



2010 RETAILERS REPORT



OVERVIEW

Contents:

Taxes and Revenues.....	3
Commerce, Consumer Protection and Credit.....	4
Employee Relations And Benefits.....	7
Unemployment and Workers Compensation....	9
Courts and Security.....	10
Miscellaneous.....	11

Beyond the ever constant fiscal cloud hanging over the state, Governor O'Malley and legislative leaders predicted that the focus of the **2010 General Assembly Session** would be on jobs. Unfortunately, some legislators did not get the memo. MRA and other business interests faced the usual number of unfriendly bills and even some real job killers.

The political climate in the legislature did not show any appreciable improvement even with a down economy. Too many legislators see government as the source of jobs and business as something simply to be regulated. The political climate in Annapolis continues to be less favorable toward employers, and forces MRA to compromise on bills it previously would have opposed and most likely defeated. And bills that were once dismissed can no longer be so.

Compromise is often now the safest means to protect members' interests.

MRA still enjoyed a solid session. We did not get everything we wanted, but the pluses far outpaced the minuses. The bad bills defeated by MRA were probably more important than the favorable bills passed. MRA's motto of being dedicated "*to the preservation of the status quo*" rang as true as ever!

The early part of the session did focus on jobs with MRA playing a key role. MRA supported Governor O'Malley's jobs creation tax credit bill (HB92/SB106) which easily passed both houses by almost unanimous votes. Governor O'Malley's unemployment modernization bill (HB91/SB107) was another matter. MRA opposed the bill and held firm until the Administration and labor supporters agreed to cost neutral amendments and dropped a counterproductive short term tax deferral. In the end, the final compromise was a victory and a good deal for employers. The bill boosted the solvency of the Unemployment Insurance Trust Fund at no expense to employers. By injecting \$127 million in Federal funds into the Trust Fund, which did not come from Maryland employers, it effectively saved Maryland employers \$127 million. Another benefit was the payment options to help employers manage cash flow. And the future was not mortgaged with a shortsighted tax deferral.

After MRA successfully defeated for three years legislation mandating employee shift breaks, the UFCW and other proponents sought revenge and applied the legislation (HB1299/SB789) this year solely to retail employers. Some saw this sole focus on retailers as a badge of courage for MRA. But it was really an insult to every merchant and grocer in Maryland and driven solely by election year considerations. While MRA successfully amended the bill to ease compliance and make employers far less a target for class action lawsuits, political and election considerations prevailed over good sense. Despite the improvements, the bill was still a bitter pill for MRA members. MRA could not politically defeat the bill. The bill can serve as a lesson, however, as to the importance of political action and campaign contributions. UFCW's political activism and large political war chest paved the way for this bill.

A focus for MRA and the Tri-State Jewelers Association this session was long overdue reform of the Secondhand Precious Metal Object Dealers Law. MRA introduced two bills. HB 318, which among other things banned dealing in gold and other precious metal at shows and events, passed, but the clock ran out on the other bill (HB 752) after running into strong law enforcement opposition. Republicans efforts to slow down the Senate on the last day and the Senate taking a 3 hour recess with just 6 hours left probably doomed the bill's chances.

After failing last session, MRA pushed through legislation (HB 494/SB 431) to add baby formula and dated baby food to the list of products requiring State Health Department approval before being sold at an auction. Pushed to get at e-Bay and other auction sites as outlets for stolen merchandise, the legislation will also clamp down on the growing trend of non-food stores conducting food auctions to attract shoppers. Unfortunately, the MRA supported legislation to restrict the sale of non-prescription drugs and cosmetics at flea markets and pawnbrokers failed. Still, this was a sweet victory after last year's defeat. Not so sweet was MRA's late entry (HB 728) to reverse last year's increase of the threshold for felony theft. It failed by one vote in the House Judiciary Committee. The bill most likely would have reached Governor O'Malley's desk if it had gotten over this hurdle.

Although MRA's plastic bag recycling legislation (HB 351/SB 462), which also preempted local regulation, did not pass, MRA defeated legislation creating a 25¢ fee on plastic bags. The scorecard on this issue still favors MRA.

