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NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

March 11, 2024

3:12 p.m.

REGULAR SESSION

SENATOR ROXANNE J. PERSAUD, Acting President

ALEJANDRA N. PAULINO, ESQ., Secretary

1 P R O C E E D I N G S

2 ACTING PRESIDENT PERSAUD: The
3 Senate will come to order.

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

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

8 ACTING PRESIDENT PERSAUD: Imam
9 Muhammad Abdus Sadik, of the Jackson Heights
10 Islamic Center in Queens, New York, will deliver
11 today's invocation.

12 Imam?

13 IMAM MUHAMMAD ABDUS SADIK:
14 (Singing/praying in Bangla.)

15 Thank you so much.

16 ACTING PRESIDENT PERSAUD: Reading
17 of the Journal.

18 THE SECRETARY: In Senate, Sunday,
19 March 10, 2024, the Senate met pursuant to
20 adjournment. The Journal of Saturday, March 9,
21 2024, was read and approved. On motion, the
22 Senate adjourned.

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

25 Presentation of petitions.

1 Messages from the Assembly.

2 The Secretary will read.

3 THE SECRETARY: Senator Fernandez
4 moves to discharge, from the Committee on
5 Alcoholism and Substance Use Disorders,
6 Assembly Print Number 8467A and substitute it for
7 the identical Senate Bill 7833A, Third Reading
8 Calendar 412.

9 ACTING PRESIDENT PERSAUD: So
10 ordered.

11 Messages from the Governor.

12 Reports of standing committees.

13 Reports of select committees.

14 Communications and reports from
15 state officers.

16 Motions and resolutions.

17 Senator Gianaris.

18 SENATOR GIANARIS: Good afternoon,
19 Madam President.

20 Amendments are offered to the
21 following Third Reading Calendar bills:

22 By Senator Ryan, page 9, Calendar
23 Number 85, Senate Print 967;

24 By Senator Gonzalez, page 37,
25 Calendar Number 485, Senate Print 5007A;

1 And by Senator Sanders, page 45,
2 Calendar Number 573, Senate Print 2731.

3 ACTING PRESIDENT PERSAUD: The
4 amendments are received, and the bills will
5 retain their place on the Third Reading Calendar.
6 Senator Gianaris.

7 SENATOR GIANARIS: Can you now
8 please recognize Senator Kennedy for an
9 introduction.

10 ACTING PRESIDENT PERSAUD: Senator
11 Kennedy for an introduction.

12 SENATOR KENNEDY: Thank you,
13 Madam President.

14 It's a great honor for me to stand
15 here during Irish Heritage Month -- St. Patrick's
16 Month -- on the day that we celebrate the
17 American Irish Legislators Association
18 celebration tonight.

19 And today we have some folks from
20 Western New York, from the great Town of Amherst,
21 that are with us that have been leaders for
22 decades in our community through the Amherst
23 Gaelic League.

24 Just this past week the Amherst
25 Gaelic League celebrated its 50th anniversary.

1 Today we have a few gentleman that are here.
2 One, Dennis Lennon. Dennis is a 32-year member
3 and a long-time leader for 17 years of the
4 Amherst Gaelic League.

5 Along with Dennis we have
6 Terry McGuire. Terry is a newer member to the
7 Amherst Gaelic League, but his father was a
8 founding member, Mike McGuire.

9 The Amherst Gaelic League is an
10 organization of service to our community, always
11 promoting goodwill and recognizing and
12 remembering the tremendous Irish heritage through
13 educational programs, entertainment, recreational
14 activities, including folklore and history and a
15 tremendous Irish tradition that is celebrated
16 throughout the year.

17 The past five decades, the Amherst
18 Gaelic League has contributed hundreds of
19 thousands of dollars to so many organizations
20 throughout Western New York that appeal to its
21 mission, including the Society of St. Vincent de
22 Paul Refugee Resettlement Program, Western
23 New York Irish Famine Memorial, the Buffalo Naval
24 and Military Park, the Amherst Police Foundation,
25 Children's Hospital Lung Unit, Ronald McDonald

1 House, youth teams dedicated to promoting and
2 preserving Gaelic Games and Irish culture in our
3 community.

4 And under the current capable
5 leadership of President Michael Dolan, the
6 Amherst Gaelic League has promoted the study and
7 understanding of Irish history and causes and
8 results of immigration of people from Ireland to
9 the United States of America, and the division of
10 Ireland. They also encourage and support Irish
11 citizens' studying and understanding of history
12 and of American democracy and of exchanging of
13 ideas and thought and collaboration through their
14 great work in our community.

15 So because of their work and
16 leadership, we recognize them here today. Also
17 with them is our great friend, no stranger to
18 this chamber, Michael Carroll. Michael, from
19 O'Dwyer & Bernstien in the City of New York,
20 Bronx-born, a New York native who's worked with
21 the Emerald Isle Immigration Center and has
22 worked to collaborate not only all across
23 New York but all across the United States of
24 America and across the Pond into Ireland.

25 And because of Michael Carroll's

1 work, and along with organizations like the
2 Amherst Gaelic League, the tremendous Irish
3 traditions continue to be celebrated, as we do
4 tonight and throughout this month.

5 So on behalf of the Senate I'd like
6 to welcome them, Madam President, and offer all
7 of the privileges of the house.

8 Thank you.

9 ACTING PRESIDENT PERSAUD: To our
10 guests, I welcome you on behalf of the Senate.
11 We extend to you the privileges and courtesies of
12 this house.

13 Please rise and be recognized.

14 (Standing ovation.)

15 ACTING PRESIDENT PERSAUD: Senator
16 Gianaris.

17 SENATOR GIANARIS: Please recognize
18 Senator Ramos for another introduction.

19 ACTING PRESIDENT PERSAUD: Senator
20 Ramos for an introduction.

21 SENATOR RAMOS: Thank you,
22 Madam President.

23 I wanted to recognize today a few
24 very hardworking people that are in our gallery
25 this afternoon. They are members of the

1 Association of Legal Aid Attorneys, union members
2 from the Union of Auto Workers, Region 9 and 9A.

3 They do so much for those who have
4 so little. And I want to make sure that we are
5 introducing them and honoring all the work they
6 do.

