

# Journal of the House

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Wednesday, April 29, 2015

At one o'clock in the afternoon the Speaker called the House to order.

## Devotional Exercises

Devotional exercises were conducted by The State House Singers.

## House Bills Introduced

House bills of the following titles were severally introduced, read the first time and referred to committee or placed on the Calendar as follows:

### H. 505

By Reps. Corcoran of Bennington and Fields of Bennington,  
House bill, entitled

An act relating to approval of amendments to the charter of the Village of North Bennington;

To the committee on Government Operations.

### H. 506

By Reps. Emmons of Springfield, Forguites of Springfield and Dakin of Chester,

House bill, entitled

An act relating to clarification of municipal property lien for unsafe structures;

To the committee on Government Operations.

## Bills Referred to Committee on Ways and Means

House bills of the following titles, appearing on the Calendar, affecting the revenue of the state, under the rule, were referred to the Committee on Ways and Means:

### H. 355

House bill, entitled

An act relating to licensing and regulating foresters

**S. 138**

Senate bill, entitled

An act relating to promoting economic development

**Joint Resolution Adopted in Concurrence****J.R.S. 26**

By Senators Baruth and Benning,

**J.R.S. 26.** Joint resolution relating to weekend adjournment.

***Resolved by the Senate and House of Representatives:***

That when the two Houses adjourn on Friday, May 1, 2015, it be to meet again no later than Tuesday, May 5, 2015.

Was taken up read and adopted in concurrence.

**Committee Relieved of Consideration  
and Bill Committed to Other Committee****H. 378**

**Rep. Head of South Burlington** moved that the committee on General, Housing & Military Affairs be relieved of House bill, entitled

An act relating to independent contractors

And that the bill be committed to the committee on Commerce & Economic Development, which was agreed to.

**Bill Read Second Time; Consideration Interrupted by Recess****S. 108**

**Rep. Haas of Rochester**, for the committee on Human Services, to which had been referred Senate bill, entitled

An act relating to repealing the sunset on provisions pertaining to patient choice at end of life

Reported in favor of its passage in concurrence with proposal of amendment as follows:

By adding a new section to be Sec. 2 to read as follows:

Sec. 2. 18 V.S.A. § 5293 is added to read:

§ 5293. REPORTING REQUIREMENTS

(a) The Department of Health shall adopt rules pursuant to 3 V.S.A. chapter 25 to facilitate the collection of information regarding compliance with this chapter, including querying the Vermont Prescription Monitoring System to identify patients who filled prescriptions written pursuant to this chapter. Except as otherwise required by law, information regarding compliance shall be confidential and shall be exempt from public inspection and copying under the Public Records Act.

(b) Beginning in 2018, the Department of Health shall generate and make available to the public a biennial statistical report of the information collected pursuant to subsection (a) of this section, as long as releasing the information complies with the federal Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

and by renumbering the existing Sec. 2, effective date, to be Sec. 3

and that when so amended the bill ought to pass.

The bill, having appeared on the Calendar one day for notice, was taken up and read the second time.

Pending the question, Shall the House propose to the Senate to amend the bill as recommended by the committee on Human Services? **Rep. Poirier of Barre City** moved to amend the recommendation of proposal of amendment of the committee on Human Services as follows:

By striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. REPEAL

18 V.S.A. chapter 113 (patient choice at end of life) is repealed.

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2015.

Pending the question, Shall the House propose to the Senate to amend the bill as recommended by the committee on Human Services? **Rep. Poirier of Barre City** demanded the Yeas and Nays, which demand was sustained by the Constitutional number.

### Recess

At two o'clock and eight minutes in the afternoon, the Speaker declared a recess until the fall of the gavel.

At two o'clock and forty-seven minutes in the afternoon, the Speaker called the House to order.

**Consideration Resumed; Proposal of Amendment Agreed to  
and Third Reading Ordered**

**S. 108**

Consideration resumed on Senate bill, entitled

An act relating to repealing the sunset on provisions pertaining to patient choice at end of life;

The Clerk proceeded to call the roll and the question, Shall the report of the Committee on Human Services be amended as proposed by Rep. Poirier of Barre City? was decided in the negative. Yeas, 60. Nays, 83.

