



**Colorado  
Legislative  
Council  
Staff**

**HB16-1370**

**FINAL  
FISCAL NOTE**

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

**Drafting Number:** LLS 16-0739  
**Prime Sponsor(s):** Rep. Singer; Coram  
Sen. Cooke

**Date:** June 13, 2016  
**Bill Status:** Postponed Indefinitely  
**Fiscal Analyst:** Clare Pramuk (303-866-2677)

**BILL TOPIC:** NICOTINE PRODUCT RETAILERS REGISTRY

<b>Fiscal Impact Summary</b>	<b>FY 2016-2017</b>	<b>FY 2017-2018</b>	<b>FY 2018-2019</b>	<b>FY 2019-2020</b>
<b>State Revenue</b>	<b><u>\$54,125</u></b>	<b><u>\$10,750</u></b>	<b><u>(\$30,250)</u></b>	<b><u>(\$39,250)</u></b>
General Fund	50,000	6,250	(14,250)	(18,750)
Cash Funds	4,125	4,500	(16,000)	(20,500)
<i>Transfers</i>				
Cash Funds			(up to 20,500)	(up to 25,000)
<b>State Expenditures</b>	<b><u>\$4,952,036</u></b>	<b><u>\$5,633,173</u></b>	<b><u>\$5,882,300</u></b>	<b><u>\$6,142,788</u></b>
General Funds	4,789,699	5,463,320	5,712,447	5,972,935
Cash Funds	136,119	138,387	138,387	138,387
Centrally Appropriated Costs	26,218	31,466	31,466	31,466
<b>TABOR Impact</b>		\$10,750	Not estimated.	
<b>FTE Position Change</b>	1.6 FTE	2.0 FTE	2.0 FTE	2.0 FTE
<b>Appropriation Required:</b> \$150,000 - Department of Revenue (FY 2016-17).				
<b>Future Year Impacts:</b> Ongoing revenue decrease and expenditure increase.				

**NOTE:** This bill was not enacted into law; therefore, the impacts identified in this analysis do not take effect.

**Summary of Legislation**

This bill requires all retailers selling cigarettes, tobacco products, or nicotine products to register with the Liquor Enforcement Division (LED) in the Department of Revenue (DOR) by January 1, 2017. The LED may impose a fine of \$500 per location for a retailer's failure to register and \$25 per location for failure to reregister annually. The LED is required to develop an online registration system that allows for the registration of multiple locations at once. The bill increases the annual appropriation to the LED from the Tobacco Education Programs Fund from \$350,000 to \$500,000 and authorizes the LED to expend up to \$150,000 for administration of the registry.

Under current law, incorporated cities, towns, and counties receive 27 percent of the gross state cigarette tax collections so long as they do not impose fees, licenses, or taxes as a condition for engaging in the business of selling cigarettes or taxing cigarettes. The bill extends this prohibition to include tobacco and nicotine products and adds the revenue collected from the tobacco products tax to the taxes that are distributed to cities, towns, and counties.

The bill doubles the penalties for sale of cigarettes, tobacco products, and nicotine products to minors that are deposited into the Cigarette, Tobacco Product, and Nicotine Product Use by Minors Prevention Fund. Under current law, until September 1, 2018, if a tobacco products distributor pays excise taxes on products that are then sent out-of-state, the DOR credits the tax to the distributor. The bill makes the excise tax credit permanent.

### **Background**

Tobacco products are subject to an excise tax equal to 40 percent of the manufacturer's list price of tobacco products. Examples of tobacco products include cigars, chewing tobacco, and loose tobacco used for roll-your-own cigarettes. The tobacco products tax is imposed at the time that the distributor brings tobacco products into the state. When a distributor sells tobacco products to an out-of-state retailer or consumer, returns tobacco products to the manufacturer, or destroys tobacco products, it can claim a credit for Colorado excise taxes that have already been paid.

Half of tobacco products tax revenue is deposited in the General Fund. Pursuant to the state constitution, the remainder of the tobacco products tax revenue money is appropriated in the following manner:

- 46 percent to the Department of Health Care and Policy Financing (HCPF) for the Children's Basic Health Plan and Medicaid;
- 19 percent to HCPF for comprehensive primary care;
- 16 percent to the Department of Public Health and Environment (CDPHE) for tobacco education programs;
- 16 percent to CDPHE for cancer, cardiovascular, and pulmonary programs; and
- 3 percent to state and local governments to make up for a reduction in sales of tobacco products because of the increase in excise taxes.

