

1 Introduced by Committee on Government Operations

2 Date:

3 Subject: Professions and occupations; Secretary of State; Office of

4 Professional Regulation; application process; unprofessional conduct;

5 discipline; funeral service; pharmacy; acupuncture; tattooists;

6 microblading; nursing home administrators

7 Statement of purpose of bill as introduced: This bill proposes to make

8 miscellaneous amendments to statutes governing professions and occupations

9 regulated by the Office of Professional Regulation.

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

12 It is hereby enacted by the General Assembly of the State of Vermont:

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

14 Sec. 1. 3 V.S.A. § 122 is amended to read:

15 § 122. OFFICE OF PROFESSIONAL REGULATION

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

20 \* \* \*

1           (2) ~~Board of Barbers and Cosmetology~~ Cosmetologists

2   \* \* \*

3           (6) ~~Board of Funeral Service~~

4   \* \* \*

5           (18) ~~Board of Private Investigative and Security Services~~

6   \* \* \*

7           (50) Well Drillers

8           Sec. 2. 3 V.S.A. § 123 is amended to read:

9           § 123. DUTIES OF OFFICE

10   \* \* \*

11           (g)(1) The Office shall establish uniform procedures applicable to all of the  
12           professions and boards set forth in section 122 of this chapter, providing for:

13                           (A) appropriate recognition of education, training, or service  
14           completed by a member of the U.S. Armed Forces toward the requirements of  
15           professional licensure; and

16                           (B) expedited issuance of a professional license to a person who is  
17           licensed in good standing in another regulatory jurisdiction; and

18                           (i) whose spouse is a member of the U.S. Armed Forces and who  
19           has been subject to a military transfer to Vermont; and

20                           (ii) who left employment to accompany his or her spouse to  
21           Vermont.

1 (2) The Director may evaluate specific military credentials to determine  
2 equivalency to credentials required for professions attached to the Office. The  
3 determinations shall be adopted through written policy that shall be posted on  
4 the Office’s website.

5 (3) The Director may evaluate apprenticeship programs recognized or  
6 administered by the Vermont Department of Labor, Agency of Education, or  
7 U.S. Department of Labor to determine equivalency to credentials required for  
8 professions attached to the Office. The determinations shall be adopted  
9 through written policy that shall be posted on the Office’s website.

10 \* \* \*

11 (j)(1) The Office may inquire into the criminal background histories of  
12 applicants for initial licensure and for license renewal of any Office-issued  
13 credential, including a license, certification, registration or specialty  
14 designation for the following professions:

15 (A) licensed nursing assistants, licensed practical nurses, registered  
16 nurses, and advanced practice registered nurses licensed under 26 V.S.A.  
17 chapter 28;

18 (B) private investigators, security guards, and other persons licensed  
19 under 26 V.S.A. chapter 59;

20 (C) real estate appraisers and other persons or business entities  
21 licensed under 26 V.S.A. chapter 69; and

1 (D) osteopathic physicians licensed under 26 V.S.A. chapter 33.

2 \* \* \*

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

4 § 129. POWERS OF BOARDS OR OF DIRECTOR IN ADVISOR

5 PROFESSIONS; DISCIPLINE PROCESS

6 (a) In addition to any other provisions of law, a board or the Director, in the  
7 case of professions that have advisor appointees, may exercise the following  
8 powers:

9 \* \* \*

10 (11) Treat as incomplete any license application submitted with a check  
11 subsequently returned for insufficient funds or without the personal attestation  
12 of the applicant or an authorized officer of an applicant corporation as to the  
13 representations therein.

14 \* \* \*

15 (g) A board may authorize any of the following:

16 (1) Its chair or Office legal counsel to grant continuances of scheduled  
17 hearings.

18 (2) Its chair to grant or deny stays pending appeal.