Among the numerous bills defeated this session were: eliminating the vendors allowance; preventing the use of credit reports in employment decisions; creating efficiency standards for TVs sold in Maryland; increasing civil damages and criminal penalties for wage and hour law violations; creating statutory damages for consumer protection violations; requiring employers to grant employees leave for religious observance of any "sincerely held belief", and requiring grocery stores to pay a prevailing wage and enter into a ten year labor agreement if the store or

the shopping center where it is located benefits in any way from any State financial assistance. The good bills included requiring energy efficient appliances receiving a State rebate to be bought from a Maryland retailer; permitting small business to pay property taxes on a semi annual basis; authorizing property tax credits for grocery stores locating in a low income area and increasing the amount in controversy to request a jury trial.

A postscript to this session is Maryland's continued fiscal malaise and what it means for the 2011 session. To a great extent, the legislature "kicked the can" down the road this session in dealing with Maryland's fiscal problems. Even the Baltimore Sun said the budget was held together with "bailing wire" and legislators even went through legal gymnastics in a shameless attempt to transfer \$20 million from the policyholders of the Injured Workers Insurance Fund to balance the budget. This sets up the 2011 session, and more immediately the November 2 elections, as pivotal to how Maryland resolves its fiscal problems -- by either spending cuts and fiscal reforms, or tax increases. Maryland must get its spending under control to avoid becoming fiscally dysfunctional. Even with its strong economy, without greater fiscal discipline Maryland will continue to drift from one budget crisis (a.k.a. structural deficit) and major tax increase to another.

The following is not intended to provide a comprehensive report on the 2010 General Assembly Session, but to focus on legislation of interest to retailers. This report is also not designed to provide a complete description or legal analysis of each bill. Unless noted otherwise, enacted bills become effective on October 1, 2010.

Key: S-MRA Support O-MRA Oppose SWA-MRA Support w/Amendments NP-No Position

TAXES AND REVENUE

Although some favorable tax legislation passed, the best news here is what did not pass. Three bills failed that would have instituted a combined reporting system for purposes of Maryland's corporate income tax. But you can probably get good odds that some form of combined reporting will pass in 2011. Also failing was legislation (HB244), which could be a scary preview to next session, that among other things would have eliminated the vendors allowance and increased the tobacco tax.

Among the favorable bills enacted were: allowing small businesses to pay property taxes on a semi-annual basis (HB484); property tax credits for locating supermarkets in certain designated areas (HB1135); requiring purchases at Maryland retailers for consumers to get state issued or authorized rebates (SB1081), and preventing a raid on the policyholders of the Injured Workers Insurance Fund where MRA sponsors a workers compensation insurance program for the members.

The following bills passed:

HB88 (SWA): Requires a license for the sale of Other Tobacco Products. (*MRA amendment exempts those retailers already holding a cigarette license from paying any additional license fee.*)

HB151/SB141 (O): The Budget and Reconciliation Financing Act shifted funds, raised revenue and changed funding formulas to balance the FY 11 state budget. (*MRA succeeded in deleting*

the transfer of \$20 million from the workers compensation insurance policyholders of the Injured Workers Insurance Fund to balance the state budget.) Effective July 1, 2010.

HB484/SB141 (S): Requires a local government or municipality to allow a small business whose property taxes are \$50,000 or less to pay their property taxes in semiannual payments.

HB1135 (SWA): This bill allows a governing body of a county or municipal corporation to grant a tax credit to a grocery store located in a designated "low-income area" if the gross receipts are at least 20% fresh produce, meats or dairy products. *(MRA's amendment was adopted expanding definition of fresh to include meats and dairy products.) Effective June 1, 2010.*

SB106 (S): Authorizes a one year program of tax credits up to \$5,000 for employers who hire unemployed individuals. *An emergency bill that took effect in March, 2010.*

SB221 (S): Extends the sunset for employer tax credits for hiring individuals with disabilities until June 30, 2011. *Effective June 1, 2010.*

SB1081 (S): Requires a state agency or a nongovernmental entity who issues a rebate for the purchase of, under a program for energy efficiency, to require the purchaser to certify that the product was purchased at a Maryland retail store or the Maryland State use tax was paid. This bill was introduced at the request of MRA. *Effective July 1, 2010.*

The following bills failed:

HB10/HB584/SB354 (O): Would have required combined reporting for corporate income tax purposes for corporations in Maryland.

