

OHIO

SENATE

JOURNAL

WEDNESDAY, JUNE 15, 2005

SIXTY-FIFTH DAY
Senate Chamber, Columbus, Ohio
Wednesday, June 15, 2005, 1:30 p.m.

The Senate met pursuant to adjournment.

Prayer was offered by Rabbi Misha Zinkow, Temple Israel, Columbus, Ohio, followed by the Pledge of Allegiance to the Flag.

The journal of the last legislative day was read and approved.

**REPORTS OF REFERENCE AND BILLS FOR SECOND
CONSIDERATION**

Senator Schuring reports for the Standing Committee on Reference, recommending that the following bills, standing in order for second consideration, be referred to committee as recommended:

S. B. No. 153-Senator Wachtmann.

To enact section 5533.811 of the Revised Code to designate a bridge on State Route 108 over the Maumee River as the "Henry County Veterans Bridge."

To the Committee on Highways and Transportation.

S. B. No. 154-Senator Wachtmann.

To amend sections 1.64, 1751.01, 2305.113, 2925.02, 2925.03, 2925.11, 2925.12, 2925.14, 2925.23, 2925.36, 3327.10, 3331.02, 3719.06, 3719.81, 4723.481, 4723.50, 4729.01, 4729.51, 4730.01, 4730.02, 4730.03, 4730.05, 4730.06, 4730.07, 4730.10, 4730.11, 4730.12, 4730.16, 4730.18, 4730.19, 4730.21, 4730.22, 4730.25, 4730.26, 4730.27, 4730.28, 4730.31, 4730.32, 4730.33, 4730.34, 4731.141, and 5903.12; to amend, for the purpose of adopting new section numbers as indicated in parentheses, sections 4730.11 (4730.12), 4730.12 (4730.14), and 4730.18 (4730.15); to enact new sections 4730.11, 4730.17, and 4730.18 and sections 4730.08, 4730.081, 4730.09, 4730.091, 4730.13, 4730.20, 4730.38, 4730.39, 4730.40, 4730.401, and 4730.41 to 4730.52; and to repeal sections 4730.15 and 4730.17 of the Revised Code to revise the laws regarding the practice of physician assistants, including the establishment of physician-delegated prescriptive authority, and to modify the authority of advanced practice nurses to furnish supplies of drugs to patients.

To the Committee on Health, Human Services and Aging.

S. B. No. 155-Senators Clancy, Dann, Coughlin.

To amend section 5747.98 and to enact sections 122.85 and 5747.66 of the Revised Code to create a tax credit for individuals who invest in state-certified motion pictures.

To the Committee on Ways and Means and Economic Development.

YES - 4: J. KIRK SCHURING, JEFF JACOBSON, BILL HARRIS,
MARK MALLORY.

NO - 0.

The question being, "Shall the report of the committee be accepted?"

The report of the committee was accepted.

Said bills were considered a second time and referred to committee as recommended.

REPORTS OF STANDING AND SELECT COMMITTEES

Senator Coughlin submitted the following report:

The standing committee on State and Local Government and Veterans' Affairs, to which was referred **S. B. No. 82**-Senator Grendell, et al., having had the same under consideration, reports back a substitute bill and recommends its passage.

Co-Sponsor: Mumper.

YES - 7: LARRY A. MUMPER, DANIEL R. BRADY, TERESA
FEDOR, J. KIRK SCHURING, TOM NIEHAUS,
TIMOTHY J. GRENDSELL, KEVIN J. COUGHLIN.

NO - 2: KIMBERLY A. ZURZ, JEFFRY J. ARMBRUSTER.

The question being, "Shall the report of the committee be accepted?"

The report of the committee was accepted.

Senator Coughlin submitted the following report:

The standing committee on State and Local Government and Veterans' Affairs, to which was referred **Sub. H. B. No. 122**-Representative Wagoner, et al., having had the same under consideration, reports back a substitute bill and recommends its passage.

Co-Sponsor: Mumper.

