

INJURY PREVENTION BACKGROUND REPORT TO ACCOMPANY REPORT ON SURVEY OF MARYLAND LEGISLATORS¹

The Legal Resource Center for Tobacco Regulation, Litigation and Advocacy (the Center) conducted research on injury prevention legislation in Maryland, at the federal level and in other states. The Center also conducted research into Maryland special funds legislation and injury prevention special fund legislation in other states. This background information assisted the Center in preparing for and conducting the legislator interviews addressed in the Survey Report for the Department of Health and Mental Hygiene (the Department), provided under separate cover, and in preparation of the recommendations section of the Survey Report.

RECENT HISTORY OF MARYLAND INJURY PREVENTION LEGISLATION AND PROPOSALS

In recent years, the Maryland General Assembly considered a variety of bills focusing on injury prevention. The summary below is not intended to be exhaustive; rather, it is illustrative and provides information about how the Maryland legislature responds to certain injury prevention proposals.

Traumatic Brain Injury

Several recent legislative proposals focused on the prevention of traumatic brain injury, particularly with respect to minors. Currently, only those under 16 years of age are required to wear a helmet when operating a bicycle or when riding in a seat or trailer attached to a bicycle or when using a scooter or in-line skates. MD. TRANSPORTATION ARTICLE §21-1207.1. These restrictions were passed in 1995 (bicycles) and 2001 (scooters and in-line skates). Research shows that mandatory helmet laws significantly increase the rate of helmet use and reduce the rate of brain injury during a variety of recreational activities, with most of the research focusing on bicycle use.² In recent years, legislators

¹ This Background Report was prepared pursuant to a contract between the Maryland Department of Health and Mental Hygiene (the Department) and the University of Maryland, Baltimore. Specifically, this work arises out of the May 19, 2009, Modification to Contract OPASS-9-9945G. The Modification requires the University to coordinate with the Department to further injury prevention policy and specifically to: 1) Review state and national data about the leading causes of injury; 2) Research recent history of injury prevention legislation and evaluate effectiveness; 3) Create an informal survey tool to assess receptiveness to injury prevention legislation, as well as in-person discussions with legislators; and 4) Analyze collected information and prepare a summary report for the Department outlining findings, including but not limited to areas of interest, specific recommended legislative proposals, and potential advocates. The Survey Report is due to the Department by January 15, 2010. This Background Report, though not specifically required, provides a foundation for the Survey Report, and highlights issues that are mentioned in the Survey Report.

² Although there is no study showing the specific impact of Maryland's 1995 helmet law, there is a 1992 study showing that Howard County's helmet law significantly increased helmet use among minors; indeed, at that time, helmet use in Howard County was found to be the highest in any municipality in the United States. Coté, *et al.*,

have proposed expansions and enhancements to those helmet requirements. For example, in 2009, House Bill 129³ would have required minors (under 18) to wear a helmet when riding a horse on a public road or other public property and House Bill 437⁴ would have required minors (under 18) to wear a helmet when riding a motor scooter, bicycle or moped. House Bill 187⁵ would have imposed the helmet requirement for bicyclists and motor scooter operators to all users, regardless of age. In 2006, House Bill 496⁶ would have imposed helmet requirements similar to those proposed in House Bill 187. In 2007, House Bill 718⁷ would have imposed a helmet requirement for those under age 16 using a skateboard on certain roads. The Department supported most of these helmet proposals, however, none of the bills passed. In fact, none of these bills were subject to vote in committee, providing no information with respect to support or opposition within the pertinent committees. File reviews do not make clear why the proposals failed, however, there is a persistent sense that the “little Libertarian” causes these bills to fail—that is the little voice in all of us, particularly legislators, that suggests that people be left to make their own decisions, good and bad, and that government not control behaviors that do not injure or put at risk others.

In 2008, the legislature considered House Bill 114, with support from the Department. This bill would have required, among other things, that anyone under age 16 wear a helmet when operating an all-terrain vehicle (ATV). Although House Bill 114 passed, the substantive provisions were removed and replaced with provisions that created an All Terrain Vehicle Safety Task Force. In part as a result of that

Bicycle helmet use among Maryland children: effect of legislation and education, Pediatrics, vol. 89, No. 6 (Part 2), at 1216-20 (June 1992).

³ In addition to the Department, the following entities supported HB 129 (2009): The Epilepsy Foundation of the Chesapeake Region and Abilities Network, MDAAP, Children’s National Medical Center, Maryland College of Emergency Physicians, Maryland PTA , Johns Hopkins Children’s Center, Maryland Department of Disabilities, Kennedy Krieger Institute, and Stacy Suskauer (pediatric rehab physician). The legislative file reveals no opposition.

⁴ In addition to the Department, the following entities supported HB 437 (2009): MedChi, Maryland Local Anesthesiology, Maryland Chapter of the American College of Emergency Physicians, FCAP, Maryland Society of Otolaryngology, Maryland Chapter of American Academy of Pediatrics, Maryland Chiefs of Police, Maryland Department of Transportation, Maryland PTA, Maryland Sheriffs Association, and Maryland Department of Disabilities. The legislative file reveals no opposition.

⁵ In addition to the Department, the following entities supported HB 187 (2009): The Epilepsy Foundation of the Chesapeake Region and Abilities Network, Partnership for a Healthier Carroll County, bicyclists/concerned citizens, Advocates For Highway and Auto Safety, Carroll County Health Department, Maryland College of Emergency Physicians, MACHO, Maryland PTA, Maryland Department of Disabilities, Maryland Chiefs of Police, and Maryland Sheriffs Association. The file also reveals support from concerned citizens, family members of individuals killed in relevant accidents, and bicycle enthusiasts. The legislative file reveals no opposition.

⁶ There is no record of the Department’s position on HB 496 (2006) in the file; however, the following entities supported the bill: State Farm Insurance, Maryland Sheriff’s Association, Emergency Physicians, George Washington University Medical Center, Advocates for Highway and Auto Safety, MedChi, Maryland Chiefs of Police Association, and American Academy of Pediatrics. The legislative file reveals no opposition.

⁷ In addition to the Department, the following entities supported HB 718 (2007): MedChi and American Academy of Pediatrics. The legislative file revealed no opposition.

Task Force, in 2009, the legislature considered two ATV safety bills: Senate Bill 547, requiring certain safety equipment (helmet and eye protection) for ATV operation, and Senate Bill 548, imposing certain training and certification requirements for the operation of ATVs by minors. Again, the Department supported these bills yet they were not voted on in committee. Center Director Kathleen Dachele was present for most of the hearings on these bills, talked with ATV industry advocates who were supporting the bill and later had discussions with Senator Forehand, lead sponsor and a member of the Senate Judicial Proceedings Committee that heard the bill. It is clear that ATV regulation continues to fail because 1) legislators do not perceive the problem of ATV injuries as prevalent or serious and 2) legislators do not desire to regulate behavior on private property, where most ATV usage occurs, and 3) the “little Libertarian.”

It is important to note that while Maryland imposes a helmet requirement on motorcycle operators and passengers, the General Assembly frequently considers bills that would create exceptions to that law. For example, in 2009, Senate Bills 766 and 253 would have created certain exceptions to the motorcycle helmet law. The Department opposed both bills and both failed; however, this is an annual battle and demonstration that the success of injury prevention legislation does not end the need for vigilance on the issue with respect to the legislature. This is a fine example, however, of how established law is tough to change—the helmet law took some time to get passed; now that it is law, the presumption is that it will stay law. Yet each year trauma centers and public health and injury prevention advocates must return to Annapolis to oppose lifting the requirement.

In 2009, the General Assembly considered but failed to pass House Bill 496/Senate Bill 428 (2009),⁸ which would have required that motor vehicles provide a safe distance (no less than 3 feet) when passing a bicycle, motor scooter, and similar vehicles. (A similar bill, House Bill 143, was considered and failed in 2008.⁹) The Department filed a letter of information on this bill. Although injury prevention advocates and bicycling enthusiasts supported the bill, opponents stressed that there may be circumstances in which it would be impossible for a driver to provide the buffer, that there may be nefarious bicyclists who would purposely veer into the buffer, and that there are significant difficulties in enforcement. Delegate Cardin intends to present the bill again in 2009 and will push for a Committee

⁸ There is no record of the Department’s position on HB 496/SB 428 (2009), however, the following individuals and entities expressed support for the bill: MTA, several local groups of bicycle enthusiasts, and One Less Car. The 2009 bill also picked up legislative support from key members, Delegates Ali, Bobo, Carr, Frush, Hammen, and McIntosh. The legislative file reveals no opposition.

