



# The Legislative Wrap-Up

Library and Information Services, Department of Legislative Services

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## BILL INTRODUCTIONS AND DEADLINES

Friday, February 6, is the 24<sup>th</sup> day of the 2004 session or the Senate Bill Introduction Date. Senate Rule 32(b) requires that a Senate bill or joint resolution introduced after this day be referred to the Senate Committee on Rules. The House Bill Introduction Date is Friday, February 13, 2004, or the 31<sup>st</sup> day. House Rule 32(b) requires that a House bill and joint resolution introduced "during the last fifty-nine calendar days" of the session (after the 31<sup>st</sup> day) be referred to the House Rules and Executive Nominations Committee.

## CRIMES, CORRECTIONS, AND PUBLIC SAFETY

A bill to expand the 1994 ban on the sale and possession of assault pistols in Maryland to include assault long guns and copycat weapons is scheduled for a hearing next week ([SB 288](#)). Current Maryland law lists 45 semiautomatic weapons that may be purchased after a seven-day waiting period and a background check. [SB 288](#) prohibits the sale and possession of these weapons after September 12, 2004, although dealers are permitted to sell the weapons they have in stock as of September 13, 2004, and lawful owners of the weapons on that date may register and keep them. Law enforcement and military personnel are exempt from the ban.

Violation of the ban is a misdemeanor, with a maximum penalty of up to three years in jail and a \$5,000 fine. A person who uses a banned weapon in the commission of a felony or crime of violence could earn a maximum 20 year jail term, with a five year mandatory minimum, for a first violation. Each subsequent violation carries a mandatory minimum sentence of ten years in jail, with a maximum sentence of 20 years. The federal ban on assault weapons, which covers 19 semiautomatic weapons, expires this September.

[HB 521](#) proposes to abolish the death penalty in Maryland after October 1, 2004, and bar any future executions. Inmates already sentenced to death would be considered as having received a sentence of life imprisonment without the possibility of parole.

Several proposals this session address identification theft and computer fraud:

- [SB 325/HB 191](#) (heard in the House last week) and [HB 69](#) create a Task Force to Study Identity Theft to report its findings by December 31, 2005;
- [SB 257/HB 457](#) (to be heard in committee in the next two weeks) authorize the Attorney General or a State's Attorney to investigate and prosecute an identity theft crime, give the Attorney General all the powers and duties of a State's Attorney in this situation, and allow the crime to be prosecuted in a county where an element of the crime occurred or where the victim resides;
- [HB 190](#) (heard in committee this week) and [HB 255](#) allow the victim of an identity theft crime to expunge the victim's court or police record that resulted from the illegal use of the victim's identity;
- [HB 255](#) (hearing on February 17) also creates a procedure for a victim to request a consumer reporting agency to block the reporting of information that is erroneous because of an identity fraud violation, and authorizes the Attorney General to issue an identity fraud passport that must be accepted as evidence of identity by police officers and others who may challenge the victim's identity; and
- [HB 194](#) (heard in committee last month) and [HB 67](#) create the crime of Internet auction fraud, which is using an Internet auction listing service or an interactive computer service for fraudulent purposes. If the value of the items fraudulently obtained exceeds \$500, the crime is a felony, with a maximum penalty of 15 years in jail and a \$10,000 fine. If the items fraudulently obtained are valued at \$500 or less, the crime is a misdemeanor, earning a maximum penalty of 18 months and a \$500 fine.

## ECONOMIC AND BUSINESS ISSUES

Under the provisions of [HB 463](#), licensed cosmetologists including make-up artists, esthetic service providers, and nail technicians will be required to be affiliated with a beauty salon that has a permit. A licensed cosmetologist would not be permitted to provide cosmetology services on the licensee's own behalf or on behalf of any other beauty salon, other than the one named on the license. The bill, which had a committee hearing this week, provides for the transfer of affiliation from one beauty salon to another. Also heard by a committee this week, [HB 405](#) requires the State Board of Cosmetologists to establish a six-hour continuing education requirement in order for a licensed cosmologist to renew a license.

