

Second Regular Session  
Seventy-first General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 18-0098.02 Jery Payne x2157

HOUSE BILL 18-1224

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HOUSE SPONSORSHIP

Willett,

SENATE SPONSORSHIP

(None),

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House Committees

State, Veterans, & Military Affairs

Senate Committees

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A BILL FOR AN ACT

101 CONCERNING THE PROCESS THAT IS DUE FOR THE IMPOSITION OF  
102 DISCIPLINE THAT AFFECTS A PERSON'S ABILITY TO PRACTICE AN  
103 OCCUPATION, AND, IN CONNECTION THEREWITH, REQUIRING  
104 THE PARTIES TO SUBMIT TO MEDIATION.

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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 state agencies to give a licensee:

! Notice of facts or conduct that may warrant revocation, suspension, annulment, limitation, or modification of a

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.

license;

! An opportunity to submit written data, views, and arguments with respect to the facts or conduct; and

! A reasonable opportunity to comply with all lawful requirements except for a willful violation or violation that is a danger to public health and safety.

When a matter pertains to a license concerning an occupation, **section 1** of the bill requires a state agency:

! To include a person who has authority to make prehearing decisions concerning disposition of the issue in settlement and mediation meetings and communications with the licensee; and

! To include a mediator at the expense of the licensee upon the licensee's request.

If an agency fails to comply with these requirements, section 1 authorizes the licensee to petition the administrative law judge or hearing officer to enjoin proceedings and order mediation. Administrative law judges are instructed to make themselves available for mediation if feasible. Procedures are set for mediation. If mediation fails, the agency may continue to seek discipline upon instituting a disciplinary hearing against a licensee, and the agency must notify the licensee of current law and the additional requirements in the bill.

**Section 3** of the bill clarifies that a court may overturn discipline for a failure to follow the requirements of current law, as modified by the bill in section 1.

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

2 **SECTION 1.** In Colorado Revised Statutes, 24-4-104, **amend**  
3 (3)(a) and (6) as follows:

4 **24-4-104. Licenses - issuance, suspension or revocation,**  
5 **renewal.** (3) (a) (I) ~~No~~ A revocation, suspension, annulment, limitation,  
6 or modification of a license by ~~any~~ AN agency ~~shall be~~ IS NOT lawful  
7 unless, before ~~institution of~~ INSTITUTING THE agency proceedings,  
8 ~~therefor~~, the agency has given the licensee notice in writing of objective  
9 facts or conduct established upon a full investigation that may warrant  
10 ~~such~~ THE action and afforded the licensee opportunity to submit written  
11 data, views, and arguments with respect to the facts or conduct and,

1       except in cases of deliberate and willful violation or of substantial danger  
2       to public health and safety, given the licensee a reasonable opportunity to  
3       comply with all lawful requirements.

4               (II) (A) THE GENERAL ASSEMBLY HEREBY FINDS THAT THE  
5       MEDIATION PROCESS GENERALLY SAVES THE STATE AND THE LICENSEE  
6       TIME AND MONEY. MEDIATION TAKES MUCH LESS TIME THAN MOVING A  
7       CASE THROUGH AGENCY PROCEEDINGS AND JUDICIAL REVIEW. THESE  
8       CASES TYPICALLY TAKE MONTHS OR YEARS TO RESOLVE, BUT MEDIATION  
9       TYPICALLY ACHIEVES A RESOLUTION IN A MATTER OF HOURS. TAKING LESS  
10      TIME MEANS EXPENDING LESS MONEY ON HOURLY FEES AND COSTS. THIS  
11      BENEFITS BOTH THE STATE AGENCY AND THE LICENSEE, AND BECAUSE THE  
12      RESULT IS ATTAINED BY THE PARTIES WORKING TOGETHER, COMPLIANCE  
13      WITH THE MEDIATED AGREEMENT IS USUALLY HIGH. THIS FURTHER  
14      REDUCES COSTS BECAUSE STATE AGENCIES DO NOT HAVE TO PAY AN  
15      ATTORNEY OR INVESTIGATORS TO FORCE COMPLIANCE.