HB244 (O): Among other things, would have eliminated the vendors allowance for the collection of sales tax and increased the cigarette by 32 cents.

HB1354/SB346 (O): Would have ceded legislative authority to the Comptroller or the Attorney General to require a new device for stamping tobacco products with tobacco tax stamps. This new device would have cost each retailer who stamps his own cigarettes about \$250,000.

SB94 (O): Would have increased the cap on the registration fees on scales by \$75 and fuel dispensing meters by \$75.

SB98/SB976 (S): Would have allowed film production companies to take a tax credit against their Maryland income tax for movies made in Maryland.

SB468 (S): Would have allowed a credit against the Maryland income tax for certain child care expenses, transportation and a hiring tax credit for the hiring of certain employees.

SB824 (S): Based on New York's so-called Amazon tax, would have created a nexus for certain online retailers, who use websites as agents, for the collection of sales and use tax.

COMMERCE, CONSUMER PROTECTION AND CREDIT

Bills adding more regulation of business and more protection for consumers usually generate a lot of legislative interest in an election year session. Maybe it was lingering concern

about jobs or laying more regulatory burdens on already struggling business, but 2010 saw less activity in this area than anticipated. And that's a good thing!

MRA had four bills introduced in this area and batted 500. Passing were bills making some long overdue changes to the Secondhand Precious Metal Object Dealers law (HB318) and, after failing last year, requiring state approval before selling infant formula and baby food at auction (HB494/SB431). Failing were a second precious metals bill dealing with tagging (HB752) and the backstop bill establishing a statewide plastic bag recycling program.

Probably just as important in this most important area for retailers is that no adverse bills were enacted. MRA either succeeded in securing either unfavorable considerations or amendments addressing MRA's concerns. On the plus side of the ledger was HB1267/SB11 that would reduce the theft of plastic crates that is plaguing grocers and their suppliers.

The following bills passed:

HB33/SB213 (SWA): Prohibits the sale of children products containing BPAs. *(MRA's amendment limited children products to only cover sippy cups and baby bottles which manufacturers are already doing.) Effective date is July 1, 2010 with implementation starting on January 1, 2012.*

HB88 (SWA): See Taxes and Revenue.

HB202 (O): As amended, makes the filing of a false financing statement a crime. *(MRA withdrew its opposition with the amendments.)*

HB318 (S): Makes a number of changes to the so-called Precious Metal Object Dealers law including prohibiting commercial trading at places other than the licensed dealer's fixed address. Also sets out requirements for advertising and permits only licensed dealers to advertise for the commercial trading of precious metal objects.

HB402 (NP): Increases the application fee and permits an investigation fee not to exceed \$900 combined for a two year term.

HB421 (O): Authorizes the Secretary of Agriculture to determine the definition of "Local Grown" produce. *(MRA withdrew its opposition when its amendment requiring the Secretary to consult with stakeholders, including retailers, and the definition "locally grown" should be a product of the stakeholders group.)*

HB456/SB782 (O): Creates a homestead exemption tied to the Federal level in bankruptcies. *(MRA removed opposition when the amount was reduced from \$170,000 and other changes were made.)*

HB494/SB431 (S): Prohibits a person from selling infant formula and baby food at an auction site without notifying the Secretary of Health and Mental Hygiene in writing at least 7 days prior to the sale.

HB611 (S): Prohibits a mobile produce seller from selling on a state right-of-way with out a lease and also on private land without a lease.

HB1032 (S): Allows a petroleum dealer to offer a lotto type game of chance to its customers.

HB1217 (O): As amended, it extends the holding period for precious metal dealers to 30 days in only Prince George's County.

