

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 345

(Senator Teitelbaum, *et al.*)

Education, Health, and Environmental Affairs

Health and Government Operations

Physicians - Unauthorized Practice of Medicine - Penalty

This bill modifies the current penalty for the unauthorized practice of medicine, changing it from a misdemeanor to a felony. A person who practices, attempts to practice, or offers to practice medicine without a license is guilty of a felony and 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, so long as less than 90 days have elapsed since the failure to renew.

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 bill's increase of the maximum penalty that may be imposed by circuit courts for unauthorized practice of medicine. Since the bill does not change current terms of imprisonment, the bill is not expected to significantly affect local jurisdiction expenditures.

Small Business Effect: Some physicians practice in settings that qualify as small businesses. This bill may have a minimal impact on those physicians.

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 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 would shift some unknown number of cases from the District Court to the circuit courts.

However, changing the unauthorized practice of medicine from a misdemeanor to felony 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 would likely be removed to the circuit court 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.

Additional Information

Prior Introductions: SB 826 of 2005, a similar bill, received an unfavorable report from the 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

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