YES - 9: LARRY A. MUMPER, DANIEL R. BRADY, TERESA FEDOR, KIMBERLY A. ZURZ, J. KIRK SCHURING, JEFFRY J. ARMBRUSTER, TOM NIEHAUS, TIMOTHY J. GRENDALL, KEVIN J. COUGHLIN.

NO - 0.

The question being, "Shall the report of the committee be accepted?"

The report of the committee was accepted.

Senator Coughlin submitted the following report:

The standing committee on State and Local Government and Veterans' Affairs, to which was referred **H. C. R. No. 9**-Representative Trakas, et al., having had the same under consideration, reports it back and recommends its adoption.

Co-Sponsors: Mumper, Grendell.

YES - 9: LARRY A. MUMPER, DANIEL R. BRADY, KIMBERLY A. ZURZ, JEFFRY J. ARMBRUSTER, TOM NIEHAUS, TIMOTHY J. GRENDALL, KEVIN J. COUGHLIN, J. KIRK SCHURING, TERESA FEDOR.

NO - 0.

The question being, "Shall the report of the committee be accepted?"

The report of the committee was accepted.

Senator Schuring submitted the following report:

Pursuant to Senate Rule No. 37, the Standing Committee on Rules recommends that **H. B. No. 185** -Representative Latta, having been referred to the Standing Committee on Finance and Financial Institutions, be re-referred to the Standing Committee on Judiciary-Criminal Justice.

YES - 10: BILL HARRIS, JEFF JACOBSON, STEPHEN C. AUSTRIA, TERESA FEDOR, RANDY GARDNER, ROBERT F. HAGAN, JAY HOTTINGER, MARK MALLORY, J. KIRK SCHURING, ROBERT F. SPADA.

NO - 0.

The question being, "Shall the report of the committee be accepted?"

The report of the committee was accepted.

Senator Schuring submitted the following report:

The standing committee on Rules to which were referred the appointments by the Governor of:

Wanda L. Carter, Democrat, from Columbus, Franklin County, Ohio, as a Member of the Ohio Higher Educational Facility Commission for a term beginning May 13, 2005 and ending at the close of business January 1, 2013, replacing Judy Baltimore, whose term expired.

Linda A. Hanaway, Republican, from Centerville, Montgomery County, Ohio, as a Member of the State Board of Career Colleges and Schools for a new term beginning March 4, 2005 and ending at the close of business November 20, 2009.

Charles M. Kramer, Democrat, from North Olmsted, Cuyahoga County, Ohio, as a Member of the State Board of Career Colleges and Schools for a new term beginning March 4, 2005 and ending at the close of business November 20, 2009.

Kenneth R. Searfoss, Republican, from Perrysburg, Wood County, Ohio, as a Member the State Board of Career Colleges and Schools for a term beginning March 4, 2005 and ending at the close of business November 20, 2006, replacing Leonard D. Kingsley, who resigned.

Having had the same under consideration, reports back the recommendation that the Senate advise and consent to said appointments.

YES - 10: BILL HARRIS, JEFF JACOBSON, RANDY GARDNER,
ROBERT F. SPADA, STEPHEN C. AUSTRIA, JAY
HOTTINGER, J. KIRK SCHURING, ROBERT F.
HAGAN, TERESA FEDOR, MARK MALLORY.

NO - 0.

The question being, "Shall the Senate advise and consent to the appointments by the Governor?"

The yeas and nays were taken and resulted - yeas 32, nays 0, as follows:

Those who voted in the affirmative were: Senators

Amstutz	Armbruster	Austria	Brady
Carey	Cates	Clancy	Coughlin
Dann	Fedor	Fingerhut	Gardner
Goodman	Grendell	Hagan	Hottinger
Jacobson	Jordan	Mallory	Miller
Mumper	Niehaus	Padgett	Prentiss

Roberts
Wachtmann

Schuler
Wilson

Schuring
Zurz

Spada
Harris-32.

So the Senate advised and consented to said appointments.

HOUSE AMENDMENTS TO SENATE BILLS AND RESOLUTIONS

The amendments of the House of Representatives to:

Sub. S. B. No. 124-Senators Spada, Harris Representatives Seitz, Willamowski, Aslanides, Coley, Domenick, Key, McGregor, Miller, Oelslager, Schneider, Seaver, G. Smith, Wagoner.

