



To Our Valued Clients, Friends, and Colleagues:

On April 9, 2018, the Maryland General Assembly concluded its 438<sup>th</sup> Legislative Session. At this time each year, we like to take a moment to share the highlights of the last 90 days. A record 3,101 bills were introduced in 2018. Needless to say, this synopsis is not an exhaustive report of the legislative activities this session, but merely an overview on certain topics of interest. If you have specific questions, please feel free to contact us.

### **Labor and Employment**

#### ***Minimum Wage Increase (“Fight for Fifteen”)***

Continuing a nationwide effort, Fight for Fifteen labor advocates reintroduced legislation to increase the state minimum wage to \$15.00 per hour by July 1, 2024. The bill would eliminate a tip credit for employers who employ tipped employees, and was strongly and successfully opposed by Maryland full service restaurants. Maryland is one of 29 states that mandates a minimum wage higher than the federal minimum wage of \$7.25 per hour. Only seven states require employers to pay the full state minimum wage before tips.

Senate Bill 543/House Bill 664, introduced by Senator Richard Madaleno (D-Montgomery County) and Delegate Shelly Hettleman (D-Baltimore County), received significant opposition from Maryland businesses who already face an increasing wage to \$10.10 per hour, beginning July 2019. Advocates were not successful in moving this bill in either the House of Delegates or the Senate, although a push is expected again next year.

There were several other pieces of legislation introduced this session to increase the state minimum wage rate or to index it including: Senate Bills 235 and 1019, both sponsored by Senator Barbara Robinson (D-Baltimore City), and Senate Bill 368, sponsored by Senator Nathaniel McFadden (D-Baltimore City), all of which failed due to lack of action by the legislature.

#### ***Paid Sick and Safe Leave***

As one of the first orders of business of the 2018 Legislative Session, the General Assembly overrode Governor Larry Hogan’s veto of Senate Bill 230/House Bill 1 from 2017, entitled the Maryland Healthy Working Families Act (the “Act”) and sponsored by Senator Thomas “Mac” Middleton (D-Charles County) and Delegate Luke Clippinger (D-Baltimore City). In light of the timing concerns created by the veto and subsequent override, Senator

Middleton sponsored 2018 legislation, Senate Bill 304, to delay the implementation of the paid sick leave law and give Maryland businesses adequate time to prepare for the new requirements. SB304 passed out of the Senate with a delayed implementation date of July 1, 2018, but received a swift unfavorable vote in the House Economic Matters Committee.

Once the legislation failed, the Act went into effect 30 days following the veto override on February 11, 2018. The Act requires employers with 15 or more employees to offer paid sick and safe leave annually. Smaller business must provide unpaid sick and safe leave. Employees may accrue one hour of sick time for every 30 hours worked, earning up to 5 days off per year. Maryland employees may begin taking accrued leave starting in May 2018.

### ***Small Business Relief Tax Credit***

On the final day of 2018 legislative session, the Maryland General Assembly passed a scaled-down version of Senate Bill 134/House Bill 99, both introduced by Governor Larry Hogan as part of his 2018 legislative package. Under the bills, companies with 14 or fewer employees are eligible to receive a tax credit for each qualified employee who earns \$30,000 or less per year plus certain benefits. Those benefits include: paid sick leave; a qualified transportation fringe; a dependent care assistance program; participation in an educational assistance program; and employer contributions to health savings accounts. The tax credit can be as great as \$500 per qualified employee. While Hogan's original proposal provided as much as \$100 million annually to cover the tax credits, the final version of the legislation only provides for \$5 million total for the tax credits annually. Nonetheless, for Maryland small businesses the tax credits could prove helpful in offsetting the legislatively mandated paid sick leave law discussed above while also encouraging those same businesses to offer the other tax credit covered fringe benefits to their employees.

### ***Sexual Harassment in the Workplace***

In the wake of the "Me Too" movement across the United States, the Maryland General Assembly sought legislation to update sexual harassment policies in both the public and private sector. Senator Craig Zucker (D-Montgomery County) and Delegate Kris Valderrama (D-Prince George's County) sponsored Senate Bill 1010/House Bill 1596, the Disclosing Sexual Harassment in the Workplace Act of 2018, which, as amended, establishes that, except as prohibited by federal law, a provision in an employment contract, policy, or agreement that waives any substantive or procedural right or remedy to a claim that accrues in the future of sexual harassment or retaliation for reporting or asserting a right or remedy based on sexual harassment is null and void as being against the public policy of the State.

Uncodified language was added to the bill requiring that an employer with 50 or more employees must annually submit a short survey to the Maryland Commission on Civil Rights (MCCR) on sexual harassment settlements, and the MCCR must publish specified information from the surveys (making them accessible on its website), retain responses for

public inspection on request, and create an executive summary on a random selection of surveys. This portion of the bill is only valid until June 30, 2023, unless additional action is taken by the General Assembly.

After some negotiation between the Senate and the House about the degree of reporting employers would be required to make, the amended bill passed out of a conference committee on Sine Die and ultimately passed the full General Assembly.

### ***Pay Scale and Salary History Information***

Legislation was reintroduced this year to prevent employers from seeking past wage history from prospective employees and requiring employers to provide pay scale information upon request. Senator Susan Lee (D-Montgomery County) and Delegate Karen Young (D-Frederick County), sponsored Senate Bill 377/House Bill 512, which, as amended by the House Economic Matters Committee, would prohibit an employer with at least 15 employees from screening an applicant for employment based on the applicant's wage history and from seeking wage history information for an employee. An applicant or an employee is not prohibited from voluntarily sharing wage history information with an employer. Both the House and the Senate versions of the bill died due to lack of action in the Senate Finance Committee.

### ***Employee Overtime Exemption - Alteration***

In response to a federal court ruling from two years ago that invalidated regulations promulgated by the Department of Labor under the Obama Administration, a bill was re-introduced this year which would have doubled the Fair Labor Standards Act's (FLSA's) salary threshold for exemption from overtime pay in Maryland. Under House Bill 974, introduced by Delegate Jimmy Tarlau (D-Prince George's County), in order to be exempt from the law's overtime requirements as an employee working in an executive, administrative, or professional capacity, the employee must be compensated on a salary basis: (1) at a rate per week of the fortieth percentile or more of weekly earnings of full, non-hourly workers in the lowest wage census region; and (2) at an amount per week, exclusive of board, lodging, or other facilities, of at least \$900 or an amount determined by the Commissioner of Labor and Industry. The House Economic Matters Committee gave a resounding 18-4 unfavorable vote on the bill after strong opposition at the hearing and the potential for lawsuits challenging the law's compliance with the FLSA.

### ***Prevailing Wage Lawsuits by Employees***

Senator Joanne Benson (D-Prince George's County) and Delegate Maricé Morales (D-Montgomery County) sponsored Senate Bill 572/House Bill 1243, which authorizes employees under a public work contract who are paid less than the appropriate prevailing wage to sue their employers to recover the difference in wages paid without first filing a complaint with the Commissioner of Labor and Industry. In addition, a determination by the Commissioner that a contractor is required to make restitution does not preclude the employee from a private cause of action.

In either course taken by the employee, a contractor and subcontractor are jointly and severally liable for any violation of the subcontractor's obligations associated with civil actions. In addition, if the employee prevails in the court proceedings, the court shall award a prevailing plaintiff reasonable counsel fees and costs of these private cause of action cases, even when the employee chooses to circumvent the free process offered by the Commissioner of Labor and Industry. Ultimately, the bill passed both the Senate and House along party lines.

### ***Construction Workforce Health Care Benefits***

As originally drafted, Senate Bill 492/House Bill 776, sponsored Senator Craig Zucker (D-Montgomery County) and Delegate Sandy Rosenberg (D-Baltimore City), would have established a procurement price preference of at least 4% for a responsive bid for which the responsible bidder or subcontractor certified that its total payments for employee health care expenses are at least 6.5% of the aggregate wages paid by the bidder or subcontractor. The legislation was based on the premise that contractors, both general contractors and subcontractors, were not providing adequate health benefits to their employees. As the bills were debated, however, stakeholders established that there was insufficient data to confirm or dispel the bills' premise.

As a result, the bills were amended in title and substance to a "Workforce Health Care Study." Under the amended bill, the Board of Public Works (BPW) must collect the following information for all construction-related contracts awarded by competitive sealed bids in the three months following the enactment of the bill:

- whether the bidder and any subcontractor provide employee health care coverage on projects that require payment of prevailing wages;
- for the year preceding the bid, what the percentage of total Social Security wages was, as well as the total amount spent on employee health care;
- the percentage of total health insurance coverage costs paid by an insurance company compared with the percentage paid by an employee;
- the type and scope of coverage, as well as the average percentage of monthly premiums paid by the bidder or subcontractor; and
- the average percentage of monthly premiums paid by the bidder's or subcontractor's employees and the average deductible in each health care plan offered.

By November 1, 2018, BPW must submit a report on the information it has collected to the Senate Education, Health and Environmental Affairs Committee and the House Health and Government Operations Committee for consideration in any future legislation on this subject.

## **Business Regulation**

### ***Micro Markets***

The General Assembly unanimously passed Senate Bill 1087/House Bill 758, sponsored by Senator Edward Reilly (R-Anne Arundel County) and Delegate C.T. Wilson (D-Charles County), which defines “micro market” in the Maryland Business Regulation Article and creates a basic licensure program for micro markets within the Office of the Comptroller. The license is modeled after the existing licensure program for vending machines and preserves the authority of the Department of Health and local health departments to oversee requirements relating to food and health safety. The bill creates standard definitions and licensure requirements for this new and innovative facet of the vending industry.

### ***Peer-to-Peer Car Sharing***

Senator Thomas “Mac” Middleton (D-Charles County) and Delegate Dereck Davis (D-Prince George’s County) introduced Senate Bill 743/House Bill 1045 to establish a regulatory framework for the “peer-to-peer car sharing” industry. Peer-to-peer car sharing is defined as the authorized use of a motor vehicle by an individual other than the owner of the vehicle through a peer-to-peer car sharing program. The bill indicates that the peer-to-peer program is not a rental vehicle company. Additionally, under the bill, peer-to-peer companies that wish to deliver vehicles to customers arriving at BWI Thurgood Marshall Airport must enter into a written concession agreement with the Maryland Aviation Administration (MAA).

This bill was worked on extensively in the Senate Finance Committee with input from Turo, the leading peer-to-peer car sharing platform, car rental firms, insurance interests, the Maryland Insurance Administration (MIA) and the MAA. The final legislation adds significant consumer protections, insurance requirements, and clearly defines when the peer-to-peer relationship commences and ceases. Peer-to-peer car sharing companies will be required to collect an 8% sales tax from customers and submit it to the Office of the Comptroller of Maryland. The bill requires a study to determine the appropriate tax rate for peer-to-peer car sharing as the 8% tax rate established by the bill will sunset in 2020. The legislation passed the Senate and House overwhelmingly.

### ***Limited Residential Lodging***

Senators John Astle (D-Anne Arundel County) and Brian Feldman (D-Montgomery County) and Delegate Bill Frick (D-Montgomery County) sponsored Senate Bill 1081 and House Bill 1604, which both proposed statewide legislation aimed at regulating Airbnb, HomeAway, VRBO, and other short-term rentals platforms. In general, the legislation incorporated “limited residential lodging” into the existing framework for other lodging establishments, including licensure, taxation, building codes, and antidiscrimination provisions. The bills also specified that requirements are established for both an innkeeper that offers limited residential lodging through a hosting platform and for a hosting platform operator.