19 (3) ~~Its chair or legal counsel~~ An administrative law officer to convene  
20 and conduct prehearing conferences and to preside at hearings for the purpose

1 of making procedural and evidentiary rulings. The board may overrule a ruling  
2 by an administrative law officer under this subdivision.

3 (4) ~~Its legal counsel to preside at hearings for the purpose of making~~  
4 ~~procedural and evidentiary rulings. The board may overrule a ruling by legal~~  
5 ~~counsel under this subdivision.~~ Office staff to grant applications that present  
6 no substantial discretionary or factual question and to administer the policies of  
7 the board between regular meetings.

8 \* \* \*

9 (i) A board may consult with the Attorney General or an attorney assigned  
10 by the Office of Professional Regulation for the proper conduct of its affairs.  
11 The Director may assign Office legal counsel to assist a board in the lawful  
12 and orderly conduct of its open meetings and other nondisciplinary business,  
13 including making procedural and parliamentary rulings.

14 \* \* \*

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

16 § 129a. UNPROFESSIONAL CONDUCT

17 (a) In addition to any other provision of law, the following conduct by a  
18 licensee constitutes unprofessional conduct. When that conduct is by an  
19 applicant or person who later becomes an applicant, it may constitute grounds  
20 for denial of a license or other disciplinary action. Any one of the following

1 items or any combination of items, whether the conduct at issue was  
2 committed within or outside the State, shall constitute unprofessional conduct:

3 \* \* \*

4 (27) Engaging in conduct of a character likely to deceive, defraud, or  
5 harm the public.

6 \* \* \*

7 \* \* \* Funeral Service \* \* \*

8 Sec. 5. 26 V.S.A. § 1252 is amended to read:

9 § 1252. APPLICATION; QUALIFICATIONS

10 \* \* \*

11 (g) Limited services establishment.

12 (1) The Director may adopt rules for the issuance of limited service  
13 establishment licenses in accordance with this chapter. Limited service  
14 establishment licensees are authorized to perform ~~only~~ disposition services  
15 without arranging, directing, or performing embalming and without on-site  
16 public viewings, gatherings, memorials, funerals, or related ceremonies.  
17 Disposition services under this subsection include direct cremation, direct  
18 alkaline hydrolysis, immediate burial, or direct green burial. A funeral director  
19 affiliated with a limited service establishment may consult families and  
20 survivors on the care of the dead; provide transport; and arrange, organize, and  
21 administer off-site ceremonies.

1           (2) Limited services shall be overseen by a funeral director licensed  
2 under this chapter who is employed by the limited service establishment.

3           (3) Each limited service arrangement shall include a mandatory written  
4 disclosure providing notice to the purchaser that limited services do not include  
5 embalming, public viewings, gatherings, memorials, funerals, or related  
6 ceremonies at the site of the establishment.

7           (4) A funeral director associated with a funeral establishment licensed  
8 under subsection (c) of this section may provide limited services so long as the  
9 mandatory disclosure described under subdivision (3) of this subsection is  
10 provided to the purchaser.

11                                 \* \* \* Pharmacy \* \* \*

12           Sec. 6. 26 V.S.A. chapter 36, subchapter 4 is added to read:

13   Subchapter 4. Discipline

14           § 2053. UNPROFESSIONAL CONDUCT; DISCIPLINE

15           (a) It shall be unprofessional conduct for a licensee to:

16                         (1) introduce or enforce external factors, such as productivity or  
17 production quotas, in a manner that encourages deviation from safe practice;

18                         (2) close a pharmacy or accept or acquire the patient records of a  
19 predecessor pharmacy in a manner that deprives a patient of continuity of care  
20 or prevents a patient's timely access to patient records;

1           (3) fail to employ sufficient personnel to prevent fatigue, distraction, or  
2           other conditions that interfere with a pharmacist’s ability to practice with  
3           competency and safety or create an environment that jeopardizes patient care,  
4           including by failing to provide mandated rest periods; and

5           (4) repeatedly, habitually, or knowingly fail, in light of predictable  
6           patient demand, to provide staff resources appropriate for a pharmacist of  
7           reasonable diligence to safely complete professional duties and responsibilities,  
8           including:

9                   (A) drug utilization review;

10                   (B) immunization;

11                   (C) counseling;

12                   (D) verification of the accuracy of a prescription; and

13                   (E) all other duties and responsibilities of a pharmacist under State  
14           and federal laws and regulations.

