



## 2019 Legislative Wrap-Up

To Our Valued Clients, Friends, and Colleagues:

The 439th Legislative Session of the Maryland General Assembly adjourned on April 8, 2019. The Session concluded on a sorrowful note, with the passing of the Honorable Michael Erin Busch, the longest serving Speaker of the House of Delegates in Maryland history. HJM joins the members of the General Assembly and the State of Maryland in grieving the loss of a truly remarkable individual. We extend our deepest condolences to the Speaker's family and staff.

At this time each year, HJM likes to take a moment to share the highlights of the last 90 days. With 17 new Senators and 43 new Delegates, members of the Maryland General Assembly introduced 2,480 bills, 16 Joint Resolutions, and 2 House Simple Resolutions in 2019. The following synopsis is not an exhaustive report of the legislative activities this session, but an overview of particular topics of interest. If you have specific questions, please feel free to contact us.

Please note that the table of contents in this document is interactive. If you would like to jump to a specific topic or issue, just click that issue in the table of contents.

Thank you for entrusting your legal, lobbying and government relations needs in the State of Maryland with Harris Jones & Malone, LLC.

Sincerely,

A handwritten signature in blue ink that reads 'Lisa Harris Jones'.

Lisa Harris Jones

A handwritten signature in blue ink that reads 'Sean Malone'.

Sean Malone

## Table of Contents

<b>Labor and Employment</b> .....	5
<i>Minimum Wage Increase (“Fight for Fifteen”)</i> .....	5
<i>Employee Overtime Exemption – Alteration</i> .....	6
<i>Family and Medical Leave Insurance Program</i> .....	7
<i>Pay Scale and Salary History Information</i> .....	8
<i>Prevailing Wage Lawsuits by Employees</i> .....	8
<b>Business Regulation</b> .....	8
<i>Polystyrene Ban</i> .....	8
<i>Debt Collection – Exemption from Attachment</i> .....	9
<i>Increase in the Smoking &amp; Vaping Age</i> .....	9
<i>Freight Trains – Required Crew</i> .....	10
<i>Notary Modernization</i> .....	10
<b>Taxes</b> .....	11
<i>Internet Sales – Collection of Sales Tax</i> .....	11
<i>Stormwater Management Fees – Impervious Surfaces Exemption</i> .....	11
<i>Child and Dependent Care – Tax Credits</i> .....	12
<b>Transportation</b> .....	12
<i>Public-Private Partnerships</i> .....	12
<i>Privately Owned Transportation Projects – Tunnels &amp; Environmental Oversight</i> .....	12
<i>Electric Vehicle Excise Tax Credit</i> .....	13
<b>Public Safety</b> .....	13
<i>Criminal Penalties for Failing to Report Child Abuse or Neglect</i> .....	13
<i>Hate Crimes</i> .....	14
<i>Education Personnel – Sexual Misconduct Prevention</i> .....	14
<i>3-D Printed and “Ghost” Guns</i> .....	14
<b>Education</b> .....	15
<i>The Commission on Innovation and Excellence (“The Kirwan Commission”)</i> .....	15
<i>“The Blue Print for Maryland’s Future”</i> .....	15
<i>Public School Construction – “The Build to Learn Act”</i> .....	15
<i>Dyslexia Screenings and Intervention</i> .....	16
<i>Holocaust Curriculum</i> .....	16

Energy .....	16
<i>Renewable Energy Portfolio Standards</i> .....	16
<i>Long-term Contracts</i> .....	19
<i>Healthy Climate Initiative</i> .....	19
<i>Alternative Rate Structuring for Gas and Electric Utilities</i> .....	20
<i>Small Cell Deployment</i> .....	20
Healthcare .....	21
<i>Procurement - Health Care Mandate</i> .....	21
<i>Substance Use Disorder - Coverage</i> .....	21
<i>Prior Authorization</i> .....	22
<i>Comprehensive and Extended Care Facilities - Discharges and Transfers</i> .....	22
<i>Drug Affordability Board</i> .....	22
<i>Prescription Drugs – Formulary Changes</i> .....	23
<i>Drug Manufacturers – Drug Take-Back Programs</i> .....	24
Health Occupations .....	24
<i>Physician Assisted Suicide</i> .....	24
<i>Expanded Practice Settings for Dental Hygienists</i> .....	25
<i>Dental Practice Ownership</i> .....	25
<i>Dental Board Elections</i> .....	26
Child Care .....	26
<i>Procurement Preference – On Site Child Care Facilities</i> .....	26
<i>Child Care Subsidies</i> .....	27
Real Property/Condominiums .....	27
<i>The Definition of Rent</i> .....	27
<i>Baltimore City Tax Sales on Water Bill Liens – Permanent Moratorium</i> .....	27
<i>Montgomery County – Just Cause Eviction</i> .....	28
<i>Dispute Settlement</i> .....	28
<i>Homeowners Associations – Powers, Boards of Directors, Voting, Meetings, and Rules</i> .....	28
<i>Condominiums – Responsibility for Property Insurance Deductibles</i> .....	29
<i>Implied Warranties</i> .....	29
<i>Reserves</i> .....	30
<i>Electric Vehicle Recharging Equipment and Reserved Parking Spaces</i> .....	30
<i>Priority Lien</i> .....	30

<i>Registration</i> .....	31
Property and Casualty Insurance .....	31
<i>Investments of Insurers in Real Estate</i> .....	31
<i>Direct Action Against An Insurer</i> .....	31
Gaming .....	31
<i>Video Lottery Terminal Licensee – Taxation</i> .....	31
<i>Video Lottery Terminal – Odds Disclosure</i> .....	32
<i>Video Lottery Terminal Proceeds – Use of Racetrack Facility Renewal Account Funds</i> .....	32
<i>Sports Betting</i> .....	32
Workers’ Compensation .....	33
<i>Medical Presumptions</i> .....	33
<i>Uninsured Employers Fund – Solvency Study</i> .....	33
Alcohol .....	33
<i>Baltimore County – Sunday Sales</i> .....	33
<i>Establishment of the Alcohol and Tobacco Commission</i> .....	34
Judicial Reform .....	34
<i>Asbestos Mediation and Resolution</i> .....	34
Consumer Protection and Privacy .....	35
<i>Online Consumer Protection Act</i> .....	35
<i>Security Features for Connected Devices</i> .....	35
<i>Financial Consumer Protection Act</i> .....	36
<i>Security Breach Notification Requirements</i> .....	36
<i>Net Neutrality</i> .....	36
Cannabis – Licensure and Regulation .....	37
<i>Ownership and Licensure</i> .....	37
<i>Use, Advertising and Immunity</i> .....	37
<i>Opioid Use Disorder</i> .....	38
<i>Worker Protections</i> .....	38
<i>Use of Pesticides</i> .....	38
<i>Taxation of Medical Cannabis Businesses</i> .....	38
<i>Legalization</i> .....	39

## Labor and Employment

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

The Fight for Fifteen scored a knockout punch in Maryland this session with the legislature passing Senate Bill 280/House Bill 166 that will incrementally raise Maryland’s minimum wage to \$15.00 per hour by January 1, 2025 for employers with 15 or more employees and by July 1, 2026, for employers with less than 15 employees. A provision to tie all future minimum wage increases beyond 2025 to the Consumer Price Index was struck from the bill. Maryland’s minimum wage increases over the next seven years will phase in as follows:

<u>Phase in Dates</u>	<u>Large Employer (≥ 15 Employees)</u>	<u>Small Employer (&lt; 15 Employees)</u>
January 1, 2020	\$11.00	\$11.00
January 1, 2021	\$11.75	\$11.60
January 1, 2022	\$12.50	\$12.20
January 1, 2023	\$13.25	\$12.80
January 1, 2024	\$14.00	\$13.40
January 1, 2025	\$15.00	\$14.00
January 1, 2026		\$14.60
July 1, 2026		\$15.00

The Fight for Fifteen has been a Democratic priority across the nation with California, Massachusetts, New Jersey, New York, and the District of Columbia already passing laws to phase in a \$15.00 minimum wage rate. Senator Cory McCray (D – Baltimore City) and Delegate Diana Fennell (D – Prince George’s County) introduced the Maryland bill, which was part of their 2018 campaign platforms. With the election of a more progressive legislature in the 2018 election, the legislation had significantly more enthusiasm behind it than in previous years and easily passed both chambers with limited amendments to the original draft.

The bill faced significant opposition from Maryland businesses which were recently required to pay a minimum wage of \$10.10 per hour to their employees in July 2018. Many employers with businesses on or near the Maryland border asserted that they would be placed at a competitive disadvantage due to significantly lower minimum wage requirements in neighboring states, (\$7.25/hour in Pennsylvania and Virginia and \$8.75/hour in West Virginia). During the debate, Governor Hogan called the increase to \$15 “unsustainable” particularly in light of the surrounding jurisdictions. Governor Hogan suggested that Maryland take the more moderate approach of increasing its minimum wage from \$10.10 per hour to \$12.10 per hour over two years. Under that proposal, further increases would occur only at the time

that surrounding states also increased their wages. Maryland legislative leaders summarily dismissed this compromise floated by the Governor and passed the bill at the original \$15 per hour wage.

Please note that the legislation was amended to maintain the current “tip wage” of \$3.63 per hour for tipped employees. Under the tip wage and credit provisions in current law, an employer is permitted to pay a qualifying tipped employee the lower tip wage, so long as the employee earns the statutory minimum hourly wage through supplemental tips. If a tipped employee’s gratuities are not sufficient to bring their hourly rate up to the minimum wage, the employer is required to make up the difference. The bill also includes an opportunity for the Board of Public Works, which consists of the Governor, State Treasurer, and Comptroller, to temporarily suspend the law’s statutorily scheduled wage increases, only once, if there is evidence of sufficient negative impact on State employment. The bill was promptly presented to the Governor while the General Assembly was still in session. The Governor vetoed the legislation on policy grounds and the legislature, in turn, elected to override his veto.

Additionally, the amended legislation included rate increases for health-based industries that are reimbursed by Medicaid, the Behavioral Health Administration, or the Developmental Disability Administration between Fiscal Year 2021 and 2026. Those increases are as follows:

- An annual four percent base statutory rate increase for provider reimbursement in Medicaid and the Maryland Children’s Health Program for the following services: nursing home services, medical day care services, private duty nursing services, personal care services, home and community-based services and services provided by the Community First Choice program;
- An annual four percent rate increase for community service providers; and
- A staggered rate increase for behavioral health community service providers. Their rate increase will phase in as follows: 4 percent in Fiscal Year 2021; 3.5 percent in Fiscal Year 2022; 3.25 percent in Fiscal Year 2023; 3 percent in Fiscal Year 2024; and 4 percent in Fiscal Years 2025 and 2026.

Finally, legislation was introduced this Session that would have authorized a county to establish a minimum wage rate for employees working in that county. House Bill 976, introduced by Delegate Neil Parrot (R – Washington County) would have required employers in the State to pay the greater of the federal minimum wage of \$7.25 per hour or the minimum wage established by the county in which the employee is working. If the county in which an employee is working has not established a minimum wage, then the minimum wage for that employee is the federal minimum wage. The House Economic Matters Committee gave the bill an unfavorable committee report, and the General Assembly rejected this bill as an unfriendly amendment to the Fight for Fifteen bill that eventually passed both chambers.

### *Employee Overtime Exemption – Alteration*

Employers may recall that in May of 2016, the United States Department of Labor (DOL) under then President Barack Obama published its final rule in relation to the Fair Labor Standards Act (FLSA), which would have more than doubled the salary threshold for workers exempt from overtime pay to \$913 per week (\$47,476 per year). The U.S. District Court for the Eastern District of Texas quickly enjoined the rule change on the so-called “white collar exemptions” from implementation in November of 2016, and later invalidated the rule in August of 2017. In response to that court ruling, a member of the Maryland House of Delegates has introduced legislation the last two sessions that would have codified the Obama Administration’s proposed salary thresholds. Under House Bill 1040, introduced this session by Delegate

Vaughn Stewart (D – Montgomery County), in order to be exempt from the FLSA’s overtime requirements as an employee working in an executive, administrative, or professional capacity, the employee must meet certain criteria. To be exempt, 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 ultimately gave the bill an unfavorable report after the Trump Administration’s DOL announced, on March 7, 2019, a more modest increase to the salary threshold than the DOL’s last proposal under President Obama. Under the new final rule proposal, the salary threshold for the so-called “white collar exemptions” from the FLSA’s overtime pay requirements would increase from \$455 per week (\$23,660 per year) to \$679 per week (\$35,308 per year). According to the DOL, more than one million additional American workers will become eligible for overtime compensation based on this change. The DOL rule does not adjust the duties’ tests for the white collar exemptions.

