

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

INTRODUCED

LLS NO. 18-1074.01 Kip Kolkmeier x4510

SENATE BILL 18-193

SENATE SPONSORSHIP

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Senate Committees

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House Committees

A BILL FOR AN ACT

101 **CONCERNING ADDITIONAL LIMITATIONS ON STATE AGENCY**
102 **OCCUPATIONAL REGULATIONS.**

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>.)

The bill prohibits state agencies from imposing a personal qualification requirement in order to engage in a profession or occupation unless the agency can show that the requirement is demonstrably necessary and narrowly tailored to address a specific, legitimate public health, safety, or welfare objective. On or before July 1, 2019, every agency is required to review occupational regulations and determine

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.

whether the regulation should be repealed or amended. Any person may file a petition with an agency requesting that an occupational regulation be repealed or amended. Regardless of whether a petition is filed with an agency, any person may file a civil suit requesting the court enjoin an occupational regulation.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** part 3 to article
3 4 of title 24 as follows:

4 **PART 3**
5 **RIGHT TO EARN A LIVING ACT**

6 **24-4-301. Short title.** THE SHORT TITLE OF THIS PART 3 IS THE
7 "COLORADO RIGHT TO EARN A LIVING ACT".

8 **24-4-302. Legislative declaration.** (1) THE GENERAL ASSEMBLY
9 HEREBY FINDS AND DECLARES THAT:

10 (a) THE RIGHT OF AN INDIVIDUAL TO PURSUE A CHOSEN
11 PROFESSION OR OCCUPATION, FREE FROM ARBITRARY OR EXCESSIVE
12 GOVERNMENT INTERFERENCE, IS A NATURAL, ESSENTIAL, AND
13 INALIENABLE RIGHT UNDER SECTION 3 OF ARTICLE II OF THE STATE
14 CONSTITUTION;

15 (b) THE FREEDOM TO EARN AN HONEST LIVING PROVIDES THE
16 SUREST MEANS TO ACHIEVE UPWARD ECONOMIC MOBILITY;

17 (c) MANY STATE REGULATIONS AFFECT ENTRY INTO PROFESSIONS
18 AND OCCUPATIONS;

19 (d) SOME CURRENT STATE REGULATIONS MIGHT EXCEED
20 LEGITIMATE PUBLIC PURPOSES AND HAVE THE EFFECT OF ARBITRARILY
21 LIMITING ENTRY INTO A PROFESSION OR OCCUPATION AND, AS A RESULT,
22 REDUCE MARKET COMPETITION; AND

23 (e) THE BURDEN OF EXCESSIVE REGULATION IS BORNE MOST

1 HEAVILY BY INDIVIDUALS OUTSIDE THE ECONOMIC MAINSTREAM FOR
2 WHOM OPPORTUNITIES FOR ECONOMIC ADVANCEMENT ARE
3 CONSEQUENTLY CURTAILED.

4 (2) IT IS IN THE PUBLIC INTEREST TO:

5 (a) ENSURE THE RIGHT OF ALL INDIVIDUALS TO PURSUE
6 LEGITIMATE ENTREPRENEURIAL, PROFESSIONAL, AND OCCUPATIONAL
7 OPPORTUNITIES TO THE LIMITS OF THEIR TALENT AND AMBITION;

8 (b) PROVIDE THE MEANS OF PROTECTING THIS RIGHT; AND

9 (c) ENSURE THAT EVERY STATE REGULATION HINDERING ENTRY
10 INTO A PROFESSION OR OCCUPATION IS DEMONSTRABLY NECESSARY AND
11 NARROWLY TAILORED TO ACHIEVING LEGITIMATE PUBLIC HEALTH, SAFETY,
12 AND WELFARE OBJECTIVES.

