



# The Legislative Wrap-Up

Library and Information Services, Department of Legislative Services

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## 45<sup>th</sup> DAY

On Friday, February 24, the 2012 session passed the half way point. The next deadline related to the ongoing legislative process will occur on Monday, March 5, which is the 55<sup>th</sup> day or the final date for the introduction of bills without suspension of the Senate or House rules.

By the 45<sup>th</sup> day, there were 2,447 bills and 22 joint resolutions in the legislative pipeline. Senate bills number 1,046, along with 7 Senate joint resolutions, 1,401 House bills, and 15 House joint resolutions.

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## COURTS AND CIVIL PROCEEDINGS

### *Domestic Violence – Unemployment Insurance*

A person who otherwise is eligible to receive unemployment insurance benefits is disqualified from receiving benefits if the Department of Labor, Licensing, and Regulation (DLLR) finds that unemployment results from voluntarily leaving work without good cause. [SB 291/HB 769](#) establish that a “good cause” for voluntarily leaving work is that the person or an immediate family member of the person is a victim of domestic violence and continued employment would jeopardize their safety. The claimant must provide documentation substantiating domestic violence, and DLLR must adhere to certain privacy protections. Also, DLLR may not charge the benefits payable to a claimant against the employer’s rating record.

### *Same-Sex Marriage*

After passing in the House last week, the Civil Marriage Protection Act ([HB 438](#)) received Senate approval late this week. The bill establishes that only a marriage between two individuals who are not otherwise prohibited from marrying is valid in this State and includes exemptions to accommodate religious groups. House amendments delay the effective date until January 2013 or after any lawsuits over a referendum effort are resolved, if that occurs after January 2013, and provide that any court rulings that invalidate any portion of the law void the entire law. The bill now heads to the Governor’s desk.

## CRIMES, CORRECTIONS, AND PUBLIC SAFETY

### *Electronic Mail – Harassment*

The House amended and passed [HB 8](#), expanding the current prohibition against the use of electronic mail with the intent to harass. The bill prohibits maliciously engaging in a course of conduct, through the use of electronic communication, including transmission of data, that alarms or seriously annoys another with the intent to harass, alarm, or annoy the other after receiving a reasonable warning or request to stop and without a legal purpose. The bill also eliminates the requirement that the recipient of the transmission be identified by a unique address. The companion bill is [SB 175](#).

### *Gun Legislation*

A House committee heard testimony on numerous gun bills this week, including measures to repeal the requirement that the Secretary of State Police find that a person has a good and substantial reason to wear, carry, or transport a handgun before issuing a handgun permit to the person ([HB 45](#), [HB 430](#), [HB 488](#), [HB 1135](#)). Also heard was legislation that:

- makes valid in Maryland a license to carry a regulated firearm issued to an individual by Delaware, Pennsylvania, Virginia, or West Virginia ([HB 256](#));
- establishes a Task Force to Study Access of Individuals with Mental Illness to Regulated Firearms to consider further limiting gun access by individuals with a history of mental illness and expanding law enforcement officers’ access to certain mental health records ([HB 618](#));
- extends current prohibitions applicable to regulated firearms to all firearms with regard to possession, sale, rental, or transfer by or to a person convicted of certain crimes, and applies current prohibitions against possession of a regulated firearm by a person previously convicted of a crime of violence or drug felony to all firearms ([HB 1114](#));
- reclassifies the use of a firearm during the commission of a felony or a crime of violence from

a misdemeanor to a felony, retaining the current statutory penalty of imprisonment for at least 5 years but no more than 20 years ([HB 1104](#));

- establishes that a person who possesses, sells, transfers, or otherwise disposes of a stolen firearm with knowledge or reasonable cause to believe that the regulated firearm has been stolen is guilty of a felony and subject to a maximum penalty of 10 years imprisonment and a \$10,000 fine ([HB 1113](#)); and
- establishes a statutory maximum incarceration penalty of 15 years for each separate felony conviction of firearm possession if the person has been convicted of a felony, suffers a “mental disorder” and has a history of violent behavior against themselves or another, unless a physician provides a certain certification, or has been confined for more than 30 days to a mental health “facility,” unless a physician provides a certain certification. The bill sets a nonsuspendable, nonparolable mandatory minimum sentence of five years ([HB 1100](#)).

