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Fiscal Impact Analysis of Colorado 2023 Senate Bill 098: Gig Work Transparency

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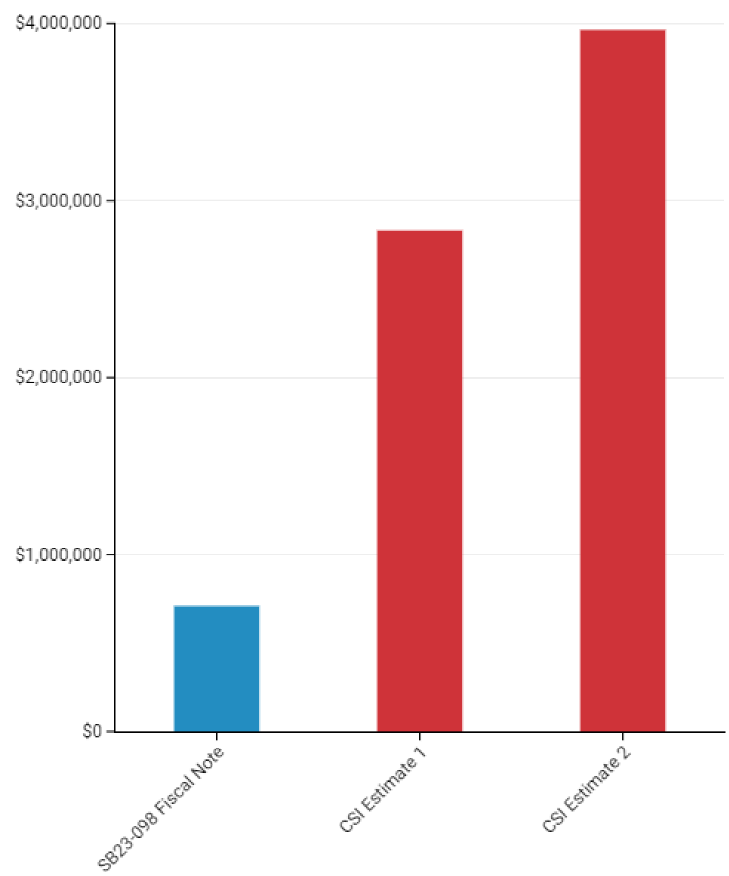
Key Findings

- The Colorado Senate Bill 23-098 fiscal note assumes the number of app-based drivers operating in Colorado is **62,113**. But 2022 company data, from just four companies, shows the number is far greater, and could total at least **248,378 drivers**.
- Based on the updated figure of the actual number of drivers working on app-based platforms in Colorado, SB23-098's fiscal impact is estimated to be between **$2,831,613 and $3,964,259–almost 4 to 5.6 times greater than estimated** in the official fiscal note.
- Given this new driver number, staffing requirements of the Colorado Department of Labor and Employment and the Department of Law are estimated to be between **25.6 and 35.8 new staff per year**, compared to 6.4 per year provided in the fiscal note.
- The increased fiscal cost of SB23-098, combined with other bills under consideration, **could drain almost $7 million from the Employment Support Fund**, which is funded by unemployment insurance taxes.

First Full Year Fiscal Impacts of SB23-098



SB23-098: GIG WORK TRANSPARENCY

SB23-098, if passed into law in its current form, would increase regulatory requirements on businesses defined as delivery network companies (DNC) or transportation network companies (TNC). TNC companies are those such as Uber and Lyft, and a DNC would be defined as "any person that sells delivered goods or services in the state and that connects consumers with delivery workers through a digital platform."

SB23-098 would impose new regulations on these businesses in several areas:

- DNC and TNC companies would be required "to provide payment disclosures to drivers and consumers" about transactions on their platform.
- DNC and TNC companies would be prohibited from deactivating a driver's account on its platform unless the deactivation is warranted under yet to be written Department of Labor and Employment regulations. Any deactivation by a DNC or TNC company could be challenged as unwarranted in a formal enforcement hearing before the Department of Labor and Employment, with no burden on the driver of actually proving the claim.

