

**First Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 19-0749.01 Jery Payne x2157

HOUSE BILL 19-1117

HOUSE SPONSORSHIP

Sandridge,

SENATE SPONSORSHIP

(None),

House Committees

Business Affairs and Labor
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE DEPARTMENT OF REGULATORY AGENCIES'**
102 **DETERMINATION REGARDING THE REGULATION OF PROFESSIONS**
103 **AND OCCUPATIONS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

Current law requires the department of regulatory agencies to analyze whether to begin or continue the regulation of a profession or occupation based on several factors. The bill elaborates on these factors and requires the department to find a present, significant, and substantiated harm to consumers before recommending regulation. The

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

bill further requires the department to recommend only the least restrictive regulation necessary to address the harm and sets guidelines for recommended regulation.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 24-34-104.1, **amend**
3 (3)(a); and **add** (8) as follows:

4 **24-34-104.1. General assembly sunrise review of new**
5 **regulation of occupations and professions.** (3) (a) (I) Except as
6 provided in ~~paragraph (b) or (c) of this subsection (3)~~ SUBSECTION (3)(b)
7 OR (3)(c) OF THIS SECTION, the department of ~~regulatory agencies~~ shall
8 conduct an analysis and evaluation of any proposed regulation. ~~submitted~~
9 ~~on or after July 1, 2012.~~ The analysis and evaluation must be based upon
10 the criteria listed in ~~paragraph (b) of subsection 4~~ SUBSECTIONS (3)(a)(II),
11 (3)(a)(III), AND (4)(b) of this section AND MAY BE BASED ON THE
12 GUIDELINES IN SUBSECTION (3)(a)(IV) OF THIS SECTION. The department
13 of ~~regulatory agencies~~ shall submit a report to the proponents of the
14 regulation and to the general assembly no later than October 15 of the
15 year following the year in which the proposed regulation was submitted.

16 (II) IN CONDUCTING A REVIEW IN ACCORDANCE WITH SUBSECTION
17 (2)(b) OF THIS SECTION, THE DEPARTMENT SHALL REBUTTABLY PRESUME
18 THAT CONSUMERS ARE SUFFICIENTLY PROTECTED BY MARKET
19 COMPETITION AND PRIVATE REMEDIES.

20 (III) THE DEPARTMENT MAY REBUT THE PRESUMPTION IN
21 SUBSECTION (3)(a)(II) OF THIS SECTION ONLY IF THE DEPARTMENT FINDS
22 CREDIBLE EVIDENCE OF A PRESENT, SIGNIFICANT, AND SUBSTANTIATED
23 HARM TO CONSUMERS THAT WARRANTS THE ENACTMENT OF GOVERNMENT
24 REGULATION TO PROTECT CONSUMERS. IF THE DEPARTMENT FINDS

1 CREDIBLE EVIDENCE OF SUCH A HARM, THE DEPARTMENT SHALL
2 RECOMMEND THE LEAST RESTRICTIVE OCCUPATIONAL REGULATION THAT
3 ADDRESSES THE HARM.

4 (IV) THE DEPARTMENT MAY USE THE FOLLOWING GUIDELINES TO
5 MAKE A RECOMMENDATION TO ADDRESS THE HARM. IF THE HARM ARISES
6 FROM:

7 (A) CONTRACTUAL DISPUTES, INCLUDING PRICING DISPUTES, THE
8 DEPARTMENT MAY RECOMMEND THE ENACTMENT OF A SPECIFIC CAUSE OF
9 ACTION IN SMALL CLAIMS COURT OR DISTRICT COURT TO REMEDY
10 CONSUMER HARM. THE CAUSE OF ACTION MAY PROVIDE FOR
11 REIMBURSEMENT OF THE ATTORNEY FEES OR COURT COSTS IF A
12 CONSUMER'S CLAIM IS SUCCESSFUL.

