

FORTIETH DAY

Wednesday, March 19, 1986

The Senate of the Thirteenth Legislature of the State of Hawaii, Regular Session of 1986, convened at 11:38 o'clock a.m., with the President in the Chair.

The Divine Blessing was invoked by Chaplain Willard I. Ghere, Major, United States Army, after which the Roll was called showing all Senators present with the exception of Senator Chang who was excused.

The President announced that he had read and approved the Journal of the Thirty-Ninth Day.

The following introductions were made to the members of the Senate:

Senator Matsuura, on behalf of Senators Henderson and Solomon and himself, introduced 20 students from the Big Island, who are participating in the Legislative Experience Program. The students represent Hilo, Honokaa, Konawaena, Kohala and Waiakea High Schools, and were accompanied by Wallace Aki, Hawaii District Advisor, and Netlie Yokoyama, Faculty Advisor.

Senator Yamasaki, on behalf of Senators Solomon and Machida and himself, introduced 26 students in the kindergarten through fifth grades from Keanae Elementary School of Maui, accompanied by their teachers, Marlene Mashita, Donna Aratani and Pearl Pahukoa, and chaperones, Lucille Smith, Gladys Kanoa, Wendy Akuna, Debbie Friedlander, Pualani Kimokeo and Clement Sheldon.

Senator Abercrombie then introduced Mr. Melvin T. Seo and Mr. Albert K. Sing with the following remarks:

"Mr. President, I have a distinct pleasure today in being able to introduce two individuals in particular and those accompanying them.

"It is with a great deal of pleasure that I present to the Senate, Mr. Melvin Seo, who has been awarded the National Child Labor Committee's 1985 Lewis Hine Award for his outstanding leadership as a principal of several very complex programs, which have successfully addressed the needs of troubled youths in Hawaii. He initiated many innovative student center programs in the academic and vocational areas that utilized various community resources. Through his efforts, the Olomana School Partners Project received the exemplary project award for 1984-85 from the Close Up Foundation.

"At this time, I would like to introduce

Mr. Melvin T. Seo and his wife, Naomi."

Senator Abercrombie continued:

"I'm also pleased to present a Senate Certificate to an old friend of almost everyone here in the Senate, Mr. Albert Sing, who has been awarded the National Child Labor Committee's 1985 Lewis Hine Award certificate for his extraordinary work on behalf of children and youth in this community.

"As we all know, he has a long record of active voluntary service on a number of community boards and, parenthetically, I might add, he has a long record of voluntary advice for most of us at any given time during the day. He has earned the respect of decision makers because of his honesty, his fairness, his fearlessness and his ability to get to the heart of the problem.

"I would like to introduce Mr. Albert Sing and his wife, Gladys."

The honorees and their respective wives, accompanied by Mrs. Genevieve Okinaga, Director of the Office of Children and Youth, rose to be recognized and were presented their congratulatory Senate Certificates and leis by Senators Holt, Solomon and A. Kobayashi.

Senator B. Kobayashi introduced Dr. Krasae Chanawongse of Thailand as follows:

"Mr. President, it is my distinct pleasure this morning to make an introduction of a visitor from Thailand. Dr. Krasae Chanawongse is visiting us today and will be giving the 1986 Ralph Sachs' lecture at the University of Hawaii, School of Public Health. Dr. Krasae is a very well known figure, much distinguished in the area of public health. He has, among other things, served as physician, a fellow legislator, health minister and scholar. He is a noted practitioner in public health and a humanitarian of much repute. In 1973, he was awarded the Distinguished Ramon Magsaysay Award for his work in under-served, rural health populations.

"I should add that Dr. Krasae is a Professor of Public Health at the Mahidol University in Thailand. He is at that university the Director of the Primary Health Care Training Center of the Association of Southeast Asian Nations."

Dr. Krasae was accompanied by Mr. Gerald Michael, Dean of the School of Public Health, University of Hawaii.

The honoree and Dean Michael rose to be recognized and were presented with leis by

Senators Fernandes Salling and McMurdo.

At 11:47 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:52 o'clock a.m.

SENATE RESOLUTION

S.R. No. 79, entitled: "SENATE RESOLUTION REQUESTING THE UNIVERSITY OF HAWAII TO IMMEDIATELY DEVELOP AND IMPLEMENT SHORT TERM SOLUTIONS TO ADDRESS THE STUDENT PARKING SITUATION AT THE UNIVERSITY OF HAWAII AT MANOA," was offered by Senators Holt, Machida, Soares, Mizuguchi and Chang, and was read by the Clerk.

By unanimous consent, S.R. No. 79 was referred to the Committee on Higher Education.

STANDING COMMITTEE REPORT

Senator Holt, for the Committee on Higher Education, presented a report (Stand. Com. Rep. No. 620-86) recommending that House Bill No. 2786-86, as amended in S.D. 1, pass Second Reading and be recommitted to the Committee on Higher Education.

On motion by Senator Holt, seconded by Senator Cobb and carried, the report of the Committee was adopted and H.B. No. 2786-86, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE UNIVERSITY OF HAWAII," passed Second Reading and was recommitted to the Committee on Higher Education.

ORDER OF THE DAY

MATTER DEFERRED FROM TUESDAY, MARCH 18, 1986

Senate Bill No. 1647-86 (Hse. Com. No. 366);

By unanimous consent, action on S.B. No. 1647-86, entitled, "A BILL FOR AN ACT RELATING TO HARBORING MONGOOSE," was deferred until Thursday, March 20, 1986.

THIRD READING

Stand. Com. Rep. No. 516-86 (H.B. No. 26, H.D. 1, S.D. 1):

By unanimous consent, action on Stand. Com. Rep. No. 516-86 and H.B. No. 26, H.D. 1, S.D. 1, was deferred to the end of the calendar.