⁹ There is no record of the Department’s position on HB 143 (2008) in the legislative file; however, the following entities supported the bill: Mid-Atlantic AAA, OneLessCar, Oxon Hill Trail Club, College Park Bicycles, Baltimore Bicycling Club, Light Street Cycles, Transit Riders Action Council, and State Highway Administration. The legislative file reveals no opposition.

vote to at least have a record of where the members are on the issue. There apparently is a sentiment that this issue is important but ripe for public education and not appropriate for legislation.

Motor Vehicle Safety

Recent legislative proposals have focused on restrictions on the use of technology while operating a motor vehicle. In 2009, the General Assembly passed Senate Bill 98, prohibiting the sending of text messages while driving, but failed to pass House Bill 518, prohibiting the use of wireless devices while driving for school bus drivers and those on a provisional license and prohibiting the use of wireless devices by all drivers unless employing a hands-free device. Bills similar to House Bill 518 (2009) have been introduced for many years in the General Assembly and the Department has supported many of those bills. At least six states and many municipalities around the country, including neighboring District of Columbia, impose the hands-free restriction on drivers and momentum is clearly in that direction. Indeed, research demonstrates the negative impact of road safety from the use of wireless devices and the federal government has encouraged states to take action to restrict use of such devices. Some argue that the law is incomplete, inappropriately singling out use of handheld cell phones while other behaviors such as eating, reading maps, and putting on makeup are equally as distracting and dangerous. Yet these opponents generally do not suggest an all-encompassing law; rather, they argue for no restrictions. Perhaps most accurately, it appears that the “little Libertarian” argument that government should not be telling citizens how to behave has prevailed thus far in Maryland; that the cell phone industry and other strong lobbies oppose the legislation creates a significant hurdle as well. The passage of Senate Bill 98 (2009), forbidding texting while driving, shows a modest shift in the right direction. Data on the effectiveness of that legislation is not yet available as the ban went into effect on October 1, 2009.

In addition to the use of electronic devices, the use of child safety seats and seatbelts is also a frequent issue of legislative proposal. In 2009, the General Assembly amended the child safety seats requirement with Senate Bill 789, increasing the coverage to children up to age 8, up to 4’9” tall and up to 65 pounds. On this issue, the General Assembly has shown a willingness to continually update the requirements as data shows the benefit of the enhancements. Although the focus on children and the ready acceptability of these provisions in the affected community explain the General Assembly’s willingness to some extent, deeper study of the history of this legislation and its continual enhancement may assist advocates in seeking other injury prevention legislation. That study will show, at a minimum, that the federal government has encouraged such laws and even threatened to suspend federal highway dollars for states that fail to comply. Moreover, that study will also show that parents and others who transport children readily complied with the law, even as the requirement expanded over the years to include older and heavier children. Hence, enforcement is not a significant issue. As with the bicycle

helmet laws, research shows that the use of child safety seats, at the increasing age, height and weight requirements, reduces injury and death among children, making these laws highly effective (at little cost to the government). The legislature has accepted this data and acted on it repeatedly, a sign that, much like the motorcycle helmet laws, getting a foot in the door can be a giant step in injury prevention.

Although Maryland has mandated seatbelt use for decades, in 1997, the legislature allowed for the enforcement of that provision as a primary offense. There have been many attempts to both remove the mandatory provisions (for example, House Bill 376 (1999)) and to demote the violation to a secondary offense (for example, House Bill 1531 (2008)). As with the proposed motorcycle helmet law exceptions, the Department opposes these changes; it is important to note, however, that continued vigilance at the legislature is essential to ensure that this injury prevention law is not changed to the detriment of public safety.

In 2009, the General Assembly passed Senate Bill 277, allowing for the establishment of speed cameras by all counties and in certain highway zones. The voting record and amendment history on this bill show the divisiveness of the legislature on the issue. Some legislators supported the bill because of its impact on injury prevention; vocal opponents argued that the prevention impact was a ruse and that the bill was simply a way in which the State and local governments could raise funds. As a matter of compromise, each local jurisdiction that institutes a speed camera provision must report to the Governor by December 31, 2013, on the effectiveness of the cameras in reducing injury and improving road safety. The effectiveness of this legislation cannot be measured yet, but by 2013, the State should have information on whether and to what extent the legislation reduced injury. This is an interesting approach to injury prevention legislation that causes some concern. While requiring assessments of efficacy is a sensible idea, it is important that the required surveillance be funded properly and that sufficient time be given for such assessment.

Poisoning

In 2007, the General Assembly passed House Bill 401/Senate Bill 535, requiring the installation of carbon monoxide detectors in new residential construction. Carbon monoxide poisoning is a leading cause of accidental poisoning death, although the poisoning occurs more frequently in a vehicle than a home. At the time House Bill 401 passed, eleven states required such monitors; there was both a legislative movement toward such requirements as well as technological advances that made monitors more accessible at lower cost. Within that perfect storm, the original carbon monoxide monitor requirement was passed. The effectiveness of the legislation is difficult to gauge as the law applied only to new construction as of January 2008. House Bill 1038 in 2009 would have expanded the carbon monoxide monitor requirement (requiring more detectors per home but still only applicable to new

construction) and imposed a radon monitor requirement on new residential construction. There was no evidence that the 2007 carbon monoxide legislation was not effective such that expansion of those provisions was appropriate or necessary just two years later in 2009. Moreover, there was a clear sense that the legislators believed the risk of radon poisoning to be considerably lower than that for carbon monoxide poisoning, low enough that legislation was not necessary. House Bill 1038 (2009) failed in the Environmental Matters Committee, as there was no real imperative for passage identified for the body that had just passed the carbon monoxide bill two years earlier. This is the opposite of the car seat experience in that the foot in the door was an effective segue to more comprehensive legislation. This serves as an example that advocates should seek strong, comprehensive legislation initially as later changes may be difficult and that a certain level of urgency (shown with solid research and data from reliable sources) must accompany a request for injury prevention legislation.

Lead poisoning is another area of injury prevention that is often presented to the General Assembly. Many recent legislative proposals (for example, House Bill 1156 (2009)) have focused on issues of civil liability for lead paint injuries and deaths and are not particularly relevant to the injury prevention discussion. There have been substantive bills considered, however. For example, in 2009, Senate Bill 361 would have increased the remedial action required by those who own property subject to the Reduction in Lead Risk Housing Program.¹⁰ The purpose of the bill was to reduce even further than existing law does the number of children exposed to lead paint and lead paint dust, reducing related injuries. Although the bill passed in committee,¹¹ the legislation was defeated on the Senate floor, 25-22, a very close margin. Opponents argued that the bill would be costly to rental property owners and ineffective in reducing youth exposure to lead paint. Interestingly, some opponents suggested an “uneven playing field” of sorts, arguing that non-compliant rental property owners would have an unfair competitive advantage as they would not be spending monies necessary for compliance. Essentially,

¹⁰ Many entities registered support for SB 361 (2009): Maryland Department of the Environment, Maryland Lead Poisoning Prevention Commission, The Arc of Maryland, Maryland Interfaith Legislative Committee, Maryland Chapter American Academy of Pediatrics, Coalition to End Childhood Lead Poisoning, Baltimore City Mayor’s Office, Saul Kerpelman and Associates (counsel for poisoned children), Evangelical Lutheran Church, Children’s National Medical Center, MaryPIRG, Maryland Commission on Environmental Justice and Sustainable Communities, CDC Lead Poisoning Branch, City of Annapolis, Stephanie Rawlings-Blake (Baltimore City Council President), East Baltimore Development, NAACP, Mt. Washington Pediatric Hospital, Friends of the Family, Inc. , Baltimore City Health Department, Healthy Homes Maryland Lead Commission, Dogwood Estates LLC, and Hilliard Homes Industries. One owner of multiple rental units and parents of children suffering from lead paint exposure also supported the bill. Opponents included rental property managers, Lead Paint Inspector LLC, Apartment and Office Building Association of Metropolitan Washington, Maryland Association of Realtors, and Maryland Multi-Housing Association.

¹¹ The Committee vote was 7 in favor (Frosh, Gladden, Brochin, Forehand, Muse, Raskin, and Stone) and 4 against (Haines, Jacobs, Mooney, and Simonaire).

minimal enforcement of the law would make compliance a competitive disadvantage. Yet in 2008, the General Assembly passed House Bill 62, prohibiting the sale of children's toys containing lead.¹² There is little question that the history of lead paint legislation provided the foundation for the lead paint in toys legislation.

Fire Safety

The General Assembly passed House Bill 785 in 2007, imposing certain fire safety standards on all cigarettes sold in the State. Because certain cigarette manufacturers supported the bill (as did the entire fire safety community) and the bill matched model legislation adopted across the country, the bill passed. This is an example of how working with industry—even if just one or two strong members of the industry—can result in success. Over the course of two sessions, fire safety and tobacco control advocates worked to create legislation that would satisfy the public safety community and key cigarette manufacturers. Patience and cooperation are necessary for success.

