

Department of Legislative Services
 Maryland General Assembly
 2004 Session

FISCAL AND POLICY NOTE

House Bill 1195 (Delegate Mandel)
 Environmental Matters

Vehicle Laws - Medical Advisory Board - Safe Operation of Motor Vehicles

This bill alters the process and requirements for the Medical Advisory Board (MAB) to determine a person’s fitness to drive. It states which persons can file a report with the Motor Vehicle Administration (MVA) on an individual’s ability to drive, as well as the health matters for which a report can be filed. It also extends immunity for certain medical professionals who provide patient information to MAB.

Fiscal Summary

State Effect: Transportation Trust Fund (TTF) expenditures will increase by \$2 million in FY 2005. Out-years reflect inflation and annualization. Revenues will not be affected.

(in dollars)	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Revenues	\$0	\$0	\$0	\$0	\$0
SF Expenditure	2,023,300	2,539,900	2,688,200	2,847,200	3,017,700
Net Effect	(\$2,023,300)	(\$2,539,900)	(\$2,688,200)	(\$2,847,200)	(\$3,017,700)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill replaces the Administrator of the MVA with the MVA as the authority to appoint MAB, refer cases involving licensees or license applicants whose driving ability is in question, and define certain disorders. The MVA would be required

(rather than authorized) to appoint MAB. It also directs the MVA, instead of the Department of Health and Mental Hygiene, to define conditions, in addition to disorders, that are characterized by lapses of consciousness or that result in corrected vision that fail to meet State requirements. It must also define other disorders or conditions that could impair an individual's ability to operate a motor vehicle.

The bill states that the following persons may file a report to MAB regarding an individual who has a disorder or condition defined above:

- a law enforcement official;
- a physician;
- a registered nurse;
- a physical or occupational therapist;
- a psychologist;
- an optometrist;
- a social worker;
- a chiropractor;
- an emergency medical technician; and
- a professional counselor.

Any other person authorized to diagnose, monitor, or treat the defined disorders and conditions or anyone who is at least 18 years old and has direct knowledge of the driver's ability to operate a motor vehicle may also file a report.

The bill states that the privilege extended to social workers, psychiatrists, psychologists, and professional counselors does not preclude them from making a report. It also repeals a provision of State transportation law that prohibits a report from being made from information derived from the diagnosis or treatment of a person on whom a confidential or privileged relationship is conferred by law, unless authorized in writing by that person. Any person acting in good faith who submits a report to MAB is immune, under the bill, from any civil or criminal liability arising from the making of the report. A MAB member is also immune from any civil or criminal liability arising from any opinions or decisions made while acting in good faith as a member of the board.

Before requiring an examination of a driver, the MVA may investigate a report to determine if it has an underlying factual basis and may dismiss a report if it feels that the report lacks a factual basis.

The legislation also specifies the type of examinations that the MVA can give an individual who is the subject of a report to include written, vision, driving skills, or highway sign recognition tests, or any other physical or mental tests considered necessary. If the driver fails the test, the MVA must suspend, revoke, or refuse to issue or renew his or her driver's license, or place restrictions on the license, following an administrative hearing.

Failure to submit to an examination within 30 days of receiving notice is grounds for license suspension, denial, or revocation. Any driver whose disorder or condition is temporary may petition the MVA for a reinstatement of an unrestricted or restricted driver's license. The petition must be accompanied by a statement from a health care provider authorized to diagnose, detect, or treat disorders and conditions that the temporary disorder or condition no longer interferes with the ability of the driver to operate a motor vehicle safely. The MVA must rule on the petition within 30 days of receipt. The MVA must keep records and statistics of reports made and actions taken against licensees and provide health care professionals and law enforcement officials with information about reporting policy and the procedures.

Any person who violates the reporting or confidentiality requirements for reports to MAB is subject to the liability and penalties specified in State law.

Current Law: Applicants for a driver's license must affirm that they are medically fit to drive. MAB, created in 1947, serves as a review board to assist the MVA in evaluating drivers with certain physical or mental disabilities that could interfere with their fitness to drive. MAB, comprised of about 20 physicians, investigates referrals and recommends to the MVA whether a person is able to drive or whether a driver requires certain restrictions, such as daylight driving only. The administrator may appoint the board but is not required to do so.

State law authorizes physicians or practitioners to report loss of consciousness or visual acuity disorders to MAB. The reporting requirement specifies disorders and does not mention conditions. If a medical condition is deemed severe, MAB may recommend a temporary emergency suspension of a license. The MVA may also suspend an individual's license indefinitely, after notifying the driver and conducting a hearing, if the individual cannot drive safely because of a physical or mental condition. Chapter 171 of 2003 extended this authority to include drivers with epilepsy.

State and Federal Privacy Laws

MAB's reports to the MVA are confidential and may only be disclosed on court order. These reports cannot be used for any purpose other than to determine the qualifications of

a person to drive. Unless authorized by the person in question, a report may not be made from information derived from the diagnosis or treatment of the person on whom a confidential or privileged relationship is conferred by law.

If a person, including an officer or employee of a governmental agency, discloses an individual's personal records in violation of State law, he or she is liable to the individual for actual damages that the court considers appropriate. The court may also assess counsel fees and other litigation costs against the defendant if it determines that the complainant has substantially prevailed. A health care provider who discloses a patient's record is guilty of a misdemeanor and subject to a fine not exceeding \$1,000 for the first offense and not exceeding \$5,000 for each subsequent conviction. A person who fraudulently obtains medical records and wrongfully discloses them is guilty of a misdemeanor and subject to fines ranging from \$50,000 to \$250,000 and imprisonment ranging from one to 10 years.

Additionally, the federal Health Insurance Portability and Accountability Act of 1996 Privacy Rule provides that a covered entity may not use or disclose protected health information, except either: (1) as the Privacy Rule permits or requires; or (2) as the individual who is the subject of the information authorizes in writing. A covered entity is a: (1) health plan; (2) health care clearinghouse; or (3) health care provider who transmits health care information in electronic form. The U.S. Department of Health and Human Services may impose civil fines on covered entities that do not comply with the Privacy Rule. Penalties are \$100 per incident of noncompliance and cannot exceed \$25,000 in one year.

State Expenditures: TTF expenditures would increase by \$2,023,255 in fiscal 2005, which accounts for the bill's October 1, 2004 effective date. This estimate reflects the cost of hiring 40 additional nurses and six customer agents so that the MVA can meet the 30-day deadline for rendering a decision on petitions to reinstate licenses for temporary disorders. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. The information and assumptions used in calculating the estimate are stated below:

- MAB handles 1,000 driver referral cases monthly and each case takes eight hours for a nurse manager to complete; six nurse case managers are currently employed to evaluate drivers;
- almost all the cases currently involve a temporary disorder or condition; and
- the bill generates additional administrative and customer service requirements.

Salaries and Fringe Benefits	\$1,841,330
Equipment	166,140
Operating Expenses	<u>15,785</u>
Total FY 2005 State Expenditures	\$2,023,255

Future year expenditures reflect: (1) full salaries with 4.6% annual increases and 3% employee turnover.

The Department of Legislative Services advises that this estimate does not include workstations or special computers for each nurse manager as requested by the MVA. It is assumed that some economies of scale can be achieved and that equipment can be shared. It also includes fewer customer agents as the MVA indicates that the bill will not result in a significant increase in cases.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of Transportation, Department of Legislative Services

Fiscal Note History: First Reader - March 16, 2004
ncs/jr

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