

TITLE 24. GOVERNMENT - STATE
PRINCIPAL DEPARTMENTS
ARTICLE 34. DEPARTMENT OF REGULATORY AGENCIES
PART 1. ORGANIZATION

C.R.S. 24-34-104 (2012)

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment

(1) (a) The general assembly finds that state government actions have produced a substantial increase in numbers of agencies, growth of programs, and proliferation of rules and regulations and that the whole process developed without sufficient legislative oversight, regulatory accountability, or a system of checks and balances. The general assembly further finds that regulatory agencies tend to become unnecessarily restrictive. The general assembly further finds that, by establishing a system for the termination, continuation, or reestablishment of such agencies and by providing for the analysis and evaluation of such agencies to determine the least restrictive regulation consistent with the public interest, it will be in a better position to evaluate the need for the continued existence of existing and future regulatory bodies.

(b) It is the intent of the general assembly that the system set forth in this section for termination, continuation, or reestablishment of agencies in the department of regulatory agencies, as in effect prior to April 28, 1988, be extended to the functions of certain specified agencies and to certain specified boards. By providing for such extension within the existing system, it is the intent to provide for the review of such functions and boards in the most cost-effective manner.

(2) and (2.5) Repealed.

(3) and (3.1) Repealed.

(4) to (4.3) Repealed.

(4.5) and (4.6) Repealed.

(4.8) (Renumbered by revision as subsection (22).)

(5) (a) The divisions in the department of regulatory agencies, the boards and agencies in the division of professions and occupations, and the functions of the specified agencies and the specified boards shall terminate according to the termination schedule outlined in this section. Requirements for periodic reports to the general assembly shall expire as set forth in section 24-1-136 (11) and shall be treated as "functions" of the respective agencies for purposes of this section except as otherwise provided in this section.

(b) Upon termination, each division, board, or agency shall continue in existence or, in the case of the termination of a function, each function shall continue to be performed until July 1 of the next succeeding year or until the date that is one year after any specified termination date other than July 1 for the purpose of winding up affairs. During the wind-up period, termination shall not reduce or otherwise limit the powers or authority of each respective agency; except that every license issued or renewed during the wind-up period shall expire at the end of said period, and original license and renewal fees shall be prorated accordingly. Upon the expiration of one year after termination, each respective agency shall cease all activities, or, in the case of the termination of a function, each function shall cease. When a license issued or renewed prior to termination is scheduled to expire after the cessation of activities, the license shall expire at the end of the wind-up period, and the agency shall refund the portion of the license fee paid that is attributable to the period following the cessation of activities. Any criminal penalty for engaging in any profession or activity without being licensed therefor shall not be enforceable with respect to activities occurring after an agency has ceased its activities pursuant to this section.

(c) Paragraph (b) of this subsection (5) shall not apply to the function of the community corrections board terminated pursuant to paragraph (e) of subsection (36) of this section.

(5.5) Repealed.

(6) Whenever the state constitution imposes any powers, duties, or functions on an agency or officer subject to the provisions of this section and such agency or officer is terminated and the general assembly does not designate another agency or officer to exercise such powers or perform such duties and functions, such agency or officer shall continue in existence, after the one-year wind-up period, under the principal department as if the agency or officer were transferred to the department by a type 2 transfer, as defined in section 24-1-105, until the general assembly shall otherwise designate.

(7) The life of any division, board, or agency scheduled for termination under this section may be continued or reestablished by the general assembly for periods not to exceed ten years. On or after May 25, 1994, the life of any division, board, or agency scheduled for termination under this section may be continued or reestablished by the general assembly for periods not to exceed fifteen years. Any newly created division, board, or agency in the department of regulatory agencies shall have a life not to exceed six years; but, on or after May 25, 1994, any such newly created division, board, or agency shall have a life not to exceed ten years, and shall be subject to the provisions of this section. The general assembly, acting by bill, may reschedule the termination date for a division, board, agency, or function to a later date if such rescheduled date does not violate the appropriate maximum life provision described in this subsection (7).

(8) (a) (I) The department of regulatory agencies shall conduct an analysis and evaluation of the performance of each division, board, or agency or each function scheduled for termination under this section. In conducting the analysis and evaluation, the department of regulatory agencies shall take into consideration, but need not be limited to considering, the factors listed in paragraph (b) of subsection (9) of this section. The department of regulatory agencies shall submit a report and supporting materials to the office of legislative legal services no later than October 15 of the year preceding the date established for termination, and a copy of said report shall be made available to each member of the general assembly.

