

## Summary of H.104 (OPR Bill), As Passed Senate

### General Summary

The OPR Bill is an annual bill addressing the professions and occupations regulated by the Secretary of State's Office of Professional Regulation (OPR). The bill recommends amendments to Title 3, which governs OPR, as well as amendments to Title 26, which governs the individual professions regulated by OPR. Aside from recommending substantive changes to specific professions, the bill would eliminate T.26 language that duplicates T.3 provisions and provides other technical clean-up.

This summary provides an overview of the main provisions of the bill that do not involve technical clean-up, and specifically **highlights** the changes the Senate made to the bill as passed the House.

### Section-by-Section Summary

\* \* \* Office of Professional Regulation \* \* \*

Sec. 1 amends definitions relating to OPR, specifically amending "License" to include commissions (used by notaries public) and other official authorizations to undertake a regulated activity.

Sec. 2 adds notaries to the list of professions OPR regulates pursuant to [2018, Act 160](#). It also names radiologic technology and real estate appraisers—rather than those professions' boards—since this bill would convert those two professions from a board to an advisor model.

Sec. 3 increases permitted penalties for unauthorized practice.

Sec. 4 adds a new unprofessional conduct standard that applies to all OPR professions re: sexual harassment, exploitation, professional boundaries, and expectations of privacy, and increases the permitted administrative penalties for any unprofessional conduct.

- **The Senate** changed the language re: sexual harassment or exploitation of a coworker by substituting “that threatens the health, safety, or welfare of patients, clients, or consumers” for the House’s “in a manner that impacts professional services,” to more closely tie this unprofessional conduct to the purpose of professional regulation as set forth in [26 V.S.A. ch. 57](#) (review of regulatory laws), which is to protect the public.

Sec. 5 requires OPR to hold one or two public meetings each year for advisor professions, depending on the size of the profession.

- Pursuant to [3 V.S.A. § 129b\(c\) and \(d\)](#), board professions are already required to meet annually, at the call of the chair, and upon the request of two board members.

Sec. 6 permits the Director of OPR to allow a lapsed licensee to renew his/her license under requirements less burdensome than completing all education that would have been required during active licensure. (Statute currently only allows less burdensome requirements as set forth in rule.)

Sec. 7 requires OPR, Agency of Education, Agency of Human Services, Agency of Natural Resources, Department of Public Safety, and the Department of Health to collaborate in analyzing the professions they regulate to determine whether their professional regulation should be transferred to different agency.

- Those agencies would need to consider the professional regulation reports and other info gathered as a result of [2016, Act No. 156](#) (2016 OPR Bill), Secs. 20 and 21 (professional regulation reports).
- OPR **and the Agency of Administration** would lead this collaboration, but are encouraged to seek available grants from outside resources to enable these agencies to contract with an independent entity to conduct this analysis.

- By 1/15/20, the contracted independent entity (or OPR and the Agency of Administration, if no contract was executed), shall report to committees of jurisdiction with findings and any recommendations for legislative action.
- **The Senate** added the Agency of Administration's participation as leading this collaboration with OPR and reporting recommendations with OPR.

Sec. 7a requires OPR and the Agency of Administration to collect from the same agencies and departments listed in Sec. 7 (AoE, AHS, ANR, DPS, and DoH) information regarding which professions they regulate have apprenticeship pathways to licensure; why certain professions do not have apprenticeship pathways to licensure and whether they should; and a proposal to implement apprenticeship pathways to licensure for those professions that should have them. OPR and AoA would report this information (including OPR's) to committees of jurisdiction by 1/15/20.

- **The Senate** added this section.

Sec. 7b requires OPR and the same agencies and departments listed in Sec. 7 (AoE, AHS, ANR, DPS, and DoH) to identify any direct license equivalents to Canadian credentials for the professions they regulate, and to propose bridge-to-licensure programs where supplemental effort is needed to bring professionals with Canadian credentials in line with Vermont's licensing criteria. OPR and the Agency of Administration would collaborate so that OPR and these agencies and departments would submit a unified report to committees of jurisdiction by 1/15/20.

