

CHAPTER 491

AN ACT to amend the executive law, in relation to establishing a domestic violence fatality review team, adding members to the advisory council, and repealing subdivision 10 of section 575 of such law relating to the New York state address confidentiality program (Part A); to amend the public health law, in relation to the disposition of remains (Part B); to amend the executive law, in relation to the address confidentiality program of the department of state; and to amend chapter 502 of the laws of 2011 amending the executive law relating to authorizing the secretary of state to accept service of process and receipt of mail on behalf of victims of domestic violence for the purpose of maintaining the confidentiality of the location of such victims, in relation to the effectiveness thereof (Part C); to amend the criminal procedure law, in relation to the consideration of certain factors when determining the issuance of an order of recognizance or bail; and to amend the penal law and the criminal procedure law, in relation to the creation of the crime of aggravated family offense (Part D); and to amend the insurance law, in relation to a reasonable request to receive communications of health information by alternative means or at alternative locations when disclosure of the information could endanger the person (Part E)

Became a law October 25, 2012, with the approval of the Governor.
Passed by a majority vote, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. This act enacts into law major components of legislation relating to issues deemed necessary by the state. Each component is wholly contained within a Part identified as Parts A through E. The effective date for each particular provision contained within such Part is set forth in the last section of such Part. Any provision in any section contained within a Part, including the effective date of the Part, which makes a reference to a section "of this act", when used in connection with that particular component, shall be deemed to mean and refer to the corresponding section of the Part in which it is found. Section three of this act sets forth the general effective date of this act.

PART A

Section 1. Subdivision 4 of section 575 of the executive law, as added by chapter 463 of the laws of 1992, paragraph (b) as amended by section 99 of subpart B of part C of chapter 62 of the laws of 2011, paragraphs (c), (d), and (e) as amended by chapter 396 of the laws of 1994, is amended to read as follows:

4. Advisory council. (a) An advisory council is hereby established to make recommendations on domestic violence related issues and effective strategies for the prevention of domestic violence, to assist in the

EXPLANATION--Matter in ***italics*** is new; matter in brackets [-] is old law to be omitted.

development of appropriate policies and priorities for effective intervention, public education and advocacy, and to facilitate and assure communication and coordination of efforts among state agencies and between different levels of government, state, federal, and municipal, for the prevention of domestic violence.

(b) The advisory council shall consist of nine members and ~~[thirteen]~~ **fifteen** ex-officio members. Each member shall be appointed to serve for a term of three years and shall continue in office until a successor appointed member is made. A member appointed to fill a vacancy shall be appointed for the unexpired term of the member he or she is to succeed. All of the members shall be individuals with expertise in the area of domestic violence. Three members shall be appointed by the governor, two members shall be appointed upon the recommendation of the temporary president of the senate, two members shall be appointed upon the recommendation of the speaker of the assembly, one member shall be appointed upon the recommendation of the minority leader of the senate, and one member shall be appointed upon the recommendation of the minority leader of the assembly. The ex-officio members of the advisory board shall consist of ~~[one representative from the staff of each of the following state departments and divisions:]~~ **the director of the office, who shall chair the council, and the following members or their designees: the commissioner of the office of temporary and disability [services] assistance; the commissioner of the department of health; the commissioner of the education department; the commissioner of the office of mental health; the commissioner of the office of alcoholism and substance abuse services; the commissioner of the division of criminal justice services; the director of the office of probation and correctional alternatives; the commissioner of the office of children and family services; the director of the office of victim services; the chief administrative judge of the office of court administration; the commissioner of the department of labor; the director of the state office for the aging; [and] the commissioner of the department of corrections and community supervision; the chief executive officer of the New York state coalition against domestic violence; and the executive director of the New York state coalition against sexual assault.**

(c) ~~[The governor shall appoint a member as chair of the advisory council to serve at the pleasure of the governor.~~

~~(d)]~~ The advisory council shall meet as often as deemed necessary by the chair ~~[or executive director]~~ but in no event less than two times per year.