7 Thank you.

8 ACTING PRESIDENT PERSAUD: To our
9 guests, I welcome you on behalf of the Senate.
10 We extend to you the privileges and courtesies of
11 this house.

12 Please rise and be recognized.

13 (Standing ovation.)

14 ACTING PRESIDENT PERSAUD: Senator
15 Gianaris.

16 SENATOR GIANARIS: Let's take up
17 the reading of the calendar, please.

18 ACTING PRESIDENT PERSAUD: The
19 Secretary will read.

20 THE SECRETARY: Calendar Number
21 215, Senate Print 1200A, by Senator Parker, an
22 act to amend the Public Service Law.

23 SENATOR LANZA: Lay it aside.

24 ACTING PRESIDENT PERSAUD: Lay it
25 aside.

1 THE SECRETARY: Calendar Number
2 308, Senate Print 7383, by Senator Sepúlveda, an
3 act to amend the New York City Charter.

4 ACTING PRESIDENT PERSAUD: Read the
5 last section.

6 THE SECRETARY: Section 3. This
7 act shall take effect on the 180th day after it
8 shall have become a law.

9 ACTING PRESIDENT PERSAUD: Call the
10 roll.

11 (The Secretary called the roll.)

12 ACTING PRESIDENT PERSAUD: Announce
13 the results.

14 THE SECRETARY: Ayes, 56.

15 ACTING PRESIDENT PERSAUD: The bill
16 is passed.

17 THE SECRETARY: Calendar Number
18 370, Senate Print 493, by Senator Comrie, an act
19 to amend the Public Service Law.

20 SENATOR GIANARIS: Lay it aside for
21 the day.

22 ACTING PRESIDENT PERSAUD: Lay it
23 aside for the day.

24 THE SECRETARY: Calendar Number
25 373, Senate Print 4511C, by Senator Ramos, an act

1 to amend the Education Law.

2 ACTING PRESIDENT PERSAUD: Read the
3 last section.

4 THE SECRETARY: Section 5. This
5 act shall take effect April 1, 2025.

6 ACTING PRESIDENT PERSAUD: Call the
7 roll.

8 (The Secretary called the roll.)

9 ACTING PRESIDENT PERSAUD: Senator
10 Ramos to explain her vote.

11 SENATOR RAMOS: Thank you,
12 Madam President.

13 You know, since the District
14 Attorney and Indigent Legal Service Attorney Loan
15 Forgiveness Program was established in 2009, law
16 school tuition has increased dramatically, and
17 still the award has remained capped at \$3400 per
18 year, when the average law school graduate owes
19 \$160,000 in student loan debt.

20 DALF money is one of the few sources
21 of student debt relief open to those with private
22 student loans. We're talking about mostly
23 attorneys of color and first-generation borrowers
24 who are more likely to hold personal student debt
25 that cannot be discharged via public service loan

1 forgiveness or other federal programs.

2 Sometimes when you're the first in
3 your family to do something, you have to choose
4 between the work that you're passionate about and
5 work that will lift your family out of poverty.
6 The weight of student debt is having a serious
7 impact on the public defender workforce, which is
8 seeing higher caseloads every day.

9 In 2022 the Legal Aid Society lost
10 200 workers, mostly due to burnout and
11 unsustainable caseloads. That was a 73 percent
12 jump in attrition, just that one public defender
13 organization alone. The rest of them did not
14 fare much better. New York Magazine wrote a
15 profile that described New York's public
16 defenders who were picking up Grubhub shifts in
17 addition to their already high caseloads.

18 My constituents rely on indigent
19 legal services to fend off eviction, navigate the
20 immigration system, and get support through
21 Family Court. The right to competent
22 representation is compromised when we ask public
23 defenders to take on more work for less pay.

24 This bill is just one approach to
25 tackling the student debt crisis that is weighing

1 heavy on my generation. We want New Yorkers to
2 be able to pursue a meaningful career and build a
3 life here in this state. I'm thrilled that we
4 are able to throw this lifeline to these
5 essential workers, and I thank our Majority
6 Leader, Andrea Stewart-Cousins.

7 I vote aye.

8 ACTING PRESIDENT PERSAUD: Senator
9 Ramos to be recorded in the affirmative.

10 Announce the results.

11 THE SECRETARY: Ayes, 57.

12 ACTING PRESIDENT PERSAUD: The bill
13 is passed.

14 THE SECRETARY: Calendar Number
15 380, Senate Print 213B, by Senator Myrie, an act
16 to amend the Agriculture and Markets Law.

17 SENATOR LANZA: Lay it aside,
18 please.

19 ACTING PRESIDENT PERSAUD: Lay it
20 aside.

21 THE SECRETARY: Calendar Number
22 391, Senate Print 1458, by Senator Serrano, an
23 act creating a legislative task force on outdoor
24 environmental education.

25 ACTING PRESIDENT PERSAUD: Read the

1 last section.

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

4 ACTING PRESIDENT PERSAUD: Call the
5 roll.

6 (The Secretary called the roll.)

7 ACTING PRESIDENT PERSAUD: Announce
8 the results.

9 THE SECRETARY: Ayes, 57.

10 ACTING PRESIDENT PERSAUD: The bill
11 is passed.

12 THE SECRETARY: Calendar Number
13 402, Senate Print 6476B, by Senator Gonzalez, an
14 act directing a state agency telework report.

15 ACTING PRESIDENT PERSAUD: Read the
16 last section.

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

19 ACTING PRESIDENT PERSAUD: Call the
20 roll.

21 (The Secretary called the roll.)

22 ACTING PRESIDENT PERSAUD: Announce
23 the results.

24 THE SECRETARY: In relation to
25 Calendar 402, those Senators voting in the

1 negative are Senators Griffo, Oberacker, O'Mara,
2 Ortt and Weber.

