

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.



JOURNAL OF THE SENATE.

Thursday, October 21, 2004.

Met at four minutes past eleven o'clock A.M. (Mr. Tolman in the Chair) (having been appointed by the President, under authority conferred by Senate Rule 4, to perform the duties of the Chair).

The Chair (Mr. Tolman), members, guests and employees then recited the pledge of allegiance to the flag.

Distinguished Guests.

There being no objection, the Chair (Mr. Tolman) introduced, seated in the rear of the Chamber, Fred and Alice Davino of Foxborough. They were the guests of Senator Sprague.

Communications.

The following communications were severally placed on file:

A communication was received from the Senate President announcing the appointment of Mr. Robert M. Stevens to serve on the Special Commission established (pursuant to Section 2B of Chapter 115 of the General Laws) relative to veteran's employment opportunities; and

A communication was received from the Honorable Brian P. Lees, the Senate Minority Leader, announcing the appointment of Senator Richard R. Tisei to the Special Commission established (pursuant to Section 292 of chapter 149 of the Acts of 2004) relative to regulations pertaining to assisted living facilities.

Reports.

The following reports were severally read and placed on file:

A report of the Massachusetts Technology Development Corporation (under the provisions of Sections 6 and 7 of Chapter 40G of the General Laws) submitting its annual financial report for the fiscal year ended June 30, 2004 (received Thursday, October 14, 2004);

A report of the Massachusetts Commission on the Status of Women (under the provisions Section 66 of Chapter 3 of the General Laws) submitting a copy of its FY 2004 annual report (received Monday, October 18, 2004); and

A report of the Department of Telecommunications and Energy (under the provisions of Section 2 of Chapter 25 of the General Laws) submitting a copy of its annual report regarding the Department's activities during the year 2003 (received Monday, October 18, 2004).

Petition.

Mr. Brown presented a petition (subject to Joint Rule 12) of Scott P. Brown, Alice Hanlon Peisch, Robert Spellane, Robert K. Coughlin and other members of the General Court for legislation relative to sexual abuse of minors,— **and the same was referred, under Senate Rule 20, to the committees on Rules of the two branches, acting concurrently.**

Resolutions.

The following resolutions (having been filed with the Clerk) were considered forthwith and adopted, as follows:—

Resolutions (filed by Mrs. Sprague) “congratulating Norton Fire Chief George Francis Burgess on the occasion of his retirement.”

Matters Taken Out of the Orders of the Day.

There being no objection, the following matters were taken out of the Orders of the Day and considered, as follows:—

The House Bill relative to the protection of inland waters (House, No. 3561),— **was read a second time, ordered to a third reading, read a third time and passed to be engrossed, in concurrence.**

The House Bill authorizing the treasurer of the town of Brookline to invest the trust funds of said town (House, No. 4400),— **was read a second time, ordered to a third reading, read a third time and passed to be engrossed, in concurrence.**

PAPERS FROM THE HOUSE.

A Bill authorizing deferment of the Hale Hospital deficit notes by the city of Haverhill (House, No. 4735,— on petition) [Local approval received],— **was read.**

There being no objection, the rules were suspended, on motion of Mr. Brewer, and the bill was read a second time, ordered to a third reading, read a third time and passed to be engrossed, in concurrence.

A Bill relative to the appointment of retired police officers in the town of Canton (House, No. 4858,— on petition) [Local approval received],— **was read.**

There being no objection, the rules were suspended, on motion of Mr. Moore, and the bill was read a second time, ordered to a third reading, read a third time and passed to be engrossed, in concurrence.

Engrossed Bills.

The following engrossed bills (the first two 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 Acting President and laid before the Governor for his approbation, to wit:

Directing the Commissioner of Revenue to accept certain applications for abatement (see Senate, No. 1786);
Authorizing the State Board of Retirement to grant creditable service to Joseph A. Quinlan (see Senate, No. 2116);
Relative to pre-marital testing (see House, No. 75);
Creating a community and economic development authority in the town of Wareham (see House, No. 4566, amended);
Authorizing the town of Adams to grant an additional license for the sale of all alcoholic beverages to be drunk on the premises to Ericfly, Inc. (see House, No. 4984);
Authorizing the town of Adams to grant an additional license for the sale of all alcoholic beverages to be drunk on the premises to Nicholas Enterprises, Inc. (see House, No. 4985);
Authorizing the Division of Capital Asset Management and Maintenance to grant an easement in certain land in the town of Bridgewater (see House, No. 5033, amended); and
Establishing a presumption relative to the disability retirement of a certain firefighter in the city of Salem (see House, No. 5094).

Reports of Committees.

By Mr. Brewer, for the committees on Rules of the two branches, acting concurrently, that Joint Rule 12 be suspended on the Senate petition of John A. Hart, Jr. for legislation relative to civil service and firefighters.

