



The Legislative Wrap-Up

Library and Information Services, Department of Legislative Services

Issue 10-7

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45th DAY

Friday, February 26, is the 45th day, or the halfway point in the 2010 session. March deadlines facilitate the legislative process as the session moves toward *sine die* on April 12:

- final date for introduction of bills without suspension of the rules (March 8);
- committee reporting courtesy date by which each chamber's committees are to report their own bills (March 23); and
- opposite chamber bill crossover date by which each chamber is to send to the other chamber those bills it intends to pass favorably (March 29).

The bill count in the Senate is 1,053 with 5 joint resolutions. The bill count in the House is 1,466 with 13 joint resolutions.

COURTS AND CIVIL PROCEEDINGS

Burglary and Crimes of Violence

The House amended and passed [HB 207](#), which provides that a person is not liable for damages for a personal injury or the death of an individual who enters the person's dwelling or place of business with the intent to commit a crime of violence or a burglary in the first, second, or third degree, provided the person does not act with malice or gross negligence or is not convicted of a crime of violence, second degree assault, or reckless endangerment arising out of the incident.

Jury Trials in Civil Actions

The Senate passed [SB 118](#), which prohibits a party in a civil action from requesting a jury trial if the amount in controversy does not exceed \$20,000, instead of the current \$10,000. The bill is contingent on the voters' adoption of a constitutional amendment ([SB 119](#), also passed by the Senate) that increases, from over \$10,000 to over \$20,000, the amount in controversy in civil proceedings in which the right to trial by jury may be limited by legislation. Identical bills, [HB 436](#) and [HB 434](#), respectively, had a hearing in the House this week.

Marriages

The Senate passed [SB 129](#), requiring an international marriage broker to disclose the marital history and criminal history record of a client to a recruited woman and provide her with basic human rights information prior to providing any services to either party, with the aim of protecting the recruit against entering into situations of violence. The broker must also obtain written consent from the recruit before disclosing recruit information to a client. An amendment to the bill requires the Department of Labor, Licensing, and Regulation to report by December 1 on the feasibility of and recommendations for the registration or licensing of international marriage brokers. The companion bill, [HB 65](#), which gained House approval two weeks ago, does not include the reporting requirement.

[HB 1021](#) prohibits the marriage of first cousins, unless both individuals are over the age of 65 or one can show proof of infertility. The bill, before a committee this week, applies only to marriages that occur after the bill's October 1, 2010 effective date.

CRIMES, CORRECTIONS, AND PUBLIC SAFETY

The Federal Sex Offender Registration and Notification Act (SORNA)

SORNA requires conformity among states with various aspects of sex offender registration provisions, including registration of specified juvenile offenders, collection of specific information from registrants, verification, duration of registration, access to and sharing of information, and penalties for failure to register. Failure to comply with SORNA could result in a loss of 10% of federal grant funding for drug task forces, anti-gang units, police overtime, and other law enforcement activities. Maryland's statutory law must change if the State is to comply with SORNA.

Sex Offender Legislation

Three Administration bills were among proposals presented this week at a marathon House committee hearing addressing sex offender issues. [HB 936](#) aims to

alter sex offender registration provisions to move Maryland closer to SORNA compliance; [HB 473](#) establishes the conditions and requirements for lifetime sexual offender supervision; and [HB 931](#) alters the composition and duties of the Sexual Offender Advisory Board, including requiring the Board to develop criteria for measuring a person's risk of reoffending to assist the court in determining whether a sexual offender may be appropriately released from lifetime supervision. The respective companion bills are [SB 854](#), [SB 280](#), and [SB 856](#).

