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UNCORRECTED PROOF OF THE JOURNAL OF THE SENATE.



JOURNAL OF THE SENATE.

Tuesday, March 2, 2010.

Met according to adjournment at one o'clock P.M. (Mr. Rosenberg in the Chair)

Distinguished Guests.

There being no objection, during consideration of the Orders of the Day, the President introduced, in the rear of the Chamber, Charles Moran, Thomas Vitone and Thomas McLaughlin of the Clinton Housing Authority. They were guests of Senators Chandler and Flanagan. The Senate welcomed them with applause and they withdrew from the Chamber.

Reports of Committees.

By Ms. Fargo, for the committee on Public Health, on petition, a Bill to provide for the autonomy for hospital medical staffs (Senate, No. 814);

By the same Senator, for the same committee, on Senate, No. 835 and House, No. 2111, a Bill regulating pharmacy audits (Senate, No. 835);

By the same Senator, for the same committee, on petition, a Bill relative to technical changes pertaining to the Board of Registration in Medicine (Senate, No. 864);

By the same Senator, for the same committee, on petition, a Bill relative to the pronouncement of death in a rest home (Senate, No. 881);

By the same Senator, for the same committee, on petition, a Bill ensuring continuity of care for patients taking prescription medicines (Senate, No. 2099);

By the same Senator, for the same committee, on petition, a Bill to establish a voluntary rehabilitation program for pharmacist and pharmacy interns (Senate, No. 2176);

By the same Senator, for the same committee, on petition (accompanied by bill, Senate, No. 812), a Bill to ensure the availability of medications in time of an emergency (Senate, No. 2298);

By the same Senator, for the same committee, on petition (accompanied by bill, Senate, No. 828), a Bill improving patient care procedures and reducing costs of long term care facilities (Senate, No. 2299);

By the same Senator, for the same committee, on petition (accompanied by bill, Senate, No. 837), a Bill establishing a voluntary school-based influenza vaccination program (Senate, No. 2300);

By the same Senator, for the same committee, on petition (accompanied by bill, Senate, No. 849), a Bill regarding medical record retention requirements (Senate, No. 2301); and

By the same Senator, for the same committee, on petition (accompanied by bill, Senate, No. 907), a Bill relative to screening for developmental disabilities (Senate, No. 2302);

Severally referred, under Joint Rule 1E, to the committee on Health Care Financing

By Ms. Creem, for the committee on the Judiciary, on petition, a Bill establishing a sick leave bank for Candace Cabey, an employee of the Trial Court (Senate, No. 2273);

By Mr. McGee, for the committee on Public Service, on petition, a Bill relative to the sanctity of collective bargaining (Senate, No. 1199);

By the same Senator, for the same committee, on petition, a Bill providing additional benefits to survivors of certain public safety employees (Senate, No. 1200); and

By the same Senator, for the same committee, on petition, a Bill establishing a sick leave bank for Sean O'Brien, an employee of the Department of Transitional Assistance (Senate, No. 2288);

Severally read and, under Senate Rule 27, referred to the committee on Ways and Means.

By Mr. McGee, for the committee on Public Service, on petition, a Bill authorizing the town of Winchendon to continue the employment of Allen J. LaFrennie as fire chief (Senate, No. 2066) [Local approval received]; and

By Mr. Joyce, for the committee on State Administration and Regulatory Oversight, on petition, a Bill relative to payment for services rendered for extraordinary storm damage in the town of Templeton (Senate, No. 2231) [Local approval received];

Severally read and, under Senate Rule 26, placed in the Orders of the Day for the next session.

There being no objection, at one minute past one o'clock P.M., the Chair (Mr. Rosenberg) declared a recess subject to the call of the Chair; and, at fourteen minutes past one o'clock P.M., the Senate reassembled, the President in the Chair.

The President, members, guests and employees then recited the pledge of allegiance to the flag.

Resolutions.

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

Resolutions (filed by Mr. Richard. Moore) "commending Carl Tubbesing on his retirement as Deputy Director of the National Conference of State Legislatures."

PAPER FROM THE HOUSE

Engrossed Bill

An engrossed Bill establishing the Sandwich Economic Initiative Corporation (see Senate, No. 2073) (which originated in the Senate), having been certified by the Senate Clerk to be rightly and truly prepared for final passage, was passed to be enacted and signed by the President and laid before the Governor for his approbation.

Petitions were severally referred, in concurrence, as follows, to wit:

Petition (accompanied by bill, House, No. 4539) of John P. Fresolo for legislation to include certain co-generation steam firemen and engineers in Group 4 of the public employees retirement law; and

Petition (accompanied by bill, House, No. 4540) of John P. Fresolo that sewerage treatment operators of the Department of Correction be placed in Group 4 of the public employees retirement law;

Severally under suspension of Joint Rules 12, to the committee on Public Service

Orders of the Day.

The Orders of the Day and considered, as follows:

Bills

Providing for the abatement of certain qualifying real estate from property taxes in the town of Hamilton (Senate, No. 2085); Relative to the interest rate to be charged upon apportioned betterment assessments for the Weweantic sewer project in town of Wareham (Senate, No. 2140);

Relative to interest rates to be charged upon apportioned betterment assessments in the town of Wareham (Senate, No. 2141);

Relative to the Punchard Free School in the town of Andover (Senate, No. 2152);

Amending the charter in the town of Stoughton relative to filling vacancies among town meeting representatives (Senate No. 2238); and

Relative to elections in the town of Wayland (House, No. 4256)

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

The Senate Bill providing for recall in the town of Colrain (printed as House, No. 4384), was read a second time and ordered to a third reading.

There being no objection, the rules were suspended, on motion of Mr. Rosenberg, and the bill was read a third time and passed to be engrossed.

Sent to the House for concurrence.

