

84TH GENERAL ASSEMBLY

REGULAR SESSION

MAY 21, 1986

PRESIDENT:

The hour of ten having arrived, the Senate will please come to order. Will the members be at their desks and will our guests in the gallery please rise. Prayer this morning by the Reverend Dale Catlin, Marshall United Methodist Church, Marshall, Illinois. Reverend.

REVEREND CATLIN:

(Prayer given by Reverend Catlin)

PRESIDENT:

Thank you, Reverend. Reading of the Journal. Senator Vadalabene.

SENATOR VADALABENE:

Yes, thank you, Mr. President and members of the Senate. I move that reading and approval of the Journals of Tuesday, May 13th and Wednesday, May 14th and Thursday, May 15th and Tuesday, May 20th, in the year 1986, be postponed pending arrival of the printed Journals.

PRESIDENT:

You've heard the motion as placed by Senator Vadalabene. Is there any discussion? If not, all in favor indicate by saying Aye. All opposed. The Ayes have it. The motion carries. It's so ordered. Messages from the House, Mr. Secretary.

SECRETARY:

A Message from the House by Mr. O'Brien, Clerk.

Mr. President - I am directed to inform the Senate the House of Representatives has passed bills with the following titles, in the passage of which I am instructed to ask the concurrence of the Senate, to-wit:

House Bills 2798, 2927, 3044, 3144, 3423, 3473 and 3475.

PRESIDENT:

All right. With leave of the Body, we'll move to page 19 on the Calendar. On the Order of House Bills 1st Reading.

If any member wishes to pick up a House bill, please...inform the Secretary or the Assistant Secretary. Page 19 on the Calendar, on the Order of House Bills 1st Reading, Mr. Secretary.

SECRETARY:

House Bill 1236, Senator Hall is the Senate sponsor.

(Secretary reads title of bill)

1st reading of the bill.

House Bill 1865, Senator Smith.

(Secretary reads title of bill)

House Bill 2093, Senator Jones.

(Secretary reads title of bill)

House Bill 2546, Senators Watson, Demuzio.

(Secretary reads title of bill)

House Bill 2630, Senator D'Arco.

(Secretary reads title of bill)

House Bill 2642, Senator Jerome Joyce.

(Secretary reads title of bill)

House Bill 2733, Senator Topinka.

(Secretary reads title of bill)

House Bill 2738, Senator Harovitz.

(Secretary reads title of bill)

House Bill 2741, Senator Maitland.

(Secretary reads title of bill)

House Bill 2760, Senator Zito and DeAngelis.

(Secretary reads title of bill)

House Bill 2765, Senator Degnan.

(Secretary reads title of bill)

✓ House Bill 2770, Senator Darrow.

(Secretary reads title of bill)

House Bill 2782, Senator Demuzio.

(Secretary reads title of bill)

House Bill 3062, Senator Poshard.

(Secretary reads title of bill)

House Bill 3156, Senators Lechowicz and Karpel.

(Secretary reads title of bill)

House Bill 3272...3276, Senator Berman.

(Secretary reads title of bill)

House Bill 3479, Senator Woodyard.

(Secretary reads title of bill)

House Bill 3506, Senator Rigney.

(Secretary reads title of bill)

House Bill 3520, Senator Schaffer.

(Secretary reads title of bill)

1st reading of the bills.

PRESIDENT:

Rules Committee. Resolutions, Mr. Secretary.

SECRETARY:

Senate Resolution 160 offered by Senator Maitland and all Senators and it's congratulatory...Senate Joint Resolution, rather.

PRESIDENT:

Senator Maitland.

SENATOR MAITLAND:

Thank you, very much, Mr. President, Ladies and Gentlemen of the Senate. I'd like to ask leave of the Body to suspend the appropriate rules and ask for the immediate consideration of Senate Joint Resolution 160.

PRESIDENT:

All right. Senator Maitland has moved to suspend the rules for the immediate consideration and adoption of Senate Joint Resolution 160, a congratulatory resolution. All in favor of the motion to suspend indicate by saying Aye. All opposed. The Ayes have it. The rules are suspended. Senator Maitland on Senate Joint Resolution 160.

SENATOR MAITLAND:

Thank you, very much, Mr. President. Senate Joint Resolution 160 is a congratulatory resolution that congratulates

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Recalled*

the retiring president of Illinois Wesleyan University, Bob Eckley. I would appreciate the Body's support.

PRESIDENT:

All right. Senator Maitland has moved the adoption of Senate Joint Resolution 160. Is there any discussion? If not, all in favor indicate by saying Aye. All opposed. The Ayes have it. The resolution is adopted. All right. The recall list has been passed out. We'll begin on the Order of Recalls so that we can afford Enrolling and Engrossing the opportunity to...get things in order. All right. With leave of the Body, we'll move to the Order of Senate Bills 3rd Reading. Top of page 4, on the Order of Senate Bills 3rd Senate Bills 1565. Senator Lemke seeks leave of the Body to return that bill to the Order of 2nd Reading for purposes of an amendment. Is leave granted? Leave is granted. On the Order of Senate Bills 2nd Reading, Senate Bill 1565, Mr. Secretary.

SECRETARY:

Amendment No. 1 offered by Senator Lemke.

PRESIDENT:

Senator Lemke.

SENATOR LEMKE:

What this does is deletes the word "shall" and inserts "may" which was requested by the committee. This does not mandate the court, allows the court that they may extend the term on a aggravated situation. I ask for its adoption.

PRESIDENT:

All right. Senator Lemke has moved the adoption of Amendment No. 1 to Senate Bill 1565. Any discussion? If not, all in favor indicate by saying Aye. All opposed. The Ayes have it. The amendment is adopted. Further amendments?

SECRETARY:

No further amendments.

PRESIDENT:

SB 1624
Recalled

3rd reading. Middle of page 5, on the Order of Senate Bills 3rd Reading is Senate Bill 1629. Senator Lemke seeks leave of the Body to return that bill to the Order of 2nd Reading for purposes of an amendment. Is leave granted? Leave is granted. On the Order of Senate Bills 2nd Reading, Senate Bill 1629, Mr. Secretary.

SECRETARY:

Amendment No. 3 offered by Senator Lemke.

PRESIDENT:

Senator Lemke.

SENATOR LEMKE:

What this does is corrects grammatical and technical errors in...in the bill, such as changes "person" to "persons" and "has, is and perform,"... "or" and "on" I think is technical in nature according to the Reference Bureau. I ask for its adoption.

PRESIDENT:

All right. Senator Lemke has moved the adoption of Amendment No. 3 to Senate Bill 1629. Any discussion? If not, all in favor indicate by saying Aye. All opposed. The Ayes have it. The amendment is adopted. Further amendments?

SECRETARY:

No further amendments.

PRESIDENT:

3rd reading. On page 5, on the Order of Senate Bills 3rd is Senate Bill 1634. Senator Lemke seeks leave of the Body to return that bill to the Order of 2nd Reading for purposes of an amendment. Is leave granted? Leave is granted. On the Order of Senate Bills 2nd Reading, Senate Bill 1634, Mr. Secretary.

SECRETARY:

Amendment No. 2 offered by Senator Lemke.

PRESIDENT:

Senator Lemke on Amendment No. 2.

SENATOR LEMKE:

Is this 1634?

PRESIDENT:

Yes.

SENATOR LEMKE:

Did we adopt Amendment No. 1 already? Wait,...is this amendment code SDS84S1634PAM3DW? This the one we're on now? Okay. What this amendment does is...it's Attorney General's amendment, extends the Act to repair for all residential buildings and deletes the violation of the home repair without being licensed under the home repair registration, increases the class of offense for entering into an unconscionable contract with a person over sixty years of old and...and makes several technical changes. I think it's a good bill and...a good amendment and I ask adoption.

PRESIDENT:

Senator Lemke has moved the adoption of Amendment No. 2 to Senate Bill 1634. Any discussion? If not, all in favor indicate by saying Aye. All opposed. The Ayes have it. The amendment is adopted. Further amendments?

SECRETARY:

Amendment No. 3 offered by Senator Lemke.

PRESIDENT:

Senator Lemke on Amendment No. 3.

SENATOR LEMKE:

Is this the amendment, SDS48...I mean...SDS84S1634PAM2VT? What this amendment does is a...a...corrects all...grammatical drafting errors according to the Reference Bureau. I ask for its adoption.

PRESIDENT:

Senator Lemke has moved the adoption of Amendment No. 3 to Senate Bill 1634. Any discussion? If not, all in favor indicate by saying Aye. All opposed. The Ayes have it. The amendment is adopted. Further amendments?

SECRETARY:

No further amendments.

PRESIDENT:

3rd reading. 2006, Senator Marovitz. 2020, Senator Geo-Karis. Senator Geo-Karis. Middle of page 13, on the Order of Senate Bills 3rd Reading, Senate Bill 2020. Senator Geo-Karis seeks leave of the Body to return that bill to the Order of 2nd Reading for purposes of an amendment. Is leave granted? Leave is granted. On the Order of Senate Bills 2nd Reading is Senate Bill 2020, Mr. Secretary.

SECRETARY:

Amendment No. 2 offered by Senators Berman and Geo-Karis.

PRESIDENT:

Senator Berman.

SENATOR BERMAN:

Thank you, Mr. President. Amendment No. 2 makes two technical changes. Number one, it sets forth a time frame in which the department may not move under its subrogation rights for collection of its benefits as provided under this bill, it gives five month leeway prior to the expiration of the Statute of Limitations. And the second part of the amendment says that the determination of the benefits payable are subject to the same requirements and standards as set forth in the previous section of this...of this part of the Public Aid Code. I move the adoption of Amendment No. 2.

PRESIDENT:

Senator Berman has moved the adoption of Amendment No. 2 to Senate Bill 2020. Discussion? Senator Geo-Karis.

SENATOR GEO-KARIS:

I concur in the...the adoption of this amendment.

PRESIDENT:

All right. Senator Berman has moved the adoption of Amendment No. 2 to Senate Bill 2020. Any further discussion? If not, all in favor indicate by saying Aye. All

opposed. The Ayes have it. The amendment is adopted. Are there further amendments?

SECRETARY:

No further amendments.

PRESIDENT:

3rd reading. Bottom of page 13, Senator Netsch. On the Order of Senate Bills 3rd Reading, Senator Netsch seeks leave of the Body to return Senate Bill 2037 to the Order of 2nd Reading for purposes of an amendment. Is leave granted? Leave is granted. On the Order of Senate Bills 2nd Reading, Senate Bill 2037, Mr. Secretary.

SECRETARY:

Amendment No. 2 offered by Senator Netsch.

PRESIDENT:

Senator Netsch on Amendment No. 2.

SENATOR NETSCH:

Thank you, Mr. President. Amendment No. 2 was requested by the Department of Revenue. The bill is the one that deals with what has come to be known as the Bellas Hess question. They had asked that we include some language that would not in any way diminish their capacity to proceed against some taxpayers who are already in audit. And we have compromised and worked out agreeable language which says that the Amenda-tory Act is a declaration of new legislative intent and will be...applied prospectively but the General Assembly makes no judgement about the meaning of the terms retailer, service man or supplier maintaining a place of business in the State prior to the effective date. That takes care of our...our mutual concerns. I would move the adoption of Amendment No. 2 to Senate Bill 2037.

PRESIDENT:

Senator Netsch has moved the adoption of Amendment No. 2 to Senate Bill 2037. Any discussion? If not, all in favor indicate by saying Aye. All opposed. The Ayes have it. The

SB 2117
Recalled

Amendment is adopted. Are there further amendments?

SECRETARY:

No further amendments.

PRESIDENT:

3rd reading. 2084, Senator D'Arco. 2117, Senator Demuzio. Middle of page...15, on the Order of Senate Bills 3rd Reading is Senate Bill 2117. Senator Demuzio seeks leave of the Body to return that bill to the Order of 2nd Reading for purposes of an amendment. Is leave granted? Leave is granted. On the Order of Senate Bills 2nd Reading, Senate Bill 2117, Mr. Secretary.

SECRETARY:

Amendment No. 1 offered by Senator Schaffer.

PRESIDENT:

Senator Schaffer on Amendment No. 1.

SENATOR SCHAFFER:

Mr. President, Amendment No. 1 to 2117 has to do with the incineration of garbage. It's some legislation proposed by some of the environmental groups and people that advocate incineration of garbage that...would allow municipalities and counties if they meet certain standards and the incineration units meet certain standards to get into that business. I believe there is only one controversial portion of the amendment and it has to do with the utilities purchasing electricity generated by the...garbage units. This is proposed by the Municipal League. I would suggest to you that the rates in the bill at this point are subject...in...in the amendment are subject to negotiation and it would be my hope that the Municipal League and the utilities could sit down and work out something agreeable. And that...that is where we are on this amendment. Be happy to answer any questions.

PRESIDENT:

All right. Senator Schaffer has moved the adoption of Amendment No. 1 to Senate Bill 2117. Discussion? Senator

Poshard.

SENATOR POSHARD:

Yes, thank you, Mr. President. Will the sponsor yield?

PRESIDENT:

Sponsor indicates he'll yield, Senator Poshard.

SENATOR POSHARD:

Senator Schaffer, have you any indication of how this amendment might affect the burning of Illinois coal?

PRESIDENT:

Senator Schaffer.

SENATOR SCHAFFER:

I am told that if all the garbage in this State were burned to generate electricity it would account for two percent of the total use of electricity. Obviously these plants, you know, since there are none on line...and some of these plants would be used to generate steam, heat, not electricity, you know, for industrial use, the impact on the generation of electricity Statewide would be absolutely miniscule, and since they are primarily...the people that are promoting them are primarily located in the northern part of the State, I would think the impact on Illinois coal would be infinitesimal.

PRESIDENT:

Further discussion? Senator Donahue.

SENATOR DONAHUE:

Thank you, would the sponsor yield for a question?

PRESIDENT:

Indicates he'll yield, Senator Donahue.

SENATOR DONAHUE:

Thank you, Mr. President. You were talking about rates and that they were negotiable between the utilities and the Municiple League. Don't you think it goes a step further that the...that we are now setting rates by Statute for utility costs?

PRESIDENT:

Senator Schaffer.

SENATOR SCHAFFER:

Well, we currently have provision in law, and correct me if I'm wrong, that establishes rates for people...private generators with wind generators and hydroelectric. So, this isn't a new concept. I think the thing that bothers the utilities is that we are setting a higher rate...purchase rate for them than we are for the private entrepreneur hydroelectric, for instance, owner. And I personally do not have problems with that since I think that the incineration of garbage is a step in the public interest than the demonition of the amount of stuff we have to put in landfills is certainly an environmentally solid thing to do. The degree that we do that I believe is something that should be talked about. I did not come up with these figures, and I am not prepared to defend them but I would hope that the utilities and the Municipal League would be able to...work out a compromise and certainly we'll look forward to seeing that happen.

PRESIDENT:

Senator Donahue.

SENATOR DONAHUE:

Well...if...you know, right now is it not true that under the...some Federal Statute and Federal regulations that the utilities must purchase this...this...this energy that's...that's...put out by this?

PRESIDENT:

Senator Schaffer.

SENATOR SCHAFFER:

I believe that is true, and I...I don't believe that they are arguing with that portion of the amendment since I believe they are required to do it in other...I think what they are arguing with is the concept of playing a...a unit of

government, a county consortium or a municipal consortium a higher rate than they are required to pay a private generator with a...windmill. I might add that all of these things have to be under 10K generators, and while I plead no expertise in this area, I am told that those are...are not big generators. We are not talking about a large amount of electricity being generated and we aren't talking about a major impact on the rate base. You know, frankly, it's...at this point in the state of the art for these generators to be economically viable they have to get a little higher return on the electricity generated. I believe, and I'd be prepared to be corrected, it would be produced cheaper than a nuclear plant but probably more expensive than a coal fired unit, and I think that's where Senator Poshard probably got in but, frankly, we're up in...most of them are up in nuke territory anyway so that's why it is somewhat cheaper. Having said that, I think you have to say yes but those utilities already have excess capacity, they don't really need more capacity. I'm just trying to be fair on the thing. But the bottom line is we have to do something with garbage and landfills are about as popular as the plague, and I think most of us would rather see an environmentally sound generation thing and...and if it has some cost implications, I think we have to...have to look at how we handle those and this is an approach.

PRESIDENT:

Further discussion? Senator Maitland.

SENATOR MAITLAND:

Thank you, Mr. President. I'm really torn with...with this amendment. I have tried this morning without success to try to get some figures from someone who could tell us what these small generators might cost. No one seems to know, and I don't think they're even state of the art yet, I...I don't know. But I've tried very diligently to do this. And I'm...and I'm wondering, Senator Schaffer, and...and

this...this thing may well ought to move out of here and...and be subject to some negotiations on down the line, but I'm wondering really where a municipality or...probably in most instances it won't be a municipality it will be a...a countywide venture no doubt or something like that, but I'm wondering how they're going to be affected if, in fact, and you've already alluded to the fact that the cost of the generator is going to be extremely expensive for the amount of energy that it creates, but what is the municipality or the...the entity going to do, you know, if this thing...the cost is so excessive, you know, that...that it really could have an adverse effect on...on rates and taxes and cost that that entity is going to have to...to endure?

PRESIDENT:

Senator Schaffer.

SENATOR SCHAFFER:

Well, frankly, the...the impact would not be on the rates or on the utilities particularly because they're only going to be required to purchase electricity and these are small units and they...if they work at maximum capacity, they'll generate x amount of electricity which the utilities will purchase for whatever the amount of money is. If the cost of the operation or the incinerators exceeds that, which it will, by the way, the electricity won't only...the...the pick-up fee from the person that is dropping the garbage off, probably some local government support, the three...there will be three sources of funding one of these things. Just, frankly, like there are in almost any other disposal system that's environmentally sound. The...the hope is that you can come up with a system that can be funded virtually totally by pick-up charges from customers and the cost of the revenue from selling electricity and so that the governmental involvement of a...say a consortium of municipalities or a large countywide area would be basically the administrative

and bonding responsibilities, that is the concept. As to whether or not they're state of the art, the answer is there are none in this State, at least none that I'm aware of, but there are units in other states. I recently attended a meeting where a proposal was put together for one of these units for about twenty-four million dollars which would be bonded...twenty-four million is what I said, and that includes the whole thing which would be bonded over a twenty-year period and...and it was very close to being economically viable. The alternative is a pick-up charge that is extremely noncompetitive or a...a more reasonable return on revenue from the utilities. Those are the things that you have to play with in this, and if...if we have to go at a real low utility rate, and let's face it, the utilities have got that rate set real low to discourage independent generation either by this type of thing or wind generators or hydroelectrics, then...then you have to go to a very high pick-up fee which is...is something that makes these things unattractive. But the bottom line is that I think everyone who studied the landfilling in the last few years realizes that we don't need to put everything in the ground, that incineration is much more environmentally practical and sound and that we ought to encourage it. That's what this proposal would do, encourage incineration and encourage the environmentally sound distribution or...or removal and...destruction of waste.

PRESIDENT:

Further discussion? If not, Senator Schaffer has moved the adoption of Amendment No. 1 to Senate Bill 2117. All in favor indicate by saying Aye. All opposed. The Ayes have it. The amendment is adopted. Further amendments?

SECRETARY:

Amendment No. 2 offered by Senator Demuzio.

PRESIDENT:

B2185
Recalled

Senator Demuzio on Amendment No. 2.

SENATOR DEMUZIO:

Thank you, Mr. President. Amendment No. 2 simply changes the...the...the date from July 1st of '86 to July 1st of '87. It delays it by one year because Congress has failed to extend the Superfund Comprehensive Employment...Environment...Response Conservation and Liability Act of 1980 which would contain a duplicate provision. It simply changes the date, moves it up by one year from July 1st of '86 to July of '87. I would move adoption.

PRESIDENT:

Senator Demuzio has moved the adoption of Amendment No. 2 to Senate Bill 2117. Discussion? If not, all in favor indicate by saying Aye. All opposed. The Ayes have it. The amendment is adopted. Further amendments?

SECRETARY:

No further amendments.

PRESIDENT:

3rd reading. 2123, Senator Poshard. I beg your pardon, Senator Keats, for what purpose do you seek recognition?

SENATOR KEATS:

I haven't got an ounce of a conflict of an interest on that amendment but simply because I have an editor who doesn't understand the legislative process, I'll announce that I voted Present on that amendment even though it has nothing whatsoever to do with me, but one term was used that might hint a relationship.

PRESIDENT:

All right...WCIA-TV, Carol Fowler, has requested permission to tape the proceedings as has Channel 20. Is leave granted? Leave is granted. 2123, Senator Poshard. 2185, Senator Lemke. Top of page 17, on the Order of Senate Bills 3rd Reading is Senate Bill 2185. Senator Lemke seeks leave of the Body to return that bill to the Order of 2nd Reading

for purposes of an amendment. Is leave granted? Leave is granted. On the Order of Senate Bills 2nd Reading, Senate Bill 2185, Mr. Secretary.

SECRETARY:

Amendment No. 1 offered by Senator Lemke.

PRESIDENT:

Senator Lemke on Amendment No. 1.

SENATOR LEMKE:

I believe this is the annual Reference Bureau amendment making all the technical changes in the laws, in the Statutes, and I ask for its adoption. I understand this is...

PRESIDENT:

Senator Lemke has moved the adoption of Amendment No. 1 to Senate Bill 2185. Any discussion? If not, all in favor indicate by saying Aye. All opposed. The Ayes have it. The amendment is adopted. Further amendments?

SECRETARY:

Amendment No. 2 offered by Senator Lemke.

PRESIDENT:

Senator Lemke on Amendment No. 2.

SENATOR LEMKE:

Okay, from a letter from the Reference Bureau, this is a...makes technical corrections in the amendment that we just put on. I ask for its adoption.

PRESIDENT:

All right. Senator Lemke has moved the adoption of Amendment No. 2 to Senate Bill 2185. Any discussion? If not, all in favor indicate by saying Aye. All opposed. The ayes have it. The amendment is adopted. Further amendments?

SECRETARY:

No further amendments.

PRESIDENT:

3rd reading. Senator Welch, on page 17. 2294, Senator Karpel. On the Order of Senate Bills...3rd Reading, top of

page 19, is Senate Bill 2294. Senator Marovitz...is in the hall? Senate...I understand, we'll just take that out of the record for the moment. All right. On the Order of Senate Bills 3rd Reading...we're still on the recall list. I would ask the ladies and gentlemen to please...particularly those of you who have filed amendments to please let's get at it or we'll be here Saturday. On the Order of Senate Bills 3rd Reading, the bottom of page 15, is Senate Bill 2123, Mr. Secretary. Gentleman seeks leave of the Body to return that bill to the Order of 2nd Reading for purposes of an amendment. Is leave granted? Leave is granted. On the Order of Senate Bills 2nd Reading, Senate Bill 2123, Mr. Secretary.

SECRETARY:

Amendment No. 1 offered by Senator Carroll.

PRESIDENT:

Senator Carroll.

SENATOR CARROLL:

Thank you, Mr. President, Ladies and Gentlemen of the Senate. This amendment will put the bond authorization into the same form as Senator Weaver's other bond...authorization bill so that both would be moving at the same levels. I would move its adoption.

PRESIDENT:

All right. Senator Carroll has moved the adoption of Amendment No. 1 to Senate Bill 2123. Any discussion? If not, all in favor indicate by saying Aye. All opposed. The Ayes have it. The amendment is adopted. Further amendments?

SECRETARY:

No further amendments.

PRESIDENT:

3rd reading. Senator D'Arco on 2084. Bottom of page 14, on the Order of Senate Bills 3rd Reading is Senate Bill 2084. Senator D'Arco seeks leave of the Body to return that bill to the Order of 2nd Reading for purposes of an amendment. Is

leave granted? Leave is granted. On the Order of Senate Bills 2nd Reading, Senate Bill 2084, Mr. Secretary.

SECRETARY:

Amendment No. 2 offered by Senator D'Arco.

PRESIDENT:

Senator D'Arco.

SENATOR D'ARCO:

Thank you, Mr. President. Again, when we passed the merger and consolidation provisions of the Trust Companies Act we have to do a little cleanup, and this is one of the clean-up provisions. It transfers Section 16 on mergers and consolidations on successor trusteeships from the Trustees Powers Act to the Trust Companies Act. And I don't know of any opposition and I move to adopt Amendment No. 2 to Senate Bill 2084.

PRESIDENT:

All right. Senator D'Arco has moved the adoption of Amendment No. 2 to Senate Bill 2084. Any discussion? If not, all in favor indicate by saying Aye. All opposed. The Ayes have it. The amendment is adopted. Are there further amendments?

SECRETARY:

No further amendments.

PRESIDENT:

3rd reading. WAND-TV Channel 17 also has requested permission to videotape. Is leave granted? Leave is granted. Senator Holmberg, for what purpose do you seek recognition?

SENATOR HOLMBERG:

While there is a little lull, I wonder if I might have my name added as a hyphenated cosponsor to Senate Bill 1974. I've talked to the sponsor.

PRESIDENT:

All right. The lady seeks leave of the Body to be added

as a cosponsor on Senate Bill 19...

SENATOR HOLMBERG:

74.

PRESIDENT:

...1974. Without objection, leave is granted. All right. On the...back on the recall list, on the Order of Senate Bills 3rd Reading, top of page 13, is Senate Bill 2006. Senator Marovitz seeks leave of the Body to return that bill to the Order of 2nd Reading for purposes of an amendment. Is leave granted? Leave is granted. On the Order of Senate Bills 2nd Reading, Senate Bill 2006, Mr. Secretary.

SECRETARY:

Senator Marovitz elects to Table one amendment, I don't know which one.

PRESIDENT:

Senator Marovitz, on Senate Bill 2006.

SENATOR MAROVITZ:

Thank you, very much, Mr. President and members of the Body. I would that Senate Amendment No. 3...to Senate Bill 2006 be Tabled. It is a different subject matter than that which was adopted in Amendment No. 2, might cause the bill some problems in terms of germaneness and, therefore, I would move, with respect to the Body, that Amendment No. 3 be Tabled.

PRESIDENT:

All right. Senator Marovitz having voted on the prevailing side has moved to reconsider the vote by which Amendment No. 3 to Senate Bill 2006 was adopted. All in favor of the motion to reconsider indicate by saying Aye. All opposed. The Ayes have it. The vote is reconsidered. Senator Marovitz now moves to Table Amendment No. 3 to Senate Bill 2006. Any discussion on the motion to Table? If not, all in favor indicate by saying Aye. All opposed. The Ayes have

*SB 2294
Revised*

it. Amendment No. 3 is Tabled. Further amendments?

SECRETARY:

No further amendments.

PRESIDENT:

3rd reading. Senator Karpel, do you wish to proceed on 2294? Senator Marovitz, are you ready? You have an amendment filed. 2-2-9-4. Senator Karpel, pursuant to an agreement with Senator Marovitz, seeks leave of the Body to return Senate Bill 2294, top of page 19, to the Order of 2nd Reading for purposes of an amendment. Is leave granted? Leave is granted. On the Order of Senate Bills 2nd Reading, Senate Bill 2294, Mr. Secretary.

SECRETARY:

Amendment No. 2 offered by Senator Marovitz.

PRESIDENT:

Senator Marovitz.

SENATOR MAROVITZ:

Thank you, very much, Mr. President and members of the Senate. Amendment No. 2 to Senate Bill 2294 is something that's been the product of an awful lot of work and would make this excellent bill a much better bill. The amendment which was previously on the bill causes considerable problems, it would criminalize and...and cause a criminal judge to hear violations of visitation and that criminal judge would not have the ability to deal with questions of child support and visitation. This bill...this amendment would decriminalize the abuse of visitation rights and add procedures to immediately enforce visitation rights in the Marriage and Dissolution Act. The judge could still punish people who disobey visitation orders through contempt of court citations. The...it...it...the clerk would set the court date between fourteen and twenty-one days after the issuance of the summons. It expedites the civil penalties and that makes this bill a much stronger bill, because to

criminalize those violations on probable cause by one party or another and bring it before a criminal judge who doesn't really have any idea what's happening in regards to the Marriage and Dissolution Act, visitation, child support and couldn't do anything really causes a serious problem. To...to...to expedite the process and bring it before a civil judge who could deal with it immediately makes this bill a much stronger bill and I would ask for the adoption of this amendment and be happy to answer any questions.

PRESIDENT:

All right. Senator Marovitz has moved the adoption of Amendment No. 2 to Senate Bill 2294. Discussion? Senator Karpel.

SENATOR KARPIEL:

Yes, thank you, Mr. President. I haven't had a chance to talk to Senator Marovitz this morning. The reason that I had held up on calling the bill was because I had promised him that if we could work out a...an agreement or a...an amendment which was agreed to by everyone, I would hold it up. Unfortunately, that has not happened. This bill is being sponsored actually by the Department of State Police and evidently they have been trying to work with the NOW group and other women's groups who have sponsored or...this amendment. And according to my information, they have offered to compromise with them by allowing this...these expedited civil cases and...and...but they said that if they would allow an exhaustion of the new civil remedies then the...and if that was exhausted, then the new criminal charges could be pursued. Those groups rejected that and so there has been no compromise and no agreement reached and they are opposed to this amendment. The bill is being supported by the Inspector General's Office, the Department of State Police, the PTA. And I would ask for you not to vote to put this amendment on...on my bill because it is not in the best

interest of the bill and it certainly is not an agreed...amendment.

PRESIDENT:

Further discussion? Senator Geo-Karis.

SENATOR GEO-KARIS:

Well, Mr. President, Ladies and Gentlemen of the Senate, I've gone into this very thoroughly and Senator Karpel is absolutely right. I mean, there is nothing to be gained by putting this amendment on. I think we should try her bill the way it is without this amendment, because those of you who have done any work on visitation and for children and so forth, and I have done a considerable amount of it, know that we have to put some teeth into the law. And I think her bill has the teeth in the law and I don't think we should interfere with it...by this amendment. And I rise to speak against the amendment.

PRESIDENT:

All right. Further discussion? Further discussion? Senator Marovitz, you wish to close?

SENATOR MAROVITZ:

Yes, I do. The...the...the concept of visitation is grounded in the belief that sustaining a child's relationship with both parents is in the best interest of the child. I think we all agree with that. When visitation abuse occurs whether it's initiated by the custodial parent or the noncustodial parent it becomes very important for a mechanism to be present to allow both...both parents to work through the difficulty in a nonpunitive atmosphere. This amendment is an attempt to address the concerns raised by the drafters of the bill, but...and...and I...those concerns, which I agree with and I think we all agree with, but in a nonpunitive manner which emphasize what's best for the child. The court in this particular case, with this amendment, could modify visitation, require supervised visitation, grant

make-up visitation, order...mediation or counseling or other sanctions provided by the law. Under the existing bill the judge can't do that. The judge has no power or jurisdiction whatsoever to do any of those things which are in the child's best interest. Modify visitation, supervise visitation, grant make-up visitation, mediation or counseling, a criminal judge can do none of those things and will only cause a further polarization between the parents and damage to the child. If we...expedite the process so that a civil judge can make sure that the visitation orders are...are followed, that is in the best interest of the child and that's what this amendment does. I was closing.

PRESIDENT:

Senator Karpiel, the Senator...the Senator was closing.

SENATOR KARPIEL:

I...I realize that, Mr. President, but it seems to me that the Senator is discussing the bill not just this amendment. When...in my remarks I was just talking about the mechanics of the amendment and who said what and who was going to agree to what. I think it's unfair that he is discussing the entire bill and...and pointing out how this amendment makes the bill better if I haven't had a chance to discuss the bill. The bill does not do what he is saying that it is going to do and I don't think we should be arguing the bill, I think we should be arguing the ability of a sponsor to have a bill in the shape that he or she wants to have it in when it is called on 3rd reading.

PRESIDENT:

Would...would you mind repeating that for the benefit of Senator Philip?

SENATOR KARPIEL:

...would you like me to repeat it again?

PRESIDENT:

I would love it.

SENATOR KARPIEL:

I think that a sponsor has the...he's not listening any-way...

PRESIDENT:

Oh, he's listening.

SENATOR KARPIEL:

...he's talking over there. I think a sponsor should have the ability to have his or her bill called in the shape that he or she wants it called in.

PRESIDENT:

I certainly appreciate that. Thank you, very much. Senator Marovitz has moved the adoption of Amendment No. 2 to Senate Bill 2294. Those in favor of the amendment will vote Aye. Those opposed will vote Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? (Machine cutoff)...all voted who wish? Take the record. On that question, there are 30 Ayes, 28 Nays. Amendment No. 2 is adopted. Senator Karpriel, for what purpose do you arise?

SENATOR KARPIEL:

Verification of the...roll.

PRESIDENT:

All right. That request is in order. Senator Karpriel has requested a verification. Will the members please be in their seats. Mr. Secretary, read the affirmative roll.

SECRETARY:

The following voted in the affirmative: Berman, Carroll, Chew, Collins, D'Arco, Darrow, Dawson, Degnan, Demuzio, Hall, Jones, Jeremiah Joyce, Jerome Joyce, Kelly, Lechowicz, Lemke, Luff, Marovitz, Nedza, Netsch, Newhouse, O'Daniel, Poshard, Sangmeister, Savickas, Smith, Vadalabene, Welch, Zito, Mr. President.

PRESIDENT:

Yes. Senator Karpriel, do you question the presence of

any member?

SENATOR KARPIEL:

Yes, Senator Dawson.

PRESIDENT:

Senator Dawson on the Floor? Senator Dawson on the Floor? Strike his name, Mr. Secretary.

SENATOR KARPIEL:

Senator Jones.

PRESIDENT:

Senator Jones on the Floor? Senator Jones on the Floor? Strike his name, Mr. Secretary.

SENATOR KARPIEL:

Thank you.

PRESIDENT:

Senator Marovitz.

SENATOR MAROVITZ:

Verify the negative.

PRESIDENT:

All right. The gentleman has requested a verification of the negative roll call. Will the members please be in their seats. Mr. Secretary, read the negative...vote.

SECRETARY:

The following voted in the negative: Barkhausen, Davidson, DeAngelis, Donahue, Dudycz, Dunn, Etheredge, Fawell, Friedland, Geo-Karis, Hudson, Karpel, Keats, Kustra, Leitch, Macdonald, Mahar, Maitland, Philip, Rigney, Rupp, Schaffer, Schuneman, Sommer, Topinka, Watson, Weaver and Woodyard.

PRESIDENT:

Senator Marovitz, do you question the presence of any member?

SENATOR MAROVITZ:

Senator Woodyard.

PRESIDENT:

*1608
Recalled*

Is Senator Woodyard on the Floor? Senator Woodyard on the Floor? Strike his name, Mr. Secretary.

SENATOR MAROVITZ:

Is that enough? That's enough.

PRESIDENT:

All right. The roll has been verified. On the question of the adoption of the Amendment No. 2 to Senate Bill 2294, the Ayes are 28, the Nays are 27. The amendment is adopted. Further amendments?

SECRETARY:

No further amendments.

PRESIDENT:

3rd reading. All right. If I can have the attention...if I can have the attention of the membership, additional recalls have just been filed. If you got a pencil handy; 1608, 1838, 1945 and 46, 2018 and 2081. In the interest of saving some time, I think we just ought to go ahead and do it, then we'll begin on the order of...once we finish the recalls, there are those six recalls and then the appropriation's people are proofing amendments now; there are two, four, six, eight appropriation bills to be recalled, and then we'll begin on the order of the top of the Calendar and go right straight through. Bottom of page 4, on the Order of Senate Bills 3rd Reading, Senate Bill 1608, Senator Etheredge seeks leave of the Body to return that bill to the Order of 2nd Reading for purposes of an amendment. Is leave granted? Leave is granted. On the Order of Senate Bills 2nd Reading, Senate Bill 1608, Mr. Secretary.

SECRETARY:

Amendment No. 3 offered by Senator Etheredge.

PRESIDENT:

Senator Etheredge on Amendment No. 3.

SENATOR ETHEREDGE:

Thank you, Mr. President, Ladies and Gentlemen of the

Senate. What this amendment does is to return the grant level award for the...that the ISSC would give back to the Governor's level of thirty-one hundred dollars. The purpose of this amendment is to put on the shoulders of the State Scholarship Commission the responsibility for distributing the impact of the one percent cuts across all of the higher education community and not just on the private colleges and universities.

PRESIDENT:

All right. Senator Etheredge has moved the adoption of Amendment No. 3 to Senate Bill 1608. Discussion? Senator Carroll.

SENATOR CARROLL:

Yes, merely to identify, as Senator Etheredge just did, that we had asked the Scholarship Commission to join with their colleagues in higher education to produce the one percent savings in general revenue that each of the institutions so graciously agreed to do and we asked each of them to identify where. Apparently with ISSC the first thought was to take the top fifty dollars off, that really hurts the poorest of people 'cause they're the ones who get the largest of awards and the privates. We have therefore suggested to them and they have agreed to spread that dollar amongst all the grant lines, we've asked for that in writing and I assume we'll get it by the end of today. This would therefore allow the cap to go up to thirty-one fifty, although most likely no one will quite get that amount 'cause each grant will have to get a little bit less but this would allow that to grow so that the poorest who go to the nonpublics will be able to be accommodated and I would urge support of the amendment.

PRESIDENT:

All right. Senator Etheredge has moved the adoption of Amendment No. 3 to Senate Bill 1608. Any further discussion? If not, all in favor indicate by saying Aye. All opposed.

SB 1838
Bence

The Ayes have it. The amendment is adopted. Further amendments?

SECRETARY:

No further amendments.

PRESIDENT:

3rd reading. The middle of page 10 is Senate Bill 1838, Senator Barkhausen. On the Order of Senate Bills 3rd Reading is Senate Bill 1838. Senator Barkhausen seeks leave of the Body to return that bill to the Order of 2nd Reading for purposes of an amendment. Is leave granted? Leave is granted. On...the Order of Senate Bills 2nd Reading is Senate Bill 1838, Senator Barkhausen.

SENATOR BARKHAUSEN:

Mr. President and members, yesterday in...in some confusion as to which amendment was which we...inadvertently Tabled an amendment that I would like to see adopted, and having voted on the prevailing side, I would move to reconsider the vote by which Amendment No. 1 to Senate Bill 1838 was Tabled.

PRESIDENT:

All right. Senator Barkhausen having voted on the prevailing side moves to reconsider the vote by which Amendment No. 1 to Senate Bill 1838 was Tabled. All in favor of the motion to reconsider indicate by saying Aye. All opposed. The Ayes have it. The vote is now reconsidered. Senator Barkhausen on Amendment No. 1.

SENATOR BARKHAUSEN:

Amendment No. 1 to Senate Bill 1838 dealing with the Business Corporation Act just does a couple of very simple technical things. It, one, grants specific authority to the Secretary of State to adopt rules and regulations and, secondly, deletes a provision which specifically authorizes the General Assembly to amend the law which is obviously something we can do anyway without the specific grant of

statutory authority. I would move for the adoption of Amendment No. 1.

