HB 20-1001

Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

FINAL FISCAL NOTE

Drafting Number:	LLS 20-0057	**Date:**	August 6, 2020
Prime Sponsors:	Rep. Mullica; Larson Sen. Bridges; Priola	**Bill Status:**	Signed into Law
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Bill Topic: **NICOTINE PRODUCT REGULATION**

Summary of Fiscal Impact:

- ☒ State Revenue
- ☒ State Expenditure
- ☐ State Transfer
- ☐ TABOR Refund
- ☒ Local Government
- ☐ Statutory Public Entity

The bill provides for the statewide licensing and regulation of cigarette, tobacco, and nicotine product retailers. The bill increases state revenue and expenditures on an ongoing basis.

Appropriation Summary: The bill requires and includes appropriations to the Department of Revenue of $45,414 for the current FY 2019-20 and $2.4 million for FY 2020-21.

Fiscal Note Status: This fiscal note reflects the enacted bill.

Table 1
State Fiscal Impacts Under HB 20-1001

		FY 2019-20 *(current year)*	FY 2020-21	FY 2021-22
Revenue	General Fund	-	$76,800	$84,480
	Cash Funds	-	$2,472,000	$2,718,000
	Total	-	**$2,548,800**	**$2,802,480**
Expenditures	Cash Funds	$55,847	$2,391,262	$2,649,363
	Total	**$55,847**	**$2,391,262**	**$2,649,363**
	Total FTE	**0.5 FTE**	**19.4 FTE**	**22.9 FTE**
Transfers		-	-	-
TABOR Refund		-	-	-

Summary of Legislation

The bill provides for statewide licensing and regulation of cigarettes, tobacco products, and nicotine products.

Minimum purchase age. The bill raises the minimum age to purchase cigarettes, tobacco products, and nicotine products from 18 years old to 21 years old. It removes the current class 2 petty offense for underage purchase and prohibits a retailer from allowing a person under the age of 18 to sell cigarettes, tobacco products, or nicotine.

Licensing. Beginning July 1, 2021, a retailer is prohibited from selling cigarettes, tobacco, or nicotine products without a state-issued license. Each retail location must be licensed, and licenses are valid for one year and are not transferrable. Retailers that sell such products and have applied for a license before to July 1, 2021 may continue to sell products until the review of their application is complete.

The Liquor Enforcement Division (LED) in the Department of Revenue (DOR) must promulgate rules related to licensing and enforcement, including setting fee amounts to cover the cost of the licensing program. The fee may not exceed $400 per year, unless compliance falls below 90 percent, and businesses with at least 10 locations may instead pay one large-operator fee that is not subject to the $400 limit. Fee revenue is deposited in the LED Cash Fund.

The bill sets time frames for approval or denial of a license application, procedures for a hearing if the application is denied, and an expedited application process for retailers that hold a valid local license, and allows LED to establish a process for an owner of multiple locations to apply simultaneously for multiple licenses.

Enforcement. Current law requires that the LED conduct the minimum number of inspections of businesses that sell cigarettes, tobacco, and nicotine products required under federal law. If achievable within the amount of fee revenue generated, the bill requires that LED conduct, or coordinate with local licensing authorities to conduct, at least two compliance checks at each retail location annually, or the federal minimum, whichever is greater. If a compliance check results in a violation, either the LED or the local licensing authority must conduct an additional check within three to six months of the initial compliance check. If a local authority suspends or revokes a license, the LED must suspend or revoke the state license. The LED must maintain and post online a list of licensed retailers.

By July 1, 2021, the LED, in consultation with wholesalers and retailers, must adopt rules related to targeted enforcement against the smuggling of cigarettes, tobacco, and nicotine products.

Local regulation. The bill prohibits cities and counties from setting a minimum age to purchase cigarettes, tobacco and nicotine products below 21 years old, and states that any local government licensing requirement may be more stringent that state licensing.

License restrictions. Unless approved by a local licensing authority, the LED may not approve a state license for a new retail location that is located within 500 feet of a school. Local licensing authorities may eliminate types of schools from the distance restrictions or adopt shorter distance restrictions.

