



Legislative Council Staff

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Fiscal Note

Drafting Number: LLS 21-0636
Prime Sponsors: Rep. Woog

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Bill Status: House SCMVA
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Bill Topic: PRIVATE SECTOR ENTERPRISE PROTECTIONS

Summary of Fiscal Impact:

- State Revenue
- State Expenditure
- State Transfer
- TABOR Refund
- Local Government
- Statutory Public Entity

This bill prohibits state government from passing or implementing any law or rule restricting the natural rights of a private sector enterprise or its customers. The bill increases state and local government expenditures on an ongoing basis.

Appropriation Summary: In FY 2021-22, the bill requires an appropriation of \$2.9 million to the Department of Law.

Fiscal Note Status: This fiscal note reflects the introduced bill.

Table 1
State Fiscal Impacts Under HB 21-1041

		Budget Year FY 2021-22	Out Year FY 2022-23
Revenue		-	-
Expenditures	General Fund	\$2,871,180	\$2,871,180
	FTE	15.0 FTE	15.0 FTE
Transfers		-	-
TABOR Refund		-	-

Summary of Legislation

The bill prohibits the state government from passing or implementing any law or rule restricting the natural rights of a private sector enterprise or its customers to exercise their free will and free choice to conduct business, exchange goods and services, and take risks that are acceptable all parties involved in the transaction.

A private sector enterprise may assert a violation of the prohibition as a claim against the state government in any judicial or administrative proceeding, or as a defense in any proceeding, regardless of whether the proceeding is brought by the state, any private business, person, or other party.

State Revenue and Expenditures

The bill increases state General Fund expenditures by up to \$2.9 million beginning in FY 2021-22, and potentially impacts revenue and expenditures in many other state departments.

Department of Law. The bill establishes a new basis for challenging any state regulatory body's enforcement of laws, rules and policies that restrict the natural rights of a business or its clients. The Department of Law provides legal services for state agencies and represents them in legal challenges. In 2020, over 2,000 licensure challenges required legal representation. Assuming a 25 percent increase in challenges that would require litigation, the bill requires 27,000 additional legal services hours per year. This equates to 15.0 FTE in the Department of Law. Legal services are provided at a cost of \$106.34 per hour. The fiscal note has not determined how these additional legal hours would be used among different state agencies. Should court interpretation result in fewer or additional resources being required, or if the need for resources decreases in out years, this will be addressed through the annual budget process.

Department of Personnel. The bill increases the number and complexity of cases handled in the Office of Administrative Courts, as well as potential expenditures from the Risk Management Liability Fund. Should additional resources be required, they will be requested through the annual budget process.

Judicial Department. The bill increases trial court workload in the Judicial Department to handle additional civil cases as a result of the new challenges under the bill. No change in appropriations is required.

Other state agencies. Beyond the legal services discussed above, the scope of the state programs and laws impacted by the bill will be determined by the courts. As a result, the specific impact on individual agencies has not be determined. Impacted agencies may include the departments of Higher Education, Labor and Employment, Natural Resources, Public Health and Environment, Public Safety, Regulatory Agencies, and Revenue, among others. Agencies may incur additional legal services or program modifications, while others may incur revenue reductions or require a change in appropriations. The fiscal note assumes that any changes to appropriations of individual agencies will be handled through the annual budget process.

Potential cost savings. If certain programs, regulations, or policies administered by state agencies are found to violate the provisions of this bill and are discontinued or altered, state agencies may have costs savings. However, it is unknown which program may be affected and how any changes to their operations would affect program spending. Should any adjustment to agency appropriations be needed to reflect changing program operations, they will be requested through the annual budget process once the impacts are known.

Local Government

As political subdivisions of the state, cities, counties, school districts, and special districts are subject to the bill's prohibition and will incur legal expenses if a claim is filed against them. Local governments could have cost savings if regulatory and other programs are discontinued or modified in response to this bill.

Effective Date

The bill takes effect 90 days following adjournment of the General Assembly sine die, assuming no referendum petition is filed.

State Appropriations

In FY 2021-22, the bill requires a General Fund appropriation of \$2,871,180 to the Department of Law, and 15.0 FTE.

State and Local Government Contacts

Agriculture	Counties	Economic Development
Higher Education	Information Technology	Judicial
Labor	Law	Municipalities
Natural Resources	Personnel	Public Health and Environment
Public Safety	Regulatory Agencies	Revenue
Secretary of State		