HB14-1285

Colorado Legislative Council Staff Fiscal Note

STATE and LOCAL FISCAL IMPACT

Drafting Number:	LLS 14-0734	**Date:**	February 27, 2014
Prime Sponsor(s):	Rep. Ryden Sen. Aguilar; Johnston	**Bill Status:**	House Business, Labor, Economic, and Workforce Development
		Fiscal Analyst:	Alex Schatz (303-866-4375)

SHORT TITLE: TAXPAYER PROTECTION ACT DISCLOSURES

Fiscal Impact Summary*	FY 2014-2015	FY 2015-2016
State Revenue		
General Fund	<$1,000	<$1,000
Cash Funds	Minimal increase.	Minimal increase.
State Expenditures	Workload and potential cost increase. See State Expenditures section.	
FTE Position Change		
Appropriation Required: None.		

* *This summary shows changes from current law under the bill for each fiscal year.*

Summary of Legislation

This bill amends the Colorado Consumer Protection Act (CCPA) to include the Colorado Taxpayer Protection Act. Under the bill, the CCPA requires a disclosure by any person paid to complete all or substantially all of an income tax return or a claim for an income tax refund (a tax preparer). The disclosure is provided on a form produced and posted by the Department of Revenue (DOR) on its website, and must be signed by the tax preparer's client.

Under the bill's CCPA provisions, violations of disclosure requirements constitute a deceptive trade practice, with civil penalties of up to $50 (or $100, if the violation is against an elderly person) for each client that did not receive a disclosure or provide a signature on the form. Civil penalties are deposited in the General Fund and may not exceed $25,000 for any one tax preparer.

The bill also establishes criminal penalties if a tax preparer provides fraudulent information on a disclosure form. For each client receiving such fraudulent information, the tax preparer commits a class 2 misdemeanor.

Background

The Internal Revenue Service (IRS) estimates that over 60 percent of federal income tax returns are completed by a paid tax preparer. According to a study by the National Consumer Law Center, over 1 million tax returns in Colorado were completed by a paid tax preparer.

Currently, the IRS certifies and regulates enrolled agents, and state licensing boards, including the Board of Accountancy under the Department of Regulatory Agencies in Colorado, regulate certified public accountants. These regulated professionals are estimated to serve less than 20 percent of the market for paid tax preparers.

State Revenue

Each fiscal year starting in FY 2014-15, enforcement actions under the bill will result in less than $1,000 in General Fund revenue and a minimal amount of cash fund revenue.

Assumptions. Reviewing the disclosure form with a client and obtaining the client's signature is consistent with the business practices of most tax preparers, and general compliance with the bill is therefore anticipated. The number of tax preparers subject to civil or criminal penalties under the bill is minimal.

Civil penalties. Based on a maximum civil penalty of $50 in most circumstances, less than $1,000 per year will be credited to the General Fund for failure to follow disclosure requirements, most likely from sole proprietors or smaller tax preparation businesses with multiple violations.

Criminal penalties. Criminal fines will be deposited in the Fines Collection Cash Fund in the Judicial Branch, but this revenue is expected to be minimal based on very few cases in which a tax preparer will include fraudulent information on the disclosure form prepared by DOR. For a class 2 misdemeanor, a judge has the discretion to impose a fine of between $250 and $1,000.

State Expenditures

Starting in FY 2014-15, the bill results in increased workload and potential cost increases for the Department of Law, the Department of Regulatory Agencies, the Judicial Branch, and the Department of Revenue.

Assumptions. Based on the small number of anticipated violations, options for civil enforcement, and indigence requirements, this bill is not anticipated to result in demand for the services of the Office of State Public Defender or the Office of Alternative Defense Counsel.

Department of Law. The Consumer Protection Unit in the Attorney General's Office will investigate complaints regarding tax preparers and in some cases pursue enforcement actions. Currently, the Consumer Protection Unit receives approximately 10 complaints about tax preparers each year. Workload will increase to follow up on these complaints, based on new enforcement authority under the bill, but no new appropriations are required to implement the bill. Any future need for additional resources will be addressed in the annual budget process.

Department of Regulatory Agencies. The bill provides a new basis for enforcement actions against certified public accountants. A minimal increase in the number of enforcement actions by the Board of Accountancy will not require new appropriations.

Judicial Branch. The civil docket caseload of Colorado trial courts will increase as a result of the new cause of action for deceptive trade practices under the bill. Based on the new misdemeanor for fraudulent disclosure information, a small number of new criminal cases will also impact trial courts and potentially increase probation caseload. These increases in trial court and probation caseload will not significantly change demands on Judicial Branch resources and do not require new appropriations.

Department of Revenue. The DOR will develop a form containing all information required by the bill and will post this form on its website. This work will be accomplished in early FY 2014-15 and is not expected to require additional resources.

Local Government Impact

The bill results in increased workload and potential costs for county governments. Increased efforts by county governments include district attorney caseload, caseload in the Denver county court, and demand on county jails, as discussed below.

District attorney caseload. District attorneys will investigate complaints regarding tax preparers and may elect to pursue civil remedies or criminal prosecution of violators. The fiscal note assumes district attorneys will accommodate this workload within existing resources.

Denver county court. The Denver County Court, funded entirely by the City and County of Denver, will experience a small increase in trial caseload related to civil and possibly criminal enforcement of the bill, as well as a potential minimal increase in probation caseload.

Demand on county jails. This bill impacts local governments by creating the new crime of providing a fraudulent tax preparer disclosure, which is a class 2 misdemeanor. The penalty for a class 2 misdemeanor is 3 to 12 months in a county jail, a fine of $250 to $1,000, or both. Because the courts have the discretion of incarceration or imposing a fine, the impact at the local level cannot be determined. The cost to house an offender in county jails varies from $45 to $50 per day in smaller rural jails to $62 to $65 per day for larger Denver-metro area jails. For the current fiscal year, the state reimburses county jails at a daily rate of $51.45 to house state inmates. It is assumed that the impact of this bill will be minimal.

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 creates a new class 2 misdemeanor for a tax preparer providing a client fraudulent information on a disclosure form. The bill addresses behavior that may be chargeable under current law, Section 18-5-301 (1)(e), C.R.S., fraud in effecting sales, a class 2 misdemeanor.

The bill does not directly address fraudulent activity related to a client's return. The fiscal note assumes that the bill is enforced and has a deterrent effect, but there is insufficient data to quantify the effect of the new crime on tax preparer behavior.

There is no known indication that offenders or victims of tax scams follow any gender or minority trend.

Technical Note

Section 5 of the bill addresses a potential five-year appropriation for capital construction and operational impacts on the Department of Corrections. This section is unnecessary, as the bill does not involve a criminal offense with a potential prison sentence.

Effective Date

The bill takes effect August 6, 2014, if the General Assembly adjourns on May 7, 2014, as scheduled, and no referendum petition is filed. The bill applies to offenses committed on or after this effective date.

State and Local Government Contacts

Revenue	Regulatory Agencies	Corrections
Law	Judicial Branch	District Attorneys
Counties	Municipalities	Local Affairs
Treasury		