator Fuschillo for bringing this bill up. This is an extremely important bill. Anyone who has gone to a retail establishment, a drugstore or whatever, to buy cosmetics or buy something, over-the-counter drugs, whatever, you will notice lately that there are plastic blocks on the shelves so that in order to get an object you have to slide one block over to reach in to get it.

The reason for that is these organized criminal gangs. These are professional thieves. This is not the kid who steals a couple of items and takes them home, these are people who are making a living doing

this. They walk in, create a distraction someplace else in the store, and then sweep whole shelves off. They remove hundreds and hundreds of items at one time.

These plastic blocks are designed to prevent that from occurring, at great cost -- which you and I are paying for in the course of the products that these people are selling to us.

So I think this is a great idea. This kind of organized theft is getting out of hand and has to be dealt with, and this is one way of doing it. And I appreciate that, and I support this bill and will be voting aye.

ACTING PRESIDENT FLANAGAN: Thank you, Senator Marcellino.

Senator Perkins.

SENATOR PERKINS: Thank you very much, Mr. Chairman. I'd like to ask the sponsor a question or two.

ACTING PRESIDENT FLANAGAN: Senator Fuschillo, will you yield to a question from Senator Perkins?

SENATOR FUSCHILLO: I'd be happy to, Senator.

SENATOR PERKINS: I generally speaking am very supportive of what is it is you're trying to accomplish.

I have sort of a thriving vendor group that operates in my district that sells products that I'm not sure are being outlawed by this particular bill, and I just wanted to be clear what is covered and what may not be covered.

For instance, a lot of these so-called street merchants that sell products in my district, they don't steal the products that they sell, so they don't fall into the category of those that you are rightfully attempting to outlaw. But they nevertheless sell like Shea rubber, which is like a cream that is made from a seed that -- and I don't know if that product, which is a popular product, is one of which you might be outlawing with this legislation. And certain type of herbal ingredients that are part of what they sell in their oils also.

So I just want to get some clarification with respect to those types of products.

SENATOR FUSCHILLO: Senator, I would have to ask you, is that a cosmetic? Because if it is, it may be prohibited on this.

But let me just tell you the intent of this legislation, just so you know. Senator Marcellino alluded to it a little bit.

Organized theft throughout this country is a multi-multi-billion-dollar operation. And there's a grave concern here for products that are in this organized theft, whether it's products that are being stolen from a legal operation or products that are just made up from other illegal activities -- certain soaps and certain cosmetics that may not be regulated are getting into the flea markets, and law enforcement needs greater tools to go after them.

It was mentioned baby formula. Baby formula shouldn't sit out in a street vendor operation with the sun beating down on it, and other products.

You know, the purpose of bringing this here today is to elevate the discussion, get it approved by the Senate, work with the

Assembly. Senator Squadron has some legitimate concerns which I'm going to address with him. If that's a product that's prohibited from a legal vendor, you and I will work on that, because that's not the intent of this at all.

SENATOR PERKINS: Well, I'd like to believe that's not the intent. I'm afraid, in supporting this, that I would be sending them a message that their Senator, who supports them, who's organizing them and who wants to see them even grow, is potentially crippling them.

SENATOR FUSCHILLO: I don't think --

ACTING PRESIDENT FLANAGAN: Senator, please address your question through the chair.

SENATOR PERKINS: I'm sorry.

ACTING PRESIDENT FLANAGAN: Would you like Senator Fuschillo to yield for another question?

SENATOR PERKINS: Yes, through you --

SENATOR FUSCHILLO: Well, I think

he was finishing the first part.

But through you, Mr. President, I think your message is greater than that. And you and I will work on that to clarify that issue if it's not clarified here now. Your message is one of public safety, and that's what my message is, to protect our citizens that choose to go to the outdoor vendors. It's not to prohibit legitimate businesses that are there right now or pay a fee.

If there's a question of that, and if something needs to be cleared up through the questions that Senator Squadron had raised, I'll be happy to do that. But this is bigger than that. It's a larger operation of public safety, and also dealing with law enforcement, to clarify some language that they need to go after individuals.

SENATOR PERKINS: Through you, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Perkins.

Senator Fuschillo, will you continue to yield?

SENATOR FUSCHILLO: I'd be happy

to, Senator.

SENATOR PERKINS: I believe that you're after bigger fish than what it is that I'm very concerned about. But very often those big nets catch little fish, and not intentionally. And I'm concerned about the possibility that that might happen, especially since these are small entrepreneurs that we encourage who are decent, law-abiding and even provide somewhat of a public safety value by virtue of their presence in the neighborhood. So --

SENATOR FUSCHILLO: And I agree with you, Senator, and your comments are duly noted.