HB1501/SB68 (NP): Requires the activation of closed caption TVs if they are in a public area and only if the sets are capable of closed caption.

HB1267/SB11 (S): Requires that the purchaser of 4 or more items of secondary plastic packaging to record the name, address and telephone number of the person selling, and the tag number of the selling person's vehicle and a description of the items sold.

The following bills failed:

HB18 (O): Would have prohibited the use of lead wheel weights on cars.

HB50 (O): Would have lowered the content threshold phosphoric acid in lawn fertilizer sold in Maryland from 5% to .05%.

HB116/SB523 (NP): Referred to as the Credit Card Blacklisting Prevention Act, prohibits credit grantors from using certain risk factors including from when, where and who a consumer buys goods and services.

HB127 (O): Would have required a grocery owner who picks up his order at a wholesaler or outlet store to transport it in a certain manner. *(MRA persuaded the sponsor to withdraw the bill.)*

HB349/SB455 (O): Would have imposed greater and more stringent energy efficiency standards on televisions sold in Maryland.

HB351/SB462 (O): Would have imposed a 5 cent fee on all plastic and paper bags used to carry merchandise.

HB561 (O): Would have prohibited the issuance of licenses for fast food type restaurants, including grocery stores, in certain areas of Prince George's County.

HB720 (O): Would have prohibited the sale of non-tobacco products that contains or delivers nicotine and is not approved by the FDA.

HB726 (O): Would have limited the use of certain negative options in consumer contracts.

HB727 (O): Would have prohibited the sale of products containing trans fats.

HB752 (O): Would have changed the identification system on precious metals by removing the tagging of each item requirement.

HB827/SB569 (O): Would have increased requirements for biomass in biofuels.

HB831 (S): Would have prohibited the sale of baby food, cosmetics and nonprescription drugs at a flea market.

HB886 (O): Would have prevented the sales of single cigarettes.

HB913 (O): Would have prohibited the placement of advertising flyers on the windshields of automobiles.

HB957 (O): Would have changed the definition of a cigarette to include a product that contains tobacco and tobacco is functional in its use.

HB1004 (O): Would have prohibited a person who offers a credit card or a consumer, business or mortgage loan from charging an application, administration or processing fee to a person applying for the credit card or loan.

HB1102 (O): Would have required a bookstore that purchases used text books to verify the seller's identity and keep a record of each transaction for two years.

HB1103 (O): Would have required retailers to place all tobacco products out of accessibility to the consumer. Also strips the retailer of his affirmative defense and places enforcement in the hands of the county health officers.

HB1138 (O): Would have required shopping centers to install a master meter in lieu of the individual meters for electricity.

HB1150 (O): Would have added statutory damages up to \$5,000 in addition to current actual damages for a violation of the Consumer Protection Act. Also, would allow triple payment of actual damages for a willful violation.

HB1418 (S): Would have established a state-wide plastic bag recycling program for stores. *(The bill was withdrawn after several adverse amendments were placed on it.)*

HB1497 (O): Would have ceded enforcement of tobacco laws to the Department of Health and Mental Hygiene.

HB1560 (O): Would have regulated the sale/return policy of undergarments.

SB686 (O): Would have established a fee on imperious surfaces for storm water management.

SB735 (O): Would have created a lifetime warranty liability on the manufacturer to a consumer.

SB763 (O): Would have changed the definition of "cost" in the tobacco sales below cost law.

SB973 (O): Would have prohibited the sale of flavored cigars.

EMPLOYEE RELATIONS AND BENEFITS

While MRA had to compromise on the so-called Healthy Retail Employee Act (HB1299/SB789) (*see discussion on page 2 in Overview*), MRA did quite well for retailers in this area. A number of adverse bills were defeated. Two deserve mention. HB 175/SB110 was part of a national effort, including Federal legislation, to curb the use of credit reports in employment decisions. A reaction to the bankruptcies and foreclosures caused by the financial meltdown and the Great Recession, employers barely defeated the bill and retailers should expect to see it again next year.