(II) The department of regulatory agencies shall submit its report to the office of legislative legal services for the preparation of draft legislation based solely on specific recommendations for legislation contained in such report. Such report shall be submitted, no later than October 15 of the year preceding the date established for termination, to the office of legislative legal services for the preparation of draft legislation. Such draft legislation shall be prepared by the office of legislative legal services prior to the next regular session of the general assembly for the committee of reference designated pursuant to section 2-3-1201, C.R.S., and shall be submitted with the report of the department of regulatory agencies by the office of legislative legal services to the committee of reference designated pursuant to section 2-3-1201, C.R.S. The committee of reference designated pursuant to section 2-3-1201, C.R.S., shall determine the title of any legislation drafted pursuant to this subparagraph (II).

(III) This subsection (8) is exempt from the provisions of section 24-1-136 (11), and the periodic reporting requirement of this subsection (8) shall remain in effect until changed by the general assembly acting by bill.

(b) and (c) Repealed.

(9) (a) Prior to the termination, continuation, or reestablishment of an agency or function, a legislative committee of reference designated pursuant to section 2-3-1201, C.R.S., shall hold public hearings to receive testimony from the public, the executive director of the department of regulatory agencies, and the agencies involved. In such hearing, each agency shall have the burden of demonstrating a public need for continued existence of the agency or function and that its regulation is the least restrictive regulation consistent with the public interest.

(b) In such hearings, the determination as to whether an agency has demonstrated a public need for continued existence of the agency or function and for the degree of regulation it practices shall be based on the following factors, among others:

(I) Whether regulation by the agency is necessary to protect the public health, safety, and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less, or the same degree of regulation;

(II) If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms, and whether agency rules enhance the public interest and are within the scope of legislative intent;

(III) Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures, and practices and any other circumstances, including budgetary, resource, and personnel matters;

(IV) Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;

(V) Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;

(VI) The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;

(VII) Whether complaint, investigation, and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;

(VIII) Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;

(IX) Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

(c) A legislative committee of reference that conducts a review pursuant to paragraph (a) of this subsection (9) shall determine whether each agency or function should be terminated, continued, or reestablished and whether its functions should be revised and, if deemed advisable, may recommend the consideration of a proposed bill to carry out its recommendations.

(c.3) (I) Bills recommended for consideration pursuant to paragraph (c) of this subsection (9) shall be introduced in the house of representatives in even numbered years and in the senate in odd numbered years. The chair of each legislative committee of reference that recommends a bill for consideration shall assign the proposed bill to the following for sponsorship; except that no more than two such bills shall be assigned to any one member of the general assembly:

(A) Members of the committee of reference; or

(B) Members of the general assembly who are not members of the committee if approved by a majority vote of the committee's members.

(II) The speaker of the house of representatives shall assign the proposed bill to a representative for sponsorship in the house of representatives in odd numbered years. The president of the senate shall assign the proposed bill to a senator for sponsorship in the senate in even numbered years.

(c.6) A bill recommended for consideration by any such committee pursuant to paragraph (c) of this subsection (9) shall not be counted against the number of bills to which members of the general assembly are limited by any law or joint rule of the senate and the house of representatives.

(d) Prior to the termination, continuation, reestablishment, or revision of an agency's functions, a committee of reference in each house of the general assembly designated pursuant to section 2-3-1201, C.R.S., shall hold a public hearing to consider the report provided by the department of regulatory agencies and any bill recommended for consideration pursuant to paragraph (c) of this subsection (9), said hearing to include the factors and testimony set forth in paragraph (b) of this subsection (9).

(10) Repealed.

(11) (a) Pursuant to the process established in this section, no more than one such division, board, or agency shall be continued or reestablished or its functions amended in any bill for an act, and such division, board, or agency shall be mentioned in the bill's title. This paragraph (a) shall not apply to requirements for periodic reports to the general assembly.

(b) This section shall not cause the dismissal of any claim or right of a person through or against any such agency or any claim or right of an agency which has ceased its activities pursuant to this section which is or may be subject to litigation. Any person may pursue said claims or rights through or against the department of regulatory agencies, the agency which performed the terminated function, or, in the case of a terminated board which is not in the department of regulatory agencies, the specified department in which the board is located, and said claims and rights of an agency which has ceased its activities shall be assumed by the department of regulatory agencies, the agency which performed the terminated function, or the specific department. Nothing in this section shall interfere with the general assembly otherwise considering legislation on any division, board, agency, or similar body.