3 Ayes, 52. Nays, 5.

4 ACTING PRESIDENT PERSAUD: The bill
5 is passed.

6 THE SECRETARY: Calendar Number
7 405, Senate Print 1963A, by Senator Addabbo, an
8 act to amend the Social Services Law.

9 ACTING PRESIDENT PERSAUD: Read the
10 last section.

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

13 ACTING PRESIDENT PERSAUD: Call the
14 roll.

15 (The Secretary called the roll.)

16 ACTING PRESIDENT PERSAUD: Announce
17 the results.

18 THE SECRETARY: Ayes, 57.

19 ACTING PRESIDENT PERSAUD: The bill
20 is passed.

21 THE SECRETARY: Calendar Number
22 408, Senate Print 8184, by Senator Mannion, an
23 act to amend Chapter 670 of the Laws of 2021.

24 ACTING PRESIDENT PERSAUD: Read the
25 last section.

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

3 ACTING PRESIDENT PERSAUD: Call the
4 roll.

5 (The Secretary called the roll.)

6 ACTING PRESIDENT PERSAUD: Announce
7 the results.

8 THE SECRETARY: Ayes, 57.

9 ACTING PRESIDENT PERSAUD: The bill
10 is passed.

11 THE SECRETARY: Calendar Number
12 412, Assembly Bill Number 8467A, by
13 Assemblymember McDonald, an act to amend the
14 Public Health Law.

15 ACTING PRESIDENT PERSAUD: Read the
16 last section.

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

20 ACTING PRESIDENT PERSAUD: Call the
21 roll.

22 (The Secretary called the roll.)

23 ACTING PRESIDENT PERSAUD: Senator
24 Harckham to explain his vote.

25 Senator Fernandez to explain her

1 vote.

2 SENATOR FERNANDEZ: Thank you.

3 So last year I was proud to support
4 an important piece of legislation called
5 Matthew's Law, sponsored by Senator Harckham.
6 The bill was created in memory of Matthew Horan,
7 a Westchester resident who tragically died using
8 drugs mixed with fentanyl.

9 Matthew's sister, Kailey, worked
10 hard to make sure that others could access
11 harm-reduction supplies like fentanyl testing
12 kits, which were difficult to find in many
13 communities around the state -- which could help
14 prevent deaths like Matthew's.

15 Now, fentanyl is not our only
16 problem. Other dangerous additives like xylazine
17 are now being mixed into the drug supply, causing
18 more deaths and unimaginable grief for families
19 and loved ones.

20 To address these trends head-on,
21 we've updated Matthew's Law to include testing
22 kits not just for fentanyl but also xylazine and
23 other dangerous additives that have been detected
24 in an increasing number of drug overdose deaths.
25 These kits will be easily accessible at

1 pharmacies throughout the state. This is about
2 staying ahead of the problem and preparing for
3 whatever new dangers come next.

4 Not everyone is ready for treatment
5 for a substance use disorder, and it's our
6 responsibility to meet individuals where they are
7 and give them the harm-reduction tools and
8 support they need to keep them safe and healthy
9 until they're ready to access the help. This is
10 about taking immediate action to prevent future
11 tragedies before they happen.

12 I thank Senator Harckham for
13 bringing this bill to life, and I thank the
14 Majority Leader for bringing this important
15 legislation back to the floor with this update to
16 ensure that we stay up-to-date in our response to
17 this deadly crisis.

18 I proudly vote aye.

19 ACTING PRESIDENT PERSAUD: Senator
20 Fernandez to be recorded in the affirmative.

21 Senator Webb to explain her vote.

22 SENATOR WEBB: Thank you,
23 Madam President.

24 I want to thank Senator Fernandez
25 for her work on this important issue, and of

1 course Senator Harckham.

2 In our state, small cities and rural
3 communities in upstate districts like mine have
4 been hit really hard by the opioid epidemic.
5 Overdoses are on the rise due to the prevalence
6 of dangerous additives like fentanyl and xylazine
7 in the drug supply, harmful additives which
8 drastically increase the risk of overdose for
9 people using these substances in our community.

10 The amount of overdose deaths have
11 doubled -- nearly doubled in New York since 2019
12 and 2033, and 2003 was actually the worst year on
13 record. In Tompkins County, which is in my
14 district, for example, overdose deaths have been
15 steadily increasing since 2018, and the number of
16 deaths so far in 2024 have already exceeded the
17 number recorded by this time last year.

18 Recent spikes in overdoses in my
19 district are due to the prevalence of fentanyl
20 and xylazine in the drug supply. According to
21 one harm-reduction organization offering free
22 on-site drug testing in my district, out of the
23 105 local drug samples from the last nine months
24 tested in Tompkins and Broome counties, all
25 contain fentanyl, and 74 percent contained

1 xylazine.

2 Last year, as it's already been
3 noted, we passed legislation to authorize
4 pharmacists to distribute fentanyl testing
5 strips, which is one of the best tools that we
6 have at our disposal to save lives. I thank
7 again my colleague Senator Fernandez for
8 introducing this legislation to add xylazine to
9 the list of drug adulterants for which testing
10 supplies may be offered at pharmacies. As has
11 been mentioned, it is increasingly present in the
12 drug supply and incredibly dangerous. Not only
13 is it known to cause skin necrosis at injection
14 sites, but typical Narcan interventions have not
15 been shown to be as effective in overdoses caused
16 by xylazine.

17 I vote aye, and I encourage my
18 colleagues to do the same.

19 Thank you, Madam President.

20 ACTING PRESIDENT PERSAUD: Senator
21 Webb to be recorded in the affirmative.

22 Senator Harckham to explain his
23 vote.

24 SENATOR HARCKHAM: Thank you very
25 much, Madam President.

1 I rise simply to thank
2 Senator Fernandez for this really important
3 addition. I thank colleagues for joining us in
4 passing Matthew's Law last year for reasons so
5 eloquently explained by Senator Fernandez.

