

HB1224_L.005

HOUSE COMMITTEE OF REFERENCE AMENDMENT

Committee on State, Veterans, & Military Affairs.HB18-1224 be amended as follows:

1 Amend printed bill, strike everything below the enacting clause and
2 substitute:

3 "SECTION 1. In Colorado Revised Statutes, 24-4-104, amend
4 (6) as follows:

5 **24-4-104. Licenses - issuance, suspension or revocation,**
6 **renewal.** (6) ~~No previously issued license shall be revoked, suspended;~~
7 ~~annulled, limited, or modified, except as provided in subsection (3) of this~~
8 ~~section~~ EXCEPT AS PROVIDED IN SUBSECTION (4) OF THIS SECTION, AN
9 AGENCY SHALL NOT REVOKE, SUSPEND, ANNUL, LIMIT, OR MODIFY A
10 PREVIOUSLY ISSUED LICENSE until after HOLDING A hearing as provided in
11 section 24-4-105.

12 **SECTION 2.** In Colorado Revised Statutes, 24-4-105, amend (4)
13 as follows:

14 **24-4-105. Hearings and determinations.** (4) (a) Any agency
15 conducting a hearing, any administrative law judge, and any hearing
16 officer shall have authority to: Administer oaths and affirmations; sign
17 and issue subpoenas; rule upon offers of proof and receive evidence;
18 dispose of motions relating to the discovery and production of relevant
19 documents and things for inspection, copying, or photographing; regulate
20 the course of the hearing, set the time and place for continued hearings,
21 and fix the time for the filing of briefs and other documents; direct the
22 parties to appear and confer to consider the simplification of the issues,
23 admissions of fact or of documents to avoid unnecessary proof, and
24 limitation of the number of expert witnesses; issue appropriate orders
25 ~~which~~ THAT shall control the subsequent course of the proceedings;
26 dispose of motions to dismiss for lack of agency jurisdiction over the
27 subject matter or parties or for any other ground; dispose of motions to
28 amend or to dismiss without prejudice applications and other pleadings;
29 dispose of motions to intervene, procedural requests, or similar matters;
30 reprimand or exclude from the hearing any person for any improper or
31 indecorous conduct in his OR HER presence; award attorney fees for
32 abuses of discovery procedures or as otherwise provided under the
33 Colorado rules of civil procedure; and take any other action authorized by
34 agency rule consistent with this article 4 or in accordance, to the extent
35 practicable, with the procedure in the district courts. All parties to the
36 proceeding shall also have the right to cross-examine witnesses who
37 testify at the proceeding. In the event more than one person engages in the
38 conduct of a hearing, such persons shall designate one of their number to
39 perform such of the above functions as can best be performed by one

1 person only, and thereafter such person only shall perform those functions
2 ~~which~~ THAT are assigned to him OR HER by the several persons
3 conducting such hearing.

4 (b) (I) (A) THE GENERAL ASSEMBLY HEREBY FINDS THAT THE
5 MEDIATION PROCESS GENERALLY SAVES THE STATE AND THE LICENSEE
6 TIME AND MONEY. MEDIATION TAKES MUCH LESS TIME THAN MOVING A
7 CASE THROUGH AGENCY PROCEEDINGS AND JUDICIAL REVIEW. THESE
8 CASES TYPICALLY TAKE MONTHS OR YEARS TO RESOLVE, BUT MEDIATION
9 TYPICALLY ACHIEVES A RESOLUTION IN A MATTER OF HOURS. TAKING LESS
10 TIME MEANS EXPENDING LESS MONEY ON HOURLY FEES AND COSTS. THIS
11 BENEFITS BOTH THE AGENCY AND THE LICENSEE, AND BECAUSE THE
12 RESULT IS ATTAINED BY THE PARTIES WORKING TOGETHER, COMPLIANCE
13 WITH THE MEDIATED AGREEMENT IS USUALLY HIGH. THIS FURTHER
14 REDUCES COSTS BECAUSE AGENCIES DO NOT HAVE TO PAY AN ATTORNEY
15 OR INVESTIGATORS TO FORCE COMPLIANCE.

