



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Fiscal Note

Drafting Number: LLS 21-0184 Date: March 17, 2021
Prime Sponsors: Sen. Donovan Bill Status: Senate SVMA
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Bill Topic: DIGITAL COMMUNICATIONS REGULATION

- Summary of Fiscal Impact:
[X] State Revenue [] TABOR Refund
[X] State Expenditure [] Local Government
[] State Transfer [] Statutory Public Entity

The bill creates the Digital Communications Division and Commission in the Department of Regulatory Agencies to register digital communications platforms and enforce unfair or discriminatory digital communications practices on the platforms. It will increase state revenue and expenditures on an ongoing basis beginning in FY 2022-23.

Appropriation Summary: No appropriation is required for FY 2021-22.

Fiscal Note Status: The fiscal note reflects the introduced bill.

Table 1
State Fiscal Impacts Under SB 21-132

Table with 4 columns: Category, Budget Year (FY 2021-22), Out Year (FY 2022-23), and Out Year (FY 2023-24). Rows include Revenue (Cash Funds, Total Revenue), Expenditures (General Fund, Cash Funds, Centrally Appropriated, Total Expenditures, Total FTE), Transfers, and TABOR Refund.

Summary of Legislation

The bill creates the Digital Communications Division and Commission as a Type 1 agency in the Department of Regulatory Agencies (DORA) to register digital communications platforms, such as social media platforms or media-sharing platforms, and enforce unfair or discriminatory digital communications practices on the platforms.

Digital Communications Division. DORA's executive director appoints the division director, who must appoint investigators and other personnel as necessary to receive, investigate, and make determinations on charges alleging unfair and discriminatory digital communications practices.

Beginning January 1, 2022, digital communications platforms that conduct business in Colorado or own or operate services that are offered to Colorado residents must register with the division and pay a registration fee.

Digital Communications Commission. The commission is composed of 7 members who receive per diem allowances and are reimbursed for actual and necessary expenses. The commission is responsible for rulemaking, establishing fees, investigating communication practices, holding hearings, and making policy recommendations.

Penalties. A digital communications platform that fails to register with the division commits a class 2 misdemeanor, punishable by a fine of up to \$5,000 for each day that the violation continues.

Civil action. If a person who files a complaint with the division exhausts all administrative remedies and proceedings, the person may file a civil action in district court alleging an unfair or discriminatory digital communications practice.

Sunset and repeal date. The division and commission are repealed September 1, 2031, pending a sunset review.

Comparable Crime Analysis

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 an existing crime. This section outlines data on crimes comparable to the offense in this bill and discusses assumptions on future rates of criminal conviction for those offense.

Prior conviction data and assumptions. This bill creates the new offense of failure to register as a digital communications platform, a class 2 misdemeanor. To form an estimate on the prevalence of this new crime, the fiscal note analyzed the existing offense of failure to register as a telemarketer as a comparable crime. From 2018 to 2020, zero offenders have been sentenced and convicted for this existing offense; therefore, the fiscal note assumes that there will be minimal or no additional case filings or convictions for the new offense under the bill. Because the bill is not expected to have a tangible impact on criminal justice-related expenditures or revenue at the state or local levels, these potential impacts are not discussed further in this fiscal note. Visit leg.colorado.gov/fiscalnotes for more information about criminal justice costs in fiscal notes.

State Revenue

Beginning in the out year, FY 2022-23, the bill will annually increase state cash fund revenue in DORA from a fee on digital communications platforms by an estimated \$2.3 million.

Fee impact on digital communication platform providers. Colorado law requires legislative service agency review of bills that create or increase any fee collected by a state agency. The fee amounts in Table 2 are estimates only, actual fees will be set administratively by DORA based on estimated program costs and the estimated number of providers subject to the fee.

Table 2
Annual Fee Impact on Platform Providers

Type of Fee	Proposed Fee	Number Affected ¹	Total Fee Impact
Digital Communications Registration	\$115,000	20	\$2,300,000

¹The number of digital communications platforms is shown for illustrative purposes, and reflects the estimated number of major social media sites. It is not meant to be comprehensive.

State Expenditures

The bill will increase state expenditures by \$2.4 million and 23.0 FTE in FY 2022-23 and \$2.2 million and 24.0 FTE in FY 2023-24 and in future fiscal years. It is assumed FY 2022-23 costs require General Fund. Ongoing program costs will be paid from registration fees on digital communications platform providers, as discussed in the State Revenue section.

Table 3
State Expenditures Under SB 21-132

Cost Components	FY 2021-22	FY 2022-23	FY 2023-24
Department of Regulatory Agencies			
Personal Services	-	\$1,334,819	\$1,456,165
Operating Expenses	-	\$31,050	\$31,050
Capital Outlay Costs	-	\$142,600	-
Legal Services	-	\$382,824	\$191,412
Centrally Appropriated Costs	-	\$521,568	\$533,403
FTE - Personal Services	-	21.0 FTE	23.0 FTE
FTE - Legal Services	-	2.0 FTE	1.0 FTE
Total	-	\$2,412,861	\$2,212,030
Total FTE	-	23.0 FTE	24.0 FTE

Department of Regulatory Agencies. Using the Colorado Civil Rights Division as a proxy, DORA will bring on 23.0 FTE to staff the Digital Communications Division starting on July 1, 2022. The division will receive complaints and perform investigations related to unfair and discriminatory digital communications practices. Given the large amount of content on social media platforms, it is assumed that the division will prioritize investigations within these resources. The division will also annually register digital communications platforms that conduct business in Colorado and support the work of the Digital Communications Commission related to rulemaking, fee schedules, and hearings. In addition, legal services are estimated at 3,600 hours and 2.0 FTE initially and 1,800 hours and 1.0 FTE ongoing, provided by the Department of Law. Standard operating and capital outlay costs are included for each staff, and FY 2022-23 costs are prorated for the General Fund pay date shift.

Judicial Department. Any increase in civil cases under the bill is expected to be minimal and no change in appropriations is required for the Judicial Department.

Centrally appropriated costs. Pursuant to 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 for Department of Regulatory Agencies, are estimated to be \$521,568 in FY 2022-23 and \$533,403 in FY 2023-24.

TABOR refunds. Under the December 2020 Legislative Council Staff Economic and Revenue Forecast, the state is not expected to collect revenue above the TABOR limit in FY 2022-23, and a refund obligation is not anticipated for this year. This bill does not change these expectations concerning refunds to taxpayers.

Technical Note

The bill creates a new fee on digital communications platform providers to support the work of the division and commission, which necessitates the creation of a cash fund.

Effective Date

The bill takes effect July 1, 2022, assuming no referendum petition is filed.

State and Local Government Contacts

Information Technology
Law

Judicial
Regulatory Agencies