SB 18-139

Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

FINAL FISCAL NOTE

Drafting Number:	LLS 18-0217	**Date:**	June 12, 2018
Prime Sponsors:	Sen. Cooke Rep. Singer	**Bill Status:**	Postponed Indefinitely
		Fiscal Analyst:	Anna Gerstle | 303-866-4375 Anna.Gerstle@state.co.us

Bill Topic: STATEWIDE REGULATION OF PRODUCTS WITH NICOTINE

Summary of Fiscal Impact:

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

The bill makes changes to state law related to the regulation of cigarette, tobacco, and nicotine products, the distribution of cigarettes tax revenue, and the tobacco education, prevention, and cessation grant program. The bill increases state and local revenue and expenditures on an ongoing basis.

Appropriation Summary: For FY 2018-19, the bill requires an appropriation of $286,279 to the Department of Revenue and a decrease in the appropriation of $650,000 to the Colorado Department of Public Health and Environment.

Fiscal Note Status: This fiscal note reflects the introduced bill. This bill was not enacted into law; therefore, the impacts identified in this note do not take effect.

Table 1
State Fiscal Impacts Under SB 18-139

		FY 2018-19	FY 2019-20
Revenue	General and Cash Funds	less than $5,000	less than $5,000
	Cash Funds		$81,000
	Total	**less than $5,000**	**up to $86,000**
Expenditures	Cash Funds	($650,000)	($650,000)
	Cash Funds	$286,279	$125,584
	Centrally Appropriated	$73,281	$16,776
	Total	**($290,440)**	**($507,640)**
	Total FTE	**4.1 FTE**	**1.3 FTE**
Transfers		-	-

Summary of Legislation

The bill makes changes to state law related to the regulation of cigarette, tobacco, and nicotine products, the distribution of cigarettes and tobacco tax revenue, and the tobacco education, prevention, and cessation grant program. The bill declares the regulation of cigarettes, tobacco, and nicotine products to be a matter of statewide concern.

Retail licensing. Beginning January 1, 2019, a person selling cigarettes, tobacco products, or nicotine products (retailer) must be licensed by the Liquor Enforcement Division (LED) in the Department of Revenue (DOR). A retailer must have a current retail sales tax license in order to obtain a license, and if a retailer has more than one location, he or she must obtain a separate license for each location. The license is valid until surrendered or revoked and must be displayed at the retail location. If a retailer no longer sells nicotine products, the retailer must notify the LED, including whether the business will be sold or transferred.

The LED may not charge a fee for a license and must require a statement that the application is signed under oath and under the penalty of 2nd degree perjury. In addition, it may deny a license application under certain circumstances and may establish rules for the transfer of a license.

Enforcement. Beginning April 1, 2019, a person who sells cigarettes, tobacco products, or nicotine products without a license is assessed a civil fine of $1,000 per violation. The LED may waive the civil penalty for good cause shown, and all fine revenue is deposited in the Cigarette, Tobacco Product, and Nicotine Product Use by Minors Prevention Fund (prevention fund). The bill sets procedures for a license to be revoked, and specifies that DOR may not issue a new license for same location and person for at least one year after the date of the revocation.

Funding for administration. The bill specifies that money from the tobacco education programs fund and the prevention fund may be used for administrative costs. The amount spent from the prevention fund may not exceed the amount deposited as a result of civil fines. The bill increases the amount of funds from the tobacco education programs fund that may be used by DOR for licensing and enforcement from $350,000 to $1,000,000 annually.

Use of grant funds. The bill specifies that money awarded through the tobacco education, prevention, and cessation grant program, administered by the Colorado Department of Public Health and Environment (CDPHE), may not be used to advocate for the imposition of a license, fee, or tax on retailers of tobacco, cigarette, and nicotine products, or to supplant funds that would be used for those purposes. Grants that have already been approved for those purposes must instead be spent on the educational or health purposes listed in statute. Grantees must submit a statement attesting that no funds were used to advocate for a license, fee, or tax on retailers of tobacco, cigarette, and nicotine products.

Requirements for cigarette tax revenue. Under current law, 27 percent of state cigarette tax revenue is distributed to local governments, which are prohibited from imposting fees, licenses, or taxes on anyone as a condition of selling cigarettes. The bill clarifies that local governments may not ban someone from selling or impose fees, licenses, or taxes on anyone selling non-cigarette tobacco or nicotine products in order to qualify for their portion of cigarette tax revenue.

Background

Current regulation of cigarettes. Under current law, cigarette wholesalers, distributors, and wholesale subcontractors are licensed by DOR. Wholesale and distributor licenses must be renewed annually. Cigarette retailers are not required to obtain a license, but must have a retail sales tax license and be in compliance with state laws, including the prohibition on sales to minors. The LED is responsible for the enforcement of state laws related to tobacco, nicotine, and cigarettes and may assess criminal and administrative penalties for failure to comply.

