1	H.870
2	Introduced by Committee on Government Operations and Military Affairs
3	Referred to Committee on
4	Date:
5	Subject: Professions and occupations
6	Statement of purpose of bill as introduced: This bill proposes to modify
7	provisions related to the Professional Regulatory Fee Fund. It will expand
8	what constitutes professional misconduct to include impeding an inspection.
9	This bill will modify the scope of practice for estheticians and clarification for
10	their licensing. It will modify the placement of subchapter titles concerning
11	nursing statutes and create consistency in terminology relating to nursing. This
12	bill will create an exemption to osteopath licensing for students and clinical
13	rotations. It will create an exemption to radiology technologist licensing for
14	limited temporary medical licensees. This bill will modify aspects of tattooing,
15	body piercing, and permanent cosmetics licensing, including the number of
16	advisors, shop licensing, and unprofessional conduct. It will clarify the scope
17	of practice for electrologists.

18 An act relating to professions and occupations regulated by the Office of19 Professional Regulation

1	It is hereby enacted by the General Assembly of the State of Vermont:
2	* * * Office of Professional Regulation * * *
3	Sec. 1. 3 V.S.A. § 127 is amended to read:
4	§ 127. UNAUTHORIZED PRACTICE
5	* * *
6	(b)(1) A person practicing a regulated profession without authority or an
7	employer permitting such practice may, upon the complaint of the Attorney
8	General or a State's Attorney or an attorney assigned by the Office of
9	Professional Regulation, be enjoined therefrom by the Superior Court where
10	the violation occurred or the Washington County Superior Court and may be
11	assessed a civil penalty of not more than \$5,000.00.
12	* * *
13	(3)(A) A civil penalty imposed by a board or administrative law officer
14	under this subsection (b) shall be deposited in the Professional Regulatory Fee
15	Fund established in section 124 of this chapter for the purpose of providing
16	education and training for board members and advisor appointees.
17	* * *
18	Sec. 2. 3 V.S.A. § 129a is amended to read:
19	§ 129a. UNPROFESSIONAL CONDUCT
20	(a) In addition to any other provision of law, the following conduct by a
21	licensee constitutes unprofessional conduct. When that conduct is by an

1	applicant or person who later becomes an applicant, it may constitute grounds
2	for denial of a license or other disciplinary action. Any one of the following
3	items or any combination of items, whether the conduct at issue was
4	committed within or outside the State, shall constitute unprofessional conduct:
5	* * *
6	(16)(A) Impeding an investigation or inspection under this chapter or
7	unreasonably failing to reply, cooperate, or produce lawfully requested records
8	in relation to such investigation or inspection.
9	* * *
10	* * * Barbers and Cosmetologists * * *
11	Sec. 3. 26 V.S.A. § 271 is amended to read:
12	§ 271. DEFINITIONS
13	As used in this chapter:
14	* * *
15	(4)(A) "Esthetics" means massaging, cleansing, stimulating, manipulating,
16	beautifying, or otherwise working on the scalp, face, or neck by using cosmetic
17	preparations, antiseptics, tonics, lotions, or creams services related to skin-care
18	treatments to enhance or improve the appearance of the skin, including:
19	(i) cleansing, toning, stimulating, manipulating, beautifying,
20	exfoliating, or performing any similar procedure on the human body using only

1	cosmetic preparations, hands, mechanical or electrical apparatus or appliances,
2	tonics, lotions, creams, or makeup;
3	(ii) beautifying lashes and brows; and
4	(iii) removing unwanted hair using manual and mechanical means.
5	(B) "Esthetics" does not include any of the following:
6	(i) the sale or application of cosmetics to customers in retail stores or
7	customers' homes <u>:</u>
8	(ii) any practice, activity, or treatment that constitutes the practice of
9	medicine, as defined in section 1311 of this title, including injections of any
10	substance and the use of lasers; or
11	(iii) the application of permanent cosmetics.
12	* * *
13	(7) "Shop" means a facility or facilities regularly used to offer or provide
14	barbering or, cosmetology, esthetics, or manicuring.
15	Sec. 4. 26 V.S.A. § 272 is amended to read:
16	§ 272. PROHIBITIONS; OFFENSES
17	(a) A person shall not practice or attempt to practice barbering or,
18	cosmetology, esthetics, or manicuring or use in connection with the person's
19	name any letters, words, title, or insignia indicating or implying that the person
20	is a barber or, cosmetologist, esthetician, or manicurist unless the person is
21	licensed in accordance with this chapter.

