

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

Senate Bill 536 (Senator Klausmeier)
Judicial Proceedings

Vehicle Laws - Motor Vehicle Commission - Establishment

This bill establishes a Motor Vehicle Commission within the Maryland Department of Transportation (MDOT), subject to the authority of the Secretary of Transportation, and transfers specified duties pertaining to the regulation of dealer, salesman, and manufacturer, distributor, and factory branch licensees from the Motor Vehicle Administration (MVA) to the commission. The bill provides for the membership, chair, and staff of the commission and requires the commission to meet on a specified schedule. The commission is granted general regulatory authority to implement the commission's duties, required to adopt a code of conduct, and may adopt bylaws. The bill establishes a process for the filing of a complaint before the commission, requires the commission to investigate a properly filed complaint, establishes procedures governing hearings and appeals from commission determinations, and provides for enforcement of specified laws governing licensees. Finally, the bill requires the commission to establish reasonable fees to be charged for its services and establishes a special fund to hold the newly established fees and several other existing fees.

Fiscal Summary

State Effect: Transportation Trust Fund (TTF) revenues decrease by at least \$450,000 in FY 2015 and by at least \$600,000 annually thereafter, as various license fees are paid to the new fund rather than TTF; Motor Vehicle Commission Fund revenues increase correspondingly. Special fund revenues for the new fund increase further, beginning in FY 2015, from the collection of the newly established one-time fees paid on the issuance of new licenses and from the collection, beginning in FY 2016, of cost-recovery fees that the commission is authorized to establish. TTF expenditures decrease by about \$496,500 in FY 2015, which reflects the bill's effective date, and by more than \$681,800 annually, as existing business licensing positions are transferred from MVA to the commission, or are eliminated. Special fund commission expenditures increase by *at least* \$557,500 in

FY 2015, which reflects the bill's effective date, and by *at least* \$681,800 annually thereafter to acquire staff, equipment, and supplies for the commission; special fund expenditures may increase significantly further, as discussed below.

Local Effect: Circuit court caseloads increase beginning in FY 2015 to handle any additional appeals from the commission and to compel compliance with subpoenas. The additional caseloads can likely be handled within existing budgeted resources.

Small Business Effect: Potential meaningful impact on small business dealer, salesman and manufacturer, distributor, or factory branch licensees due to the new fees and any additional regulatory uncertainty; licensees may benefit to the extent that determinations of the commission result in more favorable outcomes for licensees.

Analysis

Bill Summary:

Commission Membership, Meetings, and Staff

The bill specifies that the commission consists of nine members, of whom five must have been licensed for the 10 years preceding appointment, three must be consumers who are not dealers, and one must be a representative of MVA. The term of each member is five years, except that the initial terms must be staggered; the bill establishes the process for ensuring the staggering of terms. A member may not serve more than two consecutive five-year terms. The commission must elect a chair annually, who may be reelected. While in office, the chair must be covered by a surety bond. A quorum is established as a simple majority of the members. The commission must meet at least twice each year, and members are entitled to compensation and reimbursement for expenses.

The commission may employ a staff, including an investigative staff. The staff may not have an active dealer license or salesman license; be a representative of an entity that has a manufacturer, distributor, or factory branch license; or engage in an act requiring licensure under specified provisions of the Maryland Vehicle Law.

Adoption of Regulations, Code of Ethics, Bylaws, Guidelines, and Educational Courses

The bill requires the commission to adopt a code of ethics for dealer, salesman, and manufacturer, distributor, and factory branch licensees. The commission must also adopt guidelines to ensure the timely resolution of complaints as well as regulations for the conduct of hearings. The commission may adopt bylaws to govern its proceedings, the

license application process, and other regulations needed to implement its duties. The bill requires the commission to provide a copy of its regulations and the code of ethics to each licensee on request and at least once every two years. The commission is authorized to approve educational courses.

Hearings and Enforcement

A person, other than a commission member, may file a complaint alleging a violation by a person required to hold a vehicle dealer, salesman, or manufacturer, distributor, or factory branch licensee, which must be in writing and state the relevant facts; a complaint made in person must be under oath. The commission is required to administer and enforce the provisions of the bill as well as relevant portions of the Maryland Vehicle Law.