Grant programs. The tobacco education, prevention, and cessation grant program offers grants aimed at reducing tobacco use by children and youth, promoting cessation of tobacco use among youth and adults, and reducing exposure to secondhand smoke. Grantees may include local governments, schools, school districts, or boards of cooperative educational services, non-profit organizations, and certain institutions of higher education. In FY 2017-18, $23.5 million was appropriated from the tobacco education programs to fund the grant program, and CDPHE awarded 54 grants ranging from $35,552 to $3.5 million.

Cigarette tax distributions. Under current law, 27 percent of state cigarette tax revenue is required to be distributed to local governments, based on the amount collected in each jurisdiction. The December 2017 Legislative Council Staff economic forecast estimated that $10.5 million in cigarette tax revenue will be distributed to local governments in FY 2018-19 and $10.4 million in FY 2019-20.

Comparable Crime

Legislative Council Staff is required to include certain information in the fiscal note for any bill that creates a new crime, changes the classification of an existing crime, or changes an element of the existing crime that creates a new factual basis for the offense. The bill creates a new basis for perjury in the second degree, which is a class 1 misdemeanor. In the last three years, there have been 158 convictions under that offense. Demographic data is not currently available. The fiscal note assumes that applicants for a retailer's license will submit truthful and accurate information on license applications; as a result, any increase in cases will be minimal.

State Revenue

This bill increases state revenue by less than $5,000 in FY 2018-19 and up to $86,000 in FY 2019-20 and each year thereafter from criminal fines and court and administrative fees, as discussed below.

Civil fine revenue. The bill increases revenue from civil fines for selling nicotine, cigarette, and tobacco products without a license by $81,000 beginning in FY 2019-20. The bill assesses a $1,000 fine per violation, to be deposited into the prevention fund. The fiscal note assumes that in FY 2018-19, any increase in fine revenue will be minimal, as the fine penalty does not go into effect until April 1, 2019 and DOR has flexibility to adjust a fine for good cause. In FY 2019-20, the fiscal note estimates that 81 violations will be assessed, based on current 8.1 percent inspection failure rate and the assumption that half of failed inspections will lead to a fine.

Criminal fines. The bill is anticipated to increase state revenue by less than $5,000 per year, credited to the Fines Collection Cash Fund in the Judicial Department. The fine penalty for a class 1 misdemeanor offense is $500 to $5,000. Because the courts have the discretion of a jail sentence, imposing a fine, or both, the precise impact to state revenue cannot be determined. However, based on the low number of cases expected as a result of the bill, the fiscal note assumes that any revenue generated is likely to be less than $5,000.

Court and administrative fees. The bill will also increase state fee revenue by a minimal amount to the General Fund and various cash funds. Fees are imposed for a variety of court-related costs, which vary based on the offense. Any fee revenue is expected to be minimal.

TABOR Refund

The bill increases state revenue subject to TABOR by $81,000 in FY 2019-20. State revenue is not currently expected to exceed the TABOR limit in FY 2019-20 and no refund is required. Therefore, the bill is not expected to impact TABOR refunds in these years. However, refunds in future years when the state next collects a TABOR surplus will be increased.

State Expenditures

The bill increases state expenditures from the Tobacco Education Programs Fund by $650,000 in the LED in DOR and decreases state expenditures by $650,000 in CDPHE; however, the fiscal note estimates that DOR requires $359,560 and 4.1 FTE in FY 2018-19 and $142,360 and 1.3 FTE in FY 2019-20 to implement the bill's licensure requirements. The increase in DOR costs and decrease in expenditures by CDPHE results in a net decrease in spending, as shown in Table 2 and discussed below.

Table 2
Expenditures Under SB 18-139

	FY 2018-19	FY 2019-20
Department of Revenue		
Personal Services	$225,578	$53,906
Operating Expenses and Capital Outlay Costs	$22,612	$855
Computer Costs	$11,000	-
Enforcement Expenses	$5,777	$494
Legal Services	$21,312	$70,330
Centrally Appropriated Costs	$73,281	$16,776
FTE – Personal Services	4.0 FTE	0.9 FTE
FTE – Legal Services	0.1 FTE	0.4 FTE
Dept. of Revenue Subtotal	**$359,560**	**$142,360**
CDPHE Grant Reduction	($650,000)	($650,000)
Total	($290,440)	($507,640)
Total FTE	**4.1 FTE**	**1.3 FTE**

Assumptions. The fiscal note assumes that 5,900 of the 6,000 cigarette, nicotine, and tobacco retailers in the state will apply for licenses in FY 2018-19, and 600 applications will be received to either transfer a license or obtain a new license in FY 2019-20. Licenses do not have to be renewed. It is assumed that 90 minutes per license application is required to verify required information and issue the license.

