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Revised Fiscal Note

(replaces fiscal note dated May 4, 2021)

Drafting Number: LLS 21-0203 Date: May 23, 2021
Prime Sponsors: Sen. Gonzales Bill Status: House SCMVA
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Bill Topic: PROTECT PERSONAL IDENTIFYING INFORMATION KEPT BY STATE

- Summary of Fiscal Impact:
[X] State Revenue [] TABOR Refund
[X] State Expenditure [] Local Government
[] State Transfer [] Statutory Public Entity

This bill creates protections for personal identifying information collected and maintained by state agencies. It increases state revenue and expenditures on an ongoing basis.

Appropriation Summary: For FY 2021-22, the bill requires an appropriation of \$169,796 to multiple state agencies.

Fiscal Note Status: The revised fiscal note reflects the reengrossed bill.

Table 1
State Fiscal Impacts Under SB 21-131

Table with 4 columns: Category, Sub-category, Budget Year FY 2021-22, and Out Year FY 2022-23. Rows include Revenue (Cash Funds, Total Revenue), Expenditures (General Fund, Cash Funds, Centrally Appropriated, Total Expenditures, Total FTE), Transfers, and TABOR Refund.

Summary of Legislation

This bill creates protections for personal identifying information (PII) collected and maintained by state agencies that is not publicly available. PII refers to a wide variety of information that may be used to identify a specific individual.

Prohibitions. Beginning January 1, 2022, a state agency employee is prohibited from providing PII that is not available to the public as part of immigration enforcement; or collecting information to ascertain a person's immigration status. The bill includes exceptions for requirements in state or federal law or as necessary to perform state agency duties.

Motor vehicle records. The Department of Revenue is prohibited from sharing motor vehicle records with law enforcement agencies and other government agencies if the information is to be used for the immigration enforcement, unless required by federal or state law or to comply with a court-issued subpoena, warrant, or order.

Reduction in collection of PII. Beginning January 1, 2022, a state agency is prohibited from collecting place of birth; immigration or citizenship status; or information from passports, permanent resident cards, alien registration cards, or employment authorization documents. This does not apply to a database or automated network collecting data or documents that was activated by a state agency on or before December 31, 2021.

Certification of third parties. The Department of Law is required to create a model certification form for third parties to annually submit to be granted access to PII that is not otherwise available to the public. A third party must certify that the PII will not be used for immigration enforcement.

Recording and reporting. Beginning January 1, 2022, state agencies are required to retain a written record of requests for PII by third parties, and report that information to the Governor's Office of Legal Counsel quarterly. The Governor's Office is required to provide quarterly and year-to-date summaries of the information to the Joint Budget Committee.

Exclusions. Requests for the following types of PII are not covered by the bill:

- open records requests;
- an inquiry made through a database or automated network;
- a request governed by a data-sharing agreement;
- a request related to elections;
- a request made to the Department of Public Safety;
- a request that is protected by the Family Educational Rights and Privacy Act of 1974 or the Health Insurance Portability and Accountability Act of 1996; and
- a request from a government entity for determining eligibility for a government funded program for housing or economic development.

Penalties. A state employee who intentionally violates the provisions of the bill is subject to an injunction and a civil penalty of up to \$50,000 per violation.

State Revenue

This bill will increase revenue to the Records and Reports Cash Fund by \$9,053 in FY 2021-22 and \$14,489 in FY 2022-23. This will come from an increase in the fee for background checks that child care providers must request prior to hiring for child care and adult care facilities. This increase is required to cover the additional expenditures incurred by the Department of Human Services to manage data requestors' certifications. The increase will be somewhere between \$1.00 and \$2.00 per check but will require action by the State Board of Human Services because the fee is currently set at its maximum of \$35.00.

In addition, the fiscal note assumes that state employees will follow the law and any revenue from penalties will be minimal. This revenue is subject to TABOR.

State Expenditures

This bill will increase state expenditures by \$195,616 and 1.8 FTE in FY 2021-22 and \$169,802 and 2.3 FTE in FY 2022-23 paid from a mix of General Fund and cash funds. These costs are shown in Table 2 and explained below.

