NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

January 18, 2023

11:12 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, Tuesday, January 17, 2023, the Senate met pursuant to adjournment. The Journal of Sunday, January 15, 2023, was read and approved. On motion, 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 May moves

to discharge, from the Committee on Rules, Assembly Bill Number 607 and substitute it for the identical Senate Bill 820, Third Reading Calendar 29.

ACTING PRESIDENT PERSAUD: The substitution is 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: Good morning, Madam President.

Let me welcome Senator Griffo to the Floor Leader chair on the Republican side. It's a pleasure to work with him today.

I move to adopt the Resolution Calendar.

ACTING PRESIDENT PERSAUD: All those in favor of adopting the Resolution Calendar, please signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT PERSAUD: Opposed,

nay.

(No response.)

ACTING PRESIDENT PERSAUD: The Resolution Calendar is adopted.

Senator Gianaris.

SENATOR GIANARIS: Please take up the calendar at this time.

ACTING PRESIDENT PERSAUD: The Secretary will read.

THE SECRETARY: Calendar Number 26, Senate Print 817, by Senator Hoylman-Sigal, an act to amend the Elder Law.

ACTING PRESIDENT PERSAUD: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the same date and in the same manner as a chapter of the Laws of 2022.

ACTING PRESIDENT PERSAUD: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT PERSAUD: Announce the results.

THE SECRETARY: In relation to Calendar Number 26, those Senators voting in the negative are Senators Lanza, Oberacker, Ortt and

Walczyk.

Ayes, 55. Nays, 4.

ACTING PRESIDENT PERSAUD: The bill is passed.

THE SECRETARY: Calendar Number 29, Assembly Print 607, by Assemblymember Barrett, an act to amend a chapter of the Laws of 2022.

ACTING PRESIDENT PERSAUD: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the same date and in the same manner as a chapter of the Laws of 2022.

ACTING PRESIDENT PERSAUD: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT PERSAUD: Announce the results.

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT PERSAUD: The bill is passed.

THE SECRETARY: Calendar Number 30, Senate Print 821, by Senator Harckham, an act to amend the Tax Law.

ACTING PRESIDENT PERSAUD: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the same date and in the same manner as a chapter of the Laws of 2022.

ACTING PRESIDENT PERSAUD: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT PERSAUD: Announce the results.

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT PERSAUD: The bill is passed.

THE SECRETARY: Calendar Number 33, Senate Print 824, by Senator Sanders, an act to amend the Insurance Law.

ACTING PRESIDENT PERSAUD: Read the last section.

THE SECRETARY: Section 7. 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, 60.

ACTING PRESIDENT PERSAUD: The bill

is passed.

THE SECRETARY: Calendar Number 34, Senate Print 825, by Senator Hoylman-Sigal, an act to amend the Insurance Law.

ACTING PRESIDENT PERSAUD: Read the last section.

THE SECRETARY: Section 5. 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 Number 34, those Senators voting in the negative are Senators Griffo, Ortt, Stec and Tedisco.

Ayes, 56. Nays, 4.

ACTING PRESIDENT PERSAUD: The bill is passed.

THE SECRETARY: Calendar Number 70, Senate Print 101, by Senator Ryan, an act to amend the Vehicle and Traffic Law.

ACTING PRESIDENT PERSAUD: Read the last section.

THE SECRETARY: Section 9. 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: Announce the results.

THE SECRETARY: In relation to Calendar Number 70, voting in the negative: Senator Oberacker.

Ayes, 59. Nays, 1.

ACTING PRESIDENT PERSAUD: The bill is passed.

THE SECRETARY: Calendar Number 71, Senate Print 177, by Senator Gianaris, an act to amend the Banking Law.

ACTING PRESIDENT PERSAUD: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 180th day after it shall have become a law.

ACTING PRESIDENT PERSAUD: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT PERSAUD: Announce the results.

THE SECRETARY: In relation to Calendar 71, those Senators voting in the negative are Senators Gallivan, Helming, Oberacker, Ortt, Palumbo, Stec, Tedisco and Weik.

