

NOTICE: While reasonable efforts have been made to assure the accuracy of the data herein, this is **NOT** the official version of Senate Journal. It is published to provide information in a timely manner, but has **NOT** been proofread against the events of the session for this day. All information obtained from this source should be checked against a proofed copy of the Senate Journal.

UNCORRECTED PROOF OF THE JOURNAL OF THE SENATE.



Thursday, July 16, 1998.

Met at twenty-six minutes before two o'clock P.M.

Communication.

The following communication was received and placed on file, to wit:

COMMONWEALTH OF MASSACHUSETTS
MASSACHUSETTS SENATE
STATE HOUSE, BOSTON 02133

July 16, 1998.

The Honorable Edward B. O'Neill
Clerk of the Senate
State House, Room 335
Boston, MA 02133

Dear Mr. O'Neill:

I was unable to be present for today's entire session due to the fact that I will be representing the Commonwealth, on official state business, in its participation in the World Expo 98. Any and all roll calls that I may miss will be entirely due to this fact.

I respectfully request that this communication be spread upon the record of the Senate.

Sincerely,

MARC R. PACHECO,
State Senator.

Petitions.

Mr. Montigny presented a petition (subject to Joint Rule 12) of Mark C. Montigny for legislation relative to nuclear pharmacy,—
and the same was referred, under Senate Rule 20, to the committees on Rules of the two branches, acting concurrently.

A petition (having been transmitted to the Secretary of Commonwealth under the provisions of Section 5 of Chapter 3 of the General Laws, and returned by him with memorandum relative thereto) was referred, as follows, to wit:

Petition (subject to Joint Rules 12 and 9) of Bruce E. Tarr and Anthony J. Verga for legislation to authorize certain structures to be exempted from certain harbor lines within Smith Cove, Gloucester Harbor, in the city of Gloucester;

Under Senate Rule 20, to the committees on Rules of the two branches, acting concurrently.

Distinguished Guests.

The President introduced the Needham High School Girls Lacrosse Team, who were recently named the Massachusetts Interscholastic Athletic Association State Champions following an undefeated 1998 season. The team was the guest of Senator Jacques.

Papers from the House. *Engrossed Bill.*

An engrossed Bill reducing income taxes and unemployment insurance rates and providing for workforce training (see House, No. 5709) (which originated in the House), having been certified by the Senate Clerk to be rightly and truly prepared for final passage, was put upon its final passage.

After remarks, the question on passing the bill to be enacted was determined by a call of the yeas and nays, at fourteen minutes past two o'clock P.M., on motion of Mr. Rosenberg, as follows, to wit (yeas 37 — nays 1):

YEAS.

Amorello, Matthew J.
Antonioni, Robert A.
Bernstein, Robert A.
Berry, Frederick E.
Brewer, Stephen M.
Clancy, Edward J., Jr.
Durand, Robert A.
Fargo, Susan C.
Havern, Robert A.
Jacques, Cheryl A.
Jajuga, James P.
Joyce, Brian A.
Keating, William R.
Knapik, Michael R.
Lees, Brian P.
Lynch, Stephen F.
Magnani, David P.
Melconian, Linda J.
Montigny, Mark C.

Moore, Richard T.
Morrissey, Michael W.
Murray, Therese
Norton, Thomas C.
Nuciforo, Andrea F., Jr.
O'Brien, John D.
Pacheco, Marc R.
Panagiotakos, Steven C.
Pines, Lois G.
Rauschenbach, Henri S.
Rosenberg, Stanley C.
Shannon, Charles E.
Tarr, Bruce E.
Tisei, Richard R.
Tolman, Warren E.
Travaglini, Robert E.
Walsh, Marian
Wilkerson, Dianne

— 37.

NAYS.

Hedlund, Robert L.

— 1.

ABSENT OR NOT VOTING.

Creedon, Robert S., Jr.

The yeas and nays having been completed at eighteen minutes past two o'clock P.M., the bill was passed to be enacted and it was signed by the President and laid before the Acting Governor for his approbation.

Committee of Conference Report.

Ms. Jacques, for the committee of conference on the disagreeing votes of the two branches, with reference to the House amendments (striking out all after the enacting clause and inserting in place thereof the text of House document numbered 5636; and by striking out the title and inserting in place thereof the following title: "An Act relative to gun control in the Commonwealth.") to the Senate Bill relative to certain prohibited semiautomatic weapons and large capacity ammunition magazines (Senate, No. 1985), reported, recommending that the Senate recede from its non-concurrence with the House in its amendments and concur therein with a further amendment striking out all after the enacting clause and inserting in place thereof the text contained in Senate document numbered 2276.

After remarks on the question on accepting the committee report, at twenty-six minutes past two o'clock P.M., at the request of Mr. Lees, for the purpose of a minority party caucus, the President declared a recess subject to the call of the Chair; and, at twenty-nine minutes before four o'clock P.M., the Senate reassembled, the President in the Chair.

The report was further considered.

After debate, the question on accepting the report was determined by a call of the yeas and nays, at eight minutes before four o'clock P.M., on motion of Ms. Jacques, as follows, to wit (yeas 22 — nays 14):

YEAS.

Bernstein, Robert A.	Morrissey, Michael W.
Berry, Frederick E.	Murray, Therese
Fargo, Susan C.	O'Brien, John D.
Havern, Robert A.	Panagiotakos, Steven C.
Jacques, Cheryl A.	Pines, Lois G.
Jajuga, James P.	Rosenberg, Stanley C.
Joyce, Brian A.	Shannon, Charles E.
Keating, William R.	Tolman, Warren E.
Lynch, Stephen F.	Travaglini, Robert E.
Magnani, David P.	Walsh, Marian
Montigny, Mark C.	Wilkerson, Dianne

NAYS.

Amorello, Matthew J.	Lees, Brian P.
Antonioni, Robert A.	Melconian, Linda J.
Brewer, Stephen M.	Moore, Richard T.
Clancy, Edward J., Jr.	Nuciforo, Andrea F., Jr.
Durand, Robert A.	Rauschenbach, Henri S.
Hedlund, Robert L.	Tarr, Bruce E.
Knapik, Michael R.	Tisei, Richard R.