Water Safety

In 2008, House Bill 204 would have required the Secretary of the Department of Health and Mental Hygiene to adopt regulations requiring that certain pool owners meet a 25-1 swimmer to lifeguard ratio (current ratio is 50-1). The bill was vehemently opposed by pool operators, who indicated that such a requirement would be very costly and very difficult to meet due to limited lifeguards. As is often the case in injury prevention, the fiscal impact trumped the prevention benefits and the bill failed.

Injury Prevention as Wellness

An interesting bill passed in 2009 that includes injury prevention in the substantive areas that may be covered in a wellness program. House Bill 610 would allow insurers, non-profit health service plans, health maintenance organizations, and dental plan organizations to provide reasonable incentives for participation in a bona fide wellness program. More specifically, the bill redefined a “bona fide wellness program” to include “a program that is designed to . . . *promote health* or prevent or detect disease or illness; . . . or *prevent and control injury*.” Delegate Morhaim, lead sponsor of the bill, felt that this provision was an important step toward getting insurers to cover myriad injury prevention programs and services. The substantive impact of this legislation will not likely be measurable for some time. It is

¹² In addition to the Department, the following entities supported HB 62 (2008): Prince George's County Council, Women Legislators of Maryland, Maryland Nurses Association, Coalition to End Childhood Lead Poisoning, AFL-CIO, Baltimore City Mayor's Office, and Maryland Nurses Association. Opposition came from the Toy Industry Association.

important, however, that injury prevention advocates be aware of the provision, educate employers and insurers about the value of injury prevention programs and services and encourage the inclusion of such programs and services in wellness programs. This legislation is an example of how a modest proposal could serve as a seed to bigger changes in injury prevention.

RECENT HISTORY OF OTHER STATES' INJURY PREVENTION LEGISLATION AND PROPOSALS

In recent years, several states have considered a variety of bills focusing on injury prevention. The summary below is not intended to be exhaustive; rather, it is illustrative and provides information about certain trends in injury prevention in specific substantive areas.

Traumatic Brain Injury (including some Motor Vehicle)

The National Association of State Head Injury Administrators issued a report in July 2009 that summarized state legislation and public policy initiatives that impact individuals with traumatic brain injuries.¹³ Among the numerous bills discussed in the report are bills categorized under the title "Prevention," including laws related to all-terrain vehicle safety; boating under the influence; child booster seats; child helmet requirements with bicycles, skateboards, and scooters; ignition interlock devices to prevent driving under the influence; motorcycle helmet and seat belt laws; and text messaging while driving bans. Although interested persons should review the full report, a relevant summary is conducted here.

In 2007, Oklahoma passed a law (HB1686)¹⁴ that prohibits passengers under the age of 18 from riding an ATV without a helmet and prohibits multiple riders unless the vehicle is specifically designed for that purpose. Michigan (SB82),¹⁵ Utah (HB140),¹⁶ Massachusetts (SB2018),¹⁷ Kentucky (SB120),¹⁸ and Mississippi (HB558)¹⁹ passed laws in 2008 that mandate the use of child booster seats for children

¹³ NATIONAL ASSOCIATION OF STATE HEAD INJURY ADMINISTRATORS, STATE LEGISLATION AND OTHER STATE PUBLIC POLICY INITIATIVES IMPACTING INDIVIDUALS WITH TRAUMATIC BRAIN INJURY AND THEIR FAMILIES (2009), available at http://www.nashia.org/pdf/statewatch_summary_07_08.pdf. The report only discusses laws that were passed by a state legislature, not those merely proposed.

¹⁴ H.B. 1686, 51st Leg., Reg. Sess. (Okla. 2007), available at http://webserver1.lsb.state.ok.us/2007-08HB/HB1686_int.rtf.

¹⁵ S.B. 82, 94th Leg., Reg. Sess. (Mich. 2008), available at [http://www.legislature.mi.gov/\(S\(hggm0c215sijwc55kwep2a55\)\)/documents/2007-2008/billenrolled/Senate/pdf/2007-snb-0082.pdf](http://www.legislature.mi.gov/(S(hggm0c215sijwc55kwep2a55))/documents/2007-2008/billenrolled/Senate/pdf/2007-snb-0082.pdf).

¹⁶ H.B. 140, 2008 Gen. Sess. (Utah 2008), available at <http://le.utah.gov/~2008/bills/hbillenr/hb0140.pdf>.

¹⁷ S.B. 2018, 185th Leg., Reg. Sess. (Mass. 2008), available at <http://www.mass.gov/legis/laws/seslaw08/sl080079.htm>.

¹⁸ S.B. 120, 2008 Reg. Sess. (Ky. 2008), available at <http://www.lrc.ky.gov/record/08rs/SB120/SCS1.doc>.

¹⁹ H.B. 558, Reg. Sess., (Mi, 2008), available at <http://billstatus.ls.state.ms.us/documents/2008/pdf/HB/0500-0599/HB0558SG.pdf>

under age eight (as Maryland did in 2009). While Virginia passed HJ54 (2008)²⁰ to sponsor the “Use a Helmet: Prevent Epilepsy Campaign”, Delaware passed SB174 (2008)²¹ and New Mexico passed SB397 (2007),²² which require helmet use with bikes, scooters, and skateboards for children under the age of 18. Hawaii passed HB3377 (2007), requiring the use of an ignition interlock device for individuals previously convicted of driving under the influence, while Alaska extended its existing similar law through the passage of HB19 (2008)²³ to limit driver’s license privileges for individuals who circumvent or tamper with the ignition interlock device. Colorado passed a bill in 2007 (HB1117)²⁴ that requires helmet use for motorcyclists under the age of 18, with a surcharge of \$10 for each violation to be deposited in the Colorado Traumatic Brain Injury Trust Fund. In 2007, New Hampshire, the only state without a seat belt law for adults, passed a law (HB533)²⁵ that established a commission to recommend a comprehensive program for increasing seat belt use, while Indiana passed HB1237,²⁶ which requires seat belt use by all passengers in all vehicles. In 2008 and 2009, Alaska, California, Connecticut, Louisiana, Minnesota, New Jersey, and Washington passed laws banning text messaging for all drivers, although the content of the laws vary.²⁷

In 2007 and 2008, Alaska, Virginia, California, Colorado, Pennsylvania, and Washington passed legislation in some form that recognized March as Brain Injury Awareness Month.²⁸ Also in 2007, the North Carolina legislature passed SB103,²⁹ which authorized the use of special registration plates for brain injury awareness. The plates would cost \$20 and the proceeds would fund the Brain Injury Association of North Carolina. These specialized plates are not currently available according to the North

²⁰ H.J. 54, 2008 Reg. Sess. (Va. 2008), *available at* <http://leg1.state.va.us/cgi-bin/legp504.exe?081+ful+HJ54ER+pdf>.

²¹ S.B. 174, Reg. Sess., (De, 2008) *available at* <http://legis.delaware.gov/LIS/lis144.nsf/vwLegislation/SB+174?Opendocument>. This bill also established safety standards for helmet manufacturers.

²² S.B. 397, 2007 Reg. Sess. (N.M. 2007), *available at* <http://legis.state.nm.us/Sessions/07%20Regular/final/SB0397.pdf>. This bill extends helmet requirements to skates and tricycles.

²³ H.B. 19, 25th Leg., Reg. Sess. (Alaska 2008), *available at* <http://www.legis.state.ak.us/PDF/25/Bills/HB0019Z.PDF>.

²⁴ H.B. 1117, 66th Leg., Reg. Sess. (Colo. 2007), *available at* http://www.state.co.us/gov_dir/leg_dir/olls/sl2007a/sl_344.htm.

²⁵ H.B. 533, 2007 Reg. Sess. (N.H. 2007), *available at* <http://www.gencourt.state.nh.us/legislation/2007/hb0533.html>.

²⁶ H.B. 1237, 115th Leg., Reg. Sess. (Ind. 2007), *available at* <http://www.in.gov/legislative/bills/2007/PDF/HE/HE1237.1.pdf>.

²⁷ NATIONAL ASSOCIATION OF STATE HEAD INJURY ADMINISTRATORS, STATE LEGISLATION AND OTHER STATE PUBLIC POLICY INITIATIVES IMPACTING INDIVIDUALS WITH TRAUMATIC BRAIN INJURY AND THEIR FAMILIES (2009), pp 19 -20, *available at* http://www.nashia.org/pdf/statewatch_summary_07_08.pdf.

