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UNCORRECTED PROOF OF THE JOURNAL OF THE SENATE.



JOURNAL OF THE SENATE.

Thursday, February 2, 2012.

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

Communication.

A communication from John Auerbach, Commissioner of the Department of Public Health, submitting notice of a proposed fee change for vending machines (received Wednesday, February 1, 2012),-- **was placed on file.**

Report.

A report of the Bristol County Registry of Deeds (under the provisions of Section 4 of Chapter 4 of the Acts of 2003) submitting its plan for expenditure from the County Registers Technological Fund (copies will be forwarded as required to the Senate Committees on Ways and Means and Post Audit and Oversight) (received February 2, 2012),-- **was placed on file.**

Petition.

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

Petition (subject to Joint Rule 12) of Therese Murray, David Vieira, Susan Williams Gifford and Randy Hunt for legislation to authorize a lease of a certain parcel of land under the control of the Department of Fish and Game to the Bourne Water District for water distribution purposes;

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

Reports of Committees.

By Mr. Petruccelli, for the committee on Financial Services, on Senate, No. 411 and House, No. 1201, a Bill to establish standards for long term care insurance (Senate, No. 411); and

By the same Senator, for the same committee, on petition, a Bill reforming insurance prescription fee practices (Senate, No. 455);
Severally referred, under Joint Rule 1E, to the committee on Health Care Financing.

By Mr. Pacheco, for the committee on Environment, Natural Resources and Agriculture, on petition, a Bill establishing a Horseneck Beach Reservation Trust Fund (Senate, No. 376);

By Mr. Wolf, for the committee on Labor and Workforce Development, on petition, a Bill relative to the state wildfire team (Senate, No. 913);

By the same Senator, for the same committee, on petition, a Bill relative to protections for on-call volunteers (Senate, No. 941);

By the same Senator, for the same committee, on petition, a Bill establishing a Commonwealth citizen service initiative (Senate, No. 946);

By the same Senator, for the same committee, on petition, a Bill regarding protections extended to lay teachers in parochial schools (Senate, No. 961);

By the same Senator, for the same committee, on petition, a Bill relative to displaced workers (Senate, No. 969);

By the same Senator, for the same committee, on petition, a Bill relative to labor relations and representational elections (Senate, No. 970); and

By Mr. Brownsberger, for the committee on Public Service, on petition, a Bill establishing a sick leave bank for Michael Foti, an employee of the Department of Correction (Senate, No. 2088);

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

PAPERS FROM THE HOUSE.

A Bill relative to compensated absences in cities and towns (House, No. 3666,-- on House, No. 1441),-- **was read and, under Senate Rule 26, referred to the committee on Ethics and Rules.**

A Bill authorizing the appointment of special police officers in the town of Watertown (House, No. 3434,-- on petition) [Local approval received],-- **was 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 (Ms. Spilka) declared a recess subject to the call of the Chair; and, at nineteen minutes before two o'clock P.M., the Senate reassembled, the President in the Chair

The President, members, guests and staff 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. Ross) "in recognition of Walter Boyd Stitt III for his 35 years of dedicated service to the Attleboro Public Library."

PAPERS FROM THE HOUSE.

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

Petition (accompanied by bill, House, No. 3921) of Ronald Mariano and others relative to encouraging volunteerism for non-profit organizations providing transportation options for seniors;

Under suspension of Joint Rule 12, to the committee on Financial Services.

Petition (accompanied by bill, House, No. 3922) of Ronald Mariano and others relative to removing barriers for non-profit organizations providing transportation options to seniors;

Under suspension of Joint Rule 12, to the committee on Public Safety and Homeland Security.

Engrossed Bills.

The following engrossed bills (both of which originated in the House), 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 Governor for his approbation, to wit:

Relative to town meeting warrants in the town of Templeton (see House, No. 3460); and

Authorizing the town of Lincoln to place a certain question on the ballot relative to the sale of all alcoholic beverages to be drunk on the premises (see House, No. 3827).

Report of Committees.

By Mr. Berry, for the committees on Rules of the two branches, acting concurrently, that Joint Rule 12 be suspended on the Senate petition of John F. Keenan for legislation relative to the recording the assignment of mortgages;

The rules were suspended, on motion of Mr. Hart, and the report was considered forthwith. Joint Rule 12 was suspended; and the petition (accompanied by bill) was referred to the committee on the Judiciary.

Sent to the house for concurrence.