~~[(e)]~~ **(d)** The members of the advisory council shall receive no salary or other compensation for their services but shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of their duties within amounts made available by appropriation therefor subject to the approval of the director of the budget. The ex-officio members of the advisory council shall receive no additional compensation for their services on the advisory council above the salary they receive from the respective departments or divisions that employ them.

§ 2. Subdivision 10 of section 575 of the executive law is REPEALED.

§ 3. Section 575 of the executive law is amended by adding a new subdivision 10 to read as follows:

10. Fatality review team. (a) There shall be established within the office a fatality review team for the purpose of analyzing, in conjunction with local representation, the domestic violence-related death or near death of individuals, with the goal of:

(i) examining the trends and patterns of domestic violence-related fatalities in New York state;

(ii) educating the public, service providers, and policymakers about domestic violence fatalities and strategies for intervention and prevention; and

(iii) recommending policies, practices, procedures, and services to reduce fatalities due to domestic violence.

(b) A domestic violence-related death or near death shall mean any death or near death caused by a family or household member as defined in section eight hundred twelve of the family court act or section 530.11 of the criminal procedure law, except that there shall be no review of the death or near death of a child for those cases in which the office of children and family services is required to issue a fatality report in accordance with subdivision five of section twenty of the social services law.

(c) The team shall review deaths or near deaths in cases that have been adjudicated and have received a final judgment and that are not under investigation.

(d) Members of a domestic violence fatality review team shall be appointed by the executive director, in consultation with the advisory council, and shall include, but not be limited to, one representative from the office of children and family services, the office of temporary and disability assistance, the division of criminal justice services, the state police, the department of health, the office of court administration, the office of probation and correctional alternatives, the department of corrections and community supervision, at least one representative from local law enforcement, a county prosecutor's office, a local social services district, a member of the judiciary, and a domestic violence services program approved by the office of children and family services. A domestic violence fatality review team may also include representatives from sexual assault services programs, public health, mental health and substance abuse agencies, hospitals, clergy, local school districts, local divisions of probation, local offices of the department of corrections and community supervision, the office of the medical examiner or coroner, any local domestic violence task force, coordinating council or other interagency entity that meets regularly to support a coordinated community response to domestic violence, any other program that provides services to domestic violence victims, or any other person necessary to the work of the team, including survivors of domestic violence.

(e) The team shall identify potential cases and shall select which deaths or near deaths will be reviewed each year. Localities may request that the team conduct a review of a particular death or near death.

(f) The team shall work with officials and organizations within the community where the death or near death occurred to conduct each review.

(g) Team members shall serve without compensation but are entitled to be reimbursed for travel expenses to the localities where a fatality review will be conducted and members who are full-time salaried officers or employees of the state or of any political subdivision of the state are entitled to their regular compensation.

(h) To the extent consistent with federal law, upon request the team shall be provided client-identifiable information and records necessary for the investigation of a domestic violence-related death or near death incident, including, but not limited to:

(i) records maintained by a local social services district;

(ii) law enforcement records, except where the provision of such records would interfere with an ongoing law enforcement investigation or identify a confidential source or endanger the safety or welfare of an individual;

(iii) court records;

(iv) probation and parole records;

(v) records from domestic violence residential or non-residential programs;

(vi) records from any relevant service provider, program or organization; and

(vii) all other relevant records in the possession of state and local officials or agencies provided, however, no official or agency shall be required to provide information or records concerning a person charged, investigated or convicted in such death or near death in violation of such person's attorney-client privilege.

(i) Any information or records otherwise confidential and privileged in accordance with state law which are provided to the team shall remain confidential as otherwise provided by law. All records received, meetings conducted, reports and records made and maintained and all books and papers obtained by the team shall be confidential and shall not be open or made available, except by court order or as set forth in paragraphs (k) and (l) of this subdivision.

(j) Any person who releases or permits the release of any information protected under paragraph (i) of this subdivision to persons or agencies not authorized to receive such information shall be guilty of a class A misdemeanor.

(k) Team members and persons who present information to the team shall not be questioned in any civil or criminal proceeding regarding any opinions formed as a result of a meeting of the team. Nothing in this section shall be construed to prevent a person from testifying as to information which is obtained independently of the team or information which is public.

