

Journal of the Senate

TUESDAY, APRIL 30, 2019

The Senate was called to order by the President.

Devotional Exercises

Devotional exercises were conducted by the Reverend Taihaku of East Calais.

Pledge of Allegiance

The President then led the members of the Senate in the pledge of allegiance.

Committee of Conference Discharged; Request For New Committee of Conference

H. 39.

An act relating to the extension of the deadline of school district mergers required by the State Board of Education.

Was taken up.

Senator Baruth, pursuant to Mason's Rule No. 771 reported to the Senate the Committee of Conference was unable to agree and moved:

First: The Senate reaffirm its position with regard to the Senate Proposal of Amendment to H. 39;

Second: The Senate Conference Committee be discharged; and,

Third: A new Senate Conference Committee be appointed with instructions to pursue a compromise between – not outside – the limits represented by the House and Senate positions.

Which was agreed to.

Bill Referred to Committee on Appropriations

H. 543.

House bill of the following title, appearing on the Calendar for notice and carrying an appropriation or requiring the expenditure of funds, under the rule was referred to the Committee on Appropriations:

An act relating to capital construction and State bonding.

Joint Senate Resolution Adopted on the Part of the Senate**J.R.S. 26.**

Joint Senate resolution of the following title was offered, read and adopted on the part of the Senate, and is as follows:

By Senator Ashe,

J.R.S. 26. Joint resolution relating to weekend adjournment.

Resolved by the Senate and House of Representatives:

That when the two Houses adjourn on Friday, May 3, 2019, it be to meet again no later than Tuesday, May 7, 2019.

Third Reading Ordered**H. 26.**

Senator Hooker, for the Committee on Economic Development, Housing and General Affairs, to which was referred House bill entitled:

An act relating to restricting retail and Internet sales of electronic cigarettes, liquid nicotine, and tobacco paraphernalia in Vermont.

Reported that the bill ought to pass in concurrence.

Senator Balint Assumes the Chair**President Assumes the Chair**

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and third reading of the bill was ordered on a roll call, Yeas 30, Nays 0.

Senator Sears having demanded the yeas and nays, they were taken and are as follows:

Roll Call

Those Senators who voted in the affirmative were: Ashe, Balint, Baruth, Benning, Bray, Brock, Champion, Clarkson, Collamore, Cummings, Hardy, Hooker, Ingram, Kitchel, Lyons, MacDonald, Mazza, McCormack, McNeil, Nitka, Parent, Pearson, Perchlik, Pollina, Rodgers, Sears, Sirotkin, Starr, Westman, White.

Those Senators who voted in the negative were: None.

Proposal of Amendment; Third Reading Ordered**H. 79.**

Senator Hardy, for the Committee on Agriculture, to which was referred House bill entitled:

An act relating to eligibility for farm-to-school grant assistance.

Reported recommending that the Senate propose to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 6 V.S.A. § 4721 is amended to read:

§ 4721. LOCAL FOODS GRANT PROGRAM

(a) There is created in the Agency of Agriculture, Food and Markets the Rozo McLaughlin Farm-to-School Program to execute, administer, and award local grants for the purpose of helping Vermont schools develop farm-to-school programs that will sustain relationships with local farmers and producers, enrich the educational experience of students, improve the health of Vermont children, and enhance Vermont's agricultural economy.

(b) A school, a school district, a consortium of schools, a consortium of school districts, ~~or a registered or licensed child care providers~~ provider, or an organization administering or assisting the development of farm-to-school programs may apply to the Secretary of Agriculture, Food and Markets for a grant award to:

(1) fund equipment, resources, training, and materials that will help to increase use of local foods in child nutrition programs;

(2) fund items, including local food products, gardening supplies, field trips to farms, gleaning on farms, and stipends to visiting farmers, that will help educators to use hands-on educational techniques to teach children about nutrition and farm-to-school connections;

(3) fund professional development and technical assistance, in partnership with the Agency of Education and farm-to-school technical service providers, to help teachers, child nutrition personnel, organizations administering or assisting the development of farm-to-school programs, and members of the farm-to-school community educate students about nutrition and farm-to-school connections and assist schools and licensed or registered child care providers in developing a farm-to-school program; and

(4) fund technical assistance or support strategies to increase participation in federal child nutrition programs that increase the viability of sustainable meal programs.

(c) The Secretaries of Agriculture, Food and Markets and of Education and the Commissioner of Health, in consultation with farmers, child nutrition staff, educators, organizations administering or assisting the development of farm-to-school programs, and farm-to-school technical service providers jointly shall adopt procedures relating to the content of the grant application and the criteria for making awards.

(d) The Secretary shall determine that there is significant interest in the school community before making an award and shall give priority consideration to schools, school districts, and registered or licensed child care providers that are developing farm-to-school connections and education, that indicate a willingness to make changes to their child nutrition programs to increase student access and participation, and that are making progress toward the implementation of the Vermont School Wellness Policy Guidelines developed by the Agency of Agriculture, Food and Markets, the Agency of Education, and the Department of Health, updated in June 2015 or of the successor of these guidelines.

(e) No award shall be greater than ~~\$15,000.00~~ 20 percent of the total annual amount available for granting except that a grant award to the following entities may, at the discretion of the Secretary of Agriculture, Food and Markets, exceed the cap:

(1) Farm-to-School service providers; or

(2) school districts or consortiums of school districts that completed merger under 2010 Acts and Resolves No. 153, 2012 Acts and Resolves No. 156, or 2015 Acts and Resolves No. 46 on or before July 1, 2019, provided that the grant is used for the purpose of expanding Farm-to-School projects to additional schools within the new school district.

Sec. 2. 6 V.S.A. § 4722 is amended to read:

§ 4722. FARM ASSISTANCE; SECRETARY OF AGRICULTURE, FOOD AND MARKETS

(a) The Secretary of Agriculture, Food and Markets shall work with existing programs and organizations to develop and implement educational opportunities for farmers to help them increase their markets through selling their products to schools, registered or licensed child care providers, and State government agencies that operate or participate in child nutrition programs.

(b) The Secretary of Agriculture, Food and Markets shall work with distributors that sell products to schools, registered or licensed child care providers, and State government agencies to increase the availability of local products. The Secretary of Agriculture, Food and Markets shall consult and

cooperate with the Secretary of Education when working with distributors to schools under this subsection.

Sec. 3. 6 V.S.A. § 4724(b) is amended to read:

(b) The duties of the Food Systems Administrator shall include:

(1) working with institutions, schools, the Agency of Education, registered or licensed child care providers, distributors, producers, commercial markets, and others to create matchmaking opportunities that increase the number of Vermont institutions that purchase foods grown or produced in Vermont;

* * *

Sec. 4. 16 V.S.A. § 1264 is amended to read:

§ 1264. FOOD PROGRAM

(a)(1) Each school board operating a public school shall cause to operate within the school district a food program that makes available a school lunch, as provided in the National School Lunch Act as amended, and a school breakfast, as provided in the National Child Nutrition Act as amended, to each attending student every school day.

(2) Each school board operating a public school shall offer a summer snack or meals program funded by the Summer Food Service program or the National School Lunch Program for participants in a summer educational or recreational program or camp if:

(A) at least 50 percent of the students in a school in the district were eligible for free or reduced-price meals under subdivision (1) of this subsection for at least one month in the preceding academic year;

(B) the district operates or funds the summer educational or recreational program or camp; and

(C) the summer educational or recreational program or camp is offered 15 or more hours per week.

(b) In the event of an emergency, the school board may apply to the Secretary for a temporary waiver of the requirements in subsection (a) of this section. The Secretary shall grant the requested waiver if he or she finds that it is unduly difficult for the school district to provide a school lunch, breakfast, or summer meals program, or any combination of the three, and if he or she finds that the school district and supervisory union have exercised due diligence to avoid the emergency situation that gives rise to the need for the requested waiver. In no event shall the waiver extend for a period to exceed

20 school days or, in the case of a summer meals program, the remainder of the summer vacation.

(c) The State shall be responsible for the student share of the cost of breakfasts provided to all students eligible for a reduced-price breakfast under the federal school breakfast program and for the student share of the cost of lunches provided to all students eligible for a reduced-price lunch under the federal school lunch program.

(d) It is a goal of the State that by the year 2022 school boards operating a school lunch, breakfast, or summer meals program shall purchase at least 20 percent of all food for those programs from local producers.

(e)(1) On or before December 31, 2020, and annually thereafter, a school board operating a school lunch, breakfast, or summer meals program shall submit to the Agency of Education an estimate of the percentage of foods that were produced locally that are purchased for those programs and a summary of how the school board defined food purchased locally for the purposes of these purchases.

(2) On or before January 31, 2021, and annually thereafter, the Agency of Education shall submit to the Senate Committees on Agriculture and on Education and the House Committees on Agriculture and Forestry and on Education in an aggregated form the information received from school boards regarding the percentage of foods produced within the State that are purchased as part of a school lunch, breakfast, or summer meals program. The provisions of 2 V.S.A. § 20(d) regarding expiration of required reports shall not apply to the report required by this subdivision.

Sec. 5. 16 V.S.A. § 559 is amended to read:

§ 559. PUBLIC BIDS

(a) When the cost exceeds \$15,000.00. A school board or supervisory union board shall publicly advertise or invite three or more bids from persons deemed capable of providing items or services if costs are in excess of \$15,000.00 for any of the following:

(1) the construction, purchase, lease, or improvement of any school building;

(2) the purchase or lease of any item or items required for supply, equipment, maintenance, repair, or transportation of students; or

(3) a contract for transportation, maintenance, or repair services.

* * *

(c) Contract award.

(1) A contract for any such item or service to be obtained pursuant to subsection (a) of this section shall be awarded to one of the three lowest responsible bids conforming to specifications, with consideration being given to quantities involved, time required for delivery, purpose for which required, competency and responsibility of bidder, and his or her ability to render satisfactory service. A board shall have the right to reject any or all bids.

* * *

(e) Application of this section. Any contract entered into or purchase made in violation of the provisions of this section shall be void; provided, however, that:

* * *

(4) Nothing in this section shall be construed to prohibit a school board from awarding a school nutrition contract after using any method of bidding or requests for proposals permitted under federal law for award of the contract. Notwithstanding the monetary amount in subsection (a) of this section for which a school board is required to advertise publicly or invite three or more bids or requests for proposal, a school board is required to publicly advertise or invite three or more bids or requests for proposal for purchases made from the nonprofit school food service account for purchases in excess of the federal simplified acquisition threshold when purchasing food or in excess of \$25,000.00 when purchasing nonfood items, unless a municipality sets a lower threshold for purchases from the nonprofit school food service account.

* * *

Sec. 6. NATIONAL SCHOOL LUNCH PROGRAM; FREE AND REDUCED LUNCH; INCREASED QUALIFIED PARTICIPANTS

(a) It is the goal of the General Assembly that the State attempt to identify as many families as possible in the State who are qualified to receive free and reduced lunches under the National School Lunch Program.

(b)(1) The Department of Taxes shall consult with the Agency of Education and the Department for Children and Families regarding whether existing tax data in the possession of the Department, including earned income tax credit data, can be used to:

(A) maximize enrollment in State and federal assistance programs;
and

(B) increase enrollment in State and federal assistance programs that may be used to directly certify families in the State as qualified to receive free and reduced lunches under the National School Lunch Program.

(2) If the Department of Taxes determines that tax data may be used to directly certify families as qualified to receive free and reduced lunches, the Agency of Education shall apply to the U.S. Department of Agriculture for a waiver to use the relevant tax data to directly certify qualified families in the State.

(3) On or before January 15, 2020, the Department of Taxes shall submit to the Senate Committees on Agriculture and on Education and the House Committees on Agriculture and Forestry and on Education a report regarding the status of State efforts under subdivision (1) of this subsection to directly certify families as qualified to receive free and reduced lunches.

Sec. 7. APPROPRIATIONS; SCHOOL NUTRITION PROGRAMS

In addition to any other funds appropriated to the Agency of Education in fiscal year 2020, there is appropriated from the General Fund to the Agency of Education:

(1) \$45,000.00 for the purpose of increasing the State match payment to schools participating in the National School Lunch Program;

(2) \$15,000.00 for the purpose of increasing the State match payment to schools participating in the National School Breakfast Program; and

(3) \$15,000.00 for the purpose of increasing the State match payments to schools participating in the National Summer Food Service Program.

Sec. 8. EFFECTIVE DATE

This act shall take effect on July 1, 2019.

And that the bill ought to pass in concurrence with such proposal of amendment.

Senator Starr, for the Committee on Appropriations, to which the bill was referred, reported recommending that the Senate propose to the House that the bill be amended as recommended by the Committee on Agriculture with the following amendment thereto:

By striking out Sec. 7 in its entirety.

And by renumbering the remaining section to be numerically correct.

And that the bill ought to pass in concurrence with such proposal of amendment.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the recommendation of proposal of amendment of the Committee on Agriculture was amended as recommended by the Committee on Appropriations.

Thereupon, pending the question, Shall the Senate propose to the House that the bill be amended as recommended by the Committee on Agriculture, as amended?, Senators Hardy, Collamore, Pearson, Pollina and Starr moved to amend the proposal of amendment of the Committee on Agriculture, as amended as follows:

First: In Sec. 4, 16 V.S.A. § 1264, subdivision (e)(1), by striking out the words “foods that were produced locally that are purchased for those programs and a summary of how the school board defined food purchased locally for the purposes of these purchases” and inserting in lieu thereof the words locally produced foods that were purchased by the school board for those programs

Second: In Sec. 4, 16 V.S.A. § 1264, subdivision (e)(2), by striking out the words “foods produced within the State” and inserting in lieu thereof the words locally produced foods

Which was agreed to.

Thereupon, the pending question, Shall the Senate propose to the House that the bill be amended as recommended by the Committee on Agriculture, as amended?, was decided in the affirmative.

Thereupon, third reading of the bill was ordered.

Proposal of Amendment; Third Reading Ordered

H. 104.

Senator Clarkson, for the Committee on Government Operations, to which was referred House bill entitled:

An act relating to professions and occupations regulated by the Office of Professional Regulation.

Reported recommending that the Senate propose to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

* * * Office of Professional Regulation * * *

Sec. 1. 3 V.S.A. § 121 is amended to read:

§ 121. DEFINITIONS

As used in this subchapter:

(1) “Director” means the Director of the Office of Professional Regulation.

(2) “Licensing board” or “board” refers to the boards, commissions, and professions listed in section 122 of this ~~title~~ subchapter and, in the case of

disciplinary matters or denials of licensure, either an administrative law officer appointed under subsection 129(j) of this ~~title~~ subchapter or the Director in advisor professions. Notwithstanding statutory language to the contrary, this subchapter shall apply to all those boards.

(3)(A) “License” includes any certification or, registration or a, permit, commission, or other official authorization to undertake a regulated activity.

(B) “Licensee” includes ~~registrants and holders of certificates or permits~~ any person to whom a license has been issued by a board or the Director.

(4) “Office” means the Office of Professional Regulation.

Sec. 2. 3 V.S.A. § 122 is amended to read:

§ 122. OFFICE OF PROFESSIONAL REGULATION

The Office of Professional Regulation is created within the Office of the Secretary of State. The Office shall have a director who shall be appointed by the Secretary of State and shall be an exempt employee. The following boards or professions are attached to the Office of Professional Regulation:

* * *

(17) ~~Board of Radiologic Technology~~

* * *

(29) ~~Board of Real Estate Appraisers~~

* * *

(48) Notaries Public

Sec. 3. 3 V.S.A. § 127 is amended to read:

§ 127. UNAUTHORIZED PRACTICE

(a) When the Office receives a complaint of unauthorized practice, the Director shall refer the complaint to Office investigators and prosecutors.

(b)(1) A person practicing a regulated profession without authority or an employer permitting such practice may, upon the complaint of the Attorney General or a State’s Attorney or an attorney assigned by the Office of Professional Regulation, be enjoined therefrom by the Superior Court where the violation occurred or the Washington County Superior Court and may be assessed a civil penalty of not more than ~~\$1,000.00~~ \$5,000.00.

(2)(A) The Attorney General or an attorney assigned by the Office of Professional Regulation may elect to bring an action seeking only a civil penalty of not more than ~~\$1,000.00~~ \$2,500.00 for practicing or permitting the

practice of a regulated profession without authority before the board having regulatory authority over the profession or before an administrative law officer.

(B) Hearings shall be conducted in the same manner as disciplinary hearings.

(3)(A) A civil penalty imposed by a board or administrative law officer under this subsection (b) shall be deposited in the Professional Regulatory Fee Fund established in section 124 of this chapter for the purpose of providing education and training for board members and advisor appointees.

(B) The Director shall detail in the annual report receipts and expenses from these civil penalties.

(c) In addition to other provisions of law, unauthorized practice shall be punishable by a fine of not more than \$5,000.00 or imprisonment for not more than one year, or both. Prosecution may occur upon the complaint of the Attorney General or a State's Attorney or an attorney assigned by the Office of Professional Regulation under this section and shall not act as a bar to civil or administrative proceedings involving the same conduct.

* * *

Sec. 4. 3 V.S.A. § 129a is amended to read:

§ 129a. UNPROFESSIONAL CONDUCT

(a) In addition to any other provision of law, the following conduct by a licensee constitutes unprofessional conduct. When that conduct is by an applicant or person who later becomes an applicant, it may constitute grounds for denial of a license or other disciplinary action. Any one of the following items or any combination of items, whether the conduct at issue was committed within or outside the State, shall constitute unprofessional conduct:

* * *

(26) Sexually harassing or exploiting a patient, client, or consumer, or doing so to a coworker in a manner that threatens the health, safety, or welfare of patients, clients, or consumers; failing to maintain professional boundaries; or violating a patient, client, or consumer's reasonable expectation of privacy.