HB1604 received an unfavorable report from the House Economic Matters Committee, while SB1081 was substantially amended by the Senate Finance Committee to create a new tax structure for short-term rentals, causing the bill to be reassigned to the Senate Budget and Taxation Committee for review. Ultimately, that Committee took no further action on the bill and it died.

### ***Polystyrene Ban***

Legislation was, once again, introduced to make Maryland the first state in the nation to ban expanded polystyrene foam when used in conjunction with food service. Senate Bill 651/House Bill 538, introduced by Senator Cheryl Kagan (D–Montgomery County) and Delegate Brooke Lierman (D–Baltimore City), would have barred restaurants, grocery stores, movie theaters, business cafeterias, hospital cafeterias, as well as all levels of school cafeterias from using or selling expanded polystyrene food containers, plates, cups, meat and vegetable trays, and egg cartons. Some limited exceptions, such as packing for boxed electronics and supermarket meat trays, were drafted into the bill.

Environmental advocates for the bill cited both litter and the inability to recycle food-contaminated polystyrene as the primary reasons for passage. Restaurants and business groups, on the other hand, find the “durable” polystyrene to be the most cost effective way to present food to their customers, thus preserving slim profit margins. These businesses also disputed the fact that polystyrene is unrecyclable. It should be noted that local jurisdictions in Maryland, namely Baltimore City, Prince George’s County, and Montgomery County, have already banned the use of polystyrene inside their boundaries. The bill was jointly assigned in both the Senate and House but, due to conflicting reports from the various committees, failed to progress. The bill is anticipated to be reintroduced in future years as local bans become more prevalent throughout the State.

### ***Community Health Air Act***

Senator Richard Madaleno (D-Montgomery County) and Delegates Robbyn Lewis (D-Baltimore City) and Shane Robinson (D-Montgomery County), sponsored Senate Bill 133/House Bill 26 that would have established the Committee on Air Quality, composed of specified subject matter experts, tasked with developing air quality and public health data associated with large animal-feeding operations (AFOs) by January 1, 2019. The Committee would have been staffed by the Maryland Department of Environment (MDE) and required to establish a methodology for MDE to: (1) quantify the amount of air pollutants emitted from the large AFOs; and (2) assess the public health risk associated with those air pollutants. When preparing the protocol, this committee must identify all air pollutants emitted from large AFOs in the State and the potential public health risks associated with those pollutants. The legislation required the protocol to be submitted for public comment and peer review. Had this legislation passed, by April 1, 2019, this committee would have been required to review the comments received and incorporate them into the protocol as appropriate. Both bills failed due to inaction by the Senate

Education, Health and Environmental Affairs and the House Environment and Transportation Committee.

### ***Elevator Testing***

After significant debate, the General Assembly passed Senate Bill 831/House Bill 1107, sponsored by Senator Thomas “Mac” Middleton (D–Charles County) and Delegate C.T. Wilson (D–Charles County), which requires the presence of a third-party qualified elevator inspector to physically witness all annual and 5-year inspections of public and private elevators. Beginning October 1, 2018, the physical witnessing of elevators will be phased in over a 3 year period as follows: (1) five-year inspections of privately owned elevators first; (2) annual inspections of privately owned elevators next; and finally (3) annual and five-year inspections of elevators owned by the State or local governments.

To address concerns that insufficient third-party qualified inspectors exist to meet the bill requirements, the legislation creates two safeguards. First, beginning in October 2018, the Department of Labor, Licensing, and Regulation (DLLR) must establish and administer, within the Maryland Apprenticeship and Training Program, an apprenticeship program for third-party qualified elevator inspectors. Second by January 2020, By January 1, 2020, DLLR must report to the Maryland General Assembly the status of how elevator inspections are being conducted under the bill and recommendations as to whether the phase in period should be extended.

### ***Financial Regulation – Consumer Reporting Agencies***

The General Assembly passed legislation introduced on behalf of the Office the Commissioner of Financial Regulation (OCFR) to expand state regulation of consumer reporting agencies (CRAs) under the Maryland Credit Reporting Agencies Act. As amended, House Bill 848 requires CRAs to: (1) provide a secure, electronic method for placing and removing security freezes; (2) codifies an existing regulatory requirement that CRAs must register with the OCFR; and (3) establishes a procedure for receiving and investigating complaints about CRAs. Additionally, the bill imposes surety bond requirements on CRAs, allows the OCFR to recoup investigation costs, and increases civil monetary penalties for a violation.

### ***Credit Freezes***

The General Assembly unanimously passed Senate Bill 202/House Bill 710, sponsored by Senator Susan Lee (D-Montgomery County) and Delegate Ned Carey (D-Anne Arundel County), on behalf of the Maryland Cybersecurity Council. As amended, the bill prohibits a CRA from charging a consumer or a protected consumer’s representative a fee for a placement, removal, or temporary lift of a security freeze. At any time that a consumer is entitled to receive a summary of rights under the federal Fair Credit Reporting Act or the Commercial Law Article, a CRA must provide notice to the consumer with specified information, including the consumer’s right to request a placement, temporary lift, or removal of a security freeze.

### ***Freight Trains – Required Crew***

House Bill 180, sponsored by Delegate Dana Stein (D-Baltimore County), prohibits a train or light engine used in connection with the movement of railroad freight that shares the same rail corridor as a high-speed passenger or commuter train from operating in the State unless it has a crew of at least two individuals. The prohibition does not apply to a train or light engine used in connection with the movement of railroad freight involving hostler service or utility employees in yard service. A person who willfully violates the bill's prohibition is guilty of a misdemeanor and subject to a fine of \$500 for a first offense and a fine of \$1,000, per offense, for a second or a subsequent offense committed within three years of the second offense. The bill preempts a county or municipality from enacting and enforcing legislation requiring crews greater than two members. In addition, the bill terminates if a federal rule requiring two-person crews is adopted. Opposing legislators unsuccessfully argued against the bill, in committee and on the House and Senate floors, noting that it would disproportionately impact cargo trains leaving the thriving Port of Baltimore and would unnecessarily jeopardize the positive economic momentum of the Port. Ultimately, the bill was passed by the full General Assembly on Sine Die, despite these concerns.

### ***Retention Proceeds***

Currently, state law limits to 5% the percentage of a construction contract that an owner or contractor can retain to guarantee that a contractor or subcontractor completes the work required by the contract if the contractor has provided 100% performance and payment security. Delegate Christopher Adams (R-Caroline, Dorchester, Talbot, and Wicomico Counties) introduced House Bill 1627, which, as originally drafted, allowed for the payment of retention proceeds within 90 days of substantial completion of the project. Substantial completion, a term defined in the contract between the parties, occurs when the owner has taken possession and begun to use the completed project. HB1627, as originally drafted, attempted to narrow the gap between performance of work by the contractor and payment for work by the owner. An owner may still withhold payment if he/she has reasonable grounds to do so. The original bill was supported by most general contractors and subcontractors.

Delegate Ben Kramer (D–Montgomery County) successfully amended the bill in the House Economic Matters Committee to make payment of retention proceeds upon certificate of final payment. Certificate of final payment occurs well after substantial completion and allows an owner to delay final payment until long after it has accepted the project and taken possession. Delegate Kramer's position was seen as more favorable to developers and subsequent owners of development projects, and alters the bill's posture to mimic current law. The amended bill crossed over to the Senate but failed to receive a vote in the Senate Judicial Proceedings Committee.



## **Public Safety**

### ***Parental Rights of Rape Victims***

Legislation that has been heavily debated for nearly a decade passed early in the 2018 Legislative Session and was immediately signed into law by Governor Larry Hogan. Senate Bill 2/House Bill 1, the Rape Survivor Family Protection Act, introduced by Senator Brian Feldman (D–Montgomery County) and Delegate Kathleen Dumais (D–Montgomery County), allow a rape survivor who becomes pregnant as the result of “nonconsensual sexual conduct” to petition the court to remove the parental rights of her attacker, even without a conviction for the nonconsensual sexual conduct.

Under the bill, a judge must first find, by clear and convincing evidence, that the child’s conception was the result of nonconsensual sexual conduct. The judge then must find that the termination of parental rights is in the “best interest of the child,” a standard routinely used in Maryland child custody cases. When an individual’s parental rights are terminated under this section of law, the individual’s responsibility to support the child, including child support, are also terminated. Advocates for the bill, though elated with their progress, have vowed to petition the legislature next session to give the court the option of making an attacker pay child support. Senate Bill 2/House Bill 1 were originally drafted to take effect October 1, 2018, but were subsequently amended to be emergency measures. The bills took effect upon the Governor’s signature on February 13, 2018.

### ***Gun Control***

#### ***Bump Stock Ban***

In response to the increasing number of mass shootings across the nation, including the deadliest mass shooting in United States history occurring in Las Vegas in 2017, the Maryland General Assembly passed legislation to ban the possession and sale of “rapid fire trigger activators” or “bump stocks,” as defined therein. Senator Victor Ramirez (D-Prince George’s County) and Delegate David Moon (D-Montgomery County) sponsored Senate Bill 707/House Bill 888, which, as amended, prohibit a person from: (1) transporting a rapid fire trigger activator into the State; or (2) manufacturing, possessing, selling, offering to sell, transferring, purchasing, or receiving a rapid fire trigger activator.

Violators are subject to an existing misdemeanor penalty of a maximum of three years imprisonment and/or a fine of \$5,000. In addition, the bill prohibits a person from using a rapid fire trigger activator in the commission of a felony or a crime of violence. Violators are subject to the existing more stringent penalties that apply to the use of an assault weapon or a magazine with a capacity of more than 10 rounds of ammunition in the commission of a felony or crime of violence. The bill allows a person to continue to possess a rapid fire trigger activator until October 1, 2019 if, among other things, the person applies for and receives authorization from the federal Bureau of Alcohol, Tobacco, Firearms, and Explosives.

After significant debate on both the House and Senate floors, including discussion of several additional amendments offered by Republican members, the bill passed with strong majorities in both houses.

### ***Extreme Risk Prevention Orders (“Red Flag” Bill)***

Delegate Geraldine Valentino-Smith (D-Prince George's County) introduced House Bill 1302, which establishes procedures by which specified health professionals, a law enforcement officer, or any other interested person may petition the court to obtain an “extreme risk prevention order,” as defined therein on a respondent who poses an immediate and present danger of causing personal injury to themselves, the petitioner, or another by possessing a firearm and that the extreme risk prevention order is necessary to prevent personal injury to the respondent, the petitioner, or another.

A petition may be filed with district court, circuit court, or, when neither court is open for business, a law enforcement agency for presentation to a circuit or district court duty judge. A petitioner who, in good faith, files a petition for an extreme risk prevention order is not civilly or criminally liable for filing the petition. Similar to the protective order process, the court may issue temporary or final extreme risk prevention orders. A person who fails to comply with the provisions of a temporary or a final extreme risk prevention order is guilty of a misdemeanor and subject to maximum penalties of a \$1,000 fine and/or 90 days imprisonment for a first offense. For a second or subsequent offense, the court may impose a \$2,500 fine and/or one year imprisonment. Finally, a law enforcement officer must arrest with or without a warrant and take into custody a person who the officer has probable cause to believe is in violation of a temporary or a final extreme risk prevention order in effect at the time of the violation.

The bill eventually passed both chambers on Sine Die after the House accepted the lengthy Senate amendments to the bill. This legislation will become effective on October 1, 2018.

