

LEGISLATION

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# Closing the door on Assembly '04

*What made it, what didn't, and what to watch for next year*

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Members of the legal community could be forgiven for scratching their chins in confusion as they review the 2004 General Assembly session.

Granted, the occasional bill of interest passed — such as one increasing funding for legal services and another instituting some reforms in the Department of Juvenile Justice — but all the big ones disappeared without trace by the time the post-session party started Monday night.

And at the top of the list was one of Gov. Robert L. Ehrlich Jr.'s legislative priorities: medical malpractice reform.

**All for nothing**

Legislators spent hours debating, lobbyists spent hours sweet-talking, but when the dust settled on the General Assembly, all the work on medical malpractice reform came to this: Nothing.

Even reform acceptable to all sides — insurance companies, the health sector and trial lawyers — fell by the wayside, torpedoed in large part by a letter sent to the members of the Senate Judicial Proceedings Committee.

The letter outlined the writer's opposition to the reforms included in HB 1299, which had already passed the House.

If the legislation had passed it would have made mediation in medical malpractice cases mandatory and also required the creation of a task force of legislators to look at the issue more closely before next year's session.

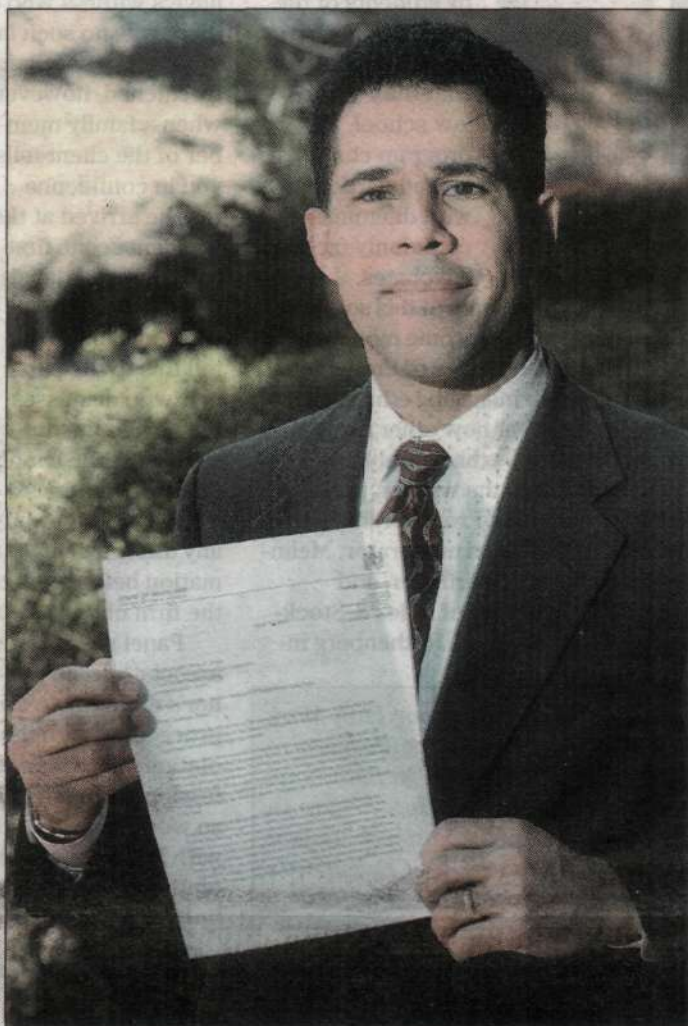
But the author of the letter was adamant the bill "will not result in the significant reforms that are urgently needed."

It was signed Robert L. Ehrlich Jr.

The governor's refusal to countenance the first stages of the type of reform he himself wanted mystified Del. Anthony D. Brown, D-Prince George's, who had chaired a working group on the issue that had come up with the recommendations featured in the bill.

"I think the issue has, for him, become political," Brown said of the governor, reflecting on the session from the comfort of his Annapolis office on a wet morning this week.

He added that the most controversial element of HB 1299 — modifying the collateral source rule so that claimants remit some of the economic damages they win if those costs have been paid for by another source — was in the governor's own bill (HB 287), as was mandatory mediation.



MAXIMILIAN FRANZ

Del. Anthony D. Brown stands with a letter from Gov. Robert L. Ehrlich Jr., written after the House passed a medical malpractice reform bill, which torpedoed further work on the legislation in the Senate Judicial Proceeding Committee — even though Ehrlich had sought reform and even suggested the bill's most controversial component. A spokeswoman for Ehrlich said the governor thought the bill 'didn't scratch the itch of the crisis.'