To amend sections 101.23, 101.82, 101.83, 101.84, 101.85, 101.86, 122.011, 122.40, 123.151, 149.56, 307.674, 340.02, 1501.04, 1502.04, 1502.05, 1502.11, 1502.12, 1506.30, 1506.34, 1506.35, 1517.02, 1517.23, 1518.01, 1518.03, 1551.35, 2323.44, 3358.10, 3375.61, 3375.62, 3383.01, 3383.02, 3383.03, 3383.04, 3383.05, 3383.06, 3383.07, 3383.08, 3383.09, 3746.09, 3746.35, 3747.02, 3748.01, 3748.02, 3748.04, 3748.05, 3748.16, 3929.482, 3929.85, 3931.01, 3955.05, 3960.06, 4117.01, 4121.442, 4167.09, 4167.25, 4167.27, 4731.143, 4741.03, 4755.481, 4981.03, 5123.35, and 5123.352 of the Revised Code, to amend Section 4 of Am. Sub. H.B. 516 of the 125th General Assembly, and to repeal Section 8 of Am. S.B. 80 of the 125th General Assembly to exempt ten state governmental entities from the operation of the Sunset Review Law, to change the membership of the Ohio Subrogation Rights Commission and accelerate its commencement date, to confirm the sunset review and related amendments, enactments, and repeals of Am. Sub. H.B. 516 of the 125th General Assembly, and to declare an emergency, were taken up.

The question being, "Shall the section, Section 7, setting forth the emergency features of the bill, stand as a part of the bill?"

The yeas and nays were taken and resulted - yeas 32, nays 0, as follows:

Those who voted in the affirmative were: Senators

Amstutz
Carey
Dann
Goodman
Jacobson
Mumper
Roberts
Wachtmann

Armbruster
Cates
Fedor
Grendell
Jordan
Niehaus
Schuler
Wilson

Austria
Clancy
Fingerhut
Hagan
Mallory
Padgett
Schuring
Zurz

Brady
Coughlin
Gardner
Hottinger
Miller
Prentiss
Spada
Harris-32.

So the section, Section 7, setting forth the emergency features of the bill stood as a part of the bill.

The question being, "Shall the Senate concur in the amendments of the House of Representatives?"

The yeas and nays were taken and resulted - yeas 32, nays 0, as follows:

Those who voted in the affirmative were: Senators

Amstutz	Armbruster	Austria	Brady
Carey	Cates	Clancy	Coughlin
Dann	Fedor	Fingerhut	Gardner
Goodman	Grendell	Hagan	Hottinger
Jacobson	Jordan	Mallory	Miller
Mumper	Niehaus	Padgett	Prentiss
Roberts	Schuler	Schuring	Spada
Wachtmann	Wilson	Zurz	Harris-32.

So the Senate concurred in the amendments of the House of Representatives.

BILLS FOR THIRD CONSIDERATION

Sub. S. B. No. 33-Senators Spada, Jacobson, Amstutz, Schuler, Mumper.

To enact section 1349.19 of the Revised Code to prohibit the sale of a gift card that has an expiration date that is less than two years after the date the gift card is issued and to prohibit, for two years after issuance, any service charges or fees having the effect of reducing the value of the gift card, was considered the third time.

The question being, "Shall the bill, **Sub. S. B. No. 33**, pass?"

Senator Wachtmann moved to amend as follows:

In line 41, after "stamps" insert ";

(6) A gift card that is sold by a small business"

After line 61, insert:

"(3) "Small business" means any corporation, partnership, proprietorship, or other entity that either does not have more than four hundred employees, or would qualify as a small business for the purpose of receiving financial assistance from small business investment companies licensed under the "Small Business Investment Act of 1958," 72 Stat. 689, 15 U.S.C.A. 661, as amended, and rules of the small business administration."

The question being, "Shall the motion be agreed to?"

Senator Prentiss moved that the amendment be laid on the table.

The question being, "Shall the motion be agreed to?"

A roll call was requested which was properly supported.

