

Colorado Legislative Council Staff Fiscal Note

**STATE and LOCAL  
FISCAL IMPACT**

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| <b>Drafting Number:</b> LLS 14-0866                               | <b>Date:</b> February 18, 2014                                  |
| <b>Prime Sponsor(s):</b> Rep. McCann; Gerou<br>Sen. Kefalas; King | <b>Bill Status:</b> House Health, Insurance, and<br>Environment |
|   | <b>Fiscal Analyst:</b> Kerry White (303-866-3469)               |

**SHORT TITLE:** TOBACCO PRODUCTS TO PERSONS UNDER TWENTY-ONE YEARS

| Fiscal Impact Summary*               | FY 2014-2015                                | FY 2015-2016         |
|--------------------------------------|---|----------------------|
| <b>State Revenue</b>                 | <b>(\$1,856,286)</b>                        | <b>(\$5,582,400)</b> |
| General Fund                         | (605,450)                                   | (1,817,503)          |
| Cash Funds**                         | (1,250,836)                                 | (3,764,897)          |
| <b>State Expenditures</b>            |   |                      |
| General Fund                         | Workload increase. Potential cost increase. |                      |
| <b>FTE Position Change</b>           |   |                      |
| <b>Appropriation Required: None.</b> |   |                      |

\* This summary shows changes from current law under the bill for each fiscal year. Parentheses indicate a decrease in funds.

\*\* Includes moneys that would be transferred to state agencies and local governments. See the State Expenditures and Local Government Impact sections.

**Summary of Legislation**

Under current law, the sale of cigarettes and tobacco products to persons under the age of 18 is prohibited. It is also prohibited for a person under the age of 18 to purchase or possess cigarettes and tobacco products. This bill increases the age limit so that cigarettes may not be sold to or purchased or possessed by a person under the age of 21. The bill makes an exception for anyone born on or before June 30, 1996.

**Background**

The Department of Revenue (DOR) is responsible for enforcing the prohibition on the sale of cigarettes and tobacco products to minors.

**Retailers.** Retailers are required to display a warning sign that it is illegal for any person under the age of 18 to purchase cigarettes and tobacco products and, upon conviction, a \$100 fine may be imposed. A retailer who is identified as violating the prohibition on the sale of cigarettes and tobacco products to minors is subject to a hearing by the DOR. If the DOR finds a violation occurred, it may issue a written order and levy a fine. Depending on the number of previous violations, a written warning may be issued or fines ranging from \$250 to \$15,000 may be levied. Violations for sales through a vending machine or failure to display a warning sign may also result in a written warning or fines ranging from \$25 to \$1,000, depending on the number of prior violations.

**Minors.** Purchasing or attempting to purchase cigarettes or tobacco products by a minor is a class 2 petty offense, subject to a fine of \$100. For a first offense, the court may sentence the youth to a tobacco education program in lieu of a fine. The court may also allow a youth to perform community service at the rate of \$5 per hour of work performed for up to 50 percent of the fine and court costs. Possession of cigarettes or tobacco products by a minor is prohibited as a non-criminal offense. Between January 1, 2010, and December 31, 2013, there were 714 cases that included at least one charge of this crime.

**Cigarette and tobacco taxes.** Cigarettes and other tobacco products are subject to taxes in Colorado. Cigarettes are subject to three taxes: state sales tax (2.9 percent on the price of the pack), state excise tax (\$0.84 per pack of cigarettes), and federal excise tax (\$1.01 per pack of cigarettes). Other tobacco products (OTP) are also subject to three taxes:

- 2.9 percent state sales;
- 40 percent excise tax; and
- federal excise tax that varies depending on the type of product.

Sales tax collected on the price of cigarettes and tobacco products is credited directly to the General Fund. State excise taxes are paid by tobacco wholesalers before the cigarettes are sold to retailers. About 23 percent of tobacco taxes are credited to the General Fund, of which 27 percent is redistributed to local governments. The remaining 77 percent of state cigarette excise taxes are credited to the Tobacco Tax Cash Fund. Excise taxes on tobacco products are deposited as 49 percent to the General Fund and 51 percent to the Tobacco Tax Cash Fund. The federal excise tax is also generally paid by cigarette wholesalers, but collected by the federal government. Moneys in the Tobacco Tax Cash Fund are allocated statutorily for transfer as follows:

- 46 percent to the Department of Health Care Policy and Financing (HCPF) for Medicaid and the Children's Basic Health Plan (known as CHP+);
- 19 percent to HCPF for comprehensive primary care;
- 16 percent to the Department of Public Health and Environment (DPHE) for tobacco education programs;
- 16 percent to DPHE 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.

In FY 2012-13, the state collected \$29.9 million in state sales tax from the sale of cigarettes; \$165.5 million in state excise taxes on cigarettes; and \$31.6 million in tobacco products excise tax.

## **State Revenue**

This bill will both increase and decrease state revenue. **Overall, revenue will decrease by \$1,856,286 in FY 2014-15 and by \$5,582,400 in FY 2015-16.** By expanding the pool of persons eligible for a class 2 petty offense for purchasing cigarettes or tobacco products or administrative fines for sales of these materials to persons between the ages of 18 and 21, state revenue could increase. State revenue will also decrease as a result of lost tax revenue from decline in sales of cigarettes and tobacco products. These impacts are discussed more fully below.

**Increases from criminal penalties.** Beginning in FY 2014-15, 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 Branch. The fine penalty for this class 2 petty offense is \$100. Because the courts have the discretion of imposing a fine or ordering completion of a tobacco education program, and persons have the option of performing community service, the impact to state revenue cannot be determined.