Those who voted in the affirmative are:

Bancroft of Westford	Fiske of Enosburgh	Morrissey of Bennington
Baser of Bristol	Forguites of Springfield	Myers of Essex
Batchelor of Derby	Gage of Rutland City	Parent of St. Albans City
Beck of St. Johnsbury	Gamache of Swanton	Pearce of Richford
Beyor of Highgate	Graham of Williamstown	Poirier of Barre City
Bissonnette of Winooski	Hebert of Vernon	Potter of Clarendon
Branagan of Georgia	Helm of Fair Haven	Quimby of Concord
Brennan of Colchester	Higley of Lowell	Russell of Rutland City
Browning of Arlington	Hubert of Milton	Scheuermann of Stowe
Canfield of Fair Haven	Juskiewicz of Cambridge	Shaw of Pittsford
Christie of Hartford	Keenan of St. Albans City	Smith of New Haven
Connor of Fairfield	LaClair of Barre Town	Strong of Albany
Corcoran of Bennington	Lanpher of Vergennes	Tate of Mendon
Cupoli of Rutland City	Lawrence of Lyndon	Terenzini of Rutland Town
Dame of Essex	Lewis of Berlin	Turner of Milton
Devereux of Mount Holly	Marcotte of Coventry	Van Wyck of Ferrisburgh
Dickinson of St. Albans Town	Martel of Waterford *	Viens of Newport City
Donahue of Northfield	Martin of Wolcott	Willhoit of St. Johnsbury *
Evans of Essex	McCormack of Burlington	Wright of Burlington
Fagan of Rutland City	McCoy of Poultney	
	McFaun of Barre Town	

Those who voted in the negative are:

Ancel of Calais	Cole of Burlington	Ellis of Waterbury
Bartholomew of Hartland	Condon of Colchester	Emmons of Springfield
Berry of Manchester	Conquest of Newbury	Feltus of Lyndon
Botzow of Pownal	Copeland-Hanzas of Bradford	Fields of Bennington
Briglin of Thetford	Dakin of Chester	Frank of Underhill
Burke of Brattleboro	Dakin of Colchester	French of Randolph
Buxton of Tunbridge	Davis of Washington	Gonzalez of Winooski
Carr of Brandon	Deen of Westminster	Grad of Moretown
Chesnut-Tangerman of Middletown Springs	Donovan of Burlington	Greshin of Warren
Clarkson of Woodstock	Eastman of Orwell	Haas of Rochester
		Head of South Burlington

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Hooper of Montpelier	McCullough of Williston	Sibilia of Dover
Jerman of Essex	Miller of Shaftsbury	Stevens of Waterbury
Jewett of Ripton	Morris of Bennington	Stuart of Brattleboro
Johnson of South Hero	Mrowicki of Putney *	Sullivan of Burlington
Kitzmiller of Montpelier	Murphy of Fairfax	Sweaney of Windsor
Klein of East Montpelier	Nuovo of Middlebury	Till of Jericho
Komline of Dorset	O'Brien of Richmond	Toleno of Brattleboro
Krebs of South Hero	Olsen of Londonderry	Toll of Danville
Krowinski of Burlington	O'Sullivan of Burlington	Townsend of South Burlington
Lalonde of South Burlington	Partridge of Windham	Trieber of Rockingham
Lefebvre of Newark	Patt of Worcester	Troiano of Stannard
Lenes of Shelburne	Pearson of Burlington	Walz of Barre City
Lippert of Hinesburg	Pugh of South Burlington	Webb of Shelburne
Long of Newfane	Rachelson of Burlington	Woodward of Johnson
Lucke of Hartford	Ram of Burlington	Yantachka of Charlotte
Macaig of Williston	Ryerson of Randolph	Zagar of Barnard
Manwaring of Wilmington	Sharpe of Bristol	
Masland of Thetford	Sheldon of Middlebury	

Those members absent with leave of the House and not voting are:

Burditt of West Rutland	Purvis of Colchester	Shaw of Derby
Huntley of Cavendish	Savage of Swanton	Young of Glover

**Rep. Martel of Waterford** explained her vote as follows:

“Mr. Speaker:

As a first year legislator I am truly amazed how much we rule and mandate our fellow Vermonters. One week we want to prevent suicide – two weeks later we want to promote suicide. Yes, people should have the right to do as they choose – just keep that in mind the next time we vote to take a choice away.”

