

in the title, not vice versa. Even if this is true, these errors are prime examples of the haste in which the bill was adopted. Rather than allowing just one more day to get the bill right and give legislators time to read and debate it, the decision was made to stay in session until the early hours of the morning to force a resolution. The final product reflects this haste.

Article II, Section 17 of the Maryland Constitution also states that one of the grounds for a veto is to guard against encroachment of the Legislative Department upon the coordinate Executive and Judicial Departments. The separation of powers doctrine is contained within Article 8 of the Maryland Declaration of Rights. Special Section 14 of House Bill 2 violates these provisions. Special Section 14 states: "...That the Governor shall propose legislation during the 2006 Session of the General Assembly to provide an alternative mechanism for distribution of the money in the Maryland Medical Professional Liability Insurance Rate Stabilization Fund." This is a violation of the separation of powers between the General Assembly and the Governor. Simply put, the General Assembly has no business telling the Governor what legislation he must introduce. If this were allowed, the General Assembly would next be considering legislation to prohibit the Governor from proposing legislation on certain topics. This is truly offensive and cannot be allowed to stand.

The Attorney General's bill review letter recognizes that Special Section 14 is "unusual". The letter does cite a recent instance where this was done and states that the provision in House Bill 2 is "directory rather than mandatory", particularly because there is no legal consequence for a violation. I would simply point out that the word "shall" is the term that is used to require an act; it is not a request. The Court of Appeals has stated that the term "shall" when used in legislation constitutes a "statutory mandate." Further, to imply that the Governor can violate the law because there are no legal consequences is not a sound argument.

People's Counsel

People's Insurance Counsel is an unnecessary and costly addition to medical professional liability insurance as well as homeowners insurance. The Maryland Insurance Administration (MIA) already does what People's Insurance Counsel purports to do. As an example, and much to the displeasure of Medical Mutual, this past summer the MIA denied Medical Mutual's requested 41% rate increase and only allowed a 33% increase. This additional cost will be passed on to Maryland citizens, makes the Maryland marketplace less attractive for carriers to do business in and could potentially threaten the MIA's accreditation with the National Association of Insurance Commissioners which is essential for Maryland insurance companies.

Rate Stabilization Fund

On the concept of a rate stabilization fund, I agreed that a short-term fix was necessary to avert a health care crisis in the State. It does trouble me, however, that this money will essentially go to physicians to pay malpractice premiums that will eventually be paid to trial lawyers. Coupled with a long-term solution I was willing to agree to this; however, as House Bill 2 makes this virtually the only such solution, a fund alone is unacceptable.