

JOURNAL OF THE HOUSE.
Wednesday, October 8, 2003.

Met according to adjournment, at eleven o'clock A.M., with Mr. Flynn of Bridgewater in the Chair (having been appointed by the Speaker, under authority conferred by Rule 5, to perform the duties of the Chair).

Prayer was offered by the Reverend Robert F. Quinn, C.S.P., Chaplain of the House, as follows: Holy Spirit God, each day we depend upon You, Your guidance and direction as we address our personal and legislative responsibilities. Your assistance enables us to recognize and to evaluate our opportunities and options accurately as we try to serve the people who depend upon our good and mature judgements. Inspire us to listen carefully to the experiences and suggestions of all people so that the best interests of all are served. In Your goodness, help us to remain faithful to our own solid principles, human and spiritual values in our diverse society. Teach us to unite people in promoting causes, goals and policies which assist us in making our communities safe, prosperous, civil and responsible. Future generations depend upon our thoughtful choices now. Grant Your blessings to the Speaker, the members and employees of this House and their families. Amen.

At the request of the Chair (Mr. Flynn), the members, guests and employees joined with him in reciting the pledge of allegiance to the flag.

Silent Prayer.

At the request of Representatives Dempsey of Haverhill, L'Italien of Andover and Stanley of West Newbury (the Speaker being in the Chair), the members, guests and employees stood for a moment of silent prayer in respect to the memory of Private First Class Evan W. O'Neill of Haverhill, who, at nineteen years of age, was killed in action in Shkin, Afghanistan, while attempting to save the lives of fellow soldiers.

Statement Concerning Representative Bosley of North Adams.

A statement of Mr. DiMasi of Boston concerning Mr. Bosley of North Adams was spread upon the records of the House, as follows:

MR. SPEAKER: I would like to call to the attention of the House the fact that one of our colleagues, Representative Bosley of North Adams, will not be present in the House Chamber for today's sitting due to illness. Any roll calls that he may miss today is due entirely to the reason stated.

Statement of Representative Fox of Boston.

A statement of Ms. Fox of Boston was spread upon the records of the House, as follows:

MR. SPEAKER: I would like to call to the attention of the House the fact that I was not present in the House Chamber for a portion of today's sitting due to official business in another part of

the State House. Any roll calls that I may have missed today is due entirely to the reason stated.

Statement Concerning Representative Kaufman of Lexington.

A statement of Mr. DiMasi of Boston concerning Mr. Kaufman of Lexington was spread upon the records of the House, as follows:

MR. SPEAKER: I would like to call to the attention of the House the fact that one of our colleagues, Representative Kaufman of Lexington, will not be present in the House Chamber for today's sitting due to official business outside of the country. Any roll calls that he may miss today or for the next several days is due entirely to the reason stated.

Statement Concerning Representative LeDuc of Marlborough.

A statement of Mr. DiMasi of Boston concerning Mr. LeDuc of Marlborough was spread upon the records of the House, as follows:

MR. SPEAKER: I would like to call to the attention of the House the fact that one of our colleagues, Representative LeDuc of Marlborough, will not be present in the House Chamber for today's sitting due to a long standing family commitment. Any roll calls that he may miss today is due entirely to the reason stated.

Resolutions.

Resolutions (filed with the Clerk by Mr. Finegold of Andover and other members of the House) congratulating the Boston Red Sox on a well played 2003 regular season and wishing them well as they play their archrival, the New York Yankees, were referred, under Rule 85, to the committee on Rules.

Mr. Miceli of Wilmington, for the committee on Rules, then reported that the resolutions ought to be adopted. Under suspension of the rules, on motion of Mr. Hynes of Marshfield, the resolutions (reported by the committee on Bills in the Third Reading to be correctly drawn) were considered forthwith. After remarks the resolutions were adopted.

Resolutions (filed with the Clerk by Messrs. Galvin of Canton and Kafka of Sharon) congratulating Elizabeth A. Galvin on the occasion of her retirement from the Canton Police Department, were referred, under Rule 85, to the committee on Rules.

