# HB14-1199

*Colorado Legislative Council Staff Fiscal Note*

# STATE FISCAL IMPACT

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| **Drafting Number:** | LLS 14-0741 | **Date:** | February 18, 2014 |
| **Prime Sponsor(s):** | Rep. Williams<br>Sen. Jahn; Balmer | **Bill Status:** | House Business, Labor, Economic, and Workforce Development |
| | | **Fiscal Analyst:** | Alex Schatz (303-866-4375) |

**SHORT TITLE:** CONSUMER GOODS SERVICE CONTRACTS REGUL CHANGES

| **Fiscal Impact Summary*** | **FY 2014-2015** | **FY 2015-2016** |
|---|---|---|
| **State Revenue** | Minimal increase. | Minimal increase. |
| General Fund | See State Revenue section. | See State Revenue section. |
| *State Diversions* | $0 | $0 |
| General Fund | (23,153) | (26,854) |
| Cash Funds | 23,153 | 26,854 |
| **State Expenditures** | **$23,153** | **$26,854** |
| Cash Funds | 20,170 | 23,476 |
| Centrally Appropriated Costs** | 2,983 | 3,378 |
| **FTE Position Change** | 0.3 FTE | 0.3 FTE |
| **Appropriation Required:** $20,170 - Department of Regulatory Agencies (FY 2014-15) | | |

* *This summary shows changes from current law under the bill for each fiscal year. Transfers and diversions result in no net change to state revenue. Parentheses indicate a decrease in funds.*

** *These costs are not included in the bill's appropriation. See the State Expenditures section for more information.*

## Summary of Legislation

This bill provides for the limited regulation of consumer goods service contracts, in which a consumer pays a premium for the repair, replacement, or maintenance of, or indemnification for, a tangible product with a value of at least $100.

Service contract providers are required to:

- provide consumers with a copy of the service contract and, if the consumer enters into a contract, a receipt of purchase;
- disclose the price and specific terms of a service contract;
- cancel the service contract in certain circumstances and after following specific procedures;
- maintain adequate financial capacity to fulfill their obligations, according to certain options provided in the bill;
- avoid presenting the company or its products as insurance; and
- keep certain records until the company's obligations in Colorado are fully discharged.

The bill also requires companies that reinsure consumer good service contracts to fully cover the obligations of the service contract provider and to pay insurance premium taxes on reinsurance premiums. Premiums paid by a consumer to the service contract provider are not subject to insurance premium taxes.

The bill provides for enforcement of its provisions by the Division of Insurance (DOI) in the Department of Regulatory Agencies (DORA). The DOI may investigate violations of the bill, including examining the records of service contract providers. At its discretion, the DOI may issue cease and desist orders, assess civil penalties of up to $500 per violation, or pursue legal action in the courts, including injunctive relief and restitution.

The bill regulates only certain aspects of a service contract provider's operations, and does not regulate warranties, home warranty service contracts, motor vehicle service contracts, and certain other service contracts. The DOI's current regulation concerning warranties and service contracts is repealed.

**Background**

House Bill 14-1199 is based on the Service Contracts Model Act. The Model Act was adopted by the National Association of Insurance Commissioners in 1995 to meet the goal of establishing limited authority for a state insurance commissioner to act upon consumer complaints or the potential insolvency of a service contract provider. The Model Act was then modified for the purposes of regulating home warranty service contracts, and a version of this legislation was enacted in Colorado. As noted in the 2007 Sunset Review of Colorado's regulation of home warranty service contracts, DORA does not enforce home warranty service contracts but recourse may be available under the Colorado Consumer Protection Act or the Unfair Practices Act.

Under current law, DOI Regulation 5-1-12 distinguishes between written agreements that fall within the definition of insurance, as regulated by the DOI, and other warranties and service contracts. Under Regulation 5-1-12, if repair, replacement, or maintenance under a service contract are not provided by the service contract provider or a predetermined, limited group of contractors, or if a service contract provides for indemnification rather than repair, replacement, or maintenance, the product is regulated as insurance rather than an exempt service contract. Currently, DORA receives approximately 65 complaints per year regarding service contracts but is precluded from taking action in most cases by its lack of legal authority.

