

# Vermont Secretary of State Office of Professional Regulation

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2021



# A Virtual Tour of the Office of Professional Regulation (OPR)

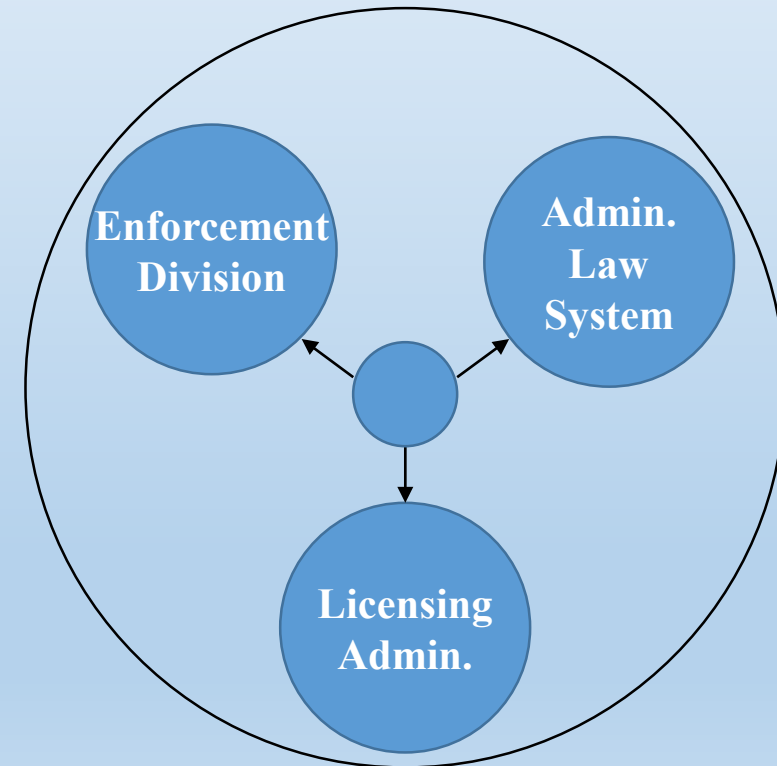
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# Essential Functions of Professional Regulation

## Standards

1. Licensing: Ensure minimum competency standards to practice
2. Enforcement: Hold those that commit unprofessional conduct accountable
3. Adjudication: Afford due process when denying a license or sanctioning a licensee for unprofessional conduct

## Operation



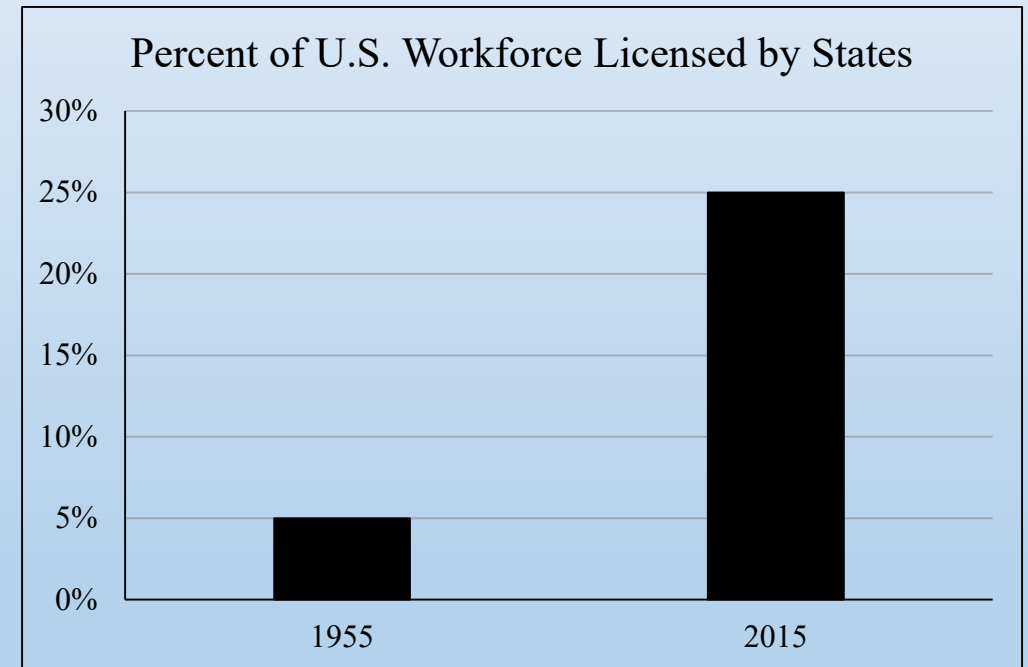
# Professional Regulation in the United States

