NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

March 10, 2022

11:05 a.m.

REGULAR SESSION

SENATOR ROXANNE J. PERSAUD, Acting President

ALEJANDRA N. PAULINO, ESQ., Secretary

P R O C E E D I N G S

ACTING PRESIDENT PERSAUD: The Senate will come to order.

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

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

ACTING PRESIDENT PERSAUD: In the absence of clergy, let us bow our heads in a moment of silent reflection or prayer.

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

ACTING PRESIDENT PERSAUD: Reading of the Journal.

THE SECRETARY: In Senate, Wednesday, March 9, 2022, the Senate met pursuant to adjournment. The Journal of Tuesday, March 8, 2022, was read and approved. On motion, the Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

The Secretary will read.

THE SECRETARY: Senator Mayer moves

to discharge, from the Committee on Consumer Protection, Assembly Bill Number 431C and substitute it for the identical Senate Bill 16D, Third Reading Calendar 624.

ACTING PRESIDENT PERSAUD: Substitution so ordered.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Gianaris.

SENATOR GIANARIS: Please take up the reading of the calendar, Madam President.

ACTING PRESIDENT PERSAUD: The Secretary will read.

THE SECRETARY: Calendar Number 111, Senate Print 1172C, by Senator Rivera, an act to amend the Public Health Law.

ACTING PRESIDENT PERSAUD: Read the last section.

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

ACTING PRESIDENT PERSAUD: Call the

roll.

(The Secretary called the roll.)

ACTING PRESIDENT PERSAUD: Announce the results.

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT PERSAUD: The bill is passed.

THE SECRETARY: Calendar Number 264, Senate Print 5720, by Senator Brooks, an act to amend the Executive Law.

ACTING PRESIDENT PERSAUD: Read the last section.

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

ACTING PRESIDENT PERSAUD: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT PERSAUD: Announce the results.

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT PERSAUD: The bill is passed.

THE SECRETARY: Calendar Number 454, Senate Print 2013, by Senator Jackson, an act to amend the Administrative Code of the City

of New York.

ACTING PRESIDENT PERSAUD: Read the last section.

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

ACTING PRESIDENT PERSAUD: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT PERSAUD: Announce the results.

THE SECRETARY: In relation to Calendar 454, those Senators recorded in the negative are Senators Akshar, Borrello, Boyle, Gallivan, Griffo, Helming, Jordan, Lanza, Martucci, Mattera, Oberacker, O'Mara, Ortt, Palumbo, Rath, Ritchie, Serino, Stec, Tedisco and Weik.

Ayes, 35. Nays, 20.

ACTING PRESIDENT PERSAUD: The bill is passed.

THE SECRETARY: Calendar Number 475, Senate Print 4598, by Senator Brooks, an act authorizing the Copiague Fire District to file an application for exemption from real property taxes.

ACTING PRESIDENT PERSAUD: Read the last section.

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

ACTING PRESIDENT PERSAUD: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT PERSAUD: Announce the results.

THE SECRETARY: In relation to Calendar 475, those Senators voting in the negative are Senators Akshar and O'Mara.

Ayes, 53. Nays, 2.

ACTING PRESIDENT PERSAUD: The bill is passed.

THE SECRETARY: Calendar Number 507, Senate Print 4650, by Senator Mannion, an act to amend the Education Law.

ACTING PRESIDENT PERSAUD: Read the last section.

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

ACTING PRESIDENT PERSAUD: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT PERSAUD: Announce the results.

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT PERSAUD: The bill is passed.

THE SECRETARY: Calendar Number 557, Senate Print 5734A, by Senator Ryan, an act requiring a multi-agency study of the issues impacting the continuum of caregiving in New York State.

ACTING PRESIDENT PERSAUD: Read the last section.

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

ACTING PRESIDENT PERSAUD: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT PERSAUD: Announce the results.

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT PERSAUD: The bill is passed.

THE SECRETARY: Calendar Number 608, Senate Print 7004, by Senator Skoufis, an act to repeal Section 153 of the Economic

Development Law relating to the Explore New York State grant program.

ACTING PRESIDENT PERSAUD: Read the last section.

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

ACTING PRESIDENT PERSAUD: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT PERSAUD: Announce the results.

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT PERSAUD: The bill is passed.

THE SECRETARY: Calendar Number 612, Senate Print 988, by Senator Gaughran, an act to amend the Navigation Law.

