

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 18-0098.02 Jery Payne x2157

HOUSE BILL 18-1224

HOUSE SPONSORSHIP

Willett,

SENATE SPONSORSHIP

(None),

House Committees

State, Veterans, & Military Affairs
Finance

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE PROCESS THAT IS DUE FOR THE IMPOSITION OF**
102 **DISCIPLINE THAT AFFECTS A PERSON'S ABILITY TO PRACTICE AN**
103 **OCCUPATION, AND, IN CONNECTION THEREWITH, REQUIRING**
104 **THE PARTIES TO SUBMIT TO MEDIATION.**

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>.)

Current law requires state agencies to give a licensee:

! Notice of facts or conduct that may warrant revocation, suspension, annulment, limitation, or modification of a

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.

license;

! An opportunity to submit written data, views, and arguments with respect to the facts or conduct; and

! A reasonable opportunity to comply with all lawful requirements except for a willful violation or violation that is a danger to public health and safety.

When a matter pertains to a license concerning an occupation, **section 1** of the bill requires a state agency:

! To include a person who has authority to make prehearing decisions concerning disposition of the issue in settlement and mediation meetings and communications with the licensee; and

! To include a mediator at the expense of the licensee upon the licensee's request.

If an agency fails to comply with these requirements, section 1 authorizes the licensee to petition the administrative law judge or hearing officer to enjoin proceedings and order mediation. Administrative law judges are instructed to make themselves available for mediation if feasible. Procedures are set for mediation. If mediation fails, the agency may continue to seek discipline upon instituting a disciplinary hearing against a licensee, and the agency must notify the licensee of current law and the additional requirements in the bill.

Section 3 of the bill clarifies that a court may overturn discipline for a failure to follow the requirements of current law, as modified by the bill in section 1.

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

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

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

11 **SECTION 2.** In Colorado Revised Statutes, 24-4-105, **amend** (4)

1 as follows:

2 **24-4-105. Hearings and determinations - repeal.** (4) (a) Any
3 agency conducting a hearing, any administrative law judge, and any
4 hearing officer shall have authority to: Administer oaths and affirmations;
5 sign and issue subpoenas; rule upon offers of proof and receive evidence;
6 dispose of motions relating to the discovery and production of relevant
7 documents and things for inspection, copying, or photographing; regulate
8 the course of the hearing, set the time and place for continued hearings,
9 and fix the time for the filing of briefs and other documents; direct the
10 parties to appear and confer to consider the simplification of the issues,
11 admissions of fact or of documents to avoid unnecessary proof, and
12 limitation of the number of expert witnesses; issue appropriate orders
13 ~~which~~ THAT shall control the subsequent course of the proceedings;
14 dispose of motions to dismiss for lack of agency jurisdiction over the
15 subject matter or parties or for any other ground; dispose of motions to
16 amend or to dismiss without prejudice applications and other pleadings;
17 dispose of motions to intervene, procedural requests, or similar matters;
18 reprimand or exclude from the hearing any person for any improper or
19 indecorous conduct in his OR HER presence; award attorney fees for
20 abuses of discovery procedures or as otherwise provided under the
21 Colorado rules of civil procedure; and take any other action authorized by
22 agency rule consistent with this article 4 or in accordance, to the extent
23 practicable, with the procedure in the district courts. All parties to the
24 proceeding shall also have the right to cross-examine witnesses who
25 testify at the proceeding. In the event more than one person engages in the
26 conduct of a hearing, such persons shall designate one of their number to
27 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

1 DECISIONS CONCERNING DISPOSITION OF THE MATTER TO BE PRESENT
2 DURING MEETINGS RELATED TO SETTLEMENT COMMUNICATIONS OR
3 MEDIATION COMMUNICATIONS AND TO BE INCLUDED IN ANY MATERIAL
4 SETTLEMENT COMMUNICATIONS WITH THE LICENSEE OR THE LICENSEE'S
5 REPRESENTATIVE OVER THE MATTER; AND

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

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

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

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

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

1 (V) IF MEDIATION FAILS, THE AGENCY SHALL NOTIFY THE
2 ADMINISTRATIVE LAW JUDGE OR THE HEARING OFFICER, AND THE
3 ADMINISTRATIVE LAW JUDGE OR THE HEARING OFFICER SHALL LIFT THE
4 SUSPENSION AND PROCEED WITH THE HEARING.

5 (VI) WHEN DETERMINING THE PLACE TO HOLD THE MEDIATION,
6 THE AGENCY SHALL GIVE DUE CONSIDERATION TO THE LOCATION OF THE
7 LICENSEE'S OCCUPATION OR RESIDENCE, THE AVAILABILITY OF AN
8 ADMINISTRATIVE LAW JUDGE TO MEDIATE, AND THE AVAILABILITY OF A
9 MEMBER OF THE GOVERNING BODY THAT REGULATES THE LICENSEE TO BE
10 A PERSON WITH AUTHORITY TO MAKE PREHEARING DECISIONS
11 CONCERNING DISPOSITION OF THE MATTER.

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

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

22 (IX) BY JANUARY 1, 2022, THE OFFICE OF ADMINISTRATIVE
23 COURTS AND THE DIVISION OF PROFESSIONS AND OCCUPATIONS IN THE
24 DEPARTMENT OF REGULATORY AGENCIES SHALL ISSUE A JOINT REPORT TO
25 THE JUDICIARY COMMITTEE AND THE STATE, VETERANS, AND MILITARY
26 AFFAIRS COMMITTEE OF THE HOUSE OF REPRESENTATIVES AND THE
27 JUDICIARY COMMITTEE AND THE STATE, VETERANS, AND MILITARY

1 AFFAIRS COMMITTEE OF THE SENATE OR THEIR SUCCESSOR COMMITTEES.
2 THIS SUBSECTION (4)(b)(VIII) IS REPEALED, EFFECTIVE JULY 1, 2022. THE
3 REPORT MUST CONTAIN THE FOLLOWING:

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

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

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

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

12 (E) THE NUMBER OF PROCEEDINGS IN WHICH THE LICENSEE AND
13 AGENCY AGREED TO SETTLE THE PROCEEDINGS BETWEEN JULY 1, 2016,
14 AND JULY 1, 2018; AND

15 (F) THE NUMBER OF PROCEEDINGS IN WHICH THE LICENSEE AND
16 AGENCY AGREED TO SETTLE THE PROCEEDINGS BETWEEN JULY 1, 2019,
17 AND JULY 1, 2021.

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

20 **24-4-106. Judicial review.** (7) (a) If the court finds no error, it
21 shall affirm the agency action.

22 (b) THE COURT SHALL HOLD UNLAWFUL AND SET ASIDE THE
23 AGENCY ACTION AND SHALL RESTRAIN THE ENFORCEMENT OF THE ORDER
24 OR RULE UNDER REVIEW, COMPEL ANY AGENCY ACTION TO BE TAKEN THAT
25 HAS BEEN UNLAWFULLY WITHHELD OR UNDULY DELAYED, REMAND THE
26 CASE FOR FURTHER PROCEEDINGS, AND AFFORD OTHER RELIEF AS MAY BE
27 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.

1 **SECTION 4. Applicability.** This act applies to hearings brought
2 to discipline the holder of a license, registration, or certification; to
3 actions brought to enforce the "State Administrative Procedure Act"; and
4 to judicial review of an agency's actions under preexisting law, on or after
5 the effective date of this act.

6 **SECTION 5. Safety clause.** The general assembly hereby finds,
7 determines, and declares that this act is necessary for the immediate
8 preservation of the public peace, health, and safety.