### ***Gun-Free Higher Education Zones***

Delegate Ben Barnes (D-Prince George’s County) reintroduced House Bill 904, which would have prohibited, with specified exceptions, a person from carrying or possessing a firearm on the property of a public institution of higher education in the State. A violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for three years and/or a \$1,000 fine. A person who is convicted of carrying or possessing a handgun in violation of the bill’s prohibition must be sentenced under the penalty provisions applicable to handgun violations. The bill’s prohibition would not have applied to a law enforcement officer, a retired law enforcement officer in good standing, security guards of the institution, a person who is required or authorized by policies of the institution to possess a firearm, a person engaged in organized shooting activity for educational purposes, or a person engaged in other specified historical activities for educational purposes with a written invitation from the president of the institution. The bill passed the House of Delegates with additional amendments to accommodate individuals with

specified firearm permits but failed to move out of the Senate Rules Committee where it died.

### ***Safe Neighborhoods Act***

Living in an apartment community would have become a little safer with the passage of Senate Bill 555/House Bill 494, sponsored by Senator Michael Hough (R-Frederick and Carroll Counties) and Delegate Pam Beidle (D-Anne Arundel County). SB 555/HB 494, entitled the Safe Neighborhoods Act, attempted to streamline the eviction process in breach of lease cases where a judge determines that a tenant is an “imminent danger” of doing serious harm to themselves, other tenants, the landlord, the landlord’s property or representatives, or any other person on the property. In practice, the Safe Neighborhoods Act would have reduced, from 14 to 7, the number of days notice that a landlord must give to evict a tenant who poses an imminent danger. The Act also would have reduced, from 10 to 7 days, the amount of time during which either party may appeal a judgment to the circuit court. The bill became the subject of a factually inaccurate floor debate in the Senate, spearheaded by Senator Cheryl Kagan (D-Montgomery County) who first successfully added an amendment to the Senate bill and then was able to kill the House Bill on third reader. The amendment to the Senate bill ultimately resulted in those supporting the bill to abandon it and thus the House of Delegates chose not to move the bill despite it being on third reader well before Sine Die.

### **Sexual Assault in Higher Education Institutions**

The General Assembly introduced several pieces of legislation aimed at the incidents of sexual assault plaguing college campuses throughout the nation.

### ***Mandatory Training for Campus Personnel***

Senator Cheryl Kagan (D-Montgomery County) and Delegate Shelly Hettleman (D-Baltimore County) introduced Senate Bill 1203/House Bill 1238 in an effort to require each Maryland community college and public or private four-year institution of higher education to provide annual sexual assault response training. If the bills had passed, the training would have included a review of the sexual policy of the institution and the effects of trauma on a survivor of sexual violence, domestic violence, dating violence, or stalking. Community colleges and public four-year institutions of higher education would have been required to provide at least eight hours of training to Title IX coordinators, members of the institution’s campus law enforcement unit or campus security team, any individual responsible for investigating alleged violations of the institution’s sexual assault policy, and any individual responsible for determining whether a violation of the institution’s sexual assault policy occurred. Finally, the bills also sought to establish a Sexual Assault Response Training at Institutions of Higher Education Grant Program to be administered by the Maryland Higher Education Commission (MHEC) with mandated funding of at least \$1 million annually for the program. SB1203 failed to receive any action in the Senate and HB1238 was withdrawn by the sponsor.

### ***Review of Transfer Student Records***

Senator Richard Madaleno (D-Montgomery County) and Delegate Maricé Morales (D-Montgomery County) introduced Senate Bill 1027/House Bill 713, which would have required local community colleges, as well as public and private four-year institutions of higher education, before deciding whether to accept and enroll a transfer student, to first request and obtain the education records of the student regarding any disciplinary actions taken against the student by any institution in which the student was previously enrolled. Then, if the student's education record indicated that the student was disciplined for a violation of a sexual assault policy adopted under State law, the institution would have been required to impose individualized conditions on the admission and enrollment of the student in order to prevent the student from violating the institution's sexual assault policy. Finally, an institution of higher education would have had to provide notice for all students that the institution provides education records regarding disciplinary action to other institutions of higher education.

While local community colleges and State public and private four-year institutions may request the required education records from another institution, that institution is not compelled to share the records, particularly those institutions located outside of the State. One of the unintended consequences of the bill, as introduced, was that potential transfer students might have been barred from enrolling in an institution because that institution was unable to obtain the required records. This reality was one of the contributing factors that led to an unfavorable vote in the Senate Education, Health, and Environmental Affairs Committee and a lack of action on the legislation in the House.

### ***Sexual Assault Policy Reform***

The General Assembly unanimously passed Senate Bill 607/House Bill 913, sponsored by Senator Joan Carter Conway (D-Baltimore City) and Delegate Aruna Miller (D-Montgomery County), which will require the governing body of each institution of higher education to adopt and submit a revised sexual assault policy that includes provisions for disciplinary proceedings that meet specified requirements by August 1, 2019. The disciplinary proceedings policy must include a description of the rights of a student who alleges a violation or a student who responds to an allegation of a violation, under the institution's sexual assault policy. The disciplinary proceedings provisions must prohibit the institution of higher education from using mediation to resolve an allegation of a violation of the institution's sexual assault policy, unless several specified conditions are met and prohibit the adjudicating official or body from considering specified evidence, including a student's prior sexual history. Additionally, the policy must permit each student, current and former, alleging a violation and/or responding to an allegation access to counsel paid for by MHEC. MHEC is not required to pay a student's attorney's fees for representation in a criminal or civil matter.

## ***Hate Crimes***

Several pieces of legislation were introduced this session to address issues relating to hate crimes occurring in the State. Senator John Astle (D-Anne Arundel County) and Delegate Charles Sydnor III (D-Baltimore County) introduced Senate Bill 528 and House Bill 700, to address a loophole in Maryland's hate crime statute. In May 2017, two 19-year-olds were arrested for allegedly hanging a noose at Crofton Middle School in Anne Arundel County. One student plead guilty to a misdemeanor hate crime violation, while the other was found not guilty after his attorney successfully argued that the statute requires the targeting of a specific person and not the targeting of a "group" of people. In response, Senate Bill 528/House Bill 700 expanded Maryland's hate crime statute by including crimes against "groups". As a result of this legislation, a person may not commit an act against another person or a group because of that individual or group's race, color, religious beliefs, sexual orientation, gender, disability, national origin, or because the individual or group is homeless. The bills overwhelmingly passed both houses.

Senator Bobby Zirkin (D-Baltimore County) and Delegate Sandy Rosenberg (D-Baltimore City) sponsored Senate Bill 671/House Bill 246, in an attempt to create criminal penalties for threatening to commit a hate crime. The bill would have extended the current penalties for committing a hate crime to an attempt or threat of committing a hate crime and would have authorized the court to require a person convicted of committing a hate crime, as a condition of supervised release, to attend educational classes and perform community service related to the person or group that was the subject of the person's hate crime. Unfortunately, this legislation did not pass.

Delegates Ben Kramer (D-Montgomery County) and Cheryl Glenn (D-Baltimore City) introduced House Bill 1119 in an attempt to create a civil remedy for victims of hate crimes. The legislation would have allowed courts to award economic and non-economic damages, punitive damages, and attorney's fees to victims of hate crimes. The bill failed due to lack of action after the House hearing.

Finally, Delegate Mark Chang (D-Anne Arundel County) introduced House Bill 1695 in order to strengthen the hate crimes definition of "deface". The bill sought to include "to affix, erect, or place a noose or swastika on." While the bill passed both the House and Senate, time ran out before the House could concur with the Senate amendments and the bill failed to pass on Sine Die.

## **Substance Exposed Newborns**

The General Assembly unanimously passed House Bill 1744, sponsored by Delegate C.T. Wilson (D-Charles County), which updates the conditions under which a health care practitioner must make a report concerning a substance-exposed newborn. This issue was the subject of significant debate between stakeholders and the Maryland Department of Health (MDH) over the 2017 interim, and the bill that passed represents a significant compromise on the issue. The bill also updates Maryland law to meet federal funding

requirements under the Child Abuse Prevention and Treatment Act, which is essential to ongoing newborn health programs in the State.

## **Education**

### ***Commission on Innovation and Excellence in Education (Kirwin Commission)***

Legislation was passed allowing the Commission on Innovation and Excellence in Education, more commonly known as the Kirwin Commission, to extend the deadline to complete its work to improve Maryland public schools by one year. Senate Bill 1029/House Bill 1415, sponsored by the Senate President and Speaker of the House, on behalf of the Commission, was based largely on recommendations of the Commission and establishes or enhances several educational programs and mandates funding for them beginning in fiscal year 2019. The bill includes: (1) comprehensive teacher recruitment and outreach; (2) the Maryland Early Literacy Initiative; (3) Learning in Extended Academic Programs, (4) Teaching Fellows for Maryland Scholarship programs; and (5) the Career and Technology Education Innovation program. The bill passed both the House and Senate with significant majorities, and additional legislation is expected in future years as the Commission completes its work.

### ***21<sup>st</sup> Century School Facilities Act (Knott Commission)***

Chairs of the Senate and House Capital Budget Committees, Senator Ed DeGrange (D-Anne Arundel County) and Delegate Adrienne Jones (D-Baltimore County) sponsored Senate Bill 1243/House Bill 1783, the 21<sup>st</sup> Century School Facilities Act to implement the recommendations of the 21<sup>st</sup> Century School Facilities Commission, more commonly known as the Knott Commission. As amended, HB1783 makes comprehensive changes to public school construction funding and approval processes in the State, including; (1) altering the name, composition, and role of the Interagency Committee on School Construction (IAC); (2) requiring periodic public school facilities assessments; (3) streamlining the State approval process for school construction projects; and (4) providing at least \$400 million for public school construction annually as soon as practicable, including \$10 million for school safety improvements. The legislation includes language encouraging the use of intergovernmental cooperative purchasing agreements, as one of several tools that may be used to increase efficiency in school construction and maintenance.

The amended bill includes a removal of the Board of Public Works (BPW) from the school construction approval process and, alternatively, expands the role of a more extensive IAC. The removal of the BPW from the process was strongly opposed by Governor Hogan and Comptroller Peter Franchot, who both serve on that Board, triggering the Governor to swiftly veto the legislation. Both the House and Senate promptly overrode the veto and the legislation will take effect on June 1, 2018.

### ***Education Funding Lockbox***

In response to growing public concerns about the “raiding” of Maryland’s Education Trust Fund for non-educational uses, Senator Joan Carter Conway (D-Baltimore City) and Delegate Maggie McIntosh (D-Baltimore City), sponsored Senate Bill 1122/House Bill 1697 to affirmatively protect that funding via constitutional amendment. As amended, the bills propose a constitutional amendment that, if approved by the voters in the next general election, would require the Governor to provide supplemental state funding for public education using commercial gaming revenues that are dedicated to public education in the State budget beginning in fiscal year 2020. Supplemental funding must total \$125 million in fiscal year 2020, \$250 million in fiscal year 2021, and \$375 million in fiscal year 2022. In all subsequent years, 100% of the gaming revenues dedicated to public education must be used for supplemental funding. The bill repeals the constitutional provision specifying that capital projects at community colleges and public senior higher education institutions are among the purposes for which revenue from video lottery terminal (VLT) facilities may be used. Beginning in fiscal year 2020, the Governor must identify in the annual State budget how the supplemental revenue is being used to supplement and not supplant spending on public schools.

Late in the legislative session, Governor Hogan introduced similar legislation, Senate Bill 1258/House Bill 1815, which would have similarly directed revenues in the Education Trust Fund toward education, but without the strength of the constitutional amendment included in the legislature’s bills. There was no action on the Hogan Administration bills after their initial public hearing.