1	(b) A person who owns or controls a shop or school of barbering or.
2	cosmetology, esthetics, or manicuring shall not permit the practice of barbering
3	or, cosmetology, esthetics, or manicuring unless the shop or school is
4	registered in accordance with this chapter.
5	* * *
6	Sec. 5. 26 V.S.A. § 276 is amended to read:
7	§ 276. GENERAL POWERS AND DUTIES OF THE DIRECTOR
8	(a) The Director shall:
9	(1) adopt rules that:
10	(A) prescribe sanitary and safety standards for shops, schools, and
11	other facilities used for the practice of barbering and, cosmetology, esthetics,
12	or manicuring;
13	(B) prescribe safe and sanitary practices for the performance of
14	activities related to the practice of barbering and, cosmetology, esthetics, or
15	manicuring;
16	* * *
17	(b)(1) The Director may inspect shops and schools and other places used
18	for the practice of barbering and, cosmetology, esthetics, or manicuring.
19	* * *

1	Sec. 6. 26 V.S.A. § 282 is amended to read:
2	§ 282. SHOP; LICENSE
3	* * *
4	(b) The practices of barbering and, cosmetology, esthetics, or manicuring
5	shall be permitted only in shops licensed by the Director, except as provided in
6	sections 273 and 281 of this chapter and the rules of the Director.
7	Sec. 7. 26 V.S.A. § 283 is amended to read:
8	§ 283. EXAMINATION
9	* * *
10	(b)(1) The examination for a license shall include both practical
11	demonstrations and written or oral tests examinations approved by the Director
12	by rule in the area of practices for which a license is applied and other related
13	studies or subjects as the Director may determine necessary.
14	* * *
15	Sec. 8. 26 V.S.A. § 284 is amended to read:
16	§ 284. ISSUANCE OF LICENSE
17	* * *
18	(b) The Director shall issue a license to the person who owns or controls a
19	shop or school of barbering or, cosmetology, esthetics, or manicuring who has
20	paid the required fee and is in compliance with the rules of the Director and the
21	provisions of this chapter.

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1	* * *
2	* * * Nursing * * *
3	Sec. 9. 26 V.S.A. chapter 28 is amended to read:
4	CHAPTER 28. NURSING
5	Subchapter 1. General Provisions
6	* * *
7	§ 1574. POWERS AND DUTIES
8	(a) In addition to the powers granted by 3 V.S.A. § 129, the Board shall:
9	* * *
10	(7) Adopt rules setting active practice continued competency and
11	ongoing practice requirements for licensure and renewal.
12	* * *
13	Subchapter 2. Advanced Practice Registered Nurses
14	* * *
15	Subchapter 3. Registered Nurses and Practical Nurses
16	§ 1621. REGISTERED NURSE LICENSURE BY EXAMINATION
17	* * *
18	Subchapter 4. Nursing Assistants
19	§ 1622. REGISTERED NURSE LICENSURE BY ENDORSEMENT
20	* * *

1	§ 1624. REGISTERED NURSE LICENSE RENEWAL
2	To renew a license, a registered nurse shall meet active practice continued
3	competency requirements set by the Board by rule.
4	* * *
5	§ 1628. PRACTICAL NURSE LICENSE RENEWAL
6	To renew a license, a practical nurse shall meet active practice continued
7	competency requirements set by the Board by rule.
8	* * *
9	Subchapter 4. Nursing Assistants
10	§ 1641. DEFINITIONS
11	* * *
12	§1645. RENEWAL
13	(a) To renew a license, a nursing assistant shall meet active practice
14	ongoing practice requirements set by the Board by rule.
15	(b) The Board shall credit as active practice ongoing practice those
16	activities, regardless of title or obligation to hold a license, that reasonably tend
17	to reinforce the training and skills of a licensee.
18	* * *
19	Subchapter 5. Nurse Licensure Compact
20	* * *

1	* * * Osteopathy * * *
2	Sec. 10. 26 V.S.A. § 1753 is amended to read:
3	§ 1753. EXEMPTIONS
4	(a) The provisions of subdivision 1752(a)(1) of this title, relating to
5	practice, shall not apply to the following persons acting within the scope of
6	their respective practices:
7	* * *
8	(4) A student who:
9	(A) is enrolled in an accredited educational program that leads to the
10	issuance of a degree that would satisfy the educational requirement for a
11	profession licensed under this chapter;
12	(B) is engaged in an organized clinical training program;
13	(C) engages in acts constituting the practice of medicine while under
14	the supervision of a Vermont-licensed or Vermont-certified health care
15	professional who is qualified to supervise any acts by the student that
16	constitute the practice of medicine; and
17	(D) is not a postgraduate trainee who is otherwise required to obtain a
18	training license.
19	* * *