Mr. Miceli of Wilmington, for the committee on Rules, then reported that the resolutions ought to be adopted. Under suspension of the rules, on motion of Mr. Galvin, the resolutions (reported by the committee on Bills in the Third Reading to be correctly drawn) were considered forthwith; and they were adopted.

Resolutions (filed with the Clerk by Mr. Koutoujian of Newton) honoring the contributions of pharmacists and the first annual "Face of Pharmacy Day in Massachusetts", were referred, under Rule 85, to the committee on Rules.

Mr. Miceli of Wilmington, for the committee on Rules, then reported that the resolutions ought to be adopted. Under suspension of the rules, on motion of Mr. deMacedo of Plymouth, the resolutions (reported by the committee on Bills in the Third Reading to be correctly drawn)

were considered forthwith; and they were adopted.

Papers from the Senate.

A Bill relative to the commitment of sexually dangerous persons (Senate, No. 1005, amended in section 2, in line 7, by inserting after the figures “265”, the second time they appear, the following: “with intent to commit a violation of section 13B, 13F, 13H, 22, 22A, 23, 24 or 24B of said chapter 265”; in line 13 by striking out the words “marriage or”; in line 14 by inserting after the figures “272” the following: “involving a person under the age of 21”; and by adding at the end thereof the following section:

“SECTION 10. There shall be a special commission to study the effects of this act. The commission shall consist of 4 members of the senate, 1 of whom shall be the chairman of the joint committee the judiciary, 1 of whom shall be the chairman of the joint committee on criminal justice, 1 of whom shall be the senate president or his designee, and 1 of whom shall be the minority leader or his designee, and four members of the house of representatives, 1 of whom shall be the chairman of the joint committee on the judiciary, 1 of whom shall be the chairman of the joint committee on criminal justice, 1 of whom shall be the speaker of the House or his designee, and 1 of whom shall be the minority leader or his designee, the governor or his designee, the secretary of public safety or his designee, who shall be the chairman, the attorney general or his designee, 1 representative of Massachusetts Law Reform Institute, 1 representative of the American Civil Liberties Union, 1 representative of the committee for public counsel services and 1 representative of the Massachusetts District Attorneys Association, 1 representative of the Massachusetts Association of Criminal Defense Lawyers, 1 representative of the office of victim assistance, and 1 representative of the Massachusetts Bar Association.

(b) The special commission shall investigate and study the impact and effectiveness of this act. The commission shall report to the general court the results of its investigation and study, by filing its report with the clerks of the senate and the house of representatives and the chairmen of the senate and house committees on ways and means no later than 3 years after the effective date of this act. Interim reports shall be filed 12 months and 24 months after the effective date of this act.”) (on a petition), passed to be engrossed by the Senate, was read; and it was referred, under Joint Rule 29, to the committees on Rules of the two branches, acting concurrently.

A Bill facilitating electronic transactions (Senate, No. 2076, amended) in section 2 (as printed), in lines 35, 36 and 37, by striking out the paragraph contained therein and inserting in place thereof the following paragraph:

“(10) ‘Executive department’, those parts of the executive branch of the commonwealth serving under the governor or within one of the executive offices headed by a secretary appointed by the governor” and by inserting after line 66 the following paragraph:

“(17A) ‘Supervisor’, the supervisor of records as defined in section 1 of chapter 66.”; in section 3 (as printed), in lines 14 and 15, by striking out the following: “Section 101(c) (d) or (e) of that Act [15 U.S.C. s 7001(c) (d) or (e)]” and inserting in place thereof the following: “section 101(c) of that Act, 15 U.S.C. section 7001(c)”; by striking out sections 17, 18 and 19 (as printed) and inserting in place thereof the following two subsections:

“Section 17. (a) The supervisor of records under section 1 of chapter 66 and clause Twenty-sixth of section 7 of chapter 4, the records conservation board under section 42 of chapter 30,

and the information technology division under section 7 of chapter 4A, shall determine whether, the extent to which and the manner by which each executive department agency shall create, maintain and preserve electronic records, signatures and contracts and the method of converting paper government records to electronic format. Nothing in this chapter shall affect the existing authority of the supervisor of records, the records conservation board or the information technology division under the cited sections.

