SB 23-098

Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Revised Fiscal Note

(replaces fiscal note dated February 13, 2023)

Drafting Number:	LLS 23-0508	**Date:**	March 2, 2023
Prime Sponsors:	Sen. Rodriguez Rep. Bacon; Vigil	**Bill Status:**	Senate Appropriations
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Bill Topic: **GIG WORK TRANSPARENCY**

Summary of Fiscal Impact:

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

The bill requires delivery network companies and transportation network companies to provide payment disclosures to drivers and consumers; requires the Department of Labor and Employment to enforce unwarranted driver terminations; and subjects noncompliant companies to fines. It will increase state revenue and expenditures on an ongoing basis.

Appropriation Summary: For FY 2023-24, the bill requires an appropriation of $604,426 to the Department of Labor and Employment.

Fiscal Note Status: The revised fiscal note reflects the introduced bill, as amended by the Senate Business, Labor, and Technology Committee.

Table 1
State Fiscal Impacts Under SB 23-098

		Budget Year FY 2023-24	Out Year FY 2024-25
Revenue		-	-
Expenditures	Cash Funds	$604,426	$599,108
	Centrally Appropriated	$102,991	$109,012
	Total Expenditures	**$707,417**	**$708,120**
	Total FTE	**5.3 FTE**	**5.8 FTE**
Transfers		-	-
Other Budget Impacts		-	-

Summary of Legislation

Beginning January 1, 2024, this bill requires a delivery network company (DNC) or a transportation network company (TNC) to make disclosures to drivers and consumers regarding payments a consumer makes to a DNC or TNC, the amount the company then pays to the driver, and any amount a third party pays to a DNC. Companies are required to disclose certain information to the driver prior to acceptance of a drive or delivery, including the consumer's location and destination, among other information. Companies are prohibited from retaliation against any driver who declines to accept a task after receiving this information.

The Division of Labor Standards and Statistics (DLSS) in the Colorado Department of Labor and Employment (CDLE), in consultation with the Public Utilities Commission, must adopt rules establishing circumstances under which termination of a DNC or TNC driver is warranted. Companies who terminate a driver must notify the DLSS within 10 days. A driver who has been terminated may seek administrative review of the action. When this review is requested, the DLSS must notify the company and driver and hold a hearing to determine if the driver should be rehired pursuant to rules promulgated by the DLSS. The DLSS must provide and maintain copies of driver termination records. A driver is not eligible for rehire under any circumstances if law enforcement reports to CDLE that the driver is under investigation for conduct that resulted in the termination.

DLSS rulemaking must also outline rules regarding payment disclosures—including take rate and take amount transparency, destination and fare transparency, nonlinear compensation system transparency, and wage transparency—as well as transparent termination procedures. These rules must be adopted no later than December 1, 2023. The DLSS may impose fines against DNCs and TNCs for violations of these disclosure requirements. These companies are also subject to civil actions and injunctive relief.

Assumptions

Based on available data, this response assumes that there are approximately 62,113 drivers covered by the provisions of this bill. The fiscal note estimates that 1 percent of drivers will be terminated from a platform annually (621 drivers), and 33 percent of terminated drivers will appeal their termination for a total of 205 hearings per year.

State Revenue

The bill increases state revenue to the Wage Theft Enforcement Fund from fines collected from DNCs and TNCs. Overall, any revenue is expected to be minimal as the Colorado Wage Act encourages the DLSS to waive most fines assessed against employers if the employer complies with the law. Any revenue from court filing fees is also expected to be minimal.

State Expenditures

The bill increases state expenditures in the Department of Labor and Employment by $707,417 in FY 2023-24 and $708,120 in FY 2024-25 and ongoing, paid from the Employment Support Fund. Expenditures are shown in Table 2 and detailed below.

