A BILL FOR AN ACT

CONCERNING THE REGULATION OF GENETIC COUNSELORS.

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.)

The bill enacts the "Genetic Counselor Licensure Act". On and after June 1, 2021, a person cannot practice genetic counseling without being licensed by the director of the division of professions and occupations in the department of regulatory agencies. To be licensed, a person must have been certified by a national body; except that the director may issue a provisional license to a candidate for certification pursuant to requirements established by rule.

The bill gives title protection to genetic counselors and standard
licensing, rule-making, and disciplinary powers to the director. Genetic counselors must have insurance. The bill repeals the act on September 1, 2027, subject to sunset review. Genetic counselors are subject to the mandatory disclosures of the "Michael Skolnik Medical Transparency Act of 2010".

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

SECTION 1. In Colorado Revised Statutes, add article 228 to title 12 as follows:

ARTICLE 228
Genetic Counselor Licensure Act

12-228-101. Short title. The short title of this article 228 is the "Genetic Counselor Licensure Act".

12-228-102. Legislative declaration. (1) The General Assembly hereby:

(a) Finds that there is a public need for reliable and affordable genetic counseling services provided by readily identifiable and competent practitioners;

(b) Determines that a licensure requirement is necessary to meet this public need, including a defined scope of practice and title protection for licensed genetic counselors to assure consumers the right to choose those from whom they receive information and advice; and

(c) Declares that:

(I) Its intent in enacting this article 228 is to establish minimum standards of education, experience, and examination for professional genetic counselors so that the public can readily identify those who meet these minimum standards; and

(II) Enactment of this article 228 will protect the health
OF THE PUBLIC BY BROADENING AFFORDABLE ACCESS TO APPROPRIATE AND RELIABLE GENETIC COUNSELING.

12-228-103. Applicability of common provisions. Articles 1, 20, and 30 of this Title 12 apply, according to their terms, to this Article 228.

12-228-104. Definitions. As used in this Article 228, unless the context otherwise requires:

(1) "ABGC" means the American Board of Genetic Counseling, Inc., or an organization that the director recognizes as being equivalent to, or a predecessor or successor of, the ABGC.

(2) "ABMGG" means the American Board of Medical Genetics and Genomics or an organization that the director recognizes as being equivalent to, or a predecessor or successor of, the ABMGG.

(3) "ACGC" means the Accreditation Council for Genetic Counseling or an organization that the director recognizes as being equivalent to, or a predecessor or successor of, the ACGC.

(4) "Active candidate status" means that an individual has submitted to the ABGC all documentation required to take and has been approved by ABGC to take the ABGC certification examination in a specific time frame.

(5) "Genetic counseling" includes the following activities:

(a) Obtaining and interpreting individual, family, medical, and development histories;

(b) Determining the mode of inheritance and risk of transmission of genetic conditions;
(c) Discussing the inheritance, features, natural history, and means of diagnosis of genetic conditions;

(d) Identifying, coordinating, ordering, and explaining genetic laboratory tests and other diagnostic studies;

(e) Assessing psychosocial factors and recognizing social, educational, and cultural issues;

(f) Evaluating the client's or the client's family's responses to the genetic condition or risk of recurrence of a genetic condition and providing client-centered counseling and anticipatory guidance;

(g) Communicating genetic information to clients;

(h) Facilitating informed decision-making about testing and management alternatives;

(i) Identifying and utilizing community resources that provide medical, educational, financial, and psychosocial support and advocacy; and

(j) Providing accurate written documentation of medical, genetic, and counseling information for clients, their families, and health care professionals.

(6) "Genetic counselor" or "licensee" means an individual who is licensed pursuant to this Article 228 to practice genetic counseling.

(7) "NSGC" means the National Society of Genetic Counselors or an organization that the director recognizes as being equivalent to, or a predecessor or successor of, the NSGC.

12-228-105. Use of titles restricted. On and after June 1, 2021, only a person licensed as a genetic counselor under this Article
228 MAY USE THE TITLE OR ABBREVIATION "GENETIC COUNSELOR", "LICENSED GENETIC COUNSELOR", "L.G.C.", "GENE COUNSELOR", "GENETIC CONSULTANT", "GENETIC ASSOCIATE", OR ANY COMBINATION OF THESE TERMS OR ABBREVIATIONS OR ANY OTHER GENERALLY ACCEPTED TERMS, LETTERS, OR FIGURES THAT INDICATE THAT THE PERSON IS A GENETIC COUNSELOR.