Matters Taken Out of the Notice Section of the Calendar.

There being no objection, the following matters were taken out of the Notice Section of the Calendar and considered as follows:

The Senate Bill authorizing the town of Kingston to install, finance and operate wind energy facilities (Senate, No. 1915),-- **was read a second time, ordered to a third reading, read a third time and passed to be engrossed.**

Sent to the House for concurrence.

The House Bill authorizing the town of Norton to grant easements and restrictions over certain town-owned land (House, No. 3431),-- **was read a third time and passed to be engrossed, in concurrence.**

Orders of the Day.

The Senate Bill relative to prescription drug diversion, abuse and addiction (Senate, No. 2072),-- **was read a second time.**

After remarks, and pending the question on adoption of the amendment previously recommended by the committee on Ways and Means that the pending Health Care Finance new draft (Senate, No. 2115) be amended by substituting a new draft with the same title (Senate, No. 2122) and pending the main question on ordering the bill to a third reading, Ms. Creem, Mr. Keenan and Ms. Flanagan moved that the pending amendment be amended in section 8 by inserting, at the end thereof, the following subsection:-

“(g) A person acting in good faith may receive a naloxone prescription, possess naloxone, and administer naloxone to an individual appearing to experience an opiate-related overdose.”; and by inserting, at the end thereof, the following section:-

“SECTION __. Section 19 of chapter 94C of the General Laws, as so appearing, is hereby amended by adding the following subsection:-

(d) Naloxone or other opioid antagonist may lawfully be prescribed and dispensed to a person at risk of experiencing an opiate-related overdose or a family member, friend or other person in a position to assist a person at risk of experiencing an opiate-related overdose. For purposes of this chapter and chapter 112, any such prescription shall be regarded as being issued for a legitimate medical purpose in the usual course of professional practice.”

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

Mr. Wolf moved that the bill be amended by inserting the following new section:-

“Section X. The commissioner of public health pursuant to the provisions of section 2 (a1/2) of chapter 94C of the General Laws, not later than January 1, 2013, shall reschedule the controlled substance hydrocodone combination product <15 mg/du (DEA Number 9806) from Schedule III to Schedule II.”

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

Ms. Flanagan, Ms. Chandler and Messrs. Richard T. Moore, Knapik and Tarr moved that the bill be amended in section 18, by striking out, in line 141, the figure “9” and inserting in place thereof the following figure:- “14”; in said section 18, by inserting after the word “podiatry”, in line 143, the following words: - “, the board of registration in pharmacy” ; and in said section 18, by inserting after the word “Assistants”, in line 145, the following words:- “, the Massachusetts Coalition of Nurse Practitioners, the Massachusetts Pharmacists Association, a physician specializing in pain management appointed by the commissioner of public health, an individual specializing in substance abuse counseling and therapy appointed by the bureau of substance abuse services”.

The amendment was **adopted.**

Mr. Petrucci moved that the bill be amended by inserting after section 13 the following 2 sections:-

“SECTION 13A. The first paragraph of section 14 of said chapter 283 is hereby amended by adding the following 2 sentences:- The study shall also include a cost estimate for a pilot substance abuse education program in 5 school districts that have surrounding communities with high rates of opioid drug abuse. The pilot program shall include evidence-based curricula to decrease experimentation and provide skills for using prescription drugs appropriately.

SECTION 13B. The second paragraph of said section 14 of said chapter 283 is hereby amended by striking out the words ‘December 31, 2011’ and inserting in place thereof the following words:- April 1, 2012.”; and by inserting after section 22 the following section:-

“SECTION 22A. Sections 13A and 13B shall take effect as of December 31, 2011.”

The amendment was **adopted.**

Mr. Tarr moved to amend the bill by inserting, at the end of section 6, the following new sentence:- “When promulgating these rules and regulations, the department shall also require that pharmacists be trained in the use of the prescription monitoring program as part of the continuing education requirements mandated for licensure by the Board of Registration in Pharmacy, pursuant to section 24A of chapter 112 of the General Laws.”

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

Mr. Keenan moved that the bill be amended by striking section 19 in its entirety and inserting in its place the following:

“SECTION 19: The department of public health, in collaboration with the department of correction and the Massachusetts Sheriffs Association, shall investigate and study the use of United States Food and Drug Administration-approved medication-assisted treatments, including non-narcotic, opioid antagonist therapies, for opioid-dependent offenders leaving correctional facilities and transitioning to community-based treatment programs. In conducting said study, the department of public health shall ensure access to United States Food and Drug Administration non-narcotic, opioid antagonist therapies for the participants in the same manner as access to any other United States Food and Drug Administration-approved medication-assisted treatment.