Although not considered ready for primetime this session, organized labor sent a clear signal that HB1317/SB785 would be their top priority next term. This legislation, which targets

the retail, hotel, food service, construction and building service industries, would make shift breaks seem like a nuisance with its requirements. This Public Investment Protection Act would require that businesses receiving state assistance or subsidy, including being a tenant in a project receiving subsidy or assistance, would have to pay a prevailing wage and enter into a labor agreement. This legislation is yet another example of unions using the legislative process to expand their membership.

The following bills passed:

HB214/SB694 (NP): Adds overtime wage violations to the Wage Payment and Collection Law.

HB404 (NP): Allows the Labor Commissioner to use an administrative procedure to enforce wage payments up to a certain amount.

HB1299/SB789 (SWA): Requires retail employers employing 50 or more individuals to provide shift breaks at certain times and provides for enforcement and certain exemptions. ***Effective on March 1, 2011.***

SB106 (S): See page 4 under Taxes and Revenue.

The following bills failed:

HB175/SB110 (O): Would have prohibited an employer from using a credit report in hiring and promotions unless the Commissioner of Labor determined the employer had a bonafide reason to use the reports.

HB370 (O): Would have required an employer to pay the regular full wage earned for each pay period on all paydays that fall within any given year. (*Bill was later withdrawn*).

HB381 (O): Titled the Workplace Religious Freedom Act, would have allowed an employee to take earned leave to observe Sabbath or other holy days in accordance with a “sincerely held belief”.

HB463 (O): Would have prohibited employers from discriminating against an individual based on “family responsibilities”.

HB504 (O): Would have clarified that an unlawful employment practice is established when a specified classification is a motivating factor for any employment practice, even though other factors were involved.

HB721/SB844 (O): Would have required an employer with a State contract or grant to verify through the Federal E-Verify Program the immigration status of an employee.

HB984 (O): Would have prohibited an employer from not hiring or discharging a person for not answering questions regarding religion, national origin or martial status unless these are bona fide occupational qualifications for employment.

HB1246/SB418 (O): Would have increased damages under Maryland’s Wage and Hour law and mandated payment of attorney’s fees.

HB1272 (O): Would have expanded the definition of “family” in Maryland under the Federal Family and Medical Leave Act of 1993 to include brother, sister, grandparent, grandchild, domestic partner and the son/daughter of a domestic partner.

HB1317/SB785 (O): Would have required a retailer and certain other businesses, which had received state assistance of \$250,000 or is a tenant in a development that received this assistance, to pay a prevailing wage and enter into a labor contract.

HB1320 (O): Would have required an employer to pay the difference between the jury duty fee paid and the employee’s regular salary.

SB181 (O): Would have increased the age to 30 years old for an individual to be considered a child dependent for health care purposes.

UNEMPLOYMENT AND WORKERS COMPENSATION

The only significant legislation enacted was the Unemployment Modernization bill (SB107) that is discussed on page 2 in the Overview. Aside from this compromise, it was pretty much a standoff in this traditional battleground for labor and business.

The following bills passed:

HB405 (S): Allows officers of a close corporation or a LLC to elect to be exempted from workers’ compensation coverage.

SB107 (O): Stabilizes the Unemployment Insurance Fund with \$127 in Federal funds. Makes other cost neutral modernization changes to receive Federal funds and provides flexible payment plans for employers. *(MRA switched to support when amendments were added to make it cost neutral). An emergency bill that became effective in March 2010 but modernization changes do not take effect until March 2011.*

SB34/HB267 (S): Repeals the termination date on the Joint Committee on Unemployment Insurance Oversight.

The following bills failed:

HB206 (S): Would have disqualified an individual from receiving unemployment insurance benefits if they left employment to serve a prison term for a felony conviction.

HB591 (O): Would have altered the unemployment insurance charging and taxation system and decreased the standard rate of contribution that employers are required to pay.

HB751/SB609 (S): Would have allowed an employer or its insurer to be entitled to a credit for compensation paid to a covered employee who is temporarily totally disabled due to an accidental personal injury or an occupational disease when treatment is delayed due to an unrelated injury.

HB968 (O): Would have allowed an appellee to introduce written testimony without the health care provider appearing in person.

