

Department of Legislative Services  
 Maryland General Assembly  
 2009 Session

FISCAL AND POLICY NOTE  
 Revised

House Bill 387

(Delegate Ivey, *et al.*)

Judiciary

Judicial Proceedings

Vehicle Laws - Lawful Status in the United States - Material Compliance with  
 Federal Requirements

This emergency bill defines “lawful status” as it applies to the issuance of identification cards, driver’s licenses, and moped operator’s permits, and establishes a two-tiered approach to the issuance of these documents by the Motor Vehicle Administration (MVA). Applicants who provide satisfactory evidence of lawful status and a valid Social Security number or their ineligibility for one may be eligible to receive one of these documents for a period of up to five years as determined by MVA, or for as long as the applicant’s authorized stay in the United States. MVA may issue documents that are not valid for official purposes by federal agencies to an individual (1) whose identity does not match records checked by MVA in its verification process but resolves the “non-match” by meeting certain federal regulatory standards and is otherwise eligible; or (2) who held the document sought for renewal on April 18, 2009, but does not possess satisfactory evidence of lawful status or a valid Social Security number. No MVA document issued to, or renewed by, an applicant who cannot provide satisfactory evidence of lawful status or a valid Social Security number is valid beyond July 1, 2015. The bill also requires MVA to develop a plan to address physical security requirements for MVA locations and other information and privacy safeguards for MVA document issuance processes.

Fiscal Summary

**State Effect:** Transportation Trust Fund (TTF) expenditures increase by a significant amount beginning in FY 2009 to conduct lawful status determinations at MVA, develop regulations, and establish a unique color or design for MVA documents. TTF expenditures may increase further in future years to implement an MVA security plan. TTF revenues may decrease beginning in FY 2009 from reduced application fee revenues and related vehicle fees. This reduction is likely offset by making fees payable on application and nonrefundable. Further, TTF revenues may increase beginning in

FY 2009 to the extent the bill's application fee is higher than existing fees, or from statutory cost-recovery fees if applicable. 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 beginning on April 19, 2009, and may cause MAIF to issue fewer policies.

**Local Effect:** Minimal increase in local expenditures due to the bill's enhanced penalty provisions.

**Small Business Effect:** Potential minimal.

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## Analysis

### Bill Summary:

#### *Issuance of MVA Documents*

In addition to requirements specified in current law and except as specified in the bill, in order to obtain an identification card or moped operator's permit from MVA, an applicant must provide satisfactory documentary evidence of lawful status, and either satisfactory evidence of a valid Social Security number, or that the individual is not eligible for one. Satisfactory documentary evidence of a Social Security number may be presented by a current (1) W-2 form; (2) SSA-1099 form; (3) non-SSA-1099 form; or (4) pay stub with the applicant's name and Social Security number on it.

To obtain a driver's license, in addition to existing requirements, if an applicant does not have a Social Security number as required by current law, then the applicant must present his or her Social Security Administration account card or a current (1) W-2 form; (2) SSA-1099 form; (3) non-SSA-1099 form; or (4) pay stub with the applicant's name and Social Security number on it. If the applicant is not eligible for a Social Security number, he or she must provide satisfactory documentary evidence of ineligibility.

If an applicant has temporary lawful status, MVA may not issue a document that is valid for a period that extends beyond the expiration date of the applicant's authorized stay in the United States or, if there is no expiration date, for more than a year. MVA must indicate on the face and in the machine-readable zone of a temporary document that the document is temporary. However, a holder of a temporary license to drive who had temporary lawful status at the time of the issuance of the temporary license to drive must present satisfactory documentary evidence of lawful status if the holder applies for issuance or renewal of any license to drive.

The bill authorizes MVA to determine a period of validity of up to five years for moped operator's permits, driver's licenses for individuals age 21 or older, and identification cards for individuals age 16 or older; the period of validity for an identification card issued to an individual younger than age 16 changes from two to five years.

*Issuance of MVA Documents Not Acceptable for Federal Purposes*

Notwithstanding these requirements, MVA may issue a driver's license, identification card, or moped operator's permit that is not acceptable by federal agencies for official purposes determined by the Secretary of the U.S. Department of Homeland Security (DHS) in two situations. The first situation exists when the verification of documentary evidence for a driver's license by MVA results in a "non-match" of records as described in federal regulations. MVA may not issue a federally accepted driver's license in the event of a non-match that is not resolved by MVA. However, an applicant with an unresolved non-match that meets various requirements to be adopted by MVA consistent with federal law, and is otherwise eligible, may be issued a driver's license that is not acceptable for federal purposes.

In addition to a non-match situation, an applicant that holds one of these three MVA documents on or before April 18, 2009, may apply for renewal or the issuance of one of the other two types of documents on or after the effective date of the bill if the applicant is otherwise eligible, regardless of whether he or she has lawful status or a valid Social Security number; the applicant must, however, certify that he or she does not have a Social Security number if applicable. MVA may no longer issue or renew one of these documents to an individual under this second situation after July 1, 2015, and any of these documents issued or renewed on or after July 1, 2010, must expire on July 1, 2015.

