



**Colorado  
Legislative  
Council  
Staff**

**Initiative #164**

**INITIAL FISCAL  
IMPACT STATEMENT**

**Date:** March 19, 2018

**Fiscal Analyst:** Anna Gerstle (303-866-4375)

**LCS TITLE:** PROHIBIT SALES OF SMARTPHONES TO PRETEEN MINORS

<b>Fiscal Impact Summary</b>	<b>FY 2018-19</b>	<b>FY 2019-20</b>
<b>State Revenue</b>	<b><u>\$313,920</u></b>	<b><u>at least \$470,880</u></b>
General Fund	\$313,920	at least \$470,880
<b>State Expenditures</b>	<b><u>\$334,975</u></b>	<b><u>\$378,077</u></b>
General Fund	\$334,975	\$378,077

**Note:** This *initial* fiscal impact estimate has been prepared for the Title Board. If the initiative is placed on the ballot, Legislative Council Staff may revise this estimate for the Blue Book Voter Guide if new information becomes available.

**Summary of Measure**

Beginning January 1, 2019, Initiative 164 prohibits retailers from selling or permitting the sale of smartphones to a person under the age of 13, or to any person who indicates the smartphone will be wholly or partially owned by a person under the age of 13. Retailers must verbally inquire about the age of the intended primary owner of the smartphone prior to the sale, document the response, and file a monthly report to the Department of Revenue (DOR) that lists the type of phone sold (smartphone or cellular) and the age of the intended primary owner at the time of purchase.

Retailers are defined as a business at a specific location that sells new or used smartphones, or a provider that operates in another jurisdiction and sells smartphones to a consumer in Colorado. A smartphone, which the measure distinguishes from a cellular phone, means a mobile phone that performs many of the functions of a personal computer, or as a handheld device with mobile internet or data connectivity.

Under the measure, DOR must create a website portal for monthly reports, investigate violations, and collect fees and penalties. The monthly filing fee is \$20 from January through December 2019, and will be set by DOR to cover administrative costs in subsequent years. The measure sets provisions for hearings to address violations, identifies civil remedies, and specifies the penalties for violations, as described in Table 1.

<b>Violation (within 24 months)</b>	<b>Fine Amount</b>
First violation	written warning
Second violation	\$500
Third violation	\$1,000
Fourth violation	\$2,000
Fifth and subsequent violation	\$2,000 - \$20,000

The measure specifies that a violation includes submitting a report at least 30 days after the filing was due. It also specifies that a fine cannot be imposed if the retailer can establish that it had adopted and enforced a written policy prohibiting the sale of smartphones to people under the age of 13, informed employees of the prohibition, required employees to verify age of customers by a photo identification, and established disciplinary actions for noncompliance. Each retailer may only use this defense twice at each location in a two-year period.

## **Assumptions**

There are approximately 3,849 retail locations in Colorado that may sell smartphones. This analysis assumes approximately 2,616 of those retail locations will be subject to the measure, including electronics and appliance stores, grocery stores, general merchandise stores, warehouse clubs and supercenters, and 50 percent of convenience stores that may sell single use phones that include data and mobile connectivity. Of those, it is assumed that compliance checks or enforcement actions will be conducted on approximately 15 percent (393) per year.

## **State Revenue**

The measure increases state General Fund revenue to the Department of Revenue by at least \$313,920 in FY 2018-19 and at least \$470,880 in FY 2019-20. It may also impact state sales tax revenue by a minimal amount, as discussed below.

**Fee impact on retailers.** Colorado law requires legislative service agency review of measures which create or increase any fee collected by a state agency. The fee amounts from July through December 2019 are specified by the measure, fee amounts in subsequent years are estimates only, and actual fee calculations will be set administratively by DOR based on estimated program costs and the estimated number of filings subject to the fee. Table 2 identifies the estimated fee impact of the measure.

<b>Table 2. Fee Impact on Retailers</b>					
<b>Fiscal Year</b>	<b>Type of Fee</b>	<b>Fee</b>	<b>Number Affected</b>	<b>Monthly Filings</b>	<b>Total Fee Impact</b>
FY 2018-19	Filing Fee	\$20	2,616	6	\$313,920
<b>FY 2018-19 TOTAL</b>					<b>\$313,920</b>
FY 2019-20	Filing Fee - July to Dec.	\$20	2,616	6	\$313,920
	Filing Fee - Jan. to June	\$10		6	\$156,960
<b>FY 2019-20 TOTAL</b>					<b>\$470,880</b>

**Fine revenue.** The measure also increases fine revenue resulting from violations of the prohibition. The analysis assumes that retailers will abide by the law and that fine revenue will be minimal. Should revenue from fines exceed what DOR requires to implement the measure, the additional revenue will be credited to the Colorado Department of Education (CDE) for use in elementary school funding. This analysis assumes any funding transferred to CDE will be minimal.

**Sales tax revenue.** This measure may impact state sales tax revenue by a minimal amount. Increased costs for retail stores that sell smartphones may result in an increase in prices paid by consumers for smartphones, and thus a marginal increase in sales tax revenue. However, to the extent that retailers choose not to sell smartphones as a result of the measure, or consumers purchase fewer smartphones, sales tax revenue may decrease. Any change in sales tax revenue is expected to be minimal.

