

HOUSE COMMITTEE OF REFERENCE REPORT

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Chairman of Committee

April 11, 2018  
Date

Committee on State, Veterans, & Military Affairs.

After consideration on the merits, the Committee recommends the following:

HB18-1224 be amended as follows, and as so amended, be referred to the Committee on Finance with favorable recommendation:

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 - repeal.** (4) (a) Any  
15 agency conducting a hearing, any administrative law judge, and any  
16 hearing officer shall have authority to: Administer oaths and affirmations;  
17 sign 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

1 ~~which~~ THAT shall control the subsequent course of the proceedings;  
2 dispose of motions to dismiss for lack of agency jurisdiction over the  
3 subject matter or parties or for any other ground; dispose of motions to  
4 amend or to dismiss without prejudice applications and other pleadings;  
5 dispose of motions to intervene, procedural requests, or similar matters;  
6 reprimand or exclude from the hearing any person for any improper or  
7 indecorous conduct in his OR HER presence; award attorney fees for  
8 abuses of discovery procedures or as otherwise provided under the  
9 Colorado rules of civil procedure; and take any other action authorized by  
10 agency rule consistent with this article 4 or in accordance, to the extent  
11 practicable, with the procedure in the district courts. All parties to the  
12 proceeding shall also have the right to cross-examine witnesses who  
13 testify at the proceeding. In the event more than one person engages in the  
14 conduct of a hearing, such persons shall designate one of their number to  
15 perform such of the above functions as can best be performed by one  
16 person only, and thereafter such person only shall perform those functions  
17 ~~which~~ THAT are assigned to him OR HER by the several persons  
18 conducting such hearing.

19 (b) (I) (A) THE GENERAL ASSEMBLY HEREBY FINDS THAT THE  
20 MEDIATION PROCESS GENERALLY SAVES THE STATE AND THE LICENSEE  
21 TIME AND MONEY. MEDIATION TAKES MUCH LESS TIME THAN MOVING A  
22 CASE THROUGH AGENCY PROCEEDINGS AND JUDICIAL REVIEW. THESE  
23 CASES TYPICALLY TAKE MONTHS OR YEARS TO RESOLVE, BUT MEDIATION  
24 TYPICALLY ACHIEVES A RESOLUTION IN A MATTER OF HOURS. TAKING LESS  
25 TIME MEANS EXPENDING LESS MONEY ON HOURLY FEES AND COSTS. THIS  
26 BENEFITS BOTH THE AGENCY AND THE LICENSEE, AND BECAUSE THE  
27 RESULT IS ATTAINED BY THE PARTIES WORKING TOGETHER, COMPLIANCE  
28 WITH THE MEDIATED AGREEMENT IS USUALLY HIGH. THIS FURTHER  
29 REDUCES COSTS BECAUSE AGENCIES DO NOT HAVE TO PAY AN ATTORNEY  
30 OR INVESTIGATORS TO FORCE COMPLIANCE.

31 (B) THE GENERAL ASSEMBLY HEREBY DECLARES THAT, IN ORDER  
32 TO SAVE TIME AND MONEY, THE POLICY OF COLORADO IS TO USE  
33 MEDIATION WHENEVER APPROPRIATE TO SETTLE DISPUTES BETWEEN  
34 AGENCIES AND LICENSEES.

35 (II) UPON PETITION OF THE AGENCY OR LICENSEE AFTER THE  
36 LICENSEE HAS RECEIVED THE NOTICE OF HEARING UNDER SUBSECTION  
37 (2)(a) OF THIS SECTION, THE HEARING OFFICER OR ADMINISTRATIVE LAW  
38 JUDGE SHALL ORDER MEDIATION BETWEEN THE AGENCY AND THE  
39 LICENSEE UNLESS THE LICENSE WAS SUMMARILY SUSPENDED IN  
40 ACCORDANCE WITH SECTION 24-4-104 (4). WHEN MEDIATION IS ORDERED,  
41 THE AGENCY SHALL:

1 (A) ASSIGN A PERSON WITH AUTHORITY TO MAKE PREHEARING  
2 DECISIONS CONCERNING DISPOSITION OF THE MATTER TO BE PRESENT  
3 DURING MEETINGS RELATED TO SETTLEMENT COMMUNICATIONS OR  
4 MEDIATION COMMUNICATIONS AND TO BE INCLUDED IN ANY MATERIAL  
5 SETTLEMENT COMMUNICATIONS WITH THE LICENSEE OR THE LICENSEE'S  
6 REPRESENTATIVE OVER THE MATTER; AND