House Bill No. 1954-86, S.D. 1:

By unanimous consent, action on H.B. No. 1954-86, S.D. 1, entitled: "A BILL FOR AN

ACT PROPOSING AN AMENDMENT TO ARTICLE III, SECTION 10, OF THE HAWAII CONSTITUTION TO CHANGE THE LEGISLATIVE SESSION RECESS REQUIREMENT," was deferred until Thursday, March 20, 1986.

House Bill No. 317, H.D. 1:

By unanimous consent, action on H.B. No. 317, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE LIMITATIONS PERIOD FOR FEDERAL ACTIONS BROUGHT IN STATE COURT," was deferred until Thursday, March 20, 1986.

House Bill No. 1995-86, H.D. 1, S.D. 1:

By unanimous consent, action on H.B. No. 1995-86, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO DRUG PRODUCT SELECTION," was deferred until Thursday, March 20, 1986.

House Bill No. 2004-86, S.D. 1:

By unanimous consent, action on H.B. No. 2004-86, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO AGENT ORANGE," was deferred until Thursday, March 20, 1986.

House Bill No. 2104-86:

By unanimous consent, action on H.B. No. 2104-86, entitled: "A BILL FOR AN ACT RELATING TO HEALTH," was deferred until Thursday, March 20, 1986.

House Bill No. 2003-86, H.D. 1, S.D. 1:

By unanimous consent, action on H.B. No. 2003-86, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO POISONS," was deferred until Thursday, March 20, 1986.

House Bill No. 2046-86:

By unanimous consent, action on H.B. No. 2046-86, entitled: "A BILL FOR AN ACT RELATING TO CIVIL PENALTIES," was deferred until Thursday, March 20, 1986.

House Bill No. 2119-86, H.D. 1, S.D. 1:

By unanimous consent, action on H.B. No. 2119-86, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO RESIDENTIAL LEASEHOLDS," was deferred until Thursday, March 20, 1986.

ADVICE AND CONSENT

Stand. Com. Rep. No. 619-86 (Gov. Msg. No. 177):

Senator Holt moved that Stand. Com. Rep. No. 619-86 be received and placed on file, seconded by Senator Cobb and carried.

Senator Holt then moved that the Senate advise and consent to the nomination of Kenneth N. Kato to the Board of Regents of the University of Hawaii, term to expire June 30, 1990, seconded by Senator Cobb.

At this time, Senator Abercrombie spoke on the nomination as follows:

"Mr. President, I rise to speak on this nomination favorably, with reservations, because I object to the stand taken by the Board of Regents, with respect to divestiture of funding in South Africa. I think that an institution devoted to academic freedom which has the opportunity to make a statement that has practical consequences for those who are in search right now, at the cost of their lives in many instances, for freedom, academic and otherwise, needs to make that statement in a manner which demonstrates beyond any question our commitments and our values — and demonstrates them in a public way.

"It may be that the amounts of money, in terms of the overall investment in South Africa, may be termed negligible in one sense, but they have a great deal of meaning for those who are now subjugated to the apartheid system in South Africa, and their meaning goes beyond the absolute dollar amounts that are involved.

"The Board of Regents have taken a stand which makes a nod in the direction of recognizing its responsibilities, but in my judgment has not made a sufficient effort to make it absolutely clear that we, especially people who live in Hawaii, not only disapprove of it but will not participate to the degree that it is possible for us to do so in aiding and abetting the apartheid regime.

"I recognize that there are differences of views and differences of opinion as to how best to accomplish that. I realize that the Board of Regents took this issue and came to this conclusion, but I nonetheless have the reservation and I feel it would be less than honest not to state it. I believe that the Board of Regents uses its constitutional powers to make policy decisions in these areas, but I feel that this time, with the nomination before us, is an appropriate one to register my dissent from that decision.

"However, Mr. President, it is a matter of principle that we expect the Regents to make decisions and to vote against someone solely on the basis of a decision with which I disagree, I think would not be appropriate. But where the policy involved is one that's so fundamental, in terms of the values that we espouse in Hawaii, I would hope that the Regents in the year to come, when it considers this issue again and I believe it will . . . I believe that there are students and faculty and others in the community

who will ask the Regents to reconsider their point of view, and Mr. Kato, as well as other members of the Board of Regents will rethink, at least reconsider, their stand on this issue and perhaps might seek to understand those who are bringing the issue to them about divestiture in the light of the most recent events which have been occurring in South Africa. And with that reservation, Mr. President, I will vote 'yes' on this nomination. Thank you."

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

Ayes, 24. Noes, none. Excused, 1 (Chang).

MATTER DEFERRED FROM
EARLIER ON THE CALENDAR

Stand. Com. Rep. No. 516-86 (H.B. No. 26, H.D. 1, S.D. 1):

Senator Cayetano moved that Stand. Com. Rep. No. 516-86 be adopted and H.B. No. 26, H.D. 1, S.D. 1, having been read throughout, pass Third Reading, seconded by Senator Toguchi.

At this time, Senator Abercrombie spoke against the bill as follows:

"Mr. President, I rise to speak against this bill. I will be very interested, Mr. President, to hear the reasons . . . I understand there are other people who will vote against the bill, as well. They may have reasons other than my own. I will be interested in them. I appreciate all the work that the Transportation chairman, my good friend Senator Cayetano, has done on this bill. I think it is well within the boundaries of discussion in the Senate, Mr. President, especially since you've been president, we all say 'my good friend' before we go after our good friends. Isn't that the way it's done?

"I have opposed the raising of the drinking age virtually from the beginning of this very poor idea. Nothing that has taken place, in terms of hearings and in terms of discussions, many of which I have participated in by way of debate, by way of hearings, by way of private and public discussions of all kinds, have altered my view.

