

THURSDAY, MAY 20, 2021

1:21 P.M.

ACTING SPEAKER AUBRY: The House will come to order.

In the absence of clergy, let us pause for a moment of silence.

(Whereupon, a moment of silence was observed.)

Visitors are invited to join the members in the Pledge of Allegiance.

(Whereupon, Acting Speaker Aubry led visitors and members in the Pledge of Allegiance.)

A quorum being present, the Clerk will read the Journal of Wednesday, May 19.

Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Mr. Speaker, I move

that we dispense with the further reading of the Journal of May the 19th and ask that the same stand approved.

ACTING SPEAKER AUBRY: Without objection, so ordered.

Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Thank you, sir. I'd certainly like to welcome colleagues again to Chambers, both those who are here with us and those that are remote. Happy Thursdays. Today is a day of debate, and there are many to debate. But I'd like to start with a quote, Mr. Speaker. This one is coming from Marian Wright Edlam. She is an American activist for children's rights. She has been an advocate for the disadvantaged Americans for her entire professional career and she influenced many leaders such as Dr. Martin Luther King as well as former Secretary Hillary Clinton. Her quote for us today is, *Service is the rent we pay for being. It is the very purpose of life and something you should do in your spare time.* Surely there is a lot of service to be done, Mr. Speaker, so we won't run out of things to do.

Members should certainly be reminded that this is our second Session day of the 20th week of the 244th legislative Session and that on your desks you have a cal -- a main Calendar as well as a debate list. So our work today, we're going to start, Mr. Speaker, with taking up resolutions on page 3, which we do have a couple of colleagues that want to speak on resolutions. Following that, we'll be going to work off of our debate list and we should start with Calendar

No. 72 which is on page 7, and then go to Calendar No. 90, which is on page 8, and then Calendar No. 94 which is on page 9.

That's a general outline of where we're going to go today, Mr. Speaker. If you have any introductions and/or housekeeping, now would be a good time.

ACTING SPEAKER AUBRY: We do have some housekeeping to take care of, Mrs. Peoples-Stokes.

On a motion by Mr. Epstein, page 23, Calendar No. 2 -- 302, Bill No. A3320, amendments are received and adopted.

Without objection, on a motion by Mr. Pichardo to reconsider the substitution of Senate Bill No. 1172 for Assembly Bill 4954, and said Senate bill is recommitted to the Committee on Health and said Assembly bill is restored to its place on the Order of Third Reading.

We go to resolutions, page 3, Assembly No. 313, the Clerk will read.

THE CLERK: Assembly Resolution No. 313, Ms. Solages.

Legislative Resolution memorializing Governor Andrew M. Cuomo to proclaim May 17, 2021, as Necrotizing Enterocolitis Awareness Day in the State of New York.

ACTING SPEAKER AUBRY: On the resolution, all those in favor signify by saying aye; opposed, no. The resolution is adopted.

THE CLERK: Assembly Resolution No. 314, Mrs.

Gunther.

Legislative Resolution memorializing Governor Andrew M. Cuomo to proclaim May 2021, as Mental Health Month in the State of New York.

ACTING SPEAKER AUBRY: On the resolution, all those in favor signify by saying aye; opposed, no. The resolution is adopted.

THE CLERK: Assembly Resolution No. 315, Mr. Jones.

Legislative Resolution memorializing Governor Andrew M. Cuomo to proclaim May 2021, as Cystic Fibrosis Awareness Month in the State of New York.

ACTING SPEAKER AUBRY: On the resolution, all those in favor signify by saying aye; opposed, no. The resolution is adopted.

THE CLERK: Assembly Resolution No. 316, Mr. Thiele.

Legislative Resolution memorializing Governor Andrew M. Cuomo to proclaim June 12, 2021, as Dragonfly Day in the State of New York.

ACTING SPEAKER AUBRY: On the resolution, all those in favor signify by saying aye; opposed, no. The resolution is adopted.

THE CLERK: Assembly Resolution No. 317, Mr. DeStefano.

Legislative Resolution memorializing Governor Andrew M. Cuomo to proclaim October 2021, as Pet Rescue Awareness Month in the State of New York.

ACTING SPEAKER AUBRY: Mr. DeStefano on the resolution.

MR. DESTEFANO: Thank you, Mr. Speaker, for the opportunity to speak on this important resolution. We appreciate that all living creatures have a value and we recognize the service, companionship, loyalty, unconditional love, and happiness that animals bring into our lives. Millions of animals are brought through shelters each year. Some are united with their owners, and some find caring and loving homes. Sadly, some must be euthanized because the shelters are too full and not enough adoptive homes. It is vital that we encourage empathy and compassion for our companion animals, that we provide a voice for those that cannot speak for themselves. Fortunately in the month of October, animal advocates, supporters, pet owners, and citizens come together in the State of New York to protect and acknowledge the contribution of all animals to our society. Therefore, I am happy to see this legislative Body pause in its deliberations to recognize October as pet -- Pet Rescue Awareness Month in the State of New York, a proclamation that will go on a long way to helping the creatures that bring so much joy to everyone's lives. Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: On the resolution, all those in favor signify by saying aye; opposed, no. The resolution is

adopted.

THE CLERK: Assembly Resolution No. 318, Mr. Bronson.

Legislative Resolution memorializing Governor M. Cuomo to proclaim October 2021, as Breast Cancer Awareness Month in the State.

ACTING SPEAKER AUBRY: On the resolution, all those in favor signify by saying aye; opposed, no. The resolution is adopted.

Page 7, Calendar No. 72, the Clerk will read.

THE CLERK: Assembly No. A01899, Calendar No. 72, Dinowitz, Gottfried, Vanel, Barron. An act to amend the Executive Law, in relation to providing for the award of attorney's fees and expert witness fees in appropriate cases.

ACTING SPEAKER AUBRY: On a motion by Mr. Dinowitz, the Senate bill is before the House. The Senate bill is advanced. Mr. -- explanation has been requested, Mr. Dinowitz.

MR. DINOWITZ: Sure. This bill would amend the Executive Law to provide for an award of attorney's fees and expert witness fees in all appropriate cases of discrimination.

ACTING SPEAKER AUBRY: Mr. Goodell.

MR. GOODELL: Thank you, sir. Would the sponsor yield?

ACTING SPEAKER AUBRY: Mr. Dinowitz, will you yield, sir?

MR. DINOWITZ: Yes.

ACTING SPEAKER AUBRY: The sponsor yields.

MR. GOODELL: Thank you, Mr. Dinowitz. Under current law legal fees are available, if I'm not mistaken, in cases of housing discrimination, is that correct? And credit --

MR. DINOWITZ: Yes.

MR. GOODELL: And credit discrimination.

MR. DINOWITZ: Yes, in certain cases for that as well.

MR. GOODELL: And legal fees are also currently available if an action or defense is considered frivolous, correct?

MR. DINOWITZ: Yes.

MR. GOODELL: And this would extend legal fees and expert fees to all other discrimination claims, correct?

MR. DINOWITZ: Yes.

MR. GOODELL: Now as you know, lawyers who take cases on contingency fee basis, for example, personal injury cases, the Appellate Divisions have detailed rules and regulations on how much the attorney can charge. It's limited to a percentage of the judgment, and that percentage depends on whether the case is settled or it goes all the way up on appeal. Are there any limitations on attorney's fees in this legislation?

MR. DINOWITZ: The legislation doesn't provide any changes in those fees.

MR. GOODELL: So is -- is it possible, then, that the

attorney's fees in one of these cases could far exceed the actual claim?

MR. DINOWITZ: I'm not sure how that would happen, but --

MR. GOODELL: Well, I can tell you how it happens. It's when you're charging \$750 an hour and the claim is small, and then the attorney's fees quickly pass the amount of the damages in the claim; isn't that --

MR. DINOWITZ: Well, I --

MR. GOODELL: That's not prohibited under this legislation, correct?

MR. DINOWITZ: No, but I mean I -- I would think that somebody who is making a claim for a relatively small amount is not hiring an attorney that charges \$750 an hour.

MR. GOODELL: Well, you're familiar, of course, with class action suits where attorneys aggressively recruit clients, all of whom get a very small award, while the attorneys who are recruiting the clients get a massive award, right?

MR. DINOWITZ: Well, this bill isn't really about class actions, but if the attorney is representing the whole class, while it may be the case that each individual person might, you know, get a smaller amount, that doesn't hurt the individual plaintiff, as far as I could see.

MR. GOODELL: Now we've also changed the standard for discrimination, right? We -- we made a sub -- a very substantial change just recently in the last year or so, am I correct?

MR. DINOWITZ: What change are you talking about?

MR. GOODELL: The standard in which you need to meet to establish a discrimination case. It used to be severe and pervasive, and that standard was removed, correct?

MR. DINOWITZ: I'll -- I'll say yes.

MR. GOODELL: And am I correct that these legal fees would be available regardless of whether the discrimination was willful or egregious or malicious? I mean, if you have a large corporation you could have a discrimination, for example, in a branch office or a retail outlet without corporate management even knowing about it, correct? There's no obligation that the organization itself was engaged in any malice, correct?

MR. DINOWITZ: Well, there you go again worried about the big corporation, but discrimination is discrimination and as far as I'm concerned it's -- it's the fact that somebody is the victim of discrimination that concerns me the most.

MR. GOODELL: But there's no requirement of showing a malice, willfulness or knowledge, correct?

MR. DINOWITZ: This bill, Mr. Goodell, simply takes out a phrase or a sentence that's in the existing law, and it takes out that phrase in order to allow for such suits in instances of discrimination other than housing discrimination and housing-related credit discrimination. And of course it also adds -- it adds provisions for expert witness fees as well. Those are the changes that the bill

makes. So the other stuff you're talking about, while very interesting is -- I don't see how that's particularly relevant to the bill, but I'm not the Parliamentarian, so I can't decide that.

MR. GOODELL: Now this bill doesn't require that the party actually prevail on their claim, they can be eligible for unlimited attorney's fees if they substantially prevail, is that correct?

MR. DINOWITZ: This bill makes no changes with respect to that.

MR. GOODELL: And so the existing law, which is very limited in its applicability, has a substantial prevailing provision. Can you give me an idea of what that means? For example, let's say a plaintiff sues for \$100,000. Do they have to get a judgment of over \$50- to be substantially prevailing under the language as amended?

MR. DINOWITZ: Well, that's a term of art which I would think would be up to a judge to address.

MR. GOODELL: Likewise, let's say that a plaintiff sues and gets a judgment of \$40,000, originally sued for \$100- so they're not substantially prevailing, I would say. I mean, they lost a substantial portion of their claim. In that case, does the defendant have the right to have their attorney's fees reimbursed?

MR. DINOWITZ: Now, Mr. Goodell, you know that the word *substantial* is not necessarily related to the percentage of the claim that the -- a plaintiff gets. A claim is a claim. What a plaintiff may be awarded is up to a judge or a jury, I guess -- it's certainly not -- we're not talking about the percentage of what they're asking. I mean,

a plaintiff could sue for \$1 billion and if the plaintiff is then awarded \$100,000, well, that's only one-tenth thousandth of -- of the claim; does that mean it's not substantial? So the substantial I don't believe really refers to the percentage of the money that they would be awarded compared to the amount of money that they claimed.