Other legislation provides for the regulation of tanning facilities. One of the provisions of [SB 209](#) prohibits anyone under the age of 18 years from using a tanning device at a tanning salon unless the operator receives written permission from the person's doctor and a parent or guardian remains at the facility.

Legislation that increases license fees for cigarette manufacturers, retailers, and storage warehouse operators received a hearing this week. [HB 48](#) raises the manufacturer's license fee to \$500 from \$25, the retailer fee to \$100 from \$30, and the cigarette warehouse operator fee to \$45 from \$25. Other cigarette sales or license measures include:

- [HB 499](#) that prohibits anyone from another state from selling or distributing cigarettes directly to a consumer or unlicensed recipient in Maryland and includes cigarettes ordered or purchased via telephone, internet, or other electronic network; and
- [HB 500](#) that gives the Comptroller disciplinary authority over a cigarette licensee who is liable for or convicted of selling tobacco to minors.

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## EDUCATION

This week House committee members heard public testimony on:

- [HB 130](#) that authorizes a public school teacher to make a reasonable search of a student on a school-sponsored trip. The teacher must have a reasonable belief that the student possesses an item in violation of State law or in violation of a rule or regulation of the local board of education; and

- [HB 137](#) that adds burglary of a public school building and willful damage of a public school building to the list of offenses that must be reported to the local superintendent of schools if a public school student is arrested and charged with the offense.

On the hearing schedule for next week, [HB 278](#) requires county boards of education to prohibit a public school from distributing politically related material that advocates a particular position or requests a particular action.

As emergency legislation, [SB 245/HB 345](#) take effect as soon as one bill is signed by the Governor. The bills repeal the "trigger provision" in the Bridge to Excellence in Public Schools Act of 2002 (Thornton Plan, Chapter 288). The Bridge to Excellence Act was passed during the 2002 legislative session and was signed into law that May. The Act reworked the State's education funding formulas to add an estimated \$1.3 billion in State aid annually by fiscal 2008, with average increases in aid during the six-year phase-in period of nearly 10% per year. Because of the large increases that would be required under the Act and an unsure budget outlook, an amendment was added to the bill that required the General Assembly to revisit the State's fiscal condition in 2004. The amendment, later termed the "trigger provision," required the General Assembly to pass a joint resolution by the fiftieth day of the 2004 session in order to proceed with full implementation of the Act.

A recent opinion by the Office of the Attorney General, however, indicated that the "trigger" provision may represent an unconstitutional legislative veto. According to the Attorney General, keeping the provision in law places the State at risk of a lawsuit on constitutional grounds. Although the issue has never been litigated, the Attorney General has advised that both passing and not passing the resolution could result in lawsuits challenging the validity of the provision. The Attorney General has further advised that, in either case, the status of education funding under the Bridge to Excellence Act would remain in question.

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## ELECTIONS AND ETHICS

The reliability of the new Diebold AccuVote-Voting System purchased by the State Board of Elections for use statewide in the upcoming March 2 primary election has occasioned a lot of discussion over the past several months. Both physical security and computer security

problems with the touch-screen machines have been discovered. Recent reports prepared for the General Assembly by the Department of Legislative Services and its consultant, RABA Technologies, as well the response of the State Board of Elections, may be found on the Maryland General Assembly's website on the main menu under Everything Else/Publications of the Department of Legislative Services.

In response to the absence of a paper trail in the Diebold system, [HB 53](#) (to be heard in committee on February 10), and the Senate companion bill, [SB 393](#) (no hearing as yet), require that any voting system that does not use a document ballot shall produce a paper record for a voter to inspect and verify at the time the vote is cast. The paper record is also to be used in any manual recount. Additionally, using a random sampling of 2% of the total number of precincts within each legislative district that produce voter-verified paper records, the State Board of Elections is required to compare the voter-verified paper records against the electronically recorded results in those districts to verify that the electronically recorded results equal the voter-verified paper records.