Senate Rule 36 was suspended, on motion of Mr. Knapik, and the report was considered forthwith. Joint Rule 12 was suspended; and the petition (accompanied by bill) was referred to the committee on Public Service.

By Mr. Brewer, for the committees on Rules of the two branches, acting concurrently, that Joint Rule 12 be suspended on the Senate petition of Steven A. Baddour for legislation relative to the special commission on the equity of fares between modes of transportation.

Senate Rule 36 was suspended, on motion of Mr. Knapik, and the report was considered forthwith. Joint Rule 12 was suspended; and the petition (accompanied by bill) was referred to the committee on Transportation. Severally sent to the House for concurrence.

Matters Taken Out of the Orders of the Day.

The Senate Bill regarding medical record retention requirements (Senate, No. 643),— was read third time.

Pending the question on passing the bill to be engrossed, Mr. Shannon moved that the bill be amended in section 1, by adding the following sentence:— “Under no circumstances shall a patient’s medical records be disposed of until the hospital or clinic has notified the patient by certified mail, return receipt requested, addressed to the patient’s last known residence, and has also published the notice in a newspaper of record in the city or town in which the patient was last known to reside.”; and in section 3, by adding the following sentence:— “Under no circumstances shall a patient’s medical records be disposed of until the hospital or clinic has notified the patient by certified mail, return receipt requested, addressed to the patient’s last known residence, and has also published the notice in a newspaper of record in the city or town in which the patient was last known to reside.”

The amendment was adopted.

The bill (Senate, No. 643, amended) was then passed to be engrossed.

Sent to the House for concurrence.

The House Bill prohibiting the recording of certain productions (House, No. 4863),— was read a second time.

Pending the question on ordering the bill to a third reading, Mr. Lees presented an amendment striking out all after the enacting clause and inserting in place thereof the text of Senate document numbered 2496; and by striking out the title and inserting in place thereof the following title: “An Act prohibiting recording certain productions in a movie theater.”

The amendment was adopted.

Ms. Fargo presented an amendment that the bill (as amended Lees) be amended by adding the following section:

“SECTION 6. Chapter 272 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by adding the following section:—

Section 104. (a) As used in this section, the following words shall have the following meanings:

‘Electronically surveils’ or ‘electronically surveilled’, to view, obtain or record a person’s visual image by the use or aid of a camera, cellular or other wireless communication devise, computer, television or other electronic device.

‘Partially nude’ the exposure of the human genitals, buttocks, pubic area or female breast below a point immediately above the top of the areola.

(b) Whoever willfully photographs, videotapes or electronically surveils another person who is nude or partially nude, with the intent to secretly conduct or hide such activity, when the other person in such place and circumstance would have a reasonable expectation of privacy in not being so photographed, videotaped or electronically surveilled, and without that person’s knowledge and consent shall be punished by imprisonment in the house of correction for not more than 2½ years or by a fine of not more than \$5,000, or by both such fine and imprisonment.

(c) Whoever willfully disseminates the visual image of another person who is nude or partially nude, with knowledge that such visual image was unlawfully obtained in violation of subsection (b) and without consent of the person so depicted, shall be punished by imprisonment in the house of correction for not more than 2½ years or in state prison for a period of not more than 5 years, or by a fine of not more than \$10,000, or by both such fine and imprisonment.

(d) This section shall not apply to a merchant that electronically surveils a customer changing room, provided that signage warning customers of the merchant’s surveillance activity is conspicuously posted at all entrances, and in the interior of any changing room electronically surveilled.

(e) This section shall not apply to a law enforcement officer when acting within the scope of the officer’s authority under applicable law, or by an order or warrant issued by a court.

(f) A sheriff, deputy sheriff or police officer may arrest without a warrant, any person believed upon probable cause to have violated this section.

(g) Any photograph, videotape or other recorded visual image, depicting a person who is nude or partially nude that is part of any court record arising from a prosecution under this section, shall not be open to public inspection and shall only be made available for inspection by court personnel, to any law enforcement officer, prosecuting attorney, defendant’s attorney, defendant, or victim connected to such prosecution, unless otherwise ordered by the court.

(h) A justice of the superior court or district court in a prosecution under this section may issue appropriate orders to restrain or prevent unlawful dissemination of a person’s visual image in violation of this section.”

The amendment was adopted.

**The bill, as amended, was then ordered to a third reading, read a third time and was passed to be engrossed, in concurrence, with the amendments.
Sent to the House for concurrence in the amendments.**

Order Adopted.

On motion of Mrs. Sprague,—

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

On motion of the same Senator, at twenty-eight minutes before twelve o'clock noon, the Senate adjourned to meet on the following Monday at eleven o'clock A.M.