Ayes, 52. Nays, 8.

ACTING PRESIDENT PERSAUD: The bill is passed.

THE SECRETARY: Calendar Number 72, Senate Print 492A, by Senator Comrie, an act to amend the Public Authorities Law.

ACTING PRESIDENT PERSAUD: Read the last section.

THE SECRETARY: Section 7. This act shall take effect on the 120th day after it shall have become a law.

ACTING PRESIDENT PERSAUD: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT PERSAUD: Announce the results.

THE SECRETARY: In relation to Calendar Number 72, those Senators voting in the negative are Senators Borrello, Helming, Murray and Palumbo.

Ayes, 57. Nays, 4.

ACTING PRESIDENT PERSAUD: The bill is passed.

THE SECRETARY: Calendar Number 74, Senate Print 564A, by Senator Kavanagh, an act to amend the Banking Law.

SENATOR GRIFFO: Lay it aside.

ACTING PRESIDENT PERSAUD: Lay it aside.

THE SECRETARY: Calendar Number 78, Senate Print 935, by Senator Kennedy, an act to amend the Real Property Tax Law.

ACTING PRESIDENT PERSAUD: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 90th day after it shall have become a law.

ACTING PRESIDENT PERSAUD: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT PERSAUD: Announce the results.

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT PERSAUD: The bill

is passed.

THE SECRETARY: Calendar Number 80, Senate Print 967, by Senator Ryan, an act to amend the Real Property Tax 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, 62.

ACTING PRESIDENT PERSAUD: The bill is passed.

THE SECRETARY: Calendar Number 82, Senate Print 1065, by Senator Mayer, an act to amend the Banking Law.

ACTING PRESIDENT PERSAUD: Read the last section.

THE SECRETARY: Section 2. 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: Announce the results.

THE SECRETARY: In relation to Calendar Number 82, those Senators voting in the negative are Senators Borrello, Griffo, Oberacker, Palumbo, Stec, Tedisco, Walczyk and Weik.

Ayes, 54. Nays, 8.

ACTING PRESIDENT PERSAUD: The bill is passed.

THE SECRETARY: Calendar Number 83, Senate Print 1144, by Senator Sanders, an act to amend the Banking Law and the Penal Law.

ACTING PRESIDENT PERSAUD: Read the last section.

THE SECRETARY: Section 11. This act shall take effect on the 30th day after it shall have become a law.

ACTING PRESIDENT PERSAUD: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT PERSAUD: Announce the results.

THE SECRETARY: In relation to Calendar Number 83, those Senators voting in the negative are Senators Ashby, Borrello, Gallivan, Griffo, Helming, Mattera, Murray, Oberacker, Ortt, Palumbo, Rolison, Stec, Tedisco, Walczyk and Weik. Also Senator Lanza.

Ayes, 46. Nays, 16.

ACTING PRESIDENT PERSAUD: The bill is passed.

THE SECRETARY: Calendar Number 84, Senate Print 1242, by Senator Felder, an act to amend the Vehicle and Traffic Law.

ACTING PRESIDENT PERSAUD: Read the last section.

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

ACTING PRESIDENT PERSAUD: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT PERSAUD: Announce the results.

THE SECRETARY: In relation to Calendar Number 84, those Senators voting in the negative are Senators Borrello, Gallivan, Griffo, Helming, Krueger, Ortt, Walczyk and Weik.

Ayes, 54. Nays, 8.

ACTING PRESIDENT PERSAUD: The bill is passed.

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

SENATOR GIANARIS: Please let's move on to the controversial calendar.

ACTING PRESIDENT PERSAUD: The Secretary will ring the bell.

The Secretary will read.

THE SECRETARY: Calendar Number 74, Senate Print 564A, by Senator Kavanagh, an act to amend the Banking Law.

ACTING PRESIDENT PERSAUD: Senator Borrello.

SENATOR BORRELLO: Yes, Madam President, would the sponsor yield for a question?

ACTING PRESIDENT PERSAUD: Does the sponsor yield?

SENATOR KAVANAGH: Yes, Madam President.

