

PA13-311

SB1149

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**CONNECTICUT
GENERAL ASSEMBLY
HOUSE**

**PROCEEDINGS
2013**

**VOL.56
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Yes, Mr. Speaker, in concurrence with the Senate,
Senate Bill 1052, as amended by 7A -- Senate "A"

Total Number Voting	134
Necessary for Passage	68
Those voting Yea	134
Those voting Nay	0
Absent and not voting	16

SPEAKER SHARKEY:

The bill as amended passes in concurrence with
the Senate.

The Chamber will stand at ease.

(Chamber at ease.)

SPEAKER SHARKEY:

House please come back to order.

Representative Aresimowicz.

REP. ARESIMOWICZ (30th):

Mr. Speaker, I rise for immediate suspension of
our House Rules for immediate consideration of Senate
Bill 1149.

SPEAKER SHARKEY:

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The motion is for the immediate suspension of our rules for the immediate consideration of Senate Bill 1149.

Representative Cafero.

REP. CAFERO (142nd):

We have no objection, Mr. Speaker.

SPEAKER SHARKEY:

Thank you.

Seeing no objection, the rules are suspended for the consideration of Senate Bill 1149.

Will the Clerk please call Calendar 690?

THE CLERK:

House Calendar 690, favorable report of the Joint Standing Committee on Government Administration and Elections, Substitute Senate Bill 1149, AN ACT MAKING TECHNICAL CHANGES TO THE STATUTE OF CONCERNING ACCESS TO PUBLIC RECORDS.

SPEAKER SHARKEY:

Representative Gerry Fox, the distinguished Chair of the Judiciary Committee, you have the floor, sir.

REP. FOX (146TH):

Thank you, Mr. Speaker.

I move for acceptance of the Joint Committee's favorable report and passage of the bill in concurrence with the Senate.

SPEAKER SHARKEY:

The question is acceptance of the Joint Committee's favorable report and passage of the bill in concurrence with the Senate.

Will you remark, sir.

REP. FOX (146TH):

Thank you, Mr. Speaker.

The Senate passed a strike-all amendment LCO Number 8864. I would ask that that be called and I be given leave to summarize.

SPEAKER SHARKEY:

Will the Clerk please call LCO 8864, which has been previously designated Senate Amendment "A"?

THE CLERK:

Mr. Speaker, Calendar Number -- or excuse me -- Senate "A", Substitute -- or -- LCO 8864 introduced by Senator Williams and Representative Sharkey, et al.

SPEAKER SHARKEY:

The gentleman seeks leave of the Chamber to summarize. Is there objection? Is there objection?

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Seeing none, you may proceed with summarization,
sir.

REP. FOX (146TH):

Thank you, Mr. Speaker.

This -- this amendment makes certain changes to
our disclosure laws with respect to freedom of
information. It also creates a task force and I move
adoption.

SPEAKER SHARKEY:

The question before the Chamber is adoption of
Senate Amendment "A".

Will you remark?

REP. FOX (146TH):

Yes, Mr. Speaker.

Thank you.

The intent of this, Mr. Speaker, is to update our
freedom of information laws and to make them
consistent with federal freedom of information laws,
including how they have been interpreted under the
United States Supreme Court in the case *National
Archives and Records Administration versus Travis*.

In that case and -- and what we're intentioned
here to do is to recognize the privacy rights of

victims of violent crime and those victims surviving family members.

Mr. Speaker, the -- what the amendment does is it -- it does a few things. One, it makes it clear that in our records of law enforcement agencies that are not otherwise disclosable, that we would also include the identity of minor witnesses, so if there's a -- a minor whose -- whose name is identified in -- in a report that was taken in -- as a result of a -- a crime, that that minor's name would be redacted from that -- that report.

Also, Mr. Speaker, this amendment has a Section 2 and what it does there is it states that any records created by a law enforcement agency that would result in a photograph, a film, a digital, some sort of video, maybe -- if that image depicts a victim of a homicide that the record could -- and if that record could reasonably be expected to constitute an unwarranted invasion of privacy that that -- that record be -- may not be disclosed in order to protect the victim and the victim's family members privacy rights.