The House Bill relative to safe driving (House, No. 4475),-- **was read a third time.**

After remarks, Mr. Michael Moore moved that the bill be amended in section 3, by striking out the following paragraph:- "A junior operator who violates the preceding paragraph shall be punished by a fine of \$100 and shall have his license or permit suspended for 180 days for a first offense, by a fine of \$250 and shall have his license or permit suspended for 1 year for a second

offense, and by a fine of \$500 and shall have his license or permit suspended for 1 year for a third or subsequent offense.” and inserting in place thereof the following paragraph:-“A junior operator who violates the preceding paragraph shall be punished by a fine of \$100 and shall have his license or permit suspended for 60 days for a first offense and shall not be eligible for license reinstatement until he also completes a program selected by the registrar that encourages attitudinal changes in young drivers, by a fine of \$250 and shall have his license or permit suspended for 180 days for a second offense, and by a fine of \$500 and shall have his license or permit suspended for 1 year for a third or subsequent offense.”

The amendment was **adopted**.

Messrs. Hedlund and Richard T. Moore moved that the bill be amended in section 2 in the definition of “mobile telephone” by adding the following sentence:- “For the purposes of this chapter, ‘mobile telephone’ shall not include amateur radios operated by those licensed by the Federal Communications Commission to operate such radios, or citizen band radios.”.

The amendment is **adopted**.

Messrs. Tisei, Tarr, Knapik and Hedlund moved that the bill be amended by inserting after section 2, the following section:-

“SECTION 2A. Section 8 of chapter 90 of the general laws, as appearing in the 2008 official edition, is hereby amended by inserting, in line 4, after word ‘registrar’ the following words:- nor any person who is an to illegal or undocumented alien.”

Pending the question on adoption of the amendment, Ms. Chang-Díaz moved that the amendment (Tisei, et al) be amended by inserting after the word “alien”, the following words:- “and whose license is no longer valid in accordance with sections 22, 22A, 22B, 22F 22G or any other applicable section of this chapter”.

After debate, the further amendment (Chang-Díaz) was *rejected*.

The pending amendment (Tisei, at el) was then **adopted**.

Mr. Richard T. Moore moved that the bill be amended by inserting after section 5, the following section:-

“SECTION 5A. Section 13 of said chapter 90, as so appearing, is hereby amended by striking out, in line 5, the words ‘citizens band’ and inserting in place thereof the following words:- federally licensed 2-way.”

The amendment was **adopted**.

Ms. Jehlen moved that the bill be amended by striking out section 4 and inserting in place thereof the following 2 sections:-

“SECTION 4. The fourteenth paragraph of said section 8 of said chapter 90, as so appearing, is hereby amended by adding the following sentence:- An applicant for the renewal of a license 75 years of age or older shall apply for a renewal in person at a registry branch office.

SECTION 4A. Said section 8 of said chapter 90, as so appearing, is hereby amended by adding the following paragraph:-

An applicant for a license or renewal of a license appearing in person at a registry branch shall take and pass a vision test administered by the registry; provided, however, that except as required by the registrar in regulations, said applicant may provide a vision screening certificate, signed by an optometrist or ophthalmologist to demonstrate compliance with the minimum visual standards to obtain and hold a license.”.

After remarks, the amendment was *rejected*.

Mr. Tisei moved that the bill be amended by inserting after section 10 the following section:-

“SECTION 10A. Notwithstanding any general or special law to the contrary, the registrar of motor vehicles shall notify all persons whose license to operate a motor vehicle is set to expire by mail, not later than 30 days prior to such expiration.”

After debate, the question on adoption of the amendment was determined by a call of the yeas and nays at twenty-six minutes past two o’clock P.M., on motion of Mr. Tisei, as follows, to wit (*yeas 32 — nays 2*) [**Yeas and Nays No. 191**]:

Insert Roll call “191”

The yeas and nays having been completed at a half past two o’clock P.M., the amendment was adopted.

Ms. Candaras and Mr. Brewer moved that the bill be amended in section 7, by inserting after the word “section.”, in line 109, the following sentence:- “If a person who disseminates medical evidence offered at a hearing under this paragraph without permission from the operator is an employee of the commonwealth, that person shall be immediately suspended without pay from the person’s position, pending a disciplinary hearing in accordance with the regular procedures of the agency by which the person is employed, unless the dissemination of the medical evidence was otherwise authorized or required by law.”

The amendment was **adopted**.

Ms. Candaras moved that the bill be amended by striking out section 8.

The amendment was *rejected*.

Ms. Candaras and Mr. Brewer moved that the bill be amended by striking out the words “suspend the license of said operator”, in line 132, and inserting in place thereof the following words:- “notify said operator that a report under this section had been filed, and shall further notify the operator of all legal obligations and options regarding the review and disposition of said report”; by striking out the word “continued”, in line 134; and, in section 8, in proposed section 22I in subsection (b) by adding the following sentence:- “The registrar shall not suspend the license of an operator under this section until the registrar has completed said review and determined that the operator lacks the capacity for licensure to operate a motor vehicle.”.

The amendment was *rejected*.

Ms. Candaras moved that the bill be amended in section 8 by adding the following subsection:-

“(d) A health care provider or law enforcement officer who intends to file a report under this section shall first notify the operator by first class mail at the operator’s residential address. If the operator is under 18 years of age, the health care provider or law enforcement officer who intends to file the report shall notify the operator’s legal guardian or guardians. Such notification shall include a copy of the report in its entirety, as well as any material reasonably expected to be considered in the registrar’s review of the report. The registrar shall not consider any report under this section without proof of such notification.”

The amendment was *rejected*.

Ms. Candaras moved that the bill be amended in section 8, by inserting after the words “health care provider”, in line 120, the following words:- “, acting in the provider’s professional capacity,”; and by inserting after the word “prescribe”, in line 123, the following words:- “, provided that such report is not made solely on the basis of age”.

After remarks, the amendment was **adopted**.