PRESIDENT:

All right. Senator Barkhausen has moved the adoption of Amendment No. 1 to Senate Bill 1838. Discussion? If not, all in favor indicate by saying Aye. All opposed. The Ayes have it. The amendment is adopted. Further amendments?

SECRETARY:

No further amendments.

PRESIDENT:

3rd reading. Middle of page 12...top of page 12, on the Order of Senate Bills 3rd Reading is Senate Bill 1945. Senator DeAngelis seeks leave of the Body to return that bill to the Order of 2nd Reading for purposes of an amendment. Is leave granted? Leave is granted. On the Order of Senate Bills 2nd Reading, Senate Bill 1945, Mr. Secretary.

SECRETARY:

Amendment No. 1 offered by Senator DeAngelis.

PRESIDENT:

Senator DeAngelis on Amendment No. 1.

SENATOR DeANGELIS:

Thank you, Mr. President. Amendment No. 1 would after July 1st eliminate the department's ability to calculate depreciation and include depreciation in the facilities for the purposes of calculating capital costs. This amendment has the support of the Governor's Office, the Homes for the Aging, the Chicago Council, the Illinois...Health Care Association, county nursing homes, et cetera, and the money is there, Senator Lechowicz. Thank you.

PRESIDENT:

All right. Senator DeAngelis has moved the adoption of Amendment No. 1 to Senate Bill 1945. Discussion? If not, all in favor indicate by saying Aye. All opposed. The Ayes have it. The Amendment is adopted. Further amendments?

SECRETARY:

No further amendments.

PRESIDENT:

3rd reading. On the Order of Senate Bills 3rd Reading, Senate Bill 1946. Senator DeAngelis seeks leave of the Body to return that bill to the Order of 2nd Reading for purposes of an amendment. On the Order of Senate Bills 2nd Reading, Senate Bill 1946, Mr. Secretary.

SECRETARY:

...do you know what...have we adopted only one amendment? I don't have the bill down here. Amendment No. 2 offered by Senator DeAngelis.

PRESIDENT:

Senator DeAngelis on Amendment No. 2.

SENATOR DeANGELIS:

Thank you, Mr. President. This is the long awaited, so-called agreed amendment. What it does, it makes transmitting a false report a Class B misdemeanor, provides for the discharge of a resident of a nursing home who is a physical threat to other residents or others in the facility. Number three, it requires the Department of Public Health to consult with the Long-term Care Facility Advisory Board prior to adopting rules and regulations. Number four, provides that the department connect on reports with or without identifying information. Five, provides for an exit conference with the nursing home administration in conjunction with the report. Six, requires the department to report the number of invalid reports, and last has the department combine visits whenever possible. Now, in addition to that, this strikes out the rule making authority of the department. However, I have an amendment after this that restores it.

PRESIDENT:

All right. Senator DeAngelis has moved the adoption of Amendment No. 2 to Senate Bill 1946. Discussion? Senator

Marovitz.

SENATOR MAROVITZ:

Thank you, very much, Mr. President. Senator DeAngelis, regarding the long awaited amendment. First of all, in regards to the Class B misdemeanor for transmitting a false report to the department. I don't have the amendment in front of me. Would you tell me if the amendment reads "knowingly" transmits a false report?

PRESIDENT:

Senator DeAngelis.

SENATOR DeANGELIS:

Good point, Senator Marovitz, yes, "knowingly" transmits.

PRESIDENT:

Senator Marovitz.

SENATOR MAROVITZ:

All right. Second question is...we talked about yesterday the Department of Public Health's notification to the resident that they would not have to submit their name and address when submitting a report, they could maintain anonymity; is that maintenance of anonymity and the responsibility of the Department of Public Health still in the bill?

PRESIDENT:

Senator DeAngelis.

SENATOR DeANGELIS:

Yes; in fact, this further expands the opportunity for the department because they're not required to get that information. They can act without that information.

SENATOR MAROVITZ:

And the last question, I think, on this is that regarding the immediate discharge when a patient has been deemed to be dangerous to fellow residents or personnel, what sort of...restrictions or requirements are put in there before an immediate discharge can be made? Whose determination is it, under what circumstances, is it totally subjective,...what

standards did we put in the amendment?

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator DeAngelis.

SENATOR DeANGELIS:

Well, I appreciate your concern on that, Senator Marovitz, but I don't believe anybody who's in the nursing home business is...is in the business to throw people out. However, you and I both know of countless instances when some of the mentally ill population is admitted into a nursing home and becomes rather violent and, in fact, harms and injures other patients. It is almost a subjective decision, but there is a right for a hearing afterwards.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Marovitz.

SENATOR MAROVITZ:

(Machine cutoff)...the concerns that I have, and I...I share your concern about someone who...who injures patients, staff and is a danger to them. One of the concerns I have, as you know, there are also patients in many of these homes that are difficult patients to deal with, are...are...are not easy, are more difficult for staff, take a lot more time, are distasteful in one way or another, physically, medically, appearancewise or one way or another, and I'm...I'm fearful that this might be used by...by some of the less reputable nursing home people, and that is certainly a...a minority, to get rid of residents that they can find no other reason to get rid of and they might use this as an excuse because they would rather not have them in their home and they can't find another way to get them out.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator DeAngelis.

SENATOR DeANGELIS:

Well, I don't know what kind of response, I guess there is a possibility that that could occur but you've got a

greater danger that if they don't have that authority of other residents getting injured. And I don't really believe that...a legitimate operator is going to be in the business of wanting to throw people out wholesale out of their nursing home.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Further discussion? All right, Senator...Senator DeAngelis has moved the adoption of Amendment No. 2 to Senate Bill 1946. Those in favor indicate by saying Aye. Opposed Nay. The Ayes have it. Amendment No. 2 is adopted. Further amendments?

SECRETARY:

Amendment No. 3 offered by Senator DeAngelis.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator DeAngelis.

SENATOR DeANGELIS:

Thank you, Mr. President. This...Amendment No. 3, as I indicated in my discussion on Amendment No. 2, restores the rule making power to the department.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Discussion? Senator DeAngelis moves the adoption of Amendment No. 3 to Senate Bill 1946. Those in favor indicate by saying Aye. Opposed Nay. The Ayes have it. Amendment No. 3 is adopted. Further amendments?

SECRETARY:

No further amendments.

PRESIDING OFFICER: (SENATOR DEMUZIO)

3rd reading. Page 14. 2081. Page 14 at the bottom...is...is 2081. Is Senator Watson on the Floor? Senator Watson on the Floor?

PRESIDENT:

All right. The only remaining recalls are the appropriation bills and it's been suggested that the appropriation staff is working on the amendments. We'll either get to them

in the order in which they appear or we'll have a list later today. Going to start on the Calendar on page 2, on the Order of Senate Bills 2nd Reading and go right through the Calendar, in order. So, I'd ask the members to please take a look at pages 2 and 3 on the Calendar and we will continue immediately into Senate bills 3rd reading. The only bills that will not be called were those that were subject to a recall today. So those of you who amended a bill today, we'll have to hold those over till tomorrow. In order to facilitate the work of Enrolling and Engrossing and for the information of the members, they worked until about four o'clock this morning on all these amendments. We will when we begin on the Order of Senate Bills 3rd Reading take the substantive Senate bills and we will skip the appropriation bills and hold those until the end of the call. They...they are still in the process of being enrolled and engrossed. On the Order of Senate Bills 2nd Reading, Senate Bill 1486, Senator Dawson. Senate Bill 1488, Senator Barkhausen. Read the bill, Mr. Secretary.

SECRETARY:

Senate Bill 1488.

(Secretary reads title of bill)

2nd reading of the bill. No committee amendments.

PRESIDENT:

Any amendments from the Floor?

SECRETARY:

Amendment No. 1 offered by Senator Barkhausen.

PRESIDENT:

Senator Barkhausen, on Amendment No. 1. Senator Schuneman, for what purpose do you arise?

SENATOR SCHUNEMAN:

Mr...Mr...Mr...President...

PRESIDENT:

I beg your pardon, Senator Barkhausen.

SENATOR SCHUNEMAN:

Mr. President...

PRESIDENT:

Well, which...who wants to address this...Senator Schuneman.

SENATOR SCHUNEMAN:

Parliamentary inquiry, Mr. President. There was delivered to the...to you, Mr. President, a written parliamentary inquiry pertaining to this...this particular bill. And we would like to have a response from you on that inquiry at this time. Would you like me to repeat the inquiry?

PRESIDENT:

I don't...I don't know whether it's necessary to repeat it in full but I think for the record it ought to be stated.

SENATOR SCHUNEMAN:

Mr. President, the...Senator Barkhausen advises me that he has a minor technical amendment that he wanted to attach first. Perhaps we should go to that order first.

PRESIDENT:

Why don't we do that first. All right. Any amendments...committee amendments, Mr. Secretary?

SECRETARY:

No committee amendments.

PRESIDENT:

Amendments from the Floor?

SECRETARY:

Amendment No. 1 offered by Senator Barkhausen.

PRESIDENT:

Senator Barkhausen on Amendment No. 1.

END OF REEL

REEL #2

SENATOR BARKHAUSEN:

Mr. President and members, Amendment No. 1 to Senate Bill 1488 does a couple of minor things. This relates to the...the Dram Shop Act and it makes it clear that insofar as we would have the Dram Shop Act apply to out-of-state individuals and entities serving liquor that we...we only mean to have it apply to...to licensed liquor servers, mainly, taverns. Secondly, it makes a change such that in order to be found liable under the Dram Shop Act one will have to have caused the intoxication of the individual in question rather than simply contributing to that individual's intoxication as the bill now reads. I would ask for the adoption of Amendment No. 1.

PRESIDENT:

Senator Barkhausen has moved the adoption of Amendment No. 1 to Senate Bill 1488. Discussion? If not, all in favor indicate by saying Aye. All opposed. The Ayes have it. The amendment is adopted. Further amendments?

SECRETARY:

Amendment No. 2 offered by Senators Watson and Schuneman.

PRESIDENT:

Senator Schuneman. Senator Schuneman, are you going to state your inquiry for the record?

SENATOR SCHUNEMAN:

...yes, Mr. President. Senate Bill 1488 relates both to tortious injuries to persons and to property and to insurance coverage therefore. It also provides for the maintenance and settlement of personal injury or property damage claims against tort-feasors. Specifically, A, at page 1 in line 17 and 18, the bill provides for the joint and several liability

of tort-feasors. At page 1 in lines 32 and at page 2 in lines 3 through 5, it specifically refers to a certain type of economic loss of means of support which, as you know, is distinguishable from such noneconomic loss as the loss of consortium and pain and suffering. At page 2 in lines 26 through 33, the bill places caps on certain types of damage awards available to a plaintiff for injuries. At page 2 in lines 34 through 35 and on page 3 at lines 1 through 6, the bill requires payments for certain types of collateral sources and claims to be aggregated in determining whether or not a cap has been reached. At page 3 in lines 13 and 14, references made to a one-year Statute of Limitations governing certain categories of tort claims. At page 3, the Illinois Long-Arm Statute which provides for service of process upon tort-feasors generally is set forth. At line 33 on page 3, the Long-arm Statute specifically provides for the jurisdiction of Illinois courts where a civil defendant has been guilty of the commission of a tortious act within this State. At page 4 in lines 2 and 3, the Long-arm Statute further provides for the jurisdiction of Illinois courts in any civil action where any person has...person has contracted to insure any person, property or risk located within this State at the time of contracting. My inquiry, Mr. President, is this, would amendments to Senate Bill 1488 addressing the rights and liabilities of tort-feasors, the types of injuries which are compensable within...Illinois civil justice system, the establishment of caps on certain types of awards and other similar matters relating to the liability of tort-feasors generally, and the conditions under which they may be sued and to the types of actions or misconduct for which they are liable, be germane to Senate Bill 1488?

PRESIDENT:

Thank you. Senator Schuneman, I appreciate the courtesy afforded to the Chair, the written inquiry was delivered to

my office a couple of days ago. The Chair is prepared to rule that...that the subject of Senate Bill 1488 is the application of the Illinois Dram Shop Act to out-of-state defendants. Specifically, the bill would give extra territorial effect to our Dram Shop Act by replacing the current Act with a new Act...that expressly subjects out-of-state liquor licensees to potential liability under the Illinois Dram Shop Act and by amending the Long-arm Statute to include out-of-state persons who contribute to the intoxication of another who cause damage or injury in Illinois. The amendments would not deal...the amendments...the amendments that have been...that are the subject of this inquiry, would not deal with the application of the Illinois Dram Shop Act to out-of-state defendants; in fact, they would deal with neither the scope of the dram shop liability under the Illinois Act, nor with the jurisdiction of our courts over nonresident licensees. Instead, these amendments would affect the substantive rights of plaintiffs and defendants in all Illinois tort actions. Thus, in the opinion of the Chair, the amendments addressed...addressing the subjects outlined in your inquiry would in the opinion of the Chair not be germane to the bill and, thus, the Chair would rule them out of order. Further amendments, Mr...Senator Schuneman.

SENATOR SCHUNEMAN:

Well, thank you, Mr President. While we have arguments are contrary to the ruling of the Chair, as is customary I guess in these cases and we do respectfully disagree with your ruling, we nevertheless will not at this time press for any vote to override the Chair.

PRESIDENT:

All right. Further amendments, Mr. Secretary?

SECRETARY:

No further amendments.

PRESIDENT:

3rd reading. 1551, Senator Zito. 1610, Senator Davidson. On the Order of Senate Bills 2nd Reading, Senate Bill 1610. Read the bill, Mr. Secretary.

SECRETARY:

Senate Bill 1610.

(Secretary reads title of bill)

2nd reading of the bill. The Committee on Appropriations II offers two amendments.

PRESIDENT:

Senator Hall on Appropriations II amendments to Senate Bill 1610. Senator Hall on Committee Amendment No. 1.

SENATOR HALL:

Thank you, Mr. President and Ladies and Gentlemen of the Senate. This amendment just brings it in line with the Governor's level and I move for the adoption of the amendment.

PRESIDENT:

Senator Hall has moved the adoption of Committee Amendment No. 1 to Senate Bill 1610. Discussion? If not, all in favor indicate by saying Aye. All opposed. The Ayes have it. The amendment is adopted. Further amendments?

SECRETARY:

Amendment...or Committee Amendment No. 2.

PRESIDENT:

Senator Hall on Committee Amendment No. 2.

SENATOR HALL:

Thank you, Mr. President...the Amendment No. 2 is the Senate guidelines amendment and I move also for the adoption of...of that amendment for Senate Bill 1610.

PRESIDENT:

Senator Hall has moved the adoption of Committee Amendment No. 2 to Senate Bill 1610. Any discussion? If not, all in favor indicate by saying Aye. All opposed. The Ayes have it. The amendment is adopted. Further amendments?

SECRETARY:

No further committee amendments.

PRESIDENT:

Any...any amendments from the Floor?

SECRETARY:

Amendment No. 3 offered by Senator Davidson.

PRESIDENT:

Senator Davidson on Amendment No. 3.

SENATOR DAVIDSON:

Mr. President and members of the Senate, this is a transfer amendment. There's no change in the money spent transfer for Illinois State University and Sangamon State University of...from Personal Service and Contractual to Awards and Grants and Telecommunications from...from...for ISU, and it's from Equipment of twenty-five three...three hundred to Personal Services and Award Grants for Sangamon State. Move the adoption of the amendment.

PRESIDENT:

All right. Senator Hall...Senator Davidson has moved the adoption of Amendment No. 3 to Senate Bill 1610. Discussion? If not, all in favor indicate by saying Aye. All opposed. The Ayes have it. The amendment is adopted. Are there further amendments?

SECRETARY:

Amendment No. 4 offered by Senator Welch.

PRESIDENT:

Senator Welch on Amendment No. 4.

SENATOR WELCH:

I'd ask to withdraw that amendment.

PRESIDENT:

Further amendments?

SECRETARY:

Amendment No. 4 offered by Senator Davidson.

PRESIDENT:

AB 1834
2nd Reading

Senator Davidson on Amendment No. 4.

SENATOR DAVIDSON:

Is that the same one which...we just did the transfer amendment? If it is,...withdraw it.

SECRETARY:

Basically, it is but it's written different. Yes, basically but it's written different.

SENATOR DAVIDSON:

Okay, then just withdraw that one 'cause...

PRESIDENT:

Withdraw it. Further amendments?

SECRETARY:

No further amendments.

PRESIDENT:

3rd reading. 1714, Senator...Senator Maitland, for what purpose do you arise? 1714, Senator Donahue. 1834, Senator Maitland. On the Order of Senate Bills 2nd Reading, Senate Bill 1834. Read the bill, Mr. Secretary.

SECRETARY:

Senate Bill 1834.

(Secretary reads title of bill)

2nd reading of the bill. Committee on Executive offers one amendment.

PRESIDENT:

Senator Maitland on Committee Amendment No. 1.

SENATOR MAITLAND:

Thank you, very much, Mr. President. First of all, it's going to be necessary for me to Table the committee amendment and...by way of a brief explanation, as you know, Mr. President, others know this has been a somewhat controversial bill that was of concern to both the Press Association and the...the Illinois News Broadcasters Association. They were still concerned with that amendment. I have met with them at length and we are prepared to offer another amendment. So,

at this time, I would...would wish to with...with...Table
Committee Amendment No. 1.

PRESIDENT:

All right. Senator Maitland is moving to Table Committee
Amendment No. 1 to Senate Bill 1834. Any discussion on the
motion to Table? If not, all in favor of the motion indicate
by saying Aye. All opposed. The Ayes have it. Motion car-
ries. Amendment No. 1 is Tabled. Further amendments?

SECRETARY:

No further committee amendments.

PRESIDENT:

Any amendments from the Floor?

SECRETARY:

Amendment No. 2 offered by Senator Maitland.

PRESIDENT:

Senator Maitland on Amendment No. 2.

SENATOR MAITLAND:

Thank you, very much, Mr. President. Amendment No. 2 is
an amendment that I...much discussion with yesterday with the
Illinois Press Association and the news broadcasters, and
the...the amendment would allow for...for closed meetings
where the discussion is preliminary in nature, does not
involve discussion on, deliberation for or taking any final
action by the corporate authorities nor involve discussion or
deliberation on the expenditure of public funds and the
discussion on industrial revenue bonds controlled by the
government body and are specifically requested by the busi-
ness entity who happens to come into that...that community.
I would say to the Body that...that the Municipal League,
DCCA are supporting this. The Illinois Press Association is
supporting the language. The news broadcasters have taken a
look at it, I can't tell you exactly what their position is
but they were involved in the meeting and I would move for
the adoption of Amendment No. 2.

PRESIDENT:

Senator Maitland has moved the adoption of Amendment No. 2 to Senate Bill 1834. Any discussion? If not, all in favor indicate by saying Aye. All opposed. The Ayes have it. The amendment is adopted. Further amendments?

SECRETARY:

No further amendments.

PRESIDENT:

3rd reading. 1915, Senator Maitland. On the Order of Senate Bills 2nd Reading, Senate Bill 1915. Read the bill, Mr. Secretary.

SECRETARY:

Senate Bill 1915.

(Secretary reads title of bill)

2nd reading of the bill. No committee amendments.

PRESIDENT:

Any amendments from the Floor?

SECRETARY:

Amendment No. 1 offered by Senator Maitland.

PRESIDENT:

Senator Maitland on Amendment No. 1.

SENATOR MAITLAND:

Thank you, very much, Mr. President, Ladies and Gentlemen of the Senate. Amendment No. 1 softens the language in the bill. As...as the Ag. Committee may recall in discussion in committee there were some concern with the fire marshal and we agreed to work with them on an amendment. This is not their amendment, it is...it is my amendment. It embraces some of their concerns, not all of their concerns, but the amendment would do...would simply allow for above-ground storage of diesel fuel and not...the gasoline still stays in regulation. So this only affects diesel fuel and it would allow for the above-ground storage of diesel fuel, and I would move for the adoption, Mr. President.

PRESIDENT:

All right. Senator Maitland has moved the adoption of Amendment No. 1 to Senate Bill 1915. Discussion? Senator Geo-Karis. All right. Senator Maitland has moved the adoption of Amendment No. 1 to Senate Bill 1915. Is there any discussion? If not, all in favor indicate by saying Aye. All opposed. The Ayes have it. The amendment is adopted. Further amendments?

SECRETARY:

No further amendments.

PRESIDENT:

3rd reading. 1920, Senator Karpiel. 2051, Senator Jones. 2074, Senator Marovitz. On the Order of Senate Bills 2nd Reading is Senate Bill 2074. Read the bill, Mr. Secretary.

SECRETARY:

Senate Bill 2074.

(Secretary reads title of bill)

2nd reading of the bill. No committee amendments.

PRESIDENT:

Are there amendments from the Floor?

SECRETARY:

Amendment No. 1 offered by Senator Marovitz.

PRESIDENT:

Senator Marovitz on Amendment No. 1.

SENATOR MAROVITZ:

Thank you, very much, Mr. President, members of the Senate. Amendment No. 1 to Senate Bill 2074 was prepared by the Department of Public Health and the Governor's AIDS Interdisciplinary Advisory Council appointed by the Governor. Provides for written informed consent prior to submitting to a test for antibodies for the HTLV3 virus, provides for anonymity by using a pseudonym in..for the person's test name. It allows for testing in the absence of written

informed consent in certain specific instances and for the disclosure of test results to certain specific individuals. It allows minors twelve and older to submit to tests and receive counseling. Intentional violation of the Act which...which would violate the confidentiality portions of the Act constitutes a Class B misdemeanor. It complies with Federal and State regulations that require all diagnosed cases of AIDS to be reported. Basically, that's what the...what the amendment does. It is an amendment that was prepared by the Department of Public Health and the Governor's AIDS Interdisciplinary Advisory Council. I am a member of that council. We have been meeting for the last six months on a very, very regular basis. The council came down and through the graces of President Rock submitted that report and the information to this Body on the Senate Floor and was here for the entire day willing to answer questions. I understand this is a very sensitive subject, but this is the result of the experts in the field, the physicians, the...the scientists, the medical personnel who work on a day-to-day basis with this problem and feel that this is the very best way to get education, counseling and to help prevent the spread of this dread disease, and I would ask that this amendment that was prepared by DPH and the Governor's Council be...be adopted. Thank you, very much.

PRESIDENT:

All right. Senator Marovitz has moved the adoption of Amendment No. 1 to Senate Bill 2074. Discussion? If not, all in favor indicate by saying Aye. All opposed. The Ayes have it. The amendment is adopted. Further amendments?

SECRETARY:

No further amendments.

PRESIDENT:

3rd reading. Senator Berman has requested leave to go back to 2051. Senator Jones, as I'm sure everyone is aware,

he is attending a funeral. With leave of the Body, we'll go to 2051. On the Order of Senate Bills 2nd Reading, Senate Bill 2051, Mr. Secretary.

SECRETARY:

Senate Bill 2051.

(Secretary reads title of bill)

2nd reading of the bill. The Committee on Insurance offers one amendment.

PRESIDENT:

Senator Berman on Committee Amendment No. 1.

SENATOR BERMAN:

Thank you. It's my intention to Table Committee Amendments 1 and 2 and to offer Amendment No...Floor Amendment No. 3 in their...in their stead. The...the...Amendment No. 1 and 2 are both incorporated into Amendment No. 3, namely, the deletion of the insurance waiver and the question of joint several liability for municipalities. So I move to Table Committee Amendment No. 1.

PRESIDENT:

All right...all right, Senator Berman has moved to Table Committee Amendment No. 1 to Senate Bill 2051. Discussion? Senator Rupp on the motion to Table Committee Amendment No. 1.

SENATOR RUPP:

No, sir. I...but what we do have is an amendment being prepared for this bill and what I was trying to get your attention was to ask that it be held briefly so that we can do that.

PRESIDENT:

Senator Berman has...that's certainly agreeable. Take it out of the record, Mr. Secretary, we'll get back to it. ✓ 2169, Senator Luft. On the Order of Senate Bills 2nd Reading, bottom of page 2, is Senate Bill 2169. Read the bill, Mr. Secretary.

SECRETARY:

Senate Bill 2169.

(Secretary reads title of bill)

2nd reading of the bill. No committee amendments.

PRESIDENT:

Any amendments from the Floor?

SECRETARY:

No Floor amendments.

PRESIDENT:

3rd reading. Top of page 3, 2202, Senator Topinka. On the Order of Senate Bills 2nd Reading, Senate Bill 2202. Read the bill, Mr. Secretary.

SECRETARY:

Senate Bill 2202.

(Secretary reads title of bill)

2nd reading of the bill. No committee amendments.

PRESIDENT:

Any amendment from the Floor?

SECRETARY:

Amendment No. 1 offered by Senator Topinka.

PRESIDENT:

Senator Topinka on Amendment No. 1.

SENATOR TOPINKA:

Yes, Mr. President and Ladies and Gentlemen of the Senate, what we are attempting to do here with Amendment No. 1 which does, indeed, become bill is to address the rewrite of the Medical Practice Act which was last considered in its entirety in 1923. So this has been a long time in coming. The Governor charged the Department of Registration and Education, the Illinois State Medical Society and others to get into this and start looking at it, because over the years we have amended it and changed it around to such an extent it became a crazy quilt and it was time to get at it. If I might have you forbearance because it is rather...involved,

it basically falls into two parts, those that would involve medical discipline and they are rather heavy items, and I think people will be rather pleased by those because they...they do help the good doc heal himself by getting rid of the bad doc in a number of different ways, which were brought up at the Governor's press conference on Monday. And the second part would be from Registration and Education in terms of codification and incorporations, licensure and things of that sort. If I could just briefly go through some of the...the...items that are covered under medical discipline in this rewrite. It would lengthen the time frame for disciplinary investigation and action. It would allow access to medical records of public and private patients treated by those under disciplinary investigation. It would establish and deputize review panels to assist in the review of alleged violations brought before the Medical Disciplinary Board. It would involve professional organizations in the review of excessive fee or other activities of those licensed under the Medical Practice Act. It would create a medical services contracting board to provide State supervision of physician representatives...permitting physicians to fairly discuss and comment on contracts for the provision of medical services. It would grant immunity to organizations such as county medical societies which participate in fee review functions and discuss appropriateness of physician fees. It would modify the Hospital Licensing Act who oblige hospitals to aggressively search out any previous action which may have been taken against a physician's license through a mandatory contact by the hospital to the Department of Registration and Education. It would require automatic review of impaired physicians under State monitoring who remove themselves from therapy programs and why. It would grant the Medical Disciplinary Board authority to order inspection of a physician's office. It would expedite Medical Disciplinary Board review

of allegations brought by other State agencies and professional organizations...against those who are licensed under the Medical Practice Act. It would redefine gross malpractice for clear understanding and application. It would strengthen and clarify the grounds for discipline to coincide with those in...Medical Practice Act or the Federation of State and Medical Boards. I'm sorry to be taking so long but this is a rather technical and a very important type of an amendment and it will become the bill. It will allow the Medical Disciplinary Board to share information on impaired physicians with hospital medical staffs upon request. It will establish a special physician board of clinical examiners to verify clinical competence and so on. It will create a new set of disciplines. The administrative recommendations are, it will organize two medical coordinator posts. It will develop a roster of physician experts. It will improve coordination with other state and...national agencies. It will foster independent, proactive investigation by the Medical Disciplinary Board, improve communications between State authorities and ensure competent Medical Disciplinary Board investigators. There are other parts. It is voluminous and we are getting copies of this. I'm sorry it's taken so long but, as you can imagine, it's something that...that has not been rewritten since 1923. It has been a very involved process involving the talents of a lot of people and a lot of dedication. So that is the amendment.

PRESIDENT:

All right. Senator Topinka has moved the adoption of Amendment No. 1 to Senate Bill 2202. Discussion? Senator Netsch?

SENATOR NETSCH:

Thank you, Mr. President. I rise in strong opposition to Amendment No. 1 to Senate Bill 2202 and I do wish the...our colleagues would listen for just a moment. This is not Sena-

tor Topinka's fault but this is an absolute perversion of the legislative process. I can understand, perhaps, some of the provisions that came out of the task force recommendations on the somewhat limited subject of medical discipline being allowed to come in at this stage; but what has happened here is that those involved, and I'm not even quite sure who they are...all are, have gone ahead and rewritten the entire Medical Practice Act. It has never been before a committee. I would point out that this is scheduled for sunset next year and the...Legislature should in a formal way have some input into that process. The Legislature as...through its institutional arrangements has had no input into the process. It is, I am told, a seventy-three page amendment. No one has even seen the amendment. Our staff tells me that they have not seen this version. They may have seen some earlier drafts of some parts, they have not seen this version. There has been no committee consideration, no committee hearing; this is not an emergency and it is suddenly appearing as an amendment at 2nd reading, a total rewrite of a major part of the structure of our regulation of the health professions. I think that is, as I said before, a total perversion of the legislative process and, in my judgment, the amendment ought to be defeated.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Discussion? Senator Rock.

SENATOR ROCK:

Thank you, Mr. President and Ladies and Gentlemen of the Senate. I indeed agree with Senator Netsch's observation. If you take a look at the amendment which comprises some seventy-three pages, not one page of which anybody in this Chamber has seen before now, this Act shall be known as the Medical Practice Act of 1986; and I think the point was well made that next year is the year that all the health care practitioners and health care organizations are subject to

sunset review, why in the world do we have to do this today. I can agree with Senator Topinka that perhaps a great deal of work was indeed done and I commend the task force, but the task force was simply that, a task force to make recommendations to this General Assembly for the purpose of adopting a new Medical Practice Act if, indeed, one is deemed necessary. It seems to me somebody ought to take the time to take a look at this. I, for one, am not comfortable with the fact that the Governor of Illinois had a press conference. That in...in...does not outline in any...great detail the Act under which licensed professionals are to practice their profession in this State. So I would move you, Mr. President, that Senate Bill 2202 as amended, if indeed Amendment No. 1 is to be adopted, would be rereferred to the...to the appropriate Senate committee for hearing and perhaps action in the fall at the earliest; but for goodness sake, somebody ought to had...ought to have an opportunity to at least read this thing.

PRESIDING OFFICER: (SENATOR DEMUZIO)

All right. Senator Rock has made a motion to rerefer Senate Bill 2202 to the Committee on License of Insurance. Discussion? Senator Topinka.

SENATOR TOPINKA:

Yes...in addressing both the comments as well as to you, Mr. President. I...I don't know that this is all that extensive in the...in the fact that the majority of this report is a recodification of that which already exists but puts it into proper order. The second thing is is that the Governor's task force very strongly charged that something like this come to pass, especially in light of medical malpractice legislation passed last year, where especially the trial attorney said, my God, you know, no one ever goes back to the rotten doctors who are out there, they're out there practicing every day. This does address it and I think Sena-

tor Netsch...would be...you know, well advised to note that medical discipline is not exactly a light type subject. It's addressed very thoroughly in here and it is...and it's very severe on the medical profession and dutifully should be coming forth. The other thing is that two years ago the Illinois Dental Society...before their sunset was over by two years rewrote their Act and we had absolutely no difficulty in this Chamber passing it out and it was taken care of. So just because there is a sunset provision to...a year down the road does not mean, I don't think, that we cannot address this problem now and, yes, it is an emergency because the bad docs are out there and the medical discipline is in order.

PRESIDING OFFICER: (SENATOR DEMUZIO)

All right. Further discussion on the motion? Senator...Senator Davidson.

SENATOR DAVIDSON:

Well, two things, discussing Senator Rock's motion and then I'll have to...depending on what that prevails or fails be...asked to be recognized to make my point on the other. I would oppose Senator Rock's motion. I am one who has read this amendment 'cause it does deal with...with my other half of my livelihood and I have more than a normal interest in this. And, secondly, I think this is now...needs to be done.

If you wait until next year the year that sunset would prevail upon all these different Acts, you're going to have us in a Catch-22 Session...situation; and the fact that we do need, which the medical malpractice debate last...insurance debate brought out last year, a way to get at the incompetent practitioner who has the numerous malpractice et cetera, regardless of what profession he's in that we have an opportunity to get at that individual and be able to circumvent that part of the privileged communications which we're unable to do now. This is a very vital needed thing. I would urge everyone to vote against Senator Rock's motion to rerefer to

committee.

PRESIDING OFFICER: (SENATOR DEMUZIO)

All right. Further discussion? Senator Schaffer, on the motion.

SENATOR SCHAFFER:

Well, I recall a lot of fiery rhetoric last year from our friends, I guess, of the trial lawyer persuasion, I don't mean to cast that around like a curse, about the bad doctors and about how could we consider limiting liability or doing anything unless we got...our act together and went after the bad doctors. I don't see any of those people speaking right now saying this is the chance to get at the bad doctors...

PRESIDING OFFICER: (SENATOR DEMUZIO)

Well, Senator,...

SENATOR SCHAFFER:

...I wasn't referring to the...

PRESIDING OFFICER: (SENATOR DEMUZIO)

...Senator Rock, for what purpose do you arise?

SENATOR ROCK:

Well,...this hasn't got...nothing to do with bad doc good doc or medical malpractice or any of that stuff. This is a rewrite of the Medical Practice Act which will be in effect until 1997, once it's approved. For goodness sake, is it too much to ask that we hold it till the fall, that a committee of ours...I'm not opposed to it, I don't know what's in it. How can you be opposed to something you don't know?

PRESIDING OFFICER: (SENATOR DEMUZIO)

All right. Further discussion? Senator Schaffer.

SENATOR SCHAFFER:

I share your frustration with that, Senator Rock and...Senator Netsch, and I wasn't aiming at you, as a matter of fact. The simple fact though is very shortly, I hope, we're going to be talking about liability insurance and about some of the issues and I hear quite...I think quite reason-

ably expect to hear some of that same rhetoric that we heard last year; and the point I'm trying to make is that the Governor and the medical profession in this State have put a lot of effort in to trying to address those concerns. And it's somewhat hypocritical to say, well, let's...it's not a big deal, we'll study it for a few more months and then turn around in a few minutes and say, wait a minute, what about the bad doctors. I think what we have here is a very good faith effort by a profession in this State to clean up its act, to respond to legislative concerns; and while all too often we've had these half-inch documents dropped on us in the final weeks of the legislative Session and I don't like it any more than anyone else. This is a real concern and I think there were some legitimate cases where the doctors need to clean up their act and I think we ought to give them a chance to do it. I would also point out, like a lot of other things, it is a rewrite of the Act but it probably is only a rewrite of a...rewrite of only a percentage of the Act, a relatively small percentage. So it isn't as if it's a whole new document and I think we'd be well-advised to act on it this Session.

PRESIDING OFFICER: (SENATOR DEMUZIO)

All right. Further discussion on the motion to rerefer? Senator Schuneman.

SENATOR SCHUNEMAN:

I'm sorry, Mr. President, are we on the amendment...

PRESIDING OFFICER: (SENATOR DEMUZIO)

We are on the motion to rerefer.

SENATOR SCHUNEMAN:

Oh, I'm sorry.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Further discussion? Senator Netsch for a second time.

SENATOR NETSCH:

Well, I just...Senator Schaffer, I...I wanted to point

out to you that...and to others that it is still the Illinois General Assembly that writes the laws around here, not the Medical Society or any other interest group, and all we are saying is, we don't know what is in here. It is absolutely outrageous for a total rewrite of a major piece of legislation to be presented to us at this stage with no one, I mean no one, on this side of the aisle at least has seen one word of that amendment and...and that makes absolutely no sense. Even if we did not have sunset scheduled for next year, we still should have an opportunity to know what we are being asked to rewrite and have some opportunity for input into it. It seems to me that what we are talking about is not the substance of the amendment but the integrity of the legislative process.

PRESIDING OFFICER: (SENATOR DEHUZIO)

Okay. Further discussion? Senator Fawell.

SENATOR FAWELL:

Thank you, very much...

PRESIDING OFFICER: (SENATOR DEHUZIO)

...on the motion to rerefer.

SENATOR FAWELL:

...Senator Netsch, now you know how I felt when you threw that huge amendment at us on the utility bill last year.

PRESIDING OFFICER: (SENATOR DEHUZIO)

All right. Further discussion?...Senator Topinka.

SENATOR TOPINKA:

Well, I think we have...

PRESIDING OFFICER: (SENATOR DEHUZIO)

...Senator Netsch, for what...what purpose do you arise?

SENATOR NETSCH:

I would like to point out, Senator Fawell, that that huge bill had had fourteen hours of hearing in a committee. It was not thrown at you on the Floor sight unseen.

PRESIDING OFFICER: (SENATOR DEHUZIO)

All right. Further discussion? Senator Topinka.

SENATOR TOPINKA:

Well, I can remember having voted on the RTA rewrite with...I think within five minutes of midnight on June 30th once and it's been working well ever since, reasonably well with the City of Chicago, of course, cooperates from time to time. However,...I mean, this particular issue I think is awfully important and I think if we go back for another year, you're putting another year out there with the bad docs out there and God knows how many patients, how many liability suits and all the things that we've considered in the past. Everything has been done and it's been done according to Hoyle with...with the Department of...of R & E very much involved, the chief of medical investigations from R & E being involved, all of the particular agencies involved who would be impacted by this and this does not seem out of line to me at all. So, I would not like to see it recommitted at this time.

PRESIDING OFFICER: (SENATOR DEMUZIO)

All right. Now...we...we have another...another light on...on the motion to rerefer, Senator Schuneman.

SENATOR SCHUNEMAN:

Well, thank you, Mr. President. I had not intended to speak on this but...I understand that this proposal would put into the Act the Medical Review Panel which was a subject of considerable debate last year in the General Assembly. That's the issue, you remember, the...the fight between the...the medical society and the employers of this State which was settled against the wishes of the medical society and apparently now they're trying to reverse that. But I really think that without adequate study and debate here in the General Assembly, we probably should rereview this.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Further discussion? Senator Geo-Karis.

SENATOR GEO-KARIS:

A point of parliamentary inquiry. If we vote No that means that it...will not be reconsidered, is that correct? That it will...not go back...will not be rereferred?

PRESIDING OFFICER: (SENATOR DEMUZIO)

The motion is to rerefer Senate Bill 202 to the Committee on Insurance.

SENATOR GEO-KARIS:

Okay.

PRESIDING OFFICER: (SENATOR DEHUZIO)

If you're voting Aye, you're voting in the affirmative to rerefer.

SENATOR GEO-KARIS:

Well,...

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Geo-Karis.

SENATOR GEO-KARIS:

...Mr. President, Ladies and Gentlemen of the Senate, I urge all of our people on this side...particularly to vote No.

PRESIDING OFFICER: (SENATOR DEMUZIO)

I'm...I'm glad I gave you that explanation. Further...further discussion? Senator Rock may close.

