

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 18-1177.01 Yelana Love x2295

SENATE BILL 18-236

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A BILL FOR AN ACT

101 CONCERNING THE DEPARTMENT OF REGULATORY AGENCIES'
102 DETERMINATION REGARDING THE REGULATION OF PROFESSIONS
103 AND OCCUPATIONS.

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 the department of regulatory agencies (department) to analyze whether to begin or continue the regulation of a profession or occupation based on several factors. The bill elaborates on these factors and requires the department to find present, significant, and substantiated harm to consumers before recommending regulation. The

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.

bill further requires the department to recommend only the least restrictive regulation necessary to address the harm.

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

2 **SECTION 1.** In Colorado Revised Statutes, 24-34-104.1, **amend**
3 (2)(b); and **add** (8) and (9) as follows:

4 **24-34-104.1. General assembly sunrise review of new**
5 **regulation of occupations and professions - definitions.** (2) (b) (I) The
6 department shall review a proposal to regulate a professional or
7 occupational group only when the party requesting the review files a
8 statement of support for the proposed regulation that has been signed by
9 at least ten members of the professional or occupational group for which
10 regulation is being sought or at least ten individuals who are not members
11 of the professional or occupational group.

12 (II) IN CONDUCTING A REVIEW IN ACCORDANCE WITH SUBSECTION
13 (2)(b)(I) OF THIS SECTION, THE DEPARTMENT SHALL PRESUME THAT
14 CONSUMERS ARE SUFFICIENTLY PROTECTED BY MARKET COMPETITION AND
15 PRIVATE REMEDIES.

16 (III) THE DEPARTMENT MAY REBUT THE PRESUMPTION IN
17 SUBSECTION (2)(b)(II) OF THIS SECTION ONLY IF THE DEPARTMENT FINDS
18 CREDIBLE EVIDENCE OF A PRESENT, SIGNIFICANT, AND SUBSTANTIATED
19 HARM TO CONSUMERS IN THE STATE THAT WARRANTS THE ENACTMENT OF
20 GOVERNMENT REGULATION TO PROTECT CONSUMERS. IF THE DEPARTMENT
21 FINDS CREDIBLE EVIDENCE OF SUCH HARM, THE DEPARTMENT SHALL
22 RECOMMEND THE LEAST RESTRICTIVE OCCUPATIONAL REGULATION THAT
23 ADDRESSES THE HARM.

24 (IV) THE DEPARTMENT SHALL USE THE FOLLOWING GUIDELINES TO
25 FORM ITS RECOMMENDATION TO ADDRESS THE HARM. IF THE HARM ARISES

1 FROM:

2 (A) CONTRACTUAL DISPUTES, INCLUDING PRICING DISPUTES, THE
3 DEPARTMENT MAY RECOMMEND THE ENACTMENT OF A SPECIFIC CAUSE OF
4 ACTION IN SMALL CLAIMS COURT OR DISTRICT COURT TO REMEDY
5 CONSUMER HARM. THE CAUSE OF ACTION MAY PROVIDE FOR
6 REIMBURSEMENT OF THE ATTORNEY FEES OR COURT COSTS IF A
7 CONSUMER'S CLAIM IS SUCCESSFUL.

8 (B) FRAUD, THE DEPARTMENT MAY RECOMMEND STRENGTHENING
9 POWERS UNDER THE STATE'S DECEPTIVE TRADE PRACTICES IN ARTICLE 1
10 OF TITLE 6 OR REQUIRING DISCLOSURES THAT WILL REDUCE MISLEADING
11 ATTRIBUTES OF THE SPECIFIC GOOD OR SERVICE;

12 (C) UNCLEAN FACILITIES OR THE NEED TO PROMOTE GENERAL
13 HEALTH AND SAFETY, THE DEPARTMENT MAY RECOMMEND REQUIRING
14 PERIODIC INSPECTION OF THE PROVIDERS' FACILITIES;

15 (D) A PROVIDER'S FAILURE TO COMPLETE A CONTRACT FULLY OR
16 TO STANDARDS, THE DEPARTMENT MAY RECOMMEND REQUIRING THAT THE
17 PROVIDER BE BONDED;

18 (E) THE NEED TO PROTECT A PERSON WHO IS NOT PARTY TO A
19 CONTRACT BETWEEN THE PROVIDER AND CONSUMER, THE DEPARTMENT
20 MAY RECOMMEND REQUIRING THAT THE PROVIDER HAVE INSURANCE;

21 (F) A PROVIDER NOT DOMICILED IN THE STATE, THE DEPARTMENT
22 MAY RECOMMEND THAT THE PROVIDER MUST REGISTER THE PROVIDER'S
23 BUSINESS WITH THE SECRETARY OF STATE;

24 (G) A CONSUMER'S LOWER LEVEL OF KNOWLEDGE ABOUT THE
25 GOOD OR SERVICE RELATIVE TO THE SELLER'S GREATER KNOWLEDGE, THE
26 DEPARTMENT MAY RECOMMEND THE ENACTMENT OF A VOLUNTARY
27 PRIVATE OR GOVERNMENT CERTIFICATION;

