

**Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 18-1177.01 Yelana Love x2295

SENATE BILL 18-236

SENATE SPONSORSHIP

Neville T., Cooke, Gardner, Holbert, Jahn, Marble, Priola, Smallwood, Sonnenberg

HOUSE SPONSORSHIP

Sandridge, Becker J., Beckman, Buck, Everett, Humphrey, Leonard, Lewis, Lundeen,
Neville P., Ransom, Saine, Van Winkle

Senate Committees

Business, Labor, & Technology

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE DEPARTMENT OF REGULATORY AGENCIES'**
102 **DETERMINATION REGARDING THE REGULATION OF PROFESSIONS**
103 **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

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.

bill further requires the department to recommend only the least restrictive regulation necessary to address the harm.

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

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

4 **24-34-104.1. General assembly sunrise review of new**
5 **regulation of occupations and professions - definition.** (2) (b) (I) The
6 department shall review a proposal to regulate a professional or
7 occupational group only when the party requesting the review files a
8 statement of support for the proposed regulation that has been signed by
9 at least ten members of the professional or occupational group for which
10 regulation is being sought or at least ten individuals who are not members
11 of the professional or occupational group.

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

16 (III) THE DEPARTMENT MAY REBUT THE PRESUMPTION IN
17 SUBSECTION (2)(b)(II) OF THIS SECTION ONLY IF THE DEPARTMENT FINDS
18 CREDIBLE EVIDENCE OF A PRESENT, SIGNIFICANT, AND SUBSTANTIATED
19 HARM TO CONSUMERS IN THE STATE THAT WARRANTS THE ENACTMENT OF
20 GOVERNMENT REGULATION TO PROTECT CONSUMERS. IF THE DEPARTMENT
21 FINDS CREDIBLE EVIDENCE OF SUCH HARM, THE DEPARTMENT SHALL
22 RECOMMEND THE LEAST RESTRICTIVE OCCUPATIONAL REGULATION THAT
23 ADDRESSES THE HARM.

24 (IV) THE DEPARTMENT MAY USE THE FOLLOWING GUIDELINES TO
25 FORM ITS RECOMMENDATION TO ADDRESS THE HARM. IF THE HARM ARISES

1 FROM:

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

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

12 (C) UNCLEAN FACILITIES OR THE NEED TO PROMOTE GENERAL
13 HEALTH AND SAFETY, THE DEPARTMENT MAY RECOMMEND REQUIRING
14 THAT THE PROVIDER REGISTER AND BE SUBJECT TO A PERIODIC INSPECTION
15 OF THE PROVIDER'S FACILITIES;

16 (D) A PROVIDER'S FAILURE TO COMPLETE A CONTRACT FULLY OR
17 TO STANDARDS, THE DEPARTMENT MAY RECOMMEND REQUIRING THAT THE
18 PROVIDER REGISTER AND BE BONDED;

19 (E) THE NEED TO PROTECT A PERSON WHO IS NOT PARTY TO A
20 CONTRACT BETWEEN THE PROVIDER AND CONSUMER, THE DEPARTMENT
21 MAY RECOMMEND REQUIRING THAT THE PROVIDER REGISTER AND HAVE
22 INSURANCE;

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

26 (G) A CONSUMER'S LOWER LEVEL OF KNOWLEDGE ABOUT THE
27 GOOD OR SERVICE RELATIVE TO THE SELLER'S GREATER KNOWLEDGE, THE

1 DEPARTMENT MAY RECOMMEND THE ENACTMENT OF A VOLUNTARY
2 PRIVATE OR GOVERNMENT CERTIFICATION;

3
4 (H) THE NEED TO ADDRESS A SYSTEMATIC INFORMATION
5 SHORTFALL IN WHICH A CONSUMER OF THE SERVICE IS UNABLE TO
6 DISTINGUISH BETWEEN THE QUALITY OF PROVIDERS, THERE IS AN ABSENCE
7 OF INSTITUTIONS THAT PROVIDE GUIDANCE TO CONSUMERS, AND THE
8 CONSUMER'S INABILITY AND THE LACK OF GUIDANCE WILL ALLOW FOR
9 PRESENT, SIGNIFICANT, AND SUBSTANTIATED HARM, THE DEPARTMENT
10 MAY RECOMMEND THE ENACTMENT OF A PROFESSIONAL OR
11 OCCUPATIONAL LICENSE;

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

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

- 17 (a) MARKET COMPETITION;
- 18 (b) THIRD-PARTY OR CONSUMER-CREATED RATINGS AND REVIEWS;
- 19 (c) PRIVATE CERTIFICATION;
- 20 (d) VOLUNTARY BONDING OR INSURANCE;
- 21 (e) SPECIFIC PRIVATE CIVIL CAUSE OF ACTION TO REMEDY
22 CONSUMER HARM;
- 23 (f) DECEPTIVE TRADE PRACTICES IN ARTICLE 1 OF TITLE 6;
- 24 (g) MANDATORY DISCLOSURE OF ATTRIBUTES OF THE SPECIFIC
25 GOOD OR SERVICE;
- 26 (h) REGULATION OF THE PROCESS PROVIDING THE SPECIFIC GOOD
27 OR SERVICE OR THE FACILITY WHERE THE GOOD OR SERVICE IS PROVIDED;

- 1 (i) INSPECTION;
- 2 (j) BONDING;
- 3 (k) INSURANCE;
- 4 (l) REGISTRATION;
- 5 (m) GOVERNMENT CERTIFICATION;
- 6 (n) OCCUPATIONAL LICENSE; AND
- 7 (o) A COMBINATION OF TYPES OF REGULATIONS, MORE
- 8 RESTRICTIVE TYPES OF REGULATIONS, OR A PROHIBITION, AS DETERMINED
- 9 BY THE DEPARTMENT.