13 **24-4-303. Definitions.** AS USED IN THIS PART 3, UNLESS THE
14 CONTEXT OTHERWISE REQUIRES:

15 (1) (a) "LEAST RESTRICTIVE REGULATION" MEANS, UNLESS
16 OTHERWISE REQUIRED BY STATUTE, AN OCCUPATIONAL REGULATION:

17 (I) PROMOTES MARKET COMPETITION;

18 (II) RELIES ON THIRD-PARTY OR CONSUMER-CREATED RATINGS
19 AND REVIEWS;

20 (III) UTILIZES PRIVATE CERTIFICATION; AND

21 (IV) ALLOWS VOLUNTARY BONDING OR INSURANCE.

22 (b) "LEAST RESTRICTIVE REGULATION" DOES NOT INCLUDE:

23 (I) REGISTRATION, CERTIFICATION, OR LICENSURE;

24 (II) AN OCCUPATIONAL LICENSE FOR MEDICAL REIMBURSEMENT;

25 (III) INSPECTIONS;

26 (IV) BONDING AND INSURANCE REQUIREMENTS;

27 (V) ENFORCEMENT PROVISIONS GRANTING A PRIVATE CIVIL CAUSE

1 OF ACTION OR REMEDIES UNDER CONSUMER PROTECTION OR DECEPTIVE
2 PRACTICE ACTS; OR

3 (VI) MANDATORY DISCLOSURES OF THE ATTRIBUTES OF A SPECIFIC
4 GOOD OR SERVICE OR REQUIREMENTS ON THE PROCESS OF PROVIDING A
5 SPECIFIC GOOD OR SERVICE.

6 (2) "OCCUPATIONAL LICENSE" MEANS A NONTRANSFERABLE AND
7 EXCLUSIVE AUTHORIZATION IN STATUTE ESTABLISHING THE PERSONAL
8 QUALIFICATIONS REQUIRED TO ENGAGE IN A PROFESSION OR OCCUPATION.

9 (3) "OCCUPATIONAL LICENSE FOR MEDICAL REIMBURSEMENT"
10 MEANS A NONTRANSFERABLE AUTHORIZATION FOR AN INDIVIDUAL TO
11 QUALIFY TO RECEIVE PAYMENT OR REIMBURSEMENT FROM A GOVERNMENT
12 AGENCY FOR THE PROVISION OF MEDICAL SERVICES BASED ON MEETING
13 ONE OR MORE PERSONAL QUALIFICATIONS.

14 (4) "OCCUPATIONAL REGULATION" MEANS A RULE, POLICY, FEE,
15 CONDITION, TEST, PERMIT, OCCUPATIONAL LICENSE, REGISTRATION OR
16 CERTIFICATION REQUIREMENT, ADMINISTRATIVE PRACTICE, OR OTHER
17 REQUIREMENT OF AN AGENCY ESTABLISHING THE PERSONAL
18 QUALIFICATIONS NECESSARY TO ENGAGE IN A PROFESSION OR
19 OCCUPATION.

20 (5) "PERSONAL QUALIFICATION" MEANS A CRITERION RELATED TO
21 AN INDIVIDUAL'S PERSONAL BACKGROUND AND CHARACTERISTICS,
22 INCLUDING COMPLETION OF AN APPROVED EDUCATIONAL PROGRAM,
23 SATISFACTORY PERFORMANCE ON AN EXAMINATION, MINIMUM WORK
24 EXPERIENCE, EVIDENCE OF ATTAINMENT OF REQUISITE SKILLS OR
25 KNOWLEDGE, MORAL STANDING, CRIMINAL HISTORY, OR COMPLETION OF
26 CONTINUING EDUCATION, THAT IS NECESSARY TO ENGAGE IN A PROFESSION
27 OR OCCUPATION.

1 (6) "WELFARE" MEANS THE PROTECTION OF THE PUBLIC AGAINST
2 FRAUD OR HARM. "WELFARE" DOES NOT INCLUDE THE PROTECTION OF AN
3 INDIVIDUAL, CORPORATION, PARTNERSHIP, BUSINESS, INDUSTRY,
4 ASSOCIATION, ORGANIZATION, OR AGENCY, WHETHER PUBLICLY OR
5 PRIVATELY OWNED, AGAINST MARKET COMPETITION. THE DEFINITION OF
6 WELFARE SHALL BE NARROWLY CONSTRUED.