An MVA document that is not acceptable for federal purposes must clearly state on its face and within the machine-readable zone that it is not acceptable by federal agencies for official purposes. In addition, each such document must have a unique design or color clearly distinguishing it from MVA documents that are acceptable for federal purposes. Although not acceptable for official federal purposes, the bill states that these documents are nevertheless eligible to be used for any purpose as legal identification except as otherwise specified in law, and have the same expiration period as the equivalent federally accepted document.

The bill requires MVA to adopt regulations to create a written, defined exceptions process, consistent with federal regulations for applicants who, for reasons beyond their control, are unable to present all necessary documentation and must rely on alternative documents to establish identity or date of birth. However, for purposes of demonstrating lawful status these alternative documents may only be allowed to demonstrate that the applicant is a *citizen* of the United States.

### *Fees*

The bill authorizes MVA to establish a fee for the issuance or renewal of each of these documents that are not federally accepted. The fee for the issuance or renewal of any license to drive, moped operator's permit, or identification card must be paid at the time of the application, and is nonrefundable regardless of whether MVA issues or renews, refuses to issue or renew, cancels, or requires to be surrendered one of these documents.

### *Security Standards*

MVA must develop a security plan that, at a minimum, addresses the physical security of the facilities used in MVA document production and the security of personally identifiable information at MVA locations. The plan must contain administrative, technical, and physical safeguards including procedures to prevent unauthorized access of applicant information and images of source documents, as well as a privacy policy, and other procedures consistent with the federal Driver's Privacy Protection Act.

The security plan must also address control of employee access and other employee training requirements. Thus, under the plan employees would undergo background checks, be credentialed, and receive badges for controlled access systems. Specified employees would also receive periodic training in fraud recognition and security awareness. The security plan must also address emergency and incident response plans, internal audits, and the ability to produce, revise, expunge, and protect the confidentiality of certain document holders. The security plan must be handled and protected in accordance with specified federal regulations.

### *Penalties*

The bill increases the penalty for conviction of fraud or misrepresentation in obtaining or applying for an identification card or a license to drive from a fine of up to \$500 or imprisonment for up to two months or both, to a fine of up to \$2,500 or imprisonment for up to three years, or both. It also expands the penalty to fraud associated with obtaining a moped operator's permit.

**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:** 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 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. If an extension is not granted, then beginning December 31, 2009, Maryland driver's licenses and identification cards will no longer be accepted by federal agencies for official purposes, such as boarding a federally regulated aircraft.

#### *Key Features of the REAL ID Act*

Major elements of the Act's provisions as specified in the final regulations are set forth below.

- *Lawful Status:* As part of the driver's license application process, all applicants are required to establish their lawful presence in the United States through the production of one of the following identity documents: valid U.S. passport;

certified copy of a birth certificate; Consular Report of Birth Abroad issued by the U.S. Department of State; Permanent Resident Card issued by DHS; employment authorization document issued by DHS; foreign passport with valid U.S. visa affixed; Certificate of Naturalization; Certificate of Citizenship issued by DHS; or such other documents as DHS may designate. This mandate imposes a new requirement for applicants of driver's licenses in Maryland and requires a statutory change by the General Assembly.

- *REAL ID Card Standards:* DHS had proposed that each state's ID card consist of a uniform set of nine data elements and security features; however, this uniformity requirement was eliminated in the final regulations. The final regulations do require certain card standards for cards that are not REAL ID-compliant in states that adopt a two-tiered approach to document issuance. A noncompliant card must clearly state on its face that it may not be accepted by any federal agency for identification or any other official purpose and must use a unique design or color indicator.
- *Information Technology Systems Development:* Responding to privacy and security concerns, the final regulations clarified how the REAL ID information technology system would be structured. DHS has initiated a verification systems design project in consultation with the American Association of Motor Vehicle Administrators (AAMVA) and state representatives. The system is envisioned as a hub-based network with the current AAMVANet system serving as the platform. Maryland and 47 other states currently verify Social Security numbers through AAMVANet, and the other documents requiring verification under REAL ID could also be added to this system. DHS indicates that it has already begun work on additional security features such as end-to-end encryption and emphasizes that AAMVANet is a private network with no connectivity to the Internet.
- *Security:* The final regulations clarify that a state-submitted consolidated security plan must address the security of only those facilities that are critical to the issuance, manufacturing, and production of identification. Thus, MVA personnel are required to undergo background checks of criminal records but are no longer subject to checks of financial records as formerly proposed. Enabling background checks for MVA personnel requires legislative action to revise current statutory law. In addition, the final regulations removed the independent adversarial security testing requirement for ID cards, but DHS is working to develop standard testing procedures for future voluntary use. DHS maintains that certain features are required for the surface of the card; although in lieu of certain card design standards, it has decided to accept state documentation of its fraud control measures. A barcode will be required, though states will not be required to secure the barcode with encryption technology.
- *Cost:* Estimates of the future expenditures necessary for Maryland to achieve full compliance with REAL ID vary greatly. For example, information provided to the