SENATOR ROCK:

Thank you, Mr. President and Ladies and Gentlemen of the Senate. I...unfortunately, the discussion has centered around medical malpractice, good doctors, bad doctors; truly, stop for just a moment and think about what's going on here. We have a seventy-three page rewrite of the Medical Practice Act under which some twenty-five thousand people in this State practice medicine, and we don't even give it the courtesy of a five minute committee hearing. We shouldn't do this. Perhaps what's in here is excellent, I don't know, but I'm not prepared to vote Aye for something that I have not

yet even had the opportunity to read. I haven't even read the Governor's task force report which is sitting on my desk in my office. We're just going too quickly. We're going to be back here right after the November election, we have our thirty-day constitutional period, if...if...if indeed, this is as it should, be rereferred to a committee, I will ask the committee chairman to hold some hearings over the summer into the early fall and let's find out what in the world is in here, but to do otherwise is sheer folly. I urge an Aye vote.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Rock has moved to rerefer Senate Bill...2202 to the Committee on Insurance. Those in...those in favor indicate by saying Aye. Opposed Nay. The Ayes have it...the Ayes have it. Senate Bill 2202...all right, there's been...been a...been a request for a roll call. Senator Rock moves that Senate Bill 2202 be rereferred to the Committee on Insurance. Those in favor of his motion will vote Aye. Those opposed will vote Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, the Ayes are 26, the Nays are 29. The motion fails. Now on the amendment, Senator Topinka.

SENATOR TOPINKA:

Yes, Mr. President, I've tried to explain it before in...in bringing the amendment up and if there would be any specific questions at that time, I'd be happy to answer them.

PRESIDING OFFICER: (SENATOR DEMUZIO)

All right. Senator Topinka has moved the adoption of Amendment No. 1 to Senate Bill 2202 again. Discussion? Senator Rock.

SENATOR ROCK:

I...I would like the sponsor to indicate to me by page

and line number where Amendment No. 1 addresses the question of incompetent medical professionals.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Topinka.

SENATOR TOPINKA:

If you would hold one second so that we can flip through here and get it for you. Plus, the...we do have a problem in getting the copies to you because the printing press apparently has broken down in the basement. So I do throw that out to you for whatever that's worth.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Well...Senator D'Arco.

SENATOR D'ARCO:

You know, I don't understand this. If we can't even look at the amendment to see what's in it, how can she proceed and ask for a vote on this amendment? I mean, that's not fair to anybody. Why don't you pull it out of the record, give us a chance at least to look at it so if we have any questions, we can ask some questions on the amendment. I mean, there are thirty-one Democratic Senators on this side, thirty of which don't have an amendment and we would like to look at it. Is that asking too much?

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Topinka, are you ready to proceed?

SENATOR TOPINKA:

Yes. The...in answer to President Rock's comment, we start on page 20 and start on line item 5 and then go down to...then we get into all the grounds which actually gets into play by play blow by blow of medical discipline, what is and what is not to be considered. It's a...rather voluminous type...area in terms of the charges.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator D'Arco, did you also request copies of the amendment? Senator Netsch.

SENATOR NETSCH:

Yeah, that was my point also, why I had my light on. I think as long as we are going to have to face this seventy-three page monster, we at least ought to be entitled to have copies of it and I think we have a right under the rules to demand that.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Netsch is correct, our rules call for copies of the amendments to be distributed. I would suggest that this be taken out of the record until we do have the copies and proceed with the other order that's on the Calendar. Take it out of the record. Senator Demuzio. The Order of Senate Bills 2nd Reading, Senate Bill 2255, Senator Poshard. Read the bill, Mr. Secretary.

SECRETARY:

Senate Bill 2255.

(Secretary reads title of bill)

2nd reading of the bill. The Committee on Agriculture offers three amendments.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Poshard. For what purpose Senator Watson arise?

SENATOR WATSON:

Inquiry of the Chair. Did we just decide now that we're going to print up an amendment...a seventy-page amendment and going to circulate it to every member on the...on the Senate Floor? Did we just make that decision?

PRESIDING OFFICER: (SENATOR SAVICKAS)

Yes.

SENATOR WATSON:

Four thousand two hundred and some pages we're going to...paper we're going to shuffle through here? Why don't we just...four...four copies of it. We don't all need one, I don't believe, do we?

PRESIDING OFFICER: (SENATOR SAVICKAS)

Well, Senator, there's going to be twenty-five thousand people licensed under this. There is nobody that has a copy of it, nobody knows what's going on with it. It's like hidden agenda and the rules call for the...amendment to be distributed. It was a proper request. The request was honored and the bill will wait until we have the copies. Senator Poshard on Amendment No. 1 to Senate Bill...for what purpose Senator Carroll arise?

SENATOR CARROLL:

I thought my hearing was wrong. Did I hear a member of the Senate suggest we should be prepared to vote on bills we are not allowed to read?

PRESIDING OFFICER: (SENATOR SAVICKAS)

Yes, Senator, that was the suggestion.

SENATOR CARROLL:

I can't believe it.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Well, you've heard it and it was presented by the...the Republican side of the aisle. Senator Poshard on Amendment No. 1 to Senate Bill 2255.

SENATOR POSHARD:

Thank you, Mr. President, Ladies and Gentlemen of the Senate. Committee Amendment No. 1 is a technical clarifying amendment. It makes some fine-tuning changes. It ensures the Statewide rural applicability to rural energy conservation program in the bill. It establishes the maximum rate on infrastructure loans at a rate set in the Public Corporation Interest Rate Act. It defines the eligibility for the farmers in transition program and clarifies the intent of the new Farm Agribusiness Loan Program. Move for its adoption.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Is there discussion? If not, Senator Poshard...Senator Watson.

SENATOR WATSON:

Well, Mr. President, I don't find a copy of that amendment on my desk. Has that been circulated? Have we got...

PRESIDING OFFICER: (SENATOR SAVICKAS)

Those copies have been circulated and distributed...obviously, either you, your clerk, your aid or one of the Pages has taken it off when you've told them to clean up your desk. Those copies have been distributed. Senator Poshard moves the adoption of Amendment No. 1 to Senate Bill 2255. Those in favor indicate by saying Aye. Those opposed. The Ayes have it. Amendment No. 1 is adopted. Further amendments?

SECRETARY:

Committee Amendment No. 2.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Poshard.

SENATOR POSHARD:

Senator Joyce.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Joyce.

SENATOR JEROME JOYCE:

Yes, thank you, Mr. President. Amendment No. 2 and 3, I wish to Table. This morning I met with the farm credit people and our farm development authority, the Illinois Farm Development Authority and they are about to reach a compromise on...the farm credit people are cooperating with the Illinois Farm Development Act and this is a major, major boost for Illinois farmers. We are talking about some three and a half billion dollar debt that could be serviced at a substantially lower interest rate. This could save an...an average Illinois farmer some thirteen thousand five hundred dollars a year and that is enough to keep him going for another year, that would provide his living expenses. So if this can be accomplished and I think it will be by the end of the week, it will probably be the biggest single thing we've

ever done for Illinois farmers. So, with that, I would like to Table those two amendments. Thank you.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Joyce, chairman of the Agriculture Committee, moves now to Table Committee Amendments 2 and 3 to Senate Bill 2255. Is there discussion? Is there objection? Those in favor indicate by saying Aye. Those opposed. The Ayes have it. The motion to Table Amendments 2 and 3 carries. Are there further amendments?

SECRETARY:

No further committee amendments.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Any amendments from the Floor?

SECRETARY:

Amendment No. 4 offered by Senator Poshard.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Poshard. Senator D'Arco.

SENATOR POSHARD:

Which amendment...

SENATOR D'ARCO:

What's the LRB number on that amendment?

SENATOR POSHARD:

Oh, this is a technical amendment from the LRB, Mr. President. I move for its adoption.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Is there discussion? If not, Senator Poshard moves the adoption of Amendment No. 4 to Senate Bill 2255. Those in favor indicate by saying Aye. Those opposed. The Ayes have it. Amendment No. 4 is adopted. Further amendments?

SECRETARY:

Amendment No. 5 offered by Senator Maitland.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Maitland.

SENATOR MAITLAND:

Thank you, very much, Mr. President. I wonder if I might ask the Secretary to read the LRB number on...on that amendment, I'm not sure.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Mr. Secretary.

SECRETARY:

8410515THTCAM.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Maitland.

SENATOR MAITLAND:

Thank you, Mr. Secretary, and thank you, Mr. President. Amendment No. 5 is the...is the amendment that would...would assure that within the department and...the State Board of Education through their agricultural unit, we continue to have education for K through twelve students in this State's elementary and secondary schools. It creates a committee of agriculturists to work with the State board to develop these programs and I would move for the adoption.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Is there discussion? Senator Demuzio.

SENATOR DEMUZIO:

Well, I just have a question of the sponsor. Is there not a...an advisory board now within the State Board of Education to recommend and work on vocational education programs? Isn't this a new precedent that we're establishing here of some sort?

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Maitland.

SENATOR MAITLAND:

Thank you, Mr. President. Senator Demuzio, to a degree, yes, it...it does create...there is a...an...an agricultural unit but this creates an outside board of agriculturists that will work with the State board. We see a declining involvement of agriculture in...in this State's schools and we

believe...and this was a recommendation from the Illinois Leadership Council for Agriculture Education and this will provide the...the funding and the program to assure that...that...that agriculture training is ongoing in Illinois.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Demuzio.

SENATOR DEMUZIO:

Well, I understand the politics of it, we're calling it the Build Illinois through quality...through quality agricultural plans or whatever. How much is this going to cost and what level and line of authority are they going to have with the State board? Is it a...is it something that's simply advisory in nature? Does it have anything to do with curriculum, you know, what are their responsibilities or their objectives or their goals or tell me something about it?

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Maitland.

SENATOR MAITLAND:

Thank you, Mr. President. Senator Demuzio, yes, it would in all likelihood create a goal...a curriculum for K through twelve throughout Illinois schools. The...the...the cost, roughly, fifteen million dollars and this at this point in time is...is a guesstimate, no question about that, and that would depend upon the extent to which they became involved.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Demuzio.

SENATOR DEMUZIO:

Well...you're telling me now that this new advisory group is going to cost us fifteen million dollars and...is that an...in an appropriation bill someplace in the General Assembly?

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Maitland.

SENATOR MAITLAND:

No, Senator, it is...it is not in an appropriation bill and...and, keep in mind, I indicated to you that we are talking about a concept here, may well in fact without funding not be totally implemented in the beginning but at least it's a step in what we consider to be the right direction.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Demuzio.

SENATOR DEMUZIO:

Okay. Well, then, Senator, just tell me, where...where are you...where are you putting in the fifteen million dollars? Is this going to into the State Board of Education's budget or in agriculture's budget or...or where's it going?

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Maitland.

SENATOR MAITLAND:

Well, once again, Senator Demuzio, I...I...we don't know to the extent that this is going to...to really get off the ground this year. If it enjoys the enthusiasm of the Legislature that I hope it...it does enjoy, then it will be necessary to...to find the money to fund it and it would be funded through the State Board of Education.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Demuzio.

SENATOR DEMUZIO:

Well, we're all surprised to learn that this is part of the education reform package. Let me ask you this, is the...is this a compromise between the Farm Bureau leaders and the Governor's Office in reference to the second ag. academy? Is that what we're really doing here?

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Maitland.

SENATOR MAITLAND:

I'm glad you asked that question, Senator. It's well known that I...that I oppose the ag. academy but that was not the point here at all. This...the Governor was not involved in this at all. Your staff has access to the membership on the...the Illinois Leadership Council for Agricultural Education. I don't have one of those at my desk now but I think you'll find that there's a list of...of people who you and I both have much respect for.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Is there further discussion? If not, Senator Maitland moves the adoption of Amendment No. 5 to Senate Bill 2255. Those in favor indicate by saying Aye. Those opposed. The Ayes have it. Amendment No. 5 is adopted. Further amendments?

SECRETARY:

Amendment No. 6 offered by Senator Poshard.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Poshard.

SENATOR POSHARD:

Yes, thank you, Mr. President. This is a clarifying amendment that clarifies the tuition reimbursements would be included under the Farmers in Transition Program that...it clarifies the crop diversification and...integration loan program, adjusts the guaranteed authorization with amounts available in reserved funds and I would move for its adoption.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Is there discussion? If not, Senator Poshard moves the adoption of Amendment No. 6 to Senate Bill 2255. Those in favor indicate by saying Aye. Those opposed. The Ayes have it. Amendment No. 6 is adopted. Further amendments?

SECRETARY:

Amendment No. 7 offered by Senator D'Arco.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator D'Arco.

SENATOR D'ARCO:

Thank you, Mr. President. As you know, Exxon owes the State of Illinois some ninety million dollars and we have to find a mechanism to spend that money. And what this amendment does is create the Illinois Petroleum Violation Fund and in the Act it specifies the various uses for the Exxon money. The money will be used for energy assistance payments and it will be..also be used for energy conservation loans and grants for programs administered by DCCA, and it would also include financing direct loans and loan guarantees to certain individuals in small businesses in the Rural Energy Conservation Act. I don't know of any opposition. It's a mechanism that is necessary and I would ask to adopt Amendment No. 7.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Is there discussion? Senator Donahue.

SENATOR DONAHUE:

Thank you, Mr. President. Question of the sponsor.

PRESIDING OFFICER: (SENATOR SAVICKAS)

He indicates he'll yield.

SENATOR DONAHUE:

Can...can you tell us how that...are there different proportions on how that money is going to be spent through all those different programs or do you have...or is it just being put into this fund and then these different groups can access those funds?

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator D'Arco.

SENATOR D'ARCO:

It's...this is the substantive mechanism which is...which will be subject to appropriation. So it...it will go through the appropriation process and at that time whatever monies will be allocated will be determined.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Donahue.

SENATOR DONAHUE:

So what you're saying is that through the legislative appropriation process, we will decide how much money goes where, right?

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator D'Arco.

SENATOR D'ARCO:

Yes.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Schaffer. Oh, Senator Schaffer.

SENATOR SCHAFFER:

I...this is a very important subject, ninety million dollars. I don't find a copy of the amendment on my desk. I think we probably ought to have that before we vote, you know, kind of like to know what we're voting on.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Mr. Secretary, were these amendments distributed? Did you check with our sergeant-at-arms to see if they were distributed? Is there further discussion about Amendment No. 7? Senator D'Arco.

SENATOR D'ARCO:

Jack, I could read the whole amendment in about two minutes. You know, it's not seventy-five pages, it's like...it's two pages.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator D'Arco moves the adoption of Amendment No. 7 to Senate Bill 2255. Those in favor indicate by saying Aye. Those opposed. The Ayes have it. Amendment No. 7 is adopted. Further amendments?

SECRETARY:

Amendment No. 8, by Senator Rigney and it...Senator Rigney, it is your A amendment.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Rigney.

SENATOR RIGNEY:

Mr. Secretary, is this the one that starts out by deleting lines 12 through...34 and so forth?

SECRETARY:

Yes, sir.

SENATOR RIGNEY:

I would like to withdraw that amendment.

SECRETARY:

Amendment No. 8 is the one that you have marked B.

SENATOR RIGNEY:

Okay. Mr. President and Ladies and Gentlemen of the Senate, what we're doing here, this...we're passing a Rural Economic Development Act. That's what this is all about and we specifically target those counties of under two hundred and fifty thousand. That's a rather comprehensive piece of legislation and in pretty good shape until you get all the way back to page 38 at...about the end of the bill, and that's where I have a little breakdown in really what I think is the intent of the legislation. When we get to page 38, we're talking about distributing some of our road funds to units of local government. Now, let's be completely candid about what we're talking about. We're talking about an annual raid on the Road Fund of about thirty million dollars, and I'm sure in the next five years, we will not see candidates coming forward suggesting that the thirty million dollars be taken out of their road district but that's...you know, that's for another day. But in any event, what we're attempting to do here with this particular amendment is to keep within the spirit of the bill itself, and so we have prepared an amendment which says that the distribution will be made to those cities, those counties and those road districts of under two hundred and fifty thousand, which is a

considerably different distribution than the one they are called for in the original legislation. And I think in the name of rural economic development, it's only fair that it be done in this fashion.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Is there discussion? Is there discussion? Senator Carroll.

SENATOR CARROLL:

Thank you, Mr. President and Ladies and Gentlemen of the Senate. Question of the sponsor, please.

PRESIDING OFFICER: (SENATOR SAVICKAS)

He indicates he'll yield.

SENATOR CARROLL:

First, does this amendment and the bill now, as if your amendment was adopted as amended, change the current distribution of road funds?

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Rigney.

SENATOR RIGNEY:

It changes the distribution called for in the bill of this two and a half percent of sales tax. In other words, we are pulling that two and half percent out of the Road Fund and the Road Construction Fund, we say we're going to do something different with it. We're going to give that money back to the local units of government.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Carroll.

SENATOR CARROLL:

So that, therefore, the distribution will be different to...units of local government in counties above two hundred and fifty thousand than it would be in counties below two hundred and fifty thousand. Is that correct?

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Rigney.

SENATOR RIGNEY:

Well, first of all, they're not getting this money now.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Carroll.

SENATOR CARROLL:

But they would be under the bill absent your amendment, and what you're saying is that only those that are counties under two hundred and fifty thousand would units of local government get it. Do you happen to know what counties of Illinois are over two hundred and fifty thousand in population?

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Rigney.

SENATOR RIGNEY:

I can't quote all of those, I think there's approximately about a half a dozen.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Carroll.

SENATOR CARROLL:

I would think that therefore it would include Cook, DuPage, Lake, probably Kane, Will and maybe McHenry?

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Rigney.

SENATOR RIGNEY:

Possibly so but I think...you know, again, in keeping with the spirit of what this bill is all about, we are not distributing these funds here to the land of the tumbleweed and the...the home where the buffalo roam. We're...we're talking about making the major distribution through the regular formula that's going to allocate most of this money into the large urban areas, and I don't think in good conscience we can do this in the name of rural economic development.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Carroll.

SENATOR CARROLL:

So, . . . just so that I understand it and . . . seventy percent of the population of the State as represented in the Senate by various members are going to be asked to give monies that they could have gotten away on the basis that their local municipalities and counties have more than enough money in their distribution in the Road Fund to do everything that their people need, so that people who represent those six counties don't want any money from distribution of Road Fund monies because the counties of DuPage and Cook and Will and so on, obviously, have enough money. My county doesn't seem to feel that way and I don't think DuPage would feel that way and I don't think Lake would feel that way, and I don't think the others that have over two hundred and fifty thousand would feel that way. I think if there's to be a distribution to units of local government, counties and municipalities that that should be a Statewide distribution and not where the sales tax generated by seventy percent is spent only in the area, as your amendment would do, of the thirty percent.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Rock.

SENATOR ROCK:

Thank you, Mr. President and Ladies and Gentlemen of the Senate. I rise in strong opposition to Amendment No. 8 and as they used to say, you sure can't blame a guy for trying. All the Senator's amendment does is take money otherwise due and owing to Cook, DuPage, Lake, Will, Kane, St. Clair and Winnebago County and say to the people of those counties, sorry, you're not included in this program. All of us little counties are going to take all the money. It's a heck of an idea, I wish I'd have thought of it, except I'd go the other way. I urge opposition to Amendment No. 8.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Lechowicz.

SENATOR LECHOWICZ:

Thank you, Mr. President, and the former speaker, President Rock, was absolutely correct except in addition to that, all sales tax of the motor fuel tax that goes presently to those counties also would go to counties under two hundred and fifty thousand. The impact of this amendment...Cook County would cost us approximately twenty-five million, City of Chicago, approximately eight and a half million. I didn't get a breakdown for DuPage, Lake and the other five counties within the northeastern section of the State, but I would strongly recommend that this is a raid of a tremendous magnitude and should be soundly defeated.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Hall.

SENATOR HALL:

Thank you, Mr. President and Ladies and Gentlemen of the Senate. Senator Rigney, I'm ashamed of you. Tell me how would you have the nerve and the audacity to do that for me and the rest of us over here? It's a shame, you want to take money away from St. Clair County along with everybody else? Convince me that I should vote for this.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Poshard.

SENATOR POSHARD:

Thank you, Mr....thank you, Mr. President. Mr. President, the intent of this legislation is to...the intent of the bill, I should say, is to rightly focus upon some of the problems of rural Illinois, and one part of the bill that leaves the sales tax portion of the motor fuel tax at the county level is going to help a lot of those counties. We do not in the process want to harm or take away from Cook County or DuPage County or Will or any of the other counties that are above two hundred and fifty thousand. I don't think this

is a good amendment and I have to oppose this amendment. We have to come time and time again and ask Chicago and suburban people for their assistance for rural programs. We're asking for their assistance for this one, but we don't want to penalize them in the process and this is a bad amendment in that respect.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator DeAngelis.

SENATOR DeANGELIS:

Yeah, thank you, Mr. President. Question of the sponsor.

PRESIDING OFFICER: (SENATOR SAVICKAS)

He indicates he'll yield.

SENATOR DeANGELIS:

Senator Rigney, would you further amend this bill to include population under two hundred and fifty thousand and legislators that are under five-foot six?

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Geo-Karis.

SENATOR GEO-KARIS:

...will the sponsor yield for a question?

PRESIDING OFFICER: (SENATOR SAVICKAS)

He indicates he will.

SENATOR GEO-KARIS:

Is it true, Senator, that by your amendment you're going to be taking the money out of my county which is more than two hundred fifty thousand?

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Rigney.

SENATOR RIGNEY:

Senator Geo-Karis, let's not misunderstand where the money is coming from. The money is coming from the Illinois Road Fund that you and I supposedly are here protecting. So now the question is, okay, we're going to rip some out of that Road Fund...the amendment that I agreed not to call was

simply going to strike the whole section out of the bill and leave the money where I think it correctly belongs in the Illinois Road Fund. But, you know, if we're not going to do it that way and we're going to call this rural economic development and...call your attention to the synopsis on the bill, rural economic development, I think in the name of rural economic development we're...we ought to be very careful of where we spend these funds.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Geo-Karis.

SENATOR GEO-KARIS:

Well, Mr. Sponsor, I happen to have some rural areas also and I'm...I'm not so sure that your amendment would help my rural areas; as a matter of fact, it will not, but I do feel that there should be a more equitable distribution. So I'm just wondering about the tenacity and the audacity of this amendment.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Joyce.

SENATOR JEROME JOYCE:

Yes, thank you. I...I think this is a great amendment. Now, the reason I think it's a great amendment is because we're going to be voting on a bill of Senator Zito's that's going to send all the garbage down to those rural counties and we're going to need the...that money to fix those roads so you guys can get the garbage down to the small towns in Illinois.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Is there further discussion? If not, Senator Rigney may close.

SENATOR RIGNEY:

Really, I guess, I've perhaps said it all. I think the issue is pretty clear. This is a Road Fund rip off bill and so I guess, you know, in the name of the rip off of the Road

Fund, let's be completely candid about it. Let's be honest and straightforward. I remember we had a...an ag. bill here this last year, we were going to help out downstate farmers, and you remember what happened when we made a Christmas tree out of it, there were a lot of other amendments that got put onto that including legislative pay raise that got tacked on to that kind of legislation in the name of helping the Illinois farmer. Well, we are supposedly, under this bill, helping rural Illinois. Let's stick to the spirit of the law and let's adopt the amendment. I'd ask for a roll call.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Rigney moves the adoption of Amendment No. 8 to Senate Bill 2255 and has requested a roll call. Those in favor will vote Aye. Those opposed will vote Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, the Yeas are 21, the Nays are 32, none voting Present. Amendment No. 8 having failed to receive a majority vote is declared lost. Further amendments?

ACTING SECRETARY: (MR. FERNANDES)

Amendment No. 9 offered by Senator Maitland.

END OF REEL

REEL #3

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Maitland.

SENATOR MAITLAND:

Thank you, very much, Mr. President. Amendment No. 9 creates within the Department of Agricultural the Bureau of Agricultural Development and this was in the...in the Governor's Executive Order of a year ago and we choose now to put it in the Statutes, and I would move for the adoption.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Is there discussion? If not,...Senator Demuzio.

SENATOR DEMUZIO:

Well, Senator, you said if I loved the other one, I'd love this one. You want to run it by me one more time? I...I don't have a copy of it, quite frankly, so if you could just run...run me through it again.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Maitland.

SENATOR MAITLAND:

Thank you, Mr. President. I would be ever so happy to, Senator Demuzio. This creates within the Department of Agriculture the Bureau of Agriculture Development and this was talked about and discussed at length a year ago and, again, was in an Executive Order and it does really three things. It...it...first of all, to identify research and evaluate the feasibility of agricultural products and facilities designed to diversify and integrate the agricultural industry, that's number one. Number two, to assist new agricultural industrial facilities in arranging financing for their operations and, three, to coordinate marketing efforts to attract new agricultural industries to Illinois.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Demuzio.

SENATOR DEMUZIO:

Well, estimated cost on this one is about another million?

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Maitland.

SENATOR MAITLAND:

No, sir, it isn't...it isn't that much. I think in the neighborhood of three hundred thousand dollars was the figure that was suggested last year.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Demuzio.

SENATOR DEMUZIO:

Well, Senator, I don't have any objections to what you're doing but, you know, one of your guys used to say a million here and a few hundred thousand there, you know, all begins to add up; and I just want to know how we're going to fund all this...all this...meritorious types of activity we are doing today, so I don't have any objections to the amendment going on.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Is there further discussion? If not, Senator Maitland moves the adoption of Amendment No. 9 to Senate Bill 2255. Those in favor indicate by saying Aye. Those opposed. The Ayes have it. Amendment No. 9 is adopted. Further amendments?

ACTING SECRETARY: (MR. FERNANDES)

Amendment No. 10 offered by Senator Rigney.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Rigney.

SENATOR RIGNEY:

Well, Mr. President, I think a lot of folks are going to like this amendment...a completely different subject, so

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2nd Reading

we're shifting gears here. What we're talking about is our treatment of small municipalities by the various regulatory agencies of State Government. So, what we have done...I think you will recall here several years back, we passed some legislation that said small businesses must be treated separately by the various regulatory agencies of State Government, have special consideration by those agencies. All we have done under this amendment is to extend this same type of protection to small municipalities. Many times a lot of these regulatory agencies and the...and the rules that they have promulgated really don't fit for small communities in the State of Illinois. So, we are defining a small municipality as any municipality under five thousand population or one that employs fewer than fifty people.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Is there discussion? If not, Senator Rigney moves the adoption of Amendment No. 10 to Senate Bill 2255. Those in favor indicate by saying Aye. Those opposed. The Ayes have it. Amendment No. 10 is adopted. Further amendments?

ACTING SECRETARY: (MR. FERNANDES)

No further amendments.

PRESIDING OFFICER: (SENATOR SAVICKAS)

3rd reading. On the Order of Senate Bills 2nd Reading, Senate Bill 2263, Senator Luft. 2263, Senator Luft. Read the bill, Mr. Secretary.

ACTING SECRETARY: (MR. FERNANDES)

Senate Bill 2263.

(Secretary reads title of bill)

2nd reading of the bill. The Committee on Insurance offers one amendment.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Committee Amendment No. 1, Senator Luft.

SENATOR LUFT:

Thank you, Mr. President. For the last few weeks we've

been sitting, myself in particular, in meetings with Speaker Madigan in an attempt to reach a compromise on tort reform and other issues...relating to the insurance crisis. One of the suggestions in attempting to deal with joint and several liability was a modified version. That version we adopted, one that we think may wind up being the final version, in committee and was consistent with legislation that has been passed in other states, the one closest to us, Indiana, then there's Louisiana, Oregon, Pennsylvania and Nevada and Texas; and what we have done is provide that each defendant is jointly and severally liable for the entire amount of the judgment awarded the claimant except that a defendant whose fault is less than that of the claimant is liable to the claimant only for that portion of the judgment that represents the percentage of fault attributed to him. In layman's terms, if a suit is filed by an individual for a hundred thousand dollars and the jury or judge rules that the plaintiff is fifteen percent at fault and the plaintiff has filed against two defendants, one defendant is liable for ten percent, the other...defendant liable for seventy-five percent, that defendant liable at ten percent, which is less than the plaintiff's fault can only...the plaintiff can only recover that ten percent or in this case would be ten thousand dollars. This is a modified version, as I said earlier, of joint and...several liability, and I would now move for the adoption of this amendment.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Is there discussion? Senator Schuneman.

SENATOR SCHUNEMAN:

Thank you, Mr. President. I rise in opposition to the adoption of Committee Amendment No. 1. The whole concept of what this package of bills was intended to do is to make some significant changes in our system of tort liability in this State. I think what Committee Amendment No. 1 does is simply

make a change that may be cosmetic but have little or not affect on the system. Not being attorney, I'm sometimes not sure exactly what some of these things will do but I have discussed the affects of this particular amendment with people who are experts in the field of governmental insurance and the governments are, of course, the one segment of society that are...that are greatly affected by this deep pockets theory and they tell me that...that this amendment will do absolutely nothing. I talked to one claim person who indicated to me that out of several hundreds of cases, like three hundred cases, there's not a single case where this particular provision would ever apply and I think the probably with the amendment is that it is not strong enough. There are other amendments that will be offered for this bill which will abolish the doctrine of joint and several liability. I would urge the members to reject this amendment and approve later amendments. Now we're not in the business here of...opposing all of the amendments that Senator Luft will be offering, there are a couple of them that we're...that we agree with and...and there's...substantially what we're trying to do, this isn't one of them. We urge opposition to Senate Amendment No. 1.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Rupp.

SENATOR RUPP:

Thank you, Mr. President. I would like to ask the sponsor a question.

PRESIDING OFFICER: (SENATOR SAVICKAS)

He indicates he'll yield.

SENATOR RUPP:

In the example that you're giving, Senator Luft, suppose that I were the one that you said I would not have to pay anything. Suppose I were just one percentage point more at fault than that plaintiff. How much would I be exposed for?

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Luft.

SENATOR LUFT:

You'd be exposed, the way I understand it, for that percent. I did not say that you were...nobody was not liable.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Rupp.

SENATOR RUPP:

Well, that's...that's not quite correct because under joint and several liability, just that one percentage point would make me responsible in the example that you gave for something like ninety percent, so here I have gone through the process in court and have been adjudged to be...say six percent at fault and yet, according to what you're doing here, I could be called on to pay not only what I have been adjudged responsible for but the main one, the highest percentage. I could be required to pay that entire percentage. Now we also...just to...I hate to repeat what Cal Schuneman said but it's worth repeating. We kept hearing during the presentations that this never happens...never happens...never happens and when I asked, well, if that's so, if it never happens, then what's so important about holding on to it. I think we should defeat this amendment and consider the others as they come up.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Berman.

SENATOR BERMAN:

Thank you, Mr. President and Ladies and Gentlemen of the Senate. I think it's important on this amendment and I think...I presume on the amendment that will be coming in a few minutes regarding joint and several liability, to understand what we're...being asked to do; and Senator Luft's Amendment No. 1, the committee amendment, should be understood to be a compromise position. In debating joint and

several liability, the issue is a relatively simple one, should the person who was hurt walk away with less than the compensation that a jury and judge has determined that that injured person should receive or should the full compensation to which that person is entitled be paid for by one or more of all the defendants. Now joint and several liability is not something new, it has been in the American common law for decades and decades, and it has been the social policy decision of the courts of this State and most of the courts of the country that when a person who has been injured is entitled to compensation that they should go away with all of their compensation, and the people that contributed to some extent to that injury shall bear the cost of that injury, and that's what the existing law does. It says that when a judge and jury have determined that a person has been injured, if one or more of the defendants are at fault at all, it is better that the people that were at fault shall pay the plaintiff rather than the plaintiff should go home with less than they are entitled to. That's the whole theory between joint and several liability. Now this amendment says that in weighing those types of policy decisions we're going to modify it somewhat and the...this amendment says we're going to take an arbitrary...an arbitrary recommendation, and we're going to cutoff; where one of the defendants is equal or more liable than the plaintiff, they're going to be part of the contributing elements to allowing the plaintiff to go home with what the court has said the plaintiff is entitled to. Now what we're saying here is this, the person who is liable less than the plaintiff won't have to pay more than what he is responsible for. But I would suggest to you...what I would suggest to you, ladies and gentlemen, in the hearings that have been held by both Houses and by this Body over a long period of time, I would suggest to you that we have been sold a bill of goods, and let me give you some specifics. I

and others on both sides of this aisle have repeatedly requested of people that came forth for specifics, case numbers, the names of the parties, claim numbers and dollar amounts involved in whence joint and several liability has caused a great injustice. How often does it happen? What is the frequency? What is the dollar amount? Now let me tell you, I had a gentleman in my office that was from one of the major insurance carriers in this State and I asked him to...to give me the specifics on where one of their insureds as a result of joint and several liability had to really pay a substantially higher amount than their portion of the liability, and I said go back over two or three years and give me the numbers and the cases. You want to know what I got back from that gentleman? I got back one case. One case, ladies and gentlemen, in which their insured who should have paid twenty-five thousand dollars wound up paying thirty-seven thousand five hundred dollars. One case from the major insurance underwriter...insurer in this State. Now I can tell you this, if there were hundreds or thousands that impacted millions of dollars, that would have been on my desk and it wasn't...and it wasn't. I have asked cities, I have asked private insurers, tell me the facts where joint and several liability have, in fact, not the academic theories, not the...the stories that we hear, give me the cases and, ladies and gentlemen, they have not been forthcoming. Now I don't like to try to hold the ocean back, this is a compromise amendment. I don't think the facts support this anymore than what you're going to hear later on about an abolition of joint and several liability. This is a compromise position, that's the...the nature of the process down here, compromise. This makes more sense from a compromise point of view than abolition. I urge an Aye vote on Amendment 1.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Watson.

SENATOR WATSON:

Well, thank you, Mr. President. In regard to the last speaker and...Senator, I think part of the problem is the fact that there's the potential for loss, maybe not necessarily that there's been the cases that you're trying to cite or necessarily that there have been that many, but there's that potential and the insurance industry has got to deal with that. They have to make a decision on whether they're going to offer insurance and that's part of the problem is simply availability and we're seeing the market dry up in many cases, especially units of local government. It's not necessarily that there's been that many awards probably, I don't know, but there is that potential and that's what the industry is concerned with. I'd like to ask the...the sponsor, if I might, a...a question.

PRESIDING OFFICER: (SENATOR SAVICKAS)

He indicates he'll yield.

SENATOR WATSON:

Thank you. And I...he probably mentioned this when he opened up the discussion, but I'd like for him to reiterate 'cause this is an important issue. Would...would you please explain to me one more time what...what happens when a unit of local government, or anyone for this matter, is considered one percent liable? Will they ever be...or what percentage of the award will they be responsible for if they are one percent liable?

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Luft.

SENATOR LUFT:

That depends, Senator, on what degree of fault has been assessed the plaintiff, the person suing. So, if...under this bill, for example, that the plaintiff has been assessed fifteen percent at fault, if there are two defendants and one...the defendant you're talking about is assessed one per-

cent fault, he would pay one percent. Under the existing law, if he were deep pockets, you could get all one hundred percent from him.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Watson.

SENATOR WATSON:

Well, let me ask you...this is supposedly a compromise. Where...where are units of local government on this, the townships and the municipality and the park districts?

PRESIDING OFFICER: (SENATOR SAVICKAS)

...Senator Luft.

SENATOR LUFT:

They have their own bill. It's Senator Jones' bill.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Watson.

SENATOR WATSON:

This...this will affect units of local government, won't it?

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Luft.

SENATOR LUFT:

It's my understanding that Senator Jones' bill deals with the Local Government Tort Immunity Act which this does not.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Watson.

SENATOR WATSON:

So, I'm to assume it has no impact on...on local government whatsoever.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Luft.

SENATOR LUFT:

If we do not adopt any legislation such as Senator Jones' bill, then this would affect it. If we adopt Senator Jones' bill, it does not affect it.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Watson.

SENATOR WATSON:

Well, thank you. I understand that this really doesn't address the problems of units of local government even if...I don't know how it's going to affect them after that remark, I have no idea what ultimately will happen, but I think we're all experiencing a...and we've all seen at the local level, we're hearing from...regardless of whoever it may be, all units of government are simply having a tremendous amount of problems with this, and the injustice of it all is the situation in which...someone can be one percent liable and...and end up being a hundred percent responsible for the award. I understand that you addressed that in the...in...somewhat but simply doesn't really solve the problem. I think that we should vote No on the amendment and then adopt further amendments. Thank you.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Barkhausen.

SENATOR BARKHAUSEN:

Mr. President and members, like those members that have previously spoken, I have sat in on a number of the hearings dealing with this and other matters on which we've heard testimony relating to the insurance crisis, and one of the things that has been clear is that for all of those organizations and entities that have been seeking relief from the problem it...it appears clear, particularly from having sat in on some of the so-called summit sessions in the last couple of weeks, that there is more interest in abolishing, hopefully, the doctrine of joint liability than there is in any of the other proposed changes that have been put forward. So it seems to me that if we are to...to take a serious approach to this problem, that the very least...the very least that we ought to be doing is abolishing joint liabil-

ity. Senator Berman, in his remarks, said that to him...the proposition is clear when we're looking at the question of joint liability and that is whether a victim ought to be able to recover; and I would say, perhaps looking at the...at the question from a slightly different angle that...that to me and perhaps to some of us on this side of the aisle, the proposition is equally clear and that is, should a defendant have an obligation to pay proportionately more than that defendant is found to be at fault and is...obligated to pay by a judge or jury. As a matter of simple justice, the answer to that proposition would be seem to be no. If I am injured, yes, I may be looking for someone against whom I might recover but, indeed, should I be able to recover against a...an individual or an organization who is not at fault; again, I say the answer should be no. So, it seems to me, ladies and gentlemen, that if we really are to be serious about the insurance problem...and as I say, I sat in on these hearings and I heard a lot of testimony that apparently went over the heads of...of at least some of the other members who may be...may have been sitting in on some of the same hearings. I heard a witness come forward from the City of Chicago and cite a number of cases and attach a specific dollar figure to what joint liability means to the City of Chicago, and those members who were representing that entity here would seem to me if they want to bring about some relief for the taxpayers in their city, they at a minimum ought to be voting to abolish joint liability. I think Senator Schuneman in his remarks on this amendment hit it on the head, it...that it, indeed, is purely a cosmetic approach to the question of joint liability than if...in fact, by the end of this Session, we are called upon to compromise, there are forms of compromise that would be far more meaningful than...than this very cosmetic proposal that is being put forward at this time. There would, for example, be the option

of the initiative that is going to be on the ballot in just a couple of weeks in California that would limit joint liability to economic damages only, excluding there...thereby pain and suffering, that would be potentially a fairly meaningful compromise. This is not. It is designed to...to perhaps let a few members off the hook, to let them go home and say they did something about the problem when, in fact, this proposes to be...to do absolutely nothing and I feel that this amendment should be rejected.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Kustra.

