

Department of Legislative Services
2012 Session

FISCAL AND POLICY NOTE

House Bill 388
Appropriations

(Delegate O'Donnell)

Public Benefits - Requirement of Proof of Lawful Presence

This bill prohibits State agencies and local governments from providing unauthorized immigrants with specified public benefits unless the benefits are required under federal law. Each State unit or political subdivision must verify the lawful presence status of an adult before providing most public benefits. The bill makes it a misdemeanor to provide a false, fictitious, or fraudulent statement or affidavit.

Fiscal Summary

State Effect: State expenditures increase for some agencies to verify the lawful presence status of applicants for public benefits or services; while State expenditures for certain public benefits and services decrease. Since unauthorized immigrants are currently not eligible to receive most federal and State public benefits, any decrease in State expenditures from the proposed proof of lawful presence requirement is not expected to be significant.

Local Effect: Local government expenditures in certain jurisdictions increase by a significant amount to handle the additional documentation required under the bill, most notably in Montgomery and Prince George's counties. Local government expenditures for certain public benefits and services may decrease depending on whether any such benefits and services are currently provided to unauthorized immigrants. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Bill Summary: Any State unit or political subdivision is prohibited from providing federal, State, or local public benefits to an adult who is not lawfully present in the United States. Thus, each State unit and political subdivision must verify the lawful presence status of an adult who applies for these public benefits.

“State or local public benefits” is a term defined by federal law to include:

- any grant, contract, loan, professional license, or commercial license provided by an agency of a State or local government or by appropriated funds of a State or local government; and
- any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of a State or local government or by appropriated funds of a State or local government.

Certain public benefits are exempted by the bill from this verification process, including (1) emergency health care services not related to organ transplantation; (2) prenatal care; (3) short-term, noncash, in-kind disaster relief; (4) immunizations and treatment of communicable disease symptoms; and (5) assistance necessary for the protection of life or safety delivered through in-kind services at the community level regardless of wealth or income.

Proof of lawful presence must be in the form of (1) a valid Maryland driver’s license or identification card; (2) a U.S. military card; (3) a U.S. merchant marine card; or (4) a Native American tribal document. State units are authorized to require additional documentation; while State units and political subdivisions are authorized to develop a waiver process through regulations, and may adopt a modification to the verification process if necessary to reduce delays or improve efficiency as long as the modification is no less stringent than the process established in the bill. Individual adjudication of lawful presence is also authorized to avoid undue hardship on a legal resident of the State.

In addition to the documentation requirement, the applicant must also execute an affidavit stating that the person is a U.S. citizen, legal permanent resident, or is otherwise lawfully present pursuant to federal law. The affidavit is presumed proof of lawful presence pending completion of a verification check. State units and political subdivisions must verify lawful presence through the federal Systematic Alien Verification of Entitlement (SAVE) Program or any successor program designated by the U.S. Department of Homeland Security.

Anyone who knowingly makes a false, fictitious, or fraudulent statement or affidavit is guilty of a misdemeanor and is subject to imprisonment of up to one year, and/or a fine of up to \$1,000.

Each State unit that provides public benefits must report to the Governor and General Assembly annually on compliance with the bill's requirements, and to the U.S. Department of Homeland Security as to any errors or significant delays caused by the SAVE Program.

Current Law: Unauthorized immigrants are not eligible to receive most federal and State public benefits due in part to federal legislation enacted in 1996. However, certain fundamental services, most notably emergency medical care and public elementary and secondary education, are available to unauthorized immigrants. In addition, children of unauthorized immigrants who are born in the United States, and are therefore United States citizens, may qualify for Medicaid or the Maryland Children's Health Program based on household income. Qualified children of unauthorized immigrants can enroll in these programs if the children's citizenship can be documented. The extent to which unauthorized immigrants in Maryland are eligible to receive certain types of public benefits is illustrated in **Exhibit 1**.

The federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) significantly reduced the ability of unauthorized immigrants to receive federal and State public benefits. Denied public benefits include retirement, welfare, health, disability, housing, food stamps, unemployment, and postsecondary education. In addition, unauthorized immigrants are not eligible for the federal Earned Income Tax Credit, Social Services Block Grants, federal grants, contracts, loans, licenses, and services through migrant health centers. PRWORA does include certain exemptions from these exclusions.

