

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 18-0098.02 Jery Payne x2157

HOUSE BILL 18-1224

HOUSE SPONSORSHIP

Willett,

SENATE SPONSORSHIP

Gardner,

House Committees

State, Veterans, & Military Affairs
Finance
Appropriations

Senate Committees

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 AND MAKING AN**
105 **APPROPRIATION.**

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,

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.

HOUSE
Amended 2nd Reading
April 24, 2018

suspension, annulment, limitation, or modification of a 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.

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

2 **SECTION 1.** In Colorado Revised Statutes, 24-4-104, **amend** (6)

3 as follows:

4 **24-4-104. Licenses - issuance, suspension or revocation,**

5 **renewal.** (6) ~~No previously issued license shall be revoked, suspended,~~

6 ~~annulled, limited, or modified, except as provided in subsection (3) of this~~

7 ~~section~~ EXCEPT AS PROVIDED IN SUBSECTION (4) OF THIS SECTION, AN

8 AGENCY SHALL NOT REVOKE, SUSPEND, ANNUL, LIMIT, OR MODIFY A

9 PREVIOUSLY ISSUED LICENSE until after HOLDING A hearing as provided in

10 section 24-4-105.

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

3 **24-4-105. Hearings and determinations - repeal.** (4) (a) Any
4 agency conducting a hearing, any administrative law judge, and any
5 hearing officer shall have authority to: Administer oaths and affirmations;
6 sign and issue subpoenas; rule upon offers of proof and receive evidence;
7 dispose of motions relating to the discovery and production of relevant
8 documents and things for inspection, copying, or photographing; regulate
9 the course of the hearing, set the time and place for continued hearings,
10 and fix the time for the filing of briefs and other documents; direct the
11 parties to appear and confer to consider the simplification of the issues,
12 admissions of fact or of documents to avoid unnecessary proof, and
13 limitation of the number of expert witnesses; issue appropriate orders
14 ~~which~~ THAT shall control the subsequent course of the proceedings;
15 dispose of motions to dismiss for lack of agency jurisdiction over the
16 subject matter or parties or for any other ground; dispose of motions to
17 amend or to dismiss without prejudice applications and other pleadings;
18 dispose of motions to intervene, procedural requests, or similar matters;
19 reprimand or exclude from the hearing any person for any improper or
20 indecorous conduct in his OR HER presence; award attorney fees for
21 abuses of discovery procedures or as otherwise provided under the
22 Colorado rules of civil procedure; and take any other action authorized by
23 agency rule consistent with this article **4** or in accordance, to the extent
24 practicable, with the procedure in the district courts. All parties to the
25 proceeding shall also have the right to cross-examine witnesses who
26 testify at the proceeding. In the event more than one person engages in the
27 conduct of a hearing, such persons shall designate one of their number to

1 perform such of the above functions as can best be performed by one
2 person only, and thereafter such person only shall perform those functions
3 which THAT are assigned to him OR HER by the several persons
4 conducting such hearing.

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

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

21 (II) UPON PETITION OF THE AGENCY OR LICENSEE AFTER THE
22 LICENSEE HAS RECEIVED THE NOTICE OF HEARING UNDER SUBSECTION
23 (2)(a) OF THIS SECTION, THE HEARING OFFICER OR ADMINISTRATIVE LAW
24 JUDGE SHALL ORDER MEDIATION BETWEEN THE AGENCY AND THE
25 LICENSEE UNLESS THE LICENSE WAS SUMMARILY SUSPENDED IN
26 ACCORDANCE WITH SECTION 24-4-104 (4). WHEN MEDIATION IS ORDERED,
27 THE AGENCY SHALL:

1 (A) ASSIGN A PERSON WITH AUTHORITY TO MAKE PREHEARING
2 DECISIONS CONCERNING DISPOSITION OF THE MATTER TO BE PRESENT
3 DURING MEETINGS RELATED TO SETTLEMENT COMMUNICATIONS OR
4 MEDIATION COMMUNICATIONS AND TO BE INCLUDED IN ANY MATERIAL
5 SETTLEMENT COMMUNICATIONS WITH THE LICENSEE OR THE LICENSEE'S
6 REPRESENTATIVE OVER THE MATTER; AND

7 (B) UPON THE LICENSEE'S REQUEST, ALLOW A PRIVATE OR PUBLIC
8 MEDIATOR CHOSEN BY THE LICENSEE TO BE PRESENT DURING MEETINGS
9 RELATED TO MEDIATION AND TO BE INCLUDED IN ANY MATERIAL
10 SETTLEMENT COMMUNICATIONS WITH THE LICENSEE OR THE LICENSEE'S
11 REPRESENTATIVE OVER THE MATTER. IF THE MEDIATOR IS PRIVATELY
12 RETAINED, THE LICENSEE MUST PAY THE MEDIATOR'S REASONABLE FEES,
13 AND THE AGENCY NEED NOT PAY THE PRIVATELY RETAINED MEDIATOR'S
14 REASONABLE OR UNREASONABLE FEES.