ACTING PRESIDENT PERSAUD: Read the last section.

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

ACTING PRESIDENT PERSAUD: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT PERSAUD: Announce

the results.

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT PERSAUD: The bill is passed.

THE SECRETARY: Calendar Number 614, Senate Print 1364, by Senator Serrano, an act to amend the Parks, Recreation and Historic Preservation Law.

ACTING PRESIDENT PERSAUD: Read the last section.

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

ACTING PRESIDENT PERSAUD: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT PERSAUD: Announce the results.

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT PERSAUD: The bill is passed.

THE SECRETARY: Calendar Number 624, Assembly Print Number 431C, by Assemblymember Rozic, an act to amend the General Business Law.

SENATOR LANZA: Lay it aside.

ACTING PRESIDENT PERSAUD: Lay it aside.

Senator Gianaris, that completes the reading of today's calendar.

SENATOR GIANARIS: Thank you, Madam President.

Let's take up the bill on the controversial calendar, please.

ACTING PRESIDENT PERSAUD: The Secretary will ring the bell.

The Secretary will read.

THE SECRETARY: Calendar Number 624, Assembly Print Number 431C, by Assemblymember Rozic, an act to amend the General Business Law.

ACTING PRESIDENT PERSAUD: Senator Palumbo, why do you rise?

SENATOR PALUMBO: Thank you, Madam President. Would the sponsor yield for a few questions, please.

ACTING PRESIDENT PERSAUD: Will the sponsor yield?

SENATOR MAYER: Yes, happy to.

ACTING PRESIDENT PERSAUD: The sponsor will yield.

SENATOR PALUMBO: Thank you, Senator. How are you? Good morning.

SENATOR MAYER: Good morning.

SENATOR PALUMBO: I just have a few questions with respect to this legislation. Can you tell us, just generally, why this is necessary at this point?

SENATOR MAYER: Absolutely, Senator Palumbo. And I'm happy to say this is the second year that the Senate will be passing this bill, which so many of my colleagues -- and yours as well -- voted for.

Because eating disorders among young people are a very serious health risk, and that youth use of diet pills and diet supplements sold over the counter without prescription are an increasing problem. Over 11 percent of teens report using dietary supplements for weight loss, and about 17 percent of boys are using some of these. And this is a growing problem, particularly with social media and the pressure to have perfect bodies for young people.

So I'm pleased that we'll be taking a firm step forward in limiting the sale of over-the-counter diet pills and diet supplements

for weight loss to those under 18.

SENATOR PALUMBO: Thank you, Senator. Would you yield for another question, please.

ACTING PRESIDENT PERSAUD: Will the sponsor yield?

SENATOR MAYER: Yes.

ACTING PRESIDENT PERSAUD: The sponsor yields.

SENATOR PALUMBO: Thank you.

And so in that regard, are there any other states that currently limit or require identification and age verification for the sale of supplements?

SENATOR MAYER: I don't believe any other state has yet passed through both houses the kind of bill that we are talking about here, and that is a credit to New York State, as it has among other things, in ensuring children's safety. I believe California has passed it through one house. We will -- it has now passed the Assembly, and today we'll be passing it through both houses.

SENATOR PALUMBO: Do you yield for another question, please, Senator?

ACTING PRESIDENT PERSAUD: Does the sponsor yield?

SENATOR MAYER: Yes.

ACTING PRESIDENT PERSAUD: The sponsor yields.

SENATOR PALUMBO: And I appreciate that, Senator, and I think we all agree that that is certainly something we're very concerned with, eating disorders in children.

Is there any empirical data that these supplements actually have any sort of effect on eating disorders? Is it that they're used by individuals with eating disorders? Because I haven't seen -- and just for clarification, I voted for this last year. But once I got -- I received some opposition memos, I was able to get into the weeds a little bit further. And I didn't find any empirical data in this regard.

So I actually have some significant concerns with this bill that I think we'll address in the next few moments.

SENATOR MAYER: Well, there's a number of things. First of all, let me point out that the FDA, which somehow some of the industry

think has covered the field here, this is what it says on its own website about these products:

"Federal law does not require dietary supplements to be proven safe to FDA's satisfaction before they are marketed" -- something I think most people think is the case.

"For most claims made in the labeling of dietary supplements, the law does not require the manufacturer or seller to prove to FDA's satisfaction that the claim is accurate or truthful before it appears on the product.

