



## Maryland General Assembly 2019 End of Session Report

### Introduction

The 2019 Legislative Session of the Maryland General Assembly ended in sorrow. Maryland's longest serving Speaker of the House, Michael Busch, passed away the Sunday before Sine Die at the age of 72. **Speaker Busch** was elected to the House of Delegates in 1987, becoming Speaker in 2003.

It was a transformative year in the Maryland General Assembly with the beginning of a new term. More than a third of the legislature were in their first year in office following 2018 election. **Governor Larry Hogan** began his second term as governor which was accompanied by an increased national profile while wading into presidential politics. Due to high profile retirements and a couple unexpected election upsets, we also saw four new committee chairs. There were a staggering 2,500 bills introduced, with the Democratic leadership prioritizing raising the minimum wage, raising the tobacco age, addressing prescription drug costs, expanding clean energy, and many other issues.

As a result of the work done by the General Assembly, Maryland will become the first state to be "foam free," with legislation passing banning the use of polystyrene in food service. Also, we became the 5th state to start the track towards a \$15/hr minimum wage, despite a gubernatorial veto which was quickly overridden. Maryland will be the 9th state to raise the minimum age to buy tobacco products to 21, while exempting active members of the armed forces.

The 2019 budget discussion largely centered, as it often does, around education. The Commission on Innovation and Excellence in Education, informally known as "Kirwan," was created a couple years ago to study and make recommendations on how to create a world-class education system. Recommendations released right before the start of Session included billions in new spending, and with the state's current fiscal situation, the result was a smaller proposal to start off, with larger discussions next year.

Due to the passing of the Speaker, and the health concerns of his Senate counterpart, **Senate President Mike Miller**, the future leadership of the General Assembly remains unclear. It will certainly be a busy interim as the leadership of begin developing their agendas for 2020.

### The Maryland Association for Justice

Compass Government Relations is proud to represent the Maryland Association for Justice (MAJ). The 2019 Legislative Session offered an abundance of variables, external forces, and political factors to create a perfect storm of policy development. MAJ's Legislative Committee and Compass Lobbyists: Hannah Garagiola, Josh Howe, Alex Shull, and Tyler Bennett weathered that storm to bring about favorable policy changes while defeating bad policy proposals.

The Legislative Committee considered and actively tracked over 200 pieces of legislation in 2019. At least 30 individuals came to our State's Capital to testify or provide written testimony on over 70 bills across almost all 10 Standing Committees of the General Assembly. MAJ made its voice heard.

MAJ's Legislative Advocacy events continue to be some of the highlighted events during the 90 Day Session. The annual Red Red Wine Happy Hour reception, Justice Day, and MAJ's committee dinners fostered relationship building

with some of the many newly elected figures in the General Assembly. MAJ looks forward to continuing building these newly formed relationships while maintaining old ones.

The following report speaks to just some of the legislation that MAJ weighed in on during the 90 Days. Should any member have any questions on specific bills not listed in this report, please feel free to reach out to members of the Legislative Committee or Compass Government Relations at: [jhowe@cgrpartners.com](mailto:jhowe@cgrpartners.com).

## **MAJ's Priority & Introduced Bills**

### **SB 773 (Senator Smith) Health Care Malpractice Qualified Expert – Qualification**

The formerly known “20% Rule” was a broken rule that was often used as a skewer to dismiss meritorious cases against malpractice defendants. The vague rule did little to define the qualification standards for expert witnesses to comply. Last year’s bill that would have repealed the rule, returned from a last-minute defeat on Sine Die 2018 and became a compromise bill at the urging of the General Assembly’s top leadership.

Stakeholders including the Maryland Hospital Association, Maryland State Medical Society, and MAJ met multiple times over the session to negotiate the 20% Rule in a way that would discourage defendants from questioning a witness’s compliance with the rule on a routine basis. Ultimately a compromise bill quickly moved through both houses in the last days of session in a bi-partisan and nearly unanimous fashion. The bill alters from 20% to 25%, the percentage of an expert's professional activities that may have been devoted to professional activities that directly involve testimony in personal injury claims during the 12 months immediately before the date when the claim was first filed in order for the expert to qualify to testify in relation to a medical malpractice proceeding. And finally, the bill offers a savings clause for plaintiffs to bring the action back with a new witness if the original witness is found in violation of the rule.