**State Expenditures**

The measure increases state General Fund expenditures in the Department of Revenue by \$334,975 and 2.3 FTE in FY 2018-19 and \$378,077 and 4.2 FTE in FY 2019-20 and subsequent years, as listed in Table 3. It also increases the workload for the Judicial Department beginning in FY 2018-19.

<b>Table 3. Expenditures Under Initiative #164</b>		
<b>Cost Components</b>	<b>FY 2018-19</b>	<b>FY 2019-20</b>
Personal Services	\$116,624	\$238,214
FTE - DOR	2.0 FTE	4.0 FTE
Operating Expenses and Capital Outlay Costs	\$49,396	\$89,839
Computer Programming	\$109,500	-
Legal Services	\$53,280	\$42,624
FTE - Department of Law	0.3 FTE	0.2 FTE
Travel Costs	\$6,175	\$7,400
<b>TOTAL</b>	<b>\$334,975</b>	<b>\$378,077</b>

**DOR — personal services.** DOR requires 2.0 FTE in FY 2018-19 and 4.0 FTE beginning in FY 2019-20, as follows:

- 0.4 FTE in FY 2018-19 and 0.6 FTE beginning in FY 2019-20 for a program assistant to maintain the database and identify retailers subject to the measure;
- 0.4 FTE in FY 2018-19 and 0.8 FTE beginning in FY 2019-20 for an administrative assistant to process monthly filings and mailings, answer questions, and conduct outreach;
- 0.6 FTE in FY 2018-19 and 1.5 FTE beginning in FY 2019-20 for a compliance investigator to conduct compliance checks and outreach;
- 0.1 FTE beginning in FY 2018-19 for a budget analyst; and
- 0.5 FTE in FY 2018-19 and 1.0 FTE beginning in FY 2019-20 for a legal assistant to assist with rulemaking and hearing preparation.

**DOR — operating and travel costs.** DOR requires \$49,396 in FY 2018-19 and \$89,839 in FY 2019-20 and subsequent years for standard operating costs that include computer, telephone, postage, and supply costs, as well as employee insurance and retirement and indirect costs such as leased space. In addition, the department requires \$6,175 in FY 2018-19 and \$7,400 in FY 2019-20 in travel costs to conduct compliance checks and enforcement at retailers around the state.

**DOR — computer programming.** DOR requires \$109,500 in FY 2018-19 only to build the required website portal and database for monthly filings and filing fees. This includes modifications to the GenTax system to process monthly payments, at a rate of \$250 per hour for 240 hours, and the MyLo software to process monthly filings and track violations, at a rate of \$300 per hour for 165 hours.

**DOR — hearings and additional expenses.** Additional hearing officers may be needed in subsequent years to accommodate hearings as a result of retailer violations. Should additional hearing officers, or other additional staffing or resources, be required to fully implement the measure, DOR will request them through the annual budget process.

**Legal services.** DOR requires 500 hours in FY 2018-19 and 400 hours in FY 2019-20 and subsequent years of legal services for rulemaking and general counsel. Legal services are provided at a rate of \$106.56 per hour by the Department of Law, which requires 0.3 FTE in FY 2018-19 and 0.2 FTE in FY 2019-20 and subsequent years to provide the services.

**Judicial Department.** The measure increases the workload in trial courts in the Judicial Department by a minimal amount to handle any administrative appeals of agency decisions. Any increase is expected to be minimal and can be accomplished within existing appropriations.

### Local Government Impact

Beginning in FY 2018-19, this measure may impact local sales tax revenue by a minimal amount. Increased costs for retail stores that sell smartphones may result in a marginal increase in prices paid by consumers for smartphones, and thus an increase in sales tax revenue. However, to the extent that retailers choose not to sell smartphones, or consumers purchase fewer smartphones, sales tax revenue may decrease. Any change in revenue is expected to be minimal.

**School districts.** Beginning in FY 2018-19, school districts may receive additional funding for elementary schools, to the extent that the state revenue increase from fines results in additional funding for CDE. Any increase is expected to be minimal.

## Effective Date

The bill takes effect January 1, 2019.

## State and Local Government Contacts

Education  
Law

Information Technology  
Personnel

Judicial  
Revenue

## **Abstract of Initiative 164: PROHIBIT SALES OF SMARTPHONES TO PRETEEN MINORS**

**This initial fiscal estimate, prepared by the nonpartisan Director of Research of the Legislative Council as of March, 2018, identifies the following impacts:**

The abstract includes estimates of the fiscal impact of the initiative. If this initiative is to be placed on the ballot, Legislative Council Staff will prepare new estimates as part of a fiscal impact statement, which includes an abstract of that information. All fiscal impact statements are available at [www.ColoradoBlueBook.com](http://www.ColoradoBlueBook.com) and the abstract will be included in the ballot information booklet that is prepared for the initiative.

**State revenue.** The measure increases state General Fund revenue by at least \$313,920 in FY 2018-19 and \$470,880 in FY 2019-20 and subsequent years from filing fees and fines. The measure may also impact state sales tax revenue by a minimal amount.

**State expenditures.** The measure increases state General Fund expenditures by the Department of Revenue by \$334,975 in FY 2018-19 and \$378,077 in FY 2019-20 and subsequent years to implement the measure.

**Local government revenue.** The bill may impact local sales tax revenue by a minimal amount, to the extent that the cost of smartphones increases as a result of increased costs for retailers, retailers choose not to sell smartphones, or retailers sell fewer smartphones as a result of the measure. The measure may also increase funding for elementary schools by a minimal amount.