

Summary of Legislation

This bill requires that all genetic counselors in Colorado be licensed by the Division of Professions and Occupations in the Department of Regulatory Agencies (DORA) by June 1, 2020. The bill sets forth the requirements for licensure, including that applicants be certified by certain national organizations, unless the applicant meets the criteria for a provisional license while obtaining the national certification.

The bill also sets forth application and renewal processes, the scope of practice for genetic counselors, rulemaking authority, disciplinary procedures, and other provisions related to the establishment of the licensure program. Only licensed individuals may use the title of "genetic counselor" and other related titles. The licensure program is repealed on September 1, 2026, following a sunset review. The bill creates new misdemeanor offenses for practicing genetic counseling without a license (class 2 misdemeanor for a first offense; class 1 misdemeanor for second and subsequent offenses).

Assumptions

The fiscal note assumes that 100 genetic counselors will be licensed in FY 2019-20 prior to the registration deadline. In future years, it is assumed that 10 new applicants will seek licensure. It is assumed that licenses are renewed annually.

Comparable Crime

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. This bill creates new misdemeanor offenses related to the unlicensed practice of genetic counseling. While data on the number of cases and convictions involving other similar offenses, such as the practice of medicine without a license, is not available as of this writing, it is assumed to be a small number and that most enforcement will be handled administratively by DORA, rather than through the criminal justice system. Given the relatively small number of genetic counselors, the number of cases and convictions under the bill is assumed to be minimal.

State Revenue

The bill increases state revenue by \$47,700 in FY 2019-20 and by at least \$52,470 in FY 2020-21 and future years. This revenue is primarily from fees collected from genetic counselors. The bill may also increase criminal fine revenue by a minimal amount starting in FY 2020-21. These impacts are discussed below.

Fee impact on genetic counselors. Colorado law requires legislative service agency review of measures which create or increase any fee collected by a state agency. These fee amounts are estimates only, actual fees will be set administratively by DORA based on cash fund balance, actual program costs, and the number of licensed professionals subject to the fee. The fee is estimated based on two years of expected expenditures. The table below identifies the estimated fee impact of this bill. Fee revenue is deposited into the Division of Professions and Occupations Cash Fund.

**Table 2
Fee Impact on Genetic Counselors**

| Fiscal Year | Type of Fee | Proposed Fee | Number Affected | Total Fee Impact |
|-------------------------|---------------------|---------------------|------------------------|-------------------------|
| FY 2019-20 | Initial License Fee | \$477 | 100 | \$47,700 |
| | License Renewal Fee | - | - | - |
| FY 2019-20 Total | | | | \$47,700 |
| FY 2020-21 | Initial License Fee | \$477 | 10 | \$4,770 |
| | License Renewal Fee | \$477 | 100 | \$47,700 |
| FY 2020-21 Total | | | | \$52,470 |

Criminal fines and court fees. By creating a new misdemeanor offense, the bill may increase state revenue from criminal fines and court fees by a minimal amount beginning in FY 2020-21, credited to the Fines Collection Cash Fund, various other cash funds in the Judicial Department, and the General Fund. The fine penalty is between \$250 and \$1,000 for a class 2 misdemeanor and between \$500 and \$5,000 for a class 1 misdemeanor. Additionally, court fees may be imposed on a case-by-case basis for a variety of court-related costs, such as probation supervision, drug surcharges, or late fees. Because the courts have the discretion of incarceration, imposing a fine, or both, a precise state revenue impact cannot be determined but are assumed to be minimal. Criminal fine and court fee revenue is subject to TABOR.

State Expenditures

The bill increases expenditures by \$36,667 and 0.3 FTE in FY 2019-20 and \$63,465 and 0.6 FTE in FY 2020-21 and future years. These costs are paid from the Division of Professions and Occupations Cash Fund. The bill may also increase workload for the Judicial Department and the Department of Personnel and Administration (DPA). These impacts are discussed below. Costs in DORA are summarized in Table 3.