13 (B) FRAUD, THE DEPARTMENT MAY RECOMMEND STRENGTHENING
14 POWERS UNDER THE STATE'S DECEPTIVE TRADE PRACTICES IN ARTICLE 1
15 OF TITLE 6 OR REQUIRING DISCLOSURES THAT WILL REDUCE MISLEADING
16 ATTRIBUTES OF THE SPECIFIC GOOD OR SERVICE;

17 (C) UNCLEAN FACILITIES OR THE NEED TO PROMOTE GENERAL
18 HEALTH AND SAFETY, THE DEPARTMENT MAY RECOMMEND REQUIRING
19 THAT THE PROVIDER REGISTER WITH A STATE AGENCY AND BE SUBJECT TO
20 A PERIODIC INSPECTION OF THE PROVIDER'S FACILITIES;

21 (D) A PROVIDER'S FAILURE TO COMPLETE A CONTRACT FULLY OR
22 TO STANDARDS, THE DEPARTMENT MAY RECOMMEND REQUIRING THAT THE
23 PROVIDER REGISTER WITH A STATE AGENCY AND BE BONDED;

24 (E) THE NEED TO PROTECT A PERSON WHO IS NOT PARTY TO A
25 CONTRACT BETWEEN THE PROVIDER AND CONSUMER, THE DEPARTMENT
26 MAY RECOMMEND REQUIRING THAT THE PROVIDER REGISTER WITH A
27 STATE AGENCY AND HAVE INSURANCE;

1 (F) A PROVIDER NOT DOMICILED IN THE STATE, THE DEPARTMENT
2 MAY RECOMMEND THAT THE PROVIDER REGISTER THE PROVIDER'S
3 BUSINESS WITH THE SECRETARY OF STATE;

4 (G) A CONSUMER'S LIMITED KNOWLEDGE ABOUT THE GOOD OR
5 SERVICE RELATIVE TO THE SELLER'S GREATER KNOWLEDGE, THE
6 DEPARTMENT MAY RECOMMEND THE ENACTMENT OF A VOLUNTARY
7 PRIVATE OR GOVERNMENT CERTIFICATION;

8 (H) THE NEED TO ADDRESS A SYSTEMATIC INFORMATION
9 SHORTFALL IN WHICH A CONSUMER OF THE SERVICE IS UNABLE TO
10 DISTINGUISH BETWEEN THE QUALITY OF PROVIDERS, AN ABSENCE OF
11 INSTITUTIONS THAT PROVIDE GUIDANCE TO CONSUMERS, AND THE
12 CONSUMER'S INABILITY AND THE LACK OF GUIDANCE WILL ALLOW FOR A
13 PRESENT, SIGNIFICANT, AND SUBSTANTIATED HARM, THE DEPARTMENT
14 MAY RECOMMEND THE ENACTMENT OF A PROFESSIONAL OR
15 OCCUPATIONAL LICENSE; OR

16 (I) THE NEED TO ADDRESS A DIFFERENT TYPE OR MULTIPLE TYPES
17 OF HARM, THE DEPARTMENT MAY RECOMMEND ALTERNATIVE TYPES OF
18 REGULATIONS OR A COMBINATION OF TYPES OF REGULATIONS.

19 (8) FOR PURPOSES OF THIS SECTION, "LEAST RESTRICTIVE" MEANS,
20 FROM LEAST TO MOST RESTRICTIVE:

- 21 (a) MARKET COMPETITION;
- 22 (b) THIRD-PARTY OR CONSUMER-CREATED RATINGS AND REVIEWS;
- 23 (c) PRIVATE CERTIFICATION;
- 24 (d) VOLUNTARY BONDING OR INSURANCE;
- 25 (e) SPECIFIC PRIVATE CIVIL CAUSE OF ACTION TO REMEDY
26 CONSUMER HARM;
- 27 (f) DECEPTIVE TRADE PRACTICES IN ARTICLE 1 OF TITLE 6;

- 1 (g) MANDATORY DISCLOSURE OF ATTRIBUTES OF THE SPECIFIC
- 2 GOOD OR SERVICE;
- 3 (h) REGULATION OF THE PROCESS PROVIDING THE SPECIFIC GOOD
- 4 OR SERVICE OR THE FACILITY WHERE THE GOOD OR SERVICE IS PROVIDED;
- 5 (i) INSPECTION;
- 6 (j) BONDING;
- 7 (k) INSURANCE;
- 8 (l) REGISTRATION;
- 9 (m) GOVERNMENT CERTIFICATION;
- 10 (n) OCCUPATIONAL LICENSE; AND
- 11 (o) A COMBINATION OF TYPES OF REGULATIONS, MORE
- 12 RESTRICTIVE TYPES OF REGULATIONS, OR A PROHIBITION, AS DETERMINED
- 13 BY THE DEPARTMENT.