**Rep. Mrowicki of Putney** explained his vote as follows:

“Mr. Speaker:

I voted against this amendment to prevent government intrusion into this very private decision and to affirm the right of patient choice at end of life.”

**Rep. Wilhoit of St. Johnsbury** explained his vote as follows:

“Mr. Speaker:

I voted to repeal Act 39 because we are left with too many unanswered questions, and still too little protections for Vermont’s most vulnerable.”

Thereupon, the recommendation of proposal of amendment offered by the committee on Human Services was agreed to and third reading was ordered.

**Senate Proposal of Amendment Concurred in  
With a Further Amendment Thereto**

**H. 105**

The Senate proposed to the House to amend House bill, entitled

An act relating to disclosure of sexually explicit images without consent

By striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 13 V.S.A. § 2605 is amended to read:

§ 2605. VOYEURISM

(a) As used in this section:

\* \* \*

(6) “Sexual conduct” shall have the same meaning as in section 2821 of this title.

(7) “Surveillance” means secret observation of the activities of another person for the purpose of spying upon and invading the privacy of the person.

~~(7)~~(8) “View” means the intentional looking upon another person for more than a brief period of time, in other than a casual or cursory manner, with the unaided eye or a device designed or intended to improve visual acuity.

\* \* \*

(e) No person shall intentionally photograph, film, or record in any format a person without that person’s knowledge and consent while that person is in a place where a person has a reasonable expectation of privacy and that person is engaged in a sexual act as defined in section 3251 of this title conduct.

\* \* \*

Sec. 2. 13 V.S.A. § 2606 is added to read:

§ 2606. DISCLOSURE OF SEXUALLY EXPLICIT IMAGES WITHOUT CONSENT

(a) As used in this section:

(1) “Disclose” includes transfer, publish, distribute, exhibit, or reproduce.

(2) “Harm” means physical injury, financial injury, or serious emotional distress.

(3) "Nude" means any one or more of the following uncovered parts of the human body:

(A) genitals;

(B) pubic area;

(C) anus; or

(D) post-pubescent female nipple.

(4) "Sexual conduct" shall have the same meaning as in section 2821 of this title.

(5) "Visual image" includes a photograph, film, videotape, recording, or digital reproduction.

(b)(1) A person violates this section if he or she knowingly discloses a visual image of an identifiable person who is nude or who is engaged in sexual conduct, without his or her consent, with the intent to harm, harass, intimidate, threaten, or coerce the person depicted, and the disclosure would cause a reasonable person to suffer harm. A person may be identifiable from the image itself or information offered in connection with the image. Consent to recording of the visual image does not, by itself, constitute consent for disclosure of the image. A person who violates this subdivision (1) shall be imprisoned not more than two years or fined not more than \$2,000.00, or both.

(2) A person who violates subdivision (1) of this subsection with the intent of disclosing the image for financial profit and causes harm to the person depicted shall be imprisoned not more than five years or fined not more than \$10,000.00, or both.

(c) A person who maintains an Internet website, online service, online application, or mobile application that contains a visual image of an identifiable person who is nude or who is engaged in sexual conduct shall not solicit or accept a fee or other consideration to remove, delete, correct, modify, or refrain from posting or disclosing the visual image if requested by the depicted person.

(d) This section shall not apply to:

(1) Images involving voluntary nudity or sexual conduct in public or commercial settings or in a place where a person does not have a reasonable expectation of privacy.

(2) Disclosures made in the public interest, including the reporting of unlawful conduct, or lawful and common practices of law enforcement, criminal reporting, corrections, legal proceedings, or medical treatment.

(3) Disclosures of materials that constitute a matter of public concern.

(4) Interactive computer services, as defined in 47 U.S.C. § 230(f)(2), or information services or telecommunications services, as defined in 47 U.S.C. § 153, for content solely provided by another person. This subdivision shall not preclude other remedies available at law.

(e)(1) A plaintiff shall have a private cause of action against a defendant who knowingly discloses, without the plaintiff's consent, an identifiable visual image of the plaintiff while he or she is nude or engaged in sexual conduct and the disclosure causes the plaintiff harm.