It's the intention of this section, Mr. Speaker, that it -- that it not be the burden of the family

member to disclose -- or to assert this right, but rather that it be presumed that they have this right. We don't want the family members and the victims of -- of these victims to have to go through additional court proceedings or commissioned hearings, so that -- that -- that's the intent here.

Also, Mr. Speaker, I should say it specifically intended that this would include the family members of the victims of Sandy Hook. In case there's any doubt or any question when those are looking for legislative intent.

Mr. Speaker, also, there is a provision that also that would allow for the exemption of audio tapes amongst emergency personnel that they would also be excluded. Now, that's -- that provides in -- is a moratorium that would take us to the end of next session and there would -- there is a task force that has been created -- that will be created under this amendment and we will study this issue and look further as we look to update our freedom on information laws to make them consistent with the digital age.

So I would urge and move adoption of the amendment.

SPEAKER SHARKEY:

Thank you, sir.

The question before the Chamber is adoption of Senate Amendment "A".

Will you remark?

Representative Hovey of the 112th.

REP. HOVEY (112TH):

Thank you, Mr. Speaker.

I want to, on behalf of the Newtown Delegation, thank my leader, the Speaker of the House, the Majority Leader, the Senate Majority Leader, the Senate Minority Leader, and the Governor. And I also really need to thank the four caucus attorneys because they have spent endless hours trying to get this right. Last, but not least, I want to thank the Sandy Hook families for sharing their very personal perspectives with all of us. Their grace is amazing.

This bill protects families from further harm when their loved ones have been murdered. The loss of a loved one is beyond most of our imaginations and to have that loss publicized and politicized is vicious and depraved.

This bill follows the federal FOIA law which has already been affirmed by the Supreme Court. As a

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society we must reignite civility and compassion. I urge each and every one of you to support this legislation and I thank you all.

SPEAKER SHARKEY:

Thank you, madam.

The question before the Chamber is adoption of Senate Amendment "A".

Will you remark further?

Representative Bolinsky of the 106th.

REP. BOLINSKY (106TH):

Thank you, Mr. Speaker.

I am not going to repeat the thanks my distinguished colleague has already showered upon our leadership, but I will refer to it if that's okay. I will address a very, very heartfelt comment and a very, very heartfelt thank you to every single person in this Chamber.

I look at this amendment -- bill -- I'm a freshman. I can't tell one from the other. And I see 110 co-sponsors. And I can't help but think to myself in the most simplistic of terms wow, that's a compassionate bunch of people.

And personally, to me, it's worth the world, but to the people who are in the well before us and the

other families that haven't had the opportunity to join us here today I want to thank every single person who helped us get to the point of doing the right thing in the face of so much wrong.

What happened on 12/14 is inexplicable and I pray to God that it happens never, ever again. In a very challenging session this House, this Senate have managed to come together in a truly bipartisan fashion more than once to do what's right. The amendment -- bill before us is another manifestation of that.

I've personally thanked my speaker for the bipartisan work that we've done here before, as well as my leader, the person who gives me my advice, Larry Cafero, so to the two of you without expanding my thank you to over -- repeat what my -- what my colleague said, the two of you my hat is off to you if I had one.

I'm just going to conclude by making note of the fact that we started with a very -- very broad set of legislation that we were looking to perhaps over step which came FOI supporters pause and cause to be concerned with our work. We then pulled back and we narrowed our definitions.

As a matter of fact, we narrowed them so much that we, and the Black and Puerto Rican Caucus, had a very brief disagreement over, you know, whether this was being done for Newtown only, or if it could become something that in the digital age could be applied to horrific losses of life that happen all throughout our state, and don't just include a small suburban school district, but also some of the horrors that happen in the inner cities as well.

So we reached a -- a very, very nice compromise of the minds, and I thank the Black and Puerto Rican Caucus for helping us get here and helping us do something that's broader than just Newtown, while also accomplishing what my initial goal was, what our delegations initial goal was, which was to do what we could to protect our families.

So on that note, I spoke much longer than I should have. Everybody's tired. I apologize for droning on and I thank every single person in this room.

Thank you, Mr. Speaker.