ACTING PRESIDENT PERSAUD: The sponsor yields.

SENATOR BORRELLO: Thank you,

Madam President. Through you, Madam President.

Senator Kavanagh, thank you. We were just discussing debating yesterday, and here we are today. So -- oh, happy birthday also.

(Cheers from members.)

SENATOR BORRELLO: I'm done with my questions. No, I don't -- no (laughing).

(Applause.)

SENATOR KAVANAGH: I cannot think of a better activity to be doing on my birthday.

(Laughter.)

SENATOR BORRELLO: So I have some concerns with this, obviously. You start talking about lenders, we already are seeing pressure with rising interest rates. Mortgages are obviously part of the American dream, being able to own your own home, and then I have some concerns.

Can you first -- we -- you're talking about basically holding lenders liable for a number of things, well beyond what the current laws are and well beyond, you know, even federal limitations. But could you -- you talk about material noncompliance. Can you really -- there's no definition in this bill on what material noncompliance really is. Can you please tell me what that means?

SENATOR KAVANAGH: Through you, Madam President, yes. We debated this bill on this floor, I believe it was last year. And one of the concerns that I heard from the other side of the aisle was the bill was written in such a way that it said noncompliance. And there was an implication that any noncompliance at all with the regulations or the law would result in adverse impacts on lenders and mortgage servicers.

So we've added a provision that specifies that the violation has to be material. So the private right of action in this bill would require that the borrower, the homeowner bringing the action, would have to show that they've been injured and meet the other requirements of -- that one would normally -- common, that are common in litigation.

But in addition, they'd have to show that any -- any violation is material. There is not, as has been noted, a -- we don't specify what "material" means in this context because there are many different regulations. But, you know, materiality is the notion that it has been nontrivial, it has to be significant, it has to have -- like they can't be a sort of de minimis injury, there has to be a significant injury, a real -- a real -- what we would think of as a real injury.

But that is the sort of thing that judges and litigants have to work to establish on the merits all the time.

SENATOR BORRELLO: Madam President, will the sponsor continue to yield.

ACTING PRESIDENT PERSAUD: Does the sponsor yield?

SENATOR KAVANAGH: Yes, Madam President.

ACTING PRESIDENT PERSAUD: The sponsor yields.

SENATOR BORRELLO: Through you, Madam President. So we're creating a private right action, which we don't currently have. Which means anyone can bring an action against a -- a lender, one of the -- a borrower.

So when you -- when you do that, so you're saying that we really don't have a definition for, you know, what a -- what material noncompliance is, and a definition of an injury. So essentially there's going to have to be litigation. And -- and a judge will have to determine what material noncompliance would be.

Is there any way to cure this without having to go to litigation?

SENATOR KAVANAGH: So first of all, like any -- it's not true that anyone could bring -- I mean, anyone is entitled to assert that they have an action. But in order to have an action, you would have to be someone who has been -- a homeowner, typically, somebody who has received mortgage funds. You'd have to be someone who has been injured by reason of a violation of the rules and regulations.

That's what -- so this creates -- to the extent this is creating something new, it is creating this notion that if you are injured because your lender or your mortgage servicer has violated the law, then you have some recourse in court. And that is the core purpose of the bill.

In terms of having to litigate once -- if you're a homeowner and you've decided you've been injured, yes, you have to litigate -- you're going to have to litigate the question of really whether you've been injured. You're going to have to litigate the question of whether your -- whether this party that you're suing has in fact violated the law, and you're going to have to litigate whether that violation is a material violation or, say, a trivial violation.

And yeah, that's -- so we have added -- again, partly in response to some concerns we heard on this floor from the other side of the aisle last year, we've added an additional element that the plaintiffs, the people bringing the action, would have to demonstrate -- because, you know, we heard last year that lack -- like there was no -- there was no standard that said the violation had to be a meaningful violation. So we've decided to add that.

So yes, it does add another element that needs to be litigated. But litigation is the way parties decide who's been injured and to what extent there's -- there's recourse.

