



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Fiscal Note

Drafting Number: LLS 22-0422
Prime Sponsors: Rep. Bird; Bacon

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Bill Status: House Business
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Bill Topic: **DORA BARRIERS TO PRACTICE REGULATED PROFESSIONS**

Summary of Fiscal Impact:

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

The bill requires that DORA audit the occupations they regulate to determine barriers to entry for individuals with a criminal history, and specifies procedures for when and why a state agency may deny a professional license, certification, or registration. Starting in FY 2022-23, the bill increases state revenue and expenditures on an ongoing basis.

Appropriation Summary: For FY 2022-23, the bill requires an appropriation of \$313,330 to multiple state agencies.

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

Table 1
State Fiscal Impacts Under HB 22-1098

		Budget Year FY 2022-23	Out Year FY 2023-24
Revenue	Cash Funds	\$408,943	\$376,448
	Total Revenue	\$408,943	\$376,448
Expenditures	Cash Funds	\$313,330	\$311,963
	Centrally Appropriated	\$76,904	\$83,876
	Total Expenditures	\$390,234	\$395,839
	Total FTE	4.5 FTE	4.9 FTE
Transfers		-	-
Other Budget Impacts	TABOR Refund	\$408,943	\$376,448

Summary of Legislation

The bill makes several changes regarding the criminal history records of individuals applying for a professional license, certification, or registration.

Audit of DORA programs. The bill requires the Department of Regulatory Agencies (DORA) to complete an audit by February 1, 2023, of the various occupations it regulates to determine whether a barrier to professional licensing, certification or registration exists due to an applicant's criminal history record. DORA must submit the results of the audit to the General Assembly.

DORA denial of license due to criminal history. Under the bill, DORA may only deny a license, certification, or registration based on an applicant's criminal history if the applicant's criminal history jeopardizes the applicant's ability to competently, safely, and honestly practice the regulated profession, or if the issuance for the credential would not serve public safety or commercial or consumer protection interests because of the criminal history. If DORA denies a license, certification, or registration, DORA must document the rationale for the denial and make recommendations to the applicant on how to change the outcome of the denial. The bill allows DORA to grant a conditional license, certification, or registration if the applicant will have appropriate oversight from the applicant's employer.

Individuals with a criminal history record may request DORA to provide a pre-determination letter that advises the individual if they would qualify for a license, certification, or registration. DORA may charge a fee to cover the costs of making such a determination. Finally, the bill requires DORA to compile de-identified information regarding the reasons why a license, certification, or registration was denied due to criminal history record, and make that information available on DORA's website.

State and local regulatory agencies. Before the state or local agency makes a final determination, state or local agencies must provide an applicant with a written notice that a criminal conviction will disqualify an applicant. If the agency makes a final determination that a criminal conviction will prevent an applicant from receiving a license, the agency must provide the determination in writing and issue a notice of the right to appeal the determination. Finally, the bill allows an applicant to petition the agency for a determination as to whether a criminal conviction will disqualify the person from receiving a license, certification, permit, or registration. The agency may charge a fee up to \$50 to cover the costs of making a determination.

State Revenue

Starting in FY 2021-22, the bill increases state cash fund revenue to the Professions and Occupations Cash Fund in DORA and the Auto Industry Division Cash Fund, the Gaming Cash Fund, and the Marijuana Enforcement Division Cash Fund in the Department of Revenue (DOR) by about \$409,000 in FY 2022-23 and by about \$376,000 in FY 2023-24 to charge a pre-determination fee on applicants wishing to know if they are eligible to receive a license and on fees on various regulated professions to cover audit and legal expenses in DORA and to cover the costs of final determination in DOR..

Fee impact on regulated professionals. 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 and DOR based on cash fund balance, estimated program costs, and the estimated number of applications subject to the fee. The table below identifies the fee impact of this bill.

**Table 2
Fee Impact on Regulated Professionals**

Fiscal Year	Type of Fee	Proposed Fee	Number Affected	Total Fee Impact
	Pre-determination Fee (DORA)	\$39.82	2,500	\$99,550
	Pre-determination Fee (DOR)	\$37.84	5,390	\$203,958
FY 2022-23	Various Licensing Fees (DORA)	\$0.65	50,000	\$32,500
	Fees on Various Professionals (DOR)	\$1.45	50,300	\$72,935
	FY 2022-23 Total			\$408,943
	Pre-determination Fee (DORA)	\$39.82	2,500	\$99,550
	Pre-determination Fee (DOR)	\$37.84	5,390	\$203,958
FY 2023-24	Various Licensing Fees (DOR)	\$1.45	50,300	\$72,935
	FY 2023-24 Total			\$376,448

Various licensing fees. DORA and DOR will adjust their licensing fees to cover the additional expenditures required to implement the bill. It is not known which fees will be adjusted. Fees will be set as part of regular fee-setting processes. Fee revenue is deposited into a variety of cash funds.

State Expenditures

The bill increases state expenditures in DORA and the Department of Revenue (DOR) by about \$376,000 in FY 2022-23 and about \$381,000 in FY 2023-24, paid from the General Fund and various cash funds. Expenditures are shown in Table 3 and detailed below.