"I believe that with the passage of this bill, we will increase the number of accidents and the severity of accidents that will take place. I believe that it involves characterizing an entire class of people as potential criminals on the basis of what some people in that class of people might do, and not committed crimes, but because some people in that area have committed crimes, being 18, 19 or 20 and driving

drunk. Everyone has to be castigated in that area. And yet it is already a crime to drive drunk. It is a crime for anyone to drive drunk. It is a crime for those who are less than 18, 19 or 20 to drive drunk, let alone those who are older than that. There are categories of ages that have an accident record as bad or worse than 18-, 19- and 20-year-olds when it comes to drunk driving and accidents.

"We have a seat belt law now that presumably will help reduce the rates of accidents if the proponents of that bill are correct. We have the incredible irony of having an argument now taking place as to whether we should reduce insurance rates, when we heard arguments all along from those who proposed to raise the drinking age that we would be more safe if we would not have 18-, 19- and 20-year-olds drinking and driving. So those who were all for that bill and presented that as a reason, now suddenly are jumping all over the chairman of Transportation because he proposes to reduce insurance rates. In fact, if the morning newspaper is correct, some of the insurance people are now saying that the differences in terms of accidents and insurance costs will be virtually negligible. If that's the case, then why are we raising the drinking age? I pose these questions not to the chairman of the Transportation Committee, but to members here assembled in general. I understand perfectly why the bill is before us. It's before us because we're going to lose highway money. We're being subject to federal blackmail.

"Now, you know, Mr. President, and other members know that myself and others have had arguments with Mr. Marsland over some of his activities as the City Prosecutor, but I don't think any of us have argued with Mr. Marsland about extortion. I think it's a crime, but if the Federal Government commits it, apparently, it's all right, and that's all this is. It's for money. I hope no one in the public is deluded by those flimsy arguments made by groups like Mothers Against Drunk Driving, which is a terrific combination of words, I guarantee you that. Mothers Against Drunk Driving — you can say practically anything you want if you have that in front of you. It doesn't matter whether it makes sense or not or whether it's the truth, you can get away with it. No one, virtually no one, believes that this is going to do anything other than create a new class of criminals. This is being done for the money. The cynicism that's displayed by some of the people in debates that I've had with them that, 'Well, I guess it's true that other age categories have just as bad an accident record or worse, but we can get the 18-, 19- and 20-year-olds, so let's do it,' is to me a classic example of private interest lobbying that all in the name of virtues which otherwise would be seen as exemplary in other circumstances.

It is clear to me that this is strictly for the money.

"Now, we have an argument going on in this state right now over what to do about H-3 funding, alternative funding, and it involves three quarters of a billion dollars — infinitely more important than the \$15 million or \$16 million a year that's involved in highway funds now. I think it is an exercise in cynicism on our part if we pass this bill in order to get the \$17 million and immediately jeopardize those who are 18, 19 and 20 years old who for all other purposes are considered adults in our state — all other purposes are considered adults — and suddenly say to them that under these circumstances because we want \$17 million, you are going to be discriminated against.

"I don't argue for a minute that drinking is a constitutional right — it isn't. I don't argue for a minute that you cannot discriminate among classes of people for various and sundry reasons, that happens all the time. I'm saying that when you do it, you have to have good and sufficient reason. The reason that we are saying that we are doing it here is to get money. Now, that's going to be an end and we are doing it because someone else blackmailing us, blackjacking us for the money.

"Now the message, it seems to me, is sent to every young person out there now that may be 17 or 18 years old right now — the message to you is that if it is for money and you can extort it from somebody and if you can bribe them with the money, then it's okay to do it. That's what the message is. And the fact that you will be expected to act as an adult in all other instances is beside the point.

"In addition, Mr. President, it is interesting that, if I am not mistaken, anyone who violates this law who is 18, 19 or 20 years old will be tried in adult court. Well, if they're not adults and so therefore they shouldn't drink, then why aren't we taking it to family court and treat as them as children? And what kind of penalties are we going to have? If we treat this as seriously as it's supposed to be, I presume there's going to be very, very heavy penalties involved. And how is this going to be enforced and who's going to be enforcing it? Are we now going to be patrolling the beaches and patrolling the parking lots at schools and so on, because I guarantee you, Mr. President, that the amount of alcohol being consumed will not, that is to say, that amount of alcohol being purchased probably isn't going to change very much.

"The locus of purchase will change. Once this bill is passed, instead of young people being able to go to clubs where they are at least under controlled circumstances and where the likelihood in fiscal terms alone is

such that they will be spending money on an entrance fee and a couple of drinks, and thus consuming much less alcohol, those circumstances will change completely, and what will happen now is that young people will be buying alcohol at Safeway and 7-Eleven and package liquor stores or having it bought for them and they will be buying it in far greater quantities and drinking it in far greater quantities in automobiles in all likelihood than they would otherwise, were they at clubs and other places where young people gather where the consumption of alcohol is secondary to the social circumstances.

"So I foresee, if anything, an increase in the amounts of alcohol that people . . . some people will violate the law and, of course, they will be violating the law. I hope that makes everyone feel better when we see the Honolulu Star Bulletin and Advertiser on a Sunday morning or whenever it is with the pictures that will inevitably take place of the pile-ups on the freeway and all the rest of it from people who were, instead of being at a club, at the beach with a quart of vodka and half-gallon of orange juice, and somebody making a fool of themselves on one hand and possible corpses of themselves and their friends before the night is over.