MR. GOODELL: Does this bill authorize attorney's fees and expert witness fees to be awarded to a successful defendant?

MR. DINOWITZ: I don't see that in here, no.

MR. GOODELL: So it's just one-sided, it's -- you get attorney's fees only if you are suing a small employer or -- or any other employer, small, large employer, but if the employer wins they don't get any reimbursement, is that correct?

MR. DINOWITZ: I don't see that in here. That's my answer.

MR. GOODELL: Thank you, Mr. Dinowitz, I appreciate your comments.

On the bill, sir.

MR. DINOWITZ: You're very, very welcome.

ACTING SPEAKER AUBRY: On the bill, Mr. Goodell.

MR. GOODELL: There's a -- there's a reason why in New York State we don't automatically award attorney's fees, and that's because we want to keep the cost of litigation reasonable and we want to encourage parties to look at settlement. And we have seen enumerable examples; not one or two, but hundreds of examples

where attorney's fees, when they are automatically included as part of the award, can far exceed the amount of the claim. And if you question this, you can just get on Google, *class action suits*, and you'll see, yeah, you know, individuals got \$5, \$10 refund on their telephone bill or whatever, and the attorney's fees were millions.

And so the current law is very clear that attorney's fees can only be awarded normally if the defendant acted maliciously, intentionally, in a way that was unjustified, and then it's almost in the context of a punitive damage situation. If you look at other similar context in the personal injury claims, the Appellate Courts throughout New York State are very clear and very firm about limiting attorney's fees for that very reason. So you know, you only get 25 percent if you file a claim and it's settled, and I think it's a third if it goes up on appeal and you win or it goes through a jury trial and you win, they're very, very careful on that because they don't want the lawsuit to be about lawyers. Even the Workers Comp Board, if you're a successful attorney in a Workers Comp or an Unemployment claim -- I know in an unemployment claim the attorney has to submit an affidavit and it has to be approved by the Unemployment Compensation Board as to reasonableness, even though the Unemployed Compensation Board's not paying the legal fee. And they look at the difficulty of the case, of course, but also the amount of the award.

So we've heard from the Business Council, we've heard from other organizations across New York State that I think correctly say we should not change the way we've dealt with attorney's

fees and allow unlimited legal fees and unlimited expert fees in a case that are not in any way tied to the judgment, or the amount in controversy. And while some people say, *Well, this is just to make sure that small plaintiffs can sue big businesses*. No, this bill isn't limited to the size of the employer. And so you can have small employers who are completely put out of business, not based on the size of the judgment on any alleged discrimination, but on the size of the legal fees and expert fees.

So while I appreciate my colleague's comments, and while I have to apologize to all my colleagues in the New York State Bar Association and even my local bar association for opposing legislation that gives them an opportunity to send their kids to college and build a substantial fund for their spouse and their retirement, our mission should still be to focus on fairness for both parties, and a bill that only allows unlimited legal fees to be collected by one side, a plaintiff, and doesn't provide the same protection for a defendant is clearly not a balanced, reasonable bill. And without any guide rails at all on the amount, it will raise the cost of doing business in New York State and not provide a level playing field. And for those reasons, I will be opposing it and recommend the same for my colleagues. Thank you, sir.

ACTING SPEAKER AUBRY: Read the last section.

THE CLERK: This act shall take effect on the 90th day.

ACTING SPEAKER AUBRY: The Clerk will record

the vote on Senate print S-49. This is a Party vote. Any member who wishes to be recorded as an exception to the Conference position is reminded to contact the Majority or Minority Leader at the numbers previously provided.

Mr. Goodell.

MR. GOODELL: Thank you, sir. The Republican Conference generally opposes this legislation, but those who support it should contact the Minority Leader's Office so we can properly record your vote. Thank you, sir.

ACTING SPEAKER AUBRY: Thank you.

Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Thank you, Mr. Speaker. Our Democratic colleagues will generally be in favor of this legislation, therefore we'll be voting in the affirmative; however, there may be some colleagues who would like to be an exception and they certainly are able to contact the Majority Leader's Office and their vote will be properly recorded.

ACTING SPEAKER AUBRY: Thank you very much.

(The Clerk recorded the vote.)

First vote of the day, members.

Ms. Simon to explain her vote.

MS. SIMON: Thank you, Mr. Speaker. To explain my vote. I would like to commend the sponsor for this legislation. Access to attorney's fees for plaintiffs who have brought

discrimination claims is extremely important for a couple of reasons. One, is that these are people who have been -- whose rights have been violated and they need access to the courts. And without competent counsel, they would -- their concerns would gone unrecognized and unremediated. They are entitled to their day in court. They are entitled to that compensation, whether it is injunctive relief or whether it is damages. But without attorney's fees for prevailing parties, many attorneys would be precluded from taking such a case.

And so it's extremely important to advance the public policy goals of our Human Rights Law that attorney's fees are available to prevailing parties, as well as expert witness fees which allow a -- a plaintiff to be able to make their case. So I'm voting in support of this and I, again, want to commend the sponsor for bringing this bill. Thank you.

ACTING SPEAKER AUBRY: Ms. Simon in the affirmative.

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Mr. Speaker, if we could now go to page 8 and take up Calendar No. 90 by Mr. Steck.

ACTING SPEAKER AUBRY: The Clerk will read.

THE CLERK: Assembly No. A00263, Calendar No. 90, Steck, Zinerman, Barron, Seawright. An act to amend the Civil

Rights Law, in relation to the imposition of penalties and remedies in suits brought for the vindication of civil rights or human rights.

ACTING SPEAKER AUBRY: Mr. Steck, an explanation has been requested.

MR. STECK: Thank you very much, Mr. Speaker, colleagues. The Civil Rights Act of 1871 is one of the greatest achievements of American law. It authorizes lawsuits for damages and attorney's fees against public officials who violate the Constitutional rights of citizens. Congress recognized that without such a remedy, there would be little deterrence for violating the Constitutional rights of citizens, and their lives could be seriously harmed by the violation without compensation.

Sadly, that is exactly the state of the law in New York. Our State, unlike other states, is well over 100 years behind in recognizing that Constitutional wrongs require an effective remedy. The most our Article 78 proceeding can bring is an order telling the wrongdoer not to do it again. It is not a solution to protecting the Constitutional rights of our citizens, and was not designed as such. Article 78 was written long before Constitutional tort litigation was developed, it has no damages nor attorney's fee remedy. This legislation for the first time enacts the State law equivalent of the Civil Rights Act of 1871, which incidentally was passed by what they used to call *The Party of Lincoln*.

Simply relying on the Federal statute now codified at 42 United States Code Section 1983 is inadequate. First, New York

defines Constitutional rights differently. For example, New York interprets free speech more broadly and, for example, we have an Equal Rights Amendment for women whereas the Federal Constitution does not. Second, there has been a movement in the Federal courts to reinterpret Federal law to provide less protection for civil rights plaintiffs and to enhance protection for the powerful. We reject that movement. State civil rights laws will, in the foreseeable future, be the vanguard of civil rights enforcement.

With respect to the attorney's fees remedy, I would note that this was included in the Federal legislation way back in 1871. Attorney's fees are based on the concept of the private Attorney General, particularly in our less populous areas of the State, people especially need to rely on their local attorney to enforce Constitutional rights. They do not have the luxury of seeking out pro bono services from large corporate law firms, nor getting a civil liberties union to handle their case. The Attorney General cannot take on every one of these matters, just like the Department of Labor cannot prosecute every violation of the Labor Law and, in fact, for that reason, many violations of the Labor Law go unremedied unless private counsel get involved.

So as Congress recognized, the attorney's fee remedy is essential and the Federal courts have consistently upheld the intent of Congress. There is no logical argument to doing otherwise on the State level. There is no evidence whatsoever of attorneys getting wealthy off civil rights cases. This has been historically a very

difficult area of law and without this statute, as Congress has long recognized, no attorney would take these cases.

ACTING SPEAKER AUBRY: Mr. Montesano.

MR. MONTESANO: Thank you, Mr. Speaker.

Would the sponsor yield?

ACTING SPEAKER AUBRY: Mr. --

MR. STECK: Sure.

ACTING SPEAKER AUBRY: -- Steck, will you yield? The sponsor yields.

MR. STECK: Yes.

MR. MONTESANO: Hi. Thank you, Mr. Steck. I just wanted to ask for a clarification, are we talking about if -- if a person goes before a, you know, a planning board, a zoning board or whatever, and it takes out an article -- and they felt they were, you know, the decision is not their favor, was arbitrary and capricious, they go to Supreme Court with an Article 78; is that the attorney's fees and expert witness' fees we're speaking about?

MR. STECK: No. That's something that probably should be done. That is not what this bill does. What this bill does is do exactly what 42 United States Code Section 1983 does was it authorizes attorney's fees and expert witness fees in the case of the violation of Constitutional rights. Now if the zoning board did something like refuse to hear somebody when they were entitled to be heard, which violated their rights, it could come under this. But the answer to your question is no, this is not a -- a statute which deals with

the writs of mandamus, prohibition or certiorari, which are codified in Article 78.

MR. MONTESANO: So then I'll -- I'll ask, so if we have public officials, teachers, law enforcement, anybody of that nature that -- that their conduct has violated somebody's civil rights, they can -- and they're sued under 1983, if they prevail, then they could get attorney's fees and expert fees, am I correct?

MR. STECK: Absolutely incorrect.

MR. MONTESANO: So then --

MR. STECK: Under Section 1983, it is only the prevailing plaintiff that can recover attorney's fees, and as your colleague so appropriately noted, it is only in the case of frivolous litigation that attorney's fees are recovered by the defendant. The 1983 does not, and the Supreme Court has never authorized the recovery of attorney's fees by prevailing defendant in every situation because that would deter the bringing of Constitutional tort litigation.

MR. MONTESANO: Then if you can, just so I can understand a little bit better, could you give me an example of what type of proceeding this would apply to?

MR. STECK: Yes. So for example, you mentioned police officers.

MR. MONTESANO: Mm-hmm.

MR. STECK: So if a police officer uses excessive force, that would be remedied under this statute just as it could be remedied under 1983. Many states already have their own 1983-type

statutes and we are doing the same in this in the State of New York. But the difference is that it has to rise to a violation of the Constitution. It can't simply be negligence or some other sort of thing. It has to be something that rises to the level of a Constitutional violation, either an intentional violation of civil rights or what they call *deliberate indifference* to a person's civil rights.

MR. MONTESANO: Okay. So the police officer violates someone's civil rights, the police department and the officer were sued, the plaintiff is successful. So in addition to the award that they would receive, they would be entitled to counsel fees and expert witness fees, correct?

MR. STECK: Yes. And that is a fact because sometimes it's not always a situation, for example, where a police officer uses excessive force and beats somebody up and there's some serious physical damages that, you know, amount to a very large number. I can think of one instance where the police confiscated a person's vehicle without giving them a right to a hearing, which has long been required under Constitutional principles, and the damages were low, but yes, the attorney's fees are recovered.

