

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 18-1074.01 Kip Kolkmeier x4510

SENATE BILL 18-193

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A BILL FOR AN ACT

101 **CONCERNING ADDITIONAL LIMITATIONS ON STATE AGENCY**
102 **OCCUPATIONAL REGULATIONS, AND, IN CONNECTION**
103 **THEREWITH, MAKING AN APPROPRIATION.**

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

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.

SENATE
Amended 2nd Reading
April 16, 2018

1 (e) THE BURDEN OF EXCESSIVE REGULATION IS BORNE MOST
2 HEAVILY BY INDIVIDUALS OUTSIDE THE ECONOMIC MAINSTREAM FOR
3 WHOM OPPORTUNITIES FOR ECONOMIC ADVANCEMENT ARE
4 CONSEQUENTLY CURTAILED.

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

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

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

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

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

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

18 (I) PROMOTES MARKET COMPETITION;

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

21 (III) UTILIZES PRIVATE CERTIFICATION; AND

22 (IV) ALLOWS VOLUNTARY BONDING OR INSURANCE.

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

24 (I) REGISTRATION, CERTIFICATION, OR LICENSURE;

25 (II) AN OCCUPATIONAL LICENSE FOR MEDICAL REIMBURSEMENT;

26 (III) INSPECTIONS;

27 (IV) BONDING AND INSURANCE REQUIREMENTS;

1 (V) ENFORCEMENT PROVISIONS GRANTING A PRIVATE CIVIL CAUSE
2 OF ACTION OR REMEDIES UNDER CONSUMER PROTECTION OR DECEPTIVE
3 PRACTICE ACTS; OR

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

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

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

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

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

1 OR OCCUPATION.

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

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

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

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

27 (a) THE SPECIFIC PUBLIC HEALTH, SAFETY, OR WELFARE

1 OBJECTIVES OF THE REGULATION;

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

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

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

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

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

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

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

27 (3) ON OR BEFORE JANUARY 1, 2020, EVERY AGENCY SHALL

1 PREPARE AND SUBMIT A REPORT TO THE MEMBERS OF THE GENERAL
2 ASSEMBLY STATING THE ACTIONS TAKEN TO CONFORM WITH THIS SECTION.

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

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

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

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

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

1 (b) (I) THE CHALLENGED OCCUPATIONAL REGULATION IS
2 DEMONSTRABLY NECESSARY AND NARROWLY TAILORED TO ACHIEVE A
3 SPECIFIC, LEGITIMATE PUBLIC HEALTH, SAFETY, OR WELFARE OBJECTIVE;
4 AND

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

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

10 **SECTION 2.** In Colorado Revised Statutes, 24-4-103, **amend**
11 (6)(a), (7), and (8.1)(b) introductory portion; and **add** (2.9) and
12 (8.1)(b)(XI) as follows:

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

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

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

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

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

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

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

26 (C) CEASE ADMINISTRATION OF THE OCCUPATIONAL REGULATION;

27 OR

1 (D) ISSUE A STATEMENT EXPLAINING HOW THE OCCUPATIONAL
2 REGULATION CONFORMS TO THE STANDARD SET FORTH IN SECTION
3 24-4-304 (1) OR IS SPECIFICALLY REQUIRED BY STATUTE.

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

6 (8.1) (b) The agency rule-making record ~~shall~~ MUST contain:

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

9 **SECTION 3. Appropriation.** (1) For the 2018-19 state fiscal
10 year, \$40,415 is appropriated to the department of agriculture. This
11 appropriation is from the general fund and is based on an assumption that
12 the department will require an additional 0.4 FTE. To implement this act,
13 the department may use this appropriation for occupational rule review.

14 (2) For the 2018-19 state fiscal year, \$76,887 is appropriated to
15 the department of education. This appropriation is from the general fund
16 and is based on an assumption that the department will require an
17 additional 0.8 FTE. To implement this act, the department may use this
18 appropriation for occupational rule review.

19 (3) For the 2018-19 state fiscal year, \$40,415 is appropriated to
20 the department of human services. This appropriation is from the general
21 fund and is based on an assumption that the department will require an
22 additional 0.4 FTE. To implement this act, the department may use this
23 appropriation for occupational rule review.

24 (4) For the 2018-19 state fiscal year, \$40,415 is appropriated to
25 the department of public health and environment. This appropriation is
26 from the general fund and is based on an assumption that the department
27 will require an additional 0.4 FTE. To implement this act, the department

1 may use this appropriation for occupational rule review.

2 (5) For the 2018-19 state fiscal year, \$2,306,226 is appropriated
3 to the department of regulatory agencies. This appropriation is from the
4 general fund and is based on an assumption that the department will
5 require an additional 20.0 FTE. To implement this act, the department
6 may use this appropriation for occupational rule review.

7 (6) For the 2018-19 state fiscal year, \$153,869 is appropriated to
8 the department of revenue. This appropriation is from the general fund
9 and is based on an assumption that the department will require an
10 additional 1.7 FTE. To implement this act, the department may use this
11 appropriation for occupational rule review.

12 **SECTION 4. Act subject to petition - effective date.** This act
13 takes effect at 12:01 a.m. on the day following the expiration of the
14 ninety-day period after final adjournment of the general assembly (August
15 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a
16 referendum petition is filed pursuant to section 1 (3) of article V of the
17 state constitution against this act or an item, section, or part of this act
18 within such period, then the act, item, section, or part will not take effect
19 unless approved by the people at the general election to be held in
20 November 2018 and, in such case, will take effect on the date of the
21 official declaration of the vote thereon by the governor.