(2) In addition to any other relief available at law, the Court may order equitable relief, including a temporary restraining order, a preliminary injunction, or a permanent injunction ordering the defendant to cease display or disclosure of the image. The Court may grant injunctive relief maintaining the confidentiality of a plaintiff using a pseudonym.

Sec. 3. 9 V.S.A. chapter 117 is redesignated to read:

#### CHAPTER 117. INTERNET SALES COMMERCE

Sec. 4. 9 V.S.A. § 4191 is added to read:

#### § 4191. REMOVAL OF BOOKING PHOTOGRAPHS FROM THE INTERNET; FEES PROHIBITED

(a) As used in this section, "booking photograph" means any photograph taken by a law enforcement office or other authorized person pursuant to 20 V.S.A. chapter 117.

(b) A person who posts or otherwise disseminates a booking photograph on the Internet shall not solicit or accept a fee or other consideration to remove, delete, correct, modify, or refrain from posting or disseminating the booking photograph if requested by the depicted person.

(c) A person who violates subsection (b) of this section shall be assessed a civil penalty of not more than \$1,000.00 for the first violation and not more than \$2,500.00 for each subsequent violation.

(d) A person who sustains damages or injury as a result of a violation of this section may bring an action in Superior Court for damages, injunctive relief, punitive damages in the case of a willful violation, and reasonable costs and attorney's fees. The Court may issue an award for the person's actual damages or \$500.00 for a first violation, or \$1,000.00 for each subsequent violation, whichever is greater. This subsection shall not limit any other



claims a person who sustains damages or injury as a result of a violation of this section may have under applicable law.

(e) This section shall not be construed to limit a person's liability under any other law.

Sec. 5. 4 V.S.A. § 1102 is amended to read:

§ 1102. JUDICIAL BUREAU; JURISDICTION

\* \* \*

(b) The Judicial Bureau shall have jurisdiction of the following matters:

\* \* \*

(26) Violations of 9 V.S.A. § 4191 relating to the solicitation or acceptance of a fee to remove a booking photograph from the Internet.

\* \* \*

Sec. 6. 20 V.S.A. § 2358(b)(1) and (2), as amended by 2014 Acts and Resolves No. 141, Sec. 5, are amended to read:

(1) Level I certification.

(A) An applicant for certification as a Level I law enforcement officer shall first complete an off-site training program prior to entering and completing Level I basic training. Level I basic training shall include training to react to the circumstances described in subdivision (B) of this subdivision (1).

(B)(i) The scope of practice of a Level I law enforcement officer shall be limited to security, transport, vehicle escorts, and traffic control, as those terms are defined by the Council by rule, except that a Level I officer may react in the following circumstances if the officer determines that it is necessary to do any of the following:

(I) protect an individual in the presence of the officer from the imminent infliction of serious bodily injury;

(II) provide immediate assistance to an individual who has suffered or is threatened with serious bodily injury;

(III) detain or arrest an individual ~~whom~~ who the officer reasonably believes has committed a crime in the presence of the officer; or

(IV) detain or arrest an individual ~~whom~~ who the officer reasonably believes has committed a felony under Vermont law.

(ii) If a Level I officer reacts to any of the circumstances described in subdivision (i) of this subdivision (B), he or she shall call upon an officer certified to respond and assume law enforcement authority over the incident.

(2) Level II certification.

(A) An applicant for certification as a Level II law enforcement officer shall first complete Level II basic training and may then become certified in a specialized practice area as set forth in subdivision (B)(ii) of this subdivision (2). Level II basic training shall include training to respond to calls regarding alleged crimes in progress and to react to the circumstances described in subdivision (B)(iii) of this subdivision (2).

