A BILL FOR AN ACT

CONCERNING ADDITIONAL LIMITATIONS ON STATE AGENCY OCCUPATIONAL REGULATIONS, AND, IN CONNECTION THEREWITH, MAKING AN 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.)

The bill prohibits state agencies from imposing a personal qualification requirement in order to engage in a profession or occupation unless the agency can show that the requirement is demonstrably necessary and narrowly tailored to address a specific, legitimate public health, safety, or welfare objective. On or before July 1, 2019, every
agency is required to review occupational regulations and determine whether the regulation should be repealed or amended. Any person may file a petition with an agency requesting that an occupational regulation be repealed or amended. Regardless of whether a petition is filed with an agency, any person may file a civil suit requesting the court enjoin an occupational regulation.

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

SECTION 1. In Colorado Revised Statutes, add part 3 to article 4 of title 24 as follows:

PART 3

RIGHT TO EARN A LIVING ACT

24-4-301. Short title. The short title of this part 3 is the "COLORADO RIGHT TO EARN A LIVING ACT".

24-4-302. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) The right of an individual to pursue a chosen profession or occupation, free from arbitrary or excessive government interference, is a natural, essential, and inalienable right under section 3 of article II of the state constitution;

(b) The freedom to earn an honest living provides the surest means to achieve upward economic mobility;

(c) Many state regulations affect entry into professions and occupations;

(d) Some current state regulations might exceed legitimate public purposes and have the effect of arbitrarily limiting entry into a profession or occupation and, as a result, reduce market competition; and
(e) The burden of excessive regulation is borne most heavily by individuals outside the economic mainstream for whom opportunities for economic advancement are consequently curtailed.

(2) It is in the public interest to:

(a) Ensure the right of all individuals to pursue legitimate entrepreneurial, professional, and occupational opportunities to the limits of their talent and ambition;

(b) Provide the means of protecting this right; and

(c) Ensure that every state regulation hindering entry into a profession or occupation is demonstrably necessary and narrowly tailored to achieving legitimate public health, safety, and welfare objectives.

24-4-303. Definitions. As used in this Part 3, unless the context otherwise requires:

(1) (a) "Least restrictive regulation" means, unless otherwise required by statute, an occupational regulation:

(I) Promotes market competition;

(II) Relies on third-party or consumer-created ratings and reviews;

(III) Utilizes private certification; and

(IV) Allows voluntary bonding or insurance.

(b) "Least restrictive regulation" does not include:

(I) Registration, certification, or licensure;

(II) An occupational license for medical reimbursement;

(III) Inspections;

(IV) Bonding and insurance requirements;
(V) **ENFORCEMENT PROVISIONS GRANTING A PRIVATE CIVIL CAUSE**

OF ACTION OR REMEDIES UNDER CONSUMER PROTECTION OR DECEPTIVE

PRACTICE ACTS; OR

(VI) **MANDATORY DISCLOSURES OF THE ATTRIBUTES OF A SPECIFIC**

GOOD OR SERVICE OR REQUIREMENTS ON THE PROCESS OF PROVIDING A

SPECIFIC GOOD OR SERVICE.

(2) "**OCCUPATIONAL LICENSE**" MEANS A NONTRANSFERABLE AND

EXCLUSIVE AUTHORIZATION IN STATUTE ESTABLISHING THE PERSONAL

QUALIFICATIONS REQUIRED TO ENGAGE IN A PROFESSION OR OCCUPATION.

(3) "**OCCUPATIONAL LICENSE FOR MEDICAL REIMBURSEMENT**"

MEANS A NONTRANSFERABLE AUTHORIZATION FOR AN INDIVIDUAL TO

QUALIFY TO RECEIVE PAYMENT OR REIMBURSEMENT FROM A GOVERNMENT

AGENCY FOR THE PROVISION OF MEDICAL SERVICES BASED ON MEETING

ONE OR MORE PERSONAL QUALIFICATIONS.

(4) "**OCCUPATIONAL REGULATION**" MEANS A RULE, POLICY, FEE,

CONDITION, TEST, PERMIT, OCCUPATIONAL LICENSE, REGISTRATION OR

CERTIFICATION REQUIREMENT, ADMINISTRATIVE PRACTICE, OR OTHER

REQUIREMENT OF AN AGENCY ESTABLISHING THE PERSONAL

QUALIFICATIONS NECESSARY TO ENGAGE IN A PROFESSION OR

OCCUPATION.