YEA.

Thomas C. Norton (present),

NAY.

Marc R. Pacheco

—2.

ABSENT OR NOT VOTING.

Creedon, Robert S., Jr.

—1.

**The yeas and nays having been completed at two minutes before four o'clock P.M., the report was accepted.
Sent to the House for concurrence.**

Papers from the House

The House Bill relative to the reorganization of domestic mutual insurance companies (House, No. 5101),— came from the House with the endorsement that the House had concurred in the Senate amendments:

Striking out all after the enacting clause and inserting in place thereof the text contained in Senate document numbered 2083, amended by inserting before section 1 (as printed) the following two sections:

"SECTION 1. Paragraph 1 of section 30 of chapter 63 of the General Laws, as appearing in the 1996 Official Edition, is hereby amended by inserting after the word sixty-seven H', in line 36, the following:— or sections 19F to 19V, inclusive, of chapter 175.

SECTION 2. Paragraph 2 of said section 30 of said chapter 63, as so appearing, is hereby amended by inserting after the word fifty-six B', in line 45, the following:— or sections 19F to 19V, inclusive of chapter 175."; in section 1 (as printed) by striking out the sentence contained in lines 221 and 222 and inserting in place thereof the following two sentences: "Said meeting shall be held no sooner than 30 days after the date of the approval or disapproval of the plan by the commissioner pursuant to subsection (f). Said notice shall be mailed at least 30 days prior to said meeting."; by inserting after the word "Commission", in line 636, the words "and the state secretary"; by inserting after the word "commissioner.", in line 944, the following sentence: "The directors, officers, employees and policyholders of the reorganized insurer shall have the right to appear and be heard at such hearing."; and in section 2 (as printed) by adding at the end of said section the following paragraph:

"Section 19W. The commissioner shall promulgate regulations necessary to implement the provisions of sections 19F to 19V, inclusive."; and by striking out the title and inserting in place thereof the following title: "An Act relative to the reorganization of certain insurance companies.",— *with further amendments:*

In section 1 (as printed) by striking out the two sentences contained in lines 221 and 222 (inserted by amendment by the Senate) and inserting in place thereof the following two sentences: "Said meeting shall be held no sooner than 30 days after the date of the public hearing pursuant to subsection (e). Said notice shall be mailed at least 60 days prior to the date of said meeting."; and by inserting after section 2 (inserted by amendment by the Senate) the following two sections:

"SECTION 2A. Section 32 of said chapter 63, as so appearing, is hereby amended by inserting after the word greater', in line 6, the following words:— , except that an insurance mutual holding company established pursuant to section 19 of chapter 175 shall pay on account of each taxable year, only the excise provided by clause (2) of subsection (a) or subsection (b), whichever is greater.

SECTION 2B. Section 39 of said chapter 63, as so appearing, is hereby amended by inserting after the word greater', in line 6, the following words:— , except that a foreign insurance mutual holding company organized pursuant to the laws of the state in which it is established shall pay, on account of each taxable year, only the excise provided by clause (2) of subsection (a) of subsection (b), whichever is greater."

The rules were suspended, on motion of Ms. Melconian, and the further House amendments were considered forthwith and adopted, in concurrence.

Engrossed Bill.

An engrossed Bill relative to the consideration of domestic violence in custody and visitation proceedings (see House, No. 4951, amended) (which originated in the House), having been certified by the Senate Clerk to be rightly and truly prepared for final passage, was put upon its final passage.

The question on passing the bill to be enacted was determined by a call of the yeas and nays, at one minute past four o'clock P.M., on motion of Ms. Jacques, as follows, to wit (yeas 37 — nays 0):

YEAS.

Amorello, Matthew J.

Montigny, Mark C.

Antonioni, Robert A.
Bernstein, Robert A.
Berry, Frederick E.
Brewer, Stephen M.
Clancy, Edward J., Jr.
Durand, Robert A.
Fargo, Susan C.
Havern, Robert A.
Hedlund, Robert L.
Jacques, Cheryl A.
Jajuga, James P.
Joyce, Brian A.
Keating, William R.
Knapik, Michael R.
Lees, Brian P.
Lynch, Stephen F.
Magnani, David P.
Melconian, Linda J.

Moore, Richard T.
Morrissey, Michael W.
Murray, Therese
Norton, Thomas C.
Nuciforo, Andrea F., Jr.
O'Brien, John D.
Panagiotakos, Steven C.
Pines, Lois G.
Rauschenbach, Henri S.
Rosenberg, Stanley C.
Shannon, Charles E.
Tarr, Bruce E.
Tisei, Richard R.
Tolman, Warren E.
Travaglini, Robert E.
Walsh, Marian
Wilkerson, Dianne

—37.

NAYS. — 0

ABSENT OR NOT VOTING.

Creedon, Robert S., Jr.

Pacheco, Marc R.

—2.

The yeas and nays having been completed at five minutes past four o'clock P.M., the bill was passed to be enacted and it was signed by the President and laid before the Acting Governor for his approbation.

Orders of the Day.

The Orders of the Day were considered, as follows:

The House bills

Relative to banking laws (House, No. 35, changed);

Banning the public distribution of free smoking or tobacco products for commercial purposes (House, No. 882, amended); and

Relative to a certain advisory committee of the Department of Mental Health (House, No. 2492);

Were severally read a second time and ordered to a third reading.

The House bills

Relative to the Groton Country Club Authority (House, No. 4453);

Designating the library at the Westborough State Hospital as the John Lowe Library (House, No. 3734);

Relative to the use of the title psychologist in employment (House, No. 917); and

Authorizing the town of North Reading to convey certain conservation land (House, No. 5473);

Were severally read a third time and passed to be engrossed, in concurrence.

The Senate bills

Relative to the uniform transfer on death security registration act (Senate, No. 747, changed); and

Relative to the appointment of members of the town building committee in the town of Shrewsbury (printed as House, No. 5396);

Were severally read a third time and passed to be engrossed.

Severally sent to the House for concurrence.