## Occupational licensing has grown rapidly—yet inconsistently—in recent decades

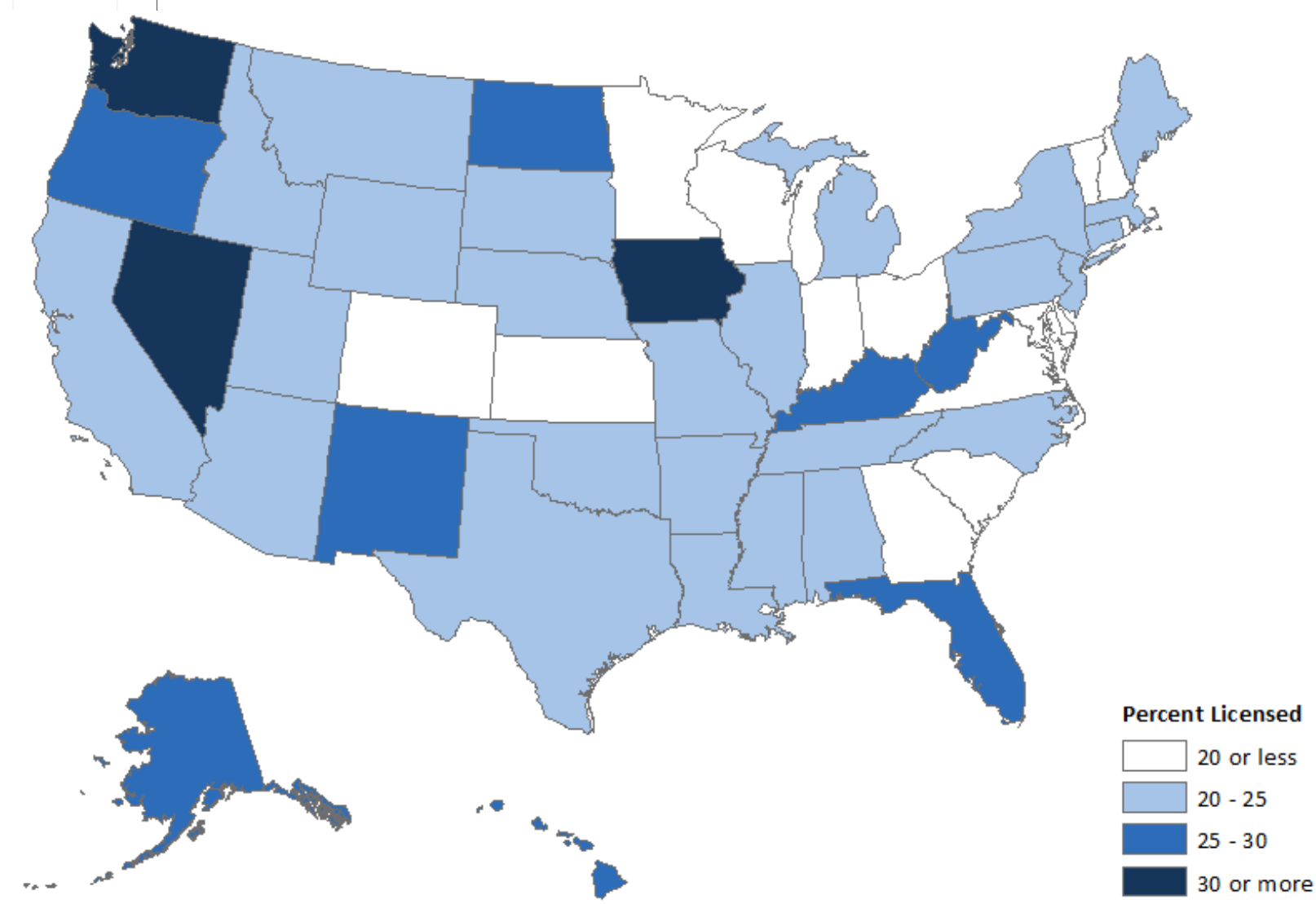
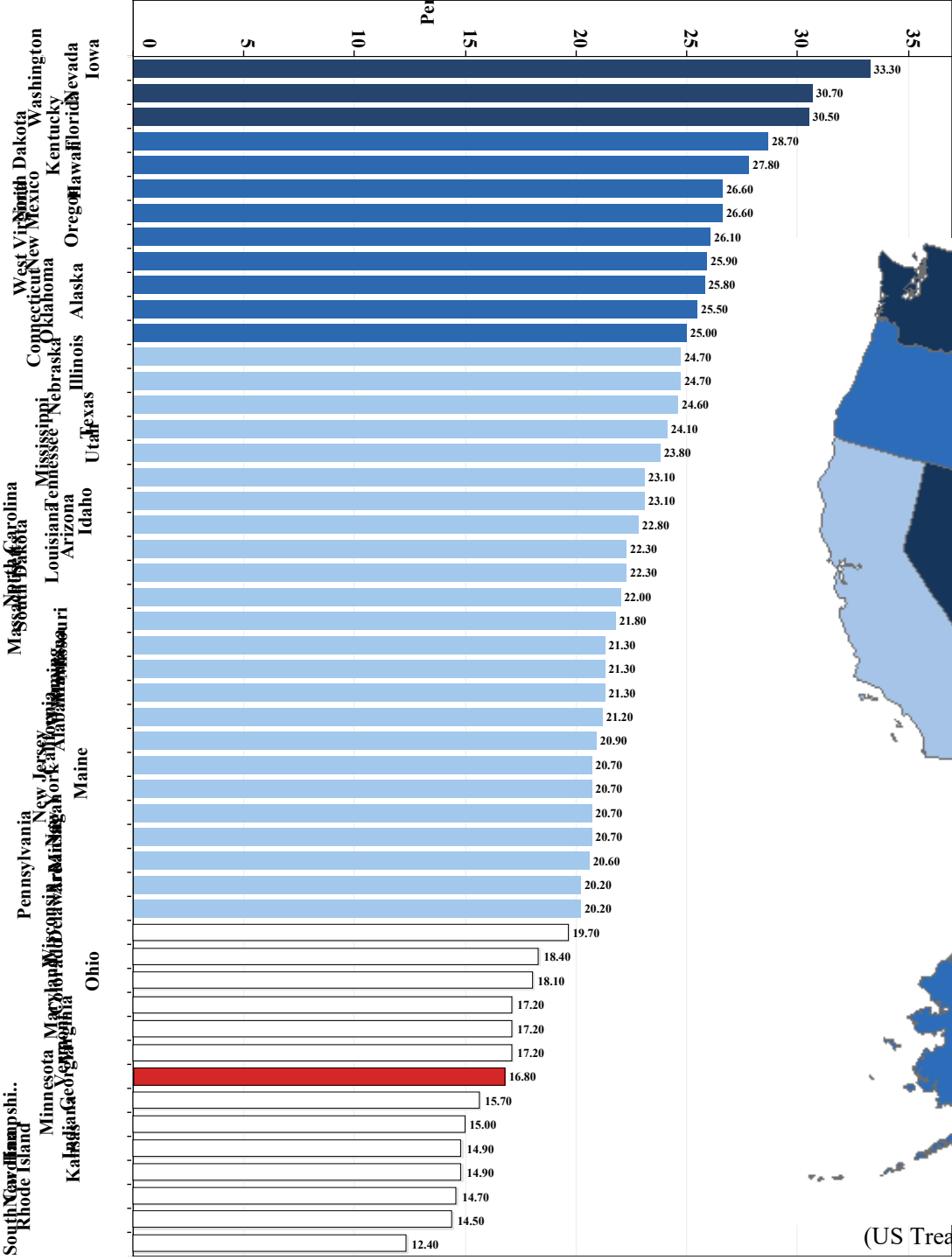
- The proportion of workers required to have a state license has increased by 500% since the 1950s
- 60% of this growth is accounted for by the new professions regulated

## Today, professional regulation varies by State

- Some States license less than 60 occupations, others more than 1,100
- States have different requirements to obtain licensure for the same profession
- States have different scopes of practice for the same profession



# How Vermont Fits In



(US Treasury, CEA & DOL, 2015; Kleiner and Vorotnikov, 2015)

# “Occupational Licensing: A Framework For Policymakers”



July 2015

## Recommendations:

1. Ensure that regulation aims to protect public health and safety;
2. Carefully consider licensure's costs and benefits;
3. Vest responsibility for licensing in a single “umbrella agency” that also conducts sunrise and regulatory reviews; and
4. Reduce barriers to mobility.