12-228-106. License required. On and after June 1, 2021, except as otherwise provided in this article 228, a person shall not engage in the practice of genetic counseling or represent that the person is able to practice genetic counseling in this state without possessing a valid license issued by the director in accordance with this article 228 and rules adopted pursuant to this article 228.


(1) Educational and experiential requirements. (a) Every applicant for a license as a genetic counselor must:

(I) Except as specified in subsection (1)(b) of this section, provide satisfactory evidence to the director of certification as a genetic counselor by the ABGC or ABMGG; and

(II) Submit an application as specified in subsection (2) of this section.

(b) The director shall establish, by rule, requirements for issuing a provisional license to practice genetic counseling to a candidate for licensure who has been granted active candidate status by the ABGC. The rules must address at least the following:
(I) The terms of, renewal of, and fees for provisional licenses;

(II) Whether a genetic counselor working pursuant to a provisional license must be under the general supervision of a licensed health care provider and, if so, by whom and under what conditions; and

(III) The automatic expiration of a provisional license upon a second failure to pass a certification examination.

(2) Application. (a) If an applicant has fulfilled the requirements of subsection (1) of this section, the applicant may apply for licensure upon payment of a license application fee in an amount determined by the director.

(b) The application must be in the form and manner designated by the director.

(3) Licensure. If an applicant has fulfilled the requirements of subsections (1) and (2) of this section, the director shall issue a license or, as appropriate, a provisional license to the applicant; except that the director may deny a license if the applicant has committed any act that would be grounds for disciplinary action pursuant to section 12-228-109.

(4) License renewal - continuing education. (a) The genetic counselor must submit a renewal application in the form and manner designated by the director and must pay a renewal fee in an amount determined by the director.

(b) All licenses issued pursuant to this article 228 are subject to the renewal, expiration, reinstatement, and delinquency fee provisions specified in section 12-20-202 (1) and
(2) If a genetic counselor fails to renew the genetic counselor's license pursuant to the schedule established by the director, the license expires. A person whose license expires is subject to the penalties provided in this article 228 or section 12-20-202 (1).

(c) Applicants for license renewal must submit proof of having completed thirty hours of NSGC-approved continuing education within the previous licensing period.

(5) Fees. All fees collected pursuant to this article 228 shall be determined, collected, and appropriated in the manner set forth in section 12-20-105.

12-228-108. Scope of article - exclusions. (1) This article 228 does not prevent or restrict the practice, services, or activities of:

(a) A person licensed or otherwise regulated in this state by any other law from engaging in the person's profession or occupation as defined in the law pursuant to which the person is licensed or otherwise regulated, specifically including persons licensed pursuant to the "Colorado Medical Practice Act", article 240 of this title 12, and acting as necessary, in the person's judgment, to engage in the practice of medicine as defined in section 12-240-107 (1);

(b) A person pursuing a course of study leading to a degree in genetic counseling or an equivalent degree, as authorized by the director, from an ACGC-accredited school or program, if:

(I) The activities and services constitute a part of a supervised course of study;
(II) The person is designated by a title that clearly indicates the person's status as a student;

(III) The period of supervised practice does not exceed two years, unless the director provides written approval; and

(IV) The person is supervised by a genetic counselor or a physician licensed pursuant to Article 240 of this Title 12;

(c) A person who is employed by the United States or a state government or any of its bureaus, divisions, or agencies while in the discharge of the person's official duties; or

(d) An individual from another state or country who is certified by the ABGC or ABMGG and is not a licensed genetic counselor in this state when engaging in genetic counseling on behalf of a temporarily absent genetic counselor, if the unlicensed individual is acting in accordance with rules established by the director. The unlicensed practice must not be of more than four weeks' duration, and a person shall not undertake unlicensed practice more than once in any twelve-month period.

(2) (a) Nothing in this Article 228 authorizes a genetic counselor to engage in the practice of medicine, as defined in Section 12-240-107 (1), or any other form of healing or counseling except as authorized by this Article 228.

(b) If, in the course of providing genetic counseling to a client, a genetic counselor finds any indication of a disease or condition that requires medical assessment or treatment, the genetic counselor shall refer the client to a physician licensed to practice medicine pursuant to Article 240 of this Title 12.
- cease-and-desist orders - definitions. (1) The director may take disciplinary or other action against a person as authorized by section 12-20-404 if the director finds that the person has represented that the person is a genetic counselor after the expiration, suspension, or revocation of the person's license.

