

Department of Legislative Services
 Maryland General Assembly
 2007 Session

FISCAL AND POLICY NOTE

Senate Bill 184 (Senator Greenip, *et al.*)
 Judicial Proceedings

Vehicle Laws - Drivers' Licensing of Illegal Aliens - Restrictions

This bill prohibits the Motor Vehicle Administration (MVA) from issuing a driver's license to an individual who cannot provide documentation certifying that the individual is lawfully present in the United States.

Fiscal Summary

State Effect: Transportation Trust Fund (TTF) revenues would decrease by \$201,200 in FY 2008 from reduced driver's license fee revenues. Potential additional decrease in revenues based on the effective date of federal regulations concerning lawful presence. TTF expenditures would increase by \$300,000 in FY 2008 for a public awareness campaign. Potential additional increase in FY 2008 only for computer reprogramming costs.

| (in dollars) | FY 2008 | FY 2009 | FY 2010 | FY 2011 | FY 2012 |
|----------------|-------------|---------|---------|---------|---------|
| SF Revenue | (\$201,200) | - | - | \$0 | \$0 |
| SF Expenditure | 300,000 | 0 | 0 | 0 | 0 |
| Net Effect | (\$501,200) | \$0 | \$0 | \$0 | \$0 |

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

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: To facilitate compliance with the federal REAL-ID Act, the MVA cannot issue a driver's license to an individual who cannot provide documentation proving legal status in the United States. However, the MVA may issue a new driver's license to an individual whose documentation indicating lawful presence has expired, if that individual can provide documentation of an application for reinstatement of lawful status for which a final determination has not been made.

The MVA may not issue an individual who is not a U.S. citizen but is lawfully present in the United States a driver's license with an effective term that exceeds the amount of time the individual is authorized to remain in the country. The MVA may renew a driver's license for one year for individuals who are not lawfully in the United States, if the individual can produce acceptable documentation of an application for reinstatement of lawful presence for which a final determination has not been made.

Current Law: An individual may not drive or attempt to drive a motor vehicle on any highway in this 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 the individual has a valid license issued by the country of residence, the individual's license authorizes the operation of the class of vehicles being driven, the individual meets the minimum age requirements for driving the class of vehicle, and, except as specified, the vehicle is not a commercial vehicle.

A person who drives a motor vehicle in the State without a proper license or 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; the offender must appear in court. The 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.

The 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 is required under the Maryland Vehicle Law to take an examination, unless the individual has passed the examination;
- whose driving skills the 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 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.

In order to obtain a driver's license in Maryland, an individual must present the MVA with two proofs of Maryland residence (for example, a voter registration card, a utility bill, an income tax return, etc.). An individual must also provide the MVA with proof of identity – a birth certificate, court change of name order, or valid foreign passport or valid INS 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.

Background: Approximately 27 states have a statutory requirement that driver's license applicants must prove "lawful presence" in the United States. In 2004, Tennessee became one of them, although individuals not eligible for a license could obtain a "certificate for driving" available to those who have temporary legal documents issued by the federal government, such as a work visa, and who can also prove Tennessee residency and proof of identity. Tennessee stopped issuing certificates to individuals who could not prove lawful presence in 2006.

Another 13 states and the District of Columbia have lawful presence requirements through agency policy or the combination of documents required of driver's license applicants. However, in three of those states, lawful presence only has to be proven if an applicant does not have a Social Security number.

Maryland does not have a legislative “lawful presence in the United States” requirement. In September 2003, the Office of the Attorney General issued an opinion on whether the MVA may require individuals with foreign identification to produce proof of legal presence in the United States as a condition of getting a driver’s license. The Attorney General concluded that the MVA may require a person without a domestic birth certificate to provide alternate forms of identification, which may include immigration-related documents. However, the inability to verify legal presence in the United States is not, in and of itself, a valid reason for denying a Maryland driver’s license.

Legislation enacted in 2003 established a Joint Task Force to Study Driver Licensing Documentation. That task force made its final report in December 2004, in which it recommended that no revision of current law was needed, meaning an individual who is not lawfully present in the United States should still be able to receive a driver’s license if the individual can provide verifiable documents.