### ***Maryland Safe to Learn Act of 2018***

A series of four bills, entitled The School Safety Act, with one focusing on “Anticipation”, the next focusing on “Prevention”, another focusing on “Deterrence”, and the last focusing on “Protection” reflected a bipartisan effort of the Maryland Senate to address school safety issues, particularly those related to school shootings. The original bills were sponsored by Senator Katherine Klausmeier (D-Baltimore County), Senator Steve Waugh (R-Calvert and St. Mary’s Counties), and Senator J. B. Jennings (R-Baltimore and Harford Counties), and all had an influential co-sponsor, Senate President Thomas V. Mike Miller, Jr. (D-Prince George’s and Calvert Counties). The bills were eventually refined into one bill, Senate Bill 1265, the Maryland Safe to Learn Act of 2018. The bill as amended and passed makes comprehensive changes designed to improve the safety of the State’s public schools as well as to help those students who may need meaningful mental health services.

First, the bill enhances the presence of school resource officers (SROs) and/or local law enforcement in or near public schools and requires SROs to complete specialized training.

Second, the bill establishes a School Safety Subcabinet (subcabinet), which also serves as the governing board for the Maryland Center for School Safety (MCSS). The MCSS was made an independent unit within Maryland State Department of Education under this bill. The subcabinet is primarily charged with: (1) collaborating with stakeholders to provide a

comprehensive, coordinated approach to school safety; (2) initiating collaborative partnerships and facilitating coordination among stakeholders to leverage existing resources to deliver school safety services uniformly to local school systems; and (3) distributing grants from the Safe Schools Fund. The Safe Schools Fund established by this bill will be used to make grants to local school systems to assist in implementing the bill's various mandates.

Third, by September 1, 2018, the subcabinet must develop a model policy for the establishment of an assessment team(s) in each local school system. The model policy must include specified provisions generally related to: (1) the identification of, and intervention with, students or other individuals who may pose a threat to school safety; (2) the composition and appropriate number of assessment teams within local school systems; and (3) training for the assessment teams. Then by September 1, 2019, each local school system must adopt a policy for the establishment of assessment teams that is consistent with the model policy. Local policies must include the following: (1) a process for regular assessment and intervention, including diversion and de-escalation, if an individual exhibits behavior that may pose a threat to school safety; (2) standards for timely response and procedures for coordination among members of the team, including referral of relevant information to appropriate authorities; and (3) standards and procedures for the referral of an individual for evaluation, services, or treatment when appropriate.

Fourth, each local school system must designate a school safety coordinator, who will serve as the liaison between the local school system, local law enforcement, and MCSS. By June 15, 2019, and regularly thereafter, each local school system must conduct a physical safety evaluation of each school to: (1) identify and, if necessary, develop solutions for physical safety concerns and (2) identify and evaluate any patterns of safety concerns on school property or at school-sponsored events.

Finally, by September 1, 2018, each local school system must appoint a mental health services coordinator to coordinate existing mental health services and referral procedures within the local school system. The coordinator must: (1) ensure that a student who is referred for mental health services obtains the necessary services; (2) maximize external funding for mental health and wraparound services; and (3) develop plans for delivering behavioral health and wraparound services to students who exhibit specified behaviors of concern.



### ***Debt-Free Community College***

Under Senate Bill 317/House Bill 951, introduced by Senator Paul Pinsky (D-Prince George's County) and Delegate Jimmy Tarlau (D-Prince George's County), beginning in the 2019-2020 academic year, Maryland public high school graduates and residents who obtain GEDs (diploma by examination) would have had the opportunity to earn an associate degree or certificate debt free. SB317/HB951 would have established the Maryland Community College Promise Program, under which the State would provide local community college tuition grants on a first come first serve basis to full-time community college students whose families' federal adjusted gross income is less than \$150,000. Students receiving Promise grants would be required to maintain a 2.0 GPA and then work in Maryland for at least two years after graduating.

As introduced, the bill included an increased tax on carried interest for specified companies in order to fund the measure, but that provision was amended out and replaced with language mandating an annual \$30 million appropriation to the Promise Program. SB 317/HB 951 would also cap tuition increases at local community colleges at 3 percent a year. In addition, these bills also include tuition assistance for "near completers," students who left school within 15 credits of their degree. Supporters of the bills noted that the median income for a community college student a year before graduation is \$23,000; yet three years following graduation, that median income soars to \$53,000.

The Senate and House disagreed on the funding levels for the grants to be issued under the bill, and a conference committee was appointed late on Sine Die to resolve the differences. Ultimately, they were unable to adopt a compromise before the legislature adjourned at midnight and the bill failed.

A similar bill, however, with a different funding mechanism, House Bill 16, sponsored by Delegate Frank Turner (D-Howard County) was able to pass the Maryland General Assembly. House Bill 16 also establishes The Maryland Community College Promise Scholarship Program, which will provide \$15 million in need-based tuition aid to recent high school graduates and near-completers who meet income, grade point average, and other requirements defined in the bill. In addition, House Bill 16 establishes for academic years 2019-2020 and 2020-2021, a local community college in the State or Baltimore City Community College may not increase the in-county tuition rate over the prior year by more than the higher of the increase in the three-year rolling average of the State's median family income or 4% over the prior year tuition rate.

House Bill 16 will go into effect in 2019. Maryland will join California, New York, Oregon, Rhode Island and Tennessee as states that provide some form of a tuition-free program for college students. The sticking point for the Governor may be the annual appropriation of at least \$10 million in the State budget for Promise scholarships beginning in fiscal 2020 and, for the near completer program.

### ***Child Sexual Abuse Prevention – Instruction and Training***

Building on abuse training and awareness policies passed in previous years, the General Assembly unanimously passed House Bill 1072, sponsored by Delegate C.T. Wilson (D-Charles County), which, as amended, requires a local board of education or a nonpublic school that receives State funds to require each employee to receive annual instruction on the prevention, identification, and reporting of child sexual abuse. In addition, each local board of education must: (1) establish and implement policies that support the prevention of child sexual abuse through ongoing staff training; and (2) develop employee codes of conduct that address appropriate contact between staff and students. By December 1, 2018, the IAC and the State Council on Child Abuse and Neglect must jointly develop guidelines and best practices for the assessment and modification of physical facilities and spaces to reduce opportunities for child sexual abuse. Beginning in the 2019-2020 school year, each local board must develop policies and procedures on the use and modification of physical facilities and spaces to reduce opportunities for child sexual abuse.

### ***Consent Curriculum***

The Family Life and Human Sexuality Curriculum for public school middle schoolers and high schoolers will have a new mandatory component for the upcoming school year. Under Senate Bill 402/House Bill 251, Education - Family Life and Human Sexuality Curriculum - Boundaries and Consent, sponsored by Senator Craig Zucker (D-Montgomery County) and Delegate Ariana Kelly (D-Montgomery County), a local board of education will have to provide age-appropriate instruction on the meaning of “consent” and respect for personal boundaries as part of the Family Life and Human Sexuality curriculum in every grade in which the curriculum is taught in public schools. Under the bills, “consent” is defined as the unambiguous and voluntary agreement between all participants in each physical act within the course of interpersonal relationships, including respect for personal boundaries. Advocates for the bill see this measure as “one of the most important things that [the State] can do to prevent college sexual assaults.”

### **State Ethics/Elections**

Over 100 bills were introduced this year with an interest to revamp and modernize Maryland’s ethics procedures and election law. The subject matters of such legislation included, but was not limited to, revising the legislature’s sexual harassment policies, providing increased transparency for legislative meetings, voter registration, campaign financing, on-line political advertisements, campaign material disclosure, term limits, cybersecurity, proof of identity and ballot access

### ***Sexual Harassment in the Legislative Branch***

The Maryland General Assembly unanimously passed House Bill 1342, in an attempt to modernize the Legislative Branch’s anti-harassment procedures, policies, and training. As amended, HB1342, sponsored by Delegate Ariana Kelly (D-Montgomery County), Chair of

the Maryland Women’s Caucus: (1) explicitly prohibits the harassment of state officials and employees, an intern, page or fellow in any branch of state government, a registered lobbyist, or a member of the press; (2) updates the procedure of the Joint Ethics Committee for addressing harassment complaints, including a role for an outside and independent investigator; (3) lays out a timeline for the Legislative Policy Committee to regularly review and update the legislature’s anti-harassment policies and procedures; (4) requires the Department of Legislative Services to retain and publish records of legislators engaging in harassment prevention training; and (5) extends anti-harassment policies and reporting abilities to registered lobbyists.

After significant work and discussion in the Women’s Caucus, as well as the House and Senate Rules and Executive Nominations Committees, the amended bill unanimously passed the full General Assembly on Sine Die. The bill was amended to be emergency legislation and will take effect upon the Governor’s signature.

### ***Open Floor Sessions***

The Hogan Administration put forth Senate Bill 295/House Bill 352, entitled the Legislative Transparency Act of 2017, which would have required the General Assembly to make available to the public live and archived video streaming of all meetings of the Senate, House of Delegates, and standing committees, including floor sessions, committee hearings, and committee voting sessions. Currently, the General Assembly’s website only provides online public access to video recordings of committee hearings and most work sessions and audio recordings of House and Senate floor sessions, both live and in archived format. Nonetheless, House Bill 352 received an unfavorable report by the House Rules and Executive Nominations Committee and no action was ever taken on Senate Bill 295.

### ***Online Electioneering Transparency and Accountability Act***

Senate Bill 875/House Bill 981 sponsored by Senator Craig Zucker (D-Montgomery County) and Delegate Alonzo Washington (D-Prince George’s County), establishes requirements applicable to any public-facing website or web application, including a social network, ad network, or search engine, that: (1) has 100,000 or more unique monthly U.S. visitors or users for a majority of months during the immediately preceding 12 months; and (2) receives payment for qualifying paid digital communications (online platforms) on which “qualifying paid digital communications” are distributed or transmitted. A qualifying paid digital communication (digital communication) is defined under this legislation as any electronic communication that: (1) is campaign material; (2) is placed or promoted for a fee on an online platform; (3) is disseminated to 500 or more individuals; and (4) does not propose a commercial transaction. Beginning July 1, 2018, as enforced by the State Administrator of Elections and State Board of Elections (SBE), online platforms must, under specific guidelines, retain records of digital communications and make such records available to SBE and the public.

Senate Bill 875/House Bill 981 prohibits purchases of campaign material or an electioneering communication with currency other than U.S. currency. The legislation also

modifies requirements applicable to independent expenditures, disbursements for electioneering communications, and campaign material authority lines.

After significant work and collaboration with SBE in the House Ways and Means Committee and the Senate Education, Health and Environmental Affairs Committee, the compromise bill passed the full General Assembly.

### ***Postelection Tabulation Audit***

Delegate Anne Kaiser (D-Montgomery County) sponsored House Bill 1278 which requires SBE to conduct an audit of the accuracy of the State's voting system's tabulation of votes, following each statewide general election, by completing an automated software audit of the electronic images of all ballots cast in the election. After each statewide general election, SBE must also complete a manual audit of voter-verifiable paper records of: (1) at least 2% of precincts statewide, including at least one randomly chosen precinct in each county and additional precincts selected by SBE; (2) at least 1% of the statewide total of early votes, including at least a minimum number of early votes in each county, as determined by SBE; and (3) a number of votes equal to at least 1% of the statewide total in the previous "comparable general election," as defined therein, of absentee votes and provisional votes, as determined by SBE.

An audit conducted in accordance with this legislation may not have any effect on the certified election results and must instead be used to improve the voting system and voting process for future elections. SBE is required to adopt regulations to implement the bill. In addition, by May 1, 2019 SBE must submit a report that describes the resources required to complete the audit required under this legislation following the 2018 general election, including time, personnel, and other costs, along with any other administrative obstacles to completing the audit. HB1278 passed the General Assembly unanimously and will take effect June 1, 2018.

