

Section-by-Section Summary of S.220 As Recommended by Senate Gov Ops
An act relating to professional regulation (2020 OPR Bill)

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

Sec. 1, 3 V.S.A. § 122, is a technical correction in accordance with 2015, Act No. 38, Sec. 34, which removed audiologists from the speech-language pathologist regulatory structure and grouped them with hearing aid dispensers.

Sec. 2, 3 V.S.A. § 123:

- (a)(12)(A): Eliminates a pro rata adjustment of fees.
- (i): Allows the Director of OPR to veto certain board *inactions*, in addition to the current law authority to veto certain board actions.
 - (i)(2)(A) allows the Director to implement an alternative to the board action.
 - (i)(C)(iii) allows the Director’s alternative to stand if, after a public meeting with the board, the Director ultimately finds that the board action was inconsistent with State policy in purpose.
- (j)(1): Technical clean-up to use the standard, general terms “initial licensure” and “license renewal.”
- (j)(2) and (3): Revises the language re: background checks pursuant to FBI request, while maintaining most applicable provisions. Differences from current law:
 - Defines in new (3) the records that may be obtained.
 - *Requires* FBI background checks to be fingerprint supported. No longer addresses fingerprints generally.
 - Eliminates specific notice requirements to applicant re: retaining fingerprints on file and that criminal convictions are not an absolute bar to licensure.

Sec. 3, 3 V.S.A. § 125, revises fees for the private investigator and security services professions due to the conversion of this profession from a board model to advisor model.

- The fees set forth in the professions’ chapter in 26 V.S.A. § 3178a would be repealed and added to this statute, which addresses fees for advisor professions.
- There are no changes to current law fees.

Sec. 4, 3 V.S.A. § 129:

- (a): Technical clean-up to clarify that the Director may take actions for advisor professions as a board would for its profession. This clarification already exists in other places within this statute.
- (c)(2): Technical correction to use “Office,” which is already defined to mean the Office of Professional Regulation via § 121(4) of the chapter.
- (d): Technical clean-up to address the Director providing notice of appeal rights.
- (f)(1)(A): Allows the Director – not a board – to appoint a hearing officer to conduct a hearing that would otherwise be heard by the board.

- (f)(1)(B): Allows the Director to consolidate hearings into one proceeding when there are multiple disciplinary charges pending against a single individual or entity.
- (f)(2): Technical clean-up.
- (h)(2)(B): Deletion of repeated language re: the appointment of ad hoc members, since these appointments are already addressed in Sec. 2's 3 V.S.A. § 123(k).
- (j): Clean-up to remove the “notwithstanding” language, as it is no longer necessary. The cross-referenced 3 V.S.A. § 130a, as already amended, addresses appeals from the decisions of both boards and advisor profession's administrative law officers going to appellate officers, and thereafter to the SCOV.
- (k): Clean-up to consolidate language re: continuing education requirements that are a condition of renewal into one subsec.
- (l): Provides that discipline imposed by an OPR profession applies to all other licenses issued to that licensee by that OPR profession, unless a disciplinary order expressly provides to the contrary.

***** Accountants *****

Sec. 5, 26 V.S.A. ch. 1:

- § 54 repeals subsec. (c) as a technical correction. This language was supposed to be repealed via [1998, No. 145](#), Sec. 31, but it was erroneously retained via [2002, No. 129](#), Sec. 8.
- § 56 deletes reference to foreign firm temporary registration fees, since 26 V.S.A. § 74a, providing the authority for those registrations, was repealed in [2019 OPR Act](#), in Sec. 9 on pg. 11.
- § 74 corrects a cross-reference in subdiv. (b)(2) and substitutes “chapter” for “title” throughout for consistency. The (b)(2) cross-reference to § 75(c) is “as applicable” because that subsec. requires peer reviews if rules are adopted requiring them and if those reviews are required of an applicant, because they may be imposed randomly.
- § 78 repealed as duplicative to T.3 provisions re: boards' disciplinary authority.

***** Funeral Services *****

Sec. 6, 26 V.S.A. § 1252(b)(3) allows for an apprenticeship as an alternative pathway to licensure for embalmers. (The General Assembly recently added apprenticeship as an alternative pathway to licensure for funeral directors; *see* subdiv. (a)(3).)

***** Nursing *****

Sec. 7, 26 V.S.A. ch. 28.

- § 1573(c) eliminates the requirement that a Board of Nursing member be a U.S. citizen.
- In § 1574(a):
 - Subdivs. (3)(A) and (B) are a technical correction. The [2019 OPR Act](#), in Sec. 11 on pg. 15, repealed subdiv. (4) (re: medication nursing assistant

education) and amended subdiv. (3) to be re: “medication” nursing assistant education. However, the act failed to address subdiv. (4)’s (A) and (B), which remain current law but should have also been moved to subdiv. (3).

- This is the reason subdivs. (4)(A) and (B) are repealed.
- Subdiv. (3)(C) sets forth the standards for nursing education programs and clinical facilities, and allows standards to be waived by the Director of OPR if the waiver will not compromise educational integrity.
 - Relatedly, Sec. 8 repeals the Board’s current rules on these standards, which are inconsistent with this new statutory language.