### **SB 102 (Senator Zirkin) Courts - Direct Action Against Automobile Insurer**

This bill would require an automobile insurance policy issued, sold, or delivered in the State to be construed to make the insurer directly liable within the terms and limits of the policy. The bill would provide that a third-party claimant has a right of direct action against auto insurers alone if the third-party claimant agrees to cap recovery at applicable policy limits. The 2018 Election brought about significant change to the General Assembly including to the Senate Judicial Proceedings Committee (JPR). This bill had been introduced in past years and received no action. This year the bill moved out of both JPR and Senate. Unfortunately, the bill was heard late in session in the House Judiciary Committee and never received a vote. MAJ hopes to work with the bill sponsor and House leadership to tee up the bill for next year.

### **SB 443 (Senator Klausmeier) Workers' Compensation - Discharge of Employee – Prohibition**

The bill would prohibit an employer from discharging a covered employee from employment if the covered employee's filing a claim for workers' compensation is any part of the basis, rather than the sole basis, for the discharge. The bill was heard in the Senate Finance Committee, but unfortunately did not receive a vote out of committee. The General Assembly opted to pass workers’ compensation legislation that benefited first responders by adding presumptions and elevate specific first responders to enhanced benefits.

### **SB 647 (Senator Klausmeier) Insurance - Homeowner's and Renter's Policies - Dog Breed Discrimination**

The bill would prohibit an insurer from discriminating against certain breeds or mixed breeds of dogs in an offer of a homeowner's insurance or renter's insurance policy. Too often the fact that certain homeowners and renter's insurance policies discriminate against specific breeds is discovered only after injury is caused by a dog. The bill had a good hearing in Senate Finance Committee with multiple members communicating for support for the bill. Unfortunately, the bill did not get voted.

### **SB 775 & SB 776 (Senator Waldstreicher) Courts - Civil Jury Trials - Amount in Controversy**

The bill would increase from \$15,000 to \$30,000 the maximum amount in controversy in a civil action in which a party may not demand a jury trial. The bill would require a constitutional referendum and was ultimately the reason this bill did not pass this year. The JPR Committee and Senate leadership telegraphed that this issue should be brought up again next year which is an election year.

### **SB 813 (Senator Smith) Personal Injury or Wrongful Death - Noneconomic Damages**

The bill would repeal a certain limitation on noneconomic damages for health care malpractice actions and increase certain limitations on noneconomic damages in an action for wrongful death in which there are two or more claimants or beneficiaries. This bill has been introduced multiple years in a row, but this year's version looked to specifically equate the damage caps of personal injury to non-personal injury caps. MAJ will look to continue to educate members on the codified inequities of bringing actions of personal injuries on behalf of victims.

### **HB 1320/ SB 869 (Delegate Cullison/ Senator Kelley) Maryland No-Fault Birth Injury Fund**

One of MAJ's defensive priorities, this bill would establish a system for adjudication of a claim involving a birth-related neurological injury and provide for certain benefits and compensation of a claimant. The bill would also establish the Maryland No-Fault Birth Injury Fund to provide compensation and benefits to eligible claimants for certain premiums and insurance surcharges to be used to finance and administer the Fund. And finally, the bill would require the Maryland Patient Safety Center to convene a certain Perinatal Clinical Advisory Committee. MAJ's history of opposing this bill is widely known throughout the legislature and continues to not be brought up for votes after committee hearings.

## **Medical Malpractice**

### **HB 145/ SB 301 (Del. K Young/ Sen. Benson) Hospitals - Patient's Bill of Rights**

The bill would require each administrator of a hospital to provide patients with a certain patient's bill of rights and require each administrator of a hospital to provide certain patients with an interpreter, a translator, or other accommodation to aid patients. requiring each administrator of a hospital to conspicuously post the patient's bill of rights on the hospital's website and in areas of the hospital accessible to patients and visitors. A bill that has been introduced in prior years; this bill finally made it across the finish line in both houses.

### **HB 247/ SB 445 (Del. K. Young/ Sen. Klausmeier) Maryland Health Care Commission - Surgical Birth Rate – Study**

The bill would require the Maryland Health Care Commission, in consultation with the Maternal and Child Health Bureau, the Vital Statistics Administration, and interested stakeholders, to conduct a study regarding the surgical birth rate in the State. The charge of the Commission would be to examine the rate of complications, increased health care costs and global research programs related to surgical births and require the Commission to report its recommendations to certain committees of the General Assembly. MAJ opposed this bill as the formation of the Commission would likely offer a birth injury fund as a solution to issues that they study. This bill received unfavorable reports in both the House Health & Government Operations Committee & Senate Finance.

