

# STATE and LOCAL FISCAL IMPACT

**Drafting Number:** LLS 14-0926  
**Prime Sponsor(s):** Rep. Landgraf  
 Sen. Aguilar

**Date:** March 25, 2014  
**Bill Status:** House Judiciary  
**Fiscal Analyst:** Clare Pramuk (303-866-2677)

**SHORT TITLE:** DOR ENFORCE LAWS ON DESIGNER DRUGS

Fiscal Impact Summary*	FY 2014-2015	FY 2015-2016
<b>State Revenue</b>	<b>&lt;\$5,000</b>	<b>&lt;\$5,000</b>
Cash Funds	<5,000	<5,000
<b>State Expenditures</b>	<b>\$238,499</b>	<b>\$196,386</b>
General Fund	218,412	174,571
Centrally Appropriated Costs**	20,087	21,815
<b>FTE Position Change</b>	2.1 FTE	2.0 FTE
<b>Appropriation Required:</b> \$218,412 - Dept. of Revenue (FY 2014-15), \$85,936 - Dept. of Corrections (FY 2014-15 through FY 2018-19)		

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

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

## Summary of Legislation

This bill clarifies that the Division of Liquor Enforcement within the Department of Revenue (DOR) is empowered to enforce criminal statutes concerning the unlawful use, possession, distribution, manufacturing, dispensing, sale, or cultivation of designer drugs. The division is required to coordinate its enforcement activities with law enforcement agencies to avoid duplicative inspections of the same retailer by multiple agencies. The bill also adds a definition of designer drug to the state Uniform Controlled Substances Act of 1992.

## State Revenue

Beginning in FY 2014-15, this bill may increase state cash fund revenue by less than \$5,000 per year from fines for criminal offenses.

**Criminal offenses.** To the extent that increased inspections of alcohol retailers for designer drugs by Liquor Enforcement Division investigators leads to an increase in the number of convictions for criminal offenses, state revenue may increase. 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 Department. The fine penalties are \$50 to \$750 for a level 2 drug misdemeanor, \$2,000 to \$500,000 for a level 3 drug felony, and \$3,000 to \$750,000 for a level 2 drug felony. Because the courts have the discretion of incarceration, imposing a fine, or both, the impact to state revenue cannot be determined.

## State Expenditures

This bill is expected to increase General Fund expenditures by \$238,499 and 2.1 FTE in FY 2014-15 and \$196,386 and 2.0 FTE in FY 2015-16. Identified costs are for the Liquor Enforcement Division in the DOR and the Department of Corrections (DOC) costs as shown in Tables 1 and 2 and explained below.

Table 1. Expenditures in the DOR Under HB14-1296		
Cost Components	FY 2014-15	FY 2015-16
Personal Services	\$113,062	\$123,341
FTE	2.1 FTE	2.0 FTE
Operating Expenses and Capital Outlay Costs	84,730	13,680
Legal Services	9,108	4,554
Travel	11,512	11,512
Centrally Appropriated Costs*	20,087	21,815
<b>TOTAL</b>	<b>\$238,499</b>	<b>\$174,902</b>

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

**Assumptions.** Expenditures under House Bill 14-1296 use the following assumptions:

- there are approximately 4,700 retailers that will be subject to inspection;
- a criminal investigator I can conduct an undercover review in 30 minutes;
- criminal investigators require vehicles and standard equipment issued to peace officers;
- each investigator will have a field testing kit;
- criminal investigators will submit 50 samples to the Colorado Bureau of Investigation (CBI) annually for analysis; and
- identification of criminal offenses will also require division action on retail licenses.

**DOR Liquor Enforcement Division.** This bill is expected to increase expenditures for the division by \$238,499 and 2.0 FTE in FY 2014-15 and \$174,902 in FY 2015-16. To implement the bill using the above assumptions, the division is expected to add one criminal investigator in Denver and one in Colorado Springs. Personal services costs are adjusted in FY 2014-15 to account for the General Fund paydate shift. The cost for field testing units (\$27,100 each) includes a warranty and staff training. Testing units, extraction kits, and standard investigative equipment are included in the operating and capital outlay totals. The division will have an increase in workload for taking action on retail licenses when a criminal offense or license violation is identified during an inspection. This workload does not require a new appropriation.