(b) The supervisor of records under section 1 of chapter 66 and clause Twenty-sixth of section 7 of chapter 4, and the records conservation board under section 42 of chapter 30, shall determine whether, the extent to which and the manner by which each government agency not in the executive department, nor in the legislative or judicial departments, shall create, maintain and preserve electronic records, signatures and contracts and the method of converting paper government records to electronic format.

Section 18. The chief information officer and the supervisor of records shall encourage and promote consistency and interoperability with other governmental agencies and nongovernmental persons. If appropriate, they may specify differing levels of standards from which governmental agencies of the commonwealth may choose in implementing the most appropriate standard for a particular application.”; and by adding at the end thereof the following two sections:

“SECTION 3. Section 23 of chapter 94C of General Laws, as so appearing, is hereby amended by striking out subsection (g) and inserting in place thereof the following subsection:—

(g) Unless otherwise prohibited by law, a prescription shall be (1) written in ink, indelible pencil or by other means; or (2) transmitted electronically; and (3) signed by the prescriber. A prescription may be transmitted electronically with the electronic signature and electronic instructions of the prescriber, and shall be transmitted directly from the prescriber to the pharmacy designated by the patient without alteration of the prescription information, except that third-party intermediaries may act as conduits to route the prescription from the prescriber to the pharmacy.

SECTION 4. Section 12D of Chapter 112 of the General Laws, as so appearing, is hereby amended by striking out the second and third paragraphs and inserting in place thereof the following 2 paragraphs: —

Every prescription issued in the commonwealth by a practitioner shall meet the standards for format established by the department. Only by signing the prescription in accordance with the standards shall the practitioner validate the prescription.

The standards shall permit the practitioner to instruct the pharmacist to dispense a brand name drug product by indicating ‘no substitution’. The standards shall require that the indication of “no substitution” shall not be the default indication and further that the prescription indicate the ‘Interchange is mandated unless the practitioner indicates “no substitution” in accordance with the law.’ Where the practitioner has so indicated ‘no substitution’, the pharmacist shall dispense the exact drug product as indicated by the practitioner.”) (on Senate, Nos. 1915 and 1920), passed to be engrossed by the Senate, was read; and it was referred, under Rule 33B, to the committee on Science and Technology.

Bills

Relative to credit union boards of directors (Senate, No. 13) (on a petition);

Regulating the use of anabolic steroids (Senate, No. 540) (on a petition);

Authorizing the town of Wareham to grant a conservation restriction to the Wareham land trust

(Senate, No. 1171) (on House No. 958) [Local Approval Received] [Representative Sanchez of Boston, for the committee on Local Affairs and Regional Government, dissenting]; Further regulating the weight of motor buses. (Senate, No. 1285, amended by striking out all after the enacting clause and inserting in place thereof the following:

“Section 19A of chapter 90 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out, in lines 1 and 2, the words ‘Any provisions of sections thirty and thirty A of chapter eighty-five to the contrary, notwithstanding a motor vehicle’ and inserting in place thereof the following words:— Notwithstanding sections 30 and 30A of chapter 85 to the contrary, a motor bus that complies with the weight limits specified in the Federal High-way Administration regulations regulating vehicle weights on interstate highways, or a motor vehicle other than a motor bus.”; and by striking out the title and inserting in place thereof the following title: “An Act further regulating the weight of motor buses.”) (on a petition);

Relative to mutual aid agreements (Senate, No. 1342, amended by adding at the end thereof the following section:

“SECTION 2. Said section 8G of said chapter 40, as so appearing, is hereby further amended by adding the following sentence:— When providing such mutual aid, police officers shall have all the immunities and powers granted to them in the municipalities that employ them, including but not limited to powers of arrest.”) (on Senate, No. 1378);

Relative to the reporting of fires in schools (Senate, No. 1372) (on a petition);

Severally passed to be engrossed by the Senate, were read; and they were referred, under Rule 7A, to the committee on Steering, Policy and Scheduling.