15           (b) Multiple drug outlets under common ownership and control constitute a  
16           chain. Discipline against any one drug outlet in the chain may be imposed  
17           against all drug outlets in the chain, provided the State alleges in a  
18           specification of charges and the Board subsequently finds:

19                   (1) unprofessional conduct has occurred at one or more drug outlets;

20                   (2) the unprofessional conduct is attributable to policies, procedures,  
21           patterns, habits, systems, or business practices of the chain, whether or not



1 those practices manifested in unprofessional conduct at each individual  
2 location; and

3 (3) imposition of disciplinary sanctions or conditions against all drug  
4 outlets in the chain is appropriate to protect the public.

5 \* \* \* Acupuncture \* \* \*

6 Sec. 7. 26 V.S.A. § 3406 is amended to read:

7 § 3406. EXAMINATION

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

11 (1) Anatomy and physiology.

12 (2) Acupuncture pathology.

13 (3) Acupuncture diagnosis.

14 (4) Hygiene, sanitation, and sterilization techniques.

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

16 (6) Clean needle techniques.

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

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





1 Home Administrators), § 2.3(b)(3), and 3 V.S.A. chapter 25 (Vermont  
2 Administrative Procedure Act), the Director of the Office of Professional  
3 Regulation may approve on-site supervision, remote supervision by electronic  
4 means, or a combination of both, by a preceptor as part of the Administrator-  
5 in-training program through June 30, 2023. On and after July 1, 2023, the  
6 Director’s approval of supervision by a preceptor as part of the Administrator-  
7 in-training program shall be conducted in accordance with the provisions of  
8 Rule CVR 04-030-180 (Administrative Rules for Nursing Home  
9 Administrators) pertaining to supervision by a preceptor.

10 \* \* \* Well Drillers \* \* \*

11 Sec. 10. 10 V.S.A. § 1392(c)(1) is amended to read:

12 (c)(1) The Secretary shall establish a groundwater coordinating committee,  
13 with representation from the Division of Drinking Water and Groundwater  
14 Protection within the Department, the Division of Geology and Mineral  
15 Resources within the Department, the Agency of Agriculture, Food and  
16 Markets, and the Departments of Forests, Parks and Recreation and of Health  
17 to provide advice in the development of the program and its implementation,  
18 on issues concerning groundwater quality and quantity, and on groundwater  
19 issues relevant to well-drilling activities ~~and the licensure of well-drillers.~~

1 Sec. 11. 26 V.S.A. chapter 107 is added to read:

2 CHAPTER 107. WELL DRILLERS

3 § 5601. DEFINITIONS

4 As used in this chapter:

5 (1) “Department” means the Department of Environmental  
6 Conservation.

7 (2) “Director” means the director of the Office of Professional  
8 Regulation.

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

10 (4) “Qualifying individual” means an individual holding a well-driller  
11 license issued in accordance with this chapter who is designated to oversee and  
12 be responsible for the well drilling operations of a business, governmental  
13 entity or other entity engaged in performing an activity established under  
14 subdivision 5601(6) of this chapter.

15 (5) “Well” means any hole deeper than 20 feet drilled, driven, or bored  
16 into the earth to locate, monitor, extract, or recharge groundwater or any hole  
17 deeper than 20 feet drilled, driven, or bored for the primary purpose of  
18 transferring heat to or from the earth’s subsurface.