(12) When an agency or function is terminated pursuant to the provisions of this section and the general assembly reestablishes the agency or function during the wind-up period with substantially the same powers, duties, and functions, the agency or function shall be deemed to have been continued.

(12.5) The purpose of this section is to provide a listing of the divisions, boards, agencies, and functions subject to review and scheduled for termination under this section. No provision in this section effectuates the repeal of any statute; the provisions which effectuate the repeal of statute creating or governing a division, board, agency, or function are set forth in the substantive law creating such division, board, agency, or function. Nothing in such a repeal provision shall be construed to invalidate the wind-up period allowed by subsection (5) of this section or the provisions of subsection (6) of this section.

(13) through (44.5) not included

(45) The following agencies, functions, or both, terminate on July 1, 2014:

(a) The accreditation of health care providers under the workers' compensation system in accordance with section 8-42-101 (3.5) and (3.6), C.R.S.;

(b) The regulation of outfitters by the director of the division of professions and occupations pursuant to article 55.5 of title 12, C.R.S.;

(c) The state board of dental examiners, created by article 35 of title 12, C.R.S.;

(d) The fire suppression program of the division of fire prevention and control, created pursuant to sections 24-33.5-1204.5, 24-33.5-1206.1, 24-33.5-1206.2, 24-33.5-1206.3, 24-33.5-1206.4, 24-33.5-1206.5, 24-33.5-1206.6, and 24-33.5-1207.6;

(e) The record-keeping and licensing functions of the department of human services relating to addiction programs under which controlled substances are compounded, administered, or dispensed in accordance with part 2 of article 80 of title 27, C.R.S.;

(f) Repealed.

(g) The licensing of home care agencies in accordance with article 27.5 of title 25, C.R.S.;

(h) The licensing of pet animal facilities pursuant to article 80 of title 35, C.R.S.

(45.5) The following agencies, functions, or both, shall terminate on September 1, 2014:

(a) In-home support services, established pursuant to part 12 of article 6 of title 25.5, C.R.S.

(46) The following agencies, functions, or both shall terminate on July 1, 2015:

(a) The licensing of massage parlors in accordance with article 48.5 of title 12, C.R.S.;

(b) The securities board, created in section 11-51-702.5, C.R.S.;

(c) The division of securities, created pursuant to article 51 of title 11, C.R.S.;

(d) The compliance advisory panel to the air pollution control division in the department of public health and environment created in section 25-7-109.2, C.R.S.;

(e) The licensing and regulation of respiratory therapists by the division of professions and occupations in the department of regulatory agencies in accordance with article 41.5 of title 12, C.R.S.;

(f) The licensing of barbers, hairstylists, cosmetologists, cosmeticians, and manicurists by the director of the division of professions and occupations pursuant to article 8 of title 12, C.R.S.;

(g) The office of consumer counsel, created in article 6.5 of title 40, C.R.S.;

(h) The utility consumers' board, created in article 6.5 of title 40, C.R.S.;

(i) The regulation of commercial applicators, qualified supervisors, certified operators, and private applicators by the commissioner of agriculture in accordance with article 10 of title 35, C.R.S.;

(j) The functions pursuant to part 2 of article 14.5 of title 12, C.R.S., of the administrator designated pursuant to section 5-6-103, C.R.S., and the registration of debt-management service providers;

(k) The regulation of athletic trainers by the director of the division of professions and occupations in the department of regulatory agencies in accordance with article 29.7 of title 12, C.R.S.;

(l) The regulation of persons registered to practice mortuary science pursuant to sections 12-54-110 and 12-54-111, C.R.S., and cremation pursuant to sections 12-54-303 and 12-54-304, C.R.S., and the administration thereof pursuant to part 4 of article 54 of title 12, C.R.S.;

(m) The Colorado commission for the deaf and hard of hearing, created by article 21 of title 26, C.R.S.;

(n) The regulation of persons licensed pursuant to article 43.3 of title 12, C.R.S.

(46.5) The following agencies, functions, or both, shall terminate on September 1, 2015:

(a) The regulation of private occupational schools and their agents under article 59 of title 12, C.R.S., including the functions of the private occupational school division created in section 12-59-104.1, C.R.S., and the private occupational school board created in section 12-59-105.1, C.R.S.