Mr. Joyce moved that the bill be amended by inserting, after section 4, the following section:-

“SECTION 4A. Said section 8 of said chapter 90, as so appearing, is hereby further amended by adding the following paragraph:-

An applicant for a license or renewal of a license appearing in person at a registry branch shall take and pass a vision test administered by the registry; provided, however, that an applicant may provide a vision screening certificate, signed by an optometrist or ophthalmologist to demonstrate compliance with the minimum visual standards to obtain and hold a license.”

The amendment was **adopted**.

Mr. Joyce moved that the bill be amended in section 4, by inserting after the word “abilities”, in line 45, the following words:- “as well as administering a vision exam, which shall include, but not be limited to, contrast sensitivity testing”.

The amendment was **adopted**.

Mr. Montigny and Ms. Creem move to amend the bill by striking out sections 1 and 2 and inserting in place thereof the following 3 sections:-

“SECTION 1. Section 1 of chapter 90 of the General Laws is hereby amended by inserting after the definition of ‘Department’ , as appearing in the 2008 Official Edition, the following definition:-

‘Electronic message’, a self-contained piece of digital communication that is designed or intended to be transmitted between mobile electronic devices; provided, however, that ‘electronic message’ shall include, but not be limited to, electronic mail, a text message, an instant message, a command or request to access an internet site or a message that includes a keystroke entry sent between mobile electronic devices.

SECTION 2. Said section 1 of said chapter 90 is hereby further amended by inserting after the definition of ‘Gross vehicle weight rating’, as so appearing, the following definition:-

‘Hands-free mobile telephone’, a hand-held mobile telephone that has an internal feature or function, or that is equipped with a hands-free accessory, whether or not permanently part of such hand-held mobile telephone, by which a user engages in a call without the use of either hand, whether or not the use of either hand is necessary to activate, deactivate or initiate a telephone call.

SECTION 2A. Said section 1 of said chapter 90, as so appearing, is hereby further amended by inserting after the definition of ‘Mobile construction crane’ the following 2 definitions:-

‘Mobile electronic device’, a hand-held or portable electronic piece of equipment capable of providing data communication between 2 or more persons including, without limitation, a mobile telephone, a text messaging device, a paging device, a personal digital assistant, a laptop computer, electronic equipment that is capable of playing a video game or digital video disk or equipment on which digital photographs are taken or transmitted, or any combination of those functions, or equipment that is capable of visually receiving a television broadcast; provided, however, that mobile electronic device shall not include audio equipment or any equipment installed or affixed, either temporarily or permanently, in a motor vehicle to provide navigation or

emergency assistance to the operator of the motor vehicle or to provide video entertainment to the passengers in the rear seats of the motor vehicle.

‘Mobile telephone’, a cellular, analog, wireless, satellite or digital telephone, including a mobile telephone with two-way radio functionality, capable of sending or receiving telephone communications and with which a user initiates, terminates or engages in a call using at least 1 hand.”; and by striking out section 6 and inserting in place thereof the following section :-

“SECTION 6. Said chapter 90 is hereby further amended by inserting after section 13A, as so appearing, the following section:-

Section 13B. (a) No operator of a motor vehicle shall use a mobile electronic device or a mobile telephone, unless the telephone is a hands-free mobile telephone. No operator of a motor vehicle shall use a mobile telephone, mobile electronic device or other device capable of accessing the internet to compose, send or read an electronic message while operating a motor vehicle; provided, however, that this section shall not apply to the operator of a public safety vehicle utilizing a mobile telephone, hands-free mobile telephone or other mobile electronic device in the performance of the operator’s official duties. For the purposes of this section, an operator shall not be considered to be operating a motor vehicle if the vehicle is stationary and not located in a part of the roadway intended for travel.

(b) Whoever violates this section shall be punished by a fine of \$100 for a first offense, by a fine of \$250 for a second offense and by a fine of \$500 for a third or subsequent offense. A violation of this section may be considered a moving violation for purposes of the safe driver insurance plan under section 113B of chapter 175.

(c) It shall be an affirmative defense for an operator to produce documentary or other evidence that the use of a mobile telephone or other mobile electronic device that is the basis of the alleged violation was made for emergency purposes including, but not limited to, an emergency call to a law enforcement agency, health care provider, fire department or other emergency services agency or entity.”.

After debate, the question on adoption of the amendment was determined by a call of the yeas and nays at eleven minutes past four o’clock P.M., on motion of Mr. Montigny, as follows, to wit (*yeas 16 — nays 18*) [**Yeas and Nays No. 192**]:

Insert Roll call “192”

The yeas and nays having been completed at a quarter past four o’clock P.M., the amendment was *rejected*.

Messrs. Tisei, Tarr, Knapik, Hedlund and Brewer moved that the bill be amended by inserting after section 10, the following section:-

“SECTION 10A. Notwithstanding any general of special law to the contrary the registrar of motor vehicles shall not impose any additional fee for transactions conducted via telephone or in person at any registry location in excess of those fees charged for transactions conducted via the commonwealth’s web portal.”

The amendment was **adopted**.

Mr. Tolman moved that the bill be amended by inserting after section 10 the following section:-

“SECTION 10A. Upon revocation of a license to operate a motor vehicle under section 8 of chapter 90 of the General Laws, the registrar shall provide a list of alternative means of transportation options to the person whose license has been revoked. The list shall include at least 1 paratransit option that is in compliance with 42 U.S.C. § 12101.”

The amendment was **adopted**.

Mr. Tolman moves to amend the bill in section 8, in proposed section 22I of chapter 90, by adding the following subsection:-

“(d) An operator who is determined not to be physically or medically capable to safely operate a vehicle pursuant to this section 8 shall be required to surrender his license to the registrar, in person or by mail, within 30 days after revocation of the license. The registrar shall provide the operator with information on obtaining an alternate identification card. The department of state police may collect the license of an operator who fails to surrender his license as required by this section and deliver the license to the registrar.”

The amendment was *rejected*.