### **HB 1323/ SB 784 (Del. Rosenberg/ Sen. West) Civil Actions - Health Care Malpractice Claims (Life Care Act 2019)**

The bill would have required a certain award or verdict for future medical expenses to be based solely on average Medicare reimbursement rates in effect on the date of the award or verdict for the locality in which the care is to be provided and would require a certain award or verdict for future medical expenses for hospital facility services to be based on certain rates. The bill would codify the Daubert standard for setting medical expense rates. MAJ opposed this bill among other med mal bills introduced in the Senate that would favor the defense. None of these bills were passed in 2019.

## **Auto Section**

### **SB 101 (Sen. Zirkin) Civil Actions - Prolitigation Discovery of Insurance Coverage**

The bill makes certain provisions of law authorizing the prelitigation discovery of certain insurance coverage information relating to claims involving vehicle accidents applicable to claims involving any tort involving death or bodily injury and provides that an insurer is required to provide a claimant with documentation of the applicable limits of coverage only in a certain automobile insurance policy. A bill that was originally met with harsh opposition in the committee hearings; this bill received a last-minute boon on Sine Die and ultimately made it to the finish line for passage.

### **SB 388 (Sen. Zirkin) Civil Actions - Liability Insurance - Prohibition on Disclaiming Coverage**

This bill would prohibit an insurer from disclaiming coverage under a policy of liability insurance on the ground that the insured or a certain person has breached the policy by failing to cooperate with the insurer. Given the legislative environment of multiple bills involving automobile insurance in cases of personal injury, the bill sponsors ultimately decided to withdraw this bill for another session.

## **Workers' Compensation**

### **HB 797/ SB 348(Del. Valderrama/ Sen Klausmeier) Workers' Compensation - Medical Benefits - Reimbursement for Medical Mileage**

This bill would require a covered employee who seeks reimbursement for medical mileage to submit to the employer or the employer's insurer a request for reimbursement, in the form adopted by the Workers' Compensation Commission, within a certain period. MAJ opposed this bill and as a result the bill did not receive a vote out of either presiding standing committee.

### **HB 799/ SB 435 (Del. Valderrama/ Sen Klausmeier) Workers' Compensation Commission - Continuing Jurisdiction**

The bill would clarify that the Workers' Compensation Commission may not modify certain awards unless the modification is applied for within 5 years after the latter of the date of the accident, the date of disablement, or the last compensation payment from the self-insured employer, insurer, or Uninsured Employers' Fund. MAJ opposed this bill and as a result the bill did not receive a vote out of either presiding standing committee.

### **HB 795 (Del. Branch) Workers' Compensation – Permanent Partial Disability – Baltimore City Deputy Sheriffs**

The bill provides for enhanced workers' compensation benefits for a Baltimore City deputy sheriff for a compensable permanent partial disability of less than a certain number of weeks. MAJ supported this bill with advocates of first responders and ultimately passed on Sine Die 2019.

## **Civil Actions & Procedures**

### **HB 412/ SB 768 (Del. Rosenberg/ Sen. Smith) Civil Actions - Strategic Lawsuits Against Public Participation**

The bill would alter the conditions under which a lawsuit is considered a strategic lawsuit against public participation (SLAPP suit) and specify the conditions under which a lawsuit is not considered a SLAPP suit by altering the conditions under which a defendant in a SLAPP suit is not civilly liable for certain communications. The bill provides that a ruling or failure to rule on a certain motion is immediately appealable. MAJ opposed this bill and ultimately received an unfavorable report out of about presiding conditions.

### **HB 556/ SB 832 (Del. Hornberger/ Sen. Carter) Maryland Transit Administration - Limits of Liability**

The bill would limit the liability of the Maryland Transit Administration in a tort action to \$1,000,000 to a single claimant for injuries arising from a single incident or occurrence. Limiting the liability of some of the largest organizations in charge of transportation and safety was not a policy that the General Assembly was comfortable with. For those reasons, MAJ was opposed to the bill and the bill was voted unfavorably in committee.

### **SB 1049 (Sen. Waldstreicher) Civil Actions - Office of Asbestos Case Mediation and Resolution**

This bill would have established the Office of Asbestos Case Mediation and Resolution in the Executive Department and require certain civil suits involving asbestos claims to be referred to the Office for mediation. The bill would also provide for the priority of certain civil suits in the mediation process; requiring all parties referred to the Office to participate in mediation subject to a certain condition; requiring the Director of the Office to notify the court if certain parties are unable to reach agreement through mediation. Introduced late, this bill almost made it to the finish line on Sine Die, however was slowed down by amendments from the Judiciary and ultimately failed.