### *Family and Medical Leave Insurance Program*

In 2016, the General Assembly passed legislation establishing the Task Force to Study Family and Medical Leave Insurance (the “Task Force”). The Task Force was required to study existing Family and Medical Leave Insurance (FAMLI) programs in other states and the District of Columbia, review specified FAMLI implementation studies and reports and receive public testimony from relevant stakeholders. Senate Bill 500/House Bill 341, entitled the Time to Care Act of 2019, is the product of the Task Force’s efforts. Senator Antonio Hayes (D – Baltimore City) and Delegate Ariana Kelly (D – Montgomery County) are the bill’s respective primary sponsors.

The bill would have applied to employers who employ at least one employee and employees who have worked at least 680 hours over 12 months. Specifically, the bill would have provided up to 12 weeks of benefits to an employee who is taking partially paid or unpaid leave from employment due to caring for specified family members, the employee’s own serious health condition, or a qualifying exigency arising out of a family member’s military deployment. The weekly benefit, which would have been based on an employee’s average weekly wage, could range from \$50 to a \$1,000 cap that would have been indexed to inflation. The bill would have established the FAMLI Fund, which would have consisted of employer and employee contributions based on an employee’s wages to be used to fund benefits, a public education program, and initial implementation costs.

Beginning on January 1, 2020, each employee and employer would have been required to pay to the Secretary of Labor, Licensing, and Regulation contributions on wages, which were to be established in regulation. The regulations’ contribution rate must be sufficient to fund the FAMLI benefits.

Proponents of the bill argued that paid family and medical leave offers much-needed income replacement to eligible employees over a more extended period. If this bill were passed, Maryland would join California, New Jersey, New York, Rhode Island, Washington, and the District of Columbia in offering this benefit to their residents. Additionally, proponents contend that many businesses support the idea as they have increasingly begun to provide paid family and medical leave to their employees. Opponents, primarily from the business community, asked the legislature to refrain from layering additional costs to the price of labor. With legislation to substantially increase the minimum wage

moving this session, this bill did not move, but will assuredly return next session with real potential to pass at that time.

### *Pay Scale and Salary History Information*

Legislation was reintroduced this Session to prevent an employer from seeking the past wage history of a prospective employee before extending that prospective employee an initial offer of employment. The bill would not have prevented a prospective employee from voluntarily providing his or her past wage history. Also, the bill would have required an employer to offer a potential employee, upon request, the wage range of the position for which he or she applied. Senator Susan Lee (D - Montgomery County) and Delegate Karen Young (D - Frederick County), sponsored Senate Bill 738/House Bill 634, which would have imposed significant civil penalties for violations of the provisions in the bill, \$1,000 per applicant for a first offense and up to \$5,000 per applicant for a subsequent offense within three years of a previous offense.

Additionally, the prospective employee would have the right to sue an employer for a violation of this law and seek actual or special damages up to \$10,000. Last session, the House Economic Matters Committee passed an amended version of the bill to apply only to employers with at least fifteen employees. The bill sponsors chose not to resubmit the bill in that form, and there was no committee action on either bill this Session.

### *Prevailing Wage Lawsuits by Employees*

Despite being vetoed by the Governor in 2018, Senator Joanne Benson (D - Prince George's County) and Delegate C.T. Wilson (D - Charles County) reintroduced Senate Bill 300/House Bill 524. This legislation 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. This private cause of action exists even if the Commissioner determines that a contractor is required to make restitution. 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.

Additionally, if the employee prevails in the court proceedings, the court may order the payment of double or triple damages if it finds that the employer willfully and knowingly withheld wages or fringe benefits or with deliberate ignorance or reckless disregard of the employer's obligations under this section of State Finance and Procurement Article. The bill moved swiftly through the legislature and was presented to the Governor with sufficient time for a veto override during the Legislative Session. The Governor opted not to veto the bill and instead allowed it to become law without his signature. The bill takes effect on October 1, 2019.

## Business Regulation

### *Polystyrene Ban*

The 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. Unlike previous years, however, the General Assembly passed the legislation. Senate Bill 285/House Bill 109, introduced by Senator Cheryl Kagan (D - Montgomery County) and Delegate Brooke Lierman (D - Baltimore City), will prohibit "food service businesses," including public and private cafeterias, from using or selling

expanded polystyrene food containers, plates, hot and cold beverage cups, trays, and cartons for eggs and other food after July 1, 2020. The legislation allows for a one-year grace period for cafes, schools, supermarkets, and businesses to phase out their stock and switch to more environmentally-friendly alternatives before the ban goes into effect on July 1, 2020. Consumers with containers purchased out of state are exempt from the ban. Food or beverages that have been packaged in expanded polystyrene containers outside the state before receipt by a food service business, a product made of expanded polystyrene that is used to package raw, uncooked, or butchered meat, fish, poultry, or seafood, and nonfoam polystyrene food service products are also exempt from the bill.

Environmental advocates for the bill, such as Trash Free Maryland, cited both litter and the inability to recycle food-contaminated polystyrene as the primary reasons for the bill's passage. Countering this assertion, the American Chemistry Council noted that a ban on polystyrene foam packaging and containers could lead to increased solid waste, energy use, water use, and greenhouse gas emissions. Also, restaurants and business groups lobbied against the ban because they 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.

### *Debt Collection – Exemption from Attachment*

Arguing that 30 years have passed since Maryland last raised its debt exemption threshold for wage garnishment, Senator Will Smith (D – Montgomery County) and Delegate Erek Barron (D – Prince George's County) championed Senate Bill 772/House Bill 1256. Current law allows an individual to protect the greater of 75% of their wages or 30 times the federal minimum wage. The bill would have changed the wage protection formula to the greater of 75% of their wages or 45 times Maryland's minimum wage. Consumer advocates applauded the proposal, citing that it would bring Maryland's debt exemptions for wage garnishment up-to-date, account for the increased cost of living and give a fresh start to the financially fragile.

Opponents, however, noted that the bill goes well beyond the financially fragile for under Maryland's current minimum wage of \$10.10 per hour, a consumer would have to earn \$33,750 per year, exclusive of federal income tax withholdings, to be subject to a wage garnishment and that number increases to \$49,000 if the state minimum wage rate is increased to \$15.00 per hour. By raising the threshold this high, opponents believe that this legislation harms consumers more than it helps them because a consumer's unpaid judgments would remain on his credit report for at least 12 years which would, in turn, impact his creditworthiness. Additionally, creditors would be less likely to extend credit to consumers if their ability to recoup debts is diminished. The legislation died due to lack of action in either the Senate or House.

### *Increase in the Smoking & Vaping Age*

Democratic leaders and the Legislative Black Caucus of Maryland achieved a legislative priority this session by passing Senate Bill 895/House Bill 1169, sponsored by Senator Delores Kelley (D – Baltimore County) and Delegate Dereck Davis (D – Prince George's County). This legislation amends the definition of "tobacco product" to include electronic smoking devices (ESDs), which are devices that can be used to deliver aerosolized or vaporized nicotine to an individual inhaling from the device. Under the bill that passed, a "tobacco product" includes cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, ESDs. The bill then raises, from 18 to 21, the minimum age for an individual to purchase or be sold tobacco

products. The bill includes an exemption for active military personnel who are 18 or older and show valid military identification.

Additionally, the bill repeals a provision of criminal law that prohibits a minor from using or possessing a tobacco product, cigarette rolling paper, or an ENDS or from using a false form of identification to obtain a tobacco product, cigarette rolling paper, or an ENDS. A retailer who sells a tobacco product to a person under 21 will be subject to a maximum civil penalty of \$300 for a first violation; \$1,000 for a second violation occurring within 24 months after the previous violation; and \$3,000 for each subsequent offense occurring within 24 months after the preceding violation. Furthermore, the bill repeals an authorized defense for a violation of a criminal prohibition against the distribution of tobacco products to a minor that the retailer examined the purchaser's or recipient's employer-issued or school identification. While some members of the ENDS industry supported the bill, there was still significant opposition to the bill because the legislation represents government overreach and takes away the autonomy of citizens to make their own choices. Additionally, retailers expressed concerns that the bill lacked a phase-in period. Nonetheless, the bill passed with party-line votes in both the Senate and House and will become law October 1, 2019.

### *Freight Trains – Required Crew*

Undeterred by Governor Hogan's veto last session, Senator Hayes (D – Baltimore City) and Delegate Dana Stein (D – Baltimore County) introduced House Bill 66/Senate Bill 252. This legislation requires a train or light engine used in connection with the movement of railroad freight, and that shares the same rail corridor as a high-speed passenger or commuter train to operate in the State with a crew of at least two individuals. 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 offense 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 and terminates if a federal rule requiring two-person crews is adopted.

Supporters claim that this legislation is just about safety. Governor Hogan, however, noted in his veto letter from the last session that (1) no empirical evidence exists that this enhances safety; (2) the size of a freight trains crew is negotiated through collective bargaining between the freight train service providers and their employees' labor union representatives and should remain that way and (3) mandated crew size would have placed the Port of Baltimore at a competitive disadvantage relative to other ports in the mid-Atlantic region that do not require a mandated crew size. Ultimately, the bill passed both chambers and now awaits Governor Hogan's signature or veto.

### *Notary Modernization*

After years of consideration, the General Assembly unanimously passed legislation to modernize Maryland's notary law, including authorizing remote notarization in the State. Senate Bill 678, championed by Senator J.B. Jennings (R - Baltimore & Harford Counties), generally updates Maryland's notary laws by implementing provisions drawn from the Revised Uniform Law on Notarial Acts (RULONA). As amended, the bill alters the qualifications to become a notary public, authorizes a notary to perform electronic notarization and remote notarization under specified conditions, specifies restrictions on allowable acts by a notary public and generally updates provisions related to performing, and maintaining records of notarial acts. SB 678 is mostly reflective of the recommendations in the final report of the Maryland Notary Workgroup convened by the Maryland Secretary of State in May 2018

and is essential to the modernization of Maryland’s notary law and access to notarial services for businesses and individuals in Maryland. The bill has a delayed effective date of October 1, 2020 to give the Secretary of State adequate time to implement its provisions.

## Taxes

### *Internet Sales – Collection of Sales Tax*

In June of 2018, the United States Supreme Court, in *South Dakota v. Wayfair*, overturned a previous Supreme Court decision from 1992 that held that a physical presence is required to impose a sales tax collection-and-remittance obligation on out-of-state sellers. The *Wayfair* decision opened the door for states to impose sales tax collection-and-remittance obligations on remote sellers. The Maryland Comptroller wasted no time and submitted emergency regulations in October of 2018 to begin the collection of sales tax on online sales and eCommerce services from sellers who do not have a physical presence here in Maryland.

Building on those regulations, the General Assembly introduced Senate Bill 728/House Bill 1301 to define better how Maryland sales taxes are to be collected. Sponsored by Senator Guy Guzzone (D – Howard County) and Delegate Jay Walker (D – Prince George’s County), the bill adds the term “marketplace facilitator” to the definition of a vendor under Maryland Tax General Article. According to the bill, a marketplace facilitator “facilitates a retail sale by a marketplace seller by listing or advertising for sale in a marketplace tangible personal property and regardless of whether the person receives compensation or other consideration in exchange for the person’s services collects payment from a buyer and transmits the payment to the marketplace seller.” The bill requires a marketplace facilitator to collect the applicable state sales and use tax due on a retail sale or sale for use by a marketplace seller to a buyer in Maryland. A marketplace seller is not required to collect the applicable sales and use tax to the extent that the marketplace facilitator collects the applicable sales and use tax.

The bill also establishes protections for marketplace facilitators who are not given sufficient information from the marketplace seller to collect the appropriate sales tax. Finally, the bill earmarks money for education, as the General Assembly continues to seek ways to fund the recommendations of the Commission on Innovation and Excellence in Education, known as the Kirwan Commission. Specifically, the bill requires revenues collected and remitted by a marketplace facilitator or a person that engages in the business of an out-of-state vendor is paid into the Commission on Innovation and Excellence in Education Fund (the “Fund”). The purpose of the Fund is to assist in providing adequate funding for early childhood education and primary and secondary education to provide a world-class education to students to ensure they are prepared for college and a career in the global economy of the 21st century, based on the final recommendations of the Kirwan Commission.

### *Stormwater Management Fees – Impervious Surfaces Exemption*

Delegate David Fraser-Hidalgo (D – Montgomery County) introduced House Bill 903. This bill would have exempted ballasted railroad tracks from the definition of “impervious surface” for purposes of imposing stormwater management fees against such property. Track ballast is packed between, below, and around the ties and forms the trackbed upon which railroad ties are laid. The ballast is used to bear the load of the railroad ties, facilitate drainage of water, and keep down vegetation that might interfere with the track structure. Proponents of the bill, who have established a similar definitional exemption in Baltimore City and the City of Salisbury, noted a legal and factual argument to advance their support.

Specifically, under federal law, railroad ballast must drain and independent test of the ballast and sub-ballast shows that it drains as well if not better than most residential yards. Environmental advocates opposed the legislation alleging that not all ballasted track is impervious and that ballasted track owners should seek credit or a fee reduction from each local jurisdiction where their track is located instead of coming to the State with an overly broad bill. House Bill 903 received a robust hearing in the House Environment and Transportation Committee, which ultimately refrained from voting this bill this Session.