A Senate committee heard testimony on [SB 640](#), which prohibits a person from possessing a regulated firearm or a rifle or shotgun if the person was previously convicted of a federal charge or an offense in another state that would constitute a disqualifying crime of violence or drug crime if committed in Maryland; and [SB 512](#), which establishes recordkeeping and reporting requirements for firearms dealer licensees and requires the disapproval of a firearms dealer’s license application if certain persons will participate in the management or operation of the business or hold an interest in the business. The crossfiled bills are [HB 209](#) and [HB 1310](#), respectively.

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## **ECONOMIC AND BUSINESS ISSUES**

### *Alcoholic Beverage Licenses*

Bills allowing persons in restaurants, hotels, or clubs to consume wine that was not purchased on the licensed premises are scheduled for committee hearings ([SB 755/HB 228](#)). The bills allow these licensed establishments to charge customers a fee, commonly known as a corkage fee, for permitting the consumption of such wine with a meal. Similar bills failed last legislative session.

Other proposals create a farm brewery manufacturer’s license ([SB 579/HB 1126](#)). The bills authorize a license holder to sell and deliver beer manufactured in a facility on the licensed farm or in another facility to certain persons. Beer must be produced mainly from an

ingredient produced on the farm. Additionally, a licensee may give or sell beer samples, sell certain foods, and store, brew, and bottle beer.

### *Other Tobacco Products*

[SB 452/HB 570](#), dealing with the licensing and taxing of other tobacco products (OTPs), were the topic of hearings this week. OTPs are cigars or any rolled tobacco, other than a cigarette, that is consumed by smoking, chewing, or as snuff. The bills repeal the licensure requirements, established by 2010 legislation, for OTP retailers, wholesalers, storage warehouses, and “tobacconists” that operate in Maryland and for OTP manufacturers in the State.

Also repealed are 2010 provisions specifying that OTP wholesalers are generally responsible for paying the OTP tobacco tax and that Internet OTP sales are prohibited. Under the bills, an OTP wholesaler must file a tobacco tax return, the Comptroller must establish a method for collecting and administering the tax on OTPs, and a retailer or consumer in possession of untaxed OTPs is responsible for paying the tax.

### *User Name and Password Privacy Protection*

[SB 433](#), before a Senate committee this week, prohibits employers, including the State and local governments, from requesting user names or passwords for Internet sites or electronic accounts from employees or employment applicants. Employers are further prohibited from disciplining or threatening to discipline employees or employment applicants for refusing to disclose user name or password information. However, employers may still require employees to disclose information that allows entry to nonpersonal accounts that provide access to the employer’s internal information systems. The companion measure is [HB 964](#). A similar bill ([HB 364](#)) bars employers from requiring that employees install monitoring software on their personal electronic devices.

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## **EDUCATION**

### *Primary and Secondary Education*

The National Institutes of Health report that food allergies are present in 6% to 8% of children under 4 and 3.7% of adults, and the numbers may be rising. House and Senate committees recently discussed legislation ([SB 621/HB 497](#)) that requires each local board of education to establish a policy for public schools that will give authority to the school nurse and other school personnel to administer auto-injectable epinephrine, if available, to a student who appears to be in a state of anaphylaxis. The student does not need to have been

identified as having an anaphylactic allergy or already have a prescription for auto-injectable epinephrine. School personnel must receive training on recognizing symptoms of anaphylaxis and on procedures for administering epinephrine.

[SB 157](#), a bill to raise the compulsory attendance age in Baltimore City public schools to 18 unless a child has written parental permission to drop out, has been withdrawn. Statewide compulsory attendance bills [SB 362/HB 373](#) are still under consideration by the legislature.