Under *Plyler v. Doe*, a 1982 Supreme Court decision, public elementary and secondary schools are required to accept unauthorized immigrants. In its decision, the court contended that denying an education to the children of unauthorized immigrants would "foreclose any realistic possibility that they will contribute ... to the progress of our Nation." However, since 1996, federal immigration law has prohibited unauthorized immigrants from obtaining a postsecondary education benefit that U.S. citizens cannot obtain. In response to the federal law, states that have passed in-state tuition benefits for unauthorized immigrants have crafted legislation that bases eligibility on where a student went to high school, not immigration status.

Chapter 191 of 2011 would allow unauthorized immigrants to attend public institutions of higher education in Maryland at the same tuition rates that resident students pay in specified circumstances. The legislation creates a two-tier path for unauthorized

students, who must begin at a Maryland community college, subject to several requirements and conditions. After completing at least 60 credits at a community college, qualifying students may enroll at a public four-year university and pay the equivalent of in-state tuition. Although the legislation would have been in effect for the 2011-2012 academic year, the legislation was petitioned to referendum following the 2011 session and has not taken effect. If voters approve the measure, it will take effect 30 days after the November general election.

In regards to labor benefits, Maryland law expressly disallows unemployment benefits for workers who cannot provide proof of legal residence. In addition, to be eligible for Unemployment Insurance (UI), a claimant must prove he or she is available for work, which would not apply to an unauthorized worker. However, unauthorized workers who are injured on the job are eligible for medical payments and lost income. While the State statute is silent on the subject, the Court of Appeals ruled in 2005 that a worker does not have to be legally employed for workers' compensation eligibility if the injury otherwise meets the test for compensation.

Background: Maryland is a leading state for immigrants, due to proximity to the nation's capital and the relatively strong business climate in past years. International immigration added nearly 200,000 people to the State's population between 2000 and 2009, according to the U.S. Census Bureau. This was the thirteenth largest gain from immigration among all states during that period. From 2000 to 2009, Maryland accounted for 2.1% of the total national population gain from international immigration.

A significant portion of Maryland's immigrants are unauthorized, according to estimates made by private research organizations. The Pew Hispanic Center, which does not take positions on policy issues, estimated that there were 275,000 unauthorized immigrants in the State in 2010. Based on this estimate, Maryland had the tenth highest number of unauthorized immigrants among the states that year. Over the last two decades, the presence of unauthorized immigrants in Maryland has increased dramatically, from an estimated population of 35,000 in 1990 and 120,000 in 2000. Today, unauthorized immigrants account for 5.9% of the State's labor force and 4.8% of the State's population. Nationally, unauthorized immigrants account for 5.1% of the labor force and 3.6% of total population.

Fiscal Implications of Unauthorized Immigration

Considerable research has been conducted over the past two decades examining the fiscal impact that immigration has on various units of government. The Congressional Budget Office released a report in 2007 concluding that, in aggregate and over the long term, immigrants pay more in taxes (federal, state, and local) than they use in government services. However, the impact of unauthorized immigrants on the federal government differs from the effect on state and local governments. While most unauthorized

immigrants are ineligible for many federal programs (*i.e.*, public cash assistance, food stamps, Medicaid (other than emergency services), and Social Security), state and local governments are limited in their ability to deny services to immigrants, including those who are unauthorized. State and local governments must provide certain services (*i.e.*, public K-12 education, emergency health care, and law enforcement) to individuals regardless of their immigration status. Consequently, while the federal government receives a net benefit from unauthorized immigrants, state and local governments realize a net loss with unauthorized immigrants paying less in state and local taxes than the cost to provide services to that population. This is due partly to the fact that unauthorized immigrants typically earn less than native-born residents and thus pay a smaller portion of their income in taxes.

In Maryland, over \$49 billion was spent through State and local budgets on government services in fiscal 2009 (**Exhibit 2**). A majority of this spending is for services that cannot be denied to unauthorized immigrants (*i.e.*, public K-12 education and emergency health care), or programs by which federal law already requires proof of lawful presence (*i.e.*, public cash assistance and Medicaid). For example, public schools accounted for the largest share of government spending, at 27%, followed by health and human services at 22%, and higher education at 12%. Together, these three functions account for 61% of total government spending in Maryland. In addition, many government services cannot logistically be denied to unauthorized immigrants, such as transportation, public safety, public works, courts, and public libraries. Together, these functions account for an additional 27% of government spending. The types of government services provided at the State and local level, along with existing federal requirements and the relatively low number of unauthorized immigrants living in Maryland in relation to the overall State population, greatly diminishes any potential cost savings that could be generated from imposing further restrictions on the eligibility to receive government services by individuals who cannot prove their lawful presence in the country.