HB1082/SB500 (O): Would have eliminated the authority of the chief hearing examiner to determine the amount of lawyer compensation.

HB1318/SB953 (NP): Would have made substantial changes to how Maryland handles death benefits and treats dependents.

SB300 (S): Would have allowed an employer to spread his unemployment payments over the course of the year, either monthly or quarterly over the year. (*Incorporated into SB107*).

SB610 (S): Would have expanded the jurisdiction of the Workers' Compensation Commission to include an appeal of a Commission order to include a request for approval of a settlement agreement.

SB675 (S): Would have exempted directors or officers of a small business or a LLC from unemployment insurance coverage.

COURTS AND SECURITY

Courts and Security was somewhat of a mixed bag for retailers. Probably as many bills MRA supported went down as bills MRA opposed failed. The fate of most was determined the day they were introduced.

Besides the loss prevention value of the legislation regulating auction sales of baby food and formula (HB474/SB431), MRA's major win was the enactment of legislation increasing the amount for jury trial. MRA actually joined with the trial lawyers (*there are cold days in hell*) on this legislation to keep debt collections out of jury trials.

The failure to reduce the threshold for theft (HB728) -- see discussion on page 2 of Overview -- was a disappointment with such a close vote.

The following bills passed:

HB434/HB436/SB118/SB119 (S): Increases the amount in controversy to \$15,000 needed to request a jury trial.

HB456/SB782 (O): See page 5 under Commerce.

HB494/SB431 (S): See page 5 under Commerce.

HB785/SB817 (S): Requires a universal reporting form to be filed for cases of ID theft.

The following bills failed:

HB3 (O): Would have required an employer to furnish body armor for any employee required to carry a firearm as a requirement of the employee's employment.

HB180 (O): Would have required a facility with an ATM machine to install a surveillance camera on the machine. (*MRA got an exemption for in-store ATMs but the bill still failed*).

HB207 (S): Would have given civil immunity to persons protecting their businesses from a robbery by using deadly force.

HB309 (S): Would have expanded the definition of a firearm used in a commission of a crime to include long guns.

HB315/SB584 (S): Would have created the crime of reckless endangerment for a fleeing criminal to attempt to run over a police officer or store security persons with a motor vehicle.

HB728 (S): Would have reduced the threshold for felony theft from \$1,000 to \$500.

HB738 (S): Would have added graffiti to the criminal statute for malicious destruction of property.

HB753 (S): Would have prohibited a pawnbroker from selling cosmetics, over the counter drugs and food products.

HB756 (S): Would have altered the definition of a criminal gang activity so that it would not have to be an ongoing activity.

HB783/SB817 (S): Would have allowed a court to order restitution for reasonable time lost in the cases of ID Theft.

HB831 (S): See page 6 under Commerce.

HB787/SB817/SB211 (S): Would have allowed a court to order restitution for losses suffered by ID Theft.

HB992 (S): Would have allowed the use of force including deadly force on a person who unlawfully enters a place of business.

HB1235/HB1265 (S): Would have broadened the underlying crime for a person to be convicted of a criminal gang activity.

HB1259 (S): Would have changed the definition of a criminal gang to include any association instead of an ongoing association.

MISCELLANEOUS

The following bills passed:

HB335/HB764/SB204 (S): Requires the State Board of Education to develop curriculum content for a course in financial literacy.

HB459/SB454 (S): Requires a licensing agency of State government to issue a statement of justification for a fee increase or decrease.

HB1416/SB940 (S): Allows a local jurisdiction to grant waivers under the Maryland Accessibility Code for restriping disabled parking spaces.

The following bills failed:

HB63 (S): Would have prohibited the condemnation of private property by a government entity for the purposes of economic development or to be transferred to a private party.

HB1008/SB507 (O): Would have recreated IWIF as a private mutual insurance company and renames it to be known as the Chesapeake Employers' Mutual Insurance Company.

HB1182 (NP): Would have allowed a county or municipal corporation to create a specified business improvement districts.

MRA Officers 2009 - 2010

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