Other proposals considered at the hearing:

- expand and strengthen sex offender registration requirements and restrictions, including provisions concerning information posted on the Internet, interstate data sharing, community notification, and residency restrictions ([HB 165](#), [HB 195](#) (companion bill is [SB 188](#)), [HB 258](#) (companion bill is [SB 316](#)), [HB 285](#), [HB 424](#), [HB 544](#) (companion bill is [SB 260](#)), [HB 736](#), [HB 1046](#), and [HB 1194](#));
- expand and strengthen sex offender monitoring and supervision requirements ([HB 288](#) (companion bill is [SB 623](#)), [HB 740](#), and [HB 809](#));
- restrict diminution credits and parole eligibility for sex offenders ([HB 24](#) (companion bill is [SB 617](#)), [HB 148](#), [HB 253](#) (companion bill is [SB 395](#)), [HB 289](#) (companion bill is [SB 620](#)), [HB 490](#), [HB 599](#), [HB 790](#) (companion bill is [SB 890](#)), [HB 864](#), [HB 996](#), and [HB 1233](#) (companion bill is [SB 170](#))); and
- enhance penalties for specified sex offenses ([HB 254](#) (companion bill is [SB 622](#)), [HB 306](#), and [HB 841](#)).

All of the indicated companion bills will be heard by a Senate committee in mid-March.

Strip Searches

As amended and passed in the Senate, [SB 125](#) prohibits a police officer from conducting or supervising a strip search or body cavity search on a person arrested for a misdemeanor or traffic offense that does not involve weapons, controlled dangerous substances, or a crime of violence unless the officer has a reasonable suspicion that the person is concealing a weapon or controlled dangerous substance that would be discovered in the search. The bill requires a supervising officer on duty to authorize the search and restricts how the search may be conducted. The companion bill [HB 255](#) was heard earlier this month.

ECONOMIC AND BUSINESS ISSUES

Puppy Sales

[SB 505](#) prohibits “retail pet stores” from selling, displaying, or in any way transferring a dog less than nine months of age. The bill does not apply to dogs in the possession of a retail pet store on the bill's October 1, 2010 effective date. The bill also does not apply to persons that breed or raise animals to sell to the public; “humane societies” or nonprofit animal adoption organizations; or adoption events operated by such organizations, even if the events are held in conjunction with pet stores.

According to the American Society for the Prevention of Cruelty to Animals, most dogs currently sold in retail pet stores are less than nine months of age. Assuming compliance with the bill's provisions, pet stores and commercial breeders may experience a steep drop in demand for puppies, and independent breeders and humane societies in the State may experience a meaningful growth in puppy sales as consumers turn to them to purchase or adopt pet dogs.

Injured Workers' Insurance Fund (IWIF)

Senate and House committees took testimony both for and against changing the status of IWIF from that of a State agency to a not-for-profit mutual insurer. Under [SB 507](#) and [HB 1008](#), the new company retains its public purpose as the insurer of last resort and must continue to guarantee the availability of workers' compensation insurance in the State. One of the questions raised at the hearings concerned the long-term status of IWIF's current State employees. Also of concern is the new company's retention of IWIF's existing exemption from the 2% tax on premiums that other private insurers are required to pay.

Passage of the legislation will trigger a transfer to the State of \$26.5 million from IWIF's reserve fund in compensation for State investment in IWIF. As of December 2009, IWIF held reserves worth \$287.6 million, which are not State monies previously disbursed to IWIF. Currently, the State does not have access to the reserves of IWIF unless the State receives approval from IWIF to transfer its assets or the State repeals the statute that created IWIF. Under the bill, the company is subject to these same provisions; thus, the State continues to have no right to IWIF's reserves unless the agency is eliminated by the General Assembly.

EDUCATION

Free Speech at Private Universities

[HB 677](#) prohibits private nonprofit higher education institutions that qualify for State aid dollars from enforcing a rule that subjects an enrolled student to disciplinary sanction based solely on speech or other communication that, when engaged in outside the campus or other facility of the institution, is protected by the First Amendment of the U.S. Constitution or the Maryland Constitution. An enrolled student at the time that the institution makes or enforces such a rule may bring a civil action.