Mr. Tolman moved that the bill be amended by inserting after section 3 the following section:-

“SECTION 3A. Said section 8 of said chapter 90, as so appearing, is hereby further amended by inserting after the third paragraph the following paragraph:—

A person holding a junior operator’s license shall not use a mobile telephone while driving. For the purposes of this section, a ‘mobile telephone’ shall include, but not be limited to, a mobile telephone utilizing cellular, analog, satellite, wireless or digital

telephone technology, and capable of sending or receiving telephone communications. A violation of this section shall be punishable by suspension of the junior operator's license for not more than 1 year and a fine of not more than \$100. It shall be an affirmative defense for a junior operator to produce documentary or other evidence that the use of the mobile telephone that is the basis of the alleged violation was made for the sole purpose of seeking emergency assistance. A violation of this paragraph shall not be considered a conviction of a moving violation for the purpose of determining surcharges on motor vehicle premiums pursuant to section 113 of chapter 175. An insurance company doing business in the commonwealth shall not deny an individual the right to purchase a motor vehicle liability policy based on a violation of this paragraph.”; by inserting after section 9 the following 2 sections:-

“SECTION 9A. Said chapter 90 is hereby further amended by inserting after section 24X the following section:-

Section 24Y. (a) For the purposes of this section, a ‘mobile telephone’ shall include, but not be limited to, a mobile telephone utilizing cellular, analog, satellite, wireless or digital telephone technology, and capable of sending or receiving telephone communications.

(b) A person shall not operate a motor vehicle on a public way:

- (1) while holding a mobile telephone in 1 or both hands or with any other part of the body; or
- (2) while using or operating a mobile telephone unless the mobile telephone is affixed to the vehicle or is part of a fixture in the vehicle and remains so affixed while being used or operated or is specially adapted or designed to be affixed to the driver as headgear and is so used to enable the driver to use or operate the mobile telephone without holding it in the manner contemplated in clause (1) and remains so affixed while being used or operated.

(c) This section shall not apply to the following persons operating motor vehicles in the exercise of their official duties:

- (1) the driver of a firefighting vehicle;
- (2) the driver of a rescue vehicle or ambulance; and
- (3) a state, county or local public safety official if operating the vehicle with due regard to the safety of others.

(d) A violation of this section shall be punishable by a fine of not more than \$250. A second and subsequent violation shall be punished by a fine of not more than \$500.

(e) It shall be an affirmative defense for an operator to produce documentary or other evidence that the phone call that represents the alleged violation was made or received for the sole purpose of seeking emergency assistance.

(f) A violation of this section shall not be considered a conviction of a moving violation for the purpose of determining surcharges on motor vehicle premiums pursuant to section 113 of chapter 175. An insurance company doing business in the commonwealth shall not deny an individual the right to purchase a motor vehicle liability policy based on a violation of this section.

SECTION 9A. Chapter 166 of the General Laws is hereby amended by adding the following section:-

Section 45. As a condition of being licensed as a wireless carrier in the commonwealth, a wireless carrier shall agree to provide to the executive office of public safety information relative to any new wireless technology which may be available to consumers in the commonwealth on a yearly basis.”; and by inserting after section 10 the following section:-

“SECTION 10A. The executive office of public safety shall initiate a public service announcement and public awareness campaign on the proper use of a mobile telephone while operating a motor vehicle. The campaign may be financed, in part, by wireless carriers operating in the commonwealth.”

The amendment was *rejected*.

Mr. Tolman moved that the bill be amended in section 8, by inserting after the word “jurisdiction”, in line 138, the following words:- “or upon the written request of the respondent to examine any medical records or reports made about the respondent under this section”.

After remarks, the amendment was **adopted**.

Mr. Tolman moved that the bill be amended by striking out section 8 and inserting in place thereof the following section:-
“SECTION 8. Said Chapter 90 is hereby further amended by inserting after section 22H the following section:

Section 22I. (a) As used in this section, the following words shall, unless the context clearly requires otherwise, have the following meanings:

‘Family member’, a mother, father, brother, sister, son, daughter, legal guardian or neighbor of the individual who is the subject of a report made under this section.

‘Health care provider’, a registered nurse, licensed practical nurse, physician, physician assistant, occupational therapist, physical therapist, optometrist, ophthalmologist or podiatrist who is a licensed health care provider under chapter 112.

(b) If a health care provider, law enforcement officer or family member has good cause to believe that an operator is not physically or medically capable to safely operate a motor vehicle, the provider, officer or family member may make a report to the registrar, requesting medical evaluation, as the registrar may prescribe. The reporting person shall state the reasons for the provider’s, officer’s or family member’s good faith belief that the operator cannot safely operate a motor vehicle. A health care provider who makes such a report and states the provider’s good faith belief shall file the report with the registrar. The report shall be based upon personal observation, physical evidence, or, in the case of a law enforcement officer, an investigation, which shall be described in the report. In the case of a family member, said report shall be based upon personal observation, knowledge of the individual’s driving record or physical evidence, which shall be described in the report.

A health care provider or law enforcement officer who makes a report, in good faith, under this section shall be immune from civil liability that might otherwise result from making the report. A health care provider or law enforcement officer who fails to make a report shall be immune from civil liability that might otherwise result from not making the report.

A family member who makes a report to the registrar shall do so only by signing a sworn affidavit attesting to the family member’s belief that the individual who is the subject of the report would represent an immediate danger to the public if the individual were allowed to continue to operate a motor vehicle. A family member who makes a report, under this section, which is later found to be fraudulent or based upon factors not connected to a legitimate concern about an individual’s mental or physical ability to operate a motor vehicle shall be punished by imprisonment in the house of corrections for not less than 30 days but not more than 90 days or by a fine of not less than \$1,000 but not more than \$5,000, or both, for each violation under this section.

Upon receipt of a report made under this section, the registrar shall suspend the license of the operator. Not later than 30 days after receipt of the report the registrar shall conduct a review to determine the operator’s capacity for continued licensure to operate a motor vehicle. In the case of a report made by a family member the registrar may only suspend the license of the operator upon the completion of a review process to determine the operator’s capacity for continued licensure to operate a motor vehicle.