The commission may hold a hearing on the merits of a complaint within 120 days of the filing of the complaint and must issue a decision within 30 days of the hearing. Existing hearing procedures and the rights of parties to a hearing established by the Maryland Vehicle Law also apply. If the commission determines that a violation may result in irreparable harm to a person, it may deny, suspend, or revoke a license; fine the licensee; and grant a conditional license. The commission may administer oaths, issue a subpoena compelling the attendance of a witness or the production of evidence, and take depositions. The bill authorizes a circuit court to compel compliance with a subpoena.

An aggrieved party may appeal a decision or an order made by the commission to the relevant circuit court on the basis that the order or decision constituted an error of law. All findings of fact of the commission are presumed to be correct unless rebutted by clear and convincing evidence. The bill establishes a right to trial by jury. Existing appellate procedures in the Maryland Vehicle Law, including the required conformance to the relevant provisions of the Administrative Procedure Act, also apply.

Establishment of Fees and New Special Fund

The bill establishes a one-time \$1,000 fee for the issuance of a new manufacturer, distributor, or factory branch license; a one-time \$100 fee for the issuance of a new independent or wholesale dealer license; and a one-time \$200 fee for the issuance of a new dealer license. Beginning on July 1, 2015, the commission may also set fees to cover the commission's costs, which must be deposited into the Motor Vehicle Commission Fund established by the bill.

The commission must annually determine whether additional funding is needed and, if so, must increase the fees by regulation. The fee schedule must be published on a website that the bill requires the commission to maintain. The new fund is to consist of

the fees established by the bill as well as fees currently collected under specified provisions of the Maryland Vehicle Law pertaining to vehicle dealer, salesman, and manufacturer, distributor, and factory branch licensees, which are redirected from TTF. Any interest earned by the fund must be retained by the fund.

On request and payment of a \$10 processing fee, the commission must certify the licensing status and qualifications of a person. A certification may include the examination results and other qualifications of the person subject to the inquiry, disciplinary action taken against that person, and other specified information.

Annual Report and Miscellaneous Provisions

The commission must submit an annual report of its activities to the Secretary of Transportation. The annual report must include specified components, including a statement of license fee receipts and total expenditures of the commission, the number of licenses of each type in each county, and specified statistics regarding enforcement and disciplinary actions.

The bill does not otherwise affect numerous existing provisions pertaining to the licensing, approved conduct, or investigation and discipline of vehicle dealer, salesman, manufacturer, distributor, or factory branch licensee. Similarly, numerous powers and duties currently possessed by MVA are transferred to the commission without change.

Current Law/Background: Subtitles 2 through 4 of Title 15 of the Transportation Article contain numerous provisions regulating vehicle dealer, salesman, manufacturer, distributor, and factory branch licensees. These provisions of the Maryland Vehicle Law require licensure, govern the application for licenses, authorize the establishment of license fees, prescribe the scope and content of licenses, prohibit or govern specified actions by licensees, provide for enforcement and discipline against licensees, authorize and regulate legal actions involving licensees, and establish dispute resolution procedures. Additionally, Subtitle 1 governs regulation by MVA of licensees, including recordkeeping and surety bond requirements, permissible disciplinary actions, and the grounds for taking such actions against a licensee. Finally, other provisions of the Maryland Vehicle Law establish procedures for hearings following actions taken against licensees.

One of the core functions of MVA is to issue licenses for vehicle-related business activities. MVA issues licenses to vehicle dealers, salesmen, manufacturers, distributors, factory branches, and for several other types of business activities. In fiscal 2013, MVA handled 12,625 transactions pertaining to license issuance, renewal, and other actions, of which 10,753 transactions involved vehicle salesmen, 689 involved vehicle dealers, and 70 involved a vehicle manufacturer, distributor, or factory branch licensee.

State Fiscal Effect: Overall, the bill may result in a modest net gain for TTF as the decrease in TTF expenditures resulting from the transfer or elimination of TTF expenditures is anticipated to be slightly greater than the decrease in licensing fee and other revenues, as discussed further below. However, the commission may not be self-sufficient in fiscal 2015 as the cost-recovery fees established by the bill are not authorized until fiscal 2016, as discussed further below.

State Revenues: TTF revenues decrease significantly in fiscal 2015 as various license fees currently distributed to TTF are instead paid to the Motor Vehicle Commission Fund. MVA advises that the business licensing fees affected by the bill are projected to generate \$610,370 in fiscal 2014. Thus, TTF revenues may decrease by about \$457,800 assuming a similar collection of fees in fiscal 2015, which reflects the bill's October 1, 2014 effective date; special fund revenues to the new fund increase correspondingly.