"In general, FDA's role with a dietary supplement product begins after the product enters the marketplace. This is usually the agency's first opportunity to take action against a product that presents a significant or unreasonable risk of illness or injury or that is otherwise adulterated or misbranded."

That is the FDA's self-description of their authority.

Now, with respect to the dangers, the American Academy of Pediatrics has strongly cautioned against teens using over-the-counter diet pills and muscle-building supplements.

And as well, there is a group that

I've been working with, it's called STRIPED, from the School of Public Health at Harvard, which has detailed numerous cases which I'm happy to share with you where people have been injured and in some cases died from the use of over-the-counter diet pills and diet supplements.

This is a serious health issue. I appreciate your acknowledgment that you voted for it last year. I believe the evidence is quite overwhelming, and happy to share it with you.

SENATOR PALUMBO: Thank you. Would you yield for another question, please?

ACTING PRESIDENT PERSAUD: Does the sponsor yield?

SENATOR MAYER: Yes, happy to.

ACTING PRESIDENT PERSAUD: The sponsor yields.

SENATOR PALUMBO: Thank you. And Senator, I do appreciate that.

But that seems to be more along the lines of conjecture. There's no specific data that it actually has some causal relationship to eating disorders. And I guess that's really the demon that we're looking to address here.

And of course the abuse of dietary

supplements is going to lead to injury and illness and possibly death, and I think we all agree with that as well. This doesn't seem to address that. So that's my concern that I think is expressed -- it's really expressed in a lot of the opposition that I've read.

And more importantly, does this regulate online sales?

SENATOR MAYER: The sale to -- within New York by online -- to a New York purchaser would be covered by this bill, yes.

SENATOR PALUMBO: So can you tell me how that would -- would you yield for another question?

ACTING PRESIDENT PERSAUD: Does the sponsor yield?

SENATOR MAYER: Yes.

ACTING PRESIDENT PERSAUD: The sponsor yields.

SENATOR PALUMBO: So how would that apply to someone who's ordering online? How would that ultimately be regulated if it's an online order from, say, an out-of-state company?

SENATOR MAYER: So the restriction on the sale to someone under 18, unless

prescribed by a physician -- which of course would be an exemption -- would be prohibited. And there would be -- there imposes upon the seller an affirmative obligation to check the age. You can't buy wine online without showing your age. I suspect you can't buy cigarettes -- I haven't tried -- unless you show your age.

So this is consistent with other age restrictions on products. And, frankly, online is a place where a lot of kids are buying these.

SENATOR PALUMBO: Would you yield for another question, please, Senator?

ACTING PRESIDENT PERSAUD: Will the sponsor yield?

SENATOR MAYER: Yes.

ACTING PRESIDENT PERSAUD: The sponsor yields.

SENATOR PALUMBO: Well, with respect to enforcement, I see in the bill that it is a $500 fine in the event that a store sells -- illegally sells supplements. But currently under our law it's $200 to illegally sell alcohol to a minor. It is $250 to illegally sell tobacco to a minor.

Is there any particular reason why

this was made to be a $500 fine?

SENATOR MAYER: Well, the risks of use, in my opinion and those who have signed onto this bill, are significant enough.

And by the way, this is when the Attorney General makes an application. It's not a simple fine. They have to make an application to a court, and the court must determine that the defendant has violated this section.

So this is not simply the State Liquor Authority or some other agency applying a fine. The Attorney General has to seek an application in court and prove a violation of the section.

SENATOR PALUMBO: Thank you. Will you yield for one more question, please?

ACTING PRESIDENT PERSAUD: Does the sponsor yield?

SENATOR MAYER: Yes.

ACTING PRESIDENT PERSAUD: The sponsor yields.

SENATOR PALUMBO: Thank you, Senator.

So regarding the individuals or the agencies that will have decision-making power, it

looks as though there are groups that are part of the eating disorder community in the Department of Health. Is that correct?

SENATOR MAYER: Senator Palumbo, that's actually, I think, not quite correct. Because the language -- and this was specifically drafted this way -- says relevant stakeholders, including but not limited to the eating disorders community.

So to your point, I anticipate that those who are involved in the production, sale and marketing of these products -- and we've heard from them, and you've heard from them -- will have an opportunity at the table to help determine, with the Department of Health, which products are prohibited under this section.