(c) Reports made to the registrar under this section shall be confidential and shall be used by the registrar only to determine a person’s qualifications to operate a motor vehicle. All reports made and all medical records reviewed and maintained by the registry under this section shall be confidential, except upon order of a court of competent jurisdiction. A report made under this section shall not be a public record as defined in section 7 of chapter 4.

The registrar shall include on its website the information about the procedures authorized in this section.”

After remarks, the amendment was *rejected*.

Ms. Creem moved that the bill be amended in section 6, in proposed section 13B, by inserting after subsection (b) the following subsection:-

“(b 1/2) It shall be an affirmative defense for an operator under this section to produce documentary or other evidence that the use of a mobile telephone that is the basis of the alleged violation was made in the case of an emergency. For the purpose of this paragraph, an emergency shall mean that the operator needed to communicate with another to report: (a) that the motor vehicle is disabled; (b) that medical attention or assistance is required; (c) that police intervention is necessary for the personal safety of the operator or a passenger or to otherwise ensure the safety of the passengers; or (d) the presence of a disabled vehicle or an accident on a roadway.”

The amendment was *rejected*.

Ms. Candaras moved that the bill be amended by striking out section 4.

Pending the question on adoption of the amendment, Mr. Joyce, Ms. Jehlen, Ms. Flanagan and Mr. Baddour moved that the pending amendment (Candaras) be amended by striking out the text in its entirety and inserting in place thereof the following:-
Section 4 is hereby amended by striking out the text and inserting in place thereof the following:-

“SECTION 4. Said chapter 90 of the General Laws is hereby amended by inserting after section 8L the following section:-

Section 8M. (a) For purposes of this section, a ‘health care provider’ shall be a primary care physician or other treating health care professional, as defined in chapter 112, with knowledge of an applicant’s overall physical and cognitive abilities.

(b) Notwithstanding any provision of the first paragraph of section 8, an applicant for a license, or the renewal of a license, age 75 or older shall apply in person. The applicant shall submit an elderly driving assessment form completed by the applicant’s

health care provider in the health care provider's professional capacity, and the applicant shall submit the assessment form to the registrar. The elderly driving assessment form shall assess the applicant's cognitive and physical ability, including a vision test, and any other condition that might prevent such applicant from operating a motor vehicle. The elderly driving assessment form shall be developed by the registrar in consultation with the medical advisory board established in section 8C. An applicant for a license renewal shall complete the form upon the expiration of 60 months from attainment of the age of 75 years, and every 36 months thereafter. No license shall be issued until the registrar is satisfied that the applicant is a qualified person to receive such a license. The registry shall charge a fee not to exceed \$30 for purposes of this paragraph.

An applicant age 75 or older who, after having submitted the assessment form, has been determined by the registrar not to meet the minimum cognitive, visual and physical abilities required to safely operate a motor vehicle, may petition the registrar for a road test as prescribed by the registrar to demonstrate the requisite driving skills necessary for licensure. Unless the registrar determines that permitting the driver to take a road test would present a safety risk to the general public, the driver shall be permitted to take a road test to determine proficiency operating a motor vehicle. The registrar shall make a determination as to whether licensure is warranted.

A person age 75 years or older, whose license to operate a motor vehicle has been suspended or revoked by the registrar under this chapter or section 113B of chapter 175, may request reconsideration by the registrar. Upon reconsideration, the registrar shall determine whether the person has demonstrated that the person is capable of safely operating a motor vehicle and the registrar shall issue findings to support the registrar's determinations which shall be based on standards developed by the registrar, in consultation with the medical advisory board.

Any such determination by the registrar under this section may be appealed under section 28.

With respect to any person whose license to operate a motor vehicle has been revoked by the registrar pursuant to this chapter or pursuant to section 113B of chapter 175 the registrar shall provide an identification card as provided for in section 8E."

After debate, the question on adoption of the further amendment (Joyce et al) was determined by a call of the yeas and nays at twenty-five minutes past four o'clock P.M., on motion of Mr. Baddour, as follows, to wit (*yeas 33 — nays 2*) **[Yeas and Nays No. 193]:**

Insert Roll call "193"

The yeas and nays having been completed at twenty-eight minutes past four o'clock P.M., the amendment was adopted. The pending amendment (Candaras), as amended (Joyce, et al) was then adopted.

Messrs. Tarr and Joyce moved that the bill be amended by inserting after section 9 the following section:-

"SECTION 9A. Chapter 90 of the General Laws is hereby amended by striking out section 24G, as appearing in the 2008 Official Edition, and inserting in place thereof the following section:-

Section 24G. (a) Whoever, upon any way or in any place to which the public has a right of access, or upon any way or in any place to which members of the public have access as invitees or licensees, operates a motor vehicle with a percentage, by weight, of alcohol in their blood of .08 or greater, or while under the influence of intoxicating liquor, or of marihuana, narcotic drugs, depressants, or stimulant substances, all as defined in section 1 of chapter 94C, or the vapors of glue, and so operates a motor vehicle recklessly or negligently so that the lives or safety of the public might be endangered, and by any such operation so described causes the death of another person, shall be guilty of homicide by a motor vehicle while under the influence of an intoxicating substance, and shall be punished by imprisonment in the state prison for not less than 2 ½ years nor more than 15 years and a fine of not more than \$5,000, or by imprisonment in a jail or house of correction for not less than 1 year nor more than 2 ½ years and a fine of not more than \$5,000. The sentence imposed upon such person shall not be reduced to less than 1 year, nor suspended, nor shall a person convicted under this subsection be eligible for probation, parole or furlough or receive any deduction from the person's sentence until such person has served at least 1 year of such sentence; provided, however, that the commissioner of correction may, on the recommendation of the warden, superintendent or other person in charge of a correctional institution or the administrator of a county correctional institution, grant to an offender committed under this subsection a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of a relative; to visit a critically ill relative; to obtain emergency medical or psychiatric services unavailable at the institution; or to engage in employment under a work release program. Prosecutions commenced under this section shall neither be continued without a finding nor placed on file.