The department shall report its findings, along with its recommendations, if any, to the general court by filing the same with the clerks of the senate and house of representatives, the house and senate committees on ways and means and the joint committee on mental health and substance abuse not later than July 1, 2013.

If the department determines that the use of any United States Food and Drug Administration-approved medication-assisted treatment for opioid-dependent offenders leaving correctional facilities and transitioning to community-based treatment programs is likely to be effective in improving treatment outcomes and reducing recidivism, the department may enter into pilot programs to provide voluntary treatment for opioid-dependent offenders with sheriffs' offices that choose to participate."

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

Mr. Tarr moved that the bill be amended by inserting after section 19, the following new section:-

"SECTION 19A. The department of public health, in collaboration with the department of correction and the Massachusetts Sheriff's Association, shall investigate and study the treatment programs and services available within the state corrections system for offenders dealing with substance abuse and opioid dependency issues. The study shall focus on the accessibility and adequacy of those programs and services that currently exist within the department of corrections, and shall attempt to identify any gaps within the existing system and ways to improve upon the delivery and effectiveness of these treatment programs and services, including, but not limited to, the use of United States Food and Drug Administration-approved medication-assisted treatments. The department shall complete this study and issue a report, along with its recommendations, if any, to the general court by filing the same with the clerks of the senate and house of representatives, the house and senate committees on ways and means, and the joint committee on mental health and substance abuse not later than 180 days after the effective date of this act."

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

Mr. Ross moved to amend the bill by inserting after SECTION XX, the following:-

"SECTION XX. Notwithstanding any general or special law to the contrary, a commission shall be established to study the effectiveness of a statewide registry of persons convicted for knowingly or intentionally manufacturing, distributing, dispensing, or possessing with the intent to distribute or dispense a controlled substance as defined by section 31 of chapter 94C of the General Laws, for use by the general public. The goal of the commission shall be to review current policies and methods of tracking such convicted persons, the role of such convicted persons in other crimes, and to examine the potential impacts to public safety of a statewide registry, accessible by the public. The commission shall make a full report to the legislature with recommendations for legislation to create a registry of those convicted for knowingly or intentionally distributing or dispensing controlled substances, or improve the tracking of known persons who knowingly or intentionally distribute or dispense controlled substances. The commission shall consist of the secretary of public safety and security, or his designee; the commissioner of the department of public safety, or his designee; the superintendent of the state police, or his designee; 2 members of the house of representatives that are chosen by the speaker; the house minority leader, or designee; 2 members of the senate, chosen by the senate president; the senate minority leader, or designee; and 1 member chosen by the governor. Said commission shall determine the scope of the crime that may dictate who shall be included on the registry and what information shall be included on the registry. Said commission shall submit said report back to the legislature with findings and recommendations for legislation on or before December 31, 2012."

After debate, the question on adoption of the amendment was determined by a call of the yeas and nays, at a half past two o'clock P.M., on motion of Mr. Ross, as follows, to wit (*yeas 5 — nays 30*) [**Yeas and Nays No. 144**]:

YEAS

Finegold, Barry R. Ross, Richard J.
Hedlund, Robert L. Tarr, Bruce E. — 5.
Knapik, Michael R.

NAYS

Baddour, Steven A. Flanagan, Jennifer L.
Berry, Frederick E. Hart, John A., Jr.
Brewer, Stephen M. Jehlen, Patricia D.
Brownsberger, William N. Joyce, Brian A.
Candaras, Gale D. Keenan, John F.
Chandler, Harriette L. Kennedy, Thomas P.
Chang-Diaz, Sonia Montigny, Mark C.
Clark, Katherine M. Moore, Richard T.
Creem, Cynthia Stone Pacheco, Marc R.
DiDomenico, Sal N. Petrucci, Anthony
Donnelly, Kenneth J. Rodrigues, Michael J.
Donoghue, Eileen M. Rush, Michael F.
Downing, Benjamin B. Spilka, Karen E.
Eldridge, James B. Welch, James T.
Fargo, Susan C. Wolf, Daniel A. — 30.

ABSENT OR NOT VOTING

McGee, Thomas M. Rosenberg, Stanley C.
Moore, Michael O. Timilty, James E. — 4.