The yeas and nays were taken and resulted - yeas 22, nays 10, as follows:

Those who voted in the affirmative were: Senators

Amstutz	Armbruster	Austria	Carey
Cates	Clancy	Dann	Fedor
Gardner	Goodman	Jacobson	Mallory
Miller	Niehaus	Prentiss	Roberts
Schuler	Schuring	Spada	Wilson
Zurz			Harris-22.

Those who voted in the negative were: Senators

Brady	Coughlin	Fingerhut	Grendell
Hagan	Hottinger	Jordan	Mumper
Padgett			Wachtmann-10.

The amendment was laid on the table.

The question recurred, "Shall the bill, **Sub. S. B. No. 33**, pass?"

Senator Jacobson, having voted on the prevailing side, moved that the vote whereby the Senate laid the amendment on the table be reconsidered.

The question being, "Shall the motion to reconsider be agreed to?"

The question being, "Shall the motion be agreed to?"

Senator Dann moved that the motion to reconsider be laid upon the table.

The question being, "Shall the motion be agreed to?"

A roll call was requested which was properly supported.

The yeas and nays were taken and resulted - yeas 13, nays 19, as follows:

Those who voted in the affirmative were: Senators

Brady	Dann	Fedor	Fingerhut
Hagan	Mallory	Miller	Prentiss
Roberts	Spada	Wachtmann	Wilson
			Zurz-13.

Those who voted in the negative were: Senators

Amstutz	Armbruster	Austria	Carey
Cates	Clancy	Coughlin	Gardner
Goodman	Grendell	Hottinger	Jacobson
Jordan	Mumper	Niehaus	Padgett
Schuler	Schuring		Harris-19.

The motion was not agreed to.

The question recurred, "Shall the motion to reconsider be agreed to?"

Senator Jacobson moved that the motion to reconsider be withdrawn.

The question being, "Shall the motion be agreed to?"

The motion was agreed to.

The question recurred, "Shall the bill, **Sub. S. B. No. 33**, pass?"

The yeas and nays were taken and resulted - yeas 28, nays 4, as follows:

Those who voted in the affirmative were: Senators

Amstutz	Armbruster	Austria	Brady
Carey	Clancy	Coughlin	Dann
Fedor	Fingerhut	Gardner	Goodman
Hagan	Hottinger	Jacobson	Jordan
Mallory	Miller	Mumper	Niehaus
Prentiss	Roberts	Schuler	Schuring
Spada	Wilson	Zurz	Harris-28.

Senators Cates, Grendell, Padgett, and Wachtmann voted in the negative-4.

So the bill passed.

The question being, "Shall the title be agreed to?"

Senator Spada moved to amend the title as follows:

Add the names: "Armbruster, Dann, Zurz."

The question being, "Shall the motion be agreed to?"

The motion was agreed to and the title so amended.

Sub. H. B. No. 122-Representatives Wagoner, McGregor, Martin, Wagner, T. Patton, Hoops, Uecker, Seitz, Combs, Gibbs, Flowers, Collier, D. Evans, Calvert, Reidelbach, Setzer, Strahorn, Garrison, Latta, C. Evans, Kearns, Blasdel, Law, Gilb, Webster, Ujvagi, Harwood, Daniels, Carmichael, Walcher, Hartnett, D. Stewart, Book, Allen, Barrett, Brinkman, Brown, Cassell, Chandler, Coley, DeBose, Distel, Dolan, Domenick, Faber, Hughes, Key, Miller, Sayre, Schaffer, Schneider, J. Stewart, Yuko Senator Mumper.

To amend sections 3770.07, 3770.071, 3770.072, and 5747.062 and to enact section 3123.89 of the Revised Code to prohibit the claiming and payment of a lottery prize award with a value in excess of \$599 until the beneficial owner's name, address, and Social Security number are disclosed to the State Lottery Commission, to make changes in the procedure for the deduction of support from lottery prize awards, to change the income tax withholding percentage for certain lottery prize award payments, and to modify the basis upon which the withholding computation is made, was considered the third time.

The question being, "Shall the bill, **Sub. H. B. No. 122**, pass?"