The provisions of section 87 of chapter 276 shall not apply to a person charged with a violation of this subsection.

(b) Whoever, upon any way or in any place to which the public has a right of access or upon any way or in any place to which members of the public have access as invitees or licensees, operates a motor vehicle with a percentage, by weight, of alcohol in their blood of .08 or greater, or while under the influence of intoxicating liquor, or of marihuana, narcotic drugs, depressants or stimulant substances, all as defined in section 1 of chapter 94C, or the vapors of glue, or whoever operates a motor vehicle

negligently so that the lives or safety of the public might be endangered and by any such operation causes the death of another person, shall be guilty of homicide by a motor vehicle and shall be punished by imprisonment in a jail or house of correction for not less than 30 days nor more than 2 ½ years, or by a fine of not less than \$300 nor more than \$3,000, or both.

(c) Whoever, upon any way or in any place to which the public has a right of access or upon any way or in any place to which members of the public have access as invitees or licensees, operates a motor vehicle recklessly so that the lives or safety of the public might be endangered and by any such operation causes the death of another person, shall be guilty of reckless homicide by a motor vehicle and shall be punished by imprisonment in a jail or house of correction for not more than 2 ½ years, or by imprisonment in the state prison for not more than 10 years, or by a fine of not more than \$3,000, or by both such fine and imprisonment. For the purpose of this section, a person operates recklessly when he consciously disregards a substantial and unjustifiable risk that the lives or safety of the public might be endangered.

(d) The registrar shall revoke the license or right to operate of a person convicted of a violation of subsection (a), (b) or (c) of this section or punished under section 13 ½ of chapter 265 when a motor vehicle is the instrument of the offense for a period of 10 years after the date of conviction for a first offense. The registrar shall revoke the license or right to operate of a person convicted for a subsequent violation of this section for the life of such person. No appeal, motion for a new trial or exceptions shall operate to stay the revocation of the license or of the right to operate; provided, however, such license shall be restored or such right to operate shall be reinstated if the prosecution of such person ultimately terminates in favor of the defendant.”
After remarks, the amendment was **adopted**.

Messrs. Montigny and Donnelly and Ms. Creem moved that the bill be amended in section 6, in subsection (c) in proposed section 13B of chapter 90 of the General Laws by striking out the first sentence.

After debate, the question on adoption of the amendment was determined by a call of the yeas and nays at twenty-six minutes before five o’clock P.M., on motion of Ms. Creem, as follows, to wit (*yeas 24 — nays 10*) [**Yeas and Nays No. 194**]:

Insert Roll call “194”

The yeas and nays having been completed at twenty-two minutes before five o’clock P.M., the amendment was adopted.

Ms. Spilka moved that the bill be amended in section 7, by striking out, the words “an applicant age 75 years or older has” and inserting in place thereof the following words:- “a licensee’s”; and by inserting after section 6 the following section

“SECTION 6A. Subsection (a) of section 22 of chapter 90 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by adding the following sentence: An operator whose license is suspended or revoked on suspicion of mental or physical disability shall be entitled to a hearing within 3 business days, but may postpone the hearing for up to 30 days at the operator’s discretion.”.

The amendment was **adopted**.

Ms. Creem moved that the bill be amended by inserting after section 1 the following 2 sections:-

“SECTION 1A. Said section 1 of said chapter 90 is hereby further amended by inserting after the definition of ‘Gross vehicle weight rating’, as so appearing, the following definition:-

‘Hands-free mobile telephone’, a hand-held mobile telephone that has an internal feature or function, or that is equipped with a hands-free accessory, whether or not permanently part of such hand-held mobile telephone, by which a user engages in a call without the use of either hand, whether or not the use of either hand is necessary to activate, deactivate or initiate a telephone call.

SECTION 1B. Said section 1 of said chapter 90 is hereby further amended by inserting after the definition of ‘Mobile construction crane’, as so appearing, the following definition:-

‘Mobile electronic device’, any hand-held or portable electronic equipment capable of providing data communication between 2 or more persons including, without limitation, a mobile telephone, a text messaging device, a paging device, a personal digital assistant, a laptop computer, electronic equipment that is capable of playing a video game or digital video disk or equipment on which digital photographs are taken or transmitted, or any combination thereof, or equipment that is capable of visually receiving a television broadcast; provided, however, that mobile electronic device shall not include audio equipment or equipment installed or affixed, either temporarily or permanently, in a motor vehicle to provide navigation or emergency assistance to the operator of the motor vehicle or to provide video entertainment to the passengers in the rear seats of the motor vehicle.”; and by striking out section 6 and inserting in place thereof the following section:-

“SECTION 6. Chapter 90 of the General Laws is hereby further amended by inserting after section 13A the following 2 sections:-

Section 13B. (a) No operator of a motor vehicle shall use a mobile telephone, or a device capable of accessing the internet, to

compose, send, or read an electronic message while operating a motor vehicle. For the purposes of this section, an operator shall not be considered to be operating a motor vehicle if the vehicle is stationary and not located in a part of the public way intended for travel.

(b) A violation of this section shall be punishable by a fine of \$100 for a first offense, by a fine of \$250 for a second offense and by a fine of \$500 for a third or subsequent offense; provided however that an operator who commits a violation of this section simultaneously with a motor vehicle accident in which the operator's motor vehicle is involved or is the proximate cause shall be fined an additional \$500 in addition to a penalty or fine imposed for the moving violation.

(c) A penalty under this section shall not be a surchargeable offense under section 113B of chapter 175.

Section 13C. No operator of a motor vehicle shall use a mobile telephone, unless the telephone is a hands-free mobile telephone. For the purposes of this section, an operator shall not be considered to be operating a motor vehicle if the vehicle is stationary and not located in a part of the public way intended for travel.

