



**State of Vermont**  
**Office of the Secretary of State**  
**Office of Professional Regulation**  
89 Main Street, 3rd Floor  
Montpelier, VT 05620-3402  
sos.vermont.gov

**Sarah Copeland Hanzas, Secretary of State**  
**S. Lauren Hibbert, Deputy Secretary**  
**Kevin A. Rushing, Director**

**April 19, 2024**

**To: Sen. Richard Sears, Chair**  
**Senate Committee on the Judiciary**

**From: Lauren Layman, General Counsel, Office of Professional Regulation**

**Re: H. 655 - An act relating to qualifying offenses for sealing criminal history records and access to sealed criminal history records**

Dear Committee,

Thank you for the opportunity to testify H. 655 and how the Office of Professional Regulation can support this work.

### **Background**

The Secretary of State's Office and the Office of Professional Regulation (OPR) believe in rehabilitation and access to professional licensure for individuals with a criminal background. We have adopted many policies to support these goals and worked with the General Assembly to adopt laws and practices facilitating licensure for folks with criminal backgrounds.

OPR oversees 51 professions, from nurses to mixed martial arts contestants and residential contractors to pharmacists, and about 80,000 licensees. A complete list of the professions we regulated is attached. Currently, OPR does not receive or seek sealed or expunged criminal history records and, for most licensed professions, OPR does not conduct a Federal Bureau of Investigations (FBI) criminal background check before granting a license. Applicants are asked during the license application process if they have ever been convicted of a crime. If the answer is yes, we ask for relevant court documents and a personal statement and proceed from there. If the answer is no, we do not pursue the matter further. Even for those professions for which OPR does require an FBI criminal background check, OPR does not pursue any further investigations or sealed records if the results show the applicant has no criminal history.

### **Position**

After careful thought and much discussion, OPR would like to ask the Committee to remove new subdivision 13 V.S.A. § 7607(c)(11) from H. 655. Our agency has determined that there is no need to alter our current processes regarding OPR's use of sealed records. We do, however, want to ensure the Committee is aware of the policy implications of H. 655 for professional licensing.

A professional license grants certain qualified individuals rights that are unavailable to the general public. The professional license puts the license holder in a position of power over members of the public who, based on their trust in the state-issued license, expose certain vulnerabilities (financial, health, etc.) to the professional licensee. For example, an individual is unlikely to divulge extensive details of their mental health conditions to a stranger in the grocery store but will do so to a licensed clinical mental health counselor. Similarly, most would not provide strangers with access to their bank accounts and their social security numbers, but many will provide that information to licensed accountants.

H. 655 will significantly expand the number and types of criminal offenses that OPR will have no knowledge of when determining whether to grant a professional license. Under current law and H. 655 (Section 1 amending 13 V.S.A. § 7607(b)(2)), a person may not be required to provide information with respect to arrests or convictions that have been sealed. In turn, OPR, and consequently, the public, will not know if an applicant or licensee has been convicted of a qualifying crime related to the practice of the profession if that record has been sealed. The professional license will be granted without conditions. The public trusting in the license will seek services from the professional unaware of any risk. Under H. 655, individuals convicted of home contractor fraud will be eligible for an unconditioned residential contractor license. Someone who has a history of certain voyeurism crimes may be permitted to register as a massage therapist. A person convicted of embezzlement may be issued an accountant license.

OPR recognizes and appreciates this Committee's and House Committee's careful review of policies and data on recidivism. The sealing petitioning process will also alleviate some concerns about public protection by empowering a court to deny a petition to seal a record if there are worries about the person obtaining a professional license related to the underlying conviction. Determining which crimes qualify for sealing and the sealing process are policy choices and OPR will support the General Assembly's decision on these matters.

OPR hopes to maintain our current process of asking applicants about their criminal histories without delving deeper into sealed records. We also want to ensure the Committee is aware of our process and the impacts H. 655 may have on professional licensing and the public. Thank you for your time and attention to this matter and for the opportunity to speak today.

|