

Department of Legislative Services
 Maryland General Assembly
 2022 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 111 (Senator McCray)
 Judicial Proceedings

**Occupational Licenses or Certificates - Pre-application Determinations -
 Criminal Convictions**

This bill authorizes a potential applicant for an occupational license or certificate to request from a “department” a determination as to whether a specified criminal conviction would be the basis for denial of the occupational license or certificate. A department must provide the determination in writing to the potential applicant and may set a reasonable fee to cover the costs of providing a determination.

Fiscal Summary

State Effect: General and special fund revenues for the Maryland Department of Labor (MDL) and special fund revenues for the Maryland Department of Health (MDH) increase beginning in FY 2023. MDL general and special fund expenditures increase by *at least* \$161,700 in FY 2023; future years reflect annualization and termination of one-time costs. MDH special fund expenditures increase by a significant but indeterminate amount beginning in FY 2023. Other impacted departments can implement the bill with existing budgeted resources.

(in dollars)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
SF Revenue	-	-	-	-	-
GF/SF Rev.	-	-	-	-	-
SF Expenditure	-	-	-	-	-
GF/SF Exp.	\$161,700	\$72,300	\$74,300	\$76,300	\$78,400
Net Effect	(\$-)	(\$-)	(\$-)	(\$-)	(\$-)

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

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: A determination provided to a potential applicant is binding on the department and the applicant on submission of an application for an occupational license or certificate unless the applicant (1) has subsequently been convicted of a crime; (2) has pending criminal charges; or (3) had previously undisclosed criminal convictions.

Current Law: “Department” means the Department of Agriculture (MDA), the Department of the Environment (MDE), MDH, the Department of Human Services (DHS), MDL, or the Department of Public Safety and Correctional Services (DPSCS) and includes any unit of a department listed above.

In general, an individual must be licensed or certified by the respective occupation board or commission before the individual may practice in the State. Each board or commission sets its own standards for obtaining an occupational license or certificate that vary by profession, but may require specified education, experience, and passage of a national and/or State examination. Under the Health Occupations Article, an applicant for licensure or certification must submit to a criminal history records check (CHRC). Under the Business Occupations and Professions Article, an applicant for licensure or certification is not typically required to submit to a CHRC, except for real estate appraisers, home inspectors, security system technicians, and security guards.

A department may not deny an occupational license or certificate to an applicant solely on the basis that the applicant has previously been convicted of a nonviolent crime, unless the department determines that (1) there is a direct relationship between the applicant’s previous conviction and the specific occupational license or certificate sought or (2) the issuance of the license or certificate would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public. The statute does not apply to a conviction of a crime that requires registration on the sex offender registry.

In addition, if a period of at least seven years has passed since an applicant completed serving the sentence for a crime and the applicant has not been charged with another crime, a department may not deny an occupational license or certificate to the applicant solely on the basis that the applicant was previously convicted of the crime.

State Revenues:

Maryland Department of Labor

MDL general and special fund revenues increase to the extent that the department chooses to charge a reasonable fee for each determination request to cover the approximate cost of providing the determination. Thus, revenues could increase by *as much as* \$161,664 in

fiscal 2023 (or further if actual expenditures for MDL are higher under the bill than anticipated by this analysis). However, the Department of Legislative Services (DLS) advises that without actual experience under the bill, the extent of any revenue increase cannot be reliably estimated.

Maryland Department of Health

MDH special fund revenues increase to the extent that MDH or the respective health occupations boards choose to charge a reasonable fee for each determination request; however, without actual experience under the bill, the extent of any revenue increase cannot be reliably estimated.

State Expenditures:

Maryland Department of Labor

In general, the business occupations boards do not require a CHRC for an applicant to become licensed or certified (with the exceptions noted above). Instead, the boards rely on self-disclosure by an applicant of any criminal history. MDL advises that the disqualifications for licensure are different for each board, making the requirements of the bill cumbersome to implement.

MDL general and special fund expenditures increase by *at least* \$161,664 in fiscal 2023, which accounts for the bill’s October 1, 2022, effective date. This estimate reflects the cost of hiring one full-time clerk to process, review, and present to the appropriate board information related to an individual’s request for a pre-application determination. It includes a salary, fringe benefits, one-time start-up costs, ongoing operating expenses, and a one-time cost of *at least* \$100,000 for contractual services to update approximately 200 applications from the business occupations boards and commissions that MDL oversees.

Position	1.0
Contractual Services	\$100,000
Salary and Fringe Benefits	54,321
Operating Expenses	<u>7,343</u>
Minimum FY 2023 MDL Expenditures	\$161,664

Future year expenditures reflect full salaries with annual increases and employee turnover, as well as annual increases in ongoing operating expenses and the termination of the one-time cost for contractual services to update licensure or certification applications for each board or commission.

Maryland Department of Health

The Maryland Board of Physicians (MBP), the State Board of Nursing (BON), and the Maryland Board of Pharmacy (BOP) advise that they need significant resources to implement the bill.

MBP advises that it needs to hire at least one full-time compliance analyst to process an estimated 700 requests for pre-application determination and one part-time (50%) assistant attorney general to advise the board on pre-application determination decisions at an annual cost of \$93,658 beginning in fiscal 2023. In addition, MBP expects to spend approximately \$22,900 in fiscal 2023 to update its licensing database. MBP's fiscal 2020 annual report indicates that 6,508 CHRCs were processed; of those, only 136 returned positive results (a criminal record was identified), but no individuals were denied initial or renewal licensure due to a positive CHRC.

BON advises that it needs to hire at least two full-time administrative specialists to collect and review all disciplinary and criminal conviction documents at an annual cost of \$92,553 beginning in fiscal 2023. BON's fiscal 2021 annual report indicates that a total of 6,121 initial licenses, 12,435 initial certificates, 52,561 renewal licenses, and 37,242 renewal certificates were issued in fiscal 2021. Further BON processed a total of 22,175 CHRCs in fiscal 2021; of those, 307 returned positive results, and one individual was denied a license or certificate due to a positive CHRC result.

BOP advises that it may need to hire one part-time administrator (25%) at an annual cost of \$18,241 beginning in fiscal 2023 to accept, track, and review pre-applications; analyze and conduct research into pre-applications; and communicate with and draft explanations of determinations to pre-applicants. BOP further advises that it does not anticipate a large volume of requests. If the volume of requests remains low, BOP advises it may not hire an additional employee and will instead increase the compensation of a current full-time employee to account for the increased workload. BOP's monthly meeting minutes from fiscal 2021 indicate that BOP processed 3,421 initial, 12,449 renewal, and 25 reinstatement licenses for a total of 15,895.

While DLS agrees that there is likely a fiscal impact on MDH (that may be attributed to individual health occupations board), the extent of the impact cannot be reliably estimated. Without actual experience under the bill, the number of requests for a pre-application determination that a health occupations board will receive cannot be estimated. *For illustrative purposes only*, DLS notes that the two largest health occupations boards (MBP and BON) received a combined total of 443 positive CHRC results in the most recent fiscal year for which data was available. Thus, DLS advises that special fund expenditures for MDH likely increase by an indeterminate but potentially significant amount beginning in fiscal 2023 for MDH to implement the bill.

Additional Departments

MDA, MDE, DHS, and DPSCS advise that the bill does not have a meaningful operational or fiscal impact on their respective agencies, and any additional workload can be absorbed within existing budgeted resources.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Maryland Department of Agriculture; Maryland Department of the Environment; Maryland Department of Health; Department of Human Services; Maryland Department of Labor; Department of Public Safety and Correctional Services; Department of Legislative Services

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Analysis by: Amber R. Gundlach

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