Maryland's Public Ethics Law, as it relates to the General Assembly, allows legislators to accept food and beverages as part of a reception or meal to which all members of a legislative unit have been invited. "Legislative unit" means the entire General Assembly, an entire chamber, a standing committee, or a county or regional delegation that is on a list issued by a presiding officer. However, current law makes an exception for food or beverages that may be accepted by an individual legislator when offered at the time and geographical location of a meeting of a legislative organization that the legislator is attending at the General Assembly's expense. This includes, for example, a reception sponsored by an industry group at the time of a national or regional conference. [HB 221](#) repeals the exception. February 12 is the Senate hearing date.

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## FINANCIAL INSTITUTIONS AND COMMERCIAL LAW

[HB 196](#) prohibits a person from sending sexually explicit commercial electronic mail (e-mail) messages or causing any pop-up advertisements to appear on an individual's computer unless specified actions are taken. Although the recently passed federal CAN-SPAM Act provides similar consumer e-mail protection, pop-up advertisements are not included.

## FISCAL MATTERS

The "Biotechnology Investment Incentive Act" ([SB124/HB57](#)) creates a tax credit by allowing an individual or a corporation to claim a credit against the State income tax or insurance premium tax for investments made in a qualified biotechnology company or venture capital firm. The maximum credit amount available for each calendar year is limited to \$12 million. SB 124 was before a committee at midweek, but HB 57 is not scheduled yet.

The Heritage Structure Rehabilitation Tax Credit Program, which expires this year, is extended to January 1, 2010, by [SB 190/HB 289](#). The bills limit the State tax credit to \$3 million for a commercial rehabilitation and \$50,000 for any other rehabilitation, place time limitations on the approval of a project, and, starting with 2004, place a \$30 million annual limit on the credits available for commercial rehabilitations, an increase from the present \$15 million limit.

Other measures take a different tack. [SB 246/HB 679](#) replace the current tax credit program with a competitive grant program for historic rehabilitation projects called the Maryland Heritage Structure Rehabilitation Program. The projects must be substantial rehabilitations of the historic property which meet Maryland Historical Trust requirements. The maximum commercial rehabilitation grant would be \$3 million and the maximum grant for other projects would be \$25,000.

Those who want to volunteer additional taxes could do so under provisions of [HB 36](#), a State general fund checkoff on individual and corporate income tax return forms. After the Comptroller deducts administrative expenses, the contributions are to be distributed to the State's general fund. The bill is scheduled for a hearing on February 19.

[SB 350](#) provides for a "Tax Me More Voluntary Account" checkoff option for individual income tax returns for contributions, after the deduction of administrative expenses, to a new Education Trust Fund. The Chesapeake Bay and Endangered Species Fund and the Fair Campaign Financing Fund are current checkoff options on individual income tax returns.

Several bills, scheduled for a hearing on February 18, increase the sales tax rate from 5% to 6%:

- [HB 271](#) increases the rate to 6%;
- [HB 102](#), a proposed constitutional amendment that if passed by the General Assembly and ratified by the electorate, places the 6% sales tax rate schedule in the Maryland Constitution. (The Governor has no veto over a proposed constitutional amendment); and
- [HB 103](#) dedicates the revenue from the sales tax increase (16.67% of the total sales tax revenue after certain other distributions) to an Education Trust Fund, which would be used to fund the “Bridge to Excellence in Public Schools Act” (Thornton Plan).

[HB 84](#) expands the list of sales-taxable services to include “luxury services.” These services include body tattooing and piercing, marina services, self-storage services, boat maintenance and repair, and home cleaning services. The hearing on this bill is also scheduled for February 18.

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## GAMING, RACING, AND SPORTS

Bills have been introduced that expand provisions prohibiting interference with a commercial athletic event. [HB 480](#), which will be heard next week, prohibits a nonparticipant in the contest from disrupting or interfering with a commercial athletic contest by (1) throwing or projecting an object on “the playing field” or seating area, (2) unlawfully entering the playing field, or (3) assaulting any athletic contestant, athlete, manager, coach, umpire, or referee on the playing field. A violator is guilty of a misdemeanor and subject to the current law maximum penalties of a fine of \$250 and/or imprisonment for three months.