19 (6) “Well driller” refers to a person engaged in the business of  
20 performing activities within one or both of the following classes:

1           (A) Water well driller. This class shall consist of any person engaged  
2           in the business of constructing wells for the purpose of locating, extracting, or  
3           recharging groundwater or for the purpose of transferring heat to or from the  
4           earth’s subsurface.

5           (B) Monitoring well driller. This class shall consist of any person  
6           engaged in the business of constructing, servicing, or closing wells drilled for  
7           the purpose of monitoring groundwater quantity or quality.

8           § 5602. APPLICATION

9           (a) Any person who intends to engage in the business of performing the  
10           activities in the classes established under subdivision 5601(6) of this chapter in  
11           the State shall hold a well driller license. The person shall apply for a license  
12           with the Office, comply with and provide the information required by rules  
13           adopted by the Director, and pay the application fee set forth in 3 V.S.A.  
14           § 125.

15           (b) A business, governmental entity or other entity engaged in the business  
16           of performing any of the activities set forth in the well drilling classes  
17           established under subsection subdivision 5601(6) of this chapter shall be  
18           owned by, employ, or contract with at least one qualifying individual.

19           (c) Qualifying individuals shall meet the qualifications established in rules  
20           adopted in accordance with this chapter. A qualifying individual shall own or  
21           be employed by only one business, governmental entity, or other entity but

1 may contract with more than one business, governmental entity, or other entity  
2 to provide well-driller services.

3 § 5603. PROHIBITIONS; PENALTIES

4 (a) It shall be a violation of this chapter for any person, including any  
5 corporation, association, or individual, to:

6 (1) practice, or to permit a person to practice, as a well driller without a  
7 current license or other authorization to practice as a well driller under  
8 Vermont law;

9 (2) practice, or to permit a person to practice, a class of well driller  
10 activities, as those classes are established in subdivision 5601(6) of this  
11 chapter, without a current license or other authorization to practice the class of  
12 well driller activities under Vermont law; or

13 (3) represent oneself as being licensed or otherwise authorized by this  
14 State to practice as a well driller or use in connection with a name any words,  
15 letters, signs, or figures that imply that a person is a well driller or able to  
16 practice as a well driller when not licensed or otherwise authorized to do so.

17 (b) A person who violates this section shall be subject to the penalties in  
18 3 V.S.A. § 127.

19 § 5604. EXEMPTIONS

20 (a) Employees of a business, governmental entity or other entity that is  
21 owned by, employs, or contracts with a licensed qualifying individual are not

1 required to obtain a well-driller license to perform the activities set forth in  
2 subdivision 5601(6) of this chapter.

3 (b) A person is not required to obtain a well-driller license to perform the  
4 following activities:

5 (1) exploratory excavations analyzing foundation conditions related to  
6 construction;

7 (2) constructing wells for the temporary de-watering of construction  
8 sites, blasting, soil vapor extraction, air sparging, grounding rod installation or  
9 other practices identified by the Commissioner;

10 (3) pump installation and pump servicing; and

11 (4) well development, cleaning, and rehabilitation.

12 § 5605. DUTIES OF THE DIRECTOR

13 The Director shall:

14 (1) provide general information to applicants for licensure as well  
15 drillers;

16 (2) receive applications for licensure; grant and renew licenses in  
17 accordance with this chapter; and deny, revoke, suspend, reinstate, or condition  
18 licenses as directed by an administrative law officer;

19 (3) after consultation with the Department, administer or approve  
20 examinations and training programs;



1           (4) explain appeal procedures to well-driller licensees and applicants  
2           and complaint procedures to the public;

3           (5) administer fees collected in accordance with this chapter and  
4           3 V.S.A. §125;

5           (6) refer all disciplinary matters to an administrative law officer  
6           established under 3 V.S.A. §129(j); and

7           (7) with advice of the advisor appointees and in collaboration with the  
8           Department, adopt or amend rules necessary to implement the provisions of  
9           this chapter.