"So I don't think that this raising the drinking age is doing anything but creating a new class of criminals. I think it is also an extremely cynical side to this because we have exempted 18-, 19- and 20-year-olds to work in the very places that they cannot drink in order to make for somebody. So that's the second lesson about money. You can extort money. I'm looking at these young people in the gallery again — you can extort money for profit and you can work in it. You can serve the liquor; you can truck the liquor; you can carry the liquor; you can take it back to the kitchen; you can make money for the people who own the restaurants and the bars and the trucking firms and the shipping firms and the alcohol distribution firms, but you can't drink it. You can't touch it. That's the lesson — if they can make money off you, that's fine. That's how much they care. And are we really going to shut these places down? What happens? I'll tell you what's going to happen.

"If we're really serious about stopping the drinking, 18, 19 and 20 years old, nobody's going to be hired who is 18, 19 or 20 years old to work in a restaurant or deliver beer or be involved in any of the services industries because, why take the chance? And if we're not going to seriously enforce it and close establishments down who serve alcohol to 18-, 19- and 20-year-olds, by mistake or otherwise, if we don't close them down for a week or two weeks or give them a heavy fine, then that means that it's not really going to be enforced seriously at all.

And people are going to disobey the law, and that teaches disrespect for the law.

"There are more people looking for jobs, believe me, that there are work in this area, so there's no reason to hire 18-, 19- and 20-year-olds in any of these places. Why take the chance? If you were a boss and you had a liquor liability insurance that we have to pay right now, would you do it? And if businesses do not succeed, if businesses find themselves on the edge of being able to make a profit or loss and they have to lay people off, you think they're just going to lay off 18-, 19- and 20-year-olds? It doesn't matter how old you are, how long you've been working, if the business cannot sustain itself because of the loss in business, they're going to lay you off.

"And what about the numbers of people coming here as tourists? We always talk about the fragility of the tourist trade. There are hundreds of thousands of 18-, 19- and 20-year-olds that come here and vacation. Now, I guarantee you the second this passes, Mexico, the Carribean, Canada, wherever, they'll be advertising 'Come here.' We'll be losing that business.

"And the irony is that of course many of them have experience with 21-year-old drinking laws right now. They have fake ID's, and they'll bring them into Waikiki and we'll be expected to deal with that, and they'll be walking around Waikiki. Our young people will be driving. So we'll have a new industry. I will say that this bill will create one set of new industry, the false ID industry. People will be carrying false ID's, or they will be getting people, as I say, who are older to buy alcohol for them so they can drink it.

"So, as for the insurance side of it, I think that will be covered probably by others which I will find that discussion amusing. I hope everyone else does because their argument will be made that we don't dare have any real benefits from this that is supposed to occur.

"So, the bottom line, Mr. President, is that I think that if there is only one state in the Union that is standing up for freedom, it should be Hawaii, because that's what we're supposed to represent here. If every other state in the Union has not knuckled under to the hysteria that has gone across the country in the scapegoating of young people in this country for the sins of their mothers and fathers.

"There is not a day that passes that the paper does not print pictures of people drinking at social occasions. Mr. President, two days ago was St. Patrick's Day. The media, electronic and otherwise, was filled with pictures of people and stories about drunks and getting drunk. The green beer

was being poured on television and everybody was getting loaded, and oh, wasn't it fun? Who's kidding who?

"The problem with drunk driving is drunk driving, not 18-, 19- or 20-year-olds. If an 18-, 19- or 20-year-old is driving drunk and committing the crime driving drunk and hurts himself or herself or other people or kills themselves or other people, they have committed that crime and you are just as dead or just as maimed if you are hit by an 18-, 19- or 20-year-old, as you are if you are hit by a 46-, 47- or 48-year-old. A person who was killed, a person who was maimed, is not going to make the differentiation. The crime is in the drinking and the driving, that's what we should be focusing on and not scapegoating our young people. The crime is allowing our young people to get the message that it is perfectly all right to commit extortion on the national level. We knuckle under it for money, and money only. On that basis and for the other reasons that I've stated, Mr. President, fully understanding the dilemma that the Transportation chairman has, I now commit his soul to you."

Senator Cayetano then spoke in favor of the bill as follows:

"Mr. President, except for the parts of Senator Abercrombie's remarks where he states his opposition to the bill, may I have the rest incorporated as part of my speech.

"Mr. President, speaking in favor of the bill. First of all, let me say that there is very little that I disagree with Senator Abercrombie about. Had we been left to our own devices, I suspect that this bill would have a different age on it, and I think that sentiment is pretty widespread. But we have been elected to make decisions, and sometimes the decisions are not always black and white; they kind of fall in between. Everything we do here is a weighing process and we place the facts on the scale, and sometimes we just barely tip one way and the way we tip is really a matter of judgment for each and everyone of us.

"I don't disagree with anything that Senator Abercrombie said. In fact, I might add that had we gotten into the merits of raising the drinking age itself, there are some illogical absurdities which just strike one in the face. For example, the argument or the basis for raising the drinking age is primarily one that is based on data. Even if we assume and accept the data presented by the proponents of raising the drinking age, we find, for example, that we are penalizing 50 percent of the men in ages 18, 19 and 20 who don't drive, and 100 percent of the women who in the classes of 18, 19 and 20 who are not a problem for the antics, so-called, of the other 50 percent of the

driving men. These kind of facts make it very, very difficult to be for a bill like this.

"We also have to consider that drinking is a privilege; it is not a constitutional right, and it is clear that the states can regulate privileges, can discriminate. Given that fact, we have to weigh the down side of not passing this bill. The loss of \$17 million in federal highway money, I think, may weigh a bit more heavily on the shoulders of a Senator if that Senator happens to be chairman of the Transportation Committee. Believe me, it's a little more serious when you happen to be the man who makes the decision as to whether the bill should be presented the Senate for a vote.