MR. MONTESANO: Okay. Thank you very much.
Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Thank you, sir.

Mr. Goodell -- no, I'm sorry, Mr. Brown.

MR. BROWN: Thank you, Mr. Speaker. Will the sponsor yield for a question?

ACTING SPEAKER AUBRY: Mr. Steck, will you yield?

MR. STECK: Absolutely.

ACTING SPEAKER AUBRY: Mr. Steck yields, sir.

MR. BROWN: Mr. Steck, I -- I appreciate your bringing this bill to the floor and I just, I want to make sure I understand it completely because it's my understanding that the current state of the law in New York State is that a litigant who wants to bring an action in State court as opposed to Federal court, under U.S. -- 42 U.S.C. 1983 and 1988 can do so at any point in time today, is that correct?

MR. STECK: That is partially correct.

MR. BROWN: Could you --

MR. STECK: You can bring the lawsuit under Federal law in a New York State court, but Federal legal principles are applied and the defendant, at its choosing, can remove the matter to Federal court, depriving the State court of all jurisdiction. This creates a right of action under State Constitutional Law principles, which are separate and apart from Federal Constitutional Law principles.

MR. BROWN: I'm -- I'm not so sure I agree, having handled these cases, but let me just ask you, because I -- I really want to understand, similar to my colleague that just spoke before, the distinction that's being made by this -- by this bill. How does this differ than what's currently on the books now in terms of what the law

is?

MR. STECK: There is nothing on the books now under State law that covers this whatsoever.

MR. BROWN: But -- then let me rephrase it. How does it differ, then, from 42 U.S.C. 1983 and 1988?

MR. STECK: So those statutes provide causes of action for violation of the Federal Constitution. This provides a cause of action not for violation of the Federal Constitution, but for violation of the State Constitution. We are taking a principle that was originally developed in 1871 by the United States Congress and we are applying the principle to enforcement of New York State's own Constitutional rights.

MR. BROWN: Okay. And -- and listen, I completely understand and I agree with the -- the importance of this in terms of ensuring that our residents in New York State have full protection of their civil rights; however, Section 42 U.S.C. 1983 does not distinguish between State Constitutions and Federal Constitutions. If you read the text of it, it simply says *any Constitutional or statutory violation*. So I'm standing here not understanding because to me, this is unnecessary when the current Federal law I guess -- so could you please explain to me where I'm wrong?

MR. STECK: Well, you're definitely wrong because you can't go into a Federal court and enforce State Constitutional rights under 1983.

MR. BROWN: Okay.

On the bill, Mr. Speaker.

ACTING SPEAKER AUBRY: On the bill, sir.

MR. BROWN: Mr. Speaker, I -- I'm not so sure I agree with the sponsor of the bill having litigated these cases, and I think the text of the Federal statute is perfectly clear. So I -- I have my misgivings about this statute, I just want to bring it to my colleagues' attention. Thank you.

ACTING SPEAKER AUBRY: Thank you, sir.

Mr. Goodell.

MR. GOODELL: Thank you, sir. Would the sponsor yield?

ACTING SPEAKER AUBRY: Mr. Steck, will you yield?

MR. STECK: Certainly.

ACTING SPEAKER AUBRY: Mr. Steck yields.

MR. GOODELL: Thank you, Mr. Steck. And I have a copy of the State Constitution in front of me; of course I keep a copy in my desk, as you would expect. And when I look down the list of Constitutional Bill of Rights in the New York State Constitution, it seems to me that almost all of them, if not all of them, are covered either by State civil causes of action, or are almost identical to the Federal. So for example, New York State has freedom of speech, of course. We also have libel and slander, so there are limits on that. We just finished talking about a bill that gave unlimited attorney's fees in discrimination cases. Of course that covers a lot of civil rights

grounds. If you're roughed up by a police officer, of course without justification, or assaulted, we have the civil assault cases. We have false arrest cases. We have false imprisonment. We have trespass, private cause of action. We have a taking cause of action, private cause of action. So my question is, what civil right under State law does not have a remedy under either existing State law or under Federal 1983?

MR. STECK: So as I indicated in my opening remarks, the -- New York State interprets its law of free speech more broadly than the Federal government does, for example. We also have a provision guaranteeing equal rights for women, which the Federal Constitution does not have. And while the rights in question may be similar, the interpretations of them that have been made by the courts differ under Federal law and under State law. And, quite frankly, there has been a movement, as I indicated in my opening remarks, to try and come up with all kinds of ways to restrict recovery under 1983, with which our State Courts are entitled to disagree when they are interpreting matters of the State Constitution.

So while learned -- my learned colleague may agree with that Federal approach, as I indicated in my opening remarks, I do not think the majority of this House does and we want to have our State Courts free to have the necessary tools in the State arena to enforce Constitutional rights.

MR. GOODELL: Well, of course as -- as I outlined, I outlined a number of areas where we have certainly a civil cause of

action under existing New York State law without the need for this, including, of course, discrimination based on -- on age, race, color, religion, national origin, sex, and we just passed another bill that expands not only the civil liability, but attorney's fees, as well, in all of those areas. And in addition to the statutory rights, of course we have Common Law rights. So my question again is, can you give me an example of a cause of action that this bill would allow that doesn't exist under current New York State law?

MR. STECK: Well, equal protection of the law, for example, is not part of the Human Rights Law. There are many areas where this is the case. Due process of law, which is a very flexible determination. For example, Federal law does not recognize yet a principle that you can't try a person or punish a person over and over again administratively. We feel the New York State Courts should be free to say that you can't do that. For example, in particular --

MR. GOODELL: Well, New York State -- I -- I apologize, but New York State could do that without this amendment, correct?

MR. STECK: Absolutely not as a matter of Constitutional rights. I think, again, the point is being missed that you can get an order through your Article 78 proceeding telling them to stop violating someone's rights, but there's no incentive not for them to just keep on doing it again, and that is why we need this legislation. It is the -- the principles underlying this are the same as that underlying the Civil Rights Act of 1871, which Congress felt was

necessary to deter violations of civil rights. Article 78 is a fine statute with a great historical origin, but it does not deter violation of Constitutional rights; it wasn't written for that purpose, it was based on the British Common Law writs. And I also, since you mentioned Common Law, let me also add that under Common Law, there were no -- no causes of action, as our courts have held many times for the intentional violation of people's civil rights.

MR. GOODELL: Thank you, Mr. Steck.

On the bill, sir.

ACTING SPEAKER AUBRY: On the bill, Mr. Goodell.

MR. GOODELL: Thank you. No one has ever accused New York State of not having enough litigation or enough lawsuits against each other. We have never been accused of that until today. And today for the first time, I've learned that notwithstanding all of the multitude of lawsuits, notwithstanding the fact that the Office of Court Administration reported that they have about a million cases backlogged from COVID, we need to add more opportunities for more lawsuits with mandatory attorney's fees being awarded. Mandatory attorney's fees without any limitation as to the size of the claim or the amount of the judgment, or anything that's related to controlling the cost of litigation or ensuring reasonableness.

Now, we are told that we don't have any laws that protect your Constitutional rights, and while we don't have a law that says you can sue for a Constitutional violation, almost every

Constitution violation that you can name has a civil remedy in New York State already. Falsely imprisoned, yeah, there's a civil remedy, you can sue. Assaulted by a police officer, yeah, there's a civil remedy, you can sue. Someone took your property, the government took your property without due process, yeah, you can sue, of course. It's called condemnation. You can sue. You're the victim of discrimination in New York, of course you can sue. But what you're not entitled to in New York is automatic attorney fees whenever you sue a local government, or whenever you sue the State of New York.

And this bill is very interesting when it comes to legal fees. It says if you sue the State of New York or any local government, the court must award attorney's fees to the prevailing party unless, unless the prevailing party is the State of New York. Unless your lawsuit has -- is dismissed against the State of New York; in that case, the taxpayers don't get reimbursed. This is one of those few times where a law actually says you can't have your legal fees reimbursed even if you are the winner when it comes to the taxpayers, and it requires the payment of expert legal fees. Now, if you're a defendant, you're the local government, local school, maybe the local fire department or the State itself and you're sued, the only way you can get legal fees reimbursed is if the lawsuit had absolutely no merit. That's an extraordinarily high standard that already applies, by the way, and all other conditions.

So let's say that we pass this and it becomes law and as you may recall, I mentioned earlier we already have civil rights

remedies on almost every imaginable civil right in New York State, and that point is driven home by the language of this bill itself because this bill says that if you win your damages are, quote, "to the extent that the laws of the State of New York furnish a remedy." Oh. So your damages under this bill are the same as they'd be without this bill. And it says and if there isn't one, then you'll extend Common Law. Well, Common Law is already included in our Constitution and it's been a part of New York's legal system for 250 years.

So what's really going on? Well, what's really going on, and I hate to say this about my good colleagues in the legal profession, this is the plaintiff lawyers' reimbursement day. It is your day. You know, you can line up, because we're lining up one bill after another that guarantees that you'll get unlimited reimbursement for your legal fees and your expert fees, regardless of the size of the claim, regardless of the existence of any other remedy, but we want you, our private sector lawyers who are suing our local governments and school districts and fire departments in the State of New York, we want to make sure that your income gets you into the highest tax bracket so we can tax you the highest amount in the nation.

And while I certainly appreciate all the great work done by my colleagues who are considering censoring me in my local bar association, I appreciate even more the checks and balances that the current system has to protect our taxpayers from guaranteed income for plaintiff lawyers who want to make a buck at the expense of our taxpayers regardless of the size of the claim, which is what this

bill does. And for those reasons, I'll be opposing it and then recommend the same to my colleagues. Thank you.

ACTING SPEAKER AUBRY: Read the last section.

THE CLERK: This act shall take effect on the 90th day.

ACTING SPEAKER AUBRY: The Clerk will record the vote on Assembly print 263. This is a Party vote. Any member who wishes to be recorded as an exception to the Conference position is reminded to contact the Majority or Minority Leader at the numbers previously provided.

Mr. Goodell.

MR. GOODELL: Thank you, sir. The Republican Conference will be generally opposed to this legislation, but those in our Conference that would like to vote for it are encouraged to call the Minority Leader's Office so we can properly record their vote. Thank you, sir.

ACTING SPEAKER AUBRY: Thank you.

Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Mr. Speaker, I would like to remind our Democratic colleagues that we're generally going to be in favor of this one; however, there may be some folks that would like to be an exception and they should contact the Majority Leader's Office and we'll make sure their votes are properly recorded.

ACTING SPEAKER AUBRY: Certainly. Thank you, both.

(The Clerk recorded the vote.)

Mr. Steck to explain his vote.

MR. STECK: Very briefly, Mr. Speaker. This law, as I indicated, simply applies the same principles to the State Constitution as were applied to the Federal Constitution in 1871. I think we need to move our law forward in this area and modernize it and not stick with 19th Century formulations of the law. Second, I would point out that attorney's fees have to be reasonable, that is a well established principle. And under Federal law there are all -- there's a huge body of case law saying what's reasonable and what's not. It's not unreasonable and unlimited fees or whatever the attorney wants. In addition, I would point out that filings in the State court system have been down, there is no explosion of litigation in our State court system.