(l) Team members are not liable for damages or other relief in any action brought by reason of the reasonable and good faith performance of a duty, function, or activity of the team.

(m) Consistent with all federal and state confidentiality protections, the team may provide recommendations to any individual or entity for appropriate actions to improve a community's response to domestic violence.

(n) The team shall periodically submit a cumulative report to the governor and the legislature incorporating the aggregate data and a summary of the general findings and recommendations resulting from the domestic violence fatality reviews completed pursuant to this subdivision. The cumulative report shall thereafter be made available to the public, consistent with federal and state confidentiality protections.

§ 4. This act shall take effect on the one hundred eightieth day after it shall have become law.

PART B

Section 1. Subdivision 2 of section 4201 of the public health law is amended by adding a new paragraph (e) to read as follows:

(e) No person who: (1) at the time of the decedent's death, was the subject of an order of protection protecting the decedent; or (2) has been arrested or charged with any crime set forth in article one hundred

ly related to the death of the decedent shall have the right to control the disposition of the remains of the decedent. However, the application of this paragraph in a particular case may be waived or modified in the interest of justice by order of (i) the court that issued the order of protection or in which the criminal action against the person is pending, or a superior court in which an action or proceeding under the domestic relations law or the family court act between the person and the decedent was pending at the time of the decedent's death, or (ii) if proceeding in that court would cause inappropriate delay, a court in a special proceeding.

§ 2. This act shall take effect on the thirtieth day after it shall have become a law.

PART C

Section 1. Subdivision 1 of section 108 of the executive law is amended by adding two new paragraphs (g) and (h) to read as follows:

(g) "Public record" means any information kept, held, filed, produced or reproduced by, with or for an agency, in any physical form whatsoever including, but not limited to, reports, statements, examinations, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, rules, regulations or codes.

(h) "Process" means judicial process and all orders, demands, notices or other papers required or permitted by law to be served on a program participant.

§ 2. The opening paragraph of subparagraph (i) of paragraph (a) of subdivision 2 of section 108 of the executive law, as added by chapter 502 of the laws of 2011, is amended, subparagraph (v) is renumbered subparagraph (vi) and a new subparagraph (v) is added to read as follows:

[A] a signed written statement [~~made under oath~~] affirmed by the applicant that:

(v) the name of any person who resides with the applicant who also needs to be a program participant in order to ensure the safety of the applicant and, if the person named in the application is eighteen years of age or older, the consent of such person to be a program participant and designation by such person of the secretary as agent for purposes of service of process and for the purpose of receipt of mail; and

§ 3. Subparagraph (i) of paragraph (b) and paragraph (c) of subdivision 4 of section 108 of the executive law, as added by chapter 502 of the laws of 2011, are amended to read as follows:

(i) [~~if requested by a law enforcement agency for a legitimate law enforcement purpose as determined by the law enforcement agency~~] there is a bona fide statutory or administrative requirement for the communication of an actual address to another agency that has received a waiver from the secretary, provided that each waiver specifically authorizes such communication with the specified agency; or

(c) Upon receipt by the secretary of a process or mail for a participant, the office of the secretary shall immediately forward all such process or mail to the appropriate program participants [~~at their actual address~~] at the address specified by the participant for that purpose, and shall record the date of such forwarding. Service of process on a program participant, a program participant's minor child, incapacitated

shall be complete when the secretary receives such process by mail or otherwise.

§ 4. Subdivision 6 of section 108 of the executive law, as added by chapter 502 of the laws of 2011, is amended to read as follows:

6. Disclosure of [~~participant's address~~] participant information prohibited; exceptions. (a) The secretary shall not make a program participant's [~~address~~] information, other than the substitute address, available for inspection or copying, except under any of the following circumstances:

[~~(a)~~] (i) if requested by a law enforcement agency for a legitimate law enforcement purpose as determined by the law enforcement agency; or

[~~(b)~~] (ii) to a person identified in a court order, upon the secretary's receipt of that court order which specifically orders the disclosure of a particular program participant's address and the reasons stated therefor[~~or~~].