(2) The director may take disciplinary or other action authorized by section 12-20-404 against a licensee upon proof that the licensee:

(a) has engaged in a sexual act with an individual receiving services while a therapeutic relationship existed or within six months immediately following termination of the therapeutic relationship. For the purposes of this subsection (2)(a):

(I) "sexual act" means sexual contact, sexual intrusion, or sexual penetration, as defined in section 18-3-401.

(II) "therapeutic relationship" means the period beginning with the initial evaluation and ending upon the written termination of treatment.

(b) has falsified information in an application or has attempted to obtain or has obtained a license by fraud, deception, or misrepresentation;

(c) is an excessive or habitual user or abuser of alcohol or habit-forming drugs or is a habitual user of a controlled substance, as defined in section 18-18-102 (5), or other drugs having similar effects;

(d) has failed to:
(I) Notify the Director of a physical illness, physical condition, substance use disorder, as defined in Section 27-82-102, or behavioral or mental health disorder that impairs the licensee's ability to provide genetic counseling with reasonable skill and safety or that might endanger the health or safety of individuals receiving the counseling;

(II) Act within the limitations created by a physical illness, physical condition, or behavioral or mental health disorder that renders the person unable to practice genetic counseling with reasonable skill and safety or that might endanger the health or safety of persons under the licensee's care; or

(III) Comply with the limitations agreed to under a confidential agreement entered into pursuant to sections 12-30-108 and 12-228-111;

(e) Has violated, or aided or abetted or knowingly permitted any person to violate, this Article 228, an applicable provision of Article 20 or 30 of this Title 12, a rule adopted pursuant to this Article 228, or a lawful order of the Director;

(f) Has had a license, certification, or registration suspended or revoked in another jurisdiction for actions that would violate this Article 228 or would constitute grounds for discipline under this section if committed in Colorado;

(g) Has been convicted of or pled guilty or no contest to a felony. A certified copy of the judgment of a court of competent jurisdiction of the conviction or plea is conclusive evidence of the conviction or plea. In considering the

(h) HAS FRAUDULENTLY OBTAINED, FURNISHED, OR SOLD ANY GENETIC COUNSELING DIPLOMA, CERTIFICATE, LICENSE, OR RENEWAL OF A LICENSE OR OTHER PROFESSIONAL CREDENTIAL;

(i) HAS FAILED TO NOTIFY THE DIRECTOR OF THE SUSPENSION OR REVOCATION OF THE PERSON'S PAST OR CURRENTLY HELD LICENSE, CERTIFICATE, OR REGISTRATION REQUIRED TO PRACTICE GENETIC COUNSELING IN THIS OR ANY OTHER JURISDICTION;

(j) HAS REFUSED TO SUBMIT TO A MENTAL OR PHYSICAL EXAMINATION IF ORDERED BY THE DIRECTOR PURSUANT TO SECTION 12-228-110;

(k) HAS ENGAGED IN ANY OF THE FOLLOWING ACTIVITIES AND PRACTICES:

(I) ORDERING, WITHOUT CLINICAL JUSTIFICATION, DEMONSTRABLY UNNECESSARY LABORATORY TESTS OR STUDIES; OR

(II) AN ACT OR OMISSION THAT IS CONTRARY TO GENERALLY ACCEPTED STANDARDS OF GENETIC COUNSELING; OR

(l) HAS FAILED TO PROVIDE ADEQUATE OR PROPER SUPERVISION OF A PROVISIONALLY LICENSED GENETIC COUNSELOR OR ANY UNLICENSED PERSON IN THE PRACTICE OF GENETIC COUNSELING, IF REQUIRED BY RULE PURSUANT TO SECTION 12-228-107 (1)(b).

(3) THE DIRECTOR NEED NOT FIND THAT THE ACTIONS THAT ARE GROUNDS FOR DISCIPLINE PURSUANT TO SUBSECTION (2) OF THIS SECTION WERE WILLFUL BUT MAY CONSIDER WHETHER THE ACTIONS WERE WILLFUL WHEN DETERMINING THE NATURE OF DISCIPLINARY SANCTIONS TO BE IMPOSED.
(4) (a) The director may commence a proceeding to discipline a licensee if the director has reasonable grounds to believe that the licensee has committed an act enumerated in this section.