* * *

(d)(1) After hearing, and upon a finding of unprofessional conduct, a board or an administrative law officer may take disciplinary action against a licensee or applicant, including imposing an administrative penalty not to exceed ~~\$1,000.00~~ \$5,000.00 for each unprofessional conduct violation.

(2)(A) Any money received under this subsection shall be deposited in the Professional Regulatory Fee Fund established in section 124 of this ~~title~~ chapter for the purpose of providing education and training for board members and advisor appointees.

(B) The Director shall detail in the annual report receipts and expenses from money received under this subsection.

* * *

Sec. 5. 3 V.S.A. § 129b is amended to read:

§ 129b. BOARD MEMBER AND ADVISOR APPOINTMENTS

* * *

(g) For advisor professions, ~~advisors~~:

(1) Advisors shall be appointed by the Secretary of State and shall serve at the pleasure of the Secretary of State. Advisor appointments shall be subject to the same conditions as those for board members under this section.

(2) The Office shall warn and conduct an open meeting including advisors, program staff, and interested members of the public:

(A) at least once per year for each profession with 500 or fewer active licensees; and

(B) at least twice per year for each profession with more than 500 active licensees.

Sec. 6. 3 V.S.A. § 135 is amended to read:

§ 135. UNIFORM STANDARD FOR RENEWAL FOLLOWING
EXTENDED ABSENCE

(a) Notwithstanding any provision of law to the contrary, when an applicant seeks to renew an expired or lapsed license after fewer than five years of absence from practice, readiness to practice shall be inferred from completion of any continuing education that would have been required if the applicant had maintained continuous licensure, or by any less burdensome showing set forth in administrative rules specific to the profession or permitted by the Director.

* * *

Sec. 7. PROFESSIONAL REGULATION; ANALYSIS OF STATE
REGULATORY STRUCTURES

(a) Findings.

(1) The General Assembly finds that multiple State agencies regulate a variety of professions and occupations, resulting in professional regulatory structures that vary throughout the State.

(2) The General Assembly further finds that the State should review whether transferring the regulation of certain professions and occupations to a different State agency would enhance the effectiveness of those professional regulatory structures, including by improving public protection and customer service, reducing unnecessary barriers to licensure, and increasing efficiencies in the staffing, information technology, and other necessary costs associated with professional regulation.

(b) Office of Professional Regulation, Agency of Administration, and other specified agencies; analysis and report.

(1) The Office of Professional Regulation and the Agency of Education, the Agency of Human Services, the Agency of Natural Resources, the Department of Public Safety, and the Department of Health shall collaborate in analyzing the professions and occupations that each of those agencies regulate in order to determine whether the effectiveness of those professional regulatory structures, including the elements of effectiveness described in subdivision (a)(2) of this section, would be enhanced by transferring an agency's professional regulation to a different agency.

(2) In conducting their analysis, the agencies shall consider the professional regulation reports and other information gathered as a result of 2016 Acts and Resolves No. 156, Secs. 20 and 21.

(3) The Office of Professional Regulation and the Agency of Administration shall lead this collaboration among all the agencies named in subdivision (1) of this subsection, but are encouraged to seek any available grants from outside resources that may enable the agencies to contract with an independent entity to conduct this analysis.

(4) On or before January 15, 2020, the independent entity or, if a contract with such an entity was not executed, the Office of Professional Regulation and the Agency of Administration shall report to the House Committees on Government Operations, on Education, on Human Services, on Health, on Natural Resources, Fish, and Wildlife, and on Commerce and Economic Development and the Senate Committees on Government Operations, on Education, on Health and Welfare, on Natural Resources and Energy, and on Economic Development, Housing and General Affairs with its findings and any recommendations for legislative action.

Sec. 8. CREATION OF POSITION WITHIN THE OFFICE OF
PROFESSIONAL REGULATION; LICENSING

(a) There is created within the Secretary of State's Office of Professional Regulation one new permanent classified Licensing Administrator position.

(b) Any funding necessary to support the position created in subsection (a) of this section shall be derived from the Office's Professional Regulatory Fee Fund, with no General Fund Dollars.

* * * Accountants * * *

Sec. 9. 26 V.S.A. chapter 1 is amended to read:

CHAPTER 1. ACCOUNTANTS

Subchapter 1. General Provisions

* * *

§ 13. DEFINITIONS

As used in this chapter:

* * *

~~(4) "Disciplinary action" or "disciplinary cases" includes any action taken by a board against a licensee, registrant, or applicant premised upon a finding of wrongdoing or unprofessional conduct by the licensee or applicant. It includes all sanctions of any kind, excluding obtaining injunctions, but including issuing warnings, other similar sanctions, and ordering restitution. [Repealed.]~~

(5) "Firm" means a sole proprietorship, a corporation, a partnership, association, or any other entity that practices public accountancy.

~~(6) "Foreign firm" means a firm not located in the United States, its territories, or possessions. [Repealed.]~~

* * *

(14) "Sole proprietorship," when used for the specific purpose of describing the fee category applicable to a firm under this chapter, means a firm that employs only one certified public accountant.

(15) "State" includes the states of the United States, the District of Columbia, Puerto Rico, Guam, the U.S. Virgin Islands, and other jurisdictions recognized by the National Association of State Boards of Accountancy (NASBA).

* * *

 § 17. PENALTY

Any person who violates any provision of section 14 of this title ~~chapter~~ shall be subject to the penalties set forth in 3 V.S.A. § 127(e).

* * *

Subchapter 3. Licenses

* * *

§ 74a. FOREIGN REGISTRATION

~~(a) A foreign firm licensed or registered in another country seeking to practice temporarily in the state shall register with the board and pay the required fee. The board shall adopt rules prescribing the procedure to be followed in carrying out the registrations. Registrations under this section shall expire three months after issuance. "Firm" is as defined in subdivision 13(5) of this title.~~

~~(b) A foreign firm providing public accounting services in the state of Vermont shall be registered and obtain a firm registration number.~~

~~(c) An accountant qualified for the practice of public accountancy in a foreign country may:~~

~~(1) use a title granted by that country, together with any suitable translation into English of that title, and the name of that country;~~

~~(2) temporarily practice public accounting after registering with the board under section 74a of this title. [Repealed.]~~

* * *

§ 81. OWNERSHIP OF ACCOUNTANT'S WORKING PAPERS

* * *

(d) An accountant or accountancy firm shall have in place a plan for responsible disposition of client records in case of unexpected incapacity or firm dissolution.

* * *

* * * Dental Hygienists * * *

Sec. 10. 26 V.S.A. chapter 12 is amended to read:

CHAPTER 12. DENTISTS, DENTAL THERAPISTS,
DENTAL HYGIENISTS, AND DENTAL ASSISTANTS

* * *

Subchapter 2. Board of Dental Examiners

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§ 582. AUTHORITY OF THE BOARD

In addition to any other provisions of law, the ~~board~~ Board shall have the authority to:

* * *

(3) adopt rules pursuant to the Vermont Administrative Procedure Act as ~~set forth in 3 V.S.A. chapter 25:~~

* * *

(H) ~~setting guidelines for general supervision of dental hygienists with no less than three years of experience by dentists with no less than three years of experience to, to be known as "public-health hygienists," who may perform tasks in public or private schools or institutions~~ the settings set forth in section 624 of this chapter; and

* * *

Subchapter 4. Dental Hygienists

* * *

§ 624. PRACTICE

(a) A dental hygienist may perform duties for which the dental hygienist has been qualified by successful completion of the normal curriculum offered by programs of dental hygiene accredited by the American Dental Association or in continuing education courses approved by the Board. A dental hygienist may perform tasks in the office of any licensed dentist consistent with ~~the~~ rules adopted by the Board.

(b) ~~In public or private schools or institutions, a dental~~ A public-health hygienist, who shall be a dental hygienist with no less fewer than three years of experience, may perform tasks under the general supervision of a licensed dentist with no less than three years of experience as prescribed in out-of-office settings, including residences, schools, nursing home and long-term care facilities, clinics, hospitals, medical facilities, community health centers licensed or approved by the Department of Health, Head Start programs, and any other facilities or programs deemed appropriate by the Department of Health in a manner consistent with guidelines adopted by the Board by rule.

* * *

* * * Nursing * * *

Sec. 11. 26 V.S.A. chapter 28 is amended to read:

CHAPTER 28. NURSING

Subchapter 1. General Provisions

* * *

§ 1574. POWERS AND DUTIES

(a) In addition to the powers granted by 3 V.S.A. § 129, the Board shall:

* * *

(3) Adopt rules setting standards for approval of medication nursing assistant and nursing education programs in Vermont, including all clinical facilities. The Board may require reimbursement for actual and necessary costs incurred for site surveys.

(4) ~~Adopt rules for medication nursing assistant education and competency evaluation programs and survey and approve those programs that meet the rules. [Repealed.]~~

* * *

Subchapter 2. Advanced Practice Registered Nurses

* * *

§ 1613. TRANSITION TO PRACTICE

(a)(1) ~~Graduates~~ An APRN with fewer than 24 months and 2,400 hours of licensed active advanced nursing practice in an initial role and population focus or fewer than 12 months and 1,600 hours for any additional role and population focus shall have a formal agreement with a collaborating provider as required by ~~board~~ Board rule.

(2) ~~APRNs~~ An APRN shall have and maintain signed and dated copies of all required collaborative provider agreements ~~as part of the practice guidelines.~~

(3) An APRN required to practice with a collaborative provider agreement may not engage in solo practice, except with regard to a role and population focus in which the APRN has met the requirements of this subsection.

(b) An APRN who satisfies the requirements to engage in solo practice pursuant to subsection (a) of this section shall notify the ~~board~~ Board that these requirements have been met.

* * *

* * * Optometrists * * *

Sec. 12. 26 V.S.A. chapter 30 is amended to read:

CHAPTER 30. OPTOMETRY

* * *

§ 1703. DEFINITIONS

As used in this chapter:

* * *

(2) The “practice of optometry” means any one or combination of the following practices:

(A) ~~The examination of~~ Examining the human eyes and visual system for purposes of:

(i) diagnosing refractive and functional ability; or

(ii) diagnosing the presence of eye and adnexa disease or injury, treating the disease or injury with the appropriate pharmaceutical agents and procedures in accordance with this chapter, and making referrals to the appropriate health care provider when warranted.

(B) ~~The diagnosis and correction of~~ Diagnosing and correcting anomalies of the refractive and functional ability of the visual system and the enhancement of visual performance including, ~~but not limited to,~~ the following:

(i) ~~the prescribing and employment of~~ using ophthalmic lenses, prisms, autorefractor or other automatic testing devices, frames, ophthalmic aids, and prosthetic materials as consistent with the health of the eye;

(ii) ~~the prescribing and employment of~~ employing contact lenses;
and

(iii) administering visual training, vision therapy, orthoptics, and pleoptics.

(C) Prescribing appropriate pharmaceutical agents for the diagnosis, management, and treatment of the eye and adnexa.

(D) Removing superficial foreign bodies from the eye and adnexa; epilating the eyelashes, including by electrolysis; and punctal dilation, lacrimal irrigation, and punctal plugs insertion.

(E) Managing the following types of glaucoma in patients who are 16 years of age or older:

- (i) adult primary open angle glaucoma;
- (ii) exfoliative glaucoma;
- (iii) pigmentary glaucoma;
- (iv) low tension glaucoma;
- (v) inflammatory (uveitic) glaucoma; and
- (vi) emergency treatment of angle closure glaucoma.

~~(3) “Disciplinary action” or “disciplinary cases” includes any action taken by a board against a licensee or applicant premised upon a finding of wrongdoing or unprofessional conduct by the licensee or applicant. It includes all sanctions of any kind, including obtaining injunctions, issuing warnings, reprimands, suspensions, or revocations of licenses, and other similar sanctions and ordering restitution.~~ “Director” means the Director of the Office of Professional Regulation.

(4) “Financial interest” means being:

- (A) a licensed practitioner of optometry; or
- (B) a person who deals in goods and services ~~which~~ that are uniquely related to the practice of optometry; or
- (C) a person who has invested anything of value in a business ~~which~~ that provides optometric services.

(5) “Contact lenses” means those lenses that are worn for cosmetic, therapeutic, or refractive purposes.

§ 1704. PENALTIES

A person who obtains a license by fraud or misrepresentation or who practices or attempts to practice optometry or hold himself or herself out as being able to do so in this ~~state~~ State without first having obtained the license required by this chapter shall be subject to the penalties provided in 3 V.S.A. § 127(e).

Subchapter 2. State Board of Optometry ~~Board~~

§ 1707. QUALIFICATIONS; TERM OF OFFICE; REMOVAL

~~(a) A state board of optometry~~ The State Board of Optometry is created ~~which shall be the continuation of and successor to the state board of examiners in optometry heretofore established by chapter 29 of this title.~~

(b) The ~~board~~ Board shall consist of five members, three of whom shall be residents of the ~~state,~~ State who have had at least five years' experience in the practice of optometry in the ~~state,~~ State and are in the active practice of optometry at the time of their appointment; and two members who shall be representatives of the public, who shall be residents of the ~~state~~ State for five years and who shall have no financial interest in the profession other than as a consumer or potential consumer of its services.

* * *

§ 1708. POWERS AND DUTIES

(a) The ~~board~~ Board shall:

(1) Adopt rules under ~~3 V.S.A. chapter 25~~ the Vermont Administrative Procedure Act necessary for the performance of its duties, ensuring that at least the following are established by statute or rule:

(A) ~~A~~ a definition of the behavior for which a license is required;

(B) ~~Explanations~~ explanations of appeal and other significant rights given by law to licensees, applicants, and the public; and

(C) standards for acceptance of continuing education, which may identify mandatory content specific to pharmacology, and management of adverse drug reactions.

(b) The ~~board~~ may:

(1) ~~exercise authority granted under 3 V.S.A. chapter 5;~~

(2) ~~use the administrative services provided by the office of professional regulation under 3 V.S.A. chapter 5;~~

(3) ~~Receive legal assistance from the attorney general of the state and from the legal counsel for the director of the office of professional regulation. [Repealed.]~~

(c) The ~~board~~ Board shall not limit the:

(1) ~~limit~~ the ownership of optometric practices to licensed optometrists;

(2) ~~limit~~ the number of offices or sites at which an optometrist may practice; or

(3) ~~limit~~ the right of optometrists to practice in an association, partnership, corporation, or other lawful entity with anyone.

* * *

* * *

§ 1715. LICENSURE BY EXAMINATION

(a) The ~~board~~ Board may grant a license to an applicant who:

(1) has attained the age of majority;

(2) is a graduate of an optometric school or college accredited by a regional or professional accreditation organization approved by the ~~board~~ Board;

(3) holds a current cardiopulmonary resuscitation certification from the American Red Cross, the Vermont Heart Association, or a comparable source recognized by the Director;

(4) has successfully completed an examination approved by the ~~board~~ Board; and

~~(4)~~(5) has paid the fee required by section 1718 of this ~~title~~ chapter.

(b) ~~A failed examination may be retaken once free of charge and each examination thereafter shall be subject to payment of a fee. [Repealed.]~~

* * *

§ 1716a. RENEWAL

Licenses shall be renewed every two years upon payment of the required fee, provided that the person applying for renewal completes at least ~~20~~ 40 hours of continuing education, approved by the ~~board~~ Board, during the preceding two-year period and holds a current cardiopulmonary resuscitation certification. ~~If the applicant has a special endorsement for the use of pharmaceutical agents as provided in section 1729 of this title, the applicant shall, during the preceding two-year period, complete at least 40 hours of continuing education, approved by the board, of which at least 20 hours shall be related to the use of therapeutic pharmaceutical agents. The board may specify particular areas of study which must be completed to satisfy the requirements of this section. The board may, by rule, adopt continuing education requirements for those who renew their licenses after less than a full two-year period.~~

* * *

Subchapter 4. Unprofessional Conduct and Discipline

§ 1719. UNPROFESSIONAL CONDUCT

(a) Unprofessional conduct is the conduct prohibited by this section and by 3 V.S.A. § 129a, whether or not taken by a license holder committed by a licensee, an applicant, or a person who later becomes an applicant.

(b) Unprofessional conduct means:

(1) Conduct ~~which~~ that evidences moral unfitness to practice the occupation.

(2) Any of the following except when reasonably undertaken in an emergency situation in order to protect life, health, or property:

(A) Practicing or offering to practice beyond the scope permitted by law.

(B) Performing treatments or providing services ~~which~~ that a licensee is not qualified to perform or ~~which~~ that are beyond the scope of the licensee's education, training, capabilities, experience, or scope of practice.

(C) Performing occupational services ~~which~~ that have not been authorized by the consumer or his or her legal representative.

* * *

Subchapter 5. Diagnostic Pharmaceutical Agents

* * *

§ 1727. EXPIRATION DATE

(a) An optometrist shall state the expiration date on the face of every prescription written by that optometrist for contact lenses. The expiration date shall be one year after the examination date unless a medical or refractive problem affecting vision requires an earlier expiration date.

(b) An optometrist ~~may~~ shall not refuse to give the buyer a copy of the buyer's prescription after the expiration date; however, the copy shall be clearly marked to indicate that it is an expired prescription.