Reports of Committees.

By Mr. Koczera of New Bedford, for the committee on Public Service, on a petition, a Bill relative to veteran’s retirement benefits (printed as Senate, No. 1576).

By the same member, for the same committee, on a petition, a Bill exempting certain positions in the city of Westfield from the civil service law (printed as Senate, No. 1928) [Local Approval Received].

By the same member, for the same committee, on a petition, a Bill relative to appointments to police service (House, No. 3073).

By the same member, for the same committee, on a petition, a Bill relative to the appointment of retired police officers as special police officers in the town of Fairhaven (House, No. 3978) [Local Approval Received].

By the same member, for the same committee, on House, No. 2511, a Bill relative to the appointment of public safety officers (House, No. 4218).

By Mr. Hall of Westford, for the committee on State Administration, on a petition, a Bill relative to the Jacob Sears Memorial Library (House, No. 3746).

By Mr. Casey of Winchester, for the committee on Taxation, on a petition, a Bill authorizing the town of Dighton to establish a special fund (House, No. 455) [Local Approval Received].

By the same member, for the same committee, on House, No. 2704, a Bill relative to the taxation of certain personal property (House, No. 4219).

By Mr. Wagner of Chicopee, for the committee on Transportation, on a petition, a Bill designating a certain rest area in the town of Barnstable as the Korean War Veterans Memorial Rest Area (House, No. 1412).

Severally read; and referred, under Rule 7A, to the committee on Steering, Policy and Scheduling.

Orders of the Day.

The engrossed Bill relative to drag racing in the city of Springfield (see House, No. 3835, amended), which had been returned to the House by His Excellency the Governor with recommendation of amendment (for message, see House, No. 4209), was adopted in the following form (as approved by the committee on Bills in the Third Reading):

In section 3, in lines 16 to 20, inclusive (as printed), by striking out the sentence contained therein and inserting in place thereof the following sentence: "The court shall order the city to give notice by certified mail to the owner of said motor vehicle, moneys or other things of value and to such other persons as appear to have an interest therein, and the court shall promptly hold a hearing on the petition."

Sent to the Senate for its action.

Senate bills

Authorizing the town of Tewksbury to establish an affordable housing trust fund (Senate, No. 1182);

Authorizing the conservation commission of the town of Andover to grant an easement (Senate, No. 1183);

Authorizing the appointment of Kelly McNiff as a firefighter in the town of Bourne notwithstanding the maximum age requirement (Senate, No. 1968);

Authorizing the town of Abington to transfer certain funds (Senate, No. 2038); and

Authorizing the town of Abington to pay a certain unpaid bill (Senate, No. 2039); and
House bills

Redefining the mandate of the Energy Facilities Siting Board (House, No. 516);

Concerning conflict of interest (House, No. 620);

Releasing certain land located in the town of Danvers from the operation of an agricultural preservation restriction (House, No. 1594); and

Relative to the issuance of pension funding bonds by the city of Fall River (House, No. 3996);

Severally were read a second time; and they were ordered to a third reading.

The engrossed Bill establishing the office of administrative appeals in the Executive Office of Environmental Affairs (see House, No. 3963), which had been returned to the House by His Excellency the Governor with his objections thereto in writing (for message, see House, No. 3990), was considered.

Pending the question on passing the bill, notwithstanding the said objections, further consideration thereof was postponed, on motion of Mr. Kujawski of Webster, until Tuesday, January 4, 2005.