On motion of Senator Coughlin, **Sub. H. B. No. 122** was informally passed and retained its place on the calendar.

Am. Sub. H. B. No. 218-Representatives Daniels, Taylor, McGregor, Bupp, J. Stewart, Gibbs, Raussen, Cassell, Uecker, T. Patton, Buehrer, Webster, Aslanides, Widener, Martin, Seitz, Flowers, Carmichael, G. Smith, Schlichter, Schneider, Coley, White, Reinhard, C. Evans, Collier, Hood, Hartnett, Latta, Strahorn, Distel, Hagan, Wagoner, Calvert, Carano, Peterson, Setzer Senators Niehaus, Jacobson, Schuler.

To amend sections 4905.04, 4927.02, 4927.03, and 4927.04 and to enact sections 4905.041 and 4905.042 of the Revised Code to revise state telecommunications policy, authorize the Public Utilities Commission to allow alternative regulation of basic local exchange service provided by larger companies, and specify the scope of Commission authority regarding wholesale telecommunications services, advanced services, and internet protocol-enabled services, was considered the third time.

The question being, "Shall the bill, **Am. Sub. H. B. No. 218**, pass?"

Senator Schuler moved to amend as follows:

In line 165, delete "252(h)" and insert "251(h)"

In line 219, delete "252(h)" and insert "251(h)"

The question being, "Shall the motion be agreed to?"

The motion was agreed to.

The question recurred, "Shall the bill, **Am. Sub. H. B. No. 218**, pass?"

Senator Fingerhut moved to amend as follows:

In line 75, after "(1)" reinsert the remainder of the line

In line 76, reinsert "this section, the"; delete "The"

In line 82, reinsert "except"; delete ", including"

Delete lines 107 through 115

In line 116, after "(B)" reinsert the remainder of the line

Reinsert lines 117 through 137

In line 138, reinsert "(C)"

In line 144, reinsert "(D)"; delete "(C)"

In line 158, reinsert "(E)"; delete "(D)"

In line 169, reinsert "basic local exchange service or"; reinsert "other"

In line 193, reinsert "basic local exchange service or"

In line 194, reinsert "other"

In line 205, reinsert "basic local exchange service or"; reinsert "other"

The question being, "Shall the motion be agreed to?"

Senator Jacobson moved that the amendment be laid on the table.

The question being, "Shall the motion be agreed to?"

A roll call was requested which was properly supported.

The yeas and nays were taken and resulted - yeas 25, nays 7, as follows:

Those who voted in the affirmative were: Senators

Amstutz	Armbruster	Austria	Carey
Cates	Clancy	Coughlin	Fedor
Gardner	Goodman	Grendell	Hottinger
Jacobson	Jordan	Mallory	Miller
Mumper	Niehaus	Padgett	Prentiss
Schuler	Spada	Wachtmann	Wilson
			Harris-25.

Senators Brady, Dann, Fingerhut, Hagan, Roberts, Schuring, and Zurz voted in the negative-7.

The amendment was laid on the table.

The question recurred, "Shall the bill, **Am. Sub. H. B. No. 218**, pass?"

The yeas and nays were taken and resulted - yeas 30, nays 2, as follows:

Those who voted in the affirmative were: Senators

Amstutz	Armbruster	Austria	Brady
Carey	Cates	Clancy	Coughlin
Dann	Fedor	Gardner	Goodman
Grendell	Hagan	Hottinger	Jacobson
Jordan	Mallory	Miller	Mumper
Niehaus	Padgett	Prentiss	Roberts
Schuler	Spada	Wachtmann	Wilson
Zurz			Harris-30.

Senators Fingerhut and Schuring voted in the negative-2.

So the bill passed.

The question being, "Shall the title be agreed to?"

The title was agreed to.