- **The Senate** added this section.

Sec. 8 creates a Licensing Administrator position within OPR, funded entirely by OPR's Regulatory Fee Fund.

- **The Senate** in subsec. (b) substituted "derived entirely from the Office's Professional Regulatory Fee Fund" for the House's "derived from the Office's Professional Regulator Fee Fund, with no General Fund dollars" to be more explicit that OPR's Fund is the only source of funding.

## \* \* \* Accountants \* \* \*

**Sec. 9** addresses **Accountants**.

- It eliminates foreign firm registration for temporary practice, which is an outdated and unused license type.
- It also requires accountants and firms to have a plan in place for handling client records in case of unexpected incapacity or firm dissolution.
- **The Senate added § 13 (definitions), which:**
  - Repeals “disciplinary action” as duplicative to T.3;
  - Repeals “foreign firm” in accordance with the § 74a repeal of foreign firm registration; and
  - Adds “sole proprietorship” in accordance with H.527 (Fee Bill), which creates a renewal fee that applies only to one-accountant firms.

## \* \* \* Dental Hygienists \* \* \*

**Sec. 10** addresses **Dental Hygienists**. It allows the Board of Dental Examiners to set guidelines for “public-health hygienists,” who are hygienists that practice in out-of-office settings under the supervision of a dentist.

- **The Senate in § 582(3)(H) (public-health hygienists) deleted “public-health” preceding “settings” to avoid introducing a new term, and since the settings in which public-health hygienists may practice would be defined in § 624.**

## \* \* \* Nursing \* \* \*

**Sec. 11** addresses **Nursing**. It eliminates reference to the Board adopting rules re: standard LNAs, since there was a transfer of LNA education back to DAIL.

- § 1613 eliminates reference to APRN practice guidelines as a technical correction, since the requirement to have practice guidelines was eliminated in the [2018 OPR Bill](#) (pg. 45).

## \* \* \* Optometrists \* \* \*

**Sec. 12** addresses **Optometrists**. It adds glaucoma treatment as part of the standard scope of practice, rather than requiring a special endorsement, and cleans up the optometry chapter,

including by moving language to more appropriate locations within the chapter in accordance with the glaucoma-related changes.

Sec. 13 requires OPR to conduct a study—in consultation with stakeholders—to evaluate whether optometrists’ scope of practice should be enlarged to include advanced procedures.

- By 1/15/20, OPR shall reports its findings and any recommendations for legislative action to committees of jurisdiction.

\* \* \* Pharmacy \* \* \*

Sec. 14 addresses **Pharmacy**.

- § 2022 includes reference to virtual manufacturing and distribution in the chapter’s definitions.
- § 2031 adds a pharmacy technician to the Board.
- § 2032 allows the Board to inspect regulated entities or commercial locations where drugs are manufactured or kept. It also eliminates the requirement for the Board to develop criteria for Rx pads (since this is under DEA control).
- § 2042b repeals a statute re: delegating tasks to pharmacy technicians, since pharmacists have to perform actual pharmacy tasks. This repeal will enable a pharmacist to delegate tasks to a pharmacy technician based on the technician’s knowledge and training.
- § 2061 adds third-party logistics providers as a recognized class of drug outlet for which a license is required.
  - **The Senate** added this section.
- Subch. 6 adds reference to wholesale manufacturers needing to be licensed, in addition to current law’s reference to licensed wholesale distributors.
  - **The Senate** added reference to manufactures in § 2067 and referred more generally to “entities” in § 2068(10)(A) to conform to the addition of manufacturers in this subchapter.

Sec. 15 requires OPR, in consultation with relevant stakeholders, to evaluate whether pharmacists should have prescribing authority, with a report back to committees of jurisdiction by 1/15/20.

\* \* \* Real Estate Brokers and Salespersons \* \* \*

Sec. 16 addresses **Real Estate Brokers and Salespersons**. It eliminates an initial post-licensure continuing education requirement.

\* \* \* Opticians \* \* \*

Sec. 17 addresses **Opticians**. In § 2672, it adds a new apprenticeship pathway to licensure via a national program, and reduces the current standard apprenticeship requirement from three years to two.