# V.S.A. Title 26

## Professions and Occupations

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Chapter 53: Polygraph Examiners

(§§ 2901 - 2910)

Chapter 55: Psychologists

(§§ 3001 - 3018)

**Chapter 57: Review Of Licensing Statutes, Boards, And Commissions**

**(§§ 3101 - 3107)**

Chapter 59: Private Investigative And Security Services

(§§ 3151 - 3183)

Chapter 61: Social Workers

(§§ 3201 - 3213)

Chapter 62: Alcohol And Drug Abuse Counselors

(§§ 3231 - 3242)

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# 26 V.S.A. Chapter 57, § 3101

## Policy and Purpose

(a) It is the policy of the State of Vermont that regulation be imposed upon a profession or occupation **solely for the purpose of protecting the public**. The General Assembly believes that all individuals should be permitted to enter into a profession or occupation unless there is **a demonstrated need for the State to protect the interests of the public** by restricting entry into the profession or occupation.

(b) If such a need is identified, the form of regulation adopted by the State shall be the **least restrictive form of regulation necessary** to protect the public interest. If regulation is imposed, the profession or occupation may be subject to review by the Office of Professional Regulation and the General Assembly **to ensure the continuing need for and appropriateness of such regulation**.



# 26 V.S.A. Chapter 57, § 3105 (Sunrise)

- (a) A profession or occupation shall be regulated by the State only when:
- (1) It can be demonstrated that the unregulated practice of the profession or occupation can clearly harm or endanger the health, safety, or welfare of the public, and the potential for the harm is recognizable and not remote or speculative;
  - (2) The public can reasonably be expected to benefit from an assurance of initial and continuing professional ability; and
  - (3) The public cannot be effectively protected by other means.

# 26 V.S.A. Chapter 57, § 3104 (Sunset)

## Regulatory Review

The review includes, among others, the following inquiries in the discretion of the Office or in response to a Committee request:

- the extent to which a regulatory entity's actions have been in the public interest and consistent with legislative intent
- the extent to which the profession's historical performance, including the actual history of complaints and disciplinary actions in Vermont, indicates that the costs of regulation are justified by the realized benefits to the public
- the extent to which the scope of the existing regulatory scheme for the profession is commensurate to the risk of harm to the public
- the extent to which the profession's education, training, and examination requirements for a license or certification are consistent with the public interest

# 26 V.S.A. Chapter 57, § 3108 (Preliminary Scope Review)

- At the request of Gov Operations Committees or Health Committees or a direct petition, OPR will provide a preliminary assessment of a change in proposed scope of practice.
- The assessment will focus on specifics of the scope change with attention to:
  - the impact to public health, safety, or welfare, including economic impact;
  - the training, supervision or knowledge base of the profession; and,
  - The national trends of the profession.