1	* * * Radiology * * *
2	Sec. 11. 26 V.S.A. § 2801 is amended to read:
3	§ 2801. DEFINITIONS
4	As used in this chapter:
5	* * *
6	(6) "Licensed practitioner" means a person licensed under this title to
7	practice medicine, osteopathy, advanced practice registered nursing, dentistry,
8	podiatry, naturopathic medicine, or chiropractic, and includes holders of
9	limited temporary licenses to practice medicine.
10	* * *
11	Sec. 12. 26 V.S.A. § 2803 is amended to read:
12	§ 2803. EXEMPTIONS
13	The prohibitions in section 2802 of this chapter shall not apply to dentists
14	licensed under chapter 12 of this title and actions within their scope of practice
15	nor to:
16	(1) Licensed practitioners acting within the scope of practice for their
17	licensed field, including holders of limited temporary licenses to practice
18	medicine as authorized by the Board of Medical Practice, provided that their
19	practice acts and rules adopted thereunder have been expressly found by the
20	Director, in consultation with advisors appointed under this chapter, to match

1	or surpass the training in radiation safety and proper radiation practices
2	required by this chapter and rules adopted under this chapter.
3	* * *
4	* * * Tattooists and Body Piercers * * *
5	Sec. 13. 26 V.S.A. § 4101 is amended to read:
6	§ 4101. DEFINITIONS
7	As used in this chapter:
8	* * *
9	(3) "Disciplinary action" includes any action taken by an administrative
10	law officer against a licensed tattooist or applicant premised on a finding of
11	unprofessional conduct. Disciplinary action includes all appropriate remedies,
12	including denial of an application for or renewal of a license, suspension or
13	revocation of a license, limiting or conditioning of a license, issuing
14	reprimands or warnings, and adopting consent orders. [Repealed.]
15	* * *
16	(8) "Special panel" means a panel established pursuant to 3 V.S.A.
17	§ 129(j). [Repealed.]
18	(9) "Shop" means a facility regularly used to offer or perform the
19	practice of tattooing or, body piercing, or permanent cosmetics.

1	Sec. 14. 26 V.S.A. § 4103 is amended to read:
2	§ 4103. DIRECTOR; FUNCTION; COMMISSIONER OF HEALTH;
3	RULES
4	* * *
5	(c) The Director may adopt rules necessary to perform $\frac{\text{his or her}}{\text{the}}$
6	Director's duties pursuant to this chapter. These rules may include:
7	(1) provisions governing tattooist, body piercer, and permanent
8	cosmetologist apprenticeships; and
9	(2) requirements for the supervision and temporary licensure of tattoo
10	artists, body piercers, and permanent cosmetologists, and shops as may be
11	necessary to allow this State to be a venue for appropriately regulated special
12	events such as conventions, festivals, or professional conferences.
13	* * *
14	Sec. 15. 26 V.S.A. § 4104 is amended to read:
15	§ 4104. ADVISOR APPOINTEES
16	(a)(1) The Secretary of State shall appoint: <u>one licensed operator practicing</u>
17	tattooing, one licensed operator practicing body piercing, and one licensed
18	operator practicing permanent cosmetics to serve as advisors in matters
19	relating to tattooing, body piercing, and permanent cosmetics.
20	(A) a professional in the field of public health and medicine from a
21	list of persons provided by the Commissioner of Health; and

1	(B) two licensed operators who
2	(2) Advisors shall have been practicing tattooing and, body piercing, or
3	permanent cosmetics for at least the three years immediately preceding
4	appointment and who shall actively be engaged in the practice of tattooing and,
5	body piercing, and permanent cosmetics in Vermont during incumbency.
6	(2) The appointees shall be appointed to serve as advisors in matters
7	relating to tattooing, permanent cosmetics, and body piercing.
8	(3) The appointees shall be appointed as set forth in 3 V.S.A. 129b.
9	* * *
10	Sec. 16. 26 V.S.A. § 4105 is amended to read:
11	§ 4105. LICENSE REQUIREMENTS
12	* * *
13	(b) Tattooists and body piercers.
14	(1)(A) As a prerequisite to licensure, a tattooist or body piercer applicant
15	shall provide proof of an apprenticeship of at least 1,000 hours of experience
16	obtained within two calendar years working under the direct supervision of a
17	body piercer or tattooist licensed and in good standing with this State or the
18	state in which he or she the body piercer or tattooist is regulated, and who has
19	been in practice a minimum of three years.
20	(B) Proof may be in the form of a sworn affidavit from the
21	supervising tattooist or body piercer, including information as the Director may