**Table 3
Expenditures Under SB 19-133**

| | FY 2019-20 | FY 2020-21 |
|---|-------------------|-------------------|
| Department of Regulatory Agencies | | |
| Personal Services | \$13,374 | \$40,126 |
| Operating Expenses and Capital Outlay Costs | \$4,703 | \$570 |
| Legal Services | \$15,545 | \$13,636 |
| Centrally Appropriated Costs* | \$3,045 | \$9,133 |
| FTE – Personal Services | 0.2 FTE | 0.5 FTE |
| FTE – Legal Services | 0.1 FTE | 0.1 FTE |
| Total Cost | \$36,667 | \$63,465 |
| Total FTE | 0.3 FTE | 0.6 FTE |

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

Department of Regulatory Agencies. DORA will have costs for 0.5 FTE for staff to administer the licensing of genetic counselors. This work will include establishing program rules, reviewing license applications and materials, responding to public inquiries and complaints, pursuing enforcement actions, and other related duties. Personal services, operating, and capital outlay expenses for this staff are shown in Table 3 above.

Staffing expenses are prorated in the first year to 0.2 FTE to reflect a start date of March 1, 2020, three months prior to the mandatory licensing date. DORA will also have costs of \$15,545 for 150 hours of legal services provided by the Department of Law, for rulemaking in the first year and \$13,636 for 120 hours for enforcement actions in future years. This number of legal services hours requires an allocation of 0.1 FTE. The legal services expenditures for FY 2020-21 include \$1,200 for the services of an expert consultant to support enforcement activities.

Disciplinary and criminal proceedings. The bill may also increase workload in the Office of Administrative Courts (OAC) in the DPA and the trial courts in the Judicial Department to hold hearings related to disciplinary matters and misdemeanor offenses, respectively. The number of persons referred to formal proceeding in the OAC or the trial courts will be minimal and both the DPA and the Judicial Department can address this workload within existing appropriations.

Agencies providing representation to indigent persons. Workload and costs for the Office of the State Public Defender and the Office of the Alternate Defense Counsel may increase under the bill if any persons on trial for the new misdemeanor offense under the bill are indigent. To the extent this occurs, this analysis assumes the affected offices will request an increase in appropriations through the annual budget process.

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. These costs, which include employee insurance and supplemental employee retirement payments, are estimated to be \$3,045 in FY 2019-20 and \$9,133 in FY 2020-21.

TABOR refunds. The bill is expected to decrease state General Fund obligations for TABOR refunds by \$47,700 in FY 2019-20. Under current law and the December 2018 forecast, the bill will correspondingly reduce the amount refunded to taxpayers via sales tax refunds on income tax returns for tax year 2020. The state is not expected to collect a TABOR surplus in FY 2020-21.

Local Government

Overall, this bill may minimally increase local government revenue, workload, and costs as described below. The exact impact to a particular local government will vary depending on the number of offenses committed within its jurisdiction. Given that the new misdemeanor offenses are assumed to occur infrequently, these impacts are assumed to be minimal.

District attorneys. The bill increases workload and costs for district attorneys to prosecute any new misdemeanor offenses under the bill or to bring a suit against a person who has failed to comply with a cease and desist order. District attorney offices are funded by counties, with each county in a judicial district contributing based on its population.

County jails. Based on the assumptions listed in the Comparable Crime Analysis section, the bill is unlikely to increase county jail costs. Under current law, the state reimburses county jails for housing state inmates. Based on a 2018 Joint Budget Committee Staff county jail survey, the average cost to house an offender in a county jail is \$98.83 per day, but varies from \$43.65 to \$350.21 per day depending on the county. For the current fiscal year, the state reimburses county jails at a daily rate of \$54.93.

Denver County Court. The bill may increase revenue, costs and workload for the Denver County Court, which is managed and funded by the City and County of Denver, to try misdemeanor cases under the bill. Probation services in the Denver County Courts may also experience an increase in revenue, costs, and workload revenue to supervise persons convicted under the bill within Denver County.

Effective Date

The bill takes effect August 2, 2019, if the General Assembly adjourns on May 3, 2019, as scheduled, and no referendum petition is filed.

State Appropriations

For FY 2019-20, the bill requires an appropriation of \$33,622 to the Department of Regulatory Agencies from the Division of Professions and Occupations Cash Fund and an allocation of 0.2 FTE. Of this, \$15,545 is reappropriated to the Department of Law with an allocation of 0.1 FTE.

State and Local Government Contacts

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|---------------------|--------------------|------------------------|
| Counties | District Attorneys | Information Technology |
| Judicial | Law | Personnel |
| Regulatory Agencies | | |