Table 2
Expenditures Under SB 23-098

		FY 2023-24	FY 2024-25
Department of Labor and Employment			
Personal Services		$476,064	$481,597
Operating Expenses		$24,543	$22,345
Capital Outlay Costs		$46,690	-
Legal Services		$57,100	$95,166
Centrally Appropriated Costs[1]		$102,991	$109,012
FTE – Personal Services		5.3 FTE	5.8 FTE
FTE – Legal Services		0.3 FTE	0.5 FTE
	Total Cost	**$707,417**	**$708,120**
	Total FTE	**5.3 FTE**	**5.8 FTE**

[1] *Centrally appropriated costs are not included in the bill's appropriation.*

Department of Labor and Employment. Beginning in FY 2023-24, the CDLE requires funding for staff to implement and enforce the provisions of the bill. The CDLE will also require general counsel and advice for rule promulgations and support with the ongoing administration of this bill, as well as legal assistance establishing procedures with the submittal of complaints and the associated investigations, hearings, and remedies.

- **Staff.** The department requires 5.3 FTE in 2023-24 and 5.8 FTE in FY 2024-25 and ongoing. First-year costs assume a start date of July 1 for staff involved in rulemaking and program start-up, and a start date of January 1, 2024 for staff involved in enforcement and hearings. Standard operating and capital outlay costs are included for these staff. Required staff are described in more detail below.

  Program implementation and management. The CDLE will require staff to assist in program implementation and rulemaking, as well as to provide ongoing management to the program. This will include 1.2 FTE in FY 2023-24 and 1.0 FTE in FY 2024-25 for an administrative law judge, and 0.8 FTE in FY 2023-24 and 0.5 FTE in FY 2024-25 for a program manager. In the first year only, 1.0 FTE for a policy advisor will be needed to assist with rulemaking and establishing program policies and procedures.

Compliance and hearing staff. Once the program takes effect in 2024, the CDLE will require staff to investigate complaints, and hold hearing regarding terminated drivers. This staff will include 1.0 FTE for a compliance investigator to process complaints about retaliation and transparency requirements under the bill. The fiscal note assumes 24 of each type of complaint, and an average time of 40 hours for staff to investigate, communicate with the parties, and adjudicate the complaint. In addition, based on the assumptions above, 2.5 FTE is required to hear and rule on approximately 171 termination appeals per year. An additional 0.9 FTE is required for administrative and legal assistant staff to manage appeal and complaint documents and to provide other support to the processes under the bill.

- **Legal services.** The CDLE will require about 540 hours of legal services for general counsel and rulemaking support in FY 2023-24, provided by the Department of Law at a rate of $105.74 per hour. Legal service needs will total 900 hours in FY 2024-45 and out years to represent the CDLE in appeals and other hearings regarding decisions resulting from complaints and termination appeals under the bill. The Department of Law requires the equivalent of 0.3 FTE in FY 2023-24 and 0.5 FTE in FY 2024-25 and ongoing to provide these services.

Department of Regulatory Agencies. The Public Utilities Commission will provide a consulting role in establishing rules for the transparent termination process of a TNC. The Department of Law will provide legal support in the event the commission requests it with respect to their role and responsibilities with the implantation of this bill. Any legal support is anticipated to be minimal and can be accommodated within existing resources.

Judicial Department. Any trial court workload impact is expected to be minimal. Since the DLSS will adjudicate cases administratively, additional case filings in district court will be small in number.

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 and supplemental employee retirement payments, are shown in Table 2.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature. It applies to conduct occurring on or after January 1, 2024.

State Appropriations

For FY 2023-24, the bill requires an appropriation of $604,426 and 5.3 FTE to the Department of Labor and Employment from the Employment Support Fund. Of this amount, $57,100 is reappropriated to the Department of Law with an additional 0.3 FTE.

Departmental Difference

The Department of Labor and Employment requests General Fund be used to enforce the bill's labor standards. The federal Department of Labor has determined that certain spending from the Employer Support Fund is not in compliance with federal law. Until the fund is back into compliance, the CDLE prefers not to make additional expenditures from this fund. The fiscal note assumes that these administrative costs constitute allowable uses of funds in the Employer Support Fund.

State and Local Government Contacts

Information Technology	Judicial	Labor
Law	Regulatory Agencies	Revenue
Transportation		