



**Colorado  
Legislative  
Council  
Staff**

**SB17-027**

**REVISED  
FISCAL NOTE**

(replaces fiscal note dated January 23, 2017)

**FISCAL IMPACT:**  State  Local  Statutory Public Entity  Conditional  No Fiscal Impact

**Drafting Number:** LLS 17-0441  
**Prime Sponsor(s):** Sen. Court  
Rep. Melton

**Date:** February 15, 2017  
**Bill Status:** Senate Finance  
**Fiscal Analyst:** Ryan Long (303-866-2066)

**BILL TOPIC:** INCREASE PENALTY FOR TEXTING WHILE DRIVING

<b>Fiscal Impact Summary</b>	<b>FY 2016-2017 (current year)</b>	<b>FY 2017-2018</b>	<b>FY 2018-2019</b>
<b>State Revenue</b>	<b>at least \$5,775</b>	<b>at least \$35,459</b>	<b>at least \$39,127</b>
Cash Funds	5,775	35,459	39,127
<b>State Expenditures</b>	Minimal workload increase.		
<b>TABOR Impact</b>	\$0	\$35,459	\$39,127
<b>Appropriation Required:</b> None.			
<b>Future Year Impacts:</b> Ongoing state revenue and minimal workload increase.			

**Summary of Legislation**

This bill, *as amended by the Senate State, Veterans, and Military Affairs Committee*, increases the penalty for texting and driving to a class 2 misdemeanor traffic offense, which carries a fine of \$300, a jail sentence of 10 to 90 days, or both. Additionally, if a person causes bodily injury or death to another person, the punishment increases to a class 1 misdemeanor; this carries a fine of \$300 to \$1,000, a sentence of 10 days or 1 year in prison, or both. A law enforcement officer must see a driver texting in a manner that caused the driver to drive in a careless and imprudent manner.

**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. It is currently a class A traffic infraction to text while driving, punishable by a fine of \$50 and 1 point assessed against a violators driver license for a first offense, and a fine of \$100 and 1 point assessed for a second or subsequent offense. Between January 2014 to January 2017, there were 934 drivers convicted for texting and driving (not including minors), or an average of 311 people per year. Of this number, there were 390 males, 323 females, and 221 for which gender information was not available; 645 were Caucasian, 32 were African American, 27 were Hispanic, 7 were Asian, and there were 223 for which race information wasn't available. During the same period, there were 4,621 cases with at least one conviction of careless driving. Of this number, there were

2,911 males, 1,697 females, and 13 classified as unknown; of this number, 4,043 were Caucasian, 208 were African American, 207 were Hispanic, 96 were Asian, 9 were American Indian, and 58 for which race data was unavailable. It is unknown how many of these cases were related to texting and driving.

**State Revenue**

This bill increases cash fund revenue by at least \$5,775 in FY 2016-17, \$35,459 in FY 2017-18 and \$39,127 in FY 2018-19 to the Highway Users Tax Fund (HUTF), as shown in Table 1.

Table 1. Fine Impact under SB17-027						
Fiscal Year	Texting and Driving Infractions	Fine Assessed	Change in Fine	Cases Subject to Penalty	Number Paying Fine*	Estimated Total Fine Collected**
FY 2016-17	First Offense	\$300	\$250	46	35	\$5,775
	Second Offense	300	200	0	0	0
	<b>FY 2016-17 TOTAL</b>					<b>\$5,775</b>
FY 2017-18	First Offense	\$300	\$250	277	208	\$34,320
	Second Offense	300	200	3	2	\$264
	FY 2016-17 Fine Revenue					875***
	<b>FY 2017-18 TOTAL</b>					<b>\$35,459</b>
FY 2018-19	Texting and Driving	\$300	\$250	277	208	\$34,320
	Second Offense	300	200	3	2	264
	FY 2016-17 and FY 2017-18 Fine Revenue					4,543***
	<b>FY 2018-19 TOTAL</b>					<b>\$39,127</b>

\* All figures in this column are the number of violations less 25 percent to account for indigence.

\*\* It is assumed that 66 percent of each year's fine revenue will be collected by June 30th of FY 2016-17, FY 2017-18, and FY 2019-19

\*\*\* It is assumed an additional 10 percent of FY 2016-17 fines will be collected in FY 2017-18, and an additional 10 percent of FY 2016-17 and FY 2017-18 fees will be collected in FY 2018-19 to account for fines from previous years being collected in future years.

**Assumptions.** The following assumptions apply to the revenue collection:

- the effective start date will be May 1, 2017;
- based on data from texting and driving convictions, there will be approximately 277 cases a year where this offense will be the first offense; and
- there will be approximately 3 cases a year where this offense will be the second offense.