²⁸ NATIONAL ASSOCIATION OF STATE HEAD INJURY ADMINISTRATORS, STATE LEGISLATION AND OTHER STATE PUBLIC POLICY INITIATIVES IMPACTING INDIVIDUALS WITH TRAUMATIC BRAIN INJURY AND THEIR FAMILIES (2009), pp 20, *available at* http://www.nashia.org/pdf/statewatch_summary_07_08.pdf.

²⁹ S.B. 103, 2007 Reg. Sess. (N.C. 2007), *available at* <http://www.ncga.state.nc.us/Sessions/2007/Bills/Senate/PDF/S103v7.pdf>.

Carolina Division of Motor Vehicles, likely due to lack of adequate numbers to support the plates, as required by the statute.

Cyclist Safety (as a subset of TBI/Motor Vehicle)

Bicycle safety is generally grouped alongside pedestrian safety regulations and legislation, and as of the end of 2008, 21 states impose requirements on riders of certain ages to wear safety helmets. The majority of bicycle safety laws focus on helmet regulations for children, with child riders being required to wear a helmet up to a certain age, varying from 11 to 18. Maryland's current helmet law requires children age 15 and younger to wear a helmet at all times while riding a bicycle.

Connecticut

Connecticut legislators passed Senate Bill 735 in 2009, which requires that at least 1 percent of the total funds expended by the Department of Transportation and any city on a street or highway project be spent to provide sidewalks and bikeways. The law also establishes the 11-member Connecticut Bicycle and Pedestrian Advisory Board.

Maine

In 2007, Maine enacted a "three feet passing" law for cyclists and motorists, a provision currently in effect in 11 other states. The law provides that "[a]n operator of a motor vehicle that is passing a bicycle proceeding in the same direction shall exercise due care by leaving a distance between the motor vehicle and the bicycle of not less than three feet while the motor vehicle is passing the bicycle. A motor vehicle operator may pass a bicycle traveling in the same direction in a no-passing zone only when it is safe to do so."³⁰ The law imposes points on a driver's record and a significant fine for violations. More information on the "three feet passing" regulations may be found in the National Conference of State Legislatures publication, *Traffic Safety and Public Health: State Legislative Action 2008* (published April 2009 at <http://www.ncsl.org/documents/transportation/08trafficsafety.pdf>).

Fire Safety

Given that most residential fires occur in winter months and the impact of residential fires is significant in densely populated areas, the scope of the research was limited to California, Illinois, Massachusetts, Minnesota, and New York.

³⁰ S.P. 643, L.D.1808 Maine 123rd Legis. First Regular session (2007) available at http://www.mainelegislature.org/legis/bills/bills_123rd/billpdfs/SP064301.pdf

California

In 2009, the California legislature proposed a bill, AB1127, which would require school modernization projects to include the installation of an automatic fire sprinkler system. This bill stalled in committee. In the 2007-08 Regular Session, the legislature considered several bills relating to firework restrictions. AB476 (2007) proposed to increase the fines for violating the State Fireworks Law and allow for impoundment of any vehicle used to transport dangerous fireworks without a valid permit. AB2170 (2008) proposed to make it “a misdemeanor to possess, manufacture, sell, use, or discharge, or offer to do so, any type of fireworks . . . in any high or very high fire hazard severity zone” Neither of these bills made it out of committee. SB839 (2008),³¹ which was enacted, makes it a crime to possess a specified amount of dangerous fireworks, and creates the State Fire Marshal Fireworks Enforcement and Disposal Fund, which would receive 65% of the penalty imposed. The legislature passed a bill, AB759 (2008),³² which was later vetoed by the Governor, that would require State Fire Marshals to conduct annual inspections of all licensed residential care facilities for the elderly with 6 or fewer residents.

Illinois

In 2009, the Illinois legislature passed a bill, HB2592,³³ which establishes a special fund called the Fire Prevention Fund, which would receive money from the Department of Insurance, from fees and reimbursements received by the Office of the State Fire Marshal, and from receipts from boiler and pressure vessel certification. The money will be used primarily for fire department training.

Massachusetts

In 2009, the Massachusetts legislature considered a bill, SB994, that would raise the fine for violations of laws related to fire, explosions, and fire prevention. This bill stalled in the Joint Committee on Public Safety and Homeland Security.

New York

In 2009, the New York legislature contemplated a bill, A02326, that would prohibit the sale or distribution of an electrical cord or extension cord that contains a fraudulent seal for the Underwriters’ Laboratory and would establish a training seminar for identifying false UL labels. This bill passed the Assembly and was referred to the Senate Rules Committee, where it remained. Another bill, A06311

³¹ S.B. 839, 2007–08 Leg., Reg. Sess. (Cal. 2007), *available at* http://www.leginfo.ca.gov/pub/07-08/bill/sen/sb_0801-0850/sb_839_bill_20071012_chaptered.pdf.

³² A.B. 759, 2007-08 Leg., Reg. Sess. (Cal. 2008), *available at* http://www.leginfo.ca.gov/pub/07-08/bill/asm/ab_0751-0800/ab_759_bill_20080821_enrolled.pdf.

³³ H.B. 2592, 96th Leg., Reg. Sess. (Ill. 2009), *available at* <http://www.ilga.gov/legislation/publicacts/96/PDF/096-0286.pdf>.

(2009), proposed to require installation of an operable carbon monoxide detector in all restaurants built or sold after December 1, 2009. This bill stalled in the Governmental Operations Committee.

Poison Prevention

There does not appear to be significant recent activity within state legislatures regarding poisoning. A brief review of the establishment and operation of poison control centers is provided here, however, as those centers serve a significant function and have, in recent years, suffered financial setbacks. According to the National Conference of State Legislatures, local hospitals were once the primary source of funding for poison control centers, but hospital budgets have experienced fiscal constraints, resulting in cutbacks. In addition, as the number of poison control centers declined, the geographic areas of the remaining centers grew to the point that local hospitals did not want to provide services outside of their own areas. Hospitals and other health care providers remain among the primary users of the expertise offered by poison control centers. Congress recognized the value of these centers with the passage of the Poison Center Enhancement and Awareness Act in 2000 and the reauthorization of the Act in 2003. These Acts mandate the establishment of a nationwide toll-free phone number to be used to access regional poison control centers. However, poison control centers continue to face difficulties in securing stable, long-term funding. At least seventy-five percent of centers receive less than twenty-five percent of total funding from federal sources, and approximately half of poison control centers receive more than fifty percent of total funding from state sources. Almost one-third of centers reported facing a real threat of closure in the past five years.

All 50 states, American Samoa, the District of Columbia, Federated States of Micronesia, Guam, Puerto Rico, and the U.S. Virgin Islands are served by at least one poison control center. According to the American Association of Poison Control Centers, there are 61 poison control centers to serve individuals residing in all 50 states and United States territories. At least 30 states have statutes related to poison control centers or poison prevention, which does not include Maryland. A sampling of unique poison control statutes are as follows:

Arizona

Ariz. Rev. Stat. Ann. § 36-1161, et seq. requires the Department of Health Services to establish a poison and drug information center located at and affiliated with the University of Arizona. The law was amended by Ariz. Sess. Laws, Chap. 10 (HB 2013 of the 2009 Third Special Session) to establish two separate poison control centers. The Arizona Poison and Drug Information Center, located at the University of Arizona, serves all counties except Maricopa County. The second, privately-operated center serves only Maricopa County. The law requires that each center provide comprehensive poison and drug information and management of poisoned persons.

Florida

Fla. Stat. § 395.1027 requires that three accredited regional poison control centers be created. The law requires each center to be affiliated with and located in a Level I trauma center as well as affiliated with an accredited medical school or college of pharmacy. Each regional poison control center must provide toll-free access, case management, professional consultation, prevention education, and data collection and reporting. The law requires telephone numbers for regional poison control centers to be given special prominence, with details on compliance provided. Each regional poison control center must develop a pre-hospital emergency dispatch protocol. The law allows patient medical records to be released to poison control centers for the purpose of treating a poisoning episode.

Oregon

Or. Rev. Stat. § 431.890 (1991) creates the Poison Prevention Task Force in the Poison Center of the Oregon Health Sciences University. The task force reviews, grants or denies certain requests. The law directs the task force to obtain and evaluate statewide poisoning incidence and severity data every two years. Or. Rev. Stat. § 442.625 requires five percent of the Emergency Medical Services Enhancement Account fund to be distributed to the Oregon Poison Control Center.

West Virginia

W. Va. Code §18B-11B-1et seq. (2006) continues the West Virginia Poison Center, operated by West Virginia University and certified by the American Association of Poison Centers (or a similar organization), and exempts it from hiring freezes affecting the University. The law creates the West Virginia Poison Center Advisory Board. The law states that the center must provide 24-hour, seven days per week emergency telephone management and treatment referral; emergency telephone treatment recommendations for all types of poisonings, chemical exposures, drug overdoses and exposure to weapons of mass destruction; telephone follow-up for patients; surveillance of human poison exposures; and community education.