SENATOR PALUMBO: Thank you. And I appreciate that, Senator. Would you yield for one more question that is by way of follow-up?

ACTING PRESIDENT PERSAUD: Does the sponsor yield?

SENATOR MAYER: Yes.

ACTING PRESIDENT PERSAUD: The sponsor yields.

SENATOR PALUMBO: Thank you.

So in that regard, so then physicians, of course, would be permitted to be part of that discussion group, where we actually have doctors who are more familiar with the causal relation of these items.

SENATOR MAYER: The definition of stakeholders is quite clear here: Included but not limited to. So I assume the Department of Health, in its wisdom, will include a wide range of people who have expertise on this subject.

SENATOR PALUMBO: Thank you, Senator. I appreciate that clarification. Thank you for responding to my questions.

On the bill, please, Madam President.

ACTING PRESIDENT PERSAUD: Senator Palumbo on the bill.

SENATOR PALUMBO: And thank you again, and thank you, Senator Mayer. I certainly appreciate those responses in clarifying some of those concerns.

But I do still have -- and as I indicated, I voted for this last year because clearly this is a laudable goal. We all absolutely agree that if this is contributing to

eating disorders, we need to find a way to remove that from some options for individuals to actually utilize supplements for the purposes of furthering an eating disorder. I think we all agree.

But the wrinkle is this, that I don't believe this particular bill is appropriately regulating online sales. And what this is going to do is going to significantly hurt our brick-and-mortar stores, the actual stores where people can go and purchase these things.

And I understand that obviously the -- it is an additional burden to these stores to have to card someone and show that they're at least the age of 18 or older.

But we're regulating protein powder, for example, but we're not regulating protein bars that you can buy in a gas station.

So the language is overly broad, and I think those are the concerns that have been brought to my attention.

And certain fat burners, for example, thermogens, are in green tea, which has very significant positive results when you use it

as far as overall health, cardiovascular health, cellular health. So we're now actually, with this implementation of this bill, we will be regulating green tea.

So I think it's overly expansive. I certainly appreciate the laudable goals here, but unfortunately, as it's presently written, I'm going to have to vote in the negative, and I urge my colleagues to do the same.

Thank you, Madam President.

ACTING PRESIDENT PERSAUD: Thank you, Senator.

Senator Tedisco.

SENATOR TEDISCO: Would the sponsor yield for a couple of questions.

ACTING PRESIDENT PERSAUD: Will the sponsor yield?

SENATOR MAYER: Sure.

ACTING PRESIDENT PERSAUD: The sponsor yields.

SENATOR TEDISCO: Yeah, I had a couple of questions I asked in conference recently, but I just want to clarify the answers to those with you, the sponsor.

One of the most serious eating

disorders is obesity for young people, and it crosses age groups and genders and all types of things nationally in this nation.

My question is to you, when someone goes in and buys liquor and gives it to someone else, there's a penalty to that. That's breaking the law. If someone buys these who is an adult and gives them to someone who's younger than 18, is there a penalty for that, according to this piece of legislation?

SENATOR MAYER: Senator Tedisco, just to be technically right, I want to read what the bill says.

So it says that the seller may not sell or offer to sell or give away, basically as a promotion, to someone under 18.

So I think technically if -- under my reading of this if a parent, for example, wanted to buy a dietary supplement for weight loss for someone younger than 18, they'd be permitted to do so. And theoretically I don't -- I would doubt that it would be deemed a violation if they gave it to their child.

SENATOR TEDISCO: Would the sponsor yield.

ACTING PRESIDENT PERSAUD: Will the sponsor yield?

SENATOR MAYER: Yes.

ACTING PRESIDENT PERSAUD: The sponsor yields.

SENATOR TEDISCO: So just to clarify that, any adult could buy this and give it to a child younger than 18, including a parent?

SENATOR MAYER: Senator Tedisco, I wouldn't say it the way you just said it at all.

I'm talking about what this law proscribes, what it prohibits. It prohibits the sale or the giving away, like in a promotion, to under 18 unless prescribed by a physician.

So I -- we're talking about what the law says, not what it doesn't say. That's what it prohibits.

SENATOR TEDISCO: Would the --

ACTING PRESIDENT PERSAUD: Does the sponsor yield?

SENATOR MAYER: Yes.

ACTING PRESIDENT PERSAUD: The sponsor yields.