The division requires 100 hours (\$9,108 and 0.1 FTE) of legal services from the Department of Law in FY 2014-15 and 50 hours (\$4,554) per year thereafter. In the first year, the Department of Law will provide legal advice, rule-making assistance, and representation in disciplinary hearings when a liquor licensee is suspected of selling designer drugs. After the first year, legal services are limited to representation in disciplinary hearings.

**Department of Public Safety, CBI.** The CBI forensics lab currently analyzes suspected designer drug samples collected by law enforcement. The 50 additional samples assumed to be submitted by DOR criminal investigators as a result of this bill are not expected to require new appropriations.

**Judicial Branch.** Workload for trial courts, the Office of the State Public Defender, and the Office of the Alternate Defense Counsel may increase if the increase in inspections leads to more arrests and prosecutions for possession of designer drugs. The fiscal note assumes that any increases in workload due to prosecutions for criminal offenses can be accomplished without an increase in state appropriations.

**DOC.** To the extent that increased inspections of alcohol retailers result in more persons convicted of distributing or possessing designer drugs and sentenced to prison, costs for the DOC are expected to increase. The penalty for a level 2 drug felony is four to eight years imprisonment and the penalty for a level 3 drug felony is two to four years imprisonment. The fiscal note assumes at least one additional offender will be convicted of a class 3 felony every five years. This results in an increase of at least \$85,936 for the DOC between FY 2014-15 and FY 2018-19. The length of stay for each offender is assumed to be 53.8 months.

Current law prohibits the General Assembly from passing any bill to increase periods of imprisonment in state correctional facilities without appropriating an amount sufficient to cover the increased capital construction and operating costs of the bill in each of the first five fiscal years. However, current law also allows the DOC to place offenders classified as medium custody and below in private contract prisons, for which no state capital construction costs are incurred.

Offenders sentenced under this bill to DOC may be placed in either a state-run or a private contract prison, depending on several factors. Any offenders that *must* be housed in a state-run prison will likely require a shift of other inmates in that facility to private contract prisons. Therefore, this fiscal note assumes that the impact of this bill will be accommodated through the use of private contract prisons, and that no new capital construction funds are necessary.

Offenders placed in a private contract prison cost the state about \$58.86 per offender per day, including the current daily rate of \$53.74 and an estimated \$5.12 per offender per day for medical care provided by the DOC. No impact is expected in the first year because of the estimated time for criminal filing, trial, disposition, and sentencing. Table 2 shows the estimated cost of the bill over the next five fiscal years.

Table 2. Five-Year Fiscal Impact On Correctional Facilities				
Fiscal Year	Inmate Bed Impact	Construction Cost	Operating Cost	Total Cost
FY 2014-15	0.0	\$0	\$0	\$0
FY 2015-16	1.0	\$0	\$21,484	\$21,484
FY 2016-17	1.0	\$0	\$21,484	\$21,484
FY 2017-18	1.0	\$0	\$21,484	\$21,484
FY 2018-19	1.0	\$0	\$21,484	\$21,484
<b>Total</b>			\$85,936	\$85,936

**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 3.

<b>Table 3. Centrally Appropriated Costs Under HB14-1296*</b>		
<b>Cost Components</b>	<b>FY 2014-15</b>	<b>FY 2015-16</b>
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$12,235	\$12,255
Supplemental Employee Retirement Payments	7,852	9,560
<b>TOTAL</b>	<b>\$20,087</b>	<b>\$21,815</b>

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

### **Local Government Impact**

This bill could affect local governments by increasing the number of prosecutions and convictions resulting from increased inspections of alcohol retailers. The penalty for a level 2 drug misdemeanor offense is 0 to 12 months in a county jail, a fine of \$50 to \$750, 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.

### **Technical Considerations**

HB14-1037 includes the purchase of one testing unit by the Department of Public Safety for the Liquor Enforcement Division. As a result, passage of HB14-1037 may indicate the need for a reduction in appropriations for this bill to reflect the purchase of only one testing unit.

### **Effective Date**

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

### **State Appropriations**

For FY 2014-15, the bill requires an appropriation of \$218,412 General Fund and an authorization for 2.0 FTE to the Department of Revenue. Of this, the Department of Law requires \$9,108 in reappropriated funds and an allocation of for 0.1 FTE. The Department of Corrections requires the five-year appropriations shown in Table 2.

### **State and Local Government Contacts**

Revenue      Public Safety      Judicial      Law