The Senate Bill providing for the certification of alcoholic beverage licensees and servers of alcoholic beverages (Senate, No.

2267) (its title having been changed by the committee on Bills in the Third Reading),— **was read a third time and passed to be engrossed.**

Sent to the House for concurrence.

The House bills

Authorizing the licensing authority of the town of Auburn to issue five additional all alcoholic beverage licenses (House, No. 4774); and

Authorizing the town of North Reading to establish a certain fund (House, No. 5464);

Were severally read a second time and ordered to a third reading.

The House Bill relative to nomination papers (House, No. 5074),— was read a second time.

After remarks on the question on ordering the bill to a third reading, Mr. Lees moved that the bill be laid on the table; and, in accordance with the provisions of Senate Rule 24, the consideration of the motion to lay on the table was postponed, without question, until the next session.

The House Bill further regulating the disclosure of certain information in real estate transactions (House, No. 2099) (its title having been changed by the committee on Bills in the Third Reading),— was read a third time.

Pending the question on passing the bill to be engrossed, Mr. Montigny moved that the bill be amended by striking out all after the enacting clause and inserting in place thereof the following text:

"SECTION 1. Chapter 93 of the General Laws is hereby amended by adding the following section:—

Section 108. The fact or suspicion that real property may be or is psychologically impacted shall not be deemed to be a material fact required to be disclosed in a real estate transaction, except as provided in this section. Psychologically impacted' shall mean an impact being the result of facts or suspicions including, but not limited to, the following:

(a) that an occupant of real property is now or has been suspected to be infected with Human Immunodeficiency Virus or with Acquired Immune Deficiency Syndrome or any other disease which reasonable medical evidence suggests to be highly unlikely to be transmitted through the occupying of a dwelling;

(b) that the real property was the site of a felony, suicide or homicide; and

(c) that the real property has been the site of an alleged parapsychological or supernatural phenomenon.

No cause of action shall arise or be maintained against a seller or lessor of real property or a real estate broker or salesman, by statute or at common law, for failure to disclose to a buyer or tenant that the real property is or was psychologically impacted.

Notwithstanding the foregoing, the provisions of this section shall not authorize a seller, lessor or real estate broker or salesman to make any misrepresentation of fact or false statement.

SECTION 2. The provisions of this act shall apply only to transactions entered into after the effective date of this act."; and by striking out the title and inserting in place thereof the following title:— "An Act further regulating the disclosure of certain information in real estate transactions."

The amendments were adopted.

The bill was then passed to be engrossed, in concurrence, with the amendments.

Sent to the House for concurrence in the amendments.

The House Bill relative to violence prevention programs in public schools (House, No. 2077, amended),— was read a third time.

Pending the question on passing the bill to be engrossed, Mr. Antonioni moved that the bill be amended by striking out all after the enacting clause and inserting in place thereof the following text:

"Section 1 of chapter 71 of the General Laws, as appearing in the 1996 Official Edition, is hereby amended by adding the following paragraph:—

The advisory council on violence prevention established by section 1G of chapter 15 shall recommend for approval by the board of education a model curriculum for grades kindergarten through 12 in education programs on violence prevention for the purpose of informing students of the harmful effects of teenage violence, weapons and illegal drug use and of promoting community and social responsibility. The department of education shall send a copy of said curriculum to the superintendent of schools for each school district in the commonwealth. The department shall encourage school districts to implement said curriculum or a variation thereof."

After remarks, the amendment was adopted.

The question on passing the bill to be engrossed was determined by a call of the yeas and nays, at twenty minutes past four o'clock P.M., on motion of Mr. Lees, as follows, to wit (yeas 37 — nays 0):

YEAS.

Amorello, Matthew J.
Antonioni, Robert A.
Brewer, Stephen M.
Clancy, Edward J., Jr.
Durand, Robert A.
Fargo, Susan C.
Havern, Robert A.
Hedlund, Robert L.
Jacques, Cheryl A.
Jajuga, James P.
Joyce, Brian A.
Keating, William R.
Knapik, Michael R.
Lees, Brian P.
Lynch, Stephen F.
Magnani, David P.
Melconian, Linda J.
Montigny, Mark C.
Moore, Richard T.

Bernstein, Robert A.
Berry, Frederick E.
Morrissey, Michael W.
Murray, Therese
Norton, Thomas C.
Nuciforo, Andrea F., Jr.
O'Brien, John D.
Panagiotakos, Steven C.
Pines, Lois G.
Rauschenbach, Henri S.
Rosenberg, Stanley C.
Shannon, Charles E.
Tarr, Bruce E.
Tisei, Richard R.
Tolman, Warren E.
Travaglini, Robert E.
Walsh, Marian
Wilkerson, Dianne

—37.

NAYS. — 0

ABSENT OR NOT VOTING.

Creedon, Robert S., Jr.

Pacheco, Marc R.

— 2.

Mr. Norton in the Chair,— the yeas and nays having been completed at twenty-three minutes past four o'clock P.M., the bill was passed to be engrossed, in concurrence.

Sent to the House for concurrence in the amendment.

The President in the Chair, the House Bill further regulating medical malpractice insurance (House, No. 1143, amended),— was read a third time.