16 (B) THE GENERAL ASSEMBLY HEREBY DECLARES THAT, IN ORDER
17 TO SAVE TIME AND MONEY, THE POLICY OF COLORADO IS TO USE
18 MEDIATION WHENEVER APPROPRIATE TO SETTLE DISPUTES BETWEEN
19 AGENCIES AND LICENSEES.

20 (II) UPON PETITION OF THE AGENCY OR LICENSEE AFTER THE
21 LICENSEE HAS RECEIVED THE NOTICE OF HEARING UNDER SUBSECTION
22 (2)(a) OF THIS SECTION, THE HEARING OFFICER OR ADMINISTRATIVE LAW
23 JUDGE SHALL ORDER MEDIATION BETWEEN THE AGENCY AND THE
24 LICENSEE UNLESS THE LICENSE WAS SUMMARILY SUSPENDED IN
25 ACCORDANCE WITH SECTION 24-4-104 (4). WHEN MEDIATION IS ORDERED,
26 THE AGENCY SHALL:

27 (A) ASSIGN A PERSON WITH AUTHORITY TO MAKE PREHEARING
28 DECISIONS CONCERNING DISPOSITION OF THE MATTER TO BE PRESENT
29 DURING MEETINGS RELATED TO SETTLEMENT COMMUNICATIONS OR
30 MEDIATION COMMUNICATIONS AND TO BE INCLUDED IN ANY MATERIAL
31 SETTLEMENT COMMUNICATIONS WITH THE LICENSEE OR THE LICENSEE'S
32 REPRESENTATIVE OVER THE MATTER; AND

33 (B) UPON THE LICENSEE'S REQUEST, ALLOW A PRIVATE OR PUBLIC
34 MEDIATOR CHOSEN BY THE LICENSEE TO BE PRESENT DURING MEETINGS
35 RELATED TO MEDIATION AND TO BE INCLUDED IN ANY MATERIAL
36 SETTLEMENT COMMUNICATIONS WITH THE LICENSEE OR THE LICENSEE'S
37 REPRESENTATIVE OVER THE MATTER. IF THE MEDIATOR IS PRIVATELY
38 RETAINED, THE LICENSEE MUST PAY THE MEDIATOR'S REASONABLE FEES.

39 (III) TO THE EXTENT FEASIBLE, FOR THE PURPOSE OF CARRYING
40 OUT THIS SUBSECTION (4):

41 (A) ADMINISTRATIVE LAW JUDGES SHALL MAKE THEMSELVES
42 AVAILABLE AS PUBLIC MEDIATORS WITHOUT COST TO THE LICENSEE;

43 (B) THE MEMBERS OF ANY GOVERNING BODY THAT REGULATES

1 THE LICENSEE SHALL MAKE A MEMBER OR OTHER PERSON AVAILABLE FOR
2 MEDIATION AS A PERSON WITH AUTHORITY TO MAKE PREHEARING
3 DECISIONS CONCERNING DISPOSITION OF THE MATTER.

4 (IV) IF AN AGENCY FAILS TO COMPLY WITH AN ORDER OF
5 MEDIATION, A LICENSEE ADVERSELY AFFECTED BY THE FAILURE MAY
6 PETITION THE ADMINISTRATIVE LAW JUDGE OR HEARING OFFICER TO
7 SUSPEND THE PROCEEDINGS AND REQUIRE COMPLIANCE WITH THE ORDER,
8 TO BE COMPLETED IN GOOD FAITH AS SOON AS PRACTICABLE, UNDER THE
9 ADMINISTRATIVE LAW JUDGE'S OR THE HEARING OFFICER'S SUPERVISION.

10 (V) IF MEDIATION FAILS, THE AGENCY SHALL NOTIFY THE
11 ADMINISTRATIVE LAW JUDGE OR THE HEARING OFFICER, AND THE
12 ADMINISTRATIVE LAW JUDGE OR THE HEARING OFFICER SHALL LIFT THE
13 SUSPENSION AND PROCEED WITH THE HEARING.