TTF revenues also decrease to a lesser extent as fewer fines are distributed to TTF and as fewer interest earnings are retained by TTF. Finally, the bill specifies that all other existing fees established within any of four subtitles of the Transportation Article are to be credited to the new fund; thus, the duplicate license fee revenues currently distributed to TTF are also paid to the new special fund beginning on October 1, 2014.

Special fund revenues for the Motor Vehicle Commission Fund increase further beginning on October 1, 2014, as a result of the new fees established by the bill. The bill establishes a one-time fee based on the class of business license regulated by the commission to be paid upon the issuance of a new license. MVA estimates 8% growth in the number of licenses issued, which may result in the collection of \$34,700 from the issuance of 199 licenses in fiscal 2015. Additionally, the bill authorizes the commission to collect a \$10 processing fee for each request to certify the licensing status of a licensee; while it is unclear how many such requests may be made each year, the additional revenues are not anticipated to be significant.

Beginning July 1, 2015, the commission is authorized to begin collecting cost-recovery fees. Thus, special fund commission revenues may increase significantly beginning in fiscal 2016 as needed to cover any amount by which expenditures exceed revenues from other fees and fines, as discussed below.

Finally, special fund commission revenues may increase beginning in fiscal 2015 from the collection of fines. MVA is currently authorized to issue fines to licensees; this authority is transferred under the bill. The bill also establishes an additional fine applicable upon a finding of irreparable harm caused by a licensee. Any additional revenues from the newly established fine and any change in revenues based on the number and amount of fines assessed by the commission cannot be reliably estimated.

State Expenditures: TTF expenditures decrease by \$496,464 in fiscal 2015, which reflects the bill's October 1, 2014 effective date, and by \$681,771 beginning in fiscal 2016, as existing business licensing positions within MVA are transferred to the commission or eliminated. MVA advises that the equivalent of four full-time customer agents and six full-time investigators are attributable to the share of time that its Business Licensing and Consumer Services Division dedicates to the administration of the various licensing activities being transferred to the commission under the bill.

MVA assumes that the 10 existing MVA positions are transferred to the commission on October 1, 2014. Thus, expenditures of at least \$557,464 are anticipated in fiscal 2015 for the Motor Vehicle Commission Fund; the estimate includes salaries and fringe benefits as well as additional supplies and equipment for the new positions and for the operation of the commission. Based on these costs alone, special fund expenditures for the commission are anticipated to exceed revenues in fiscal 2015. The Department of Legislative Services advises that it is unclear which funding source may be required to support an additional appropriation to address a deficiency in the Motor Vehicle Commission Fund.

However, the Department of Legislative Services further advises that it is unlikely that these 10 positions and relatively modest start-up costs and ongoing operating expenses are sufficient for the establishment of a new public body. For example, the estimate does not account for any land or structure costs, which may be necessary if the new commission is not housed within an existing MVA structure. Additionally, it is unclear whether additional staff may be necessary to oversee the commission's activities, or whether the existing positions possess the knowledge and experience to fully staff the commission; a management position may be advisable. The estimated expenditures discussed above also do not account for any compensation or reimbursement for commission members, as authorized by the bill, which may be significant. Finally, the estimate does not account for several other new responsibilities of the commission that are not currently required for MVA, such as certifying the licensing status of licensees, producing an annual report, and overseeing new enforcement, hearing, and appellate procedures. MVA has not been able to provide an estimate of the additional costs attributable to these activities.

Thus, special fund expenditures increase by a significant, but indeterminate amount, beyond the \$557,464 in personnel costs discussed above. A reliable estimate of these additional expenses cannot be made at this time without additional information regarding the needs of the commission.

Additional Comments: The Judiciary advises that several provisions of the bill regarding procedures for hearings and appeals are contradictory and inconsistent with the

Administrative Procedure Act, including whether an error of fact may serve as the basis for an appeal, the applicable burden of proof, and the right to a trial by jury.

Additional Information

Prior Introductions: None.

Cross File: HB 941 (Delegate Schuh) – Environmental Matters.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of State Police, Maryland Department of Transportation, Department of Legislative Services

Fiscal Note History: First Reader - February 17, 2014
mc/ljm

Analysis by: Evan M. Isaacson

Direct Inquiries to:
(410) 946-5510
(301) 970-5510