(5) "**PERSONAL QUALIFICATION**" MEANS A CRITERION RELATED TO

AN INDIVIDUAL'S PERSONAL BACKGROUND AND CHARACTERISTICS,

INCLUDING COMPLETION OF AN APPROVED EDUCATIONAL PROGRAM,

SATISFACTORY PERFORMANCE ON AN EXAMINATION, MINIMUM WORK

EXPERIENCE, EVIDENCE OF ATTAINMENT OF REQUISITE SKILLS OR

KNOWLEDGE, MORAL STANDING, CRIMINAL HISTORY, OR COMPLETION OF

CONTINUING EDUCATION, THAT IS NECESSARY TO ENGAGE IN A PROFESSION
(6) "WELFARE" MEANS THE PROTECTION OF THE PUBLIC AGAINST FRAUD OR HARM. "WELFARE" DOES NOT INCLUDE THE PROTECTION OF AN INDIVIDUAL, CORPORATION, PARTNERSHIP, BUSINESS, INDUSTRY, ASSOCIATION, ORGANIZATION, OR AGENCY, WHETHER PUBLICLY OR PRIVATELY OWNED, AGAINST MARKET COMPETITION. THE DEFINITION OF WELFARE SHALL BE NARROWLY CONSTRUED.

24-4-304. Limitation on occupational regulations. (1) In addition to all other applicable requirements contained in this article 4, an agency shall not promulgate or administer an occupational regulation unless the specific regulation is demonstrably necessary and narrowly tailored to achieve a specific, legitimate public health, safety, or welfare objective.

(2) Each proposed occupational regulation filed with the secretary of state in accordance with section 24-4-103 (2.9) must include a statement describing how the regulation complies with subsection (1) of this section and identifying the specific public health, safety, or welfare objective necessitating the regulation.

24-4-305. Agency review of occupational regulations - repeal or amend regulations - report to general assembly - repeal. (1) On or before July 1, 2019, every agency shall conduct a comprehensive review of all occupational regulations promulgated or administered by that agency. The comprehensive review must include gathering the following information for each occupational regulation:

(a) The specific public health, safety, or welfare
OBJECTIVES OF THE REGULATION;

   (b) The reasons why the regulation is necessary to meet the specified objectives;

   (c) The regulation's impact on opportunities for employment, consumer choices and costs, market competition, governmental costs, and any other significant impact;

   (d) A comparison of the regulation to similar regulations of other states; and

   (e) If the occupational regulation is required by statute, the specific statutory provisions authorizing or requiring the occupational regulation.

(2) Following the review required by subsection (1) of this section:

   (a) If the agency determines that an occupational regulation does not satisfy the standard set forth in section 24-4-304 (1) and the regulation is not required by statute, the agency shall repeal or otherwise cease administration of the occupational regulation or amend the occupational regulation to conform with the standard set forth in section 24-4-304 (1); and

   (b) If the agency determines that an occupational regulation does not satisfy the standard set forth in section 24-4-304 (1) but is required by statute, the agency shall recommend to the general assembly legislation to repeal or amend the statutory occupational requirements to conform to the standard set forth in section 24-4-304 (1).

(3) On or before January 1, 2020, every agency shall
PREPARE AND SUBMIT A REPORT TO THE MEMBERS OF THE GENERAL ASSEMBLY STATING THE ACTIONS TAKEN TO CONFORM WITH THIS SECTION.

(4) THIS SECTION IS REPEALED, EFFECTIVE SEPTEMBER 1, 2022.

24-4-306. Petition objecting to occupational regulation. A PERSON MAY FILE A PETITION WITH AN AGENCY REQUESTING THE REPEAL OF, AMENDMENT TO, OR CESSATION OF ADMINISTRATION OF AN OCCUPATIONAL REGULATION PROMULGATED OR ADMINISTERED BY THAT AGENCY ON THE GROUNDS THAT THE OCCUPATIONAL REGULATION DOES NOT CONFORM TO THE STANDARD SET FORTH IN SECTION 24-4-304 (1). THE PETITION MUST STATE THE SPECIFIC CHALLENGED OCCUPATIONAL REGULATION. IF THE PETITION REQUESTS THAT THE OCCUPATIONAL REGULATION BE AMENDED AND NOT REPEALED, THE PETITION MUST PRECISELY STATE THE PROPOSED AMENDMENT. THE AGENCY SHALL ACT ON THE PETITION IN ACCORDANCE WITH SECTION 24-4-103 (7)(b).

24-4-307. Right of civil action objecting to occupational regulation. (1) REGARDLESS OF WHETHER A PETITION IS FILED PURSUANT TO SECTION 24-4-306, A PERSON MAY FILE A CIVIL ACTION IN DISTRICT COURT CHALLENGING THE PROMULGATION OR APPLICATION OF AN OCCUPATIONAL REGULATION.

(2) IN A CIVIL ACTION FILED IN ACCORDANCE WITH SUBSECTION (1) OF THIS SECTION, A PLAINTIFF PREVAILS IF A PREPONDERANCE OF THE EVIDENCE PROVES THAT THE CHALLENGED OCCUPATIONAL REGULATION IMPOSES A BURDEN ON ENTRY TO A PROFESSION OR OCCUPATION AND IF THE DEFENDANT DOES NOT PROVE BY A PREPONDERANCE OF EVIDENCE THAT:

(a) THE OCCUPATIONAL REGULATION IS SPECIFICALLY REQUIRED BY STATUTE; OR
(b) (I) The challenged occupational regulation is demonstrably necessary and narrowly tailored to achieve a specific, legitimate public health, safety, or welfare objective; and

(II) The challenged occupational regulation is the least restrictive regulation.

