

Department of Legislative Services  
Maryland General Assembly  
2009 Session

FISCAL AND POLICY NOTE  
Revised

House Bill 1226  
Judiciary

(Delegate Ivey, *et al.*)

---

Vehicle Laws - Lawful Presence - Identification Card, Moped Operator's Permit,  
or Driver's License

---

This bill requires the Motor Vehicle Administration (MVA) to issue separate identification cards, driver's licenses, and moped operator's permits to applicants depending on whether they provide acceptable documentation of U.S. citizenship or lawful presence in the United States. An identification card, driver's license, or moped operator's permit issued to an applicant who does not provide documentation of U.S. citizenship or lawful presence must have a unique design or color indicator and state clearly on its face and in its machine-readable zone that it is not acceptable by federal agencies for official purposes. 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.

---

**Fiscal Summary**

**State Effect:** Transportation Trust Fund (TTF) expenditures increase significantly beginning in FY 2010 to hire additional customer agents at each MVA branch office to avoid delays caused by the additional transaction time for each driver's license, identification card, or moped operator's permit issued. TTF expenditures also increase to a lesser extent due to the cost of producing a separate card with a unique design or color for individuals who do not provide documentation of U.S. citizenship or lawful presence.

**Local Effect:** None.

**Small Business Effect:** None.

---

## Analysis

**Current Law:** MVA is required to issue an identification card to any individual who (1) is a resident of the 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.

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.

An individual may not drive or attempt to drive a motor vehicle on any highway in the 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 (1) the individual has a valid license issued by his or her country of residence; (2) the individual's license authorizes the operation of the class of vehicles being driven; (3) the individual meets the minimum age requirements for driving the class of vehicle; and (4) 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. 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.

MVA is required to issue a moped operator's permit to an individual (1) who is age 16 or older; (2) who does not possess a valid driver's license issued by the State or any other jurisdiction; (3) whose license or privilege to drive is not revoked, suspended, refused, or canceled; (4) who passes the driver's license examination process; and (5) who pays the required fee. A moped operator's permit expires every five years.

**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 in fiscal 2010 for the cost of hiring additional customer agents to avoid delays caused by the additional transaction time for each driver's license, identification card, or moped operator's permit issued. Additional transaction time at MVA branch offices is the result of the bill requiring the verification of lawful presence status. Expenditures increase to a lesser extent due to the cost of producing a separate card with a unique design or color for individuals who do not provide documentation of U.S. citizenship or lawful presence.

This bill does not authorize an individual to possess a separate identification card for the purpose of legal identification; therefore, it is not likely to cause a significant number of additional transactions for MVA. However, the bill does require lawful presence status to be determined, which causes additional transaction *time* at MVA branch offices. One of MVA's primary missions is to provide efficient customer service, which is often tracked as a performance measure by the average customer wait time. In order to implement the bill while keeping average customer wait times down, a significant number of additional contractual customer agents are necessary. Further, MVA estimates that the number of transactions will increase by about 10% under the bill because some customers will choose to obtain a license or card certifying lawful presence prior to the current renewal date.

Legislative Services 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. However, because the bill does not permit individuals to obtain separate identification cards in addition to a driver's license, the licenses and cards compliant with the bill's requirements may be obtained within the regular license renewal cycle, thereby minimizing the increase in transactions for any one year; as noted above, MVA estimates that about 10% of customers will deviate from this regular renewal cycle.

Legislative Services advises that this estimate assumes that the licenses and cards issued for those who are able to provide documentation acceptable to MVA of citizenship or lawful presence status are not required to be REAL ID compliant. The bill does expressly require REAL ID compliance; however, MVA advises that it interprets certain language in the bill as requiring such compliance. Legislative Services does not concur with this assessment.

TTF revenues may increase beginning in fiscal 2010 or 2011 due to an MVA statutory cost-recovery provision. Additional revenues are likely to be generated by increases in the fee for issuance of driver's permits and licenses and identification cards.

---

### **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

**Fiscal Note History:** First Reader - February 24, 2009  
ncs/ljm Revised - Clarification/Updated Information - March 17, 2009

---

Analysis by: Evan M. Isaacson

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