Pending the question on passing the bill to be engrossed, Ms. Melconian moved that the bill be amended by striking out section 4 and inserting in place thereof the following section:—

"SECTION 4. Said section 193U of said chapter 175, as so appearing, is hereby further amended by striking out the definition of 'Medical malpractice insurer' and inserting in place thereof the following definition:—

'Medical malpractice insurer', any corporation that is licensed, admitted, authorized or approved to write liability other than auto insurance on risks within the commonwealth on a direct basis. The term 'medical malpractice insurer' shall not include: (1) a corporation or other entity that is formed under the laws of any jurisdiction other than a state of the United States or the District of Columbia and that is engaged in writing (i) medical malpractice insurance for the members, shareholders or owners of such corporation or other entity, including affiliates of such members, shareholders, owners and persons employed by, affiliated with or providing professional services to such members, shareholders, owners or affiliates, and any servicing carrier thereof, or (ii) reinsurance on medical malpractice insurance written by a fronting company for the members, shareholders or owners of such

corporation or other entity, including affiliates of such members, shareholders, owners or affiliates, and any servicing carrier thereof; (2) a trust maintained by the University of Massachusetts to self fund medical malpractice risks; (3) a risk retention group, as defined in the Liability Risk Retention Act of 1986, 15 U.S.C. 3901; or (4) a surplus lines insurer, so-called, insuring in the commonwealth under the requirements of section 168."; and

By striking out section 6 and inserting in place thereof the following section:—

"SECTION 6. Section 9 of chapter 330 of the acts of 1994 is hereby amended by striking out the definition of Medical malpractice insurer' and inserting in place thereof the following definition:—

'Medical malpractice insurer', any corporation that is licensed, admitted, authorized or approved to write liability other than auto insurance on risks within the commonwealth on a direct basis. The term medical malpractice insurer' shall not include: (1) a corporation or other entity that is formed under the laws of any jurisdiction other than a state of the United States or the District of Columbia and that is engaged in writing (i) medical malpractice insurance for the members, shareholders or owners of such corporation or other entity, including affiliates of such members, shareholders, owners and persons employed by, affiliated with or providing professional services to such members, shareholders, owners or affiliates, and any servicing carrier thereof, or (ii) reinsurance on medical malpractice insurance written by a fronting company for the members, shareholders or owners of such corporation or other entity, including affiliates of such members, shareholders, owners or affiliates, and any servicing carrier thereof; (2) a trust maintained by the University of Massachusetts to self fund medical malpractice risks; (3) a risk retention group, as defined in the Liability Risk Retention Act of 1986, 15 U.S.C. 3901; or (4) a surplus lines insurer, so-called, insuring in the commonwealth under the requirements of section 168 of chapter 175 of the General Laws."

The amendment was adopted.

Messrs. Bernstein and Berry moved to amend the bill by inserting the following section:—

"SECTION 12A. Section 10 of said chapter 330 is hereby amended by striking out the second paragraph and inserting in place thereof the following paragraph:—

Such plan shall be prepared and administered by a governing committee appointed by the governor for terms of three years consisting of five members, four of whom shall represent medical malpractice insurers, and one of whom shall be an independent insurance agent, nominated by the Massachusetts Association of Insurance Agents and who is licensed and resides in the commonwealth. Of the four representatives of the medical malpractice insurers, at least three shall be representatives of any domestic medical malpractice insurer and at least one shall be a representative of a non-domestic medical malpractice insurer. The governing committee shall be responsible for the hiring of employees of the plan."

The amendment was adopted.

After remarks, the bill, as amended, was then passed to be engrossed, in concurrence.

Sent to the House for concurrence in the amendments.

The Senate Bill relative to the Board of State Examiners of Plumbers (Senate, No. 2052),— was read a third time. Mr. Clancy, for the committee on Bills in the Third Reading, reported, recommending that the bill be amended by substituting a new draft entitled: "An Act further regulating the membership of the Board of State Examiners of Plumbers and Gas Fitters." (Senate, No. 2277).

The amendment was adopted.

The new draft (Senate No. 2277) was then passed to be engrossed.

Sent to the House for concurrence.

The Senate Bill regulating the production of fortified wines (Senate, No. 1951),— **was read a third time; and, after remarks, it was passed to be engrossed.**

Sent to the House for concurrence.

The Senate Bill relative to complaints of sexual harassment and other forms of discrimination (Senate, No. 2265),— was read a third time.

After remarks, the question on passing the bill to be engrossed was determined by a call of the yeas and nays, at fifteen minutes before five o'clock P.M., on motion of Mr. Keating, as follows, to wit (yeas 37 — nays 0):

YEAS.

Amorello, Matthew J.

Antonioni, Robert A.

Bernstein, Robert A.

Berry, Frederick E.

Brewer, Stephen M.

Clancy, Edward J., Jr.

Durand, Robert A.

Montigny, Mark C.

Moore, Richard T.

Morrissey, Michael W.

Murray, Therese

Norton, Thomas C.

Nuciforo, Andrea F., Jr.

O'Brien, John D.

Fargo, Susan C.
Havern, Robert A.
Hedlund, Robert L.
Jacques, Cheryl A.
Jajuga, James P.
Joyce, Brian A.
Keating, William R.
Knapik, Michael R.
Lees, Brian P.
Lynch, Stephen F.
Magnani, David P.
Melconian, Linda J.

Panagiotakos, Steven C.
Pines, Lois G.
Rauschenbach, Henri S.
Rosenberg, Stanley C.
Shannon, Charles E.
Tarr, Bruce E.
Tisei, Richard R.
Tolman, Warren E.
Travaglini, Robert E.
Walsh, Marian
Wilkerson, Dianne

—37.

NAYS. — 0

ABSENT OR NOT VOTING.

Creedon, Robert S., Jr.

Pacheco, Marc R.

—2.

**The yeas and nays having been completed at nine minutes before five o'clock P.M., the bill was passed to be engrossed.
Sent to the House for concurrence.**

The Senate Bill authorizing the Division of Capital Planning and Operations to convey a certain parcel of land in the city of Waltham (Senate, No. 2266),— **was read a third time and passed to be engrossed.
Sent to the House for concurrence.**

The House Bill relative to the taxation of common trust funds (House, No. 4783, amended),— **was read a third time and passed to be engrossed, in concurrence.
Sent to the House for concurrence in the amendment previously adopted by the Senate.**

The House Bill providing for hearing screening of newborns (House, No. 5392),— was read a third time.
After remarks, the question on passing the bill to be engrossed was determined by a call of the yeas and nays, at four minutes before five o'clock P.M., on motion of Ms. Murray, as follows, to wit (yeas 36 — nays 0):

YEAS.

Amorello, Matthew J.
Antonioni, Robert A.
Bernstein, Robert A.
Durand, Robert A.
Fargo, Susan C.
Hedlund, Robert L.
Jacques, Cheryl A.