### *Child and Dependent Care – Tax Credits*

Senator Nancy King (D – Montgomery County) and Delegate Ariana Kelly (D – Montgomery County), introduced Senate Bill 870/House Bill 810: Income Tax-Child and Dependent Care Tax Credit-Alterations to allow more Maryland residents to benefit from tax credits that may offset the high costs of child and elder care. Current law allows state residents who are earning under \$50,000 annually to claim the tax credit. This bill expands the tax credits to those who make up to \$143,000. Proponents of the bill advised that many families spend nearly a quarter to a third of their median family income on childcare and/or dependent care. The bill will lessen the child care and/or dependent care burden through a \$350 - \$800 tax credit depending on the size and income of the family. This critical legislation passed unanimously through the Senate and the House.

## Transportation

### *Public-Private Partnerships*

Advocates in opposition to the Hogan Administration’s plans to build toll lanes on Interstates 495 and 270 to relieve traffic (a project reported to be the largest public-private partnership (P3) in the country) had several pieces of legislation introduced. While all but one bill died due to a lack of committee action, House Bill 1091 sponsored by Jared Solomon (D - Montgomery County) moved from the House to the Senate Budget and Taxation Committee (B&T). With an effective date of June 1, 2019, this bill, among other things, made modifications to the process and conditions for the approval of P3s valued at more than \$500 million, including additions to the required elements of pre-solicitation reports for those projects and requiring the Legislative Policy Committee to review P3 agreements for those projects. The existing prohibition against non-compete clauses for P3 road and bridge projects would be expanded so that they cannot impede any road maintenance projects or transit projects not funded by the State. This bill died due to a lack of action in B&T.

### *Privately Owned Transportation Projects – Tunnels & Environmental Oversight*

Delegate Anne Healey (D - Prince George’s County) reintroduced House Bill 209, which would have regulated privately owned transportation projects in the State that include the construction of one or more tunnels with a diameter of six feet or greater to be primarily used by a “common carrier.” A similar bill gained traction late in the 2018 Session, passing on Sine Die and was subsequently vetoed by the Governor. There was significant confusion among legislators around the impetus of this bill and whether the transit project targeted by the legislation was currently subject to any environmental oversight or review. After much education, these misperceptions were corrected, and the House Environment and Transportation Committee took no action on the bill.

### *Electric Vehicle Excise Tax Credit*

This year, several bills were introduced that focused on the State's already existing plug-in electric vehicle excise tax credit program. Components of each of these bills were amended into one more comprehensive bill and shepherded through the legislative process by Delegate David Fraser-Hidalgo (D - Montgomery County). House Bill 1246, The Clean Cars Act of 2019, expands the total amount that the Motor Vehicle Administration can award in excise tax credits. For Fiscal Year 2020, the aggregate amount is up to \$6 million. The manufacturer suggested retail price (MSRP) cap was raised from \$60,000 to \$63,000, and the amount of the credit for which an individual is eligible was changed to the lesser of \$3000 or the amount of the excise tax owed for a new electric vehicle purchase. While the bill also makes hydrogen fuel cell vehicles eligible for the excise tax credits, it also prohibits, thanks to amendments adopted by a conference committee, hydrogen fuel cell vehicles that derive their hydrogen from a natural gas reformation process from being sold in Maryland beginning in the year 2026. The bill also changes the Electric Vehicle Infrastructure Council to the Zero Emission Electric Vehicle Infrastructure Council. As this excise tax credit program continues to gain in popularity, the legislature anticipates expanding it further.

## Public Safety

### *Criminal Penalties for Failing to Report Child Abuse or Neglect*

Under current law, health care practitioners, police officers, educators, and human service workers who are acting in a professional capacity and have reason to believe that a child has been subjected to abuse or neglect must notify the local department of social services or the appropriate law enforcement agency. These individuals are referred to as "mandatory reporters." Senate Bill 568/House Bill 787, sponsored by Senator Susan Lee (D – Montgomery County) and Delegate Vanessa Atterbeary (D – Howard County), establishes criminal penalties of up to three years in jail and/or \$10,000 fine for a mandatory reporter who knowingly fails to provide a required notice or make a required report of suspected child abuse or neglect if the mandatory reporter has actual knowledge of the abuse or neglect. Proponents of the bill highlighted the fact that Maryland is an outlier on this issue as 48 States and the District of Columbia impose penalties on mandatory reporters who knowingly or willfully fail to report suspected child abuse or neglect. Wyoming is the only other state that does not. Proponents believe that demanding greater accountability from mandatory reporters through exposure to criminal penalties will provide additional protections to children who are victims of abuse and neglect.

Opponents, on the other hand, argued that health care practitioners and educators who are currently required to report instances of child abuse and/or neglect as a condition of their employment do not fail to do so as a matter of malpractice, criminal intent, or depraved indifference. Instead, instances of failure to report arise when a health care practitioner or an educator is not provided the requisite information necessary to determine if and when child abuse or neglect has occurred. For opponents, the bill represented the criminalization of professional judgment. Additionally, opponents argued that practitioners stand to lose their license to practice medicine as well as incur hefty fines if they knowingly fail to report child abuse. Thus, individuals who are now subject to mandatory reporting requirements will not fail to report in cases where they are aware that an individual has been abused or is in danger of being abused because the practitioner's livelihood, which took years of education and expense to earn, is indeed at stake. In the end and in the spirit of compromise, the potential for criminal penalties arises only when a mandatory reporter has actual knowledge of child abuse or neglect and fails to report as

opposed to inferred knowledge from the circumstances or willful blindness thresholds that were initially in the bill. The bill takes effect on October 1, 2019.

### *Hate Crimes*

Senator Ben Kramer (D - Montgomery County) and Delegate Sandy Rosenberg (D - Baltimore County) introduced Senate Bill 232/House Bill 240, entitled Hate Crimes - Threats. The bill establishes that the existing misdemeanor penalties for committing a hate crime apply to an attempted hate crime and to a threat to commit a hate crime. The maximum sentence is three years imprisonment and/or a \$5,000 fine. The bill retains the enhanced penalties applicable under the existing statute for hate-based acts that involve a separate felony or that results in the death of the victim. This bill passed both the Senate and House with overwhelming majorities and will go into effect October 1, 2019.

### *Education Personnel – Sexual Misconduct Prevention*

After considering similar legislation in previous years, the General Assembly unanimously passed Senate Bill 541/House Bill 486, sponsored by Senator Clarence Lam (D – Baltimore and Howard Counties) and Delegate C.T. Wilson (D - Charles County), which sets forth a process for documenting and identifying individuals disciplined for allegations of child sexual abuse or misconduct when they apply for positions in public and nonpublic schools. Under the amended bill, a county board, nonpublic school, or contracting agency must require an applicant for a position involving direct contact with minors to provide:

- employment history contact information
- consent for the release of records relating to child sexual abuse or misconduct
- a written statement about whether an applicant has been the subject of a child sexual abuse or misconduct investigation
- ever been disciplined after an investigation
- had a license or certificate suspended, surrendered or revoked in connection with those sexual abuse or misconduct allegations.

The hiring entity must then take specified steps in the hiring and employment process to obtain full information on applicants and employees, before assigning an employee to work in a position involving direct contact with minors. The bill includes additional requirements to ensure proper maintenance and use of employee records, discipline and penalties, and other provisions to prevent child sexual abuse by education personnel. The amended bill takes effect on July 1, 2019.

### *3-D Printed and “Ghost” Guns*

Senator Will Smith (D - Montgomery County) and Delegate Kathleen Dumais (D - Montgomery County) introduced Senate Bill 882/House Bill 740 banning 3-D printed guns and “ghost guns.” HB740, as amended by the House, would have prohibited a person from manufacturing a firearm (1) using a computer-aided fabrication device or (2) that is not imprinted with a serial number issued by a federally licensed firearms manufacturer or importer. There is an exception in the bill for firearms manufactured before 1968. The amended legislation passed successfully out of the House, but was never taken up by the Senate Judicial Proceedings Committee and subsequently died. Senator Joanne Benson (D-Prince George’s County) also introduced Senate Bill 8, similar legislation to ban 3-D printed guns, but it was later withdrawn.

## Education

### *The Commission on Innovation and Excellence (“The Kirwan Commission”)*

On February 14, 2019, the Kirwan Commission released its 2019 Interim Report, which called on Maryland’s leaders to build a world-class education system. The Kirwan Commission’s recommendations focused on five major policy areas:

- Early Childhood Education and Care: Free full-day preschool for all low-income three- and four-year-olds;
- Teacher Salaries and Advancement: Establishing a performance-based career ladder and salaries comparable to other fields with similar education requirements;
- Overhaul of School Curriculum: Institute an internationally benchmarked curriculum that enables most students to be “college- and career-ready” by the end of tenth grade;
- Wrap Around and Support Services: New support for schools serving high concentrations of students living in poverty, with before- and after-school and summer academic programs and student access to need-based health and social services, and increased support for English learners and special education students; and
- Accountability: Establishment of an accountability oversight board with the authority to ensure that the Commission’s recommendations are successfully implemented and produce the desired results.

The recommendations of the Kirwan Commission have a total estimated price tag of \$4.4 billion annually by 2030.

### *“The Blue Print for Maryland’s Future”*

Senate President Thomas v. Mike Miller, Jr. (D – Calvert and Prince George’s Counties) and House Speaker Michael Busch (D – Anne Arundel County) submitted Senate Bill 1030/House Bill 1413, “The Blueprint for Maryland’s Future,” (the Blueprint) on behalf of the Kirwan Commission to implement the initial stages of the recommendations outlined above. As introduced, the bill established programs and provided funding for Fiscal Year 2020 and mandated additional funding for Fiscal Year 2021, totaling approximately \$325 million. Additionally, the Governor must appropriate \$387.0 million in Fiscal Year 2021 to the Commission special fund. To make the Blueprint bill viable, the Senate Budget and Taxation and House Appropriations Committees passed a budget with \$255 million in additional funding toward the \$325 million requested in the Blueprint for Fiscal Year 2020. Legislative leaders and Commission members will continue to work during the interim on the funding formulas that will determine how much of the increased costs are paid by the State and how much will be allocated directly to counties

### *Public School Construction – “The Build to Learn Act”*

Senator Craig Zucker (D - Montgomery County) and Delegate Kathleen Dumais (D - Montgomery County) introduced Senate Bill 731/House Bill 727, aimed at providing supplemental funding for public school construction through bonds issued by the Maryland Stadium Authority and backed by State Lottery revenues. The bill was a high priority for newly elected county leaders and large public school systems throughout the State. Initially, the legislation created broad funding sources for public school construction projects across the State. The House amended HB727 to clarify the use of revenues from the Education Trust Fund and aimed portions of the bill at specifically funding public-private partnership (P3) agreements for school construction projects in Prince George’s County and projects in school

systems experiencing significant enrollment growth or relocatable classrooms. The amended version of HB727 was passed successfully out of the House and had a robust hearing in the Senate Budget and Taxation Committee, but failed to progress beyond that hearing.

### *Dyslexia Screenings and Intervention*

The General Assembly unanimously passed Senate Bill 734/House Bill 690, sponsored by Senator Craig Zucker (D - Montgomery County) and Delegate Eric Luedtke (D - Montgomery County), requiring local school boards, beginning in the 2020-2021 school year, to ensure that students are screened to identify risks of reading difficulties. If the screening results indicate that the student is at risk, the local board must conduct an informal diagnostic assessment to determine and provide for supplemental reading instruction, as needed, and notify the student's parents. The Maryland State Department of Education (MSDE) must develop resources, including a reading and dyslexia handbook, for local school boards every two years and provide training opportunities annually.

### *Holocaust Curriculum*

Senator Ben Kramer (D - Montgomery County) introduced The Lessons of the Holocaust and Genocide Act. This bill would have required each public middle and high school, as well as non-public middle and high schools that participate in State-funded education programs, to include, in their curriculum, consistent guidelines on the Holocaust and other historical and contemporary acts of genocide. The MSDE would have developed these guidelines. Proponents emphasized that this legislation is essential as new research and studies show that two-thirds of American millennials cannot identify Auschwitz and its historical significance.

Additionally, 22% of those same millennials surveyed either have never heard of the Holocaust or were unsure if they have heard of the Holocaust. Unfortunately, the bill stalled in the Senate Education, Health and Environment Committee, where it failed to receive a vote. It is likely that Senator Kramer will reintroduce the bill next session.

## Energy

### *Renewable Energy Portfolio Standards*

After years of consideration and study, the General Assembly passed controversial legislation to substantially expand the State's renewable energy portfolio standards (RPS). Senator Brian Feldman (D - Montgomery County) and Delegate Maryann Lisanti (D - Harford County) sponsored Senate Bill 516/House Bill 1158, to increase the general percentage requirements within the RPS to 50% by 2030, up from the current 20% by 2020. Initially the bill was met with a desire by legislators, particularly in the House, to defer action on the bill until after the completion of an ongoing study on the RPS by the Power Plant Research Group (PPRG) within the Department of Natural Resources, which is required to submit its final report to the General Assembly by January 1, 2019. However, as the Session progressed, there was increasing pressure from the progressive wing of both the Senate and House to move the bill forward, and in the last days of Session, the bill began to move and ultimately passed in an amended form on Sine Die.