### ***Term Limits***

The Hogan Administration requested the introduction of Senate Bill 294/House Bill 347, which proposed a constitutional amendment that, if approved by the voters in the next general election, would have limited the terms of a senator or delegate to two consecutive terms in the same office. A member filling a vacancy in office would have been considered to serve a full term if the member has served more than three years in that office. Delegate Sid Saab (R-Anne Arundel County) sponsored a similar piece of legislation, House Bill 886, limiting the terms to three consecutive terms in the same office. All three bills received an unfavorable report by the House and Senate Rules and Executive Nominations Committees.

Another piece of legislation that failed to move past the committee level was Senate Bill 221 sponsored by Senator Bryan Simonaire (R-Anne Arundel County). This legislation would have limited the term of office of the State Administrator of Elections to 12 years, with the first term beginning on January 1, 2019. Had this bill passed, the State Administrator would be eligible for reappointment and, at the end of a term, continue to serve until a successor is appointed by SBE, with the advice and consent of the Senate. Any

State Administrator in office before January 1, 2019, would have been eligible to apply for and be appointed as State Administrator for the 12-year term that begins on January 1, 2019.

### ***Automatic Voter Registration***

Senator Will Smith (D-Montgomery County) and Delegate Eric Luedtke (D-Montgomery County) sponsored Senate Bill 1048/House Bill 152, the Secure and Accessible Registration Act. As amended, the legislation requires the Motor Vehicle Administration, the Maryland Health Benefit Exchange, the Mobile Certification Office, and local social services to automatically register a Maryland resident to vote or update their voter registration record. Included agencies shall inform applicants that they will be registered to vote or have their voter registration records updated, unless the applicant affirmatively declines. Additionally, under the bill, SBE and the State Comptroller shall develop procedures to offer Maryland residents who file income tax returns electronically an opportunity to register to vote through the SBE's online voter registration system.

SB1048 passed the full General Assembly with a party line vote and became law without the Governor's signature on April 5, 2018.

### **Healthcare**

#### ***Health Care Reform/Affordable Care Act Protection***

Several pieces of legislation were introduced during the 2018 Legislative Session to address the ongoing increases in health insurance premium costs as well as to safeguard Maryland benefits under the Affordable Care Act. Introduced midway through this session as a result of work done by the Affordable Care Act Workgroup, Senate Bill 1267/House Bill 1795, sponsored by Senator Thomas "Mac" Middleton (D-Charles County) and Delegate Joseline Pena-Melnyk (D-Prince George's County), requires the Maryland Health Benefit Exchange, in consultation with the Insurance Commissioner, to submit a State Innovation Waiver application for a Federal Section 1332 waiver to establish a program for reinsurance and seek federal pass-through funding. Senate Bill 387/House Bill 1782, a companion bill, identifies revenue streams to fund the reinsurance program authorized under SB12678/HB1795, upon receipt of the 1332 waiver, to be sought under the provisions of the bill. The companion funding bill establishes a state health insurance provider fee assessment on insurers for calendar year 2019, during which a corresponding federal fee is dormant. This bill also establishes limitations for association health plans, as well as short term limited duration insurance.

The language in this healthcare protection package contemplates ongoing interim work by the Maryland Health Insurance Coverage Protection Commission. Specifically, the Commission is required to study and make recommendations regarding individual and group health insurance market stability. In addition, the Senate Finance Committee and the House Health and Government Operations Committees requested that the Commission study the following courses of action:

- a standard plan design that limits cost sharing;
- merging the individual and small group health insurance markets in the State for rating purposes;
- a basic health program;
- a Medicaid buy-in program for the individual market;
- subsidies that supplement premium tax credits or cost-sharing reductions described in the Affordable Care Act;
- the adoption of a state-based individual health insurance mandate; and
- methods to use payments collected from individuals who do not maintain minimum essential coverage, including use of the payments to assist individuals in purchasing health insurance.

The Commission's report is due December 31, 2019.

Senate Bill 1267/House Bill 1795 passed the General Assembly with overwhelming support and were signed into law by the Governor immediately following the close of the legislative session.

### ***Drug Cost Commission***

Senator Joan Carter Conway (D-Baltimore City) and Delegate Joseline Pena-Melnyk (D-Prince George's County), in conjunction with Healthcare for All, introduced Senate Bill 1023/House Bill 1194, which would have created a Maryland Drug Cost Commission. As introduced, the legislation focused heavily on both brand name and generic drug manufacturers and attempted to impose on them price controls and burdensome reporting requirements. After significant discussion in the House Pharmaceuticals and Health Facilities Subcommittee, House Bill 1194 was heavily amended to eliminate the bulk of the reporting requirements and expanded the scope of the Commission to examine the entire drug supply chain in making its recommendations on methods to lower the consumer cost of prescription drugs. House Bill 1194 then crossed over to the Senate late in session and passed favorably out of the Senate Finance Committee on Sine Die in the same posture as it left the House, but ultimately died on the floor when the Senate failed to take up the Committee Report.

### ***Specialty Drugs***

Senator Jim Mathias (D-Somerset, Worcester, and Wicomico Counties) and Delegate Nicholaus Kipke (R-Anne Arundel County) sponsored Senate Bill 1076/House Bill 1183, which would have further restricted the current statutory definition of "specialty drug" to apply only to current limits on copayments and coinsurance requirements for such drugs and specified coverage determination decisions. The bills also would have established a new definition of "specialty drug" for purposes of a carrier, requiring a specialty drug to be obtained through a specified designated pharmacy and coverage of a specialty drug through a managed care system. The bills were met with substantial opposition from health insurers and after some debate in both the Senate Finance Committee and the House

Health and Government and Operations Committee, both were withdrawn by their sponsors.

### ***Regulation of Pharmacy Benefits Managers***

In the wake of several bills introduced in the 2017 Legislative Session to regulate the operation of Pharmacy Benefits Managers (PBMs) and their relationships with pharmacies in Maryland, the Maryland Insurance Administration (MIA) was charged with studying the issues in the interim under the Pharmaceutical Services Workgroup. Early in the 2018 Legislative Session, the MIA briefed the House Health and Government Operations Committee and the Senate Finance Committees on the recommendations of that workgroup. The following legislation is reflective of those recommendations and subsequent work of the legislative committees:

#### ***Gag Rule Prohibition***

The General Assembly unanimously passed Senate Bill 576/House Bill 736, sponsored by Senator Katherine Klausmeier (D-Baltimore County) and Delegate Eric Bromwell (D-Baltimore County). As amended, the legislation bars a PBM from: (1) prohibiting a pharmacist from providing a beneficiary with information regarding the retail price for a prescription drug; or (2) the amount of the cost share for which the beneficiary is responsible for a prescription drug; or (3) from discussing with a beneficiary information regarding the retail price for a prescription drug. The bill also keeps a PBM from prohibiting a pharmacist from selling a more affordable drug available on the purchaser's formulary, providing the requirements for a therapeutic interchange are met.

#### ***Reimbursement Parity for Independent Pharmacies and MAC Pricing***

The General Assembly also unanimously passed Senate Bill 1079 /House Bill 1349, sponsored by Senator Jim Mathias (D-Somerset, Worcester, and Wicomico Counties) and Delegate Carl Anderton, Jr. (R-Wicomico County). As amended, the bill imposes specified requirements and prohibitions on PBMs related to reimbursement for pharmacy services and maximum allowable cost (MAC) lists, including requiring parity in reimbursement rates for small, independent pharmacies that are not affiliated with a particular PBM. In regard to MAC pricing lists, the bill specifies that MAC does not include dispensing fees and establishes a more accessible and transparent process for pharmacies to access current and applicable MAC pricing lists. The bill also authorizes the Maryland Insurance Commissioners to adopt regulations to govern PBMs and to establish a complaint process to address grievances and appeals.

### ***Behavioral Health***

The 2018 Legislative Session saw the introduction of several pieces of legislation to improve the delivery of behavioral health services in Maryland. Senate Bill 703/House Bill 1092, introduced by Senator Kathy Klausmeier (D-Baltimore County) and Delegate Sandy Rosenberg (D-Baltimore City), establishes a Behavioral Health Crisis Response Grant

Program in the Maryland Department of Health to provide funding to local jurisdictions to establish and expand community behavioral health crisis response systems. The bill stipulates that the Governor must include the following appropriations in the State operating budget for the program: (1) \$3 million for fiscal 2020; (2) \$4 million for fiscal 2021; (3) \$5 million for fiscal 2022; and (4) \$8 million for fiscal 2023. This legislation passed with overwhelming majorities in both the Senate and the House.

Senate Bill 765/House Bill 772, sponsored by Senator Jim Mathias (D-Somerset, Worcester, and Wicomico Counties) and Delegate Antonio Hayes (D-Baltimore City), requires the Secretary of Health to convene a stakeholder workgroup to make findings and recommendations on issues related to the reimbursement of certified peer recovery specialists, including: (1) whether statutory or regulatory changes are required and (2) whether a Medicare State Plan Amendment is required. According to the National Conference of State Legislatures, at least 36 states permit providers to bill Medicaid for mental health peer support services. The report, including findings and recommendations, is due by December 1, 2018. The bill passed unanimously in both houses.

### ***Reporting of Drug Overdoses***

The Hogan Administration championed Senate Bill 309/House Bill 359, which authorizes an emergency medical services (EMS) provider or law enforcement officer who treats and releases, or transports to a medical facility, an individual experiencing a suspected or actual overdose to report the incident. This report must include the following information: (1) the date and time of the overdose; (2) the approximate address where the victim was found or where the overdose occurred; (3) whether an opioid overdose reversal drug was administered; and (4) whether the overdose was fatal or non fatal. These reports are not permitted to be used for criminal investigations or prosecutions but rather the information will be used for the purpose of making decisions about the allocation of public health and educational resources. After significant discussion, the Senate and House were able to work out their differences on the legislation and HB359 unanimously passed on Sine Die.

### ***Medical Cannabis***

This year, several bills were introduced relating to the medical cannabis program in Maryland. Senate Bill 1/House Bill 2, sponsored by Senator Joan Carter Conway (D-Baltimore City) and Delegate Cheryl Glenn (D-Baltimore City), were pre-filed bills lauded as a top priority for the Black Caucus in 2018. Due to significant debate and amendment in both the Senate and the House, compromise legislation crafted in a conference committee was adopted by both houses on the final day of the Session. As amended, HB2 does the following:

- makes changes to the make up of the Maryland Medical Cannabis Commission;
- establishes a “compassionate use” special fund;
- promulgates emergency remedial regulations, based on the results of the 2017 interim disparity study, which informs future licensing decisions;
- establishes new license caps for growers and processors; and



- restricts when a report regarding the demand for additional licensees may be submitted, to include dispensaries.

Additionally, the General Assembly passed Senate Bill 1063/House Bill 1035, also sponsored by Senator Conway and Delegate Glenn. As amended, this bill prohibits the referral of a qualified patient to a certifying provider from being made by any person or entity who is employed by or has a specified compensation interest in facilitating a person to become a patient. In the bill hearings before the Senate Finance Committee and House Health and Government Operations Committee, significant concern was expressed about the increased signage along roadsides advertising how Marylanders can easily obtain a medical cannabis card. The General Assembly passed the bill in an attempt to curtail this type of advertising.

In an attempt to deal with the ongoing advertising concerns, several other pieces of legislation were introduced to restrict advertising relating to medical cannabis and controlled dangerous substances, including Senate Bill 1078/House Bill 1348, sponsored by Senator Joanne Benson (D-Prince George's County) and Delegate Geraldine Valentino-Smith (D-Prince George's County), and House Bill 1366, sponsored by Delegate C.T. Wilson (D-Charles County). Because these bills were found to be overly restrictive and problematic to the industry, the bills ultimately received an unfavorable vote in their initial committees of jurisdiction. Legislators remain concerned, however, about the proliferation of advertising signs, particularly in certain jurisdictions, and it is likely that similar restrictive legislation will be reintroduced in future years.