And, you know, this is, as I indicated a very difficult area of law. In the Northern District of New York there are very, very, very few lawyers, less than ten that practice Civil Rights Law full-time and, in fact, the -- normally what happens in a lot of areas is you have to seek pro bono counsel from a large law firm. Or the intervention of the Civil Liberties Union because no one will take these cases. We need to modernize our law and not be stuck in the 19th Century. Thank you.

ACTING SPEAKER AUBRY: Mr. Steck in the affirmative.

Mr. Brown to explain his vote.

MR. BROWN: Thank you, Mr. Speaker. I -- I talked about this bill and I have nothing but the utmost respect for my colleague and sponsor of this bill, but I just don't see how this bill, in particular, advances the law in this area. Currently, a litigant can come to State court or Federal court if they decide to, and the way the law works is currently they could bring a Section 1983 or 1988 claim in New York State and the prevailing party can get attorney's fees. So because of that, and because I think this is a superfluous and redundant law, I vote in the negative. Thank you.

ACTING SPEAKER AUBRY: Mr. Brown in the negative.

Mr. Lawler to explain his vote.

MR. LAWLER: Thank you, Mr. Speaker. "Every person who under color of any statute, ordinance, regulation, custom or usage of any state or territory or the District of Columbia subjects or causes to be subjected any citizen in the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunity secured by the Constitution and laws shall be liable to the party injured in an action at lawsuit, in equity or other proper proceedings for redress..." et cetera, et cetera. I certainly hope that this bill basically eliminates qualified immunity for every elected official in the State of New York. And I hope that the people in the State of New York take the opportunity, after they have suffered through the most restrictive government over the last year, many of whom have lost their businesses, many of whom have lost their

liberties, I hope they sue every single elected official in this Body who has voted to pass these laws. I hope they sue the Governor of the State of New York under this bill. That would be quite fitting in passing this legislation.

And so for that reason, I will vote in the affirmative because I do think people in the State of New York have suffered deeply and had their civil rights violated by this government. So I encourage all New Yorkers to take advantage of this law when it passes. Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Mr. Lawler in the affirmative.

Mr. Goodell.

MR. GOODELL: Thank you, sir. In addition to Mr. Lawler who hopes to recover some of that \$5 million on the book deal, please record the following Republicans in favor of this legislation: Mr. Morinello, Mr. Schmitt, and Mr. Walczyk. Thank you, sir.

ACTING SPEAKER AUBRY: Thank you very much.

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

Page 9, Calendar No. 94, the Clerk will read.

THE CLERK: Assembly No. A00528-A, Calendar No. 94, Paulin, Galef, Englebright, Quart, Zebrowski, Cook, Abinanti,

L. Rosenthal, Colton, Weprin, Otis, Dinowitz, Thiele, Simon, Gottfried, Lupardo, Perry, Fernandez, Griffin, Steck, Jacobson, Carroll, Seawright, Reyes, Barron, Kelles, Zinerman, Jackson, González-Rojas. An act to amend the Public Health Law and the Environmental Conservation Law, in relation to prohibiting the use of pesticides at children's overnight or summer day camp.

ACTING SPEAKER AUBRY: On a motion by Ms. Paulin, the Senate bill is before the House. The Senate bill is advanced.

Ms. Walsh.

Explanation is requested, Ms. Paulin.

MS. PAULIN: Yes, Mr. Speaker. The bill would prohibit children's camps from applying pesticides to any playground, athletic or playing field.

ACTING SPEAKER AUBRY: Ms. Walsh.

MS. WALSH: Thank you, Mr. Speaker. Will the sponsor yield for a few questions?

MS. PAULIN: Absolutely.

ACTING SPEAKER AUBRY: Ms. Paulin yields.

MS. WALSH: Thank you, Ms. Paulin. And I have to say, your background is just beautiful. I think we all wish that we were outside in a garden like that right now, that's -- that's very nice.

MS. PAULIN: I wish so, too, which is why I put it on.

(Laughter)

MS. WALSH: So this bill that, as you said, would prohibit the use of all pesticides at children's overnight or summer day camps, and am I right in thinking that that is kind of a follow-up to some legislation from 2010? Could you just talk about the -- the history or the genesis of this bill?

MS. PAULIN: Yes, absolutely. We -- we at that point banned pesticide use on school grounds and yes, so this is an extension recognizing that children are not mini adults and their exposure to pesticides could lead to many health impacts and it -- that has been recognized in between 2010 even more so, and now by the pediatric community, doctors, so that this is the next important step.

MS. WALSH: So I'm just curious, I didn't look up the 2010 legislation. Does that -- does that bill ban the use of all pesticides throughout the entire, not just the school year, but the entire year, all 52 weeks of the year?

MS. PAULIN: I -- you know what, I don't have that in front of me. I'm sure someone will text me and tell me --

(Laughter)

But -- but I -- I think it's silent on whether or not, you know, but so -- so yes, I would imagine if it's not and it is silent, then school grounds could be interpreted either way.

MS. WALSH: Okay. So with this particular bill that we're discussing today, what -- what about a camp that only runs, as many do, for eight to ten weeks during the summer, say an overnight camp. Does this bill prohibit the application of all pesticides

throughout the entire year, or just during the time that we would have campers there?

MS. PAULIN: The bill is silent on that.

MS. WALSH: Okay.

MS. PAULIN: I would -- I would say that based on the language in the bill, if there were specific applications that were deemed problematic or they -- they could get State approval from their, you know, from -- if in the case of a camp that's located in a -- if they're unregulated, they would get State Department of Health approval, if they're in a location that uses the State Health Department then they would get approval from there, and if they had a County Health Department, from the County Health Department. But otherwise, there would be an expectation that the -- that there would be a ban on pesticide use because of the spillage. You know, when, you know, when is the right -- when -- when do you -- you don't really see -- I mean, now we have beautiful weather, we see many gardeners putting down pesticides, it doesn't really happen that much in the wintertime. So you know -- so by the time the gardeners come back and the -- and pesticide is put down, you know, it could be very close to the time that the children are coming to school -- I mean coming to camp.

MS. WALSH: Okay. Thank you. So -- now also I think -- I just wanted to mention, too, that with the 2010 legislation regarding schools and this particular bill, there is a pretty significant overlap, is there not? So, for example, places that run maybe a day

camp that's being held at a -- on school grounds would already have the restriction on pesticide application because of that previous legislation, correct?

MS. PAULIN: I think there is quite a bit of overlap, yes, but it's not, of course, absolute.

MS. WALSH: Okay.

MS. PAULIN: And not for sleepaway camps.

MS. WALSH: Very -- yes, very good. So you started to talk a minute ago, and I just want to get into this issue a little bit, the issue of an application for -- an emergency application procedure for -- for asking for permission to do a special treatment. So who would declare or -- the emergency that would be necessary prior to making this application to -- to put down some pesticides?

MS. PAULIN: Well, as what would happen now, you know, there would be -- there's a cooperative relationship between the camp and whomever does their respective gardening, they're still going to need a gardener to trim and to mow and to do all kinds of things, right. So they would have a relationship and together, I would imagine today they would decide, *Oh, we have to put down a pesticide*. So it would be in that conversation that would happen today and will happen tomorrow that a decision would be made that this is an emergency. This is not something that we can do with, you know, this is on the path that the children are walking, there's poison ivy, there's some reason to do something. I'm not -- that's beyond the normal alternative uses that they've been doing.

So what -- what -- they would make a decision and they would ask their respective Health Department. Again, County Health Department if they're in a county where there is one, State Health Department if there isn't. And what we put in the bill after talking to -- to the camps, we worked very cooperatively with the camps in developing this bill and we have no opposition from them, that -- that if they didn't receive that proper auth -- you know, the authority to do it, that they could do it and then provide the documentation later, so that we didn't hold up the prevention of that pest on -- on the land that children are actually occupying.

MS. WALSH: I did see that in the bill, I think it was like within -- if they didn't hear back from the governing agency within, I think it was like 48 hours or so, that they could go ahead and do the application and then, you know, put in the -- the backup documentation afterwards. So I appreciate that change to the -- the bill based on your conversations with other stakeholders. So -- so -- you know -- so you helped to clarify that a little bit. So like for example, if we had a very wet spring and it looked like there were going to be a lot of mosquitoes, we know that right now in May it's peak tick season. So based on those types of observations made at a particular location they could say, you know, it looks like we're going to have a very bad mosquito season, we know that there are things like West Nile Virus, we know that there are things like Zika, concerns about Zika, so based on, you know, our evaluation of what this property looks like and what the -- what it's going to be in terms of a

tick season or a mosquito season, then you could make a request for an emergency application based on that; do -- am I understanding that correctly?

MS. PAULIN: Yes. And actually the emergency would be within 24 hours, so that we -- it's not 48 hours.

MS. WALSH: Oh, very good. Okay. Very good. All right. Well, thank you so much, Ms. Paulin.

Mr. Speaker, on the bill.

ACTING SPEAKER AUBRY: On the bill, Ms. Walsh.

MS. WALSH: So I -- this bill is interesting because what it does is instead of restrict the use of pesticides or say that there are some pesticides that can be used and some that can't, or saying that -- because it's silent on this issue it's saying no pesticides at all, 52 weeks a year unless you request an emergency permission to apply a pesticide, I mean that's a pretty stringent piece of legislation here. And I understand where the sponsor is coming from in the sense that, you know, our littlest people, our kids that are going to be attending camps, whether they're day camps or overnight camps, may be particularly sensitive to pesticides, but it does seem to me that if a camper is not going to be attending a camp until say, you know, end of July and there's a -- there's a need to apply some type of a pesticide to suppress mosquitoes that could be carrying, you know, really terrible things like Zika or West Nile that it seems to me that there should be a little bit more flexibility than there is. I know that there is

this emergency application procedure, but as some have noted in response to this legislation, there's a feeling that rather than banning the use of all pesticides, maybe it would be better to prescribe the use of an -- of an integrated pest management plan at camps rather than go through a procedure like this. And I think really what it comes down to is a risk benefit analysis. You know, is it -- is it riskier to allow application of pesticides versus say sending your child to camp and -- and smearing them with -- with Deet, you know, so that they are -- they're safe in that way. What -- what is the safer way to proceed here?

So you know, I think that the -- the idea that I kind of laid out where you would have this -- an integrated pest management plan at camps rather than a wholesale ban of all pesticides, that would be a preferable way to go, for me anyway. This bill has been around since 2013, our last vote was in 2016. There were 42 no votes at that time. And although -- you know, there are a number --- as you -- as you would imagine, there are a number of groups that oppose the bill, including, you know, the Turf Grass Association and New York Pest Management Association. But even DEC, I thought this was interesting, they take no official position; however, they do see issues with who declares an emergency.

So for those reasons, I -- I have some misgivings about this bill. I think that there would be another way to proceed that I think would be a -- a little bit better. So for those reasons, I don't think that I'll be supporting this bill, but I do thank the sponsor for her

answers to my questions. Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Thank you.

Mr. Manktelow.

MR. MANKTELOW: Thank you, Mr. Speaker.

Would the sponsor yield for a couple of questions, please?