Fall Prevention

Currently, there are only 13 states operating under fall prevention coalitions, with 10 other states considering legislation to explore and develop coalitions to help prevent falls. Those states that currently have fall prevention coalition legislation in operation are California, Washington, Minnesota, Wisconsin, Missouri, Michigan, Ohio, Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, and North

Carolina.³⁴ The 10 states considering falls prevention coalitions are Oregon, Arizona, New Mexico, Texas, Nebraska, Illinois, Kentucky, Pennsylvania, New York, and Florida.³⁵ Following is a sample of common bills that have been enacted and those that are currently under consideration in the various aforementioned states.

Connecticut

In October of 2009, Connecticut enacted a budgetary measure to establish a falls prevention program via HB7005d. Sponsored by Representative Donovan, HB7005d establishes a falls prevention program with the Connecticut Department of Social Services that 1) supports research, development and evaluation of risk identification and intervention strategies; 2) establishes a professional education program in fall prevention; and 3) oversees and supports demonstration and research projects.

Massachusetts

The Massachusetts legislature recently considered fall prevention legislation. Massachusetts SB318 - "An Act to Prevent Falls Among Older Adults"- was proposed by Senator Moore and was enacted during the 2009 legislative session. SB318 establishes a Falls Prevention Program to: (1) develop effective public education strategies in a statewide initiative to reduce falls among older adults and to educate older adults, family members, employers, and caregivers; (2) intensify services and conduct research to identify, synthesize and translate information on falls prevention from interdisciplinary research into best practices and to disseminate information to target audiences; (3) support demonstration projects designed to reduce the risk of falls and/or injuries caused by falls; and (4) require the Secretary of Elder Affairs to evaluate the effect of falls on health care costs, the potential for reducing falls, and the most effective strategies for reducing health care costs associated with falls. In 2008, Senator Moore also sponsored SR317 in conjunction with SB318, which seeks to establish a special committee on falls prevention for seniors, as well as commission a comprehensive study on the effects of falls on seniors, as well as the potential for reducing the number of falls for older adults.

³⁴ <http://www.ncsl.org/Default.aspx?TabId=13854>

³⁵ <http://www.ncsl.org/Default.aspx?TabId=13854>

Texas

Texas sits in between Massachusetts and Connecticut, as it has passed falls prevention awareness legislation but has yet to pass legislation implementing a comprehensive fall prevention program or initiative. Texas Representative Rose introduced HB703 – “Relating to Fall Prevention Awareness,” which was signed into law by the governor on May 23, 2009 and establishes "Fall Prevention Awareness Week." This law allows the State's Department of Aging and Disability Services to develop recommendations to: (1) raise public awareness about fall prevention; (2) educate older adults and individuals who provide care to older adults about best practices to reduce the incidence and risk of falls among older adults; (3) encourage state and local governments and the private sector to promote policies and programs that help reduce the incidence and risk of falls among older adults; (4) encourage area agencies on aging to include fall prevention education in their services; (5) develop a system for reporting falls to improve available information on falls; and (6) incorporate fall prevention guidelines into state and local planning documents that affect housing, transportation, parks, recreational facilities, and other public facilities. However, Representative Rose’s accompanying legislation, HB4160 – “Relating to Health and Human Services Programs Designed to Assist Elderly Individuals” – is still in committee in the Texas state legislature. HB4160 would take the provisions of HB703 to create a statewide initiative, and would require the Health and Human Services Commission to develop recommendations and implement policies designed to assist elderly individuals in the community, including supporting initiatives intended to help prevent accidents in the home that hasten the need for facility-based care, including fall prevention initiatives. As is, Texas has passed a falls prevention awareness bill, but has stopped short of requiring its public health departments to take next step and develop initiatives to implement fall prevention protocols.

Washington

Washington has two separate pieces of falls prevention legislation that were recently enacted. HB2668 – “Expanding Programs for Persons Needing Long-Term Care” - was sponsored by Representative Morrel and enacted in March of 2008. The law requires the Department of Social and Health Services to establish a statewide fall prevention program, which shall include networking community services; identifying service gaps; making affordable senior-based, evaluated exercise programs more available; providing consumer education to older adults, their adult children, and the community at large; and conducting professional education on fall risk identification and reduction. Washington also enacted falls prevention legislation in the form of more training for elder care providers in the form of SB6180– “Long-Term Care Workers – Training, Background Checks” – which was

sponsored by Senator Keiser and enacted in July 2009. SB6180 requires long-term care workers to complete 70 hours of long-term care basic training, including fall prevention training.

*Water Safety*³⁶

Due to the ubiquity of boating in the United States, the scope of the research for water safety legislation was limited to California, Florida, Minnesota, New York, and Virginia. These states were selected based on the common use of waterways.

California

The California legislature considered two bills in recent years that relate to water safety. AB2222 (2004),³⁷ which was enacted into law, proposed the Anthony Farr and Stacy Beckett Boating Safety Act, which would make it unlawful to operate a motorized vessel, or have the engine of a motorized vessel run idle, while someone is teak surfing, platform dragging, or bodysurfing behind the motorized vessel, or while someone is occupying or holding onto the swim platform, swim deck, swim step, or swim ladder. The purpose of the law was to prevent injuries due to carbon monoxide poisoning. SB154 (2009) proposed an amendment to existing law, which prohibits a person from operating a vessel or manipulating water skis or an aquaplane or similar device or serving as a crew member of a charter boat under the influence of an alcoholic beverage or drug. The proposed amendment would, as a condition of probation, mandate successful completion of a licensed, alcohol or drug recovery services program in conformance with existing provisions applicable to driving under the influence motor vehicle offenses.

Florida

A number of bills were proposed in 2008 and 2009 that relate to water safety, including safety course requirements, the regulation of personal watercraft, the use of personal flotation devices, and the legal implications of boating under the influence. In 2009, the Florida legislature considered bills S306, S2536, H155, and H1423, all of which contemplated imposing a safety course requirement for those operating certain vessels. S306 (2009) and H155 (2009) proposed to increase the legal age for operation of a personal watercraft from fourteen to sixteen and to require a boating safety license for operation of the watercraft. The requirements of S306 would be applicable to anyone who owns, leases, or rents a personal watercraft. S306 failed to pass in the Senate, while H155 died in the Committee on Natural

³⁶ For a comparison of state boating laws, see NAT'L ASS'N STATE BOATING L. ADMIN., REFERENCE GUIDE TO STATE BOATING LAWS, <http://www.nasbla.net/referenceguide/index.php>. Note: This section does not describe comprehensively laws that restrict the use of alcohol while operating a boat or similar vessel.

³⁷ A.B. 2222, 2003–04 Leg., Reg. Sess., 2009 CAL. HARB. & NAV. CODE § 681–685, *available at* http://www.leginfo.ca.gov/pub/03-04/bill/asm/ab_2201-2250/ab_2221-2250_ab_2222_bill_20040917_chaptered.pdf.

Resources Appropriations. S2536 (2009), called the Osmany “Ozzie” Castellanos Boating Safety Education Act, proposed to impose a requirement on anyone born on or after January 1, 1988, to have a boating safety identification card in order to operate a vessel with a motor of 10 hp or greater; however, the bill included a list of exemptions, including use on a private lake or pond. H1423, which was enacted as Chapter 86 in 2009,³⁸ incorporated the Osmany “Ozzie” Castellanos Boating Safety Education Act. S406 (2008) proposed a requirement that all riders engaged in parasailing wear a personal flotation device, but the bill died in the Committee on General Government Appropriations. S1546 (2008) proposed a prohibition on the operation of certain vessels unless every person under 6 years of age is wearing a Coast Guard approved personal floatation device while the vessel is underway, but the bill died in the Committee on Environmental Preservation and Conservation.

Minnesota

Two particularly relevant bills were recently proposed in Minnesota. One bill, HF2216/SF1994 (2007), proposed a surcharge on the license of watercraft, the proceeds of which would be used for the prevention, control, and research of aquatic invasive species. While this bill is not an injury prevention bill, the use of a similar surcharge may be an option for future water-related injury prevention legislation. HF2216 and SF1994 died in Committee on Environment and Natural Resources. A second bill, SF1116 (2005),³⁹ proposed a prohibition on the operation of a watercraft with a child under 10 years of age onboard unless the child is wearing an appropriate personal floatation device or is in an enclosed cabin. This bill was passed and became effective on May 6, 2005.