Finally, Senate Bill 37/House Bill 845, sponsored by Senator Ron Young (D-Frederick County) and Delegate Pam Queen (D-Montgomery County), would have created a subtraction modification against the State individual and corporate income tax for the amount of ordinary and necessary business expenses for the medical cannabis industry. The bill failed to gain traction and died in its committees of jurisdiction in both the Senate and the House.

### ***Medicaid Expansion - Adult Dental Benefit***

In 2017 the General Assembly passed legislation authorizing the Department of Health to develop an adult dental benefit within the Maryland Medicaid program and required the Maryland Dental Action Coalition (MDAC) to conduct a study on the cost of dental services being provided in emergency departments in the State, particularly the cost to the State through Medicaid coverage. In response to those actions and the findings of the MDAC study, Senate Thomas "Mac" Middleton (D-Charles County) introduced Senate Bill 284, to affirmatively create an adult dental benefit in Maryland Medicaid. After significant collaboration between the Senate Finance Committee, the House Health and Government Operations Committee, and the Maryland Department of Health (MDH), the bill was amended to create a pilot program to provide limited dental coverage for adult Medicaid recipients. The bill requires MDH to develop and administer the program, and to apply to the Federal Center for Medicare and Medicaid Services (CMS) for any necessary waivers.

### ***NCR and IST Commitment Procedures***

The General Assembly passed Senate Bill 233/House Bill 111, introduced by Senator Thomas “Mac” Middleton (D–Charles County) and Delegate Erek Barron (D–Prince George’s County), which requires a court, upon a finding that a defendant is incompetent to stand trial and is a danger to themselves or others, or upon a verdict that a defendant is not criminally responsible, to enter an order of commitment that requires the MDH to commit the defendant to either a State facility; a State forensic residential center; or a hospital or private residential facility under contract with MDH. MDH must place defendants, as soon as possible, but no later than 10 business days after it receives the court order. If MDH fails to timely place the defendant in a facility, the court may impose any sanction reasonably designed to compel compliance, including requiring MDH to reimburse a detention facility for costs incurred as a result of delayed placement.

### ***Medicaid Work Requirement***

The Washington County Senate Delegation and Delegate Neil Parrott (R-Washington County) introduced Senate Bill 886/House Bill 1446, which would have required MDH to apply for a federal waiver to implement a demonstration project establishing work or community engagement requirements on all able-bodied adult Medicaid enrollees who are eligible on a basis other than disability. The Senate bill was withdrawn and both the House and Senate version were ultimately voted unfavorably in their respective committees.

### **Health Occupations**

#### ***Direct-Entry Midwives***

The General Assembly unanimously passed Senate Bill 1114/House Bill 1437, sponsored by Senator Joan Carter Conway (D-Baltimore City) and Delegate Bonnie Cullison (D-Montgomery County), which makes much needed updates to the Maryland Licensure of Direct-Entry Midwives Act, which initially passed in 2015. The bill: (1) clarifies the conditions under which a licensed direct-entry midwife (LDEM) must consult or transfer the care of a patient to another health care practitioner; (2) sets an ongoing timeline for the State Board of Nursing to review and update the standardized informed consent document for LDEM; and (3) updates the bridge educational requirements for LDEM applicants to match the North American Registry of Midwives Midwifery Bridge Certificate Program.

#### ***Dental Practice Ownership***

For the fourth year in a row, the General Assembly reviewed proposed legislation to clarify the definition of the practice of dentistry in Maryland and carve out a specific role for dental support organizations (DSOs) in Maryland’s oral health system. Both House Bill 70, sponsored by Delegate Angela Angel (D-Prince George’s County) and House Bill 438, sponsored by Delegate Chris West (R-Baltimore County), sought to redefine the “practice of dentistry” and attempted to sort dental activities into clinical and non-clinical categories to better clarify the role of DSOs in a dental practice. The bills also included an expansion of

penalties and enforcement authority for the State Board of Dental Examiners (the Dental Board).

Lengthy hearings on the bills were held in the House Health and Government Operations Committee, with significant and often conflicting testimony from dentists in traditional private practice settings and DSO-supported dentists. Both committees recognized the essential role of DSOs in creating increased access to affordable dental care in Maryland, but there are still several outstanding issues of concern on how certain dental practice activities should be defined and regulated in the State. None of the relevant bills moved in the 2018 Legislative Session and it is anticipated that the committees and representatives from the Dental Board and the MDH will continue to work with stakeholders and advocates to develop increased consensus on the definitions prior to any action in the 2019 Legislative Session. There is a clear level of fatigue on this issue for legislators and they were adamant about the desire to see stakeholders work out a compromise over the interim.

Delegate Chris West also introduced House Bill 652, which did not alter underlying definitions relating to the practice of dentistry, but increased the penalties for a violation of the Maryland Dentistry Act and expanded the Dental Board's enforcement authority for those violations. The House Health and Government Operations Committee amended the bill to make it consistent with similar standards set in the Maryland Medical Practice Act, but the bill died due to a lack of action in the Senate.

### ***Athletic Trainers Act***

Introduced early in the 2018 Legislative Session, Senate Bill 151/House Bill 497 would have made substantive changes to current law, significantly broadening the scope of practice for athletic trainers. As introduced, the bill: (1) repealed limitations on the settings in which athletic trainers practice; (2) altered the definition of "practice athletic training;" and (3) made changes to the Athletic Trainer Advisory Committee, eliminating the chiropractor, physical trainer and occupational therapist positions. The bill also eliminated language that prohibited athletic trainers from performing adjustments, manipulation or high velocity mobilization of the spine or extremities. This language was negotiated by the Maryland Chiropractic Association and mutually agreed upon several years ago when legislation passed initially licensing athletic trainers. Stakeholders spent significant time working through the bill and negotiating amendments. Unexpectedly, requested the withdrawal of the bill mid-negotiations. Despite the abrupt failure of the legislation, it is likely to be reintroduced again next year.

### ***Ban on Conversion Therapy***

The General Assembly enacted a ban on the controversial practice of "conversion therapy" for minors. Under Senate Bill 1028/House Bill 902, entitled the Youth Mental Health Protection Act and introduced by Senator Richard Madaleno (D-Montgomery County) and Delegate Bonnie Cullison (D-Montgomery County), "conversion therapy" occurs when a licensed mental health or child care practitioner provides services that seeks to change an

individual's sexual orientation or gender identity, and includes any effort to change the behavioral expression of an individual's sexual orientation; change gender expression; or eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same gender.

Opponents to the bill argued that the legislation infringes on certain forms of mental health counseling, particularly religious-based counseling, and may drive individuals to seek similar services from unlicensed practitioners. Proponents of the ban countered that conversion therapy is based on questionable scientific validity and on the false assumption that homosexuality is a disorder and thus needs therapy. Proponents further contend that such therapy can be very harmful to participating individuals, contributing to anxiety, depression, and the possible attempts at self-harm. After lengthy and emotional debate, the bill passed both houses with overwhelming, bipartisan support.

### **Child Care**

Several pieces of legislation were introduced in the 2018 Legislative Session to provide much needed financial support for both parents seeking childcare services and childcare institutions in the State.

#### ***Child Care Subsidy Program***

Senate Bill 379/House Bill 430, introduced by Senator Nancy King (D-Montgomery County) and Delegate Adrienne Jones (D-Baltimore County), requires the Governor to include funding in the annual State budget to support the Child Care Subsidy program in an amount sufficient to raise the program's reimbursement rates for each region to the following minimum percentiles of the most recent market rate survey or its equivalent if an alternative methodology defined by the Maryland State Department of Education is used: (1) the thirtieth percentile for fiscal 2020; (2) the forty-fifth percentile for fiscal 2021; and (3) the sixtieth percentile for fiscal 2022 and each fiscal year thereafter. Currently, Maryland's reimbursement rates are among the lowest in the country, so this is a significant step in the right direction for providing appropriate support for families who otherwise cannot afford quality child care. The bill passed with significant support in both houses.

#### ***Tax Credit for Employer-Based Child Care***

Delegate Angela Angel (D-Prince George's County) introduced House Bill 68, which would have established a tax credit against an employer's state income tax who incurred expenses to establish a child care center that provides child care services for the children of the employer's employees. The bill would have also allowed a tax credit for an employer who provides a stipend for his/her employees for child care services. Proponents argued that this bill would have served as a significant incentive for employers to proactively support their employee's childcare needs. The bill, however, failed to move out of the House Ways and Means Committee, likely due to its high fiscal impact on the State.

### ***Prenatal and Infant Care Coordination Services Grant Program***

Senator Bill Ferguson (D-Baltimore City) and Delegate Adrienne Jones (D-Baltimore County) introduced Senate Bill 912/House Bill 1685, which establishes a Maryland Prenatal and Infant Care Coordination Services Grant Program Fund to provide counties and municipalities for care coordination services to low-income pregnant and postpartum women and to children from birth to age three. These grants provide funding for programs that demonstrate: (1) evidence that the care coordination services will be collaborative and involve appropriate public services agencies and community-based providers and (2) a plan to establish a database to collect data from the program to ensure that services are provided to families with the highest need. It is anticipated that \$1 million will be included in the budget for this program. Despite the fiscal impact, both houses passed the legislation with nearly unanimous margins.

### **Taxes**

#### ***Single Sales Factor***

For the third year in a row, legislation was introduced to implement a single sales factor income apportionment for businesses operating in Maryland. Sponsored by Senator Doug Peters (D-Prince George's County), Senate Bill 1090 alters the formula used to apportion income to the state for the corporate income tax. Under the bill, all corporations subject to the corporate income tax, not just manufacturers, that carry on a trade or business in and out of the State, must allocate to the state the part of the corporation's Maryland modified income derived from or attributed to business being carried on in the state using an apportionment formula in which Maryland modified income is multiplied by 100% of the sales factor. SB1090, as introduced, allowed several sectors/industries to elect whether or not to use single sales factor, including telecommunication companies, regulated utilities and banks.

The House Ways and Means Committee and the full House of Delegates favored a more straightforward approach and stripped all the elections except for one applying to Marriott and other worldwide headquartered companies located in the State. In the end, the Senate accepted the House version of the bill with the addition of a five year phase in period for businesses. This compromise version of the bill ultimately passed both houses.

#### ***Hometown Heroes and Veterans Act of 2018***

The General Assembly passed Senate Bill 996, sponsored by Senator Doug Peters (D-Prince George's County), which expands the existing military retirement income tax subtraction modification by increasing from \$10,000 to \$15,000 the maximum amount of retirement income that can be excluded from Maryland adjusted gross income for purposes of calculating Maryland income tax liability. In order to qualify for the increased subtraction modification, the individual must be at least 55 years old. The bill also expands the existing state subtraction modification for retired law enforcement, fire, rescue, and emergency services personnel by extending eligibility to correctional officers.

Similar House bills, House Bill 327 sponsored by Delegate Mary Ann Lisanti (D-Harford County) and House Bill 296, sponsored by Delegate Sheila Hixson, (D-Montgomery County), were amended to duplicate the provisions included in the more comprehensive SB996 and were also passed by the General Assembly.

