

**Department of Legislative Services**  
Maryland General Assembly  
2008 Session

**FISCAL AND POLICY NOTE**

House Bill 288

(Delegate George, *et al.*)

Judiciary

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**Vehicle Laws - Proof of Legal Presence Act of 2008**

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This bill prohibits the Motor Vehicle Administration from issuing an identification card, driver's license, or moped operator's permit to an individual born on or after December 1, 1964 who cannot provide acceptable documentation certifying citizenship or lawful presence in the United States. Beginning December 1, 2017, this prohibition applies to anyone, regardless of age. For an individual who is lawfully present but who is not a citizen, the identification card, driver's license, or moped operator's permit is effective only for as long as the individual is authorized to remain in the United States under federal law.

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**Fiscal Summary**

**State Effect:** Transportation Trust Fund revenues could decrease by \$1.0 million in FY 2009 and by \$1.5 million or more annually through FY 2014 from reduced driver's licensing fee revenues. TTF expenditures could increase by \$150,000 in FY 2009 for a public awareness campaign.

(in dollars)	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
SF Revenue	(\$1,044,700)	(\$1,453,100)	(\$1,513,200)	(\$1,573,400)	(\$1,633,500)
SF Expenditure	150,000	0	0	0	0
Net Effect	(\$1,194,700)	(\$1,453,100)	(\$1,513,200)	(\$1,573,400)	(\$1,633,500)

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

**Maryland Automobile Insurance Fund:** The bill would likely reduce the number of individuals eligible to receive a driver's license and could cause MAIF to issue fewer policies.

**Local Effect:** None.

**Small Business Effect:** Potential minimal.

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## Analysis

**Current Law:** MVA is required to issue an identification card to any individual who • is a resident of this State; • does not have a driver's license; • presents a birth certificate or other acceptable proof of age and identity; and • presents a completed application for an identification card on a form furnished by MVA.

An individual may not drive or attempt to drive a motor vehicle on any highway in this State unless the individual holds a driver's license, is expressly exempt from licensing requirements, or is otherwise specifically authorized to drive the class of vehicles that the individual is driving or attempting to drive. Among those specifically exempt from the licensing requirement is a nonresident of the United States if • the individual has a valid license issued by their country of residence; • the individual's license authorizes the operation of the class of vehicles being driven; • the individual meets the minimum age requirements for driving the class of vehicle; and • except as specified, the vehicle is not a commercial vehicle.

An individual who drives a motor vehicle in the State without a proper license, authorization, or a specific exemption is guilty of a misdemeanor and is subject to a maximum fine of \$500 and/or imprisonment for 60 days or less. There is no prepayment for this offense and the offender must appear in court. Further, MVA is required to assess five points against the offender's license. A second or subsequent violation subjects the offender to a maximum fine of \$500 and/or imprisonment for up to one year.

MVA is prohibited from issuing a license to an individual:

- during any period of revocation, suspension, refusal, or cancellation, except as specified;
- who is an habitual drunkard or habitual drug user, as specified;
- who previously has been adjudged to be suffering from a mental disability or disease and has not been adjudged competent;
- who has not passed a required examination under the Maryland Vehicle Law;
- whose driving skills MVA has good reason to believe would be hazardous to the public safety or welfare;
- who is unable to exercise reasonable control over a vehicle due to a disease or physical disability, except that a restricted license may be issued under specified circumstances;

- who is unable to understand highway warning or direction signs written in the English language;
- who is unable to sign the individual's name for identification purposes;
- who is 70 or older and applying for a new license, unless the applicant presents proof of satisfactory operation of a motor vehicle or written certification from a physician, as specified; or
- who otherwise does not qualify for a license.

In order to obtain a driver's license in Maryland, an individual must present MVA with two documents proving Maryland residence (for example, a voter registration card, a utility bill, or an income tax return). An individual must also provide MVA with proof of identity – a birth certificate, court change of name order, or valid foreign passport or valid U.S. Citizenship and Immigration Services document, plus one additional primary source or two secondary sources of identification. A primary source includes documents such as a passport, an actual Social Security card, an out-of-state driver's license, or a baptismal certificate or synagogue naming certificate. Secondary sources include utility bills, checking or savings account statements, a marriage certificate or divorce decree, or a residential contract.

MVA is required to issue a moped operator's permit to an individual who is

- 16 years of age or older;
- does not possess a valid driver's license issued by this State or any other jurisdiction;
- whose license or privilege to drive is not revoked, suspended, refused, or canceled;
- passes the driver's license examination process; and
- pays the fee provided for in this section.

A moped operator's permit expires every five years.

**Background:** As of February 2008, 30 states had a statutory requirement that driver's license applicants prove lawful presence in the United States. Another 15 states and the District of Columbia had lawful presence requirements through agency policy or the combination of documents required of driver's license applicants.