SPEAKER SHARKEY:

Thank you, sir.

Would you care to remark further on Senate Amendment "A"?

Representative Carter of the 2nd District.

REP. CARTER (2nd):

Thank you very much, Mr. Speaker.

You know, ladies and gentlemen of the Chamber, we vote a lot on a lot of important things in this Howard Hall. And nothing more difficult than the vote we face tonight. I know a lot of us in this room have a lot of complex feelings about what's happened.

I mean, we have the emotions of what's happened in Newtown. We have our love of the Constitution. We have our concerns about the freedom of information.

What's unique about this bill before us this evening is it's within what the federal guidelines say with respect to freedom of information and that's important. Because by doing what we're doing this evening we're still keeping ourselves in the Connecticut law much stricter than what the federal law is.

I know this is a difficult step for us. It's a courageous step. And I hope we make it not as much on the -- the emotions of what's happened in our own

community in the past, but the thought of what's going to happen in the future.

You know, it's unfortunate that in this instance, you know, the dramatic events of what happened in Newtown has been the catalyst to what we can see maybe the worst in society of wanting this information. And in the future I think what we have the opportunities now to guard against this.

You know, we've seen it rear its ugly head and -- and maybe tonight we have the opportunity to prevent, not only the re-victimization of people in our own state (inaudible) or in Newtown, but what could happen in the future? So ladies and gentleman, this is a -- this is a huge opportunity in front of us.

You know, I hope we have as much support as I think we're going to have. And as we've been through this process together, you know, our colleagues have said across the aisle thank you. We thank the -- the leadership. We thank the members because I know this hasn't been easy for anybody.

Thank you, Mr. Speaker.

SPEAKER SHARKEY:

Thank you, sir.

Would you care to remark? Would you care to remark further on Senate Amendment "A"?

If not, let me try your minds. All those in favor of Senate Amendment "A", please signify by saying, aye.

REPRESENTATIVES:

Aye.

SPEAKER SHARKEY:

Those opposed, nay.

The ayes have it. The amendment is adopted.

Would you care to remark further on the bill as amended?

If not, staff and guests to the Well of the House? Members take your seats; the machine will be opened.

THE CLERK:

The House of Representatives is voting by roll.

The House of Representatives is voting by roll. Will members please return to the Chamber immediately?

SPEAKER SHARKEY:

Have all the members voted? Have all the members voted?

Will the members please check the board to make sure your vote is properly cast?

If all the members have voted, the machine will be locked and the Clerk will take a tally.

Will the Clerk please announce the tally?

THE CLERK:

Senate Bill 1149, as amended by Senate "A"

Total Number Voting 132

Necessary for Passage 67

Those voting Yea 130

Those voting Nay 2

Absent and not voting 18

SPEAKER SHARKEY:

The bill as amended passes in concurrence with the Senate.

Chamber will stand at ease.

(Chamber at ease.)

SPEAKER SHARKEY:

Chamber will come back to order.

Representative Aresimowicz.

REP. ARESIMOWICZ (30th):

Yes, Mr. Speaker.

I rise for suspension of our rules and immediate transmittal to the Governor.

SPEAKER SHARKEY:

Motion is for the immediate suspension of our
rules for the immediate transmittal to the Governor.

Representative Cafero.

REP. CAFERO (142nd):

Without objection, Mr. Speaker.

SPEAKER SHARKEY:

Thank you -- thank you, Representative Cafero.

The previous bill will be transmitted immediately
to the Governor.

The Chamber will now stand at ease.

(Chamber at ease.)

SPEAKER SHARKEY:

Chamber please come back to order.

Is there any further business on the Clerk's
desk?

THE CLERK:

Yes, Mr. Speaker, we have late readings on the
Clerk's desk, favorable reports and Senate bills to be
tabled for the calendar.

SPEAKER SHARKEY:

Representative Aresimowicz.

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And, Madam President, if I might inquire of the Clerk as to whether he is now in possession of LCO 8864 for Senate Bill 1149.

THE CHAIR:

He is, sir.

SENATOR LOONEY:

He is, okay.

Then, Madam President, I would ask the Clerk to call Calendar Page 38, Calendar 448, Senate Bill 1149.