State Fiscal Effect: A majority of State agencies responding to an information request for this legislation (or for a prior introduction of identical legislation) indicated that the bill will have minimal or no impact on their operations or finances (**Exhibit 3**). However, the Department of Health and Mental Hygiene (DHMH), the Department of Human Resources (DHR), the Department of Labor, Licensing, and Regulation (DLLR), and the Maryland State Department of Education (MSDE) indicate that the legislation will have a significant fiscal impact. To implement the proposed verification measures, State expenditures at these four agencies increase by approximately \$687,000 in fiscal 2013 and by \$770,000 annually thereafter.

Department of Health and Mental Hygiene

Most DHMH units indicated or have indicated on prior introductions that the bill will have no operational impact or that agency services are governed by federal law. For example, the Medical Assistance program complies with federal rules and guidelines regarding the provision of health benefits to individuals in the State. However, the Developmental Disabilities Administration (DDA) indicates that it will incur additional costs for individuals receiving and applying for State-only funded services, low intensity support services, and those waiting and applying for services. Currently, around 2,000 individuals receive State-only services while 3,000 receive low intensity support services. In addition, over 6,900 individuals are waiting to receive DDA services with an average of 85 individuals added to the waiting list each month. To implement the proposed verification measures, the department will need an additional two positions at a cost of approximately \$115,000 in fiscal 2013 and \$150,000 on an annualized basis. These costs include transactional charges for using the SAVE system.

Department of Human Resources

DHR indicates that although the agency does not currently provide any welfare or disability benefit programs specifically to unauthorized immigrants, the department does provide emergency medical assistance and other services in accordance with federal law. Local departments of social services already require documentation of identity, but because the bill imposes new documentation requirements there will be a resulting administrative burden. Specifically, transaction processing time will increase by over 3,600 person-hours. As a result, DHR will need an additional 2.5 positions at a cost of approximately \$111,000 in fiscal 2013 and \$140,000 annually thereafter.

Department of Labor, Licensing, and Regulation

DLLR previously reported (for a prior introduction of this bill) that to comply with the bill's requirements, the department will need to develop comprehensive verification systems for both renewal and new license transactions. DLLR is responsible for licensing numerous occupations and professions in the State. Through the Division of Occupational and Professional Licensing, the department handles an estimated 100,000 renewal transactions and approximately 20,000 new license transactions annually. In recent years, the licensing process has been streamlined with 87% of renewal transactions being completed through electronic means. Therefore, approximately 87,000 renewal transactions that would otherwise be completed electronically will need to be processed manually. In addition, for each of the estimated 20,000 new licensing transactions, the department will be required to implement new document review procedures to verify lawful presence status. The proposed verification measures will require an additional six positions at a cost of approximately \$200,000 in

fiscal 2013 and \$300,000 on an annualized basis. In addition, the department will incur \$65,000 in ongoing charges for use of the SAVE program, and \$100,000 in one-time computer modification expenses. In total, department expenditures increase by approximately \$365,000 annually.

DLLR also noted that complying with the verification requirements may lead to a delay in disbursing unemployment insurance benefits, which could place the State out of conformity with federal requirements and jeopardize administrative funds.

Department of Education – Division of Rehabilitation Services

The Division of Rehabilitation Services (DORS) offers programs and services that help individuals with disabilities go to work or stay independent in their home and communities. DORS indicates that it averages approximately 25,000 new clients per year and that the more stringent requirements for verification of lawful presence under the bill's provisions will increase the division's workload. Accordingly, processing the new applicants will require two additional support staff at a cost of \$96,000 in fiscal 2013 and approximately \$115,000 annually thereafter.

Local Fiscal Effect: Local government expenditures in certain jurisdictions may increase by a significant amount to handle the additional documentation required under the bill, most notably in Montgomery and Prince George's counties where a large portion of the State's foreign-born population resides (**Exhibit 4**).

Montgomery County previously reported (for a prior introduction of this bill) that an additional 19 positions at a cost of \$2.2 million will be needed to implement the proposed verification measures. The additional cost reflects both the large number of foreign-born residents living in Montgomery County and the county's current policy of not requiring proof of lawful presence to receive county funded services. The Public Health Services (PHS) in Montgomery County indicates that county staff verifies the proof of lawful presence for all federal and State programs that require such verification (*i.e.*, Medical Assistance); however, such verifications are not conducted on county funded programs.