(B)(i) Except as provided in subdivisions (ii) and (iii) of this subdivision (B), the scope of practice of a Level II law enforcement officer shall be limited to investigating the following matters:

(I) 7 V.S.A. § 658 (sale or furnishing to minors; enabling consumption by minors);

(II) 13 V.S.A. chapter 7 (advertisements);

~~(H)~~(III) 13 V.S.A. chapter 8 (humane and proper treatment of animals);

(IV) 13 V.S.A. §§ 505 (fourth degree arson), 508 (setting fires), and 509 (attempts);

~~(H)~~(V) 13 V.S.A. chapter 19, subchapter 1 (riots);

~~(IV)~~(VI) 13 V.S.A. §§ 1022 (noise in the nighttime), 1023 (simple assault), 1025 (recklessly endangering another person), 1026 (disorderly conduct), ~~and~~ 1027 (disturbing peace by use of telephone or other electronic communications), 1030 (violation of an abuse prevention order, an order against stalking or sexual assault, or a protective order concerning contact with a child), 1031 (interference with access to emergency services), 1042 (domestic assault), and 1062 (stalking);

~~(V)~~(VII) 13 V.S.A. chapter 35 (escape);

~~(IV)~~(VIII) 13 V.S.A. chapter 41 (false alarms and reports);

~~(VII)~~(IX) 13 V.S.A. chapter 45 (flags and ensigns);

~~(VIII)~~(X) 13 V.S.A. chapter 47 (frauds);

~~(IX)~~(XI) 13 V.S.A. chapter 49 (fraud in commercial transactions);

- ~~(X)~~(XII) 13 V.S.A. chapter 51 (gambling and lotteries);
- ~~(XI)~~(XIII) 13 V.S.A. chapter 57 (larceny and embezzlement),  
except for subchapter 2 (embezzlement);
- ~~(XII)~~(XIV) 13 V.S.A. chapter 67 (public justice and public  
officers);
- ~~(XIII)~~(XV) 13 V.S.A. chapter 69 (railroads);
- ~~(XIV)~~(XVI) 13 V.S.A. chapter 77 (trees and plants);
- ~~(XV)~~(XVII) 13 V.S.A. chapter 81 (trespass and malicious  
injuries to property);
- ~~(XVI)~~(XVIII) 13 V.S.A. chapter 83 (vagrants);
- ~~(XVII)~~(XIX) 13 V.S.A. chapter 85 (weapons);
- ~~(XVIII)~~(XX) 18 V.S.A. §§ 4230(a), 4230c, and 4230d  
(marijuana possession);
- (XXI) 18 V.S.A. § 4231(a) (cocaine possession);
- (XXII) 18 V.S.A. § 4232(a) (LSD possession);
- (XXIII) 18 V.S.A. § 4233(a) (heroin possession);
- (XXIV) 18 V.S.A. § 4234(a) (depressant, stimulant, or narcotic  
drug possession);
- (XXV) 18 V.S.A. § 4234a(a) (methamphetamine possession);
- (XXVI) 18 V.S.A. § 4235(b) (hallucinogenic drug possession);
- (XXVII) 18 V.S.A. § 4235a(a) (ecstasy possession);
- (XXVIII) 18 V.S.A. § 4476 (drug paraphernalia offenses);
- (XXIX) 21 V.S.A. § 692(c)(2) (criminal violation of stop-work  
order);
- (XXX) any misdemeanor set forth in Title 23 of the Vermont  
Statutes Annotated, except for 23 V.S.A. chapter 13, subchapter 13 (drunken  
driving), 23 V.S.A. § 3207a (snowmobiling under the influence),  
23 V.S.A. § 3323 (boating under the influence), or 23 V.S.A. § 3506(b)(8)  
(operating an all-terrain vehicle under the influence);
- (XXXI) any motor vehicle accident that includes property  
damage and injuries, as permitted by the Council by rule;

~~(XXXII)~~ any matter within the jurisdiction of the Judicial Bureau as set forth in 4 V.S.A. § 1102;

~~(XIX)~~~~(XXXIII)~~ municipal ordinance violations;

~~(XX)~~~~(XXXIV)~~ any matter within the jurisdiction of a game warden or deputy game warden as set forth in 10 V.S.A. chapter 103, subchapter 4 (game wardens); and

~~(XXI)~~~~(XXXV)~~ any matter within the scope of practice of a Level I law enforcement officer.