7 **24-4-304. Limitation on occupational regulations.** (1) IN
8 ADDITION TO ALL OTHER APPLICABLE REQUIREMENTS CONTAINED IN THIS
9 ARTICLE 4, AN AGENCY SHALL NOT PROMULGATE OR ADMINISTER AN
10 OCCUPATIONAL REGULATION UNLESS THE SPECIFIC REGULATION IS
11 DEMONSTRABLY NECESSARY AND NARROWLY TAILORED TO ACHIEVE A
12 SPECIFIC, LEGITIMATE PUBLIC HEALTH, SAFETY, OR WELFARE OBJECTIVE.

13 (2) EACH PROPOSED OCCUPATIONAL REGULATION FILED WITH THE
14 SECRETARY OF STATE IN ACCORDANCE WITH SECTION 24-4-103 (2.9) MUST
15 INCLUDE A STATEMENT DESCRIBING HOW THE REGULATION COMPLIES WITH
16 SUBSECTION (1) OF THIS SECTION AND IDENTIFYING THE SPECIFIC PUBLIC
17 HEALTH, SAFETY, OR WELFARE OBJECTIVE NECESSITATING THE
18 REGULATION.

19 **24-4-305. Agency review of occupational regulations - repeal**
20 **or amend regulations - report to general assembly - repeal.** (1) ON OR
21 BEFORE JULY 1, 2019, EVERY AGENCY SHALL CONDUCT A COMPREHENSIVE
22 REVIEW OF ALL OCCUPATIONAL REGULATIONS PROMULGATED OR
23 ADMINISTERED BY THAT AGENCY. THE COMPREHENSIVE REVIEW MUST
24 INCLUDE GATHERING THE FOLLOWING INFORMATION FOR EACH
25 OCCUPATIONAL REGULATION:

26 (a) THE SPECIFIC PUBLIC HEALTH, SAFETY, OR WELFARE
27 OBJECTIVES OF THE REGULATION;

1 (b) THE REASONS WHY THE REGULATION IS NECESSARY TO MEET
2 THE SPECIFIED OBJECTIVES;

3 (c) THE REGULATION'S IMPACT ON OPPORTUNITIES FOR
4 EMPLOYMENT, CONSUMER CHOICES AND COSTS, MARKET COMPETITION,
5 GOVERNMENTAL COSTS, AND ANY OTHER SIGNIFICANT IMPACT;

6 (d) A COMPARISON OF THE REGULATION TO SIMILAR REGULATIONS
7 OF OTHER STATES; AND

8 (e) IF THE OCCUPATIONAL REGULATION IS REQUIRED BY STATUTE,
9 THE SPECIFIC STATUTORY PROVISIONS AUTHORIZING OR REQUIRING THE
10 OCCUPATIONAL REGULATION.

11 (2) FOLLOWING THE REVIEW REQUIRED BY SUBSECTION (1) OF THIS
12 SECTION:

13 (a) IF THE AGENCY DETERMINES THAT AN OCCUPATIONAL
14 REGULATION DOES NOT SATISFY THE STANDARD SET FORTH IN SECTION
15 24-4-304 (1) AND THE REGULATION IS NOT REQUIRED BY STATUTE, THE
16 AGENCY SHALL REPEAL OR OTHERWISE CEASE ADMINISTRATION OF THE
17 OCCUPATIONAL REGULATION OR AMEND THE OCCUPATIONAL REGULATION
18 TO CONFORM WITH THE STANDARD SET FORTH IN SECTION 24-4-304 (1);
19 AND

20 (b) IF THE AGENCY DETERMINES THAT AN OCCUPATIONAL
21 REGULATION DOES NOT SATISFY THE STANDARD SET FORTH IN SECTION
22 24-4-304 (1) BUT IS REQUIRED BY STATUTE, THE AGENCY SHALL
23 RECOMMEND TO THE GENERAL ASSEMBLY LEGISLATION TO REPEAL OR
24 AMEND THE STATUTORY OCCUPATIONAL REQUIREMENTS TO CONFORM TO
25 THE STANDARD SET FORTH IN SECTION 24-4-304 (1).