Table 3
Expenditures Under HB 22-1098

Cost Components	FY 2022-23	FY 2023-24
Department of Regulatory Agencies		
Personal Services	\$75,908	\$76,376
Operating Expenses	\$1,755	\$1,620
Capital Outlay Costs	\$6,200	-
Legal Services	\$14,786	-
Centrally Appropriated Costs ¹	\$29,201	\$26,280
FTE – Personal Services	1.3 FTE	1.2 FTE
FTE – Legal Services	0.1 FTE	-
DORA Subtotal	\$127,850	\$104,276
Department of Revenue		
Personal Services	\$185,696	\$228,973
Operating Expenses	\$4,185	\$4,995
Capital Outlay Costs	\$24,800	-
Centrally Appropriated Costs ¹	\$47,703	\$57,596
FTE – Personal Services	3.1 FTE	3.7 FTE
DOR Subtotal	\$262,384	\$291,564
Total	\$390,233	\$395,840
Total FTE	4.5 FTE	4.9 FTE

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

Department of Regulatory Agencies. Starting in FY 2022-23, expenditures from the Professions and Occupation Cash Fund in DORA will increase to hire staff and pay for legal services. Staffing costs are shown in Table 2 and include personal services, operating expenses, and capital outlay costs. The fiscal note assumes a September 1 starting date for staff.

- **Staffing— compliance audit.** In FY 2022-23 only, DORA requires 0.2 FTE to audit all the practice acts under DORA and to write a report. The fiscal note assumes that it will take 10 hours to review each of the 37 practice acts and 25 hours to write the report.
- **Staffing— pre-determination.** Starting in FY 2022-23, DORA requires 1.2 FTE to respond to any requests to review a person's application before applying for a license. DORA receives are around 50,000 applications for licensure, certification or registration annually. The fiscal note assumes that 5 percent of applicants will have a criminal history and request a review before applying. The fiscal note also assumes that each review will require one hour of work per application to enter information into the licensing system, ask for additional information, prepare documents for board review, conduct a review of any correspondence, and complete any follow up.

- **Staffing – reviewing denials.** Starting in FY 2022-23, workload within DORA will increase to review any applications that were denied due to criminal history to determine the reason for denial. The fiscal note assumes that there will be 73 applications per year and that the review will take 17 hours total. The fiscal note assumes this workload can be accomplished within existing appropriations.
- **Technology costs.** In FY 2022-23, workload within DORA will increase to update its licensing system to include new user defined fields to include criminal conviction for a reason why someone was denied. The fiscal note assumes that these updates can be made within existing appropriations.
- **Legal services.** DORA will require 150 hours of legal services to conduct rulemaking regarding denial and conditional licensure for the different boards within DORA. Legal services are provided by the Department of Law at a rate of \$98.57 per hour.

Department of Revenue. Starting in FY 2022-23, cash fund expenditures in DOR will increase to hire staff and pay for legal services. Staffing costs are shown in Table 3 and include personal services, operating expenses, and capital outlay costs. The fiscal note assumes an September 1 starting date for staff.

- **Staffing— pre-determination.** Starting in FY 2022-23, DOR requires 2.6 FTE to respond to any requests to review a person’s application before applying for a license. DOR receives around 56,000 applications for licensure, certification or registration annually for a number of their divisions; costs will be incurred by the Auto Industry Division, Motor Vehicle Dealer Board, the Gaming Division, and Marijuana Enforcement Division. Based on anecdotal department experiences, the fiscal note assumes that 10 percent of applicants will have a criminal history and request a review before applying. The fiscal note also assumes that each review will require one hour of work per application to respond to applications, ask for additional information, prepare documents for board review if necessary, conduct a review of any correspondence, and complete any follow up. Costs are assumed to be covered by the fee established by the bill that will be deposited into the division’s various cash funds.
- **Staffing – final determination notices.** Starting in FY 2022-23, the DOR requires 1.1 FTE within the Motor Vehicle Dealer Board and the Marijuana Enforcement Division to review any applications that were denied due to criminal history to determine the reason for denial. The fiscal note assumes that each denied application will require 15 to 30 minutes of work to write and track letters and respond to any follow ups. For the Motor Vehicle Dealer Board, there is additional work to present letters to the Motor Vehicle Dealer Board.

Other state agencies. Currently, many state agencies administer regulatory programs that require minimum licensing and certification standards be met. Workload in these agencies will increase to handle the notice requirements in the bill. In FY 2022-23, various state agencies may require up to 100 hours of legal services from the Department of Law for general guidance on how the bill interacts with other statutory requirements. The fiscal note assumes that this increase in legal services costs is accounted for through the annual budget process, with the Department of Law billing client agencies based on their historical use of legal services. No change in appropriations is required.

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 shown in Table 2.

Other Budget Impacts

TABOR refunds. The bill is expected to increase the amount of state revenue required to be refunded to taxpayers by the amounts shown in the State Revenue section above. This estimate assumes the December 2021 LCS revenue forecast. A forecast of state revenue subject to TABOR is not available beyond FY 2023-24. Because TABOR refunds are paid from the General Fund, increased cash fund revenue will reduce the amount of General Fund available to spend or save.

Effective Date

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

State Appropriations

For FY 2022-23, the bill requires appropriation totaling \$313,330 including:

- \$98,649 from the Professions and Occupations Cash Fund to the Department of Regulatory Agencies, and 1.3 FTE. Of that amount, \$14,786 and an additional 0.1 FTE must be reappropriated to the Department of Law;
- \$84,830 from the Auto Industry Division Cash Fund to the Department of Revenue and 1.3 FTE;
- \$119,645 from the Marijuana Enforcement Division Cash Fund to the Department of Revenue and 1.6 FTE; and
- \$10,206 from the Limited Gaming Cash Fund to the Department of Revenue, and 0.2 FTE.

State and Local Government Contacts

Counties	Education	Information Technology
Human Services	Judicial	Law
Municipalities	Personnel	Regulatory Agencies
Revenue		