In addition, the fiscal note assumes that no additional compliance checks or inspections will occur as a result of the bill and that verification of a valid license displayed on the premises will be incorporated into current enforcement procedures. In FY 2018-19, it is assumed that no administrative actions related to failing to obtain a license will occur, as the fine penalty does not go into effect until April 1, 2019 and DOR has flexibility to adjust a fine for good cause. In FY 2019-20, it is assumed that 81 administrative actions will be required and 10 cases will be referred to the Department of Law, based on current rates of failed inspections and cases referred to the Department of Law.

Department of Revenue. LED requires 4.0 FTE in FY 2018-19 and 0.9 FTE in FY 2019-20 to implement the license requirement. The staffing increase includes a criminal investigator, program assistant, and legal assistant to establish licensing procedures, issue licenses, provide support to retailers, compile reports and conduct hearings. Enforcement expenses (i.e. badges, gun, and radio) are required for the criminal investigator FTE.

Computer costs. In FY 2018-19 only, LED requires $11,000 to update computer systems to accommodate the new license. Of that, $3,000 is required to add the license to the MyLicenseOffice licensing system and $8,000 is required for the eGov system, which allows for an online licensing process.

Legal services. DOR requires 200 hours of legal services in FY 2018-19 and 660 hours in FY 2019-20. Legal services are provided by the Department of Law, which requires 0.1 FTE in FY 2018-19 and 0.4 FTE in FY 2019-20, and are assessed at a rate of $106.56 per hour.

Colorado Department of Public Health and Environment. The bill decreases the amount available for grants under the Tobacco Education, Prevention and Cessation Grant Program by $650,000 beginning in FY 2018-19. This change occurs as a result of increasing the amount that LED receives from the tobacco education fund to implement the additional licensing requirements under the bill. In FY 2017-18, grants averaged $423,116; because the decrease in funding is likely to result in one or two fewer grants as a result of the bill, no decrease in staffing is required. The decrease in funding may be adjusted through the annual budget process based on the balance in the fund or amount appropriated to DOR from the fund.

In addition, the bill increases the workload for CDPHE to ensure that no grant funds are spent advocating for the imposition of a license requirement, fee, or tax on a retailer selling tobacco, nicotine, or cigarettes. No change in appropriations is required to accommodate the workload increase.

Judicial Department. The bill increases workload for the trial courts in the Judicial Department by a minimal amount to handle any additional cases of perjury under the bill. The fiscal note assumes that applicants for a retailer's license will submit truthful and accurate information on license applications; as a result, any increase in cases will be minimal and can be accomplished within existing appropriations.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. These costs, which include employee insurance, supplemental employee retirement payments, and leased space, are estimated to be $73,281 in FY 2018-19 and $16,776 in FY 2019-20.

Local Government Impact

The bill impacts local governments in several ways, discussed below.

Revenue impacts. First, local governments are not eligible for their portion of cigarette tax revenue if they impose fees, licenses, or taxes on a retailer selling tobacco or nicotine products, or ban a retailer from selling cigarette, tobacco, or nicotine products. Seven jurisdictions have a license requirement for non-cigarette tobacco products and would lose their portion of cigarette tax revenue, should the local regulations remain in place. Should those local governments continue such regulations, revenue to those jurisdictions from state cigarette tax revenue will decrease. Should those local governments repeal such regulations, revenue to those jurisdictions from taxes or licensing fees will decrease.

In addition, fewer grants to local governments will be awarded as a result of the bill. For jurisdictions that would have a received a grant, revenue will decrease. Local governments currently using grant funds for advocacy related to licensure or taxation of cigarettes, tobacco, and nicotine products will have to adjust spending to ensure that grants are used only for authorized uses.

Court impacts. The bill increases workload and costs for district attorneys to prosecute any new perjury offenses, and increases workload and costs for trial courts in the Denver County Court, managed and funded by the City and County of Denver, to try any perjury cases as a result of the bill. Denver County Court may also see a minimal increase in criminal fine and court fee revenue as a result of the increase.

County jails. Under current law, a court may sentence an offender to jail for a class 1 misdemeanor offense for a period of between six and 18 months. Because the courts have the discretion of incarceration or imposing a fine, the precise impact at the local level cannot be determined. Any impact is expected to be minimal.

Effective Date

The bill was postponed indefinitely by the Senate Business, Labor, and Technology Committee on February 21, 2018.

State Appropriations

For FY 2018-19, the bill appropriates $650,000 from the Tobacco Education Programs Fund to the Department of Revenue; however, the fiscal note estimates that the bill requires an appropriation of $286,278 and an allocation of 4.0 FTE, of which $21,312 is reappropriated to the Department of Law, with an allocation of 0.1 FTE.

The bill also requires a decrease in appropriations of $650,000 for the Colorado Department of Public Health and Environment from the Tobacco Education Programs Fund.

State and Local Government Contacts

Counties	Judicial	Law
Municipalities	Public Health and Environment	Public Safety
Revenue		