15 (III) TO THE EXTENT FEASIBLE, FOR THE PURPOSE OF CARRYING
16 OUT THIS SUBSECTION (4):

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

19 (B) THE MEMBERS OF ANY GOVERNING BODY THAT REGULATES
20 THE LICENSEE SHALL MAKE A MEMBER OR OTHER PERSON AVAILABLE FOR
21 MEDIATION AS A PERSON WITH AUTHORITY TO MAKE PREHEARING
22 DECISIONS CONCERNING DISPOSITION OF THE MATTER.

23 (IV) IF AN AGENCY FAILS TO COMPLY WITH AN ORDER OF
24 MEDIATION, A LICENSEE ADVERSELY AFFECTED BY THE FAILURE MAY
25 PETITION THE ADMINISTRATIVE LAW JUDGE OR HEARING OFFICER TO
26 SUSPEND THE PROCEEDINGS AND REQUIRE COMPLIANCE WITH THE ORDER,
27 TO BE COMPLETED IN GOOD FAITH AS SOON AS PRACTICABLE, UNDER THE

1 ADMINISTRATIVE LAW JUDGE'S OR THE HEARING OFFICER'S SUPERVISION.

2 (V) IF MEDIATION FAILS, THE AGENCY SHALL NOTIFY THE
3 ADMINISTRATIVE LAW JUDGE OR THE HEARING OFFICER, AND THE
4 ADMINISTRATIVE LAW JUDGE OR THE HEARING OFFICER SHALL LIFT THE
5 SUSPENSION AND PROCEED WITH THE HEARING.

6 (VI) WHEN DETERMINING THE PLACE TO HOLD THE MEDIATION,
7 THE AGENCY SHALL GIVE DUE CONSIDERATION TO THE LOCATION OF THE
8 LICENSEE'S OCCUPATION OR RESIDENCE, THE AVAILABILITY OF AN
9 ADMINISTRATIVE LAW JUDGE TO MEDIATE, AND THE AVAILABILITY OF A
10 MEMBER OF THE GOVERNING BODY THAT REGULATES THE LICENSEE TO BE
11 A PERSON WITH AUTHORITY TO MAKE PREHEARING DECISIONS
12 CONCERNING DISPOSITION OF THE MATTER.

13 (VII) THIS SUBSECTION (4)(b) APPLIES ONLY TO AGENCY
14 PROCEEDINGS THAT CONCERN AN INDIVIDUAL WHO IS LICENSED TO
15 PRACTICE AN OCCUPATION OR PROFESSION; EXCEPT THAT THIS SUBSECTION
16 (4)(b) DOES NOT APPLY TO A COMMERCIAL DRIVER'S LICENSE ISSUED
17 UNDER PART 4 OF ARTICLE 2 OF TITLE 42.

18 (VIII) THIS SUBSECTION (4)(b) DOES NOT APPLY IF A LICENSE HAS
19 BEEN SUMMARILY SUSPENDED BECAUSE THE AGENCY FINDS, IN
20 ACCORDANCE WITH SECTION 24-4-104 (4), THAT THE LICENSEE IS GUILTY
21 OF A DELIBERATE AND WILLFUL VIOLATION OR THAT THE PUBLIC HEALTH,
22 SAFETY, OR WELFARE IMPERATIVELY REQUIRES EMERGENCY ACTION.

23 (IX) BY JANUARY 1, 2022, THE OFFICE OF ADMINISTRATIVE
24 COURTS AND THE DIVISION OF PROFESSIONS AND OCCUPATIONS IN THE
25 DEPARTMENT OF REGULATORY AGENCIES SHALL ISSUE A JOINT REPORT TO
26 THE JUDICIARY COMMITTEE AND THE STATE, VETERANS, AND MILITARY
27 AFFAIRS COMMITTEE OF THE HOUSE OF REPRESENTATIVES AND THE

1 JUDICIARY COMMITTEE AND THE STATE, VETERANS, AND MILITARY
2 AFFAIRS COMMITTEE OF THE SENATE OR THEIR SUCCESSOR COMMITTEES.

3 THIS SUBSECTION (4)(b)(VIII) IS REPEALED, EFFECTIVE JULY 1, 2022. THE
4 REPORT MUST CONTAIN THE FOLLOWING:

5 (A) THE NUMBER OF HEARINGS AFFECTING LICENSES HELD
6 BETWEEN JULY 1, 2016, AND JULY 1, 2018;

7 (B) THE NUMBER OF HEARINGS AFFECTING LICENSES HELD
8 BETWEEN JULY 1, 2019, AND JULY 1, 2021;

9 (C) THE NUMBER OF MEDIATIONS HELD BETWEEN JULY 1, 2016,
10 AND JULY 1, 2018;

11 (D) THE NUMBER OF MEDIATIONS HELD BETWEEN JULY 1, 2019,
12 AND JULY 1, 2021;

13 (E) THE NUMBER OF PROCEEDINGS IN WHICH THE LICENSEE AND
14 AGENCY AGREED TO SETTLE THE PROCEEDINGS BETWEEN JULY 1, 2016,
15 AND JULY 1, 2018; AND

16 (F) THE NUMBER OF PROCEEDINGS IN WHICH THE LICENSEE AND
17 AGENCY AGREED TO SETTLE THE PROCEEDINGS BETWEEN JULY 1, 2019,
18 AND JULY 1, 2021.