Berry, Frederick E.
Brewer, Stephen M.
Clancy, Edward J., Jr.
Murray, Therese
Norton, Thomas C.
Nuciforo, Andrea F., Jr.
O'Brien, John D.

Jajuga, James P.
Joyce, Brian A.
Keating, William R.
Knapik, Michael R.
Lees, Brian P.
Lynch, Stephen F.
Magnani, David P.
Melconian, Linda J.
Montigny, Mark C.
Moore, Richard T.
Morrissey, Michael W.

Panagiotakos, Steven C.
Pines, Lois G.
Rauschenbach, Henri S.
Rosenberg, Stanley C.
Shannon, Charles E.
Tarr, Bruce E.
Tisei, Richard R.
Tolman, Warren E.
Travaglini, Robert E.
Walsh, Marian
Wilkerson, Dianne

—36.

NAYS. — 0

ABSENT OR NOT VOTING.

Creedon, Robert S., Jr.
Havern, Robert A.

Pacheco, Marc R.

—3.

The yeas and nays having been completed at one minute past five o'clock P.M., the bill was passed to be engrossed, in concurrence.

Sent to the House for concurrence in the amendment previously adopted by the Senate.

The Senate report of the committee on Government Regulations, ought NOT to pass, on the petition (accompanied by bill, Senate, No. 1892) of Andrea F. Nuciforo, Jr., and others (with the approval of the mayor and city council) for legislation to authorize the city of Pittsfield to sell alcoholic beverages not to be drunk on the premises on Sundays and legal holidays,— was considered, the question being on accepting it.

Mr. Nuciforo moved that the report be amended by substituting a new draft entitled: "An Act authorizing cities and towns within ten miles of the New York border to sell certain alcoholic beverages on Sundays" (Senate, No. 2269).

The amendment was adopted; and accordingly, the bill was substituted. The new draft (Senate, No. 2269) was read. There being no objection, the rules were suspended, and the bill was read a second time and ordered to a third reading.

The House Bill relative to the prevention of drug induced rape and kidnapping (House, No. 5448),— was read a third time. There being no objection, the further consideration thereof was postponed until the remaining matters passed for consideration in the Orders of the Day had been disposed of.

Subsequently, the matters passed for consideration in the Orders of the Day having been disposed of, the bill was further considered.

Messrs. Bernstein and Tarr, Ms. Walsh, Messrs. Jajuga, Lees, Amorello, Hedlund, Knapik, Tisei, Rauschenbach, Montigny and Keating moved to amend the bill by inserting after section 1 the following six sections:—

"SECTION 1A. Section one of chapter 123A of the General Laws, as appearing in the 1996 Official Edition, is hereby amended by inserting after the word meanings:—', in line 2, the following paragraph:

'Agency with jurisdiction', the agency with the authority to direct the release of a person presently incarcerated, confined, or committed to the department of youth services including, but not limited to, a sheriff, keeper, master or superintendent of a jail, house of correction or prison, the director of a custodial facility in the department of youth services, the parole board and, where a person has been found incompetent to stand trial, a district attorney.

SECTION 1B. Said section 1 of said chapter 123A, as so appearing, is hereby further amended by inserting after the definition of Community Access Program', the following two definitions:—

'Mental abnormality', a congenital or acquired condition of a person that affects the emotional or volitional capacity of the person

in a manner that predisposes that person to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of other persons.

'Personality Disorder', a congenital or acquired physical or mental condition that results in a general lack of power to control sexual impulses.

SECTION 1C. Said section 1 of said chapter 123A, as so appearing, is hereby further amended by inserting after the word twenty-four', in line 34, the following words:— assault on a child with intent to commit rape under the provisions of section twenty-four B of chapter two hundred and sixty-five; drugging persons for sexual intercourse under the provisions of section three of chapter two hundred and seventy-two.

SECTION 1D. Said section 1 of said chapter 123A, as so appearing, is hereby further amended by striking out the definition of Sexually Dangerous Person', and inserting in place thereof the following definition:—

'Sexually Dangerous Person', any person (I) whose misconduct in sexual matters indicates a general lack of power to control his sexual impulses, as evidenced by repetitive or compulsive sexual misconduct by either violence against any victim, or aggression against any victim under the age of 16 years, and who, as a result, is likely to attack or otherwise inflict injury on such victims because of such uncontrolled or uncontrollable desires or (ii) who has been convicted of, adjudicated delinquent of, or charged with a sexual offense and suffers from a mental abnormality or personality disorder which makes the person likely to engage in sexual offenses if not confined to a secure facility.

SECTION 1E. Said chapter 123A, as so appearing, is hereby further amended by adding the following four sections:—

Section 12. (a) Any agency with jurisdiction of a person who has been convicted or adjudicated delinquent of a sexual offense as defined in section 1, shall notify in writing the district attorney of the county where the offense occurred and the attorney general 6 months prior to the release of such person, except that in the case of a person who is returned to prison for no more than six months as a result of a revocation of parole or who is committed for no more than six months, such notice shall be given as soon as practicable following such person's admission to prison.

(b) When it appears that the prisoner or youth in the custody of the department of youth services may be a sexually dangerous person, as defined in section 1, the district attorney or the attorney general at the request of the district attorney, may file a petition alleging that such prisoner or such youth is a sexually dangerous person in the superior court where the prisoner or youth is committed or in the superior court of the county where the sexual offense occurred.

Upon the filing of a petition under this section, the court in which the petition was filed shall determine whether probable cause exists to believe that the person named in the petition is a sexually dangerous person. Such person shall be provided with notice of, and an opportunity to appear in person at, a hearing to contest probable cause.

(d) At the probable cause hearing, the person named in the petition shall have the following rights: (I) to be represented by counsel; (ii) to present evidence on such person's behalf; (iii) to cross-examine witnesses who testify against such person; and (iv) to view and copy all petitions and reports in the court file.

Section 13. (a) If the court is satisfied that probable cause exists to believe that the person named in the petition is a sexually dangerous person, the prisoner or youth shall be committed to the treatment center for a period not exceeding 60 days for the purpose of examination and diagnosis under the supervision of two qualified examiners who shall, within said period, file with the court a written report of the examination and diagnosis and their recommendation of the disposition of the person named in the petition.