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

12 **24-34-104. General assembly review of regulatory agencies**
13 **and functions for repeal, continuation, or reestablishment - legislative**
14 **declaration - repeal.** (5) (a) The department of regulatory agencies shall
15 analyze and evaluate the performance of each agency or function
16 scheduled for repeal under this section. In conducting the analysis and
17 evaluation, the department of regulatory agencies shall take into
18 consideration, but need not be limited to considering, the factors listed in
19 ~~paragraph (b) of subsection (6)~~ SUBSECTION (6)(b) OF THIS SECTION AND,
20 RELATING TO THE REGULATION OF PROFESSIONS AND OCCUPATIONS,
21 SUBSECTION (5)(a.5) of this section. The department of regulatory
22 agencies shall submit a report and supporting materials to the office of
23 legislative legal services no later than October 15 of the year preceding
24 the date established for repeal and shall make a copy of the report
25 available to each member of the general assembly.

26 (a.5) (I) IN CONDUCTING THE ANALYSIS AND EVALUATION OF THE
27 NEED FOR THE CONTINUED EXISTENCE OF AN OCCUPATIONAL REGULATION

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

5 (II) THE DEPARTMENT MAY REBUT THE PRESUMPTION IN
6 SUBSECTION (5)(a.5)(I) OF THIS SECTION ONLY IF THE DEPARTMENT FINDS
7 CREDIBLE EVIDENCE OF A PRESENT, SIGNIFICANT, AND SUBSTANTIATED
8 HARM TO CONSUMERS IN THE STATE THAT WARRANTS THE CONTINUATION
9 OF GOVERNMENT REGULATION TO PROTECT CONSUMERS. IF THE
10 DEPARTMENT FINDS CREDIBLE EVIDENCE OF SUCH HARM, THE
11 DEPARTMENT SHALL RECOMMEND THE REGULATION THAT ADDRESSES THE
12 HARM AND IS THE LEAST RESTRICTIVE, AS DEFINED IN SECTION
13 24-34-104.1 (8)(a).

14 (III) THE DEPARTMENT MAY USE THE FOLLOWING GUIDELINES TO
15 FORMITS RECOMMENDATION TO ADDRESS THE HARM. IF THE HARM ARISES
16 FROM:

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

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

27 (C) UNCLEAN FACILITIES OR THE NEED TO PROMOTE GENERAL

1 HEALTH AND SAFETY, THE DEPARTMENT MAY RECOMMEND REQUIRING
2 THAT THE PROVIDER REGISTER AND BE SUBJECT TO A PERIODIC INSPECTION
3 OF THE PROVIDER'S FACILITIES;

4 (D) A PROVIDER'S FAILURE TO COMPLETE A CONTRACT FULLY OR
5 TO STANDARDS, THE DEPARTMENT MAY RECOMMEND REQUIRING THAT THE
6 PROVIDER REGISTER AND BE BONDED;

7 (E) THE NEED TO PROTECT A PERSON WHO IS NOT PARTY TO A
8 CONTRACT BETWEEN THE PROVIDER AND CONSUMER, THE DEPARTMENT
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10 INSURANCE;

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

14 (G) A CONSUMER'S LOWER LEVEL OF KNOWLEDGE ABOUT THE
15 GOOD OR SERVICE RELATIVE TO THE SELLER'S GREATER KNOWLEDGE, THE
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20 SHORTFALL IN WHICH A CONSUMER OF THE SERVICE IS UNABLE TO
21 DISTINGUISH BETWEEN THE QUALITY OF PROVIDERS, THERE IS AN ABSENCE
22 OF INSTITUTIONS THAT PROVIDE GUIDANCE TO CONSUMERS, AND THE
23 CONSUMER'S INABILITY AND THE LACK OF GUIDANCE WILL ALLOW FOR
24 PRESENT, SIGNIFICANT, AND SUBSTANTIATED HARM, THE DEPARTMENT
25 MAY RECOMMEND THE ENACTMENT OF A PROFESSIONAL OR
26 OCCUPATIONAL LICENSE.

27 (I) THE NEED TO ADDRESS A DIFFERENT TYPE OR MULTIPLE TYPES

1 OF HARM, THE DEPARTMENT MAY RECOMMEND ALTERNATIVE TYPES OF
2 REGULATIONS OR COMBINATIONS OF TYPES OF REGULATIONS.

3 **SECTION 3. Act subject to petition - effective date.** This act
4 takes effect November 1, 2018; except that, if a referendum petition is
5 filed pursuant to section 1 (3) of article V of the state constitution against
6 this act or an item, section, or part of this act within the ninety-day period
7 after final adjournment of the general assembly, then the act, item,
8 section, or part will not take effect unless approved by the people at the
9 general election to be held in November 2018 and, in such case, will take
10 effect on the date of the official declaration of the vote thereon by the
11 governor.