Prince George's County previously reported (for a prior introduction of this bill) that it would need 12 additional full-time staff employees to handle the proposed verification measures.

Jurisdictions that do not provide county funded public benefits and those with a limited foreign-born population are less likely to be impacted by the bill's proposed verification measures. For example, Kent and Worcester counties have indicated on prior introductions and Harford County indicated this year that the legislation will have no

impact since public benefits are not provided to unauthorized immigrants. The Town of Leonardtown and the City of Salisbury have also indicated that the legislation will have no impact.

Additional Information

Prior Introductions: HB 28 of 2011 received an unfavorable report from the House Appropriations Committee. Its cross file, SB 585, received an unfavorable report from the Senate Education, Health, and Environmental Affairs Committee. HB 380 of 2011 also received an unfavorable report from the House Appropriations Committee. HB 343 of 2010, HB 1234 of 2009, and HB 604 of 2008 likewise received unfavorable reports from the House Appropriations Committee.

Cross File: None.

Information Source(s): Baltimore City Community College; Department of Human Resources; Maryland State Department of Education; Department of Housing and Community Development; Maryland Higher Education Commission; Department of Health and Mental Hygiene; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Maryland Energy Administration; Department of State Police; Morgan State University; Department of Public Safety and Correctional Services; Maryland Department of Transportation; University System of Maryland; Baltimore City, the Town of Leonardtown, and City of Salisbury; Harford, Kent, Montgomery, and Worcester counties; Department of Legislative Services

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Exhibit 1
Unauthorized Immigrants Are Not Eligible for Many Programs in Maryland

<u>Program/Service</u>	<u>Eligibility</u> <u>Status</u>	<u>Comments</u>
Unemployment Insurance	No	State law requires proof of legal residence.
Workers' Compensation	Yes	State court ruling indicates that State law broadly defines a covered employee to include an unauthorized worker.
Social Security	No	
Food Stamps	No	Federal law requires that immigration status be verified for noncitizen applications.
WIC Nutrition Program	Yes	
Medical Assistance	No	Unauthorized immigrants can receive Medicaid-funded emergency medical care. Also, U.S. born children of unauthorized immigrants are eligible for Medical Assistance and other public assistance programs.
Temporary Cash Assistance	No	Federal law requires that immigration status be verified for noncitizen applications.
Energy Assistance	No	Federal law requires that immigration status be verified for noncitizen applications.
Public Schools	Yes	U.S. Supreme Court ruling guarantees access to a free public primary and secondary education to unauthorized children.
School Breakfast/Lunch Programs	Yes	
Higher Education – In-state Tuition	No	Unauthorized students must pay out-of-state tuition.*
Language Assistance Programs	Yes	

*Chapter 191 of 2011 would allow unauthorized immigrants to pay in-state tuition rates under certain circumstances. The legislation was petitioned to referendum, and enactment of the legislation will be decided by voters in November 2012.

Exhibit 2
State, Local, and Federal Spending on Government Services in Maryland
As a Percentage of Total Spending on the Service
Fiscal 2009
(\$ in Millions)

	<u>Total</u>	<u>State</u>	<u>Local</u> ¹	<u>Federal</u>	<u>Other</u> ²
Legislative/Executive/General Government	\$1,695	18%	82%	0%	0%
Financial Administration	434	60%	40%	0%	0%
Courts and Related Offices	826	69%	30%	1%	0%
Public Safety	4,678	32%	66%	2%	0%
Public Education	13,305	44%	49%	6%	0%
Higher Education	5,861	28%	6%	15%	52%
Public Libraries/Television	314	24%	62%	2%	12%
Transportation	5,334	69%	15%	16%	0%
Health Services ³	8,316	47%	2%	49%	2%
Human Services	2,634	37%	10%	53%	0%
Housing and Community Development	871	9%	27%	64%	0%
Economic Development and Business Regulation	300	66%	32%	2%	0%
Labor and Workforce Development	453	29%	9%	62%	0%
Natural and Historic Resources Management	1,457	38%	54%	8%	0%
Public Works	2,070	0%	100%	0%	0%
Miscellaneous/Unallocated ⁴	825	15%	85%	0%	0%
Total	\$49,372	40%	35%	18%	7%

¹Local funding represents own-source spending rather than the total spending reported by local governments. Federal and State grants were assumed to have been expended in the year they were received. Moreover, State grants reported by local governments were assumed to have been accounted for in the State budget. Likewise, most federal grants reported by local governments were assumed to have been passed through the State budget rather than provided directly to the local government; consequently, federal funding may be underestimated.