(b) In any proceeding pursuant to this section, the director may accept as evidence of grounds for disciplinary action against a licensee any disciplinary action taken against the licensee in another jurisdiction if the violation that prompted the disciplinary action in the other jurisdiction would be grounds for disciplinary action pursuant to this article 228.

(5) Actions under this section are governed by section 12-20-403. Disciplinary proceedings shall be conducted in accordance with article 4 of title 24, and the hearing and opportunity for review shall be conducted pursuant to that article by the director or by an administrative law judge, at the director's discretion. The director has the authority to exercise all powers and duties conferred by this article 228 during the disciplinary proceedings.

(6) The director may:

(a) Issue a letter of admonition under the circumstances specified in and in accordance with section 12-20-404 (4);

(b) Send a licensee a confidential letter of concern under the circumstances specified in section 12-20-404 (5); and

(c) Issue cease-and-desist orders under the circumstances and in accordance with the procedures specified in section 12-20-405.

(7) A final action of the director is subject to judicial
REVIEW IN ACCORDANCE WITH SECTION 12-20-408.

12-228-110. Mental and physical examination of licensees.

(1) If the director has reasonable cause to believe that a licensee is unable to practice with reasonable skill and safety, the director may order the licensee to take a mental or physical examination administered by a health care provider designated by the director. Except where due to circumstances beyond the licensee's control, if the licensee fails or refuses to undergo a mental or physical examination, the director may suspend the genetic counselor's license until the director has made a determination of the licensee's fitness to practice. The director shall proceed with an order for examination and shall make a determination in a timely manner.

(2) In an order requiring a licensee to undergo a mental or physical examination, the director shall state the basis of the director's reasonable cause to believe that the licensee is unable to practice with reasonable skill and safety. For purposes of a disciplinary proceeding authorized pursuant to this article 228, the licensee is deemed to have waived all objections to the admissibility of the examining health care provider's testimony or examination reports on the grounds that they are privileged communications.

(3) The licensee may submit to the director testimony or examination reports from a health care professional chosen by the licensee and pertaining to any condition that the director has alleged may preclude the licensee from practicing with reasonable skill and safety. The director may consider the
TESTIMONY AND REPORTS SUBMITTED BY THE LICENSEE IN CONJUNCTION WITH, BUT NOT IN LIEU OF, TESTIMONY AND EXAMINATION REPORTS OF THE HEALTH CARE PROVIDER DESIGNATED BY THE DIRECTOR.

(4) THE RESULTS OF A MENTAL OR PHYSICAL EXAMINATION ORDERED BY THE DIRECTOR SHALL NOT BE USED AS EVIDENCE IN ANY PROCEEDING OTHER THAN ONE BEFORE THE DIRECTOR, ARE NOT A PUBLIC RECORD, AND SHALL NOT BE MADE AVAILABLE TO THE PUBLIC.

12-228-111. Confidential agreement to limit practice.

(1) EXCEPT AS SPECIFIED IN SUBSECTION (2) OF THIS SECTION, SECTION 12-30-108 CONCERNING CONFIDENTIAL AGREEMENTS TO LIMIT PRACTICE APPLIES TO THIS ARTICLE 228.

(2) THIS SECTION AND SECTION 12-30-108 DO NOT APPLY TO A LICENSEE SUBJECT TO DISCIPLINE FOR PROHIBITED ACTIVITIES AS DESCRIBED IN SECTION 12-228-109 (2)(c).

12-228-112. Professional liability insurance required - rules.

(1) A PERSON SHALL NOT PRACTICE GENETIC COUNSELING UNLESS THE PERSON PURCHASES AND MAINTAINS, OR IS COVERED BY, PROFESSIONAL LIABILITY INSURANCE IN AN AMOUNT DETERMINED BY THE DIRECTOR BY RULE THAT COVERS ALL ACTS WITHIN THE SCOPE OF PRACTICE OF THE GENETIC COUNSELOR.

(2) THIS SECTION DOES NOT APPLY TO A GENETIC COUNSELOR WHO IS A PUBLIC EMPLOYEE ACTING WITHIN THE COURSE AND SCOPE OF THE PUBLIC EMPLOYEE'S DUTIES AND WHO IS GRANTED IMMUNITY PURSUANT TO THE "COLORADO GOVERNMENTAL IMMUNITY ACT", ARTICLE 10 OF TITLE 24.

12-228-113. Unauthorized practice. A PERSON WHO PRACTICES OR OFFERS OR ATTEMPTS TO PRACTICE GENETIC COUNSELING WITHOUT AN
ACTIVE LICENSE ISSUED PURSUANT TO THIS ARTICLE 228 IS SUBJECT TO PENALTIES PURSUANT TO SECTION 12-20-407 (1)(b).

