HB14-1127

Colorado Legislative Council Staff Fiscal Note

FINAL FISCAL NOTE

Drafting Number:	LLS 14-0333	**Date:**	June 9, 2014
Prime Sponsor(s):	Rep. Coram	**Bill Status:**	Postponed Indefinitely
	Sen. Hodge	**Fiscal Analyst:**	Alex Schatz (303-866-4375)

SHORT TITLE: DISCLOSURE INFORMATION ASSET RECOVERY

Fiscal Impact Summary*	FY 2014-2015	FY 2015-2016
State Revenue	**up to $1,021,000**	**up to $1,021,000**
Cash Fund	up to 1,021,000	up to 1,021,000
State Expenditures	**$599,259**	**$492,867**
Cash Fund	532,752	423,284
Centrally Appropriated Costs**	66,507	69,583
FTE Position Change	7.0 FTE	7.0 FTE
Appropriation Required: $532,752 - Multiple agencies (FY 2014-15)		

** This summary shows changes from current law under the bill for each fiscal year.*
*** These costs are not included in the bill's appropriation. See the State Expenditures section for more information.*

Summary of Legislation

This bill establishes a procedure for a party that obtains a monetary award in court (judgment creditor) to compel the Colorado Department of Labor and Employment (CDLE) to disclose employment information contained in its wage and employment database about the other party (judgment debtor). The Judgment Debtor Disclosure Fund is created for the collection of CDLE revenue under the bill and the payment of CDLE costs, subject to annual appropriation.

The judgment creditor files a motion in court to compel CDLE's disclosure, which the court must grant after following certain procedure, including a hearing if the judgment debtor opposes the motion. Upon presentation of a certified copy of the order granting the motion and payment of a reasonable fee, CDLE has seven business days to make a disclosure to the judgment creditor.

Information received in the CDLE disclosure is subject to security measures and may only be used to collect those moneys owed by the judgment debtor under court order. A judgment creditor that fails to follow security measures is subject to enforcement action by the Attorney General (AG) and a civil penalty up to $1,000 plus the AG's enforcement costs. A judgment creditor is entitled to attorney fees and costs if the AG does not prevail in court in an enforcement action.

The bill also provides that state and local governments may charge the costs of collection to delinquent accounts, up to 25 percent of the amount to be collected. A court may award additional attorney fees.

Background

Lawsuits decided by Colorado courts frequently involve a monetary dispute. Based on Judicial Branch data, state trial courts enter a monetary award in over 150,000 cases each fiscal year. County courts hear the majority of cases affected by the bill. For example, in FY 2012-13, debt collections in county court accounted for 118,734 cases statewide.

State Revenue

The bill increases state revenue by **up to $1,021,000.** Of this amount, $220,000 is collected annually by CDLE in fees, credited to the Judgment Debtor Disclosure Fund. The Judicial Stabilization Cash Fund receives an estimated $800,000 each year from court clerk certification fees. The remainder of revenue under the bill is generated by fines collected by the Judicial Branch and attorney fees and costs awarded to the Department of Law.

Assumptions. While the bill potentially results in up to 150,000 court orders, the fiscal note assumes that the judgment creditor in over two-thirds of these cases will not present the order to the CDLE. This assumption is based on the potential for the court order to induce the judgment debtor to promptly settle the amount owed, cost considerations related to procedures under the bill (such as fees), and other alternatives available to the judgment creditor. Fees are estimated based on an assumed caseload of 40,000 disclosures that commence with a certified court order and proceed to CDLE, with its own fee.

The bill authorizes CDLE to charge a reasonable fee for its actual cost to process disclosure orders. The fiscal note assumes CDLE rulemaking results in a fee that is sufficient to cover all CDLE costs, direct and indirect.

Fee impact on judgment creditors. Section 2-2-322, C.R.S., requires legislative service agency review of measures which create or increase any fee collected by a state agency. Table 1 summarizes the fee impact of this bill on judgment creditors who pursue a CDLE disclosure under the bill. To begin the process, an estimated 40,000 judgment creditors will request from the court clerk a certified copy of the order awarding them a money judgment, paying a $20 fee for each certification, resulting in a $800,000 revenue increase to the Judicial Branch. In CDLE, the judgment debtor disclosure fee will be set at a rate sufficient to cover the approximate annual cost of CDLE administration under the bill, estimated at $5.50 per disclosure, to generate $220,000 in fee revenue in FY 2014-15 and FY 2015-16. The CDLE fee may be adjusted in future fiscal years to reflect budget requirements.