26 (3) ON OR BEFORE JANUARY 1, 2020, EVERY AGENCY SHALL
27 PREPARE AND SUBMIT A REPORT TO THE MEMBERS OF THE GENERAL

1 ASSEMBLY STATING THE ACTIONS TAKEN TO CONFORM WITH THIS SECTION.

2 (4) THIS SECTION IS REPEALED, EFFECTIVE SEPTEMBER 1, 2022.

3 **24-4-306. Petition objecting to occupational regulation.** A
4 PERSON MAY FILE A PETITION WITH AN AGENCY REQUESTING THE REPEAL
5 OF, AMENDMENT TO, OR CESSATION OF ADMINISTRATION OF AN
6 OCCUPATIONAL REGULATION PROMULGATED OR ADMINISTERED BY THAT
7 AGENCY ON THE GROUNDS THAT THE OCCUPATIONAL REGULATION DOES
8 NOT CONFORM TO THE STANDARD SET FORTH IN SECTION 24-4-304 (1).
9 THE PETITION MUST STATE THE SPECIFIC CHALLENGED OCCUPATIONAL
10 REGULATION. IF THE PETITION REQUESTS THAT THE OCCUPATIONAL
11 REGULATION BE AMENDED AND NOT REPEALED, THE PETITION MUST
12 PRECISELY STATE THE PROPOSED AMENDMENT. THE AGENCY SHALL ACT
13 ON THE PETITION IN ACCORDANCE WITH SECTION 24-4-103 (7)(b).

14 **24-4-307. Right of civil action objecting to occupational**
15 **regulation.** (1) REGARDLESS OF WHETHER A PETITION IS FILED PURSUANT
16 TO SECTION 24-4-306, A PERSON MAY FILE A CIVIL ACTION IN DISTRICT
17 COURT CHALLENGING THE PROMULGATION OR APPLICATION OF AN
18 OCCUPATIONAL REGULATION.

19 (2) IN A CIVIL ACTION FILED IN ACCORDANCE WITH SUBSECTION (1)
20 OF THIS SECTION, A PLAINTIFF PREVAILS IF A PREPONDERANCE OF THE
21 EVIDENCE PROVES THAT THE CHALLENGED OCCUPATIONAL REGULATION
22 IMPOSES A BURDEN ON ENTRY TO A PROFESSION OR OCCUPATION AND IF
23 THE DEFENDANT DOES NOT PROVE BY A PREPONDERANCE OF EVIDENCE
24 THAT:

25 (a) THE OCCUPATIONAL REGULATION IS SPECIFICALLY REQUIRED
26 BY STATUTE; OR

27 (b) (I) THE CHALLENGED OCCUPATIONAL REGULATION IS

1 DEMONSTRABLY NECESSARY AND NARROWLY TAILORED TO ACHIEVE A
2 SPECIFIC, LEGITIMATE PUBLIC HEALTH, SAFETY, OR WELFARE OBJECTIVE;
3 AND

4 (II) THE CHALLENGED OCCUPATIONAL REGULATION IS THE LEAST
5 RESTRICTIVE REGULATION.

6 (3) IF THE PLAINTIFF PREVAILS, THE COURT SHALL ENJOIN THE
7 ENFORCEMENT OF THE CHALLENGED OCCUPATIONAL REGULATION AND
8 SHALL AWARD THE PLAINTIFF REASONABLE ATTORNEY FEES AND COSTS.

9 **SECTION 2.** In Colorado Revised Statutes, 24-4-103, **amend**
10 (6)(a), (7), and (8.1)(b) introductory portion; and **add** (2.9) and
11 (8.1)(b)(XI) as follows:

12 **24-4-103. Rule-making - procedure - definitions - statutory**
13 **citation correction - repeal.** (2.9) AT THE TIME OF FILING A NOTICE OF
14 PROPOSED RULE-MAKING WITH THE SECRETARY OF STATE, THE AGENCY
15 SHALL ALSO SUBMIT A STATEMENT TO THE SECRETARY IN ACCORDANCE
16 WITH SECTION 24-4-304 (2).