The information presented in this fiscal note does not account for citations of minors for texting and driving, as the existing statute prohibits all cell phone use by minors, including texting.

**Penalties.** Violation of this law is a class 2 misdemeanor traffic offense, and this bill increases the penalty to a fine of \$300, up from \$50. Penalty revenue from citations issued by both Colorado State Patrol officers and local law enforcement is credited to the HUTF, and distributed to the State Highway Fund in the Colorado Department of Transportation (CDOT) (65 percent), counties (26 percent), and municipalities (9 percent). Table 2 outlines how revenues may be split between CDOT, counties, and municipalities.

Drivers that harm or kill someone while texting and driving are subject to a class 1 misdemeanor traffic offense. The fine penalty for a class 1 misdemeanor traffic offense ranges from \$300 to \$1,000. Because the courts have the discretion of incarceration, imposing a fine, or both, the precise impact to state revenue has not been estimated. As a result, the fiscal note assumes the revenue amount in Table 2 is the floor, rather than the ceiling.

<b>HUTF Distribution</b>	<b>Estimated FY 2016-17 Fine Impact</b>	<b>Estimated FY 2017-18 Fine Impact</b>	<b>Estimated FY 2018-19 Fine Impact</b>
CDOT (65 percent)	\$3,754	\$23,048	\$25,433
Counties (26 percent)	1,502	9,219	10,173
Municipalities (9 percent)	520	3,191	3,521
<b>TOTAL</b>	<b>at least \$5,775</b>	<b>at least \$35,429</b>	<b>at least \$39,127</b>

### **TABOR Impact**

This bill increases state cash fund revenue from fines, which will increase the amount of money required to be refunded under TABOR for FY 2017-18 and FY 2018-19. TABOR refunds are paid out of the General Fund. TABOR refund obligations are not expected for FY 2016-17. Since the bill increases the TABOR refund obligation without a corresponding change in General Fund revenue, the amount of money available in the General Fund for the budget will decrease by an identical amount.

### **State Expenditures**

Beginning in the current FY 2016-17, this bill will increase workload in the Judicial Department. In addition, workload will minimally increase in the Departments of Public Safety and Revenue. These impacts are discussed below.

**Judicial Department.** The increase in fine amounts creates the potential for greater litigation in the courts. While an increase in workload related to increased penalties for this infraction is anticipated, this fiscal note assumes that it can be accomplished within existing appropriations. Probation services in the Judicial Department may also experience a minimal increase in workload to supervise persons convicted under the bill.

*Office of the State Public Defender and Office of Alternate Defense Counsel.* The bill may increase workload or costs for the Office of the State Public Defender and Office of Alternate Defense Counsel, to provide representation for any persons deemed to be indigent. The fiscal note assumes any such increases are minimal and will not require an increase in appropriations for any agency within the Judicial Department.

**Department of Public Safety.** The department will have the ability to enforce texting and driving violations on portions of state highways not under local government jurisdiction and will also be required to update its information materials to reflect the change in law. These impacts are expected to be minimal and accomplished within existing appropriations.

**Department of Revenue.** The department will be required to update its Penalty Assessment Express System. These impacts are expected to be minimal and accomplished within existing appropriations.

### **Local Government Impact**

This bill will increase local government revenue from fines and county court workload, as discussed below.

**Enforcement.** The bill is not expected to create a significant workload increase for local law enforcement agencies. Local law enforcement will have the explicit ability to issue penalties directly to texting and driving violators, but this is not expected to increase workload, only penalty options available to local law enforcement officers.

**Fine revenue.** The bill will minimally increase local government HUTF revenue. HUTF revenue generated by court fines is distributed to counties (26 percent) and municipalities (9 percent) for transportation needs. Table 2 outlines the estimated three-year distribution to counties and municipalities.

**County court expenditures.** First, the bill increases workload for district attorneys to prosecute any new misdemeanor under the bill. Second, to the extent that this bill increases misdemeanor convictions and offenders are sentenced to jail, costs will increase. 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. It is assumed that the impact of this bill will be minimal.

**Denver County expenditures.** The bill results in an increased workload for the Denver County Court, managed and funded by the City and County of Denver. The court will try misdemeanor cases under the bill. Probation services in the Denver County Courts may also experience a minimal increase in workload to supervise persons convicted under the bill.

### **Effective Date**

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

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

Information Technology  
Public Safety  
Transportation

Judicial  
Revenue

Municipalities  
Sheriffs