The engrossed Bill relative to exemptions for residential real property in the city of Cambridge

(see House, No. 2185), which had been returned to the House by His Excellency the Governor with his objections thereto in writing (for message, see House, No. 4208), was considered. The question on passing the bill, notwithstanding the said objections, was determined by yeas and nays, as required by Chapter I, Section I, Article II, of the Constitution; and on the roll call 125 members voted in the affirmative and 24 in the negative.

[\[See Yea and Nay No. 421 in Supplement.\]](#)

Therefore the bill was passed, notwithstanding the objections of His Excellency the Governor (more than two thirds of the members having agreed to pass the same). Sent to the Senate for its action.

The House Bill relative to the sale of alcohol on Sundays (House, No. 1474) (its title having been changed by the committee on Bills in the Third Reading), reported by said committee to be correctly drawn, was read a third time.

Pending the question on passing the bill to be engrossed, Mr. Broad-hurst of Methuen moved that it be amended in line 17 by inserting after the word “noon” the following: “or prior to the hour of 9 o’clock in the afternoon by any retail establishment located in any city or town which city or town is located within 10 miles of the New Hampshire border or within 10 miles of the Vermont border”.

After debate on the question on adoption of the amendment, the sense of the House was taken by yeas and nays, at the request of the same member; and on the roll call 28 members voted in the affirmative and 125 in the negative.

[\[See Yea and Nay No. 422 in Supplement.\]](#)

Therefore the amendment was rejected.

Mr. Kelly of Dalton then moved that the bill be amended in lines 18 to 22, inclusive, by striking out the words “and provided further that establishments operating under the provisions of this clause which employ more than a total of seven persons shall compensate all employees at a rate of not less than one and one-half of the employee’s regular rate”.

After debate on the question on adoption of the amendment, the sense of the House was taken by yeas and nays, at the request of the same member; and on the roll call 6 members voted in the affirmative and 147 in the negative.

[\[See Yea and Nay No. 423 in Supplement.\]](#)

Therefore the amendment was rejected.

Mr. Kelly then moved that the bill be amended by adding at the end thereof the following section:

“SECTION 2. Provided further that establishments engaged in the retail sale of alcoholic beverages not to be drunk on the premises shall not operate in excess of 6 days per week.”.

After debate on the question on adoption of the amendment, the sense of the House was taken by yeas and nays, at the request of Mr. Peterson of Grafton; and on the roll call 8 members voted in the affirmative and 145 in the negative.

[\[See Yea and Nay No. 424 in Supplement.\]](#)

Therefore the amendment was rejected.

Ms. Khan of Newton then moved that the bill be amended by adding at the end thereof the following nine sections:

SECTION 2. Subsection (a) of section 21 of chapter 138 of the General Laws, as appearing in the 2000 Official Edition, is hereby amended by striking out, in line 16, the words ‘three dollars and thirty cents’ and inserting in place thereof the following words: — \$10.85.

SECTION 3. Subsection (b) of section 21 of chapter 138 of the General Laws, as appearing in the 2000 Official Edition is hereby amended by striking out, in line 20, the words ‘three cents’ and inserting in place thereof the following words:— \$0.23.

SECTION 4. Subsection (c) of section 21 of chapter 138 of the General Laws, as appearing in the 2000 Official Edition is hereby amended by striking out, in lines 24 to 25, the words ‘fifty-five cents’ and inserting in place thereof the following words:— \$0.80.

SECTION 5. Subsection (d) of section 21 of chapter 138 of the General Laws, as appearing in the 2000 Official Edition is hereby amended by striking out, in line 27, the words ‘seventy cents’ and inserting in place thereof the following words:— \$1.50.

SECTION 6. Subsection (e) of section 21 of chapter 138 of the General Laws, as appearing in the 2000 Official Edition is hereby amended by striking out, in line 30, the words ‘one dollar and ten cents’ and inserting in place thereof the following words:— \$2.10.

Subsection (f) of section 21 of chapter 138 of the General Laws, as appearing in the 2000 Official Edition is hereby amended by striking out, in line 35, the words ‘four dollars and five cents’ and inserting in place thereof the following words:— \$6.05.