The yeas and nays having been completed at twenty-six minutes before three o'clock P.M., the amendment was *rejected*.

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

“SECTION XX. Section 24A of chapter 94C of the General Laws is hereby amended by inserting after subsection (d) the following paragraph:-

Each pharmacy that delivers a schedule II to V, inclusive, controlled substance or a substance classified as an additional drug by the department to the ultimate user, and each practitioner that is required by law to register as a participant in the prescription monitoring program established in section 24A and utilize said program shall notify customers and patients of said customers' and patients' involvement in said program by providing them with a privacy notice. Said privacy notice shall be provided: (a) at the time of the pharmacy's delivery of the schedule II to V, inclusive, controlled substance or substance classified as an additional drug by the department to the ultimate user, (b) at the time practitioners are required by law to utilize the prescription monitoring program. The department shall create and distribute copies of the privacy notice to all pharmacies and registered participants in the prescription monitoring program. Said privacy notice shall inform customers and patients of: (a) said customers' and patients' inclusion in the prescription monitoring program, (b) the type of information stored in the prescription monitoring program database, (c) the section in the General Laws that mandates said customers' and patients' involvement in the prescription monitoring program.”

After debate, the amendment was *rejected*.

Mr. Tarr moved that the bill be amended by inserting after the first sentence in section 6 the following new sentence:- “The department shall also have the authority to require participants to utilize the prescription monitoring program prior to the issuance to a patient for the first time of benzodiazepines or any other Schedule IV or V commonly abused prescription drug that may lead to physical or psychological dependence or that patients with a history of substance dependence have been shown to experience significant addictive symptoms.”; by inserting in section 6, at the end thereof, the following sentence:- “The department shall also study the feasibility and value of expanding the prescription monitoring program to include Schedule VI prescription drugs.”; and by inserting in section 18 after the word “opioid” in lines 139 and 152, the following words:- “and other harmful commonly abused prescription drug, as determined by the commissioner of the department of public health,”.

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

Ms. Flanagan moved that the bill be amended by inserting the following new section:-

“SECTION XX. Section 18 of chapter 94C of the General Laws, as so appearing, is hereby amended by striking out, in line 36, the word ‘controlled’ and inserting in place thereof the word: - ‘non-narcotic’.; and by adding a new section in line 66:-

“(d½) A prescription for a narcotic substance contained in Schedule II of section three may also be issued by a physician who is licensed to practice medicine and registered in a contiguous state where he resides or practices, if required, and registered under federal law to write prescriptions. A registered pharmacist filling a prescription under the provisions of this paragraph shall determine, in accordance with professional standards and personal judgment, that such prescription is authentic and valid; and shall verify such prescription by telephone or other means. A pharmacist shall not fill a prescription for which said verification cannot be obtained. A pharmacist shall not be held liable for refusing to fill such prescription for which said verification cannot be obtained; provided, however, that documented good faith efforts were made to determine the authenticity and validity of such prescription. This paragraph is only for the purpose of authorizing the filling of prescriptions within the commonwealth, issued within the preceding five days, and shall not authorize such practitioner to possess, administer or dispense controlled substances as provided in section nine, or to practice medicine within the commonwealth. Any prescription issued under the provisions of this paragraph shall be issued in the manner prescribed in section twenty-two and all relevant provisions of this chapter shall apply to such practitioner and prescription. In the case of any prescription for a Schedule II substance filled under the provisions of this paragraph, a pharmacist filling such prescription shall within thirty days after the filling of such prescription deliver to the department a copy of each such Schedule II prescription; provided, however, that such copy shall not include the name and address of the patient for whom the prescription is issued and that such copy and the information contained thereon shall not be deemed to be public record within the meaning of section seven of chapter four and shall be subject to the restrictions set forth in section two of chapter sixty-six A. Nothing contained in this section shall be deemed to authorize any mail order pharmacies.”

Pending the question on adoption of the amendment, Mr. Tarr moved that the amendment (Flanagan) be amended by inserting at the end thereof the following new section:-

“Section XX: The Commissioner of Public Health or his or her designee shall work with a nationally recognized entity specializing in prescription monitoring programs to establish interstate compacts between the commonwealth and other states that have programs and those states that do not to securely share prescription data to improve public health and safety.”

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

The pending amendment (Flanagan), as amended (Tarr), was then **adopted**.

Mr. Brewer moved to amend the bill in section 9, by inserting after the word “physician”, the following words:-“, nurse practitioner.