(b) The court shall supply to the qualified examiners copies of any juvenile and adult court records which records shall contain, if available, a history of previous juvenile and adult offenses, previous psychiatric and psychological examination and such other information as may be pertinent or helpful to the examiners in making the diagnosis and recommendation. The district attorney or the attorney general shall provide a narrative or police reports for each sexual offense, conviction or adjudication, as well as any psychiatric, psychological, medical or social worker records in his possession.

The person named in the petition shall be entitled to counsel and, if indigent, the court shall appoint an attorney. All written documentation submitted to the two qualified examiners shall also be provided to counsel for the person named in the petition and to the district attorney and attorney general.

(d) Any person subject to an examination pursuant to the provisions of this section may retain a psychologist or psychiatrist who meets the requirements of a qualified examiner' to perform an examination on his behalf. If the person named in the petition is indigent, the court shall provide for a qualified examiner'.

Section 14. (a) If the report filed with the court by the two qualified examiners indicates that the person named in the petition is a sexually dangerous person, the court shall notify such person and his attorney, the district attorney and the attorney general that a trial by jury will be held within 60 days to determine whether such person is a sexually dangerous person. The trial may be continued upon motion of either party for good cause shown, or by the court on its own motion if the interests of justice so require, provided that the offender will not be substantially prejudiced thereby. The offender shall be confined to a secure facility for the duration of the trial.

(b) The person named in the petition shall be entitled to the assistance of counsel, and shall be entitled to have counsel appointed if he is indigent in accordance with section 2 of chapter 211D. In addition, such person may retain experts or professional persons to perform an examination on his behalf. Such experts or professional persons shall be permitted to have reasonable access to such person for the purpose of such examination, as well as to all relevant medical and psychological records and reports. If such person is indigent under said section 2 of said chapter 211D, the court shall, upon such person's request, determine whether the expert or professional services are necessary and shall determine reasonable compensation for such services. If the court so determines, the court shall assist in obtaining an expert or professional person to perform an examination and participate in the trial on such person's behalf. The court shall approve payment for such services upon the filing of a certified claim for

compensation supported by a written statement specifying the time expended, services rendered, expenses incurred and compensation received in the same case or for the same services from any other source. The court shall inform such person of his rights under this section before the trial commences. The person named in the petition shall be entitled to have process issued from the court to compel the attendance of witnesses on his or her behalf. If such person intends to rely upon the testimony or report of his qualified examiner, the report must be filed with the court and a copy provided to the district attorney and attorney general no later than ten days prior to the scheduled trial.

Juvenile and adult court probation records, psychiatric and psychological records and reports, including the report of any qualified examiner' filed under this chapter, police reports relating to the prior sexual offenses of the person named in the petition, incident reports arising out of such person's incarceration or custody, and any other evidence tending to show that such person is or is not a sexually dangerous person shall be admissible at the trial; provided, however, that such written information has been provided to opposing counsel.

(d) If after the trial, the jury finds unanimously beyond a reasonable doubt that the person named in the petition is a sexually dangerous person, such person shall be committed to the treatment center for an indeterminate period of a minimum of one day and a maximum of such person's natural life, until discharged pursuant to the provisions of section 9. The order of commitment which shall be forwarded to the treatment center and to the appropriate institution, shall become effective on the date of parole or discharge from jail, the house of correction, prison or facility of the department of youth services.

(e) If the person named in the petition is scheduled to be released from jail, house of correction, prison or a facility of the department of youth services at any time prior to the decision of the jury, the court may temporarily commit such person to the treatment center pending disposition of the petition.

Section 15. If an offender has been found incompetent to stand trial and his commitment is sought and probable cause has been determined to exist, the court, without a jury, shall hear evidence and determine whether the offender did commit the act or acts charged before conducting the trial. The hearing on the issue of competence shall comply with all procedures specified in section five, except with respect to trial by jury. The rules of evidence applicable in criminal cases shall apply and all rights available to criminal defendants at criminal trials, other than the right not to be tried while incompetent, shall apply. After hearing evidence, the court shall make specific findings relative to whether the offender did commit the act or acts charged; the extent to which the cause of the offender's incompetence to stand trial affected the outcome of the hearing, including its effect on the offender's ability to consult with and assist counsel and to testify on his own behalf; the extent to which the evidence could be reconstructed without the assistance of the offender and; the prosecution's case. If the court finds, beyond a reasonable doubt, that the offender did commit the act or acts charged, the court shall enter a final order, subject to appeal by the person named in the petition, and the court may proceed to consider whether the offender is a sexually violent person according to the procedures set forth in sections 12 to 14, inclusive. Any determination made under this section shall not be admissible in any subsequent criminal proceeding.

SECTION 1F. Chapter 265 of the General Laws, as so appearing, is hereby amended by inserting, after section 24C, the following section:—

Section 24D. Whoever is convicted of indecent assault and battery on a child under fourteen under the provisions of section 13B of chapter 265; indecent assault and battery on a mentally retarded person under the provisions of section 13F of chapter 265; indecent assault and battery on a person who has attained the age of 14 under the provisions of section 13H of chapter 265; rape under the provisions of section 22 of chapter 265; rape of a child under 16 with force under the provisions of section 22A of chapter 265; rape and abuse of a child under 16 under the provisions of section 23 of chapter 265; assault with intent to commit rape under the provisions of section 24 of chapter 265; assault on a child with intent to commit rape under the provisions of section 24B of chapter 265; drugging persons for sexual intercourse under the provisions of section 3 of chapter 272; unnatural and lascivious acts with a child under the provisions of section 35A of chapter 272, including an attempt to commit any of the above listed crimes under the provisions of section 6 of chapter 274, having been before convicted or adjudicated delinquent of any of the above offenses, or of any other offense of any other jurisdiction, federal, state or territorial, which is the same as or necessarily includes the elements of any one or more of the above offenses, shall be imprisoned in the state prison for life."