(47) The following agencies, functions, or both, shall terminate on July 1, 2016:

(a) Repealed.

(b) The division of racing events, including the Colorado racing commission created by article 60 of title 12, C.R.S.;

(c) The rural alcohol and substance abuse prevention and treatment program created pursuant to section 27-80-117, C.R.S., within the unit in the department of human services that administers behavioral health programs and services, including those related to mental health and substance abuse.

(47.5) The following agencies, functions, or both, shall terminate on September 1, 2016:

(a) The nursing facility culture change accountability board created in section 25-1-107.5 (6), C.R.S., and the use of moneys in the nursing home penalty cash fund for the purposes described in section 25-1-107.5 (4) (c) (II), C.R.S.;

(b) The registration of surgical assistants and surgical technologists pursuant to article 43.2 of title 12, C.R.S.;

(c) The identity theft and financial fraud board and the Colorado fraud investigators unit created in part 17 of article 33.5 of this title;

(d) The issuance of information letters and private letter rulings by the executive director of the department of revenue in accordance with section 24-35-103.5;

(e) The registration and regulation of vessels by the department of natural resources in accordance with article 13 of title 33, C.R.S.;

(f) The sex offender management board created in section 16-11.7-103, C.R.S.;

(g) The teen pregnancy and dropout prevention program, created in section 25.5-5-603, C.R.S.;

(h) The registration of direct-entry midwives by the division of registrations in accordance with article 37 of title 12, C.R.S.;

(i) The voluntary licensing of private investigators by the director of the division of professions and occupations in accordance with article 58.5 of title 12, C.R.S.

(48) The following agencies, functions, or both, shall terminate on July 1, 2017:

(a) The licensing of landscape architects and the Colorado state board of landscape architects in the department of regulatory agencies in accordance with article 45 of title 12, C.R.S.;

(b) The certification of conveyances and conveyance mechanics, contractors, and inspectors pursuant to article 5.5 of title 9, C.R.S.;

(c) The motor vehicle dealer board, created by section 12-6-103, C.R.S., and the functions of the executive director of the department of revenue, including licensing, in accordance with part 1 of article 6 of title 12, C.R.S.;

(d) The regulation of powersports vehicles by the motor vehicle dealer board, created by section 12-6-103, C.R.S.;

(e) The function of licensing of bingo and other games of chance through the secretary of state in accordance with article 9 of title 12, C.R.S.;

(f) The Colorado bingo-raffle advisory board, created in section 12-9-201, C.R.S.;

(g) The division of real estate, including the real estate commission created in part 1 of article 61 of title 12, C.R.S.;

(h) The regulation of collection agencies pursuant to article 14 of title 12, C.R.S.;

(i) The office of boxing, including the Colorado state boxing commission, created by article 10 of title 12, C.R.S.;

(j) The functions of the division of insurance in the department of regulatory agencies pursuant to article 1 of title 10, C.R.S., other than the functions of the division related to the licensing of bail bonding agents.

(48.5) The following agencies, functions, or both, terminate on September 1, 2017:

(a) The domestic violence offender management board created in section 16-11.8-103, C.R.S.;

(b) The regulation of speech-language pathologists by the director of the division of professions and occupations pursuant to article 43.7 of title 12, C.R.S.;

(c) The licensing of professional cash-bail agents and cash-bonding agents under article 23 of title 10, C.R.S.

(49) The following agencies, functions, or both, shall terminate on July 1, 2018:

(a) The environmental management system permit program, created in article 6.6 of title 25, C.R.S.;

(b) The conservation easement oversight commission, created in section 12-61-721, C.R.S.;

(c) The issuance of licenses and certificates related to measurement standards by the commissioner of the department of agriculture in accordance with article 14 of title 35, C.R.S.;

(d) The regulation by the department of agriculture of the custom processing of meat animals in accordance with article 33 of title 35, C.R.S.;

(e) The regulation by the department of agriculture of home food service plans in accordance with article 33.5 of title 35, C.R.S.;

(f) The board of examiners of nursing home administrators created pursuant to section 12-39-104, C.R.S.;

(g) The appointment of notaries public through the secretary of state in accordance with part 1 of article 55 of title 12, C.R.S.;

(h) The Colorado civil rights division, including the Colorado civil rights commission, created by part 3 of this article;

(i) The consolidated communications system authority created in section 29-24.5-103, C.R.S.