Message from the House of Representatives

Mr. President:

I am directed to inform you that the House of Representatives has passed the following bills in which the concurrence of the Senate is requested:

Am. H. B. No. 140 - Representatives Carmichael, D. Stewart, Setzer, T. Patton, Barrett, Beatty, Blasdel, Brown, Buehrer, Carano, Cassell, Chandler, Coley, DeGeeter, Domenick, D. Evans, Faber, Harwood, Hughes, Key, McGregor, Otterman, Perry, Seaver, Seitz, Yuko, Trakas

To enact section 4303.251 of the Revised Code to authorize entities involved in the manufacture or distribution of beer or intoxicating liquor to conduct consumer product instruction, or provide sample servings of their products, at a retail permit holder's premises without having to obtain a retail liquor permit.

Sub. H. B. No. 203 - Representatives Raga, Kearns, DeWine, Flowers, Wagoner, Calvert, T. Patton, Allen, Strahorn, Gilb, Chandler, Faber, White, S. Smith, Barrett, Beatty, DeBose, Fessler, G. Smith, Harwood, Hoops, Otterman, Reidelbach, Schneider, Webster

To amend sections 3707.26 and 4736.01 and to enact sections 117.102, 3313.473, 3314.12, and 3701.93 to 3701.98 of the Revised Code with respect to inspections of public and nonpublic school buildings by boards of health, to require the Director of Health to establish the School Health and Safety Network to coordinate school inspections, and to include Safety and Sanitary inspection rules within the practice of environmental health for registered sanitarians.

Attest:

Laura P. Clemens,
Clerk.

Said bills were considered the first time.

Message from the House of Representatives

Mr. President:

I am directed to inform you that the House of Representatives has passed the following bills in which the concurrence of the Senate is requested:

Am. Sub. H. B. No. 79 - Representatives Raga, Latta, Setzer, C. Evans, Hagan, DeWine, McGregor, Willamowski, Gilb, Flowers, Seaver, Reidelbach, Schlichter, Reinhard, Blasdel, Boccieri, Brown, Bulp, Calvert, Carmichael, Cassell, Coley, Collier, Combs, Core, Daniels, Dolan, Domenick, D. Evans,

Faber, Gibbs, Harwood, Healy, Hughes, Koziura, Law, Martin, Otterman, T. Patton, Schaffer, Schneider, G. Smith, J. Stewart, Strahorn, Trakas, Ujvagi, Wagoner, Webster, Widener, Williams, Wolpert, Yates, Yuko

To amend sections 3314.03, 3319.291, and 3319.311 and to enact sections 3319.313, 3319.314, 5126.253, 5126.254, and 5153.176 of the Revised Code to require that information about specified professional misconduct or child abuse or neglect committed by a person licensed by the State Board of Education be submitted to the Superintendent of Public Instruction, to require the State Board to request a criminal records check prior to renewing an educator license, and to require the State Board to request a criminal records check every five years for a person teaching under an eight-year professional teaching certificate or permanent teaching certificate issued under former law.

Sub. H. B. No. 96 - Representatives Seitz, McGregor, C. Evans, Combs, Hartnett, Latta, Schaffer, Webster, Taylor, Gilb, Otterman, White, D. Evans, Willamowski, Uecker, Koziura, Hughes, Seaver, Barrett, Bulp, Buehrer, Carano, Cassell, Collier, Core, Daniels, Dolan, Domenick, Fessler, Gibbs, Hoops, T. Patton, Raga, Reidelbach, Schneider, Setzer, G. Smith, D. Stewart, Wagoner, Walcher

To enact sections 2911.10 and 2911.23 of the Revised Code to create the offense of criminal trespass on a place of public amusement and to clarify the element of "trespass" in the offenses of aggravated burglary, burglary, and breaking and entering.

Sub. H. B. No. 105 - Representatives Setzer, Kearns, C. Evans, Hartnett, Distel, Walcher, Seaver, Garrison, Seitz, Carano, Webster, Taylor, Collier, Reidelbach, Allen, Chandler, Aslanides, Barrett, Beatty, Boccieri, Book, Brown, Bulp, Calvert, Coley, Combs, DeBose, Domenick, Gilb, Hagan, Harwood, Healy, Hughes, Latta, Mason, McGregor, Mitchell, Otterman, T. Patton, Perry, Sayre, Schaffer, Schlichter, Schneider, S. Smith, Sykes, Wagoner, White, Williams, Woodard, Yuko

To amend section 3313.60 and to enact section 3301.078 of the Revised Code to require each school district to provide instruction in physical education in each of grades kindergarten through eight and to require the Department of Education to provide each school district with access to research to facilitate the use of locally developed instructional objectives and to encourage students' regular participation in physical activity.