**Table 2
 Expenditures Under SB 21-131**

Cost Components	FY 2021-22	FY 2022-23
Department of Labor and Employment		
Personal Services	\$21,535	\$43,070
Operating Expenses	-	\$810
Capital Outlay Costs	\$6,200	-
Computer Programming	\$9,200	-
Salesforce Expenses	\$8,955	\$11,020
Centrally Appropriated Costs ¹	\$4,949	\$9,897
FTE – Personal Services	0.3 FTE	0.6 FTE
CDLE Subtotal	\$50,839	\$64,797
Department of Human Services		
Personal Services	\$7,609	\$13,045
Temporary Staff	\$5,000	-
DocuSign	\$1,444	\$1,444
Centrally Appropriated Costs ¹	\$1,689	\$3,181
FTE – Personal Services	0.1 FTE	0.2 FTE
DHS Subtotal	\$15,742	\$17,670

**Table 2
 Expenditures Under SB 21-131 (Cont.)**

Department of Personnel and Administration		
Personal Services	\$3,393	\$5,816
Centrally Appropriated Costs ¹	\$1,307	\$1,526
FTE – Personal Services	0.1 FTE	0.1 FTE
DPA Subtotal	\$4,700	\$7,343
Department of Revenue		
Personal Services	\$53,884	\$58,783
Operating Expenses	\$1,890	\$1,890
Capital Outlay Costs	\$6,200	-
Contractor	\$44,486	-
Centrally Appropriated Costs ¹	\$17,875	\$19,319
FTE – Personal Services	1.3 FTE	1.4 FTE
DOR Subtotal	\$124,335	\$79,992
Total	\$195,616	\$169,802
Total FTE	1.8 FTE	2.3 FTE

¹ Centrally appropriated costs are not included in the bill's appropriation.

Department of Labor and Employment. The Unemployment Insurance Division will have an increase in expenditures of \$50,839 and 0.3 FTE in FY 2021-22 and \$64,797 and 0.6 FTE in FY 2022-23 from the Employment Support Fund. The division will modify the Salesforce application to accommodate the changes required by the bill and add staffing to implement the new requirements. Costs are prorated in the first year to account for the January 1, 2022, start date.

Department of Human Services. This bill will increase expenditures for the DHS by \$15,742 and 0.2 FTE in FY 2021-22 and \$16,226 and 0.2 FTE in FY 2022-23. This includes a one-time \$5,000 General Fund expenditure for Adult Protective Services for temporary staff to have county staff complete certifications. The Administrative Review Division will have expenditures of \$9,053 in FY 2021-22 and \$13,045 in FY 2022-23 from the Records and Reports Cash Fund for 0.2 FTE of a program assistant and DocuSign document processing. Some costs are prorated in the first year to account for the January 1, 2022, start date.

Department of Personnel. The Office of the State Archives will have an increase in General Fund expenditures of \$4,700 and 0.1 FTE in FY 2021-22 and \$7,343 and 0.1 FTE in FY 2022-23 to collect certifications and track and report on requests. Costs are prorated in the first year to account for the January 1, 2022, start date.

Department of Revenue. The bill will increase General Fund expenditures by \$124,335 in FY 2021-22 and \$79,992 in FY 2022-23 for the Law Enforcement Communication Center hire 1.4 FTE to document calls and email requests and the Driver Control Section to update 631 data-sharing agreements to comply with the bill. A contractor will be used to update the data-sharing agreements.

Governor's Office. The office is required to collect and report on the requests for PII and provide this to the JBC. This increase in workload can be accomplished within existing resources.

Law. The Department of Law will conduct outreach, research, drafting and review to finalize a certification form. This workload can be accomplished within existing appropriations.

All other state agencies. This bill will increase workload in all state agencies that will be subject to the requirements of the bill. Should this require additional resources, the fiscal note expects funding will be requested 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 \$25,820 in FY 2021-22 and \$33,923 in FY 2022-23.

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.

Federal ARPA funds. This bill increases state revenue, which may impact the state's flexibility in spending federal American Rescue Plan Act (ARPA) funds. For more information, see the LCS memo, titled "Legislative Changes and Flexibility in Use of American Rescue Plan Funds," available online at: <https://leg.colorado.gov/node/2211881>.

Effective Date

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

State Appropriations

For FY 2021-22, the following General Fund appropriations are required:

- \$106,460 to the Department of Revenue and 1.3 FTE;
- \$5,000 to the Department of Human Services; and
- \$3,393 to the Department of Personnel and 0.1 FTE.

The Department of Human Services also requires an appropriation of \$9,053 and 0.1 FTE from the Records and Reports Cash Fund.

The Department of Labor and Employment requires an appropriation of \$45,890 and 0.3 FTE from the Employment Support Fund.

State and Local Government Contacts

Governor
Human Services
Labor
Personnel

Higher Education
Information Technology
Law
Revenue