ACTING SPEAKER AUBRY: Ms. Paulin, will you yield?

MS. PAULIN: Absolutely.

ACTING SPEAKER AUBRY: Ms. Paulin yields.

MR. MANKTELOW: Thank you, Ms. Paulin. Just a couple of questions, I know my colleague had asked some of the questions I was going to ask. Are you familiar with a integrated pest management plan at all?

MS. PAULIN: I am.

MR. MANKTELOW: So what are your thoughts on that in regards to this?

MS. PAULIN: The problem that we have seen with the -- the use of integrated pest management is that there is still a reliance on pesticides that could adversely impact children. And while that is a very good approach in that you limit the use of pesticides, it doesn't eliminate those pesticides that are going to be very problematic for -- for causing children asthma and cancer and all kinds of other health problems down the road.

MR. MANKTELOW: So are you familiar with a pre-emerge herbicide at all?

MS. PAULIN: With -- I'm sorry?

MR. MANKTELOW: With a -- excuse me. With a pre-emergent herbicide?

MS. PAULIN: A pre-emergent herbicide.

MR. MANKTELOW: Yeah, basic -- basically what this does is you put an application of a herbicide on the property prior to any of the -- the weeds or bushes or whatever coming -- that would come up during the season.

MS. PAULIN: I -- I do know that, you know, in having conversations with some of the -- you know -- the, you know, the people who do pesticide management, they offered that as a possibility and when we went back to the pediatricians and to the health experts they said absolutely do not do that, that will have residue impact that -- that you can't determine. So -- so we didn't include that in the bill.

MR. MANKTELOW: Okay. If you could share that with me sometime, I'd like to -- to see that -- see that --

MS. PAULIN: I believe we have some e-mails going back and forth when we were looking at trying to use IPM.

MR. MANKTELOW: That would be very much appreciated. You were talking earlier about spillage. Can you explain what you meant by spillage?

MS. PAULIN: So I -- what I meant -- you know, maybe it was the wrong use of word, but what -- what I meant was just what we were talking about. You -- it's very hard to know when

you can apply a pesticide and how long it stays on that property and, therefore, could have an impact on a child even if it's used a month or two or three months before. So it's very hard to determine how long the impact on that land would be that subsequently would have an impact on a child. And -- and part of the problem is that there have been many studies on adults, you know, on pesticides on -- on big people, but there have been so limited amount of studies on pesticides in children. And one of the key findings from the Environmental Health Committee for a -- for the Academy of Pediatrics has been that that's the case, that there's so many -- that the studies are so limited and the few that have been done have shown how detrimental pesticides are to these little bodies. So -- so the -- so they advocate for more studies. And maybe if there were more studies, we would know that this pesticide or that pesticide could be used three months prior. But because we have no knowledge and no studies have been done, the safest route at this point is to not use them.

MR. MANKTELOW: So our professionals here in New York, our New York State Department of Environmental Conservation, our Federal EPA, Environmental Protection Agency, to me those are professionals. I know using farm chemicals two-thirds of my life, having read all the labels and -- and what goes into that, those pesticides are -- are highly vetted prior to using them. It takes a -- roughly ten years from start to finish before a pesticide actually makes it to market. And as my colleague said earlier, too, as well, you know, I have concerns that there are products out there that we could

use safely that would probably pro -- for instance, control of ticks, and mosquitoes. There are products out there that we could do prior to -- to the children coming to the camp which would be much safer than doing a -- an emergency application. And if we did it -- an emergency application, how long will it take or how long does it take for the children to be allowed back into that camp, do you know?

MS. PAULIN: Well, let me -- I know that our colleague has just mentioned two outbreaks, right, that she was concerned about, and I'm imagining that's similar for what you are talking about which is, of course, West Nile and possibly Zika. So let me just say -- stick with those because they exist also on school grounds where we've already banned them. So in the case of Zika - you probably know that was a big topic of the debate when we did this last time - to date, New York doesn't have any cases of local transmission of the virus; however, you know, if -- if they -- if we did at some point, you know, clearly that would be of concern and we'd want to address that. In the case of West Nile, it does exist on school property as well, and they've already made that accommodation. The Commissioners have already found alternatives and a way to do that when children are not on the premises, which I think -- so some of those determinations have already been made on some products and, you know, I would imagine that if there was a camp that said, *You know what? We have -- we have a concern of -- of West Nile, of ticks* or what have you, you know, they would go to the Health Department just like the schools are going now, and they would get permission to

use whatever alternatives, whatever sprays, whatever pesticides would be appropriate at a time that, you know, that the Health Department has already determined that, you know, that they -- it would be helpful for the -- for the children.

MR. MANKTELOW: Okay.

MS. PAULIN: And -- and I just want to also say, you mentioned DEC, as did your -- our colleague. DEC did have an issue in the bill, the prior bill, in making a determination and so, therefore, we worked closely with DEC and we actually took that out because that wasn't how -- because they believed that they should not be in the mix because they said for the -- and we probably should amend the school statute, as well, because what they do is they take the requests and they immediately give it over to the Department of Health. So we just responded to their concern in this bill. So as far as we know, their concerns are -- are addressed.

MR. MANKTELOW: So when you -- you said we spoke to DEC about this, who is *we*?

MS. PAULIN: My staff.

MR. MANKTELOW: Your staff contacted DEC and talked with them?

MS. PAULIN: I -- actually, DEC contacted us, you know, but -- but either way, we -- we spoke with them.

MR. MANKTELOW: Okay. So your staff had a lot to do with getting this bill ready to go, correct?

MS. PAULIN: Yes, as all my bills, my staff is great.

MR. MANKTELOW: In the process, did you happen to talk to any applicators, whether they're private or commercial applicators, about this?

MS. PAULIN: Yes, we did. We talked to applicators. They certainly were -- during the time where we had developed the bill, we talked to applicators and clearly this year, again, they -- we had several conversations.

MR. MANKTELOW: Okay. Ms. Paulin, I -- I appreciate your time and your comments.

And, Mr. Speaker, I'd like to go on the bill.

ACTING SPEAKER AUBRY: On the bill, sir.

MR. MANKTELOW: As we know, as we've -- we talk about it on this floor all the time that things progress forward, we move forward with better things, with better products. My concern here is if this bill goes through the way it's written today that any new product that -- any new product that comes down from a pesticide company, we may not be able to use it even though it's completely safe for our children. And I understand studies and what it does and what it doesn't do, but I can tell you what, I can go and look at studies on hairspray, and hairspray has an awful effect on people with asthma. Are we going to get rid of hairspray? I -- I don't think so. I -- I think it goes back to common sense and I think it goes back to doing the right thing, and I believe that we are doing the right thing by moving newer products into New York State.

So I -- I really do want to support this bill because I --

I like the point of protecting our children, but sometimes we've got to take a step back and look at a different direction that will accomplish the same thing but, at the same time, allow us to do things much safer in the very near future. So at this point I -- I will be voting no and I will be asking my colleagues to do the same, and I will be more than willing to sit down with Ms. Paulin in the future to help work out a better plan to take care of some of these issues. Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Thank you.

Mr. Montesano.

MR. MONTESANO: Thank you, Mr. Speaker. Will the sponsor yield, please?

ACTING SPEAKER AUBRY: Ms. Paulin --

MS. PAULIN: I will.

ACTING SPEAKER AUBRY: -- will you yield?

MS. PAULIN: Yes. Thank you.

MR. MONTESANO: Thank you, Ms. Paulin --

ACTING SPEAKER AUBRY: The sponsor yields.

MR. MONTESANO: Thank you. Ms. Paulin, just a question. I notice in the -- it's part of the bill that cities with a population of one million or more are exempt from this piece of legislation. Could you tell me why?

MS. PAULIN: Yeah. It's actually interesting because originally when we exempted them, it was because the City wasn't sure how they were going to be able to get to all of the

locations and they wanted some accommodation because they use a lot of public space. Ironically, in the meantime there was a group of what started out seven years ago with a kindergarten teacher and she organized, right after all of the information that we were talking about today that came take out from the American Academy of Pediatrics, she organized her class to take an action to ban pesticides and -- on -- on these parks. And she took that -- she did it every single year with her kindergarten class and it took seven years and those seven groups of cohorts banded together and this year were successful in banning pesticides on -- on all public property in -- in the City so that now you could argue that the exemptions, because the City of New York already does it, where before the City of New York didn't know how they were going to be able to achieve it. So -- so kudos to those kids because they were able to achieve something that, frankly, I caved on when I first did the bill seven years ago.

MR. MONTESANO: That's so -- so the City of New York you're saying has its own program to ban these pesticides in these --

MS. PAULIN: They do now, yes. It just adjusted --

MR. MONTESANO: Okay, then how come --

MS. PAULIN: -- the article, it's so interesting these children.

MR. MONTESANO: And how about Buffalo and Rochester?

MS. PAULIN: They, to my knowledge, those cities

do not have --

MR. MONTESANO: So my question is why should the children of those geographic locations be subjected to this type of chemical, because I agree, you know, what you're providing here.

MS. PAULIN: I don't think there's any other municipality that has a million people, you know. Does Buffalo have a million people?

MR. MONTESANO: I mean, they're large enough and I would suspect -- assuming for the moment they do, because I know New York City always get an exemption, but Buffalo and Rochester are large cities and there's, unfortunately I haven't seen the new Census yet out, but assuming for the moment they did, why would they have to be -- why should they be exempt from something like this?

MS. PAULIN: They're not exempt; they're not exempt. This bill does not exempt them. It only exempted New York City.

MR. MONTESANO: Because the way I'm reading it is that it's a million a more, so --

MS. PAULIN: A million or more residents, and there are only a million or more residents in the City of New York, not in the City of Buffalo or the -- or the City of Rochester.

MR. MONTESANO: All right. Thank you very much. Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Thank you, sir.

Read the last section.

THE CLERK: This act shall take effect on the 180th day.

ACTING SPEAKER AUBRY: The Clerk will record the vote on Senate print 4478-A. This is a Party vote. Any member who wishes to be recorded as an exception to the Conference position is reminded to contact the Majority or Minority Leader at the numbers previously provided.

Mr. Goodell.

MR. GOODELL: Thank you, sir. The Republican Conference generally opposes this legislation. Those who feel otherwise, make sure you contact the Minority Leader's Office so we can properly record your vote. Thank you, sir.

ACTING SPEAKER AUBRY: Thank you.

Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Thank you, Mr. Speaker. Majority colleagues will be voting in the affirmative on this one. Should colleagues desire to be an exception, they should feel free to contact our offices and we will be happy to record their vote. Thank you.

ACTING SPEAKER AUBRY: Thank you, ma'am.
(The Clerk recorded the vote.)

Mr. Manktelow to explain his vote.

MR. MANKTELOW: Thank you, Mr. Speaker. I just want to share another part before I vote on this, and that's I don't

understand why *pesticides* seem to be a bad word. Pesticides were developed to help us to get rid of insects and bugs and weeds that hurt us, and they're done and used in a proper way. They do a lot for us as human beings and for our animals. And I went to a conference many years ago and we talked about doing away with pesticides and I remember the speaker saying if we did away with pesticides, we could not build enough hospitals soon enough to take care of all of the diseases and things that pesticides take care of.