Currently, as State agents, all public colleges and universities are legally bound to respect the constitutional rights of their students. Private universities are not directly bound by the First Amendment, which limits only government action. The bill does not prohibit an institution from imposing discipline for harassment, threats, or intimidation or adopting rules designed to prevent hate crimes from being directed at students in a manner that denies any student full participation in the education process. The companion bill is [SB 805](#).

ENVIRONMENT, NATURAL RESOURCES, AND AGRICULTURE

Boating Safety

[SB 92](#) passed third reading in the Senate. As amended, this departmental bill requires a child under the age of 13 (increased from 7) to wear a personal flotation device (PFD) when on a vessel under 21 feet in length, and requires individuals younger than age 16 who operate a vessel to adhere to the following requirements: 1) possess a certificate of boating safety education; 2) if operating a vessel under 11 feet in length, be under the supervision of a person who has obtained a certificate of boating safety education and is aboard the vessel; 3) if operating a vessel 11 feet in length or greater, be under the supervision of a person who is at least 18 years old and has obtained a certificate of boating safety education and is aboard the vessel; or 4) be under the supervision of a person who was born before July 1, 1972, and is aboard the vessel. The bill's provisions on use of PFD's take effect on an emergency basis.

Oysters

[HB 218](#), which repeals a ban on using certain devices known as "devil catchers" or "devil divers" or similar devices on any oyster dredge boat to steer the dredge to the bottom, has received preliminary approval in the House. Other bills related to oyster harvesting which remain in committee include related bills [SB 37](#) and [HB](#)

[154](#), [SB 222](#), [SB 342/HB 1191](#), [SB 808/HB 284](#), [SB 809](#), [SB 987](#), [HB 303](#), and [HB 1172](#).

Puritan Tiger Beetle

Testimony has been heard on [HB 295](#) authorizing the Department of Natural Resources to allow for capturing the endangered Puritan Tiger Beetle that is threatening the homes and land on cliffs along the Chesapeake Bay. A hearing has not yet been scheduled for the crossfiled [SB 1020](#), nor for [SB 975](#), which creates a task force to study erosion in areas of Puritan Tiger Beetle habitat and make recommendations by December 31, 2010, on the most feasible and effective methods to prevent erosion in these areas.

FINANCIAL INSTITUTIONS AND COMMERCIAL LAW

Commercial Debt Settlement Services

Recently, delegates received public testimony on a bill that relates to the regulation of debt settlement service companies. These companies often purport to help consumers with their debts, but some companies have unscrupulously collected large fees from the consumer for services, which can lead to increased consumer debt. [HB 392](#) prohibits a person from offering, providing, or attempting to provide debt settlement services in Maryland except as allowed under the bill's provisions. The bill also prohibits a debt settlement services provider from receiving specified funds or payments or imposing certain fees or other charges on a consumer under certain conditions, until a debt settlement services agreement is executed and the debt settlement services are completed. The bill was heard on February 25. The crossfiled bill, [SB 701](#), has a hearing next week.

FISCAL MATTERS

Budget Recommendations

This week, the General Assembly held a hearing concerning the State's budget package (Budget Bill, [SB 140](#); the Budget Reconciliation and Financing Act, [SB 141](#), and the Maryland Consolidated Capital Bond Loan of 2010, [SB 142](#)) in which all legislators were given the opportunity to recommend budget reductions and to recommend changes in the State's fiscal policy to reduce the structural deficit.

One package of recommendations for balancing the fiscal 2011 budget reduces expenditures for fiscal 2011 by \$830 million, eliminating State employee furloughs with a cost of \$83 million and saving the coal tax credit with a cost of \$5 million for a net savings of \$725

million. The reductions include eliminating the Geographic Cost of Education Index for a savings of \$126 million, eliminating the legislative scholarship program for a savings of \$12 million, reducing university travel by \$28 million, and eliminating 500 State employee positions for a savings of \$30 million. To balance the budget in future years, recommendations include eliminating the inflator provisions in legislative mandates, rejecting the proposed diversion of wastewater treatment plant upgrade funds, and phasing out the 2007 sales tax and corporate income tax rate increases.