[SB 354/HB 633](#) broaden the current prohibition by adding that a person may not “attempt to” disrupt or interfere with a commercial athletic contest by throwing or projecting an object and by deleting the former language “on the playing field or seating area.”

[HB 451](#) prohibits the Department of Natural Resources (DNR) from establishing an open season to hunt black bears and reducing the black bear population in any area of the State until on or after July 1, 2010. Until then DNR may kill a black bear only in defense of a person, a person’s property, or domestic animals on a person’s property and only after exhausting all nonlethal methods. This bill was previously introduced last session.

## HEALTH CARE AND HEALTH INSURANCE

Several bills were introduced this week to regulate abortions in the State. [SB 351/HB 621](#) expand parental notification by a physician prior to an unmarried minor having an abortion, with exceptions. The physician may perform the procedure without giving notice to a parent if: (1) the parent or guardian signs a notarized acknowledgment within the past 30 days that the parent was aware of the pending procedure; (2) if the physician certifies in the minor’s medical record that a medical emergency exists and there is not enough time to provide the required notice; or (3) notice is waived. A minor may seek waiver of parental notification from a circuit court under circumstances specified in the bill.

[SB 265](#), “The Women’s Health Protection Act,” alters the definition of a free-standing ambulatory care facility to include a facility that provides abortion services. The change requires an abortion facility to meet specified requirements for licensing by the Department of Health and Mental Hygiene (DHMH). Among its provisions, the bill also requires a woman to be screened prior to having an abortion for specific medical conditions, history of medical conditions, emotional well-being, and religious or moral convictions against abortions, the results of which are to be presented in a written statement to both the woman and the physician prior to a procedure. If these requirements are not met, a physician may be held liable for damages.

Legislation introduced in response to the possible closing of the Crownsville Hospital Center includes [SB 373](#) that provides for an early retirement allowance for employees of the Center if it is consolidated with the other State hospitals, and [HB 680](#) that requires DHMH when selling any facility to provide a covenant in the deed that states that the property must be used for a similar purpose, as a park or open space, or as a public school. Also, DHMH must hold a public hearing in the county of the facility prior to any sale or transfer of the state-owned property.

This week committee members reviewed [SB 232](#) that authorizes a county sheriff to appoint a physician licensed to practice medicine in Maryland to be the county’s medical advisor. The bill also requires the Police Training Commission to establish standards for certification of a county medical advisor. The designated medical advisor is authorized to conduct investigations and make arrests that relate directly to a catastrophic health emergency or to weapons that could be used to cause a catastrophic health emergency.

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## REAL PROPERTY, ESTATES, AND TRUSTS

“The Hurricane Isabel Disaster Relief Act,” introduced in the Senate this week ([SB 415](#)), provides low interest loans for people whose primary residences were damaged by Isabel and who have not received sufficient funds to repair the homes to make them habitable. The program is designed to provide gap funding for damages that are beyond the limits set by insurance and State, federal or private market loans. The Department of Housing and Community Development is to operate the program by granting the loans or serving as guarantor of loans obtained from financial institutions. A House committee took testimony on the companion bill ([HB 3](#)) this week.

their lives in service to their community and the State of Maryland. Currently, there are three other Maryland commemorative days: John Hanson’s birthday, April 13; Law Day, May 1 (Law Day U.S.A.); and Poetry Day, October 15. In 2000, the Memorial Day moment of silence at 3:00 PM was added in memory of the heroic acts and efforts of Marylanders who served and died in the U.S. Armed Forces.

Under [HB 147](#), the last full week in October becomes Massage Therapy Awareness Week. According to the bill’s fiscal and policy note, at present there are 2,084 certified massage therapists in Maryland. In 2001, the month of March was designated as Women’s History Month.