6 But this addition of xylazine test
7 strips we wanted to do last year. We couldn't
8 get our friends down the hall on board. You did.
9 This is a great addition to this bill. Thank
10 you.

11 Proud to vote aye.

12 ACTING PRESIDENT PERSAUD: Senator
13 Harckham to be recorded in the affirmative.

14 Senator Martins to explain his vote.

15 SENATOR MARTINS: Thank you,
16 Madam President.

17 I too rise to thank the sponsor for
18 this bill, and Senator Harckham for his previous
19 bill. This is all very important. Anything that
20 will prevent an overdose death is something we
21 should all work together. And I think you've
22 seen in this chamber that we all just in fact did
23 that.

24 But I would urge everyone in this
25 chamber to take a stronger holistic approach when

1 it comes to holding people accountable for
2 placing fentanyl and xylazine and these drugs
3 that are killing our children and our residents
4 and our communities.

5 You know, it's great to be able to
6 stand here and talk about prevention and talk
7 about strips. Let's talk about putting drug
8 dealers, Madam President, behind bars. Let's
9 give judges the opportunity to hold them in jail
10 until they're prosecuted, and then they go to
11 jail for having perpetuated this drug and this
12 scourge on our communities. We talk about it
13 each and every day in this session.

14 Let's come together and do something
15 holistic. Yes, let's allow for strips to be
16 placed in pharmacies. But let's also hold drug
17 dealers accountable when they actually peddle the
18 stuff that is killing our kids.

19 I proudly vote aye.

20 ACTING PRESIDENT PERSAUD: Senator
21 Martins to be recorded in the affirmative.

22 Senator Rolison to explain his vote.

23 SENATOR ROLISON: Thank you,
24 Madam President.

25 I concur with my colleague

1 Senator Martins. You know, we over the years --
2 and I don't know when it started where bills were
3 named after an individual. And this bill -- and
4 thank you, Senator Fernandez, Senator Harckham,
5 for -- and the Majority Leader for bringing this
6 bill to the floor. Because, ultimately, Matthew
7 was someone. He was a son, could have been a
8 brother, he could have been a father. I don't
9 know the background of Matthew.

10 But what I do know is that these
11 harm-reduction initiatives make sense. In fact,
12 we've acted upon this with a sense of urgency. I
13 hope that this is passed in the Assembly and
14 signed by the Governor. So while we can't,
15 obviously, bring Matthew back, we can say that we
16 did something to prevent further Matthews and
17 other names that unfortunately happen way too
18 often in this state.

19 And I'll be voting in the
20 affirmative, Madam President.

21 ACTING PRESIDENT PERSAUD: Senator
22 Rolison to be recorded in the affirmative.

23 Senator Canzoneri-Fitzpatrick to
24 explain her vote.

25 SENATOR CANZONERI-FITZPATRICK:

1 Thank you, Madam President.

2 I too rise to support this
3 legislation and thank the sponsor.

4 However, my understanding is that
5 tranq, or xylazine, is not even listed as a
6 controlled substance yet. And that's what we
7 need to do to give this legislation more teeth,
8 so that when we are dealing with drug dealers who
9 are pushing this drug, we have some teeth.

10 So I would like to encourage
11 everybody to look at the legislation that's
12 pending -- I think it's been offered by
13 Senator Murray -- that we look at that
14 legislation so that we allow this horrible
15 epidemic to be addressed with the proper tools.

16 Thank you, Madam President.

17 ACTING PRESIDENT PERSAUD: How do
18 you vote, Senator?

19 SENATOR CANZONERI-FITZPATRICK: Oh.
20 I vote in the affirmative. Thank you.

21 ACTING PRESIDENT PERSAUD: Thank
22 you.

23 Senator Canzoneri-Fitzpatrick to be
24 recorded in the affirmative.

25 Announce the results.

1 THE SECRETARY: Ayes, 57.

2 ACTING PRESIDENT PERSAUD: The bill
3 is passed.

4 THE SECRETARY: Calendar Number
5 434, Senate Print 5603, by Senator Comrie, an act
6 to amend the Public Authorities Law.

7 ACTING PRESIDENT PERSAUD: Read the
8 last section.

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

11 ACTING PRESIDENT PERSAUD: Call the
12 roll.

13 (The Secretary called the roll.)

14 ACTING PRESIDENT PERSAUD: Announce
15 the results.

16 THE SECRETARY: Ayes, 57.

17 ACTING PRESIDENT PERSAUD: The bill
18 is passed.

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

21 SENATOR GIANARIS: Please move to
22 the controversial calendar.

23 ACTING PRESIDENT PERSAUD: The
24 Secretary will ring the bell.

25 The Secretary will read.

1 THE SECRETARY: Calendar Number
2 215, Senate Print 1200A, by Senator Parker, an
3 act to amend the Public Service Law.

4 ACTING PRESIDENT PERSAUD: Hello,
5 Senator Lanza. Why do you rise?

6 SENATOR LANZA: Good evening,
7 Madam President.

8 Madam President, I believe there's
9 an amendment at the desk. I waive the reading of
10 that amendment and ask that you recognize
11 Senator Canzoneri-Fitzpatrick to be heard.

12 ACTING PRESIDENT PERSAUD: Thank
13 you, Senator Lanza.

14 Upon review of the amendment, in
15 accordance with Rule 6, Section 4B, I rule it
16 nongermane and out of order at this time.

17 SENATOR LANZA: Accordingly, Madam
18 President, I appeal the ruling of the chair and
19 ask that Senator Canzoneri-Fitzpatrick be heard
20 on that appeal.

21 ACTING PRESIDENT PERSAUD: The
22 appeal has been made and recognized, and
23 Senator Canzoneri-Fitzpatrick may be heard.

24 SENATOR CANZONERI-FITZPATRICK:
25 Thank you, Madam President.

1 I rise to appeal the ruling of the
2 chair. The proposed amendment is germane to the
3 bill at hand because the bill at hand creates
4 provisions to provide customer certainty about
5 utility bills, and the amendment I have brought
6 today gives consumers further certainties about
7 their monthly bills.