Retailer restrictions. Retailers may not advertise electronic smoking device product in a manner that is visible from outside the retail location. The bill prohibits the shipment of products directly to consumers; the prohibition does not apply to shipments of cigars and pipe tobacco to consumers over 21 years old. Licensed retailers may deliver products to customers who are at least 21 years old, as long as certain conditions are met. The LED must promulgate rules related to delivery, which may include issuing permits allowing retailers to deliver product.

Fines and violations. The bill allows the LED to apply for an injunction to prohibit a person from violating state tobacco regulations, and may suspend or revoke a retailer's state license after an investigation and public hearing. The bill establishes a new fine schedule for violations related to selling products to a minor, and a list of civil fines for sale of cigarettes, tobacco, and nicotine products without a state license, or violating advertisement and online sale restrictions.

In addition, the bill allows employees of retailers who are between 18 and 21 years old to handle products that are for sale, and specifies that retailers may use an affirmative defense for violations only once, except that a cigar-tobacco bar in a licensed gaming establishment may use it twice within a 24 month period. The bill also removes offenses related to sale of products to under the age of 21 from juvenile courts, and clarifies that appeals of agency decisions may be appealed to district court instead of the court of appeals.

Background

Minimum purchase age. Colorado law prohibits retailers of cigarettes, tobacco, and nicotine products from certain activities, including selling to a minor under the age of 18; however, the Federal Food, Drug, and Cosmetic Act was amended in December 2019 to raise the federal minimum age of sale of tobacco products from 18 to 21 years old. The change applies to cigarettes, cigars, and e-cigarettes. As a result, it is currently illegal for a retailer to sell any tobacco product to someone under 21 and the bill aligns state law with the change to federal law.

Assumptions

The fiscal note assumes that there about 6,000 retailers in Colorado that will obtain a license in FY 2020-21, and the number of retailers will grow by about 10 percent per year, for a total of 6,600 licenses in FY 2021-22. In addition, the fiscal note assumes that work implementing the licensing and enforcement changes will begin in the current FY 2019-20, and that the required compliance checks will begin in FY 2020-21.

Of the estimated 12,960 compliance checks that are required in FY 2020-21 under the bill, the fiscal note assumes that 10 percent will be completed by local jurisdictions that currently have a licensing requirement.

Comparable Crime

The bill removes the current class 2 petty offense for the purchase of cigarettes, tobacco, and nicotine products by a minor. There are about 15 cases filed per year; as a result, this analysis assumes that there will be a minimal impact on civil and criminal case filings. As a result, any decrease of fines and court fees and related TABOR impact is expected to be minimal. Similarly, potential workload decreases for the Judicial Department, the Division of Probation, and agencies that provide representation to indigent persons require no change in appropriations, and the impact on local courts and district attorneys is expected to be minimal. As a result, the fiscal note does not further discuss impacts of the bill on the criminal justice system.

State Revenue

The bill increases state revenue by at least $2.5 million in FY 2020-21 and at least $2.8 million in FY 2021-22. This revenue is from fees and fines. Fee revenue is deposited in the LED Cash Fund and fine revenue is deposited in either the Cigarette, Tobacco Product, and Nicotine Product Use By Minors Cash Fund or the General Fund. This revenue is subject to TABOR.

Fee impact on retailers. Colorado law requires legislative service agency review of measures which create or increase any fee collected by a state agency. These fee amounts are estimates only, actual fees will be set administratively by Department of Revenue based on cash fund balance, program costs, and the number of licenses subject to the fee. The fiscal note assumes that 30 large operators with at least 10 locations will pay large-operator fee, estimated at $400 plus the $400 per location application fee and that retailers that are licensed locally will pay the full license fee. The table below identifies the fee impact of this bill, estimated to cover costs over a two-year period.