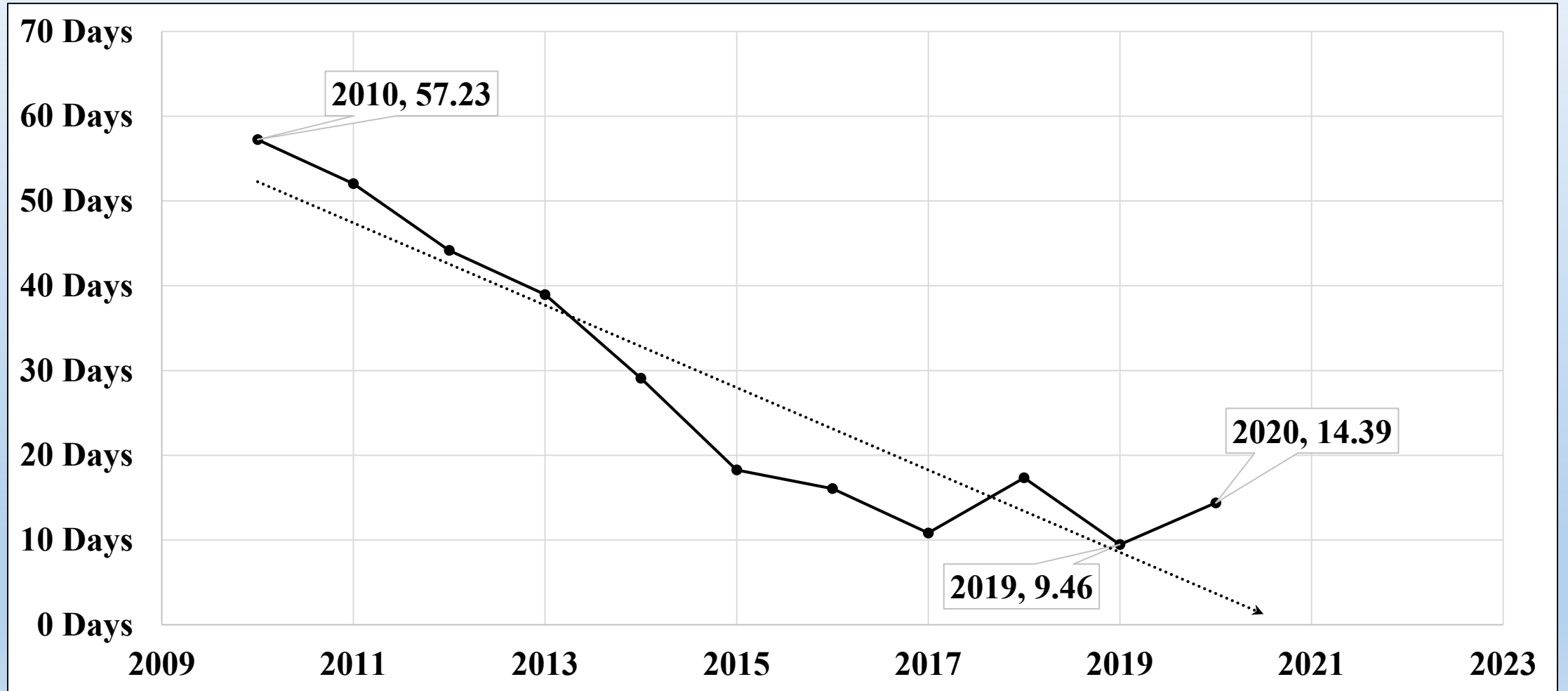
# Office of Professional Regulation

- Oversees 50 professions & 167 occupational specialties - OPR currently licenses approximately 80,000 individuals or entities.
  - Very Diverse – Health Professions, Beauty Professions, Engineering and Accounting.
- Since COVID -19, OPR has helped with temporary licenses, telehealth, closing and reopening guidance.
- OPR has been primarily remote without interruption to customer service.
- OPR protects the public's health, safety and welfare by establishing the minimum qualifications required for licensure and then removing or correcting licensees who commit unprofessional practice.