[~~(c) to~~] (b) The secretary may verify the participation of a specific program participant, in which case the secretary may only confirm information supplied by the requester.

§ 5. Section 2 of chapter 502 of the laws of 2011, amending the executive law relating to authorizing the secretary of state to accept service of process and receipt of mail on behalf of victims of domestic violence for the purpose of maintaining the confidentiality of the location of such victims, is amended to read as follows:

§ 2. This act shall take effect [~~nine months after the date it shall have become a law~~] July 15, 2012; provided, however, that the secretary of state is authorized and directed to promulgate all rules, regulations and forms necessary to implement the provisions of this act, on its effective date, on or before such date.

§ 6. This act shall take effect immediately; provided, however, that sections one, two, three and four of this act shall take effect on the same date and in the same manner as chapter 502 of the laws of 2011, as amended takes effect.

PART D

Section 1. Subparagraphs (vii) and (viii) of paragraph (a) of subdivision 2 of section 510.30 of the criminal procedure law, as renumbered by chapter 447 of the laws of 1977, are renumbered subparagraphs (viii) and (ix) and a new subparagraph (vii) is added to read as follows:

(vii) Where the principal is charged with a crime or crimes against a member or members of the same family or household as that term is defined in subdivision one of section 530.11 of this title, the following factors:

(A) any violation by the principal of an order of protection issued by any court for the protection of a member or members of the same family or household as that term is defined in subdivision one of section 530.11 of this title, whether or not such order of protection is currently in effect; and

(B) the principal's history of use or possession of a firearm; and

§ 2. The penal law is amended by adding a new section 240.75 to read as follows:

§ 240.75 Aggravated family offense.

1. A person is guilty of aggravated family offense when he or she commits a misdemeanor defined in subdivision two of this section as a

specified offense and he or she has been convicted of one or more specified offenses within the immediately preceding five years. For the

purposes of this subdivision, in calculating the five year period, any period of time during which the defendant was incarcerated for any reason between the time of the commission of any of such previous offenses and the time of commission of the present crime shall be excluded and such five year period shall be extended by a period or periods equal to the time served under such incarceration.

2. A "specified offense" is an offense defined in section 120.00 (assault in the third degree); section 120.05 (assault in the second degree); section 120.10 (assault in the first degree); section 120.13 (menacing in the first degree); section 120.14 (menacing in the second degree); section 120.15 (menacing in the third degree); section 120.20 (reckless endangerment in the second degree); section 120.25 (reckless endangerment in the first degree); section 120.45 (stalking in the fourth degree); section 120.50 (stalking in the third degree); section 120.55 (stalking in the second degree); section 120.60 (stalking in the first degree); section 121.11 (criminal obstruction of breathing or blood circulation); section 121.12 (strangulation in the second degree); section 121.13 (strangulation in the first degree); subdivision one of section 125.15 (manslaughter in the second degree); subdivision one, two or four of section 125.20 (manslaughter in the first degree); section 125.25 (murder in the second degree); section 130.20 (sexual misconduct); section 130.30 (rape in the second degree); section 130.35 (rape in the first degree); section 130.40 (criminal sexual act in the third degree); section 130.45 (criminal sexual act in the second degree); section 130.50 (criminal sexual act in the first degree); section 130.52 (forcible touching); section 130.53 (persistent sexual abuse); section 130.55 (sexual abuse in the third degree); section 130.60 (sexual abuse in the second degree); section 130.65 (sexual abuse in the first degree); section 130.66 (aggravated sexual abuse in the third degree); section 130.67 (aggravated sexual abuse in the second degree); section 130.70 (aggravated sexual abuse in the first degree); section 130.91 (sexually motivated felony); section 130.95 (predatory sexual assault); section 130.96 (predatory sexual assault against a child); section 135.05 (unlawful imprisonment in the second degree); section 135.10 (unlawful imprisonment in the first degree); section 135.60 (coercion in the second degree); section 135.65 (coercion in the first degree); section 140.20 (burglary in the third degree); section 140.25 (burglary in the second degree); section 140.30 (burglary in the first degree); section 145.00 (criminal mischief in the fourth degree); section 145.05 (criminal mischief in the third degree); section 145.10 (criminal mischief in the second degree); section 145.12 (criminal mischief in the first degree); section 145.14 (criminal tampering in the third degree); section 215.50 (criminal contempt in the second degree); section 215.51 (criminal contempt in the first degree); section 215.52 (aggravated criminal contempt); section 240.25 (harassment in the first degree); subdivision one, two or four of section 240.30 (aggravated harassment in the second degree); aggravated family offense as defined in this section or any attempt or conspiracy to commit any of the foregoing offenses where the defendant and the person against whom the offense was committed were members of the same family or household as defined in subdivision one of section 530.11 of the criminal procedure law.