8 Our electric grid is in the midst of
9 a transformation, but we are still unsure at this
10 point what that transformation will do to
11 electric bills for families across the state.
12 Families sitting around their kitchen table
13 trying to figure out their budgets have been
14 under tremendous pressure because of inflation,
15 and the last thing they need is more shock and
16 uncertainty when they are already struggling just
17 to get by.

18 We would be as transparent as
19 possible about the costs that this Legislature is
20 imposing on families with the CLCPA mandates, so
21 that they can plan how they are going to pay
22 their monthly bills.

23 The amendment I have brought today
24 would force the PSC to determine the cost of
25 these mandates for each family around the state,

1 and to publicize that information prior to voting
2 on actions needed to comply with the CLCPA.

3 In the spirit of fairness, if this
4 Legislature is going to force these mandates on
5 families, the very least that we can do in this
6 Legislature is to give them the costs and to be
7 transparent about that.

8 For these reasons, I strongly urge
9 you to reconsider your ruling.

10 Thank you, Madam President.

11 ACTING PRESIDENT PERSAUD: Thank
12 you, Senator.

13 I want to remind the house that the
14 vote is on the procedures of the house and the
15 ruling of the chair.

16 Those in favor of overruling the
17 chair, signify by saying aye.

18 (Response of "Aye.")

19 SENATOR LANZA: Show of hands.

20 ACTING PRESIDENT PERSAUD: A show
21 of hands has been requested and so ordered.

22 Announce the results.

23 THE SECRETARY: Ayes, 20.

24 ACTING PRESIDENT PERSAUD: The
25 ruling of the chair stands, and the bill-in-chief

1 is before the house.

2 Read the last section.

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

6 ACTING PRESIDENT PERSAUD: Call the
7 roll.

8 (The Secretary called the roll.)

9 ACTING PRESIDENT PERSAUD: Announce
10 the results.

11 THE SECRETARY: In relation to
12 Calendar Number 215, voting in the negative:
13 Senator Stec.

14 Ayes, 56. Nays, 1.

15 ACTING PRESIDENT PERSAUD: The bill
16 is passed.

17 THE SECRETARY: Calendar Number
18 380, Senate Print 213B, by Senator Myrie, an act
19 to amend the Agriculture and Markets Law.

20 ACTING PRESIDENT PERSAUD: Senator
21 Borrello.

22 SENATOR BORRELLO: (Chewing
23 loudly.) Madam President, would the sponsor
24 yield for some questions about junk food
25 advertising?

1 ACTING PRESIDENT PERSAUD: No
2 eating on the floor.

3 (Laughter.)

4 ACTING PRESIDENT PERSAUD: Will the
5 sponsor yield?

6 SENATOR MYRIE: Yes.

7 ACTING PRESIDENT PERSAUD: The
8 sponsor will yield.

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

11 This is the third time we've debated
12 this bill. And, you know, I have a lot of
13 questions.

14 I will start off by saying -- by
15 thanking you for removing the private right of
16 action from this. I thought that was an
17 important part of this, so thank you very much.

18 But my first question is, you know,
19 the bill speaks to unhealthy food marketing and
20 it speaks to specifically the use of rewarding
21 cues. What exactly is a rewarding cue?

22 SENATOR MYRIE: Through you,
23 Madam President. And I hope you enjoyed your
24 Lay's chips before this debate.

25 (Laughter.)

1 SENATOR MYRIE: I just -- I'm not
2 sure if it's reflected in the record, so I wanted
3 to make sure we got that on.

4 So let me back up a little bit and
5 say that through -- the section that you're
6 referencing in the bill is an outline, a
7 guidepost for the court to consider what is
8 predatory marketing or what is violative of the
9 statute. So it would be very fact-based, it
10 would be based on the circumstances in that
11 particular advertisement.

12 And rewarding cues, as outlined in
13 the Federal Trade Commission's regulations around
14 advertising to children, basically are the things
15 that you see that would prompt you to want to
16 purchase this and or want to what is called in
17 the industry "pester your parents" to get it. So
18 these are things like toys and other things that
19 appeal to children.

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

22 ACTING PRESIDENT PERSAUD: Will the
23 sponsor yield?

24 SENATOR MYRIE: Yes.

25 ACTING PRESIDENT PERSAUD: The

1 sponsor yields.

2 SENATOR BORRELLO: All right. So
3 you mentioned that there's some kind of a federal
4 guideline for something called "rewarding cue."
5 You just brought up toys and so forth.

6 So if I -- if there's a box of
7 cereal that comes with a toy prize inside of it,
8 could that be considered a rewarding cue for
9 buying that box of cereal?

10 SENATOR MYRIE: Through you,
11 Madam President, it would depend on the nature of
12 that particular advertisement.

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

15 ACTING PRESIDENT PERSAUD: Will the
16 sponsor yield?

17 SENATOR MYRIE: Yes.

18 ACTING PRESIDENT PERSAUD: The
19 sponsor yields.

20 SENATOR BORRELLO: So I think we
21 all grew up with Happy Meals. The Happy Meals
22 have got usually some kind of a toy that comes
23 along with them.

24 Would the Happy Meal be potentially
25 subject to having to eliminate that toy in order

1 not to be in violation of this law here in
2 New York State?

3 SENATOR MYRIE: Through you,
4 Madam President, it would be one of the factors
5 that the court would consider. I want to
6 underscore that point.

7 Because this does not speak to
8 advertising generally. It speaks to targeted
9 advertising to inherently vulnerable audiences.
10 And in determining whether or not that audience
11 is inherently vulnerable, we have outlined some
12 things in this bill that the court could look at.

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

15 ACTING PRESIDENT PERSAUD: Does the
16 sponsor yield?

17 SENATOR MYRIE: Yes.

18 ACTING PRESIDENT PERSAUD: The
19 sponsor yields.

20 SENATOR BORRELLO: So you bring up
21 vulnerable -- basically, vulnerable people in
22 this. But you also mention federal guidelines.
23 But in this bill you actually change the
24 definition of a child to 18 and younger, versus
25 the federal guideline, which is under 18. So

1 you're basically saying an 18-year-old now will
2 be considered a child and potentially subject to
3 this -- you know, as a vulnerable constituent for
4 this bill.