After remarks, the question on adoption of the amendment was determined by a call of the yeas and nays, at nineteen minutes past five o'clock P.M., on motion of Mr. Tarr, as follows, to wit (yeas 33 — nays 0):

YEAS.

Amorello, Matthew J.

Antonioni, Robert A.

Bernstein, Robert A.

Berry, Frederick E.

Brewer, Stephen M.

Clancy, Edward J., Jr.

Durand, Robert A.

Moore, Richard T.

Morrissey, Michael W.

Murray, Therese

Norton, Thomas C.

Nuciforo, Andrea F., Jr.

O'Brien, John D.

Panagiotakos, Steven C.

Fargo, Susan C.
Jacques, Cheryl A.
Jajuga, James P.
Joyce, Brian A.
Keating, William R.
Knapik, Michael R.
Lees, Brian P.
Lynch, Stephen F.
Melconian, Linda J.
Montigny, Mark C.

Pines, Lois G.
Rauschenbach, Henri S.
Rosenberg, Stanley C.
Shannon, Charles E.
Tarr, Bruce E.
Tolman, Warren E.
Travaglini, Robert E.
Walsh, Marian
Wilkerson, Dianne

—33.

NAYS. — 0

ABSENT OR NOT VOTING.

Creedon, Robert S., Jr.
Havern, Robert A.
Hedlund, Robert L.

Magnani, David P.
Pacheco, Marc R.
Tisei, Richard R.

—6.

The yeas and nays having been completed at twenty-three minutes past five o'clock P.M., the amendment was adopted. After remarks, the question on passing the bill to be engrossed was determined by a call of the yeas and nays, at twenty-seven minutes past five o'clock P.M., on motion of Mr. Montigny, as follows, to wit (yeas 33 — nays 0):

YEAS.

Amorello, Matthew J.
Antonioni, Robert A.
Brewer, Stephen M.
Clancy, Edward J., Jr.
Durand, Robert A.
Fargo, Susan C.
Jacques, Cheryl A.
Jajuga, James P.
Joyce, Brian A.
Keating, William R.
Knapik, Michael R.
Lees, Brian P.
Lynch, Stephen F.
Melconian, Linda J.

Bernstein, Robert A.
Berry, Frederick E.
Murray, Therese
Norton, Thomas C.
Nuciforo, Andrea F., Jr.
O'Brien, John D.
Panagiotakos, Steven C.
Pines, Lois G.
Rauschenbach, Henri S.
Rosenberg, Stanley C.
Shannon, Charles E.
Tarr, Bruce E.
Tolman, Warren E.
Travaglini, Robert E.

Montigny, Mark C.
Moore, Richard T.
Morrissey, Michael W.

Walsh, Marian
Wilkerson, Dianne

—33.

NAYS. — 0

ABSENT OR NOT VOTING.

Creedon, Robert S., Jr.
Havern, Robert A.
Hedlund, Robert L.

Magnani, David P.
Pacheco, Marc R.
Tisei, Richard R.

—6.

The yeas and nays having been completed at twenty-three minutes past five o'clock P.M., the amendment was adopted. After remarks, the question on passing the bill to be engrossed was determined by a call of the yeas and nays, at twenty-seven minutes past five o'clock P.M., on motion of Mr. Montigny, as follows, to wit (yeas 33 — nays 0):

YEAS.

Amorello, Matthew J.
Antonioni, Robert A.
Bernstein, Robert A.
Berry, Frederick E.
Brewer, Stephen M.
Clancy, Edward J., Jr.
Durand, Robert A.
Fargo, Susan C.
Jacques, Cheryl A.
Jajuga, James P.
Joyce, Brian A.
Keating, William R.
Knapik, Michael R.
Lees, Brian P.
Lynch, Stephen F.
Melconian, Linda J.
Montigny, Mark C.

Moore, Richard T.
Morrissey, Michael W.
Murray, Therese
Norton, Thomas C.
Nuciforo, Andrea F., Jr.
O'Brien, John D.
Panagiotakos, Steven C.
Pines, Lois G.
Rauschenbach, Henri S.
Rosenberg, Stanley C.
Shannon, Charles E.
Tarr, Bruce E.
Tolman, Warren E.
Travaglini, Robert E.
Walsh, Marian
Wilkerson, Dianne

—33.

NAYS. — 0

ABSENT OR NOT VOTING.

Creedon, Robert S., Jr.
Havern, Robert A.
Hedlund, Robert L.

Magnani, David P.
Pacheco, Marc R.
Tisei, Richard R.

—6.

The yeas and nays having been completed at twenty-three minutes past five o'clock P.M., the amendment was adopted. After remarks, the question on passing the bill to be engrossed was determined by a call of the yeas and nays, at twenty-seven minutes past five o'clock P.M., on motion of Mr. Montigny, as follows, to wit (yeas 33 — nays 0):

YEAS.

Amorello, Matthew J.
Antonioni, Robert A.
Brewer, Stephen M.
Clancy, Edward J., Jr.
Durand, Robert A.
Fargo, Susan C.
Jacques, Cheryl A.
Jajuga, James P.
Joyce, Brian A.
Keating, William R.
Knapik, Michael R.
Lees, Brian P.
Lynch, Stephen F.
Melconian, Linda J.
Montigny, Mark C.
Moore, Richard T.
Morrissey, Michael W.

Bernstein, Robert A.
Berry, Frederick E.
Murray, Therese
Norton, Thomas C.
Nuciforo, Andrea F., Jr.
O'Brien, John D.
Panagiotakos, Steven C.
Pines, Lois G.
Rauschenbach, Henri S.
Rosenberg, Stanley C.
Shannon, Charles E.
Tarr, Bruce E.
Tolman, Warren E.
Travaglini, Robert E.
Walsh, Marian
Wilkerson, Dianne

—33.

NAYS. — 0

ABSENT OR NOT VOTING.

Creedon, Robert S., Jr.
Havern, Robert A.
Hedlund, Robert L.

Magnani, David P.
Pacheco, Marc R.
Tisei, Richard R.

—6.

The yeas and nays having been completed at twenty-eight minutes before six o'clock P.M., the bill was passed to be engrossed, in concurrence, with the amendments. [for text of Senate amendments, printed as amended, see Senate, No. 2278.]