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

The Ways and Means amendment was then adopted, as amended.

The bill (Senate, No. 2122, amended) was then substituted for the pending Health Care Financing new draft (Senate, No. 2115); and then substituted for the original bill (Senate, No. 2072).

The bill (Senate, No. 2122, amended) was then ordered to a third reading and read a third time.

After remarks, the question passing the bill to be engrossed was determined by a call of the yeas and nays, at eight minutes past three o'clock P.M., on motion of Mr. Keenan, as follows, to wit (*yeas 36 — nays 0*) **[Yeas and Nays No. 145]:**

YEAS

Baddour, Steven A. Hedlund, Robert L.
Berry, Frederick E. Jehlen, Patricia D.
Brewer, Stephen M. Joyce, Brian A.
Brownsberger, William N. Keenan, John F.
Candaras, Gale D. Kennedy, Thomas P.
Chandler, Harriette L. Knapik, Michael R.
Chang-Diaz, Sonia Montigny, Mark C.
Clark, Katherine M. Moore, Richard T.
Creem, Cynthia Stone Murray, Therese
DiDomenico, Sal N. Pacheco, Marc R.
Donnelly, Kenneth J. Petruccelli, Anthony
Donoghue, Eileen M. Rodrigues, Michael J.
Downing, Benjamin B. Ross, Richard J.
Eldridge, James B. Rush, Michael F.
Fargo, Susan C. Spilka, Karen E.
Finegold, Barry R. Tarr, Bruce E.
Flanagan, Jennifer L. Welch, James T.
Hart, John A., Jr. Wolf, Daniel A. — 36.

NAYS — 0.

ABSENT OR NOT VOTING

McGee, Thomas M.. Rosenberg, Stanley C.
Moore, Michael O. Timilty, James E. — 4.

**The yeas and nays having been completed at ten minutes past three o'clock P.M., the bill was passed to be engrossed [For text of bill, printed as amended, see Senate, No. 2125].
Sent to the House for concurrence.**

Report of Committees.

By Mr. Berry, for the committees on Rules of the two branches, acting concurrently, that Joint Rule 12 be suspended on the Senate petition of Therese Murray, David Vieira, Susan Williams Gifford and Randy Hunt for legislation to authorize a lease of a certain parcel of land under the control of the Department of Fish and Game to the Bourne Water District for water distribution purposes.

The rules were suspended, on motion of Mr. Hedlund, and the report was considered forthwith. Joint Rule 12 was suspended; and the petition (accompanied by bill) was referred to the committee on State Administration and Regulatory Oversight.

Sent to the House for concurrence.

PAPER FROM THE HOUSE.

Engrossed Bill.

An engrossed Bill relative to the granting of club and special licenses for the sale of alcoholic beverages in the town of Weston (see House, No. 3459) (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 and signed by the President and laid before the Governor for his approbation.

Order Adopted.

On motion of Mr. Hart,--

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.

Moment of Silence.

At the request of the President, the members, guests and staff stood in a moment of silence and reflection to the memory of Kelly A. Timilty.

Adjournment in Memory of Kelly A. Timilty

The Senator from Berkshire, Hampshire and Franklin, Mr. Downing, moved that when the Senate adjourns today, it adjourn in memory of Governor's Councillor Kelly Timilty.

Kelly was born on October 14, 1962. She grew up in Mattapan. She attended St. Gregory's Grammar School in Dorchester, Newton Country Day School of the Sacred Heart and the University of Maryland. She worked on Capitol Hill on the staff of the late Congressman Joseph Moakley of South Boston. She first ran for the Governor's Council in 1994 and served with five governors.

She was a devoted wife to Jim Mandeville, daughter to Joe and Elaine, sister to six: Joseph, Kara, Patrick, Jim, Greg and Bart and aunt to 5 nieces and 2 nephews.

"Kelly's passions in life were two; family and public service, and she was fiercely committed to both" said her brother Greg. "She was a dedicated and thoughtful public servant and clearly a passion for politics was part of her life's blood as our father's daughter. She was honored to serve on the Governor's Council alongside five different governors. Her other great passion was family. As the oldest of seven, she nurtured each of us and delighted in doting on her 5 nieces and 2 nephews."

Accordingly, as a mark of respect to the memory of Kelly Timilty, at fourteen minutes past three o'clock P.M., on motion of Mr. Baddour, the Senate adjourned to meet again on Monday next at eleven o'clock A.M.