SENATOR KUSTRA:

Thank you, Mr. President and members of the Senate. I...I rise to voice the same concern about this amendment that my colleagues have. I think we ought to be about the business of abolishing joint and several and I don't think this amendment is going to do that. I'm interested in Senator Berman's historical analysis of the doctrine of joint and several liability and I think he was accurate to a point, but I don't think, Senator Berman, you really went back far enough to explain the full impact historically of joint and several. It's no accident that the word "joint" is in the title "joint and several liability," because if you really want to go back in the common law, you will find that joint and several liability only affected defendants who acted in concert. There was no recovery if defendants did not act in concert. What happened is somewhere in the early part of this century, the American courts started liberalizing that doctrine. I would suggest it's because those American courts wanted to become Legislatures instead of courts. We, in this Legislature, ought to be about the business of deciding who should get how much money when either they're aggrieved or when they are poor or whatever, but I don't think it's the job of the courts to do that. In the common law...the

English common law agrees with that position, and so we have now liberalized this so-called doctrine of joint and several liability so much so that it doesn't even bear the respectability of its name anymore that we simply apportion dollars to people regardless of guilt or fault. That doesn't make any sense. That's the reason why we ought to reject this amendment and get on to an amendment that will, in fact, abolish joint and several liability and take us back to the English common law if that's where you want to go.

PRESIDING OFFICER: (SENATOR SAVICKAS)

For the second time, Senator Rupp.

SENATOR RUPP:

Thank you, Mr. President. I heard the word used that this was a compromise. We have been involved in many, many meetings and today was the first time I actually saw this particular item. Evidently the governmental units have not seen it either. I think we might be able to get up when our amendments come through and we could claim that they were compromises too, but it's pretty difficult to make a compromise just on one side and that's what I feel had been done. The second question addressed to Senator Berman. The thing that puzzles me...I'm not an attorney, sometimes I'm glad, sometimes I'm sad, but it seems to me that here we have in a case, the same case, the same court, the same judge or the same jury and that decision comes down and part of it assesses fault and part of it assesses a total amount of damages. Which has the most weight? To me, I think it's equal...I think it's equal. So why should we be willing to just push aside one section of that decision and say that you have to...because you have the money pay for my share of the loss that I cannot cover? I can't understand that. I don't understand how we can decide which part of one decision in the same case overrides the other. I think they're equal.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Is there further discussion? Senator Rock.

SENATOR ROCK:

Thank you, Mr. President and Ladies and Gentlemen of the Senate. I rise in support of Amendment No. 1 and it is admittedly...admittedly a first step but one I think that's very meaningful. And, Senator Rupp, I'm sure that members of your side of the aisle have, in fact, been invited and have, in fact, participated in the summit meetings that were organized by the Office of the Speaker, they've been almost interminable and I know, as a matter of fact, having attended one or two that some of your members have been present and I applaud them for that, and that's really where this discussion is taking place, frankly, because all the parties are there and this is an attempt to reflect what is being discussed; and I think one other thing that we ought to bear in mind because we have totally, in my judgment, lost sight of the fact that what we are dealing with is the taking away of rights that an injured person currently enjoys, an injured party, one who has admittedly been injured, one who has been admittedly been injured as the result of the negligence of another or more than one, and that's the point. And, Senator Barkhausen, you couldn't have been more wrong. Nobody who is not at fault is assessed damages. There is fault and that fault was the proximate cause of the injury to this injured person. Any one of the eleven million four hundred thousand in Illinois who get injured as the result of another person's negligence has a right to recover. Bear that in mind as we go through this whole discussion. Let's don't worry about the insurance company and let's don't worry about the major manufacturer and the businessman, let's keep an eye on the injured party because that injured party could be very well be a member of your family or mine and they have rights, and before we willy-nilly take away those rights, we better know what we're doing, because why are we taking away these

rights? 'Cause the insurance company won't make insurance available or somebody is paying too much, and yet we have no specific, definitive, documented evidence that if, indeed, we take away rights of an injured person, of an injured citizen, if, indeed, we take away rights, what's the result? Will the result be availability? Will the result be affordability? We don't know. It's been done in other states and other states have the same exact problem that we are confronted with here in Illinois, even though they've abolished, limited, curtailed, taken away rights of injured people. We ought to be very, very careful. And what we are saying here is we're willing to effect a compromise. We're willing to say that even though you who are at fault and that your action, your negligence caused injury to another, you're not going to be totally liable, you'll be comparatively liable in accordance with your degree of negligence and fault, and I think it's a reasonable, workable compromise. I urge the adoption of Amendment No. 1.

PRESIDING OFFICER: (SENATOR SAVICKAS)

There further discussion? If not, Senator Luft may close.

SENATOR LUFT:

Thank you, Mr. President. There's been three words used that I find a little difficult to understand and I guess it depends on definition. One Senator said that this legislation or this amendment was not significant. Another said that it was cosmetic. Another referred to it as really not a serious approach to joint and several liability. Let's go back to my original example of the plaintiff who was found fifteen percent at fault, the defendant found ten percent at fault and another defendant at seventy-five percent at fault. And let's pretend for a second that your neighbor, worth a half a million dollars, is Defendant No. 1, at fault ten percent. Under the law today, the plaintiff can get him for

absolutely everything he has. Under this bill, all that they could come up with that he would have to pay is ten percent of the ward. So, in fact, it is a significant amendment. It is not cosmetic and it is a serious approach to an attempted compromise, and I did not say it was a compromise, I said it was an attempt at compromise. So, under my scenario, you ask your neighbor, who's Mr. Ten Percent here, whether this is significant. You ask the insurance company who is insuring Mr. Ten Percent if this is significant, if it's cosmetic or it's serious. I would move for the adoption of this amendment.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Luft moves the adoption of Amendment No. 1 to Senate Bill 2263. All those in favor indicate by saying Aye. Those opposed. The Ayes have it. A roll call has been requested. All those in favor of adopting Amendment No. 1 will vote Aye. Those opposed will vote Nay. The voting is open. Have all voted who wish? Have all voted who wish? Take the record. On that question, the Ayes are 30, the Nays are 28, none voting Present. Amendment No. 1 to Senate Bill 2263 having received the majority vote is declared adopted. Further amendments?

SECRETARY:

Amendment No. 2, by Senator...

PRESIDING OFFICER: (SENATOR SAVICKAS)

Oh, just a minute. Before we call that, we do have a presentation. We have Senator Jerome Joyce here for the presentation.

SENATOR JEROME JOYCE:

Thank you, Mr. President. I would like to take this opportunity to introduce to you the Bishop McNamara High School from Kankakee and its principal, Father Erwin Savela and Coach Rich Zaninna, who...with there three A championship football team. Father Savela, make it brief, Father, no

sermons.

FATHER SAVELA:

(Remarks made by Father Savela)

RICH ZANINNA:

(Remarks made by Rich Zaninna)

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Maitland, for what purpose do you arise?

SENATOR MAITLAND:

Thank you, Mr. President. Just a comment to Senator Joyce as he's...I wish I could have had the opportunity to say this while he was still up there and while the school was still there, but the...the team that that fine group of boys beat was Olympia High School where my son played football, but congratulations anyway.

PRESIDING OFFICER: (SENATOR DEMUZIO)

All right, we are on the Order of Senate Bills 2nd Reading, Senate Bill 2263. Further amendments?

SECRETARY:

Amendment No. 2 offered by Senator Luft.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Luft.

SENATOR LUFT:

Thank you, Mr. President. This is another attempt at compromise and what we're trying to do with this amendment is deal with frivolous suits. And the amendment is based on Rule 11 of the Federal Rules of Civil Procedure which also deals with, obviously, frivolous suits, and what we're simply doing is that it allows sanctions against the defendant's insurance company as well as the attorney involved.

PRESIDING OFFICER: (SENATOR DEMUZIO)

All right, Senator Luft has moved the adoption of Amendment No. 2. Discussion? Senator Schuneman.

SENATOR SCHUNEMAN:

Thank you, Mr. President. Is this...could I check the

amendment number, please, the LRB number 8411092DAMRAM01?

Thank you.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Secretary indicates that that is the number. Senator Schuneman.

SENATOR SCHUNEMAN:

Mr. President and members of the Senate, this is an attempt by the sponsor to deal with an important issue and while we had...and do have other language that we would somewhat prefer, frankly, we don't think this is something that we ought to be arguing about, and I would suggest that the members on this side of the aisle support Senator Luft's amendment.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Further discussion? Senator Barkhausen.

SENATOR BARKHAUSEN:

Mr. President and members, I would concur in Senator Schuneman's remarks, but I would ask a question of the sponsor.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Indicates he will yield. Senator...Barkhausen.

SENATOR BARKHAUSEN:

Senator Luft, if I can ask you...just for a moment on...if you could...we could take a look at page 2, beginning lines 16 and then 17 of the bill. I just have a question about legislative intent.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Luft...

SENATOR BARKHAUSEN:

If you...if...

PRESIDING OFFICER: (SENATOR DEMUZIO)

...Senator Barkhausen.

SENATOR BARKHAUSEN:

Looking at that section, Senator, it...it says if a

pleading motion or other paper is signed in violation of this section, and I understand that this language, I think, is...is adopted from the proposals that have been made by some of the groups concerned about frivolous suits, but to my own mind, I define that language in violation of this section to be slightly vague and I...I wonder if what is meant by that language is that...in addition to being signed, all pleadings and motions and so forth have to be well-grounded, in fact, and warranted by existing law and good faith and...and if they're not so grounded or so warranted, then they're in violation of this section. Do you think that's what that means?

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Luft.

SENATOR LUFT:

Yes.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Further...further discussion? Senator Smith.

SENATOR SMITH:

Thank you, Mr. Chairman and to the members of the Senate. I stand on a point of perfect...personal privilege, if I may.

PRESIDING OFFICER: (SENATOR DEMUZIO)

State your point.

SENATOR SMITH:

I'm proud to present to this august Body today a school from my district, the Mollison School. It's located at 4415 South King Drive and we have the instructors with them, Miss Loften, Miss Smith, Jones and Talbet. I'd like for them to stand and be recognized.

PRESIDING OFFICER: (SENATOR DEMUZIO)

If our guests in the gallery will please rise...recognized by the Senate. Welcome to Springfield. All right, further discussion? Senator Luft has moved the adoption of Amendment No. 2 to Senate Bill 2263. Those in

favor indicate by saying Aye. Opposed Nay. The Ayes have it. Amendment No. 2 is adopted. Further amendments?

SECRETARY:

Amendment No. 3, by Senator Luft.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Luft.

SENATOR LUFT:

Thank you, Mr. President. Again, an attempt at compromise and...the subject matter in this case is punitive damages. What we do with this amendment is leave it to the discretion of the trial judge to limit...punitive damages and to determine whom such damages should be pay...paid. There were other bills that mandated certain limits and everything. In this case, we leave it to the discretion of the judge.

PRESIDING OFFICER: (SENATOR DEMUZIO)

All right,...Senator Luft has moved the adoption of Amendment No. 3. Discussion? Senator Schuneman...

SENATOR SCHUNEMAN:

Well, I yield to Senator...

PRESIDING OFFICER: (SENATOR DEMUZIO)

...or Senator Rupp. Senator Rupp.

SENATOR RUPP:

...one question I would like to ask, as far as punitive damages are concerned, isn't that, Mr. Sponsor, the same as a fine? Isn't that the same type...this is a...a punishment type part of the...the...the circumstances?

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Luft.

SENATOR LUFT:

It's my understanding that punitive damages are designed to punish or deter other misconduct.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Rupp.

SENATOR RUPP:

That's what I was getting at, that it is, it's a fine basically for some malicious...or some act that should not have been...should not have occurred, and it just seems like here we have one part of our Criminal Code where a fine goes to a plaintiff. In every other instance, I believe the fine goes to the court or some other governmental unit. Our suggestion is going to be that these punitive damages, they can still be awarded, but they go into a fund in the Department of Rehabilitation Services in order to take care of those who are injured. That's going to be our suggestion later on and I think that should be considered. It seems like for us to just permit the judge to decide, and there are a couple of things that he's going to be able to decide; one, he's going to be able to decide if any is...of this punitive damage award is given to the rehab. services, he's going to determine the percent of the award paid to the attorney without regard to the contingency fee arrangement, except the judge can't increase it anymore but he can award and the judge is going to decide it. I think it's...again, we've heard instances here where we think we should make the laws, not the courts. I think that's the...the weakness in this. I think we are the ones who should decide punitive damages go to the Department of Rehabilitation and not up to someone else.

PRESIDING OFFICER: (SENATOR DEMUZIO)

All right, discussion? There are several...indications of...several speakers. Senator Geo-Karis.

SENATOR GEO-KARIS:

Mr...Mr. President, will the sponsor yield for question?

PRESIDING OFFICER: (SENATOR DEMUZIO)

Indicates he will yield. Senator Geo-Karis.

SENATOR GEO-KARIS:

Mr. Sponsor, at the present time, the court...the judge can decrease the amount of punitive damages. So, that's not

really the gist of your amendment, is it?

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Luft.

SENATOR LUFT:

Yes, it is, Senator.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Geo-Karis.

SENATOR GEO-KARIS:

Well, I submit...Mr. President and Ladies and Gentlemen of the Senate, a judge can reduce the judgment, can reduce the punitive damages part of the judgment now without any legislation to do so, but I think what you're going to is the fact for the rehabilitation service, is that it?

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Luft.

SENATOR LUFT:

No, we allow the judge the discretion of awarding a percentage or whatever he sees fit to go to DDR...or...or I'm sorry, Senator, or any other entity.

PRESIDING OFFICER: (SENATOR DEMUZIO)

All right, further discussion? Senator Barkhausen.

SENATOR BARKHAUSEN:

Mr. President and members, in addition to supporting the remarks of Senators Rupp and...and Geo-Karis,...I was...note also that the ICIC proposal and others similar to it that have been made all contain some form of limitation on punitive damages, and I feel...I think most of us on this side of the aisle feel that...that any proposal dealing with punitive damages that does not to one degree or another impose some kind of a cap is a, again, meaningless or cosmetic remedy. I believe the ICIC proposal would...would limit punitive damages to an amount equal to compensatory damages. If we are to vary that proposal somewhat, certainly we can think of other possibilities whether it's a...a dollar amount that

would adequately compensate those who were most seriously injured or perhaps be a figure that would be some sort of a multiplier of compensatory damages, but...a punitive damages remedy without a cap of some kind...is, indeed, extremely meaningless and, therefore, I think we should reject this amendment.

PRESIDING OFFICER: (SENATOR DEMUZIO)

All right, further discussion? Senator Berman.

SENATOR BERMAN:

Thank you, Mr. President and Ladies and Gentlemen of the Senate. It's interesting also on...when we talk about punitive damages. Punitive damages, ladies and gentlemen, I would submit to you, if you pass this one or you pass the one that...that even abolishes it or gives it to the Department of Rehabilitation Services, it's not going to mean a nickle off of your premiums to your insureds, because, number one, punitive isn't even covered by your insurance policies. All right? Now keep that in mind. The insurance companies that talk about punitive damages don't pay any money for punitive damage awards. Let me tell you what punitive damages does. It delivers a message by twelve, honest, independent jurors that the defendant has so violated the rules of society that punishment should be imposed. Let me give you one example. There was testimony in California regarding the Ford Pinto gas tank. That jury determined that the business decision that Ford Motor Company made that involved...and I might be wrong on my numbers but I think it was like four bucks and fifty cents to change the position of the Pinto gas tank resulted in a number of flaming deaths to people that bought the Pinto, and Ford Motor Company made the business decision that they didn't want to spend four bucks to change the position of the gas tank. That jury decided that millions of dollars should be assessed as punitive damages. Now let me comment to you about the amendment that I believe is going to

be coming in a few...in a little while...I was going to say few minutes, I'll...I'll withdraw that, a little while that gives the entire punitive damage award to the Department of Rehabilitation Services. Let me tell you what the problem is and I address this to my good friends and colleagues on the other side of the aisle that talk about self-help and self-enterprise and keeping government out of the individual initiatives. You're not going to get...let me back up. Under their proposal, it's my understanding that no part of a punitive damage award will go towards attorneys' fees. Now what you're going to do with...with that is this, in order to prove a punitive damage account...award or account requires substantially more work on behalf of the plaintiff's attorney. If you agree with me, and I think you have to in...for example in the...Pinto case and other cases and in particular in cases of toxic waste and indifference by industry to the best interest of society, there is a purpose served by punitive damages. In order to keep that socially redeemable purpose of punitive damages and allow that to be presented to the jury, you have to compensate the people that are putting that issue before them. That involves attorneys' fees...that involves attorneys' fees; otherwise, there's no incentive to go to the trouble and the work to present that to the jury. This amendment, again, is a reasonable compromise along the socially redeemable purpose of punitive damages and, ladies and gentlemen, they're not often imposed, they're rarely imposed, they have no significant...no significant impact on the cost of doing business in this State, none...none. The amount of the awards are infinitesimal. You're making a very important mistake if you reject this amendment and abolish punitive damages and take away the incentive for proving punitive damages. I urge an Aye vote on the compromise Amendment No. 3.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Further discussion? Senator Schuneman.

SENATOR SCHUNEMAN:

Thank you, Mr. President. A question of the sponsor.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Indicates he will yield. Senator Schuneman.

SENATOR SCHUNEMAN:

Senator, what do you understand the purpose of punitive damages to be?

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Luft.

SENATOR LUFT:

I answered earlier that I feel that it is the attempt to deter or punish misconduct.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Schuneman.

SENATOR SCHUNEMAN:

Why should the fine...if that's what...I think we can agree that it's some kind of a fine or punishment that's leveled on...leveled against the wrongdoer, why should that award go to the injured party when the injured party has already been made whole in the civil case?

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Luft.

SENATOR LUFT:

First of all, we make allowances in this bill for...it does not have to go to the injured party. We let the judge determine what percentage goes to the injured party and what percentage could go to another cause. Secondly, if there are no punitive damages, what incentive is there for anybody not to pursue a reckless course?

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Schuneman.

SENATOR SCHUNEMAN:

Thank you, Mr. President. Well, I think you've...I think

you've made our case. The problem with the amendment is that it allows the court to continue the practice of awarding punitive damages to the person who has already received the compensation awarded by the court. And our approach to this is that if...if punitive damages are to be assessed, and no doubt there are cases where they should be assessed, that those damages should go to the public good, not to enrich the party who has already been made whole. Now I think Senator Berman made a point about legal fees and, you know, somewhere along in this process, perhaps, there should be some reasonable attorney fees allowed for prosecuting a...a punitive damages case, I'm not sure about that; but I think that the problem with the amendment that Senator Luft is offering is that it allows the court discretion to continue the same practice that has caused punitive damages to be so criticized in the past, and, frankly, an awful lot of us are losing confidence in what the courts are doing and the direction in which they're going, and I think that it's time to take that discretion away from the court and tell them what should be done with punitive damages.

PRESIDING OFFICER: (SENATOR DEHUZIO)

Further discussion? Senator D'Arco.

SENATOR D'ARCO:

Thank you, Mr. President. I...I'm a little baffled by what Senator Schuneman means by making somebody whole, because when the court or a jury awards punitive damages, the conduct of the defendant is so outrageous, it is so blatant and so disproportionate to the injury that the judge is saying you've got to pay more to this plaintiff that has sustained this grievous wrong in harm because you almost intentionally committed this grievous act. It almost borders on being criminal. That's why you have to pay those damages. It has nothing to do with making him whole, you can never make him whole, but you've got to pay the price for your conduct

and what you did was absolutely wrong. It wasn't a question of mere negligence, it was on the verge of intentional wrongdoing, that's why you've got to pay. And thank God that you're not one of those plaintiffs that have to suffer that grievous injury.

PRESIDING OFFICER: (SENATOR DEMUZZIO)

Further discussion? Senator Luft may close.

SENATOR LUFT:

Thank you, Mr. President. I would only point out that we are, once again, trying to have a compromise amendment dealing with punitive damages and to point out, in fact, perhaps the compromise and the change in the system as it exists today is that we do allow the judge or the jury the discretion to distribute punitive damages for the public good, and I would move for the...

PRESIDING OFFICER: (SENATOR DEMUZZIO)

Senator Luft moves the adoption of Amendment No. 3 to Senate Bill 2263. Those in favor indicate by saying Aye. Opposed Nay. The Ayes have it. Amendment No. 3 is adopted. Been a request for a...a roll call...the question is, Senator Luft has moved adoption of Amendment No. 3 to Senate Bill 2263. Those in favor of the adoption of Amendment No. 3 will vote Aye. Those opposed will vote Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, the Ayes are 30, the Nays are 28, none voting Present. Amendment No. 3 is adopted. Further amendments?

SECRETARY:

Amendment No. 4,...and I have been asked to read the LRB number...

PRESIDING OFFICER: (SENATOR DEMUZZIO)

Is this a committee amendment?

SECRETARY:

...no these are all Floor amendments.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Okay. Mr. Secretary.

SECRETARY:

LRB 8411092DAMRAM05.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Luft.

SENATOR LUFT:

Very simply, Mr. President, Amendment No. 4 would allow admission into evidence of collateral source payments...payments as evidence. This is insurance payments and any other awards that may be forthcoming to the plaintiff.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Luft has moved the adoption of Amendment No. 4. Discussion? Senator Schuneman.

SENATOR SCHUNEMAN:

Thank you, Mr. President. While we have a different version of the same idea, I think that the two versions are close enough that we should agree with Senator Luft's amendment. So, I would urge support.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Further discussion? If not, Senator Luft has moved the adoption of Amendment No. 4 to Senate Bill 2263. Those in favor indicate by saying Aye. Opposed Nay. The Ayes have it. Amendment No. 4 is adopted. Further amendments?

SECRETARY:

Floor Amendment No. 5...excuse me, by Senator Luft. And it's LRB 8411092DAMRAM04.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Luft.

SENATOR LUFT:

Thank you, Mr. President. Since the last four amendments went on in order, I don't think this amendment is necessary and then would...would now ask leave to withdraw the amendment.

PRESIDING OFFICER: (SENATOR DEMUZIO)

All right, Senator Luft seeks leave to withdraw Amendment No. 5...Amendment No. 5 is withdrawn. Further amendments?
SECRETARY:

Amendment No. 5 offered by Senators Rupp and Schuneman.
LRB No. 84110924CMIAM01.

PRESIDING OFFICER: (SENATOR DEMUZIO)

All right, Senator Rupp, are you handling the amendment?
Senator Rupp.

SENATOR RUPP:

Thank you, Mr. President. This amendment deals with the joint and several liability problem. Basically, there have been a lot of arguments pro and con on this. I do believe that the weight, however, should be given to the fact that...a court case decides the amount and the proportion of fault and also I think we heard mentioned here proximate cause and the fact that the...those who are...the inference was that...those who have the higher percentage of fault basically bear the proximate cause label too. I think...if I...am not an attorney again and I apologize for it, but...not really...not really, I almost choked on that, but I also believe that if I were just at a one or two percent fault, I am also part of the proximate cause. So, the argument about proximate cause, I think, does not carry too much weight. But I do believe that the proposal that we have bring...brought forth in this is a much more fair arrangement than the previously adopted amendment, and I ask that it be...this amendment be adopted.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Rupp has moved the adoption of Amendment No. 5.
Discussion? Senator Berman.

SENATOR BERMAN:

Thank you, Mr. President and Ladies and Gentlemen of the Senate. I suggested to Senator Savickas that he may want to

renew his bill that would allow legislators to take the bar exam, because after this debate today, I think we're all going to be experts on tort law. I want to partially restate but look at...in a little more depth what this amendment would do as far as the rights and obligations of citizens of Illinois. And let me give you a couple of clarifying points and I think Senator Rock corrected Senator Barkhausen in a comment...I don't think Senator Barkhausen really meant to say that a person who's not at fault pays something that they aren't obligated for. Joint and several liability doesn't cost anyone who is not a contributor to an accident...to an injury anything. You have to be a participant and have some degree of fault in order to be subject to joint and several liability. Now, what joint and several liability is...is a process to determine on a social level who is best able to, one, chase parties who are at fault for the collection of a judgment and, two, where somebody that's at fault cannot pay and somebody else that's at fault can pay, who should bear the loss, the person who has been injured or the person who has contributed to the injury? That's the issues in joint and several liability. Just as...in aside Senator Kustra talked about joint and let me tell you that joint liability is today the same because we are talking about people who together...together, jointly, in concert, in some degree have contributed to the injury that the plaintiff has been awarded damages for. For example, I'm walking on my way to church, or synagogue, Senator Carroll, and two cars collide in the intersection and one of those cars veers off of the impact and hits me while I'm walking on the sidewalk, and my injury is worth five hundred thousand dollars. One of the defendants is twenty-five percent at fault and the other defendant is seventy-five percent at fault. The reason for that percentage...and this is a typical case, I want you to know. There's a big argument between the two drivers as to whether

one of the lights was green or one of the lights was red, and the jury hears both sides and they decide that somebody ran the red light, that's the guy that's seventy-five percent at fault, but the other one was speeding to fast and should have watched out and they're twenty-five percent at fault. Now the person that's twenty-five percent at fault has a five hundred thousand dollar liability policy and the person that's seventy-five percent at fault has only a hundred thousand dollar policy. If this amendment passes and my injury is worth five hundred thousand dollars, I will be able to collect a hundred and twenty-five thousand dollars because the person that was seventy-five percent at fault has only a hundred thousand dollars of assets available; in other words, they've only got a hundred thousand dollar policy, they should pay three hundred and seventy-five thousand dollars but they're only going to pay a hundred thousand. The person...I'm sorry, I gave you the wrong number. The person that's twenty-five percent at fault should pay a hundred and twenty-five thousand, so that I will wind up receiving a hundred and...plus a hundred and twenty-five...two hundred and twenty-five thousand dollars. I will go home receiving only two hundred and twenty-five thousand dollars for an injury that cost me five hundred thousand. Now, the question is, should the person that was twenty-five percent at fault pay anything more than a hundred and twenty-five thousand dollars? And my answer to you is, from a socially...from a social policy point of view, the answer is yes and I'll tell you why. If that car hadn't been in the intersection and if that accident...wouldn't have happened, I would not have been injured. It's just that simple. If the two cars didn't cause that accident and I had not been hurt, there'd been no issue. The fact that there were two cars that contributed to a situation that caused my injury, I should not have to bear the loss. One or both of the responsible parties that con-

tributed to that accident, I didn't, they did, they ought to make me whole. Now, if the...if both of them can't add up to...half a million dollars, that's the breaks of the game, but if both of them, one way or another can, that makes me whole. What you're doing by this amendment is shifting the responsibility...the responsibility from those who contributed to the accident to the plaintiff who did not contribute to the accident and that's the issue. And let me ask those of you who want to debate this subject, don't bring into the debate the question of the...contribution of the negligence of the plaintiff because it has no role...it has no role in joint and several liability. It plays no point in it. You're only debating here as to whether somebody who is responsible should pay more than their share. That's the issue and the decision is, does the person who was hurt and not contributed to his injury should he bear the loss or should the person that contributed to the injury pay more than their loss? And there's arguments on both sides. I suggest to you the more socially acceptable policy, the fairer policy, the more humane policy, the policy that spreads the risk and saves, I would point out, the taxpayers an awful lot of money because if it...if the plaintiff is not made whole, it winds up on public aid and other types of taxpayer funded programs. The person that has contributed to that injury should be the one that pays along with others that have contributed to that injury. I urge a No vote on Amendment No. 5.

PRESIDING OFFICER: (SENATOR DEMUZIO)

All right, further discussion? Senator Rock.

END OF REEL

REEL #4

SENATOR ROCK:

Thank you, Mr. President, Ladies and Gentlemen of the Senate. I have probably attended as many meetings with the various interested parties as anyone presently in the building, and I think there is a good faith effort on all sides to effect a compromise that will hopefully satisfy the...the needs that...that are obviously there and at the same time protect the rights of the injured party. And, again, I harken back, and don't forget we are dealing with the rights of the people we represent when they are injured due to the negligence of another. Elimination of joint and several has a devastating effect on the ability of the injured plaintiff to obtain compensation for injuries that he didn't cause, it was caused by the negligence of another. We are working toward a compromise, and I suggest to you that Amendment No. 5 should be rejected for a number of reasons. This is not any attempt at a compromise, this is a flat out statement that we're just abolishing this right that you as...a injured party have, we're just taking it away from you. And secondly, if I have the right amendment, which is LRB number 01 on the end, I'd like to point out particularly to the members on my side of the aisle because I am asking each and every one of them to vote to reject this amendment, obviously because of the substance, obviously because of the continuing effort of the compromise, and you can be sure we'll be voting on this subject matter in one form or another again; but more than that, as a technical matter, Senator Rupp's amendment now deletes everything after the enacting clause. So with one fell swoop he is deleting the prior four amendments that Senator Luft is...is...has put on, couple of which were agreed to. I don't think that's fair. I think we can argue

about whether or not joint and several ought to be abolished without deleting everything else that's involved. But to have this amendment at this time is in bad faith, irrespective of the substance, and the substance...we're going to argue about for a long time, because, again, why are we taking away a right of an injured party? What's the quid pro quo? What's the social good? The social good is, we hope, lower insurance premiums. Is it a fact? We don't know, because I read some of those letters that the Governor has received and it said, well, we can't really tell you because we're subject to antitrust and we can't act in concert; I don't know if it's going to reduce premiums. And I sat in my office in Chicago and talked with a number of representatives of the insurance industry in this State and they were truly in good faith unwilling to say categorically, yes, the rates will go down. So you have to balance. What in the world are we doing if we're not assured of the result? And I think by virtue of this amendment, Amendment No. 5, which deletes all that we've done so far and says this is what we want, we're taking away this right with no assurance that we're going to come to the proper conclusion. I urge rejection of Amendment No. 5, and ask everyone on this side, in the spirit of ultimate compromise, as a responsible legislator, vote No on Amendment 5.

PRESIDING OFFICER: (SENATOR DEMUZIO)

All right. Further discussion? We have several speakers. Senator Luft.

SENATOR LUFT:

Thank you, Mr. President. A few weeks ago when I became the sponsors of both 2260 and 2263 dealing with tort reform in the State of Illinois, I tried to put myself in a position of effectuating change that did not satisfy any special interest group but hopefully the people that we're supposedly here to represent. My decision at that time was also to sup-

port Amendment No. 5, which if you will note on Senate Bill 2260 I am the sponsor of Amendment No. 1 which does the same. During this whole process I have tried to be fair, up front, and inform absolutely everybody involved, or at least those that I thought were involved, of what I was attempting to do, what I was doing with these bills and where we were attempting to go. I think that I have been acceptable to every compromise that exists. But now, today, we come up with this, striking everything after the enacting clause...everything after the enacting clause. Not one individual came to me and said, Dick, we don't like your first four amendments, we're going to wipe them out with Amendment No. 5. Nobody said that to me. You stood over there and said that two of my amendments were good amendments, and now you're striking them out. That is not fair at all, and it only goes to show you why we need lawyers, why we need insurance companies and why we need strong laws to protect ourselves, 'cause we can't even trust ourselves, we need help, and you just lost me, I'm not on your side anymore on this. You do not strike other people's amendments without talking to them and...everybody here has been around here long enough to know at least some definition of fair, and apparently there are still those that don't. Thank you.

PRESIDING OFFICER: (SENATOR SAVICKAS)

George Thompson from the Chicago Tribune, a staff photographer, requests permission to take still photos. Is leave granted? Hearing no objection, leave is granted. Senator Schuneman.

SENATOR SCHUNEMAN:

Thank you, Mr. President. The arguments of the two previous speakers about fairness are entirely misplaced, and I...I don't know whether you're serious in those arguments or not. You want to talk about fairness, Senator, you are the sponsor of a bill which did all these things that we're ask-

ing for in these amendments. It was your people on your committee that struck everything out of those bills and made them lifeless, we're trying to put some more life back into these bills. When the bills were to be called last week, you wouldn't call them. When the bills were to be called this week, you wouldn't call them. We had our amendments drafted and ready to go on the basis that we thought the bill was going to be debated. And that's the only reason that it contains the language which would delete the enacting clause. I think you know, as we know, that there are amendments...Republican amendments following which put back into the bill those very things that we've agreed to. So if anybody is persuaded by this righteous anger over some unfair practice, that's a bunch of garbage. As to the issue...we have all either attended hearings or we have heard from our constituents that we need to abolish and get away from the doctrine of joint and several liability. You've heard from local governments, they want this abolished. That's what this amendment does. This is the deep-pockets theory. Now, I want to...I want to cite a case to you to prove how this really works. This is an Illinois case, it involves a woman who was driving a car who was intoxicated. It was proven in a blood alcohol test at the hospital, she had from 1...or .137 to 152 blood alcohol at the time of the accident. She ran a stop sign and...and T-boned another car. Whose fault is it? She was seriously injured. Whose fault was that injury? Well, she claims it was the fault...apparently the other...she claims that it was the fault of the township who owned the sign, the stop sign that she ran. And that stop sign was apparently about twenty percent off from the way it should have been, either tilted to the side or tilted forward, and that...that she claims that that's the reason she ran the stop sign and...and caused the accident. I ask you again, who caused the injury? Think about it. She brought

suit against the township for millions of dollars. It was a small township and they had...they didn't have very much insurance, they only had three hundred thousand dollars insurance. What do you think the award...how do you think the award came down? Who do you think had to pay? Of all...of all entities, the county had to pay because the court held that counties somehow have jurisdiction over township highways. Now, you're all legislators, you know to what extent counties really control township roads, don't you? The jury in that case awarded a total judgment of three million one hundred and sixty-two thousand dollars. The county that had umbrella liability insurance sufficient to pay the claim was required to pay two million seven hundred and eighty-seven thousand dollars. Now that's the judgment; obviously, that case is going to be appealed because it seems to be completely unfair. This is the essence of what we're talking about here. You get...you get results which have nothing to do with fairness. This doctrine should be abolished, and if we want to...if we want to compromise on something, and I'm willing to compromise, but I think we all have to realize that we're dealing with a House Chamber who will not even hear any of these bills, they won't permit them to be debated. And in all due credit to the President and to the majority, you have finally allowed a debate on this issue and we thank you for that. But that's not happened in the House and it's not likely to happen there. So if we want to pass something out of here that is meaningful at all, you've got to support this amendment. I urge the adoption.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Watson.

SENATOR WATSON:

Well, thank you, Mr. President. One of the previous speakers made a remark that the insurance industry has not come forth and said that their rates will decrease in regard

to elimination of joint and several liability. And several meetings that I've attended, and I was in one with a group from the Country Companies, and they said that if elimination of joint and several liability and also some tort immunity was established that they would get back into that insurance...provide that insurance and that's one of the big problems we have simply now is availability. If we provide some relief for these people and create more of a positive market for them, availability increases and with availability naturally comes cost reductions. I have a letter here from the Allstate Insurance industry from the president of the company, Richard Haien, I believe his name is, and I'd like to just read a statement that he mentions in his letter to the Governor, "If the present court...imposed pure comparative negligence law is changed to a modified system and the deep pocket of joint liability is eliminated, we will expand our writings of many classes of commercial liability insurance. We will reduce our rates in particular for most commercial...commercial automobile liability insurance by three to eleven percent and for municipal liability insurance by five to ten percent." So I think we are seeing a commitment from the industry that they are willing to gaze into a crystal ball, which is really unfair for us to ask them to do, but gaze into a crystal ball and say, we will be reducing rates and we will try to make availability and affordability of insurance more readable to units of local government and to small businesses throughout this State. I think this is a good amendment and I believe it needs to be adopted. Thank you.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Barkhausen.

SENATOR BARKHAUSEN:

Mr. President and members, I'll try to make my remarks brief in light of the fact that much of this debate took

place also on the earlier amendment. As a point of clarification I want to point out that I did not say...or certainly did not mean to say that...that joint liability...potentially imposes liability on one who is...is not to any degree at fault. I said or meant to say that it imposes liability in greater proportion and to a greater extent than a party is found to be a fault and then posed the basic question as to whether that was fair. One of the earlier speakers on the other side conceded that there are, indeed, different ways of looking at this question and, in fact, there are. But rather than looking at...at the issue solely from the standpoint of the rights of the consumers, and I would not for a minute say that we ought in any way to lose sight of...of the importance of the rights of the consumers, but the job of us, as legislators, is, of course, at all times and particularly on an issue of this kind to try to balance the various interests in society; and in...in looking at the rights of victims or...or the rights of consumers I think we ought to apply as broad a definition as we possibly can in determining...or defining what we mean by consumer. We have had involved in the various discussions on this issue IPAC which seems to take it upon itself to be the...the sole spokesman for the rights of the consumers but consumers in this sense are only being defined as victims. Well, consumers are also...are they not, taxpayers who are paying higher taxes because of the insurance bills being assessed to units of government? Consumers are also, are they not, purchasers of goods and services, all of us and our citizens who are paying higher prices because of escalating insurance premiums? And also I think it needs to be pointed out that this is just not a question of how this issue affects insurance companies, for more and more of our entities in society nowadays by choice or necessity are self-insured; and without regard to how any remedy dealing with joint liability affects insurance companies or

the ability of insurance companies to lower prices, we have to recognize that a remedy of this kind doing away with joint liability will significantly affect the payouts not only of insurance companies but of entities that are self-insured. As I mentioned in my earlier remarks on the previous amendment, all of those who are interested in some kind of meaningful solution to the insurance problem agree that any kind of a solution that we might come up with begins, and I emphasize begins, with the approach that is taken by this amendment, the abolition of joint liability. And I urge the adoption of this amendment.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Kustra. Senator Rupp.

SENATOR RUPP:

...close.

PRESIDING OFFICER: (SENATOR SAVICKAS)

No, your...your light was on for speaking. I'm sorry. Senator D'Arco. Senator Zito. If there's no further discussion, Senator Rupp may close. Senator Geo-Karis.

SENATOR GEO-KARIS:

Mr. President, Ladies and Gentlemen of the...Senate, I would like to point out to one of the prior speakers who said that if he got hurt five hundred thousand dollars worth and the other...party had only a hundred and twenty-five thousand, he could only get that. We also have written in most of our policies underinsurance to provide, if I understand correctly, for insurance to cover some of our injuries past the amount of policy that the fellow has who hits us. So, I think perhaps this amendment should be considered.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Before we call on Senator Rupp to close, we'd like to recognize the distinguished Speaker of the House of Representatives, Michael Madigan, is in attendance today. Senator Rupp may close debate.