SB516, the version of the bill that ultimately passed, is a comprehensive expansion of the RPS program that adds significant new requirements on energy providers and the renewable energy industry in the State. The legislation was substantially amended in both houses and, as passed, reflects the following provisions:

*RPS Increase to 50% and Other Changes:*

Minimum RPS percentage requirements are increased beginning in 2019 and escalate to 50% by 2030, as shown in Exhibit 1 below. Associated alternative compliance payments (ACPs) are reduced beginning in that same year; by 2029, solar and nonsolar ACPs reach parity.

<b>Exhibit 1</b>								
<b>Annual Tier 1 RPS Specifications</b>								
<b>Under the Bill</b>								
<b>Year</b>	<b>Percentage of Retail Sales</b>				<b>Alternative Compliance Payments<sup>1</sup></b>			
	<b>The Bill</b>		<b>Current Law</b>		<b>The Bill</b>		<b>Current Law</b>	
	<b>Total<sup>2</sup></b>	<b>Solar</b>	<b>Total</b>	<b>Solar</b>	<b>Nonsolar</b>	<b>Solar</b>	<b>Nonsolar</b>	<b>Solar</b>
2019	20.70%	5.50%	20.40%	1.95%	\$30.00	\$100.00	\$37.50	\$150.00
2020	28.00%	6.00%	25.00%	2.50%	30.00	100.00	37.50	125.00
2021	30.80%	7.50%	25.00%	2.50%	30.00	80.00	37.50	100.00
2022	33.10%	8.50%	25.00%	2.50%	30.00	60.00	37.50	75.00
2023	35.40%	9.50%	25.00%	2.50%	30.00	45.00	37.50	60.00
2024	37.70%	10.50%	25.00%	2.50%	27.50	40.00	37.50	50.00
2025	40.00%	11.50%	25.00%	2.50%	25.00	35.00	37.50	50.00
2026 <sup>3</sup>	42.50%	12.50%	25.00%	2.50%	24.75	30.00	37.50	50.00
2027	45.50%	13.50%	25.00%	2.50%	24.50	25.00	37.50	50.00
2028	47.50%	14.50%	25.00%	2.50%	22.50	25.00	37.50	50.00
2029	49.50%	14.50%	25.00%	2.50%	22.50	22.50	37.50	50.00
2030+	50.00%	14.50%	25.00%	2.50%	22.35	22.35	37.50	50.00

RPS: Renewable Energy Portfolio Standard

<sup>1</sup>Dollars per megawatt-hour.

<sup>2</sup>Total columns include solar and offshore wind and reflect Tier 1 only. The bill also reestablishes Tier 2 at 2.5% in 2019 and 2020 (not shown).

<sup>3</sup>New offshore wind capacity is required beginning with at least 400 megawatts in 2026, increasing to at least 800 megawatts in 2028, and to at least 1,200 megawatts in 2030.

Other RPS changes include:

- The expired Tier 2 of RPS is reestablished for two years, in 2019 and 2020;
- The threshold for a potential solar cost control administrative action by PSC is increased from 2.5% of an electricity supplier’s retail sales to 6.0%;
- For electric cooperatives only, the solar portion of the Tier 1 requirement is 2.5% from 2020 through 2029 and 5.0% annually after that (i.e., other sources can be used to meet more of the Tier 1 requirement).

ACP revenue must still be used to support new renewable energy sources in the State, but under the bill, the renewable energy sources also must be owned by or directly benefit low-income residents.

*New Offshore Wind Applications:*

The existing offshore wind application and approval process are bifurcated into “Round 1” and “Round 2” projects, to allow for new applications. PSC must provide Round 2 application periods beginning, respectively:

- January 1, 2020, for consideration of Round 2 projects to start creating offshore wind renewable energy credits (ORECs) no later than 2026;

- January 1, 2021, for consideration of Round 2 projects to begin creating ORECs no later than 2028; and
- January 1, 2022, for consideration of Round 2 projects to begin creating ORECs no later than 2030.

The maximum combined ratepayer impacts from all Round 2 projects is \$0.88 per month (in 2018 dollars) for an average residential customer (1,000 kilowatt-hours per month) and 0.9% for nonresidential customers. Round 2 ratepayer impacts are in addition to the \$1.50/1.5% residential/nonresidential monthly maximums allowed under the existing (Round 1) process. Otherwise, the PSC review and approval process are generally the same, except, Round 2 projects must be located 10 to 80 miles off the coast of the State, instead of 10 to 30 miles, and projects are subject to a community benefits agreement, as defined.

PSC approval of offshore wind projects is conditional on applicants entering into memoranda of understanding and community benefits agreements with requirements relating to the following areas:

- Use of small, minority, women-owned, and veteran-owned businesses;
- Prevailing wage rates;
- Occupational Safety and Health Administration safety courses and requirements,
- Career training opportunities; and
- Project labor agreements.

*SEIF Transfers for Various Clean Energy Initiatives:*

The Maryland Energy Administration (MEA) must use SEIF to provide \$7.0 million in funding for access to capital for small, minority, women, and veteran-owned businesses in the clean energy industry under the Small, Minority, and Women-Owned Businesses Account (SMWOBA) in Commerce, subject to specified conditions. The funding must be allocated in annual increments from fiscal 2021 through 2028, as specified.

MEA must also use SEIF to invest in pre-apprenticeship, youth apprenticeship, and registered apprenticeship programs to establish career paths in the clean energy industry under the Maryland Employment Advancement Right Now (EARN) program. Subject to specified requirements, starting in fiscal 2021, \$1.5 million must be transferred for grants to pre-apprenticeship jobs training programs and \$6.5 million must be transferred for grants to youth and registered apprenticeship jobs training programs until all amounts are spent.

The Clean Energy Workforce Account is established in the EARN program to receive and disburse the transfers as grants, subject to specified requirements, and a related reporting requirement is altered to incorporate the outcomes of the funding.

*RPS Study Expansion and Supplemental Report:*

An existing PPRP study on RPS required by Chapter 393 of 2017 is expanded to include (1) additional impacts related to in-state clean energy generation as an increasing percentage of RPS and (2) an assessment of the costs, benefits, and any legal or other implications of expanding the geographic eligibility for renewable sources, as specified. The final report must be submitted by December 1, 2019, in accordance with current law.

After submission of the final report, PPRP must conduct a supplemental study to assess the overall costs and benefits of increasing RPS to a goal of 100% by 2040. Particular subjects must include (1) all relevant subjects listed for the original study and (2) an assessment of whether any in-state industries could be displaced or negatively economically impacted by a 100% RPS, with recommendations on how to transition workers and communities that rely on those industries. This study shall also include the findings of the study on nuclear energy mandated in the bill. On completion of the supplemental study, PPRP must use the results to publish recommendations regarding the feasibility of implementing a 100% RPS by 2040. PPRP must submit the supplemental study to the Governor and the General Assembly by January 1, 2024.

The PPRP shall also conduct a study of nuclear energy and its role as a renewable or clean energy resource that can effectively combat climate change in the State, including (1) an evaluation of current nuclear energy in Maryland, (2) identification of the benefits, including environmental benefits, of nuclear energy, (3) an assessment of emerging nuclear energy technologies, (4) an assessment of countries and other states that rely heavily on nuclear energy, (5) an identification of potential for new nuclear power initiatives in the State, (6) an assessment of the practicality of adding nuclear energy to the RPS, and (7) recommendations regarding subsequent legislation impacting nuclear energy in the State. The results of this study shall be reported to the Governor and the General Assembly on or before January 1, 2020.

### *Long-term Contracts*

Legislation was once again introduced by Senator Brian Feldman (D - Montgomery County) and Delegate Luke Clippinger (D - Baltimore City) mandating that electric companies enter into long-term contracts for renewable energy. Senate Bill 910/House Bill 879 required electric companies, beginning in 2020, to contract for renewable energy credits (RECs) and electricity generated from specified renewable sources. Starting in 2022, the contracts must meet at least 50% of that year's requirement under the State Renewable Energy Portfolio Standard (RPS) for the electricity that each company provides its customers through standard offer service. These contracts are subject to review and approval by the Public Service Commission (PSC).

In a lengthy and contentious hearing in the House Economic Matters Committee, representatives from the renewable energy industry claimed the legislation was essential to incentivize the development of renewable energy projects in Maryland and that the contracts would ultimately lower costs to ratepayers. The utilities pushed back, claiming the legislation would force them to enter into contracts for multiple decades, locked in at today's prices, that would result in significant cost to the utilities and ratepayers over time. Ultimately, HB879 received an unfavorable vote in the House Committee, with a nearly unanimous vote, and SB910 was subsequently withdrawn before the Senate hearing.

### *Healthy Climate Initiative*

Senator Ben Kramer (D - Montgomery County) and Delegate David Fraser-Hidalgo (D - Montgomery County) introduced Senate Bill 702/House Bill 1235, establishing the Healthy Climate Initiative. This bill would have created a comprehensive program within the Maryland Department of the Environment (MDE), including the implementation of greenhouse gas (GHG) pollution charge on all GHG-producing substances distributed or used in the State. Under the bill, revenue from the pollution charge would be deposited into two special funds used to (1) provide rebates to households and employers and (2) fund

specified State and local GHG reduction activities. The House bill was jointly assigned to the House Economic Matters and Environment and Transportation Committees and received unfavorable reports by both committees shortly after a contentious and confusing public hearing. No action was taken on Senate bill after the initial hearing.

### *Alternative Rate Structuring for Gas and Electric Utilities*

Senate Bill 572/House Bill 653 was introduced by Senator Brian Feldman (D – Montgomery County) and Delegate Dereck Davis (D - Prince George’s County), and strongly supported by Maryland utilities. In response to concerns voiced by the Public Service Commission (PSC) about its ability to comply with the bill, the House Economic Matters Committee amended the bill to do the following:

- Require the PSC to allow an electric or gas company to use an “alternative rate plan” to establish a new base rate if the PSC finds the plan results in a just and reasonable rate.
- Permitted alternative rate plans include (1) a fully forecasted test year, which is a rate that is based on forecasted costs, investments, and billing determinants for the effective period of the rate and (2) formula rates, which are rates that are periodically adjusted based on a predetermined formula and subject to annual reconciliation adjustments.
- Require the PSC to allow an electric or gas company to file for new base rates simultaneously with the proposed alternative rate plan and use an alternative rate plan covering its full cost of service to establish new base rates if the PSC finds that the alternative rate plan results in a just and reasonable rate.
- Allow an electric or gas company to file an alternative rate plan that provides for performance standards, subject to the approval of the PSC, that are designed to achieve improvement or sustain results in electric or gas company reliability and customer satisfaction.
- Provide other mechanisms for utilities to accurately assess and recover costs through alternative rate plans, including revenue decoupling mechanisms, cost deferrals into regulatory assets, annual formula rate reconciliations, and other cost recovery mechanisms, all subject to PSC approval.

Lengthy, substantive hearings on the legislation were held in both the Senate Finance Committee and the House Economic Matters Committee, which included significant discussion about the implementation of alternate rate plans in Maryland. An amended version of HB653 successfully passed out of the House and was presented in a second hearing before the Senate Finance Committee. That committee, in response to concerns about timing raised by the PSC, opted to defer action on the bill until after a planned technical conference scheduled for April 2019. Similar legislation is expected to be back before the General Assembly in the 2020 Legislative Session.

### *Small Cell Deployment*

Two pieces of legislation were introduced to establish statewide parameters for the deployment of small wireless facilities, more commonly known as small cell technology, in local jurisdictions in Maryland. Senate Bill 937/House Bill 654, sponsored by Senator Katherine Klausmeier (D - Baltimore County) and Delegate Dereck Davis (D - Prince George’s County) was introduced on behalf of the wireless industry to

establish a clear definition of small wireless facilities and lay out a statewide policy for deploying this technology in a manner consistent with federal law.

Senate Bill 713/House Bill 1020, sponsored by Senator Pam Beidle (D - Anne Arundel County) and Delegate Maryann Lisanti (D - Harford County), was introduced on behalf of the Maryland Association of Counties and the Maryland Municipal League and aimed at preserving significant authority over the deployment process for local jurisdictions. Several stakeholder meetings were held before and during the Legislative Session to try and rectify the two bills, but ultimately the Senate Finance Committee and House Economic Matters Committee directed the bills to be studied further during the 2019 interim.