1	reasonably require on forms provided by the Director. The Director may adopt
2	rules to require additional information from applicants to prove completion of
3	an apprenticeship.
4	* * *
5	(3) Apprentices shall contact register with the Office for the appropriate
6	forms prior to beginning the apprenticeship in accordance with rules adopted
7	by the Director.
8	* * *
9	(c) Permanent cosmetologists.
10	(1)(A) As a prerequisite to licensure for the practice of permanent
11	cosmetics, an applicant shall provide proof of a course of approved study
12	lasting at least 60 hours.
13	(B)(i) In addition, the applicant shall obtain at least 40 hours of
14	practical experience, within two calendar years preceding the application,
15	working under the direct supervision of a tattooist or permanent cosmetologist
16	licensed and in good standing with this State or the state in which he or she the
17	tattooist or permanent cosmetologist is regulated, and who has been in practice
18	a minimum of three years.
19	(ii) Proof may be in the form of a sworn affidavit from the
20	supervising permanent cosmetologist or tattooist, including information as the
21	Director may reasonably require on forms provided by the Director. The

1	Director may adopt rules to require additional information from applicants to
2	prove completion of an apprenticeship.
3	* * *
4	(3) Prior to training and obtaining practical experience, applicants
5	shall contact <u>register with</u> the Office and submit the appropriate forms <u>in</u>
6	accordance with rules adopted by the Director.
7	* * *
8	(d) Shops. A shop shall not operate in this State without first registering
9	with the Office of Professional Regulation and paying a fee of \$100.00.
10	Registration shall be in the form required by the Director.
11	* * *
12	(2) All shops shall designate a person who is licensed under this chapter
13	in the practice of tattooing or body piercing at least one of the professions
14	being practiced in the shop, be it tattooing, body piercing, or permanent
15	cosmetics, who shall be responsible for overall cleanliness and sanitation of the
16	shop.
17	(3) The practice of tattooing or body piercing shall be permitted only in
18	registered tattooing and body piercing shops.
19	(4) The practice of permanent cosmetics may be performed shall be
20	permitted only in:
21	(A) a licensed permanent cosmetic shop;

1	(B) a cosmetology shop licensed under chapter 6 of this title;
2	(C) anywhere the practice of tattooing is permitted;
3	(D) on the premises of a health care professional licensed pursuant to
4	this title , or ; and
5	(\underline{E}) on premises meeting the sanitation requirements of this chapter as
6	determined by the Director or as set forth by rule.
7	(5) Notwithstanding the provisions of this subsection, <u>a tattoo shop</u>
8	licensed under this chapter or a cosmetology shop licensed under chapter 6 of
9	this title may provide permanent cosmetics services by a person licensed under
10	this chapter without obtaining a second an additional shop license for the same
11	premises, provided that the Director may require by rule permanent
12	cosmetologists to report all locations of their practice to the Director as a
13	condition of licensure or license renewal.
14	(6) All registered shops shall report to the Director within 48 hours after
15	a change of location. The Director may require shops to undergo a new
16	inspection prior to beginning the practice of tattooing, body piercing, or
17	permanent cosmetics at the new location. The Director may permit a relocated
18	shop to continue operation under its existing registration.
19	* * *

1	Sec. 17. 26 V.S.A. § 4108 is amended to read:
2	§ 4108. UNPROFESSIONAL CONDUCT
3	* * *
4	(b) Unprofessional conduct means the following conduct and conduct set
5	forth in 3 V.S.A. § 129a:
6	(1) Using dishonest or misleading advertising.
7	(2) Addiction to narcotics, habitual drunkenness, or rendering
8	professional services to a client if the operator is intoxicated or under the
9	influence of drugs.
10	(3)(2) Sexual harassment of a client.
11	(4)(3) Tattooing or body piercing a minor in violation of the provisions
12	of section 4102 of this title.
13	(c) After hearing and upon a finding of unprofessional conduct, an
14	administrative law officer may take disciplinary action against a licensed or
15	registered operator or applicant.
16	* * * Electrologists * * *
17	Sec. 18. 26 V.S.A. § 4402 is amended to read:
18	§ 4402. DEFINITIONS
19	As used in this chapter:
20	* * *

1	(3) "Electrology" means the removal of hair by electrical current using
2	needle/probe electrode-type epilation, which would include electrolysis (direct
3	current/DC), thermolysis (alternating current/AC), or a combination of both
4	(superimposed or sequential blend). "Electrology" includes, solely for the
5	purpose of hair removal, the use of lasers approved by the U.S. Food and Drug
6	Administration for electrology by electrologists possessing a special license
7	endorsement set forth in subsection 4404(d) of this chapter. "Electrology"
8	does not include any practice, activity, or treatment that constitutes the practice
9	of medicine, as defined in section 1311 of this title, including injections of any
10	substance or the practices of permanent cosmetics as defined in section 4101 of
11	this title.
12	* * *
13	* * * Effective Date * * *
14	Sec. 19. EFFECTIVE DATE
15	This act shall take effect on passage.