SENATOR RUPP:

Thank you, Mr. President. I'm...I'm real glad to hear that we're finally coming to a...an atmosphere of fairness,...that's...that's fine, it's great to hear that. Also great to hear about that spirit of ultimate compromise, we're looking for an example of it. I assure you, there was no bad faith in anything that we on this side did. I think you folks knew that we had to prepare these amendments this way, we do have four more. I think that you should realize that this basically is the first of the five amendments that we will have, and this is the start to reply and to respond to the various groups and I would imagine that every member on this Floor has had numerous calls, a lot of pressure. This is what we're talking about, we're at the door right now, this is the bill, this is the start. The ICIC group put the pressure in it, the Chamber has had their share, various business entities have been in it, individuals, governmental units. Now, are you not going to respond? I think you know that there are thousands and thousands of people out there with a problem with their insurance. When I was in the insurance business, I remember we used to have trouble placing a...a long-haul truck that carried gasoline or...or propane. That's not the problem now. Every corner store, park district, governmental unit is having the same problem. I would like to quote just the Mayor of New York City, they for the most part, you know, are self-insured, and the liability crisis that the state...different localities and school districts had the same problem as we are having here. The City of New York realizes the problem and it's become evident to them because they've had extraordinary increases in their own tort liability payments over the last several years. They've looked at these trends carefully, and I am quoting the mayor, "We have looked at these trends carefully, and based on our experience, we believe that this crisis is

one caused...ultimately by the current system of tort law and the manner in which damages are determined against municipalities. A lot has been said about the fact that the insurance industry has helped to bring about the crisis. I think we're beyond that point now. There's fault, there's a lot of fault, there's enough fault to go around, everybody can have their share of fault. But those factors, when you consider the situation, our situation,"...and this is still the mayor and I'm quoting him, "as a self-insured entity simply cannot explain the dramatic five-fold increase in the city's tort payments and the average cost per case since 1979, and precisely because we are self-insured, we can measure the increase in our liability and give you figures that illustrate our mounting cost in a way that is completely separate from the issuance or...or issue of insurance premiums. New York City, since 1977 when they paid out 24.2 million in personal injury cases at an average settlement of seven thousand one hundred and twenty-seven dollars. In 1985 that twenty-four million figure rose to a hundred an fourteen million and the seven thousand dollar figure rose to thirty-one thousand." I urge you to remember that you have been contacted on this, there are thousands of people looking to us for some help. And really what I would like to do is to ask that you vote for this and that you give us an example of that fairness and ultimate compromise attitude that you're talking about.

PRESIDING OFFICER: (SENATOR SAVICKAS)

The question is, shall Amendment No. 5 to Senate Bill 2263 be adopted. Those in favor will vote Aye. Those opposed will vote Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. Senator Schuneman, for what purpose do you arise?

SENATOR SCHUNEMAN:

Mr. President, having voted on the prevailing side, I move to reconsider the vote by which Amendment No. 5 was adopted.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator...Schuneman votes to reconsider the vote. Senator Geo-Karis moves to Table that motion. All those in favor indicate by saying Aye. Those opposed. The Ayes carry it, the motion carries. Further amendments?

SECRETARY:

Amendment No. 6 offered by Senators Schuneman and Rupp. LRB No. 8411092RCMLAM02.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Schuneman.

SENATOR SCHUNEMAN:

Thank you, Mr. President. For...Mr. President, first of all, before I proceed with this amendment, for the information of the members, there was never any intent to...delete those issues which we had agreed to. There are amendments coming which would reinstate the collateral source rule and the frivolous lawsuits issue which we had agreed to. So, there's no intent on our side to...to delete that from the bill. This amendment would adopt as the policy of the State of Illinois modified comparative negligence. And I'm sure that the attorneys in our...particularly the trial lawyers who are members of this Body will debate this...the technicalities of this issue. But for those of us who are not trial lawyers, I'd like to explain this issue as I know it. Prior to about 1981 in this State, the...the doctrine of liability, in effect, worked this way, that if you were injured in an accident and you had contributed to that accident; in other words, if you were somewhat negligent yourself, then theoretically you were barred from recovering anything from the other people who perhaps were more negligent than you were. There were arguments for a long time

that that sometimes resulted in unfair...results in the court, and I think probably those arguments were justified. But the Illinois Supreme Court in about 1981 threw out that old contributory negligence method in the State and adopted what is known as pure comparative negligence. Now I submit to you that that's the name but it's really not as pure as we might think. But in effect what our courts do now is try to assess a percentage of liability to each of the parties that are involved in an accident. Now many, many times that's very difficult to do but this whole change in our liability system has never been adopted by this Legislature, it's never been ratified by this Legislature, it was a change brought about by the court. And according to one report...forgotten the name of the publication, the...well, I guess here it is, "The Illinois Jury Verdict Report" showed that gross awards in tort cases outside the Chicago area more than doubled in the period just after this change in law was adopted by the court. The same thing happened in...in Cook County courts, that is, there was a dramatic increase, about a thirty-seven percent increase in Cook County courts. And this gives rise, in my opinion, to a lot more litigation than we had under the other system because now there is great argument about whether you were thirty-seven percent liable or if you're twenty-five percent liable or if you're sixty percent liable. There...there is...a great deal to be argued about the comparative fault of the various parties. What this bill does is adopt in Illinois a system which works well in other States. This is a modified comparative negligence bill. It's the same kind of law that is in effect, as I understand it, in Wisconsin. There are some thirty-eight states in the United States that have some form of modified comparative negligence. And, in effect, what this one says is that if you are more at fault than the other party, then you can't collect from the other party. And we think that this is a

better system than the one that is presently in effect in Illinois. And we would urge adoption of this amendment.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Is there discussion? Senator Berman.

SENATOR BERMAN:

Question of the sponsor.

PRESIDING OFFICER: (SENATOR SAVICKAS)

He indicates he'll yield.

SENATOR BERMAN:

Senator Schuneman, do you have any information as to what...amount of decrease in premiums will result if we pass this?

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Schuneman.

SENATOR SCHUNEMAN:

Well, Senator, as you know, insurance companies are required under model bills recommended by the National Association of Insurance...Commissioners to file certain documents with each of the states. The information that you asked for, to my knowledge, is not available from anybody because I don't think that there's anyone who...who requires or does that kind of reporting. It's interesting that the...that the trial lawyers constantly ask for information which they know is not available and is...is...is not required by any insurance department in any of the states. And, so the answer to your question is, no, I can't quantify exactly what this would do. I can only tell you that those people who are in your own profession but who represent the defense side of the bar argue that this is a needed change and would...would have a significant effect on claim costs. Now when you reduce claim costs, then you reduce the price of insurance. But I can't quantify it any more than perhaps you could quantify in your own practice how this would affect...what happens.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Berman.

SENATOR BERMAN:

All right. I...I would just suggest to you, ladies and gentlemen, that in any process in order for us to go home and tell our constituents, and I'm talking about the business people and the citizens of Illinois not just the insurance companies, that we've done something meaningful for them, if we're going to change the laws so that injured people lose some of their rights, there ought to be a quid pro quo, something that the businessman and the citizens of Illinois are getting in exchange. Senator Schuneman says he can't specify how much, if at all, premiums are going to decrease by changing this comparative negligent or pure negligent rule. But let me just give you an example from the previous debate on the previous amendment that Senator Watson cited. He said that Allstate in their letter said, "That with joint and several liability being abolished Allstate would reduce their premiums three to...three to eleven percent on commercial automobile rates." Let me tell you something, if you go back to your businessman whose premium this year was increased two hundred percent and tell them that you've passed a bill that's going to reduce their premium eleven percent so that they only have a hundred and eighty-nine percent increase, he'll ride you out of town and vote for your opponent. It's a sham, we ought to require insurance companies to say what, in fact, they're going to do to roll back premiums not from this exaggerated level of inflated premiums, but from what it was last year or the year before when they quoted...when they quoted those premiums that were paid...without the duress of the present system to make us pass a lot of laws that will increase their already exaggerated profits and take away the rights of injured people. I urge a No vote.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Keats.

SENATOR KEATS:

Thank you, Mr. President, Ladies and Gentlemen of the Senate. I rise to do something we normally don't bother to do. This particular piece of...this particular amendment deals with a court decision, Elvis versus Rebar, and that's the major portion of it. This problem was not caused by this legislative Chamber or the House or anyone else, this is a doctrine made up by the Illinois Supreme Court. I just...for the fun of it, I'm going to read you a few things from the decision, you sort of want to puke as you read it. The Supreme Court says we're replacing one concept with another. Let me just quick hit a few of their highlight comments in a five to two decision. First of all,...they're saying an Arkansas study...this is how they're justifying and then I'll come back to the changes, "An Arkansas study showed that the adoption of comparative negligence prompted no drastic change in court burden." Our Supreme Court is saying that this particular piece here would not change the court burden. A trained orangutan is aware that this has dramatically affected the burden. Secondly, it said, "Defendants claims that the adoption of..." I'm reading word for word from the court decision, this isn't my interpretation, I'm reading them word for word. "Defendants claimed that the adoption of comparative negligence would escalate insurance rates to an unbearable level. This has not been found to be the case." That's the Supreme Court speaking. Let me give you now their explanation for why they did this. "In each case the court found that contributory negligence is a judicially created doctrine which can be altered or totally replaced by the court which created it." In other words, they're saying, the Legislature never did this, this wasn't their idea, the representatives of the people have said,...but the courts in each case have made it up on their own; therefore, they

should continue to make things up on their own. "Defendants point out that since 1976 six bills were introduced in the Illinois Legislature to abolish the doctrine of contributory negligence. In each case the bills failed to pass." They interpret, they being...they interpret the failure of each bill to pass as a sign of the General Assembly's desire to retain the present status of the rule which was not this particular situation. Another conclusion may be drawn, however, as pointed out by Justice Ward in his dissenting opinion. Justice Ward in attempting to change the entire position said, "It can be argued that the Legislature's inaction in this area is attributable to its feeling that it's more appropriate that the court set the law." Justice Ward said we refused to pass these bills, therefore, we meant the court should do it. Now how many times when you have failed to pass a bill were you calling the courts saying, gee, I don't want to do this, you do it. This is your Supreme Court saying that we are too stupid to realize that when we fail to pass a bill that that means we didn't want the bill. They're saying because we failed to pass a bill, we really wanted it. Continuing in their own opinion, "The court says there are however times when there exists a mutual state of inaction which the court awaits action by the Legislature and the Legislature awaits guidance from the court." When does the Legislature wait for the court to tell us how to pass a law? If they have a role it is after the legislative process, not during the legislative process. They say, "It is the imperative duty of the court to repair the injustice and reform the law to be responsive to the demands of society." That is our function, is not a function of the court and yet our Supreme Court says it is. In dissent two of the Justices, Underwood and Ryan, say, and in separate dissents say, "The decision...that the decision to change is best left to the General Assembly," Justice Underwood is saying. The fact does

not, however, ...well, wait a minute... "There are other reasons to refer to legislative action," he explains and he gives a list. "We can see no practical benefit to be gained by the traditional break from the common laws tort fault methodology that the pure comparative negligence rules require." In other words, he's saying, what are you guys doing? He says its analog is for the majority to cite the introduction and consideration of these six bills and saying there's no reason to believe, as the majority...suggests, that the absence of legislation doing so should be viewed as indication the Legislature is waiting for the court to do it instead. I could go on with some more but he says, "I would respectfully suggest that the members of the General Assembly are far better situated than the members of the court to...determine what is socially desirable." Justice Ryan also points out in another dissent, "I am bothered by the idea that no more than four individuals, four members of this court, can radically change the fabric of law that will here and after govern the conduct of eleven million residents." I could go on and on with some of the courts, but what we're saying is, hey, this is a big problem, no one in this Legislature caused that problem. Without exception, we have said this is a problem, we don't want it done this way, and we have refused to gum up the process by making this the law. So the court then says, well, fellows, you are too dumb to govern this State, we'll do it for you. Anyone who does not support this amendment is saying, I'm too dumb to be a legislator, I'll let the court do my job for me, even though the court admits that they had no legislative right to do this, it was done because they thought, in their wisdom that was so much greater than ours, that this should be the law of the State of Illinois. How you could sit there and say, okay, gang, let's run with the court when they even admit in their own decision that this is not the intent of the people of

this State.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Barkhausen.

SENATOR BARKHAUSEN:

Mr. President and members, it's interesting, Senator Keats, that you should...bring up the question of legislative prerogative and cite the example of the Elvis versus Rebar decision as I suppose just one example where the Supreme Court tread in a little heavy on what might be considered a legislative prerogative. In fact, back in 1981, when I was starting out as a member of the...General Assembly and serving on the House Judiciary Committee, we were at that very...at the very time that the Elvis versus Rebar decision was handed down from above, as it were, considering legislation that would have adopted that which was imposed by virtue of judicial fiat, that is, the pure comparative negligence doctrine. And there were some of us, perhaps a majority at that time, in the Legislature who agreed that the contributory negligence rule in place at that time was somewhat harsh but who also had misgivings about the adoption of a pure comparative negligence standard. And, in fact, many of us would then like to have seen the passage of legislation which then proposed to do exactly what this amendment would accomplish which is to go to a compromise solution, if you will, a modified comparative negligence doctrine that allows the plaintiff to recover except where the plaintiff is more liable than a particular...more responsible for an injury than a particular defendant. So I suggest that this...this is a good compromise, it respects the rights of victims to recover other than those who are largely responsible for their own mishaps. And I urge the adoption of this amendment.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Is there further discussion? Senator Rock.

SENATOR ROCK:

Thank you, Mr. President, Ladies and Gentlemen of the Senate. I was truly enhanced and entranced with the call to arms for legislative prerogative. Not an hour ago we were subjected to something handed down from the...Illinois Medical Society and weren't even allowed to read it. Now we're worried, for goodness sake, about a five-year-old Supreme Court decision. Remember that when we get back to 2202. I resent, as a legislator, and I don't think I'm too dumb, I resent the fact that the Medical Society walks in here with a seventy-three page amendment and says swallow it. Let me talk about comparative fault. If I have a lack of do care for my own safety, that is not a tortuous act, but if you have a lack of care about me, that's tortuous. And what we're saying by virtue of Amendment No. 6, if I am negligent halfway and you injure me by your negligence halfway, I recover nothing. That doesn't make a lot of sense. It sure doesn't make a lot of sense after I heard the sponsor say, well, we don't know what impact it's going to have on the rates. Why in the world are we doing this? What is the purpose of this exercise? Why are we taking away rights of injured people if we don't...can't document the result we're going to get? I don't understand it. We are going through an exercise here just stripping, literally stripping away rights of injured people and we're not sure we're going to get the desired result. And what's the desired result? A lower insurance premium and more profit for the casualty companies. Their stock has only risen sixty percent in the last six months, that's not enough, they need more. So let's hurry up, let's stampede and let's just take away as many rights as we can. This is not the most pernicious amendment, I'll speak to that one when it's offered but this is equally bad. If I don't have regard for my own safety that's my business, but if you injure me, that's also my business and I

ought to be compensated for it. I urge a rejection of Amendment No. 6.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Is there further discussion? If not, Senator Schuneman may close.

SENATOR SCHUNEMAN:

Thank you, Mr. President. Senator Rock, I...I know you're busy over there a lot of times and you may not have heard what I said. I didn't say that I didn't know whether this would...result in a reduction in rates or not, I'm confident that this will result in a reduction of rates. What I said was that I couldn't quantify that reduction. And let me speak just a moment to...to that problem. Insurance companies are required today to set their rates for policies on which claims are going to be paid perhaps next year, the following year, maybe in some instances twenty years later. So setting insurance rates is a prospective business. It's a very difficult...science, particularly when you don't know what the court rulings are going to be. And when the court changed from a contributory negligence system to a comparative negligence system that was something that the courts hadn't expected. And I think another reason for insurance companies to be reluctant to tell us today how much they're going to reduce rates is the simple fact that the trial lawyers are going to challenge every one of these amendments in court. There will be a constitutional test and it may go on for some time before anybody really knows what the law in Illinois will become. And I submit to you that if you were asked to project what your rates are going to be under those conditions, you'd be somewhat reluctant to make positive and definitive statements too. We do have statements made by Allstate, CNA, the Kemper Group, I think all of them appeared with the Governor in making statements which, in effect, said that insurance would become more available if we pass these

amendments. Some of them went so far, Allstate and some of the others, to actually quantify what they thought the reductions would be. Now I'm not sure where...where all you...folks were or where you've been that you haven't heard about any of those statements, but you keep saying over and over that the insurance industry won't say how much they're going to reduce premiums. Some insurance companies have, in fact, said precisely that, even though it's a very difficult...science and a difficult thing for them to project into the future. I think Senator Keats made a good point, and that is that the court took this upon themselves and there have been efforts in this General Assembly to try to get us to ratify the decision made by the court and we have been unwilling to do it. In other words, we've never given the stamp of approval to what the court decided, and I think it's time that we adopt in Illinois a system which will send a signal to local governments who are having great difficulty getting insurance, to small business having great difficulty getting insurance, and to those major employers in this State who are self-insured, no insurance company involved there, that we're going to do something about turning the direction of the court system in the State of Illinois. That's really what this entire issue is all about. Are we going to be...have our society run by the courts or are we going to have it run by the legislative bodies and the law set by these bodies? I'd urge adoption of this very worthwhile amendment.

PRESIDING OFFICER: (SENATOR SAVICKAS)

A roll call has been requested. On the passage...adoption of Amendment No. 6 to Senate Bill 2263, those in favor will vote Aye. Those opposed will vote Nay. The voting is open. Have all voted who wish? Have all voted who wish? Take the record. On that question, the Ayes are 34, the Nays are 18, 2 voting Present. Amendment No. 6 having

received the required majority vote is adopted. Further amendments?

SECRETARY:

Amendment No. 7 offered by Senators Watson and Schuneman...and Senator...Schuneman and the LRB number is LRB8411092RCMIAM03.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Watson.

SENATOR WATSON:

Thank you, Mr. President. This is the collateral source evidence amendment which we did discuss earlier. There is some differences between this proposal...and Senator Luft's proposal that was offered before, but it does make the provision that collateral source will be admissible evidence in determining the...the award. Now the difference between...I believe, between Senator Luft's and this particular approach would be that the evidence of such payments or services shall be considered by the jury or the court or the judge. I believe Senator Luft said it may be. I think that there's no problem with this necessarily and the fact that it should be a...a fact of admissible evidence in the court, and I would urge its adoption and would ask...answer any questions.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Is there discussion? Senator Berman.

SENATOR BERMAN:

Thank you, Mr. President. I find it interesting that a colleague of mine who many times stands up and talks about...personal initiative and self-help and the rights of individuals should offer this kind of an amendment. And let me explain to you why. Let me tell you what this amendment does. If I take out of my pocket and buy health insurance...medical insurance for myself and that insurance pays my hospital bill, a hospital bill that has been incurred as a result of somebody else running me over, this amendment says

that the wrongdoer is going to get the benefit of the...of the bill that my insurance paid. And what we are doing is saying those of us who take care of ourselves, who pay for our own expenses, and either personally or through our work or collective bargaining or other kinds of insurance where we have benefits that we have negotiated for or paid for, those benefits are going to accrue to the benefit of the wrongdoer. He's going to get the benefit of what I paid for. That is exactly opposite to what most of us think is the way society ought to operate. I'm going to urge a No vote on this amendment.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Davidson.

SENATOR DAVIDSON:

Well, I think that people should be aware, I and some other people on this side would not be voting for this amendment if it was going to take money out of the pocket. All it's saying...originally the way this amendment was put together, as I understand it, it would have taken the money out of your pocket that you'd paid insurance premium. My understanding is now this can only be entered as evidence that you have received some insurance. It doesn't remove any of the payment, doesn't remove any of the part of you...your settlement that you...or judgment you may collect. Because I want to tell you, if it was going to remove what you had coming for what you have paid premium on on your own private policy, I wouldn't be in support of it and I'm supporting this amendment. I urge an Aye vote.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Hall.

SENATOR HALL:

Will the sponsor yield for a question?

PRESIDING OFFICER: (SENATOR SAVICKAS)

He indicates he will.

SENATOR HALL:

Senator Watson, are you...introducing an amendment that says that I'll be worse off by having had the foresight to get insurance because I will not be reimbursed for my payment? Is that what your amendment does?

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Watson.

SENATOR WATSON:

No, sir, it does not at all. It in no way requires a judge or a jury to reduce the award. It does not require it at all.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Hall.

SENATOR HALL:

...you mean to tell me that...in personal injury cases the evidence...receive will receive payment for service and other collateral. In other words, that...I just don't understand how all of a sudden...and all of us have to come up here and say the poor insurance companies and the way that they're treating people today, and I listened to all this on the Floor. And it's to a point now to where poor people have a problem getting insurance. In many areas where I am they all run out and refuse to insure people, and now we come along to say that even though you...if you do have insurance that you're not going to be able to recoup the payments. You know it's shocking, I...I just don't understand how you...how you could introduce an amendment like this, how you could be doing these things. I wonder what's happening to us today. Everybody I hear talk about the poor insurance company, what about the poor people? You know, there's one thing about these insurance companies, they make millions and millions, they keep two sets of books, they...if you...if you get payment against them, what in the world do they do? They tie it up, they complain about lawyers but yet they got all

high-priced lawyers. They take you to court, they draw all the interest off of the settlement...it's a dirty shame here today that we would stay here in this Senate and not look after the welfare of the people that we're supposed to be representing. If you're wealthy, everything is okay. It's going to be tough for people to get insurance. I got areas in my district where...where the insurance companies refuse to even come in, and here we come along now and try to make it even...even tougher...for if you do have some insurance to even get reimbursed on your premiums. This is so unfair, I...I just don't understand, I'm just shocked to think that you'd even do this.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Barkhausen.

SENATOR BARKHAUSEN:

Mr. President and members, I'm not sure what the protracted debate is about on this particular issue since when substantially the same amendment was offered by Senator Luft it was adopted on a voice vote. The simple point has been made that only...that...that collateral sources will only be introduced as evidence and that no setoff of an award by the amount of insurance will be required. And with that in mind, I...I think we can be sure that plaintiffs will still be adequately and fairly compensated for their injuries, but where there is insurance coming in from...from a outside source that judges and juries ought to be mindful of that without being required to...to reduce awards accordingly. It's a good amendment and we should adopt it.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Kustra.

SENATOR KUSTRA:

Well, thank you, Mr. President, members of the Senate. I must say, I'm a little confused at this point because I've been listening to the other side of the aisle, and I...I hear

you in this great dilemma over how are we going to compensate these poor people who get injured. What is the social good, Senator Rock said, what's to be served if we're going to abolish joint and several liability? Your concern clearly was to compensate people for their injuries. So here's an insurance system, as I define insurance it's a way to compensate people for their injuries; and now all we're saying is that a judge and a jury ought to be able to take into account another insurance plan so somebody doesn't collect twice. I think what you're really saying is you think insurance is an investment plan. If you buy insurance, you have the right to collect on that policy and whatever other policies you're entitled to no matter how high they stack up. That isn't what insurance is all about. This bill in no way...in no way affects the right of an individual to collect compensation for injuries, but it does say that a judge and a jury ought to know what else that client is going to get. I don't know what is so unfair about that unless, as I say, you think insurance is some kind of an long-term investment plan where in all cases you get back what you put in. I don't think that's the way we define it in this country.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Schuneman.

SENATOR SCHUNEMAN:

Thank you, Mr. President. I think this issue has gotten pretty confused. Essentially this is the same thing that you voted for on Senator Luft's amendment. There are admittedly a couple of minor differences which we really don't think are important, and, frankly, I offered just a few minutes ago to Senator Luft that if you'd rather have his language than our language, that's no problem with us or anybody else I think. So, you've already voted...you've already adopted this amendment once. It simply says that such evidence can be introduced in court. It...it certainly doesn't

say what one of the other speakers indicated that...that the ward is going to be reduced, that will be...continue to be up to the court.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Is there further discussion? Senator Rock.

SENATOR ROCK:

Thank you, Mr. President, Ladies and Gentlemen of the Senate. I, too, rise in opposition to Amendment No. 7 and I've heard four people now say they're substantially similar to what Senator Luft offered, wrong. Question of the sponsor.

PRESIDING OFFICER: (SENATOR SAVICKAS)

He indicates he'll yield.

SENATOR ROCK:

"Evidence of services of any kind from collateral sources made or provided," what does that mean?

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Schuneman.

SENATOR ROCK:

That I'm a quadriplegic and I'm receiving some therapy, that evidence has to go in?

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Watson.

SENATOR WATSON:

Senator, where are you on...on the amendment? What...what line is that, page number?

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Rock.

SENATOR ROCK:

That is on line...my...my copy of the amendment, 16, 17, 18.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Watson.

SENATOR WATSON:

I would say the answer to that is, yes.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Rock.

SENATOR ROCK:

Well, that's one substantial difference that was not covered in Senator Luft's amendment. It seems to me that if I have been injured as a result of your negligence and I am now receiving therapy, that's supposed to be admitted into evidence as some setoff as an expense? The other thing that I question is it says, "substantially certain to be made." In other words, we're admitting into evidence the possibility that I'm going to get some...some other money from somebody else. I don't have it. Senator Luft's amendment said, "You can allow...admit into evidence proof of collateral source payments that have been made or which have become payable." This one says, "substantially certain to be made," big difference, big difference. And thirdly, it says, "Shall be considered both by the trier of fact and on appeal, shall be." Substantial difference. If...if you're willing, I'm willing, we'll take this amendment out and put Senator Luft's amendment in.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Watson.

SENATOR WATSON:

Well, I believe that's agreeable. I believe we'll be glad to do that.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Watson wishes to withdraw Senate...Amendment No. 7 to Senate Bill 2263. Senator Schuneman.

SENATOR SCHUNEMAN:

A...on a parliamentary inquiry, Mr. President. Does Senator Rock intend to introduce that as a separate amendment or are we going to amend this on its face?...we...we had a lot of amendments and it's easy to...

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Rock.

SENATOR SCHUNEMAN:

...get it mixed up.

SENATOR ROCK:

Well, my...my suggestion is that the amendment that was wiped out by virtue of Senator Rupp's amendment ought to be physically copied and reintroduced. That's the only way I see to do it.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Schuneman.

SENATOR SCHUNEMAN:

Do you want us to do that, Senator? We...we will be glad to do it, I'm...just so we know who's going to do what.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Schuneman, you've got the responsibility. Senate Amendment No. 7 from 2263 has been withdrawn by Senator Watson. Are there further amendments?

SECRETARY:

Amendment No. 7 offered by Senators Rupp and Schuneman, LRB No. 8411092RCMIAM04.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Rupp.

SENATOR RUPP:

What number amendment is this?

PRESIDING OFFICER: (SENATOR SAVICKAS)

Mr. Secretary, would you read that again?

SECRETARY:

The LRB number is 8411092RCMIAM04.

SENATOR RUPP:

Thank you, Mr. President. This amendment deals with the punitive damages and basically I will read the exact wording in the amendment. "Punitive damages may be awarded only if the plaintiff proves by clear and convincing evidence that

the defendant acted or failed to act with actual malice or with intentional and reckless disregard for the safety of others. Punitive damages shall not be awarded in an amount greater than the compensatory damages awarded for economic loss. All amounts awarded as punitive damages shall be paid to the State of Illinois Department of Rehabilitation Services for the sole purpose of providing services to disabled children, youth and adults." That's the extent of the amendment, I ask for its adoption.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Is there discussion? Senator Berman.

SENATOR BERMAN:

Thank you, Mr. President, Ladies and Gentlemen of the Senate. If you recall our debate when Senator Luft had a similar...had a punitive damage amendment, I tried to make the point that punitive damages, number one, has no impact on an insurance crisis because insurance policies don't cover punitive damages, that's number one. Number two, they are rarely imposed and they're usually imposed when there has been such a terrible assault on the reasonableness of an act by a defendant that a jury is outraged...outraged. But I've given you the example of the...of the four dollar and eighty cent situation business decision by Ford Motor Company in the location of the Pinto gas tank. The problem with this amendment is that there is a limit here saying that you can't impose punitive damages that exceed the economic loss. Ladies and gentlemen, you're making a terrible mistake if you vote for this amendment. There are rare but there are existing situations where a jury should have the power to slug that defendant because of what they've done to society. And when you say that it can't be more than the economic loss, you're taking away that power of that jury, that jury that's there to speak for you and for me after evidence has been introduced by both sides in a ...in a court case. You'd be

taking away one of the most effective tools...effective tools that our society has to deliver a message that a person or a company should not operate in that manner. I urge a No vote on this amendment.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Kustra.

SENATOR KUSTRA:

Well, thank you, Mr. President, I'll be brief. Just to that first point that Senator Berman just discussed. First of all, of course, this bill does not abolish punitive damages, number one. Number two, I believe you were on record as saying at least twice now that this bill will have no impact on the liability insurance crisis. And I beg to differ with you, it does have an impact on the liability insurance crisis because the very threat of punitive damages as they have been imposed in courts across this land in the last five years in many cases will force settlements where there shouldn't be settlements, at least at that point. And so I don't know how you can stand up and say that it has no impact. Of course these punitive damages are at least a threat of punitive damages has an impact when two parties are sitting down trying to reach an agreement. My feeling is that because too many of those settlements have been...extraordinarily high or the jury awards have been high, one of the reasons for that is the threat of the punitive damage which no one can predict. So what we're suggesting here is that we limit it in some reasonable way. I would also suggest that plaintiffs attorneys like punitive damages because it fits right in with their contingency fee system but we'll discuss that at another time. Thank you.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Is there further discussion? Senator Rock.

SENATOR ROCK:

Thank you, Mr. President, Ladies and Gentlemen of the

Senate. I rise in opposition to Amendment No. 7, pointing out only that the question of punitive damages really has little or no impact on this whole debate on the whole problem. If you find me an insurance company in this State who'll write insurance to cover the possibility of punitive damages, I'll...I'll be delighted. They don't, they can't, they won't. More than that, the whole theory of punitive damages is a bugaboo for corporate America, corporate Illinois, if you will, and that's what we're dealing with here, because we are saying to a corporation by virtue of this threat, you'd better be careful for the health and welfare of the people of this State. Not too very long ago two Illinois plaintiffs recovered a punitive damage award in the amount of something like twenty million dollars which has since, by the way, been reduced by a judge, as is his right. But the fact of the matter is it delivered a strong message to that corporation who in their lust for profit changed, tinkered with the nutrition formula for baby food and caused the...the dismembering, if you will, of two youngsters. And they were sued and they should have been sued, 'cause the evidence showed that they changed the composition of this chemical formula for profit. They took out some of the expensive ingredients and substituted without telling anybody, without warning anybody. But that's what corporate Illinois, corporate America does, they're...they're out there someplace and nobody's got a handle on them. The handle...the handle are the threat of punitive damages. And now we're saying...totally aside from the question of the liability crisis, now we're saying, okay, corporations, here you go. As long as we're in this thing, we're going to give you everything you want, Merry Christmas, corporate Illinois. I vote No.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Is there further discussion? If not, Senator Rupp may

close.

END OF REEL

REEL #5

SENATOR RUPP:

Thank...thank you, Mr. President. Just briefly, punitive damages are actually a fine, a punishment for misconduct and punishment for misconduct should be a...a function of a public law enforcement and not a private litigation problem. I ask for a favorable vote on this amendment.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Rupp moves the adoption of Amendment No. 7 to Senate Bill 2263. Those in favor will vote Aye. Those opposed will vote Nay. The voting is open. Have all voted who wish? Have all voted who wish? Take the record. On that question, the Ayes are 32, the Nays are 21, 1 voting Present. Amendment No. 7 having received the majority vote is declared adopted. Further amendments?

SECRETARY:

Amendment No. 8 offered by Senators Schuneman and Rupp and the LRB No. is 8411092RCM1AM05.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Schuneman.

SENATOR SCHUNEMAN:

Thank you, Mr. President. There's been a lot of talk on this bill about the conflict between trial lawyers and insurance companies, and although certainly the things we're talking about have an impact on insurance companies, I think you all know perfectly well that they have not been the leaders in the demand to get tort reform. The leadership has come from the business community of this State and from units of local government. This particular amendment seeks to make some changes in...in the products liability law as it applies to manufacturers, wholesalers and retailers involved in

making products available to consumers in Illinois, and I think to a...very real degree has to do with the jobs issue in Illinois; because to the extent that manufacturers in particular do not manufacture in Illinois, out of a concern that they're not sure what our courts are going to do and that they're going to constantly expand doctrines of legal liability as they apply to manufacturers, those manufacturers might tend to have...to allow those products to be made in foreign countries where the manufacturers are not so easily chargeable in lawsuits as are Illinois manufacturers. In a recent magazine article, I read about a man who had a heart attack while trying to start a lawn mower, in a suit against the manufacturer, he argued that pulling the starter rope required excessive effort, a jury ordered him a million dollars in damages plus...plus interest. And I think this is a...this is kind of a key phrase to avoid further litigation, the company settled the case out of court. I happened to have been involved in a number of cases exactly like that where insurance companies trying to defend cases become so jittery about what the courts are going to do that if it appears to them that they're getting any kind of a compromise at all they may jump at it and settle the case, and I submit to you that part of that problems stems from the fact that nobody can predict what the courts are going to do. The only thing we can tell for sure is that they have been constantly broadening the liability law. In another case, an Oregon jury awarded Ford Motor Company to pay one and a half million dollars to the estate of a woman who was killed when a runaway horse that she hit crashed through the roof of her Ford, and although Ford argued that the case was one in a million that...no car roof could...could withstand such an impact, nevertheless the jury found the auto maker liable...Ford is now appealing that ruling. In effect, this amendment...and I'm sure the opponents are going to want to discuss the

details but, in effect, this amendments seeks to strike some kind of a balance between what the courts have done in the area of product liability and the interest of manufacturers and ultimately the interest of consumers, because in order to be a consumer in Illinois you got to have a job and we have seen the exodus of a lot of jobs...out of Illinois, some of them arguably are leaving because manufacturers are faced with huge products liability problems. I would urge adoption of the amendment.

PRESIDING OFFICER: (SENATOR DEMUZZIO)

Senator Schuneman moves the adoption of Amendment No. 8. Discussion? Senator Holmberg.

SENATOR HOLMBERG:

Yes, I think we all know that product liability legislation is perhaps needed, perhaps most likely at the Federal level, but I'd like to share with you a communication I had from a group from my local bar association, both plaintiff and defense lawyers, on this particular amendment. They felt that of all the amendments being presented today, this was far and away the most poorly drafted and far too complicated to apply to jury trials; for example, the state of the art provisions as drafted can be read to me and that an alternative design must be in actual use by others in the industry before it can be presented as an acceptable alternative by a plaintiff. And this would enable an entire industry to insulate itself from liability even where the technology for the safety device is well-known and the cost is not unreasonable, and that modification requirements for a failure to warn case is both confusing and so complicated that accurate instructions on the law would be beyond the comprehension of the average juror. So what you're talking about here is complicating the law rather than helping in a case of good product liability legislation.

PRESIDING OFFICER: (SENATOR DEMUZZIO)

All right. Further discussion? Senator Mahar.

SENATOR MAHAR:

Thank you, Mr. President, members. I rise in support of this amendment. In some respects I agree with Senator Holmberg in that maybe they should be treated at the national level, but, at the same token, it does not allow a distributor or a manufacturer to be devoid of liability. In fact, if they...if a distributor should have known that a defect or danger exists, he's still liable. A manufacturer who is...just because he's in compliance with industry practice does not make him devoid of liability. And it adds objective standards and let me read you what the objective standards is and I don't think this is complicated at all. The...the objective standard is, "Users of ordinary skill and judgment." That seems to be very plain, very clear to me. It goes on to say, "Those who reasonably might have expected to use the product." I think this is a good bill. I think it allows for...it continues to allow for a tremendous amount of latitude by the Judiciary and the legal community in this State of Illinois. It does apply a certain amount of common sense. I urge your support of this amendment.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Further discussion? Senator Rock.

SENATOR ROCK:

Well, it's a...it's a long afternoon and I appreciate...this is...this is one of the worst, frankly, that I have seen and it's again happy birthday, merry Christmas, corporate Illinois. This one says...unbelievably says, "In a product liability action based on negligence, breach of expressor, implied warranty or strict liability in tort in which the plaintiff"...the plaintiff now is this person who has been injured, we keep forgetting about that, but "Where the plaintiff is seeking recovery for damages claimed to have resulted from the formula or design of a product, the defend-

ant shall not be liable unless the...plaintiff can prove by a preponderance of the evidence in addition to the other facts"...the other facts I assume being that I was injured, I was injured as a result of the use of this product or the car blew up or the lawn mower backed up over my foot, you can't recover unless...unless you can prove that an alternative formula or design was available at the time of manufacturer. That makes every injured plaintiff an engineer. Silly.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Further discussion? Further discussion? If not, Senator Schuneman may close.

SENATOR SCHUNEMAN:

Thank you, Mr. President. Well, in response to the previous speakers, Senator Holmberg, the...the...the amendment may not be perfect, like a lot of things we do around here, and I...I certainly wouldn't want to claim that this is perfect, but I tell you, it's a heck of a lot better than not doing anything and I think that the manufacturers in Rockford and elsewhere in this State expect us to do something. Now if we're going to get any action at all out of the House, we need to put some...some strong language over there. This may be too strong; if it is, then before it's ultimately adopted by this Body in our wisdom we will modify it, but I think we need to go on record that we are going to support changes in products liability law in Illinois; and if you want to go on that record, now is the time to do it.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Schuneman has moved the adoption of Amendment No. 8. Those in favor indicate by saying Aye. Opposed Nay...opinion of the Chair, the Ayes have it. Amendment No. 8 is adopted. Further amendments?

SECRETARY:

Amendment No. 9 offered by Senators Rupp and Schuneman.
LRB No. 8411092RCMIAM06.

PRESIDING OFFICER: (SENATOR DEMUZZIO)

Senator Rupp.

SENATOR RUPP:

Thank you, Mr. President. This amendment deals with the contingent fees for attorneys and personal injury actions. Basically...I'll read right from the bill a portion that changes is that "In all actions brought on account of injury to the person or death, the calculation of the total contingent fee for the plaintiff's attorney or attorneys shall be limited to the plaintiff's compensatory award and shall not exceed the following amounts; thirty-three and a third of the first one hundred and fifty thousand of the sum covered...recovered, twenty-five percent of the next eight hundred and fifty thousand, twenty percent of any amount recovered over one million and for purposes of determining any lump sum contingent fee any future damages recovered by the plaintiff in periodic installments shall reduce to a lump sum present cash value." I ask for an approval of the amendment.

PRESIDING OFFICER: (SENATOR DEMUZZIO)

Discussion? Senator D'Arco.

SENATOR D'ARCO:

...Senator Schuneman and Senator Rupp, I know you guys are in the insurance business, why...I think now...I...I know you're out of the business, right? You were in the business, now you're out of business...that's why you're offering all these amendments...anyway, why...you guys get paid on a percentage basis...you get a commission on the percent of premium, right? You know, maybe we can keep the premiums down if we lower your percentage a bit; you know, instead of like you get ten percent of the total amount of the premium or something, well, maybe you'll only get three percent or four percent. Maybe that way they can charge less premium dollar by lowering, you know, the percent of commissions that you get. Are you willing to go for that one?

PRESIDING OFFICER: (SENATOR DEMUZIO)

Further discussion? Senator Berman.

SENATOR BERMAN:

Thank you, Mr. President and Ladies and Gentlemen of the Senate. Question of the sponsor, one of them, both of them.

PRESIDING OFFICER: (SENATOR DEMUZIO)

All right. Indicate they will both yield. Senator Berman.

SENATOR BERMAN:

My analysis says that this prohibits any attorney fee being paid out of punitive damages. Is that in this amendment?

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Rupp.