## Healthcare

### *Procurement - Health Care Mandate.*

As drafted, Senate Bill 433/House Bill 680, sponsored by Senator Craig Zucker (D - Montgomery County) and Delegate Bonnie Cullison (D – Montgomery County), would have established a procurement price preference of at least 4% for a responsive bid under which the responsible bidder or subcontractor certified that its total payments for employee health care expenses are at least 10% of the aggregate wages paid by the bidder or subcontractor. The legislation was based on the premise that both general and subcontractors were not providing adequate health benefits to their employees despite a Board of Public Works (BPW) study over the interim that showed approximately 75% of contractors providing health benefits to their employees.

After vigorous debate, the bill was amended in title and substance to require, beginning July 1, 2019, all bidders, contractors, and subcontractors on State-funded construction projects to pay either the aggregate employee health care expenses at a rate of at least 5% of the wages paid by the employer or the employer pays 50% or more of the required premium necessary to obtain coverage by a credible health insurance plan. The bill does not apply to minority business enterprises (MBEs) or small businesses with 30 or fewer employees. The Department of General Services must establish procedures for bidders, contractors, and subcontractors to certify that they pay employee health care expenses.

For three years following the bill's enactment, BPW must collect the following information for all construction-related, competitive sealed bids: (1) whether the bidding company and any subcontractor provides employee or family health care coverage on projects that require a prevailing wage; (2) for the year preceding the bid, the percentage of total wages and the total amount spent on employee health care; (3) the percentage of total health insurance costs paid by the insurance company (instead of the employee), the type and scope of coverage provided, and the average percentage of the monthly premium paid by the bidder or subcontractor; and (4) the average portion of monthly premium paid by the employee and the average per employee deductible for each health care plan offered.

### *Substance Use Disorder - Coverage*

The U.S. Surgeon General's office estimates that more than 20 million people have a substance use disorder. The amount of drug overdoses in Maryland, as with the rest of the country, shows no sign of slowing. Senator Malcolm Augustine (D - Prince George's County) and Delegate Arianna Kelly (D – Montgomery County) introduced Senate Bill 631/House Bill 599 as a treatment based response to this crisis. The bill requires commercial insurance carriers to use the American Society of Addiction Medicine (ASAM) criteria when making medical necessity determinations for substance use treatment. "ASAM

criteria” means the most recent edition of the ASAM treatment criteria for addictive, substance-related, and co-occurring conditions that establish guidelines for placement, continued stay, and transfer or discharge of patients with addiction and co-occurring conditions. The bill also repeals the limitation on a carrier charging a copayment for methadone maintenance treatment that is greater than 50% of the daily cost for methadone maintenance treatment. The bill passed, which passed unanimously in both the House and Senate, takes effect January 1, 2020, and applies to all policies, contracts, and health benefit plans issued, delivered, or renewed in the State on or after that date.

### *Prior Authorization*

Delegate Terri Hill (D – Howard County), a physician, introduced House Bill 751 to address prior authorization concerns for patients with chronic conditions. Under the bill, a carrier must honor a prior authorization from a previous entity for at least the initial 30 days of the beneficiary’s prescription drug benefit coverage during which time the carrier can initiate its own prior authorization review. The bill also requires an entity to honor a prior authorization when the beneficiary moves between health plans within the same carrier or when there is a dosage change, excluding opioids. As passed, the bill requires carriers to electronically pre-populate forms with specific information and again requires that at least 30 days before implementing a prior authorization change, a carrier must provide a beneficiary who is currently taking the drug and all health care providers with notice of the change. This bill was introduced last year but ultimately was withdrawn by the bill sponsor. This year, the bill passed through both chambers unanimously. The bill takes effect on January 1, 2020.

### *Comprehensive and Extended Care Facilities - Discharges and Transfers*

At the request of Attorney General, Brian Frosh, Senate Bill 669/House Bill 592 was introduced to alter requirements related to the discharge or transfer of a resident from a comprehensive or extended care facility. The bill was in response to the allegations made by the State against NMS, LLC, a former nursing home operator in Maryland. The State alleged that NMS had engaged in unfair, unsafe, and unlawful discharge practices that affected hundreds of residents. Additionally, the State argued that NMS had submitted false claims to the Medicaid program for their services. While the case was ultimately settled, Attorney General Frosh sought to make legislative changes to prevent similar cases in the future. The bill establishes additional rights for nursing home residents, expands the required contents of a discharge or transfer form, requires the development of a post-discharge plan, and places other restrictions on the discharge of a resident without informed consent. The bill also authorizes the Attorney General Office to request from a court a civil penalty of up to \$100,000 for each violation of provisions related to the transfer or discharge of a resident, the required notice of discharge or transfer, or involuntary discharge. The Attorney General worked closely with industry stakeholders and patient advocates to pass the legislation. The bill takes effect on October 1, 2019.

### *Drug Affordability Board*

After several years of consideration, the General Assembly passed legislation aimed at addressing concerns about the rising costs of prescription drugs in Maryland. As amended, Senate Bill 541/House Bill 768, sponsored by Senator Katherine Klausmeier (D – Baltimore County) and Delegate Joseline Pena-Melnyk (D – Anne Arundel and Prince George’s Counties), establishes a Prescription Drug Affordability Board (the Board) to protect State residents and other stakeholders from the high costs of prescription drug products. The legislation creates a five-member Board, to be assisted by a 26 member stakeholder council, and requires that, on or before December 31, 2020, the Board shall (1) conduct a study of the

entire pharmaceutical distribution and payment system in the State and related policy options being used in other states, including upper payment limits, a reverse auction marketplace, and a bulk purchasing process; (2) collect and review publicly available information regarding prescription drug manufacturers, health insurers, wholesale distributors, and pharmacy benefit managers, including data obtained by entering in a memoranda of understanding with other states, and (3) identify circumstances, including the identification of specific prescription drug products, that create affordability challenges for the State health care system and patients.

One or before December 31, 2020, the Board shall report, to the Senate Finance Committee and the House Health and Government Operations Committee (the Committees), its findings on pricing trends for prescription drug products and recommendations on further legislation needed to make products more affordable in the State. By that date, the Board must also determine a funding source for the Board and make recommendations to the Committees about legislation to establish that funding source.

In performing its required duties, the Board must specifically evaluate the establishment of setting upper payment limits for prescription drug products that create affordability challenges, as determined by the Board. If the setting of upper payment limits is determined to be in the best interest of the State, the Board, in conjunction with the stakeholder council, shall draft a plan of action (the Plan) for implementing those limits. If the Plan is developed, under the provisions of the bill, on or before July 1, 2021, the Board shall submit the Plan to the Legislative Policy Committee for approval. If the Legislative Policy Committee does not approve the Plan, the Board shall submit it to the Governor and the Attorney General for approval. The Board may not set upper payment limits under the Plan without permission from either the Legislative Policy Committee or the Governor and Attorney General. On or after January 1, 2022, the Board may set upper payment limits for prescription drug products that are purchased or paid for by a unit of State or local government. On or before December 1, 2023, the Board shall report to the Committees on the legal obstacles and benefits of setting upper payment limits on all purchases and payor reimbursements of prescription drug products in the State.

The legislation that passed the General Assembly this Session is a product of significant compromise from all entities impacted by the bill. The legislature intended to lay out a clear path for the State to implement a substantive policy to reduce the cost of prescription drug products in Maryland while providing adequate checks and objective evaluation throughout the development and implementation of those policies.

### *Prescription Drugs – Formulary Changes*

The General Assembly passed Senate Bill 405/House Bill 435, introduced by the Senator Antonio Hayes (D - Baltimore City) and Delegate Ariana Kelly (D - Montgomery County), which, as amended, requires insurance carriers that remove a drug from their formulary or move a drug to a benefit tier with a higher deductible, copayment or coinsurance amount to provide a members and the member's health care provider with (1) notice at least 30 days before the change is implemented and (2) included in the notice, the process for requesting a specified exemption. The bill also expands the current process carriers must have in place to allow a member to receive an off-formulary prescription drug or device to include a prescription drug or device that has been removed from a formulary and to enable a member to continue the same cost-sharing requirements under specified circumstances. The version of this bill passed by the General Assembly represents compromise legislation between carriers, patient advocacy groups, and various other health care stakeholders to ensure certain patient protections are in place

when changes occur to a drug's status under a carrier's formulary or benefit tiers. The amended version of the bill passed both the Senate and the House unanimously.

### *Drug Manufacturers – Drug Take-Back Programs*

Delegate Karen Lewis Young (D - Frederick County) sponsored House Bill 1085, a bill that would have require pharmaceutical manufacturers selling or distributing drugs in the State to (1) operate a drug take-back program approved by the Maryland Department of Health (MDH); (2) enter into an agreement with a "drug take-back organization" to operate such a program; or (3) enter into an agreement with MDH to run such a program on behalf of the manufacturer. Significant opposition and concerns about the practical impact of the bill were raised in the hearing in the House Health and Government Operations Committee, and the bill failed to progress beyond that initial hearing. Delegate Young is expected to reintroduce similar legislation in the 2020 Legislative Session but may amend the bill to exempt certain types of medications from the requirements under the bill.

## Health Occupations

### *Physician-Assisted Suicide*

After taking the year before the election off, the End-of-Life Options Act, a bill to legalize physician-assisted suicide in Maryland, was once again presented to the legislature by Senator Will Smith (D – Montgomery County) and Delegate Shane Pendergrass (D – Howard County). If passed, Maryland would have joined seven other states - California, Colorado, Hawaii, Montana, Oregon, Vermont and Washington – and the District of Columbia in permitting medical aid in dying. The bill as introduced would have allowed an attending physician licensed to practice medicine in the State of Maryland and who follows procedural safeguards to prescribe self-administered medication to a qualified individual to bring about the individual's death. The bill defined the medical practice of prescribing such medication as "aid in dying." The bill also defined a "qualified individual" as an adult who (1) has the capacity to make medical decisions; (2) is a resident of the State; (3) has a terminal illness with a prognosis of death within six months; and (4) has the ability to self-administer medications. Proponents for the bill believe that this option allows individuals to have autonomy over their lives when faced with an uncertain and often painful ending to their lives. Furthermore, proponents think that the medications used are efficacious and almost always allow for the peaceful death of the suffering person.

Beyond the traditional moral and faith-based arguments advanced against the legislation, many opponents argued that the bill lacked adequate protections for people with mental illness or people who may be manipulated into asking for the drugs either by those who do not want to carry the burden the patient presents or from those who stand to gain a financial benefit from the patient's death. The bill passed the House of Delegates unamended and in a posture favored by proponents. However, the proposal met significantly more resistance in the Senate's Judicial Proceedings Committee, which was poised only to advance the bill with the inclusion of additional safeguards. The Senate Judicial Proceedings Committee sent the legislation to the Senate floor with extensive amendments. Ultimately, the End-of-Life Options Act failed in the Senate after a rare and dramatic deadlock vote on the second reader that saw one Senator refuse to cast the deciding ballot.

### *Acupuncture – Scope of Practice*

Senator Cheryl Kagan (D - Montgomery County) and Delegate Robbyn Lewis (D - Baltimore City) introduced Senate Bill 303/House Bill 404 - State Acupuncture Board - Definition and Education Requirements. This bill, as introduced, altered the definition of ‘acupuncture’ and ‘practice acupuncture’ in a manner that appeared to both expand the scope of practice for licensed acupuncturists and potentially impede other licensed health practitioners from practicing and performing certain therapies like dry needling. In response to concerns raised by several stakeholder associations about the unintended consequences of the revised definitions, the bill was amended to make it acceptable to all interested parties. The amended bill passed the General Assembly with significant majorities in both chambers. The bill takes effect on October 1, 2019.

### *Expanded Practice Settings for Dental Hygienists*

The General Assembly passed House Bill 738, sponsored by Delegate Nicholas Kipke (R - Anne Arundel County), which expanded the healthcare settings where licensed dental hygienists may practice under general supervision to include medical offices, adult day care centers and group homes. The bill broadened on existing provisions in the dental hygienist practice act permitting them to practice under general supervision in nursing homes and long term care facilities and will increase patient access to vital preventative dental care. The bill takes effect on October 1, 2019.

### *Dental Practice Ownership*

For the fifth 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 Senate Bill 924/House Bill 597, sponsored by Senator Jason Gallion (R - Cecil and Harford Counties) and Delegate Sue Krebs (R - Carroll County) and Senate Bill 371/House Bill 470, sponsored by Senator Chris West (R - Baltimore County) and Delegate Bonnie Cullison (D – Montgomery 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.

Lengthy hearings on the bills were held in the Senate Education, Health and Environmental Affairs Committee and 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. SB371 eventually passed out of the Senate after significant floor debate and nearly being recommitted to the Senate Education, Health and Environmental Affairs Committee, but was referred to Summer Study by the House Health and Government Operations Committee, along with other legislation relating to the practice of dentistry in Maryland.

Senator West and Delegate Cullison also introduced Senate Bill 365/House Bill 448, 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. SB 365 was jointly assigned to the Senate Education, Health and Environmental Affairs and Judicial Proceedings Committees due to its subject-matter, and while the bill did receive a favorable report by the Education, Health and Environmental Affairs Committee, it failed to pass the Judicial

Proceedings Committee and move forward in the Senate. These bills were also referred to Summer Study by the House Health and Government Operations Committee due to their overlap with the dental ownership legislation.