**Increases from administrative penalties.** Beginning in FY 2014-15, this bill may increase fine revenue from administrative penalties levied against retailers. About \$3,500 per year is collected in administrative penalties for violations of the current law. Because penalties are progressive according to the number of prior violations, the fiscal note assumes that revenue could increase under HB14-1263. The amount of the increase has not been estimated, but based on the low number of existing offenses, the fiscal note assumes any such increase will be minimal. Revenue is credited to the Tobacco Use Prevention Fund in the Department of Human Services.

**Decrease from sales and tobacco taxes.** By reducing the pool of persons eligible to purchase cigarettes and tobacco products, beginning in FY 2014-15, state sales, state excise, and tobacco tax revenues will decrease. The revenue reduction is based on the following assumptions:

- persons currently between ages 13 and 20 make up about 14.2 percent of the total population (based on data provided by the Department of Local Affairs for 2013);
- for each age category between ages 13 and 20, about half of the population uses cigarettes and OTP;
- sales and excise taxes are declining by 3.3 percent per year, and OTP taxes are increasing by 5 percent per year; and
- persons between ages 18 and 20 as of June 30, 2014, will not be subject to the provisions of the bill.

Based on the revenues received in FY 2012-13, Table 1 shows the reduction in revenues anticipated under HB14-1263.

| <b>Table 1. Revenue Reduction Under HB14-1263</b>              |                      |                      |
|--|----------------------|----------------------|
| <b>Program Area</b>  | <b>FY 2014-15</b>    | <b>FY 2015-16</b>    |
| State Sales Tax  | (\$242,291)          | (\$727,334)          |
| State Cigarette Excise Taxes                                   | (1,341,334)          | (4,026,553)          |
| Tobacco Products Excise  | (227,661)            | (833,513)            |
| <b>TOTAL</b>   | <b>(\$1,861,286)</b> | <b>(\$5,587,400)</b> |
| <b>General Fund</b>  | <b>(605,450)</b>     | <b>(1,817,503)</b>   |
| <b>Cash Funds - State (Transfer to Tobacco Tax Cash Fund)*</b> | <b>(1,172,260)</b>   | <b>(3,519,011)</b>   |
| <b>Cash Funds - Transfer to Local Governments**</b>            | <b>(83,576)</b>      | <b>(250,886)</b>     |

\* This is discussed in the State Transfers section, below.

\*\* This is discussed more fully in the Local Government Impact section.

**State transfers.** As discussed above, portions of the state excise taxes and OTP taxes are credited to the Tobacco Tax Cash Fund and transferred to various state programs. By reducing the pool of legal smokers, total revenue declines, including the amounts credited to the Tobacco Tax Cash Fund. The reduction in moneys credited to the Tobacco Tax Cash Fund will reduce transfers out of the fund, as shown in Table 2.

| Program Area  | FY 2014-15           | FY 2015-16           |
|---|----------------------|----------------------|
| HCPF - Medicaid and CHP+ (46%)                              | (\$539,240)          | (\$1,618,745)        |
| HCPF - Comprehensive Primary Care (19%)                     | (222,728)            | (668,612)            |
| DPHE - Tobacco Education Programs (16%)                     | (187,562)            | (563,042)            |
| DPHE - Cancer, Cardiovascular, and Pulmonary Programs (16%) | (187,562)            | (563,042)            |
| State and Local Governments (3%)                            | (35,168)             | (105,570)            |
| <b>TOTAL</b>  | <b>(\$1,172,260)</b> | <b>(\$3,519,011)</b> |

### State Expenditures

Overall, this bill will increase workload for several state agencies, as discussed below. To the extent that the General Assembly opts to provide General Fund to backfill some of the lost revenue for programs in HCPF and DPHE, costs could also increase.

**Judicial Department.** This bill is anticipated to increase workload for county courts to hear cases related to the prohibition for purchasing or possessing cigarettes. As discussed above, about 179 cases are currently heard per year. While it is difficult to project the increase in filings for this offense in the future, the fiscal note assumes that the increase in workload will be minimal and can be accomplished within existing appropriations.

**Department of Revenue.** Workload will increase for the department to conduct outreach to make retailers aware of the changes and to conduct administrative hearings for any increase in violations. The fiscal note assumes this workload increase will likely be in the initial years of implementation and will drop off over time as retailers become fully trained and aware of the change in law. These activities can be performed without an increase in appropriations.

**Backfill for programs.** As discussed in the State Revenue Section above, this bill will reduce moneys transferred to HCPF and the DPHE. To the extent that the General Assembly decides to backfill the reduction in revenue, General Fund expenditures will increase. The fiscal note assumes any such decisions will be addressed through the annual budget process.

### Local Government

This bill affects local governments in several key ways. First, it reduces distributions from state excise and OTP taxes. Second, it could increase fine penalty revenue and workload as a result of more persons being subject to a class 2 petty offense for purchasing or attempting to purchase cigarettes or tobacco products. These impacts are discussed more fully below.

**Revenue loss.** Overall, local revenue will decrease by \$118,744 in FY 2014-15 and by \$356,456 in FY 2015-16. The reductions are the result of reduced state excise revenue collections and a reduction in transfers from the Tobacco Tax Cash Fund.

**Revenue and workload increase.** Per Section 18-1.3-503, C.R.S., the penalty for a class 2 petty offense is a fine specified in the section defining the offense. The penalty assessment procedure of Section 16-2-201, C.R.S., specifies that the arresting officer may either give the person a penalty assessment notice or take the person before a judge of the county court in which the offense occurred. To the extent that an arresting officer chooses to take a person before a judge, workload in the City and County of Denver will increase. For persons who are convicted of the offense and issued a fine, revenue will also increase. This analysis assumes the impact to the courts and increases in revenue will be minimal.

**Effective Date**

The bill takes effect July 1, 2014.

**State and Local Government Contacts**

| Counties | District Attorneys | Judicial | Revenue |
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