SENATOR RUPP:

It doesn't yet...thank you, Mr. President. Doesn't mention it quite that way, it...it says shall be limited to the plaintiff's compensatory award. So the answer is, yes.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Berman.

SENATOR BERMAN:

All right. Just to refresh your memory, when we're talking about the purpose and the importance of delivering a message through punitive damages and, of course, this may be moot after the last amendment or two, but I think that, again, you're...we're making a mistake. You want to allow that plaintiff and his attorney to be able to show the social injustice, the social egregiousness, the social harm that the defendant has done by his...total disregard of the safety of people that use his product or the action of that defendant. If you don't allow the attorney to share in that award, there is no incentive in our court system to prove that kind of wrongful act and you're hurting yourself and you're hurting society by this kind of an amendment.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Further discussion? Senator...Senator Schuneman.

SENATOR SCHUNEMAN:

Well, I...I only want to respond to...to Senator D'Arco's question. Senator, our...our commission income since this insurance crisis has come upon us has been reduced about twenty-five percent. I'm talking about across the board, total gross commission income. While insurance companies have been charging dramatically higher premiums, our income, in fact, has been going down. So, our commission income has not been cut...or has been cut much more significantly than what is being suggested by this amendment; not only that, I'd say that...that probably the average commission income on the kind of liability insurance we're talking about here, commercial liability, would probably average about eleven percent and, you know, we'd be willing to go with that if the attorneys want to go with eleven, why, seems fair to me.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Further discussion? Senator Kustra.

SENATOR KUSTRA:

Thank you, Mr. President and members of the Senate.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Oh, wait...wait a minute...wait a minute. Senator D'Arco, for what purpose do you arise?

SENATOR D'ARCO:

Well, eleven percent, that...but that's renewed every year. I mean every time...every time a premium is paid, you get eleven percent. You know, when a...when a lawyer goes to court and gets a judgment for somebody, that's a one-time event, okay? So you guys live off those premiums...all your lives, you know, as long as the company is in business. So that eleven percent accumulates over the years, that turns into a...a lot of dollars, so...

PRESIDING OFFICER: (SENATOR DEMUZIO)

Further discussion? Senator Kustra.

SENATOR KUSTRA:

Thank you, Mr. President. Just to get this back to what relationship this particular bill has to the liability insurance crisis. Recently the U. S. Attorney General issued a report on the affordability and the availability of insurance in this country, and one of the things that that report found after looking at a whole range of cases that have had high jury awards is that two-thirds of the cost of a lawsuit in this country many times are transaction costs. They are costs that go to the lawyers, both plaintiff's and the defense, what's left over, that other third, goes to the victim, the people that all you folks are trying to watch out for. What we're really saying here is that when jurors are interviewed they admit that they calculate into the award the present contingency fee system which lawyers use, they know exactly what the lawyer has to take away. So you increase the award to make sure the lawyer get...gets what they think is deserving, but in the meantime, you've increased the whole award and you've knocked it out of whack. This system...this contingency system fee is justified by the plaintiff's bar as a way to let the poor consumer, the injured, get into court, take the...the lawyer will take the cases that other folks will not. I suggest to you that this is one bill anyway that really doesn't divide itself along the lines of lawyers versus nonlawyers, and I have a clipping that I...I'm going to read just one quote from Florida. The Florida State Bar Association, the last I heard, they represent lawyers in the State of Florida, they came before the Florida Supreme Court with a proposal and guess what, folks? Their proposal was just about the very same proposal you're looking at here today. The lawyers of the State of Florida asking the Supreme Court to limit their own contingency fees and the gentleman speaking for the Florida Bar saying, "It is time

for the Supreme Court to step in and set a fee limit that would protect consumers' share of judgments and their access to the courts." Isn't that an interesting argument? We've been told heretofore that somehow this system is designed to protect consumers, and now we have a substantial body of lawyers in one state which is confronted with the same problem we are telling us that adopting the very system we have before us in the bill will protect consumers' share of judgments and their access to the courts. I think I'm going to vote with the lawyers on this one.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Further discussion? Senator...Senator Rock.

SENATOR ROCK:

Thank you, Mr. President. This train is rolling, I know, but I'm going to vote No on Amendment No. 9 for two reasons and...and again, we're forgetting about the injured. We are now having great sport at the expense of the lawyers, again, has nothing, in my judgment, nothing whatever to do with the insurance liability availability or affordability question. What we could do but what this amendment doesn't do, why don't we put a limit on the defense lawyer's fees? That's one of the reasons the courts are clogged up, those gentlemen and ladies work on the clock so much an hour and the case goes on for one year, two years, three years, four years, five years, six years and the clock keeps ticking and all of a sudden you've got these horrendous attorneys' fees for corporate Illinois and corporate America. They don't care, the insurance company pays them. The most important aspect of the contingent fee arrangement is that it affords to those who otherwise could not afford access to the system. The injured party who in many instances cannot afford access to the court, enters into an agreement. If there's a recovery, if we prove what has to be proved and then prove that the defendant is in fact negligent and his negligence caused my

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injury, you'll recover. If you recover, the fee will be taken out of the recovery but nothing to do with insurance liability. Have fun. It's already been declared unconstitutional, by the way, so you are just building in to whatever ultimate proposal you wish to vote upon a provision that is admittedly unconstitutional. It's a mistake.

PRESIDING OFFICER: (SENATOR DEHUZIO)

Further discussion? Senator Keats.

SENATOR KEATS:

An extremely quick comment, the President offered an excellent suggestion. He said, why don't we put a cap on the fees on both sides; you draft it, we'll vote for it, we're with you.

PRESIDING OFFICER: (SENATOR DEHUZIO)

All right. Further discussion? Senator Rupp may close.

SENATOR RUPP:

Thank you, Mr. President. Just request a favorable roll call.

PRESIDING OFFICER: (SENATOR DEHUZIO)

All right. Senator Rupp moves the adoption of Amendment No. 9 to Senate Bill 2263. Those in favor indicate by saying Aye. Opposed Nay. The Ayes have it. Amendment No...9 is adopted. Further amendments?

SECRETARY:

Amendment No. 10, by Senator Schuneman and Rupp. LRB No. 8411092RCM1AM07...Senator Schuneman and Rupp.

PRESIDING OFFICER: (SENATOR DEHUZIO)

Senator Schuneman.

SENATOR SCHUNEMAN:

Where's my handlers?

PRESIDING OFFICER: (SENATOR DEHUZIO)

Can we get the handlers down here, please?

SENATOR SCHUNEMAN:

Oh...is this...is this 07...

SECRETARY:

Yes, 07, Article VII.

SENATOR SCHUNEMAN:

We're going to Table this amendment, Mr...

PRESIDING OFFICER: (SENATOR DEMUZIO)

Why don't you just withdraw it?

SENATOR SCHUNEMAN:

Why don't we? I withdraw the amendment.

PRESIDING OFFICER: (SENATOR DEMUZIO)

All right. Senator Schuneman has...sought leave to withdraw Amendment No. 10...Amendment No. 10 is withdrawn. Further amendments?

SECRETARY:

Amendment No. 10 offered by...Senators Schuneman and Rupp and this is the same except 08, all right? LRB number is the same except 08.

SENATOR SCHUNEMAN:

That for this...

SECRETARY:

Yeah.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator...

SENATOR SCHUNEMAN:

I don't know how that happened, we withdraw the amendment.

PRESIDING OFFICER: (SENATOR DEMUZIO)

...Senator Schuneman seeks leave of the Body to...withdraw...take your time, Senator, we...we may...end up being here Friday if things proceed as we have been. Senator Schuneman.

SENATOR SCHUNEMAN:

Thank you, Mr. President. Could we have the number of that amendment again?

SECRETARY:

LRB 8411092RCH1AM08.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Schuneman.

SENATOR SCHUNEMAN:

We'll go with that one. Yes, thank you, Mr. President. This amendment would seek to establish caps for noneconomic damages. Mention was made earlier today about English common law, and while not a lawyer, I know that it was a...a principle of that legal system that there were some injuries which could not be measured in dollars and cents and some injuries which could not be compensated by dollars and cents; for example, a death, pain, loss of a companion, those things which...to which you really can't establish a price tag. The courts have increasingly been awarding greater and greater amounts for these noneconomic, unmeasurable kinds of damages and what this amendment seeks to do is cap those damages. We're not going to eliminate the damages, you're still going to be able to collect for how badly your head hurts, but someone in Whiteside County isn't going to collect a hundred thousand dollars and someone in Cook County a million dollars for the same kind of headache because those are things that you can't really measure. What this seeks to do is put a limit...a cap on noneconomic...and please remember that, because the...the opponents of this are going to try to point out to you that you are taking all kinds of rights away from people and you're going to deny them things. What you're...what you're doing by means of this amendment is saying that since these are things that...that are not really measurable anyway, that the top limit that can be awarded should be set forth in the Statute and this particular amendment calls for a two hundred and fifty thousand dollar cap.

There have been caps suggested by many bodies including the President's task force recently which suggested a cap of a hundred thousand dollars, and that's the essence of the

amendment. I move its adoption.

PRESIDING OFFICER: (SENATOR DEMUZIO)

All right. Discussion? Senator Berman.

SENATOR BERMAN:

Thank you, Mr. President and Ladies and Gentlemen of the Senate. During the medical malpractice debate last year, those of us who sit on the Judiciary Committee had an interesting opportunity. There was a child that came forth with his parents and there was a lawsuit pending alleging negligence in the delivery of that child. Let me put into perspective, that child...it's alleged, and let's say that they can prove it, that child is blind, and I apologize for this analogy but let us say that it is your child that is blind and let's not talk about medical malpractice, let's talk about you're walking across the street with your child...carrying your child that's one year old and a guy runs through a red light and injures your child and for the rest of that child's life that child is going to be blind and confined to a...to a bed and can't work and can't walk and can't talk and can't see. And the actuarial tables tells us that that child's life is going to be seventy-five years, that that child can live for seventy-five more years and we're talking about pain and suffering. We're talking about disfigurement, we're talking about disability. Those are your noneconomic losses and we're saying, ladies and gentlemen, that because of the guy that ran that red light and what he's done to your child and mine that the cost, the value of that pain and suffering, that disability, that disfigurement should be less than ten dollars a day for the life of that child...ten dollars a day for the life of that child. That's what we're going to pay that child under this bill for...being a vegetable, that's what this amendment is. I can't understand anybody...anybody that would vote Aye to place that kind of a value on that child being a vegetable.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Further discussion? Senator Rock.

SENATOR ROCK:

Thank you, Mr. President and Ladies and Gentlemen of the Senate. Amendment No. 10 is probably, in my judgment, the single most pernicious, perverse and I, for one, am going to request a roll call. This amendment is aimed specifically at the poor and at the young 'cause you're dealing with noneconomic. Noneconomic, what does that include? Physical pain, loss of enjoyment of a limb, fright, nervousness, grief, anxiety, worry, mortification, shock, humiliation, indignity, embarrassment, apprehension. For a youngster who's been paralyzed, the only compensation for a lifetime without play comes, yes, from noneconomic damages. For a person who has been hideously disfigured receives literally only noneconomic damages to ameliorate the humiliation and the embarrassment. Pain and suffering are something that are shared by all of us irrespective of economic status, but what about a poor folk, somebody who is poor and who is injured as a result of the negligence of another? Noneconomic damages, frankly, are the principal source of compensation for a reduced life span or the loss of physical capacity, because that poor person didn't have a job. Where's his economic loss? That's the measure, economics; let's forget about the poor people and the young folks and the injured, economics. And I suppose two and hundred and fifty thousand dollars sounds like a lot of money, but as Senator Berman pointed out, figure it out, over the lifetime of a youngster who's paralyzed...and there are many of them I hope you know who have been so because of the negligence or the utter disregard of another they spend the rest of their lives and we're going to say to them, that's it, three thousand a year, two thousand a year, that's all you're going to get. Shameful, absolutely shameful. I urge a No vote.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Further discussion? Senator Lemke.

SENATOR LEMKE:

This is probably the most crass thing that can happen to an individual. Mr. Schuneman, when I was a boy scout, I was taught that...an Indian saying, you walk in the shoes of that person and I don't think you ever walked in the shoes of a injured person or even tried to help them along. I don't think you'd ever want to...to know what a blind person has to go through the rest of his life not being able to see or a kid that's five years old going to school having other kids ridicule him. And I say this, if this is the cruelty of your party to the lame and the disfigure and the protection of corporate executives, like Harvester, where they can...waive millions and dollars and loans to protect the...and put a price tag on pain and suffering, the pain to me is...might not be as great as the pain to you but it's there and I have no way of evaluating it and this system came about for a very...simple reason. In the old days, if somebody did you harm, you did them harm, an eye for eye. So if they blinded you, you went out of your way and you blinded them, and we came up with the tort system to kind of compensate somebody for the wrong that this...wrong person has done, the wrong that he's done, the wrong thing you're talking about; this isn't an innocent person you're talking about, the innocent person is the guy that's suffering. The guilty person is the guy you're trying to...protect, the guy that can afford it and this is a mental condition and there's no way of evaluating mental things. It's just as cruel as what you're doing here and putting a figure and price tag on a person but this is the crassness of big business, because if a car is worth three thousand dollars, a person should be worth three thousand dollars. And I'm saying this, being a grandfather of a disabled child, this is the most crass thing you can do, not

to me, but to everybody and I'm telling you right now, this is going to hurt you much and I'll go around in my district and use this vote against me. I'll go around in my district to every one of those people that came down here and I'll go around with my grandson and show to them, what is his pain and suffering worth because some doctor screwed up in giving him oxygen. What is his pain and suffering? What is his pain and suffering? How do you evaluate that? My kid has got to be walking around...my grandson. The suffering my daughter goes through every day, that's worth something for you? For two hundred and fifty thousand dollars, give them nothing; take the two hundred and fifty thousand dollars 'cause we don't want it. I learned that a long time ago, I don't want you rich people's money and I don't need it. I grew up with cardboard in my shoes and I never got a dime from the State, I never got a dime from the government; and I'm here saying that I got a lot of grief and this was taught by my mother who got nothing from the State and got no income, nothing. We worked day in and day out, my brothers and I, we delivered newspapers and we had the pain and suffering of being poor; but it's more pain and suffering to get something from somebody that wants to make it to you and come around with a basket on Thanksgiving Day and say, here, buddy, have a Thanksgiving dinner on me and screw you the other three hundred and sixty-four hour days of the year, bleeding you and bleeding you and bleeding you, trying to say, you are nothing, you are nothing in society. You are a price tag and you're worth two hundred and fifty thousand dollars if I hurt you. That is wrong and this is a bad amendment. This is the worst thing that you can do. You're not helping anybody here, the only people you are helping is a Hitler, philosophy of big business, saying every man is valued at a price. No man has a price on his life, no man has a price on his pain and suffering and no man is ever

valued. Your value is unassessible and what a twelve-man jury gives you whether it's two dollars or two million dollars is not what you feel your life is worth. You're...you're better off not getting a dime...not getting a dime because it...you're better off, and I say to you, we don't want two hundred and fifty thousand dollars for a grandson. I don't care if we get anything for my grandson, I just want him well. I don't want him going through pain and suffering and I don't want any other children...any other children in this State to have us as crass individuals tell them, you're...you're only worth two hundred and fifty thousand dollars and this drunk can go out and cut off your legs or this drunk can make it...impair you and make you blind and you got to go through this. If that's what you want, then you vote for it; you vote for it and you stand up in society and try to stand up and represent that...the people that we try to help. These are people that are going to be on our doles, if we don't give them money, the State is going to pay him and it's going to come out of all of our pockets. So why not let the wrong person pay and let the innocent person get from the wrong person instead of getting from all of the rest of us...people. I ask for a No vote.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Further discussion? Senator Barkhausen.

SENATOR BARKHAUSEN:

Mr. President and members, I understand that many of us feel strongly about these issues and it's not easy to discuss them dispassionately. Many of us feel that...that we ought to be passing out of the Senate a strong bill perhaps without feeling any particular attachment to the figure of two hundred and fifty thousand dollars. Let me just simply point out that which many of us are already aware that there are states that have adopted language of this kind. In the medical malpractice area, for example, the States of Califor-

nia...and Kansas and Maine and...and South Dakota have all adopted caps, two of them at the two hundred and fifty thousand dollar level in the medical malpractice field. Beyond that, Maryland and Minnesota, both states with Legislatures controlled I believe by the Democrats and with Democratic Governors, have recently adopted caps in all personal injury cases of three hundred and fifty thousand dollars in the case of Maryland, four hundred thousand dollars in the case of Minnesota. So what we are proposing here is not something that is particularly novel. As has been pointed out, the Justice Department even recommended a level of a hundred thousand dollar cap and this is, of course, two and a half times more generous than that. As I say, none of us I don't think are stuck on a...on a figure for a cap of two hundred and fifty thousand dollars, we do figure...feel that...that some sort of limitation is important, not only for its own sake, but in order to make the business of trying to predict liability which is probably the greatest single reason that insurance costs have gone up the way they have...that business more certain and predictable and I urge the adoption of this amendment.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Further discussion? Senator Poshard.

SENATOR POSHARD:

Yes, thank you, Mr. President, Ladies and Gentlemen of the Senate. I...I've listened to most of the debate today with a great deal of interest and I...I guess there's something here that concerns me that hasn't been talked about yet, and that's the process of the legal system in this country...in this State and what we're doing with that. Now, as I understand it, and I'm not a lawyer, if I have a cause for complaint against another individual, I can take that to the courts for redress, I can have a lawyer to prosecute for me, the person whom I'm prosecuting can have a lawyer to

defend him and those two people can interview a long list of people as long as it takes to get twelve objective people to decide my case. If I'm a prosecuting attorney, if I'm a defense attorney, I can throw out anyone whom I do not feel is objective, and I may throw out people whom I do feel is objective but may be detrimental to my particular argumentation. And it seems to me that what we're doing with the system that has served us so well for so long in this country entrusting twelve individuals to be objective about the facts of a case, and that's really the basis for our whole system of jurisprudence, isn't it? That we put everything in the hands of those people to make a fair and honest decision about the particular facts of this case. I've always thought that that's what we're about but it seems to me that what we're doing here now, especially with this amendment, we're saying you don't have the sensibility after listening to the facts and after being carefully chosen by both sides and agreed upon by both sides, you do not have the sensibility or the good judgment to determine not only the rightness or wrongness of the case but whether, in fact, remuneration to an individual for loss is appropriate. Now that to me goes to the very heart of our system. What are we about as a people if we're not about trusting twelve objective people which both sides have chosen to determine the case and to determine what the case should bring to the injured party. I think this is a bad amendment. There are some things that maybe we need to change about our tort system but this isn't one of them, because this takes away from the judgment of people which we have entrusted our legal system to and I'm against it.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Further discussion? Senator Schuneman may close.

SENATOR SCHUNEMAN:

Thank you, Mr. President. The...the essence of the argu-

ment for this amendment is whether noneconomic damages should be open-ended as they have been, and as I listen to the...to the arguments here, I was reminded that for many jurors the passionate arguments of a trial attorney come to them for the first time. And it seems to me that if I heard those arguments the first time, I might be more persuaded than I was today listening to this debate, because we've heard them many, many times here. But I think the essence of what we're doing here is deciding whether or not we're going to have any limit on damages that cannot be measured in an economic way, and for persons to...to raise the issue on the Floor of this Senate about the impossibility of putting a price tag on the health of a relative, of course, you can't do that, we all know that. And I don't think we ought to be challenging here the affection that any of us have for our family...members, that's something that's personal to each of us. But I think we also have to come to grips with the question of whether or not we're going to send a message out there that we're...we're not satisfied with what I consider to be a run-away court system and...so this is your chance to...to vote for some kind of a limit. Now I don't know two hundred and fifty thousand dollars is right and maybe it won't come back to us that way, but at least in this case we can show that we believe that there ought to be some limits on noneconomic damages. I...I urge support of the amendment.

PRESIDING OFFICER: (SENATOR DENUZIO)

All right, a roll call has been requested. Senator Schuneman has moved the adoption of Amendment No. 10 to Senate Bill 2263. Those in favor will vote Aye. Those opposed will vote Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, the Ayes are 26, the Nays are 31, none voting Present. Senate Amendment No. 10 fails. Further amendments?

SECRETARY:

Amendment No. 11 offered by Senators Luft and Rupp.

PRESIDING OFFICER: (SENATOR DEMUZIO)

All right, I am told there are seven addition amendments to this bill. Hope everyone brought their knapsacks. Senator Luft.

SENATOR LUFT:

Thank you, Mr. President. Is this the frivolous suit amendment?

PRESIDING OFFICER: (SENATOR DEMUZIO)

Well,...just...just a moment. The notation on the amendment indicates that it is, Mr. Secretary,...read the LRB number.

SECRETARY:

Yes. LRB No. 8411092DAMRAM01.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Luft.

SENATOR LUFT:

Thank you, Mr. President. It's my understanding this is the identical amendment we had adopted earlier on and then struck...with Amendment No. 5. It pertains to frivolous suits and I think is agreed upon by all parties. So I would move for the adoption of Amendment No. 11 to Senate Bill 2263.

PRESIDING OFFICER: (SENATOR DEMUZIO)

All right. Discussion?...Senator Rupp.

SENATOR RUPP:

Thank...just to urge that...a Yes vote on this agreed amendment.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Well, now we got our directions, okay. Senator Luft has moved the adoption of Amendment No. 11 to Senate Bill 2263. Those in favor indicate by saying Aye. Opposed Nay. The Ayes have it. Amendment No. 11 is adopted. Further amend-

ments?

SECRETARY:

Amendment No. 12 offered by Senator Keats. LRB No. 8411092RCM...1AM10.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Keats.

SENATOR KEATS:

I will be extremely brief. This is the contribution among joint tort-feasors. Last year this was Senate Bill 779 sponsored by Senator Dawson and Senator Friedland, passed the Senate on a vote of 38 to 11 with roughly a dozen Democrats, it was a bipartisan vote. In a couple of quick sentences, workmen's comp. is a no-fault. One of the reasons that...an employee receives benefits even if his injury was caused by his own stupidity or recklessness, we agreed that he would get these benefits without anyone asking any questions. And, with that, in order for an employee even if it's his own fault to receive benefits, the employer said you can only sue me under workmen's comp. That was the agreement in 1913, that has been the law of Illinois for seventy some years. Recently the Supreme Court, not the Legislature, the Supreme Court changed the law and said you can now come around and have a third party sue your employer. What it basically is doing is undermining the concept of...of workmen's comp. being a no-fault. If there's one thing this Legislature should stand for it is the fact that injured workers will receive benefits regardless, the no-fault concept that workmen's comp. has to be protected, this does it. We didn't change the rule, the Supreme Court did, it went out on a bipartisan 38 to 11 vote last year and I'd appreciate your support.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Discussion? If not, Senator Keats has moved the adoption of Amendment No. 12 to Senate Bill 2263. Those in favor

indicate by saying Aye. Opposed Nay. The Ayes have it.
Amendment No. 12 is adopted. Further amendments?

SECRETARY:

Amendment No. 13 offered by Senator Leitch. The LRB No.
is 8410092RCMIAM12.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Leitch.

SENATOR LEITCH:

Thank you, Mr. Chairman, Ladies and Gentlemen of the
Senate. I, too, will hope we be very brief. This amendment
addresses a very serious problem especially as it impacts the
six hundred weekly and daily small newspapers in Illinois,
and I'd appreciate a favorable vote.

PRESIDING OFFICER: (SENATOR DEMUZIO)

All right. Senator Leitch has moved the adoption of
Amendment 13. Discussion? Senator Rock.

SENATOR ROCK:

Only to ask the gentleman what it does.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Leitch.

SENATOR LEITCH:

What this does is remove punitive damages in liable
suits.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Further discussion? Senator Rock.

SENATOR ROCK:

...that's what I thought it did...absolutely incredible.
What has this to do with the "insurance crisis?" Zip.
There's no insurance for punitive damages in any event. So
what we are saying, effectively, we have already said merry
Christmas and happy birthday to corporate Illinois and now we
are saying merry Christmas and happy birthday to press Illi-
nois. Write anything you want, utter disregard for the
facts of the truth, write whatever you want, no way to get at

you. I vote No.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Further discussion? Senator Hall.

SENATOR HALL:

Will the sponsor yield for a question?

PRESIDING OFFICER: (SENATOR DEMUZIO)

Indicates he will yield. Senator Hall.

SENATOR HALL:

Senator Leitch, is...is this the results of a...an award that's been given down in St. Clair County?

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Leitch.

SENATOR LEITCH:

I wouldn't say it's directly a result of that specific award, but one of the problems...has occurred especially since the late 70's is increasingly punitive damages have become the target as opposed to general damages and, as a result, we are finding very extensive...not only awards being given but it has resulted in a skyrocketing of liable insurance costs to the extent that, as an example, the Hoopston Chronicle which has two thousand circulation has to now carry a five million dollar liable coverage. The Litchfield News-Herald which has fifty-five hundred circulation is up over ten million dollars. The Daily Calumet which is twelve thousand has ten thousand, and so what has happened is that as a result of the problem in the insurance crisis as a whole, what has occurred is that there's been such a distortion which were it to be directly done would be a gross violation of the First Amendment. And so the First Amendment is...is under threat by...by virtue of the problems of insurance and that's wrong and...and this would...this would cure that problem very successfully.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Hall.

SENATOR HALL:

I just want to be sure I'm straight on your amendment. In other words, you're telling...a newspaper can print...defame your character, make all kind of false statements against you, and you are saying that even though they know...that's...untrue that there should be no punitive damage could be awarded? Is that what you're saying?

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Leitch.

SENATOR LEITCH:

No, what I'm saying is is that...is that the awards should be given under the compensatory damages and under the general damages as...as was the case until very recently and until some very large awards started to totally distort this whole system that we've had and had worked successfully for so many years, that until 1974, the highest amount ever upheld by the Supreme Court was about four hundred eighty-five thousand. In recent years some of these punitive awards have gone into the tens of millions of dollars which has then caused this tremendous increase in insurance and has totally messed up the system to the point where this...this kind of change makes a great deal of sense.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Hall.

SENATOR HALL:

Well, all I can say, this is a very, very bad amendment and it should really be defeated.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Further discussion? Senator Welch.

SENATOR WELCH:

Thank you, Mr. President. I would just rise to speak against this amendment mainly because in a liable suit the main source of damages is going to be punitive damages. It's very difficult to quantify the damage suffered from liable,

and to say that there's no punitive damages is, in effect, to say that there is practically no liability whatsoever for reckless disregard of the truth and that's what you're doing with this amendment. It seems to be it's a...it's an amendment to help a specific class cut out from all the rest, it may be unconstitutional and I think that we should vote No.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Further discussion? Senator Geo-Karis.

SENATOR GEO-KARIS:

Well, I rise to speak in favor of...this amendment, Mr. President and Ladies and Gentlemen of the Senate, because...because...wait a minute. If you prove a case of liable in the first instance, you should be able to get a good judgment and...what this does, if I understand it correctly, it eliminates the punitive damages. I don't see anything wrong with this. I speak in favor of it.

PRESIDING OFFICER: (SENATOR DEMUZIO)

(Machine cutoff)...discussion? Senator Leitch, you may close...whoop...whoop...whoop, one more speaker. Senator Rock.

SENATOR ROCK:

Well, I...I apologize, Mr. President, for rising for a second time but there has been some intramural discussion on this side as to what the amendment does. With...with all the paper trail that we've had before, some have...let me just read this for you so that everybody is really clear on what this baby says. "No punitive, exemplary, vindictive or aggravated damages shall be allowed in any case in which a plaintiff seeks damages by reason of liable, slander or defamation of character against a reporter or news media." That's absolute sheer, unadulterated license, and I would suggest that all of us start immediately to form our own newspaper and we can have one hell of a field day.

PRESIDING OFFICER: (SENATOR DEMUZIO)

All right. Further discussion? Senator Collins.

SENATOR COLLINS:

I have a question of the sponsor. You know, how...how do you separate and just segregate that class of people for...to be totally immune to any liable suit? How do you do that?

PRESIDING OFFICER: (SENATOR DEHUZIO)

Senator Leitch.

SENATOR LEITCH:

Well, first of all, I don't think they are totally immune because I think under the general damages and the compensatory damages people are able to recover. Second of all, the most important aspect of this has been that the...the great awards and the perversion of this whole system has resulted in a circumstance where many of these over...twenty-five percent of these six hundred weeklies and dailies in Illinois don't even carry insurance because it's either not available or they can't afford it, and so that then in turn is having a chewing affect on the ability of these weeklies and...and dailies to serve their communities, so that...what we're weighing here is the importance of the First Amendment and...and it makes sense.

PRESIDING OFFICER: (SENATOR DEHUZIO)

...Senator Collins.

SENATOR COLLINS:

So...so let me...let me kind of get this straight, you're really not protecting the media, you're really...trying to protect the insurance industry.

PRESIDING OFFICER: (SENATOR DEHUZIO)

Senator Leitch.

SENATOR LEITCH:

No, what I'm trying to protect is the ability of us all to enjoy the benefits of a strong and free press. I might also point out that this language is the same...the same language that was used to protect doctors and...and lawyers in

malpractice.

PRESIDING OFFICER: (SENATOR DEHUZIO)

...Senator Collins.

SENATOR COLLINS:

No, you...you...you're actually...with this amendment you're not...you're not protecting our right to enjoy a strong and free press. What you're really doing is totally demeaning and destroying...whatever hopes of credibility that's left to have a free press in this country. That's what this amendment does, 'cause what you're saying that we're giving them license to do whatever hell they want to do and there's nothing a poor citizen have to...to defend themselves against that. And that is most certainly not indicative of a strong and free press because the press first have to be respected and have some credibility and reliability before it is worth anything, and that's what you're doing is destroying that by this amendment.

PRESIDING OFFICER: (SENATOR DEHUZIO)

All right. Further discussion? Senator Leitch may close.

SENATOR LEITCH:

I would simply ask for a favorable approval of the amendment.

PRESIDING OFFICER: (SENATOR DEHUZIO)

All right, a roll call has been requested. The...Senator Leitch has moved the adoption of Amendment No. 13 to Senate Bill 2263. Those in favor will vote Aye. Those opposed will vote Nay. The voting is open. Have all voted who wish? Have all voted who wish? Take the record. That probably is the record. On that question, the...the Ayes are 9, the Nays are 46, none voting Present. Amendment 13 to Senate Bill 2263 fails. Further amendments?

SECRETARY:

Amendment No. 14 offered by Senators Watson and Luft and

the LRB No. is 8411092DAMRAM05.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Watson.

SENATOR WATSON:

Thank you, Mr. President. This is the collateral source evidence amendment that Senator Luft had offered earlier and we had adopted, and I believe this is pretty well agreed now. Move for its adoption.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Watson moves the adoption of Amendment 14 to Senate Bill 2263. Discussion? If not, those in favor indicate by saying Aye. Opposed Nay. The Ayes have it. Amendment No. 14 is adopted. Further amendments?

SECRETARY:

Amendment No. 15 offered by Senators Berman, Sangmeister and Lemke.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Berman.

SENATOR BERMAN:

I yield to Senator Lemke, he will handle this amendment.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Lemke. Senator Barkhausen, for what purpose do you arise?

SENATOR BARKHAUSEN:

What's the LRB number?

SECRETARY:

LRB No...no, it...it doesn't carry an LRB number. It carries a Senate majority number. SDS84S2263PAH14DH.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Lemke. Senator Barkhausen, for what purpose do you arise?

SENATOR BARKHAUSEN:

With a parliamentary inquiry, Mr. President. Inasmuch as Amendment No. 16 relates to Chapter 73 dealing with the

Insurance Code and inasmuch as Senate Bill 2263 in its original form dealt with Chapter 70 in this Illinois Revised Statutes, and inasmuch that all of the...the...the original bill and all of the amendments that we have discussed thus far relate solely to questions of tort and to personal injury, and inasmuch as the Chair in its earlier ruling today dealing with Senate Bill 1488 took what many of us would regard as a...as a rather restrictive view of germaneness in that it...the Chair ruled out of order amendments on these same subject matters to a bill that also dealt with the question of personal injuries, I would ask the Chair to determine whether, in fact, Amendment No. 16 is germane and would further request the Chair to...to rule in Amendment No. 16 as nongermane and therefore out of order.

PRESIDING OFFICER: (SENATOR DEWUZIO)

Thank you, Senator. Senate Bill 2263 unlike Senate Bill 1488 was originally designed to address the purported insurance crisis in Illinois. Its subject includes any measures reasonably designed to increase affordability and availability of insurance in Illinois. The amendment relates to the subject of the bill and is therefore germane. I might add that we have already considered and adopted as amendments to Senate Bill 2263 a broad range of measures including ones to address the so-called frivolous suits to restructure tort, the tort law generally and to provide a new Act relating to product liability. The amendment is germane. Senator Lemke.

SENATOR LEMKE:

What this amendment is, it's a simple...very simple amendment. It says, "No insurance company which issues or has in effect a policy of insurance to which Section 143-11 shall apply...apply shall charge as a premium more than the premium which is charged in 1984 for the same policy of insurance." What this is, this amendment is very simple. It's like the rainbow...

PRESIDING OFFICER: (SENATOR DEMUZIO)

All right...Senator Schuneman, for what purpose...

SENATOR LEMKE:

...and this is the pot at the end of the...

PRESIDING OFFICER: (SENATOR DEMUZIO)

...Senator Schuneman, for what purpose do you arise?

SENATOR SCHUNEMAN:

A point of order, Mr. President.

PRESIDING OFFICER: (SENATOR DEMUZIO)

State your point.

SENATOR SCHUNEMAN:

You...you ruled but did not give the Body any opportunity to...to consult with you in your ruling, Mr. President.

PRESIDING OFFICER: (SENATOR DEMUZIO)

I had the highest...

SENATOR SCHUNEMAN:

...and I'm sure you intended to do that.

PRESIDING OFFICER: (SENATOR DEMUZIO)

...consultation right...to my left.

SENATOR SCHUNEMAN:

Well, can I point out, Mr. President, that contrary to your ruling, Senate Bill 2263 as introduced, as far as I can tell, doesn't mention the subject of insurance. There's no mention of insurance, what it mentions is the...the Illinois Comparative Fault Act and similar to the ruling...if...if the Chair is going to be consistent, Mr. Chairman,...Mr. President, I think you must rule that this amendment is germane...or not germane since your previous ruling of this very day was that same ruling on...on a very comparable issue.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Schuneman, you and I both know that Senate Bill 2263 was designed to address the...the question of the insurance liability crisis. I have made a ruling that, in fact,

it is germane. Senator...Senator Rupp, for what purpose do you arise?

SENATOR RUPP:

Just...thank you, Mr. President. Just to agree with Senator Lemke when he started out and said this is a simple bill. I think what we should do...I asked if they would entertain an amendment to it to also freeze attorneys' fees and...

PRESIDING OFFICER: (SENATOR DEMUZIO)

Well,...Senator, we...we're on...Senator Lemke on Amendment No. 15.

SENATOR LEMKE:

You know, Senator Rupp, this is a...this is...this is what we're trying to do here and trying to keep the insurance industry honest that they're going to reduce premiums or at least this is going to keep premiums at the same place it is in '84...until we see how these bills work and...and...and see what we can do. But as far as freezing attorneys' fees, we already did that. We cut attorneys' fees, should we cut insurance premiums? That was my other suggestion. My suggestion was originally...and when I got into this idea was to put a sunset law on this in three years; therefore, if we are taking benefits away from one person, then we should give benefits to another person...that's what we're talking about. We're trying to benefit people that pay insurance premiums on their liability insurance, that's what...that's what you're trying to...this bill...this amendment is so germane to this particular bill that there's no question about...we're talking about liability. This amendment goes right to the liability section of the Insurance Code. It talks about liability. It talks about it, why should the insurance industry get off the hook? It's a war always between business and labor, consumers versus business, but the insurance company just stands back there. The last time we tried to

help business was workmen's compensation, business and labor had to get together and sue the insurance industry to get a rate reduction, and they admitted...and insurance companies admitted they overcharged eighteen percent. I wonder what they really overcharged? So, therefore, I think it's a good amendment. I ask for its...I ask for its adoption.

PRESIDING OFFICER: (SENATOR DEMUZZIO)

All right. Senator Lemke has moved the adoption of Amendment 15. Discussion? Senator Collins.

SENATOR COLLINS:

Yes, thank you, Mr. President and members of the Senate. I rise in very strong support of Amendment 16. I...and I also think that it is germane because it gets to the real heart of the so-called claim around here. Now, it is my understanding that the reason we have this problem is because the insurance industry fails to provide insurance in these cases because of the so-called elements of risk involved and...and losses. And just as Senator Lemke said, every time there is a crisis dealing with the insurance, be it worker's compensation or whatever, we spend hours and months and days and weeks coming up with so-called solutions and all of those solutions seem to come down to hands off of the insurance industry. Everybody must pay except the insurance industry, which is probably one of the most richest industry in this country and, yet, every time there is some so-called losses, all of it comes out of the hide of the poor and those people who are least able to pay the costs. And so if there is any fairness at all,...sitting here today and listen to repeatedly arguments and debates about fairness and...and...and...and changing the system and making it more equitable to all people...concerned. But never once have there been anything and there's no intention on the part of that...side of our aisle to bring...come to grips with the reality of what's really happening. I would suggest that

this is an easy way out, because I see what we need to do to deal with the problem of assessability of insurance in...in the State availability is to just say that if you do business in this State, you must provide adequate coverage for the citizens of...to protect the...the...the citizens of the State of Illinois, be it through local units of government or be it through whatever means, there need to be coverage if you doing business and you will write that insurance at a reasonable rate and, if you don't like it, go to another state. I say this is a good amendment.

PRESIDING OFFICER: (SENATOR DEHUZIO)

Further discussion? Senator Watson.

END OF REEL

REEL #6

SENATOR WATSON:

...Mr. President, that's a great attitude we just heard from there. Gee. Let me ask the...the sponsor, if I could, a...a question.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Indicates he will yield. Senator Watson.

SENATOR WATSON:

Okay, so we're here in 1986 and you're saying now that we're going to roll back prices to 1984. Is that...is that correct?

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Lemke. Senator Lemke. Senator Lemke.

SENATOR LEMKE:

That's...that's...yes.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Watson.

SENATOR WATSON:

Is there anywhere in here where it says the insurance company then must offer that policy? What happens if they decide to, as the previous speaker said, leave Illinois?

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Lemke.

SENATOR LEMKE:

I don't think the insurance industry is going to leave Illinois. I don't think they're going to leave any state. I think...they made big profits. If you'll look at their corporate returns in 1984, they made big, big profits and they ain't going away...they ain't going away, and I don't think they're going to leave. So, I...I think it's just a question. We're not...we're not telling them to automati-

cally reduce rates. All we're doing here is freezing at where...where the crisis was allegedly supposed to start after and that's what we're doing. And we're doing all of these reforms. We just want to make sure to keep the insurance industry honest, that they're going to reduce premiums.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Watson.