(49.5) The following agencies, functions, or both, shall terminate on September 1, 2018:

(a) The automobile theft prevention authority and the automobile theft prevention board, created in section 42-5-112, C.R.S.;

(b) The licensing of physical therapists by the physical therapy board in accordance with article 41 of title 12, C.R.S.;

(c) The certification of physical therapist assistants by the physical therapy board in accordance with article 41 of title 12, C.R.S.;

(d) The issuance of permits for specific weather modification operations through the executive director of the department of natural resources in accordance with article 20 of title 36, C.R.S.

(50) The following agencies, functions, or both, shall terminate on July 1, 2019:

(a) Repealed.

(b) The passenger tramway safety board, created in section 25-5-703, C.R.S.;

(c) The licensing of public livestock markets pursuant to article 55 of title 35, C.R.S.;

(d) The licensing and regulation of psychiatric technicians by the state board of nursing pursuant to article 42 of title 12, C.R.S.;

(e) The state board of accountancy, created by article 2 of title 12, C.R.S.;

(f) The state electrical board, created by article 23 of title 12, C.R.S.;

(g) The Colorado podiatry board, created by article 32 of title 12, C.R.S.;

(h) The Colorado medical board, created by article 36 of title 12, C.R.S.

(50.5) The following agencies, functions, or both, terminate on September 1, 2019:

(a) The Colorado public utilities commission, created by article 2 of title 40, C.R.S.;

(b) The functions of the commissioner of the department of agriculture related to seed potatoes under article 27.3 of title 35, C.R.S.;

(c) The functions of the administrator, defined in section 5-9.5-103, C.R.S., with regard to refund anticipation loan facilitators regulated under article 9.5 of title 5, C.R.S.;

(d) The function of licensing river outfitters through the parks and wildlife commission and the division of parks and wildlife in accordance with article 32 of title 33, C.R.S.;

(e) The cold case task force created in section 24-33.5-109;

(f) The regulation of dialysis treatment clinics and hemodialysis technicians pursuant to section 25-1.5-108, C.R.S.;

(g) The functions of professional review committees pursuant to article 36.5 of title 12, C.R.S.

(51) The following agencies, functions, or both, shall terminate on July 1, 2020:

(a) The regulation of persons working in coal mines by the department of natural resources through the coal mine board of examiners in accordance with article 22 of title 34, C.R.S.;

(b) The regulation of poultry eggs pursuant to article 21 of title 35, C.R.S.;

(c) The registration functions of the commissioner of agriculture pursuant to article 27 of title 35, C.R.S.;

(d) The licensing and regulation of persons by the department of agriculture pursuant to article 16 of title 12, C.R.S.;

(e) The state board of nursing, created by article 38 of title 12, C.R.S.;

(f) The Colorado state board of chiropractic examiners, created by article 33 of title 12, C.R.S.

(51.5) The following agencies, functions, or both, shall terminate on September 1, 2020:

(a) The certification of nurse aides by the state board of nursing in accordance with article 38.1 of title 12, C.R.S.;

(b) The HOA information and resource center, created in section 12-61-406.5, C.R.S.;

(c) Notwithstanding paragraph (a) of subsection (11) of this section, the functions of the boards created pursuant to article 43 of title 12, C.R.S., relating to the licensing, registration, or certification of and grievances against any person licensed, registered, or certified pursuant to article 43 of title 12, C.R.S.

(52) The following agencies, functions, or both, terminate on July 1, 2021:

(a) The workers' compensation classification appeals board, created in article 55 of title 8, C.R.S.;

(b) The electronic prescription drug monitoring program created in part 4 of article 42.5 of title 12, C.R.S.

(52.5) The following agencies, functions, or both, terminate on September 1, 2021:

(a) The assistance program for disability benefits under part 22 of article 30 of this title;

(b) The state board of pharmacy and the regulation of the practice of pharmacy by the department of regulatory agencies through the division of professions and occupations in accordance with parts 1 to 3 of article 42.5 of title 12, C.R.S.

(53.5) The following agencies, functions, or both, shall terminate on September 1, 2022:

(a) The state board of optometry, created by article 40 of title 12, C.R.S.;

(b) The state board of veterinary medicine, created by article 64 of title 12, C.R.S.