"It's something [Ehrlich] theoretically supported," Brown said. Sen. Brian E. Frosh, D-Montgomery, who chairs the Senate Judicial Proceedings Committee, certainly feels Ehrlich's letter was decisive in changing the votes of the three Republican members.

In the end the committee was locked 5-5 so the bill died. Frosh described Ehrlich's actions as "very odd" and echoed comments made by Brown suggesting the governor is deter-

mined to retain control of the issue to the extent that he would prefer to call a special session rather than see watered-down reforms passed.

Especially if the legislation doesn't have his name on it, Brown hinted.

Ehrlich spokeswoman Shareese N. DeLeaver said the letter was written in response to a request from Frosh after the governor told the senator in person he was unhappy with the bill.

"The reasoning behind it was that the governor thought the bill didn't scratch the itch of the crisis," she said.

Another key issue, she conceded, was that the task force proposed by the bill would have been comprised only of legislators, with no representatives from the executive branch.

DeLeaver also confirmed Ehrlich would consider calling a special session if insurance premiums rise dramatically over the summer.

It would take a double-digit increase for that to happen, she added.

Defense lawyers were understandably pleased with the outcome of the session, as they feared a reduction to the cap on damages, one of the proposal's in Ehrlich's tort reform bill.

Kevin J. McCarthy, spokesman for the **Maryland Trial Lawyers Association**, claimed one of the reasons dramatic reform didn't occur is that some legislators realized there was more to the issue than they originally thought.

"Things didn't quite seem to be as they were portrayed when the session started," he said. "Tort reform, rather than being a solution, is a way for insurance companies to make more money."

He added that mandatory mediation and the creation of a task force would both have been welcomed by trial lawyers.

"I was in a mediation the other night which went on for 14 hours, but it was resolved," said McCarthy. "It would have gone on for three weeks to a month [in court]."

## Dead or alive

### Bills that died

**HB 248: Witness intimidation/death penalty:** If passed, this legislation would have added witness intimidation to the list of aggravating factors in death penalty cases. Died in House Judiciary Committee.

**HB 614: Alternate jurors:** Supported by the judiciary, this bill was designed to increase the participation of alternate jurors in civil cases. Killed in House Judiciary Committee.

**HB 728: Same sex marriages:** Would have insured that marriages between people of the same sex would not be recognized by Maryland law. Killed in House Judiciary Committee.

**HB1299: Medical malpractice:** This bill would have introduced mandatory mediation and set up a task force to look into the issue further.

**SB 288: Assault weapon ban:** This would have extended and expanded on the federal ban which expires this September. Died in Senate Judicial Proceedings Committee.

**SB 627: Prompt presentment:** This legislation would have defined how long police officers have to question suspects before they are presented to a court commissioner. Killed in Senate Judiciary Proceedings Committee.

### Staying alive (pending review by the governor)

**HB 746: Marriage ceremonies:** Clarifies that district judges, circuit court judges and appellate judges in Maryland have the authority to preside over weddings. Also sets the cost at \$25, except for Cecil County, where it is \$30.

**HB 930: Qualified immunity:** After several failed attempts in recent years, this bill, which allows members of the public to enjoy qualified immunity when communicating their views on issues,

finally passed.

**HB 1053: Cash-option bail:** Requires court commissioner to give express permission for a defendant to post bail by paying the full penalty amount and depositing the greater of \$25 or 10 percent.

**SB 163: Juveniles and waiver of right to counsel.** Makes it harder for juveniles to waive right to counsel upon arrest.

**SB 164: Acting Attorney General:** Fills a loophole by specifying that the senior Deputy Attorney General should take over as acting Attorney General if the Attorney General is incapacitated.

**SB 309: Emergency regulations:** When executive agencies propose emergency measures to be considered by the Joint Committee on Administrative, Executive, and Legislative Review, this bill requires the proposals to be posted on the General Assembly Web site. Any interested parties who have expressed an interest in being informed of any changes are also required to be contacted.

**SB 316: Filing fee surcharge:** Imposing a new surcharge for district and circuit court filings as a way to fund legal services for the poor.

**SB 513: Misdemeanor/jury trial:** Anyone charged with theft, bad check and credit card offenses where the property involved is not worth more than \$100 is no longer eligible for a jury trial.

**SB 543: Juvenile Justice:** Mandates guidelines for the Department of Juvenile Services. Requires the department to create a 10-year plan and report back to the General Assembly on a regular basis.

**SB 578: Public assistance for drug felons:** Department of Human Resources to provide cash and food stamp assistance to felons on their release from prison. Amended version sunsets in one year and limits eligibility to six months for non-custodial parents.