**State Revenue**

The bill results in a minimal increase in state General Fund revenue. The bill clarifies that premiums paid for the reinsurance of service contracts are subject to insurance premium taxes, which will result in a minimal change in premium taxes, assuming most reinsurance producers already pay taxes on all premiums. The bill also permits the DOI to assess civil penalties, with a minimal increase in state revenue due to the discretion of DOI to pursue other disciplinary options, the $500 cap on penalties per violation, and a small number of cases referred to enforcement.

***State diversions.*** This bill diverts $23,153 from the General Fund in FY 2014-15 and $26,854 in FY 2015-16. This revenue diversion occurs because the bill increases costs in the DOI, which is funded with premium tax revenue that would otherwise be credited to the General Fund.

**State Expenditures**

The bill increases state expenditures by $23,153 and 0.3 FTE in FY 2014-15 and $26,854 and 0.3 FTE in FY 2015-16. Specific costs for DORA, with legal services provided by the Department of Law, are summarized in Table 1 and paid from the Division of Insurance Cash Fund. The bill also results in a minimal workload increase to the Judicial Branch and the Department of State.

**Table 1. Expenditures Under HB 14-1199**

| Cost Components | FY 2014-15 | FY 2015-16 |
|---|---|---|
| Personal Services | $16,527 | $19,833 |
| FTE | 0.3 | 0.3 |
| Legal Services (40 hours * 91.08/hour) | 3,643 | 3,643 |
| Centrally Appropriated Costs* | 2,983 | 3,378 |
| **TOTAL** | **$23,153** | **$26,854** |

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

***Department of Regulatory Agencies.*** Responding to an estimated 80 consumer complaints per year, including complaints related to the potential insolvency of a service contract provider, will increase workload for DOI staff by an estimated 640 hours per year. Specifically, complaint intake and initial investigation require 480 hours of work by a Rate/Financial Analyst II. Detailed examinations and preparation of disciplinary cases will require 160 hours of work by a Financial/Credit Examiner IV. Costs for personal services are prorated in FY 2014-15 to account for the effective date of the bill.

To provide the DOI legal services necessitated by the bill, the workload of the Attorney General (Department of Law) will increase by approximately 40 hours per year starting in FY 2014-15. In FY 2014-15, this workload will consist primarily in advising the DOI on the scope of its authority and assisting with rulemaking. In FY 2015-16, this workload will consist primarily of assisting the DOI with occasional investigation and enforcement actions.

The fiscal note assumes that the DOI will not preemptively examine the records of service contract providers unless warranted by experience. If DOI's implementation of the bill is eventually expanded to include more use of such permissive authority in the bill, any requirement for additional resources will be addressed in the annual budget process.

***Judicial Branch.*** By establishing new standards for consumer goods service contracts, the bill may increase the number of civil claims relating to these contracts, while also expediting the resolution of cases by clarifying the duties of consumers and service contract providers. The overall effect on the workload of trial courts is expected to be minimal and will not require new appropriations.

***Department of State.*** Removing DOI Regulation 5-1-12 from the Code of Colorado Regulations will increase workload in the Department of State by a minimal amount in FY 2014-15. This workload is budgeted within the scope of the department's existing duties.

***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. The centrally appropriated costs subject to this policy are estimated in the fiscal note for informational purposes and summarized in Table 2.

| Table 2. Centrally Appropriated Costs Under HB 14-1199* | | |
|---|---|---|
| **Cost Components** | **FY 2014-15** | **FY 2015-16** |
| Employee Insurance (Health, Life, Dental, and Short-term Disability) | $1,835 | $1,841 |
| Supplemental Employee Retirement Payments | 1,148 | 1,537 |
| **TOTAL** | **$2,983** | **$3,378** |

**More information is available at: http://colorado.gov/fiscalnotes*

### 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.

### State Appropriations

For FY 2014-15, the bill requires a cash fund appropriation of $20,170 to the Department of Regulatory Agencies from the Division of Insurance Cash Fund, and an allocation of 0.3 FTE.

### State and Local Government Contacts

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|---|---|---|
| Regulatory Agencies | Personnel and Administration | Law |
| Judicial Branch | District Attorneys | State |