New York

Several bills were proposed in the New York legislature in 2009 that pertain to water safety. One bill, A05510 (2009), would require everyone under the age of eighteen who operates a vessel, and anyone convicted of a watercraft-related offense involving alcohol, to get a boating safety certificate. A05510 was referred to the Transportation Committee, where it remained. A similar bill, A05889 (2009), would require that all operators of mechanically propelled boating vessels born on or after January 1, 1992, hold a boating safety certificate, exempting from these requirements any operator who is accompanied by a person who is 18 years of age and who either holds a boating safety certificate or is not required to hold a boating safety certificate due to the 1992 cut-off date. The bill reached a third reading, but was not voted on. A third bill, A01909 (2009), would provide that the money received by the imposition of taxes on

³⁸ H. 1423, 2009 Leg., Reg. Sess. (Fla. 2009), *available at* http://laws.flrules.org/files/Ch_2009-086.pdf.

³⁹ S.F. 1116, 84th Leg., Reg. Sess. (Minn. 2005), *available at* <https://www.revisor.mn.gov/laws/?id=31&year=2005&type=0>.

motor fuel used in the operation of a pleasure or recreational boat shall be deposited in a Boating and Marine Improvement Fund and used for boating services, including emergency response, marine patrols, boating education, boating and marine law enforcement, among others. This bill was referred to the Ways and Means Committee, where it remained.

Virginia

Two bills recently introduced in Virginia would add requirements for boating education courses and state-wide uniformity for child life jackets. HB1627 (2007),⁴⁰ which was enacted, provides that any person who operates a motorboat with a motor of 10 hp or greater or a personal watercraft must first take certain boating education courses. HJ627 (2009) was a joint resolution to request that the Board of Game and Inland Fisheries and the Department of Game and Inland Fisheries establish regulations that create a uniform and consistent requirement for children to wear life jackets during certain water activities. This bill died in the Committee on Agriculture, Chesapeake and Natural Resources.

Washington

A bill, HB1848 (2009), was introduced into the Washington Legislature to “reduce boating fatalities and injuries, and increase the general safety of Washington’s waterways by implementing the recommendations of recent state studies regarding the enhancement of boating safety. The bill proposed to use existing funds to increase and enhance state and local law enforcement on waterways, among other things. The Senate version of the bill, SB 5691 (2009), passed the Senate, but was returned by the House to the Senate Rules Committee, where it remained. A similar bill, HB2237 (2009), was proposed but died in the Committee on General Government Appropriations. In 2007, the legislature passed a bill, HB1651,⁴¹ which created a boating activities account in the state treasury and an interagency committee for outdoor recreation to distribute funds appropriated from the boating activities account for studies related to boater safety, education, and law enforcement, among other things.

Generally

Additional information on state legislative efforts related to traumatic brain injury is available at: <http://www.birf.info/advocacy/nation/nation-watch.html>.

⁴⁰ H.B. 1627, 2007 Leg., Reg. Sess. (Va. 2007), *available at* <http://leg1.state.va.us/cgi-bin/legp504.exe?071+ful+CHAP0615+pdf>.

⁴¹ Sub. H.B. 1651, 60th Leg., Reg. Sess. (Wash. 2007), *available at* <http://apps.leg.wa.gov/documents/billdocs/2007-08/Pdf/Bills/Session%20Law%202007/1651-S.SL.pdf>.

RECENT HISTORY OF FEDERAL INJURY PREVENTION LEGISLATION, RESOLUTIONS AND PROPOSALS

Congress has demonstrated a keen interest in a variety of injury prevention matters; however, the federal legislature has not passed significant substantive injury prevention legislation recently. Rather, from 2007 to 2009, Congress issued several resolutions indicating the legislature's awareness of many issues within injury prevention.

Traumatic Brain Injury

Both Houses of Congress have contemplated in recent years bills that promote awareness of the need for prevention of traumatic brain injury. Representative Pascrell (NJ) introduced H.Res.178 (111th) to express the need for enhanced public awareness of traumatic brain injury and to support the designation of a National Brain Injury Awareness Month. The House passed this Resolution, which garnered ninety-four co-sponsors, on March 23, 2009. Representative Capps (CA) introduced H.R.477 (110th) to amend the Public Health Service Act to strengthen education, prevention, and treatment programs relating to stroke, including developing and enhancing training for health professionals to improve stroke and traumatic injury prevention, diagnosis, and treatment. The House issued Report 110-75 and passed the bill on March 27, 2007. The bill was referred to the Senate Committee on Health, Education, Labor, and Pensions, where it stalled. Representative Gonzalez (TX) introduced H.R.3673 (110th) to establish the National Trauma Institute under the Department of Defense for the purpose of developing medical technologies to improve injury prevention and diagnosis, survival, and quality of life for victims of trauma and burn injury. The bill was referred to the Subcommittee on Military Personnel, where it remained. Senator Hatch (UT) introduced S.793 (110th) to expand and improve research programs relating to traumatic brain injury and to improve access to rehabilitation and other services for traumatic brain injury. This bill became Public Law 110-206 on April 28, 2008, and is currently being implemented by the CDC, NIH and the Department of Defense specifically at Walter Reed Army Hospital and the Bethesda Naval Hospital, with the focus on research as opposed to the implementation of safety measures. Representative Michaud (ME) introduced a separate measure, H.R.2199 (110th), in 2007 to establish a program to screen veterans eligible for Department of Veterans Affairs (VA) hospital, medical, and nursing home care for symptoms of traumatic brain injury and to develop and carry out a program of long-term care for post-acute traumatic brain injury rehabilitation. This bill passed the House on May 24, 2007, and was referred to the Senate Committee on Veterans' Affairs, where it stalled.

The traumatic brain injury legislation at the federal level identified here focuses primarily on veterans with traumatic brain injuries and on the treatment and study of brain injury, not on prevention. The number of veterans suffering brain injuries has increased in modern warfare as medical professionals

in the field are able to save soldiers who previously would have died; many of those saved suffer traumatic brain injuries. Veterans are, of course, a highly sympathetic population such that voting in support of research on or support for their brain injuries is a politically attractive option. Further, the target group for Senator Hatch's S.793 is already covered under the umbrella of the federal government's health insurance program for veterans, and thus extending coverage made political and fiscal sense on the federal level. Because all populations benefit from the study of treatment for traumatic brain injury, this legislation has broader outcomes. However, there is no immediate prevention aspect to the study of injury after-the-fact.

Fall Prevention

The Senate has considered measures to address fall prevention particularly among the elderly. Senator Kohl (WI) introduced S.Res.276 (111th) to designate September 22, 2009, as National Falls Prevention Awareness Day. The purpose of the Resolution is to encourage businesses, individuals, governments, the public health community, and health care providers to work together to promote the awareness of falls among older people and to identify and adopt policies to prevent such falls. Senator Kohl also hoped to urge the CDC to continue developing and evaluating interventions to prevent falls. On September 21, 2009, the Senate passed the resolution. Senators Enzi (WY) and Mikulski (MD) introduced S.845 (110th) to expand and intensify programs with respect to research and related activities concerning elder falls, such as a support for a national education campaign focusing on reducing falls among older adults and preventing repeat falls. This bill became Public Law 110-202 on April 23, 2008. The principal goal of the bill proposed by Enzi and Mikulski is to provide federal funding in the form of grants, contracts or cooperative agreements to carry out local education programs, as well as to fund research into ways to reduce elderly fall risks in the home, in hospitals and in other arenas where falls occur on a regular basis. The Senators encourage cooperation among the states. Both pieces of legislation demonstrate federal support for senior falls prevention. To get ahead of the pack, the Department might consider advocating for falls prevention legislation to demonstrate to the CDC the State's understanding of the importance of such policies and to improve the odds of receiving falls prevention funding.

Water Safety

The House of Representatives has considered several resolutions relating to water safety. Representative Tauscher (CA) introduced H.Res.331 (111th) to educate the public on the prevention of drowning associated with children near swimming and water recreational facilities; the Resolution would establish a National Drowning Prevention and Water Safety Month. The Resolution was referred to the

House Committee on Energy and Commerce but has not been voted on in committee. Representative Sires (NJ) introduced H.Res.57 (111th) to stress the importance of access to swimming lessons for all U.S. communities as an integral part of drowning prevention. That Resolution encourages state and local governments to fund initiatives that provide all children access to swimming education yet provides no federal funds for that purpose. On September 14, 2009, the House passed the Resolution. Representative Drake (VA) introduced H.Res.386 (110th) in support of initiatives for recreational boating safety education and accident prevention, such as the National Safe Boating Week, to minimize the number of annual recreational boating fatalities. On May 15, 2007, the House passed this Resolution.