So if these pesticides are used in the right way, which I've done for 30-some years of my life, nothing happens. They are good. I was never concerned about using pesticides around my children because we did it the right way and the proper way. And that's what this is all about. If there's a bad apple out there and it's not done in the proper way, absolutely we should do something, but the pesticide itself is not the bad apple. So again, I really urge my colleagues to consider voting no on this because there are other ways and better ways, and we need to use pesticides as a deterrent to many things. So I thank you again, Mr. Speaker, for my time -- or your time. Thank you, sir.

ACTING SPEAKER AUBRY: Thank you, sir.

Mr. Goodell.

MR. GOODELL: Thank you, sir. In addition to those on the floor voting in favor of this bill, please record Mr. Mike Lawler and Mr. Mike Montesano in favor of this bill. Thank you, sir.

ACTING SPEAKER AUBRY: Thank you, sir.

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Thank you, Mr. Speaker and colleagues. Our next two debates we're going to take up, one is on page 25, it's Calendar No. 322 by Ms. Glick, and the second one is on page 22, Calendar No. 288 by Ms. Rosenthal.

ACTING SPEAKER AUBRY: Thank you.

Page 25, Calendar No. 322, the Clerk will read.

THE CLERK: Senate No. S04248, Calendar No. 322, Senator Skoufis (Glick, L. Rosenthal, Lupardo, Cook, Vanel, Jean-Pierre, Zebrowski, Abbate, Seawright, J. Rivera--A05775). An act to amend the Domestic Relations Law, in relation to requiring the court to consider the best interest of a companion animal when awarding possession in a divorce or separation proceeding.

ACTING SPEAKER AUBRY: Ms. Glick, an explanation is requested.

MS. GLICK: Thank you, Mr. Speaker. Feels good to stand up on the floor, it's been a long time.

The purpose of the bill is simply to require the court to consider the best interest of a companion animal when dealing with either a divorce or a separation situation.

MS. WALSH: Yes, Mr. Speaker, will the sponsor yield?

ACTING SPEAKER AUBRY: Will you yield, Ms. Glick?

MS. GLICK: Most assuredly.

MS. WALSH: Thank you so much. So you know, it's interesting, sometimes we have bills that are many, many, many pages long; this is just a few words but it could be very impactful on the court system. It's just a couple of lines in the Domestic Relations Law, so -- but I want to break it down and kind of walk through it a little bit so we can think about what the potential impacts could be. First of all, what -- what animals specifically, what companion animals will this encompass? I mean, I would imagine dogs and cats, but are there any other animals that would be encompassed by this?

MS. GLICK: Well, any domesticated animals. It certainly does not -- that would be normally in or maintained in a household. It does not, you know, under -- refers to -- it certainly does not refer to any farm animals.

MS. WALSH: Okay. And it refers to a section of the Ag and Markets Law, actually, to define that, correct?

MS. GLICK: Yes, that's exactly right.

MS. WALSH: And I'm just going to get that in front of me for a second. So that -- that was interesting, I had to look up a new word I didn't know, it was -- let's see, a companion animal was going to mean -- actually a farm animal was defined as any, and some of my farmer friends here will know, means any ungulate --

MS. GLICK: That's like a cow.

MS. WALSH: Okay. All right. And it looked like animals that had, like, hooves would not count; is that right, like --

MS. GLICK: Right, this would be --

MS. WALSH: -- cows and goats?

MS. GLICK: If you would, this would be any animal that was normally maintained in the house. So it would include, I suppose, I guess it could include a rabbit. People frequently keep rabbits, children love rabbits, hamsters --

MS. WALSH: Guinea pigs.

MS. GLICK: -- gerbils.

MS. WALSH: Ferrets.

MS. GLICK: Even if -- and I -- I know that people are fond, you know, when I was a kid some of my friends would get chicks around Easter, which was actually a very bad idea because they don't stay chicks. So -- so this would not include those -- those animals, but it would include the companion animal that is normally maintained in the home. And so yes, it could include, you know, a hamster or a gerbil.

MS. WALSH: Yeah, like -- what about like an iguana or like a boa constrictor? Some of my -- one of my friends I used to work with, his son had snakes, which freak me out, but that was their pet, it was a snake; would that count?

MS. GLICK: Well, if it is maintained in the home and has been cared for as a part of the family, I would imagine, although I must say that when we started the bill, snakes were not in

my mind, certainly if you're in Australia they just come in.

MS. WALSH: Yeah.

MS. GLICK: They're not necessarily maintained, they're -- usually you call the snake guy and he takes them out, but this is what is -- has been the companion animal within the home and so I guess it could include snakes, but I suspect there's less fighting over snakes than dogs.

MS. WALSH: Yeah, pot belly pigs, too, are a big one. They're pets in some people's homes. They let them sit right on the sofa with them, I've seen -- I've seen them around. They're not maintained out in a stall or anything, they're right in the home. Would they -- would they count under this legislation, too?

MS. GLICK: I suppose if they have been maintained in the home, that is quite possible, but certainly in many jurisdictions there are restrictions on certain -- maintaining certain animals within various jurisdictions. So somebody down my block did have a chicken, but that was actually totally in violation of the local health code.

MS. WALSH: Yeah, and you can kind of see where I'm going here because I think, too, over the years, there's been a little bit of a blurring of lines between what -- what would be a farm animal. Some people think that their chickens are like their pets, really. You see them perched on their shoulders, you know, like a parrot would. I guess a parrot would be covered under this bill because they're in a home in a cage. They live to be -- a really long

time.

MS. GLICK: Yes, you better have provision in your will if you have a parrot.

MS. WALSH: That's right, they could be like 100 years old, I think; that's right. You know, goats -- I mean, goat yoga is a big thing now, so some people think of goats as being almost like pets, too, but they have hooves so I don't know if they would count under this bill.

MS. GLICK: That is not anticipated by this legislation in any stretch of the imagination.

MS. WALSH: Very good. Very good. All right. Well, so I mean -- so that the words that really struck me the most, I guess, as somebody who practices in family court is that it talked about the quote, "best interest of the animal," and even for people who are not attorneys or attorneys from family court, most people I think have heard the term *best interest of the child*, when we think about like a matrimonial action or a family court action. So was there -- was there a reason for choosing *best interest of the animal*, because to me that conjures up a certain process and procedure that would be used to -- to figure out what happens to these companion animals.

MS. GLICK: Well, we don't direct the court in any particular way other than to say they should consider it. In the past, they have been viewed more like furniture or property or, you know, just home goods or whatever, and they're not, they're sentient beings. And so the best interest would be -- and you know, I don't have to tell

you that sometimes there are contentious circumstances in divorce proceedings and sometimes people don't even want the children but they don't want their -- the departing spouse to have the children. So in this instance we're just saying that the court should look at what would be in the best interest and that, to a -- the average person would be who has been the primary caregiver, who has taken -- who feeds the animal, if it's an animal that goes outside like mostly dogs, but there are some people who walk cats. I don't know how you get a lead on a -- I've never been able to get a lead on a cat, but there are people who do, so who takes the animal to the vet and if the animal needs certain medication, who is the person who normally administers that. So those are the kinds of things we would assume. Though it's not lined out, we leave this to the discretion of the court for them to inquire. That would be in the best interest where the animal has gotten its primary care and with whom the animal is primarily bonded.

MS. WALSH: You -- you've raised a really interesting point because you're absolutely right that in the past, and I think -- I think as a society I think we've sort of evolved to a point where we don't look at our companion pets as being chattel, as being like furniture or dishes or a car that would be distributed as part of equitable distribution in a divorce. Back when we did look at it more as a property analysis, you'd looked at things like who bought, who purchased the animal, and sometimes they can be very expensive, especially if you're going through a breeder or something like that, who purchased, or was it a gift to one of the -- you know, one spouse.

And you'd look at it from a property point of view. The things that you just mentioned are more of a custody analysis, who has nurtured the pet, who has met the pet's emotional needs, as much as we can tell what those are, who has been responsible for the happiness of the pet. You know, those types of -- so you're proposing through this legislation more of a custody type of analysis in determining who is going to get the pet at the end of the day in this contested matrimonial action; do I have that right?

MS. GLICK: Well, yeah, I suppose in any of these division of both when two people are parting, sometimes it's amiable and sometimes it's not. And I'm sure you're aware of some of the domestic violence situations in which someone specifically harms the pet to get back at or to threaten the -- their partner. This is really when you are -- if you are at the stage where you're in court, we're just recommending that the judge has to think about the best interest of the animal. Now we don't enumerate those things --

MS. WALSH: Right.

MS. GLICK: -- but we would, as I said, the thoughtful standard would be where -- where is the animal best suited. And that might be, you know, based on the fact that one person is never home.

MS. WALSH: Yeah. So in addition to the things that you mentioned, that type of custody analysis that we were talking about, does the property analysis then go out the window? Do you still -- is it still a factor to consider who purchased the animal or

whether it was a gift?

MS. GLICK: We don't impose on the judge that -- a hierarchy of items to consider, we just said that as we're changing Domestic Relations Law to say take this into consideration.

MS. WALSH: Right.

MS. GLICK: And there may be innumerable factors that are involved in once you go to court on a divorce or separation situation, you've already gotten past the, you know, this is your mother's china, you can have it. We've gone beyond that when we're actually in court.

MS. WALSH: Right. So to your point, there really aren't any guardrails at all in this legislation. It doesn't really give any guidance to a judge that's going to look at this once this is passed and signed and say, *What I'm supposed to do with this? How am I supposed to handle this?* And so one of the reasons why I'm asking you so many of these questions is to create that kind of legislative history that maybe would be instructive to a court that's taking a look at this later to see what was intended. For example, whether you are going to continue to count the property analysis even as a factor to be considered, or whether that -- or whether you're not. And specifically about, you know, what you're going to do in terms of this custody analysis.

But let me just move on because I could talk to you all day about this, but I do have a lot of questions. So how do you think that the court should determine the best interest of the animal?

MS. GLICK: Well, you know, first of all, I have great confidence in the judicial system and I think that the court will look at this and think through what is best for the animal. And in doing so, think about those things that -- the animal doesn't care whether it cost 5 bucks at -- on the corner, 50 bucks for a -- the spay and neuter deposit at a rescue, or whether you went to a breeder and it was 1,500 bucks. The animal has no -- that does not bear on the animal's mind.

MS. WALSH: So do you think -- really what -- are you saying that the court should try to put itself kind of in the mind or through the eyes of the animal and try to figure out --

MS. GLICK: No, I'm saying the court --

MS. WALSH: -- what its best interests are? Because 5 bucks doesn't matter to an animal, we know that.

MS. GLICK: I think we've gone a little further afield. Let me just be clear. The court should take into account those things that indicate what would be in the best interest of the animal. And that is who has been the caregiver, who has been the primary person who has tended to take it to the vet, who is the person who has on a regular basis tended to its needs, because wherever the pet is going to go, it is going to need all of those things that it has needed up till that time and, therefore, determining where that -- where the companion animal should reside should be based on where the pet will be best cared for.