SENATOR WATSON:

I don't...I don't believe what he said was quite correct. If...if the rates are higher now, we are going to be reducing rates and mandating those reductions to the 1984 level. Isn't that correct?

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Lemke.

SENATOR LEMKE:

I guess this would be kind of a mandate, indirectly.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Watson.

SENATOR WATSON:

It's...it's very direct. Anyway...part of the issue, besides affordability is availability. I mean, that's as much a problem as the cost. There's people that are willing to pay the cost but simply can't get the insurance. Now what...this type of approach is...is ludicrous and I don't think that we...we or anyone on this Floor who supports this can go back home and say, well, we solved the problems of availability of life...of casualty and...and liability insurance by...mandating the insurance companies roll back their prices to the 1984 level, I...I think is...is a...is a terrible approach. This...this should get about as many votes as that...the liability on the...the press...gets more than nine why it's a...it's a winner...it's a real loser. Vote No.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Is there further discussion? Senator Schuneman.

SENATOR SCHUNEMAN:

Well, thank you, Mr. President. I think that what the sponsors of this amendment are doing is trying to take a shot at the insurance industry and, frankly, I am in the mood to do that too, but what you're doing...what you're really doing is taking a shot...or aiming at the insurance industry and shooting your consumer in the foot, your small business people, units of local government who now find that insurance is unavailable. Your...your amendment doesn't...address the availability of insurance. What it says is that the insurance company who in 1984 was charging, say a ten thousand dollar premium and reinsuring the risk at a...maybe two thousand dollar premium, now this year has to charge a ten thousand dollar premium when reinsurance may be costing them eight thousand dollars; and, you know, this is...this is a completely silly suggestion and I...it may be offered with tongue in cheek, I'm not sure, but...you know, I think we'd all like to do something to show our displeasure with the insurance industry but don't do this. This will...this will work against your consumers.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Rupp.

SENATOR RUPP:

Thank...thank you, Mr. President. I do...I think we're...we're looking at this problem. I don't think there's any question that we've established that there are two parts to this problem; one is price and one is availability. This thing certainly is not going to do one thing to improve the availability. I think it's interesting to note that...and it just came out that...in the last day or two, West Virginia is right now back in special session because five...they...they did some things like this and five major companies withdrew from the state. So, for anyone to get up and say they are not

going to do it, they will do it, they have done it, maybe we can settle it in November if you want to come back to a special session.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator DeAngelis.

SENATOR DeANGELIS:

Thank you, Mr. President. Back several years ago when I was still active in the tubing business, I had a gentleman call me and ask me for a quote on a particular product, and I gave him a price and he said, your price is too high, and he gave me the price that he had been quoted by a competitor. So, I, out of somewhat insipidness said, well, why don't you buy it from him? He said, he doesn't have it. I said, well, hell, if I didn't have it, I'd give it to you for nothing. Well, I think you're going to have the same effect right here. Why don't you just lower it to zero, because if it's not available, it doesn't really matter what the price is. But I do have a question of the sponsor as well.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Indicates he'll yield.

SENATOR DeANGELIS:

Based on the way I read...and I have to cover myself by saying I'm neither a lawyer or an insurance man. Based on the way I read the amendment, however, product liability and general liability insurance is generally based on dollar volume. Now this says that the premium shall not be...the premium shall be the same as the premium was in '84. Now if my dollar volume goes down, are you precluding me from having a lower premium or are you going to have that company raise the rate? The other one is, what are you going to do about companies that are doing more volume? Because you're talking about premium here, you're not talking about rate.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Lemke.

SENATOR LEMKE:

Well, we're talking about a rate that insurance companies charge per thousand, and we're talking about a rate, no matter if your volume goes up, you will be charged so much per thousand for insurance. We're talking about being charged a 1984 rate, not the 1986 rate. So, if your dollar and volume goes up, your premium is going to go up, that's natural 'cause it'll go up...it would have went up under 1984 rates. This is not going to freeze premiums. This is going to set the premium for that particular type of insurance and that particular volume at 1984 rates where it was alleged that the insurance crisis started. This is...and if you...if you decrease in volume, your premium is going to go down in volume because premiums are based on thousands, and I speak from this, Aldo, on a very experienced level. I used to be house counsel for USF and G and I can tell you about the insurance premium business 'cause I've been involved in many lawsuits when I was representing them for ten years, so...I know what the deal is. They charge per thousand...they charge a rate per thousand and we're talking about being charged the 1984 rate per thousand; and if any industry...any big industry decides to move out of Illinois because they don't like we have here, that's not going to happen and I'll tell you why it's not going to happen, because as they pull out of states, then Congress is going to act and there's one thing that the insurance industry doesn't want and that's Federal control and being put under the antitrust laws. They have that exemption. And I'll tell you this, if they start pulling out and refusing to give local government insurance coverage, they refuse to come into a state and write...that's a great violation of antitrust law, and I think they're going to lose themselves in a big lawsuit and I think the Federal Government will step in and pass some legislation which they don't like. So, I...I think that this is a good amendment and this just

brings the insurance companies into the pie where they haven't been in this...in this negotiations. I ask for adoption of the amendment.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Well, Senator DeAngelis, you asked for...you asked a question. Senator Lemke, obviously,...takes a little time in answering that question. Senator DeAngelis.

SENATOR DeANGELIS:

And he didn't answer the question either. In fact, we ought to really amend this to include an AIDS test along with it. Senator Lemke, this is such an extensive amendment that it's five...five...four lines long and if you'll read it it says, "Shall charge as a premium." Doesn't say a single thing about rate, "Shall charge as a premium." Now, the other thing...difficulty with it is what if you have a new company coming in...but it does not say rate, it says premium. And as a point of personal privilege, Senator Sangmeister and I both agreed that whichever of us...one of us goes to Congress, we will deal with those Federal issues on insurance.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Barkhausen.

SENATOR BARKHAUSEN:

Mr. President and members, I'd just like to make a quick legal point on top of more general and perhaps more important point that this amendment would clearly aggravate the availability problem. But the legal point is that as I read this amendment that it would seem to be an unconstitutional impairment of a contractual obligation. If you view an insurance policy as a contract between the insurance company and insured and you're...you're saying that an existing policy set with a premium established at 1986...or 1985 rates which may be different than those which were in force in 1984, then by imposing a legislative fiat that the rates have

to be rolled back to 1984, we would thereby be impairing that contractual obligation which establishes rates at 1985 or 1986 levels. So, apart from all the other problems which this...amendment would entail...on top of that, I believe it's unconstitutional and for all these reasons ought to be rejected.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Hall.

SENATOR HALL:

Thank you, Mr. President and Ladies and Gentlemen of the Senate. All of a sudden we come to where we have to be worried about the poor insurance companies, shed crocodile tears for them. I'll tell you what, the availability...I live in a city right now where I pay close to eight hundred dollars more for my car insurance than if it were garaged outside of that city. These insurance companies come in, they force all of the people who...who are brokers in that town, if they want to use their policy, a city of fifty-five thousand people in the City of East St. Louis, they got two insurance companies now because these insurance companies have refused to insure these people. Now, I don't know why all the worry and concern all of a sudden is about these insurance companies. I consider them barrons, what they do they make all this money and, as I told you before, as soon as you get some claim against them, what do they do? They either tie the money up or they go into some case and what they do is send you a notification. I have a lady right now that had the storm tear her roof off and what did they do? They came out and found out that they didn't give her enough money and she asked to...and what did it do, she got a notice yesterday that they're going cancel her insurance. I'll tell you, these people are ruthless. We need to do something about them. There's no need of having a place in this town...everybody...or in this State, everybody is...and

entitled to have insurance, but all of a sudden we're so worried about these insurance companies. I remember back here when one insurance company made a big statement in the paper that they had made fifty-five million dollars profit in the first six months and the next six months they made thirty-eight thousand dollar profit and they put a statement out that they lost...I mean, thirty-eight million and they put a place in the paper that they've lost seventeen million because they made fifty-five million in the first...no one says anything about that. We need to deal with these people and I think that's...we're going in the right direction.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Marovitz.

SENATOR MAROVITZ:

Thank you, Mr. President and members of the Senate. I heard some comments on the other side of the aisle that what we're doing here is shooting the consumers in the foot, and I'll tell you something, if we...if anything is shooting the consumers in the...in the foot, it's the first several amendments that we put on this bill. And let's be honest about this. Those are the amendments that have been most harmful, most hurtful to the consumer is the people that...I've heard some people on the other side of the aisle say that you're...you're concerned about. If we were concerned about them, we wouldn't have put those amendments on the bill in the first place. I also heard some comments on the other side of the aisle that some states have done this before and seen insurance companies pull out. Well, it's nice to use examples of other states, but let me give you some examples of other states. If you take a look at the other states that passed the same amendments that you put on this bill earlier today and take a look at what effect that had on the rates and the availability of insurance in those states, you'll find that they have the same crisis and the same increase in

premiums that we have in Illinois without those amendments. So, these amendments that you put on...aren't going to do any good for those people that you say you're concerned about, they're not going to do any good about the premiums and the availability. At least with this amendment...at least with this amendment, we are saying, okay, we've put these harmful amendments on, but we're going to be damned sure that it's going to affect the rates.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Is there further discussion? Senator Berman.

SENATOR BERMAN:

Thank you, Mr. President and Ladies and Gentlemen of the Senate. Most of this debate is as if Amendment 15 were the entire bill, and let me just suggest to you, ladies and gentlemen, that this amendment makes the entire bill fair...fair, and I tell you, those of you who are concerned about your business people and your voters back home, I don't see how you cannot vote for this amendment. Let me tell you why. All that this amendment says is as follows. It says that back in 1984, liability insurance companies who are in the business of writing liability insurance policies estimated that a policyholder should pay a certain premium and that that premium was based upon an exposure...based upon an exposure that the underwriters of those companies said that they could be subject to punitive damages, that that policy could be subject to no setoff for collateral sources, that they would be subject to a deep-pocket theory because joint and several liability was in force, that they...that the pure comparative negligence was the law in Illinois, not a modified comparative fault; that there as a open blank check product liability law, not a modified one and that all of the attorneys' contingent fees had no cap on them. Under that circumstance, the insurance companies quoted a premium for liability insurance in 1984. Now, we're saying that if

2263...Senate Bill 2263 passes and the insurance company is going to write a liability policy in which there is no exposure for punitive damages, that you can't...you may not have to collect for collateral source, that you've eliminated joint and several liability, that you now have a modified comparative fault threshold of fifty percent, that there's a new product liability that cuts down the exposure for product liability lines, with that much more favorable climate in Illinois, we want you insurance companies to charge not below but at the same price that you pay...that you quoted this insured for a greater liability in 1984. That's all we're asking. That's what we're saying by this amendment which is part of this bill which is giving them what they're asking for, a better climate, a more predictable jury system, a more predictable court system, and we're saying, we're willing to pay you what you quoted with higher exposures in 1984. That's what our voters expect us to do, ladies and gentlemen. That's all this amendment on this bill does. It says, we're giving you a better climate and we just want you to give us not even a reasonable break. We'll let you charge the same things you charged in 1984. This is the heart of the whole insurance crisis from the point of view of the consumer. It requires a Yes amendment on Amendment No. 15.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Is there further discussion? Senator Lechowicz. If not,...if not, Senator Lemke may close.

SENATOR LEMKE:

I just ask for an adoption of this amendment which says that all the things that we're doing to reform, this will guarantee the people what's been promised them, at least, and I ask for a favorable vote.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Lemke moves the adoption of Amendment No. 15 to Senate Bill 2263. Those in favor will indicate by saying

Aye. Those opposed. The Ayes have it. A roll call has been requested. Those who wish to adopt Amendment No. 15 will vote Aye. Those opposed will vote Nay. The voting is open. Have all voted who wish? Have all voted who wish? Take the record. On that question, the Ayes are 30, the Nays are 26, none voting Present. Amendment No. 15 having received the majority vote is declared adopted. Senator Lemke.

SENATOR LEMKE:

(Machine cutoff)...side, I make a motion to reconsider.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator...Senator Lemke moves to reconsider. Senator Berman moves to lie that motion on the Table. All those in favor indicate by saying Aye. Those opposed. The Ayes have. The motion carries. Further amendments?

SECRETARY:

Amendment No. 16 offered by Senators Schuneman and Rupp. And the LRB No. 8411092SJDVAM01.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Schuneman.

SENATOR SCHUNEMAN:

Thank you, Mr. President. Amendment No...what is this...15?

SECRETARY:

16.

SENATOR SCHUNEMAN:

Amendment 16 is the severability clause. I move its adoption.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Is there discussion? Is there discussion? If not, Senator...Senator Schuneman moves the adoption of Amendment No. 16. If there's no discussion...Senator Berman.

SENATOR BERMAN:

Question of the sponsor.

PRESIDING OFFICER: (SENATOR SAVICKAS)

He indicates...

SENATOR BERMAN:

This is a severability clause or a non...if part of the bill is found to be unconstitutional, what happens to the bill if your amendment is adopted?

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Schuneman.

SENATOR SCHUNEMAN:

The balance of the bill is...is law.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Berman.

SENATOR BERMAN:

All right, I rise in opposition to this amendment and I...and it's...it's technical but it's important, especially in relation to the last amendment we adopted. Part of the argument...and I think the reason that everybody that voted Yes voted Yes is because within the total context of House...Senate Bill 2263 taken as a whole, we've made tort reform...dramatic tort reform and we've...we've delivered reduction in premiums for our voters. If you vote for this amendment,...if you vote for this amendment, you may lose...you may lose the reduction in premium and still have tort reform. That's why this amendment has to be defeated. If you voted Yes on the last one, you got to vote No on this one.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Is there discussion? Senator Weaver.

SENATOR WEAVER:

Question of Senator Berman. Senator Berman, are you admitting that this last amendment was unconstitutional?

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Berman.

SENATOR BERMAN:

No, not at all. All I'm saying is that we look at this

as a total package and that's the way it should...should remain.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Is there further discussion? Senator Lemke.

SENATOR LEMKE:

This I think we should vote No because if...say the beginning of the bill and all these amendments we put on to help the insurance industry are...declared unconstitutional, then it'd be...it'd be wrong for us to roll back the insurance premiums. So, I mean...see, we can talk about constitutionality and everything else, but this is a joint package and your side of the aisle made it that way. You went out and told everybody you're going to cut premiums. We did it. Let's cut premiums. That's what we're doing. We're...we're not cutting, we're just rolling them back...ball game. I'm not asking...the support is...the last amendment to vote No. This has to stay together. It has to guarantee to the people that there's no severability, that...if one part of the bill is declared unconstitutional, then the whole bill...and we start all over, but we can't have one part go and the other part go, and we can...we can...as lawyers, Art and I can argue over what's constitutional and what isn't, we can go all day long and we don't know what's...that's the courts decision. I hope we don't take that power away. So, I ask for a No vote on this amendment.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Is there further discussion? Senator Carroll.

SENATOR CARROLL:

Just a question of the sponsor. Is this amendment joint and several then?

PRESIDING OFFICER: (SENATOR SAVICKAS)

If there's no further discussion, Senator Schuneman may close.

SENATOR SCHUNEMAN:

Well, thank you, Mr. President. [...I think silly time has arrived here. Of course, the amendment is the same amendment that we attach to almost all significant legislation that we adopt in this Body. I don't think there's anybody here who seriously thinks there's going to be a challenge to the...to the insurance part of this question. What's going to be challenged is the question of joint and several liability. Did you vote for that? What's going to be challenged is the question of modified comparative negligence. Did you vote for that? Well, if...if any part of either one of those issues is ruled unconstitutional, the sponsors would...or the opponents would have you believe that the whole bill will be unconstitutional. Now I'm told by staff that we probably don't need this anyway, that the...that the law...that the Statute already contains the same provision but it's common practice in the Senate and the House to attach these amendments to...to significant bills so that the court will not unintentionally undo everything that this Legislature has done. We really ought to attach this to this bill if we're going to attach it to anything we do. I move adoption of the report...of the amendment.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Schuneman moves the adoption of Amendment No. 16 to Senate Bill 2263. Those in favor will vote Aye. Those opposed will vote Nay. The voting is open. Have all voted who wish? Have all voted who wish? Take the record. On that question, the Ayes are 29, the Nays are 29, none voting Present. Amendment 16 having failed to receive a majority vote is declared lost. Further amendments?

SECRETARY:

Amendment No. 17 offered by Senator Rupp. LRB No. 8411092RCM1AM11.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Rupp.

SENATOR RUPP:

Thank you, Mr. President. What this amendment does really is just renumber the several articles consecutively in the order in which they appear. That's all this amendment does.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Is there discussion? If not, Senator Rupp moves the adoption of Amendment No. 17 to Senate Bill 2263. Those in favor will indicate by saying Aye. Those opposed. The Ayes have it. Amendment 17 is adopted. Further amendments?

SECRETARY:

No further amendments.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Before we move it to 3rd reading, I would just...for your information, Senate Bill 2263 took four hours on 2nd reading for passage to 3rd. 3rd reading. On the Order of Senate Bills 2nd Reading, Senate Bill 2265, Senator Luft. Read the bill, Mr. Secretary.

SECRETARY:

Senate Bill 2265.

(Secretary reads title of bill)

2nd reading of the bill. No committee amendments.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Any amendments from the Floor?

SECRETARY:

No Floor amendments.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Demuzio, would you please be quiet. We're looking for possible amendments. No...no further amendments? 3rd reading. With leave of the Body, we will go back to page 2 on Senate bills 2nd reading. We have Senate Bill 2051, Senator Berman. Senator Luft, for what purpose do you arise?

SENATOR LUFT:

I'm sorry, Mr. President, but was 2265 moved to 3rd?

PRESIDING OFFICER: (SENATOR SAVICKAS)

It was moved to 3rd reading.

SENATOR LUFT:

Thank you.

PRESIDING OFFICER: (SENATOR SAVICKAS)

On the Order of Senate Bills 2nd Reading, Senate Bill 2051, Senator Berman. Read the bill, Mr. Secretary.

SECRETARY:

Senate Bill 2051.

(Secretary reads title of bill)

2nd reading of the bill. Committee on Insurance offers two amendments.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Berman.

SENATOR BERMAN:

Thank you. We'd got into this earlier and I think it was...somebody asked that we pull it out because of other amendments. We adopted in committee Amendments 1 and 2 and I will move to Table those because it...both of those are incorporated in Amendment No. 3. So, I move to Table Committee Amendment No. 1.

PRESIDING OFFICER: (SENATOR SAVICKAS)

You've heard the motion. Senator Berman moves to Table Committee Amendment No. 1. Is there objection? Hearing none, the motion carries. Amendment...Committee Amendment No. 1 is Tabled.

SECRETARY:

Committee Amendment No. 2...Oh, I'm sorry. Committee Amendment No. 2.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Berman.

SENATOR BERMAN:

I move to Table Committee Amendment No. 2.

PRESIDING OFFICER: (SENATOR SAVICKAS)

You've heard the motion...Senator Berman moves to Table

Committee Amendment No. 2. Those in favor indicate by saying Aye. Those opposed. The Ayes have it. The motion carries. Amendment...Committee Amendment No. 2 is Tabled. Further amendments?

SECRETARY:

No further committee amendments.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Any amendments from the Floor?

SECRETARY:

Amendment No. 3 offered by Senators Jones and Berman.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Berman.

SENATOR BERMAN:

Thank you, Mr. President. If everybody has been concerned about the exposure of your municipalities, this is the bill that you want to pay attention to and I think that you want to support. Amendment No. 3 does several things. First of all, it apply...it...it adopts a modified doctrine of joint and several liability for local public entities and employees. It...it states that joint and several will only...will apply only to defendants who are equally or more at fault than other defendants. So that this...the five percent situation that we've all heard about with the barriers and the...the town that puts up those barriers would not apply because there would be other defendants that would be substantially more at fault than the city. So this would eliminate joint and several for those situations that involve the local municipalities. Secondly, it deletes the provision whereby under existing law when a municipality buys insurance they waive the standard of wilfull and wanton misconduct as to their...standard of liability. This says that wilfull and wanton misconduct shall be the basis...the only basis upon which you can recover against a municipality even when the municipality has bought insurance. The third part of this

amendment is regarding the exposure for the people that volunteer for our...Senator Jones called it the little league amendment, the people that run the little leagues, this immunizes them as to their liability for injuries that result from those type of volunteer exposures arising out of...the...sports that are conducted not-for-profit and strictly as a community activity. I move the adoption of Amendment No. 3. Be glad to respond to any questions.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Is there discussion? If not, Senator Berman moves the adoption of Amendment No...Senator Rupp.

SENATOR RUPP:

Thank you, Mr. President. Could we have a little bit more explanation on your joint liability for local governments...what you're talking about there?

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Berman.

SENATOR BERMAN:

Yes, I'll be happy to. The amendment says that joint and several liability as relates to local public entities will only apply to those defendants who are equally or more at fault than other defendants. So, that if you have the situation that the cities have told us about, that the drunk driver careens over the...the barricade and causes a million dollars of damage to the plaintiff and the jury finds that the city was five percent responsible because they put the barricade in the wrong place but the drunk driver was ninety-five percent responsible, this amendment says that the city will only pay five percent of that judgment, that the drunk would...could not...or the plaintiff could not collect the other ninety-five percent against the city.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Rupp.

SENATOR RUPP:

Thank you. I do...it does sound familiar now. That's the one we defeated on the other bill. That's what we...rejected on the other bill. Isn't that correct?

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Berman.

SENATOR RUPP:

I thought it was a little bit familiar but I wanted to make sure that...and that the people here who are going to vote on this realize that this is one that we have already rejected on...on a broad basis and now you're just trying to apply it to local governments. I don't think we should accept this amendment that way.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Berman.

SENATOR BERMAN:

Well, I...I...so much...discussion has gone over the...the dam since we looked at that. I...I'm not sure, but let me suggest to you this...this happens to be a Senate bill and the bill that we just got done with happens to be a Senate bill. I would suggest to you that with the uncertainties...we've heard that word today, the uncertainties of what's going to happen in the House, if you want to protect your municipalities, you...you ought to vote for this notwithstanding what you did on the other bill.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Rupp.

SENATOR RUPP:

I'd just like to know why. Why should I do that? What...what that's going to do to protect them when I'm...when I'm exposing them, basically...since we don't know what they're going to do over there, they might accept this and then there we go.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Berman.

SENATOR BERMAN:

Well, if...I will just tell you this, that with the...if...if 2263 never sees the light of day again and you don't pass 2051, you've done...in effect nothing for...for your municipalities. It's better to be safe than sorry and I'm just telling you that, you know, from the point of view of your municipalities, this is an Aye vote. You can go home and explain to them all about 2263 but that...in the posture it is, you may never see that bill again.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Is there further discussion? Senator Rupp. No...

SENATOR RUPP:

No, I...I better not say what I was thinking...

PRESIDING OFFICER: (SENATOR SAVICKAS)

Good. Senator Schuneman.

SENATOR SCHUNEMAN:

Well, Mr. President and members of the Senate, I think we're getting into the same kind of...of action that we took on Senate Bill 2263. What Senator Berman is offering here is another modified version of joint and several liability and, of course, local governments have been asking that we abolish the doctrine of joint and several liability. Now this Senate has already voted to do that for everybody including governments. Now what Senator Berman is asking us to accept is...a less effective amendment as it affects units of local government. Now there will be following this amendment another one offered by members of our side of the aisle that would strike everything after the enacting clause and again enact the abolition of joint and several liability as it applies to local governments. So, I really think we ought to...we should not adopt this amendment.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Further discussion? If not, Senator Berman may close.

SENATOR BERMAN:

All right, let...Ladies and Gentlemen of the Senate, this...I believe it's fair to say that this will be the only opportunity that you will have to address one issue that all of your municipalities are in favor of. That is not the issue of joint and several liability, but in this amendment is the change in the standard of negligence that applies to municipalities; and what I mean by that is this, under the existing law, if they take out insurance, if they are found to be ordinarily negligent, the insurance must pay. This says that they do not have to have that standard, they can have a standard...a higher standard wilfull and wanton negligent even if they take out insurance. That is an element that has not been addressed before that your municipalities want and need. In addition, the other part of it is just another approach to joint and several liability, but...but the element regarding the standard of negligence is an important one. I urge an Aye vote for Amendment No. 3.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Berman moves the adoption of Amendment No. 3 to Senate Bill 2051. Those in favor indicate by saying Aye. Those opposed. The Ayes have it. The amendment is adopted. Further amendments?

SECRETARY:

Amendment No. 4 offered by Senators Rupp and Watson.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Rupp.

SENATOR RUPP:

Thank you, Mr. President. What this amendment does, it does eliminate basically right out on top the joint and several liability for municipalities. It deletes the provisions in the Counties Act and the Local Government Tort Immunity Act that require an insurance company to waive the immunities provided to local public entities. It deletes the provision to maintain property in a reasonable safe condition

and to conduct inspections for the purpose, to provide traffic signs which weren't of unsafe condition and it adds "agent and volunteer" to the definition of employee when applying the immunities granted under the Act. It expands the definition of injury to include civil rights injuries when applying the immunities granted under the Act. It expands the definition of local public entity to specifically include a library systems, intergovernmental agencies and not-for-profit corporations conducting public business. It exempts public employees from punitive damage awards. The expanded immunities include that the municipalities are not liable for injury caused by providing information verbally or through library materials, not liable...they are not liable either for injury based on the condition of public property...unless it's proven that the public entity had sufficient notice of an unsafe condition. They're not liable for the effect of weather conditions on traffic signals or ways adjoining the public streets or sidewalks. They're not liable for injuries occurring when a person participates in a hazardous recreational activity and voluntarily assumes the risk of such participation. Public entity is still liable, however, if they fail to warn a participant of a known dangerous condition which is not basically inherent to that part of the activity. They're not liable for injury occurring in lakes or rivers adjacent to but not owned to the local public entity, and I might explain here that the reason these might appear to be somewhat definite is that they all attend and...and...and face to some particular questions and possibly cases that have...where cities have been found to be held liable. They are not liable or will not be held liable for an injury occurring while in pursuit of an escaping prisoner. They're not liable for failure to provide rescue services or for delays or failure to respond to request for services including police, fire, ambulance, rescue or other

emergency service. They're not liable for injury caused by the negligent operation of a vehicle when responding to emergency calls unless the person injured was totally without fault or the emergency vehicle was operated with wilfull and wanton...misconduct. It raises the duty of care from a standard of...negligence to wilfull and wanton misconduct in the following situations; there are two, where injuries resulting from conditions of public property used for recreational purposes and injuries resulting from failure to summon medical care for a prisoner.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Is there discussion? Senator Berman.

SENATOR BERMAN:

I won't burden the Body with going through questions and answers between Senator Rupp and myself. Let me merely state that there are some provisions in here that probably don't make any difference, but there are some in here that...some provisions in this amendment, ladies and gentlemen,...and by the way, the amendment strikes everything after the enacting clause so the benefit that you've just provided to your municipalities in the previous Amendment No. 3 is taken off. That alone should cause you to vote No on Amendment 4. But let me tell you what this...what Amendment 4 does and if you listened to Senator Rupp carefully there is no city or village or municipality in Illinois if this amendment is passed into law that will ever have to inspect any of its traffic lights, it will never have to repair any of its streets, it will never have to caution their policemen or firemen that when they go through a red light in an intersection with their sirens blasting that they should slow down at all, they won't have to, they can just go raring though...roaring through; and if you happen to be in that intersection and you get hit by that emergency vehicle, you can't sue. That's what this amendment does. That's what was

explained by Senator Rupp. Now, ladies and gentlemen, I represent a couple of municipalities in my district and I got to tell you that my responsible elected officials in those communities don't want this kind of a blank check that Senator Rupp is giving to them. This is more than they need. It's more than they want. I don't know who brought this together, but I will tell you this, it's irresponsible because it says, any municipality, you can do anything you want and we can't sue you. I urge a No vote on Amendment 4.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Is there further discussion? Senator...Senator Watson.
SENATOR WATSON:

Well, just a clarification, Mr. President. I understand that those provisions were taken out. Is that...do you know of that...

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Rupp.

SENATOR RUPP:

Which ones? I've been told that some of them have been taken out since I got this listing, but I can't tell you which ones. Which ones were taken out?

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Watson.

SENATOR WATSON:

Well, I understand that Section 3-105 dealing with weather conditions, traffic signals and all was taken out of the...out of the amendment. It is no longer in it.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Berman.

SENATOR BERMAN:

I apologize for standing. In the explanation, he said that a municipality shall not be responsible for weather conditions. All right? Now, that's what he said.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Rupp.

SENATOR RUPP:

I was trying to apologize too. He had his turn, I apologize, I made a mistake. That's the first time. I think there was once in nineteen...let's see...seventy...seventy-two, I think it was, but I'm sorry...sorry.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Berman.

SENATOR BERMAN:

Well, I...I accept your apology but I'm not sure what you're apologizing for. Would you care to state...would you care to state again for our...all of our edification what's in this amendment? When...when will municipalities not be liable when they are liable today? Would you please restate that then?

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Rupp, did you hear the question?

SENATOR RUPP:

I will...I will defer to those who have worked on it more recently than I did.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Watson.

SENATOR WATSON:

Yeah. Thank you. Yeah, we just...okay, is this in or is it out? Where's the amendment that we have...okay. Revision of Section 3-104, Chapter 85, paragraph 3104, that provision in one of the original amendments that you may have there, Senator Berman, was taken out and is not currently in our amendment.

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Berman.

SENATOR BERMAN:

Mr. President, I renew my question from either Senator

Watson or Senator Rupp, under what circumstances in this amendment will a municipality not be liable where they are liable today? Would they please elaborate exactly when...what benefits does the municipality gain from this amendment?

PRESIDING OFFICER: (SENATOR SAVICKAS)

Senator Watson. Senator Rupp indicates he can answer that.

SENATOR RUPP:

While...while he's looking, I can tell you one thing that they'll gain, Mr. Berman, is the...the joint and several will be eliminated, if you want to know one thing, and that's the main thing that's in there. I said that I...I would...

PRESIDING OFFICER: (SENATOR DEMUZIO)

All right, further discussion? Senator...Senator Watson.
SENATOR WATSON:

This is to respond to the immunities...the immunity question that Senator Berman had in regard to units of local government. The unit of local government immunity expansion says that they will not be liable for injury caused by providing information verbally or through library materials. They will not be liable for injuries occurring when a person participates in a hazardous recreational activity and voluntarily assumes the risk of such participation. They will not be liable for injury occurring in lakes or rivers adjacent to but not owned by the local public entity. They will not be liable for failure to detect or solve crimes or failure to delay in responding to reports of crimes or failure to identify criminals. They will not be liable for an injury occurring while in pursuit of an escaping prisoner. They will not be liable for failure to provide rescue services or delays or failure to respond to requests for services including police, fire, ambulance, rescue and other emergency services. They will not be liable for injury caused by the negligent oper-

ation of a vehicle when responding to emergency calls unless the person injured was totally without fault or the emergency vehicle was...operated with wilfull and wanton misconduct. They will not be liable for any rights or contributions sought by a third party if the injured employee has been compensated under the Workers' Compensation or Workers' Occupational Disease Act. I understand that those are the provisions that the...list of immunities will cover, Senator Berman.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Further discussion? Senator Watson.

SENATOR WATSON:

Well, we understand that there's a possibility the wrong amendment has been distributed, and we'd like to know from the Secretary if we can get a LRB number on it...on the amendment...

PRESIDING OFFICER: (SENATOR DEMUZIO)

...you made copies and had them distributed to all the members? Senator Watson.

SENATOR WATSON:

Not I. No, sir.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Berman.

SENATOR BERMAN:

My suggestion is, why don't you Table Amendment 4, file the right one and let's talk about what we're talking about.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Why don't we just...why don't just withdraw this amendment. Withdraw this one...all right, Senator Watson seeks leave to withdraw Amendment 4. Leave granted? Leave is granted. Further amendments?

SECRETARY:

Floor Amendment No. 4 offered by Senators Rupp and Watson.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Now are we talking about virtually the same amendment, is that correct? All right, let's read the LRB number.

SECRETARY:

LRB number is 8411246RLKSAH01.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Rupp or Watson, who...who's...Senator Watson.

SENATOR WATSON:

Okay, this is the correct amendment that we wish to discuss at this time and it does contain the items and the immunities in which I just mentioned. If you'd like for me to go through that again, I will be glad to.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Berman.

SENATOR BERMAN:

All right. Thank you. Ladies and Gentlemen of the Senate, let me...let me point out two things that are in this amendment that I've just got to tell you I don't think a responsible public official of any of our municipalities needs, wants or deserves. Two...two points; number one, they are not liable for the failure to respond to an emergency call...

PRESIDING OFFICER: (SENATOR DEMUZIO)

Wait a minute...pardon me, Senator Berman. Ladies and gentlemen, could we have some order please? Senator Savickas. Senator Savickas, could we break up that conference. Senator Berman.

SENATOR BERMAN:

Thank you. As Senator Watson explained it, this amendment says that you can't hold a municipality liable for failure to respond to an emergency call. Now, Ladies and Gentlemen of the Senate, let me give you a hypothetical. I hope it's only a hypothetical. There's an emergency in the house, your wife...your spouse is choking. You pick up the

phone and you call 911, and the person that picks up the phone who's an employee of the fire department or the police department of your municipality happens to have...happens to have had a few too many drinks or is busy talking and they pick up the phone and they lay it down and they don't listen to that 911 emergency call and your spouse dies. Ladies and gentlemen, you can't sue that municipality...you can't sue that municipality. That's what you explained. Are you telling me this is not in this amendment? I thought that Senator Watson explained this as...what I'm addressing as being in the amendment. Now, he's saying it's not in the amendment.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Watson.

SENATOR WATSON:

What he says is quite true. I did read that and...but it is not a provision in the amendment. That is not a provision in the amendment in regard to emergency vehicles. We took that...that part out.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Berman. All right, Senator Rock. Further discussion? Senator Rock.

SENATOR ROCK:

Thank you, Mr. President. I...I would seriously request that the gentleman pull this amendment. This is awful. I mean it is truly awful. I think every one of us, irrespective of party, House, side of the aisle are all attempting to...to do something favorable toward units of local government, municipalities, counties. This is awful. You are virtually giving every city and county in the State virtual...a free ride. They're not liable for anything, and that's not what you want to do, I'm sure. I mean, this...this puts the...the...not only the municipality, this one...applies also to security police who are under contract,

for goodness sake, and it...allows the firemen to...to drive rescue equipment irrespective of the rights of the pedestrian or people in general. I really, truly don't believe you want to do this, and I'd ask you seriously to pull it. We're...we're...we're discussing this ad nauseam, we're getting nowhere fast and...and I'm sure that once you read this thing, you're not going to want to do this.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Watson, what's your pleasure?

SENATOR WATSON:

I ended up with this hot potato, looks like...well, what...what we're trying to do and...and what has happened here is various special groups, the park districts, municipalities, townships, counties have gotten together and have come up to...with what they feel is a solution to the problem of...of liability insurance at the local level. This was...amendment was an attempt to address that. These are provisions that they have offered and they...we...they came with an...amendment first of all which we thought was too broad and we asked them to revise it. We went back and they came up with this amendment. I think it's a reasonable approach to trying to solve a problem of...units of local government. If you want to vote it down, let's...let's vote it down, but it's an attempt to help our people at the local level. If you don't like it, so be it.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Further discussion? Senator Rupp. Senator Rupp.

SENATOR RUPP:

I will withdraw the motion. I won't subscribe and say amen to all our accusations and all the innuendos. This is...I apologize again, that's twice in...boy, that's...that's...I'm getting to be a habit...I'm sorry, but...we did take what was given to us, we were trying to come up and answer some of the questions that the municipal-

ities had and in the rush of things evidently some things are not quite in order and I apologize for it. We will take it out of the record.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Well, Senator...Senator Rupp is the principal sponsor of the amendment and I assume Senator Watson is yielding to his request. Take it out of the record. All right, if...I beg your pardon. Senator...Senator Rupp has requested...Senator Rupp requested leave to take it out...to withdraw...withdraw the amendment. Senator Rupp.

SENATOR RUPP:

Okay, we'll withdraw the amendment.

PRESIDING OFFICER: (SENATOR DEMUZIO)

All right, Senator...Senator Rupp seeks leave of the Body to withdraw Amendment No. 4. Further amendments?

SECRETARY:

No further amendments.

PRESIDING OFFICER: (SENATOR DEMUZIO)

3rd reading. Top of page 3, Senate bills 2nd reading is Senate Bill 2202, Mr. Secretary.

SECRETARY:

Senate Bill 2202.

(Secretary reads title of bill)

2nd reading of the bill. No committee amendments.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Amendments from the Floor?

SECRETARY:

Amendment No. 1 offered by Senator Topinka.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Topinka.

SENATOR TOPINKA:

Yes, Mr. President, thank you, very much, for coming back on this order of business. We're going back now to the Medical Practice Act which we had discussed earlier in the day.

The amendment has been passed out. It's been on everybody's desk for four hours, and I assume, because everybody here is rather ambidextrous, as we were listening and voting on tort reform and various other things, we were also looking at this. In answer to what was President Rock's question when last we discussed this roughly four hours ago, we have made available to you, and I can go through it but it's rather lengthy, all the medical disciplinary grounds that you sought in terms of page and line item, that has been made available to the Democratic staff; however, there are roughly forty-five of these. I can go through some as you may see fit. They are extremely strong. They do go after the bad doc to just...affectionately use a phrase that's kind of quick, but I would...if there's any questions, I'll be happy to answer them. I...I do have people here who can be of help as well.

PRESIDING OFFICER: (SENATOR DEMUZIO)

All right. Discussion? Senator Rock.

SENATOR ROCK:

Well, I intend, for the benefit of all concerned, to renew my motion tomorrow, irrespective of whether this amendment gets on. I think this is terrible and I'll tell you why...one of the reasons why. I don't know how many have read the report...the Governor's report on the Medical Society Task Force. Question number one, are all twenty recommendations of that task force included in this bill?

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Topinka.

SENATOR TOPINKA:

Yes. The twenty...the twenty recommendations from that medical task force are included in the bill, yes.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Rock.

SENATOR ROCK:

So that I...I can be sure that registration and education

is granted the statutory authority to issue a subpoena for inspecting a physician's office. That's in here?

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Topinka.

SENATOR TOPINKA:

Yes, that is correct.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Rock.

SENATOR ROCK:

All right, it's been brought to my attention, among other things, that the Act does away with Section 44-112B of the previous Act, and in the view of some who have studied it rather quickly over the last four hours, it appears to be unconstitutional on that basis. Is there a different group of people being licensed under this Act than under the current Act?

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Topinka.

SENATOR TOPINKA:

No, the same group of people is still being licensed and there are three groups which would be doctors, osteopaths and chiropractors. They are the same groups that are currently licensed under the Act.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Rock.

SENATOR ROCK:

Are naprapaths currently licensed?

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Topinka.

SENATOR TOPINKA:

No they are not.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Rock.