In terms of your question about cure, there are provisions in the state law for some of the violation -- for some of the rules that the violation of which could be a predicate for a suit in this -- for this private right of action we're adding, there are in some cases provisions that specify how one might cure a violation of that provision.

That -- that approach is also paralleled in some of the federal law. And I would note there is a private right of action under federal law already. There's also private rights of action in Ohio and California. This is not novel. We're not, you know, doing something to -- to lenders in New York that hasn't happened in other places and, indeed, isn't available in federal law in every state in the country.

But so in some circumstances somebody may have violated and then cured it, presumably it would be -- you would be hard-pressed to say you've been injured if the injury has been cured.

But again, all -- all of -- I think all of that would be -- the significance of a cure or a failure to cure I think would be something that the parties would have to litigate.

SENATOR BORRELLO: Madam President, will the sponsor continue to yield.

ACTING PRESIDENT PERSAUD: Does the sponsor yield?

SENATOR KAVANAGH: Yes, Madam President.

ACTING PRESIDENT PERSAUD: The sponsor yields.

SENATOR BORRELLO: So I just want to dig a little deeper on this. You're saying, then, that, you know, there would be an opportunity to cure. In other words, if it was a mistake, an honest mistake, they could fix that mistake and that would then cure the injury from a legal standpoint?

SENATOR KAVANAGH: Again, I don't want to prejudge how the judiciary would view this. And in another building -- in the building across the street people are discussing how the judiciary is going -- going to be managed in the next -- in the coming years.

But what I'm saying is that there are -- in some cases there are provisions that are in the rules that are referenced in this bill where the provision itself specifies how to cure a violation of that. So there are -- there are some circumstances where there's black-letter law that says if you violated this, you may cure it in this way. And that's true at the federal level, it's true at the state level.

This bill does not add a general-purpose cure provision that says if you cured it, you're fine. Presumably courts would be empowered to determine whether -- whether efforts the party that violated the rule -- whether their efforts to, you know, compensate the borrower or their efforts to cure the violation are relevant to the question of whether the person's been injured and whether the injury is -- whether the violation is material.

SENATOR BORRELLO: Through you, Madam President, will the sponsor continue to yield?

ACTING PRESIDENT PERSAUD: Does the sponsor yield?

SENATOR KAVANAGH: Yes, Madam President.

ACTING PRESIDENT PERSAUD: The sponsor yields.

SENATOR BORRELLO: So if a noncompliance is discovered and it's cured by the -- the servicer, the -- you know, the -- the lender, would that still essentially forever bar them from foreclosing? In other words, if there was a violation but it was cured, does -- are they now barred from being able to foreclose?

SENATOR KAVANAGH: So if -- if somebody has violated the law and the regulations that they're violating provide for a cure and they do what's necessary to cure the violation, I would -- the way I would think about it is at that point they are not in violation of the regulations.

And again, there would also have to be presumably -- there would also still have -- there would have to be an injury that the party is asserting. So if -- you know, if somebody, you know, borrowed money from you and didn't pay you back and then they pay you back, you'd be hard -- you'd be in a -- maybe I shouldn't use a borrower analogy.

But -- but if you -- if a violation has occurred and then the violation has been cured, presumably the cure diminishes the extent to which you're able to assert that you've been injured by the violation.

But again, DFS has power -- this --

this bill references statute but also regs. DFS does have the power to specify under what circumstances someone is effectively curing.

My assumption -- and again, I -- I -- it's possible that somebody in the judiciary would read this differently. But my assumption is if you cured a violation, it would be such that you're -- that the borrower is not -- is no longer injured by the violation, and so they probably wouldn't have a -- a cause at that point.

SENATOR BORRELLO: Thank you.

Madam President, will the sponsor continue to yield.

ACTING PRESIDENT PERSAUD: Does the sponsor yield?

SENATOR KAVANAGH: Yes, Madam President.

ACTING PRESIDENT PERSAUD: The sponsor yields.

SENATOR BORRELLO: Thank you. Through you, Madam President.