16              (B) THE GENERAL ASSEMBLY HEREBY DECLARES THAT, IN ORDER  
17      TO SAVE TIME AND MONEY, THE POLICY OF COLORADO IS TO USE  
18      MEDIATION WHENEVER APPROPRIATE TO SETTLE DISPUTES BETWEEN  
19      AGENCIES AND LICENSEES.

20              (III) FOR THE PURPOSE OF AFFORDING THE LICENSEE THE  
21      OPPORTUNITY TO SUBMIT WRITTEN DATA, VIEWS, AND ARGUMENTS WITH  
22      RESPECT TO THE FACTS OR CONDUCT AT ISSUE, THE AGENCY SHALL, IF THE  
23      LICENSE CONCERNS AN OCCUPATION REGULATED BY THE DEPARTMENT OF  
24      REGULATORY AGENCIES:

25              (A) ASSIGN A PERSON WITH AUTHORITY TO MAKE PREHEARING  
26      DECISIONS CONCERNING DISPOSITION OF THE MATTER TO BE PRESENT  
27      DURING MEETINGS RELATED TO SETTLEMENT COMMUNICATIONS OR

1 MEDIATION COMMUNICATIONS AND TO BE INCLUDED IN ANY MATERIAL  
2 SETTLEMENT COMMUNICATIONS WITH THE LICENSEE OR THE LICENSEE'S  
3 REPRESENTATIVE OVER THE MATTER; AND

4 (B) UPON THE LICENSEE'S REQUEST, ALLOW A PRIVATE OR PUBLIC  
5 MEDIATOR CHOSEN BY THE LICENSEE TO BE PRESENT DURING MEETINGS  
6 RELATED TO MEDIATION AND TO BE INCLUDED IN ANY MATERIAL  
7 SETTLEMENT COMMUNICATIONS WITH THE LICENSEE OR THE LICENSEE'S  
8 REPRESENTATIVE OVER THE MATTER. IF THE MEDIATOR IS PRIVATELY  
9 RETAINED, THE LICENSEE MUST PAY THE MEDIATOR'S REASONABLE FEES.

10 (IV) TO THE EXTENT FEASIBLE, FOR THE PURPOSE OF CARRYING  
11 OUT SUBSECTION (3)(a)(III) OF THIS SECTION:

12 (A) ADMINISTRATIVE LAW JUDGES SHALL MAKE THEMSELVES  
13 AVAILABLE AS PUBLIC MEDIATORS WITHOUT COST TO THE LICENSEE;

14 (B) THE MEMBERS OF ANY GOVERNING BODY THAT REGULATES AN  
15 OCCUPATION SHALL MAKE THEMSELVES AVAILABLE AS A PERSON WITH  
16 AUTHORITY TO MAKE PREHEARING DECISIONS CONCERNING DISPOSITION  
17 OF THE MATTER.

18 (V) IF AN AGENCY FAILS TO COMPLY WITH SUBSECTION (3)(a)(I)  
19 OR (3)(a)(III) OF THIS SECTION BEFORE INSTITUTING PROCEEDINGS TO  
20 REVOKE, SUSPEND, ANNUL, LIMIT, OR MODIFY A LICENSE, A LICENSEE  
21 ADVERSELY AFFECTED BY THE FAILURE MAY PETITION THE  
22 ADMINISTRATIVE LAW JUDGE OR HEARING OFFICER TO SUSPEND THE  
23 PROCEEDINGS AND REQUIRE COMPLIANCE WITH SUBSECTION (3)(a)(I) OF  
24 THIS SECTION. THE LICENSEE MAY FILE THE PETITION WHEN AN  
25 ADMINISTRATIVE LAW JUDGE OR HEARING OFFICER IS ASSIGNED TO THE  
26 HEARING AND THE LICENSEE:

27 (A) RECEIVES THE NOTICE MADE IN ACCORDANCE WITH SECTION

1 24-4-105 (2); OR

2 (B) LEARNS THAT A HEARING IS BEING HELD TO REVOKE, SUSPEND,  
3 ANNUL, LIMIT, OR MODIFY THE LICENSE.