SENATOR PERKINS: All right, thank you. Thank you.

ACTING PRESIDENT FLANAGAN: Thank you, Senator Perkins.

Any other Senator wishing to be heard?

Senator Squadron.

SENATOR SQUADRON: Through you, Mr. President, to Senator Fuschillo, I did say I was done; I have one final question, through

you, Mr. President, if Senator Fuschillo would be willing to yield.

ACTING PRESIDENT FLANAGAN: Senator Fuschillo, will you yield to one final question?

SENATOR FUSCHILLO: The second final question?

I'd be happy to yield to your final question.

SENATOR SQUADRON: Thank you. I appreciate that. And I did say I would not have any more.

So very briefly, is there a same-as bill in the Assembly?

SENATOR FUSCHILLO: Yes, there is.

SENATOR SQUADRON: Thank you. I thank Senator Fuschillo.

So just very briefly -- and again, we are sharing a lot of values and goals here, and I really do appreciate Senator Fuschillo's willingness to debate this.

I worry -- and in fact, when I was a freshman here last year I was repeatedly told by more senior colleagues on other side

of the aisle to be very, very careful about passing one-houses that weren't fully formed and fully ready, frankly especially if there's a same-as, for fear that before you know it, it could become law before it's ready.

So I really would urge, again Senator Fuschillo to hold the bill today so that we can all be voting unanimously for something that we support as a goal. Certainly, as I've said before, if Senator Fuschillo chooses not to hold it, I'll be voting in the negative.

But we have an opportunity here to do something bipartisan together and something better formed when this house passes it. So I would really urge that.

Thank you, Mr. President.

ACTING PRESIDENT FLANAGAN: Thank you, Senator Squadron.

Are there any other Senators wishing to be heard?

Hearing none, debate is closed. The Secretary will ring the bell.

Read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT FLANAGAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT FLANAGAN: Senator Perkins, to explain his vote.

SENATOR PERKINS: Thank you very much.

I want to extend my appreciation to the sponsor for the laudable efforts that he's making for what is clearly a very, very important concern and something that we would all normally want to be able to support.

Unfortunately for me, I'm not going to be able to vote for this bill at this time. I'd like to be able to join with the sponsor and fix it, if you will, such that it addresses some of the concerns that I believe are legitimate that I have that reflect the kinds of entrepreneurship that you probably would want to be supportive of.

But I think you might not appreciate how this net manages to capture those folks unintentionally. So from that point of view, I'm going to have to vote no.

ACTING PRESIDENT FLANAGAN: Senator Perkins, thank you.

Would the members who are seeking to vote in the negative, would you please kindly raise your hands again so that the clerk may get an accurate count.

Senator Hassell-Thompson, to explain her vote.

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

I too echo the concerns raised by Senator Perkins. I think that there are some areas of specificity that we could do to make this bill a little bit better.

I too would like to volunteer to work with the sponsor to work on some of those areas of glitches. In communities such as the type that both Senator Perkins and I represent, we have a large number of vendors. And we have worked very hard to make sure, number one, that those vendors are licensed vendors. The 125th Street is world-known for the numbers of vendors and how they have now spatially created a place for that kind of vending opportunity.

But too often in helping them to create a legitimacy, which is what we've striven very hard to do, we want to be sure that the things that we do here on the floor don't adversely affect their ability to do business.

So again, I'd like to offer my help in developing the language that would make this the bill with the intent that you have, Senator Fuschillo, but that would give the protections appropriately to those that fall outside of that category.

Thank you, Mr. President.

ACTING PRESIDENT FLANAGAN: Thank you, Senator Hassell-Thompson.

The clerk will announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 80: Senators Breslin, Hassell-Thompson, Huntley, Liz Krueger, Perkins, Rivera and Squadron.

Absent from voting: Senators Montgomery, Parker, and Smith.

Ayes, 49. Nays, 7.

ACTING PRESIDENT FLANAGAN: The

bill is passed.

Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President.

Mr. President, has the desk received an announcement from the Assembly?

ACTING PRESIDENT FLANAGAN: We have, Senator Libous, and it is filed in the Journal Clerk's office.

SENATOR LIBOUS: Thank you, Mr. President.

Before we adjourn, there will be an immediate Republican conference in Room 332.

And, Mr. President, is there any further business at the desk?

ACTING PRESIDENT FLANAGAN: No, there is not, Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President.

Seeing there be no further business, we will adjourn until Tuesday, March 8th, at 3:00 p.m.

ACTING PRESIDENT FLANAGAN: On motion, the Senate stands adjourned until Tuesday, March 8th, at 3:00 p.m.

(Whereupon, at 3:40 p.m., the Senate adjourned.)