\* \* \* Radiology \* \* \*

Sec. 18 addresses **Radiology**. It converts this profession from a board model to an advisor model. The number and qualifications of advisor appointees would match those of the current Board members.

Sec. 19 provides that the Board's rules become the Director's rules.

\* \* \* Alcohol and Drug Abuse Counselors \* \* \*

Sec. 20 addresses **Alcohol and Drug Abuse Counselors**. It adds "process disorders" (such as gambling addiction) to their scope of practice.

\* \* \* Real Estate Appraisers \* \* \*

Sec. 21 addresses **Real Estate Appraisers**. It converts this profession from a board model to an advisor model. The number and qualifications of advisor appointees would match those of the current Board members.

Sec. 22 provides that the Board's rules become the Director's rules.

\* \* \* Acupuncture \* \* \*

Sec. 23 addresses **Acupuncture**.

- § 3401 updates the definition of the practice.

- § 3401a specifies the scope of practice, but specifically recognizes that acupuncturists may offer functional diagnoses when necessary to document care for health insurers.
- § 3402 permits the unlicensed practice of auriculotherapy if certain conditions are met (and therefore repeals the specialized certification for acupuncture detoxification in § 3412).
- § 3405 reduces education and practice requirements for licensure.
- In § 3406(a)(2) and (3), **the Senate** substituted “Acupuncture pathology” and “Acupuncture diagnosis” for the House’s “Traditional acupuncture pathology” and “Traditional acupuncture diagnosis” since neither the amended definition of “acupuncture” in § 3401(1) nor the new scope of practice in § 3401a use the word “traditional.”
- In § 3407(b), **the Senate** substituted “National Certification Commission for Acupuncture and Oriental Medicine” for the House’s “National Commission for the Certification of Acupuncturists” to reflect the Commission’s revised current name.

\* \* \* Athletic Trainers \* \* \*

Sec. 24 addresses **Athletic Trainers**. It eliminates the restrictions on the settings where they may practice, while maintaining the requirement to have a referral from an appropriate provider for clinical care.

- In § 4151(10), **the Senate** added podiatrists, physician assistants, physical therapists, and naturopaths as medical professionals who may refer a patient to an athletic trainer.

\* \* \* Applied Behavior Analysts \* \* \*

Sec. 25 addresses **Applied Behavior Analysts**. It provides technical cleanup.

\* \* \* Notaries Public \* \* \*

Secs. 26-29 address **Notaries Public** and were added by **the Senate**. Overall, these changes confirm that notarial acts are part of the official duties of a town clerk and his or her assistants when they are commissioned as a notary public (while maintaining current law’s exemption for

these officers to pay the commission fee), and amend the provisions of the notary chapter from which judiciary-related and law enforcement-related employees are exempted.

- Sec. 26 addresses the town clerk duties that require a notary public commission (with the administration of oaths not requiring a commission), and allows town clerks to designate assistants commissioned as notaries public to perform notarial acts for the public during normal business hours free of charge.
- Sec. 27 updates the definition of “notarial officer” to recognize people outside of Vermont who may perform notarial acts.
- Sec. 28 amends the persons who are exempt from requirements of the notary chapter.
  - Judiciary-related employees acting within the scope of their official duties are exempt from all notary chapter requirements, except for the requirement to apply for a notary commission.
  - Law enforcement-related employees acting within the scope of their official duties are commissioned as notaries public authorized to perform notarial acts as a matter of law, and are exempt from all notary chapter requirements.
  - Justices of the peace and town clerks and their assistants are exempted from the requirement to pay a fee for a notary commission (no change from current law).

\* \* \* Massage Services \* \* \*

Sec. 30 was added by **the Senate** and requires OPR to consult with stakeholder and submit an Addendum to its 2016 sunrise report on massage therapy in order to specifically assess whether new regulation of businesses or individuals offering massage services will enhance public safety in regard to sexual misconduct and human trafficking.

\* \* \* Effective Date \* \* \*

Sec. 31 provides a July 1, 2019 effective date for all provisions.