### **State Revenue**

This bill increases state revenue by \$54,125 in FY 2016-17, \$10,750 in FY 2017-18, and reduces revenue by \$30,250 in F 2018-19, and \$39,250 in FY 2019-20. The changes in revenue by fund and source of revenue are shown in Table 1 and explained below.

<b>Table 1. State Revenue Impact of HB16-1370</b>				
<b>Revenue Source</b>	<b>FY 2016-17</b>	<b>FY 2017-18</b>	<b>FY 2018-19</b>	<b>FY 2019-20</b>
General Fund - Fines	50,000	6,250	6,250	6,250
General Fund - Tax Credit			(20,500)	(25,000)
Tobacco Tax Cash Fund - Amendment 35 Taxes			(20,500)	(25,000)

<b>Table 1. State Revenue Impact of HB16-1370 (Cont.)</b>				
<b>Revenue Source</b>	<b>FY 2016-17</b>	<b>FY 2017-18</b>	<b>FY 2018-19</b>	<b>FY 2019-20</b>
Cigarette, Tobacco Product, and Nicotine Product Use by Minors Prevention Fund	4,125	4,500	4,500	4,500
<b>TOTAL</b>	<b>\$54,125</b>	<b>\$10,750</b>	<b>(\$30,250)</b>	<b>(\$39,250)</b>

**General Fund revenue impacts.** The bill impacts General Fund revenue in two ways. First, General Fund revenue will increase from fines paid by retailers that fail to register with the DOR. The fiscal note assumes that 100 retailers will fail to complete their initial registration in FY 2016-17. In subsequent years 10 retailers will fail to complete their initial registration and 50 retailers will fail to renew their registrations. Second, by extending the excise tax credit for tobacco products sent out-of-state, General Fund revenue will decrease beginning in FY 2018-19.

**Tobacco Tax Cash Fund reduction.** The excise tax credit that reduces General Fund revenue reduces Tobacco Tax Cash Fund revenue by an equal amount.

**Cigarette, Tobacco Product, and Nicotine Product Use by Minors Prevention Fund.** This fund receives fines levied for sale of cigarettes or tobacco or nicotine products to minors. For FY 2014-15, the fund received \$4,500 in revenue. Because the bill doubles the fine amounts, the revenue is doubled in the fiscal note.

**State transfers.** The reduction in Tobacco Tax Cash Fund revenue will reduce transfers beginning in FY 2018-19 as shown in Table 2.

<b>Table 2. Transfers Under SB 15-1301</b>				
<b>Department, Fund</b>	<b>FY 2016-17</b>	<b>FY 2017-18</b>	<b>FY 2018-19</b>	<b>FY 2019-20</b>
HCPF, Children's Basic Health Plan and Medicaid			(Up to \$9,430)	(Up to \$11,500)
HCPF, Comprehensive Primary Care			(Up to \$3,895)	(Up to \$4,750)
CDPHE, Tobacco Education Programs			(Up to \$3,280)	(Up to \$4,000)
CDPHE, Cancer, Cardiovascular and Pulmonary Programs			(Up to \$3,280)	(Up to \$4,000)
State and Local Governments			(Up to \$615)	(Up to \$750)
<b>TOTAL</b>			<b>(Up to \$20,500)</b>	<b>(Up to \$25,000)</b>

**TABOR Impact**

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

**State Expenditures**

This bill increases state expenditures by \$4,952,036 in FY 2016-17, \$5,633,173 in FY 2017-18, \$5,882,300 in FY 2018-19, and \$6,142,788 in FY 2019-20. The majority of the expenditures are a result of sharing 27 percent of taxes levied on tobacco and nicotine products with cities, towns, and counties beginning in FY 2016-17. The remainder of the expenditures are for implementation of the registry by the DOR.

