

1 H.289

2 Introduced by Committee on Government Operations

3 Date:

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

5 Professional Regulation; application process; unprofessional conduct;

6 discipline; pharmacy; acupuncture; tattooists; microblading; nursing

7 home administrators

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

9 miscellaneous amendments to statutes governing professions and occupations

10 regulated by the Office of Professional Regulation.

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

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

14 * * * Office of Professional Regulation * * *

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

16 § 122. OFFICE OF PROFESSIONAL REGULATION

17 The Office of Professional Regulation is created within the Office of the

18 Secretary of State. The Office shall have a director who shall be appointed by

19 the Secretary of State and shall be an exempt employee. The following boards

20 or professions are attached to the Office of Professional Regulation:

1 * * *

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

3 * * *

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

5 * * *

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

7 * * *

8 (50) Well Drillers

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

10 § 123. DUTIES OF OFFICE

11 * * *

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

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

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

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

1 (ii) who left employment to accompany his or her spouse to
2 Vermont.

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

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

12 * * *

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

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

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

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

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

4 * * *

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

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

7 PROFESSIONS; DISCIPLINE PROCESS

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

11 * * *

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

16 * * *

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

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

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

1 (3) ~~Its chair or legal counsel~~ An administrative law officer to convene
2 and conduct prehearing conferences and to preside at hearings for the purpose
3 of making procedural and evidentiary rulings. The board may overrule a ruling
4 by an administrative law officer under this subdivision.

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

10 * * *

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

16 * * *

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

18 § 129a. UNPROFESSIONAL CONDUCT

19 (a) In addition to any other provision of law, the following conduct by a
20 licensee constitutes unprofessional conduct. When that conduct is by an
21 applicant or person who later becomes an applicant, it may constitute grounds

1 for denial of a license or other disciplinary action. Any one of the following
2 items or any combination of items, whether the conduct at issue was
3 committed within or outside the State, shall constitute unprofessional conduct:

4 * * *

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

7 * * *

8 * * * Pharmacy * * *

9 Sec. 5. 26 V.S.A. chapter 36, subchapter 4 is added to read:

10 Subchapter 4. Discipline

11 § 2053. UNPROFESSIONAL CONDUCT; DISCIPLINE

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

13 (1) introduce or enforce policies and procedures related to the provision
14 of pharmacy services in a manner that results in deviation from safe practice;

15 (2) unreasonably prevent or restrict a patient's timely access to patient
16 records or essential pharmacy services;

17 (3) fail to identify and resolve conditions that interfere with a
18 pharmacist's ability to practice with competency and safety or create an
19 environment that jeopardizes patient care, including by failing to provide
20 mandated rest periods; and

1 (4) repeatedly, habitually, or knowingly fail to provide resources
2 appropriate for a pharmacist of reasonable diligence to safely complete
3 professional duties and responsibilities, including:

4 (A) drug utilization review;

5 (B) immunization;

6 (C) counseling;

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

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

10 (b) Drug outlets under common ownership and control constitute a chain.
11 Discipline against any one drug outlet in a chain may be imposed against all
12 drug outlets in a chain, provided the State alleges in a specification of charges
13 and the Board subsequently finds:

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

15 (2) the unprofessional conduct is attributable to pharmacy or pharmacy
16 business-related policies, procedures, systems, or practices of the chain
17 whether or not those practices manifested in unprofessional conduct at each
18 individual location; and

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

1 * * * Acupuncture * * *

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

3 § 3406. EXAMINATION

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

7 (1) Anatomy and physiology.

8 (2) Acupuncture pathology.

9 (3) Acupuncture diagnosis.

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

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

12 (6) Clean needle techniques.

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

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

17 * * * Tattooists and Body Piercers * * *

18 Sec. 7. 26 V.S.A. chapter 79 is amended to read:

19 CHAPTER 79. TATTOOISTS AND BODY PIERCERS

20 § 4101. DEFINITIONS

21 As used in this chapter:

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(6) “Practice of permanent cosmetics” means ~~to place~~ microblading and other practices involving placement of a specific type of tattoo that includes permanent eyeliner, permanent lip color, permanent eyebrows, anatomical reproduction, and permanent eye shadow as well as other specific procedures that may be identified by rule by the Director consistent with the Society of Permanent Cosmetic Professionals’ or its successor group’s guidelines.