Attest:

Laura P. Clemens,
Clerk.

Said bills were considered the first time.

Message from the House of Representatives

Mr. President:

I am directed to inform you that the Speaker of the House of Representatives has signed the following concurrent resolution:

H. C. R. No. 5 - Representative Hoops - et al.

Attest:

Laura P. Clemens,
Clerk.

The President signed said concurrent resolution.

MESSAGE FROM THE PRESIDENT

Pursuant to Section 149.306 (A) (3) of H. B. No. 516 of the 125th General Assembly, the President of the Senate appoints the following senators to serve on the Ohio African-American Hall of Fame Governing Board:

Senator Mumper
Senator Miller

On the motion of Senator Jacobson the Senate recessed.

The Senate met pursuant to the recess.

Message from the House of Representatives

Mr. President:

I am directed to inform you that the House of Representatives has concurred in the passage of the following bill:

Am. S. B. No. 128 - Senators Cates, Wilson, Niehaus, Grendell
Representatives Willamowski, Coley, Barrett, Boccieri, Book, Combs, Dolan,
Domenick, C. Evans, D. Evans, Harwood, McGregor, Mitchell, Otterman,
Schneider, Seaver, Seitz, G. Smith, Wagoner, Webster, DeBose

To amend sections 2301.02 and 2919.251 of the Revised Code to add one additional judge for the general division of the Butler County Court of Common Pleas to be elected in 2006 and to eliminate the requirement that a person charged with an offense of violence against a family or household member appear before the court for the setting of bail if the person is subject to a protection order or consent decree related to domestic violence or

previously was convicted of or pleaded guilty to certain offenses.

With the following additional amendments, in which the concurrence of the Senate is requested:

In line 5, delete "section" and insert "sections"; after "2301.02" insert "and 2919.251"

Between lines 293 and 294, insert:

"Sec. 2919.251. (A) Subject to division (D) of this section, a person who is charged with the commission of any offense of violence shall appear before the court for the setting of bail if the alleged victim of the offense charged was a family or household member at the time of the offense and if ~~any of the following applies:~~

~~(1) The person charged, at the time of the alleged offense, was subject to the terms of a protection order issued or consent agreement approved pursuant to section 2919.26 or 3113.31 of the Revised Code or previously was convicted of or pleaded guilty to a violation of section 2919.25 of the Revised Code or a violation of section 2919.27 of the Revised Code involving a protection order or consent agreement of that type, a violation of an existing or former municipal ordinance or law of this or any other state or the United States that is substantially similar to either section, a violation of section 2909.06, 2909.07, 2911.12, or 2911.211 of the Revised Code if the victim of the violation was a family or household member at the time of the violation a violation of an existing or former municipal ordinance or law of this or any other state or the United States that is substantially similar to any of those sections if the victim of the violation was a family or household member at the time of the commission of the violation, or any offense of violence if the victim of the offense was a family or household member at the time of the offense;~~

~~(2) The arresting officer indicates in a police report or other document accompanying the complaint any of the following:~~

~~(a)(1) That the arresting officer observed on the alleged victim objective manifestations of physical harm that the arresting officer reasonably believes are a result of the alleged offense;~~

~~(b)(2) That the arresting officer reasonably believes that the person had on the person's person at the time of the alleged offense a deadly weapon or dangerous ordnance;~~

~~(c)(3) That the arresting officer reasonably believes that the person presents a credible threat of serious physical harm to the alleged victim or to any other person if released on bail before trial.~~

(B) To the extent that information about any of the following is available to the court, the court shall consider all of the following, in addition to any other circumstances considered by the court and notwithstanding any provisions to the

contrary contained in Criminal Rule 46, before setting bail for a person who appears before the court pursuant to division (A) of this section:

(1) Whether the person has a history of domestic violence or a history of other violent acts;

(2) The mental health of the person;

