



**Colorado  
Legislative  
Council  
Staff**

**HB16-1335**

**FISCAL NOTE**

**FISCAL IMPACT:**  State  Local  Statutory Public Entity  Conditional  No Fiscal Impact

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|--|---|
| <b>Drafting Number:</b> LLS 16-0766                          | <b>Date:</b> March 22, 2016                         |
| <b>Prime Sponsor(s):</b> Rep. Pabon; Melton<br>Sen. Steadman | <b>Bill Status:</b> House SVMA                      |
|  | <b>Fiscal Analyst:</b> Erin Reynolds (303-866-4146) |

**BILL TOPIC:** UNLAWFUL SALE OF PUBLIC SERVICES AND APPOINTMENTS

| Fiscal Impact Summary                | FY 2016-2017               | FY 2017-2018        |
|--------------------------------------|----------------------------|---------------------|
| <b>State Revenue</b>                 | <b>&lt;\$10,000</b>        | <b>&lt;\$10,000</b> |
| General Fund                         | <5,000                     | <5,000              |
| Cash Funds                           | <5,000                     | <5,000              |
| <b>State Expenditures</b>            | Minimal workload increase. |                     |
| <b>TABOR Impact</b>                  | <\$10,000                  | <\$10,000           |
| <b>Appropriation Required:</b> None. |                            |                     |
| <b>Future Year Impacts:</b> None.    |                            |                     |

**Summary of Legislation**

The bill prohibits a person from reserving or obtaining a cost-free government service or appointment to sell or intend to sell. An exception is made when the person has consent from the government entity or when the person is selling or offering to sell only information. A violation of the prohibition is a class 1 misdemeanor and a deceptive trade practice for which the Attorney General and district attorneys may seek civil penalties for a violation.

**Background**

The Colorado Road and Community Safety Act (Senate Bill 13-251) allowed individuals not lawfully present or temporarily lawfully present in Colorado to apply for driver's licenses, instruction permits, and identification cards (SB13-251 documents) from the Division of Motor Vehicles (DMV) in the Department of Revenue (DOR). The DMV has received between 15 to 20 complaints that SB13-251 document appointments were being sold. As of yet, none of these complaints contained enough information to pursue enforcement action. Additionally, the DMV made a change to the online scheduling portal to prevent a person from cancelling an appointment online and to instead require cancellations to occur by phone, which has helped to minimize these incidents.

## **Comparable Crime**

Pursuant to Section 2-2-322 (2.5), C.R.S., 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 makes it both a class 1 misdemeanor to reserve or obtain a cost-free government service or appointment to sell or intend to sell. In the past three years, there have been 57 convictions for computer crimes committed for the purpose of devising or executing any scheme or article to defraud. Of the convictions, 30 involved males and 27 involved females, while the minority status of the criminals was 34 Caucasian, 16 African-American, 3 Hispanic, and 4 unknown.

## **State Revenue**

Beginning in FY 2016-17, this bill is anticipated to increase state fine revenue by less than \$10,000 per year, credited to the General Fund and the Fines Collection Cash Fund in the Judicial Department.

**Assumptions.** While the provisions of the bill may apply to other state agencies, the fiscal note assumes that the central issue is the sale of SB13-251 document appointments in DOR. Additionally, the fiscal note assumes that the changes made to the DMV's online scheduling portal, that prevent a person from cancelling an appointment online and to instead require cancellations to occur by phone, has helped to mitigate the problem.

**Deceptive trade practice.** To the extent that the Attorney General or district attorneys pursue actions related to the deceptive trade practice, fine revenue to the General Fund may increase beginning in FY 2016-17. Fines for violations range from \$500 to \$5,000. Additional fines may be levied for violations of a court order or injunction related to the deceptive trade practice. The fiscal note generally assumes a high level of compliance and any fine revenue is assumed to be less than \$5,000 per year.

**Class 1 misdemeanor.** Beginning in FY 2016-17, this 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 penalty for a class 1 misdemeanor is a fine of \$500 to \$5,000, between 6 to 18 months in jail, or both. Because the courts have the discretion of imposing a fine, imposing a jail sentence, or both, the precise impact to state revenue cannot be determined. However, based on the low number of fines imposed in 2015 and assumed compliance with the law, any revenue generated is likely to be less than \$5,000. Probation revenue from misdemeanor convictions may also increase by \$50 per month, per person sentenced to probation.

## **TABOR Impact**

This bill increases state General Fund and cash funds revenue from fines, which will increase the amount of money required to be refunded under TABOR. TABOR refunds are paid out of the General Fund.

## **State Expenditures**

Beginning in FY 2016-17, this bill is expected to minimally increase workload in the Judicial Department, the Department of Law, DOR, and other state agencies as discussed below. These workload increases can all be accomplished within the existing appropriations of the departments.

**Judicial Department.** Workload in the Judicial Department will minimally increase as follows. While the fiscal note assumes legal compliance, workload may increase to hear cases of illegally sold or promised government appointments. The bill may also increase workload or costs for the Office of the State Public Defender and Office of Alternate Defense Counsel, to provide representation for any persons deemed to be indigent. The fiscal note assumes these workload increases will be minimal and will not require an increase in appropriations for any agency within the Judicial Department.

**Department of Law.** Workload in the Attorney General's office will minimally increase to the extent that deceptive trade practice complaints are filed under the bill. The office will review complaints under the bill within the annual body of deceptive trade practice complaints and assess which complaints to investigate.

**Department of Revenue.** As discussed in the Background section, the DOR has already made a system change in response to issues it faced related to SB13-251 document appointments being sold. The DOR will experience a workload increase in order to provide training to authorized agents and DMV staff, and to update rules, forms, manuals, and its website.

**Other state agencies.** To the extent that any other state agency offers a cost-free government service or appointment, workload will increase to train staff and communicate the new law to the public.

## **Local Government and Statutory Public Entity Impact**

The bill will affect local governments in several ways, as discussed below.

**Local government and statutory public entity offices, generally.** As with state agencies, to the extent that a local government or statutory public entity offers a cost-free government service or appointment, workload will increase to train staff and communicate the new law to the public. Where applicable, these workload impacts are expected to be accomplished within existing resources.

**Misdemeanor offenses in county courts.** First, the bill may increase workload for district attorneys to prosecute any new offenses. Second, to the extent that this bill increases misdemeanor convictions and offenders are sentenced to jail, costs will increase. Under current law, a court may sentence an offender to jail for a class 1 misdemeanor for a period of between 6 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. The cost to house an offender in county jails varies from about \$53 to \$114 per day. For the current fiscal year, the state reimburses county jails at a daily rate of \$52.74 to house state inmates. It is assumed that the impact on county courts will be minimal.

***Denver County Court.*** The bill results in an increase in workload for the Denver County Court, managed and funded by the City and County of Denver. The court will try misdemeanor cases where a person violates the prohibition on government appointment sales. Probation services in the Denver County Courts may also experience a minimal increase in workload and revenue to supervise convicted persons.

## **Effective Date**

The bill takes effect July 1, 2016.

## **State and Local Government Contacts**

All Departments

All Local Governments

All Statutory Public Entities

## **Research Note Available**

An LCS Research Note for HB 16-1335 is available online and through the iLegislate app. Research notes provide additional policy and background information about the bill and summarize action taken by the General Assembly concerning the bill.