* * *

§ 4105. ~~APPRENTICESHIP~~ LICENSE REQUIREMENTS FOR
LICENSURE

* * *

(d) Shops. A shop shall not operate in this State without first registering with the Office of Professional Regulation and paying a fee of \$100.00. Registration shall be in the form required by the Director.

(1) A shop shall not be granted registration unless the shop complies with this chapter and rules adopted under this chapter.

(2) All shops shall designate a person who is licensed under this chapter in the practice of tattooing or body piercing, who shall be responsible for overall cleanliness and sanitation of the shop.

(3) The practice of tattooing or body piercing shall be permitted only in registered shops.

1 (4) The practice of permanent cosmetics may be performed anywhere
2 the practice of tattooing is permitted, on the premises of a health care
3 professional licensed pursuant to this title, or on premises meeting the
4 sanitation requirements of this chapter as determined by the Director or as set
5 forth by rule.

6 (5) Notwithstanding the provisions of this subsection, a cosmetology
7 shop licensed under chapter 6 of this title may provide permanent cosmetics
8 services by a person licensed under this chapter without obtaining a second
9 shop license for the same premises.

10 * * *

11 * * * Nursing Home Administrators * * *

12 Sec. 8. OFFICE OF PROFESSIONAL REGULATION; RULES;

13 SUPERVISION FOR NURSING HOME ADMINISTRATORS IN
14 TRAINING

15 Notwithstanding the provisions of the Office of Professional Regulation
16 Administrative Rule CVR 04-030-180 (Administrative Rules for Nursing
17 Home Administrators), § 2.3(b)(3), and 3 V.S.A. chapter 25 (Vermont
18 Administrative Procedure Act), the Director of the Office of Professional
19 Regulation may approve on-site supervision, remote supervision by electronic
20 means, or a combination of both, by a preceptor as part of the Administrator-
21 in-training program through June 30, 2023. On and after July 1, 2023, the

1 Director's approval of supervision by a preceptor as part of the Administrator-
2 in-training program shall be conducted in accordance with the provisions of
3 Rule CVR 04-030-180 (Administrative Rules for Nursing Home
4 Administrators) pertaining to supervision by a preceptor.

5 * * * Well Drillers * * *

6 Sec. 9. 10 V.S.A. § 1392(c)(1) is amended to read:

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

15 Sec. 10. 26 V.S.A. chapter 107 is added to read:

16 CHAPTER 107. WELL DRILLERS

17 § 5601. DEFINITIONS

18 As used in this chapter:

19 (1) "Department" means the Department of Environmental
20 Conservation.

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

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

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

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

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

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

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

1 § 5602. APPLICATION

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

7 § 125.

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

12 (c) Qualifying individuals shall meet the qualifications established in rules
13 adopted in accordance with this chapter. A qualifying individual shall own or
14 be employed by only one business, governmental entity, or other entity but
15 may contract with more than one business, governmental entity, or other entity
16 to provide well-driller services.

17 § 5603. PROHIBITIONS; PENALTIES

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

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

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

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

12 (b) A person who violates this section shall be subject to the penalties in
13 3 V.S.A. § 127.

14 § 5604. EXEMPTIONS

15 (a) Employees of a business, governmental entity or other entity that is
16 owned by, employs, or contracts with a licensed qualifying individual are not
17 required to obtain a well-driller license to perform the activities set forth in
18 subdivision 5601(6) of this chapter.

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

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

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

6 (3) pump installation and pump servicing; and

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

8 § 5605. DUTIES OF THE DIRECTOR

9 The Director shall:

10 (1) provide general information to applicants for licensure as well
11 drillers;

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

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

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

19 (5) administer fees collected in accordance with this chapter and

20 3 V.S.A. §125;

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

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

6 § 5606. ADVISOR APPOINTEES

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

13 (b) A well driller advisor appointee shall have not fewer than three years'
14 experience as a well driller immediately preceding appointment, shall be
15 licensed as a well driller in Vermont during incumbency, and shall be actively
16 engaged in the practice as a well driller during incumbency.

