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 (department) 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 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.

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

SECTION 1. In Colorado Revised Statutes, 24-34-104.1, amend (2)(b); and add (8) and (9) as follows:

24-34-104.1. General assembly sunrise review of new regulation of occupations and professions - definition. (2)(b)(I) The department shall review a proposal to regulate a professional or occupational group only when the party requesting the review files a statement of support for the proposed regulation that has been signed by at least ten members of the professional or occupational group for which regulation is being sought or at least ten individuals who are not members of the professional or occupational group.

(II) In conducting a review in accordance with subsection (2)(b)(I) of this section, the department shall presume that consumers are sufficiently protected by market competition and private remedies.

(III) The department may rebut the presumption in subsection (2)(b)(II) of this section only if the department finds credible evidence of a present, significant, and substantiated harm to consumers in the state that warrants the enactment of government regulation to protect consumers. If the department finds credible evidence of such harm, the department shall recommend the least restrictive occupational regulation that addresses the harm.

(IV) The department may use the following guidelines to form its recommendation to address the harm. If the harm arises

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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 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 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 and have insurance;

(F) A provider not domiciled in the state, the department may recommend that the provider must register the provider's business with the secretary of state;

(G) A consumer's lower level of 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, THERE IS AN ABSENCE
OF INSTITUTIONS THAT PROVIDE GUIDANCE TO CONSUMERS, AND THE
CONSUMER'S INABILITY AND THE LACK OF GUIDANCE WILL ALLOW FOR
PRESENT, SIGNIFICANT, AND SUBSTANTIATED HARM, THE DEPARTMENT
MAY RECOMMEND THE ENACTMENT OF A PROFESSIONAL OR
OCCUPATIONAL LICENSE;

(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;
(g) MANDATORY DISCLOSURE OF ATTRIBUTES OF THE SPECIFIC
GOOD OR SERVICE;
(h) REGULATION OF THE PROCESS PROVIDING THE SPECIFIC GOOD
OR SERVICE OR THE FACILITY WHERE THE GOOD OR SERVICE IS PROVIDED;
(i) INSPECTION;

(j) BONDING;

(k) INSURANCE;

(l) REGISTRATION;

(m) GOVERNMENT CERTIFICATION;

(n) OCCUPATIONAL LICENSE; AND

(o) 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) SUBSECTION (6)(b) OF THIS SECTION AND, RELATING TO THE REGULATION OF PROFESSIONS AND OCCUPATIONS, 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

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IN ACCORDANCE WITH THIS SECTION, THE DEPARTMENT SHALL PERFORM AN ORIGINAL REVIEW THAT PRESUMES THAT CONSUMERS ARE SUFFICIENTLY PROTECTED BY MARKET COMPETITION AND PRIVATE REMEDIES.


(III) THE DEPARTMENT MAY USE THE FOLLOWING GUIDELINES TO FORM ITS 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 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 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 AND HAVE INSURANCE;

(F) A PROVIDER NOT DOMICILED IN THE STATE, THE DEPARTMENT MAY RECOMMEND THAT THE PROVIDER MUST REGISTER THE PROVIDER'S BUSINESS WITH THE SECRETARY OF STATE;

(G) A CONSUMER'S LOWER LEVEL OF 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, THERE IS AN ABSENCE OF INSTITUTIONS THAT PROVIDE GUIDANCE TO CONSUMERS, AND THE CONSUMER'S INABILITY AND THE LACK OF GUIDANCE WILL ALLOW FOR PRESENT, SIGNIFICANT, AND SUBSTANTIATED HARM, THE DEPARTMENT MAY RECOMMEND THE ENACTMENT OF A PROFESSIONAL OR OCCUPATIONAL LICENSE.

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

SECTION 3. Act subject to petition - effective date. This act takes effect November 1, 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 the ninety-day period after final adjournment of the general assembly, 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.