### *Dental Board Elections*

Senator Arthur Ellis (D - Charles County) and Delegate Sid Saab (R - Anne Arundel County) introduced Senate Bill 994/House Bill 807, which would have altered the appointment process for members of the State Board of Dental Examiners. The bill, aimed at increasing practice diversity and transparency in the Board's election and appointment process, (1) changes how licensees and dental organizations are notified of board vacancies; (2) repeals the current balloting process for nominating board members and instead establishes a new process for nominating board members; and (3) repeals the requirement that the Governor appoint a board member from a list of names provided by the board and instead establishes three specified alternatives the Governor may use when selecting members to the board. This legislation was referred to Summer Study for further consideration

### Child Care

#### *Procurement Preference – On-Site Child Care Facilities*

House Bill 521, sponsored by Delegate Pam Queen (D – Montgomery County), would have established a procurement preference on any procurement contract valued at more than \$500,000 for bidders or offerors who have an on-site licensed child care center for use by their employees. As initially drafted, the preference could have either been a percentage price preference or any other provision that favors a bidder or offeror with such a child care facility. The preference may not be awarded, however, over a bidder or offeror that is a qualified small business enterprise as defined in the State Finance and Procurement Article.

The sponsor testified that House Bill 521 was one of several legislative attempts over the years to incentivize the business community to address the high cost of child care incurred by their employees. When opposition, especially from those engaged in construction services, pointed out the logistical problems of having onsite child care, the sponsor revised the bill to provide a price preference on a sliding scale of up to 5% for bidders on State contracts in excess of \$500,000 if the bidder either (1) provided on-site child care and charged employees using the facility 50% or less of the cost, or (2) reimbursed its employees for 50% or more of the expenses provided through a licensed child care center. The revised price preference still could not be awarded against a bidder that is a small business enterprise. The bill as amended did not quell the opposition to the bill.

First, tax dollars from State employees who do not receive child care from their employer would be used to underwrite the cost of a private sector company's providing childcare for its employees. Second, the preference would run counter to the fundamental goal of public procurement, namely to ensure that taxpayers receive the lowest possible responsive bid from a responsible bidder. Price preferences create one of two situations: either the most responsible and responsive bid is not selected because of a preference granted to a less responsive bidder, or bidders simply up their prices to take advantage of the preference. In either case, taxpayers are denied the benefit of the lowest responsive bid. Finally, HB 521 as redrafted would have extended the preference to out-of-state bidders that provide child care in their own state, which does nothing to advance the availability of child care in Maryland. Despite the

amendment proffered by the bill sponsor, the House Health and Government Operations Committee failed to advance the bill beyond the initial public hearing.

### *Child Care Subsidies*

Senator Nancy King (D - Montgomery County) and Delegate Adrienne Jones (D - Baltimore County) introduced Senate Bill 181/House Bill 248, important legislation that accelerates the mandated appropriation for the Child Care Subsidy (CCS) program by requiring the Governor to appropriate funds for Fiscal Year 2021 rather than merely phasing it in. Each fiscal year thereafter increases until the program's provider reimbursement rates reach a minimum of the sixtieth percentile of the most recent market rate survey. The CCS program provides financial assistance with childcare costs to eligible low-income families. This bill passed fairly easily through both the Senate and the House without amendment. The legislation will provide families with increase relief through child care subsidies sooner than initially expected.

## Real Property/Condominiums

### *The Definition of Rent*

The term "rent" lacks a statutory definition in Maryland law. Likewise, no Maryland statute prohibits a landlord from recovering fees or charges as rent. This issue became contentious between tenant advocates and residential housing providers when the Maryland Court of Appeals decided *Lockett v. Blue Ocean Bristol, LLC*, in 2016, which involved a retaliatory eviction claim by the tenant. In *Lockett*, the Court held that for purposes of Maryland's anti-retaliation provisions the term "rent" denotes periodic charges for the use or occupancy of a rental unit. Accordingly, "rent" does not include various other payments, such as utility charges, that a tenant may owe his or her landlord, even if the tenant's lease characterizes such payments as "deemed rent" or "additional rent."

In 2019, the Maryland Court of Appeals clarified its position in *Ben-Davies & Moore v. Blibaum & Associates, P.A.*, when it noted that "in *Lockett*, the issue before this Court was not the definition of the word "rent" in RP § 8-401, which governs summary ejectment actions; instead, the issue was the definition of the word "rent" in RP § 8-208.1, which prohibits landlords from taking retaliatory actions against tenants under certain circumstances. Put simply, although *Lockett* may be relevant to the interpretation of the word "rent" as used in a statute within Title 8 of the Real Property Article, *Lockett* does not address the issue of whether judgments like those in the instant cases constitute 'money judgment[s] for rent of residential premises'." Senate Bill 941/House Bill 473, introduced by Senator Susan Lee (D – Montgomery County) and Delegate Steve Lafferty (D- Baltimore County), sought to codify the definition of rent as fixed and periodic under the *Lockett* decision, while Senate Bill 366/House Bill 558, sponsored by Senator Chris West (R – Baltimore County) and Delegate Marvin Holmes (D – Prince George's County), sought to codify an expanded definition of rent as suggested under the *Blibaum* decision. Ultimately, the legislature opted not to move either bill forward and, instead, asked stakeholders to work out their differences in an interim study of the issue.

### *Baltimore City Tax Sales on Water Bill Liens – Permanent Moratorium*

Last session, former Senator Barbara Robinson (D – Baltimore City) passed a bill that placed a moratorium on Baltimore City tax sales for unpaid water and sewer services. This session, Senator Mary

Washington (D – Baltimore City) and Delegate Nick Mosby (D – Baltimore City) introduced and passed Senate Bill 96/House Bill 161 - Water Taxpayer Protection Act of 2019 to make that moratorium permanent. Under the bill, Baltimore City can no longer place liens on residential and religious properties for unpaid water and sewer bills to bring it to tax sale. Traditionally, the city had seized the debt if it totaled more than \$750 and was overdue by at least nine months—the only jurisdiction in the State to do so. Properties are not protected from tax sale for water bills if the City combines that debt with other types of unpaid taxes. The City’s Department of Public Works advised that roughly one in 10 Baltimore homes were eligible for tax sale as of this winter.

### *Montgomery County – Just Cause Eviction*

In a contested vote, the Montgomery County Delegation agreed to introduce House Bill 628, which would have required a residential rental property owner in Montgomery County to renew a tenant's lease unless he or she can prove at least one of seven listed "just causes" for non-renewal. Montgomery County would have been the first county in the State to impose such a law. Under this legislation, a rental property owner could only terminate a tenancy by proving: (1) a substantial breach of lease, (2) the tenant disturbing the peace, (3) illegal activity on the part of the tenant, (4) a tenant’s refusal to grant the landlord reasonable access to the leased premises, (5) the landlord seeks to recover leased premises for family use, (6) the landlord attempts to remove leased premises from the market permanently, or (7) the landlord has permits and seeks to undertake substantial repairs to the leased premises. The bill would have also added a 60-day notice requirement prior to filing any type of eviction case, further delaying an already slow process. The bill eventually died in subcommittee in the House Environment and Transportation Committee. The Chair of the Environment and Transportation Committee is a Montgomery County Delegate who voted against the bill in the delegation.

### *Dispute Settlement*

Once again Senator Joanne Benson (D - Prince George’s County) and Delegate Anne Healey (D - Prince George’s County) introduced legislation aimed at making changes to the Maryland Condominium Act (MCA) and Maryland Cooperative Housing Corporation Act (MCHC) concerning dispute settlement mechanisms. Senate Bill 724/House Bill 414 would have repealed the prohibition against a governing body of a cooperative housing corporation (CHC) bringing an action to evict a member based on the member’s failure to pay specific assessments and would have made other technical and clarifying changes. The proposed law would have also applied prospectively, and it could not have been interpreted to have any effect on any complaint or demand formally arising under a CHC or the provisions of a member’s proprietary lease before the legislation’s effective date of October 1, 2019, unless the bylaws of the CHC or the proprietary lease of the member stated otherwise. While House Bill 414 passed out favorably out the House and crossed over to the Senate, it received an unfavorable report along with Senate Bill 724 in the Senate Judicial Proceedings Committee (JPR).

Senator Benson and Delegate Healey also introduced Senate Bill 723/House Bill 392, which received an unfavorable report in JPR. This bill intended to establish a dispute settlement mechanism under the Maryland Homeowners Association Act (MHAA), similar the provisions of Senate Bill 724/House Bill 414 described above.

### *Homeowners Associations – Powers, Boards of Directors, Voting, Meetings, and Rules*

Senator Susan Lee (D - Montgomery County) and Delegate Bonnie Cullison (D - Montgomery County) re-introduced legislation to modify the MHAA to significantly expand the provisions related to boards of

directors, meetings, voting, recordation and rules of homeowner's associations (HOAs). As with the previous session of the General Assembly, members of both the Senate Judicial Proceedings Committee and the House Environment and Transportation Committee found the 15 pages of material changes to the MHAA too much to tackle during the 90-day session. Senate Bill 612/House Bill 709 received unfavorable reports in those committees.

Delegate Cullison also introduced legislation clarifying the circumstances under which unit owners may vote to amend the bylaws of a condominium association (COA) and lot owners may vote to amend certain governing documents of an HOA. This bill specified changes may be made by affirmative vote of at least 60% of unit or lot owners in good standing, or by a lower percentage if required in the bylaws or governing documents of the COA or HOA. House Bill 207 died due to the failure of Senate Judicial Proceedings to act.

### *Condominiums – Responsibility for Property Insurance Deductibles*

For 10 years the law permitted a COA's master policy property damage deductible – up to \$5,000 – to be assigned to the owner of a condominium unit owner (CUO) when a loss originates in that unit or from a component that services the unit. The deductible expense for losses that arise from a common element or from a common area is an ordinary expense shared by the COA. The law, based upon point of origination, was considered part of critical legislation that passed in 2009; COAs throughout Maryland were bearing the burden of funding the deductible each time a loss originated from a unit due to any number of causes, including the failure to maintain, accidental loss, gross or inadvertent negligence, or an unforeseeable breakdown of a unit component.

Now as a result of unfortunate occurrences of aging infrastructure and unit components and/or CUO misuse, neglect or failure to maintain, many COAs have master policy deductibles higher than \$5,000 with the COA responsible for the remaining balance. Higher deductibles eventually result in higher condominium fees for all members. Therefore, Delegate Dana Stein (D - Baltimore County) introduced House Bill 249 to relieve the COA's financial burden which, as amended, increases a CUO's deductible responsibility to \$10,000 when a loss originates from within an owner's unit or from a component that services only that unit. This legislation passed favorably out of the House but died due to the failure of the Senate Judicial Proceedings Committee to act.

### *Implied Warranties*

Senator Delores Kelley (D - Baltimore County) and Delegate Marvin Holmes (D - Prince George's County) introduced Senate Bill 379/House Bill 68 that would have prohibited the declarations or bylaws of a condominium made by a developer from limiting certain powers of a CUO to have legal standing or to enforce implied warranties.

Additionally, Senator Kelley and Delegate Holmes introduced Senate Bill 380/House Bill 69 which stated that all common elements of a condominium are covered under an implied warranty on common elements from a developer to the CUO. These bills also specified that implied warranties applied to any portion of the condominium that the CUO is required to maintain, repair, or replace under the declaration, bylaws, or other instrument made by a developer or vendor in accordance with the MCA.

Senate Bill 379/House Bill 68 and Senate Bill 380/House Bill 69 received unfavorable reports in their committees of origin.

## *Reserves*

The Prince George's County Delegation introduced House Bill 220 which would have required a study every five years of the necessary reserves for major repairs and replacement of (1) the common elements of a condominium located in Prince George's County or (2) the common areas of an HOA situated in that county. This bill applied to condominiums with more than 50 units or HOAs that contain more than 50 dwelling units in the development. House Bill 220 failed to receive a favorable report in the House Environment and Transportation Committee.

Delegate Holmes also introduced statewide legislation, House Bill 900, that was very similar to the Prince George's County reserve bill. This bill included a condominium, HOA, and CHC with more than 20 dwelling units in the development and that has the responsibility under its declaration for maintaining and repairing common areas. The bill did not apply to an HOA that issued bonds to meet capital expenditures. House Bill 900 received an unfavorable report after the sponsor withdrew his bill.