17 (6) (a) A temporary or emergency rule may be adopted without
18 compliance with the procedures prescribed in subsection (4) of this
19 section and with less than the twenty days' notice prescribed in subsection
20 (3) of this section, or where circumstances imperatively require, without
21 notice, only if the agency finds that immediate adoption of the rule is
22 imperatively necessary to comply with a state or federal law or federal
23 regulation or for the preservation of public health, safety, or welfare and
24 compliance with the requirements of this section would be contrary to the
25 public interest and makes ~~such a~~ THAT finding on the record. ~~Such~~ THE
26 findings and a statement of the reasons for the action shall be published
27 with the rule. A temporary or emergency rule may be adopted without

1 compliance with subsections (2.5), ~~and~~ (2.7), AND (2.9) of this section,
2 but shall not become permanent without compliance with ~~such~~ SAID
3 subsections (2.5), ~~and~~ (2.7), AND (2.9). A temporary or emergency rule
4 ~~shall become~~ BECOMES effective on adoption or on ~~such~~ A later date ~~as is~~
5 stated in the rule, shall be published promptly, and shall have effect for
6 not more than one hundred twenty days after its adoption, or for ~~such~~ THE
7 shorter period as may be specifically provided by the statute governing
8 ~~such~~ THE agency, unless made permanent by compliance with subsections
9 (3) and (4) of this section.

10 (7) (a) Any interested person ~~shall have~~ HAS the right to petition
11 for the issuance, amendment, or repeal of a rule. ~~Such~~ THE petition ~~shall~~
12 MUST be open to public inspection. Action on ~~such~~ THE petition ~~shall be~~
13 IS within the discretion of the agency; but when an agency undertakes
14 rule-making on any matter, all related petitions for the issuance,
15 amendment, or repeal of rules on ~~such~~ THE matter shall be considered and
16 acted upon in the same proceeding.

17 (b) (I) IF A PETITION IS FILED WITH AN AGENCY PURSUANT TO
18 SECTION 24-4-306, THE AGENCY SHALL, WITHIN NINETY DAYS AFTER THE
19 DATE THE PETITION IS FILED:

20 (A) REPEAL THE OCCUPATIONAL REGULATION THAT IS THE
21 SUBJECT OF THE PETITION;

22 (B) AMEND THE OCCUPATIONAL REGULATION SO THAT THE
23 OCCUPATIONAL REGULATION CONFORMS TO THE STANDARD SET FORTH IN
24 SECTION 24-4-304;

25 (C) CEASE ADMINISTRATION OF THE OCCUPATIONAL REGULATION;

26 OR

27 (D) ISSUE A STATEMENT EXPLAINING HOW THE OCCUPATIONAL

1 REGULATION CONFORMS TO THE STANDARD SET FORTH IN SECTION
2 24-4-304 (1) OR IS SPECIFICALLY REQUIRED BY STATUTE.

3 (II) FOR PURPOSES OF THIS SUBSECTION (7)(b), "OCCUPATIONAL
4 REGULATION" HAS THE MEANING ESTABLISHED IN SECTION 24-4-303 (4).

5 (8.1) (b) The agency rule-making record ~~shall~~ MUST contain:

6 (XI) A COPY OF THE STATEMENT REQUIRED BY SUBSECTION (2.9)
7 OF THIS SECTION.

8 **SECTION 3. Act subject to petition - effective date.** This act
9 takes effect at 12:01 a.m. on the day following the expiration of the
10 ninety-day period after final adjournment of the general assembly (August
11 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a
12 referendum petition is filed pursuant to section 1 (3) of article V of the
13 state constitution against this act or an item, section, or part of this act
14 within such period, then the act, item, section, or part will not take effect
15 unless approved by the people at the general election to be held in
16 November 2018 and, in such case, will take effect on the date of the
17 official declaration of the vote thereon by the governor.