On May 11, 2005, President Bush signed into law the REAL-ID Act that, beginning on May 11, 2008, requires federal agencies to accept only personal identification cards, including driver’s licenses, that meet certain standards. The Act requires the U.S. Department of Homeland Security (DHS) to adopt regulations clarifying the Act’s provisions. As of March 2, 2007, DHS had issued regulations for comment, but no regulations had been finalized.

Under REAL-ID’s broad provisions, the MVA will not only have to confirm that an individual is legally permitted to reside in the country, but also meet several other requirements such as security of data and machine-readability.

The proposed regulations would allow for an extension of the implementation of REAL-ID if filed by October 1, 2007. DHS stated in its proposed regulations that it would not allow an extension past December 31, 2009.

DHS advises that the database to verify lawful presence already exists, and states have already entered into agreements with DHS to use this database. As such, DHS could require states to cease issuing driver’s licenses to individuals who cannot prove lawful presence as of May 11, 2008.

The 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.

State Revenues: The MVA advises that in February 2007, 1,054 out-of-country applications were processed for driver's licenses and identification cards. In fiscal 2006, the MVA advises that out of 633,743 issuances of new driver's licenses and photo identification cards, 477,967, or approximately 75% were issuances of new driver's licenses.

TTF revenues could decrease by \$201,215 in fiscal 2008 due to fewer driver's licenses being issued under the bill. This estimate is based on the following facts and assumptions:

- 1,054 out-of-country applications processed a month;
- of those 1,054 transactions, 75% or 795 are driver's license transactions;
- of those 795, 75% or 596 cannot prove lawful presence;
- the final regulations from DHS require Maryland to stop offering driver's licenses and identification cards to individuals who cannot prove lawful presence as of May 11, 2008;
- all driver's license transactions are new driver's license transactions;
- the fee for a new driver's license remains \$45; and
- there are 7.5 months between the bill's October 1, 2007 effective date and the May 11, 2008 possible date for REAL-ID implementation.

If DHS does not require states to stop issuing driver's licenses and identification cards to individuals who cannot prove lawful presence until an even later date, the revenue loss would continue until that date.

For Maryland, any further revenue loss would depend on whether an extension were sought and granted. Maryland would have to apply for an extension by October 1, 2007. If granted, the extension would be valid until December 31, 2009. Thus, additional revenue loss could be \$40,243 in fiscal 2008, \$321,944 in fiscal 2009, and \$160,972 in fiscal 2010.

State Expenditures: TTF expenditures would increase by \$300,000 in fiscal 2008 for an advertising campaign to notify the public about the new lawful presence requirement. It is assumed that this is an additional cost because Maryland would be changing its lawful presence requirement prior to whatever date DHS imposed and would seek to notify the public.

In addition, the MVA advises that it would have to reprogram and update several computer systems at a cost of \$80,000 in fiscal 2008. The Department of Legislative Services (DLS) concurs, but advises that under the DHS proposed regulations, a State may be able to use 20% of grant money from DHS to ensure compliance with REAL-ID. The MVA may be able to use this grant money for computer changes. In addition, DLS advises that if other legislation requires computer reprogramming changes, economies of scale could be realized, lowering the costs associated with changes to the MVA system.

The number of cases involving a driver who could not prove lawful presence and was caught driving without a license could increase. However, it is assumed that such cases could be handled with existing resources.

Additional Information

Prior Introductions: An identical bill, HB 1443 was introduced in the 2006 session and was heard by the House Judiciary Committee, but no further action was taken. A similar bill, HB 1214, was introduced in the 2005 session and was also heard by Judiciary, but no further action was taken. A bill also denying a driver's license to an individual not lawfully in the United States, HB 41, was introduced in the 2004 session, but received an unfavorable report from Judiciary.

Cross File: Although not designated as cross file, HB 11 and HB 537 are identical.

Information Source(s): National Conference of State Legislatures, Tennessee Department of Safety, Judiciary (Administrative Office of the Courts), Maryland Department of Transportation, Department of Legislative Services

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