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

21 **24-4-106. Judicial review.** (7) (a) If the court finds no error, it
22 shall affirm the agency action.

23 (b) THE COURT SHALL HOLD UNLAWFUL AND SET ASIDE THE
24 AGENCY ACTION AND SHALL RESTRAIN THE ENFORCEMENT OF THE ORDER
25 OR RULE UNDER REVIEW, COMPEL ANY AGENCY ACTION TO BE TAKEN THAT
26 HAS BEEN UNLAWFULLY WITHHELD OR UNDULY DELAYED, REMAND THE
27 CASE FOR FURTHER PROCEEDINGS, AND AFFORD OTHER RELIEF AS MAY BE

1 APPROPRIATE if ~~it~~ THE COURT finds that the agency action is:

2 (I) Arbitrary or capricious;

3 (II) A denial of statutory right;

4 (III) Contrary to constitutional right, power, privilege, or

5 immunity;

6 (IV) In excess of statutory jurisdiction, authority, purposes, or

7 limitations;

8 (V) Not in accord with the procedures or procedural limitations

9 of this article 4 or as otherwise required by law;

10 (VI) An abuse or clearly unwarranted exercise of discretion;

11 (VII) Based upon findings of fact that are clearly erroneous on the

12 whole record;

13 (VIII) Unsupported by substantial evidence when the record is

14 considered as a whole; or

15 (IX) Otherwise contrary to law, ~~then the court shall hold unlawful~~

16 ~~and set aside the agency action and shall restrain the enforcement of the~~

17 ~~order or rule under review, compel any agency action to be taken which~~

18 ~~has been unlawfully withheld or unduly delayed, remand the case for~~

19 ~~further proceedings, and afford such other relief as may be appropriate~~

20 INCLUDING FAILING TO COMPLY WITH SECTION 24-4-104 (3)(a) OR

21 24-4-105 (4)(b).

22 (c) In making the ~~foregoing determinations~~ FINDINGS SPECIFIED IN

23 THIS SUBSECTION (7), the court shall review the whole record or ~~such~~

24 ~~portions thereof as may be~~ OF THE RECORD cited by any party.

25 (d) In all cases under review, the court shall determine all

26 questions of law and interpret the statutory and constitutional provisions

27 involved and shall apply ~~such~~ THE interpretation to the facts duly found

1 or established.

2 **SECTION 4. Appropriation.** (1) For the 2018-19 state fiscal
3 year, \$125,356 is appropriated to the department of regulatory agencies.
4 This appropriation is from the division of professions and occupations
5 cash fund created in section 24-34-105 (2)(b)(I), C.R.S. To implement
6 this act, the department may use this appropriation as follows:

7 (a) \$24,393 for use by the division of professions and occupations
8 for personal services, which amount is based on an assumption that the
9 division will require an additional 0.3 FTE;

10 (b) \$16,471 for use by the division of professions and occupations
11 for operating expenses;

12 (c) \$19,917 for the purchase of administrative law judge services;
13 and

14 (d) \$64,575 for the purchase of legal services.

15 (2) For the 2018-19 state fiscal year, \$19,917 is appropriated to
16 the department of personnel for use by the office of administrative courts.
17 This appropriation is from reappropriated funds received from the
18 department of regulatory agencies under subsection (1)(c) of this section
19 and is based on an assumption that the office will require an additional
20 0.2 FTE. To implement this act, the office may use this appropriation to
21 provide administrative law judge services for the department of regulatory
22 agencies.

23 (3) For the 2018-19 state fiscal year, \$64,575 is appropriated to
24 the department of law. This appropriation is from reappropriated funds
25 received from the department of regulatory agencies under subsection
26 (1)(d) of this section and is based on an assumption that the department
27 of law will require an additional 0.3 FTE. To implement this act, the

1 department of law may use this appropriation to provide legal services for
2 the department of regulatory agencies.

3 **SECTION 5. Applicability.** This act applies to hearings brought
4 to discipline the holder of a license, registration, or certification; to
5 actions brought to enforce the "State Administrative Procedure Act"; and
6 to judicial review of an agency's actions under preexisting law, on or after
7 the effective date of this act.

8 **SECTION 6. Safety clause.** The general assembly hereby finds,
9 determines, and declares that this act is necessary for the immediate
10 preservation of the public peace, health, and safety.