

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1260 (Delegates Adams and Hutchinson)
Health and Government Operations

State Government - Permits, Licenses, and Certificates - Reimbursement

This bill requires the Attorney General, within five days after a court issues a final order on an unconstitutional license requirement, to (1) notify the State department or independent unit of State government that is responsible for issuing the permit, license, or certificate in writing that the final order has been issued and (2) post a notice on the Attorney General’s website. A department or an independent unit that receives a notice from the Attorney General must, on request, reimburse a person to whom the department or independent unit has issued the permit, license, or certificate that is subject of the notice any money paid by the person for (1) issuance of the permit, license, or certificate and (2) renewal of the permit, license or certificate. If the Attorney General does not post the specified notice, a person who would be entitled to request a reimbursement may file a complaint against the Attorney General in circuit court.

Fiscal Summary

State Effect: General and special fund expenditures increase to the extent State entities must issue refunds for issued permits, licenses, or certificates. However, a reliable estimate of any increase in expenditures is not feasible, as discussed below. The Office of the Attorney General can provide the required notice using existing budgeted resources.

Local Effect: The bill is not anticipated to materially affect local government operations or finances.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: “Department” means a principal department as defined under the State Government Article. “Independent unit” means a unit in the Executive Branch of State government that is not a department. “Unconstitutional license requirement” means that a court of competent jurisdiction has issued a final order not subject to appeal or other judicial review that the State may not require a person to possess a specified permit, license, or certificate.

Current Law:

State Legal Business and Representation by the Attorney General

The Attorney General has general charge of the legal business of the State. Unless a law expressly provides for a general counsel as the legal adviser and representative of the officer or unit, the Attorney General is the legal adviser of and shall represent and otherwise perform all of the legal work for each officer and unit of the State government. An officer or unit of State government may not employ or be represented by a legal adviser or counsel other than the Attorney General or a designee of the Attorney General, except as otherwise provided under specified circumstances.

Administration of State-issued Permits, Licenses, and Certificates

Many principal departments and independent units of State government administer and oversee the issuance of permits, licenses, and certificates for various purposes. Permit, license, and certificate fees are generally distributed to the general fund or a special fund dedicated to the regulatory function addressed by the specific permit, license, or certificate. Examples of State agencies that issue permits, licenses, and certificates include:

- the Maryland State Department of Education oversees the licensure and certification of educators, nonpublic schools, and specified childcare providers;
- the Maryland Department of Health (MDH) issues State licenses for health care facilities and community-based programs operating in Maryland; MDH also houses 20 independent health occupational boards that oversee the licensure and certification of various health-related professions, including acupuncturists, nurses, pharmacists and pharmacies, and physicians;
- the Maryland Department of Labor oversees more than 20 professional licensing boards, commissions, and offices that issue licenses and certifications for, among others, barbers, electricians, locksmiths, cosmetologists, real estate agents, and plumbers;

- the Department of State Police (DSP) issues licenses related to firearms and professional licenses generally relating to security guards, security services, and special police officers, among other specified law enforcement-related professions;
- the Office of the State Fire Marshal within DSP oversees the testing, licensing, and regulation of nongovernmental electrical inspectors and sprinkler contractors, in addition to other licenses and certifications relating to fire protection and prevention;
- the Maryland Department of the Environment issues several permits, licenses, and certificates, including those relating to lead paint, mining, oil and gas, refuse disposal, natural wood waste, hazardous waste, controlled hazardous substances, animal feeding operations, composting, scrap tires, sewage sludge, water quality discharge permits, water and sewerage construction, water appropriation and use, well construction, drinking water quality, wetlands and waterways, erosion and sediment control, and waterworks and waste system operators;
- the Maryland Department of Agriculture issues various permits, licenses, and registrations, including those relating to nutrient management, weights and measures, food quality assurance (such as eggs, grain dealers, and organic production and handling operations), pesticides, fertilizers, turf and seed, animal feed, pet foods, veterinarians, nurseries, apiaries, and horse stables;
- the Department of Natural Resources issues several permits and licenses, including those relating to hunting, wildlife, fishing, aquaculture, vessels and boating, endangered species, roadside trees, tree experts, off-road vehicles, and open air burning; and
- the Maryland Department of Transportation issues various permits and licenses, including those related to driving motor vehicles, hauling, car dealers, junkyard and scrap metal processing, airports, highway access, and outdoor advertising.

State Revenues: State expenditures (multiple fund types) increase, potentially significantly, to the extent a State department or independent unit issues refunds to the holders of affected permits, licenses, or certificates, regardless of when they were originally issued, that are declared unconstitutional. Neither the Department of Legislative Services nor any of the many agencies contacted for this analysis are aware of any active permit, license, or certificate issued by the State that has been declared unconstitutional, as specified by the bill. Therefore, any increase in State expenditures cannot be reliably estimated as it is unknown if or when a court may issue such a final order or how many holders of permits, licenses, and certificates will request a refund under the bill. However, the increased expenditures may be significant depending on the specific permit, license, or certificate that is affected by a final order.

DSP advises that the U.S. Court of Appeals for the 4th Circuit is currently considering litigation regarding the constitutionality of the State's handgun qualification license

(HQL). DSP further advises that, as of February 20, 2024, there are 318,444 HQL's issued for use in the State, with an initial application fee of \$50. *For illustrative purposes only*, if a court issues a final order that the HQL is unconstitutional, general fund expenditures for DSP increase by as much as \$15.9 million, to the extent HQL holders request refunds.

Small Business Effect: Any small business that holds a permit, license, or certificate that is declared unconstitutional is entitled to a refund under the bill.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: SB 926 (Senators Mautz and Hershey) - Education, Energy, and the Environment.

Information Source(s): Maryland Institute for Emergency Medical Services Systems; Maryland Department of Aging; Maryland Cannabis Administration; Office of the Attorney General; Secretary of State; Judiciary (Administrative Office of the Courts); Maryland State Department of Education; Maryland Higher Education Commission; Maryland Department of Agriculture; Maryland Department of the Environment; Department of Housing and Community Development; Department of Human Services; Department of Juvenile Services; Maryland Department of Labor; Department of Natural Resources; Department of State Police; Maryland Department of Transportation; State Ethics Commission; Maryland Insurance Administration; Maryland State Lottery and Gaming Control Agency; Public Service Commission; Department of Legislative Services

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