**Liquor Enforcement Division, Department of Revenue.** This bill increases state expenditures to the LED in the DOR by \$162,337 and 1.6 FTE in FY 2016-17 and \$169,853 and 2.0 FTE in FY 2017-18 and thereafter. FY 2016-17 costs are prorated to reflect the August effective date. The first \$150,000 of funding will be from the Tobacco Education Programs Fund. See the Centrally Appropriated Costs section for discussion of the amounts above \$150,000. Table 3 shows the cost components of the bill which are explained below.

<b>Table 3. Expenditures Under HB16-1370</b>				
<b>Cost Components</b>	<b>FY 2016-17</b>	<b>FY 2017-18</b>	<b>FY 2018-19</b>	<b>FY 2019-20</b>
Personal Services	\$93,208	\$111,850	\$111,850	\$111,850
FTE	1.6 FTE	2.0 FTE	2.0	2.0
Operating Expenses and Capital Outlay Costs	10,926	1,900	1,900	1,900
Investigator Supplies	5,777	987	987	987
Vehicle Lease	4,708	5,650	5,650	5,650
Computer Programming	21,500	18,000	18,000	18,000
Centrally Appropriated Costs*	26,218	31,466	31,466	31,466
<b>DOR Expenditures</b>	<b>\$162,337</b>	<b>\$169,853</b>	<b>\$169,853</b>	<b>\$169,853</b>
<b>General Fund Expenditures</b>	<b>\$4,789,699</b>	<b>\$5,463,320</b>	<b>\$5,712,447</b>	<b>\$5,972,935</b>
<b>TOTAL Expenditures</b>	<b>\$4,952,036</b>	<b>\$5,633,173</b>	<b>\$5,882,300</b>	<b>\$6,142,788</b>

\* Centrally appropriated costs are not included in the bill's appropriation.

The LED will add 2.0 FTE which will include a Criminal Investigator and a Program Assistant to assist in the development and implementation of the registry and registration process, provide support to retailers, conduct investigations, write reports and take enforcement actions. The FTE are prorated to 1.6 FTE for FY 2016-17 to reflect the August effective date.

The criminal investigator working in the field will hold peace officer status and requires appropriate police equipment for one-time costs of \$4,790 and ongoing costs of \$987. The criminal investigator will also require a vehicle at a cost of \$5,650 annually prorated for FY 2016-17 to \$4,708.

The DOR requires one-time programming costs of \$13,500 in FY 2016-17 to allow for online retailer registrations and ongoing annual costs of \$18,000 for its licensing software. The Colorado Integrated Tax Architecture system, DOR's taxation system, requires one-time programming costs of \$8,000 in FY 2016-17 to allow the DOR to properly identify tobacco registration penalty revenue.

**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. Leased space is included to show the incremental impact of the additional FTE, and calculated at a rate of \$27 per square foot for 200 square feet. The centrally appropriated costs subject to this policy are estimated in the fiscal note for informational purposes and summarized in Table 4.

<b>Table 4. Centrally Appropriated Costs Under HB16-1370</b>		
<b>Cost Components</b>	<b>FY 2016-17</b>	<b>FY 2017-18</b>
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$12,842	\$16,044
Supplemental Employee Retirement Payments	7,976	10,022
Leased Space	5,400	5,400
<b>TOTAL</b>	<b>\$26,218</b>	<b>\$31,466</b>

### **Local Government Impact**

Tobacco and nicotine products are currently universally taxed by local jurisdictions as tangible personal property. In order to benefit from the increased distribution of tax revenue, local jurisdictions must repeal their local tax on tobacco and nicotine products resulting in a decrease in tax revenue. The amount of this decrease has not been quantified and the extent to which the increased share of revenue included in the bill will serve to supplant that loss in tax revenue is unknown

### **Technical Note**

The DOR is implementing a new online registration program in the Spring of 2017 so will not have the ability to implement the system required by the bill by January 1, 2017.

### **Effective Date**

The bill was postponed indefinitely by the House Business Affairs and Labor Committee on April 28, 2016.

### **State Appropriations**

For 2016-17, the DOR requires an appropriation of \$150,000 from the Tobacco Education Programs Fund and an allocation of 1.6 FTE. The Department of Personnel and Administration requires \$4,708 in reappropriated funds for the vehicle lease.

**State and Local Government Contacts**

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Local Affairs  
Public Health & Environment

Human Services  
Municipalities