1 (H) THE NEED TO QUALIFY PROVIDERS OF NEW OR HIGHLY
2 SPECIALIZED MEDICAL SERVICES FOR REIMBURSEMENT BY THE STATE, THE
3 DEPARTMENT MAY RECOMMEND THE ENACTMENT OF A SPECIALTY
4 OCCUPATIONAL LICENSE FOR MEDICAL REIMBURSEMENT;

5 (I) THE NEED TO ADDRESS A SYSTEMATIC INFORMATION
6 SHORTFALL IN WHICH A CONSUMER OF THE SERVICE IS UNABLE TO
7 DISTINGUISH BETWEEN THE QUALITY OF PROVIDERS, THERE IS AN ABSENCE
8 OF INSTITUTIONS THAT PROVIDE GUIDANCE TO CONSUMERS, AND THE
9 CONSUMER'S INABILITY AND THE LACK OF GUIDANCE WILL ALLOW FOR
10 PRESENT, SIGNIFICANT, AND SUBSTANTIATED HARM, THE DEPARTMENT
11 MAY RECOMMEND THE ENACTMENT OF A PROFESSIONAL OR
12 OCCUPATIONAL LICENSE.

13 (8) FOR PURPOSES OF THIS SECTION:

14 (a) "LEAST RESTRICTIVE" MEANS, FROM LEAST TO MOST
15 RESTRICTIVE:

- 16 (I) MARKET COMPETITION;
- 17 (II) THIRD-PARTY OR CONSUMER-CREATED RATINGS AND REVIEWS;
- 18 (III) PRIVATE CERTIFICATION;
- 19 (IV) VOLUNTARY BONDING OR INSURANCE;
- 20 (V) SPECIFIC PRIVATE CIVIL CAUSE OF ACTION TO REMEDY
21 CONSUMER HARM;
- 22 (VI) DECEPTIVE TRADE PRACTICES IN ARTICLE 1 OF TITLE 6;
- 23 (VII) MANDATORY DISCLOSURE OF ATTRIBUTES OF THE SPECIFIC
24 GOOD OR SERVICE;
- 25 (VIII) REGULATION OF THE PROCESS PROVIDING THE SPECIFIC
26 GOOD OR SERVICE;
- 27 (IX) INSPECTION;

- 1 (X) BONDING;
- 2 (XI) INSURANCE;
- 3 (XII) REGISTRATION;
- 4 (XIII) GOVERNMENT CERTIFICATION;
- 5 (XIV) SPECIALTY OCCUPATIONAL LICENSE FOR MEDICAL
- 6 REIMBURSEMENT; AND
- 7 (XV) OCCUPATIONAL LICENSE.

8 (b) "SPECIALTY OCCUPATIONAL LICENSE FOR MEDICAL
9 REIMBURSEMENT" MEANS A NONTRANSFERABLE AUTHORIZATION FOR AN
10 INDIVIDUAL TO QUALIFY FOR PAYMENT OR REIMBURSEMENT FROM A
11 GOVERNMENT AGENCY FOR THE NONEXCLUSIVE PROVISION OF MEDICAL
12 SERVICE BASED ON MEETING PERSONAL QUALIFICATIONS ESTABLISHED BY
13 THE LEGISLATURE.

14 (9) LAWS GOVERNING THE REGULATION OF A PROFESSION OR
15 OCCUPATION, WHERE AMBIGUOUS, SHALL BE CONSTRUED:

16 (a) TO INCREASE ECONOMIC OPPORTUNITIES, PROMOTE
17 COMPETITION, AND ENCOURAGE INNOVATION;

18 (b) IN FAVOR OF WORKERS AND ASPIRING WORKERS; AND

19 (c) IN FAVOR OF A NARROW SCOPE OF PRACTICE TO AVOID
20 APPLICATION TO AN INDIVIDUAL WHO WOULD BE BURDENED BY
21 REGULATORY REQUIREMENTS THAT ARE ONLY PARTIALLY RELATED TO THE
22 GOODS OR SERVICES THE INDIVIDUAL PROVIDES.

23 **SECTION 2.** In Colorado Revised Statutes, 24-34-104, **amend**
24 (5)(a); and **add** (5)(a.5) as follows:

25 **24-34-104. General assembly review of regulatory agencies**
26 **and functions for repeal, continuation, or reestablishment - legislative**
27 **declaration - repeal.** (5) (a) The department of regulatory agencies shall

1 analyze and evaluate the performance of each agency or function
2 scheduled for repeal under this section. In conducting the analysis and
3 evaluation, the department of regulatory agencies shall take into
4 consideration, but need not be limited to considering, the factors listed in
5 ~~paragraph (b) of subsection (6)~~ SUBSECTION (6)(b) OF THIS SECTION AND,
6 RELATING TO THE REGULATION OF PROFESSIONS AND OCCUPATIONS,
7 SUBSECTION (5)(a.5) of this section. The department of regulatory
8 agencies shall submit a report and supporting materials to the office of
9 legislative legal services no later than October 15 of the year preceding
10 the date established for repeal and shall make a copy of the report
11 available to each member of the general assembly.