10           § 5606. ADVISOR APPOINTEES

11           (a) The Secretary of State shall appoint three persons to be advisors to the  
12           Director, two of whom shall be well drillers and one of whom shall be a  
13           representative of the Agency of Natural Resources. Advisors shall be  
14           appointed to five-year staggered terms to serve at the Secretary’s pleasure as  
15           advisors in matters related to the administration of this chapter. Two of the  
16           initial appointments shall be for a term of fewer than five years.

17           (b) A well driller advisor appointee shall have not fewer than three years’  
18           experience as a well driller immediately preceding appointment, shall be  
19           licensed as a well driller in Vermont during incumbency, and shall be actively  
20           engaged in the practice as a well driller during incumbency.

1        (c) The Director shall seek the advice of the advisor appointees in carrying  
2        out the provisions of this chapter.

3        § 5607. ELIGIBILITY FOR LICENSURE

4        (a) Eligibility. To be eligible for licensure as a well driller, an applicant  
5        shall:

6            (1) not be in violation of any provisions of this chapter or rules adopted  
7            in accordance with the provisions of this chapter; and

8            (2) demonstrate the education, training, experience, and examination  
9            performance as the Director may, by rule, require to hold a license as a well  
10          driller.

11          (b) Classes. The Director shall specify on a license the class or classes of  
12          well-driller activities, as those classes are defined in subdivision 5601(6) of  
13          this chapter, a licensee is authorized to practice. A licensee may be authorized  
14          to perform more than one class of activities under a single license.

15          (c) The Director, after consultation with advisor appointees and the  
16          Department, shall, by rule, establish appropriate application, testing, and  
17          renewal procedures for each class of activity under a license.

18          § 5608. RECORDS AND REPORTS

19          (a) Each licensee shall keep accurate records and file a report with the  
20          Department and the owner of each water well constructed by the licensee that  
21          includes the name of the owner; the well and property location; well depth;

1 character of rocks, earth formations, and fluids encountered; and other  
2 reasonable and appropriate information the Department may require. Required  
3 information shall be set forth in rules established by the Director in  
4 collaboration with the Department.

5 (b) The reports required to be filed under subsection (a) of this section shall  
6 be on forms provided by the Department and submitted in accordance with  
7 rules adopted under this chapter, which shall include the following  
8 requirements:

9 (1) Each licensee classified as a water well driller shall submit a well  
10 completion report within 90 days after completing the construction of a water  
11 well.

12 (2) Each licensee classified as a monitoring well driller shall submit a  
13 monitoring well completion or closure report or Department-approved  
14 equivalent within 90 days after completing the construction or closure of a  
15 monitoring well. Reporting on the construction of a monitoring well shall be  
16 limited to information obtained at the time of construction and need not  
17 include the work products of others. The filing of a monitoring well  
18 completion or closure report shall be delayed for one or more six-month  
19 periods from the date of construction upon the filing of a request form  
20 provided by the Department that is signed by both the licensee and well owner.

1        (c) No report shall be required to be filed with the Department if the well is  
2        hand driven or is dug by use of a hand auger or other manual means.

3        (d) A licensee drilling or developing a new water well for use as a potable  
4        water supply, as that term is defined in 10 V.S.A. § 1972(6), shall provide to  
5        the owner of the property to be served by the groundwater source  
6        informational materials developed by the Department of Health regarding:

7                (1) the potential health effects of the consumption of contaminated  
8        groundwater; and

9                (2) recommended tests to detect specific contaminants, such as arsenic,  
10        lead, uranium, gross alpha radiation, total coliform bacteria, total nitrate, or  
11        nitrite, fluoride, and manganese.

12        § 5609. LICENSE RENEWAL

13        A license shall be renewed every two years upon application, payment of  
14        the required fee in accordance with 3 V.S.A. § 125, and proof of compliance  
15        with such continuing education or periodic reexamination requirements  
16        established in the rules adopted in accordance with this chapter. The fee shall  
17        be paid biennially upon renewal.