SENATOR ROCK:

Well, then I...I would also point out that last Session on Senate Bill 879 we had a Conference Committee report which created the Voluntary Medical Services Contract...Contracting Act, which, as you will recall, the AFL-CIO among others was violently opposed to it. As a matter of fact, when you called that bill for passage, it received five...repeat five affirmative votes in this House...in this Chamber; and yet, that exact language is contained in this amendment.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Topinka.

SENATOR TOPINKA:

Because you did ask as to whether or not the recommendations of the Governor's task force are in this, that's recommendation number four to involve professional organizations in the review of excessive fees or other activities of those licensed under the Medical Practice Act; and there is a reason and that is because there are complaints about excessive fees, and it was felt by the Governor's task force, which had quite a good group of people involved here, that that should indeed be reviewed as part and parcel of what would not be good medical practice.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Rock.

SENATOR ROCK:

Well, let me refresh...refresh your recollection when we discussed the Conference Committee report on Senate Bill 879 because one of the groups that was violently opposed to that provision, in addition to the AFL-CIO, was your friends. I've been listening about them all day, the insurance industry is violently opposed to this provision. The industry argues that the proposal would allow physicians to exert pressure on other physicians to enter into lower cost contracts. Price fixing is what they called it, and they're opposed to it and as one who is a strong advocate of the

insurance industry, frankly, I'm appalled.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Topinka.

SENATOR TOPINKA:

Yeah, not being particularly an advocate of any industry, if I...which I mean...other than just trying to keep it in business and keeping jobs in the State, this in no way can be interpreted as collective bargaining or in trying to...force people into price fixing or union ratification or close shops, they bring physicians to the bargaining table to discuss fees and it becomes more and more prevalent as more and more physicians are on a salary and they...it's...it's...it's like any other method where you just bring information to the table. In no way is it binding. In no way can a price be fixed. It is strictly of an advisory nature just to hear more opinions on the subject.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Rock.

SENATOR ROCK:

Well, I had listened with...with great interest and had voted affirmatively when our late colleague, Senator Bloom, put into...put in the preferred provider legislation. This provision, obviously, would affect those contracts under that legislation, would it not?

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Topinka.

SENATOR TOPINKA:

Only insofar as discussion, that the...any type of advice or review or information...does not have to be accepted. It just merely puts it forth on the table as another option.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Rock.

SENATOR ROCK:

Well,...you know, this can go on and on and prob-

ably...the point I'm making is one that that legislation received five affirmative votes in this Chamber. This is something that, obviously, should be discussed in a committee where all these questions can be answered. I'm not prepared to argue the substance at this moment. The fact is, somebody ought to be aware of this. Tell me about page 20. Does this legalize abortion?

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Topinka.

SENATOR TOPINKA:

This repeats current and extistent language in the Medical Practice Act.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Rock.

SENATOR ROCK:

Tell me about page 27 with the respect to the admissibility question.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator...Senator Topinka. Senator Topinka.

SENATOR TOPINKA:

Are you referring to gross negligence? I mean, what line...where do you start?

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Rock.

SENATOR ROCK:

No, I'm suggesting that where it says, "No such rule shall be admissible into evidence in any civil action except for review of a licensing or other disciplinary action." What does that mean? That this kind of...this kind of Illinois Medical Society rule as to what constitutes proper practice of medicine is no longer admissible in the court of law when your dealing with a question of malpractice. Is that what you're saying?

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Topinka.

SENATOR TOPINKA:

According to my handlers here, it is currently department rule and it is in effect at this moment.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Rock.

SENATOR ROCK:

Tell me what the current makeup of the board is. Page 31.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Topinka.

SENATOR TOPINKA:

(Machine cutoff)...be in...it's current language.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Rock.

SENATOR ROCK:

This is the way the board is right now?

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Topinka.

SENATOR TOPINKA:

As I said when I spoke to the amendment four hours ago, that this particular bill...you know, had the malpractice...the...the Medical Practice Act has not been recodified, cleaned up, put together, all the buggy whips taken in and out since 1923, so much of it is exactly the same as what we have not except tightened up to reflect the...the processes that have impact on this...you know, for over seventy years.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Rock.

SENATOR ROCK:

Is the...is the board makeup as proposed in this amendment the same it is...as it is currently?

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Topinka.

SENATOR TOPINKA:

Yes, it is.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Rock.

SENATOR ROCK:

Well, then maybe we ought to talk about changing it. This is the disciplinary board to get out the bad docs. I heard that four or five times four hours ago. And the fact of the matter is, four of the...four of the members of the board are a quorum, they can do everything and five of the members of that eight-person board are, guess what, doctors.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Topinka.

SENATOR TOPINKA:

Yes, President Rock, I realize that, but, one, this gives more powers to the disciplinary board. You can put as many good people as you want to on a board, but if you give it no power it...it really is...is kind of flaccid, and I would like to point out that, for instance, funeral directors have a board as well wherein the whole board which takes care of all funerary practices are all funeral directors. So, I don't know that this necessarily holds.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Rock.

SENATOR ROCK:

And finally, having labored long and hard, as I'm sure they did, the medical society now has Amendment No. 2. Is that correct?

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Topinka.

SENATOR TOPINKA:

Yes, it does.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Further discussion? Senator Netsch.

SENATOR NETSCH:

Senator Rock is obviously a speed reader or else has had some good staff help. I have looked at these seventy-three pages and part of the problem, and this is process rather than substance, is that there is no way to tell what is new and what is a repeat of the existing law because it is a brand new Act, nothing is underscored. It is all here in its pristine form and we're supposed to absorb all of this and know exactly what we have or have not changed, whether it does or does not make sense, without it ever having been through committee or had any kind of a hearing at all other than this very brief exchange just now. That is the point that I was making earlier. We should not be doing something like this without any opportunity for members at large to have an idea of what is going on with respect to this major piece of legislation. And for that reason, too, I would oppose the amendment.

PRESIDING OFFICER: (SENATOR DEMUZIO)

All right, further discussion? Senator Keats.

END OF REEL

REEL #7

SENATOR KEATS:

I just want to raise a couple of points right now that are loosely related to this amendment. We're saying bringing out this amendment now and this is a major amendment. Hey, this is early, normally these come out June 28th at about ten-fifteen. I'm amazed that it's this early and it can even go through House committees. I mean, I'm...I'm impressed by the fact that we had...he had six weeks to look at it, that is probably a record. Now, I do have to say in sympathy to the President's comments, since I have supported his position on numerous times, when I raise these exact points around the 1st of July, can I rely on a consistent judgment at that time to say maybe we shouldn't be bringing these things out at the last moment? When the five-man Legislature goes to work, we're excluded, we don't hear what's going on, and those bills are often much longer than seventy-two pages and were not a year in the making, and you don't have six weeks and another Chamber to take a look at it. I also bring up one last point, the Medical Disciplinary Board has a lot of docs. How many lawyers are on the...the Lawyers Disciplinary Board? Is that a group of...of laymen? I don't know, I'm just asking out of interest.

PRESIDING OFFICER: (SENATOR DEMUZIO)

All right...since it's a question that goes on into...Senator Davidson, further discussion?

SENATOR DAVIDSON:

Mr. President and members of the Senate, I want to say here as provided that if there is a possibility of a conflict on your vote you're going to cast, you should announce that conflict. Since the adoption of this amendment to this bill will have governance over myself and the other members of my

profession, I do have a conflict. I also want to say that I am going to vote Aye on this bill. I've gone over it very closely, as I'm sure other people have, and particularly by the learned questions that was asked by our President. The only one change on the examining committee was done, under the present law...those people when they're appointed there is no term, they're appointed to serve whenever or whomever would be Governor would ask for their resignation or they resign. This does put a specific number of years for them to serve which I think is a good, good thing. The rest of the bill has many good things in it. It gives an opportunity for those who need to be disciplined and who are in the health care field, particularly an M. D., a D. O. or D. C., that we have an opportunity to remove that individual's license, to remove that person who may be a hazard to the public, and as it should be. We should be able to get at that individual and under the present law we have a very difficult situation of doing that. And being one who has set on our ethics committee dealing with my members, I want an opportunity to hold someone who is not giving his best care and ability of care of the public for us to take that person out of practice be he or she whomever they are. And that's what is really the guts part of this bill. And I would urge everybody to vote Aye.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Further discussion? Senator Schuneman.

SENATOR SCHUNEMAN:

Thank you, Mr. President. It's my pleasure to announce to the members of the Senate that Illinois has a new coalition. I have a letter from...from the coalition, and the members of this coalition are the Illinois State AFL-CIO, the...the Illinois AFSCME, the Illinois UAW, the State Chamber of Commerce, the Associated Employers of Illinois, the Illinois Manufacturer's Association, the Illinois Retail

Merchant's Association, Illinois Hospital Association, Illinois Life Insurance Council, and the Blue Cross and Blue Shield. They have addressed a...a letter to the members of the General Assembly dated today asking us to oppose the provisions contained in this bill, the medical services contracting board proposal. And in their letter they say that these provisions are especially onerous to the members of our coalition for the following reasons; number one, the provision contained...the provisions contained in the physician contract review bill would slow the process of instituting a PPO. Secondly, the provisions of the informed physician legislation would allow representatives of county units, that is county medical societies, with at least thirty percent of the counties' physicians to legally with antitrust immunity discuss charges and contract terms and conditions of PPO contracts and any other contracts thereby effectively setting prices. And the third reason is that all contract offers to physicians would be subject to review severely undermining the competitiveness of not only PPO's but health maintenance organizations and similar arrangements which present...which presently function effectively and competitively without physician contract review. They ask us to oppose this legislation which has not been openly debated prior to this time. I rest my case, I guess.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Schuneman, you're...you're a lawyer now? All right. Further discussion? Senator Topinka may close.

SENATOR TOPINKA:

Yes, and...and, of course, these groups have a right to oppose as...as any other group would. However, I do bring out the point that these groups on the whole have never opposed...well, some have and some have not, but a great majority have never opposed mandatory collective bargaining for groups. This, as I said, is a matter of just bringing

people's opinions to a table and not even having to be regarded other than just listening to them. I think the position is grossly overstated. I appreciate Senator Schuneman bringing it up and I don't...you know, he's merely the vehicle for this. But I would disagree with the position they're taking because this is not price fixing, it is not binding and it has nothing to do with collectivization nor should it adversely impact on the PPO.

PRESIDING OFFICER: (SENATOR DEMUZIO)

All right. There has been a request for a roll call. Senator...Topinka has moved the adoption of Amendment No. 1 to Senate Bill 2202. Those in favor will vote Aye. Those opposed will vote Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, the Ayes are 29, the Nays are 25. Amendment No. 1 to Senate Bill 2202 is adopted. Further amendments?

SECRETARY:

Amendment No. 2 offered by Senator Topinka.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Topinka.

SENATOR TOPINKA:

Yes, this is...this is, I don't think should be any problem for anybody. It is strictly typographical errors, commas, quotation marks, whatever and those things that have been cleaned up by the department. This does not touch on anything substantive in the bill.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Topinka moves adoption of Amendment No. 2. Discussion? If not, those in...Senator Rock.

SENATOR ROCK:

Well, my recollection is that there...there was a deletion...substantive deletion.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Topinka.

SENATOR TOPINKA:

It's my understanding that there is no substantive deletion, it is strictly typographical. Wait...whoops...wait...excuse me, it was a wrong citation of an area of the law, they just got it into the right area of the law. Sorry.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Rock.

SENATOR ROCK:

Well,...let me ask then about page 38 where you delete lines 33 to 35 and insert in lieu of...thereof something else?

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Topinka.

SENATOR TOPINKA:

Oh, it was a wrong citation, it was the wrong Act that was being referred to that was being modified.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Further discussion? Senator Topinka has moved the adoption of Amendment No. 2. Further discussion? Those in favor indicate by saying Aye. Opposed Nay. The Ayes have it. Amendment No. 2 is adopted. Further amendments?

SECRETARY

No further amendments.

PRESIDING OFFICER: (SENATOR DEMUZIO)

3rd reading. All right. Page 3, Senate bills 3rd reading, Senate Bill 916, Senator Lemke. All right. On the Order of Senate Bills 3rd Reading is Senate Bill...916, Mr...Senator Lemke, for what purpose do you rise?

SENATOR LEMKE:

We're going to hold this bill, I understand that...they're supposed to be still in negotiations, let's

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3rd Reading

see what happens. So we got tomorrow to do it, tomorrow I'm going to call the bill. We've been working on it for two years negotiating with everybody and I think we should give them another day to see if they can get things together before we vote.

PRESIDING OFFICER: (SENATOR DEMUZIO)

All right. 1491, Senator Rock. 1519. All right. Is there leave for Senator Carroll to...to hold...to handle that? Okay. Senate Bill 1519, Mr. Secretary.

SECRETARY:

Senate Bill 1519.

(Secretary reads title of bill)

3rd reading of the bill.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Carroll.

SENATOR CARROLL:

Thank you,...thank you, Mr. President and Ladies and Gentlemen of the Senate. Senate Bill 1519 is the ordinary and contingent expenses of the Auditor General subject to the guidelines amendment that reduced by one percent and followed the other guidelines for Personal Services. I'd be willing to answer questions and ask for a favorable roll call.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Discussion? If not, the question is, shall Senate Bill 1519 pass. Those in favor will vote Aye. Those opposed will...vote No. The...the voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, the Ayes are 56, the Nays are none, none voting Present. Senate Bill 1519 having received the required constitutional majority is declared passed. 1520, Senator Maitland. On the Order of Senate Bills 3rd Reading is Senate Bill 1520. Mr. Secretary.

ACTING SECRETARY: (MR. FERNANDES)

Senate Bill 1520.

(Secretary reads title of bill)

3rd reading of the bill.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Maitland.

SENATOR MAITLAND:

Thank you, very much, Mr. President. Senate Bill 1520 as amended does two things. First of all, it makes the same adjustment in the transportation formula in the enterprise zone language that we did with the corporate personal property tax adjustment. This was an oversight when this language was put in and this recognizes the transportation formula and the recalculation of the assessed...the...the EAV. Secondly, the amendment we put on the bill yesterday deals with those school districts that have a growth of over five percent in...in one year. And...and this, as I mentioned yesterday, will address a...a school district that affects Senator Demuzio and Senator Watson's district. We will calculate this based on the difference of the enrollment of the first month of the current school year and the...and the year preceding. That difference will be what the calculation will be based upon assuming it is over five percent. There was a reason for doing it on a one-month basis only, and that was to assure that when we come back in in November in the Veto Session we can address a supplemental appropriation. I'd be happy to respond to any questions you might have.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Discussion? If not, the question is, shall Senate Bill 1520 pass. Those in favor will vote Aye. Those opposed will vote Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, the Ayes are 56, the Nays are none, none voting Present. Senate Bill 1520 having received the required constitutional majority is declared passed.

SB 1522
3rd reading

1522. Senate Bills 3rd reading is Senate Bill 1522, Mr. Secretary.

ACTING SECRETARY: (MR. FERNANDES)

Senate Bill 1522.

(Secretary reads title of bill)

3rd reading of the bill.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Marovitz.

SENATOR MAROVITZ:

Thank you, very much, Mr. President and members of the Senate. Senate Bill 1522 is the no pass, no play legislation which has been amended, and with the amendment now has the support of the...superintendent of the State Board of Education, IEA, the school administrators, the school boards, ED-RED, the Chicago Teachers Union. I have been meeting with the Illinois High School Association and our staff has been meeting with them for the last six months in an attempt to work out something to provide an...an incentive and nothing punitive to send a very loud and clear message that academics are first and athletics are a very important second...and extracurricular activities are a very important second. We met for about six months, finally reached what was an agreement and unfortunately, the agreement never got voted on by the members of the IHSA. An increasing number of states throughout the country are linking athletic eligibility to academic status. This...this first began in Texas. I must say very clearly that the Texas law is much too tough, it's much too punitive, I don't agree with it, and our bill is very, very reasonable, and it does send a loud and clear message. We move the effective date of the bill back one full year so it does not affect the 1986-1987 school year, begins with the...1987-'88 school year and...and only affects competitive competition. This would be sports and, for instance, a band competition, a debate competition, et

cetera. This is consistent with our school reform efforts of last year which is...we took the leadership role on. What this bill does specifically is...it says that at the end of a grading period if you are failing one of the core courses, the courses required under the School Code for graduation, at the end of the grading period you must...you will be suspended for a two-week period. The coaches came to me and said, these kids need to practice. Sometimes we're the only ones, the coaches, who have a handle on these kids, we want them to practice during the suspension period. We changed the bill so the kids can practice during this period so that he can stay in shape, the...the coach can have a handle on these kids and...and encourage them to get their studies back up. The two-week period is not punitive at all. The other change that we made, the IHSA not long ago increased the credit hour requirement to be eligible for athletics and extracurricular activities to twenty hours. Many of the schools...high schools in the State then increased the PE credits so that they could get around this increased requirement, and we just say that PE hours can't be used in computing whether you have the requisite hours to be eligible for athletics. I think it's a good bill, it's been worked out, it's a compromise. Most everyone involved in education is supportive of it, and I would ask for your support.

PRESIDING OFFICER: (SENATOR DEMUZZIO)

All right. We have several speakers. Senator Maitland.
SENATOR MAITLAND:

Well, thank you, very much, Mr. President. Senator Marovitz, without question, introduced this legislation with...with all good intent and I understand that, and I also appreciate his willingness to work with...with the groups and attempt to work out a reasonable compromise. But let me just recite to the Body a couple of concerns that I have with respect to the bill. I mentioned this point in committee and

I think it's a real, real issue. Keep in mind that...that we do have some young people around this State that don't have the God-given talents to be outstanding students in the academic area, they don't really do well at all in that area, and I think we need to challenge these young people and make sure that they do everything possible to do well in academics. But, unfortunately, in some areas we do have people who have God-given talents as athletes and do a good job, and this is the only thing that's keeping them in school. And I want those of you...I want those of you to listen very carefully who are from an urban area because this affects you, I think, quite dramatically. Those students, perhaps the only thing keeping them in class is their ability as...as an athlete, and we work diligently with them to keep them in school. School isn't only academics, it's extremely important but those athletes are also contributing and they're being educated through that endeavor. So keep that thought in mind, it is a real, real issue. Secondly, the IHSA has had in force a policy dealing with students who are passing or failing in school, it's been in place. The IHSA has been policing itself. In case you don't know it, the IHSA is made up of principals across the State. And I just question very seriously, my fellow colleagues, whether or not this is an appropriate place for the General Assembly to be. Should we really be legislating issues like this? I don't, Senator Marovitz, really consider this a part of the reform package. I think this is outside of that and I think we need to look at that very carefully. I would say finally, that we will probably be back dealing with this issue again because the IHSA regulations will plug in here anyway. So I think we are creating what may be a very serious problem. Please keep these thoughts in mind.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Further discussion? Senator Kelly.

SENATOR KELLY:

Thank you, Mr. President. Along the...the line of what Senator Maitland was indicating about some of the urban school areas, I think that we should consider that fact that many of these school districts do not have the same equal educational opportunities that they do in some of the other more affluent, well-funded areas and that legislation like this may at least temporarily be adverse to students from these schools. Hopefully, what we did last year in educational reform and what will be passed on to all the schools in the State from that reform legislation will have a great affect upon raising the...and elevating the level of education, the level of...the teachers and the institutions themselves. I'm going to support this proposal; however, I'm concerned that they might be...and it should be noted, as Senator Maitland did, that it might be adverse to some of the students from those areas.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Further discussion? Senator Kustra.

SENATOR KUSTRA:

Thank you, Mr. President and members of the Senate. I...I rise to echo some of the concerns that...that Senator Maitland has expressed. I...I've heard a long list of people who are supposedly in favor of the bill. I know that the principals of the north suburban area, that's from the City of Chicago all the way to Wisconsin, have met on this bill and there's not one principal of a high school in north suburban, Cook, Lake, whatever that entails, that's in favor of this bill. I was also told by those people that they doubted seriously that many of you from downstate would find your principals overwhelmed by this bill. I think we have to take a look at it. I know that the sponsor has good intentions. First of all, it affects only core courses. So right off the bat, your varsity athletes aren't really going to be

that affected by this bill anyway. They have finished their core courses at least by the time they're seniors, if not by their second semester of junior year. So you haven't affected them at all by this piece of legislation. You have hit the freshmen and the sophomores real hard and maybe that's what you want to do. I've got a freshman who plays sports and I hope he doesn't find himself in this situation, but as far as I'm concerned, this isn't a positive way to induce a kid to get involved in sports. Secondly, it singles out interscholastic athletics. I mean, if we're going to address the subject of kids being better students, then what about the pom pom girls? What about the cheerleaders? What about the...the kids in the newspaper? Student government? There's a long line of extracurricular people. And they're all in there and it's a good thing they are. You see what kind of influence I have on this Floor, I say it, it's done. The third thing is that the grading period...the...the grading periods...there's three grading periods in some...in some schools. And my principals tell me that that creates a real problem, where two or three...it's not just at the end of the term. It's mid-term and the end of the...and the end of the semester. I think that creates a real hassle for the schools. I think what we...what we're doing here is trying to stick our nose into school's business where they already have rules that deals with these things. Secondly, at least three major studies show that the schools that have the best interscholastic athletic programs have the highest overall grade points. So what we're doing is going after the kids and the schools in a sense that are doing the best job of integrating athletics and...and studies. The question is, how does this get at the kids who don't participate in any extracurricular activities. Those are the kids, quite frankly, who have the grading problems, it's the kids who don't get involved. We're penalizing the kids who are really

doing their best to try to keep those grades up. And I don't think one F and only one F should bar a kid from participating in a sport when we already have rules on...on the books that deal with this. I would suggest that you look this one over and give it a No vote.

PRESIDING OFFICER: (SENATOR DEMUZIO)

All right. Discussions? Further discussion? Senator Newhouse.

SENATOR NEWHOUSE:

Thank you, Mr. President. I want to make it clear in the first instance that I don't disagree with what is the philosophy behind this bill and that is to induce youngsters to...do more in the study of the subjects in their curriculum. The problem is that what we have, whether we like it or not, is a punitive measure that doesn't do anything to induce youngsters to get into the learning process. And what is equally disturbing about it is that we're looking at a field in which this had traditionally been circumvented. I don't think there's anybody in here who doesn't know of institutions where youngsters get artificial grades to keep them on the team. It's unfair to them because it gives them a false sense of where they go, and as a consequence, what we do is get kids who not only come out of high school not reading and writing, we get college graduates who come out not reading and writing. I suspect many of you have heard about the single case of a college graduate who went to Marvel Collins School in the City of Chicago to learn how to read and write and we got too much of that, so that what we are doing here is dealing into a system that's already gotten perverted. College athletics are a major scandal. If we look at what's happening on that scene where, as a matter of fact, all we're doing in college is using college as a farm system for the NBA and the National Football League. They don't stand the cost of a farm system just as baseball does.

We all know that in college you can fire the president of any institution, you cannot fire the coach if he has a successful career. So we're just piling on here, it seems to me, a perverted situation from which we ought to try to construct something that would be helpful to these youngsters. Nothing is being said here about the support mechanisms that will give them the opportunity to do what we want to do. Now let me tell you this, you take a look at the demographics and we're losing kids by the time they get to high school, we're not picking them up. They're choosing high school to drop out. We're losing these kids at six, seven, eight and nine years old, that's when they're gone. And to say that this is going to induce them to study is plain nonsense. If they haven't learned to read and write by the time they're in high school, they're certainly not going to come off a football field at the end of a three-hour practice and go sit down somewhere and learn how to read and write. That just doesn't make any sense at all. I don't think that we ought to pass this legislation out. I think we ought to look at what a real solution is and provide these youngsters with the underpinning that will make them educated men and women and that will produce for us in the State of Illinois some taxpayers. That's what it means in the long-run. But I'm telling you this, that if we continue to encourage uneducated youngsters to stay in school for the purpose of participating in...in...in...in...in...in athletics, what we're going to wind up with is a group of young people who come out of school frustrated with little or no future and who are the fodder for making the kind of headaches for this social system that we don't need to have. I think we ought to hold this bill somewhere, figure out how to come to grips with the real problem; and the real problem is providing incentives, the real problem is providing hope, the real problem is adding to these kids a dimension they don't presently have and

athletics without education is not it. I think we ought to hold this bill then and take a serious look at what we can do to produce solid citizens for the State of Illinois. I vote No on this bill.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Further discussion? Senator Collins.

SENATOR COLLINS:

Question of the sponsor, please?

PRESIDING OFFICER: (SENATOR DEMUZIO)

Indicates he will yield. Senator Collins.

SENATOR COLLINS:

Senator Marovitz, in committee I raised the same objection to this legislation that has been...expressed here by most of the previous speakers. And I would like to know...I heard you said that you had met with a lot of different groups and you had eliminated most of the objections in this bill, but I really want to know, have you attempted to address the problem of providing adequate support systems and mechanisms to ensure that children that who had been for whatever reason denied adequate and opportunities and quality education so they could, in fact, be able to read and write and have a fair chance to...to...to make passing grades...that is once they get to high school, that...that you would not be penalizing them? We talked about not being punitive to the...punitive to these people, but unless you come up with some kind of support system so that if you...and a monitoring system to ensure that if, in fact, that this child is failing, at some point in time you would know that before...that the child fails a test. So that...that there should be something happening and taking place prior to the testing period that would give this...a child an equal chance to...to...if they're falling back on their grades and if all possible or adequate tutoring and supervision so that they can, in fact, pass whatever tests are necessary for them to

compete. Have you done anything in...with this amendment?

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Marovitz.

SENATOR MAROVITZ:

Well, Senator Collins, first of all, we're not talking about A's, B's, C's or D's, we're talking about merely passing...merely passing the courses that are required by the Board of Education and required for them to pass before they graduate anyway. So they can't graduate unless they pass these courses anyway. It seems totally inconsistent and incongruous to say to some student, well, you have to pass these courses to graduate but you don't have to pass them to play baseball, football or basketball, that's okay. We don't care if you pass English, that doesn't make any difference. This is at the end of the grading period and...and somebody will know...that student, that teacher will know during that grading period if that...if that kid is falling down and if he needs some extra help. It is not punitive, it's not keeping him off for a semester or for the season or for four weeks, as I originally had, it's keeping him off for two weeks. He can practice with the team, the coach who has a hold on him will be able to...to encourage this kid to buckle down to get back on the team. If...if athletics are the only reason this kid is staying in school...and I'm wondering now what our high schools are for, are they for education or are they minor leagues? You know, are they...are they for...for...for the minor leagues for the pro sports or...or for colleges? It seems unbelievable to me that anybody who wants their constituency to better themselves and to prove themselves and to be...an independent and productive part of society would say, well, my kids can't make it, and so we ought to let them play sports even though they're flunking English and flunking science, that's okay as long as they can play football. I don't really think that makes a lot of

sense that we're keeping them only...off for only two weeks, they got to pass these courses anyway to graduate.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Collins...

SENATOR COLLINS:

Senator, I think...

PRESIDING OFFICER: (SENATOR DEMUZIO)

...you...you've almost exhausted your time.

SENATOR COLLINS:

...no...no...I...

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Collins.

SENATOR COLLINS:

...I think you've missed the point. I don't...I am not opposed to the basic concept of what you're trying to do. I agree with you. The problem is that you are cutting out some...a lot of kids in...in the urban areas who have been, to no fault of their own, denied access to a quality education to the point that by the time they get in high school they're unable to read, as Senator Newhouse said. And there are many kids that once you provide the incentive and once they can find something that will motivate them to keep them in school, be it athletics, be it...be it debate or be it whatever, drum and bugle corp or whatever, if you provide...if you say to them on one hand, now, if you put forth a concerted effort and you pass, you will stay, you can participate in that...that activity. But recognizing the fact that you do not have the fundamentals, the basics that you did not get back there in first, second, third, fourth, fifth, sixth, seventh and eighth grade, we will...we are willing to help you. So that when...if the kid went in to high school and you tested that child to see where that child was and you knew that here is a child who is now, four, five grade levels behind a high school level, yet this child has great aptitude

and potentials for some kind of athletic ability that's been demonstrated, and so we're starting out from day one, we're going to allow you to participate in the sport of your choice but at the same time you can't read, you can't write, and...for a time certain we will provide you with the necessary tutoring to make sure that you...by the time test time come you can qualify to pass your exam. If you didn't do that, you're...you are unfair, you are unfair, and that's what's wrong with this bill.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Further discussion? Senator Schaffer.

SENATOR SCHAFFER:

Well, I find myself in a somewhat unusual position, supporting one of Senator Marovitz's bills, it may surprise him. This issue got a lot of notoriety in my area and a lot of publicity, and because I knew there was legislation introduced, I included it in my last public opinion poll in my district. And, as I said, it got some of our schools that established these policies on their own and that was what got the thing rolling in the local press. I was amazed to find eighty-seven percent of my constituents, and we've counted over two thousand, support the concept of no pass, no play; eleven percent oppose it, two percent are undecided. I think you'll find your constituents believe this is a good idea, and while I admit some of those arguments have validity, the bottom line is the kids are in school to learn, not to bounce a basketball.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Further discussion? Senator Topinka.

SENATOR TOPINKA:

Yes, Mr. President and Ladies and Gentlemen of the Senate, I speak in support of this and I suppose the biggest reason I do is...is just watching TV and...seeing more than one athlete at about age thirty-two or thirty-five who's

basically burned out now after having been in the pro's and somehow having gotten through college and having gone through high school and wherever he comes from and somehow or other just never having gotten an education through the whole system, and now they're burned out and the big bucks are not forthcoming anymore and they don't know what to do because they've never been trained adequately how to think in just core subjects. I don't know that this is going to answer all the problems but it's a darn good start, and I would commend Senator Marovitz and I would hope that we would vote Yes on his bill.

PRESIDING OFFICER: (SENATOR DEHUZIO)

Further discussion? Senator Marovitz may close.

SENATOR MAROVITZ:

Well, thank you, very much, Mr. President. The people that have talked to me and I have talked to some people from many of your districts who have come down, Senator Darrow's district came down, there were presidents of the school board and principals, and when they began talking to me, they started talking about things that were not in the bill. And when I...when I heard Senator Kustra talk about the people that were opposed to it, I can probably guarantee you that those people don't...did not understand what this bill was about, 'cause a lot of false information was disseminated and a lot of things were disseminated about the bill that was originally introduced which was put in as a foundation piece of legislation and substantially changed after meetings with the IHSA. After I talked to the people in Senator Darrow's district, they supported the district and said, well, how could anybody oppose this? How could anybody oppose saying, yes, extracurricular activities are important but first comes education, first comes academics and then comes extracurricular activities. I think that's very important. When...when we...when I heard from some of my colleagues in

the innercity talk about these kids who were athletes and maybe that's all they have, well, I think that does a disservice to those kids. To say, well, you're an athlete and you may not be able to pass your courses but as long as you're an athlete, we're going to let you go. First of all, those kids got to pass those courses to graduate. And number two, the NCAA under Proposition 48 has just increased their requirements to be eligible to play in college both testwise and gradewise. So those same kids that Senator Collins and Senator Newhouse were talking about, they're not going to be able to graduate high school, they're not going to be able to play in college anyway because of these new increased requirements. I do think it's inconsistent to say you have to pass this basic core course, this English course, to graduate but you don't have to pass it to go out and play baseball, basketball or football. And I'm concerned about these kids and that's why I reduced the time limit that they're off to two weeks, just two weeks. It's not punitive in nature, it's a bill that will create an incentive for these kids to say, okay you're going to practice with us, you're going to stay in good shape, you're with the team, you're with the coach, just get your grades back up to passing, you don't have to get a C, you don't even have to get a D, you just have to pass the course that you need to graduate. I think this is part of the school reform package. This sends a loud and clear message, and I think that...let me tell you something, this is an election year, I, frankly, would love to run against somebody who votes against this bill because I think the...vast majority of the people, as Senator Schaffer said, want to make sure that these kids put academics first and then the important part of the school curriculum, extra-curricular activities and athletics, second. I urge your support of this important piece of legislation.

PRESIDING OFFICER: (SENATOR DEMUZIO)

SB 1552
3rd Reading

The question is, shall Senate Bill 1522 pass. Those in favor will vote Aye. Those opposed will vote Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, the Ayes are 39, the Nays are 14, 2 voting Present. Senate Bill 1522 having received the required constitutional majority is declared passed. Senate Bill 1552, Mr. Secretary. Senate bills 3rd reading, Senate Bill 1552. Senator Lechowicz, 1552. Mr. Secretary.

ACTING SECRETARY: (MR. FERNANDES)

Senate Bill 1552.

(Secretary reads title of bill)

3rd reading of the bill.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Lechowicz.

SENATOR LECHOWICZ:

Thank you, Mr. President, Ladies and Gentlemen of the Senate. Charitable gaming type fund-raisers have been popular among our churches, parochial schools and public charities in Illinois for many years. Until recently, law enforcement...ignored the current law which prohibits such events. Now these organizations have turned to us for help. We must not turn our backs on them. In passing Senate Bill 1552 we can send two messages to the citizens of Illinois. The first is our commitment to charitable organizations, our desire to ensure that funding will be available for all of the community services they provide. The second, that we will not allow the infiltration of professional gamblers into charity gaming. Many of our churches, parochial schools and public charities depend upon income from charitable gaming events to underwrite their tuition costs, community services and public assistance programs. Many health related organizations depend on such events to finance important research and medical studies. It is these not-for-profit organiza-

tions that have been hardest hit by cuts in Federal funding, inflation and stagnancy in our State economy at the same time the underfunding of educational and social services at the State level has placed more demands on these types of organizations. We have an obligation both to these organizations and to society to provide at the very least a means for these groups to achieve some level of economic stability, for without charitable gaming legislation the cost of supporting many worthwhile programs will fall back on the taxpayers or else these valuable programs will receive no funding at all. Without such legislation, our charities and our communities will suffer. But there is another message that we must send to the citizens of Illinois. We must tell the people of this State that we will get tough on violations of this new legislation. This legislation calls for State control, requires criminal background checks of participants and provides for tough penalties for those violating the law. The proposed law contains very strict administrative and enforcement provisions. Only legitimate charities as recognized by the Internal Revenue Service 501C3 as not-for-profit organizations would be eligible to participate. This legislation is very conservative as it only allows for cash prizes up to two hundred and fifty dollars, that's half as much as we allow for bingo nights. It also limits the number of times charitable games may be held in one facility to four times a year as well as the number of times any one organization can operate charitable games to four per year. It also restricts the use of personnel used in events to bona fide members of the charitable organization. This will ensure that no professional gamblers begin to infiltrate charitable gaming. This legislation as amended sends a message to the criminal elements that we will not tolerate violation of this Act. By requiring tough enforcement mechanisms and the...stepped up law enforcement efforts, we have shut the door to criminal

elements, but at the same time it allows us to ensure that our charitable organization will not have to close their doors to the lack offunds. I strongly urge your support to Senate Bill 1552.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Discussion? Senator Marovitz.

SENATOR MAROVITZ:

Thank you...thank you, very much, Mr. President. We did hold hearings in the Senate on this and came up with what I think is...is an excellent package, a very tightly drawn package. Senator Lechowicz explained it very well. There's a couple of other provisions. First of all, there's an opt-in...opt-out provision, excuse me, so that any municipality who does not want to participate in charitable gaming nights can merely opt-out and, therefore, the...the purview of this legislation would not be effective for that municipality. Again, no professional help would be allowed, only volunteers for the charity or parochial organization. This is more...much more restrictive than bingo. There is no 501C3 restriction in bingo and there is in this legislation so it's only legitimate not-for-profit organizations. There'll be no bingo palaces and Las Vegas palaces because we have restricted any facility to only four Las Vegas nights a year and any charity can only have a maximum of four a year. There's probably some questions right now about what the position of the Cardinal is, and I think I'd be remiss if I didn't mention that. Yesterday the Cardinal had some conversations with people and issued a fifteen-page statement, part of..part of one page of that statement dealt with Las Vegas nights. The Cardinal today at three o'clock in the afternoon held a press conference to clarify his position on charitable gaming nights, and the Cardinal was asked specifically and said specifically he is in favor of this bill, and while he would like to see the emphasis for contributions to

the parishes not come from bingo and Las Vegas nights, in the future he knows that realistically the parishes need this money, the parochial schools need this money and he encourages...the passage of this legislation, and that as a result of a press conference that occurred at three o'clock today. I think this is a good piece of legislation, it's very tightly drawn. We have a sunset provision in it in two years, so if the legislation is not working well, it will be off the books in two years. Finally, the Department of Revenue asked for an audit and that is in the legislation. I think this is a good bill and deserves everyone's support.

PRESIDING OFFICER: (SENATOR DEHUZIO)

Well, I think, you know...tomorrow we're going to start using the clock. Further discussion? Senator Lechowicz may close.

SENATOR LECHOWICZ:

Thank you, Mr. President. I believe the matter has been discussed quite thoroughly. Appreciate your Aye vote.

PRESIDING OFFICER: (SENATOR DEHUZIO)

The question is, shall Senate Bill 1552 pass. Those in favor will vote Aye. Those opposed will vote Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, the Ayes are 43, the Nays are 13, none voting Present. Senate Bill 1552 having received the required constitutional majority is declared passed. Senator Rock, for what purpose do you arise?

SENATOR ROCK:

Well, I think on that happy note, I think we've done enough for today. We'll start again tomorrow morning at nine o'clock. There are, I am told, about ten appropriation bills that are subject to recall for purposes of an amendment. We'll start there and then we'll start with Senator Luft's

bill and do as much as we can. I don't want to be here on Friday either but it may be necessary. So...we've got two hundred bills on the Calendar.

PRESIDING OFFICER: (SENATOR DEMUZIO)

All right. Senator Rock, we got a couple of housekeeping things here we'll just go ahead and take. All right. Senator Rock has moved that the Senate stand adjourned until tomorrow morning at nine...nine o'clock. Senator Zito, for what purpose do you arise?

SENATOR ZITO:

Just...thank you, Mr. President, I've been meaning to do this for the last couple of days. Can we change sponsorship? I'm the chief sponsor of Senate Bill 546, I would like to remove my name completely and add in its place Senator Vadalabene. Senate Bill 546, and...ask leave of the Body to do so.

PRESIDING OFFICER: (SENATOR DEMUZIO)

All right. You've heard the request of Senator Zito to have his name removed as the sponsor of Senate Bill 546 and have Senator Vadalabene substituted in his place. Is that...leave granted? Leave is granted. So ordered. Senator Rigney, for what purpose do you arise?

SENATOR RIGNEY:

Same reason, Mr. President, to change sponsorship of House Bill 2839. I'm the chief sponsor, change that over to Senator Weaver.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Rigney, 2839? Senator Rigney, 2839? All right. Senator Rigney seeks leave of the Body to remove himself as the chief sponsor of Senate Bill...of House Bill 2839 and substitute Senator Weaver. Is leave granted? Leave is granted. So ordered. Senator Rock now moves that the Senate stand adjourned until tomorrow morning at nine o'clock. The Senate stands adjourned.

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