Subchapter 6. Therapeutic Pharmaceutical Agents

§ 1728. USE OF THERAPEUTIC PHARMACEUTICAL AGENTS

~~(a) An optometrist licensed under this chapter who possesses the endorsement required under section 1729 of this title, may:~~

~~(1) use and prescribe appropriate pharmaceutical agents for the diagnosis, management, and treatment of the eye and adnexa.~~

~~(2) remove superficial foreign bodies from the eye and adnexa, perform epilation of the eyelashes including electrolysis, punctal dilation, and lacrimal irrigation, and insert punctal plugs.~~

~~(b) Nothing in this subchapter shall be construed to permit:~~

~~(1) the use of therapeutic ultrasound, the use of injections except for the~~

~~appropriate emergency stabilization of a patient, or the performance of surgery. "Surgery" means any procedure in which human tissue is cut, penetrated, thermally or electrically cauterized except when performing electrolysis, or otherwise infiltrated by mechanical or laser means in a manner not specifically authorized by this act;~~

~~(2) the use of lasers for any procedure other than diagnostic testing; or~~

~~(3) a licensee to perform indocyanine green angiography, removal of benign skin lesions involving subcutaneous injections, sub-tenons injections, retrobulbar injections, intraocular injections, ketamine (IM) for an infant's examination under anesthesia, management of skin and conjunctival neoplasms, and botox injections.~~

(a)(1) A licensee who employs an oral therapeutic pharmaceutical agent that might prove to have significant systemic adverse reactions or systemic side effects shall, in a manner consistent with Vermont law, ascertain the risk of systemic side effects through either a case history or by communicating with the patient's primary care provider.

(2) The licensee shall also communicate with the patient's primary care provider, or with a physician skilled in diseases of the eye, when, in the professional judgment of the licensee, it is medically appropriate.

(3) Any communication shall be noted in the patient's permanent record. The methodology of communication shall be determined by the licensee.

(b)(1) If a glaucoma patient does not respond to up to three topically administered pharmaceutical agents within a reasonable time, the licensee shall refer the patient to a licensed ophthalmologist.

(2) A glaucoma patient shall not be treated by an optometrist with more than three topically administered agents at any given time.

(3) If an oral medication is required to obtain an adequate clinical response in a glaucoma patient, the licensee shall consult with a licensed ophthalmologist as soon as clinically prudent following initiation of the oral medication.

(4) This subsection shall not require that the licensee transfer care of the patient to the consulting ophthalmologist, but does require that the patient be seen by the consulting ophthalmologist.

§ 1728a. PERMISSIBLE TREATMENTS; GLAUCOMA TYPES

~~(a) A licensee may treat the following types of glaucoma on patients who are 16 years of age or older:~~

- ~~(1) adult primary open angle glaucoma;~~
- ~~(2) exfoliative glaucoma;~~
- ~~(3) pigmentary glaucoma;~~
- ~~(4) low tension glaucoma;~~
- ~~(5) inflammatory (uveitic) glaucoma; and~~
- ~~(6) emergency treatment of angle closure glaucoma.~~

~~(b) This section shall not prohibit a licensee from administering appropriate emergency stabilization treatment to a patient. [Repealed.]~~

~~* * *~~

~~§ 1728c. USE OF ORAL THERAPEUTIC PHARMACEUTICAL AGENT;
COMMUNICATION WITH PRIMARY CARE PROVIDER~~

~~A licensee who employs an oral therapeutic pharmaceutical agent that might prove to have significant systemic adverse reactions or systemic side-effects shall, in a manner consistent with Vermont law, ascertain the risk of systemic side effects through either a case history or by communicating with the patient's primary care provider. The licensee shall also communicate with the patient's primary care provider, or with a physician skilled in diseases of the eye, when in the professional judgment of the licensee, it is medically appropriate. The communication shall be noted in the patient's permanent record. The methodology of communication shall be determined by the licensee. [Repealed.]~~

~~§ 1728d. DURATION OF GLAUCOMA TREATMENT WITHOUT
REFERRAL~~

~~(a) If a glaucoma patient does not respond to up to three topically administered pharmaceutical agents within a reasonable time, the licensee shall refer the patient to a licensed ophthalmologist. No glaucoma patient shall be treated by an optometrist with more than three topically administered agents at any given time.~~

~~(b) If an oral medication is required to obtain an adequate clinical response, the licensee shall consult with a licensed ophthalmologist as soon as clinically prudent following initiation of the oral medication. This section shall not require that the licensee transfer care of the patient to the consulting ophthalmologist, but does require that the patient be seen by the consulting ophthalmologist. [Repealed.]~~

§ 1729. ~~ENDORSEMENTS AND REQUIREMENTS~~

~~(a) Upon application, the board shall certify eligible licensees to use and prescribe therapeutic drugs and to perform those procedures authorized by subdivision 1728(a)(2) of this title, if the applicant meets the requirements of section 1715 of this chapter for licensure by examination or meets the requirements of section 1716 of this chapter for licensure by endorsement, and is authorized under the license of another jurisdiction to use therapeutic pharmaceutical agents.~~

~~(b) A licensee certified under this section shall affix current documentation of certification to the license in the manner provided by the board.~~

~~(c) A licensee who is certified to use therapeutic pharmaceutical agents shall demonstrate proof of current cardiopulmonary resuscitation certification as a condition of initial certification and of license renewal. Acceptable courses shall include:~~

~~(1) courses in external cardiopulmonary resuscitation which are approved by the Vermont Heart Association or the American Red Cross; and~~

~~(2) courses which include a review of diseases or conditions which might produce emergencies such as anaphylactic shock, diabetes, heart condition, or epilepsy.~~

~~(d) A licensee certified to use therapeutic pharmaceutical agents shall, as part of required continuing education, receive not less than 50 percent of his or her continuing education in the use of pharmaceuticals, including treating possible complications arising from their use, and the treatment of glaucoma. [Repealed.]~~

§ 1729a. ~~PREREQUISITES TO TREATING GLAUCOMA~~

~~A licensee who is already certified to use therapeutic pharmaceutical agents and who graduated from a school of optometry prior to 2003 and is not certified in another jurisdiction having substantially similar prerequisites to treating glaucoma shall, in addition to being certified to use therapeutic pharmaceutical agents, provide to the board verification of successful completion of an 18-hour course and examination offered by the State University of New York State College of Optometry or similar accredited institution. Successful completion shall include passing an examination substantially equivalent to the relevant portions on glaucoma and orals of the examination given to current graduates of optometry school and shall require the same passing grade. The course shall cover the diagnosis and treatment of glaucoma and the use of oral medications and shall be taught by both optometrists and ophthalmologists. In addition, the licensee shall collaborate with an optometrist who has been licensed to treat glaucoma for at least two~~

~~years or an ophthalmologist regarding his or her current glaucoma patients for six months and at least five new glaucoma patients before treating glaucoma patients independently. These five new glaucoma patients shall be seen at least once by the collaborating glaucoma-licensed optometrist or ophthalmologist. [Repealed.]~~

Sec. 13. OFFICE OF PROFESSIONAL REGULATION; STUDY OF
OPTOMETRIC ADVANCED PROCEDURES

(a) The Office of Professional Regulation shall conduct a study to evaluate the safety and public health needs of enlarging the scope of practice of optometrists to include advanced procedures. In conducting this study, the Office shall consult with relevant stakeholders, including the Vermont Board of Optometry, the Vermont Optometric Association, the Vermont Board of Medical Practice, the Vermont Department of Health, and the Vermont Ophthalmological Society.

(b) The study shall evaluate, among other considerations, approaches to advanced procedures in jurisdictions outside Vermont, patient need for access to additional practitioners, effects on patient access to care, effects on patient safety, costs to the health care system, and the existing education and training for optometrists, including the degree to which it addresses training in advanced procedures. The Office shall inquire into the specific clinical training for both optometrists and ophthalmologists for specific procedures.

(c) On or before January 15, 2020, the Office shall report its findings, including any recommendations for legislative action, to the House Committees on Government Operations and on Health Care and to the Senate Committees on Government Operations and on Health and Welfare.

* * * Pharmacy * * *

Sec. 14. 26 V.S.A. chapter 36 is amended to read:

CHAPTER 36. PHARMACY

Subchapter 1. General Provisions

* * *

§ 2022. DEFINITIONS

As used in this chapter:

* * *

(7) “Drug outlet” means all pharmacies, wholesalers, manufacturers, and other entities that are engaged in the manufacture, dispensing, delivery, or distribution of prescription drugs.

* * *

(11)(A) “Manufacturing” means the production, preparation, propagation, conversion, or processing of a drug or device, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical or biological synthesis.

(B) “Manufacturing” includes the packaging or repackaging of a drug or device ~~or~~; the labeling or relabeling of the container of a drug or device for resale by a pharmacy, practitioner, or other person; and virtual manufacturing by an entity that sells its own prescription drug or device without physically possessing the product.

* * *

(19)(A) “Wholesale distributor” means any person who is engaged in wholesale distribution of prescription drugs, ~~but~~ including virtual distribution by an entity that sells a prescription drug or device without physically possessing the product.

(B) “Wholesale distributor” does not include any for-hire carrier or person hired solely to transport prescription drugs.

* * *

Subchapter 2. Board of Pharmacy

§ 2031. CREATION; APPOINTMENT; TERMS; ORGANIZATION

(a)(1) There is hereby created the Board of Pharmacy to enforce the provisions of this chapter.

(2) The Board shall consist of ~~seven~~ eight members, five of whom shall be pharmacists licensed under this chapter with five years of experience in the practice of pharmacy in this State. One member shall be a pharmacy technician registered under this chapter. Two members shall be members of the public having no financial interest in the practice of pharmacy.

(b) Members of the Board shall be appointed by the Governor pursuant to 3 V.S.A. §§ 129b and 2004.

§ 2032. POWERS; DUTIES; LIMITATIONS

(a) The Board shall adopt rules necessary for the performance of its duties, including:

- (1) scope of the practice of pharmacy;
- (2) qualifications for obtaining licensure;

- (3) explanations of appeal and other rights given to licensees, applicants, and the public; ~~and~~
- (4) rules regulating pharmacy technicians; ~~and~~
- (5) provisions for the inspection of any regulated entity or commercial location where legend drugs are manufactured or kept.

* * *

(c) The Board of Pharmacy shall also have the following responsibilities in regard to medications, drugs, legend devices, and other materials used in this State in the diagnosis, mitigation, and treatment or prevention of injury, illness, and disease:

(1) ~~The~~ the regulation of the sale ~~at retail and the, compounding, administration, and~~ dispensing of medications, drugs, legend devices, and other materials, including the right to seize any such drugs, legend devices, and other materials found to be detrimental to the public health and welfare by the Board pursuant to an appropriate hearing as required under the Administrative Procedure Act;

(2) ~~The~~ the specifications of minimum professional and technical equipment, environment, supplies, and procedures for the compounding or dispensing of such medications, drugs, legend devices, and other materials within the practice of pharmacy;

(3) ~~The~~ the control of the purity and quality of such medications, drugs, legend devices, and other materials within the practice of pharmacy; ~~and~~

(4) ~~The~~ the issuance of certificates of registration and licenses of drug outlets; ~~and~~

(5) ~~The development of criteria for a standardized tamper-resistant prescription pad that can be used by all health care providers who prescribe drugs. Such criteria shall be developed in consultation with pharmacists, hospitals, nursing homes, physicians and other prescribers, and other affected parties.~~

* * *

Subchapter 3. Licensing

* * *

§ 2042b. ~~PHARMACY TECHNICIANS; NONDISCRETIONARY TASKS; SUPERVISION~~

(a) ~~Notwithstanding any other provision of law, a registered pharmacy technician may perform packaging or other nondiscretionary tasks only while assisting and under the supervision and control of a pharmacist.~~

~~(b) This section does not authorize a pharmacy technician to perform packaging or other nondiscretionary tasks without a pharmacist on duty, and without being under the supervision and control of a pharmacist.~~

~~(c) This section does not authorize a pharmacy technician to perform any act requiring the exercise of professional judgment by a pharmacist.~~

~~(d) The Board may adopt rules to specify tasks that a pharmacy technician may perform under the supervision and control of a pharmacist pursuant to subsection (a) of this section. A pharmacy or pharmacist that employs a pharmacy technician to perform tasks specified in subsection (a) shall do so in conformity with the rules adopted by the Board pursuant to this section.~~

~~(e) [Repealed.]~~

~~(f)(1) A pharmacist on duty shall be directly responsible for the conduct of a pharmacy technician.~~

~~(2) A pharmacist responsible for a pharmacy technician shall be on the premises at all times, or in the case of a remote pharmacy approved by the Board, immediately available by a functioning videoconference link.~~

~~(3) A pharmacist shall verify a prescription before medication is provided to the patient. [Repealed.]~~

* * *

Subchapter 5. Registration of Facilities

§ 2061. REGISTRATION AND LICENSURE

(a) All drug outlets shall biennially register with the Board of Pharmacy.

(b) Each drug outlet shall apply for a license in one or more of the following classifications:

- (1) Retail.
- (2) Institutional.
- (3) Manufacturer.
- (4) Wholesale distributor.
- (5) Investigative and research projects.
- (6) Compounding.
- (7) Outsourcing.
- (8) Home infusion.
- (9) Nuclear.

(10) Third-party logistics provider.

* * *

Subchapter 6. Wholesale Distributors and Manufacturers§ 2067. ~~WHOLESALE DISTRIBUTOR~~ DISTRIBUTORS AND MANUFACTURERS; LICENSURE REQUIRED

(a) A person who is not licensed under this subchapter shall not engage in wholesale distribution or manufacturing in this State.

* * *

(c) The Board may require a separate license for each facility directly or indirectly owned or operated by the same business entity ~~within this State~~, or for a parent entity with divisions, subsidiaries, or affiliate companies ~~within this State~~ when operations are conducted at more than one location and there exists joint ownership and control among all the entities.

(d) An agent or employee of any licensed wholesale distributor or manufacturer shall not be required to obtain a license under this subchapter and may lawfully possess pharmaceutical drugs when that agent or employee is acting in the usual course of business or employment.

§ 2068. REQUIREMENTS; APPLICANTS; LICENSES

An applicant shall satisfy the ~~board~~ Board that it has, and licensees shall maintain, the following:

- (1) Acceptable storage and handling conditions plus facilities standards.
- (2) Minimum liability and other insurance as may be required under any applicable federal or state law.
- (3) A security system ~~which~~ that includes after hours, central alarm or comparable entry detection capability, restricted premises access, adequate outside perimeter lighting, comprehensive employment applicant screening, and safeguards against employee theft.
- (4) An electronic, manual, or any other reasonable system of records, describing ~~all wholesale distributor~~ activities governed by this subchapter for the two-year period following disposition of each product, which shall be reasonably accessible, as defined by the ~~board~~ Board by rule, during any inspection authorized by the ~~board~~ Board.
- (5) Officers, directors, managers, and other persons in charge of wholesale drug distribution, manufacture, storage, and handling, who shall at all times demonstrate and maintain their capability to conduct business according to sound financial practices as well as state and federal law.

* * *

(9) Operations in compliance with all federal requirements ~~applicable to wholesale drug distribution.~~

(10)(A) Compliance with standards and procedures ~~which that~~ the ~~board~~ Board shall adopt by rule concerning provisions for initial and periodic on-site inspections, criminal and financial background checks, ongoing monitoring, reciprocity for out-of-state ~~wholesale drug distributors~~ entities inspected by a third party organization recognized by the ~~board~~ Board or inspected and licensed by a ~~state~~ State licensing authority with legal standards for licensure that are comparable to the standards adopted by the ~~board~~ Board pursuant to this subdivision (10), protection of a ~~wholesale drug distributor's~~ proprietary information, and any other requirements consistent with the purposes of this subdivision (10).

(B) The ~~board~~ Board rules may recognize third party accreditation in satisfaction of some or all of the requirements of this subdivision (10).

* * *

§ 2076. INSPECTION POWERS; ACCESS TO WHOLESALE
DISTRIBUTOR AND MANUFACTURER RECORDS

(a) A person authorized by the Board may enter, during normal business hours, all open premises purporting or appearing to be used by a wholesale distributor or manufacturer for purposes of inspection.

(b)(1) Wholesale distributors and manufacturers may keep records regarding purchase and sales transactions at a central location apart from the principal office of the wholesale distributor or the location at which the drugs were stored and from which they were shipped, provided that such records shall be made available for inspection within two working days of a request by the Board.

(2) Records may be kept in any form permissible under federal law applicable to prescription drugs record keeping.

* * *

Sec. 15. OFFICE OF PROFESSIONAL REGULATION; EVALUATION
OF PHARMACIST PRESCRIBING AUTHORITY

(a) The Office of Professional Regulation shall evaluate the costs and benefits of incorporating prescribing authority into the scope of practice of licensed pharmacists. This evaluation shall be conducted in consultation with relevant stakeholders and shall include consideration of:

(1) approaches to clinical pharmacy in jurisdictions outside Vermont;

(2) potential impacts on patient safety and on primary and preventive care delivered by other health care professionals;

(3) effects on patient access to care; and

(4) the appropriate extent, if any, of the prescribing authority.

(b) On or before January 15, 2020, the Office shall report its findings and any recommendations for legislative action to the House and Senate Committees on Government Operations, the House Committee on Health Care, and the Senate Committee on Health and Welfare.

* * * Real Estate Brokers and Salespersons * * *

Sec. 16. 26 V.S.A. chapter 41 is amended to read:

CHAPTER 41. REAL ESTATE BROKERS AND SALESPERSONS

Subchapter 1. General Provisions

* * *

§ 2213. PENALTIES

A person who shall violate any provision of this chapter shall be subject to the penalties provided in 3 V.S.A. § 127(e).

* * *

Subchapter 3. Licenses

* * *

§ 2292. ELIGIBILITY

* * *

~~(b)(4)~~ A license as a real estate salesperson shall be granted to a person who satisfies all of the following:

~~(A)(1)~~ has passed an examination as required by the Commission;

~~(B)(2)~~ is at least 18 years of age;

~~(C)(3)~~ has been employed by or become associated with a brokerage firm and that firm's principal broker; and

~~(D)(4)~~ has completed a course of instruction, approved by the Commission, of at least 40 hours.