Table 1. Annual Fee Impact on Judgment Creditors

Type of Fee	Current Fee	Proposed Fee	Number Affected	Total Fee Impact
Certified Court Order	$20.00	no change	40,000	$800,000
Judgment Debtor Disclosure	n/a	$5.50	40,000	$220,000
			TOTAL	**$1,020,000**

Judicial Branch — Fines. Enforcement actions against judgment creditors are expected in a small number of cases, and may not result in fines (or the maximum fine) in these cases. For this reason, less than $1,000 in fines are estimated in any fiscal year. These civil penalties are credited to the General Fund.

Department of Law — Attorney fees and costs. State revenue will increase in cases where a court awards the AG's costs to investigate and pursue legal action against judgment creditors who are found to have violated security requirements of the bill. Such cases are expected to be rare and will result in a minimal increase in General Fund revenue.

State Expenditures

The bill increases state expenditures by **$599,259 and 7.0 FTE in FY 2014-15** and **$492,867 and 7.0 FTE in FY 2015-16.** These costs affect the Judicial Branch and CDLE, as illustrated in Table 2. In CDLE, personal services and associated operating costs are paid from the Judgment Debtor Disclosure Fund. The Judicial Branch funds expenditures with new cash fund revenue deposited in the Judicial Stabilization Cash Fund under the bill.

Assumptions. While the bill applies to all monetary awards in Colorado court cases, county courts produce the largest share of cases in which the judgment creditor is unable to collect. Estimated costs to implement the bill are based on a magistrate serving as the judicial officer in trial courts affected by the bill, especially in county courts. Each magistrate is assisted by two clerks.

The fiscal note assumes a batch process is developed to automate the composition of disclosure letters. Under the bill, a disclosure is a simple two-item record (name, employer) and does not require any special legal process for CDLE to fulfill its duties. Programming to extract employer information from the CDLE wage and employment database using a legal name and reporting this on a form letter can be readily accomplished by the Office of Information Technology (OIT).

The fiscal note assumes that CDLE's duty to disclose under the bill is satisfied once it has retrieved records and responded to the judgment creditor. Once it has furnished a response, CDLE will not monitor judgment creditors (for compliance with security measures) or judgment debtors (for new employment information) unless there is a new court order or some other external source of information that prompts further investigation or enforcement action.

CDLE administrative costs. The bill increases direct expenditures in CDLE by $233,358 and 4.0 FTE in FY 2014-15 and $194,546 and 4.0 FTE in FY 2015-16. A summary of costs to CDLE is included in Table 2.

Table 2. Expenditures Under HB 14-1127		
Cost Components	**FY 2014-15**	**FY 2015-16**
Department of Labor and Employment	*$262,779*	*$225,292*
Personal Services	164,346	164,346
FTE	4.0	4.0
Standard Operating Expenses	3,800	3,800
Mailing Expenses	26,400	26,400
Capital Outlay	18,812	0
Programming (OIT)	20,000	0
Centrally Appropriated Costs*	29,421	30,746
Judicial Branch	*$336,480*	*$267,575*
Personal Services	221,138	221,138
FTE	3.0	3.0
Standard Operating Expenses	7,600	7,600
Capital Outlay	70,656	0
Centrally Appropriated Costs*	37,086	38,837
TOTAL	**$599,259**	**$492,867**

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

In FY 2014-15, CDLE will begin responding to court orders immediately after conducting rulemaking to set a reasonable fee for judgment creditors. In addition, programming to automate production of disclosure letters requires an estimated $20,000. The Office of Information Technology will complete this work as soon as possible in FY 2014-15. However, immediately after the bill's effective date, CDLE staff may be temporarily required to manually transfer information to a disclosure form letter.

Based on a task analysis of CDLE staff functions under the bill, ongoing workload increases by at least 4.0 FTE to perform data entry, database inquiries, prepare and mail disclosures, and respond to security complaints and other issues. The estimated increase in state expenditures includes 3.2 FTE of Administrative Assistant II and 0.8 FTE for a Labor and Employment Specialist III, as well as associated operating costs and expenses for an estimated 40,000 mailings.

Judicial Branch. The bill increases direct expenditures in the Judicial Branch by $299,394 and 3.0 FTE in FY 2014-15 and $228,738 and 3.0 FTE in FY 2015-16. A summary of costs to the Judicial Department is included in Table 2.