"Just last session, Mr. President, we increased the fuel tax, we increased the weight tax, and we increased the state vehicle registration fee. We did that because our highway fund was running in the red. That is a very, very serious matter and, as far as I'm concerned, the primary factor in my supporting this bill. The Federal Government in using this blackjack on our heads has hit us where it hurts the most. I cannot be responsible for holding this bill back and causing the loss of \$17 million and looking down the road forcing this Legislature to increase the fuel tax, the weight tax, and the registration fee at even higher rates. I simply cannot do that.

"So, I won't argue anymore about the merits of raising the drinking age. However, there is one section of this bill which I think deserves some comment, and that is the section which relates to the reduction of insurance premiums. Lobbyists for the insurance industry, Mr. President, have been scurrying around the halls of this Legislature in near hysteria trying to convince members of this body that should we pass this bill, should the 10 percent premium reduction be adopted, that they would go broke. First of all, let me say that I'm not wedded to 10 percent, although I think that figure can be justified. I do note, however, that the insurance industry allowed itself and, in fact, came forward to testify for raising the drinking age.

"Let me quote to you from testimony given at the committee hearing. This is from the testimony of MADD, Mothers Against Drunk Driving, dated March 30, 1985, quoting the Insurance Institute for Highway Safety, they state: 'A study by the Insurance Institute for Highway Safety examined nine states that have raised their drinking age. According to the Insurance Institute study, the average reduction in night-time fatal crashes was 28 percent. The Institute concluded that any state raising its drinking age to 21 could reduce night-time fatal crashes by 28 percent.' That's data coming from the insurance industry, itself.

"Let me quote to you testimony given before the committee. This comes from a magazine called 'The Company Magazine of UIAA Insurance,' dated March 30, 1985. UIAA stands for United Insurance Agents Association, another insurance group. Let me quote you the testimony: 'According to insurance industry estimates, raising the drinking age to 21 could save 1,250 lives each year, nationwide.'

"Let me quote to you more testimony; this time given by a local insurance source, The Hawaii Independent Insurance Agents Association, testimony given on March 30, 1985, and I quote in part: 'The Hawaii Independent Insurance Agents Association citing statistics from U.S. News and World Report from an interview with John Volpe states, "Between 1981 and 1982 there was a drop in drunk driving fatalities of about 2600, during a time when 14 states raised their drinking age. The State of Michigan experienced a 20 percent rise in drunk driving, that's when it lowered the age to 18 and had a 31 percent reduction when it was raised back to 21.'

"There's more. Some of you may have seen ads in Time, Newsweek, and U.S. News and World Report ads published by the insurance industry calling for tort reform, raising the drinking age as a means to lower insurance costs. The evidence is overwhelming that the insurance industry has had its finger in supporting the movement to raise the drinking age.

"Now, what is the basis for the insurance premium reduction? It's really very simple. We are saying that this data is correct, and I think that we have to assume that because Congress assumed it was correct; that's why they passed the federal law; Mothers Against Drunk Driving assumed it was correct, and the proponents of this bill assumed it's correct. If we assume it's correct, then that means, very simply and logically, that when you raise the drinking age there should be less accidents; there should be less fatalities; there should be less property damage; there should be less injuries. If there are less fatalities, there are less injuries, less property damage, that means very simply and logically that there would be less benefits paid out by the insurance companies. Now, if you understand how insurance rates are set, usually they wait and try to accumulate a three-to-five year history so that they can make actuarial projections. I don't think we should wait for that. Why? Because as soon as we pass this law, and as soon as people 18, 19 and 20 are not allowed to drink, benefits will begin to accrue. If we wait five years, those benefits will accrue to the insurance industry and they will be realizing a windfall.

"I suggest that we err on the side of the

consumer, that we pass on the benefits now; even if it is just an estimate, we should pass on the benefits now and if the history does not project out as we think it will, then the insurance industry can come in at a later time and ask that the rates be adjusted. It's very simple. We have to choose — choose between the insurance industry and the consumer. As Senator Toyofuku once said to Senator Abercrombie, on a bill that we heard five years ago, he said, 'Neil, it's very simple. In this bill you, if you're for the bill, you're for the insurance industry; if you're against the bill, you're for the consumer.' This bill is very simple, also. And those who oppose that particular section should take that into account.

"Now, the insurance industry's position on this particular bill is very interesting and it is consistent with the position that it's taken with respect to workers' comp, the so-called liability insurance, and the whole business of tort reform. Mr. President, because of my profession, I have not said anything on tort reform. But, let me say to members of this body, should we even dream this year of taking away the rights of victims by passing tort reform legislation we should tie in to every bill that we pass which brings about tort reform some reduction in insurance premiums, whether it's liability insurance, workers' comp, or automobile insurance. I think that's a very logical way to proceed, and as far as I'm concerned, if this bill goes to conference and the insurance industry wants to bring us information which may require an adjustment in the rates, the percentage of reduction that is called for in the bill, I'm open. But, Mr. President, should someone dream, since I believe I will be the chairman of the Conference Committee on this bill, should by some accident the House feel that this bill should pass without any reduction in insurance premiums, I would be very, very reluctant to let this bill move. Thank you."

Senator George also rose to speak in favor of passing the bill:

"Mr. President, I rise to speak in favor of this bill. Of course, I speak in favor of this bill. After so many years of being stubborn and relentless about the necessity to raise the drinking age in Hawaii to 21 it would be a curious aberration if I were to oppose House Bill 26, even in its present form.

"I do, however, have reservations about certain burdens which this vehicle bears after its departure from the Transportation Committee.

"For instance, I wonder about the necessity, the relevance and the fairness of the provision for a ten percent reduction in automobile insurance premiums. I have gone through the evidence received by the committees having custody of House Bill 26

and testimony given at hearings on the same subject matter, and a good pile of published commentary, and nowhere do I find specifics that show that our raising the drinking age will generate this dramatic 10 percent windfall for the insurance companies.

"Of course we all hope that our actions here will help to reduce the incidence of alcohol related driving accidents and fatalities and lessen property damage.