~~(2)(A) An initial salesperson license shall expire 90 days from issuance.~~

~~(B) The license of a salesperson who has provided documentation to the Commission showing successful completion of eight hours of instruction addressing topics specified by the Commission relating to the salesperson's~~

~~postlicensure practice of the profession shall be renewed without application or fee and remain valid until the end of the biennial licensing period.~~

~~(3) Has been employed by or become associated with a brokerage firm and that firm's principal broker.~~

~~(4) Has completed a course of instruction, approved by the Commission, of at least 40 hours.~~

* * *

§ 2293. RENEWAL OF LICENSE; EXPIRED LICENSE

~~(a) Licenses shall be renewed every two years without examination and on payment of the required fees, provided that the person applying for renewal completes at least 24 hours of instruction for brokers and 16 hours of instruction for salespersons, approved by the Commission, during the preceding two-year period. Four hours of this continuing education instruction shall address legislation and other topics specified by the Commission for each renewal period.~~

~~(b)(1) A broker or salesperson applying for reinstatement of a license that has expired shall be assessed both the renewal fee and late renewal penalty established by the Director of the Office of Professional Regulation and shall not be assessed renewal fees for the years during which the license was expired.~~

~~(2) Reinstatement shall not take place until the applicant completes the continuing education required for the previous renewal period.~~

~~(c)(1) If a broker or salesperson's license has expired for greater than five consecutive years, the broker or salesperson shall apply for reinstatement in accordance with the initial licensure requirements as set forth in section 2292 of this chapter, including a course of instruction and examination.~~

~~(2) The Commission may waive the reinstatement requirements based upon licensed practice in another state.~~

~~(d) The Commission may waive or postpone compliance with the instructional requirements of this section in cases of extreme hardship on the part of the licensee. No licensee, however, may receive a postponement or waiver for two successive two-year periods of licensure. The Commission may accept fewer hours of continuing education instruction for renewal of a license on a prorated basis following an initial licensing period of less than two years.~~

~~(e) [Repealed.]~~

* * *

§ 2296. UNPROFESSIONAL CONDUCT

~~Unprofessional conduct means the following conduct and~~ In addition to the conduct set forth in 3 V.S.A. § 129a, the following conduct by those regulated under this chapter constitutes unprofessional conduct:

~~(1) makes a material misstatement in the application for his or her license;~~

~~(2) uses dishonest or misleading advertising;~~

~~(3) demonstrates incompetency to act as a real estate broker or salesperson;~~

~~(4) is found by the Commission to be guilty of fraud or fraudulent practices; or is convicted for violating this chapter; or is convicted of forgery, embezzlement, obtaining money under false pretenses, or conspiring to defraud;~~

~~(5) commingles commingling money or other property to which the licensee's clients or other persons are entitled with the licensee's own, except to the extent nominal sums of the licensee's funds may be required to maintain an open trust account;~~

~~(6)~~(2) ~~fails failing~~ to inform clients, establish trust and escrow accounts, maintain records, and otherwise act in accordance with the provisions of section 2214 of this chapter with respect to all monies received by the licensee as a real estate broker, or as escrow agent, or as the temporary custodian of the funds of others, in a real estate transaction;

~~(7)~~(3) ~~fails failing~~ promptly to segregate any properties received that are to be held for the benefit of others;

~~(8) is found by the Commission to have engaged in any act or conduct, whether of the same or different character as that described in this section, that contributes to or demonstrates incompetency or dishonest fraudulent dealings;~~

~~(9)~~(4) ~~fails failing~~ to fully disclose to a buyer all material facts within the licensee's knowledge concerning the property being sold;

~~(10)~~(5) ~~fails failing~~ to fully disclose to a buyer the existence of an agency relationship between the licensee and the seller.

* * *

* * * Opticians * * *

Sec. 17. 26 V.S.A. chapter 47 is amended to read:

CHAPTER 47. OPTICIANS

* * *

Subchapter 2. Administration

§ 2661. POWERS AND DUTIES OF THE DIRECTOR; ~~DUTIES~~(a) The ~~director~~ Director shall:

- (1) provide general information to applicants for licensure as opticians;
- (2) explain appeal procedures to opticians and applicants and complaint procedures to the public;
- (3) administer fees established by law;
- (4) receive applications for licensure, issue licenses, to applicants qualified under this chapter, deny or renew licenses and issue, revoke, suspend, condition, and reinstate licenses as ordered by an administrative law officer;
- (5) refer ~~complaints and disciplinary matters to~~ for adjudication by an administrative law officer;
- (6) conduct or specify examinations and pass upon the qualifications of applicants for reciprocal registration;
- (7) conduct hearings as necessary for the issuance, renewal, or discipline of a license; and
- (8) establish by rule standards of education required of applicants, as well as minimum standards for any school presenting a course for present or future opticians.

(b) The ~~director~~ Director may, after consultation with the advisor appointees, adopt rules necessary to perform the director's duties under this chapter, including rules governing apprenticeship and continuing education. Rules adopted under this section shall not prohibit lawful advertising, the display of ophthalmic materials or merchandise, limit the place or location where opticians may practice, nor be designed to limit the number of opticians in the State.

* * *

§ 2665. ~~POWERS AND DUTIES OF THE DIRECTOR~~(a) ~~The Director shall:~~

- ~~(1) adopt only those rules necessary for the full and efficient performance of its duties;~~
- ~~(2) conduct examinations and pass upon the qualifications of applicants for reciprocal registration;~~

~~(3) establish standards of education required of applicants for licensing and establish, by appropriate rules, the minimum standards for any school presenting a course for present or future opticians;~~

~~(4) conduct any necessary hearings in connection with the issuance, renewal, suspension, or revocation of a license;~~

~~(5) [Repealed.]~~

~~(6) adopt rules establishing continuing education requirements and approve continuing education programs to assist a licensee in meeting these requirements.~~

~~(b) The Director shall not:~~

~~(1) adopt any rules prohibiting lawful advertising, the display of ophthalmic materials or merchandise, or limiting the place or location where opticians may practice; or~~

~~(2) adopt any rules specifically designed to limit the number of opticians in this State. [Repealed.]~~

* * *

Subchapter 3. Licenses

§ 2671. APPLICATIONS

~~Any person who desires to practice as an optician be licensed under this chapter shall file a written submit an application for a license and the application as specified by the Director, accompanied by payment of the required fee with the office on forms provided by the office. An applicant shall submit satisfactory proof that he or she meets the qualifications under section 2672 of this title chapter.~~

§ 2672. QUALIFICATIONS

~~No A person may shall not be examined or licensed under this chapter, except as otherwise provided in this chapter, unless the applicant has attained the age of majority he or she has obtained a high school education or its equivalent and possesses the following qualifications:~~

~~(1) Education. Has completed:~~

~~(A) Has obtained a high school education or its equivalent and has completed at least a two-year course of study in a school of ophthalmic dispensing approved by the board Director or a school which that is a candidate for accreditation by an accreditation agency approved by the United States Department of Education and by the director Director; or~~

~~(2)(B) Has completed three at least two~~ years of practical training and experience, approved by the ~~director~~ Director, under the supervision of a licensed optician, ophthalmologist, or optometrist; or

(C) the National Academy of Opticianry Ophthalmic Career Progression Program, including at least one year of practical training and experience, approved by the Director, under the supervision of a licensed optician, ophthalmologist, or optometrist; and

(2) Examination. Has passed an examination recognized by the Director that shall include assessment of competency in ophthalmic materials; laboratory, practical, and physiological optics; prescription interpretation; dispensing preparation; adjustment of lenses, spectacles, eyeglasses, prisms, tinted lenses, and appurtenances; the use of lensometers or equivalent instruments; adjusting instruments; and pupillary and facial measurements.

§ 2673. ~~EXAMINATION; LICENSES~~

~~(a) Examinations for licenses shall be conducted at least once each year and shall be devised in form and substance to evaluate fairly the applicant's qualifications to practice as a licensed optician. The examination shall include, but not be limited to, ophthalmic materials, laboratory, practical and physiological optics, prescription interpretation, dispensing preparation, adjustment of lenses, spectacles, eyeglasses, prisms, tinted lenses, and appurtenances, the use of lensometers or equivalent instruments, adjusting instruments, and pupillary and facial measurements.~~

~~(b) Any applicant passing the examination and meeting the requirements established by the director shall be issued a license under this chapter. [Repealed.]~~

* * *

* * * Radiology * * *

Sec. 18. 26 V.S.A. chapter 51 is amended to read:

CHAPTER 51. RADIOLOGY

Subchapter 1. General Provisions

§ 2801. DEFINITIONS

As used in this chapter:

(1) ~~“Board”~~ “Director” means the ~~board of radiologic technology~~ Director of the Office of Professional Regulation.

(2) “Practice of radiologic technology” means the practice of:

(A) radiography; ~~or~~

(B) nuclear medicine technology; or

(C) radiation therapy.

(3) “Practice of radiography” means the direct application of ionizing radiation to human beings.

(4) “Practice of nuclear medicine technology” means the act of giving a radioactive substance to a human being or the act of performing associated imaging procedures, or both.

(5) “Practice of radiation therapy” means the direct application of ionizing radiation to human beings for therapeutic purposes or the act of performing associated imaging procedures, or both.

(6) “Licensed practitioner” means a person licensed under this title to practice medicine, osteopathy, advanced practice registered nursing, dentistry, podiatry, naturopathic medicine, or chiropractic.

(7) “Financial interest” means being:

(A) a licensed practitioner of radiologic technology; or

(B) a person who deals in goods and services ~~which~~ that are uniquely related to the practice of radiologic technology; or

(C) a person who has invested anything of value in a business ~~which~~ that provides radiologic technology services.

(8) “Unauthorized practice” means conduct prohibited by section 2802 of this ~~title~~ chapter and not exempted by section 2803 of this ~~title~~ chapter.

(9) “Direct ~~personal~~ supervision” means that the person being supervised remains in the physical presence of the supervisor at all times.

(10) “General supervision” means that the supervisor is readily available for consultation or intervention on the premises where radiologic technology services are being provided.

(11) “ARRT” means the American Registry of Radiologic Technologists.

(12) “NMTCB” means the Nuclear Medicine Technologist Certification Board.

(13) “Office” means the Office of Professional Regulation.

§ 2802. PROHIBITIONS

(a) [Repealed.]

(b) ~~No~~ A person shall not practice radiologic technology unless he or she is licensed in accordance with the provisions of this chapter.

(c) ~~No~~ A person shall not practice radiography without a license for radiography ~~from the board~~ unless exempt under section 2803 of this ~~title~~ chapter.

(d) [Repealed.]

(e) ~~No~~ A person shall not practice nuclear medicine technology without a license for that purpose ~~from the board~~ unless exempt under section 2803 of this ~~title~~ chapter.

(f) ~~No~~ A person shall not practice radiation therapy technology without a license for that purpose ~~from the board~~ unless exempt under section 2803 of this ~~title~~ chapter.

§ 2803. EXEMPTIONS

The prohibitions in section 2802 of this chapter shall not apply to dentists licensed under chapter 12 of this title and actions within their scope of practice nor to:

(1) Licensed practitioners acting within the scope of practice for their licensed field, provided that their practice acts and rules adopted thereunder ~~make provisions for~~ have been expressly found by the Director, in consultation with advisors appointed under this chapter, to match or surpass the training in radiation safety and proper radiation practices determined in consultation with the Board required by this chapter and rules adopted under this chapter.

* * *

(5) Any of the following when operating dental radiographic equipment to conduct intraoral radiographic examinations under the general supervision of a licensed practitioner; and any of the following when operating dental radiographic equipment to conduct specialized radiographic examinations, including tomographic, cephalometric, or temporomandibular joint examinations, if the person has completed a course in radiography approved by the Board of Dental Examiners and practices under the general supervision of a licensed practitioner:

* * *

(D) a student of dental therapy, dental hygiene, or dental assisting as part of the training program when ~~directly supervised by~~ under the direct supervision of a licensed dentist, licensed dental therapist, licensed dental hygienist, or registered dental assistant.

* * *

(7) Researchers operating bone densitometry equipment for body composition upon successful completion of courses on body composition and radiation safety approved by the Board Director. The Board Director shall not require this coursework to exceed eight hours. The Board Director may consider other exemptions from licensure for bona fide research projects subject to course and examination requirements as deemed necessary for public protection.

§ 2804. COMPETENCY REQUIREMENT OF CERTAIN LICENSED PRACTITIONERS

(a) Unless the requirements of subdivision 2803(1) of this chapter have been satisfied, a ~~physician, as defined in chapter 23 of this title; podiatrist, as defined in chapter 7 of this title; chiropractic physician, as defined in chapter 10 of this title; osteopathic physician, as defined in chapter 33 of this title; or naturopathic physician, as defined in chapter 81 of this title,~~ licensed practitioner shall not apply ionizing radiation to human beings without first having satisfied the Board Director of his or her competency to do so.

(b) The Board Director shall:

(1) consult with the appropriate licensing boards concerning suitable performance standards; and

(2) by rule, provide for periodic recertification of competency.

(c) A person subject to the provisions of this section shall be subject to the fees established under subdivisions 2814(4) and (5) of this chapter.

(d) This section does not apply to radiologists who are certified or eligible for certification by the American Board of Radiology, nuclear cardiologists who are certified or eligible for certification by the Certification Board of Nuclear Cardiology, or interventional cardiologists and electrophysiologists who are certified or eligible for certification by the American Board of Internal Medicine.

§ 2805. PENALTY AND ENFORCEMENT

A person found guilty of violating section 2802 or 2804 of this ~~title~~ chapter shall be subject to the penalties provided in 3 V.S.A. § 127(e).

Subchapter 2. ~~Board of Radiologic Technology Administration~~

§ 2811. BOARD REGULATION OF RADIOLOGIC TECHNOLOGY; DIRECTOR; ADVISOR APPOINTEES

(a)(1) ~~A board of radiologic technology is created, consisting of six members. The board shall be attached to the office of professional regulation. The Director shall administer the provisions of this chapter.~~

(2)(A) The Secretary of State shall appoint six persons of suitable qualifications in accordance with this section to advise the Director in matters concerning radiologic technology, radiologic safety, and the optimal administration of this chapter.

(B) The Secretary shall appoint the advisors for five-year staggered terms. Four of the initial appointments shall be for four-, three-, two-, and one-year terms.

(3) The Director shall consult the appointed advisors prior to exercising interpretive discretion, adopting or amending rules, and determining any substantial regulatory question presented in the course of administering this chapter.

~~(b) One member of the board~~ advisor shall be a member of the public who has no financial interest in radiologic technology other than as a consumer or possible consumer of its services. The public member shall have no financial interest personally or through a spouse.

~~(c) One member of the board~~ advisor shall be a radiologist certified by the American Board of Radiology.

~~(d) Three members of the board~~ advisors shall be licensed under this chapter, one representing each of the three following primary modalities: radiography; nuclear medicine technology; and radiation therapy.

~~(e) One member of the board~~ advisor shall be a representative from the radiological health program of the Vermont ~~department of health~~ Department of Health.

~~(f) Board members shall be appointed by the governor.~~ [Repealed.]

§ 2812. DIRECTOR; POWERS AND DUTIES

~~(a) The Board~~ Director shall adopt rules necessary for the ~~performance effective administration of its duties~~ this chapter, including:

(1) a definition of the practice of radiologic technology, interpreting section 2801 of this ~~title~~ chapter;

(2) qualifications for obtaining licensure, interpreting sections 2821a and 2821b of this chapter;

(3) explanations of appeal and other significant rights given to applicants and the public;

(4) procedures for disciplinary and reinstatement cases;

(5) [Repealed.]

(6) procedures for mandatory reporting of unsafe radiologic conditions or practices;

(7) procedures for continued competency evaluation;

(8) procedures for radiation safety;

(9) procedures for competency standards for license applications and renewals.

(b) The ~~Board~~ Director shall:

(1) [Repealed.]

(2) ~~use the administrative and legal services provided by the Office of Professional Regulation under 3 V.S.A. chapter 5; [Repealed.]~~

(3) investigate suspected unprofessional conduct;

(4) periodically determine whether a sufficient supply of good quality radiologic technology services is available in Vermont at a competitive and reasonable price and take suitable action, within the scope of ~~its~~ the Office's powers, to solve or bring public and professional attention to any problem that it finds in this area; and

(5) as a condition of renewal require that a licensee establish that he or she has completed a minimum of 24 hours of continuing education as ~~approved by the Board,~~ the specific requirements of which may be specified by rule.

(c) The ~~Board~~ Director may:

(1) Refer cases of apparent improper radiologic technology practice to any occupational board with authority over the person concerned.

(2) Investigate suspected cases of unauthorized practice of radiologic technology, and refer any such case to the Office's State prosecuting attorney, the Attorney General, or a State's Attorney for possible prosecution and injunctive relief.

* * *

(8)(A) Conduct a competency evaluation where radiographic services are performed by licensees and licensed practitioners required to demonstrate competency under section 2804 of this title chapter to ensure that optimum radiologic technology practices are used to minimize patient and occupational radiation dose. ~~The fee required under section 2814 of this title shall not be assessed more than once in any two-year period against any licensed practitioner evaluated under this subdivision.~~

~~(B) The Director of the Office of Professional Regulation may contract with the Department of Health or others to perform evaluations under this subsection subdivision (8).~~

~~§ 2813. BOARD PROCEDURES~~

~~(a) Annually, the board shall meet to elect a chairperson and a secretary.~~

~~(b) Meetings may be called by the chairperson and shall be called upon the request of any other two members.~~

~~(c) Meetings shall be warned and conducted in accordance with 1 V.S.A. chapter 5.~~

~~(d) A majority of the members of the board shall be a quorum for transacting business.~~

~~(e) All action shall be taken upon a majority vote of the members present and voting, unless otherwise provided in 1 V.S.A. chapter 5.~~

~~(f) The provisions of the Vermont Administrative Procedure Act relating to contested cases shall apply to proceedings under this chapter.~~

~~(g) Fees for the service of process and attendance before the board shall be the same as the fees paid sheriffs and witnesses in superior court. [Repealed.]~~

* * *

Subchapter 3. Licensing

* * *

§ 2821a. LICENSE FOR PRIMARY MODALITIES; COMMON REQUIREMENTS

The ~~board~~ Director shall recognize and follow the ARRT and the NMTCB primary certification process. The ~~board~~ Director shall issue a license to practice in one of the following three primary modalities to any person who in addition to the other requirements of this section, has reached the age of majority and has completed preliminary education equivalent to at least four years of high school:

(1) Radiography. The ~~board~~ Director shall issue a radiography license to any person who, in addition to meeting the general requirements of this section:

* * *

(2) Nuclear medicine technology. The ~~board~~ Director shall issue a nuclear medicine technology license to any person who, in addition to meeting the general requirements of this section:

* * *

(3) Radiation therapy. The ~~board~~ Director shall issue a radiation therapy license to any person who, in addition to meeting the general requirements of this section:

* * *

§ 2821b. LICENSE FOR POSTPRIMARY MODALITIES

(a) The ~~Board recognizes and follows~~ Director shall recognize and follow the ARRT and NMTCB postprimary certification process ~~for~~ in the following postprimary practice categories: mammography, computed tomography (CT), cardiac-interventional radiography, vascular-interventional radiography, and positron emission tomography (PET).

