

Colorado Legislative Council Staff Fiscal Note

**STATE and LOCAL
FISCAL IMPACT**

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|---------------------------------------|---|
| Drafting Number: LLS 15-0438 | Date: January 29, 2015 |
| Prime Sponsor(s): Sen. Lambert | Bill Status: Senate Judiciary |
| Rep. Joshi | Fiscal Analyst: Kerry White (303-866-3469) |

BILL TOPIC: REPEAL GUN TRANSFER BACKGROUND CHECK RQMNT & FEE

| Fiscal Impact Summary* | FY 2015-2016 | FY 2016-2017 |
|--|---------------------|---------------------|
| State Revenue | | |
| Cash Funds | (up to \$3,653,500) | (up to \$3,653,500) |
| State Expenditures | (\$137,153) | (\$137,153) |
| General Fund | \$3,511,343 | \$3,511,343 |
| Cash Funds | (3,648,496) | (3,648,496) |
| FTE Position Change | (2.4 FTE) | (2.4 FTE) |
| TABOR Set Aside | (up to \$3,653,500) | (up to \$3,653,500) |
| Appropriation Required: See State Appropriations section. | | |

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

Summary of Legislation

This bill removes the requirement that anyone who is not a licensed gun dealer require a criminal background check and approval of the Colorado Bureau of Investigation (CBI) in the Department of Public Safety (DPS) in order to transfer a firearm to another person. It also repeals the requirement that the CBI impose a fee for conducting an instant criminal background check for the transfer of a firearm.

Background

With the passage of House Bill 94-1276, Colorado established the Statewide Instant Criminal Background Check (Instacheck) system to perform background checks prior to all firearm transfers and to process appeals of denials. The CBI is the state's point-of-contact for Instacheck, which also processes background checks for concealed carry permit applications. Between 1994 and 1999, Instacheck was financed through a \$10 fee on each requested background check. From 1999 through 2000, the Federal Bureau of Investigation conducted Colorado background checks. The Instacheck system was reestablished in 2000 and has been operational ever since.

In 2013, two key pieces of legislation affecting background checks and the transfer of firearms were enacted. House Bill 13-1228 requires the CBI to charge a fee of up to \$10 for performing instant criminal background checks on all firearm transfers. House Bill 13-1229 expanded the type of transfers that required an instant criminal background check. Prior to its enactment, instant criminal background checks were only required for transfers under a licensed gun dealer or gun show vendor. HB13-1229 expanded those requirements to include all transfers

and clarified that if the entity receiving the firearm was a corporation, association, partnership, limited liability company, or trust, a background check is required for each natural person who is authorized to possess the firearm. In FY 2013-14, the CBI processed 13,620 background checks for private firearm transfers.

Under current law, it is a class 1 misdemeanor to transfer a handgun without first obtaining a background check and approval of the CBI. Between August 7, 2013, and January 5, 2015, there were 14 cases filed and 3 convictions of this offense in state courts. As of this writing, the number of any cases or convictions within Denver County Court was unavailable, but is assumed to be minimal.

State Revenue

Beginning in FY 2015-16, this bill is anticipated to reduce state revenue by up to \$3,653,500 per year from reduced background check fees and criminal fines, as described below.

Background checks. Based on the 13,620 private background checks and an assumed 351,230 requests from licensed gun dealers or gun show vendors, the fiscal note assumes a reduction of \$3,648,500 per year that will no longer be credited to the Instant Criminal Background Check Cash Fund in the DPS. The fiscal note assumes that revenue received related to background checks on concealed carry permits are not affected by the bill.

Criminal fines. The bill is anticipated to reduce criminal fine revenue by up to \$5,000 per year, credited to the Fines Collection Cash Fund in the Judicial Department. The fine penalty for a class 1 misdemeanor is \$500 to \$5,000. Because the courts have the discretion of incarceration, imposing a fine, or both, the precise impact to state revenue cannot be determined. However, based on the low number of convictions and associated fines imposed on existing cases, the fiscal note assumes that any revenue reduction under the bill is likely to be less than \$5,000 per year.

TABOR Impact

This bill decreases state revenue by up to \$3.7 million per year from fees and fines, which will decrease the amount required to be refunded under TABOR.

State Expenditures

Beginning in FY 2015-16, this bill reduces overall state expenditures by \$137,153 and 2.4 FTE per year, but increases General Fund costs by \$3,511,343 per year. These costs are in the DPS. By removing a cash funding source, but not the requirement to conduct background checks for transfers processed by licensed gun dealers and gun show vendors, General Fund moneys are required to refinance these costs.

The fiscal note assumes that background checks performed for concealed carry permit applications will continue to be funded with cash funds and are not affected by this bill. Table 1, below, shows the annual amount of refinancing required under HB15-1050.

| Table 1. Refinancing of Expenditures Under HB15-1050 | | | |
|---|----------------------|----------------------------------|------------------------------|
| Cost Components | Appropriation | Reduction Under HB15-1050 | General Fund Required |
| Personal Services | \$2,331,273 | (\$107,318) | \$2,223,955 |
| Operating Costs | 321,162 | (2,280) | 318,882 |
| Health, Life, Dental Benefits | 2,419,793 | (19,025) | 230,768 |
| Salary Survey | 18,667 | 0 | 18,667 |
| Merit Pay | 22,096 | 0 | 22,096 |
| Shift Differential | 24,011 | 0 | 24,011 |
| Supplemental Retirement | 142,360 | (8,318) | 134,042 |
| Short-term Disability | 3,979 | (212) | 3,767 |
| Leased Space | 325,729 | 0 | 325,729 |
| Vehicle Lease | 4,920 | 0 | 4,920 |
| Executive Director's Office Costs | 204,506 | 0 | 204,506 |
| TOTAL | \$3,648,496 | (\$137,153) | \$3,511,343 |

Assumptions. Reductions in costs under HB15-1050 are based on the assumption that 2.4 FTE and associated operating and benefits costs will be reduced as a result of eliminating background checks on approximately 13,620 private transfers per year.

Judicial Department. By eliminating the criminal penalties associated with transferring a firearm without a background check or CBI approval, the bill reduces workload for trial courts by a minimal amount. No adjustments in appropriations are required under the bill.

Local Government Impact

This bill impacts local governments by eliminating the penalty for transferring a firearm without a criminal background check or approval of the CBI which is a class 1 misdemeanor. The penalty for a class 1 misdemeanor is 6 to 18 months in a county jail, a fine of \$500 to \$5,000, or both. Because the courts have the discretion of incarceration or imposing a fine, the precise impact at the local level cannot be determined. The cost to house an offender in county jails varies from about \$53 to \$114 per day. For the current fiscal year, the state reimburses county jails at a daily rate of \$52.74 to house state inmates. It is assumed that the impact of this bill will be minimal.

Denver County Court. The bill may also results in a decrease in workload for the Denver County Court, managed and funded by the City and County of Denver. Probation services in the Denver County Courts may also experience a minimal reduction in workload as a result of not having to supervise any persons convicted of transferring a firearm without obtaining a background check or CBI approval.

Effective Date

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

State Appropriations

For FY 2015-16, the Department of Public Safety requires an appropriation of \$3,511,343 General Fund and a decrease in spending authority from the Instant Criminal Background Check Cash Fund of \$3,648,500.

State and Local Government Contacts

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|----------------|--------------------|----------|
| Counties | District Attorneys | Judicial |
| Municipalities | Public Safety | Sheriffs |