So you bring up DFS. And in fact, you know, loan servicers are regularly examined and -- and penalized by DFS. So what's the purpose of this bill if we already have a -- a procedure in place to ensure that servicers are -- are being honest and -- and -- and doing their job?

SENATOR KAVANAGH: The purpose of this bill is to ensure -- through you, Madam President -- to ensure that homeowners who have been injured by a failure of lenders or mortgage servicers to follow the law, that those people, when they've been injured, they have some recourse.

SENATOR BORRELLO: Madam President, will the sponsor continue to yield?

ACTING PRESIDENT PERSAUD: Does the sponsor yield?

SENATOR KAVANAGH: Yes, Madam President.

ACTING PRESIDENT PERSAUD: The sponsor yields.

SENATOR BORRELLO: All right. So thank you for that.

So -- so I want to go back to the private right of action. You know, this is a concern of mine on so many bills that we have here, that we are creating fertile ground, in my opinion, for frivolous lawsuits.

So let's say a -- a mortgage servicer has done -- has created some kind of a technical violation. They gave a notice incorrectly or, you know, a little late. Could conceivably this create a situation for a class-action lawsuit? In other words, this ABC mortgage lender sent a notice out, you know, 30 days late and now everybody is in a class, to create a class action lawsuit by a law firm against that servicer and essentially could be, you know, financially devastating if every loan that they have out, or within a certain period of time, is now subject to a class-action lawsuit. Or even a group of lenders.

So my concern is that, and the potential impact. Because that could be a -- certainly a big money situation. And, you know, could break the back of an individual lender, potentially.

SENATOR KAVANAGH: Through you, Madam President, that's a bit hypothetical. Perhaps you could elaborate a little more? In the hypothetical, what is the injury that the --

SENATOR BORRELLO: The late notice.

SENATOR KAVANAGH: I'm sorry?

SENATOR BORRELLO: The late notice to borrowers, their -- a required notice.

SENATOR KAVANAGH: Okay. So again, through you, Madam President, in my mind a late notice would be a violation of the law. It would -- it would have to be determined whether that late notice is material.

But also they'd have to demonstrate -- the bill we have in front of us clearly distinguishes between the notion that you're violating the law and you're -- and as a result of that violation, the borrower is injured.

So a 30-day-late notice, a borrower in that circumstance would have to demonstrate that they had in fact been injured by that, by that notice. And I guess it's conceivable that they -- you know, that they have been. Maybe they lost a great deal of money as a result of that late notice. I'm not sure of the circumstances of this hypothetical.

But if somebody -- that yeah, we're saying if a homeowner loses a lot of money or has some other injury to them, and that injury is not cured in some way, then they have recourse.

And if thousands of people are injured in that way, the -- a class action is the mechanism. As -- as I'm sure my colleague knows, it's not so easy to certify a class and get a class action going. But a class action is the mechanism when very large numbers of -- of people have been injured in a way that is sufficiently similar that a class action is the most efficient way for the judiciary to do it.

I don't think there's -- you know, that this statute is more likely to lead to class actions than numerous other statutes we've passed. But that is -- that is the mechanism for that.

SENATOR BORRELLO: Thank you.

Madam President, on the bill.

ACTING PRESIDENT PERSAUD: Senator Borrello on the bill.

SENATOR BORRELLO: Senator Kavanagh, thank you again for the birthday debate, appreciate it.

You know, I -- I look at bills like this and others and I say to myself, what is the goal? The goal is to protect consumers, and I get that. But when you -- when you do things like this, you limit choice, you raise costs. And that, to me, is a bigger injury to consumers.

This -- and so many other bills that we vote on -- creates a private right of action, which creates fertile ground for frivolous lawsuits. Now, last week in this chamber we had a very vigorous debate on why we should limit the ability for someone who feels that their constitutional rights have been violated -- instead of having a choice of 62 counties to bring their lawsuit, it should only come down to five. Because we wanted to streamline the process and reduce frivolous lawsuits.

Yet since that bill was debated, I'm counting this as the third bill that creates more opportunity for frivolous lawsuits. Now, you might say to yourself, well, what's the material violation? Well, that's a good question. But it may cost money to get that answer through litigation.