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## ELECTIONS AND ETHICS

### *Governor's Legislative Plan Becomes Law*

Because the General Assembly did not adopt an alternative legislative redistricting plan by the 45<sup>th</sup> day of the 2012 session, the Governor's redistricting plan, introduced as [SJ 1/HJ 1](#), became law on the 45<sup>th</sup> day of the session, Friday, February 24. [Article III, Section 5](#) of the Maryland Constitution requires the Governor to conduct public hearings and introduce a plan "setting forth the boundaries of the legislative districts for electing of the member of the Senate and House of Delegates." Further, the constitution states that, "If no plan has been adopted by the General Assembly for these purposes by the 45<sup>th</sup> day... the Governor's plan...shall become law." Legislators will run for office in the new districts in 2014.

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## ENVIRONMENT, NATURAL RESOURCES, AND AGRICULTURE

### *Honey*

Bills establishing a Maryland standard of identity for honey and authorizing a person that has suffered specified damages to bring action to recover damages, [SB 193/HB 159](#), have passed to the opposite chambers. The bills have been amended similarly to clarify who may bring action in the Circuit Court and identify relief that may be ordered.

### *State Development Plan*

Bills that address PlanMaryland, the State Development Plan prepared by the Maryland Department of Planning (MDP), were discussed in committee this week. [HB 36](#) makes finalization of the State Development Plan contingent upon approval by an Act of the General Assembly, and authorizes the General Assembly to modify the plan as submitted by MDP. [HB 253](#) prohibits MDP from adopting any regulation or taking any action

that restricts the planning and land use powers of local governments or regional planning agencies.

Related bills that will be heard in the coming weeks include: [HB 654](#), [HB 932](#), [SB 829](#), [HB 931](#), and [SB 826](#).

### *Sustainable Growth and Wastewater Disposal*

[SB 819/HB 35](#) give a cause of action to a private property owner against the State if the application of a regulation by the Maryland Department of the Environment (MDE), the Department of Natural Resources (DNR), or MDP restricts, limits, or otherwise infringes on a right to the private property that would exist absent the application of the regulation. The cause of action applies to regulations adopted on or after October 1, 2012, but does not apply to regulations adopted by the applicable agencies to comply with federal law or protect public safety.

Also, [SB 692/HB 47](#) remove the requirement for MDE approval of county subdivision plans but allow MDE to recommend a location for any sewage treatment facility discharge point that is included in any county plan.

### *Watershed Implementation Plan*

Execution of a State Watershed Implementation Plan was a topic of hearings recently. [HB 487](#) provides that a local jurisdiction may not be required to implement activities or strategies of a State Watershed Implementation Plan unless specified funding is provided. [HB 486](#) requires MDE, on or before October 1, 2012, to create, update, maintain, and mail to the counties a list that ranks best management practices relating to a Watershed Plan based on cost and expected pollution reduction value. The crossfiled bills are [SB 822](#) and [SB 823](#), respectively. Related bills include [SB 695](#) and [SB 821](#).

### *Fishing Nets*

Testimony was heard this week on [SB 385/HB 478](#), requiring DNR to remove and dispose of any abandoned fishing net in State waters within one day of the net being found or reported.

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## FISCAL MATTERS

### *Coal Tax Credit Repeal*

Maryland public service companies and specified co-generators and electricity suppliers may claim a \$3 per ton tax credit for the amount of Maryland-mined coal purchased in a calendar year. Companies are not required to consume the coal in order to claim the credit. The credit can be claimed against the public service franchise tax and the State income tax.

Chapter 247 of 2006 phased out the credits by capping the maximum amount of credits that can be claimed at \$9 million annually in tax years 2007 to 2010, \$6 million annually in tax years 2011 to 2014, and \$3 million annually in tax years 2015 to 2020. The credit is scheduled to terminate after 2020.

A provision in the Budget Reconciliation and Financing Act of 2012, [SB 152](#) (Section 4), repeals the credit, as does [HB 24](#).

### *Combined Reporting*

Corporate income tax reform efforts have significantly increased in Maryland and several other states in the wake of highly publicized cases involving corporate income tax avoidance at both the federal and state levels. For the past several years, the legislature has considered requiring affiliated corporations to compute Maryland taxable income using the combined reporting method.