²Other includes tuition and fees collected by higher education institutions; higher education revenues from private gifts, grants, and contracts; endowment income at higher education institutions; sales and services revenues at higher education institutions; gifts, grants, and fees for public libraries and public television; and certain fees used to finance health programs.

³Excludes \$10.8 billion in federal Medicare spending which does not pass through State or local budgets.

⁴Miscellaneous spending includes State disparity grant payments and local personnel expenditures such as pension, health insurance, and Social Security payments.

Source: *Fiscal 2011 State Budget Books*; Uniform Financial Reports; Department of Legislative Services

Exhibit 3
Potential Fiscal Impact on State Agencies

<u>State Agency</u>	<u>Impact</u>	<u>Comments</u>
Attorney General	None	
Baltimore City Community College (BCCC)	None	Legislation reflects current practices. Proof of lawful residence in the United States is currently required for both employees and students.
Business and Economic Development (DBED)	None	No operational impact.
Disabilities (DOD)	Minimal	Services governed by federal law.
Education (MSDE)	Significant	New verification requirements will require two positions at a cost of approximately \$96,000 in fiscal 2013 and \$115,000 annually thereafter.
Health and Mental Hygiene (DHMH)	Significant	No impact on Medical Assistance as the program is governed by federal law. New verification requirements for the Developmental Disabilities Administration will require an additional two positions at a cost of approximately \$115,000 in fiscal 2013 and \$150,000 annually thereafter.
Higher Education Commission (MHEC)	None	Legislation reflects current practices.
Housing & Community Development (DHCD)	None	Services governed by federal law.
Human Resources (DHR)	Significant	Services governed by federal law. New verification requirements will increase processing time for certain programs, which will require an additional 2.5 positions at a cost of approximately \$111,000 in fiscal 2013 and \$140,000 annually thereafter.
Labor, Licensing, and Regulation (DLLR)	Significant	New verification requirements will require an additional six positions at a cost of approximately \$365,000 annually. Minimal decrease in general fund licensing revenues.
Morgan State University (MSU)	None	Legislation reflects current practices.
Motor Vehicle Administration (MVA)	Minimal	Lawful presence already required to obtain drivers' license.
Natural Resources (DNR)	Minimal	Must develop verification system.
Public Defender	None	No operational impact.
University of Maryland System (UMS)	Minimal	Legislation reflects current practices.

Exhibit 4
Foreign-born Population in Maryland
2006-2008 American Community Survey

County	Total Population	Foreign-born Population	Percent Foreign Born	State Ranking	Share of State Total	State Ranking
Allegany	72,419	856	1.2%	23	0.1%	23
Anne Arundel	510,778	33,578	6.6%	6	4.9%	6
Baltimore City	639,343	38,270	6.0%	7	5.5%	5
Baltimore	785,549	73,078	9.3%	4	10.6%	3
Calvert	88,126	2,654	3.0%	21	0.4%	14
Caroline	32,715	1,687	5.2%	8	0.2%	16
Carroll	168,773	5,623	3.3%	17	0.8%	10
Cecil	99,271	2,370	2.4%	22	0.3%	15
Charles	140,032	5,830	4.2%	11	0.8%	9
Dorchester	31,734	1,017	3.2%	19	0.1%	20
Frederick	223,787	18,797	8.4%	5	2.7%	7
Garrett	29,647	64	0.2%	24	0.0%	24
Harford	239,650	9,887	4.1%	12	1.4%	8
Howard	272,412	44,076	16.2%	3	6.4%	4
Kent	19,943	944	4.7%	9	0.1%	21
Montgomery	942,747	279,841	29.7%	1	40.5%	1
Prince George's	825,924	154,512	18.7%	2	22.3%	2
Queen Anne's	46,475	1,442	3.1%	20	0.2%	18
St. Mary's	100,117	3,955	4.0%	13	0.6%	13
Somerset	26,014	888	3.4%	16	0.1%	22
Talbot	36,127	1,291	3.6%	14	0.2%	19
Washington	144,343	5,047	3.5%	15	0.7%	11
Wicomico	93,120	4,010	4.3%	10	0.6%	12
Worcester	49,204	1,624	3.3%	18	0.2%	17
Maryland	5,618,250	691,341	12.3%		100.0%	

Source: U.S. Census Bureau, 2006-2008 American Community Survey