General Assembly in October 2008 indicates that personnel-related costs are estimated to be between \$16.52 million and \$20.23 million between fiscal 2010 and 2014, with additional capital spending of \$5.6 million between fiscal 2009 and 2014, for a total cost range of between approximately \$22.1million and \$25.8 million. This compares to an estimated range of between \$60 million and \$100 million provided to the General Assembly in a 2007 report, and an estimate of \$83.0 million provided to the Department of Legislative Services (DLS) in February 2008. The substantial variability in cost estimates may be attributed to different time horizons for implementation in each estimate, inclusion of costs that would have been incurred in the absence of REAL ID implementation, changes in federal regulations, different implementation approaches, and general uncertainty associated with forecasting the cost of contracting with outside vendors. Nevertheless, to put these estimates in context, DHS has estimated that the total cost of REAL ID to all states will be \$3.9 billion, or an average of \$78 million per state.

### *State Actions*

According to the National Conference of State Legislatures (NCSL), five state legislatures have enacted legislation to comply with REAL ID and 24 have enacted laws rejecting compliance with REAL ID or urging the U.S. Congress to repeal the Act. The National Governors Association, NCSL, and AAMVA have been collaborating for several years to study the Act's provisions and fiscal impacts and to make recommendations to DHS. Generally, this coalition of state groups has been opposed to the Act, although AAMVA has urged its members to move forward with implementation. In December 2008, NCSL reaffirmed its official policy in opposition to REAL ID since final regulations were released.

Since 2007, at least two states (Indiana and Nevada) enacted laws to comply with federal REAL ID standards. At least three states (Nevada, Tennessee, and Virginia) have appropriated money for REAL ID implementation. Some states have considered proposals to develop multi-tiered licensing systems or to subsidize the use of alternative forms of identification, such as the U.S. passport, which will serve the same purpose as a REAL ID. Utah statutorily established a two-tier licensing system. Altogether, legislators in 28 states proposed compliance legislation or alternative REAL ID bills in 2008.

In addition to Maryland, Hawaii, New Mexico, Utah, and Washington also extend the privilege to drive to individuals who do not have lawful status.

**State Fiscal Effect:** The bill's requirement to determine lawful status is anticipated to cause 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. To implement the bill while keeping average customer wait times down, a significant number of additional contractual customer agents may be necessary. Further, the number of transactions may increase to some extent under the bill because some customers may choose to obtain a license or card verifying lawful status prior to their current renewal date. Even if MVA is able to streamline the lawful status determination procedures or otherwise reduce the amount of time needed to determine lawful status, expenditures will increase significantly to access electronic verification databases for each applicant. Expenditures increase to a lesser extent due to the cost of producing a separate card with a unique design or color for documents not acceptable for federal purposes.

The bill authorizes MVA to establish a fee for the issuance of MVA documents issued or renewed under the bill that are not federally accepted. DLS assumes that MVA will establish this fee, but advises that it is unknown whether the fee will be made equivalent to the fee for documents that are federally accepted, or whether the fee will be set higher to cover all additional costs of complying with the bill in fiscal 2009 or 2010. Nevertheless, the Maryland Department of Transportation (MDOT) will likely need to raise some or all MVA document fees under the current, statutory cost-recovery requirement in some fiscal year before fiscal 2014 to pay for the substantial costs associated with implementing the bill's lawful status checks as well as the security plan to the extent the plan is actually implemented.

TTF revenues may decrease due to fewer MVA documents being issued, primarily to applicants who cannot demonstrate citizenship or lawful status and did not hold a valid MVA document on April 18, 2009. TTF revenue losses may increase further due to a loss of other vehicle and driver's license related fees and the ineligibility for those whose lawful status lapses. However, these revenue losses may be partially or fully offset by the bill's requirement that certain document fees be submitted on application and be nonrefundable.

DLS advises that the bill's authorization for MVA to change the validity period for various MVA documents may substantially affect MVA workloads and TTF finances in future years. A decrease in the renewal cycle's duration may temporarily increase expenditures.

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 fine collection and a potential increase in incarceration of unlicensed drivers, as well as the enhanced penalties for conviction of fraud in obtaining or applying for an MVA document.

**Local Expenditures:** Expenditures may increase minimally as a result of the applicable incarceration penalties for those convicted of fraud in applying for or obtaining an MVA document. Likewise, to the extent the bill results in more individuals driving without a license, expenditures related to incarceration may increase. 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. Legislative Services concurs with this assessment and cites in support the General Assembly's Task Force to Study Driver Licensing Documentation report.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Maryland Automobile Insurance Fund, Maryland Department of Transportation, U.S. Department of Homeland Security, National Conference of State Legislatures, National Governors Association, American Association of Motor Vehicle Administrators, Department of Legislative Services

**Fiscal Note History:** First Reader - February 24, 2009  
mcp/ljm Revised - Clarification/Updated Information - March 17, 2009  
Revised - House Third Reader - April 1, 2009  
Revised - Enrolled Bill - May 19, 2009

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Analysis by: Evan M. Isaacson

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