

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 369

(Senator Stone, *et al.*)

Judicial Proceedings

Judiciary

Vehicle Laws - Proof of Lawful Presence Act of 2009

This bill restricts the issuance by the Motor Vehicle Administration (MVA) of an identification card, driver's license, or moped operator's permit to an individual who cannot provide acceptable documentation verifying citizenship or lawful presence in the United States. Upon application for any of these MVA documents, the applicant must provide acceptable documentation of a Social Security number or the applicant's ineligibility for one. The bill requires MVA to determine a new period of validity for each of these documents of up to eight years, except for identification cards issued to individuals younger than age 16, for which the period is five years. 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) revenues decrease by about \$225,000 in FY 2010 and \$300,000 in FY 2011 from reduced driver's licensing fee revenues. TTF revenues may decrease further in future years due to the reduced collection by MVA of other vehicle and driver's license related fees. TTF expenditures may increase to hire additional personnel and otherwise conduct lawful presence documentation review. TTF expenditures may increase further to reprogram MVA computers and databases or to hire additional customer agents to handle the verification of ineligibility for a Social Security number required by the bill. General fund revenues and expenditures may increase due to the applicable penalty provisions.

Maryland Automobile Insurance Fund (MAIF) Effect: The bill reduces the number of individuals eligible to receive a driver's license and may cause MAIF to issue fewer policies.

Local Effect: Minimal increase in local expenditures due to applicable penalty provisions.

Small Business Effect: Potential minimal.

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. An identification card expires after five years, or after two years for applicants younger than age 16.

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. A license issued to a driver at least 21 years of age expires on the birth date in the fifth year after issuance, or 60 days after the twenty-first birthday for individuals younger than age 21.

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 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.

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 revenues may decrease by \$224,817 in fiscal 2010 and by \$299,757 in fiscal 2011, the first full year of experience under the bill, due to fewer driver's licenses and identification cards being issued under the bill's prohibition. This estimate is based on the following information and assumptions:

- MVA advises that in calendar 2008 there were 91,483 out-of-country appointments for driver's licenses and ID cards and the Department of Legislative Services (DLS) assumes this rate remains constant indefinitely;
- 62% of out-of-country appointments were attended by an applicant;
- 47% of applicants were approved for a driver's license or ID card by MVA;
- 25% of approved applicants are assumed to not be U.S. citizens or otherwise lawfully present;
- 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 may 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.

TTF revenue losses may increase further due to (1) a loss of other vehicle and driver's license related fees; (2) the exclusion from this estimate of the negligible revenue from moped operator permit fees; and (3) the ineligibility for a driver's license or identification card for those whose lawful presence status is temporary and subsequently lapses.

TTF expenditures are not likely to decrease due to fewer applications from undocumented individuals under the bill. Instead, DLS advises that because of the bill's prohibition there is an incentive for more undocumented individuals to attempt to obtain a driver's license, ID card, or moped permit through fraudulent means. Therefore, although there is a net reduction in the number of applications at MVA, the additional transaction time required to screen for fraudulent documents may require MVA to maintain staffing at current levels or hire additional positions. Depending on the stringency of lawful presence review administered by MVA, personnel costs may increase by a greater extent to counteract the additional pressure on transaction times, thereby substantially outweighing any potential personnel reductions caused by fewer applications from undocumented individuals.

DLS advises that the bill's authorization for MVA to change the validity period to as many as eight years for various MVA documents may substantially affect MVA workloads and TTF finances in future years. Whereas an increase in the renewal cycle may temporarily lower expenditures and workloads, a decrease in the renewal cycle's duration may temporarily increase expenditures. Assuming the authority is used to increase the validity period, any such impact will not be realized in the first five years.

In addition, DLS advises that, although the bill may require additional costs at MVA for reprinting forms and manuals, communication, or for public awareness related expenditures, these costs may be handled with existing budgeted resources. However, TTF expenditures may increase by an additional amount due to the bill's requirement to verify ineligibility for a Social Security number if MVA is required to reprogram its computer systems or databases to note this ineligibility, or if additional customer agents are needed to reduce the slight increase in transaction time caused by this additional requirement.

Experience from states with lawful presence requirements for driver's license issuance indicates that a significant percentage of undocumented immigrants drive notwithstanding the lack of eligibility for licensure. Driving without a license is a violation of the Maryland Vehicle Law and is therefore a misdemeanor punishable by a fine of up to \$500, imprisonment for up to 60 days, or both; on a second or subsequent offense the violator may be imprisoned for up to one year in addition to a \$500 fine. To the extent that the incidence of driving without a license increases significantly under the bill, the increase in the District Court caseload may necessitate additional clerical staff and resources but can likely be handled with existing resources. General fund revenues and expenditures may increase due to an increase in civil fine collection and a potential increase in incarceration of unlicensed drivers.

Local Expenditures: Expenditures may increase minimally as a result of the applicable incarceration penalties for those convicted of driving without a license. 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.

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

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

Additional Information

Prior Introductions: A similar bill was introduced in the 2008 session as HB 288 and received an unfavorable report from the House Judiciary Committee.

Cross File: HB 195 (Delegate George, *et al.*) - Judiciary.

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

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