

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**

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**HOUSE SPONSORSHIP**

**Willett,**

**SENATE SPONSORSHIP**

**Gardner,**

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**House Committees**

State, Veterans, & Military Affairs  
Finance  
Appropriations

**Senate Committees**

Finance  
Appropriations

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**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 AND MAKING AN**  
105            **APPROPRIATION.**

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**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,

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.*

HOUSE  
3rd Reading Unamended  
April 25, 2018

HOUSE  
Amended 2nd Reading  
April 24, 2018

suspension, annulment, limitation, or modification of a 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.

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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.

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

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

1 perform such of the above functions as can best be performed by one  
2 person only, and thereafter such person only shall perform those functions  
3 which THAT are assigned to him OR HER by the several persons  
4 conducting such hearing.

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

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

21 (II) UPON PETITION OF THE AGENCY OR LICENSEE AFTER THE  
22 LICENSEE HAS RECEIVED THE NOTICE OF HEARING UNDER SUBSECTION  
23 (2)(a) OF THIS SECTION, THE HEARING OFFICER OR ADMINISTRATIVE LAW  
24 JUDGE SHALL ORDER MEDIATION BETWEEN THE AGENCY AND THE  
25 LICENSEE UNLESS THE LICENSE WAS SUMMARILY SUSPENDED IN  
26 ACCORDANCE WITH SECTION 24-4-104 (4). WHEN MEDIATION IS ORDERED,  
27 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 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

1 ADMINISTRATIVE LAW JUDGE'S OR THE HEARING OFFICER'S SUPERVISION.

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

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

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

18 (VIII) THIS SUBSECTION (4)(b) DOES NOT APPLY IF A LICENSE HAS  
19 BEEN SUMMARILY SUSPENDED BECAUSE THE AGENCY FINDS, IN  
20 ACCORDANCE WITH SECTION 24-4-104 (4), THAT THE LICENSEE IS GUILTY  
21 OF A DELIBERATE AND WILLFUL VIOLATION OR THAT THE PUBLIC HEALTH,  
22 SAFETY, OR WELFARE IMPERATIVELY REQUIRES EMERGENCY ACTION AND  
23 INCORPORATES THE FINDINGS IN THE AGENCY'S ORDER. NOTHING IN THIS  
24 SUBSECTION (4)(b) PROHIBITS AN AGENCY AND LICENSEE FROM  
25 VOLUNTARILY AGREEING TO A MEDIATION FOLLOWING A SUMMARY  
26 SUSPENSION.

27 (IX) BY JANUARY 1, 2022, THE OFFICE OF ADMINISTRATIVE

1 COURTS AND THE DIVISION OF PROFESSIONS AND OCCUPATIONS IN THE  
2 DEPARTMENT OF REGULATORY AGENCIES SHALL ISSUE A JOINT REPORT TO  
3 THE JUDICIARY COMMITTEE AND THE STATE, VETERANS, AND MILITARY  
4 AFFAIRS COMMITTEE OF THE HOUSE OF REPRESENTATIVES AND THE  
5 JUDICIARY COMMITTEE AND THE STATE, VETERANS, AND MILITARY  
6 AFFAIRS COMMITTEE OF THE SENATE OR THEIR SUCCESSOR COMMITTEES.  
7 THIS SUBSECTION (4)(b)(VIII) IS REPEALED, EFFECTIVE JULY 1, 2022. THE  
8 REPORT MUST CONTAIN THE FOLLOWING:

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

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

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

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

17 (E) THE NUMBER OF PROCEEDINGS IN WHICH THE LICENSEE AND  
18 AGENCY AGREED TO SETTLE THE PROCEEDINGS BETWEEN JULY 1, 2016,  
19 AND JULY 1, 2018; AND

20 (F) THE NUMBER OF PROCEEDINGS IN WHICH THE LICENSEE AND  
21 AGENCY AGREED TO SETTLE THE PROCEEDINGS BETWEEN JULY 1, 2019,  
22 AND JULY 1, 2021.