3. The person against whom the current specified offense is committed may be different from the person against whom the previous specified

offense was committed and such persons do not need to be members of the same family or household.

Aggravated family offense is a class E felony.

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§ 3. The criminal procedure law is amended by adding a new section 200.63 to read as follows:

§ 200.63 Indictment; special information for aggravated family offense.

1. Whenever a person is charged with the commission or attempted commission of an aggravated family offense as defined in section 240.75 of the penal law, an indictment or information for such offense shall be accompanied by a special information, filed by the district attorney with the court, alleging that the defendant was previously convicted of a specified offense as defined in subdivision two of section 240.75 of the penal law, that at the time of the previous offense the defendant and the person against whom the offense was committed were members of the same family or household as defined in subdivision one of section 530.11 of this chapter, and that such previous conviction took place within the time period specified in subdivision one of section 240.75 of the penal law. Except as provided herein, the people may not refer to such special information during trial nor adduce any evidence concerning the allegations therein.

2. Prior to the commencement of the trial, the court, in the absence of the jury, must arraign the defendant upon such information and advise him or her that he or she may admit each such allegation, deny any such allegation or remain mute with respect to any such allegation. Depending upon the defendant's response, the trial of the indictment or information must then proceed as follows:

(a) (i) If the previous conviction is for an aggravated family offense as defined in section 240.75 of the penal law, and the defendant admits the previous conviction or that it took place within the time period specified in subdivision one of section 240.75 of the penal law, such admitted allegation or allegations shall be deemed established for the purposes of the present prosecution, including sentencing pursuant to section 70.00 of the penal law. The court must submit the case to the jury as if such admitted allegation or allegations were not elements of the offense.

(ii) If the defendant denies the previous conviction or remains mute with respect to it, the people may prove, beyond a reasonable doubt, that element of the offense before the jury as a part of their case.

(iii) If the defendant denies that the previous conviction took place within the time period specified in subdivision one of section 240.75 of the penal law, or remains mute with respect to that matter, the people may prove, beyond a reasonable doubt, before the jury as part of their case, that the previous conviction took place within the time period specified.

(b) (i) If the previous conviction is for a specified offense as defined in subdivision two of section 240.75 of the penal law, other than an aggravated family offense, and the defendant admits such previous conviction, that it took place within the time period specified in subdivision one of section 240.75 of the penal law, or that the defendant and the person against whom the offense was committed were members of the same family or household as defined in subdivision one of section 530.11 of this chapter, such admitted allegation or allegations shall be deemed established for the purposes of the present prosecution, including sentencing pursuant to section 70.00 of the penal law. The court must submit the case to the jury as if the admitted allegation or alle-

gations were not elements of the offense.

(ii) If the defendant denies the previous conviction or remains mute with respect to it, the people may prove, beyond a reasonable doubt, that element of the offense before the jury as a part of their case.

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(iii) If the defendant denies that the previous conviction took place within the time period specified in subdivision one of section 240.75 of the penal law, or remains mute with respect to that matter, the people may prove, beyond a reasonable doubt, before the jury as part of their case, that the previous conviction took place within the time period specified.

(iv) If the defendant denies that the defendant and the person against whom the previous offense was committed were members of the same family or household as defined in subdivision one of section 530.11 of this chapter, or remains mute with respect to that matter, the people may prove, beyond a reasonable doubt, that element of the offense before the jury as a part of their case.

