

**Department of Legislative Services**  
Maryland General Assembly  
2009 Session

**FISCAL AND POLICY NOTE**  
**Revised**

House Bill 742  
Judiciary

(Delegate Ivey, *et al.*)

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**Lawful Presence - Identification Card**

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This bill requires the Motor Vehicle Administration (MVA) to issue a “lawful presence” identification card to any eligible individual who applies for one, regardless of whether he or she already possesses a driver’s license. To be eligible for a lawful presence identification card under the bill, the applicant must be a resident of the State and present documentation certifying that the applicant is a U.S. citizen or otherwise lawfully present in the U.S. pursuant to federal law, as well as either a birth certificate or other acceptable documentation of age and identity. An individual may hold both a driver’s license and a lawful presence identification card.

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**Fiscal Summary**

**State Effect:** Transportation Trust Fund (TTF) expenditures increase significantly beginning in FY 2010 to hire one or more customer agents at each MVA branch office because of the additional transactions and transaction time required to provide lawful presence identification cards. TTF revenues may increase beginning in FY 2010 or 2011 due to the bill’s requirement to recover all costs associated with the issuance of lawful presence identification cards. General fund revenues and expenditures may increase minimally due to the bill’s penalty provisions.

**Local Effect:** Minimal increase in local expenditures due to the bill’s penalty provisions.

**Small Business Effect:** None.

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## Analysis

**Bill Summary:** A lawful presence identification card may be used for any purpose as legal identification of the individual to whom it is issued.

MVA is required to set a fee for the issuance of a lawful presence identification card at a level that enables it to recover its costs of complying with the bill; no fee revenues may be credited to the Gasoline and Motor Vehicle Revenue Account. MVA may not charge a fee to an applicant who would qualify for an exemption for payment of the fee for a special identification card. An individual may not possess both a lawful presence identification card and a special identification card.

It is a misdemeanor punishable by a fine of up to \$500 and/or imprisonment for up to two months to (1) commit fraud in applying for a lawful presence identification card; (2) commit a misrepresentation in applying for a lawful presence identification card; (3) commit fraud in using a lawful presence identification card; or (4) make a misrepresentation in using a lawful presence identification card.

**Current Law:** An identification card issued by MVA may be used for any purpose as legal identification of the individual for whom it is issued. MVA is required to issue an identification card to any individual who (1) is a resident of this State; (2) does not have a driver's license; (3) presents a birth certificate or other acceptable proof of age and identity; and (4) presents a completed application for an identification card on a form furnished by MVA. If an identification card holder is issued a Maryland driver's license, the holder must surrender the identification card at that time.

The identification card must contain the applicant's (1) name and address; (2) birth date; (3) sex; (4) description; (5) color photograph under a procedure approved by MVA; and (6) signature. MVA is required to make the card tamperproof, to the extent possible, and with the signature and seal of the issuing agent.

An identification card expires after five years for applicants 16 years or older, or after two years for applicants younger than age 16. MVA may cancel an identification card if the holder was never entitled to be issued the card, failed to provide accurate or required information in the application, or obtained the card through a misrepresentation or fraudulent information.

**Background:** As of November 2008, 28 states had a statutory requirement that driver's license applicants prove lawful presence in the United States. Another 18 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. However, 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.

Legislation enacted in 2003 established a Joint Task Force to Study Driver Licensing Documentation. That task force released its final report in December 2004, which included, among other recommendations, that there be no revision of the State's statutory law except as otherwise required by federal legislation.

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 (DHS) 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. Administration officials have announced that Maryland will comply with the REAL ID Act and that Maryland has been granted a deadline extension until December 31, 2009, for submission of an initial certification package.

The final regulations also allow a state to request, by October 11, 2009, an additional extension to May 10, 2011. An additional extension may be granted only if a state certifies material compliance by January 1, 2010 with the 18 benchmarks contained in DHS's "Material Compliance Checklist" that was issued as an attachment to the final regulations. The summary of the final regulations states that "[t]he eighteen milestones are all mandatory requirements under the Act; one of the most important ones, however, is the state's ability to verify that the applicant is lawfully present in the United States." If a second extension is granted, a state must begin issuing REAL ID compliant ID cards on May 11, 2011.

Although REAL ID compliant ID cards must verify lawful presence, a state is not prohibited from issuing noncompliant ID cards to individuals who cannot certify lawful presence status. MVA has been exploring the possibility of establishing a two-tiered driver's license and identification card system for several years, in order to allow individuals to drive who cannot certify lawful presence status or cannot otherwise obtain the information necessary to satisfy the standards required to obtain a federally compliant license or card.

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 Fiscal Effect:** TTF expenditures increase significantly beginning fiscal 2010 for the cost of hiring one or more customer agents at each MVA branch office because of the additional transactions and transaction time required to provide lawful presence identification cards. The additional transactions are the result of the bill allowing an individual to possess both a driver's license and a lawful presence identification card. Some individuals may choose to apply for a lawful presence identification card separately from the renewal of their driver's license, thus causing additional transactions. The lawful presence identification card may be of limited use aside from the restrictions imposed by the federal REAL ID beginning December 1, 2014. Therefore, many individuals may delay obtaining a lawful presence identification card until fiscal 2014, potentially causing an over-allocation of new personnel and resources initially, followed by an under-allocation in fiscal 2014.

The Department of Legislative Services (DLS) advises that estimates of the additional personnel-related costs necessary for the issuance of lawful presence identification cards under the bill may be similar to personnel-related cost estimates for issuance of REAL ID compliant cards. The Maryland Department of Transportation and MVA have provided several estimates of the total cost of implementing REAL ID in the last several years ranging from a low of \$16.5 million up to \$100 million, with the most recent estimates at the lower end of this range. Personnel costs comprise the majority of costs estimated for implementation of REAL ID.

TTF revenues increase beginning in fiscal 2010 or 2011 and each fiscal year thereafter due to the bill's requirement to recover all costs associated with the issuance of lawful presence identification cards. Additional revenues are generated by the fee established under the bill.

General fund revenues and expenditures may increase minimally due to the bill's penalty provisions. It is a misdemeanor punishable by a fine of up to \$500 or imprisonment for up to two months, or both, for committing fraud or misrepresentation under the bill. General fund revenues may increase due to a slight increase in civil fine collection by the District Court, and Department of Public Safety and Correctional Services expenditures may increase slightly for additional incarcerations in Baltimore City. Any increase in the District Court caseload may necessitate additional clerical staff and resources, but can likely be handled with existing resources.

**Local Expenditures:** Expenditures may increase minimally as a result of the applicable incarceration penalties for those convicted of committing fraud or misrepresentation under the bill. Counties pay the full cost of incarceration for people in their facilities for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$46 to \$141 per inmate in fiscal 2010.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Office of the Attorney General, Maryland Insurance Administration, Judiciary (Administrative Office of the Courts), Maryland Automobile Insurance Fund, Department of State Police, Maryland Department of Transportation, Department of Legislative Services

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