* * *

§ 2822. PROCEDURE FOR DENIAL OF LICENSE

~~When the board intends to deny an application for license, it shall send the applicant written notice of its decision by certified mail. The notice shall include a statement of the reasons for the action. Within 30 days of the date that an applicant receives such notice, the applicant may file a petition with the board for review of its preliminary decision. At the hearing, the burden shall be on the applicant to show that a license should be issued. After the hearing, the board shall affirm or reverse its preliminary denial. [Repealed.]~~

§ 2823. RENEWAL AND PROCEDURE FOR NONRENEWAL

(a) ~~Each radiographer, nuclear medicine technologist, and radiation therapist licensed to practice by the board shall apply biennially for the renewal of a license. One month prior to the renewal date, the office of professional regulation shall send to each of those licensees a license renewal application form and a notice of the date on which the existing license will expire. The licensee shall file the application for license renewal and pay a renewal fee. In order to be eligible for renewal, an applicant shall document completion of no fewer than 24 hours of board-approved continuing education. Required accumulation of continuing education hours shall begin on the first day of the first full biennial licensing period following initial licensure.~~

(b) ~~A person who practices radiography, nuclear medicine technology, or radiation therapy and who fails to renew a license or registration or fails to pay the fees required by this chapter shall be an illegal practitioner and shall forfeit the right to practice until reinstated by the board.~~

(c) ~~The board shall adopt rules setting forth qualifications for reinstating lapsed licenses. [Repealed.]~~

* * *

§ 2825a. LICENSURE BY ENDORSEMENT

The ~~board~~ Director may grant a license to an applicant who possesses a license in good standing in another state and possesses the applicable ARRT or NMTCB primary and postprimary certifications as set forth in sections 2821a and 2821b of this subchapter, respectively.

~~Subchapter 4. Discipline [Repealed.]~~

§ 2831. UNPROFESSIONAL CONDUCT

~~(a) Unprofessional conduct is the conduct prohibited by this section and by 3 V.S.A. § 129a, whether or not taken by a license holder.~~

~~(b) Conduct by a radiologic technologist which evidences moral unfitness to practice the profession constitutes unprofessional conduct. When that conduct is by an applicant or person who later becomes an applicant, it may constitute grounds for denial of a license.~~

~~(c) Unprofessional conduct includes the following actions by a licensee:~~

~~(1) practicing or offering to practice beyond the scope permitted by law;~~

~~(2) accepting and performing responsibilities which the licensee knows or has reason to know that he or she is not competent to perform;~~

~~(3) making any material misrepresentation in the practice of the profession, whether by commission or omission;~~

~~(4) agreeing with any other person or organization, or subscribing to any code of ethics or organizational bylaws, when the intent or primary effect of that agreement, code, or bylaw is to restrict or limit the flow of information concerning alleged or suspected unprofessional conduct to the board. [Repealed.]~~

§ 2832. DISCIPLINE OF LICENSEES

~~(a) The board shall accept oral and written complaints from any member of the public, any licensee, any state or federal agency, or the attorney general. The board may initiate disciplinary action in any complaint against a licensee and may act without having received a complaint.~~

~~(b) The burden of proof shall be on the state to show by a preponderance of the evidence that the licensee has engaged in unprofessional conduct.~~

~~(c) After hearing and upon a finding of unprofessional conduct, the board may:~~

~~(1) revoke a license;~~

- ~~(2) suspend a license; or~~
- ~~(3) issue a warning to a licensee.~~

~~(d) Before or after hearing, the board may approve a negotiated agreement between the parties when it is in the best interest of the public health, safety, or welfare to do so. Such an agreement may include, without limitation, any of the following conditions or restrictions which may be in addition to or in lieu of suspension:~~

- ~~(1) a requirement that a licensee submit to care or counseling;~~
- ~~(2) a restriction that a licensee practice only under supervision of a named person or a person with specified credentials;~~
- ~~(3) a requirement that a licensee participate in continuing education in order to overcome specified practical deficiencies;~~
- ~~(4) a requirement that the scope of practice permitted be restricted to a specified extent. Such an agreement may be modified by the parties after obtaining the approval of the board.~~

~~(e) An interested party may petition the board for modification of the terms of an order under this section.~~

~~(f) Where a license has been revoked, the board may reinstate the license on terms and conditions it deems proper. [Repealed.]~~

* * *

Sec. 19. TRANSITIONAL PROVISION; RADIOLOGIC TECHNOLOGY RULES

On the effective date of Sec. 18 of this act (amending 26 V.S.A. chapter 51 (radiology)), the rules of the Board of Radiologic Technology shall constitute the rules of the Director of the Office of Professional Regulation for the practice of radiologic technology.

* * * Alcohol and Drug Abuse Counselors * * *

Sec. 20. 26 V.S.A. § 3231 is amended to read:

§ 3231. DEFINITIONS

As used in this chapter:

* * *

(5) “Practice of alcohol and drug abuse counseling” means the application of methods, including psychotherapy, that assist an individual or group to develop an understanding of alcohol and drug abuse dependency problems or process disorders, and to define goals and plan actions reflecting

the individual's or group's interests, abilities, and needs as affected by alcohol and drug abuse dependency problems and comorbid conditions.

* * *

* * * Real Estate Appraisers * * *

Sec. 21. 26 V.S.A. chapter 69 is amended to read:

CHAPTER 69. REAL ESTATE APPRAISERS

Subchapter 1. General Provisions

§ 3311. DEFINITIONS

As used in this chapter:

* * *

(7) ~~“Board” “Director” means the Board of Real Estate Appraisers established under this chapter~~ Director of the Office of Professional Regulation.

(8)(A) ~~“Disciplinary action” means any action taken by the Board any regulatory or certifying authority against a licensed real estate appraiser or applicant premised on~~ upon a finding that the person has engaged in unprofessional conduct.

(B)(i) The term includes all sanctions of any kind, including obtaining injunctions, refusing to grant or renew a license, suspending, revoking, or restricting a license, and issuing warnings.

(ii) The term does not include monetary civil penalties imposed by a hearing officer in relation to an express finding under 3 V.S.A. § 129(a)(3) that the subject matter does not constitute unprofessional conduct.

(9) “Office” means the Office of Professional Regulation.

§ 3312. PROHIBITIONS; PENALTY; EXEMPTION

(a) Unless licensed in accordance with the provisions of this chapter, ~~no~~ a person may shall not:

(1) ~~Perform~~ perform an appraisal in a federally related transaction when a licensed or certified appraiser is required by the Act; or

(2) ~~Use~~ use in connection with his or her name any letters, words, or insignia indicating that he or she is a ~~state~~ State certified or licensed real estate appraiser.

(b) An individual who violates a provision of subsection (a) of this section shall be subject to the penalties provided in 3 V.S.A. § 127(e).

(c) A registered appraisal management company shall not be required to be licensed in order to acquire and provide finished appraisals to third parties.

Subchapter 2. Administration

§ 3313. BOARD REGULATION OF REAL ESTATE APPRAISERS;
DIRECTOR; ADVISOR APPOINTEES

~~(a)(1) A board of real estate appraisers is established. The board shall consist of six members appointed by the governor pursuant to 3 V.S.A. §§ 129b and 2004~~ The Director shall administer the provisions of this chapter.

(2)(A) The Secretary of State shall appoint six persons of suitable qualifications in accordance with this section to advise the Director in matters concerning real estate appraisal.

(B) The Secretary shall appoint the advisors for five-year staggered terms. Four of the initial appointments shall be for four-, three-, two-, and one-year terms.

(3) The Director shall consult the appointed advisors prior to exercising interpretive discretion, adopting or amending rules, and determining any substantial regulatory question presented in the course of administering this chapter.

(b) Three members advisors shall be real estate appraisers licensed under this chapter who have been actively engaged in the full-time practice of real estate appraising for five years preceding appointment and have been practicing in Vermont for the two-year period immediately preceding appointment.

(c) Two members advisors shall be public members who shall have no direct financial interest personally or through a spouse, parent, child, brother, or sister in real estate appraising.

(d) One member advisor shall be a public member actively engaged in the business of banking, including lending for the purpose of buying real property, or shall be a person who is a consumer of appraisal services in the regular course of his or her business.

§ 3314. BOARD DIRECTOR; POWERS AND DUTIES

(a) The Board Director shall administer the provisions of this chapter in a manner that conforms in all respects with the requirements of the Act.

(b) In addition to it's the Director's other powers and duties under this chapter, the Board Director shall:

(1) Receive and review applications.

(2) Collect the registry fee as required by the Act and transmit that fee to the ASC. The registry fee shall be in addition to State licensing and registration fees.

(3) Annually publish a roster of all licensees and transmit the roster to the ASC as required by the Act.

(4) Register appraisal management companies.

(5) ~~The Board may make~~ Make inquiries ~~it he or she~~ deems necessary into the character, integrity, and reputation of the applicant.

(6) Perform other functions and duties as may be necessary to carry out the provisions of this chapter and to comply with the requirements of the Act, including by adopting rules defining and regulating appraisal management companies in a manner consistent with the Act.

§ 3315. RULES

(a) The ~~Board~~ Director may adopt rules necessary to implement the provisions of this chapter.

(b) The ~~Board~~ Director shall adopt rules relating to procedures for processing applications, issuing licenses, registering trainees, inspecting records, and instituting and conducting disciplinary proceedings.

Subchapter 3. Licenses, Certifications, and Registrations

§ 3316. LICENSING AND REGISTRATION FEES

* * *

§ 3317. APPLICATION

An individual who desires to be licensed under this chapter shall ~~apply to submit an application as specified by the board in writing on a form furnished by the board.~~ The application shall be Director, accompanied by payment of the required fee.

§ 3318. EXAMINATION

The ~~Board~~ Director shall examine applicants ~~for~~ using an AQB-approved qualifying examination ~~for~~ applicable to the credential sought by the applicant.

§ 3319. TEMPORARY PRACTICE

The ~~board~~ Director shall issue a temporary license to an individual, after filing of an application and fee, who is a certified or licensed real estate appraiser in another jurisdiction if all of the following apply:

(1) ~~The~~ the property to be appraised is part of a federally related transaction for which a licensed or certified appraiser is required by the Act;₂

(2) ~~The~~ the applicant's business is of a temporary nature; and

(3) ~~The~~ the applicant registers with the ~~board~~ Office.

§ 3319a. APPRAISER TRAINEE REGISTRATION

(a)(1)(A) A person who has completed a course of instruction approved by the AQB may work as a certified residential or certified general appraiser trainee provided the person is registered with the ~~Board~~ Office.

(B) An appraiser trainee shall work under the direct supervision of an appraiser who holds either a certified residential or a certified general license in good standing and has held the certified residential or certified general license for at least the minimum number of years required by the AQB.

(2)(A) An appraiser trainee may perform activities within the scope of practice of the license sought, provided that the supervising appraiser reviews and signs all resulting appraisals.

(B) The supervising appraiser shall be professionally responsible for such activities performed by the trainee.

(3) As used in this ~~section~~ subsection, "good standing" means that the appraiser supervisor holds a current, unrestricted license.

(b) [Repealed.]

(c) The ~~Board~~ Director may, ~~in its discretion~~, give credit for training hours, not exceeding 10 percent of the total hourly experience requirement, for hours worked or training given that does not include or is unrelated to a site inspection.

(d) Appraiser trainees registered with the Board as of July 1, 2013 and who continue on to satisfy the requirements specified by the AQB may become State licensed appraisers, notwithstanding the elimination of that license category.

§ 3320. LICENSURE BY RECIPROCITY

The ~~Board~~ Director shall waive all licensing requirements for an appraiser applicant holding a valid certification from another state if:

(1) the appraiser licensing and certification program of the other state is in compliance with the provisions of the Act; and

(2) the appraiser applicant holds the valid certification from a state whose requirements for certification or licensing meet or exceed the licensure standards established by this chapter.

* * *

§ 3321. RENEWALS

* * *

(c) The ~~Board~~ Director may reactivate the license of an individual whose license has lapsed for more than 30 days upon payment of the renewal fee, the reactivation fee, and the late renewal penalty, provided the individual has satisfied all requirements of AQB for reactivation.

(d) The ~~Board~~ Director may require, by rule, as a condition of reactivation, that an applicant undergo review of one or more aspects of the applicant's professional work in the practice of real estate appraising, provided that the manner and performance results of the review be specified by the ~~Board~~ Director. Such a review requirement shall:

* * *

§ 3322. USE OF LICENSE NUMBER; CONSUMER FEE DISCLOSURE

(a)(1) Each licensee or registrant shall be assigned a license or registration number ~~which~~ that shall be used in a report, a contract, engagement letter, or other instrument used by the licensee or registrant in connection with the licensee's or registrant's activities under this chapter. The license number shall be placed adjacent to or immediately below the title the licensee is entitled to use under this chapter.

(2) ~~The~~ Each licensed appraiser shall ensure that the registration number and the appraiser's fee for appraisal services shall appear adjacent to or immediately below the appraisal management company's registered name on documents supplied to clients or customers in this ~~state~~ State.

(b) ~~The~~ Each licensed appraiser shall include within the body of the appraisal report the amount of the appraiser's fee for appraisal services.

§ 3323. UNPROFESSIONAL CONDUCT

(a) The following conduct by a licensee and the conduct set forth in 3 V.S.A. § 129a constitute unprofessional conduct. When that conduct is by an applicant or a person who later becomes an applicant, it may constitute grounds for denial of a license:

* * *

(8) Violating any term or condition of a license restricted by the ~~board~~ Office.

(9) Failing to comply with practice standards adopted by the ~~board~~ Director.

* * *

~~(d) After hearing, and upon a finding of unprofessional conduct, the board may take disciplinary action against a licensee, applicant, or registrant. Without limitation, disciplinary action may include any of the following:~~

- ~~(1) suspending or conditioning a license or registration;~~
- ~~(2) requiring a licensee to submit to care or counseling;~~
- ~~(3) requiring that a licensee practice only under supervision of a named person or a person with specified credentials;~~
- ~~(4) requiring a licensee to participate in continuing education in order to overcome specified practical deficiencies;~~
- ~~(5) limiting the scope of the licensee's practice. [Repealed.]~~

~~(e) Appeals from decisions of the board disciplinary orders and final license denials shall be governed by the provisions of 3 V.S.A. § 130a.~~

§ 3324. RECORD RETENTION

(a) A licensee or registrant shall retain all records related to an appraisal, review, or consulting assignment for no less fewer than five years after preparation.

(b) A licensee or registrant shall retain records under this section that relate to a matter in litigation for two years after the litigation concludes or in conformance with the "Uniform Standards of Professional Appraisal Practice," as promulgated by the Appraisal Standards Board of the Appraisal Foundation, whichever period is longer.

~~(c) With Upon reasonable notice, a licensee or registrant shall produce provide to the Director for inspection and copying any records governed by this section for inspection and copying by the board or its authorized agent.~~

§ 3325. REPORTING

An appraiser who reports to the ~~board~~ Director appraisal work ~~being performed which~~ that does not comply with the provisions of this chapter shall not be considered to have violated the ethics provision of the uniform standards of professional practice.

Sec. 22. TRANSITIONAL PROVISION; REAL ESTATE APPRAISER RULES

On the effective date of Sec. 21 of this act (amending 26 V.S.A. chapter 69 (real estate appraisers)), the rules of the Board of Real Estate Appraisers shall constitute the rules of the Director of the Office of Professional Regulation for the practice of real estate appraisal.

* * * Acupuncturists * * *

Sec. 23. 26 V.S.A. chapter 75 is amended to read:

CHAPTER 75. ACUPUNCTURISTS

Subchapter 1. General Provisions

§ 3401. DEFINITIONS

As used in this chapter:

(1) “Acupuncture” or the “practice of acupuncture” means the insertion of fine needles through the skin at certain points on the body, with or without the application of electric current or the application of heat to the needles or skin, or both, for the purpose of promoting health and ~~balance as defined by traditional and modern Oriental theories. Acupuncture involves the use of traditional and modern Oriental diagnostic techniques, acupuncture therapy, and adjunctive therapies, including but not limited to: nonprescription remedies, exercise, nutritional and herbal therapies, therapeutic massage, and lifestyle counselling~~ well-being or to prevent or alleviate pain or unease.

* * *

(4) ~~“Disciplinary action” includes any action taken by an administrative law officer appointed pursuant to 3 V.S.A. § 129(j) against a licensed acupuncturist or applicant premised on a finding of unprofessional conduct. Disciplinary action includes all appropriate remedies, including denial of or renewal of a license, suspension, revocation, limiting, or conditioning of the license, issuing reprimands or warnings, and adopting consent orders.~~

(5) ~~“Secretary” means the secretary of state.~~

§ 3401a. SCOPE OF PRACTICE

(a) A licensed acupuncturist may, in addition to the practice of acupuncture employing fine needles, in a manner consistent with acupuncture theory, employ electrical, magnetic, thermal, and mechanical skin stimulation techniques; nonlaboratory diagnostic techniques; nutritional, herbal, and manual therapies; exercise and lifestyle counseling; acupressure; and massage.