4 (VI) UPON FINDING THAT AN AGENCY FAILED TO COMPLY WITH  
5 SUBSECTION (3)(a)(I) OR (3)(a)(III) OF THIS SECTION, UNLESS THE AGENCY  
6 CAN DEMONSTRATE EXTRAORDINARY CIRCUMSTANCES, THE  
7 ADMINISTRATIVE LAW JUDGE OR THE HEARING OFFICER SHALL:

8 (A) SUSPEND THE HEARING INSTITUTED TO REVOKE, SUSPEND,  
9 ANNUL, LIMIT, OR MODIFY A LICENSE;

10 (B) ORDER THE AGENCY TO TEMPORARILY CEASE DISCIPLINE  
11 ACTIVITIES; AND

12 (C) ORDER THE AGENCY AND THE LICENSEE TO SUBMIT TO  
13 MEDIATION, TO BE COMPLETED IN GOOD FAITH AS SOON AS PRACTICABLE,  
14 UNDER THE ADMINISTRATIVE LAW JUDGE'S OR THE HEARING OFFICER'S  
15 SUPERVISION.

16 (VII) IF MEDIATION FAILS, THE AGENCY SHALL NOTIFY THE  
17 ADMINISTRATIVE LAW JUDGE OR THE HEARING OFFICER, AND THE  
18 ADMINISTRATIVE LAW JUDGE OR THE HEARING OFFICER SHALL LIFT THE  
19 SUSPENSION AND PROCEED WITH THE HEARING.

20 (VIII) WHEN DETERMINING THE PLACE TO HOLD THE MEDIATION,  
21 THE AGENCY SHALL GIVE DUE CONSIDERATION TO THE LOCATION OF THE  
22 LICENSEE'S OCCUPATION OR RESIDENCE, THE AVAILABILITY OF AN  
23 ADMINISTRATIVE LAW JUDGE TO MEDIATE, AND THE AVAILABILITY OF A  
24 MEMBER OF THE GOVERNING BODY THAT REGULATES AN OCCUPATION TO  
25 BE A PERSON WITH AUTHORITY TO MAKE PREHEARING DECISIONS  
26 CONCERNING DISPOSITION OF THE MATTER.

27 (IX) (A) THIS SUBSECTION (3)(a) DOES NOT APPLY TO THE

1 PROCESS OF SUMMARILY SUSPENDING A LICENSE IN ACCORDANCE WITH  
2 SUBSECTION (4) OF THIS SECTION; EXCEPT THAT THIS SUBSECTION (3)(a)  
3 DOES APPLY TO THE PROCEEDINGS REQUIRED TO BE INSTITUTED BY  
4 SUBSECTION (4) OF THIS SECTION AFTER THE LICENSE HAS BEEN  
5 SUMMARILY SUSPENDED UNLESS EXTRAORDINARY CIRCUMSTANCES ARE  
6 SHOWN BY THE AGENCY.

7 (B) SUBSECTIONS (3)(a)(II) TO (3)(a)(VIII) OF THIS SECTION APPLY  
8 ONLY TO AGENCY PROCEEDINGS THAT CONCERN A LICENSE TO PRACTICE  
9 AN OCCUPATION; EXCEPT THAT THESE SUBSECTIONS DO NOT APPLY TO A  
10 COMMERCIAL DRIVER'S LICENSE ISSUED UNDER PART 4 OF ARTICLE 2 OF  
11 TITLE 42.

12 (X) For purposes of this subsection (3), "full investigation" means  
13 a reasonable ascertainment of the underlying facts on which the agency  
14 action is based.

15 (6) ~~No previously issued license shall be revoked, suspended,~~  
16 ~~annulled, limited, or modified, except as provided in subsection (3) of this~~  
17 ~~section~~ EXCEPT AS PROVIDED IN SUBSECTION (4) OF THIS SECTION, AN  
18 AGENCY SHALL NOT REVOKE, SUSPEND, ANNUL, LIMIT, OR MODIFY A  
19 PREVIOUSLY ISSUED LICENSE until after HOLDING A hearing as provided in  
20 section 24-4-105.