(3) If the plaintiff prevails, the court shall enjoin the enforcement of the challenged occupational regulation and shall award the plaintiff reasonable attorney fees and costs.

SECTION 2. In Colorado Revised Statutes, 24-4-103, amend (6)(a), (7), and (8.1)(b) introductory portion; and add (2.9) and (8.1)(b)(XI) as follows:

24-4-103. Rule-making - procedure - definitions - statutory citation correction - repeal. (2.9) At the time of filing a notice of proposed rule-making with the secretary of state, the agency shall also submit a statement to the secretary in accordance with section 24-4-304 (2).

(6) (a) A temporary or emergency rule may be adopted without compliance with the procedures prescribed in subsection (4) of this section and with less than the twenty days' notice prescribed in subsection (3) of this section, or where circumstances imperatively require, without notice, only if the agency finds that immediate adoption of the rule is imperatively necessary to comply with a state or federal law or federal regulation or for the preservation of public health, safety, or welfare and compliance with the requirements of this section would be contrary to the public interest and makes such a finding on the record. Such the findings and a statement of the reasons for the action shall be published
with the rule. A temporary or emergency rule may be adopted without
compliance with subsections (2.5), and (2.7), and (2.9) of this section,
but shall not become permanent without compliance with such said
subsections (2.5), and (2.7), and (2.9). A temporary or emergency rule
shall become becomes effective on adoption or on such a later date as is
stated in the rule, shall be published promptly, and shall have effect for
not more than one hundred twenty days after its adoption, or for such the
shorter period as may be specifically provided by the statute governing
such the agency, unless made permanent by compliance with subsections
(3) and (4) of this section.

(7) (a) Any interested person shall have has the right to petition
for the issuance, amendment, or repeal of a rule. Such the petition shall
must be open to public inspection. Action on such the petition shall be
is within the discretion of the agency; but when an agency undertakes
rule-making on any matter, all related petitions for the issuance,
amendment, or repeal of rules on such the matter shall be considered and
acted upon in the same proceeding.

(b) (I) If a petition is filed with an agency pursuant to
section 24-4-306, the agency shall, within ninety days after the
date the petition is filed:

(A) Repeal the occupational regulation that is the
subject of the petition;

(B) Amend the occupational regulation so that the
occupational regulation conforms to the standard set forth in
section 24-4-304;

(C) Cease administration of the occupational regulation;

or
(D) ISSUE A STATEMENT EXPLAINING HOW THE OCCUPATIONAL REGULATION CONFORMS TO THE STANDARD SET FORTH IN SECTION 24-4-304 (1) OR IS SPECIFICALLY REQUIRED BY STATUTE.

(II) FOR PURPOSES OF THIS SUBSECTION (7)(b), "OCCUPATIONAL REGULATION" HAS THE MEANING ESTABLISHED IN SECTION 24-4-303 (4).

(8.1) (b) The agency rule-making record shall MUST contain:

(XI) A COPY OF THE STATEMENT REQUIRED BY SUBSECTION (2.9) OF THIS SECTION.

SECTION 3. Appropriation. (1) For the 2018-19 state fiscal year, $40,415 is appropriated to the department of agriculture. This appropriation is from the general fund and is based on an assumption that the department will require an additional 0.4 FTE. To implement this act, the department may use this appropriation for occupational rule review.

(2) For the 2018-19 state fiscal year, $76,887 is appropriated to the department of education. This appropriation is from the general fund and is based on an assumption that the department will require an additional 0.8 FTE. To implement this act, the department may use this appropriation for occupational rule review.

(3) For the 2018-19 state fiscal year, $40,415 is appropriated to the department of human services. This appropriation is from the general fund and is based on an assumption that the department will require an additional 0.4 FTE. To implement this act, the department may use this appropriation for occupational rule review.

(4) For the 2018-19 state fiscal year, $40,415 is appropriated to the department of public health and environment. This appropriation is from the general fund and is based on an assumption that the department will require an additional 0.4 FTE. To implement this act, the department
may use this appropriation for occupational rule review.

(5) For the 2018-19 state fiscal year, $2,306,226 is appropriated to the department of regulatory agencies. This appropriation is from the general fund and is based on an assumption that the department will require an additional 20.0 FTE. To implement this act, the department may use this appropriation for occupational rule review.

(6) For the 2018-19 state fiscal year, $153,869 is appropriated to the department of revenue. This appropriation is from the general fund and is based on an assumption that the department will require an additional 1.7 FTE. To implement this act, the department may use this appropriation for occupational rule review.

SECTION 4. Act subject to petition - effective date. 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 8, 2018, if adjournment sine die is on May 9, 2018); 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 2018 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.