## *Electric Vehicle Recharging Equipment and Reserved Parking Spaces*

As in past years, legislation was introduced in both the Senate and House concerning the authorization and installation of electric vehicle recharging equipment and the reserving of parking spaces. While Senator Clarence Lam's (D - Baltimore & Howard Counties) legislation Senate Bills 316 and 822 received unfavorable reports in JPR, Delegate Marc Korman's (D - Montgomery County) House Bill 826 at least passed the House before dying in Senate Judicial Proceedings Committee after the committee failed to act. This bill, after amendment, established the Electric Vehicle Infrastructure Modernization Grant Program within the Maryland Energy Administration (MEA) and authorized a COA or HOA to apply for a grant to facilitate the electrical upgrade of a parking structure. The bill directed MEA to adopt regulations to implement the program. The bill also would have expanded the authorized uses of the Maryland Strategic Energy Investment Fund to provide grants under the plan. The bill also set out specific requirements and procedures for unit and lot owners that wished to install electric vehicle recharging equipment to be responsible for certain costs, insurance, and disclosures. A governing body of a condominium or HOA (Governing Body) had the ability to grant a 3-year license, renewable at the discretion of the Governing Body on any common elements necessary for the installation of equipment or the supply of the electricity to any electric vehicle recharging equipment.

## *Priority Lien*

Generally, in the case of a foreclosure of a mortgage or deed of trust on a unit in a condominium, a portion of the condominium's liens on the unit must have priority over a claim of the holder of a first mortgage or a first deed of trust that is recorded against the unit on or after October 1, 2011. The portion of the condominium's liens that has priority consists only of up to four months, or the equivalent of four months, of unpaid regular assessments for common expenses that are levied by the condominium; that portion may not include (1) interest; (2) costs of collection; (3) late charges; (4) fines; (5) attorney's fees; (6) special assessments; or (7) any other costs or sums due under the declaration or bylaws of the condominium or as specified in any contract, law, or court order. Further, the portion of the liens that have priority may not exceed a maximum of \$1,200.

This Session, Senator Mary Washington (D - Baltimore City) and Delegate Vaughn Stewart (D - Montgomery County) introduced Senate Bill 374/House Bill 250 which would have increased, from four to six months, or the equivalent of six months, the amount of unpaid regular assessments for common expenses that may be included in the portion of a condominium's liens that are given priority over a

claim of the holder of a first mortgage or first deed of trust that is recorded against a unit in the event of a foreclosure. The bills would have also authorized specified interest, costs, charges, fines, fees, and special assessments to be included in the portion of a condominium's liens given priority. Thus, the bill would have repealed the \$1,200 limit on the amount that may be given priority. Senate Bill 374 failed to receive action in the Senate Judicial Proceedings Committee, while House Bill 250 was withdrawn by its sponsor.

### *Registration*

Once again there were failed attempts to establish a "Common Ownership Community Registry" within the State Department of Assessments and Taxation (SDAT) by requiring the governing bodies of specified CHCs, COAs, and HOAs to register with SDAT by January 1 each year. Senator Benson's Senate Bill 721 received an unfavorable report in JPR, and Delegate Holmes' House Bill 737 was withdrawn.

## Property and Casualty Insurance

### *Investments of Insurers in Real Estate*

The General Assembly unanimously passed Senate Bill 523/House Bill 602, sponsored by Senator Pam Beidle (D - Anne Arundel County) and Delegate Dereck Davis (D - Prince George's County), which updates restrictions on property and casualty insurers to permit property and casualty insurers to invest in real estate, similar to current laws allowing real estate investment by life insurers. The legislation expressly authorizes the reserve investments of an insurer to include fee simple or improved leasehold real estate. The cost of each investment may not exceed (1) 1% of the admitted assets of the insurer and (2) in combination with the value of all the real estate acquired or held by the insurer, 10% of the admitted assets of the insurer. The legislation is keeping with other policy requirements that insurers maintain a robust and diversified investment portfolio and allow insurers to, among other things, invest in opportunity zones throughout the State. SB523 and HB602 passed the Senate and the House with overwhelming support.

### *Direct Action Against An Insurer*

Senator Bobby Zirkin (D - Baltimore County) introduced Senate Bill 102, which would have established the right of a "Third-party claimant" to directly sue the insurer of a tortfeasor with respect to an insurance policy claim. After significant opposition in the hearing before the Senate Judicial Proceedings Committee about the practical impact of the legislation, SB102 was amended to only apply to claims against a person insured under an automobile insurance policy, making the bill more consistent with laws in other states. While the bill passed out of the Senate under a party-line vote, it was jointly assigned to the House Judiciary and Economic Matters Committees and failed to progress beyond an initial public hearing in the House.

## Gaming

### *Video Lottery Terminal Licensee – Taxation*

Delegate Jheanelle Wilkins (D - Montgomery County) introduced House Bill 802 to repeal the authority of the State Lottery and Gaming Control Commission (SLGCC) to adjust the tax rates on the video lottery terminal (VLT) licensees in Anne Arundel County, Baltimore City, and Cecil County. In 2012, when the General Assembly passed legislation authorizing a sixth VLT license for a site in Prince George's County, they authorized the SLGCC to implement a tax adjustment for these three licensees, beginning July 1,

2019, for these sites, if the SLGCC determined the adjustment was warranted due to the competitive impact of a sixth casino and a variety of other factors. In December 2018, the SLGCC determined that the adjustment was justified due to the current competitive climate and recommended that the proceed distributions for the licensees in Anne Arundel County, Baltimore City, and Cecil County be increased by 2%, 3%, and 5% respectively. HB802, as introduced would have repealed that authority.

After a robust hearing in the House Ways and Means Committee, there was no further action on HB802. However, identical language was subsequently amended into House Bill 1407, the Budget Reconciliation and Financing Act sponsored by House Appropriations Committee Chair Maggie McIntosh (D-Baltimore City), as part of a comprehensive effort to provide adequate funding for increased education expenditures mandated by legislation originating with the Kirwin Commission.

### *Video Lottery Terminal – Odds Disclosure*

Delegate Anne Kaiser (D - Montgomery County) sponsored House Bill 987, which would have required the SLGCC to adopt regulations requiring the video display of each VLT that a player must scroll through before beginning play to disclose the odds of each winning combination and jackpot the VLT offers. The disclosure required in the bill must be in terms that are generally understood by the average adult. The SLGCC must ensure that a VLT licensee complies with this requirement as a condition of holding a license. At the hearing, VLT licensees expressed concern about their practical ability to adhere to the legislation, including the ability to retrofit existing VLTs. After the initial hearing, there was no further action on the bill, and it died.

### *Video Lottery Terminal Proceeds – Use of Racetrack Facility Renewal Account Funds*

Senator Pam Beidle (D – Anne Arundel County) and Delegate Mark Chang (D – Anne Arundel County) introduced Senate Bill 883/House Bill 990 on behalf of the Maryland Jockey Club, which is the corporate name of the company that operates Pimlico Race Course, Laurel Park, and the Bowie Training Center. The Canadian-based The Stronach Group (TSG) is the parent company of the Maryland Jockey Club. TSG would like to move the Preakness Stakes to Laurel Park and eventually phase out operations at Pimlico. The bill would have authorized the Maryland Economic Development Corporation (“MEDCO”) to issue bonds, estimated by TSG to be between \$90 - \$120 million, or other financing to be used to transform TSG’s Laurel Park into a “super track.” The Greater Baltimore Committee, working with the City of Baltimore, opposed the legislation and worked closely with Senator Bill Ferguson to negotiate an amendment to the bill that would have provided assurances that a plan to stabilize the Pimlico site would need to be approved prior to disbursement of MEDCO funds to TSG. This amendment was accepted and passed in the Senate Budget and Taxation Committee; however, the Baltimore City House Delegation rejected the language. On Sine Die, the bill was removed from second reader and recommitted to Budget and Taxation, effectively killing the legislation

### *Sports Betting*

Legislation was reintroduced this year to provide initial authorization to expand Maryland’s commercial gaming industry to include sports betting. Senator Chris West (R - Baltimore County) and Delegate Nino Mangione (R - Baltimore County) introduced Senate Bill 470/House Bill 739, which, subject to voter referendum, would have established that the General Assembly may authorize, by law, that the SLGCC may issue a license to offer sports wagering in the State to a video lottery operation licensee or a licensee for thoroughbred racing or harness racing. The bill also stated the General Assembly’s intent that, if the voter referendum is approved, State revenues generated by sports wagering would be used

for education purposes, similar to the education “lockbox” requirements that apply to other gaming revenues allocated to the Education Trust Fund. While there is general support for sports betting within the legislature, there remains disagreement on what licensees should be authorized to implement sports wagering programs, and the legislation failed to advance in either the Senate or the House due to an ongoing dispute on that point.

## Workers’ Compensation

### *Medical Presumptions*

The General Assembly passed two pieces of legislation easing the eligibility criteria for individuals seeking benefits under the State’s workers’ compensation law. Senate Bill 646/House Bill 604, sponsored by Senator Kathy Klausmeier (D - Baltimore County) and Delegate Dereck Davis (D - Prince George’s County), lessens restrictions in the criteria for a firefighter, firefighting instructor, rescue squad member, or advance life support unit member to qualify for a cancer or leukemia disease presumption.

Similarly, the legislature passed House Bill 595, sponsored by Delegate Mike Rogers (D - Anne Arundel County), which establishes new occupational disease presumptions for specified public safety employees, generally firefighters, who contract bladder or kidney or renal cell cancers caused by contact with a toxic substance encountered in the line of duty. HB595 was nearly identical to Senate Bill 160/House Bill 233, introduced at the request of the Administration. These bills take effect on October 1, 2019.

### *Uninsured Employers Fund – Solvency Study*

As introduced, Senate Bill 62, a departmental bill introduced at the request of the Director of the Uninsured Employers Fund (UEF), would have repealed provisions in current law providing that the payment of assessments to the UEF by self-insured employers and insurers is suspended when the amount in the UEF reaches \$5,000,000. In response to concerns about the future solvency of the UEF raised by the Department of Legislative Services (DLS) and members of the Senate Finance Committee and the House Economic Matters Committee, SB62 was substantially amended. Under the amended version of the bill, the Director of the UEF must report to those committees and the Joint Committee on Workers’ Compensation Benefits and Insurance Oversight on the solvency of the UEF and whether the General Assembly should adjust or provide authority to adjust the assessment that funds the UEF. The report must include specified information about Bethlehem Steel Corporation hearing loss claims and other claims made against the fund from October 1, 2012, through August 31, 2019. The report is due on or before October 1, 2019.

## Alcohol

### *Baltimore County – Sunday Sales*

Senator Bobby Zirkin (D – Baltimore County) and Delegate Kathy Szeliga (R – Baltimore & Harford Counties) introduced Senate Bill 386/House 772 that would have allowed Class A license holders the ability to sell beer, wine, and spirits on Sunday. Currently, Baltimore County is the only county in the State that does not allow retailers other than tavern owners to sell alcohol for off-premise consumption on Sundays. The bill passed out of the Senate by a vote of 44-3. The bill then stalled in the House Baltimore County Delegation, where it faced significant opposition from tavern owners. After a lengthy, contentious hearing, the bill received an unfavorable vote from the Baltimore County Delegation, which

essentially killed the bill for the 2019 Legislative Session. In a surprise move on Sine Die, however, some life was breathed back into the bill. Senator Zirkin successfully amended on to a bill that would have allowed motorcycle sales on Sundays in Baltimore and Harford Counties also to allow alcohol sales on Sundays as well. The newly amended bill passed the Senate, but the House refused to concur with the new language. The bill then died due to lack of action before the end of Session.

### *Establishment of the Alcohol and Tobacco Commission*

Last year, the General Assembly passed legislation that established the Task Force to Study State Alcohol Regulation, Enforcement, Safety, and Public Health. The Task Force was charged with examining whether the Maryland State Comptroller's Office, which currently has regulatory and enforcement powers over the State alcoholic beverages industry, is the appropriate agency to ensure the safety and welfare of Maryland residents in regards to alcohol regulations. Additionally, the Task Force was required to explore whether regulation and enforcement of Maryland's alcohol industry should be assigned to an existing State agency or a newly created agency altogether. In its final report, the Task Force made 23 recommendations, some of which were incorporated in Senate Bill 703/House Bill 1052, introduced by Senator Ben Kramer (D - Montgomery County) and Delegate Warren Miller (R - Howard County). The bill establishes the Alcohol and Tobacco Commission (ATC), specifies its powers and duties, and transfers the Field Enforcement Division staff of Comptroller's Office along with their associated powers and responsibilities to the ATC. The transfer of people and power to the ATC is to take place by July 1, 2020. After a heated debate on the issue, the bill passed. While the Governor vetoed the bill, his veto was quickly and handily overridden by the legislature. Many eyes will undoubtedly be on the new created ATC and its governing board as this transition occurs.

## Judicial Reform

### *Asbestos Mediation and Resolution*

Senator Jeff Waldstreicher (D – Montgomery County) introduced Senate Bill 1049 late in the Legislative Session, which would have established an Office of Asbestos Case Mediation and Resolution within the executive branch of state government. As envisioned in the bill and in the name, the newly created officer would have brought mediation attention and more expedient resolutions to the many asbestos cases that have been languishing on dockets since the 1980s and 1990s. Despite the late introduction, Senator Waldstreich was able to ride some political winds to quickly move the bill through the Senate and out of the House Rules and Executive Nominations, where most late-filed bills meet their demise.