This report reviews the potential fiscal impacts to the state, incurred from the enforcement and termination provisions of the bill, and offers updated estimates based upon actual company records and publicly available industry data.

UPDATED FISCAL IMPACTS OF SB23-098

SB23-098 directs state agencies to develop rules that can be used to determine if a DNC or TNC driver's account has been wrongfully deactivated. In this report, "termination," is used to refer to platform deactivations, given that is the term used in the bill and fiscal note. The Colorado Department of Labor and Employment will then be responsible for investigating and litigating future claims of wrongful termination. The fiscal note from March 2, 2023, includes estimated costs to the state for fiscal year 2024 and fiscal year 2025.

The following table shows the state expenditure and full-time equivalent (FTE) employment impacts included in the fiscal note, compared with two additional scenarios using company records and industry data.

Scenario 1 assumes a higher number of hearings and appeals based on a number of drivers provided by four DNC and TNC companies. Given there are multiple other DNC and TNC platforms with drivers in Colorado, this updated estimate of the number of drivers remains conservative. The more accurate number of drivers provided by select companies is almost four times higher than the Legislative Council Staff's estimate in the state's fiscal note.

Scenario 2 assumes the same higher number of hearings and appeals as scenario 1, but also assumes a higher termination rate, based on industry data that is described in more detail below.

Table 1: First Full Year Budget Impacts of SB23-098

	SB23-098 March 2 Fiscal Note	Scenario 1 - Hearings Given Number of Drivers Provided by DNC and TNC Companies	Scenario 2 - Hearings Given Number of Drivers Provided by DNC and TNC Companies with JOLTS Termination %
Expenditures			
Personal Services	$481,597	$1,925,814	$2,696,140
Operating Expenses	$22,345	$89,353	$125,095
Capital Outlay Costs	$0	$0	$0
Legal Services	$95,166	$380,528	$532,739
Centrally Appropriated Costs	$109,012	$435,918	$610,285
Total Expenditures	**$708,120**	**$2,831,613**	**$3,964,259**
Appropriated by Bill	$599,108	$2,395,695	$3,353,973
CDLE FTE Expense	$612,954	$2,451,086	$3,431,520
FTE			
CDLE	5.9	23.6	33.0
Department of Law	0.5	2.0	2.8
Total FTE	**6.4**	**25.6**	**35.8**

Key Assumptions for Estimating Fiscal Impacts of SB23-098

The fiscal note for SB23-098 describes multiple elements of state costs. The primary responsibility for establishing and managing the enforcement of the requirements of the bill would fall upon the Colorado Department of Labor and Employment (CDLE). CDLE would incur direct costs and would need to reappropriate funds to the Colorado Department of Law for legal services. Both the direct costs to CDLE and the need for legal services are tied to the volume of hearings and appeals from former DNC and TNC drivers appealing terminations.

NUMBER OF DRIVERS

Both the number of drivers and the rate of termination of drivers are critical values used in the fiscal note to estimate FTE requirements and state costs. The March 2, 2023 fiscal note accompanying SB23-098 included an estimated 62,113 drivers, based on a three-year average provided by CDLE. The number of drivers reported by select DNC and TNC companies, however, totals 248,378. Note that individuals sometimes perform work on multiple platforms. As outlined in the fiscal note, the number of total hearings and appeals is the driving factor for total costs related to enforcing the bill. For that reason, the total drivers who have performed work on select DNC and TNC platforms in 2022 is used, given a single individual is capable of appealing deactivation decisions on multiple platforms. Again, this figure understates the actual number of covered drivers in the state, as it includes drivers working only on select platforms.