Another proposal, the Budget Reconciliation and Balancing Act ([SB 1004](#)), includes provisions to eliminate the Geographic Cost of Education Index, require the counties to pay 50% of the cost of teachers' retirement, provide level-funding for the community college grants formula, reduce State grants to Maryland private colleges and universities, reduce the State workforce by 1%, and increase mass transit fare box recovery to 50%. A hearing has not been scheduled for this bill.

Job Creation and Recovery Tax Credit

The Administration proposal, the Job Creation and Recovery Tax Credit ([SB 106](#)), passed third reading in the Senate. The amendments increase the credit from \$3,000 to \$5,000 with a corresponding monthly partial credit. The House companion bill, [HB 92](#), is still in committee.

Transportation Trust Fund (TTF)

[HB 383](#), the Transportation Trust Fund Protection Act, prohibits the transfer of money in the TTF to the general fund unless the Governor declares the transfer necessary due to extraordinary financial circumstances, and legislation enacted prior to the transfer provides for repayment of the funds within five years after the diversion, with repayment commencing immediately. The bill takes effect July 1, 2010. The bill had a hearing on February 16.

Another measure, [HB 367](#), requires that all motor fuel tax revenues, motor vehicle excise tax revenues, and vehicle registration fees collected, received, or credited to the TTF, net of statutory deductions and after the payment of debt service, be used only for specified highway purposes. The bill expands the definition of highway purposes to include police services and ferry operations, and authorizes the transfer of funds from the TTF to the Transportation Authority Fund. No part of the TTF may revert or be credited to the general fund or a special fund. The bill takes effect July 1, 2010. The bill is scheduled for a hearing on March 2.

HEALTH CARE AND HEALTH INSURANCE

Medical Marijuana

Legislation to establish procedural requirements for the prescription and distribution of medical marijuana in the State has been heard by two House committees. [HB 712](#) requires the Department of Health and Mental Hygiene (DHMH) to issue a request for proposals to select authorized growers of marijuana for medical use and provide for certain requirements of authorized growers. The bill also requires DHMH to establish a registration program to authorize certain entities to distribute marijuana for medical purposes and establish a fee-based permitting process for these entities. DHMH is also required to establish a registry of qualifying patients and primary caregivers and to issue registry identification cards. The bill also includes several restrictive provisions relating to the medicinal use of the drug. [HB 712](#) was heard this week, while [SB 627](#), the companion bill, is scheduled for a hearing on March 18.

Dental Provider Contracts

Heard this week by Senate and House committees, [SB 665/HB 1026](#) prohibit a carrier, in a dental provider contract, from requiring a dental provider to provide services at a fee set by the carrier if the services will not be covered by the carrier. The bills apply to all dental provider contracts issued, renewed, or amended on or after October 1, 2010. Current State law does not specifically prohibit carriers from setting rates for dental services that are not covered services. Some carriers are setting rates in provider contracts for services that require enrollees to pay up to 100% of the costs. The bills would prohibit carriers from setting the fees for services paid for by enrollees.

Artificial Trans Fat

[HB 727](#) prohibits food containing artificial trans fat from being stored, distributed, held for service, used in preparation of any menu item, or served in any food service facility. The legislation, heard by a House committee this week, does not apply to food served directly to patrons in the original sealed manufacturer's package. Violations of the bill's terms do not affect a food service facility's license nor do they face fines or imprisonment for violation. The legislation requires DHMH to list on its web site a food service facility that violates the bill's provisions. This legislation was previously introduced in the 2007 and 2009 sessions.