## **Real Property/Condominiums**

### ***Suspension of Use of Common Elements***

In 2017, the Maryland Court of Appeals in *Elvaton Towne Condominium Regime II v. Rose* struck down a Maryland condominium rule that barred condominium owners who were delinquent on their condominium assessments from using the community parking lot and swimming pool. In response to the ruling, Delegate Marvin Holmes (D-Prince George's County) sponsored House Bill 575, authorizing a declaration of a condominium association to provide for the suspension of the use of the parking lot or recreational facility common elements for a unit owner that is more than 60 days delinquent in paying assessments. This legislation authorizes the council of unit owners (CUO) to amend the declaration to add or repeal such a suspension provision by the affirmative vote of at least 60% of the total eligible voters of the condominium. If a declaration contains a suspension provision, the declaration must specifically state that a suspension of the uses of common elements may not be implemented until the COU: (1) mails to the unit owner a demand letter specifying a time period of at least 10 days within which the unit owner may pay the delinquent assessment or request a hearing to contest the suspension; and (2) if a unit owner requests a hearing to contest a suspension, provides notice and holds a hearing in accordance with specified dispute settlement procedures. This legislation will become effective October 1, 2018.

### ***Condominiums – Claims Against Developers and Vendors***

After years of introduction and failure of passage, Senator Delores Kelley (D-Baltimore County) and Delegate Marvin Holmes (D-Prince George's County) were successful in passing legislation establishing that any provision of an instrument made by a developer or vendor, including a declaration, bylaw, and contract for the initial sale of a unit to a member of the public, is unenforceable if the provision: (1) shortens the statute of limitations applicable to any claim; (2) waives the application of the discovery rule or other accrual date applicable to a claim; (3) requires a unit owner of the CUO to assert a claim subject to arbitration within a period of time that is shorter than the statute of limitations applicable to the claim; or (4) operates to prevent a unit owner or the CUO from filing a lawsuit, initiating arbitration proceedings for a claim subject to arbitration, or otherwise asserting a claim within the applicable statute of limitations.

Senate Bill 258/House Bill 77 applies to provisions relating to any right of a unit owner or CUO to bring a claim under applicable law alleging the failure to comply with: (1) applicable building codes; (2) plans and specifications approved by a county or municipality; (3) manufacturer's installation instructions; or (4) specified warranty

provisions contained in statute. Note that this legislation does not apply to: (1) a unit that is occupied and used solely for nonresidential purposes; (2) an agreement or other instrument entered into by a developer or vendor and a CUO designed to settle a disputed claim after the date on which the unit owners, other than the developer and its affiliates, first elect a controlling majority of the board of directors for the CUO; or (3) an agreement entered into by the developer or vendor and a unit owner to settle a disputed claim after the date the unit is conveyed to the purchaser.

This legislation will apply prospectively and may not be interpreted to have an effect on any provision of a declaration or bylaws of a condominium recorded in the land records of the county where the property is located, or any other instrument executed before the bills effective date of October 1, 2018.

### ***Regulation of Common Ownership Community Managers***

As in years past, there were several failed attempts by various legislators to pass legislation to regulate managers of common ownership communities. Two bills sponsored by Senator Joanne Benson (D-Prince George's County) and one bill sponsored by Delegate Marvin Holmes (D-Prince George's County), Senate Bills 65 and 1209 and House Bill 1158, were each found to be too complex to rectify in the 90-day session.

### ***Condominiums, Homeowners Associations and Cooperative Housing – Boards of Directors, Voting, Records, Conflicts of Interest and Dispute Settlement***

Close to a dozen House and Senate bills were introduced this session aimed at making multiple changes to the Maryland Homeowners Association Act (HOA Act) and Maryland Cooperative Housing Act to both clarify and/or significantly expand provisions related to boards of directors, meetings, voting, recordation and dispute settlement and eviction procedures. Both houses chose to send this legislation to summer study and take up the subject matter during the 2019 Legislative Session after having a better understanding of the current law.

### ***Recorded Covenants – Deletion of Ownership Restrictions Based on Race, Religious Belief or National Origin***

While the Federal Housing Act of 1968 outlawed Jim Crow-era agreements which barred homeowners from selling their properties to anyone but white buyers by including restrictions based on race, religious belief and/or national origins in architectural covenants, common area deeds or other declarations of property, recent news identified certain homeowners associations and communities with authorization to enforce architectural guidelines with such unenforceable covenants remaining in their documents without a clear procedure for removal. Senator Joan Carter Conway (D-Baltimore City) sponsored Senate Bill 621 which authorizes a person who holds an ownership interest in property to execute and record a restrictive covenant modification, if the person believes that the property is subject to a specified unlawfully restrictive covenant. This legislation also requires the governing body of a homeowners association to delete any recorded

covenant or restriction that restricts ownership based on race, religious belief, or national origin from the common area deeds or other declarations of property in the development by September 30, 2019.

While Senate Bill 621 passed, House Bill 1066 sponsored by Delegate Chris West (R-Baltimore County) with the intent to allow associations that do not meet the definition of a “homeowners association,” as defined under the HOA Act, to delete a recorded covenant or restriction that prohibits ownership based on race, religious belief, or national origin from deeds, architectural covenants, or other declarations of property failed. HB1066 received an unfavorable vote due to technical drafting concerns.

### ***Body Attachments for Delinquent Residential Tenancies***

The use of body attachments in debt collection proceedings has been the focus of several recent news reports leading up to the 2018 Legislative Session. Those body attachments connected to debts related to delinquent residential tenancies have received the most scrutiny. Critics of the practice argue that body attachments for debt collection cases is the modern-day American equivalent of debtors’ prisons and that they disproportionately impact low-income individuals. Those who see merit to the practice for debt collection purposes contend that the an individual arrested on a body attachment in a debt collection case is not being arrested for the debt, itself, but rather for failing to answer the call of the Court on more than one occasions. In an effort to assuage the discord over this issue, members of the Maryland General Assembly proposed the following pieces of legislation, all of which failed to pass:

House Bill 545, entitled The Jared Kushner Act, was sponsored by Delegate Bilal Ali (D-Baltimore City) and sought to prohibit a court from issuing a body attachment for a tenant who is a defendant in a landlord-tenant action in which the amount of rent claimed does not exceed \$5,000, exclusive of interest and costs.

House Bill 942 was also focused on the role of body attachments in debt collection cases related to residential tenancies. Sponsored by Delegate Sandy Rosenberg (D-Baltimore City), House Bill 942 would have entitled a person arrested on a body attachment related to a residential tenancy to be represented by counsel, including court appointed council, when taken before the court or a judicial officer. At that hearing, House Bill 942 mandated that the court or judicial officer to make an independent, individualized bond determination regardless of whether the body attachment specifies an amount.

Finally, Senate Bill 1050/House Bill 1081, sponsored by Senator Will Smith (D-Montgomery County) and Delegate Erek Barron (D-Prince George’s County) would have required an individual taken into custody on a body attachment and brought before a judicial officer for failure to appear in court: (1) to show cause why the individual should not be found in contempt for failure to answer interrogatories or (2) for an oral examination in aid of enforcement of a money judgment, to be given the opportunity to make, under penalty of perjury, a complete declaration of the individual’s income and assets on a form provided by the judicial officer. If the individual elects to make a



declaration, Senate Bill 1050/House Bill 1081 would have required the judicial officer to release the individual on personal recognizance without any additional conditions and then provide a copy of the declaration to the judgment creditor.

## **Gaming**

### ***Sports Wagering***

The 2018 Legislative Session saw the introduction of several pieces of legislation to authorize the expansion of Maryland's gaming program to include sports wagering. All three bills, House Bill 1014, introduced by Delegate Frank Turner (D-Howard County), House Bill 1346, introduced by Delegate Jason Buckel (R- Allegany County), and Senate Bill 836, introduced by Senator Nancy King (D-Montgomery County), authorizing the State Lottery and Gaming Control Commission (SLGCC) to develop a sports wagering licensure program and referring the expansion for referendum in the 2018 Election failed. The bills varied in the level of detail concerning potential licensure programs. For example, HB1014, which passed the House of Delegates, limited licenses to existing holders of video lottery terminal (VLT) licenses or certain racing licenses. Ultimately, the bills died due to the Senates failure to act. It is anticipated that similar legislation will be reintroduced in future years, upon action by the federal government to affirmatively permit state sports wagering programs.

### ***Loss Carry Over***

The General Assembly passed House Bill 1171, sponsored by Delegate Anne Kaiser (D-Montgomery County) and Delegate Jay Walker (D-Prince George's County), which statutorily extends the length of time a VLT licensee may subtract a loss from the proceeds of the following days to seven days. This shift in time will make Maryland law more consistent with other states that have gaming programs. A similar bill that passed in 2017 left the determination of this period up to SLGCC, who through regulation set the time period to two days.

## **Energy**

### ***Renewable Energy Portfolio Standards***

The 2018 Legislative Session, once again, saw an attempt to increase the State's Renewable Energy Portfolio Standards (RPS). Senate Bill 732/ House Bill 1453, sponsored by Senator Brian Feldman (D-Montgomery County) and Delegate Bill Frick (D-Montgomery County), would have increased the RPS from the current 25% by 2022 to 50% by 2030. The bill also included provisions to limit the use of waste-to-energy and refuse-derived fuels, increase parity between the use of solar and non-solar sources, and allow for new applications to the State's offshore wind program. Additionally, Delegate Shane Robinson (D-Montgomery County) introduced the more ambitious House Bill 878, which would have increased the RPS to 100% by 2035. All three bills were withdrawn by the sponsor in light of ongoing

studies to modify and update the State's current RPS requirements. Similar bills to increase the RPS are expected to be introduced in the 2019 Legislative Session.

### ***Tier 2 Eligibility Extension***

Senator Thomas "Mac" Middleton (D-Charles County) and Delegate Sally Jameson (D-Charles County) introduced Senate Bill 282/House Bill 529, to extend "Tier 2" of the RPS program. Late in the session, an amended version of Senate Bill 282 moved out of the Senate, which extended "Tier 2" of the RPS by three years, through 2021. "Tier 1" percentage requirements were unchanged, which increases the total RPS percentage requirements by 2.5% in those years, to 22.9% in 2019 and 27.5% in 2020 and 2021. Senate Bill 282 ultimately did not receive consideration in the House and failed. House Bill 529 met a similar fate and died in the House as well.

### ***Long Term Contract Requirements***

The 2018 Legislative Session, once again, saw the introduction of bills aimed at requiring electric companies to engage in long term contracts for certain types of renewable energy. As introduced, Senate Bill 391/House Bill 967, sponsored by Senator Brian Feldman (D-Montgomery County) and Delegate Luke Clippinger (D-Baltimore City), requires electric companies, beginning in 2021, to contract for renewable energy credits (RECs) and electricity generated from specified renewable sources. The contracts must meet at least 25% of that year's requirement under the RPS for the electricity that each company provides its customers through standard offer service. Contracts are subject to review and approval by the Public Service Commission (PSC).

After less than enthusiastic hearings in both houses, there was an attempt late in the session in the Senate Finance Committee to amend Senate Bill 391 to make it more palatable. Ultimately, the Committee found that the legislation would result in higher costs to electric consumers in the State and both the proposed amendments and the underlying bill received an unfavorable committee vote on Sine Die.

### ***Certificate of Public Convenience and Necessity/Overhead Transmission Lines***

Controversy over a proposed overhead transmission line project in Harford County spurred several legislators from that area to introduced legislation to increase transparency in the certificate of public convenience (CPCN) approval process under the PSC. After significant debate, the General Assembly ultimately passed three of the four pieces of legislation introduced, including Senate Bill 696/House Bill 869, sponsored by Senator J.B. Jennings (R- Baltimore and Harford Counties) and Delegate Kathy Szeliga (Baltimore and Harford Counties), House Bill 784, sponsored by Delegate Rick Impallaria (R-Baltimore and Harford Counties), and House Bill 1126, sponsored Delegate Maryann Lisanti (D-Harford County).