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## STATE GOVERNMENT

### *Open Meetings*

Companion bills ([SB87/HB73](#)), entitled “Open Meetings Act – Standing to File a Petition Alleging Violation of the Act,” both had their first committee hearings this week. Under current law, only a person adversely affected by a public body’s failure to comply with the open session requirements under the State’s Open Meetings Act may bring an action to determine the applicability of those requirements, require the public body to comply with them, or void the public body’s action. The new legislation changes that equation to authorize any person to file with a circuit court that has venue a petition that asks the court to determine the applicability of open session requirements under the State’s Open Meetings Act, require the public body to comply with those requirements, or void the public body’s action.

### *State Symbols and Commemorative Dates*

Jousting, Maryland’s official State sport since 1962 retains that designation, but if [SB 428](#) is enacted, lacrosse becomes the official State “team” sport. The Patuxent River Stone is named the official State gem under [HB 22](#). The designation, first introduced during the 2000 session, follows 30 other states that have a state gem. Most recently, the General Assembly has agreed to add to the list of State symbols the calico cat as the State cat (2001) and the Thoroughbred horse as the State horse (2003).

Another measure, [SB 390](#), proposes September 11 as Hero’s Day to be dedicated to those who have given

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## TRANSPORTATION

Because of concern over the increased use of hand-held telephones and other devices by drivers that may distract them and lead to traffic accidents, several legislators have introduced bills to address this growing problem. [HB 275](#) provides that evidence of a motor vehicle driver’s operation of a hand-held telephone at or near the time of an accident may be considered in determining whether the driver was negligent. The bill exempts calls made to report or otherwise deal with an emergency situation and calls made by drivers of emergency vehicles.

[HB 189](#) requires the Motor Vehicle Administration (MVA) to impose a restriction on each provisional license and each learner’s instructional permit that prohibits the licensee or permit holder while operating a motor vehicle from using an interactive wireless communication device, which includes a mobile or cellular telephone, a text messaging device, a personal digital assistant that sends or receives messages, and a laptop computer. The prohibition does not apply if the licensee or permit holder uses an interactive wireless communication device while driving to contact a 911 system. A similar measure ([HB 5](#)) had a committee airing just this week, as did [HB 29](#) that prohibits all drivers of a motor vehicle that is in motion from using a hand-held telephone.

House committee members heard testimony this week on a measure to create the offense of homicide by aggressive driving. [HB 173](#) provides that a person driving a motor vehicle that causes the death of another as a result of committing, at the same time or during a single and continuous period of driving, three or more

violations of traffic laws is guilty of a misdemeanor and subject to imprisonment for up to three years and/or a fine up to \$5,000 and the assessment of 12 points against the violator's license. The violations include disobeying traffic lights with steady indications, overtaking and passing vehicles, passing on the right, following too closely, failure to yield right-of-way, or exceeding the maximum speed limit. The bill's Senate companion is [SB 218](#).

In a related matter, [SB 293](#) creates the offense of homicide by motor vehicle or vessel while fatigued, which is defined as either causing the death of another as a result of driving, operating, or controlling a motor vehicle or vessel while knowingly fatigued or causing the death of another as a result of falling asleep while driving, operating, or controlling a motor vehicle or vessel. A violator is guilty of a felony and on conviction is subject to imprisonment not exceeding five years or a fine not exceeding \$5,000 or both.

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## UPCOMING

The 2004 session has moved just past the one third mark of the allotted 90 calendar days. The Senate Budget and Taxation and the House Appropriations Committees are moving forward with State budget hearings during which each agency defends its budget, as submitted by the Governor, before the committees make recommendations for cuts to the full Senate and House membership.

Bill hearings and briefings also continue in all of the standing committees of the Senate and House. Anyone interested in attending a hearing or briefing should consult the weekly *Committee Meetings and Hearing Schedule* and daily addendum that are posted on the legislature's website and available in hard copy within the Capitol Complex. Daily addenda are published to note changes in the schedule.