Thank you, Madam President.

THE CHAIR:

Mr. Clerk.

THE CLERK:

On Page 38, Calendar 448, Substitute for Senate Bill Number 1149, AN ACT MAKING TECHNICAL CHANGES TO THE STATUTE CONCERNING ACCESS TO PUBLIC RECORDS, Favorable Report of the Committee on Government, Administration and Elections and there is an amendment.

THE CHAIR:

Senator Williams, good morning, sir.

SENATOR WILLIAMS:

Good morning, Madam President.

I move adoption and passage of the bill before us.

THE CHAIR:

The motion is on adoption and passage.

Could we -- Senator Williams, I think we have to wait a moment.

The Senate will stand at ease for a moment.

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(Chamber at ease.)

THE CHAIR:

Senator Williams.

SENATOR WILLIAMS:

Good morning, Madam President.

THE CHAIR:

Good morning, sir.

SENATOR WILLIAMS:

I had moved adoption and passage of the bill before us.

THE CHAIR:

You have, sir.

SENATOR WILLIAMS:

And at this time I would like to call a strike-all amendment and ask the Clerk to call LCO Number 8864.

THE CHAIR:

Mr. Clerk.

THE CLERK:

LCO Number 8864, Senate "A", offered by Senator Williams, et al.

THE CHAIR:

Senator Williams.

SENATOR WILLIAMS:

Thank you, Madam President.

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In less than 24 hours our regular --

THE CHAIR:

Sir, would you like to move adoption of the amendment?

SENATOR WILLIAMS:

Thank you, Madam President.

I move adoption and passage of the amendment before us.

THE CHAIR:

The motion is on adoption.

Will you remark, sir?

SENATOR WILLIAMS:

Madam President, in less than 24 hours our official session here in 2013 will come to an end. In many ways it is ending as it began with Legislators in the House and the Senate, with Democrats and Republicans working together to respond to the tragedy at the Sandy Hook Elementary School.

The amendment before us balances important and critical interests. Behind me, Madam President, are some of the parents and relatives of those who lost loved ones at Sandy Hook. The interests that we balance are critical to them. They are also critical to our democracy.

Abraham Lincoln said let the people know the facts and the country will be safe. Walter Lippmann said the theory of a free press is that the truth will emerge from free reporting and discussion not that it will be presented perfectly and instantly in any one account.

At the same time, Madam President, Justice Louis Brandeis many years ago recognized an essential right to privacy in the United States. That right to privacy has evolved over decades and most recently just last year in the U.S. Court of Appeals in the

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Ninth Circuit, the case of Marsh v. County of San Diego was decided.

Chief Judge Kozinski concluded, and I quote, that a mother has a constitutionally protected right to privacy over her child's death images. Chief Judge Kozinski found that that right is not based on common law. That right is not based on a federal statutory right but that is a matter of substantive due process protected by the U.S. Constitution.

Judge Kozinski said few things are more personal than the graphic details of a close family member's tragic death. And in conclusion the court in Marsh held the Constitution protects a parent's right to control the physical remains, memory and images of a deceased child against unwarranted public exploitation.

So, Madam President, that's what we have worked very hard to balance the public's right to know with the constitutionally protected right to privacy. Our amendment, that becomes the bill, is quite simple and I will briefly recount it before yielding to my colleague and friend, Senator McKinney.

Section 1 protects records that disclose the identity of minor child witnesses and this is in response to the Newtown case where children who are witnesses sign affidavits. Those affidavits are protected from release and their identity is protected from release.

However, if a child does not actually sign the affidavit, but is nonetheless known to the authority, then that particular affidavit actually is public. So this corrects that technical issue so that all of the statements of the children, and going forward the identity of minor witnesses, are protected.

In Section 2, Madam President, we address the same issue that was addressed in the Ninth Circuit in Marsh, that is, images, photographs, film, video, digital or otherwise, depicting the victim of a homicide, we create a new exemption under our Freedom of Information statutes.

This statute tracks closely language that is in the federal Freedom of Information exemption and it

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protects it such that the image could be reasonably expected to constitute an unwarranted invasion of the personal privacy of the victim or the victim's surviving family members.