(b) A licensed acupuncturist shall not offer diagnosis of any human pathology except for a functional diagnosis, based upon the physical complaint of a patient or acupuncture theory, for purposes of developing and managing a plan of acupuncture care, or as necessary to document to insurers and other payers the reason a patient sought care.

§ 3402. PROHIBITIONS; OFFENSES; EXEMPTIONS; EVALUATING
NONACUPUNCTURISTS

(a) Except as provided in subsections (d) through (g) of this section 3412 of this title, a person shall not practice acupuncture unless he or she is licensed in accordance with the provisions of this chapter.

* * *

(d) Nothing in subsection (a) of this section shall prevent a student from performing acupuncture under the supervision of a competent licensed acupuncturist instructor:

(1) within a school or a college or an acupuncture department of a college or university that is licensed by the Vermont Agency of Education or certified by the Accreditation Commission for Acupuncture and Oriental Medicine;

(2) as a student in a Director-approved apprenticeship; or

(3) as an intern in any hospital.

(e) Nothing in subsection (a) of this section shall prevent a person who is licensed or certified as an acupuncturist in another state or Canadian province from practicing acupuncture for no more than five days in a calendar year as part of a health care professional educational seminar or program in Vermont, if the educational seminar or program is directly supervised by a Vermont-licensed health care professional whose scope of practice includes acupuncture.

(f) This chapter shall not be construed to limit or restrict in any way the right of a licensed practitioner of a health care profession regulated under this title from performing services within the scope of his or her professional practice.

(g) Nothing in subsection (a) of this section shall prevent an unlicensed person from engaging in auriculotherapy, an unregulated practice wherein needles are inserted into the external human ear, provided such person:

(1) has appropriate training in clean needle technique;

(2) employs sterile, single-use needles, without reuse;

(3) does not purport to treat any disease, disorder, infirmity, or affliction;

(4) does not use any letters, words, or insignia indicating or implying that the person is an acupuncturist; and

(5) makes no statement implying that his or her practice of auriculotherapy is licensed, certified, or otherwise overseen by the State.

(h) The Director, with cooperation of the relevant professional regulatory boards, shall monitor and evaluate whether nonacupuncturists employing acupuncture as a therapeutic modality are doing so safely, within their scopes of practice, and in a manner consistent with the public health, safety, and welfare.

* * *

Subchapter 2. Administration

§ 3403. DIRECTOR; FUNCTIONS

* * *

§ 3404. ADVISOR APPOINTEES

(a)(1) The secretary of state Secretary of State shall appoint two licensed acupuncturists to serve as advisors in matters relating to acupuncture as set forth in 3 V.S.A. § 129b.

(2) Appointees shall have at least three years' experience as an acupuncturist immediately preceding appointment and shall be actively engaged in the practice of acupuncture in Vermont during incumbency.

(b) The director Director shall seek the advice of the acupuncturist advisors in carrying out the provisions of this chapter. They shall be entitled to compensation and necessary expenses in the amount provided in 32 V.S.A. § 1010 for attendance at any meeting called by the director for that purpose.

Subchapter 3. Licenses

§ 3405. ELIGIBILITY FOR LICENSURE

To be eligible for licensure as an acupuncturist, an applicant shall be at least 18 years of age and shall furnish satisfactory proof that he or she ~~has~~:

(1)(A) completed a program in acupuncture and Oriental medicine and has received holds a degree or diploma from an educational institution in candidacy or accredited by the Accreditation Commission for Acupuncture and Oriental Medicine or an a substantially equivalent or successor accrediting organization approved by the U.S. Department of Education and the Director. The training received in the program shall be for a period of not less than three academic years, and, which shall include at least two academic years and a minimum of 800 400 hours of supervised clinical practice; or

(B) completed a training program no later than December 31, 2010 with a preceptor approved by the Director where the training program is

approved by the Director and begun prior to December 31, 2007 and which shall include earning a minimum of 40 points earned in any one of the following categories or combination of categories:

(i) self-directed study-10 points for study equivalent to one year of full-time academic work in acupuncture and Oriental medicine, for a maximum of two years or 20 points;

(ii) apprenticeship-10 points for each 1,000 documented contact hours, up to a maximum of 13.5 points per year;

(iii) completed academic work in an accredited acupuncture program as described in subdivision (1) of this section-five points for each six-month period of completed academic study in the field of acupuncture and Oriental medicine, up to a maximum of four periods or 20 points;

(iv) preceptors shall be licensed and in good standing and meet the standards of the National Certification Commission for Acupuncture and Oriental Medicine in order to be approved, with no preceptor having more than two apprentices at any one time; and

(2) passed the examination described in section 3406 of this title chapter.

§ 3406. EXAMINATION

(a) The ~~director~~ Director shall examine applicants for licensure and may use a standardized national examination. The examination shall include the following subjects:

(1) Anatomy and physiology.

(2) ~~Traditional Oriental~~ Acupuncture pathology.

(3) ~~Traditional Oriental~~ Acupuncture diagnosis.

(4) Hygiene, sanitation, and sterilization techniques.

(5) The principles, practices, and techniques of acupuncture and Oriental medicine.

(6) Clean needle techniques.

(7) Chinese herbology for those licensed after January 1, 2007 who intend to employ nonprescription remedies and herbal therapies.

(b) The ~~director~~ Director may adopt rules necessary to perform his or her duties under this section.

§ 3407. LICENSURE WITHOUT EXAMINATION

(a) The ~~director~~ Director may waive the examination requirement under subdivision ~~3405(3)~~ 3405(2) of this title ~~chapter~~ if the applicant is an acupuncturist regulated under the laws of another state who is in good standing to practice acupuncture in that state and, in the opinion of the ~~director~~ Director, the standards and qualifications required for regulation of acupuncturists in that state are substantially equivalent to those required by this chapter.

(b) The ~~director~~ Director may waive the examination requirement under subdivision ~~3405(3)~~ 3405(2) of this title ~~chapter~~ for an applicant who has furnished evidence of having passed the examination administered by the National Certification Commission for the Certification of Acupuncturists Acupuncture and Oriental Medicine.

* * *

§ 3408. RENEWALS

(a) Licenses shall be renewed every two years upon payment of the required fee and furnishing satisfactory evidence of having completed 30 hours of continuing education credit during the preceding two years. The ~~director~~ Director may adopt rules for the approval of continuing education programs and the awarding of credit.

~~(b) Biennially, the director shall forward a renewal form to each licensed acupuncturist. Upon receipt of the completed form and the renewal fee, the director shall issue a new license.~~

~~(c) A license that has expired for three years or less shall be renewed upon meeting the renewal requirements and paying a late renewal penalty. A license that has expired for more than three years shall not be renewed; the applicant shall be required to apply for reinstatement. The director may adopt rules relating to reinstatement to assure that the applicant is professionally qualified.~~

* * *

§ 3410. UNPROFESSIONAL CONDUCT

~~(a) A licensed acupuncturist or applicant shall not engage in unprofessional conduct.~~

~~(b) Unprofessional conduct means any of the conduct listed in this section and 3 V.S.A. § 129a, whether committed by a licensed acupuncturist or an applicant:~~

~~(1) Using dishonest or misleading advertising.~~

~~(2) — Addiction to narcotics, habitual drunkenness, or rendering professional services to a patient if the acupuncturist is intoxicated or under the influence of drugs.~~

~~(3) — Sexual harassment of a patient.~~

~~(4) — Engaging in sexual intercourse or other sexual conduct with a patient with whom the licensed acupuncturist has had a professional relationship within the previous two years.~~

~~(c) — After hearing and upon a finding of unprofessional conduct, an administrative law officer appointed under 3 V.S.A. § 129(j) may take disciplinary action against a licensed acupuncturist or applicant. [Repealed.]~~

* * *

§ 3412. ACUPUNCTURE DETOXIFICATION; SPECIALIZED CERTIFICATION

~~(a) — A person not licensed under this chapter may obtain a specialized certification as an acupuncture detoxification technician to practice auricular acupuncture according to the National Acupuncture Detoxification Association protocol from the board for the purpose of the treatment of alcoholism, substance abuse, or chemical dependency if he or she provides documentation of successful completion of a board-approved training program in acupuncture for the treatment of alcoholism, substance abuse, or chemical dependency which meets or exceeds standards of training established by the National Acupuncture Detoxification Association.~~

~~(b) — Treatment permitted under this section may only take place in a state, federal, or board-approved site under the supervision of an individual licensed under this chapter and certified by the National Acupuncture Detoxification Association.~~

~~(c) — A person practicing under this section shall be subject to the requirements of section 3410 of this title.~~

~~(d) — Nothing in this section shall be construed to modify any of the requirements for licensure of acupuncturists contained in this chapter, nor shall it grant any rights to practice acupuncture which exceed the scope of this section.~~

~~(e) — The fee for obtaining a specialized certification or renewal of a specialized certification under this section shall be that established in 3 V.S.A. § 125(b).~~

~~(f) Anyone certified under this section, while practicing the National Acupuncture Detoxification Association protocol, shall be referred to as an acupuncture detoxification technician. [Repealed.]~~

* * * Athletic Trainers * * *

Sec. 24. 26 V.S.A. chapter 83 is amended to read:

CHAPTER 83. ATHLETIC TRAINERS

§ 4151. DEFINITIONS

As used in this chapter:

* * *

(3) “Athletic training” means the application of principles and methods of conditioning, the prevention, immediate care, recognition, evaluation, assessment, and treatment of athletic and orthopedic injuries within the scope of education and training, the organization and administration of an athletic training program, and the education and counseling of athletes, coaches, family members, medical personnel, ~~and communities, and groups~~ in the area of care and prevention of athletic and orthopedic injuries. ~~Athletic training may only be applied in the “traditional setting” and the “clinical setting”:~~

~~(A) Without further referral, to athletes participating in organized sports or athletic teams at an interscholastic, intramural, instructional, intercollegiate, amateur, or professional level.~~

~~(B) With a referral from a physician, osteopathic physician, advanced practice registered nurse, physician assistant, dentist, or chiropractor, to athletes or the physically active who have an athletic or orthopedic injury and have been determined, by a physician’s examination, to be free of an underlying pathology that would affect treatment.~~

* * *

(10) “Referral” means sending a patient for treatment determination, recorded in writing, by an allopathic or osteopathic physician, podiatrist, advanced practice registered nurse, physician assistant, physical therapist, naturopath, dentist, or chiropractor, that an athlete or physically active individual should be treated by an athletic trainer, and that such person is free of an underlying pathology that would affect treatment.

(11) ~~“Settings” means any areas in which an athletic trainer may practice athletic training. These areas include:~~

~~(A) “Traditional setting” means working with any organized sports or athletic teams at an interscholastic, intramural, instructional, intercollegiate, amateur, or professional level.~~

~~(B) “Clinical setting” means an outpatient orthopaedic or sports medicine clinic that employs one of the following: physician, osteopathic physician, chiropractor, or physical therapist. [Repealed.]~~

(12) “Underlying pathology” means any disease process, including neuromuscular disease, diabetes, spinal cord injuries, and systemic diseases.

§ 4151a. PRACTICE CONTEXTS; REFERRAL REQUIRED FOR CLINICAL CARE

(a) A person licensed under this chapter may provide athletic training:

(1) by formal engagement with a team, school, college, university, league, or other sporting organization, to affiliated athletes participating in organized sports or athletic teams at an interscholastic, intramural, instructional, intercollegiate, amateur, or professional level;

(2) upon referral of an athlete or physically active individual to an athletic training clinic;

(3) by engagement with an employer or organization for the purpose of educating groups on the care and prevention of athletic and orthopedic injuries or conditioning appropriate to physical demands upon employees or members; or

(4) in a bona fide emergency necessitating response care of an injured athlete.

(b) Practice outside the settings set forth in subsection (a) of this section, including clinical practice without referral, exceeds an athletic trainer’s scope of practice. Such practice is not entitled to the protections of § 4160 of this chapter and may be sanctioned as unprofessional conduct.

§ 4152. PROHIBITION; OFFENSES

~~(a) No~~ A person may shall not use in connection with the person’s name any letters, words, or insignia indicating or implying that the person is a licensed athletic trainer unless the person is licensed in accordance with this chapter.

(b) A person who violates any of the provisions of subsection (a) of this section shall be subject to the penalties provided in 3 V.S.A. § 127(e).

§ 4153. EXEMPTIONS

The provisions of this chapter shall not apply to:

* * *

~~(2) a person who assists or provides response care to an injured athlete and who does not attempt to assess the injury, provide follow-up treatment, or otherwise practice athletic training as defined in this chapter; [Repealed.]~~

~~(3) a person duly licensed under the laws of this state State who is practicing within the scope of the profession for which the person is licensed; or~~

~~(4) the practice of athletic training ~~which~~ that is incidental to a program of study by a person enrolled in an athletic training education program approved by the ~~director~~ Director, or graduates of an approved athletic training education program ~~pending the results of the first licensing examination scheduled by the director following graduation. Graduates shall practice under the supervision of a licensed athletic trainer and shall have an application for licensure by examination on file working under the direct supervision of a person licensed under this chapter within 90 days following graduation from that program.~~~~

* * *

§ 4157a. TEMPORARY LICENSURE

~~An applicant who is currently certified by and in good standing with the National Athletic Trainers Association Board of Certification, or who is currently licensed or certified and in good standing in another state, shall be eligible for a 60-day temporary license. Applicants under this section shall meet the requirements of section 4158 of this title. Temporary practice shall not exceed 60 days in any calendar year. [Repealed.]~~

§ 4158. APPLICATION

~~A person who desires to be licensed as an athletic trainer shall apply to the director in writing, on a form furnished by the director, accompanied by payment of a fee required pursuant to 3 V.S.A. § 125 and evidence that the applicant meets the requirements set forth in section 4156 or 4157 of this title. [Repealed.]~~

§ 4158a. RENEWALS

~~(a) Licenses shall be renewed every two years upon payment of the required fee.~~

~~(b) Biennially, the director shall forward a renewal form to each license holder. Upon receipt of the completed form and the renewal fee, the director shall issue a new license.~~

~~(c) Any application for renewal of a license which has expired shall be accompanied by the renewal fee and late fee. A person shall not be required to pay renewal fees for years during which the license was lapsed.~~

~~(d) The director may, after notice and opportunity for a hearing, revoke a person's right to renew licensure if the license has lapsed for five or more years. [Repealed.]~~

§ 4159. UNPROFESSIONAL CONDUCT

~~(a) A licensed athletic trainer shall not engage in unprofessional conduct. When such conduct is committed by an applicant, it shall be grounds for denial of the application or other disciplinary action.~~

~~(b) Unprofessional conduct means the following conduct and conduct set forth in 3 V.S.A. § 129a:~~

~~(1) Failing to make available to a person using athletic training services, upon that person's request, copies of documents in the possession or under the control of the practitioner, when those documents have been prepared for the user of services.~~

~~(2) Conduct which evidences unfitness to practice athletic training.~~

~~(3) Sexual harassment of a person using athletic training services.~~

~~(4) Engaging in a sexual act as defined in 13 V.S.A. § 3251 with a person using athletic training services.~~

~~(5) Any of the following except when reasonably undertaken in an emergency in order to protect life, health, or property:~~

~~(A) Practicing or offering to practice beyond the scope permitted by law.~~

~~(B) Performing athletic training services which have not been authorized by the consumer or his or her legal representative.~~

~~(6) Conduct prohibited under any other laws relating to athletic training.~~

~~(c) After notice and an opportunity for hearing, and upon a finding of unprofessional conduct, an administrative law officer may take disciplinary action against a licensed athletic trainer or applicant. [Repealed.]~~

* * *

* * * Applied Behavior Analysts * * *

Sec. 25. 26 V.S.A. chapter 95 is amended to read:

CHAPTER 95. APPLIED BEHAVIOR ANALYSTS

* * *

Subchapter 3. Licenses

* * *

§ 4925. RENEWALS

* * *

(b) Biennially, the Director shall provide notice to each licensee of license expiration and renewal requirements. Upon receipt of ~~the completed form and the~~ a complete and satisfactory renewal application and fee, the Director shall issue a new license.

* * *

~~(d)(1) The Director may reinstate the license of an individual whose license has expired upon payment of the required fee and reinstatement penalty, provided the individual has satisfied all the requirements for renewal, including continuing education.~~

~~(2) The Director may adopt rules necessary for the protection of the public to assure the Director that an applicant whose license has expired or who has not worked for more than three years as an applied behavior analyst or an assistant behavior analyst is professionally qualified for license renewal. Conditions imposed under this subsection shall be in addition to the other requirements of this section. [Repealed.]~~

* * *

§ 4927. APPLICATIONS

~~Applications for licensure and license renewal shall be on forms provided by the~~ The Director shall promulgate applications for licensure and license renewal. Each application shall contain a statement under oath showing the applicant's education, experience, and other pertinent information and shall be accompanied by the required fee.

* * *

* * * Notaries Public * * *

Sec. 26. 24 V.S.A. § 1160 is amended to read:

§ 1160. ACKNOWLEDGEMENTS; OATH

(a) A town clerk, commissioned as a notary public pursuant to 26 V.S.A. chapter 103, may take acknowledgements of deeds and other instruments throughout his or her county.

(b) In his or her county, he or she may administer oaths in all cases where an oath is required, without being commissioned as a notary public pursuant to 26 V.S.A. chapter 103.

(c)(1) Each town clerk may designate from among the members of his or her staff at least one notary public to be available to perform notarial acts for the public in the town clerk's office during normal business hours free of charge.