Senator Waldstreicher pointed to the victims of asbestos exposure who deserve to be heard as the main reason for the bill. The bill was primarily supported, however, by a law firm that represents approximately 66% of the cases pending in the Asbestos Unit of the Circuit Court for Baltimore City; nearly 20% of the pending cases are on an inactive docket, meaning potential victims without significant health damages have filed cases to toll the statute of limitations. The Maryland Judiciary was among the opponents of the bill. The Chief Judge of the Maryland Court of Appeals, Chief Judge Mary Ellen Barbera, testified against the bill, which she saw as an attempt to intrude upon the Judiciary for the bill would have shifted tens of thousands of asbestos cases from a Baltimore City court to a quasi-judicial executive branch office for mediation. The Baltimore City Circuit Court, employing regular status conferences to address the backlog, anticipates moving about 5,000 cases a year through the new scheduling process. Proponents contend that the scheduling conferences burdensome for plaintiff's and

unjust. Defense bar members and insurance companies applauded the status conferences because they receive important documentation not included in plaintiffs' barebones complaints such as records of the illness alleged. Opponents also questioned the constitutionality of the bill. In the end, the House Judiciary Committee amended the bill to create a task force comprised of lawyers, legislators, and judges that would study the issue. The Senate refused to concur with the House amendments, and the bill died on Sine Die.

## Consumer Protection and Privacy

The 2019 Legislative Session saw the introduction of several pieces of legislation dealing with consumer protection and privacy, particularly as it related to information gathered and held on the Internet. While the bulk of these bills failed to move this session, there is a definite interest among legislators to look more closely at these issues in the interim.

### *Online Consumer Protection Act*

Senator Susan Lee (D - Montgomery County) and Delegate Ned Carey (D - Anne Arundel County), introduced Senate Bill 613/House Bill 901, the Online Consumer Protection Act (OCPA). As presented, this bill is similar to a California law enacted in 2018, which, among other things, establishes that a consumer has the right to request that a business disclose categories and specific pieces of personal information the business has collected about the consumer.

Generally, SB613/HB901 would have established numerous personal information privacy rights for consumers in the State, including creating a consumer's right to (1) know whether and what personal information is collected or disclosed by a business; (2) access and obtain a copy of personal information collected by a business; (3) have personal information deleted by a business; (4) stop a business from disclosing information to third parties; and (5) equal service and pricing, regardless of whether the consumer has exercised his or her rights under the bill. The Office of the Attorney General (OAG) is charged with enforcing the provisions of the bill and adopting any subsequent regulations.

The OCPA was the first attempt by legislators in Maryland to expand on existing federal privacy protections, adopted by the Federal Communications Commission and seek parity with similar protections being enacted in other states. Although neither SB613 nor HB901 progressed beyond their initial public hearings, it is anticipated that this issue will be looked at closely by the Maryland Cybersecurity Council, the Joint Committee on Cybersecurity, Information Technology and Biotechnology, and individual legislators in the interim and that similar legislation dealing with internet privacy will be introduced in future sessions.

### *Security Features for Connected Devices*

Senator Lee and Delegate Carey also introduced Senate Bill 553/House Bill 1276, to establish a regulatory framework for the manufacture and procurement of secure connected devices in the State. Among other things, the bill defined "secure connected device" as a physical object that is capable of connecting to the Internet, directly or indirectly, and assigned an Internet Protocol address or Bluetooth address. Under the bill, manufacturers would be required to equip devices with reasonable security features and contractors doing business with the State or local governments would be required to use secure connected devices, as defined in the bill, in the performance of public contracts. Similarly to the OCPA, the committee hearings on SB553 and HB1276 started a policy discussion that will continue

within the legislature going forward. However, the bills failed to progress beyond that initial discussion in the 2019 Legislative Session.

### *Financial Consumer Protection Act*

Senator Jim Rosapepe (D - Anne Arundel and Prince George's County) and Delegate Ned Carey introduced Senate Bill 786/House 1127, omnibus legislation dealing with a variety of consumer protection issues in Maryland's financial sector, including personal information protected under the Maryland Personal Information Protection Act (MPIPA). As introduced, the bill would have implemented the recommendations of the 2018 report of the Maryland Financial Consumer Protection Commission (MFCPC). In general the bill would have (1) established several new requirements, standards and duties for various financial services entities, including automobile dealers and financial professionals, (2) expanded MPIPA to cover additional personal information and shorten the period within which businesses must provide required notification to consumers after a data breach occurs, (3) set new regulatory standards for cryptocurrencies and currency exchanges, and (4) required the Office of the Commissioner of Financial Regulation to make recommendations to the General Assembly about legislation related to forced arbitration clauses. Additionally, the bill would have extended the MFCPC through fiscal 2021.

The bill was met with significant opposition from various impacted entities and faced lengthy, contentious hearings in both the Senate Finance Committee and the House Economic Matters Committee. The Senate sponsor attempted to address some of those concerns through significant amendments offered late in the Legislative Session, but ultimately SB786 was voted unfavorably in a unanimous vote by the Senate Finance Committee. No action was taken on HB1127 subsequent to the initial public hearing. It is expected that the sponsors will reintroduce similar legislation in future years, but without the formal support of the MPCPC, which, due to the failure of this legislation, will sunset in June 2019.

### *Security Breach Notification Requirements*

After several years of consideration, the General Assembly unanimously passed Senate Bill 693/House Bill 1154, sponsored by Senator Ben Kramer (D - Montgomery County) and Delegate Seth Howard (R - Anne Arundel County) and supported by the Maryland Retailers Association. This legislation expands requirements on businesses related to the notification of consumers about data breaches under MPIPA. Under the amended bill, any business that maintains, owns or licenses computerized data that includes the personal information of a Maryland resident that is subject to a breach must conduct a reasonable and prompt investigation when the business discovers or is notified that it incurred a security breach. If misuse of personal information has occurred or is reasonably likely to happen, the owner or licensee of the data must notify the affected individual of the breach.

Additionally, the bill prohibits a third-party business from charging a fee for providing the information needed for the required notification to the owner or licensee of the data. Violation of the bill is an unfair, abusive, or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), and subject to the MCPA's civil and criminal penalty provisions.

### *Net Neutrality*

Delegate Kirill Reznik (D - Montgomery County) sponsored House Bill 141, which is a reintroduction of legislation from the 2018 Legislative Session imposing certain Internet privacy and net neutrality

requirements in the State. HB141, as introduced, would require providers of broadband Internet access services (BIAS) to comply with specific 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 of the Office of the Attorney General. Additionally, the bill would prohibit the use of State funds to procure services from an Internet service provider (ISP) that blocks specified contact, impairs or degrades lawful Internet traffic, or engages in specified commercial traffic preferencing.

The legislation was substantially similar to legislation introduced by former Delegate Bill Frick (D - Montgomery County) in 2018, in response to the action by the Federal Communication Commission (FCC) in 2017 to repeal federal "net neutrality" regulations. HB141 was considered in the Banking and Consumer Protection Subcommittee of the House Economic Matters Committee, but no further action was taken by the full Committee, and the bill died due to lack of action.

## Cannabis – Licensure and Regulation

The 2019 Legislative Session saw the introduction of a myriad of legislation impacting the emerging medical cannabis industry in Maryland and beyond. A slew of bills from bipartisan sponsors touched on nearly every aspect of the industry and caused significant debate between the Senate and House.

### *Ownership and Licensure*

Senator Chris West (R – Baltimore County) introduced Senate Bill 426, aimed at addressing ongoing ownership/interest issues related to grower, processor and dispensary licenses in Maryland. The amended bill, which passed the General Assembly late in Session, clarifies and codifies existing limitations allowing only one ownership interest for licensed growers and processors. However, the bill expands the authority of the Natalie M. LaPrade Medical Cannabis Commission (the Commission) to allow a person to have an ownership interest in or control of as many as four licensed dispensaries, down from the six dispensaries in the original bill. Additionally, SB426 explicitly subjects licensed growers, dispensaries, and processors to the Maryland Antitrust Act and the Maryland Sales Below Cost Act. This legislation will take effect on July 1, 2019.

### *Use, Advertising, and Immunity*

House Bill 17, introduced by Delegate Cheryl Glenn (D – Baltimore City) began as narrower legislation aimed at authorizing access to edible cannabis products for medicinal purposes. After significant, and even hostile debate between leadership in the House Health and Government Operations Committee and the Senate Judicial Proceedings Committee, the bill was amended to cover a variety of regulatory issues impacting the processing and dispensing of medical cannabis. The emergency legislation that moved through the entire legislative process in the last three days of the Session makes the following changes to the State's medical cannabis program:

- Authorizes institutions of higher education and medical facilities to register with the Commission to purchase medical cannabis for research purposes;
- Requires the Commission to allow licensed dispensaries to sell edible cannabis products;
- Increases the length of times a medical cannabis license holder must be actively engaged in the industry before selling or transferring ownership of a license, from two to three years;

- Expands legal protections for individuals participating in the State’s medical cannabis program; and
- Regulates medical cannabis advertising.

As emergency legislation, HB17 takes effect immediately.

### *Opioid Use Disorder*

Senator Bobby Zirkin (D – Baltimore County) and Delegate Cheryl Glenn introduced Senate Bill 893/House Bill 33, encouraging the Commission to approve certifying provider applications that include the treatment for an opioid use disorder. The Senate Judicial Proceedings Committee amended the bill by adding language to limit approval to patients who (1) have tried all other traditional treatments and were unsuccessful and (2) will use the medical cannabis in conjunction with conventional therapies. The amended version of the bill passed successfully out of the Senate but stalled along with HB 33 in the House Health and Government Operations Committee.

### *Worker Protections*

Senator Zirkin and Delegate Glenn also introduced legislation to establish protections for individuals participating in the medical cannabis program as either a patient or a caregiver. Senate Bill 864 and House Bill 794, as introduced, prohibited an employer, including State and local governments, from discriminating against a qualifying patient who is using medical cannabis or against a caregiver of a qualifying medical cannabis patient, in hiring, terminating, or imposing a term or condition of employment. The bills did provide exemptions for employers who, by complying with the bill, would lose a monetary or licensing-related benefit under federal or State law. HB794 was withdrawn by the sponsor shortly after the public hearing in the House Economic Matters Committee and SB864 failed to progress beyond the initial hearing in the Senate Judicial Proceedings Committee.

### *Use of Pesticides*

Senator Clarence Lam (D – Baltimore and Howard Counties) introduced Senate Bill 749, requiring the Maryland Department of Agriculture (MDA) to study the health impacts of being in close proximity to smoke from medical cannabis that was grown using pesticides. Additionally, the bill required dispensaries to ensure that all medical cannabis is grown using a pesticide and medical cannabis products containing cannabis grown using a pesticide to have a label affixed to the product, at the time of sale, stating that the cannabis was grown using pesticides. Delegate Terri Hill (D-Baltimore and Howard Counties) introduced similar legislation in the House of Delegates. SB749 received an unfavorable report from the Senate Judicial Proceedings Committee, but it did spark discussion within the legislature about similar requirements in other states and the unique agricultural nature of cannabis as a medical product. This is an issue that is likely to come up again in the 2020 legislative session.

### *Taxation of Medical Cannabis Businesses*

Senator Ron Young (D – Frederick County) and Delegate Pam Queen (D – Montgomery County) sponsored Senate Bill 9/House Bill 568, to allow for a subtraction modification against the State individual and corporate income tax for medical cannabis businesses . While businesses are generally permitted to deduct qualifying business expenses, federal law explicitly prohibits the marijuana industry from deducting ordinary and necessary business expenses because Internal Revenue Code § 280E states that no costs incurred in connection with the trafficking of a controlled dangerous substance or illegal drugs may be deducted for federal income tax purposes. If passed, this legislation would allow growers,

processors, and dispensaries the ability to deduct business expenses, at least on their state taxes, in the same way as every other business in the state of Maryland. While neither version of the bill progress beyond the initial public hearing, there was an attempt to amend 280e language onto Senate Bill 426. Unfortunately, this amendment was stripped on the floor of the Senate due to the significant fiscal impact.

### *Legalization*

Finally, Senator Will Smith (D – Montgomery County) and Delegate Eric Luedtke (D – Montgomery County) introduced Senate Bill 771/House Bill 656 which would have generally legalized marijuana, renamed cannabis, for individuals age 21 and older. The bill established a regulatory and taxation framework for cannabis establishments and a process for expungement and resentencing for marijuana-related offenses. Delegate David Moon (D – Montgomery County) sponsored House Bill 632, which was similar legislation proposing a constitutional amendment that, if approved by voters in the next general election, would have established a right, under State law, for an individual who is at least 21 to use, possess, and cultivate cannabis. After robust hearings, none of the bills progressed in the 2019 Legislative Session. A workgroup has been established, though, to look at the issue of recreational use and to make recommendations about what such a program should look like in Maryland. This workgroup will begin meeting during the interim in preparation for the 2020 General Assembly session.