Maryland does not have a legislative requirement of lawful presence in the United States. In September 2003, the Maryland Office of the Attorney General issued an opinion as to whether MVA is authorized to require individuals with foreign identification to produce proof of legal presence as a condition of obtaining a driver's license. The Attorney General determined that MVA may require a person without a domestic birth certificate to provide alternate forms of identification, which may include immigration-related documents. The opinion concluded that the inability to verify legal presence in the United States is not itself a valid reason for the denial of a Maryland driver's license.

Chapter 452 of 2003 established the Joint Task Force to Study Driver Licensing Documentation. That task force released its final report in December 2004

recommending that no revision of current law was necessary, meaning that an individual who is not lawfully present in the United States should still be allowed to receive a driver's license if the individual could satisfy the current requirement for verifiable documents.

On May 11, 2005, President Bush signed into law the REAL ID Act that requires federal agencies to accept only personal identification cards that meet certain standards. The U.S. Department of Homeland Security issued final regulations in January 2008. Pursuant to these regulations, MVA will need to verify the identity and lawful status of each applicant for a driver's license or identification card. The Maryland Department of Transportation has announced that Maryland will comply with REAL ID and MVA has announced that Maryland has been granted a deadline extension until December 31, 2009 for submission of an initial certification package.

Neither DHS nor MVA has given a timetable for when the State must cease issuing driver's licenses and other IDs for individuals who cannot be verified under the REAL ID requirements.

MVA has 10 sites to process out-of-country applicants for driver's licenses and identification cards: Baltimore City; Bel Air; Beltsville; Frederick; Gaithersburg; Glen Burnie; Largo; Salisbury; Waldorf; and White Oak. These sites are intended to improve the security of the application process and to allow the examination of foreign documents by specially trained examiners. Out-of-country applicants must schedule an appointment to obtain a driver's license.

**State Revenues:** TTF revenues could decrease by \$1,044,692 in fiscal 2009 and by more than \$1,453,074 annually through fiscal 2014 due to fewer driver's licenses being issued under the bill's prohibition. This estimate is based on the following information and assumptions:

- MVA advises that approximately 1,700 out-of-country appointments for driver's licenses and ID cards are made weekly and Legislative Services assumes this rate would remain constant indefinitely;
- each out-of-country appointment results in a driver's license or ID card being issued;
- out-of-country applicants reflect the same age distribution as all state driver's license applicants such that approximately 51% of applicants would be born after December 1, 2014 and approximately 60% by fiscal 2013;
- with 39 weeks remaining in fiscal 2009 following the bill's effective date, approximately 66,300 out-of-country applications would be processed in fiscal 2009;

- an estimated 69% of out-of-country applicants are undocumented immigrants;
- all driver's license transactions are new driver's license transactions;
- the fee for a new driver's license is \$45;
- despite the State planning to implement REAL ID, driver's licenses could still be issued for individuals younger than 50 until December 2014 and for older individuals until December 2017; and
- MVA does not have the authority to deny driver's licenses to undocumented immigrants without statutory change.

Legislative Services notes that the revenue decrease is slightly greater in each of the out-years due to the increasing percentage of the population who would be covered by the bill's prohibition.

The decrease in TTF revenues could increase further as moped operator permits have not been accounted for in this estimate. However, this additional revenue reduction would be minimal as the average number of moped permits issued is approximately 100 each year.

The revenue loss could also increase by a slight, but indeterminate, amount due to a lapse in the lawful presence status of some driver's license holders who are not citizens but who might have previously still been issued licenses.

**State Expenditures:** TTF expenditures would increase by \$150,000 in fiscal 2009 for an advertising campaign to notify the public about the new lawful presence requirement. It is assumed that this is an additional cost because Maryland would be changing its lawful presence requirement prior to whatever date DHS imposed and would seek to notify the public.

In addition, MVA advises that computer reprogramming would be necessary to implement the requirements of this bill. Legislative Services advises that if MVA is unable to accomplish this task with existing staff and resources, it may need to contract with an outside computer services vendor at an additional cost of between \$36,000 and \$144,000.

**Small Business Effect:** The bill could have an impact on small businesses to the extent that they rely on undocumented immigrants for labor.

**Additional Comments:** MAIF advises that the bill could cause the number of uninsured drivers to increase. Legislative Services concurs with this assessment and cites in support the General Assembly's Task Force to Study Driver Licensing Documentation report.

## Additional Information

**Prior Introductions:** Two similar bills, HB 537 and SB 184, were introduced during the 2007 regular session. HB 537 was given an unfavorable report by the House Judiciary Committee, and SB 184 was heard before the Senate Judicial Proceedings Committee but no further action was taken. A similar bill, HB 1443, was introduced in the 2006 session and was heard by Judiciary but no further action was taken. A similar bill, HB 1214, was introduced in the 2005 session and was also heard by Judiciary, but no further action was taken. A bill also denying a driver's license to an individual not lawfully in the United States, HB 41, was introduced in the 2004 session, but received an unfavorable report from Judiciary.

**Cross File:** None.

**Information Source(s):** Maryland Automobile Insurance Fund, Maryland Insurance Administration, Maryland Department of Transportation, Department of Legislative Services

**Fiscal Note History:** First Reader - March 17, 2008  
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