In Section 3 there is a one-year moratorium on audio tapes, a portion of which describes the condition of a victim of homicide. This does not include a 911 emergency call or other calls for assistance made by a member of the public to a law enforcement agency. It is a narrow exception, Madam President, and it will sunset on May 7th of next year.

Now in the meantime, Section 4 of the bill creates a task force. That task force will evaluate Section 3 where we're having a moratorium to see if we need to revisit that issue and other issues related to personal privacy and will look towards striking an appropriate balance between victim privacy, under the Freedom of Information statutes, and the public -- the public's right to know.

Their first meeting, Madam President, will be in August. Their report due back to the leadership, the Majority and Minority leadership of the General Assembly, is due on January 1, 2014.

So it is very simple, Madam President. It is straightforward. We have tried our best, as Democrats and Republicans, to work together to protect the interests of these families, these parents, these relatives sitting behind me, at the same time honoring our tradition as a free and open democracy.

So, Madam President, with that let me yield again to my friend and colleague who has spent so much time on this issue and so much time listening to, and caring for, the families and relatives of those who passed at Sandy Hook, Senator McKinney.

THE CHAIR:

Senator McKinney, will you accept the yield, sir?

SENATOR MCKINNEY:

I do accept the yield, Madam President.

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And, Madam President, before I begin my brief remarks, if I could, through you, for purposes of legislative intent, ask a question of Senator Williams.

THE CHAIR:

Please proceed, sir.

SENATOR McKINNEY:

Thank you, Madam President.

Senator Williams, in Section 2, the new subdivision 27 which reads any record created by a law enforcement agency or other federal, state or municipal governmental agency consisting of a photograph, film, video or digital or other visual image depicting the victim of a homicide, to the extent that such record could reasonably be expected to constitute an unwarranted invasion of the personal privacy of the victim or the victim's surviving family members, does that section cover the 26 deceased victims of the tragedy at the Sandy Hook Elementary School?

THE CHAIR:

Senator Williams.

SENATOR WILLIAMS:

Through you, Madam President, to Senator McKinney, the answer is yes. That is, in many respects, the genesis of this legislation.

THE CHAIR:

Senator McKinney.

SENATOR McKINNEY:

Thank you, Madam President.

I thank Senator Williams and that's my lone question.

Madam President, and members of the Senate, the intent of what we're doing here is very clear. That the

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public disclosure of an image of the dead body of a brutally murdered child or spouse or sibling would cause emotional harm and violate the personal privacy of the parents and other surviving family members.

One does not need to see the photos to understand the unwarranted pain and anguish it would cause a parent or other family member to see such photos published and appear on the internet every time someone searches Sandy Hook or school shooting.

Particularly in this case when we know who the perpetrator was and that he is deceased and where there is no legitimate claim of official misconduct there can be no public interest that would require the disclosure of such intensely painful pictures.

In this case it is our clear intent that the privacy interests of the victims and their families outweighs any public interest in the disclosure of the photos of the Sandy Hook victims.

This is a narrow protection offered in this bill and it is not unusual or novel. Federal Freedom of Information laws, as well as old English Common Law, have long recognized the privacy interests of crime victims and their families and have protected the privacy of private individuals absent a significant and specific public interest and that's what this bill is. It is modeled on well-established federal law and recognizes those privacy interests.

Senator Williams referenced a Ninth Circuit case. There is also a United States Supreme Court case, National Archives and Records Administration v. Favish.

Madam President, I wanted to leave the balance of my remarks and say on behalf of the Newtown delegation and this Legislature, myself, Representatives DebraLee Hovey, Mitch Bolinsky and Dan Carter two words which, at this moment, often seem inadequate and that's thank you.

First I'll apologize to those who I should thank but have forgotten but thank you to Senator Williams for his leadership on this issue and to our Majority

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Leader, Senator Looney, for his leadership. He told me not to thank him but this wouldn't have happened if Senator Fasano hadn't been the amazing human being that he is for the last four days, so thank you.

If I mentioned all of the Senators who have helped, I would mention all 36 of us. To the Senate Republican Caucus and my colleagues I can't say thank you enough. They have essentially said John, we want to do whatever we can to help you to help them.