(3) Whether the person has a history of violating the orders of any court or governmental entity;

(4) Whether the person is potentially a threat to any other person;

(5) Whether the person has access to deadly weapons or a history of using deadly weapons;

(6) Whether the person has a history of abusing alcohol or any controlled substance;

(7) The severity of the alleged violence that is the basis of the offense, including but not limited to, the duration of the alleged violent incident, and whether the alleged violent incident involved serious physical injury, sexual assault, strangulation, abuse during the alleged victim's pregnancy, abuse of pets, or forcible entry to gain access to the alleged victim;

(8) Whether a separation of the person from the alleged victim or a termination of the relationship between the person and the alleged victim has recently occurred or is pending;

(9) Whether the person has exhibited obsessive or controlling behaviors toward the alleged victim, including but not limited to, stalking, surveillance, or isolation of the alleged victim;

(10) Whether the person has expressed suicidal or homicidal ideations;

(11) Any information contained in the complaint and any police reports, affidavits, or other documents accompanying the complaint.

(C) Any court that has jurisdiction over charges alleging the commission of an offense of violence in circumstances in which the alleged victim of the offense was a family or household member at the time of the offense may set a schedule for bail to be used in cases involving those offenses. The schedule shall require that a judge consider all of the factors listed in division (B) of this section and may require judges to set bail at a certain level if the history of the alleged offender or the circumstances of the alleged offense meet certain criteria in the schedule.

(D)(1) Upon the court's own motion or the motion of a party and upon any terms that the court may direct, a court may permit a person who is required to appear before it by division (A) of this section to appear by video conferencing equipment.

(2) If in the opinion of the court the appearance in person or by video

conferencing equipment of a person who is charged with a misdemeanor and who is required to appear before the court by division (A) of this section is not practicable, the court may waive the appearance and release the person on bail in accordance with the court's schedule for bail set under division (C) of this section or, if the court has not set a schedule for bail under that division, on one or both of the following types of bail in an amount set by the court:

(a) A bail bond secured by a deposit of ten per cent of the amount of the bond in cash;

(b) A surety bond, a bond secured by real estate or securities as allowed by law, or the deposit of cash, at the option of the person.

(3) Division (A) of this section does not create a right in a person to appear before the court for the setting of bail or prohibit a court from requiring any person charged with an offense of violence who is not described in that division from appearing before the court for the setting of bail.

(E) As used in this section:

(1) "Controlled substance" has the same meaning as in section 3719.01 of the Revised Code.

(2) "Dangerous ordnance" and "deadly weapon" have the same meanings as in section 2923.11 of the Revised Code."

In line 294, delete "section" and insert "sections"; after "2301.02" insert "and 2919.251"

In line 295, delete "is" and insert "are"

In line 1 of the title, delete "section" and insert "sections"; after "2301.02" insert "and 2919.251"

In line 4 of the title, after "2006" insert "and to eliminate the requirement that a person charged with an offense of violence against a family or household member appear before the court for the setting of bail if the person is subject to a protection order or consent decree related to domestic violence or previously was convicted of or pleaded guilty to certain offenses"

Attest:

Laura P. Clemens,
Clerk.

On the motion of Senator Jacobson Am. S. B. No. 128, was brought up for consideration.

The question being, "Shall the Senate concur in the amendments of the House of Representatives?"

The yeas and nays were taken and resulted - yeas 0, nays 32, as follows:

Those who voted in the negative were: Senators

Amstutz	Armbruster	Austria	Brady
Carey	Cates	Clancy	Coughlin
Dann	Fedor	Fingerhut	Gardner
Goodman	Grendell	Hagan	Hottinger
Jacobson	Jordan	Mallory	Miller
Mumper	Niehaus	Padgett	Prentiss
Roberts	Schuler	Schuring	Spada
Wachtmann	Wilson	Zurz	Harris-32.

So the Senate did not concur in the amendments of the House of Representatives.

On the motion of Senator Jacobson, the Senate adjourned until Thursday, June 16, 2005 at 11:00 o'clock a.m.

Attest:

MATTHEW T. SCHULER,
Clerk.