14 **SECTION 2.** In Colorado Revised Statutes, 24-34-104, **amend**
15 (5)(a); and **add** (5)(a.5) as follows:

16 **24-34-104. General assembly review of regulatory agencies**
17 **and functions for repeal, continuation, or reestablishment - legislative**
18 **declaration - repeal.** (5) (a) The department of regulatory agencies shall
19 analyze and evaluate the performance of each agency or function
20 scheduled for repeal under this section. In conducting the analysis and
21 evaluation, the department of regulatory agencies shall ~~take into~~
22 ~~consideration, but need not be limited to considering,~~ CONSIDER the
23 factors listed in ~~paragraph (b) of subsection (6)~~ SUBSECTION (6)(b) OF
24 THIS SECTION AND, IF THE FUNCTION IS THE REGULATION OF A PROFESSION
25 OR OCCUPATION, SUBSECTION (5)(a.5) of this section. The department of
26 regulatory agencies shall submit a report and supporting materials to the
27 office of legislative legal services no later than October 15 of the year

1 preceding the date established for repeal and shall make a copy of the
2 report available to each member of the general assembly.

3 (a.5) (I) IN CONDUCTING THE ANALYSIS AND EVALUATION OF THE
4 NEED FOR THE CONTINUED EXISTENCE OF AN OCCUPATIONAL REGULATION
5 IN ACCORDANCE WITH THIS SECTION, THE DEPARTMENT OF REGULATORY
6 AGENCIES SHALL REBUTTABLY PRESUME THAT CONSUMERS ARE
7 SUFFICIENTLY PROTECTED BY MARKET COMPETITION AND PRIVATE
8 REMEDIES.

9 (II) THE DEPARTMENT OF REGULATORY AGENCIES MAY REBUT THE
10 PRESUMPTION IN SUBSECTION (5)(a.5)(I) OF THIS SECTION ONLY IF THE
11 DEPARTMENT OF REGULATORY AGENCIES FINDS CREDIBLE EVIDENCE OF A
12 PRESENT, SIGNIFICANT, AND SUBSTANTIATED HARM TO CONSUMERS IN THE
13 STATE THAT WARRANTS THE CONTINUATION OF GOVERNMENT
14 REGULATION TO PROTECT CONSUMERS. IF THE DEPARTMENT OF
15 REGULATORY AGENCIES FINDS CREDIBLE EVIDENCE OF SUCH A HARM, THE
16 DEPARTMENT OF REGULATORY AGENCIES SHALL RECOMMEND THE
17 REGULATION THAT ADDRESSES THE HARM AND IS THE LEAST RESTRICTIVE,
18 AS DEFINED IN SECTION 24-34-104.1 (8).

19 (III) THE DEPARTMENT OF REGULATORY AGENCIES MAY USE THE
20 GUIDELINES IN SECTION 24-34-104.1 (3)(a)(IV) TO FORM ITS
21 RECOMMENDATION TO ADDRESS THE HARM.

22 **SECTION 3. Act subject to petition - effective date -**
23 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
24 the expiration of the ninety-day period after final adjournment of the
25 general assembly (August 2, 2019, if adjournment sine die is on May 3,
26 2019); except that, if a referendum petition is filed pursuant to section
27 (3) of article V of the state constitution against this act or an item, section,

1 or part of this act within such period, then the act, item, section, or part
2 will not take effect unless approved by the people at the general election
3 to be held in November 2020 and, in such case, will take effect on the
4 date of the official declaration of the vote thereon by the governor.

5 (2) This act applies to analyses done on or after the applicable
6 effective date of this act.