5 So you're talking about college
6 students. So are we saying that you cannot
7 advertise, you know, Lay's potato chips on a
8 college campus without potentially being in
9 violation of this bill?

10 SENATOR MYRIE: Through you,
11 Madam President, our definition of child matches
12 every other definition of child in New York State
13 law. So we did not want to diverge from that
14 definition to create some new category, so it
15 matches it.

16 But let me, more importantly,
17 address the underlying principle here, and that
18 is that only younger teenagers or children are
19 potentially vulnerable. Everything that we know
20 about brain development for children suggests to
21 us that that is a process that continues even
22 past the age of 18. But in this particular
23 context, we thought it was important just to
24 match what every other section of New York State
25 law says regarding the definition of a child.

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

3 ACTING PRESIDENT PERSAUD: Does the
4 sponsor yield?

5 SENATOR MYRIE: Yes.

6 ACTING PRESIDENT PERSAUD: The
7 sponsor yields.

8 SENATOR BORRELLO: So this speaks
9 to food advertisers being liable for false and
10 misleading advertising. That's quite vague. And
11 also the "intellectual capabilities" of that
12 person is quite vague.

13 So really, how does anybody produce
14 an advertisement without potentially opening
15 themselves up to liability?

16 SENATOR MYRIE: Through you,
17 Madam President, I would disagree with the
18 characterization of "false and misleading" being
19 vague. That is in fact the law right now. In
20 Section 350 of the General Business Law, false or
21 misleading advertising is already against the
22 law.

23 What this bill does is say in
24 considering whether it is false and misleading,
25 there must be special attention paid to children.

1 And I'd be remiss if I didn't sort of speak to
2 the purpose of this bill, which is that the food
3 industry spends billions of dollars targeting our
4 children with ultraprocessed food and unhealthy
5 food. We have an obesity epidemic that is across
6 ages, but particularly for our children; other
7 health maladies associated with the
8 overconsumption of junk food.

9 And we have a job I think as a
10 Legislature to protect the most vulnerable
11 amongst us. So this is an attempt to clarify
12 what is already existing law as relates to "false
13 and misleading," and instructing the court to
14 consider other factors when that false or
15 misleading advertisement is targeted to a child.

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

18 ACTING PRESIDENT PERSAUD: Does the
19 sponsor yield?

20 SENATOR MYRIE: Yes.

21 ACTING PRESIDENT PERSAUD: The
22 sponsor yields.

23 SENATOR BORRELLO: Well, and I
24 understand that you -- you know, the intent here
25 is to -- we want to ensure that we're doing

1 whatever we can to keep, you know, children from
2 being unduly influenced.

3 But you're basically saying, then,
4 that it's up to a judge to determine what will be
5 considered false and misleading, what will be
6 considered intellectual capabilities, and what
7 will be considered targeting children. Right?
8 The judge basically has full discretion,
9 interestingly enough -- full discretion to
10 actually determine what will be false and
11 misleading.

12 SENATOR MYRIE: Through you,
13 Madam President, a judge right now already has
14 that discretion.

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

17 ACTING PRESIDENT PERSAUD: Does the
18 sponsor yield?

19 SENATOR MYRIE: Yes.

20 ACTING PRESIDENT PERSAUD: The
21 sponsor yields.

22 SENATOR BORRELLO: So the judge has
23 discretion to determine all of those factors. So
24 what will this bill then empower them to do?

25 SENATOR MYRIE: Through you,

1 Madam President. I was speaking to your focus on
2 discretion and whether or not this was
3 appropriate for a judge to have that discretion
4 on "false and misleading."

5 That is already the case. There is
6 already case law on that.

7 If you can remind me of the second
8 part of your question.

9 SENATOR BORRELLO: Just, you know,
10 the judge itself, they would have full discretion
11 to determine whether or not something was, you
12 know, considered false and misleading.

13 SENATOR MYRIE: Through you,
14 Madam President. I remember now: You said, So
15 what's the point of the bill?

16 (Laughter.)

17 SENATOR MYRIE: So in addition to
18 the already existing law, what this would do is
19 help the court make a determination on
20 advertisements that are targeted to children.

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

23 ACTING PRESIDENT PERSAUD: Does the
24 sponsor yield?

25 SENATOR MYRIE: Yes.

1 ACTING PRESIDENT PERSAUD: The
2 sponsor yields.

3 SENATOR BORRELLO: So you speak
4 about music could be a -- potentially a trigger,
5 the type of music chosen. You know, what would
6 trigger liability? What kind of music would
7 trigger liability? I'm not asking you to like
8 sing anything, just tell me what you think it --
9 would potentially trigger liability.

10 SENATOR MYRIE: Through you,
11 Madam President. Similar to what I was
12 mentioning earlier, this would be one of the
13 several factors that the court would have to
14 consider.

15 So it wouldn't be just the type of
16 music used. It would include some of the other
17 things we have laid out in the bill -- the images
18 that are used, the likeness of other potential
19 celebrities that children might be more attracted
20 to.

21 And I'd again underscore that the
22 Federal Trade Commission also uses music as one
23 of the factors. So there isn't a particular song
24 or a particular jingle. This would be
25 fact-dependent, would depend on the exact

1 advertisement, and would only be one of the
2 factors considered by the court.

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

5 ACTING PRESIDENT PERSAUD: Does the
6 sponsor yield?

7 SENATOR MYRIE: Yes.

8 ACTING PRESIDENT PERSAUD: The
9 sponsor yields.

10 SENATOR BORRELLO: Through you,
11 Madam President. You brought up celebrities. So
12 are you saying that athletes now would maybe be
13 barred from, you know, endorsing products that
14 might be considered unhealthy? I mean, would
15 that be appealing to children. Or actors,
16 certain actors. Taylor Swift appeals to young
17 people under the age of 18. Who would -- how
18 would that be determined as a restriction?

