

First Regular Session
Seventy-second General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 19-0350.01 Yelana Love x2295

SENATE BILL 19-234

SENATE SPONSORSHIP

Rodriguez and Foote,

HOUSE SPONSORSHIP

Weissman,

Senate Committees
Judiciary

House Committees

A BILL FOR AN ACT

101 CONCERNING THE CONTINUATION OF THE FUNCTIONS OF
102 PROFESSIONAL REVIEW COMMITTEES, AND, IN CONNECTION
103 THEREWITH, IMPLEMENTING THE RECOMMENDATIONS
104 CONTAINED IN THE 2018 SUNSET REPORT BY THE DEPARTMENT
105 OF REGULATORY AGENCIES.

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/>.)

Sunset Process - Senate Judiciary Committee. The bill implements the recommendations of the department of regulatory

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.

agencies' sunset review and report on the functions of professional review committees as follows:

- ! Continues the functions of professional review committees for 11 years, until September 1, 2030 (**sections 1 and 2** of the bill);
- ! Makes technical amendments repealing references to the committee on anticompetitive conduct since it no longer exists and changing the term "utilization and quality control peer review organization" to "quality improvement organization" to be consistent with federal law (**sections 3 and 4**);
- ! Clarifies that governing boards reporting data, and the data reported, to the division of professions and occupations in the department of regulatory agencies (division) or a regulatory board may be known to staff of the division (**section 5**);
- ! Requires governing boards to annually update their information with the division (**section 5**); and
- ! Requires the division to promulgate rules to determine the information a governing board is required to report and to establish a process to remove governing boards from the registry (**section 5**).

The bill also makes conforming amendments necessary to harmonize the bill with the title 12 recodification bill, House Bill 19-1172 (**sections 6 and 7**).

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

2 **SECTION 1.** In Colorado Revised Statutes, 24-34-104, **repeal**
3 (17)(a)(VII); and **add** (31)(a)(II) as follows:

4 **24-34-104. General assembly review of regulatory agencies**
5 **and functions for repeal, continuation, or reestablishment - legislative**
6 **declaration - repeal.** (17) (a) The following agencies, functions, or both,
7 are scheduled for repeal on September 1, 2019:

8 (VII) ~~The functions of professional review committees specified~~
9 ~~in article 36.5 of title 12, C.R.S.;~~

10 (31) (a) The following agencies, functions, or both, are scheduled
11 for repeal on September 1, 2030:

1 (II) THE FUNCTIONS OF PROFESSIONAL REVIEW COMMITTEES
2 SPECIFIED IN ARTICLE 36.5 OF TITLE 12.

3 **SECTION 2.** In Colorado Revised Statutes, **amend** 12-36.5-107
4 as follows:

5 **12-36.5-107. Repeal of article.** This ~~article~~ ARTICLE 36.5 is
6 repealed, effective ~~September 1, 2019. Prior to such~~ SEPTEMBER 1, 2030.
7 BEFORE THE repeal, ~~the department of regulatory agencies shall review~~
8 the functions of professional review committees ~~and the committee on~~
9 ~~anticompetitive conduct~~ ARE SCHEDULED FOR REVIEW in accordance with
10 section 24-34-104. ~~C.R.S.~~

11 **SECTION 3.** In Colorado Revised Statutes, 12-36.5-102, **amend**
12 the introductory portion, (7)(a) introductory portion, and (7)(a)(V) as
13 follows:

14 **12-36.5-102. Definitions.** As used in this ~~article~~ ARTICLE 36.5,
15 unless the context otherwise requires:

16 (7) (a) "Records" means any and all written, electronic, or oral
17 communications by any person arising from any activities of a
18 professional review committee, including a governing board, established
19 by an authorized entity under this ~~article~~ ARTICLE 36.5 or by the agent or
20 staff thereof, including any:

21 (V) Recordings or transcripts of proceedings, minutes, formal
22 recommendations, decisions, exhibits, and other similar items or
23 documents related to professional review activities ~~or the committee on~~
24 ~~anticompetitive conduct~~ and typically constituting the records of
25 administrative proceedings.

26 **SECTION 4.** In Colorado Revised Statutes, 12-36.5-104, **amend**
27 (3) and (13) as follows:

1 **12-36.5-104. Establishment of professional review committees**
2 **- function - rules.** (3) A ~~utilization and quality control peer review~~
3 IMPROVEMENT organization, as defined pursuant to 42 U.S.C. sec.
4 1320c-1, or any other organization performing similar review services
5 under federal or state law is an approved professional review committee
6 under this ~~article~~ ARTICLE 36.5.

7 (13) Responding to a subpoena or disclosing or sharing of
8 otherwise privileged records and information pursuant to subsection (10),
9 (11), or (12) of this section does not constitute a waiver of the privilege
10 specified in ~~paragraph (a) of subsection (10)~~ SUBSECTION (10)(a) of this
11 section or a violation of the confidentiality requirements of subsection
12 (15) of this section. Records provided to any governmental agency,
13 including the department of public health and environment, ~~the committee~~
14 ~~on anticompetitive conduct~~, the medical board, and the nursing board
15 pursuant to subsection (10) or (11) of this section are not public records
16 subject to the "Colorado Open Records Act", part 2 of article 72 of title
17 24. ~~C.R.S.~~ A person providing the records to an authorized entity or its
18 professional review committee or governing board, the department of
19 public health and environment, ~~the committee on anticompetitive~~
20 ~~conduct~~, the medical board, the nursing board, CMS, the Joint
21 Commission, or other governmental agency is entitled to the same
22 immunity from liability as provided under section 12-36.5-105 for the
23 disclosure of the records.