(ii) In addition to the scope of practice permitted under subdivision (i) of this subdivision (B), a Level II law enforcement officer may also practice in additional areas approved in writing by the Council based on a special certification or training approved by the Council ~~pursuant to rules adopted by the Council.~~

(iii) Notwithstanding the limitations set forth in subdivisions (i) and (ii) of this subdivision (B), a Level II officer may respond to calls regarding alleged crimes in progress and may react in the following circumstances if the officer determines that it is necessary to do any of the following:

(I) protect an individual in the presence of the officer from the imminent infliction of serious bodily injury;

(II) provide immediate assistance to an individual who has suffered or is threatened with serious bodily injury;

(III) detain or arrest an individual ~~whom~~ who the officer reasonably believes has committed a crime in the presence of the officer; or

(IV) detain or arrest an individual ~~whom~~ who the officer reasonably believes has committed a felony under Vermont law.

(iv) If a Level II officer responds to calls regarding alleged crimes in progress or reacts to any of the circumstances described in subdivision (iii) of this subdivision (B) and that response or reaction is outside the scope of his or her scope of practice, he or she shall call upon an officer certified to respond and assume law enforcement authority over the incident.

#### Sec. 7. EFFECTIVE DATE

This act shall take effect on July 1, 2015.

**Rep. Rachelson of Burlington** moved to concur in the Senate proposal of amendment with a further amendment thereto as follows:

In Sec. 2, 13 V.S.A. § 2606, in subdivision (b)(2), by striking out “and causes harm to the person depicted”

Which was agreed to.

### **Senate Proposal of Amendment Concurred in**

#### **H. 120**

The Senate proposed to the House to amend House bill, entitled

An act relating to creating a Vermont false claims act

First: In Sec. 1, in 32 V.S.A. § 631(c)(3), by striking out the words “the false claims law” and inserting in lieu thereof the words this subchapter

Second: In Sec. 1, in 32 V.S.A. § 632(b)(3), by striking out the words “in an electronic format determined by the Attorney General” and inserting in lieu thereof the words in accordance with the Rules of Civil Procedure

Third: In Sec. 1, in 32 V.S.A. § 633(c), by striking out the words “in an electronic format determined by the Attorney General” and inserting in lieu thereof the words in accordance with the Rules of Civil Procedure

Fourth: In Sec. 1, in 32 V.S.A. § 635(a), by striking out the following: “subsection (b) of this section” where it twicely appears and inserting in lieu thereof the following: subsection 632(b) of this chapter

Fifth: In Sec. 1, in 32 V.S.A. § 636(b), after the word “administrative” by inserting the words civil money penalty

Sixth: In Sec. 1, in 32 V.S.A. § 639(a)(2), by striking out the following: “circumstances, but in no event more than 10 years after the date on which the violation is committed; whichever occurs last.” and inserting in lieu thereof the following:

circumstances, but in no event more than 10 years after the date on which the violation is committed;

whichever occurs last.

Seventh: In Sec. 1, in 32 V.S.A. § 639, by inserting a new subsection to be subsection (d) to read as follows:

(d) Notwithstanding any other general or special law, rule of procedure or rule of evidence to the contrary, a final judgment rendered in favor of the State in any criminal proceeding charging false statements or fraud, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, shall estop the defendant from denying the essential elements of the offense in any action

which involves the same transaction as in the criminal proceeding and which is brought under section 632 of this chapter.

Eighth: In Sec. 2, by striking out the catchline (effective date) and inserting in lieu thereof a new catchline to read: EFFECTIVE DATES and after the word “passage” by inserting the following: , except for 32 V.S.A. § 639(b) which shall take effect on March 15, 2016

Which proposal of amendment was considered and concurred in.

#### **Message from the Senate No. 54**

A message was received from the Senate by Mr. Marshall, its Assistant Secretary, as follows:

Mr. Speaker:

I am directed to inform the House that:

The Senate has on its part adopted joint resolution of the following title:

**J.R.S. 20.** Joint resolution relating to the Vermont Student Assistance Corporation’s lending authority.

In the adoption of which the concurrence of the House is requested.

The Senate has considered House proposal of amendment to Senate bill entitled:

**S. 115.** An act relating to expungement of convictions based on conduct that is no longer criminal.

And has refused to concur therein and asks for a Committee of Conference upon the disagreeing votes of the two Houses;

The President announced the appointment as members of such Committee on the part of the Senate:

Senator White  
Senator Nitka  
Senator Benning.

#### **Adjournment**

At four o'clock in the afternoon, on motion of **Rep. Turner of Milton**, the House adjourned until tomorrow at nine o'clock and thirty minutes in the forenoon.