Generally, federal water safety legislation is not substantive and provides no funding; rather, the proposals focus on raising awareness by adoption of a Resolution, a modest type of public education. Although there appears to be legislative support on a federal level for increased awareness, the lack of substance and funding renders the efforts rather ineffective. However, water safety advocates could use the Resolutions and the support they convey both to request federal funds and in legislative efforts at the state and local level.

General Safety Legislation

The House and Senate have considered resolutions regarding general safety and injury prevention awareness. Representative Rogers (MI) introduced H.Res.376 (111th) to support the designation of the calendar year 2009 as “The Year of the Safe Child” and to raise awareness and encourage the prevention of unintentional injuries among children. The resolution was referred to the Committee on Energy and Commerce, where it died for lack of action. Rep Roskam (IL) introduced H.Res.459 (111th) to support the designation of National Safety Month and recognize the contributions of the National Safety Council for its ongoing commitment to raising awareness about the need for the safe practices in our schools and jobs. The House passed the resolution on September 14, 2009. Representative Roybal-Allard (CA) introduced H.Res.1381 (110th) to express the importance of an increased public and private commitment prioritizing prevention and public health for all people in the United States, including the prevention of disease and injury. The House passed this resolution on September 23, 2008. Senator Cardin (MD) introduced a related resolution, S.Res.640 (110th), expressing support for prioritizing public policies focusing on the prevention of disease and injury. This resolution was referred to the Committee on Health, Education, Labor, and Pensions, where it remained.

MARYLAND SPECIAL FUNDS LEGISLATION

INCOME TAX CHECK-OFF FUNDS

Chesapeake Bay and Endangered Species Fund

In 1988, SB 359 created an income tax check-off system to fund the Chesapeake Bay and Endangered Species Fund (CBESF). *See* Natural Resources Article §§1-702 to -706 and 8-2A-01. The Chesapeake Bay Trust had been created in 1985 and drew funding from public and private donors. SB 359 was designed to provide additional and more significant and stable monies to that Fund and to the Endangered Species Account. The Chesapeake Bay Trust is also funded by a motor fuel tax (*see* Tax-General Article §§1104 and 1302), budgetary designations, private donations, and “Treasure the Chesapeake” license plates.

Monies going into the Chesapeake Bay Trust via the CBESF may be used only to provide grants to non-profit organizations, community associations, civic groups, schools, or public agencies for citizen involvement projects and only for education, enhancement or restoration projects concerning the Chesapeake Bay. Funds provided to the Endangered Species Account may be used only to promote the conservation, propagation, and habitat protection of nongame, threatened, or endangered species.

Under SB 359, the Comptroller designed the check-off system and collects the funds designated to CBESF. The Secretary of the Department of Natural Resources administers the funds and issues an annual report showing how the funds are distributed.

There was strong opposition to this bill in 1988. The Comptroller opposed the bill, raising concerns about complicating the tax form, covering costs to implement the program initially (estimated at \$200,000), and opening the floodgates for add-ons for other worthy causes. The Comptroller also suggested that funding a charitable organization in this manner strayed significantly from the government’s “primary function” of setting public policy priorities. United Way, Catholic Charities, the Health and Welfare Council, the Baltimore Council for Equal Business Opportunities, and the Jewish Council, all testified in opposition, concerned that that an income-tax check-off would unfairly show state support for one cause and not others.

Supporters of the bill identified other states’ successful check-off programs as evidence that the procedure is effective and efficient. Based on these examples, supporters projected that the CBESF would generate about \$315,000 per year. Supporters also compiled a long list of legislation related to Chesapeake Bay preservation, probably to remind the legislature that this bill was in support of their previous efforts. In support were the Audubon Society, Garden Club, Izaak Walton League, Worcester

Environmental Trust, Women’s Federation of Clubs, Citizens Chesapeake Executive Council, Commission to Preserve Assateague, and many more environmental organizations.

The Fund has been quite successful. For specific examples of how the fund has been used, go to <http://www.cbtrust.org>. The website states that, “Since its inception by the Maryland General Assembly in 1985, the Chesapeake Bay Trust has awarded over \$27 million in grants to approximately 8,000 grantees. These grants support wetlands restoration, living shorelines, oyster seeding, tree plantings, water quality monitoring, educational experiences, and other organizations and projects that have a long-term, measurable impact on the environment and the health of the Chesapeake Bay. In 2008, 90 percent of the Trust’s expenditures were directed to Chesapeake Bay restoration, education, innovation and outreach programs. [The Trust] awarded over \$3.8 million dollars through 9 successful grant programs.” In fiscal year 2007, the check-off brought in \$1.2 million and in fiscal year 2008 \$1.1 million. (See chart following Public Campaign Financing section for more information.)

Public Campaign Financing

The Maryland income tax form also contains a check-off box for funds to be given to the account that certain candidates for elective office may use for campaign expenses if the candidate agrees to certain terms. There has been much back-and-forth with this legislation—the check-off was created, repealed and reinstated. There have been frequent concerns that the Fund is woefully insufficient to serve its purpose and legislators have introduced bills to provide additional sources for such a fund.

Income from MD income tax check-offs: Chesapeake Bay and Public Campaign Finance

Fiscal Year	Chesapeake Bay	Fair Campaign Fund
2002	1,106,276	133,873
2001	983,858	122,712
2000	957,270	114,475
1999	953,954	109,708
1998	873,873	98,187
1997	875,421	84,772
1996	957, 934	75,278
1995	1,170,970	n/a
1994	1,036,961	n/a
1993	994,638	n/a

1992-1990 – none recorded

Maryland Cancer Fund

In 2004, the Maryland Cancer Fund received an income tax check-off to generate funding when the General Assembly passed HB 1000. This check-off may have had a detrimental impact on the CBESF check-off as CBESF monies generated by the check-off decreased in the years following 2004. The check-off has produced between \$250,000 and \$400,000 annually, according to Robert Villanueva, program director for the Maryland Cancer Fund.

MARYLAND SUBSTANCE ABUSE FUND

The Maryland Substance Abuse Fund (MSAF) Fund was created in 2004 when the General Assembly passed SB 194. *See* Health-General Article §8-6A-01 et seq.; Criminal Procedure Article §6-229. The MSAF is funded in part by a \$150 administrative fee paid by certain defendants who receive a disposition of *nolle prosequi* or *stet* along with the requirement of drug and alcohol treatment under § 6-229 of the Maryland Criminal Procedure Article.⁴² The MSAF also receives monies appropriated in the State budget, profits from investment of money in the Fund, and other money from government and private sources.

SB 194 was introduced in response to an increasing number of incarcerations of non-violent offenders, coupled with a shortage in rehabilitative services. The idea of diverting offenders from prisons and into rehabilitation was widely accepted by legislators as was the creation of the Fund from defendants' fees. County officials who would have the task of implementing the diversion programs expressed concern that the money from the fees would not be enough to fund the rehabilitation programs needed and that the counties would incur expenses that would not be compensated by the State. Maryland Association of Counties, the Baltimore City Mayor's Office, Public Defenders, and various county health officials, recommended "amending the legislation so that the cost of providing a substance abuse counselor in the jails and increasing the availability of treatment beds falls to the state and not local jurisdictions." These concerns were resolved with two provisions, one that sets forth the process through which local drug and alcohol abuse councils could apply for additional funding and another providing that if the General Assembly did not dedicate \$3 million to the implementation of the new program, the legislation would become void.

In addition to the Department and those supporters mentioned above, the bill received support from the Drug Policy Alliance, mothers of incarcerated youth, Maryland Criminal Defense Attorneys,

⁴² The Fund must be used by the Alcohol and Drug Abuse Administration in the following priority order: (1) planning expenses and related costs incurred by local drug and alcohol councils; (2) planning expenses and related costs incurred by any State unit designated to coordinate planning by local drug and alcohol councils and review grant requests from local governments; and (3) substance abuse evaluation and treatment services, including services provided through a drug treatment court.

Maryland Psychiatric Society, and Baltimore Substance Abuse Systems. There was no opposition testimony, only amendment requests, and only a few negative votes.

The Fund has been successful in that all of the counties established or reorganized their Local Drug and Alcohol Abuse Councils (most already had something similar). According to DHMH, the MSAF has generated \$25,000 - \$35,000 each year since its inception.

CIGARETTE RESTITUTION FUND

The CRF was established to receive all money from the Master Settlement Agreement, and any other tobacco-related litigation and/or settlement. *See* State Finance Article §7-317. The Department is fully aware of how the fund has been used, and perhaps misused, in the decade since its creation.

MARYLAND AFFORDABLE HOUSING TRUST FUND 2005 (HS 10-101-301)

The General Assembly created the Maryland Affordable Housing Trust Fund (MAHT) in 1992 by passing SB 594/HB1255. *See* Housing and Community Development Article §§10-101 *et seq.* The MAHT is funded partly by interest on trust accounts held by title insurers under Insurance Article 22-103, by loan repayments to the fund, and by public and private donors. The Trust is governed by a Board of Trustees and staffed by the Maryland Department of Housing and Community Development.