19 SENATOR MYRIE: Through you,
20 Madam President. I think what my colleague is
21 engaging in is the process that the court would
22 engage in.

23 You would have to look at the
24 particular instance, you would have to look at
25 the combination of the factors. And you would

1 have to look at, I imagine in the celebrity
2 context, whether this is someone that holds
3 appeal for that particular vulnerable audience.

4 But there's no red line, there's no
5 blanket application, because these things are
6 inherently case-dependent.

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

9 SENATOR MYRIE: Does the sponsor
10 yield?

11 SENATOR MYRIE: Yes.

12 ACTING PRESIDENT PERSAUD: The
13 sponsor yields.

14 SENATOR BORRELLO: You know,
15 there's a debate going on in Washington right now
16 about banning TikTok. We've heard from many
17 experts saying that social media is bad for our
18 kids, it's caused depression, it's caused
19 suicide, it's caused radicalization.

20 So would you, then, following this
21 thought of trying to protect our children, would
22 you think we should ban the use of social media
23 for children 18 and under?

24 SENATOR MYRIE: Through you,
25 Madam President. I'm not going to speak to

1 whether or not we should ban social media.
2 That's certainly outside of the bounds of this
3 bill.

4 But I will say that social media, as
5 you pointed out, speaks to the underlying
6 principle of this bill, and that is that our
7 young people are particularly vulnerable. That
8 they -- we know that in children ages 6 to 9, for
9 instance, some of the studies have shown that
10 they can't differentiate between what is a
11 commercial, like commercial speech, and what is
12 truth.

13 And so when two of these things are
14 combined, that's when we get into trouble and
15 kids are doing things that perhaps they might not
16 have otherwise done if not exposed to that
17 particular advertisement.

18 So we are trying, again, to get at
19 false and misleading advertising in this context.

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

22 ACTING PRESIDENT PERSAUD: Does the
23 sponsor yield?

24 SENATOR MYRIE: Yes.

25 ACTING PRESIDENT PERSAUD: The

1 sponsor yields.

2 SENATOR BORRELLO: So there's no
3 guidelines here. There's no standards to be
4 followed. So other than being sued, how would a
5 company know it's in violation?

6 SENATOR MYRIE: Through you,
7 Madam President, I would again disagree with the
8 characterization. We've laid out many factors, A
9 through K, that would guide the court. So it was
10 subject matter, visual content, use of animated
11 characters or child oriented activities and
12 incentives. Music or other audio content. Age
13 of models. Presence of child celebrities or
14 celebrities who appeal to children. Language.
15 Competent or reliable empirical evidence
16 regarding audience composition, and evidence
17 regarding the intended audience.

18 That is not vague. That gives the
19 court some guidance. And I think that if we are
20 to say, Well, if there's a risk of litigation we
21 should never do anything -- I think we'd be
22 paralyzed as a chamber.

23 The risk to our children is not some
24 future thing. It's happening right now. We have
25 children that have Type 2 diabetes at the age of

1 9. That is not in the natural order of things.
2 That is because we are subjecting them,
3 unfortunately, to predatory marketing. That is
4 what this bill is aiming to curb.

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

7 ACTING PRESIDENT PERSAUD: Does the
8 sponsor yield?

9 SENATOR MYRIE: Yes.

10 ACTING PRESIDENT PERSAUD: The
11 sponsor yields.

12 SENATOR BORRELLO: So you brought
13 up all those factors, using music, language,
14 celebrities, images. So how does one advertise
15 if we can't use any of those things?

16 SENATOR MYRIE: Through you,
17 Madam President. It's not our job to determine
18 who's going to advertise and how. The
19 Constitution, the United States Constitution does
20 protect advertisement. Commercial speech does
21 have some protection. But it does not have
22 First Amendment protection if it is false or
23 misleading.

24 So unless the industry plans to
25 unleash false and misleading advertisements, you

1 can still advertise as you have in the past
2 except if it is targeting children and meets some
3 of these factors and the court makes a
4 determination, then they would be violative of
5 this law.

6 But this is in no means an attempt
7 to stop advertising writ large.

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

10 ACTING PRESIDENT PERSAUD: Does the
11 sponsor yield?

12 SENATOR MYRIE: Yes.

13 ACTING PRESIDENT PERSAUD: The
14 sponsor yields.

15 SENATOR BORRELLO: So Red Bull.
16 Red Bull's tag line is "Red Bull gives you
17 wings." Clearly you actually don't get actual
18 wings.

19 So would Red Bull be in violation of
20 this law if they continue to use that tag line?

21 SENATOR MYRIE: Through you,
22 Madam President. There are many factors that the
23 court would have to consider in that particular
24 case.

25 SENATOR BORRELLO: Madam President,

1 will the sponsor continue to yield.

2 ACTING PRESIDENT PERSAUD: Does the
3 sponsor yield?

4 SENATOR MYRIE: Yes.

5 ACTING PRESIDENT PERSAUD: The
6 sponsor yields.

7 SENATOR BORRELLO: But in order to
8 find out if "Red Bull gives you wings" is an
9 actual violation of the law, you'd have to go to
10 court, right? Because Red Bull doesn't give you
11 wings. Unless they give you chicken wings. Then
12 that could be like a loophole.

13 SENATOR MYRIE: Through you,
14 Madam President. Again, it's not our job to
15 write advertisement copy for corporations. That
16 is their duty.

17 And we also do not have a
18 responsibility as relates to what the outcome of
19 a court decision would be, considering all of
20 these factors.

21 So I would again point my colleague
22 to the bill language, to what is already in
23 regulatory language on the federal level. And I
24 would encourage all companies worried about
25 violating either of those things to perhaps

1 consult their lawyers.