"But even if the predicted decrease in driving statistics doesn't happen — which would surprise me greatly — there are plenty of good reasons for raising our drinking age. I have here a nifty compendium titled '21 Reasons for Raising the Drinking Age to 21.' I'm not going to read it. It's getting late. I'm sure all of us have waded through more literature on this subject than we ever expected to — but let me remind you that the relationship between young drivers and alcohol provides only one of numerous good reasons for raising the drinking age.

"I think most of you heard Judge Spencer on one of the occasions when he testified on the relationship of alcohol to violent crime committed by persons under 21. Remember what he said: 'Judiciary statistics reflect the following:

'Ninety percent of persons under 21 convicted of murder, manslaughter, attempted murder, and attempted manslaughter were consuming alcohol immediately prior to the crime, in contrast to 41 percent over 21 convicted of such crimes.

'Forty-four percent of persons under 21 convicted of robbery were consuming alcohol immediately prior to the crime, in contrast to 35 percent of persons over 21 convicted of such a crime.

'Sixty-four percent of persons under 21 convicted of violent sex crimes had been consuming alcohol immediately prior to the crime, in contrast to 21 percent of persons over 21 convicted of such a crime.

'Fifty-four percent of persons under 21 convicted of assault had been consuming alcohol immediately prior to the crime, in contrast to 38 percent of persons over 21 convicted of such a crime.'

"These numbers alone provide us with a very good reason for passing this bill.

"All of us who attended one or more of the public hearings on the drinking age proposals have also heard from educators and parents of teenagers, offering compelling testimony that raising the drinking age would help to keep alcohol out of the hands of younger teens.

"And I have just been reminded that we're living in a democracy and we're supposed to be reflecting, regardless of money, what the people we represent feel and we ought to remember that the majority of the adults over 21, not just nationally but locally, favor raising the drinking age and young people 18 to 21 have also indicated they want the drinking age raised to 21. This is the constituency we are elected to represent.

"Then of course there's the additional reason — indeed from the standing committee report before us today, and for the purpose expressed in Section 1 of the bill — the only reason.

"Freely translated, I think it boils down to 'we're doing it for the money.'

"Not the noblest reason in the world for justifying legislation, but I admit to a certain pragmatic desirability.

"However, if we're going to do it for the money, I would like us to identify more correctly the amounts for which we're doing it.

"This bill, and the Standing Committee Report No. 516 which accompanies it, gives outdated numbers for the amount of federal highway funds which will be lost if we don't raise the drinking age to 21.

"If the Transportation Committee chairman would like to pencil in the figures so that the changes can be made in conference, the correct amount that would be lost in fiscal 1987 is \$6,285,000 and in 1988 it will be \$12,570,000. Almost \$19 million instead of the \$17 million 'blackjack' noted by the Transportation chairman.

"With these reservations, Mr. President, I would vote 'aye' on this bill, and implore my colleagues to do the same. It's high time."

Senator Cobb spoke in favor of the bill, with reservations, as follows:

"Mr. President, I would like to express my reservations on this matter, and it goes far beyond the Section 6 which I flagged out by my signature on the committee report. I agree with many of the comments made by Senator Abercrombie, in terms of this being a classic example of federal blackmail. I agree also with the comments made by the chairman of the Transportation Committee that we would probably not be passing a 21-age drinking bill were it left to our free discretion.

"When I was a teenager, Hawaii had a drinking age law of 20. When the war in Vietnam came, there was a national movement to lower the drinking age to 18. Part of that, no doubt, reflecting the burden

of those who bore the brunt of combat. The average age of a soldier in Vietnam was 19. Many of you heard a song to that effect.

"The prediction is that the 21-age drinking will remain the law of the land until we have another war, and those who are of the age who bear the brunt of that combat will then be asked to serve the country and be confronted with the irony they could be called upon to serve and die for their country but couldn't drink within its borders. They couldn't even drink on a military reservation under the jurisdiction of any of the United States Armed Services. That's the ultimate irony of this federal action.

"If we were logical, Mr. President, in looking at the accident data, then the drinking age should in effect be raised to 24 because that's the peak of accident data that exists. That's the highest rate, not 21. It keeps going up from 21 until you hit 24, but no state has taken that action. Yet, if we relied purely on logic, this bill should read 24.

"A concern that I also raise is whether or not the 'drop dead' clause for 1991 would cause the loss of federal funds, but my primary interest in this is not the loss of money. It's another example of the loss of basic freedom — not a right, but a privilege which we have seen more and more in our society today, both locally and nationally.

"Some allusion have been made to insurance figures, and I would like to bring to the members' attention some figures that have been presented to me as to what the scope of the problem is. If we eliminate accidents by youthful drivers under the age of 21 who were drinking, the total impact would be less than one percent on the total overall premium. The actuary data that I've seen indicates that it would be eight-tenths of one percent. Unfortunately, many accidents occurred by the youthful driver either by just plain carelessness or showing off. And the eight-tenths of one percent may be high because this figure takes into account all persons under the age of 21, such as those under 18 who are not supposed to drink now.

"When the basic no-fault law was passed, a provision was inserted that prohibits age discrimination of any kind with drivers of experience. That has caused all of the rest of us over the age of 24 to, in effect, subsidize the rates of those below that age. Let me give you some comparisons. If we have an average 1985 car in Honolulu with full no-fault coverage, the premium for everyone today, based on an accident-free and ticket-free driving record is \$372.00 — that's average. However, if we had an age-class rating system, here would be the premiums: for age over 65, \$283; for age 30

to 64, \$298; for age 25 to 29, \$373; for age 23 to 24, if the individual is married, \$373; for age 21 to 22, married, \$432; for age 21 to 24, single, \$500; under 21, married, would be \$537; and under 21 single, would be \$798.

