A BILL FOR AN ACT

CONCERNING THE DEPARTMENT OF REGULATORY AGENCIES' DETERMINATION REGARDING THE REGULATION OF PROFESSIONS 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
bill further requires the department to recommend only the least restrictive regulation necessary to address the harm and sets guidelines for recommended regulation.

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

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

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

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

(III) THE DEPARTMENT MAY REBUT THE PRESUMPTION IN SUBSECTION (3)(a)(II) OF THIS SECTION ONLY IF THE DEPARTMENT FINDS CREDIBLE EVIDENCE OF A PRESENT, SIGNIFICANT, AND SUBSTANTIATED HARM TO CONSUMERS THAT WARRANTS THE ENACTMENT OF GOVERNMENT REGULATION TO PROTECT CONSUMERS. IF THE DEPARTMENT FINDS
CREDIBLE EVIDENCE OF SUCH A HARM, THE DEPARTMENT SHALL RECOMMEND THE LEAST RESTRICTIVE OCCUPATIONAL REGULATION THAT ADDRESSES THE HARM.

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

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

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

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

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

(E) THE NEED TO PROTECT A PERSON WHO IS NOT PARTY TO A CONTRACT BETWEEN THE PROVIDER AND CONSUMER, THE DEPARTMENT MAY RECOMMEND REQUIRING THAT THE PROVIDER REGISTER WITH A STATE AGENCY AND HAVE INSURANCE;
(F) A PROVIDER NOT DOMICILED IN THE STATE, THE DEPARTMENT MAY RECOMMEND THAT THE PROVIDER REGISTER THE PROVIDER'S BUSINESS WITH THE SECRETARY OF STATE;

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

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

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

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

(a) MARKET COMPETITION;

(b) THIRD-PARTY OR CONSUMER-CREATED RATINGS AND REVIEWS;

(c) PRIVATE CERTIFICATION;

(d) VOLUNTARY BONDING OR INSURANCE;

(e) SPECIFIC PRIVATE CIVIL CAUSE OF ACTION TO REMEDY CONSUMER HARM;

(f) DECEPTIVE TRADE PRACTICES IN ARTICLE 1 OF TITLE 6;
MANDATORY DISCLOSURE OF ATTRIBUTES OF THE SPECIFIC
GOOD OR SERVICE;

REGULATION OF THE PROCESS PROVIDING THE SPECIFIC GOOD
OR SERVICE OR THE FACILITY WHERE THE GOOD OR SERVICE IS PROVIDED;

INSPECTION;

BONDING;

INSURANCE;

REGISTRATION;

GOVERNMENT CERTIFICATION;

OCCUPATIONAL LICENSE; AND

A COMBINATION OF TYPES OF REGULATIONS, MORE
RESTRICTIVE TYPES OF REGULATIONS, OR A PROHIBITION, AS DETERMINED
BY THE DEPARTMENT.

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

24-34-104. General assembly review of regulatory agencies
and functions for repeal, continuation, or reestablishment - legislative
declaration - repeal. (5) (a) The department of regulatory agencies shall
analyze and evaluate the performance of each agency or function
scheduled for repeal under this section. In conducting the analysis and
evaluation, the department of regulatory agencies shall take into
consideration, but need not be limited to considering, the factors listed in paragraph (b) of subsection (6)(b) of
this section and, if the function is the regulation of a profession
or occupation, subsection (5)(a.5) of this section. The department of
regulatory agencies shall submit a report and supporting materials to the
office of legislative legal services no later than October 15 of the year
preceding the date established for repeal and shall make a copy of the report available to each member of the general assembly.

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


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

SECTION 3. Act subject to petition - effective date - applicability. (1) This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 2, 2019, if adjournment sine die is on May 3, 2019); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section,
or part of this act within such period, then the act, item, section, or part
will not take effect unless approved by the people at the general election
to be held in November 2020 and, in such case, will take effect on the
date of the official declaration of the vote thereon by the governor.

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