[SB 269](#) and [HB 941](#), each entitled the “Maryland Business Tax Fairness Act,” require, except as provided by regulation, a corporation that is a member of a combined group to compute its Maryland taxable income using the combined reporting method. This method requires taking into account the combined income of all members of the combined group; apportioning the combined income to Maryland using the combined factors of all members of the combined group; and allocating the apportioned income among the members of the group that are subject to the Maryland income tax. The bills provide that, subject to regulations, corporations may elect to use the “water’s edge method,” essentially including only corporations incorporated in the United States and specified others (those generally having significant U.S. presence) in the combined group for combined filing purposes. The measures are effective on July 1, 2012, and apply to tax year 2013 and beyond.

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## **GAMING, RACING, AND SPORTS**

### *Table Games*

Spurred by some states bordering Maryland beginning to offer table games, bills authorizing table games in Maryland facilities licensed to operate video lottery terminals (VLTs) were considered by a legislative committee this week ([SB 26](#), [SB 158](#), and [SB 892/HB 1265](#)). All of the bills are subject to voter referendum. If enacted, the legislation will appear on the 2012 general election ballot.

[SB 26](#) allows those who hold a video lottery operation license to offer table games such as roulette, baccarat, blackjack, craps, big six wheel, minibaccarat, poker, pai

gow poker, sic bo, and any variations and composites of these games determined to be suitable by the State Lottery Commission. The bill also authorizes tournaments of competing players in the above mentioned games.

Similar legislation, [SB 158](#), proposes a constitutional amendment to grant holders of a video lottery operation license the ability to offer table games as well. These games include poker, blackjack, craps, and roulette.

[SB 892/HB 1265](#) authorize a video lottery operation license to be awarded in a specified area in Prince George’s County. The bill makes a number of changes to the current VLT laws, including increasing the number of VLTs allowed in the State, increasing the percentage of video lottery revenues distributed to licensees, and removing restrictions such as the prohibition on one company holding multiple licenses. As with the previously discussed legislation, this bill also makes way for video lottery operation license holders to offer table games.

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## **HEALTH CARE AND HEALTH INSURANCE**

### *The Maryland Health Benefit Exchange*

The Maryland Health Benefit Exchange Act of 2012, an Administration proposal, will be heard by committees in both chambers this week. [SB 238/HB 443](#) are an expansion of the Maryland Health Benefit Exchange Act of 2011 (Ch. 2, 2011 Regular Session), which established the governance and structure of the Exchange, pursuant to a federal law (the Patient Protection and Affordable Care Act) that requires states to establish a Health Benefit Exchange by January 1, 2014.

[SB 238/HB 443](#) expand the operating structure of the Maryland Health Benefit Exchange by authorizing the exchange to contract with health insurance carriers in a certain manner, establish the framework for the Small Business Health Options Program (SHOP) Exchange, and establish navigator programs for the SHOP and Individual exchanges. The bills require SHOP Exchange navigators to be licensed, Individual Exchange navigators to be certified, and insurance producers to be authorized to sell qualified health plans and qualified dental plans in the SHOP and/or Individual exchanges.

The bills also establish a process for selecting the benchmark plan that will serve as the standard for the essential health benefits for health benefit plans offered in the small group and individual markets, both inside and outside the exchange. The bills’ effective date is June 1, 2012.

## HUMAN RESOURCES

[HB 388](#) prohibits State agencies and local governments from providing undocumented immigrants with federal, State, or local public benefits, with specified exceptions and unless the benefits are required under federal law. The bill, heard in committee this week, requires each State unit or political subdivision to verify the lawful presence status of an adult before providing most public benefits and makes it a misdemeanor to provide a false, fictitious, or fraudulent statement or affidavit.

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## STATE GOVERNMENT

### *Revoking Pensions for Convicted Officials*

Recently considered in committee, [HB 572](#) requires elected and retired elected public officials at the State, county, or municipal level to forfeit retirement benefits if they are convicted or plead *nolo contendere* to a felony charge or to a misdemeanor charge related to their public duties and responsibilities that involves moral turpitude and is punishable by imprisonment. Payment of retirement benefits to elected public officials or their beneficiaries must be suspended if the official is charged with committing a crime of violence, sexual offense, or child pornography offense.