"It is estimated, Mr. President, that each driver could save anywhere from \$30 to \$75, if some allowance were made for differentiation on age and driving experience. We passed some bill to that effect now in the House. But the theoretical problem that I have with an across-the-board reduction is the last time this happened — I think was just very recently — when a 10 percent reduction was mandated, and what happened was the insurance companies came back and they said, 'Well, the cost have gone up in other areas so you have a 15 percent increase in cost and a 10 percent reduction in rate, so you still have a 5 percent increase.' I think if we're going to mandate an increase, we need to make sure that we have the data to present to the Insurance Commissioner to make it stick, so that we won't be confronted with this kind of situation again.

"Those are my reservations, Mr. President. The sadness of it is that we are responding, as has been pointed out correctly, to a case of federal blackmail. I would hope that that kind of federal thinking can be changed. Until it is or until there is another war that causes us to rethink the problem, this is the trend — it's done not just for money; it's done as a part of an overall national trend that we hear in the name of freedom, and yet take some of those freedoms away. Thank you."

Senator Kuroda added his remarks in support of passing the bill as follows:

"Mr. President, I rise to speak in support of the measure. I shall not quote any statistics and I shall keep my remarks short. I support the bill, not for the purpose of retaining federal monies, and not necessarily to deal with the drunken driver. But as I have spoken before on this measure, and as Senator George alluded to as an additional reason — and I think it is a very important reason — and that is to make alcohol less accessible to the sub-teen and the teenager. We've heard Dr. Fox, president of the most prestigious private school in this state, Punahou, come and testify as others have, other school administrators and teachers who described the problem faced at the schools because of the easy access of alcohol by teens and sub-teens. I believe it is very important for that reason that we must raise the drinking age. Thank you."

Senator Cayetano responded to the remarks of Senators George and Kuroda as follows:

"Mr. President, in response to Senator George and I guess to Senator Kuroda, I think what we should keep clear and make a distinction about is that are we arguing for temperance? Are we arguing to go back to prohibition? That will certainly resolve the problems raised by Senator George. The point made by Senator Cobb, why not go to 24? Why, why indeed, why not? Those illogical considerations just make it very, very difficult to see why the drinking age should be raised. We're not talking about teens. As Senator Cobb pointed out, we're talking about adults, 18-, 19-, 20-year-olds. The figures show that 40 percent of the soldiers who died in Vietnam were 19 and under — that's what we're talking about. We're talking about people who can go to jail because they're adults; we're talking people who go to war because they're adults — they happen to be 18-, 19- and 20-year-olds. We're not talking about prohibition, as some of the people here seem to be arguing. We're not talking about teenagers. We're talking about adults. And if you think this is going to stop drinking by teenagers, I'm not as optimistic.

"The five-year 'drop-dead' clause will give us an opportunity to look at this as a test. Five years from now, if the data vindicates the optimistic projections made by the proponents of raising the drinking age, then maybe, Mr. President, it should be extended. It seems to me that there are many other good ways to deal with drunken driving. We have passed bills which impose harsher penalties, and a good example is the roadblock bill that we passed a year or two ago. That has been very effective in curbing drunk driving, and the beauty of it all, and the fairness of it all, is that it applies to everyone, whether you are 18 or 90."

Senator Abercrombie then replied to previous arguments as follows:

"Mr. President, just very briefly by way of rebuttal, and I sympathize with the chairman of Transportation's remarks just made. We don't want to confuse what's being done here. We wanted to raise the age to 19, as was suggested. The chairman had, last year, come up with what I thought was a very good idea. If you raise it to 19 for purchase in the package stores and left it at 18 for the clubs kind of thing, it would solve the problem, or at least attempt to solve the problem in a good-faith manner — with alcohol coming on to the high school campuses, and so on. If that's what we're concerned about, we should be dealing with a different bill. We shouldn't be dealing with this bill. And the same with remarks made by Senator Cobb also apply. If we really want to do this on a statistical basis, we'll raise it to 24. It's going to 21 because that's where the pressure comes, vis-a-vis the money from the Federal Government.

That's what it is, for the money.

"I want to point out . . . I had alluded to it and I meant to make it more clear, just so we understand exactly because we're told about a bad business climate around here. Just remember this when we pass the bill, to look on page 6 on line 19. This has to do with exemption from making money. I'm sorry some of the young people have left now because they may be affected by it.

"When I raised this issue with the then head of the Department of Labor, Mr. Aagsalud, about why should anyone who owns a restaurant, for example, hire 18-, 19- or 20-year-olds, when they stood to be accused of a misdemeanor — just exclude them? When they come in to apply for a job, ask them, 'Are you 18, 19 or 20?' If they say 'yes,' say 'sorry, we're not going to hire you.' And he said, 'Oh, that would be discrimination; you couldn't do that.' And after the general laughter subsided, it came down to the fact that that's the way it's going to work out for a very simple reason. Anyone who owns a restaurant, anyone who owns a store where liquor is being distributed, better not have a 18-, 19- or 20-year-old behind that counter or serving that alcohol because under this bill, if that person, unless they can establish under (2) (c) on page 5, 'was reasonable under the circumstances, that the minor had attained the age of twenty-one.' That's the only excuse given in this bill for serving someone or allowing someone to drink on your premises, 18, 19 or 20. What restaurant owner in his or her right mind is going to have an 18-, 19- or 20-year-old who might after work be spotted drinking a bottle of beer in the kitchen by a liquor inspector? If that happens, despite the best intention, inasmuch as that person knew that the person was not 21 years old, and that's the only exemption allowed under this bill, that means that the owner of the restaurant or bar or a store or whatever the business, where the alcohol is subject to a misdemeanor conviction — not a petty misdemeanor, a misdemeanor. That means they can serve up to a year in jail, a year in jail, because an 18-, 19- or 20-year-old got caught by a liquor inspector.