MS. WALSH: And do you envision that there would

be one -- when the court makes a disposition and reaches a decision that the pet should go to live either with one party or the other, or do you envision joint custody with visitation rights? Do you envision a -- some type of support process where further medical bills would be shared between the parties? I mean, how far do we take this? If we're going to be analyzing this as we would with a child custody case, the child is generally traveling between two homes, there's a support order, there's an opportunity to come in later and seek a modification or an enforcement proceeding. I mean what -- what more -- what do you see happening here with this piece of legislation as far as animals are concerned?

MS. GLICK: I think a sitcom, but seriously --

MS. WALSH: I'm out of time?

ACTING SPEAKER AUBRY: We have exhausted the time, my colleagues, and we do have other members who want to speak on this.

MS. WALSH: I had a lot of sand left, I guess not. I'm going to have to talk to Mr. Walczyk about that. Thank you.

ACTING SPEAKER AUBRY: Mr. Manktelow.

MR. MANKTELOW: Thank you, Mr. Speaker, just a quick question if the sponsor will yield?

ACTING SPEAKER AUBRY: Ms. Glick, will you yield?

MS. GLICK: Of course.

MR. MANKTELOW: Well, thank you so much. I

will generally -- I will definitely support this bill. But I have a question for you. So I'm a single guy, I have a three-year-old German Shepard dog, okay? I marry a woman, we get married, we live together. I become an Assemblymember so now I'm in Albany half of my time. She's the primary caregiver of that dog when I'm away, but it's still my dog, I brought it into the marriage. So when we get to the divorce court, does she have a right to that dog?

MS. GLICK: Well, I would say to you that the -- the court would look at the totality of the -- if you had been married for, did you give a specific time?

MR. MANKTELOW: Yeah, let's go with five years, that's a good number.

MS. GLICK: Okay. So the dog is five years old, you had the dog presumably for some period of time before and the dog is bonded to you, that would be an argument to the court to say that *While I haven't been home all the time, I came to the marriage with the companion animal, the companion animal is bonded to me and the dog should go with me.* But, you know, a court could say that's fine, but, you know, if there is some evidence that you've been neglectful, perhaps the court would have a different opinion. My belief is, you know, that the courts have to navigate a lot of these very difficult situations and that they generally do a reasonably good job and I would assume, we're just saying, I want to be clear: Stop thinking about the companion animal as an inanimate object and that it is a sentient being and, therefore, there should be some consideration

about where the companion animal would be best cared for.

MR. MANKTELOW: I agree -- the dog is --

MS. GLICK: And you could certainly bring your dog to the LOB, lots of people have.

MR. MANKTELOW: Definitely the dog is not an inanimate object for sure, it's a dog that wants to cuddle, that wants to be petted, wants to play; it's definitely a live creature. So again, that would be up to the judge then at that point, correct?

MS. GLICK: Well, if there is a conflict, then yes, the judge would have to make a determination.

MR. MANKTELOW: Okay. Even though it was my dog to begin with?

MS. GLICK: Well, that may weigh very heavily with the court.

MR. MANKTELOW: Okay. Well, Ms. Glick, I appreciate your answers and I will let my colleagues know, I will support this bill. I think it does need to be taken into consideration absolutely. So again, I thank you for bringing this forward.

MS. GLICK: Thank you.

MR. MANKTELOW: You're welcome. Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Thank you, Mr. Manktelow.

Ms. Byrnes.

MS. BYRNES: Well, thank you. If the sponsor

would yield?

ACTING SPEAKER AUBRY: Ms. Glick, will you yield?

MS. GLICK: Of course.

ACTING SPEAKER AUBRY: Ms. Glick yields, Ms. Byrnes.

MS. BYRNES: Good afternoon. I won't belabor it, but I know intent on the part of the sponsor is very important when it ultimately will come to how this is interpreted in the courts of law, which obviously it will be. And I am going to be voting for it, but I just want to go back one step a little bit to look at what constitutes a companion animal again, because since we are looking at intent, I just wanted to say that where I live, which is very rural country, other than the Amish who use horses as farm animals and as work animals, I know tons of people who legitimately have horses as pets. Where you or I may go out jogging or taking a walk at night, they're out riding their horses at night and I just don't want, as this legislation to go through, any preclusion of any specific animals as being potential companion animals. I don't mind leaving it up to the court, but I would just hope as the sponsor that you're not precluding them being designated depending on the findings of a court.

MS. GLICK: Well, you know, the definition is from the Ag laws, any dog, cat, and shall also mean any other domesticated animal normally maintained in or near the household of the owner or person who cares for. Such other domesticated animals shall not

include a farm animal as defined in this section. So it's very possible, and I certainly understand how attached people are to their horses and, frankly, the miniature horses, you know, there are some dogs that are quite a bit bigger than miniature horses, so -- and I have been surprised occasionally on the Thruway when the side of a minivan opens and out comes a small horse. So while I personally understand, I think the section of law does limit the -- it's not my intention, but the Ag and Market, since a horse has a hoof, I suspect that it would not strictly be covered. Although since we've had this debate, there is this -- hopefully this will be a law, the court might look at this and say that in some circumstances, this is actually more of a companion animal if it is perhaps the only horse that is part of the family, as opposed to people who, you know, may have several, in which case then --

MS. BYRNES: And they normally -- and if people live in the town as opposed to the village, they normally have them living on their property, they are at their houses. But anyway, I just want to make my best pitch because it's important in our community, they're almost as prevalent as dogs and cats are. Thank you, ma'am.

MS. GLICK: Well, I understand that and I appreciate it and, you know, there are a lot of people who have horses but don't have enough room and they do board them, in which case maybe that becomes a little bit of an issue, but then they could make the pitch that they're the only one who ever goes to the boarding stable and they're the only one who interacts with the horse. But it's not specifically included based on Ag Law, regrettably.

MS. BYRNES: So you'll let the courts make a determination.

MS. GLICK: Absolutely. The court can always look at these things and make their own ruling.

MS. BYRNES: Thank you very much. I will be voting in favor of it. I thank you for your time. Thank you, ma'am.

MS. GLICK: Thank you.

ACTING SPEAKER AUBRY: Thank you.

MS. BYRNES: Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: No problem.

Mr. Gallahan.

MR. GALLAHAN: Thank you, Mr. Speaker, if the sponsor might yield?

ACTING SPEAKER AUBRY: Ms. Glick, will you yield?

MS. GLICK: Certainly.

ACTING SPEAKER AUBRY: Ms. Glick yields, sir.

MR. GALLAHAN: Thank you very much. I just have one quick question in a marital dispute. Hypothetically speaking, a husband and wife are married for several years and the doctor of the wife prescribes, under many cases, they prescribe a companion animal. So she has a cat, but she can't take care of it so he's doing all the work taking care of it, it's a companion animal under doctor's orders prescribed to her, they go to court; how would this bill affect a situation such as that?

MS. GLICK: Well, you know, we don't prejudge, if you will excuse the pun, what the courts might say, and I certainly understand there certainly are circumstances in which the older folks sometimes give up an animal to a close friend, or as my mother did gave me her cat because she was going into assisted living and had no option. So I think that the court would have to see what was in the best interest and if it was that the individual should have -- has been, quote, "in some way prescribed a therapy companion," and that person is no longer able to -- has not been able to care for it, but now they're separating, it depends on what the circumstance is where that person will be. If they're -- you know, they may have -- they may now, now that they're not going to have a spouse, they may be in a circumstance where they are hiring help to assist them and in which case they may very well be able to have the -- that assistant help them take care of the animal.

MR. GALLAHAN: Thank you. Thank you very much. Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Thank you.

Read the last section.

THE CLERK: This act shall take effect immediately.

ACTING SPEAKER AUBRY: The Clerk will record the vote on Senate print 4248. This is a fast roll call. Any member who wishes to be recorded in the negative is reminded to contact the Majority or Minority Leader at the numbers previously provided.

(The Clerk recorded the vote.)

Mr. Goodell to explain his vote.

MR. GOODELL: Thank you, sir. From time to time, we as a Legislature get together and we put together a special day. It might be dealing with domestic violence or Earth Day, or it might be involved with some other special interest and today should be called the *best interest of lawyers day*.

(Laughter)

Now what this bill does, this allows divorce lawyers to go to court and fight extensively over what's in the best interest of a pet. Right now it's not an issue that's litigated in a court at all. And what happens in court right now is the family court judge says, *You guys work it out or I'll decide who is going to own the pet*. And 99 percent of the time, the parties work it out without litigating it.

So now we're asked -- and, by the way, one of the most litigious issues in family court, bar none, is custody and visitation of children, where the best interest of the children. So now we can throw a great bone to my lawyer friends so that they can litigate over the best interest of the pet: *Who's got a bigger yard? But he comes to me when I call him. Yes, but he sleeps with you. Yes, but I feed him. Yes, but I take him to the vet*, and we're going to do like personality profiles, psychological personality profiles, which parent is better at pet management. We're going to do a pet personality evaluation, call in psychologists to talk to the pet, cat whispers, open a subsequent review. And all of this, by the way, guarantees large legal fees. So once again, at the risk of being disbarred, I'm opposing this

best interest of lawyer bill as I have the prior ones. Thank you, sir.

ACTING SPEAKER J.D. RIVERA: Mr. Goodell in the negative.

Ms. Walsh.

MS. WALSH: Thank you, Mr. Speaker. To explain my vote. So I absolutely agree with the idea that our pets that we love are more than just chattel. I think that we've evolved like that as a society. The problem I have here with this bill is that by saying you're going to look at the best interest of the animal, it sounds an awful lot like the best interest of the child. And let me tell you something, child custody battles are difficult, painful, and emotionally wrenching experiences for all concerned, the parties, the children, the attorneys, and the court. A court needs a tremendous amount of information upon which to make a best interest finding, almost always necessitating an attorney for the child. Are we going to need an attorney for the animal? A forensic psychiatrist or psychologist to evaluate the children and the parties, as well, to conduct collateral interviews with teachers, child care providers, and pediatricians and the like, taking extended testimony from both lay and expert witnesses. Are we going to need a Dr. Dolittle to come in and talk about what the dog wants, right? Court is doing an in camera proceeding to hear from the children themselves.

I'm not suggesting that we're going to do all those things for our pets, but by saying *best interest of the animal*, that's what comes to mind as a practitioner. I think as one court said, in the

Raymond case, the best interest for all concerned is the standard that I would like -- I would request that amended to the bill, I think that would really help it out. I'm sure everyone's going to stand up and say that they're going to vote for it in honor of their beloved dog, I get the emotional appeal of the bill, I get the reason for the bill, I just think that the way it's worded is just really handing the court system, an already beleaguered system full of matrimonial cases just a big pile, and I'll leave it at that. Thank you.

ACTING SPEAKER J.D. RIVERA: Ms. Walsh in the negative.

Mr. Tague.

MR. TAGUE: Thank you, Mr. Speaker. To explain my vote.

ACTING SPEAKER J.D. RIVERA: Proceed.

MR. TAGUE: Well, first of all, I am not a lawyer and I did not stay at a Howard Johnson's last night, but for the same reasons that were discussed by my two colleagues prior, I will be voting in the negative on this bill and I would encourage all my colleagues to do the same, please.