The forfeiture or suspension of retirement benefits applies only to crimes committed while in office and affects only benefits accrued after the bill's effective date. The bill takes effect July 1, 2012, and applies only prospectively to any act committed after the bill's effective date.

### *Public-Private Partnerships (P3s)*

Across the nation, there is growing interest in using private-sector financing as a means to maintain and expand capital infrastructure investment. In Maryland, P3 agreements have been used primarily to finance transportation infrastructure. More recently, however, P3s have also facilitated the proposed multi-year phased redevelopment of the State Center complex in Baltimore City.

P3s offer opportunities to share resources and project risks with the private sector and access private-sector financial markets. However, P3s also involve significant fiscal considerations, including the disposition of State assets; assignment of future revenues to private-sector entities that would otherwise accrue to the State; and the execution of capital and operating leases that obligate the State to long-term general and special fund budget commitments.

A gubernatorial initiative ([SB 358/HB 576](#)) establishes a State policy on the use of P3s and expressly authorizes specified State agencies to enter into P3s. The bills establish a process and reporting requirements for State oversight of P3s and institute a process for both solicited and unsolicited P3 proposals that must be followed before the Board of Public Works may approve a P3 agreement.

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## TRANSPORTATION

### *Rules of the Road*

[SB 177/HB 67](#), addressing requirements for drivers approaching a non-functioning traffic light, both passed third reading. The bills require the driver to stop at the intersection, yield to other vehicles or pedestrians, and continue only when it is safe to enter the intersection. [SB 89](#) (failed), a similar bill, was withdrawn.

[SB 57](#), regarding speed control systems in work zones, had a public hearing this week. It allows the use of speed control systems only if at least one worker is in or near the work zone. Current law allows law enforcement agencies or their contractors to issue speeding citations or warnings in highway work zones regardless of whether workers are present. Similar bills have failed in previous years. Companion bill [HB 326](#) (failed) received an unfavorable committee report.

### *Equipment and Inspections*

[SB 116](#), which passed the Senate, allows the driver of a vehicle carrying an overweight load of perishable products to proceed to its destination if the driver has not had a violation within the previous 365 days. The bill moves to the House for consideration.

### *Licensing and Registration*

[SB 276/HB 358](#) require the Motor Vehicle Administration (MVA) to note veteran status on a veteran's driver's license or identification card if the MVA has received documentation from the Maryland Department of Veterans Affairs (MDVA). Maryland Vehicle Law and MDVA provide services and programs for veterans, their families, and survivors. Designation of veteran status on a driver's license or ID card would make it easier for veterans to claim official benefits and privileges, such as veterans' discounts. Currently, veterans must show a copy of their discharge documents. Public testimony on the bill was heard in committee this week.

### *Towing*

[SB 401/HB 160](#) are the result of study and recommendations by the Task Force to Study Motor

Vehicle Towing Practices, regarding the towing of vehicles from private property without the owner's permission and the disposition of towed vehicles. The task force was created by law in 2008 and extended in 2009 to deal with the incidence of illegal towing. The crossfiled bills require statewide application of rules tow truck drivers must follow before taking a vehicle to a storage facility, including a scrap yard or junkyard, and set requirements to be met before the vehicle can be reclaimed by the owner or sold.

*Use of Wireless Communication Devices*

The House passed [HB 104](#) that aims to make Maryland law related to the use of a wireless communication device, which means a handheld or hand-free device used to access a wireless telephone service or a text messaging device, consistent with the provisions related to texting by drivers in [HB 55](#), which was also recently passed by the House.

[HB 104](#) clarifies that the prohibition against the use of a wireless communication device applies to all drivers younger than age 18 and further specifies that the prohibition applies to operating a motor vehicle in the travel portion of the roadway. Primary enforcement is authorized, as the provision limiting enforcement to a secondary action is repealed.

The bill also expands, to the travel portion of the roadway, the prohibition against using a handheld telephone by the operator of a school vehicle that is carrying passengers and for fully licensed adult drivers, except as specified. Primary enforcement for the operators of school vehicles and adult drivers is also authorized. A violator is guilty of a misdemeanor and is subject to a maximum penalty of \$500 and the assessment of points against the driver's license. The Senate companion bill is [SB 217](#).