(b) A violation of this section shall be punishable by a fine of \$100 for a first offense, by a fine of \$250 for a second offense and by a fine of \$500 for a third or subsequent offense; provided however that the fine shall be suspended for a first-time violator who provides proof of acquisition and installation of a hands-free accessory subsequent to the violation but prior to the imposition of a fine. An operator who commits a violation of this section simultaneously with a motor vehicle accident in which the operator's motor vehicle is involved or is the proximate cause shall be fined an additional \$500 in addition to a penalty or fine imposed for the moving violation.

(c) A penalty under this section shall not be a surchargeable offense under section 113B of chapter 175.”.

The amendment was *rejected*.

Mr. Eldridge, Ms. Jehlen and Ms. Candaras moved that the bill be amended by inserting after section 10, the following section:-

“SECTION 10A. There shall be a special commission to study the long-term alternative transportation needs of senior citizens. The commission shall consist of the secretary of elder affairs or the secretary's designee who shall serve as chair; the secretary of transportation or the secretary's designee; the director of the office on disability or the director's designee; 1 person to be appointed by the president of the senate and 1 person to be appointed by the speaker of the house of representatives; and 2 persons to be appointed by the governor, 1 of whom shall be a representative of the Massachusetts Chapter of American Association of Retired Persons and 1 of whom shall be a representative of a disability rights organization. Each member shall serve without compensation.

The commission shall review the public transportation alternatives for seniors citizens and the disabled and may develop model plans that could be utilized by municipalities, state agencies and regional transportation authorities. The commission shall: (1) examine the transportation needs of senior citizens in the commonwealth; (2) examine and evaluate transportation services for senior citizens inside and outside of the commonwealth; (3) establish best practices and evaluate programs and services available to urban, suburban and rural populations; (4) evaluate regional disparities in transportation options and explore solutions to those disparities; (5) provide recommendations for improvements in the management of local and regional transportation services for seniors; (6) examine and develop recommendations on ways in which the commonwealth and its municipalities can meet the transportation needs of senior citizens for the next 15 years; and (7) examine and develop recommendations on methods by which the commonwealth may meet the transportation needs of senior citizens, including, but not limited to, recommendations regarding revenue sources and establishing new incentives for public-private partnerships in the development of transportation services.

The commission may hold public hearings to assist in the collection and evaluation of data and testimony.

The commission shall submit its findings and recommendations relative to public transportation options for seniors citizens and the disabled, together with drafts of legislation necessary to carry those recommendations into effect, by filing the same with the clerks of the house of representatives and senate, the house and senate committees on ways and means, the joint committee on elder affairs and the joint committee on transportation not later than March 1, 2012.”

The amendment was **adopted**.

Ms. Creem moved that the bill be amended in section 8, line 117, by inserting after the word “assistant”, in line 118, the following word:- “, psychologist”.

The amendment was **adopted**.

Mr. Baddour moves to amend the bill by inserting after section 1 the following section:-

“SECTION 1A. Said section 1 of said chapter 90 is hereby further amended by inserting after the definition of ‘Gross vehicle weight rating’, as so appearing, the following definition:-

'Hands-free mobile telephone', a hand-held mobile telephone that has an internal feature or function or that is equipped with a hands-free accessory, whether or not permanently part of such hand-held mobile telephone, by which a user engages in a call without the use of either hand, whether or not the use of either hand is necessary to activate, deactivate or initiate a telephone call." ; in section 2, by inserting before the definition of "mobile telephone" the following definition:- "Mobile electronic communications device", hand-held or portable electronic equipment capable of providing data communication between 2 or more persons including, without limitation, a mobile telephone, a text messaging device, a paging device, a personal digital assistant, a laptop computer, or electronic equipment; provided, however, that 'mobile electronic communications device' shall not include audio equipment or equipment installed or affixed, either temporarily or permanently in a motor vehicle, including equipment to provide navigation or emergency assistance to the operator of a motor vehicle or information to the passengers in the vehicle."; and by inserting after section 5 the following section:-

"SECTION 5A. Section 13 of said chapter 90, as appearing in the 2008 Official Edition, is hereby amended by striking out, the first sentence and inserting in place thereof the following 2 sentences:- No person, when operating a motor vehicle, shall permit to be on or in the vehicle or on or about his person anything which may interfere with or impede the proper operation of the vehicle including, but not limited to, mobile telephones, hands-free mobile telephones or other mobile electronic communications devices. For the purposes of this section, an operator shall not be considered to be operating a motor vehicle if the vehicle is stationary and not located in a part of the public way intended for travel."

The amendment was *rejected*.

Mr. Timilty moved that the bill be amended in section 1 by striking out, in lines 7 and 8 the words "a keystroke entry sent between mobile electronic devices" and inserting in place thereof the following words:- "keystroke entries sent between mobile devices"; by inserting, after section 2, the following section:-

"SECTION 2A. Said section 1 of said chapter 90 is hereby further amended by inserting after the definition of 'Transporter', as so appearing, the following definition:- 'Voice-operated device', allows a user to compose, send, or receive an electronic message while operating a motor vehicle without the use of either hand except to activate, deactivate or initiate a feature or function."; in section 6, by inserting in paragraph (a) of proposed section 13B of chapter 90 of the General Laws after the word "any", in line 87, the following word;- "handheld"; in said section 6, by inserting in said paragraph (a) of said proposed section 13B of said chapter 90 after the word "to", in line 88, the following word;- "manually"; and, in said section 6, by inserting in said paragraph (a) of said proposed section 13B of said chapter 90 after the word "vehicle", in line 89, the following words:- "unless using a voice-operated device". The amendment was **adopted**.

Mr. Baddour in the Chair, Ms. Creem moves to amend the bill by striking out section 3 and inserting in place thereof the following section:-

"SECTION 3. Said chapter 90 of the General Laws is hereby amended by inserting after section 8 the following section:-

Section 8½. (a) For purposes of this section 'hands-free mobile telephone' means a hand-held mobile telephone that has an internal feature or function, or that is equipped with a hands-free accessory, whether or not permanently part of such hand-held mobile telephone, by which a user engages in a call without the use of either hand, whether or not the use of either hand is necessary to activate, deactivate or initiate a telephone call.