§ 4. Subdivisions 4 and 5 of section 240.30 of the penal law are renumbered subdivisions 5 and 6 and a new subdivision 4 is added to read as follows:

4. Strikes, shoves, kicks or otherwise subjects another person to physical contact thereby causing physical injury to such person or to a family or household member of such person as defined in section 530.11 of the criminal procedure law.

§ 5. This act shall take effect on the sixtieth day after it shall have become a law; provided that sections two and three of this act shall take effect on the ninetieth day after it shall have become a law.

PART E

Section 1. Paragraph 2 of subsection (c) of section 2612 of the insurance law, as amended by chapter 246 of the laws of 2005, is amended to read as follows:

(2) "insurer" shall mean an insurer, a corporation organized pursuant to article forty-three of this chapter, a municipal cooperative health benefit plan established pursuant to article forty-seven of this chapter, a health maintenance organization certified pursuant to article forty-four of the public health law or a provider issued a special certificate of authority pursuant to section four thousand four hundred three-a of such law, or an agent, representative or designee thereof regulated pursuant to this chapter.

§ 2. Section 2612 of the insurance law is amended by adding a new subsection (h) to read as follows:

(h) (1) For purposes of this subsection:

(A) "Claim related information" means all claim or billing information relating specifically to an insured, subscriber or person covered by an insurance policy or contract issued by the health insurer.

(B) "Health insurer" means an insurer licensed to write accident and health insurance or salary protection insurance in this state, a corporation organized pursuant to article forty-three of this chapter, a municipal cooperative health benefit plan established pursuant to article forty-seven of this chapter, a health maintenance organization certified pursuant to article forty-four of the public health law or a provider issued a special certificate of authority pursuant to section four thousand four hundred three-a of such law, or an agent, representative or designee thereof regulated pursuant to this chapter.

(2) (A) A health insurer shall accommodate a reasonable request by a person covered by an insurance policy or contract issued by the health insurer to receive communications of claim related information from the health insurer by alternative means or at alternative locations if the

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person clearly states that disclosure of all or part of the information could endanger the person.

(B) If a child is covered by an insurance policy or contract issued by the health insurer, then the child's parent or guardian may make a request to the health insurer pursuant to subparagraph (A) of this paragraph.

(3) A health insurer may require: a person to make a request pursuant to paragraph two of this subsection in writing; the request to contain a statement that disclosure of all or part of the claim related information to which the request pertains could endanger the person or child; and the specification of an alternative address, telephone number or other method of contact.

(4) With respect to an insurer authorized to write accident and health insurance in this state, this subsection shall apply only to a policy of accident and health insurance or a policy of salary protection insurance, as defined in subsection (a) of section one thousand one hundred thirteen of this chapter.

(5) Nothing in this subsection shall prevent, hinder, or otherwise affect the entry of an appropriate order made in the best interests of a child by a court of competent jurisdiction adjudicating disputed issues of child welfare or custody.

(6) Except with the express consent of the person making a request pursuant to subparagraph (A) of paragraph two of this subsection, a health insurer shall not disclose to the policyholder (i) the address, telephone number, or any other personally identifying information of the person who made the request or child for whose benefit a request was made; (ii) the nature of the health care services provided; or (iii) the name or address of the provider of the covered services.

(7) A health insurer that makes reasonable and good faith efforts to comply with this subsection shall not be subject to civil or criminal liability on the ground of non-compliance with this subsection.

(8) The superintendent, in consultation with the commissioner of health, the office of children and family services and the office for the prevention of domestic violence, shall promulgate rules to guide health insurers in guarding against the disclosure of the information protected pursuant to this subsection.

§ 3. This act shall take effect on the first of January next succeeding the date on which it shall have become a law, provided, however, that effective immediately the addition, amendment or repeal of any rule or regulation necessary for the implementation of this act on its effective date is authorized.

§ 2. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 3. This act shall take effect immediately provided, however, that

the applicable effective date of Parts A through E of this act shall be as specifically set forth in the last section of such Parts.

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The Legislature of the STATE OF NEW YORK **ss:**

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

DEAN G. SKELOS

Temporary President of the Senate

SHELDON SILVER

Speaker of the Assembly