Table 2
Fee Impact on Cigarette, Tobacco, and Nicotine Product Retailers

Fiscal Year	Type of Fee	Estimated Fee	Number Affected	Total Fee Impact
FY 2020-21	Application Fee	$400	6,000	$2,400,000
	Large-Operator Fee	$400	30	$12,000
			FY 2020-21 Total	**$2,412,000**
FY 2020-21	Application Fee	$400	600	$240,000
	Renewal Fee	$400	6,000	$2,400,000
	Large-Operator Fee	$400	30	$12,000
			FY 2021-22 Total	**$2,652,000**

Fine revenue. The bill increases fine revenue to the Cigarette, Tobacco Product, and Nicotine Product Use By Minors Cash Fund from violations related to selling products to a minor. Currently, about 8 percent of compliance checks result in a violation. Based on the minimum fine amount of $250 and the assumption that 75 percent of initial violations will use an affirmative defense, the bill will increase revenue by at least $60,000 in FY 2020-21 and $66,000 in FY 2021-22.

The fiscal note assumes that the equivalent of 8 percent of failed compliance checks will result in a fine for selling licensing, advertising, and online sale violations. Based on the minimum fine amount of $1,000, this will increase revenue to the General Fund by at least $76,800 in FY 2021-22, and $84,480 in FY 2021-22.

State Expenditures

The bill increases state expenditures in the DOR by $55,847 and 0.5 FTE in the current FY 2019-20, $2.4 million and 19.4 FTE in FY 2020-21, and $2.6 million and 22.9 FTE in FY 2021-22. Expenditures are from the LED Cash Fund, and are listed in Table 3 and discussed below.

Table 3
Expenditures Under HB 20-1001

	FY 2019-20 *(current year)*	FY 2020-21	FY 2021-22
Department of Revenue			
Personal Services	$26,139	$1,328,128	$1,490,853
Operating Expenses	$675	$25,515	$28,755
Capital Outlay Costs	$18,600	$117,800	$12,400
Legal Services	-	$98,605	$303,277
Fleet Costs	-	$176,850	$188,640
Equipment Costs	-	$86,655	$20,582
Computer Programming	-	$6,300	-
Compensation to Minors	-	$126,279	$126,279
Leased Space	$3,300	$124,740	$140,580
Employee Benefits and Supp. Retirement Payments*	$7,133	$300,390	$337,997
FTE – Personal Services	0.5 FTE	18.9 FTE	21.3 FTE
FTE – Legal Services	-	0.5 FTE	1.6 FTE
Total Cost	**$55,847**	**$2,391,262**	**$2,649,363**
Total FTE	**0.5 FTE**	**19.4 FTE**	**22.9 FTE**

* *Because this bill requires over 20 FTE when fully implemented, certain costs that are typically centrally appropriated are appropriated directly in the bill instead of through the annual budget process. These include health, life, and dental benefits; short-term disability benefits; and supplemental retirement payments. These costs are not included in the bill's appropriation for FY 2019-20.*

Department of Revenue. The bill increases costs in the LED to implement and enforce the bill. These costs are discussed below.

Personal services. In the current FY 2019-20, DOR requires 0.5 FTE to begin rulemaking, hiring, and implement the provisions in the bill. In FY 2020-21, DOR requires 18.9 FTE to issue licenses, conduct enforcement checks and conduct investigations, and handle additional administrative actions; the required FTE includes the following:

- 11.6 FTE Criminal Investigator I to conduct 11,664 state compliance checks; each FTE can complete 1,005 checks per year;
- 2.3 FTE Criminal Investigator II and 1.0 FTE Criminal Investigator I to oversee checks, conduct investigations, and determine any necessary sanctions;
- 1.5 FTE Administrative Assistant III, split between the LED and the Hearings Division, to process applications and assist with investigations;
- 1.5 FTE Legal Assistant II, split between the LED and Hearings Division, to assist with rulemaking, questions, documentation and enforcement actions;.
- 1.0 FTE Hearings Officer to conduct the additional hearings resulting from the bill.

In addition to the amounts above, in FY 2021-22, DOR requires 1.2 FTE Criminal Investigator I, 1.0 Hearing Officer, and 0.5 Analyst III to handle additional checks, hearings, and duties related to data management and tracking. In addition, DOR requires $126,279 per year for compensation to minors participating in compliance checks.