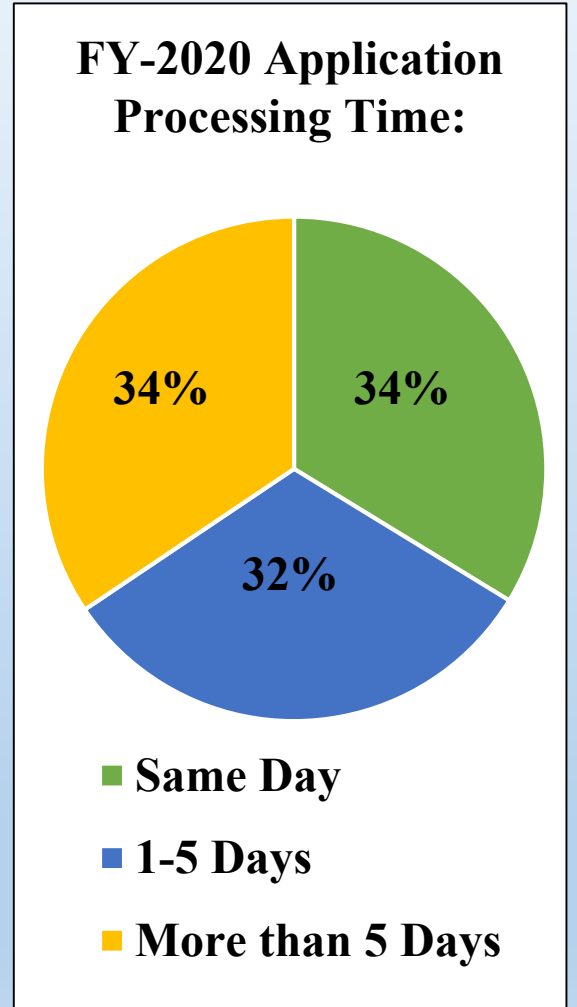
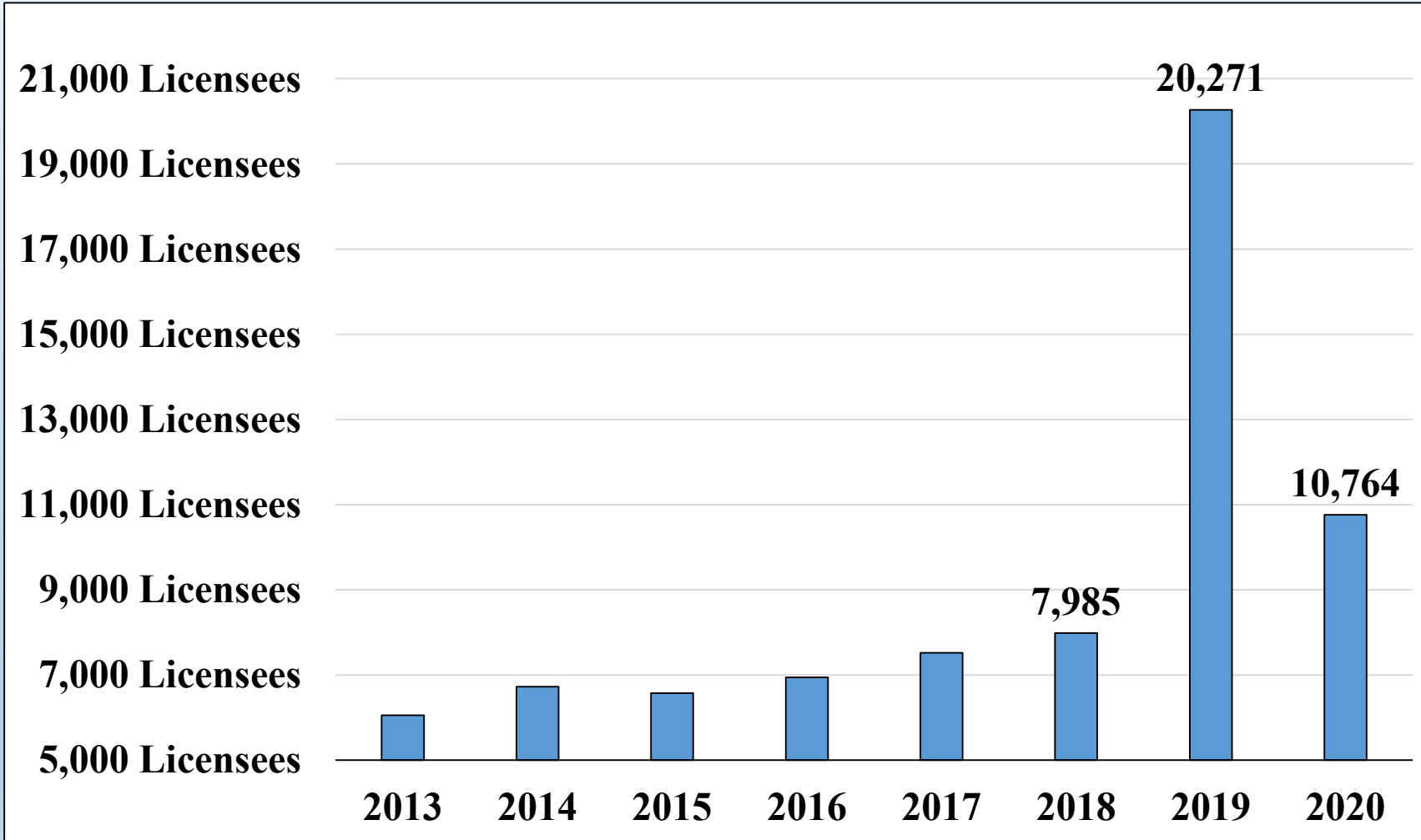
# Office of Professional Regulation