Sent to the House for concurrence in the amendments adopted by the Senate.

Reports of Committees.

By Mr. Clancy, for the committees on Rules of the two branches, acting concurrently, that Joint Rule 12 be suspended on the Senate petition of Michael W. Morrissey, Richard T. Moore, Charles E. Shannon, William R. Keating and other members of the General Court for legislation to require that increases in the cost of using a pay phone be reported to the Department of Telecommunication and Energy.

Senate Rule 36 was suspended, on motion of Ms. Melconian, and the report was considered forthwith. Joint Rule 12 was suspended; and the petition (accompanied by bill) was referred to the committee on Government Regulations.

By Mr. Clancy, for the committees on Rules of the two branches, acting concurrently, that Joint Rule 12 be suspended on the Senate petition of Stephen M. Brewer and David H. Tuttle (by vote of the town) for legislation to authorize the town of Hardwick to convey land to the Hardwick Farmers Co-operative [Local approval received].

Senate Rule 36 was suspended, on motion of Ms. Melconian, and the report was considered forthwith. Joint Rule 12 was suspended; and the petition (accompanied by bill) was referred to the committee on Local Affairs.

Severally sent to the House for concurrence.

Matter Taken Out of the Notice Section of the Calendar.

There being no objection, the following matter was taken out of the Notice Section of the calendar and considered, as follows: The House Bill authorizing the town of Westborough to issue an additional license for the sale of all alcoholic beverages to be drunk on the premises (House, No. 5132),— **was read a third time and passed to be engrossed, in concurrence.**

Papers from the House.

Engrossed Bills.

The following engrossed bills (the first of which originated in the Senate), having been certified by the Senate Clerk to be rightly and truly prepared for final passage, were severally passed to be enacted and were signed by the President and laid before the Acting Governor for his approbation, to wit:

Relative to the grant of immunity (see House, No. 5651);

Relative to the transfer of certain fishing licenses (see House, No. 91, amended);

Establishing a board of selectmen-town administrator form of government in the town of Spencer (see House, No. 5573); and

Authorizing the town of Marion to establish an open space acquisition commission (see House, No. 5600).

Petitions were referred, in concurrence, as follows:

Petition (accompanied by bill, House, No. 5710) of Shirley Gomes and Henri S. Rauschenbach (by vote of the town) that the town of Eastham be authorized to establish and make appropriations for a land acquisition and maintenance fund in said town;
To the committee on Local Affairs.

Petition (accompanied by bill, House, No. 5713) of Anthony Tomasiello relative to the retirement allowance of said Anthony Tomasiello, a retired justice of the Nantucket Division of the District Court Department of the Trial Court;

Under suspension of Joint Rule 12, to the committee on Public Service.

Petition (accompanied by bill, House, No. 5711) of Ruth W. Provost, Thomas J. O'Brien and Marc R. Pacheco (by vote of the town) relative to the eligibility for certain insurance benefits of part time elected officials in the town of Carver;

To the committee on Public Service.

Petition (accompanied by bill, House, No. 5714) of Salvatore F. DiMasi for legislation to authorize the Division of Capital Planning and Operations to convey certain permanent and temporary easements on state property in the city of Boston to Emerson College; and

Petition (accompanied by bill, House, No. 5715) of William C. Galvin and Brian A. Joyce relative to authorizing the transfer of certain state owned land located within the Blue Hills Reservation in the town of Canton from the Metropolitan District Commission to the Highway Department;

Severally, under suspension of Joint Rule 12, to the committee on State Administration.

Petition (accompanied by bill, House, No. 5712) of Shirley Gomes and Henri S. Rauschenbach (by vote of the town) relative to the distribution of the local room occupancy excise tax in the town of Eastham and establishing a promotions fund in said town;
To the committee on Taxation.

Engrossed Bill.

An engrossed Bill relative to the annual town meeting held in the town of Carver in 1998 (see House Bill, printed in House, No. 5539) (which originated in the House), **having been certified by the Senate Clerk to be rightly and truly prepared for final passage, was passed to be enacted, two-thirds of the members present having voted in the affirmative, and it was signed by the President and laid before the Acting Governor for his approbation.**

Resolutions.

Resolutions (filed by Mr. Pacheco) "congratulating William P. Ferioli on the occasion of his retirement as chief of the town of Bridgewater police department", were referred, under the rule, to the committee on Rules.

Subsequently, Mr. Norton, for the said committee, reported, recommending that the resolutions ought to be adopted; and they were considered forthwith, under a suspension of the rules, moved by Ms. Fargo, and adopted.

Resolutions (filed by Ms. Wilkerson) "honoring the Most Worshipful Grand Master John Maddox, Jr.", were referred, under the rule, to the committee on Rules.

Subsequently, Mr. Norton, for the said committee, reported, recommending that the resolutions ought to be adopted; and they were considered forthwith, under a suspension of the rules, moved by Ms. Fargo, and adopted.

Senate Order Adopted.

Mr. Havern presented the following order, to wit:

Ordered, That, notwithstanding the provisions of Joint Rule 10, the committee on Transportation be granted until Friday, July 31, 1998, within which to make its final report on current House documents numbered 1636, 2613, 5176, 5487, 5694 and 5695, and Senate document numbered 2229.

The order was considered forthwith, and adopted.

Sent to the House for concurrence.

Adjournment on the Occasion of the Fortieth Birthday of Senator Robert A. Antonioni.

Ms. Walsh and Mr. Durand moved that when the Senate adjourns today, it adjourn on the happy occasion of the fortieth birthday of Senator Robert A. Antonioni, which occurred on Wednesday, July 15, 1998.

Order Adopted.

On motion of Ms. Melconian,—

Ordered, That when the Senate adjourns today, it adjourn to meet again tomorrow at eleven o'clock A.M., and that the Clerk be directed to dispense with the printing of a calendar.

On motion of Mr. Lees, at twenty-one minutes before six o'clock P.M., the Senate adjourned to meet on the following day at eleven o'clock A.M.