SENATOR TEDISCO: So it would not

prohibit anyone from buying it and giving it to a younger person.

SENATOR MAYER: I'm not prepared to say what it does not say. I'm telling you what it does say, Senator Tedisco.

I understand you're interpreting it one way. And the focus of the bill is not on adults who wish to engage in conduct that they are authorized to do. This is about children buying and having access to these medica -- these drugs.

SENATOR TEDISCO: Yeah, I'm just a little bit concerned that it doesn't really --

ACTING PRESIDENT PERSAUD: Senator Tedisco, are you on the bill?

SENATOR TEDISCO: Yes.

ACTING PRESIDENT PERSAUD: Senator Tedisco on the bill.

SENATOR TEDISCO: I'm a little bit concerned that it doesn't stop anyone actually from purchasing these and giving them to others.

And probably parents should have the opportunity. Obesity is a serious problem in our nation, especially for young people. It can affect heart wellness and other concerns that

take place when there is that type of activity and action.

So several concerns about this piece of legislation, but I thank the sponsor for partially answering my question.

Thank you.

ACTING PRESIDENT PERSAUD: Thank you, Senator.

Are there any other Senators wishing to be heard?

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

Read the last section.

THE SECRETARY: Section 3. This act shall take effect one year after it shall have become a law.

ACTING PRESIDENT PERSAUD: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT PERSAUD: Senator Mayer to explain her vote.

SENATOR MAYER: Thank you, Madam President.

Thank you to my colleagues for asking thoughtful questions.

I would note that the vast majority of them voted for this bill last year. Same bill, and the bill has been amended over time to address numbers of concerns.

But let me talk about the seriousness of this issue and why I am motivated, along with my colleagues, to press for this. And this is material from the STRIPED Advocacy Playbook. This is a portion of the Public Health School at Harvard University.

In 2021, a 20-year-old woman suffered a heart attack after ingesting a dry scoop of a pre-workout supplement. She suffered a heart attack.

In 2019, a woman from Dallas was rushed to the hospital in order to receive a lifesaving liver transplant. Doctors believe Goss's acute liver failure was associated with a weight loss supplement she had been taking for months.

A young mother in 2017, aged 24, died after taking the weight-loss supplement Avitia Cobrax, which she bought online via Facebook.

In June 2017, a mom of two toddlers

was found unconscious in her home and later died after consuming a sports supplement that contained the chemical MADB, a substance similar to methamphetamine.

And it goes on. This is a serious health issue. This is not a made-up issue. This is an issue that is not adequately regulated by the FDA, and therefore there is absolutely compelling reason to impose a restriction on the sale to those under 18 unless a doctor prescribes it.

And the increasing amount of attention to body image among young women and now among young men poses a serious health threat.

It is a credit to the New York State Legislature and my colleague Assemblywoman Nily Rozic, the sponsor in the Assembly, that this bill is passing both houses. This is an important step for New York to take in protecting young people and in sending a strong message that these products, which are basically unregulated, unregulated by the federal government, will not be available to our young people unless a doctor prescribes them.

I would like to thank my staff; Mike

Press, my legislative director, who's worked on this for several years; Bryn Austin, from STRIPED at the Harvard T.H. Chan School of Public Health, and many of the other advocates who have worked with me in crafting a bill that is reasonable, that is not excessive, but is motivated by public health and protection of our children.

Thank you. I vote aye.

ACTING PRESIDENT PERSAUD: Senator Mayer to be recorded in the affirmative.

Announce the results.

THE SECRETARY: In relation to Calendar 624, those Senators voting in the negative are Senators Borrello, Griffo, Helming, Jordan, Lanza, Oberacker, O'Mara, Ortt, Palumbo, Serino, Stec and Tedisco.

Ayes, 48. Nays, 12.

ACTING PRESIDENT PERSAUD: The bill is passed.

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

SENATOR GIANARIS: Is there any further business at the desk?

ACTING PRESIDENT PERSAUD: There is no further business at the desk.

SENATOR GIANARIS: I move to adjourn until Monday, March 14th, at 3:00 p.m., intervening days being legislative days.

ACTING PRESIDENT PERSAUD: On motion, the Senate stands adjourned until Monday, March 14th, at 3:00 p.m., intervening days being legislative days.

(Whereupon, the Senate adjourned at 11:29 a.m.)