SB 24-077

Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Fiscal Note

Drafting Number:	LLS 24-0665	**Date:**	February 14, 2024
Prime Sponsors:	Sen. Jaquez Lewis; Michaelson Jenet Rep. McCormick	**Bill Status:**	Senate Health & Human Services
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Bill Topic: **PRESCRIPTION DRUG MANUFACTURER REQUIREMENTS**

Summary of Fiscal Impact:

☒ State Revenue ☐ State Diversion ☒ Local Government
☒ State Expenditure ☐ TABOR Refund ☐ Statutory Public Entity

The bill requires prescription drug manufacturers to register with the Department of Regulatory Agencies. The bill increases state revenue and expenditures and may increase local government workload beginning in FY 2024-25,

Appropriation Summary: For FY 2024-25, the bill requires an appropriation of $45,807 to the Department of Regulatory Agencies.

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

Table 1
State Fiscal Impacts Under SB 24-077

		Budget Year FY 2024-25	Out Year FY 2025-26
Revenue	Cash Funds	$60,000	$60,000
	Total Revenue	**$60,000**	**$60,000**
Expenditures	Cash Funds	$45,807	$46,964
	Centrally Appropriated	$9,602	$11,523
	Total Expenditures	**$55,409**	**$58,487**
	Total FTE	**0.5 FTE**	**0.6 FTE**
Diversion		-	-
Other Budget Impacts	TABOR Refund	$60,000	$60,000

Summary of Legislation

Beginning January 1, 2025, the bill requires manufacturers of prescription drugs that are available in the state to register and pay a fee to the Division of Insurance (DOI) in the Department of Regulatory Agencies (DORA). It also requires that copayment assistance programs for prescription drugs offered by manufacturers be available to the covered person in the plan for either the entire plan year or calendar year, whichever the deductible and out-of-pocket calculation applies to.

A manufacturer that violates these requirements commits an unfair method of competition and a deceptive act in the business of insurance.

Assumptions

The fiscal note assumes 600 prescription drug manufacturers will register and pay a fee to the DOI and that fees collected will cover the DOI's costs for registering these manufacturers.

State Revenue

The bill increases state revenue in the Division of Insurance Cash Fund by $60,000 annually beginning in FY 2024-25 from fees paid by prescription drug manufacturers. The bill may also increase revenue from civil penalties and filing fees beginning in FY 2024-25.

Fee impact on prescription drug manufacturers. 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 the DORA based on cash fund balance, program costs, and the number of drug manufacturers subject to the fee. The table below identifies the fee impact of this bill. Registration fees are subject to TABOR.

Table 2
Fee Impact on Prescription Drug Manufacturers

Fiscal Year	Type of Fee	Proposed Fee	Number Affected	Total Fee Impact
FY 2024-25	Registration Fee	$100	600	$60,000
FY 2025-26	Registration Fee	$100	600	$60,000

Civil penalties. Under the Colorado Consumer Protection Act, a person committing a deceptive trade practice may be subject to a civil penalty of up to $20,000 for each violation. Additional penalties may be imposed for subsequent violations of a court order or injunction. This revenue is classified as a damage award and not subject to TABOR. The fiscal note assumes a high level of compliance by manufacturers and that any revenue will be minimal.

Filing fees. The bill may minimally increase revenue to the Judicial Department from an increase in civil case filings related to the deceptive trade practice. Revenue from filing fees is subject to TABOR.

State Expenditures

The bill increases state cash fund expenditures in DORA by about $55,000 in FY 2024-25 and $58,000 per year beginning in FY 2025-26, paid from the Division of Insurance Cash Fund. It also may impact the Department of Personnel, Department of Law, and the Judicial Department. Expenditures are shown in Table 3 and detailed below.

Table 3
Expenditures Under SB 24-077

	FY 2024-25	FY 2025-26
Department of Regulatory Agencies		
Personal Services	$38,497	$46,196
Operating Expenses	$640	$768
Capital Outlay Costs	$6,670	-
Centrally Appropriated Costs[1]	$9,602	$11,523
Total Cost	**$55,409**	**$58,487**
Total FTE	**0.5 FTE**	**0.6 FTE**

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

Department of Regulatory Agencies. The DOI will have new staffing costs, and may have additional contractor costs, to register prescription drug manufacturers and collect fees and compliance data.

- **Staff.** The DOI requires 0.6 FTE annually beginning in FY 2024-25 to develop the process for registering drug manufacturers, conduct stakeholder discussions to determine registration regulations, and determine final registration fees. Additionally, the staff will continually collect registration information, process registration fees, review information submitted, follow up with noncompliant manufacturers, and address consumer complaints against manufacturers that do not offer copayment assistance programs as required. Staff costs in the first year are prorated for a September 1, 2024 start date.

- **Contractor.** The DOI currently uses a software platform for pharmacy benefit manager registrations; however, given the number of registrations, the DOI may need to contract with a different service provider for prescription drug manufacturer registration. Any costs incurred will be covered by fees, with spending authority requested through the annual budget process, if needed.

Department of Law. Workload in the Department of Law will minimally increase to the extent that deceptive trade practice complaints are filed. The department will review complaints under the bill and prioritize investigations as necessary within the overall number of deceptive trade practice complaints and available resources.

Judicial Department. The trial courts in the Judicial Department may have an increase in cases filed under the Colorado Consumer Protection Act from the addition of a new deceptive trade practice. It is assumed that prescription drug manufacturers will abide by the law and that any violation of the legislation will result in minimal number of new cases. No change in appropriations is required.

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 2022 LCS revenue forecast. A forecast of state revenue subject to TABOR is not available beyond FY 2024-25. 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.

Local Government

Similar to the state, to the extent district attorneys receive deceptive trade practice complaints related to the new deceptive trade practice under the bill, workload will increase to investigate complaints and seek relief when appropriate. It is assumed most such cases will be handled at the state level by the Attorney General.

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 2024-25, the bill requires an appropriation of $45,807 to the Department of Regulatory Agencies from the Division of Insurance Cash Fund, and 0.5 FTE.

State and Local Government Contacts

Counties	District Attorneys	Health Care Policy and Financing
Judicial	Law	Personnel
Regulatory Agencies		