12-228-114. Rule-making authority. The director shall promulgate rules pursuant to section 12-20-204.

12-228-115. Repeal of article - review of functions. This article 228 is repealed, effective September 1, 2027. Before the repeal, the director's powers, duties, and functions pursuant to this article 228 are scheduled for review in accordance with section 24-34-104.

SECTION 2. In Colorado Revised Statutes, 12-20-404, add (1)(c)(II)(D.5) as follows:

12-20-404. Disciplinary actions - regulator powers - disposition of fines. (1) General disciplinary authority. If a regulator determines that an applicant, licensee, certificate holder, or registrant has committed an act or engaged in conduct that constitutes grounds for discipline or unprofessional conduct under a part or article of this title governing the particular profession or occupation, the regulator may:

(c) (II) A regulator is not authorized under this subsection (1)(c) to impose a fine on a licensee, certificate holder, or registrant regulated under the following:

(D.5) ARTICLE 228 OF THIS TITLE 12 CONCERNING GENETIC COUNSELORS;

SECTION 3. In Colorado Revised Statutes, 12-20-407, add (1)(b)(II.5) as follows:

12-20-407. Unauthorized practice of profession or occupation - penalties - exclusions. (1) (b) A person commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501 for the first
offense and, for the second or any subsequent offense, commits a class 1
misdemeanor and shall be punished as provided in section 18-1.3-501, if
the person engages in any of the following activities:

(II.5) PRACTICES OR OFFERS OR ATTEMPTS TO PRACTICE GENETIC
COUNSELING WITHOUT AN ACTIVE LICENSE ISSUED PURSUANT TO ARTICLE
228 OF THIS TITLE 12;

SECTION 4. In Colorado Revised Statutes, 12-30-102, amend
(3)(a)(XXVIII) and (3)(a)(XXIX); and add (3)(a)(XXX) as follows:

12-30-102. Medical transparency act of 2010 - disclosure of
information about health care licensees - fines - rules - short title -
legislative declaration - repeal. (3) (a) As used in this section,
"applicant" means a person applying for a new, active license,
certification, or registration or to renew, reinstate, or reactivate an active
license, certification, or registration to practice:

(XXVIII) As a surgical assistant or surgical technologist pursuant
to article 310 of this title 12; and

(XXIX) Naturopathic medicine pursuant to article 250 of this title
12; AND

(XXX) GENETIC COUNSELING PURSUANT TO ARTICLE 228 OF THIS
TITLE 12.

SECTION 5. In Colorado Revised Statutes, 12-245-217, amend
(2) introductory portion, (2)(e)(IV), and (2)(f); and add (2)(g) as follows:

12-245-217. Scope of article - exemptions. (2) The provisions
of This article 245 shall DOES not apply to:

(e) A person who resides in another state and who is currently
licensed or certified as a psychologist, marriage and family therapist,
clinical social worker, professional counselor, or addiction counselor in
that state to the extent that the licensed or certified person performs
activities or services in this state, if the activities and services are:

   (IV) Disclosed to the public that the person is not licensed or
certified in this state; or

   (f) A professional coach, including a life coach, executive coach,
personal coach, or business coach, who has had coach-specific training
and who serves clients exclusively as a coach, as long as the professional
does not engage in the practice of psychology, social work,
marijuana and family therapy, licensed professional counseling,
psychotherapy, or addiction counseling, as those practices are defined in
this article 245; or

   (g) A GENETIC COUNSELOR WHO IS LICENSED PURSUANT TO
ARTICLE 228 OF THIS TITLE 12.

SECTION 6. In Colorado Revised Statutes, 24-34-104, add
(28)(a)(III) as follows:

24-34-104. General assembly review of regulatory agencies
and functions for repeal, continuation, or reestablishment - legislative
declaration - repeal. (28) (a) The following agencies, functions, or both,
are scheduled for repeal on September 1, 2027:

   (III) THE POWERS, DUTIES, AND FUNCTIONS OF THE DIRECTOR OF
THE DIVISION OF PROFESSIONS AND OCCUPATIONS PURSUANT TO ARTICLE
228 OF TITLE 12.

SECTION 7. 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 5, 2020, if adjournment sine die is on May 6,
2020); 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 conduct occurring on or after the applicable effective date of this act.