7 (B) UPON THE LICENSEE'S REQUEST, ALLOW A PRIVATE OR PUBLIC  
8 MEDIATOR CHOSEN BY THE LICENSEE TO BE PRESENT DURING MEETINGS  
9 RELATED TO MEDIATION AND TO BE INCLUDED IN ANY MATERIAL  
10 SETTLEMENT COMMUNICATIONS WITH THE LICENSEE OR THE LICENSEE'S  
11 REPRESENTATIVE OVER THE MATTER. IF THE MEDIATOR IS PRIVATELY  
12 RETAINED, THE LICENSEE MUST PAY THE MEDIATOR'S REASONABLE FEES,  
13 AND THE AGENCY NEED NOT PAY THE PRIVATELY RETAINED MEDIATOR'S  
14 REASONABLE OR UNREASONABLE FEES.

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

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

19 (B) THE MEMBERS OF ANY GOVERNING BODY THAT REGULATES  
20 THE LICENSEE SHALL MAKE A MEMBER OR OTHER PERSON AVAILABLE FOR  
21 MEDIATION AS A PERSON WITH AUTHORITY TO MAKE PREHEARING  
22 DECISIONS CONCERNING DISPOSITION OF THE MATTER.

23 (IV) IF AN AGENCY FAILS TO COMPLY WITH AN ORDER OF  
24 MEDIATION, A LICENSEE ADVERSELY AFFECTED BY THE FAILURE MAY  
25 PETITION THE ADMINISTRATIVE LAW JUDGE OR HEARING OFFICER TO  
26 SUSPEND THE PROCEEDINGS AND REQUIRE COMPLIANCE WITH THE ORDER,  
27 TO BE COMPLETED IN GOOD FAITH AS SOON AS PRACTICABLE, UNDER THE  
28 ADMINISTRATIVE LAW JUDGE'S OR THE HEARING OFFICER'S SUPERVISION.

29 (V) IF MEDIATION FAILS, THE AGENCY SHALL NOTIFY THE  
30 ADMINISTRATIVE LAW JUDGE OR THE HEARING OFFICER, AND THE  
31 ADMINISTRATIVE LAW JUDGE OR THE HEARING OFFICER SHALL LIFT THE  
32 SUSPENSION AND PROCEED WITH THE HEARING.

33 (VI) WHEN DETERMINING THE PLACE TO HOLD THE MEDIATION,  
34 THE AGENCY SHALL GIVE DUE CONSIDERATION TO THE LOCATION OF THE  
35 LICENSEE'S OCCUPATION OR RESIDENCE, THE AVAILABILITY OF AN  
36 ADMINISTRATIVE LAW JUDGE TO MEDIATE, AND THE AVAILABILITY OF A  
37 MEMBER OF THE GOVERNING BODY THAT REGULATES THE LICENSEE TO BE  
38 A PERSON WITH AUTHORITY TO MAKE PREHEARING DECISIONS  
39 CONCERNING DISPOSITION OF THE MATTER.

40 (VII) THIS SUBSECTION (4)(b) APPLIES ONLY TO AGENCY  
41 PROCEEDINGS THAT CONCERN AN INDIVIDUAL WHO IS LICENSED TO

1 PRACTICE AN OCCUPATION OR PROFESSION; EXCEPT THAT THIS SUBSECTION  
2 (4)(b) DOES NOT APPLY TO A COMMERCIAL DRIVER'S LICENSE ISSUED  
3 UNDER PART 4 OF ARTICLE 2 OF TITLE 42.

4 (VIII) THIS SUBSECTION (4)(b) DOES NOT APPLY IF A LICENSE HAS  
5 BEEN SUMMARILY SUSPENDED BECAUSE THE AGENCY FINDS, IN  
6 ACCORDANCE WITH SECTION 24-4-104 (4), THAT THE LICENSEE IS GUILTY  
7 OF A DELIBERATE AND WILLFUL VIOLATION OR THAT THE PUBLIC HEALTH,  
8 SAFETY, OR WELFARE IMPERATIVELY REQUIRES EMERGENCY ACTION.