Collectively, the bills update the CPCN application and approval process to: (1) require a public service company proposing a transmission line to provide written notice to adjacent

property owners to the site where the line is proposed: (2) require the PSC to provide notice of an application for a CPCN on its social media platforms and website; and (3) requires the PSC to consider, for an application for a CPCN for a proposed overhead transmission line, the alternative routes that the CPCN applicant considered, including the estimated capital and operating costs of each alternative route and a statement of the reason why the alternative route was rejected.

## **Telecommunications**

### ***Rural Broadband***

The General Assembly unanimously passed Senate Bill 968/House Bill 243, sponsored by Senator Addie Eckardt (R-Caroline, Dorchester, Talbot and Wicomico Counties) and Delegate Carol Krimm (R-Frederick County), which expands the responsibilities of the Task Force on Rural Internet, Broadband, Wireless, and Cellular Service and extends the task force by one year. Under the bill, the scope of the Task Force will include all rural areas of the state, as opposed to being limited to specified rural counties.

### ***Net Neutrality/ISP Privacy***

In response to what some in the General Assembly perceive as a rollback by the Federal Communications Commission (FCC) on federal requirements on internet service providers (ISPs) regarding consumer privacy and net neutrality, several members of the legislature sponsored legislation to attempt to regulate these issues at the state level. In the Senate, Senator Roger Manno (D-Montgomery County) and Senator Susan Lee (D-Montgomery County) sponsored Senate Bills 287 and 882, respectively, both of which place procurement restrictions on state business with ISPs that do not meet certain net neutrality standards laid out in the bills.

Similarly, Delegate Bill Frick (D-Montgomery County) sponsored House Bill 1654, which establishes requirements related to Internet privacy in the State, including: (1) the use, disclosure, sale, or provision of consumer data; (2) the protection of consumer data; and (3) enforcement of the bill's requirements by the Consumer Protection Division in the Office of the Attorney General. The bill also prohibits the use of State funds to procure services from an ISP that: (1) blocks specified content; (2) impairs or degrades lawful Internet traffic; or (3) engages in commercial traffic preferencing, as specified by the bill.

HB1654 passed out of the House Economic Matters Committee and the full House late in the Session, but, due to the late crossover, never came out of the Senate Rules Committee and died due to lack of action in the Senate. The aforementioned Senate bills on this same issue, 287 and 882, did not receive a vote from the Education, Health, and Environmental Affairs Committee.

### ***Small Cell Regulation***

Senator Thomas “Mac” Middleton (D-Charles County) and Delegate Dereck Davis (D-Prince George’s County) introduced Senate Bill 1188/House Bill 1767, which would have set statewide standards to be followed by local jurisdictions and specified wireless providers regarding the permitting and siting of “small cell” telecommunications facilities. As introduced, the bill: (1) established a standardized and streamlined procedure for wireless companies to deploy small wireless facilities on property located in and out of the right-of-way and on property owned by the local government and located in both residential and commercial zones; (2) establishes a 60-day time limit for local jurisdictions to approve deployment, after which the action is deemed approved regardless of affirmative approval action by the local jurisdiction; and (3) sets parameters around “reasonable” fees that may be charged by a local jurisdiction for deployment.

Members of the wireless industry began developing the proposed legislation early in the 2017 interim, working with representatives from the Maryland Association of Counties, the Maryland Municipal League, and representatives from individual local jurisdictions, in an attempt to work out some consensus on the provisions of the proposed legislation. Despite those efforts, a compromise position on the bill could not be reached during the 2018 Legislative Session and there was no formal action on the legislation by the General Assembly. The wireless industry will likely continue its work in 2018 to develop statewide and local legislation that allows for the reasonable deployment of small cell technology throughout the State.

### **Workers Compensation**

#### ***Public Safety Classification of State Correctional Officers***

Senator Jim Mathias (D-Somerset, Worcester, and Wicomico Counties) and Delegate Luke Clippinger (D-Baltimore City) introduced Senate Bill 48/House Bill 205, to alter the definition of “public safety employee” to include state correctional officers, thereby making these officers eligible for enhanced workers’ compensation benefits for claims arising on or after October 1, 2018. After years of debate and concern over significant cost increases to the State, the bills passed this year.

#### ***Wage Stacking for Employers with Multiple Employers***

Delegate Maricé Morales (D-Montgomery County) unsuccessfully introduced House Bill 484, which attempted to alter how an employee’s average weekly wage is calculated for the purposes of workers’ compensation benefits when the employee is employed by multiple employers. As drafted, the bill would increase the compensation benefits for an employee by basing the award on the combined wages of the employee, and the increase in weekly wage benefit would be reimbursable to the employer by the Subsequent Injury Fund, ultimately driving an increase in premiums for employers. The bill failed in the Economic Matters Committee, but is anticipated to return in 2019.

## **Transportation**

### ***Metro Funding and Board Members***

The Maryland General Assembly unanimously passed legislation sponsored by Senator Brian Feldman (D-Montgomery County) and Delegate Marc Korman (D-Montgomery County) to provide a dependable source of funding to the Washington Metropolitan Transit Authority (WMATA), among other reforms. As amended, Senate Bill 277/House Bill 372 does the following: (1) mandates additional capital funding for the WMATA, subject to a specified contingency; (2) requires the Secretary of Transportation to withhold a portion of the State's annual operating grant to WMATA under certain circumstances; (3) mandates additional capital and operating funding for the Maryland Transit Administration (MTA) from fiscal 2020 through 2022; (4) establishes additional transit planning responsibilities for MTA; and (5) requires WMATA to study and report on various aspects of its operations. The bill takes effect June 1, 2018, and the mandated appropriations for MTA terminate June 30, 2022.

Senator Feldman and Delegate Korman also sponsored Senate Bill 279/House Bill 370, which, as amended, requires one of Maryland's two principal members on the WMATA Metro Board of Directors to be the Secretary of Transportation or the Secretary's designee, as specified. The bill also: (1) encourages each signatory of the WMATA Compact to support reform of WMATA's governance structure to improve efficiency, accountability, and effectiveness of WMATA's performance, oversight, safety, accessibility, environmental quality, economic development, and quality of life in Maryland and (2) provides examples of the types of reforms that may be appropriate. This bill also passed the General Assembly, unanimously in the Senate and with a strong majority in the House.

### ***Uninsured Motorists***

Senator Thomas "Mac" Middleton (D- Charles County) and Delegate Benjamin Brooks (D-Baltimore County) sponsored Senate Bill 856/House Bill 1161 to update the administration of the State's Uninsured Motorist Education and Enforcement Fund (UMEEF). As amended, the bill repeals the UMEEF within the Motor Vehicle Administration (MVA) and establishes a UMEEF within the Maryland Automobile Insurance Fund (MAIF). The bill also establishes another program to incentivize and enable uninsured vehicle owners to be insured which shall be administered by MAIF, rather than the MVA. Uninsured motorist penalties collected through the program are retained by MAIF. The bill requires MVA to notify MAIF in a certain manner when it receives notice that a vehicle has become uninsured. The bill passed unanimously in both houses.

### ***Complete Streets***

The General Assembly passed legislation to establish and fund a "Complete Streets Program" in the State. Senate Bill 407/House Bill 535, sponsored by Senator Guy Guzzone

(D-Howard County) and Delegate Brooke Lierman (D-Baltimore City), as amended, establishes the Complete Streets Program as a competitive matching grant program within the Maryland Department of Transportation (MDOT). Funds for the program must be as provided by the Governor in the State budget. Local governments that develop complete streets policies and are certified by MDOT may apply for grants from the program to finance the design and planning of eligible projects. MDOT must adopt regulations to implement the program; the bill establishes a workgroup to assist MDOT in developing and reviewing the required regulations.

Additionally, Senate Bill 850/House Bill 744 were sponsored by Senator Jim Mathias (D-Somerset, Worcester, and Wicomico Counties) and Delegate Steve Lafferty (D-Baltimore County), and, as amended, require specified modal units within MDOT to adopt and implement a “complete streets policy” for the State’s highways, airport facilities, and transit facilities. A “complete streets policy” means a policy that provides information for the implementation of design features that accommodate and facilitate safe and convenient access and mobility to transportation facilities by all users, including bicyclists, motorists, pedestrians, and public transportation users. Both bills passed the General Assembly with strong majorities in both houses.

### ***Highway User Funds***

Senate Bill 516/House Bill 807, sponsored by Senator Richard Madaleno (D-Montgomery County) and Delegate Pam Beidle (D-Anne Arundel County), sought to update how highway user funds are distributed to local jurisdictions. After significant amendment in both the Senate and House, the bill requires that 100% of revenue obtained through the Gasoline and Motor Vehicle Revenue Account (GMVRA) be retained by the Transportation Trust Fund (TTF) and shall be distributed to localities through specified capital grants from MDOT, as opposed to the local jurisdictions sharing directly in that revenue. The bill lays out specifications for capital grant criteria for Baltimore City and counties for fiscal year 2019 and beyond. The bill passed unanimously in both houses.

### **Alcohol**

#### ***Sunday Sales***

For the second year in a row, Delegate Kathy Szeliga (R-Baltimore and Harford Counties) introduced enabling legislation, House Bill 975, that would have allowed the Board of License Commissioners for Baltimore County to grant Class A license holders the ability to sell beer, wine, and spirits on Sunday. As drafted, this legislation established an opt-in program by requiring those license holders interested in selling on Sunday to purchase a Sunday-only license, separate and apart from their 6-day license. While some progress was made this year on the legislation, it was never brought up for a vote in the Baltimore County Delegation and therefore died.

### ***Task Force Legislation***

House Bill 1316 was introduced by Delegates Ben Kramer (D-Montgomery County) and Warren Miller (R-Howard County) to establish the Task Force to Study State Alcohol Regulation, Enforcement, Safety and Public Health. Under the bill, the Task Force would be charged with examining whether the Comptroller's Office, which currently regulates the alcohol industry, is the most appropriate agency to ensure the safety and welfare of the residents of Maryland as the chief regulator of beer, wine and spirits, or whether that task should be assigned to another state agency or a new state agency. The report, due December 2018, shall include recommendations regarding what additional policies should be implemented and the method for implementing the policies with regard to alcohol laws in the State, as well as legislative proposals that would expand the availability of alcohol to the public. This bill passed with overwhelming margins in both houses and became law without the Governor's signature on April 5, 2018.

### ***Brewery Regulation***

In response to brewery legislation passed in the 2017 Legislative Session and as a result of an interim brewery Commission, Comptroller Peter Franchot requested the introduction of House Bill 518, entitled Reform on Tap. HB518 made several changes to current regulations on the four types Maryland brewery licenses: Class 5 breweries, Class 6 pub-breweries, Class 7 micro-breweries, and Class 8 farm-breweries. As introduced, the bill would: (1) substantially increase or repeal barrel limits for a variety of licensed breweries; (2) substantially reduce or remove restrictions on both on- and off-premise consumption purchases of beer sold at breweries; (3) remove limits on the sale of beer that is brewed at the brewery; and (4) require that hours for on-premise consumption be limited solely by the underlying license held by the brewery and not any other provision of law.

The Comptroller touted the bill as removing overly burdensome and obtrusive regulation of Maryland's growing brewery industry and urged the passage of the bill through an intense and coordinated social media campaign, as well as through the legislative process. Political disputes broke out due to allegations made by the Comptroller and his staff about alleged "back room deals" and "the undue influence of the liquor establishment." After a contentious bill hearing, the House Economic Matters Committee voted unfavorably on HB518 and failed to take up other pieces of legislation concerning brewery regulation. Identical or similar legislation is expected to be introduced in future years.

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Sincerely,



Lisa Harris Jones



Sean R. Malone