

Department of Legislative Services  
Maryland General Assembly  
2007 Session

FISCAL AND POLICY NOTE  
Revised

Senate Bill 851

(Senator Lenett, *et al.*)

Education, Health, and Environmental Affairs

Health and Government Operations

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Physicians - Unauthorized Practice of Medicine - Penalty

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This bill modifies the current penalty for the unauthorized practice of medicine, changing it from a misdemeanor to a felony and doubling the amount of the fine that may be imposed. A person who practices, attempts to practice, or offers to practice medicine without a license is guilty of a felony and upon conviction is subject to a fine of up to \$10,000 or imprisonment for up to five years, or both.

The bill does not apply to a physician licensee of the State Board of Physicians (MBP) who failed to renew a license with MBP.

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Fiscal Summary

**State Effect:** Since the bill does not change current terms of imprisonment, the bill is not expected to significantly affect State finances or operations.

**Local Effect:** Potential increase in local revenues as a result of the increased maximum fine that may be imposed by circuit courts for the unauthorized practice of medicine. Since the bill does not change current terms of imprisonment, the bill is not expected to significantly affect local government expenditures.

**Small Business Effect:** Minimal.

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Analysis

**Current Law:** A person may not practice, attempt to practice, or offer to practice medicine in the State unless licensed by MBP. A person who violates any provision of

the laws governing the practice and regulation of physicians is guilty of a misdemeanor and subject to a fine of up to \$5,000 or imprisonment for up to five years or both. A person who practices medicine without a license is also subject to a civil fine of up to \$50,000 to be levied by the board.

The statute of limitations on prosecuting the unauthorized practice of medicine is three years. Generally, there is no statute of limitations on prosecuting a felony.

Physician licenses are typically renewed biennially. MBP is required to send a renewal notice to licensees via first-class mail to the last known address of the licensee. MBP must send this renewal notice at least one month prior to the expiration date of the license. The renewal notice must contain (1) the expiration date of the license; (2) the latest date by which MBP can receive the licensee's renewal application so that the license can be renewed, issued, and mailed to the licensee before the expiration date of the original license; and (3) the amount of the renewal fee.

**State Fiscal Effect:** Changing crimes from misdemeanors to felonies means (1) that such cases will likely be filed in the circuit courts rather than the District Court; and (2) some persons could eventually serve longer incarcerations due to enhanced penalty provisions, applicable to some offenses, for prior felony convictions. It is not known whether, under this bill's provisions, the prospect of a jury trial might spur more plea bargains and affect actual sentencing practices for this offense.

In any event, this bill could shift some unknown number of cases from the District Court to the circuit courts, although this is not expected to significantly reduce State revenues or expenditures. MBP advises there have been few, if any, criminal prosecutions for the unauthorized practice of medicine in recent years. Further, most cases brought in District Court under current law would likely be removed to the circuit court anyway because a defendant would request a jury trial.

The District Court and circuit courts have concurrent jurisdiction over the unauthorized practice of medicine since this crime is a misdemeanor that carries a term of imprisonment of more than three years and a fine of more than \$2,500. For a variety of reasons, including the probable need for expert medical testimony and other complex litigation issues, it is likely that a defendant would generally request a jury trial, removing the matter to circuit court. Given the likelihood that most, if not all, cases charging the unauthorized practice of medicine are already heard in the circuit court, changing the crime to a felony (which may only be heard in the circuit court) is expected to have minimal or no impact to District Court operations or general fund revenues or expenditures.

**Local Fiscal Effect:** For the reasons mentioned above, the bill is not expected to have a significant impact on local jurisdiction expenditures. Most cases of this nature would already be tried in the circuit court. However, local revenues could increase due to the doubling of the maximum fine that may be imposed by the court.

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### **Additional Information**

**Prior Introductions:** A similar bill, SB 345 of 2006, was amended and passed by the Senate. The bill had a hearing in the House Health and Government Operations Committee but no further action was taken. Another similar bill, SB 826 of 2005, received an unfavorable report from the Senate Education, Health, and Environmental Affairs Committee.

**Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts), Department of Health and Mental Hygiene, Department of Public Safety and Correctional Services, Department of Legislative Services

**Fiscal Note History:** First Reader - March 18, 2007  
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