



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Final Fiscal Note

Drafting Number:	LLS 21-0266	Date:	June 21, 2021
Prime Sponsors:	Rep. Valdez A. Sen. Rodriguez	Bill Status:	Postponed Indefinitely
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Bill Topic: RESTRICTIONS ON COLLECTION & USE OF BIOMETRIC INFORMATION

Summary of Fiscal Impact:

<input checked="" type="checkbox"/> State Revenue	<input type="checkbox"/> TABOR Refund
<input checked="" type="checkbox"/> State Expenditure	<input checked="" type="checkbox"/> Local Government
<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

The bill would have prohibited the collection, use, or sale of certain biometric data, with certain exceptions. It would have increased state and local expenditures, and potentially state revenue, on an ongoing basis.

Appropriation Summary: No appropriation would have been required.

Fiscal Note Status: The fiscal note reflects the introduced bill. This bill was not enacted into law; therefore, the impacts identified in this analysis do not take effect.

Summary of Legislation

The bill prohibits certain covered entities that target products and services to people in Colorado from collecting, possessing, or using certain biometric identifiers or any biometric surveillance system unless they obtain informed consent from affected individuals. If such consent is revoked, the covered entity must cease collecting or using the biometric identifiers and delete or destroy stored information. Violation by a covered entity constitutes a deceptive trade practice.

The bill prohibits governmental entities from collecting, possessing, or using certain biometric identifiers or any biometric surveillance system, including information accessed from a third party, unless they are specifically authorized to do so in statute. Governmental entities are further prohibited from releasing or selling such information unless required by a court order, rule, or statute, or unless the affected individual consents. Violation by a governmental entity creates a private right of action, and an affected individual may seek damages and additional remedies in court.

Biometric identifiers include retina scans, face prints, and fingerprints. They do not include writing samples, fingerprints used only for identification purposes, and certain medical information.

State Revenue

To the extent that individuals file civil actions under the bill, filing fee revenue will increase and will be distributed to multiple cash funds. In the event the Attorney General or a district attorney bring an action alleging a deceptive trade practice, revenue from civil penalties may also increase. Assuming a high level of compliance by affected businesses, penalty revenue to the General Fund is assumed to be less than \$20,000 per year. Revenue from court fees and civil penalties is subject to the state's TABOR revenue limit.

State Expenditures

The bill may increase state expenditures in several state agencies beginning in FY 2021-22 as described below.

Judicial Department. Trial courts may see an increase in cases for instances of deceptive trade practice or for civil actions against governmental entities. The fiscal note assumes that covered entities and governmental entities will generally follow the law, and no change in appropriations is required.

Department of Law. Workload will increase in the Department of Law to address cases filed against the state. Each case is estimated to cost \$20,000 and 0.1 FTE (an average of 188 hours at a blended rate of \$106.34 per hour). If a large number of cases is filed, the department may seek additional funding through the annual budget process.

The department may see an increase in deceptive trade practice complaints. The department prioritizes consumer protection complaints and addresses as many as can be accomplished within existing appropriations.

Department of Personnel and Administration. Risk Management Services in the Department of Personnel and Administration (DPA) oversees the state response to liability claims and lawsuits. Based on prior punitive awards, costs may range from legal fees of \$5,400 for a settled case, to \$60,000 for a smaller compensatory award, to \$1.8 million or more for a large compensatory award. These expenditures are paid from DPA's Risk Management Fund which is funded by assessments on state agencies based on past loss experience. The fiscal note assumes that the number of cases will be low in FY 2021-22. To the extent that costs exceed what the fund can absorb, the department may seek additional funding through the annual budget process.

Other state agencies. Workload may increase in other state agencies, including state institutions of higher education, to update policies and procedures to comply with the bill.

TABOR refunds. The bill increases state revenue subject to TABOR. For FY 2022-23, the March 2021 LCS forecast projects revenue to fall short of the TABOR limit by \$28.6 million, or 0.2 percent of the limit. If actual revenue exceeds the limit, the bill will increase the amount required to be refunded to taxpayers from the General Fund in FY 2023-24.

Local Government

Expenditures may increase for local governments and other governmental entities if civil cases are filed against them for violating the bill. In addition, district attorneys may receive complaints about deceptive trade practices under the bill, which may increase local workload if such cases are not referred to the Attorney General for state level investigation.

Effective Date

The bill was postponed indefinitely by the House Business Affairs and Labor Committee on May 12, 2021.

State and Local Government Contacts

All State and Local Agencies