Chain Restaurants- Nutrition Information Labeling

Crossfiled measures ([SB 539/HB 758](#)) before committees this week require chain restaurants, defined in the bills as restaurants that have 15 or more locations

nationwide, among other requirements, to provide specified nutrition information for standard menu items. The bills establish how the nutrition information is to be determined, authorize local health departments to enforce the provisions, and impose various civil penalties. Restaurant locations not subject to the bills' provisions are authorized to participate voluntarily in the law's requirements.

Bisphenol-A

The Senate approved [SB 213](#), which prohibits the use of the chemical bisphenol-A (BPA), in certain children's products. The amended Senate bill conforms to the crossfiled bill, [HB 33](#), which passed in the House last week. Amendments prohibit certain BPA levels from being in children's cups intended for food or liquid for children under 4 years of age and require the term "child care article" to be defined by federal law, should a federal law concerning the prohibition of BPA in children's products be enacted. The amendments also provide that a person may not manufacture the child care products specified in the bill after January 10, 2012. The original bill specified the date as January 10, 2011.

Bona Fide Wellness Program

[HB 416](#), heard by a House committee last week, expands the current definition of a program to include a program that requires membership and routine exercise at a health club or fitness center. In current law, a "program" is one program to promote health or prevent or detect disease or illness, reduce or avoid poor clinical outcomes, prevent complications from medical conditions, promote healthy behaviors, or prevent and control injury. Laws passed in 2009 authorized carriers to provide reasonable incentives for participation in a wellness program under specified circumstances. A carrier may not make participation in a bona fide wellness program a condition of coverage. Participation must be voluntary.

HUMAN RESOURCES

Individuals with Developmental Disabilities

The Waiting List Equity Fund, administered by the State's Developmental Disabilities Administration, is used to provide community-based services to individuals with a developmental disability who are eligible for, but not receiving, those services. [SB 318](#), heard by a committee last week, establishes a checkoff box on the State individual income tax return form for contributions to the Fund in an effort to reduce the long waiting list for developmental disabilities services. Companion bill [HB 830](#) has a hearing set for March 11.

STATE GOVERNMENT

This week, [HJ 3](#) passed the General Assembly. The companion joint resolution ([SJ 2](#)) is poised to pass the Senate next week. The joint resolutions reject the 2010 salary recommendations of the Governor's Salary Commission for the Governor and Lieutenant Governor for the next four-year term of office, maintaining the current salary levels established in 2006.

TRANSPORTATION

Criminally Negligent Driving

[HB 388](#) makes it a misdemeanor to cause the death of a person by driving a vehicle or a vessel in a criminally negligent manner. It authorizes a maximum jail term of three years and a maximum fine of \$5000, or both, for a violator. Similar bills have been introduced in the House for the past three years and in the Senate in 2006. The bill fills a gap in current law, which does not contain a separate offense for criminally negligent manslaughter by vehicle or vessel, but does address driving a vehicle in a grossly negligent manner. The bill was heard by a House committee this week. The companion bill is [SB 870](#), scheduled to be heard in March.

[SB 189](#) authorizes the Motor Vehicle Administration (MVA) to suspend for a maximum of 180 days the license of a driver convicted of reckless and negligent driving that results in death or bodily injury. The driver may appeal the suspension of the license. The bill also increases the maximum fine for a violation from \$500 to \$1000. The bill was heard by a committee last week.

Ignition Interlock

[SB 564/HB 743](#) require the MVA to establish an Ignition Interlock System Program and requires a person who is convicted of or who receives probation before judgment for drunken driving to participate in the program. Current law authorizes a judge to order ignition locks, but does not require them. A driver who has an ignition lock blows into the device before starting the car. If the device detects a breath alcohol content above a certain limit, it prevents the car from starting. Under the proposed law, the MVA must require a drunken driver to complete the interlock program or must suspend the driver's license. A person who is convicted of driving with a license that is suspended or revoked as a result of an alcohol-related offense or after a failure to complete the interlock program is subject to a minimum sentence of five days in jail. A Senate committee heard testimony on the bill this week.