24 **SECTION 5.** In Colorado Revised Statutes, 12-36.5-104.6,
25 **amend** (2) introductory portion and (4); and **add** (2)(a.5) and (2)(c)(IV)
26 as follows:

27 **12-36.5-104.6. Governing boards to register with division -**

1 **annual reports - aggregation and publication of data - definition -**
2 **rules.** (2) Each governing board that establishes or uses one or more
3 professional review committees to review the practice of persons licensed
4 under article 36 of this ~~title~~ TITLE 12 or licensed under article 38 of this
5 ~~title~~ TITLE 12 and granted authority as advanced practice nurses shall:

6 (a.5) UPDATE THE GOVERNING BOARD'S INFORMATION, AS
7 SPECIFIED BY THE DIVISION BY RULE IN ACCORDANCE WITH SUBSECTION
8 (4)(a) OF THIS SECTION, WITH THE DIVISION ANNUALLY, INCLUDING
9 WHETHER THE GOVERNING BOARD IS CURRENTLY ENGAGED IN A
10 PROFESSIONAL REVIEW ACTIVITY OR INTENDS TO ENGAGE IN A
11 PROFESSIONAL REVIEW ACTIVITY IN THE FUTURE;

12 (c) (IV) THE IDENTITY OF THE GOVERNING BOARD REPORTING THE
13 DATA AND THE DATA REPORTED PURSUANT TO THIS SUBSECTION (2)(c) OR
14 SUBSECTION (2)(b) OF THIS SECTION MAY BE KNOWN TO THE DIVISION.

15 (4) The division:

16 (a) Shall adopt rules to:

17 (I) Implement this section;

18 (II) DETERMINE THE INFORMATION A GOVERNING BOARD IS
19 REQUIRED TO REPORT; AND

20 (III) ESTABLISH A PROCESS TO REMOVE A GOVERNING BOARD
21 FROM THE REGISTRY WHEN THE GOVERNING BOARD IS NO LONGER
22 REQUIRED TO REGISTER WITH THE DIVISION PURSUANT TO THIS SECTION;
23 and

24 (b) May collect a reasonable registration fee to recover its direct
25 and indirect costs of administering the registration and publication
26 systems required by this section.

27 **SECTION 6.** In Colorado Revised Statutes, **amend as relocated**

1 **by House Bill 19-1172** 12-30-209 as follows:

2 **12-30-209. Repeal of part.** This part 2 is repealed, effective
3 September 1, ~~2019~~ 2030. Before the repeal, the functions of professional
4 review committees are scheduled for review in accordance with section
5 24-34-104.

6 **SECTION 7.** In Colorado Revised Statutes, 12-30-206, **amend**
7 **as relocated by House Bill 19-1172** (4); and **add** (2)(a.5) and (2)(c)(IV)
8 as follows:

9 **12-30-206. Governing boards to register with division - annual**
10 **reports - aggregation and publication of data - definition - rules.**

11 (2) Each governing board that establishes or uses one or more
12 professional review committees to review the practice of persons licensed
13 under article 240 of this title 12 or of advanced practice nurses shall:

14 (a.5) UPDATE THE GOVERNING BOARD'S INFORMATION, AS
15 SPECIFIED BY THE DIVISION BY RULE IN ACCORDANCE WITH SUBSECTION
16 (4)(a) OF THIS SECTION, WITH THE DIVISION ANNUALLY, INCLUDING
17 WHETHER THE GOVERNING BOARD IS CURRENTLY ENGAGED IN A
18 PROFESSIONAL REVIEW ACTIVITY OR INTENDS TO ENGAGE IN A
19 PROFESSIONAL REVIEW ACTIVITY IN THE FUTURE;

20 (c) (IV) THE IDENTITY OF THE GOVERNING BOARD REPORTING THE
21 DATA AND THE DATA REPORTED PURSUANT TO THIS SUBSECTION (2)(c) OR
22 SUBSECTION (2)(b) OF THIS SECTION MAY BE KNOWN TO THE DIVISION.

23 (4) The division:

24 (a) Shall adopt rules to:

25 (I) Implement this section;

26 (II) DETERMINE THE INFORMATION A GOVERNING BOARD IS
27 REQUIRED TO REPORT; AND

1 (III) ESTABLISH A PROCESS TO REMOVE A GOVERNING BOARD
2 FROM THE REGISTRY WHEN THE GOVERNING BOARD IS NO LONGER
3 REQUIRED TO REGISTER WITH THE DIVISION PURSUANT TO THIS SECTION;
4 and

5 (b) May collect a reasonable registration fee to recover its direct
6 and indirect costs of administering the registration and publication
7 systems required by this section.

8 **SECTION 8. Act subject to petition - effective date.** (1) Except
9 as otherwise provided in subsection (2) of this section, this act takes
10 effect at 12:01 a.m. on the day following the expiration of the ninety-day
11 period after final adjournment of the general assembly (August 2, 2019,
12 if adjournment sine die is on May 3, 2019); except that, if a referendum
13 petition is filed pursuant to section 1 (3) of article V of the state
14 constitution against this act or an item, section, or part of this act within
15 such period, then the act, item, section, or part will not take effect unless
16 approved by the people at the general election to be held in November
17 2020 and, in such case, will take effect on the date of the official
18 declaration of the vote thereon by the governor.

19 (2) Sections 6 and 7 of this act take effect only if House Bill
20 19-1172 becomes law, in which case sections 6 and 7 take effect October
21 1, 2019.