Sec. 8 repeals the Board of Nursing rules re: nursing faculty requirements since they are inconsistent with the standards that would be provided in § 1574(a)(3)(C).

* * * Optometry * * *

Sec. 9, 26 V.S.A. ch. 30:

- § 1718 reduces the renewal fee.
- Corrects Subchapter 6’s title to its form prior to the 2019 OPR Act.

* * * Osteopathy * * *

Sec. 10, 26 V.S.A. § 1794 reduces osteopaths’ biennial renewal fee.

* * * Pharmacy * * *

Sec. 11, 26 V.S.A. ch. 36:

- § 2022(15) updates definitions related to clinical pharmacy, as amended § 2023 would allow for clinical pharmacy prescribing.
- § 2022(21) defines “self-administered hormonal contraceptive” because that term is used in the amended § 2023 re: clinical pharmacy prescribing.
- § 2023 would allow for clinical pharmacy prescribing. (The [2019 OPR Act](#) in Sec. 15 required OPR to evaluate the costs and benefits of incorporating prescribing authority into the scope of practice of licensed pharmacists.)
 - (a) prohibits pharmacists from prescribing a regulated drug; a biological product other than a vaccine or insulin; or initiating antibiotic therapy, except as permitted in a collaborative practice agreement as set forth in subsec. (b).
 - (b) allows a pharmacist to prescribe in the following contexts:
 - (1): Via a collaborative practice agreement with a licensed prescribing practitioner for that practitioner’s patient(s).
 - (2): Via a State protocol approved by the Commissioner of Health after consultation with the Director of OPR and the Board of Pharmacy and the ability for public comment. A State protocol is limited to the prescriptions described in subdivs. (i)-(viii).
 - (3): Accessory devices, where clinically indicated in the judgment of the pharmacist.
 - (4): Substituted drugs in the same therapeutic class when authorized by a licensed prescriber under the conditions of subdivs. (A)-(D).

- (5): Over-the-counter drugs.
- (6): To provide a short-term extension of a previous prescription in the absence of a collaborative practice agreement or State protocol under conditions of subdivs. (A) and (B).
- (c) requires Board rules to address:
 - (1): the required elements of a collaborative practice agreement;
 - (2): prohibiting conflicts of interest;
 - (3): the appropriate bounds of short-term extension prescribing; and
 - (4): minimum standards for patient privacy in clinical consultation.
- Subchapter 5 updates a subchapter heading, since the subchapter is about drug outlets.
- § 2061 corrects a cross-reference, since pharmacy unprofessional conduct is set forth in the general OPR statute 3 V.S.A. § 129a.
- § 2063 is a technical correction; the Board adopts rules.
- The Subchapter 6 heading is repealed because its sections are about drug outlets generally, which is the topic of Subchapter 5.

Sec. 12 provides deadlines for the Commissioner of Health and the Board of Pharmacy to execute duties relating to the new clinical pharmacy provisions.

***** Physical Therapists *****

Sec. 13 corrects a typo.

*****Veterinary Medicine *****

Sec. 14 lowers the fee for veterinarian license renewal.

***** Landscape Architects *****

Sec. 15 corrects a typo.

***** Review of Regulatory Laws *****

Sec. 16 amends 26 V.S.A. ch.57, which is the chapter that sets forth standards for professional regulation. This chapter already addresses standards when a new profession is proposed to be regulated; it provides for an OPR preliminary assessment (a.k.a. sunrise review) of the profession. This section would set new standards for when a proposal is made to change an existing regulated profession's scope of practice, by similarly requiring a preliminary assessment of a proposed change to scope of practice. This section also makes general updates to this chapter.

- § 3105(d) requires OPR's preliminary assessment of a new profession to be submitted to both Gov Ops committees.
- § 3105(e) allows OPR to decline to conduct a preliminary assessment. This subsec. applies the current conditions (which now only apply to new professions)

to proposals to change a scope of practice, and adds the condition of the Director of OPR finding that the proposal would call for an unwarranted expenditure of State resources.

- § 3107 amends the section heading re: proposals to regulate new professions to clarify that it is re: info required of applicants.
- § 3108 adds a new section re: OPR's preliminary assessment of proposals to change a scope of practice.
 - (a) requires OPR to do so upon the request of a Gov Ops committee or upon direct petition from a regulated profession. The preliminary assessment would be reported to the Gov Ops committees and to the Health Care committees if it pertains to a health care profession.
 - (b) requires a profession petitioning for a change in scope of practice to submit specific info to OPR to the extent requested by OPR or the Gov Ops committees.
 - (c) allows a profession to be exempted from filing the info in subsec. (b) and allows OPR to grant the exemption if certain factors are met.
 - (d) allows other professions that may be impacted by a scope of practice change to submit a written statement to OPR and to the profession requesting the change. Thereafter, the requesting profession is required to submit a written response to OPR and the impacted profession.