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

25 **24-4-106. Judicial review.** (7) (a) If the court finds no error, it  
26 shall affirm the agency action.

27 (b) THE COURT SHALL HOLD UNLAWFUL AND SET ASIDE THE

1 AGENCY ACTION AND SHALL RESTRAIN THE ENFORCEMENT OF THE ORDER  
2 OR RULE UNDER REVIEW, COMPEL ANY AGENCY ACTION TO BE TAKEN THAT  
3 HAS BEEN UNLAWFULLY WITHHELD OR UNDULY DELAYED, REMAND THE  
4 CASE FOR FURTHER PROCEEDINGS, AND AFFORD OTHER RELIEF AS MAY BE  
5 APPROPRIATE if ~~it~~ THE COURT finds that the agency action is:

6 (I) Arbitrary or capricious;

7 (II) A denial of statutory right;

8 (III) Contrary to constitutional right, power, privilege, or  
9 immunity;

10 (IV) In excess of statutory jurisdiction, authority, purposes, or  
11 limitations;

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

14 (VI) An abuse or clearly unwarranted exercise of discretion;

15 (VII) Based upon findings of fact that are clearly erroneous on the  
16 whole record;

17 (VIII) Unsupported by substantial evidence when the record is  
18 considered as a whole; or

19 (IX) Otherwise contrary to law, ~~then the court shall hold unlawful~~  
20 ~~and set aside the agency action and shall restrain the enforcement of the~~  
21 ~~order or rule under review, compel any agency action to be taken which~~  
22 ~~has been unlawfully withheld or unduly delayed, remand the case for~~  
23 ~~further proceedings, and afford such other relief as may be appropriate~~  
24 INCLUDING FAILING TO COMPLY WITH SECTION 24-4-104 (3)(a) OR  
25 24-4-105 (4)(b).

26 (c) In making the ~~foregoing determinations~~ FINDINGS SPECIFIED IN  
27 THIS SUBSECTION (7), the court shall review the whole record or ~~such~~



1 portions thereof as may be OF THE RECORD cited by any party.

2 (d) In all cases under review, the court shall determine all  
3 questions of law and interpret the statutory and constitutional provisions  
4 involved and shall apply such THE interpretation to the facts duly found  
5 or established.

6 **SECTION 4. Appropriation.** (1) For the 2018-19 state fiscal  
7 year, \$125,356 is appropriated to the department of regulatory agencies.  
8 This appropriation is from the division of professions and occupations  
9 cash fund created in section 24-34-105 (2)(b)(I), C.R.S. To implement  
10 this act, the department may use this appropriation as follows:

11 (a) \$24,393 for use by the division of professions and occupations  
12 for personal services, which amount is based on an assumption that the  
13 division will require an additional 0.3 FTE;

14 (b) \$16,471 for use by the division of professions and occupations  
15 for operating expenses;

16 (c) \$19,917 for the purchase of administrative law judge services;  
17 and

18 (d) \$64,575 for the purchase of legal services.

19 (2) For the 2018-19 state fiscal year, \$19,917 is appropriated to  
20 the department of personnel for use by the office of administrative courts.  
21 This appropriation is from reappropriated funds received from the  
22 department of regulatory agencies under subsection (1)(c) of this section  
23 and is based on an assumption that the office will require an additional  
24 0.2 FTE. To implement this act, the office may use this appropriation to  
25 provide administrative law judge services for the department of regulatory  
26 agencies.

27 (3) For the 2018-19 state fiscal year, \$64,575 is appropriated to

1 the department of law. This appropriation is from reappropriated funds  
2 received from the department of regulatory agencies under subsection  
3 (1)(d) of this section and is based on an assumption that the department  
4 of law will require an additional 0.3 FTE. To implement this act, the  
5 department of law may use this appropriation to provide legal services for  
6 the department of regulatory agencies.

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

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