"If the answer to me is going to be, 'oh, don't worry, the judge will never sentence anybody to a year in jail.' If they're not going to sentence anybody to a year in jail, then why the misdemeanor? Why not make it a petty misdemeanor? That's 30 days, if that would make them feel better. Petty misdemeanor is 30 days. Now, we may go over to Columbia Inn or I don't know, pick one, down to Ward Warehouse, out to Pearl Ridge, and everybody who owns any of these restaurants is going to guarantee, right, that no 18-, 19- or 20-year-old employee will ever let alcohol touch their lips while they're making money for them serving it,

and that no alcohol inspector is ever going to spot us; and that no judge is ever going to make any kind of sentence that's going to be meaningful, because if it isn't meaningful then the law obviously isn't. They're not going to pay any attention to it if they're going to fine them five bucks.

"If they're going to make an example ... I think we've had it here today, rapers, murderers, violent assaulters . . . we'll just put a thing here saying no, you shouldn't drink. I'm sure that'll affect rapers and murderers and violent assaulters all over the whole country, let alone in the State of Hawaii. If it's against the law to drink, I guess I shouldn't murder anybody today.

"This is the practical consequences of what you're doing when we pass this bill. There is no way a rational businessperson is going to hire an 18-, 19- or 20-year-old to work in their place of business where alcohol is being served, unless they want to face the possibility of being charged with an offense that could put them into jail for up to a year. So, the consequences, economically, believe me, are considerable and I commend that to the chairman's attention if and when a conference is held on this bill, that perhaps the criminal consequences of the 18-, 19- and 20-year-old for business people in this state should be thought of again, and very thoroughly. Thank you."

At 12:49 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 12:52 o'clock p.m.

Senator Soares spoke in support of the bill with the following statements:

"Mr. President, I rise to speak in favor of this bill and so doing I'd like to ask the chairman to allow me the privilege to serve on conference so we can correct the possible problem with the bill; that's the earth-shaking news I had to give you.

"I will file with the Clerk, for the Journal, my comments on the insurance part of the bill which I have indicated with my reservations on the committee report. But, Mr. President, to close this discussion I'd like to make a few comments dealing with the reason why I'm so strongly in favor of this bill.

"For those of us who spend a lot of time with the youth of our state, those of us who are very happy to work with 18-, 19-, 20- and 21-year-olds, I think that to say this bill will increase accidents, by my colleague on my left over here, is not accurate. I don't agree with that; we don't agree on a lot of things, and that is one of them. But I find that discussions dealing with the high

schools are very relevant in this matter of drinking. The fact is that schools today have canteens and dances and have to hire police department people to keep track of the liquor being drunk on campus or brought on campus by the elders. The problem is that you have younger students being influenced by this activity.

"I went to all the hearings. I heard all the arguments for the bill. I'm convinced that this has got to pass, and therefore, rather than going into each of the features for the bill, I would just say that I am convinced that the move we make today is the best thing we can do this whole session. And therefore, I ask the members of this body to support this bill, and have us go in to conference and correct the situation that might be a problem. Thank you, Mr. President."

Senator Soares' insertion is as follows:

"Mr. President, H.B. 26 came to us last year with a single noteworthy purpose, to raise the drinking age from 18 to 21. However, this bill has now been complicated by its attempt to predict what insurance savings there might be. The bill presumes that there will be an automatic 10 percent savings as a result of raising the drinking age. There is no pretense that this figure is based on any data. It is a number pulled out of the air.

"Our 18 to 21 year old drivers make up only 6.5 percent of drivers. They are not suddenly going to stop having accidents just because they are not supposed to drink anymore. We would have to raise the driving age to 21 before we could begin to realize the kind of savings contemplated by this bill.

"Your Transportation Committee was provided with the income data of the top seven auto insurance companies. They produced a combined profit of 1.2 percent in auto insurance for the last five years. This is before taxes and includes investment income.

"Simple math tells us that a 10 percent across the board discount would require insurers to do business at a 8.8 percent loss. Presently insurers from the Mainland are being sought to insure U-drive companies and tour bus operators who lost coverage when their insurance company went bankrupt. New companies will not come into the state in which the legislature requires the companies to do business at a loss.

"Hawaii has lost two of its largest auto insurers in the last two years, U.I.L.A. and Commercial Union. Together they insured 20 percent of the state's automobiles. The state cannot afford to lose any more

insurance capacity. We should be trying to add to our capacity to increase competition.

"Mandatory rate reduction is meaningless under Hawaii's auto competitive rating law. Each company sets its own rates in order to try to meet or beat the competition. They can change rates at any time to try to get the competitive edge.

"This Legislature never mandates price discounts from any other sector of the economy when we pass legislation which might produce some savings. The only data we were given indicated that any savings would be less than one percent.

"I trust that this unreasonable appendage to this otherwise important and worthy bill is amputated in conference."

The motion was put by the Chair and carried, Stand. Com. Rep. No. 516-86 was adopted and H.B. No. 26, H.D. 1, S.D. 1,

entitled: "A BILL FOR AN ACT RELATING TO LIQUOR," on the following showing of Ayes and Noes:

Ayes, 21. Noes, 3 (Abercrombie, Solomon and Wong). Excused, 1 (Chang).

RE-REFERRAL OF A HOUSE BILL

The President re-referred House Bill No. 2254-86, H.D. 1, to the Committee on Ways and Means.

At this time, Senator George introduced Carol McNamee to the members of the Senate.

ADJOURNMENT

At 12:57 o'clock p.m., on motion by Senator Cobb, seconded by Senator Soares and carried, the Senate adjourned until 11:30 o'clock a.m., Thursday, March 20, 1986.