No significant effort is required for a judgment creditor to make a motion for CDLE disclosure at the time a court enters a monetary award, and these motions may be filed at any time thereafter. As a result, the bill increases workload and expenditures for trial courts to process CDLE disclosure motions in approximately 150,000 civil cases each year, with 40,000 certified copies of the court order produced by court clerks each year.

While a small number of cases will require a hearing, the bill entitles most judgment creditors to a court order. Accordingly, trial court costs are driven primarily by workload to enter the motion on the record and issue the court order. Statewide, assuming this workload takes, on average, less than one minute per case, the bill requires 1.0 FTE magistrate and 2.0 FTE of support staff, as well as operating costs and capital outlay for these positions.

Because the bill also affects cases decided by judges, with a higher level of staffing, actual expenditures and workload impacts in the Judicial Branch may be higher than estimated. Any increase in expenditures that exceeds appropriations under the bill will be addressed in the annual budget process.

Department of Law. The Department of Law will assist CDLE with rulemaking to implement the bill in FY 2014-15. On an infrequent basis, CDLE may request the AG to investigate or take enforcement action against a judgment creditor that does not adhere to the security measures that apply to information received in a disclosure. These AG duties under the bill are consistent with the AG's existing representation of CDLE and are not expected to significantly increase caseload for the AG. No new appropriation is required for the AG to assist with rulemaking or respond to occasional enforcement issues with judgment creditors.

In the event that the AG takes action against a judgment creditor in district court and does not prevail in the case, state expenditures will increase to pay attorney fees and costs for the judgment creditor's defense. The fiscal note assumes the AG will take action only in cases with sufficient merit to prevail in court, thus an award of judgment creditor's costs is expected to be rare, with minimal expenditure impact to the Department of Law.

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. The centrally appropriated costs subject to this policy are estimated in the fiscal note for informational purposes and summarized in Table 3.

Table 3. Centrally Appropriated Costs Under HB 14-1127*

Cost Components	FY 2014-15	FY 2015-16
Employee Insurance (Health, Life, Dental, and Short-term Disability)	$40,015	$40,015
Supplemental Employee Retirement Payments	26,492	29,568
TOTAL	**$66,507**	**$69,583**

**More information is available at: http://colorado.gov/fiscalnotes*

Local Government Impact

The bill increases expenditures for the City and County of Denver, while potentially increasing revenue to local governments statewide.

The City and County of Denver covers all costs related to judicial officers and operations of Denver's county court. The bill increases workload for Denver county courts to process motions for CDLE disclosure under the bill. Based on Denver county court's share of overall caseload in the state, this impact is estimated as an increase in judicial officers of less than 0.1 FTE.

Local government revenue may increase to the extent that, under current law, local agencies have not included the costs of collection when overdue fees, fines, and other obligations are received. Provided that accounting and billing practices of affected local governments accommodate the inclusion of these charges, the bill increases amounts that may be charged to delinquent accounts. The total amount of increased local revenue depends on recovery rates and cannot be estimated for this fiscal note.

Technical Note

The wage and employment database at CDLE is an integral part of the Unemployment Insurance (UI) program. The UI program is subject to various statutory controls, such as limitations on the use of state cash funds and federal funds for unemployment purposes.

Regarding the use of information in the wage and employment database, Section 8-72-107 (1), C.R.S., provides this information "shall be held confidential and shall not be published or be open to public inspection... in any manner revealing the individual's or employing unit's identity." This statute provides specific exemptions from confidentiality, none of which apply to the bill. Use of the wage and employment database is also subject to similar federal confidentiality requirements, though federal law permits the disclosure of UI claimant information in response to a court order.

The fiscal note assumes the bill can be implemented notwithstanding legal constraints related to the UI program.

Effective Date

The bill was postponed indefinitely by the Senate State, Veterans, and Military Affairs Committee on April 16, 2014.

State Appropriations

For FY 2014-15, the bill requires an appropriation of $233,358 from the Judgment Debtor Disclosure Fund and 4.0 FTE to the Department of Labor and Employment, and an appropriation of $299,394 from the Judicial Stabilization Cash Fund and 3.0 FTE to the Judicial Branch. Of the amount appropriated the Department of Labor and Employment, $20,000 is reappropriated to the Office of Information Technology.

State and Local Government Contacts

Labor and Employment	Judicial Department	Revenue
Personnel and Administration	Regulatory Agencies	Human Services
Health Care Policy and Financing	Public Safety	Local Affairs
Special Districts	Municipalities	Law
Counties		