(2) Each individual designated by the town clerk under this subsection shall be commissioned as a notary public pursuant to 26 V.S.A. chapter 103 and shall be exempt from the notary public application fee under that chapter.

Sec. 27. 26 V.S.A. § 5304 is amended to read:

§ 5304. DEFINITIONS

As used in this chapter:

* * *

(8) "Notarial officer" means a notary public or other an individual authorized to perform a notarial act under authority and within the jurisdiction of another state, under authority and within the jurisdiction of a federally recognized Indian tribe, under authority of federal law, under authority and within the jurisdiction of a foreign state or constituent unit of the foreign state, or under authority of a multinational or international governmental organization.

* * *

Sec. 28. 26 V.S.A. § 5305 is amended to read:

§ 5305. EXEMPTIONS

(a) Generally.

(1) The persons set forth in subdivision (2) of this subsection, shall be commissioned as a notary public authorized to perform a notarial act as a matter of law and are exempt from all of the requirements of this chapter, including the requirement to pay a fee, when acting within the scope of their official duties, are exempt from all of the requirements of this chapter, except for the requirements:

~~(A) to apply for a commission as set forth in section 5341(a), (b)(1)-(3), (c), (d), and (e) of this chapter; and~~

~~(B) unless exempted under subsection (c) of this section, to pay the fee set forth in section 5324 of this chapter.~~

(2)(A) Persons employed by the Judiciary, including judges, Superior Court clerks, court operations managers, Probate registers, case managers, docket clerks, assistant judges, county clerks, and after-hours relief from abuse contract employees.

(B) Persons employed as law enforcement officers certified under 20 V.S.A. chapter 151; who are noncertified constables; or who are employed by a Vermont law enforcement agency, the Department of Public Safety, of Fish and Wildlife, of Motor Vehicles, of Liquor Control, or for Children and Families, the Office of the Defender General, the Office of the Attorney General, or a State's Attorney or Sheriff.

(3) As used in subdivision (1) of this subsection, "acting within the scope of official duties" means that a person is notarizing a document that:

(A) he or she believes is related to the execution of his or her duties and responsibilities of employment or is the type of document that other employees notarize in the course of employment;

(B) is useful or of assistance to any person or entity identified in subdivision (2) of this subsection (a);

(C) is required, requested, created, used, submitted, or relied upon by any person or entity identified in subdivision (2) of this subsection (a);

(D) is necessary in order to assist in the representation, care, or protection of a person or the State;

(E) is necessary in order to protect the public or property;

(F) is necessary to represent or assist crime victims in receiving restitution or other services;

(G) relates to a Vermont or federal court rule or statute governing any criminal, postconviction, mental health, family, juvenile, civil, probate, Judicial Bureau, Environmental Division, or Supreme Court matter; or

(H) relates to a matter subject to Title 4, 12, 13, 15, 18, 20, 23, or 33 of the Vermont Statutes Annotated.

(4)(A) A notarial act that identifies the notary public as a person who is exempt under this subsection shall establish as a matter of law that the person is commissioned as a notary public for the purpose of acting within the scope of his or her official duties under this subsection.

(B) Nothing in this subsection is intended to prohibit prosecution of a person under 3 V.S.A. § 127 (unauthorized practice).

(b) Attorneys.

(1) Attorneys licensed and in good standing in this State are exempt from:

(A) the examination requirement set forth in subsection 5341(b) of this chapter; and

(B) the continuing education requirement set forth in section 5343 of this chapter.

(2) If a complaint of a violation of this chapter is filed in regard to a Vermont licensed attorney, the Office shall refer the complaint to the Professional Responsibility Board and shall request a report back from the Board regarding the final disposition of the complaint.

~~(c) Fees Towns clerks, assistants, and justices of the peace. The following persons are exempt from the fee set forth in section 5324 of this chapter:~~

~~(1) a judge, clerk, or other court staff, as designated by the Court Administrator; A town clerk and his or her assistants may perform notarial acts as a notary public throughout the town clerk's county, provided that they shall comply with all of the requirements of this chapter.~~

~~(2) State's Attorneys and their deputies and Assistant Attorneys General, public defenders, and their staff; Subject to the provisions of subdivision (1) of this subsection, performing notarial acts as a notary public shall be considered within the scope of the official duties of a town clerk and his or her assistants.~~

~~(3) justices Justices of the peace and town clerks and their assistants; and~~

~~(4) State Police officers, municipal police officers, fish and game wardens, sheriffs and deputy sheriffs, motor vehicle inspectors, employees of the Department of Corrections, and employees of the Department for Children and Families are exempt from the fee set forth in section 5324 of this chapter.~~

Sec. 29. 26 V.S.A. § 5361 is amended to read:

§ 5361. NOTARIAL ACTS IN THIS STATE; AUTHORITY TO PERFORM

(a) A notarial act, as defined in subdivision 5304(7)(A) of this chapter, may only be performed in this State by a notary public commissioned under this chapter.

(b) The signature and title of an individual performing a notarial act in this State are prima facie evidence that the signature is genuine and that the individual holds the designated title.

* * * Massage Services * * *

Sec. 30. OFFICE OF PROFESSIONAL REGULATION; ADDENDUM TO PRELIMINARY SUNRISE ASSESSMENT ON MASSAGE THERAPY

(a) On or before January 15, 2020, the Office of Professional Regulation shall prepare and submit to the Senate and House Committees on Government Operations an Addendum to its 2015-2016 Preliminary Sunrise Assessment on Massage Therapy, dated January 5, 2016. The Addendum shall apply the criteria set forth in 26 V.S.A. chapter 57 (review of regulatory laws) to assess whether new regulation of businesses or individuals offering massage services will serve the interests of public safety pertaining to sexual misconduct and human trafficking. Development of the Addendum shall not require the Office to repeat its 2010 and 2016 analyses of proposals by applicants for sunrise review.

(b) In preparing the Addendum, the Office shall consult with the Vermont Center for Crime Victim Services, the Vermont Network Against Domestic and Sexual Violence, the Vermont Department of Public Safety, the Vermont Police Association, the Vermont Association of Chiefs of Police, the Vermont Human Trafficking Task Force, representatives of massage therapists, and such other advocacy organizations, researchers, State and federal agencies, and law enforcement authorities as the Office may deem appropriate.

* * * Effective Date * * *

Sec. 31. EFFECTIVE DATE

This act shall take effect on July, 1, 2019.

And that the bill ought to pass in concurrence with such proposal of amendment.

Senator Ashe, for the Committee on Appropriations, to which the bill was referred, reported recommending that the Senate propose to the House that the bill be amended as recommended by the Committee on Government Operations with the following amendment thereto:

In Sec. 8 (creation of position within the Office of Professional Regulation; licensing) by striking out in its entirety subsection (b) and inserting in lieu thereof a new subsection (b) to read as follows:

(b) Any funding necessary to support the position created in subsection (a) of this section shall be derived entirely from the Office's Professional Regulatory Fee Fund.

And that the bill ought to pass in concurrence with such proposal of amendment.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the recommendation of proposal of amendment of the Committee on Government Operations was amended as recommended by the Committee on Appropriations.

Thereupon, pending the question, Shall the Senate propose to the House that the bill be amended as recommended by the Committee on Government Operations, as amended?, Senators Clarkson, Bray, Collamore, Pollina and White moved to amend the proposal of amendment of the Committee on Government Operations, as amended as follows:

By striking out Sec. 28 in its entirety and inserting in lieu thereof the following:

Sec. 28. 26 V.S.A. § 5305 is amended to read:

§ 5305. EXEMPTIONS

(a) Generally Judiciary- and law enforcement-related employees.

(1) Employee exemptions.

(A) Judiciary-related.

(i) The persons set forth in subdivision (2)(A) of this subsection, when acting within the scope of their official duties, are exempt from all of the requirements of this chapter, including the requirement to pay the fee set forth in section 5324 of this chapter, except for the requirements:

~~(A) requirement to apply for a commission as set forth in section 5341(a), (b)(1)–(3), (c), (d), and (e) of this chapter; and~~

~~(B) unless exempted under subsection (c) of this section, to pay the fee set forth in section 5324 of this chapter.~~

(ii) A commission issued to a person under this subdivision (A) shall not be considered a license.

(B) Law enforcement-related.

(i) The persons set forth in subdivision (2)(B) of this subsection, when acting within the scope of their official duties, shall be commissioned as notaries public authorized to perform a notarial act as a matter of law and are exempt from all of the requirements of this chapter, including the requirement to pay the fee set forth in section 5324 of this chapter.

(ii) A notarial act that identifies the notary public as a person who is exempt under this subdivision (B) shall establish as a matter of law that the

person is commissioned as a notary public for the purpose of acting within the scope of official duties under this subsection.

(2) Employees, defined.

(A) Judiciary-related. Persons employed by the Judiciary, including judges, Superior Court clerks, court operations managers, Probate registers, case managers, docket clerks, assistant judges, county clerks, and after-hours relief from abuse contract employees.

(B) Law enforcement-related. Persons employed as law enforcement officers certified under 20 V.S.A. chapter 151; who are noncertified constables; or who are employed by a Vermont law enforcement agency, the Department of Public Safety, of Fish and Wildlife, of Motor Vehicles, of Liquor Control, or for Children and Families, the Office of the Defender General, the Office of the Attorney General, or a State's Attorney or Sheriff.

(3) Official duties, defined. As used in subdivision (1) of this subsection, "acting within the scope of official duties" means that a person is notarizing a document that:

(A) he or she believes is related to the execution of his or her duties and responsibilities of employment or is the type of document that other employees notarize in the course of employment;

(B) is useful or of assistance to any person or entity identified in subdivision (2) of this subsection (a);

(C) is required, requested, created, used, submitted, or relied upon by any person or entity identified in subdivision (2) of this subsection (a);

(D) is necessary in order to assist in the representation, care, or protection of a person or the State;

(E) is necessary in order to protect the public or property;

(F) is necessary to represent or assist crime victims in receiving restitution or other services;

(G) relates to a Vermont or federal court rule or statute governing any criminal, postconviction, mental health, family, juvenile, civil, probate, Judicial Bureau, Environmental Division, or Supreme Court matter; or

(H) relates to a matter subject to Title 4, 12, 13, 15, 18, 20, 23, or 33 of the Vermont Statutes Annotated.

(b) Attorneys.

(1) Attorneys licensed and in good standing in this State are exempt from:

(A) the examination requirement set forth in subsection 5341(b) of this chapter; and

(B) the continuing education requirement set forth in section 5343 of this chapter.

(2) If a complaint of a violation of this chapter is filed in regard to a Vermont licensed attorney, the Office shall refer the complaint to the Professional Responsibility Board and shall request a report back from the Board regarding the final disposition of the complaint.

~~(c) Fees Town clerks, assistants, and justices of the peace. The following persons are exempt from the fee set forth in section 5324 of this chapter:~~

~~(1)(A) a judge, clerk, or other court staff, as designated by the Court Administrator; A town clerk and his or her assistants may perform notarial acts as notaries public throughout the town clerk's county, provided that they shall comply with all of the requirements of this chapter, except as provided in subdivision (2) of this subsection.~~

~~(B) Subject to the provisions of subdivision (A) of this subdivision (1), performing notarial acts as a notary public shall be considered within the scope of the official duties of a town clerk and his or her assistants.~~

~~(2) State's Attorneys and their deputies and Assistant Attorneys General, public defenders, and their staff;~~

~~(3) justices Justices of the peace and town clerks and their assistants;~~
and

~~(4) State Police officers, municipal police officers, fish and game wardens, sheriffs and deputy sheriffs, motor vehicle inspectors, employees of the Department of Corrections, and employees of the Department for Children and Families are exempt from the fee set forth in section 5324 of this chapter.~~

~~(d) Unauthorized practice. Nothing in this section is intended to prohibit prosecution of a person under 3 V.S.A. § 127 (unauthorized practice).~~

Which was agreed to.

Thereupon, the pending question, Shall the Senate propose to the House that the bill be amended as recommended by the Committee on Government Operations, as amended?, was decided in the affirmative.

Thereupon, third reading of the bill was ordered.

Proposal of Amendment; Third Reading Ordered**H. 521.**

Senator Perchlik, for the Committee on Education, to which was referred House bill entitled:

An act relating to amending the special education laws.

Reported recommending that the Senate propose to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

* * * Act 173 amendments * * *

Sec. 1. PURPOSE

(a) 2018 Acts and Resolves No. 173 made substantial changes to the funding of special education services and directed the Agency of Education to assist supervisory unions in adopting best practices for the delivery of special education services. This act makes certain minor amendments to the special education laws that are proposed by the Agency of Education to clarify some of the changes made in Act 173.

(b) This act also amends certain dates in Act 173 to provide an additional year to prepare for the changes in the funding and delivery of special education services required by Act 173.

Sec. 2. 2018 Acts and Resolves No. 173, Sec. 2 is amended to read:

Sec. 2. GOALS

* * *

(b)(1) To support the enhanced delivery of these services, the State funding model for special education shall change for all supervisory unions in fiscal year ~~2021~~ 2022, for school year ~~2020-2021~~ 2021-2022, from a reimbursement model to a census-based model, which will provide more flexibility in how the funding can be used, is aligned with the State's policy priorities of serving students who require additional support across the general and special education service-delivery systems, and will simplify administration.

* * *

Sec. 3. 16 V.S.A. § 2961 is amended to read:

§ 2961. CENSUS GRANT

(a) As used in this section:

* * *

(3) “Long-term membership” of a supervisory union in any school year means the average of the supervisory union’s average daily membership over the most recent three school years for which data are available.

(4) “Uniform base amount” means an amount determined by:

(A) dividing an amount:

(i) equal to the average State appropriation for fiscal years ~~2018, 2019, and 2020~~ 2019, 2020, and 2021 for special education under sections 2961 (standard mainstream block grants), 2963 (special education expenditures reimbursement), and 2963a (exceptional circumstances) of this title; and

(ii) increased by the annual change in the National Income and Product Accounts (NIPA) Implicit Price Deflator for State and Local Government Consumption Expenditures and Gross Investment as reported by the U.S. Department of Commerce, Bureau of Economic Analysis; by

(B) ~~the statewide average daily membership for prekindergarten through grade 12 for the 2019–2020 school year~~ long-term membership.

* * *

(d)(1)(A) For fiscal year ~~2021~~ 2022, the amount of the census grant for a supervisory union shall be:

(i) the average amount it received for fiscal years ~~2017, 2018, and 2019~~ 2018, 2019, and 2020 from the State for special education under sections 2961 (standard mainstream block grants), 2963 (special education expenditures reimbursement), and 2963a (exceptional circumstances) of this title; increased by

(ii) the annual change in the National Income and Product Accounts (NIPA) Implicit Price Deflator for State and Local Government Consumption Expenditures and Gross Investment as reported by the U.S. Department of Commerce, Bureau of Economic Analysis.

(B) The amount determined under subdivision (A) of this subdivision (1) shall be divided by the supervisory union’s long-term membership, to determine the base amount of the census grant, which is the amount of the census grant calculated on a per student basis.

(2) For fiscal year ~~2025~~ 2026 and subsequent fiscal years, the amount of the census grant for a supervisory union shall be the uniform base amount multiplied by the supervisory union’s long-term membership.

(3) For fiscal years ~~2022, 2023, and 2024~~ 2023, 2024, and 2025, the amount of the census grant for a supervisory union shall be determined by

multiplying the supervisory union's long-term membership by a base amount established under this subdivision. The base amounts for each supervisory union for fiscal years ~~2022, 2023, 2024~~ 2023, 2024, and 2025 shall move gradually the supervisory union's fiscal year ~~2024~~ 2022 base amount to the fiscal year ~~2025~~ 2026 uniform base amount by prorating the change between the supervisory union's fiscal year ~~2024~~ 2022 base amount and the fiscal year ~~2025~~ 2026 uniform base amount over this three-fiscal-year period.

Sec. 4. 16 V.S.A. § 2967 is amended to read:

§ 2967. AID PROJECTION

(a) On or before December 15, the Secretary shall publish an estimate, by each supervisory union, of its anticipated State special education expenditures funding under this chapter for the ensuing school year.

(b) As used in this section, State special education expenditures funding shall include:

(1) ~~costs~~ funds eligible for grants and reimbursements under sections 2961 and 2962 of this title;

(2) ~~costs~~ funds for services for persons who are visually impaired;

(3) ~~costs~~ funds for persons who are deaf or hard of hearing;

(4) ~~costs~~ funds for the interdisciplinary team program;

(5) funds expended for training and programs to meet the needs of students with emotional or behavioral challenges under subsection 2969(c) of this title; and

(6) funds expended for training under subsection 2969(d) of this title.

Sec. 5. 16 V.S.A. § 2975 is amended to read:

§ 2975. UNUSUAL SPECIAL EDUCATION COSTS; FINANCIAL ASSISTANCE

The Secretary may use ~~up to two percent of the funds appropriated for allowable special education expenditures, as that term is defined in State Board of Education rules, to directly assist supervisory unions with special education expenditures of an unusual or unexpected nature~~ funds for allowable special education expenditures, as defined in State Board of Education rules, to directly assist supervisory unions with special education expenditures of an unusual or unexpected nature. These funds shall be appropriated in the amount of two percent times the Census Grant as defined in section 2961 of this title. The Secretary's decision regarding a supervisory union's eligibility for and amount of assistance shall be final.