***** Private Investigative and Security Services *****

Sec. 17, 26 V.S.A. ch. 59 converts the private investigative and security services profession from a Board model to an advisor model. Throughout the chapter, the Director of OPR is substituted for the Board and related changes are made re: this conversion. Specifically:

- § 3161 substitutes five advisor appointees appointed by the Sec. of State for the five current Board members appointed by the Governor. The advisor appointees have the same qualifications as the current Board members. The Sec. of State will appoint the advisors for five-year staggered terms.
- The statutes re: the requirements for licensure are updated for clarity.
- § 3178a repeals the fees since they would be placed in Sec. 3's 3 V.S.A. § 125, where all of the fees for OPR advisor professions are codified. There is no change to these fees.

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

Sec. 18, 26 V.S.A. ch. 69:

- § 3316: Technical clean-up.
- § 3321: Clarifies that appraisal management companies must renew their licenses *annually* in compliance with federal law. (Federal law regulates appraisal management companies, which act as a broker in acquiring finished appraisals from real estate appraisers and supply the appraisals to third parties.)

*** * * Dieticians * * ***

Sec. 19 is a technical correction because the section currently cross-references a repealed statute.

*** * * Naturopathic Physicians * * ***

Sec. 20 eliminates language referencing the ability of an advisor appointee to serve as an administrative law officer, which does not happen in practice and does not conform to OPR's regulatory structure.

*** * * Midwives * * ***

Sec. 21 eliminates reference to the Vermont Midwives Alliance, which does not exist.

- § 4185(b)(2)(B) substitutes the Vermont Midwives Association as the correct entity that would provide consultation to the Director of OPR re: the midwives formulary.

Sec. 22 repeals 2012 session law that required midwives to submit data on home births and the Dept. of Health to access that data. The Dept. and OPR agree these requirements should not continue permanently.

*** * * Electrologists * * ***

Sec. 23 deletes reference to inspection fees, which are not charged and are not provided for in the § 4410 that is erroneously cross-referenced.

*** * * Respiratory Care * * ***

Sec. 24 is a technical correction to substitute "the Director" for "the board," since this is an advisor – not board – profession.

*** * * Motor Vehicle Racing * * ***

Sec. 25 is also a technical correction to substitute "the Director" for "the commission," since this is an advisor – not board – profession.

*** * * Pollution Abatement Facility Operators * * ***

Sec. 26 eliminates the requirement that a pollution abatement facility operator have a high school diploma or GED.

*** * * Notaries Public * * ***

Sec. 27 repeals a statute that is outdated and left over from when the county issued certificates of appointment to notaries public.

***** Massage Therapists, Bodyworkers, and Touch Professionals *****

Sec. 28 adds massage therapists, bodyworkers, and touch professionals to the list of professions regulated by OPR.

Sec. 29 adds new 26 V.S.A. ch. 105 to regulate these professionals. This would be an advisor profession. People would need to be registered with OPR in order to practice these professions.

- § 5401 defines terms for this chapter.
- § 5402 prohibits people from engaging in these professions or holding themselves out as a massage therapist, bodyworker, or touch professional without being registered.
- § 5403 provides that practice without registration constitutes unauthorized practice, for which a person may be penalized.
- § 5404:
 - (a) exempts students and apprentices from registration, as well as the practice of massage or bodywork to clients “in a manner in which the clients do not remove street clothing or do not have a reasonable expectation of privacy.
 - (b) exempts from registration other licensed professionals.
 - (c) makes explicit that registrants need not practice in an establishment, so long as the registrant and client agree to an acceptable location.
- § 5411:
 - (a) provides standard Director duties for an advisor profession.
 - (b) requires the Director to adopt rules re: disclosures to clients and the display of information.
- § 5412 provides for three advisor appointees, appointed for five-year staggered terms.
- § 5421 provides for registrant applications.
- § 5422 provides for registration by endorsement.
- § 5423:
 - (a) requires an establishment to designate a professional who will be responsible for ensuring compliance with this chapter and rules adopted under it.
 - (b) authorizes OPR to enter an establishment for the purpose of inspection.
- § 5424 provides for registration biennial renewal.
- § 5426 provides for standard advisor profession fees for initial registration and renewal.
- § 5427 requires the display of registrations in establishments.
- § 5428 provides unprofessional conduct provisions for these professions.

Sec. 30 provides for the appointment of advisor appointees prior to registration taking effect.

Sec. 31 creates two new positions in OPR – in licensing and enforcement – from the funds derived from OPR’s Professional Regulatory Fee Fund, not General Fund.

Sec. 32 requires OPR to assess the registration of these professions and to submit any recommended amendments to the Gov Ops committees by 11/1/23.

***** Climate Change and State Energy Goals *****

Sec. 33 requires specified professional regulatory entities to submit to the Director of OPR by 11/15/20 info re: continuing education re: climate change and/or the State's energy goals that is offered to the profession; that should be offered to the profession; and how the profession addresses its role in mitigating the effects of climate change and in furthering the State's energy goals and how any current and recommended continuing education addresses those issues. The Director is required to compile this info and submit it to the Gov Ops committees by 1/15/21.

***** Effective Dates *****

Sec. 34 provides that the bill takes effect on July 1, 2020, except the new professional regulation of massage therapists, bodyworkers, and touch professionals takes effect on Nov. 1, 2020.