No person under 18 years of age shall use a mobile telephone or hands-free mobile telephone while operating a motor vehicle on any public way. For the purposes of this section, a junior operator shall not be considered to be operating a motor vehicle if the vehicle is stationary and not located in a part of the public way intended for travel.

A junior operator who violates this section shall be punished by a fine of \$100 and shall have his license or permit suspended for 180 days for a first offense, by a fine of \$250 and shall have his license or permit suspended for 1 year for a second offense, and by a fine of \$500 and shall have his license or permit suspended for 1 year for a third or subsequent offense.

It shall be an affirmative defense for a junior operator to produce documentary or other evidence that the use of a mobile telephone that is the basis of the alleged violation was made for emergency purposes. For the purpose of this section, an emergency shall mean that the junior operator needed to communicate with another to report any of the following: (i) that the motor vehicle was disabled; (ii) that medical attention or assistance was required; (iii) that police intervention was necessary for the personal safety of the operator or a passenger; or (iv) the presence of a disabled vehicle or an accident in the public way. The provisions of this subsection shall be enforced by law enforcement agencies only when an operator of a motor vehicle has been stopped for a violation of the motor vehicle laws or some other offense. A penalty under this section shall not be a surchargeable offense under section 113B of chapter 175."

The amendment was **adopted**.

Ms. Creem and Mr. Montigny moved that the bill be amended in section 3, by striking out the first sentence of the last paragraph.

The amendment was **adopted**.

Mr. Panagiotakos moves to amend the bill in section 3 by striking out the third paragraph of proposed section 8 ½ and inserting in place thereof the following paragraph:-

“A junior operator who violates the preceding paragraph shall be punished by a fine of \$100 and shall have his license or permit suspended for 60 days for a first offense and shall not be eligible for license reinstatement until he also completes a program selected by the registrar that encourages attitudinal changes in young drivers, by a fine of \$250 and shall have his license or permit suspended for 180 days for a second offense, and by a fine of \$500 and shall have his license or permit suspended for 1 year for a third or subsequent offense.”;

In section 4 by adding, after the word “test” in the third sentence of subsection (b) in proposed section 8M of chapter 90 the following words:- “which shall include, but not be limited to, contrast sensitivity testing”;

In said section 4 by striking out the last paragraph and inserting in place thereof the following paragraph:-

“With respect to any person whose license to operate a motor vehicle is not renewed pursuant to this section, the registrar shall provide an identification card as provided for in section 8E.”;

In section 8, by striking out proposed subsection (b) of proposed section 22I of chapter 90, and inserting in place thereof the following:-

“(b) If a health care provider acting in the health care provider’s professional capacity or law enforcement officer has good cause to believe that an operator is not physically or medically capable of safely operating a motor vehicle, the provider or officer may make a report to the registrar, requesting medical evaluation, as the registrar may prescribe, provided that such report is not made solely on the basis of age. The report shall state the provider’s or officer’s good faith belief that the operator cannot safely operate a motor vehicle. In making such report to the registrar, a health care provider shall disclose the medical information underlying his good faith belief in his report to the registrar. The good faith belief shall be based upon personal observation, physical evidence, or, in the case of a law enforcement officer, an investigation, which shall be described in the report.

A health care provider or law enforcement officer who reports, in good faith, pursuant to this section shall be immune from civil liability that might otherwise result from making the report. A health care provider or law enforcement officer who does not report shall be immune from civil liability that might otherwise result from not making the report.

Upon receipt of said report, the registrar shall suspend the license of said operator. Not later than 30 days after receipt of said report the registrar shall conduct a review to determine the operator’s capacity for continued licensure to operator a motor vehicle. The registrar shall develop standards, in consultation with the medical advisory board established under section 8C, by which this will be determined.”; and by striking section 11 and inserting in place thereof the following:-

“SECTION 11. Notwithstanding any general or special law to the contrary, section 30A½ of chapter 90 of the General Laws shall not apply to section 8M of chapter 90.”

The amendment was **adopted**.

The bill, as amended, was then passed to be engrossed, in concurrence, with amendments. [For text of Senate amendments, see Senate, No. 2305, printed as amended].

Sent to the House for concurrence in the amendments.

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 consider, as follows:

The House Bill establishing a board of health in the town of Nantucket (House, No. 1895),-- **was read a third time and passed to be engrossed, in concurrence.**

PAPER FROM THE HOUSE.

A petition (accompanied by bill, House, No. 4543) of John P. Fresolo relative to providing veteran status to William S. Wood,—**was referred, in concurrence, under suspension of Joint Rule 12, to the committee on Veterans and Federal Affairs.**

Order adopted.

On motion of Mr. Knapik,—

Ordered, That when the Senate adjourns today, it adjourn to meet again on Thursday next at one o'clock P.M., in a full formal session.

Adjournment in Memory of Britney Kathleen Gengel

The Senator from Worcester, Hampden, Hampshire and Franklin, Mr. Brewer, requested that when the Senate adjourns today, it adjourn in memory of Britney Kathleen Gengel of Rutland.

Britney Gengel, daughter of Leonard and Cherylann and loving sister to Bernard and Richard Gengel passed away on Tuesday, January 12, 2010 in the Hotel Montana in Port-au-Prince, Haiti following the nation's devastating earthquake. Britney was a bright, intelligent and compassionate 19 year old who was committed to helping others. While a student at Lynn University in Florida, Britney made the life changing decision to visit Haiti on a "Journey of Hope" to feed the poor, aid the sick and comfort the hurting. Britney will long be remembered for her kind spirit and as someone who cherished spending time with her family and friends above all else. Her favorite word was "fabulous" and so was she.

Accordingly, as a mark of respect to the memory of Britney Kathleen Gengel, at nineteen minutes before six o'clock P.M., on motion of Mr. Knapik, the Senate adjourned to meet again on Thursday at one o'clock P.M.