9 (IX) BY JANUARY 1, 2022, THE OFFICE OF ADMINISTRATIVE  
10 COURTS AND THE DIVISION OF PROFESSIONS AND OCCUPATIONS IN THE  
11 DEPARTMENT OF REGULATORY AGENCIES SHALL ISSUE A JOINT REPORT TO  
12 THE JUDICIARY COMMITTEE AND THE STATE, VETERANS, AND MILITARY  
13 AFFAIRS COMMITTEE OF THE HOUSE OF REPRESENTATIVES AND THE  
14 JUDICIARY COMMITTEE AND THE STATE, VETERANS, AND MILITARY  
15 AFFAIRS COMMITTEE OF THE SENATE OR THEIR SUCCESSOR COMMITTEES.  
16 THIS SUBSECTION (4)(b)(VIII) IS REPEALED, EFFECTIVE JULY 1, 2022. THE  
17 REPORT MUST CONTAIN THE FOLLOWING:

18 (A) THE NUMBER OF HEARINGS AFFECTING LICENSES HELD  
19 BETWEEN JULY 1, 2016, AND JULY 1, 2018;

20 (B) THE NUMBER OF HEARINGS AFFECTING LICENSES HELD  
21 BETWEEN JULY 1, 2019, AND JULY 1, 2021;

22 (C) THE NUMBER OF MEDIATIONS HELD BETWEEN JULY 1, 2016,  
23 AND JULY 1, 2018;

24 (D) THE NUMBER OF MEDIATIONS HELD BETWEEN JULY 1, 2019,  
25 AND JULY 1, 2021;

26 (E) THE NUMBER OF PROCEEDINGS IN WHICH THE LICENSEE AND  
27 AGENCY AGREED TO SETTLE THE PROCEEDINGS BETWEEN JULY 1, 2016,  
28 AND JULY 1, 2018; AND

29 (F) THE NUMBER OF PROCEEDINGS IN WHICH THE LICENSEE AND  
30 AGENCY AGREED TO SETTLE THE PROCEEDINGS BETWEEN JULY 1, 2019,  
31 AND JULY 1, 2021.

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

34 **24-4-106. Judicial review.** (7) (a) If the court finds no error, it  
35 shall affirm the agency action.

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

- 1 (I) Arbitrary or capricious;  
2 (II) A denial of statutory right;  
3 (III) Contrary to constitutional right, power, privilege, or  
4 immunity;  
5 (IV) In excess of statutory jurisdiction, authority, purposes, or  
6 limitations;  
7 (V) Not in accord with the procedures or procedural limitations  
8 of this article 4 or as otherwise required by law;  
9 (VI) An abuse or clearly unwarranted exercise of discretion;  
10 (VII) Based upon findings of fact that are clearly erroneous on the  
11 whole record;  
12 (VIII) Unsupported by substantial evidence when the record is  
13 considered as a whole; or  
14 (IX) Otherwise contrary to law, ~~then the court shall hold unlawful~~  
15 ~~and set aside the agency action and shall restrain the enforcement of the~~  
16 ~~order or rule under review, compel any agency action to be taken which~~  
17 ~~has been unlawfully withheld or unduly delayed, remand the case for~~  
18 ~~further proceedings, and afford such other relief as may be appropriate~~  
19 INCLUDING FAILING TO COMPLY WITH SECTION 24-4-104 (3)(a) OR  
20 24-4-105 (4)(b).  
21 (c) In making the ~~foregoing determinations~~ FINDINGS SPECIFIED IN  
22 THIS SUBSECTION (7), the court shall review the whole record or ~~such~~  
23 ~~portions thereof as may be~~ OF THE RECORD cited by any party.  
24 (d) In all cases under review, the court shall determine all  
25 questions of law and interpret the statutory and constitutional provisions  
26 involved and shall apply ~~such~~ THE interpretation to the facts duly found  
27 or established.  
28 **SECTION 4. Applicability.** This act applies to hearings brought  
29 to discipline the holder of a license, registration, or certification; to  
30 actions brought to enforce the "State Administrative Procedure Act"; and  
31 to judicial review of an agency's actions under preexisting law, on or after  
32 the effective date of this act.  
33 **SECTION 5. Safety clause.** The general assembly hereby finds,  
34 determines, and declares that this act is necessary for the immediate  
35 preservation of the public peace, health, and safety."

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