Legal services. DOR requires additional legal services to support rulemaking, and enforcement actions. Legal services are provided by the Department of Law. In FY 2020-21, 925 hours are required $98,605 and 0.5 FTE. In FY 2021-22, 2,845 hours are required to handing an assumed hearings for selling without a license, license denials, underage sales, and injunctive acts. This equates to $303,277 and 1.6 FTE.

Fleet and equipment costs. Criminal investigators require equipment costs of $5,777 in the first year and $987 in subsequent years. In addition, the 15.0 FTE criminal investigators conducting compliance checks statewide will each require a fleet vehicle, provided by the Department of Personnel and Administration, at a leased cost of $4,630 per year ($69,450 total) and $7,160 per year in mileage and operations ($107,400 total).

Computer programming. In FY 2020-21 only, DOR requires $6,300 to make changes to GenTax and the MyLo licensing program. For MyLo, costs are estimated at 30 hours at a rate of $150 per hour, for a total of $4,500 in FY 2020-21 only. For GenTax, costs are estimated at 8 hours at the standard rate of $225 per hour. There may also be costs to update the Colorado Interactive program, which is used by LED and local governments to coordinate compliance checks and enforcement actions. Costs for these changes are not estimated; any additional resources will be requested through the annual budget process.

Leased space. Leased space costs are also included on a per FTE rate, as shown in Table 3 above. These costs are estimated to total $140,580 in FY 2021-22 when full staffing is in place. Leased space costs are not included in the bill's appropriation for FY 2019-20.

Employee benefits and supplemental retirement payments. DOR will have costs of $7,133 in FY 2019-20, $300,390 in FY 2020-21, and $337,997 in FY 2021-22 for employee health, life, dental, and short-term disability insurance, as well as supplemental retirement payments to PERA. Because this bill requires over 20 FTE when fully implemented, certain costs that are typically centrally appropriated are appropriated directly in the bill instead of through the annual budget process starting in FY 2020-21. These costs are not included in the bill's appropriation for FY 2019-20.

Judicial Department.. The bill allows the state to ask for injunctive relief prohibiting a person from committing acts prohibited by the bill. The fiscal note assumes that retailers will comply with the bill; as a result, any increase in cases will also be minimal. The bill also allows agency decisions to be appealed to the district court, shifting workload from the court of appeals. Because most retailers are expected to comply with the law, no change in appropriations is required. In addition, there may be minor changes to update the Judicial Department's case management system. This work is absorbable within current resources.

Colorado Department of Public Health and Environment. The bill may increase the workload for the Tobacco Education, Prevention, and Cessation program in the Prevention Services Division to provide technical assistance to local jurisdictions. Any increase is expected to be minimal.

TABOR refunds. Under the June 2020 LCS Economic and Revenue Forecast, the state is not expected to collect revenue above the TABOR limit in either FY 2020-21 or FY 2021-22, and refund obligations are not anticipated for these years. This bill does not change these expectations concerning refunds to taxpayers.

Local Government

The bill increases revenue and expenditures for local licensing authorities who modify or adopt local licensing requirements as a result of the bill to implement new policies and to conduct modified checks and coordinate with LED on enforcement. The bill may also minimally impact the types of cases handled by district attorneys, as discussed above for the trial courts, and increase workload for the district court run by the City and County of Denver. Any change is expected to be minimal.

Effective Date

The bill was signed into law by the Governor and took effect on July 14, 2020.

State Appropriations

For the current FY 2019-20, the bill requires and includes an appropriation of $45,414 from the from the Liquor Enforcement Division Cash Fund to the Department of Revenue, and 0.5 FTE.

For FY 2020-21, the bill requires and includes an appropriation of $2,391,262 from the Liquor Enforcement Division Cash Fund to the Department of Revenue, and 18.9 FTE. Of that amount, $98,605 and an additional 0.5 FTE is reappropriated to the Department of Law and $69,450 is reappropriated to the Department of Personnel and Administration.

State and Local Government Contacts

Counties
Judicial
Municipalities
Public Health and Environment
Revenue
Information Technology
Law
Personnel
Public Safety