14 (VI) WHEN DETERMINING THE PLACE TO HOLD THE MEDIATION,
15 THE AGENCY SHALL GIVE DUE CONSIDERATION TO THE LOCATION OF THE
16 LICENSEE'S OCCUPATION OR RESIDENCE, THE AVAILABILITY OF AN
17 ADMINISTRATIVE LAW JUDGE TO MEDIATE, AND THE AVAILABILITY OF A
18 MEMBER OF THE GOVERNING BODY THAT REGULATES THE LICENSEE TO BE
19 A PERSON WITH AUTHORITY TO MAKE PREHEARING DECISIONS
20 CONCERNING DISPOSITION OF THE MATTER.

21 (VII) THIS SUBSECTION (4)(b) APPLIES ONLY TO AGENCY
22 PROCEEDINGS THAT CONCERN AN INDIVIDUAL WHO IS LICENSED TO
23 PRACTICE AN OCCUPATION OR PROFESSION; EXCEPT THAT THIS SUBSECTION
24 (4)(b) DOES NOT APPLY TO A COMMERCIAL DRIVER'S LICENSE ISSUED
25 UNDER PART 4 OF ARTICLE 2 OF TITLE 42.

26 **SECTION 3.** In Colorado Revised Statutes, 24-4-106, amend (7)
27 as follows:

28 **24-4-106. Judicial review.** (7) (a) If the court finds no error, it
29 shall affirm the agency action.

30 (b) THE COURT SHALL HOLD UNLAWFUL AND SET ASIDE THE
31 AGENCY ACTION AND SHALL RESTRAIN THE ENFORCEMENT OF THE ORDER
32 OR RULE UNDER REVIEW, COMPEL ANY AGENCY ACTION TO BE TAKEN THAT
33 HAS BEEN UNLAWFULLY WITHHELD OR UNDULY DELAYED, REMAND THE
34 CASE FOR FURTHER PROCEEDINGS, AND AFFORD OTHER RELIEF AS MAY BE
35 APPROPRIATE if it THE COURT finds that the agency action is:

36 (I) Arbitrary or capricious;

37 (II) A denial of statutory right;

38 (III) Contrary to constitutional right, power, privilege, or
39 immunity;

40 (IV) In excess of statutory jurisdiction, authority, purposes, or
41 limitations;

42 (V) Not in accord with the procedures or procedural limitations
43 of this article 4 or as otherwise required by law;

1 (VI) An abuse or clearly unwarranted exercise of discretion;
2 (VII) Based upon findings of fact that are clearly erroneous on the
3 whole record;
4 (VIII) Unsupported by substantial evidence when the record is
5 considered as a whole; or
6 (IX) Otherwise contrary to law, ~~then the court shall hold unlawful~~
7 ~~and set aside the agency action and shall restrain the enforcement of the~~
8 ~~order or rule under review, compel any agency action to be taken which~~
9 ~~has been unlawfully withheld or unduly delayed, remand the case for~~
10 ~~further proceedings, and afford such other relief as may be appropriate~~
11 INCLUDING FAILING TO COMPLY WITH SECTION 24-4-104 (3)(a) OR
12 24-4-105 (4)(b).
13 (c) In making the ~~foregoing determinations~~ FINDINGS SPECIFIED IN
14 THIS SUBSECTION (7), the court shall review the whole record or such
15 portions thereof ~~as may be~~ OF THE RECORD cited by any party.
16 (d) In all cases under review, the court shall determine all
17 questions of law and interpret the statutory and constitutional provisions
18 involved and shall apply ~~such~~ THE interpretation to the facts duly found
19 or established.
20 **SECTION 4. Applicability.** This act applies to hearings brought
21 to discipline the holder of a license, registration, or certification; to
22 actions brought to enforce the "State Administrative Procedure Act"; and
23 to judicial review of an agency's actions under preexisting law, on or after
24 the effective date of this act.
25 **SECTION 5. Safety clause.** The general assembly hereby finds,
26 determines, and declares that this act is necessary for the immediate
27 preservation of the public peace, health, and safety."

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