ACTING SPEAKER J.D. RIVERA: Mr. Tague in the negative.

Ms. Glick.

MS. GLICK: Thank you, Mr. Speaker, quickly to explain my vote. The intention is to simply change the way in which we view companion animals in the event of a divorce or separation,

that they are actual animals, that there should be some thought given as opposed to them being viewed as, you know, just another piece of furniture. I withdraw my request and vote in the affirmative.

ACTING SPEAKER J.D. RIVERA: Ms. Glick in the affirmative.

Mr. Goodell.

MR. GOODELL: Thank you, sir. In addition to those voting no on the floor of the Assembly, please record Mr. McDonough in the negative. He called me and said absent testimony from the dog, he's going to let the current system work. Thank you, sir.

ACTING SPEAKER J. D. RIVERA: Are there any other votes?

Mr. Goodell.

MR. GOODELL: Thank you, sir. In addition to Mr. McDonough and those on the floor, please record the following Assemblymembers in the negative: Mr. DiPietro, Mr. Fitzpatrick, Mr. Gallahan, Mr. Montesano, Mr. Salka, and Mr. Tague. Also, Mr. Walczyk. Thank you, sir.

ACTING SPEAKER J.D. RIVERA: Announce the results.

(The Clerk announced the results.)

The bill is passed.

We're going to be going to page 22, Calendar No. 288, the Clerk will read.

THE CLERK: Assembly No. A00715, Calendar No. 288, L. Rosenthal, Weprin. An act to amend the Public Health Law and the Education Law, in relation to authorizing emergency medical service personnel to provide basic first aid to cats and dogs under certain circumstances.

ACTING SPEAKER J.D. RIVERA: An explanation has been requested, Ms. Rosenthal.

MS. ROSENTHAL: This -- this bill would allow first responders to administer basic first aid to a dog or cat in the course of responding to an emergency, provided there are no persons requiring medical attention or transportation at such time.

ACTING SPEAKER J.D. RIVERA: Mr. Goodell.

MR. GOODELL: Thank you, sir. Would the sponsor yield?

ACTING SPEAKER J.D. RIVERA: Does the sponsor yield?

MS. ROSENTHAL: Yes.

ACTING SPEAKER J.D. RIVERA: The sponsor yields.

MR. GOODELL: Thank you, Ms. Rosenthal. Now this bill deals specifically with first aid for a dog or cat being provided by a certified EMT or a first responder or advanced emergency medical technician, is that correct?

MS. ROSENTHAL: Yes.

MR. GOODELL: And the type of service that can be

provided in terms of first aid is very specific, right, like opening an airway, mouth to mouth resuscitation?

MS. ROSENTHAL: Yes, mm-hmm.

MR. GOODELL: Oxygen, managing ventilation by a mask, controlling hemorrhaging, retract pressure, immobilization of fractures, bandaging, and administering NARCAN or something similar, is that correct?

MS. ROSENTHAL: Yes, Naloxone, mm-hmm.

MR. GOODELL: So it doesn't include psychological counseling, for example, if the pet is unhappy with a custody determination by a family court judge?

MS. ROSENTHAL: Well, you know, it doesn't say you can't do that so perhaps the animal might need that if they're injured. They might need the comfort and caring of a first responder.

MR. GOODELL: Especially if the first responder is the pet owner, right? And I note that what this basically says is that if a certified EMT or first responder or advanced emergency medical technician provides first aid to a dog or cat and they do so in communication with a licensed veteran -- veterinarian, then they don't have any civil liability as long as it's done in good faith, correct?

MS. ROSENTHAL: Yeah, as long as they acted reasonably and in good faith in effectuating the rescue.

MR. GOODELL: Does this in any way require the consent of the pet owner or custodian or guardian?

MS. ROSENTHAL: No, it does not.

MR. GOODELL: Does the pet owner face liability if, for example, the pet bites the first responder and the pet has not been properly vaccinated?

MS. ROSENTHAL: That's not the subject of this bill.

MR. GOODELL: I see. And likewise, if a cat, for example, scratches a first responder, even though it's -- oh, I'm sorry. Never mind. I apologize. I forgot we banned de-clawing cats earlier. So this is only designed to provide liability protection for the first responders, correct?

MS. ROSENTHAL: Well, currently it's illegal for first responders to provide emergency treatment to an animal if they're not licensed veterinarians, and there are many first responders who happen to have occasion to help a cat, a dog, there are reports of increased ingestion of Fentanyl by police dogs and others, and so we want them to be able to help out the animal.

MR. GOODELL: Certainly, a laudable objective. Does this bill envision that the EMTs would be authorized to transport the injured dog or cat to the -- to a veterinarian?

MS. ROSENTHAL: Um, I believe so, yeah.

MR. GOODELL: Now this bill is also clear that any EMT services, first aid or transport, presumably, is secondary to any medical needs of a human, correct?

MS. ROSENTHAL: Yes. As I said in the beginning, it lays that out in the bill.

MR. GOODELL: I see. And how are EMTs to respond if they're in the middle of using an ambulance to transport an injured dog to the veterinarian and they get another call?

MS. ROSENTHAL: I believe those rules and regs would be promulgated by the hospital or the ambulance company.

MR. GOODELL: Thank you very much, Ms. Rosenthal, I appreciate your comments.

Sir, on the bill.

ACTING SPEAKER J.D. RIVERA: On the bill.

MR. GOODELL: Thank you, sir. I will be supporting this bill because I appreciate any efforts that can be done to help our pets in a time of an emergency. I do note, though, that it's not without risk for the reasons that were mentioned. If a dog has not -- or a cat hasn't had a Rabies shot, for example, there's a potential risk to the EMT, there's a potential risk if that dog is -- or cat is being transported in an ambulance to a veterinarian hospital. But overall, I think the intent of the bill is correct that it would be great if people help in any way they can with administering first aid, if they're willing to, and that they not incur liability should they desire to help. Thank you, sir.

ACTING SPEAKER J.D. RIVERA: Thank you.

Mr. Angelino.

MR. ANGELINO: Mr. Speaker, on the bill.

ACTING SPEAKER J.D. RIVERA: On the bill.

MR. ANGELINO: Thank you. I appreciate this. I'll

be supporting this. I'm an animal lover and I have way too many in my house right now. But the -- I'm a little concerned about the abuse that might be caused by -- when people hear about this bill being passed. In my -- in my experience in public service, I supervised an ambulance corp of four ambulance daily, and many times -- I didn't realize it was against the law, but they have administered first aid to animals and I've witnessed firefighters revive dogs, and this is wonderful that it's going to be done. I'm just concerned that when this becomes public and widespread, we're going to have 9-1-1 abuse, people calling and expecting emergency care for pets.

The -- another concern I have about this is who's going to pay if a transport is done or medical care is needed by a veterinarian? And so this may need some amendments later on as this starts to progress and starts to get used. Another concern I have is -- and I think my colleague here from the Western part of our State mentioned, EMTs and paramedics are not trained in animal husbandry and care, and I was just concerned if they do harm. But I think, hopefully, they would be covered as good samaritans even though they're excluded from the Good Samaritan Exclusion.

But overall, I would do anything I could to help an animal. I appreciate that this was brought to the floor but, like I said, I just have some concerns but, overall, I think it's good, but it's going to need some tweaking in the future. Thank you.

ACTING SPEAKER J.D. RIVERA: Thank you.

Mr. Montesano.

MR. MONTESANO: Thank you, Mr. Speaker. Will the sponsor yield?

ACTING SPEAKER J.D. RIVERA: Does the sponsor yield?

MS. ROSENTHAL: Yes.

ACTING SPEAKER J.D. RIVERA: The sponsor yields.

MR. MONTESANO: Thank you, Ms. Rosenthal, just a quick question because I heard something mentioned before and I just wanted to clarify it. If the first responders are giving aid to the dog or the cat, does it have to be in conjunction with getting advice from a veterinarian, or -- for them to be protected if something goes wrong, or could they just act, you know, with the knowledge and training they have as it is to treat the animal?

MS. ROSENTHAL: They can act with the knowledge and training they have, but I do want to emphasize that this does not mandate that they do treat them and, in fact, I've heard about firefighters and first responders who are happy with this legislation because it conveys protection for them which they haven't had until --

MR. MONTESANO: And I'm for it and I support it, and I see many occasion out here in my county, in Nassau County, at house fires and stuff like that where you see firemen have small masks on a dog or a cat that they take -- and I thought I heard somebody say something before that their work had to be in conjunction with a veterinarian in order to be indemnified. That's what I sought to clear

up.

MS. ROSENTHAL: Yeah, no; no.

MR. MONTESANO: Thank you. Thank you, Mr. Speaker.

ACTING SPEAKER J.D. RIVERA: Read the last section.

THE CLERK: This act shall take effect on the 365th day.

ACTING SPEAKER J.D. RIVERA: The Clerk will record the vote on Assembly 715. This is a fast roll call. Any member who wishes to be recorded in the negative is reminded to contact the Majority or Minority Leader at the numbers previously provided.

(The Clerk recorded the vote.)

ACTING SPEAKER AUBRY: Mr. Goodell.

MR. GOODELL: Thank you, sir. Please record Mr. DiPietro in the negative on this legislation. Thank you, sir.

ACTING SPEAKER AUBRY: So noted.

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Mr. Speaker, do you have any further housekeeping or resolutions?

ACTING SPEAKER AUBRY: We have both, Mrs.

Peoples-Stokes.

On a motion by Mr. Pichardo, page 25, Calendar No. 317, Bill No. A04954, amendments are received and adopted.

Without objection, on a motion by Mr. Abinanti to reconsider the substitution of Senate Bill S06393 for Assembly Bill A07358, and Senate bill is recommitted to the Committee on People with Disabilities, and said Assembly bill is restored to its place on the Order of Third Reading.

On a motion by Mr. Abinanti, page 31, Calendar No. 384, Bill No. A07358, the amendments are received and adopted.

And on behalf of Mr. Dinowitz, Assembly Bill recalled from the Senate, the Clerk will read the title of the bill.

THE CLERK: An act to amend Chapter 455 of the Laws of 1997.

ACTING SPEAKER AUBRY: Motion to reconsider the vote by which the bill passed the House.

The Clerk will record the vote.

(The Clerk recorded the vote.)

The Clerk will announce the results.

(The Clerk announced the results.)

The bill is before the House and the amendments are adopted.

Numerous fine resolutions, Mrs. Peoples-Stokes, we will take them up with one vote. On the resolutions, all those in favor signify by saying aye; opposed, no. The resolutions are adopted.

(Whereupon, Assembly Resolution Nos. 319-323 were unanimously approved.)

Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Thank you, Mr.

Speaker. I now move that the Assembly stand adjourned until Friday, May the 21st, tomorrow being a legislative day, and that we will reconvene at 2:00 p.m. on May the 24th, Monday being a Session day.

ACTING SPEAKER AUBRY: The Assembly stands adjourned.

(Whereupon, at 3:35 p.m., the Assembly stood adjourned until Friday, May 21st, Friday being a legislative day, and to reconvene on Monday, May 21st at 2:00 p.m., Monday being a Session day.)