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

19 § 5607. ELIGIBILITY FOR LICENSURE

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

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

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

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

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

13 § 5608. RECORDS AND REPORTS

14 (a) Each licensee shall keep accurate records and file a report with the
15 Department and the owner of each water well constructed by the licensee that
16 includes the name of the owner; the well and property location; well depth;
17 character of rocks, earth formations, and fluids encountered; and other
18 reasonable and appropriate information the Department may require. Required
19 information shall be set forth in rules established by the Director in
20 collaboration with the Department.

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

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

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

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

19 (d) A licensee drilling or developing a new water well for use as a potable
20 water supply, as that term is defined in 10 V.S.A. § 1972(6), shall provide to

1 the owner of the property to be served by the groundwater source
2 informational materials developed by the Department of Health regarding:

3 (1) the potential health effects of the consumption of contaminated
4 groundwater; and

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

8 § 5609. LICENSE RENEWAL

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

14 § 5610. UNPROFESSIONAL CONDUCT

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

17 Sec. 11. REPEALS

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

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

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

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

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

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

3 Sec. 12. TRANSFER OF RULEMAKING AUTHORITY; TRANSFER OF
4 RULES

5 (a) The statutory authority to adopt rules by the Department of
6 Environmental Conservation pertaining to the licensure of well drillers is
7 transferred from the Department of Environmental Conservation to the Office
8 of Professional Regulation at the Secretary of State's office.

9 (b) All rules pertaining to the licensure of well drillers adopted by the
10 Department of Environmental Conservation under 3 V.S.A. chapter 25 prior to
11 July 1, 2021 shall remain in effect until amended or repealed by the Office of
12 Professional Regulation pursuant to 3 V.S.A. chapter 25.

13 (c) The Office of Professional Regulation shall provide notice of the
14 transfer to the Secretary of State and the Legislative Committee on
15 Administrative Rules in accordance with 3 V.S.A. § 848(d)(2).

16 * * * Agency of Education * * *

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

18 § 1707. APPEAL FROM PANEL ORDER

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

20 (1) A party aggrieved by a final decision of a hearing panel may, within
21 30 days of the decision, appeal that decision by filing a notice of appeal with

1 the administrative officer of the hearing panel who shall refer the case to the
2 ~~State Board of Education~~ Director of the Office of Professional Regulation.

3 The parties may agree to waive this review by written stipulation filed with the
4 ~~State Board of Education~~ administrative officer of the hearing panel. The ~~State~~
5 ~~Board of Education~~ Director of the Office of Professional Regulation shall
6 assign the case to an appellate officer, who shall conduct its a review on the
7 basis of the record created before the hearing panel, and ~~it~~ shall allow the
8 presentation of evidence regarding alleged irregularities in hearing procedure
9 not shown in the record.

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

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

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

18 (C) made upon unlawful procedure;

19 (D) affected by other error of law;

20 (E) clearly erroneous in view of the evidence on the record as a

21 whole;

1 (F) arbitrary or capricious; or

2 (G) characterized by abuse of discretion or clearly unwarranted
3 exercise of discretion.

4 (b) Following appeal or waiver of appeal ~~to the State Board of Education~~, a
5 party may appeal to the ~~Superior Court in Washington County~~, which shall
6 review the matter de novo Supreme Court, which shall review the matter on
7 the basis of the records created before the hearing panel and the appellate
8 officer.

9 Sec. 14. PROFESSIONAL REGULATION; INTERAGENCY REVIEW OF
10 AGENCY OF EDUCATION DISCIPLINARY PROCESS

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

14 (b) The General Assembly directs that the Agency of Education and the
15 Office of Professional Regulation cooperatively assess the costs and benefits of
16 transferring responsibility for educator discipline to the Office of Professional
17 Regulation, making investigative and disciplinary processes applicable to
18 educators consistent with those applicable to professions licensed under
19 3 V.S.A. § 122. The agencies' assessment shall consider whether the transfer
20 of enforcement and adjudication to the Office of Professional Regulation

1 would enhance the efficiency and transparency of the regulatory process and
2 increase public protection.

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

7 * * * Effective Date * * *

8 Sec. 15. EFFECTIVE DATE

9 This act shall take effect on July 1, 2021.