21 **SECTION 2.** In Colorado Revised Statutes, 24-4-105, **amend**  
22 (2)(a) as follows:

23 **24-4-105. Hearings and determinations.** (2) (a) In any such  
24 proceeding in which an opportunity for agency adjudicatory hearing is  
25 required under the state constitution or by this or any other statute, the  
26 parties are entitled to a hearing and decision in conformity with this  
27 section. ~~Any~~ A person entitled to notice of a hearing shall be given timely

1 notice of the time, place, and nature ~~thereof~~ OF THE HEARING, the legal  
2 authority and jurisdiction under which ~~it~~ THE HEARING is to be held, ~~and~~  
3 the matters of fact and law asserted, AND THE RIGHTS OF A LICENSEE  
4 AFFORDED BY SECTION 24-4-104 (3)(a). Unless otherwise provided by  
5 law, ~~such~~ notice ~~shall be~~ IS VOID UNLESS IT IS served personally or by  
6 mailing by first-class mail to the last address furnished TO the agency by  
7 the person to be notified at least thirty days ~~prior to~~ BEFORE the hearing.  
8 In fixing the time and place for a hearing, due regard shall be had for the  
9 convenience and necessity of the parties and their representatives.

10 **SECTION 3.** In Colorado Revised Statutes, 24-4-106, **amend** (7)  
11 as follows:

12 **24-4-106. Judicial review.** (7) (a) If the court finds no error, it  
13 shall affirm the agency action.

14 (b) THE COURT SHALL HOLD UNLAWFUL AND SET ASIDE THE  
15 AGENCY ACTION AND SHALL RESTRAIN THE ENFORCEMENT OF THE ORDER  
16 OR RULE UNDER REVIEW, COMPEL ANY AGENCY ACTION TO BE TAKEN THAT  
17 HAS BEEN UNLAWFULLY WITHHELD OR UNDULY DELAYED, REMAND THE  
18 CASE FOR FURTHER PROCEEDINGS, AND AFFORD OTHER RELIEF AS MAY BE  
19 APPROPRIATE if ~~it~~ THE COURT finds that the agency action is:

- 20 (I) Arbitrary or capricious;
- 21 (II) A denial of statutory right;
- 22 (III) Contrary to constitutional right, power, privilege, or  
23 immunity;
- 24 (IV) In excess of statutory jurisdiction, authority, purposes, or  
25 limitations;
- 26 (V) Not in accord with the procedures or procedural limitations  
27 of this ~~article~~ ARTICLE 4 or as otherwise required by law;

1 (VI) An abuse or clearly unwarranted exercise of discretion;  
2 (VII) Based upon findings of fact that are clearly erroneous on the  
3 whole record;  
4 (VIII) Unsupported by substantial evidence when the record is  
5 considered as a whole; or  
6 (IX) Otherwise contrary to law, ~~then the court shall hold unlawful~~  
7 ~~and set aside the agency action and shall restrain the enforcement of the~~  
8 ~~order or rule under review, compel any agency action to be taken which~~  
9 ~~has been unlawfully withheld or unduly delayed, remand the case for~~  
10 ~~further proceedings, and afford such other relief as may be appropriate~~  
11 INCLUDING FAILING TO COMPLY WITH SECTION 24-4-104 (3)(a).

12 (c) In making the ~~foregoing determinations~~ FINDINGS SPECIFIED IN  
13 THIS SUBSECTION (7), the court shall review the whole record or ~~such~~  
14 ~~portions thereof as may be~~ OF THE RECORD cited by any party.

15 (d) In all cases under review, the court shall determine all  
16 questions of law and interpret the statutory and constitutional provisions  
17 involved and shall apply ~~such~~ THE interpretation to the facts duly found  
18 or established.

19 **SECTION 4. Applicability.** This act applies to hearings brought  
20 to discipline the holder of a license, registration, or certification; to  
21 actions brought to enforce the "State Administrative Procedure Act"; and  
22 to judicial review of the agency's actions under preexisting law, on or  
23 after the effective date of this act.

24 **SECTION 5. Safety clause.** The general assembly hereby finds,  
25 determines, and declares that this act is necessary for the immediate  
26 preservation of the public peace, health, and safety.