TERMINATION RATE

Following the number of drivers is the estimated percentage of drivers whose accounts are terminated or deactivated annually. The fiscal note includes the assumption that 1% of driver accounts are terminated annually and arrives at a total number of 205 hearings. Using this same termination rate and the actual number of drivers provided by DNC and TNC companies, the number of hearings grows to 820, or four times the number estimated by the fiscal note. Although the fiscal note does not provide a source for the termination rate, Job Openings and Labor Turnover Survey (JOLTS) survey data, developed by the Bureau of Labor Statistics (BLS), indicates that the transportation, warehousing and utilities industry had an annual average termination rate of 1.4% over the last decade. This alternative termination rate was used to demonstrate how variable the impacts can be and how much higher the fiscal cost could fluctuate under plausible conditions.

OTHER ASSUMPTION HELD CONSISTENT WITH FISCAL NOTE

Multiple other assumptions underlying the fiscal impacts were not changed in scenarios 1 and 2. Though such values as the number of hours required for each case, the rate of appeals, and the FTE costs all contribute to the final fiscal impacts, they were not altered from the original fiscal note in the scenarios.

All expenses and FTE requirements were scaled proportionally to the change in the number of hearings and appeals in the scenarios. The only expense and FTE requirement that does not increase proportionally is an estimate in the first year of the program related to rulemaking and startup costs. Since Table 1 only shows the first full year of fiscal impacts, this cost is not included.

Table 2: Fiscal Impact Scenario Assumptions

	March 2 Fiscal Note Hearings	Scenario 1 - Hearings Given Number of Drivers Provided by DNC and TNC Companies	Scenario 2 - Hearings Given Number of Drivers Provided by DNC and TNC Companies with JOLTS Termination %
Number of Drivers	62,113	248,378	248,378
Percent of Drivers that Are Terminated	1.00%	1.00%	1.40%
Percent of Drivers that Appeal	33%	33%	33%
Number of Hearings	205	820	1,148
Fiscal Note Implied Termination Appeals as % of Hearings	83%	83%	83%
Termination Appeals	171	684	957

STABILITY OF THE BILL FUNDING SOURCE

The proposed funding source for the enforcement requirements of SB23-098 is the Employment Support Fund (ESF), a state cash fund which is allocated .00145% of all unemployment insurance payroll tax collections. The purpose of this fund is "to help pay for administration of the unemployment-insurance program and to support programs that strengthen the solvency of the UITF, which officials have interpreted as programs that get more people into jobs."

Currently, there are five bills moving through the state legislative process that would be funded through the Employment Support Fund. Though the end of year fund balance is currently projected to increase significantly with the upcoming budget, the updated fiscal impacts in this report would bring the total annual increased cost for the five bills to the ESF to more than $5.5 million or $6.9 million. Given these funds would be allocated to administer the requirements of a new state enforcement program, it would further strain the limited resources available for programs supported through the ESF and it would reduce the annual amount transferred to the UITF to support its solvency and maintain lower premium rates

CONCLUSION

As a new program, the expenses associated with SB23-098 are understandably uncertain. However, given the bill creates an ongoing need for state resources, understanding the likely range of full costs is critical. Though the bill fiscal note captures the state costs associated with an estimated level of covered drivers, records from select companies reveal the actual number of drivers, and therefore the costs to the state, to be at least 4 to 5.6 times higher.

[i] https://leg.colorado.gov/sites/default/files/documents/2023A/bills/fn/2023a_sb098_r1.pdf

[ii] Doordash, Instacart, Lyft and Uber worked with Littler Mendelson, P.C. (Littler) to collect data on the number of app-based workers who had completed at least one trip or delivery in Colorado on their platform in 2022. The companies provided Littler with a total number of drivers using their platforms. Littler then reviewed the numbers and added them together in order to anonymize the final aggregate number. This number does not include data from companies such as GrubHub, Shipt, Amazon or other TNCs/DNCs that may be captured in the bill.

[iii] https://www.bls.gov/jlt

[iv] https://tsscolorado.com/unemployment-taxes-could-fund-new-labor-regulations

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