And in the case of a -- of a class action lawsuit, you could create a situation where a minor violation, a notice that was sent out to all borrowers, was illegal because it was a few days late. That now creates the situation for a class-action lawsuit.

Now, maybe the -- the result isn't that the company has to refund all the mortgages. That would be unreasonable. But it could be like, as we've all experienced, as all of us probably have been part of a class-action lawsuit, that I get a check in the mail for $1.86 that I probably never bother cashing, but the law firm made hundreds of thousands, if not millions of dollars in that process. And that's what this type of legislation incubates, in my opinion.

But when we start talking about mortgages and the ability for someone to own a home in New York State, there's kind of a sense of arrogance, in my opinion, that everybody wants to do business in New York State because this is the great State of New York. Well, that's just not the case. We're seeing that every day. We see businesses leave New York State every day because they can't do business here, they can no long afford to do business here.

But in the case of mortgage lenders, that means less people are going to have the ability to own a home in this state. And that, to me, is a real tragedy, because that is the American dream.

So I'll be voting no on this, and I'll certainly be encouraging my colleagues to do the same.

Thank you, Madam President.

ACTING PRESIDENT PERSAUD: Thank you, Senator.

Are there any other Senators wishing to be heard?

Seeing and hearing none, debate is closed.

Senator Gianaris.

SENATOR GIANARIS: By agreement with our colleagues across the aisle, we are returning this bill to the noncontroversial calendar.

So if we can please do that and take it up for a vote.

ACTING PRESIDENT PERSAUD: The bill is restored to the noncontroversial calendar.

Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 30th day after it shall have become a law.

ACTING PRESIDENT PERSAUD: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT PERSAUD: Senator Kavanagh to explain his vote.

SENATOR KAVANAGH: Thank you, Madam President.

And thank you for the opportunity to debate today. And, you know, a good, lively discussion. I would note that last year's debate has resulted in specific amendments to the bill, so we always appreciate the opportunity to discuss it.

Just to say, again, this is about circumstances where lenders and mortgage servicers are violating the law and it is harming homeowners. It is true that any cause of action that -- any -- any law that creates an opportunity for people to bring a legitimate cause of action also creates the opportunity for people to claim they've been injured when they haven't. But we have had cases in New York where mortgage servicers have aggressively and apparently intentionally charged fees to homeowners that were legally impermissible. We have had commentary in our courts that say, you know, it's up to the Legislature to determine whether there ought to be a private right of action.

And it is -- you know, it's the judgment -- the judgment that's reflected in this bill is that homeowners who are also facing the -- the challenges that -- the challenges that my colleague mentioned, you know, the -- the rising interest rates and the difficulties in the economy, should have some ability to assert their rights. That's what this bill is about.

I would note again there are private rights of actions at the state level in at least two other states, including the largest state in the United States, California, and certainly Ohio, and also there is a private right of action under federal law. So this rash of frivolous litigation -- you know, many, many people in America have a right to sue right now under federal law and they have the defense -- they have a defense under federal law, and that has not led to the kind of -- this kind of pernicious frivolous litigation that -- that we're talking about here today.

Again, so I -- I vote aye and again I thank the leader and my colleagues in the house for supporting this bill.

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

Announce the results.

THE SECRETARY: In relation to Calendar 74, those Senators voting in the negative are Senators Ashby, Borrello, Gallivan, Griffo, Helming, Lanza, Mattera, Murray, Oberacker, Ortt, Palumbo, Rolison, Stec, Tedisco, Walczyk, Weber and Weik.

Ayes, 45. Nays, 17.

ACTING PRESIDENT PERSAUD: The bill is passed.

Senator Gianaris, that completes the reading of today's 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, January 23rd, at 3:00 p.m., with the intervening days being legislative days.

ACTING PRESIDENT PERSAUD: On motion, the Senate stands adjourned until Monday, January 23rd, at 3:00 p.m., with intervening days being legislative days.

(Whereupon, at 11:43 a.m., the Senate adjourned.)