18        § 5610. UNPROFESSIONAL CONDUCT

19        Unprofessional conduct means misusing a title in professional activity and  
20        any of the conduct listed in 3 V.S.A. § 129a.

1       Sec. 12. REPEALS

2           (a) 10 V.S.A. § 1395 (application) is repealed.

3           (b) 10 V.S.A. § 1395a (licenses; rules) is repealed.

4           (c) 10 V.S.A. § 1396 (records and reports) is repealed.

5           (d) 10 V.S.A. § 1399 (penalties) is repealed.

6           (e) 10 V.S.A. § 1400 (appeals) is repealed.

7           (f) 10 V.S.A. § 1402 (denial and revocation of license) is repealed.

8                                   \* \* \* Agency of Education \* \* \*

9       Sec. 13. 16 V.S.A. § 1707 is amended to read:

10       § 1707. APPEAL FROM PANEL ORDER

11           (a) ~~Appeal to State Board of Education.~~

12                   (1) A party aggrieved by a final decision of a hearing panel may, within  
13       30 days of the decision, appeal that decision by filing a notice of appeal with  
14       the administrative officer of the hearing panel who shall refer the case to the  
15       ~~State Board of Education~~ Director of the Office of Professional Regulation.

16       The parties may agree to waive this review by written stipulation filed with the  
17       ~~State Board of Education~~ administrative officer of the hearing panel. The ~~State~~  
18       ~~Board of Education~~ Director of the Office of Professional Regulation shall  
19       assign the case to an appellate officer, who shall conduct its a review on the  
20       basis of the record created before the hearing panel, and ~~it~~ shall allow the

1 presentation of evidence regarding alleged irregularities in hearing procedure  
2 not shown in the record.

3 (2) The ~~State Board of Education~~ appellate officer shall not substitute ~~its~~  
4 the appellate officer's judgment for that of the hearing panel as to the weight of  
5 the evidence on questions of fact. ~~It~~ The appellate officer may affirm the  
6 decision or may reverse and remand the matter with recommendations if  
7 substantial rights of the appellant have been prejudiced because the hearing  
8 panel's finding, inferences, conclusions, or decisions are:

9 (A) in violation of constitutional or statutory provisions;

10 (B) in excess of the statutory authority of the hearing panel;

11 (C) made upon unlawful procedure;

12 (D) affected by other error of law;

13 (E) clearly erroneous in view of the evidence on the record as a  
14 whole;

15 (F) arbitrary or capricious; or

16 (G) characterized by abuse of discretion or clearly unwarranted  
17 exercise of discretion.

18 (b) Following appeal or waiver of appeal ~~to the State Board of Education~~, a  
19 party may appeal to the ~~Superior Court in Washington County, which shall~~  
20 ~~review the matter de novo~~ Supreme Court, which shall review the matter on

1 the basis of the records created before the hearing panel and the appellate  
2 officer.

3 Sec. 14. PROFESSIONAL REGULATION; INTERAGENCY REVIEW OF  
4 AGENCY OF EDUCATION DISCIPLINARY PROCESS

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

8 (b) The General Assembly directs that the Agency of Education and the  
9 Office of Professional Regulation cooperatively assess the costs and benefits of  
10 transferring responsibility for educator discipline to the Office of Professional  
11 Regulation, making investigative and disciplinary processes applicable to  
12 educators consistent with those applicable to professions licensed under  
13 3 V.S.A. § 122. The agencies' assessment shall consider whether the transfer  
14 of enforcement and adjudication to the Office of Professional Regulation  
15 would enhance the efficiency and transparency of the regulatory process and  
16 increase public protection.

17 (c) On or before December 15, 2021, the Office of the Professional  
18 Regulation and the Agency of Education shall report to the House and Senate  
19 Committees on Government Operations and on Education with their findings  
20 and any recommendations for legislative action.

1

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

2

Sec. 15. EFFECTIVE DATE

3

This act shall take effect on July 1, 2021.