- Processes approximately 8,000 initial licenses annually.
- Renews approximately 50,000 existing licenses biennially
- Investigates approximately 800 conduct complaints annually
- Charges approximately 200 disciplinary cases annually
- Annual Legislative Agenda usually starts on in the House Government Operations Committee. We usually have an annual OPR bill & other related regulatory bills

# OPR Average Initial License Application Processing Duration



# OPR Initial License Applications by Fiscal Year





# Licensing Staff Ratios

- 7 Non-Nursing Licensing Administrators; each responsible for approximately 7,500 licensees
- 2 Nursing Licensing Administrators; jointly responsible for approximately 25,000 nurses.

# ADVISOR/BOARD MODELS

## Advisors

- Recently regulated professions
- Appointed by Secretary of State
- Licensing fees standardized
- Required Director consultation
- Disciplinary hearings go to ALO
- I-Team Enforcement participation
- License application review

## Board Members

- Historically regulated professions
- Appointed by Governor
- Licensing fees not standardized
- Required Director supervision
- Decide disciplinary cases
- I-Team Enforcement participation
- License application review

# Federal Department of Labor Grant

450,000 over original term of 3 years has been extended one more year

- Scope of work:

- Focus on professions that do not require a baccalaureate degree
- Attention to operationalizing outcomes: cost of entry, New Americans , mobility, military, people with criminal background conduct, competition, consumer-side price and access
- Priority given to programs ripe for substantial modernization

- Activities facilitated by grant resources:

Consulting and operational support

Hearings and fact finding

Study of other jurisdictions

Rulemaking

Implementation

# Professions Selected:

## Barbering & Cosmetology – Done

- Adopted new administrative rules based on OPR Bill reforms that reduced education requirements and create more marketplace flexibility

## Private Investigative & Security Services – In process

- Actively in rulemaking; primary goal of is untangling a license from a particular agency allowing for more marketplace portability.

## Pharmacy Technicians – In Process

- Part of a larger strike-and-rewrite of pharmacy rules
- Allows for more portability and a multi-path model accepting of employer-based training

## Funeral Directors – Substantially Completed

- Implementation of the newly created apprenticeship paths.

# Programs Selected

## Nurses – In Process

- Oriented toward legislatively-mandated study of costs and benefits of participation in the Nurse Licensure Compact
- If General Assembly supports participation, grant funds will support implementation.

## Real Estate Brokerage – In Process

- OPR is finishing a Chapter-57 review of an operating program
- Top-to-bottom review will examine utility of testing, continuing education, broker/salesperson distinction, firm regulation
- The goal of regulation should incentivize compliance with fiduciary obligations while promoting price competition

# OPR Legislative Goals for 2021- OPR Bill

Current draft is only 7 pages; however, it is anticipated to grow.

## Title 3 Clean-up items:

- Allows the Director to grant experience from DOL apprenticeships towards experience for licensure
- Adds the unprofessional conduct standard – engaging in a conduct of a character likely to deceive or defraud the public.

## Funeral:

- Expands the definition of a Limited Services Funeral Establishment

## Pharmacy:

- Adds unprofessional conduct standards to the profession.
  - Prohibits quotas or staffing practices that encourage dangerous practices
  - Improves accountability and transparency when pharmacies change ownership

# OPR Legislative Goals for 2021- OPR Bill

## Acupuncture:

- Removes Chinese herbology exam reference since OPR no longer offers that specialty – still allows acupuncturists who are trained in Chinese herbology to use that with their patients

## Tattooing:

- Adds the term microblading (permeant tattooing of eyebrows) to the definition of tattooing – this clears up confusion about who can perform this regulated activity

## Nursing Home Administrators:

- Session law to strike an administrative rule requiring direct supervision of Nursing Home Administrator Trainees – this is responsive to advanced technology and COVID.



# OPR Legislative Goals for 2021- Other Bills

Multi-State Nurse Licensure Compact

Home Contractors

Music Therapist Certification Program – recent sunrise report filed with the Legislature

MMA reform

Governor/SOS Bill with reforms stemming from the Regulatory Review Report filed last session:

- Transfer of Well-Drillers from ANR to OPR
- Transfer of appeal process for AOE to OPR