To the members of the Democrat Caucus, each and every one of you has come up to me, time and time again, and offered your help.

I also want to thank Jen Macierowski, our chief legal counsel for her fantastic work and Joel Rudikoff who did extraordinary work on behalf of the Senate Democrat Caucus.

In the House I want to thank Speaker Sharkey and I'm sure glad we went to high school together because he's a great -- a great man and I want to thank the Majority Leader, Joe Aresimowicz, for his leadership.

I want to thank Larry Cafero, my friend who, like my Caucus, said to me John, you tell me what you need and we'll do it for you down here.

I also want to thank their respective counsels, Dallas Dodge and -- for the House Democrats and Deb Hutton for the House Republicans.

I want to pay a special thank you to Representative Juan Candelaria and the Black and Puerto Rican Caucus for their tremendous compassion and leadership in helping us get to where we are as well as the good Chairman of the Judiciary Committee, Representative Gerry Fox and Representative Bob Godfrey.

I also want to thank Governor Malloy who has been unwavering in his support for the families and for the people of Newtown and yourself, Madam President, our Lieutenant Governor, who has been equally as strong and unwavering and always there whenever we need you and the Governor's Chief of Staff and his entire

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office but specifically Mark Ojakian who was instrumental in this passing as well.

Lastly I want to thank the families of those 26 victims. I want to thank them for having faith in us and in our system and in our government that we would work together to get the right thing done and I believe we've done that and struck that balance that Senator Williams talked about.

I want to thank them for their love, for their compassion, for their courage in what must be the most horrific moment anyone could imagine. They have shown what true love and compassion is all about and I want to thank them as well.

Madam President, I would yield back to Senator Williams.

THE CHAIR:

Senator Williams, will you accept the yield, sir?

SENATOR WILLIAMS:

Yes, Madam President.

I simply move adoption of this amendment.

THE CHAIR:

At this point, Mr. Clerk.

It's a voice vote. It's on the amendment, Senate "A". All -- I'll try your minds. All in favor on Senate "A" please say aye.

SENATORS:

Aye.

THE CHAIR:

Opposed?

Senate "A" has passed.

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At this time, Mr. Clerk, will you please call for a roll call vote and the machine will be open.

THE CLERK:

Immediate roll call has been ordered in the Senate.
Senators please return to the Chamber. Immediate roll call has been ordered in the Senate.

THE CHAIR:

If all members have voted, if all members have voted, the machine will be closed. Mr. Clerk, will you please call the tally.

THE CLERK:

Senate Bill Number 1149, as amended.

Total Number Voting	35
Necessary for Adoption	18
Those voting Yea	33
Those voting Nay	2
Absent and not voting	1

THE CHAIR:

The bill passes.

SENATOR LOONEY:

Madam President.

THE CHAIR:

Senator Looney.

SENATOR LOONEY:

Thank you, Madam President.

Madam President, I move for immediate transmittal to the House of Representatives of Calendar Page 38, Calendar 448, Senate Bill 1149 as amended.

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So ordered, sir.

SENATOR LOONEY:

Thank you, Madam President.

Madam President, before moving to a -- a vote on our Consent Calendar, have one additional item to mark as go which we believe will need to be amended and -- and then voted upon. Madam President, that's Calendar Page 18, Calendar 682, Substitute House -- Substitute for House Bill 6591.

THE CHAIR:

So ordered, sir.

Mr. Clerk.

SENATOR LOONEY:

Call the -- the Clerk would call that item. Thank you, Madam President.

THE CHAIR:

Mr. Clerk.

THE CLERK:

On Page 18, Calendar 682, Substitute for House Bill Number 6591, AN ACT REQUIRING THE EUTHANIZATION OF ANY CAT OR DOG TO BE PERFORMED BY A LICENSED VETERINARIAN, Favorable Report of the Committee on Public Health.

THE CHAIR:

Sorry, Senator Gerratana.

SENATOR GERRATANA:

Good morning, Madam President.

Madam President, I move accept of the Joint Committee's Favorable Report and passage of the bill in concurrence with the House.