MAHT promotes affordable housing for households earning less than 50% of area or statewide median income by:

- Funding capital costs of rental and ownership housing;
- Providing financial assistance for nonprofit-developer capacity building;
- Funding supportive services for occupants of affordable housing; and
- Funding operating expenses of affordable housing developments.

The legislation faced strong opposition in 1992, primarily from the real estate industry. Sentinel Title Corporation described the proposal as a tax and threatened to re-incorporate in Delaware or Pennsylvania if this “well-intentioned flop” became law. The Maryland Association of Realtors, the Maryland Bankers Association, and other title companies opposed the legislation. Title companies claimed that the consumer would ultimately absorb the title companies’ loss when title companies could no longer compete with real estate lawyers. There was also an argument (consistent with other funds researched) that it is better to fund such initiatives through normal budgetary processes.

Supporters identified other states that had set up successful affordable housing funds using similar methods. Many letters of support came from the Attorney General, Councilwoman Sheila Dixon, the Maryland Department of Housing and Community Development, Maryland Housing Policy

Commission, Lawyer's Clearinghouse, Maryland Catholic Conference, Homeless Persons Representation Project, Action for the Homeless, MILC, Maryland Low Income Housing, members of the Baltimore City Council, and Pro Bono Action. Supporters cited the Federal Cranston-Gonzalez National Affordable Housing Act of 1990, which emphasized the need for non-profit housing developments. The fiscal note for the bill in 1992 estimated \$1,116,423 in annual revenue.

This fund seems to be doing very well. MAHT holds two funding rounds per year, generally in February and August. The maximum award amount is \$150,000. The 2008 report is available at: <http://www.mdhousing.org/Website/programs/maht/documents/AnnualReport121808.pdf>, showing \$30 million in grant awards in support of programs such as HOPE and Homeownership Counseling.

Summary on Maryland Special Funds

The creation of any special fund, regardless of the source of monies for the fund, will likely be subject to intense opposition and little executive support in the short term as legislators and the Governor are averse to imposing any "tax" or other fee or fine that could be so described. After the 2010 election and with a hopefully improved economy, however, creation of a fund may face less vehement opposition.

Points to remember when seeking a special fund include providing that the source of the funds in some manner relates to the use of the funds; securing a non-lapsing fund that will not be subject to §7-302 of State Finance and Procurement, which is a reversion provision ("use it or lose it"); and ensuring that the fund has a variety of funding sources.

Injury Prevention Funds in Other States

New Jersey

In 2002, the New Jersey legislature established the Traumatic Brain Injury Trust Fund, with a \$.50 addition to the vehicle registration fee. The purpose of the TBI Fund is two-fold. First, the Fund allows New Jersey residents who have survived a brain injury to obtain the services and support they need to live in the community when insurance, personal resources and/or public programs are unable to meet their needs fully. The Fund pays for limited support and services that foster independence and maximize quality of life. The second purpose of the Fund is to provide public information and prevention education related to brain injury. The TBI Fund administrators and the Brain Injury Association of New Jersey work together in this endeavor.

The Division of Disability Services (DDS) of the New Jersey Department of Human Services administers the Traumatic Brain Injury Fund. To be eligible for funds, an individual must have been a resident of New Jersey for at least 90 days, present medical documentation of the TBI and have liquid

assets of less \$100,000. An individual may receive a maximum of \$15,000 per year and \$100,000 total. All other funding sources must be exhausted. Through both financial relief and public awareness, New Jersey's TBI Fund provides a tremendous public service to the residents of New Jersey.

Kentucky

The Kentucky Traumatic Brain Injury Trust Fund receives 5.5% of all court costs paid to county circuit court clerks, to a maximum of \$2,750,000, and a portion of fees paid for driving under the influence convictions. Specifically, 16% of DUI fines are shared by a variety of sources; the TBI Fund receives 50% of that 16%.

According to the Fund's website, <http://www.kybraininjuryfund.org/index.html>, the "TBI Benefit Management Program is committed to helping people with traumatic brain injury maintain the highest quality of life possible through its services and support. Services available through the Traumatic Brain Injury Benefit Management Program include: case management; community residential services; companion services; occupational therapy services; prevocational services; psychological services; respite care; speech/language services; structured day programs; supported employment services; and other services." Medications and the cost of institutionalization or hospitalization are not covered. The Program assists individuals suffering from total or partial disability due to injury to the brain regardless of whether the injury was suffered in an accident, due to allergic reaction, caused by medical treatment, or the result of drug or alcohol overdose. There is no clearly identified cap on the income for financial eligibility; however, the Fund is designed to support only those who need the financial assistance.

Tennessee

In 2003, the Tennessee General Assembly passed HB 1826, adding a ten dollar fine to certain driving infractions, with the increased amounts allocated to the Traumatic Brain Injury Fund. The infractions included (1) Underage driving while impaired; (2) Adult driving while impaired; (3) Open container; (4) Seat belt laws (except the additional fee would be \$5.00 instead of \$10.00); (5) Leaving the scene of an accident; (6) Drag racing; (7) Motor vehicle habitual offender (except the additional fee would be \$25.00 instead of \$10.00); and (8) Reckless endangerment with a motor vehicle, vehicular assault while intoxicated, vehicular homicide, aggravated vehicular homicide, or evading arrest (except the additional fine would be \$25.00 instead of \$10.00). In 2006, Tennessee Governor Phil Bredesen signed legislation imposing an additional fine of \$15 to be deposited in the brain injury fund by drivers who leave the scene of an accident resulting in personal injury or death.⁴³

⁴³ http://www.nashia.org/pdf/state_chronology2008.pdf

Tennessee's Traumatic Brain Injury Fund is completely funded by traffic fines.⁴⁴ The Fund receives about \$1 million annually from 6 different fine sources – speeding and DWI, reckless driving, hit and run, driving without a valid license, and the newest fine source - drag racing.⁴⁵ The Fund reports that FY 07 program revenues totaled \$1,468,424; expenditures totaled \$1,295,804. The fund balance as of June 30, 2008, was \$630,542.⁴⁶ The Traumatic Brain Injury Fund supports Tennessee's Traumatic Brain Injury Program, which was “established to address the needs of individuals who have suffered brain injuries, as well as their family members and primary caregivers. The Program provides staff to respond to questions, make referrals, and provide education and prevention programs, on the basis that initial contact can be the first link in a chain of support for a survivor or family member. The program also hosts an information clearinghouse and toll-free telephone number that provides access to current data and information.”⁴⁷ “Since 1995, the TBI Program has awarded 126 competitive grants totaling approximately \$8.4 million for a variety of projects including day treatment, housing, supportive living services, education and prevention, behavioral counseling, camp, professional training, and service coordination.”⁴⁸

South Carolina

In 2003, the South Carolina legislature considered HB3917/S536 that would have established a Brain Injury Trust Fund that would be funded, at least in part, by a \$10 increase to the existing penalties for conviction of certain driving infractions. The bill failed to pass and there does not appear to have been subsequent introductions.

Connecticut

The 2007 Connecticut General Assembly considered legislation that would have imposed an additional \$1 on all vehicle registration fees and allocated those monies for the Traumatic Brain Injury Trust Fund. The bill failed.

Georgia

The Georgia Spinal and Brain Injury Trust Fund receives 10% of each fee paid for a conviction of driving under the influence of drugs or alcohol. *See* Ga. Code Ann., §15-21-149. There have been

⁴⁴ *See* Tennessee Code Annotated Title 68, Chapter 55, part 3, available at <http://www.michie.com/tennessee/lpext.dll?f=templates&fn=main-h.htm&cp=tncode>

⁴⁵ HB 3512 Tennessee 105th General Assembly 2008, available at, <http://wapp.capitol.tn.gov/apps/Billinfo/default.aspx?BillNumber=HB3512&ga=105>.

⁴⁶ http://health.state.tn.us/Downloads/TBI_08AnnualReport.pdf

⁴⁷ <http://health.state.tn.us/FactSheets/braininjury.htm>

⁴⁸ <http://health.state.tn.us/TBI/index.htm#newsletter>

attempts to increase fines for additional driving and boating offenses, with the monies paid to the Fund, however, it appears that those efforts have failed or are still subject to approval by Georgia voters. The Fund has collected about \$2 million annually for the last nine years, with \$1,960,848 in FY09.⁴⁹

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⁴⁹ http://www.ciclt.net/sn/adm/editpage.aspx?ClientCode=bsitf&FileName=LPabout_collections.txt