12 (a.5) (I) IN CONDUCTING THE ANALYSIS AND EVALUATION OF THE
13 NEED FOR THE CONTINUED EXISTENCE OF AN OCCUPATIONAL REGULATION
14 IN ACCORDANCE WITH THIS SECTION, THE DEPARTMENT SHALL PRESUME
15 THAT CONSUMERS ARE SUFFICIENTLY PROTECTED BY MARKET
16 COMPETITION AND PRIVATE REMEDIES.

17 (II) THE DEPARTMENT MAY REBUT THE PRESUMPTION IN
18 SUBSECTION (5)(a.5)(I) OF THIS SECTION ONLY IF THE DEPARTMENT FINDS
19 CREDIBLE EVIDENCE OF A PRESENT, SIGNIFICANT, AND SUBSTANTIATED
20 HARM TO CONSUMERS IN THE STATE THAT WARRANTS THE ENACTMENT OF
21 GOVERNMENT REGULATION TO PROTECT CONSUMERS. IF THE DEPARTMENT
22 FINDS CREDIBLE EVIDENCE OF SUCH HARM, THE DEPARTMENT SHALL
23 RECOMMEND THE REGULATION THAT ADDRESSES THE HARM AND IS THE
24 LEAST RESTRICTIVE, AS DEFINED IN SECTION 24-34-104.1 (8)(a).

25 (III) THE DEPARTMENT SHALL USE THE FOLLOWING GUIDELINES TO
26 FORM ITS RECOMMENDATION TO ADDRESS THE HARM. IF THE HARM ARISES
27 FROM:

1 (A) CONTRACTUAL DISPUTES, INCLUDING PRICING DISPUTES, THE
2 DEPARTMENT MAY RECOMMEND THE ENACTMENT OF A SPECIFIC CAUSE OF
3 ACTION IN SMALL CLAIMS COURT OR DISTRICT COURT TO REMEDY
4 CONSUMER HARM. THE CAUSE OF ACTION MAY PROVIDE FOR
5 REIMBURSEMENT OF THE ATTORNEY FEES OR COURT COSTS IF A
6 CONSUMER'S CLAIM IS SUCCESSFUL.

7 (B) FRAUD, THE DEPARTMENT MAY RECOMMEND STRENGTHENING
8 POWERS UNDER THE STATE'S DECEPTIVE TRADE PRACTICES IN ARTICLE 1
9 OF TITLE 6 OR REQUIRING DISCLOSURES THAT WILL REDUCE MISLEADING
10 ATTRIBUTES OF THE SPECIFIC GOOD OR SERVICE;

11 (C) UNCLEAN FACILITIES OR THE NEED TO PROMOTE GENERAL
12 HEALTH AND SAFETY, THE DEPARTMENT MAY RECOMMEND REQUIRING
13 PERIODIC INSPECTION OF THE PROVIDERS' FACILITIES;

14 (D) A PROVIDER'S FAILURE TO COMPLETE A CONTRACT FULLY OR
15 TO STANDARDS, THE DEPARTMENT MAY RECOMMEND REQUIRING THAT THE
16 PROVIDER BE BONDED;

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18 CONTRACT BETWEEN THE PROVIDER AND CONSUMER, THE DEPARTMENT
19 MAY RECOMMEND REQUIRING THAT THE PROVIDER HAVE INSURANCE;

20 (F) A PROVIDER NOT DOMICILED IN THE STATE, THE DEPARTMENT
21 MAY RECOMMEND THAT THE PROVIDER MUST REGISTER THE PROVIDER'S
22 BUSINESS WITH THE SECRETARY OF STATE;

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24 GOOD OR SERVICE RELATIVE TO THE SELLER'S GREATER KNOWLEDGE, THE
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4 (I) THE NEED TO ADDRESS A SYSTEMATIC INFORMATION
5 SHORTFALL IN WHICH A CONSUMER OF THE SERVICE IS UNABLE TO
6 DISTINGUISH BETWEEN THE QUALITY OF PROVIDERS, THERE IS AN ABSENCE
7 OF INSTITUTIONS THAT PROVIDE GUIDANCE TO CONSUMERS, AND THE
8 CONSUMER'S INABILITY AND THE LACK OF GUIDANCE WILL ALLOW FOR
9 PRESENT, SIGNIFICANT, AND SUBSTANTIATED HARM, THE DEPARTMENT
10 MAY RECOMMEND THE ENACTMENT OF A PROFESSIONAL OR
11 OCCUPATIONAL LICENSE.

12 **SECTION 3. 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.