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

4 ACTING PRESIDENT PERSAUD: Does the
5 sponsor yield?

6 SENATOR MYRIE: Yes.

7 ACTING PRESIDENT PERSAUD: The
8 sponsor yields.

9 SENATOR BORRELLO: Correct me if
10 I'm wrong, but there's also discussion about
11 being within a certain proximity of a school or
12 where children -- what's the proximity? What's
13 the standard that -- for -- how close to a
14 school, and what type of advertising?

15 I mean, obviously old-school things
16 like billboards, that's one thing. But what
17 about, you know, people that use Googled ads and,
18 you know, those targeted ads? How would that
19 be -- how would you know where that phone is if
20 it's close to a school or not close to a school,
21 if you're using a -- you know, a Google ad or
22 some other online ad?

23 SENATOR MYRIE: Through you,
24 Madam President. Firstly, the use of proximity
25 is not something unusual in our law. And it's

1 again a factor that the court would consider
2 amongst many other things.

3 But I would note that there is
4 already geofence-like tracking of young people
5 done by corporations. An example of that, if you
6 are getting off the train and going to school and
7 a McDonald's has a geofence around and senses
8 that you are there, in your feed they can send
9 advertisements.

10 This is something that we have not
11 had to grapple with in the past that is
12 developing, and why I'm reluctant for us to have
13 a red line. Because the way that we advertise,
14 how people are subjected to these advertisements,
15 is ever-evolving, and we want to leave room for
16 the court to address that.

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

19 ACTING PRESIDENT PERSAUD: Does the
20 sponsor yield?

21 SENATOR MYRIE: Yes.

22 ACTING PRESIDENT PERSAUD: The
23 sponsor yields.

24 SENATOR BORRELLO: One last
25 question here.

1 You know, this speaks to unfair
2 or -- there's really no definition of unfair
3 advertising. So, you know, are we going to
4 punish somebody for something that was
5 unintentional? I mean, you're giving a broad
6 definition to what is considered unfair. That's
7 a very broad term. Fairness is a word that means
8 a lot of things to a lot of people.

9 So how do we stop someone who had no
10 intention of falsely advertising something from
11 being caught up in a lawsuit as a result of this?

12 SENATOR MYRIE: Through you,
13 Madam President. First, on the unfair, this is
14 not an unusual word. In fact, it is a term of
15 art in the legal academy. Unfair practices are
16 something that is on the books in many other
17 states, including unfair practices in advertising
18 to vulnerable populations like seniors and
19 children.

20 So that is not a place where the
21 court would be confused. That is well-developed
22 jurisprudence on what that might consider.

23 And as you know, we are having a
24 conversation in this Legislature, and as proposed
25 by the Governor's budget, about updating

1 New York's consumer protection laws to meet those
2 unfair practice thresholds.

3 And regarding unintentionality, I
4 think that would be an unfortunate circumstance
5 if someone was sued for unintentionally doing it.
6 But they would be able to make the case to the
7 court that it was -- that they don't meet the
8 factors outlined in this bill, and then the court
9 would subsequently make a determination.

10 SENATOR BORRELLO: Madam President,
11 on the bill.

12 ACTING PRESIDENT PERSAUD: Senator
13 Borrello on the bill.

14 SENATOR BORRELLO: Senator Myrie,
15 thank you very much once again for engaging in
16 that debate. I appreciate it.

17 I understand the purpose of this
18 bill. But it's just too broad. It's too vague.
19 You know, it's subject to so many circumstances.
20 Basically what you're saying here is that you
21 can't use music or a celebrity or a cartoon
22 character to advertise something. Maybe you
23 can't put a toy in the Happy Meal anymore, or in
24 the cereal box. Maybe you can't say "Red Bull
25 gives you wings."

1 So New York State's basically saying
2 there's going to be no product advertising if
3 we're going to play it safe and not subject
4 ourselves to some kind of a liability. I think
5 that that's far too broad.

6 You know, this morning we did a
7 press conference with Senator Martinez about
8 vaping devices that are in the shape of school
9 supplies and toys. That's pretty clear. That's
10 a pretty clear, egregious violation where we're
11 trying to appeal to children. So we have a
12 law -- we have a bill that's sitting in the
13 Health Committee that would outlaw and increase
14 the fines for those vapes that are in the shape
15 of toys.

16 So we have a way to address this.
17 We can do things like that. We can say if you're
18 going to do something like this that is clearly
19 targeting children with something they clearly
20 should not have, this is how we're going to
21 address it.

22 To do this broad, sweeping bill that
23 is going to negatively impact the ability for
24 anybody to advertise a product -- which is going
25 to really, I think, open this up to frivolous

1 lawsuits and so forth -- I just think is far too
2 broad.

3 The intent is good, but I think that
4 the solution here is just far too onerous. So
5 I'll be voting no and I would encourage my
6 colleagues to do the same.

7 Thank you, Madam President.

8 ACTING PRESIDENT PERSAUD: Thank
9 you, Senator.

10 Are there any other Senators wishing
11 to be heard?

12 Seeing and hearing none, the debate
13 is closed. The Secretary will ring the bell.

14 Read the last section.

15 THE SECRETARY: Section 6. This
16 act shall take effect on the 30th day after it
17 shall have become a law.

18 ACTING PRESIDENT PERSAUD: Call the
19 roll.

20 (The Secretary called the roll.)

21 ACTING PRESIDENT PERSAUD: Announce
22 the results.

23 THE SECRETARY: In relation to
24 Calendar 380, those Senators voting in the
25 negative are Senators Borrello, Gallivan, Griffio,

1 Helming, Lanza, Murray, Oberacker, O'Mara, Ortt,
2 Rhoads, Stec, Tedisco and Weik.

3 Ayes, 44. Nays, 13.

4 ACTING PRESIDENT PERSAUD: The bill
5 is passed.

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

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

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

12 SENATOR GIANARIS: Move to adjourn
13 until tomorrow, Tuesday, March 12th, at 3:00 p.m.

14 ACTING PRESIDENT PERSAUD: On
15 motion, the Senate stands adjourned until
16 Tuesday, March 12th, at 3:00 p.m.

17 (Whereupon, at 3:59 p.m., the Senate
18 adjourned.)

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