SECTION 7. Subsection (g) of section 21 of chapter 138 of the General Laws, as appearing in the 2000 Official Edition is hereby amended by striking out, in lines 38 to 39, the words ‘four dollars and five cents’ and inserting in place thereof the following words: — \$6.05.

SECTION 8. Chapter 29 of the General Laws, as so appearing, is hereby amended by inserting after section 2XX the following section:—

Section 2AAA. There shall be established and set up on the books of the commonwealth a separate fund to be known as the Substance Abuse Health Protection Fund. Amounts credited to said fund shall be expended, subject to appropriation, to provide funding, or supplement existing levels of funding, for the following purposes:

(a) For a comprehensive substance abuse treatment program, to be administered by the department of public health, for the treatment of individuals who are dependent on or addicted to alcohol or controlled substances, or both alcohol and controlled substances, and who lack public or private health insurance that would provide coverage for such treatment; (b) To fund such substance abuse treatment programs that are administered by the office of community corrections, the department of corrections, the department of social services, the department of youth services, and the office of the commissioner of probation; (c) For comprehensive school health education programs, to be administered by the department of education, provided that such programs shall incorporate information relating to the hazards of alcohol and controlled substances use; and (d) For workplace-based and community substance abuse prevention and drinking cessation programs, for substance abuse-related public service advertising and for drug and alcohol education programs, to be administered by the department of public health.

SECTION 9. Notwithstanding any general or special law to the contrary, there shall be credited to the Substance Abuse Health Protection Fund, 20 per cent of the amounts collected from

January 1, 2004 to December 31, 2004, 30 per cent of the amounts collected from January 1, 2005 to December 31, 2005, 46 per cent of the amounts collected on and after January 1, 2006 under section 21 of chapter 138 from the sale of alcoholic beverages together with any penalties, forfeitures, interest, costs of suits and fines collected in connection therewith, all as determined by the commissioner of revenue according to his best information and belief; and any appropriation, grant, gift, or other contribution explicitly made to said fund at any time, and any income derived from the investment of amounts credited to said fund.”.

Ms. Rogeness of Longmeadow thereupon raised a point of order that the amendment offered by the lady from Newton was improperly before the House for the reason that it went beyond the scope of the pending bill.

The Chair (Mr. Flynn of Bridgewater) stated that the point of order was well taken; and the amendment was laid aside accordingly.

Representatives Gifford of Wareham and Fallon of Malden then moved that the bill be amended in line 20 by inserting after the word “persons” the words “per location”; and the amendment was adopted.

The same members then moved that the bill be amended in line 20 by inserting after the word “all” the words “Sunday workers”; and the amendment was adopted.

On the question on passing the bill, as amended, to be engrossed, the sense of the House was taken by yeas and nays, at the request of Mr. Jones of North Reading; and on the roll call 64 members voted in the affirmative and 88 in the negative.

[See Yea and Nay No. 425 in Supplement.]

Therefore the bill (House, No. 1474, amended) was rejected. Mr. Festa of Melrose then moved that this vote be reconsidered; and, on further motion of the same member, the motion to reconsider was postponed until the next sitting.

Subsequently a statement of Mr. Rogers of Norwood was spread upon the records of the House, as follows:

MR. SPEAKER: During the taking of the above yeas and nays, I was absent from the House Chamber on official business in another part of the State House conducting a meeting relative to the fiscal matters of the Commonwealth. Had I been present when the vote was taken, I would have voted in the negative.

Order.

On motion of Mr. Finneran of Boston,—

Ordered, That when the House adjourns today, it adjourn to meet tomorrow at eleven o’clock A.M.

Accordingly, without further consideration of the remaining matters in the Orders of the Day, at sixteen minutes after one o’clock P.M., on motion of Mr. Fagan of Taunton (Mr. Flynn of Bridgewater being in the Chair), the House adjourned, to meet tomorrow at eleven o’clock A.M., in an Informal Session.