Sec. 6. 2018 Acts and Resolves No. 173, Sec. 12 is amended to read:

Sec. 12. TRAINING AND TECHNICAL ASSISTANCE ON THE
DELIVERY OF SPECIAL EDUCATION SERVICES

(a) The Agency of Education shall, for the 2018–2019, 2019–2020, ~~and~~ 2020–2021, and 2021–2022 school years, assist supervisory unions to expand and improve their delivery of services to students who require additional supports in accordance with the report entitled “Expanding and Strengthening Best-Practice Supports for Students who Struggle” delivered to the Agency of Education in November 2017 from the District Management Group. This assistance shall include the training of teachers and staff and technical assistance with the goal of embedding the following best practices for the delivery of special education services:

- (1) ensuring core instruction meets most needs of most students;
- (2) providing additional instructional time outside core subjects to students who require additional support, rather than providing interventions instead of core instruction;
- (3) ensuring students who require additional support receive all instruction from highly skilled teachers;
- (4) creating or strengthening a systems-wide approach to supporting positive student behaviors based on expert support; and
- (5) providing specialized instruction from skilled and trained experts to students with more intensive needs.

(b) The sum of \$200,000.00 is appropriated from federal funds that are available under the Individuals with Disabilities Education Act for fiscal year 2019 to the Agency of Education, which the Agency shall administer in accordance with this section. The Agency shall include in its budget request to the General Assembly for each of fiscal years 2020 ~~and~~, 2021, and 2022 the amount of \$200,000.00 from federal funds that are available under the Individuals with Disabilities Education Act for administration in accordance with this section.

(c) The Agency of Education shall present to the General Assembly on or before December 15 in 2019, 2020, ~~and 2021~~, and 2022 a report describing what changes supervisory unions have made to expand and improve their delivery of services to students who require additional supports and describing the associated delivery challenges. The Agency shall share each report with all supervisory unions.

Sec. 7. 2018 Acts and Resolves No. 173, Sec. 16 is amended to read:

Sec. 16. RULEMAKING

The Agency of Education shall recommend to the State Board proposed rules that are necessary to implement this act and, on or before November 1, ~~2019~~ 2020, the State Board of Education shall adopt rules that are necessary to implement this act. The State Board and the Agency of Education shall consult with the Census-based Funding Advisory Group established under Sec. 9 of this act in developing the State Board rules. The State Board rules shall include rules that establish processes for reporting, monitoring, and evaluation designed to ensure:

(1) the achievement of the goal under this act of enhancing the effectiveness, availability, and equity of services provided to all students who require additional support in Vermont's school districts; and

(2) that supervisory unions are complying with the Individuals with Disabilities Education Act, 20 U.S.C. chapter 33.

Sec. 8. 2018 Acts and Resolves No. 173, Sec. 17 is amended to read:

Sec. 17. TRANSITION

(a) Notwithstanding the requirement under 16 V.S.A. § 2964 for a supervisory union to submit a service plan to the Secretary of Education, a supervisory union shall not be required to submit a service plan for fiscal year ~~2021~~ 2022.

(b) On or before November 1, ~~2019~~ 2020, a supervisory union shall submit to the Secretary such information as required:

(1) by the Secretary to estimate the supervisory union's projected fiscal year ~~2021~~ 2022 extraordinary special education reimbursement under Sec. 5 of this act; and

(2) for IDEA reporting in a format specified by the Secretary.

(c) The Agency of Education shall assist supervisory unions as they transition to the census-based funding model in satisfying their maintenance of effort requirements under federal law.

Sec. 9. 2018 Acts and Resolves No. 173, Sec. 18 is amended to read:

Sec. 18. TRANSITION FOR ALLOWABLE SPECIAL EDUCATION COSTS

* * *

(b) This section is repealed on July 1, ~~2020~~ 2021.

Sec. 10. 2018 Acts and Resolves No. 173, Sec. 23 is amended to read:

Sec. 23. EFFECTIVE DATES

* * *

(b) Sec. 5 (16 V.S.A. chapter 101) shall take effect on July 1, ~~2020~~ 2021.

* * *

* * * State Advisory Panel on Special Education * * *

Sec. 11. 16 V.S.A. § 2945 is amended to read:

§ 2945. STATE ADVISORY COUNCIL PANEL ON SPECIAL EDUCATION

~~(a) There is created the Advisory Council on Special Education that shall consist of 19 members. All members of the Council shall serve for a term of three years or until their successors are appointed. Terms shall begin on April 1 of the year of appointment. A majority of the members shall be either individuals with disabilities or parents of children with disabilities.~~

~~(1) Seventeen of the members shall be appointed by the Governor with the advice of the Secretary. Among the gubernatorial appointees shall be:~~

~~(A) teachers;~~

~~(B) representatives of State agencies involved in the financing or delivery of related services to children with disabilities;~~

~~(C) a representative of independent schools;~~

~~(D) at least one representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities;~~

~~(E) a representative from the State juvenile and adult corrections agency;~~

~~(F) individuals with disabilities;~~

~~(G) parents of children with disabilities, provided the child shall be younger than 26 years old at the time his or her parent is appointed to the Council;~~

~~(H) State and local education officials, including officials who carry out activities under the McKinney-Vento Homeless Assistance Act;~~

~~(I) a representative of higher education who prepares special education and related services personnel;~~

~~(J) a representative from the State child welfare department responsible for foster care;~~

~~(K) special education administrators; and~~

~~(L) two at-large members.~~

~~(2) In addition, two members of the General Assembly shall be appointed, one from the House of Representatives and one from the Senate. The Speaker shall appoint the House member and the Committee on Committees shall appoint the Senate member.~~

~~(b) The Council shall elect its own chair from among its membership. The Council shall meet annually at the call of the Chair, and other meetings may be called by the Chair at such times and places as he or she may determine to be necessary.~~

~~(c) The members of the Council who are employees of the State shall receive no additional compensation for their services, but actual and necessary expenses shall be allowed State employees, and shall be charged to their departments or institutions. The members of the Council who are not employees of the State shall receive a per diem compensation as provided under 32 V.S.A. § 1010 for each day of official business and reimbursement for actual and necessary expenses at the rate allowed State employees.~~

~~(d) The Council shall:~~

~~(1) assume all responsibilities required of the State advisory panel by federal law;~~

~~(2) review periodically the rules, regulations, standards, and guidelines pertaining to special education and recommend to the State Board any changes it finds necessary;~~

~~(3) comment on any new or revised rules, regulations, standards, and guidelines proposed for issuance; and~~

~~(4) advise the State Board in the development of any State plan for provision of special education.~~

(a) The State Advisory Panel on Special Education (Panel) is created to provide guidance with respect to special education and related services for children with disabilities in the State. Members of the Panel shall be appointed by the Governor, with the advice of the Secretary of Education. The Panel shall perform the duties, and members of the Panel shall be appointed, in accordance with federal law. In addition to members appointed to the Panel to satisfy the requirements under federal law, the members of the Panel shall include a representative of each body designated by the State under federal law

as the Parent Training and Information Center and the Protection and Advocacy System.

(b) The Panel shall elect an executive committee from among its members. The executive committee shall be composed of seven members of the Panel, one of whom shall be the chair of the Panel. A majority of the members of the executive committee shall be individuals with disabilities or parents of children with disabilities (ages birth through 26 years of age). The executive committee shall call meetings of the Panel and shall direct the work of the Panel.

(c) The Panel shall advise both the Agency of Education and the State Board of Education on those matters upon which the Panel is required, under federal law, to advise the State Education Agency.

Sec. 12. TRANSITION

(a) On or before August 1, 2019, members shall be appointed to the State Advisory Panel on Special Education under 16 V.S.A. § 2945 to ensure that the membership of the Panel complies with federal law, including the appointment of members who fulfill the requirement that a majority of the members be individuals with disabilities or parents of children with disabilities.

(b) On or before December 1, 2019, the Panel shall, in consultation with the Agency of Education, review and update its bylaws, and shall include in its bylaws term limits for all or certain of its members, as the Panel deems appropriate.

* * * Effective Dates * * *

Sec. 13. EFFECTIVE DATES

Secs. 1, 2, 6–12 and this section shall take effect on passage. Secs. 3–5 shall take effect on July 1, 2021.

And that the bill ought to pass in concurrence with such proposal of amendment.

Senator McCormack, for the Committee on Appropriations, to which the bill was referred, reported recommending that the Senate propose to the House that the bill be amended as recommended by the Committee on Education with the following amendments thereto:

First: In Sec. 11, amending 16 V.S.A. § 2945, by adding a sentence to the end of subsection (a) to read as follows: The total number of members on the Panel shall not exceed 37 members.

Second: In Sec. 11, amending 16 V.S.A. § 2945, by adding a new subsection (d) to read as follows:

(d) Members of the Panel shall be entitled to per diem compensation and reimbursement of expenses as permitted under 32 V.S.A. § 1010.

And that the bill ought to pass in concurrence with such proposals of amendment.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the recommendation of proposal of amendment of the Committee on Education was amended as recommended by the Committee on Appropriations.

Thereupon, pending the question, Shall the Senate propose to the House that the bill be amended as recommended by the Committee on Education, as amended?, Senator Baruth moved to amend the proposal of amendment of the Committee on Education, as amended by striking out Sec. 13 and its reader assistance heading in their entirety and inserting in lieu thereof the following:

* * * Act 46 * * *

Sec. 13. SCHOOL DISTRICT MERGERS; STATE BOARD OF
EDUCATION ORDER

(a) Statement of intent.

(1) 2017 Acts and Resolves No. 49 made “useful changes to the merger time lines” contained in 2015 Acts and Resolves No. 46 “without weakening or eliminating the Act’s fundamental phased merger and incentive structures and requirements.” Act 49 reemphasized this point by noting that “[n]othing in this act should be interpreted to suggest that it is acceptable for a school district to fail to take reasonable and robust action to seek to meet the goals of Act 46.”

(2) Similarly, nothing in this act, which permits a final extension of the deadline for mergers required by the State Board of Education, should be interpreted to weaken or undermine in any way the State Board’s final merger order of November 28, 2018 or to encourage delay for school districts that want to merge on July 1, 2019. Except as modified by this act, school districts remain under all obligations under Acts 46 and 49, whether or not they choose to delay the operational date of their merger.

(b) Definitions. As used in this section:

(1) “Default Articles” means the Default Articles of Agreement issued with the State Board Report.

(2) “Existing district” means a union school district created by vote of the electorate on or after July 1, 2014 into which a merging district is ordered by the State Board Order to merge.

(3) “Forming district” means a school district that is ordered by the State Board Order to merge with other forming districts to create a newly formed district.

(4) “Initial members” mean the initial members of the board of a newly formed district elected under Article 10 of the default articles.

(5) “Merging district” means a school district that is ordered by the State Board Order to merge into an existing district.

(6) “Newly formed district” means a union school district that is formed by the State Board Order by merging forming districts.

(7) “State Board Order” means the section of the State Board Report entitled “State Board of Education’s ‘order merging and realigning districts and supervisory unions where necessary pursuant to Act 46, Sec. 10(b).’”

(8) “State Board Report” means the “Final Report of the Decisions and Order on Statewide School District Merger Decisions Pursuant to Act 46, Sections 8(b) and 10” issued by the State Board of Education dated November 28, 2018.

(c) Notwithstanding any provision of law to the contrary:

(1) Merger deadline extension.

(A) Except as provided in subdivisions (1)(B) and (C) of this subsection, the operational deadline for school district mergers under the State Board Order shall be on July 1, 2019 or July 1, 2020.

(i) For the mergers of forming districts into a newly formed district, the school board of the newly formed district, operating in accordance with the default articles, shall, on or before June 30, 2019, determine, by majority vote of the initial members representing a quorum, the operational date of merger.

(ii) For the merger of a merging district into an existing district, the school board of the existing district shall, on or before June 30, 2019, determine, by majority vote of members representing a quorum, the operational date of merger.

(B) The operational deadline for school district mergers under the State Board Order shall be on July 1, 2019 if the relevant board does not, on or before June 30, 2019, determine the operational date of the merger under subdivision (1)(A) of this subsection.

(C) The deadline for mergers that, in the State Board Order, are conditioned upon approval of voters of the existing district shall be as specified in the State Board Order.

(2) Default Articles. The Default Articles for each newly formed district that has an operational deadline of July 1, 2020 are amended as follows:

(A) by striking out the date “June 30, 2019” wherever it appears and inserting in lieu thereof the date “June 30, 2020”;

(B) by striking out the date “July 1, 2019” wherever it appears and inserting in lieu thereof the date “July 1, 2020”; provided, however, the date “July 1, 2019” shall not be changed in Article 9;

(C) by striking out the date “December 31, 2019” wherever it appears and inserting in lieu thereof the date “December 31, 2020”;

(D) by striking out the date “July 1, 2020” wherever it appears and inserting in lieu thereof the date “July 1, 2021”;

(E) by striking out the academic year “2019–2020” wherever it appears and inserting in lieu thereof the academic year “2020–2021”;

(F) by striking out the academic year “2020–2021” wherever it appears and inserting in lieu thereof the academic year “2021–2022”;

(G) by striking out the academic year “2021–2022” wherever it appears and inserting in lieu thereof the academic year “2022–2023”; and

(H) by striking out the fiscal year “2020” wherever it appears and inserting in lieu thereof the fiscal year “2021”.

(3) Small schools grant.

(A) If a forming district or merging district that merges under the State Board Order has an operational merger date of July 1, 2019, and that district was an “eligible school district” as defined in 16 V.S.A. § 4015, as in effect on June 30, 2019, that received a small schools support grant under that section in the fiscal year two years prior to the first fiscal year of merger, then the newly formed district or existing district, as applicable, shall receive an annual small schools support grant in an amount equal to the small schools support grant received by the forming district or merging district, as applicable, in the fiscal year two years prior to the first fiscal year of merger. If more than one forming district or merging district was an eligible school district and merged into the same newly formed district or existing district, as applicable, then the small schools support grant for the newly formed district or existing district, as applicable, shall be in an amount equal to the total

combined small schools support grants the forming districts or the merging districts, as applicable, received in the fiscal year two years prior to the first fiscal year of merger.

(B) Payment of the grant under subdivision (3)(A) of this subsection shall continue annually unless explicitly repealed by the General Assembly; provided, however, that the Secretary shall discontinue payment of the grant in the fiscal year following closure by the school district of a school that qualified the district for the grant; and further provided that if a school building that housed a school that qualified the district for the grant is closed in order to consolidate with another school into a renovated or new school building, then the Secretary shall continue to pay the grant during the repayment term of any bonded indebtedness incurred in connection with the consolidation-related renovation or construction.

(4) Union school district budget.

(A) If the first budget of a newly formed district has not been approved by voters on or before June 30 for the 2020 or 2021 fiscal year, the Agency of Education shall authorize an amount of education spending for that newly formed district equal to:

(i) the cumulative education spending amount authorized by the most recently voter approved school budgets of the forming districts; multiplied by

(ii) the percentage that represents the average statewide increase from the prior fiscal year to the current fiscal year in school district education spending authorized by voter approved school district budgets, based on data received by the Agency of Education on or before June 14 of the prior fiscal year. As used in this subdivision (ii), for mergers under the State Board Order that are operational on July 1, 2019, the prior fiscal year shall be fiscal year 2019 and the current fiscal year shall be fiscal year 2020, and for mergers under the State Board Order that are operational on July 1, 2020, the prior fiscal year shall be fiscal year 2020 and the current fiscal year shall be fiscal year 2021.

(B) The amount authorized by the Agency of Education under subdivision (4)(A) of this subsection shall be the “education spending” of the newly formed district for the relevant fiscal year under 16 V.S.A. chapter 133.

(C) The school board of the newly formed district, operating in accordance with the default articles, shall determine how funds shall be expended in the relevant fiscal year under this subdivision (4). In addition, the school board of the newly formed district shall have the authority to expend any other funds received from other sources in the relevant fiscal year under

this subdivision (4), including endowments, parental fundraising, federal funds, nongovernmental grants, or other State funds such as special education funds paid under 16 V.S.A. chapter 101.

Sec. 14. 16 V.S.A. § 4015 is amended to read:

§ 4015. SMALL SCHOOL SUPPORT

(a) In this section:

* * *

(2) “Enrollment” means the number of students who are enrolled in a school operated by the district on October 1. A student shall be counted as one whether the student is enrolled as a full-time or part-time student. Students enrolled in prekindergarten programs shall not be counted.

* * *

* * * Effective Dates * * *

Sec. 15. EFFECTIVE DATES

Secs. 1, 2, 6–13 and this section shall take effect on passage. Secs. 3–5 shall take effect on July 1, 2021. Sec. 14 (small school support) shall take effect on July 1, 2019.

And that after passage the title of the bill be amended to read

An act relating to amending special education laws and Act 46.

Which was agreed to.

Thereupon, the pending question, Shall the Senate propose to the House that the bill be amended as recommended by the Committee on Education, as amended?, was decided in the affirmative.

Thereupon, third reading of the bill was ordered.

House Proposal of Amendment Concurred In

S. 86.

House proposal of amendment to Senate bill entitled:

An act relating to increasing the legal age for buying and using cigarettes, electronic cigarettes, and other tobacco products from 18 to 21 years of age.

Was taken up.

The House proposes to the Senate to amend the bill by striking out Sec. 8, effective date, in its entirety and inserting in lieu thereof a new Sec. 8 to read as follows:

Sec. 8. EFFECTIVE DATE

This act shall take effect on September 1, 2019.

Thereupon, the question, Shall the Senate concur in the House proposal of amendment?, was decided in the affirmative.

Message from the House No. 54

A message was received from the House of Representatives by Ms. Rebecca Silbernagel, its Second Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House has passed a House bill of the following title:

H. 549. An act relating to approval of the dissolution of Rutland Fire District No. 10.

In the passage of which the concurrence of the Senate is requested.

Message from the Governor

A message was received from His Excellency, the Governor, by Ms. Brittney L. Wilson, Secretary of Civil and Military Affairs, as follows:

Mr. President:

I am directed by the Governor to inform the Senate that on the thirtieth day of April, 2019 he approved and signed a bill originating in the Senate of the following title:

S. 118. An act relating to the time frame for the adoption of administrative rules.

Adjournment

On motion of Senator Ashe, the Senate adjourned until one o'clock in the afternoon on Wednesday, May 1, 2019.