

1 Introduced by Committee on Government Operations and Military Affairs

2 Referred to Committee on

3 Date:

4 Subject: Professions and occupations

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

17 An act relating to professions and occupations regulated by the Office of  
18 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;

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 \* \* \*

20 Sec. 6. 26 V.S.A. § 282 is amended to read:

21 § 282. SHOP; LICENSE

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(b) The practices of barbering ~~and~~, cosmetology, esthetics, or manicuring shall be permitted only in shops licensed by the Director, except as provided in sections 273 and 281 of this chapter and the rules of the Director.

Sec. 7. 26 V.S.A. § 283 is amended to read:

§ 283. EXAMINATION

\* \* \*

(b)(1) The examination for a license shall include ~~both practical demonstrations and written or oral tests~~ examinations approved by the Director by rule in the area of practices for which a license is applied and other related studies or subjects as the Director may determine necessary.

\* \* \*

Sec. 8. 26 V.S.A. § 284 is amended to read:

§ 284. ISSUANCE OF LICENSE

\* \* \*

(b) The Director shall issue a license to the person who owns or controls a shop or school of barbering ~~or~~, cosmetology, esthetics, or manicuring who has paid the required fee and is in compliance with the rules of the Director and the provisions of this chapter.

\* \* \*

\* \* \* Nursing \* \* \*

1 Sec. 9. 26 V.S.A. chapter 28 is amended to read:

2 CHAPTER 28. NURSING

3 Subchapter 1. General Provisions

4 \* \* \*

5 § 1574. POWERS AND DUTIES

6 (a) In addition to the powers granted by 3 V.S.A. § 129, the Board shall:

7 \* \* \*

8 (7) Adopt rules setting ~~active practice~~ continued competency and  
9 ongoing practice requirements for licensure and renewal.

10 \* \* \*

11 Subchapter 2. Advanced Practice Registered Nurses

12 \* \* \*

13 Subchapter 3. Registered Nurses and Practical Nurses

14 § 1621. REGISTERED NURSE LICENSURE BY EXAMINATION

15 \* \* \*

16 ~~Subchapter 4. Nursing Assistants~~

17 § 1622. REGISTERED NURSE LICENSURE BY ENDORSEMENT

18 \* \* \*

19 § 1624. REGISTERED NURSE LICENSE RENEWAL

20 To renew a license, a registered nurse shall meet ~~active practice~~ continued  
21 competency requirements set by the Board by rule.

1 \* \* \*

2 § 1628. PRACTICAL NURSE LICENSE RENEWAL

3 To renew a license, a practical nurse shall meet ~~active practice~~ continued  
4 competency requirements set by the Board by rule.

5 \* \* \*

6 Subchapter 4. Nursing Assistants

7 § 1641. DEFINITIONS

8 \* \* \*

9 § 1645. RENEWAL

10 (a) To renew a license, a nursing assistant shall meet ~~active practice~~  
11 ongoing practice requirements set by the Board by rule.

12 (b) The Board shall credit as ~~active practice~~ ongoing practice those  
13 activities, regardless of title or obligation to hold a license, that reasonably tend  
14 to reinforce the training and skills of a licensee.

15 \* \* \*

16 Subchapter 5. Nurse Licensure Compact

17 \* \* \*

18 \* \* \* Osteopathy \* \* \*

19 Sec. 10. 26 V.S.A. § 1753 is amended to read:

20 § 1753. EXEMPTIONS



1 (a) The provisions of subdivision 1752(a)(1) of this title, relating to  
2 practice, shall not apply to the following persons acting within the scope of  
3 their respective practices:

4 \* \* \*

5 (4) A student who:

6 (A) is enrolled in an accredited educational program that leads to the  
7 issuance of a degree that would satisfy the educational requirement for a  
8 profession licensed under this chapter;

9 (B) is engaged in an organized clinical training program;

10 (C) engages in acts constituting the practice of medicine while under  
11 the supervision of a Vermont-licensed or Vermont-certified health care  
12 professional who is qualified to supervise any acts by the student that  
13 constitute the practice of medicine; and

14 (D) is not a postgraduate trainee who is otherwise required to obtain a  
15 training license.

16 \* \* \*

17 \* \* \* Radiology \* \* \*

18 Sec. 11. 26 V.S.A. § 2801 is amended to read:

19 § 2801. DEFINITIONS

20 As used in this chapter:

21 \* \* \*



1 As used in this chapter:

2 \* \* \*

3 (3) ~~“Disciplinary action” includes any action taken by an administrative~~  
4 ~~law officer against a licensed tattooist or applicant premised on a finding of~~  
5 ~~unprofessional conduct. Disciplinary action includes all appropriate remedies,~~  
6 ~~including denial of an application for or renewal of a license, suspension or~~  
7 ~~revocation of a license, limiting or conditioning of a license, issuing~~  
8 ~~reprimands or warnings, and adopting consent orders. [Repealed.]~~

9 \* \* \*

10 (8) ~~“Special panel” means a panel established pursuant to 3 V.S.A.~~  
11 ~~§ 129(j). [Repealed.]~~

12 (9) “Shop” means a facility regularly used to offer or perform the  
13 practice of tattooing ~~or~~ body piercing, or permanent cosmetics.

14 Sec. 14. 26 V.S.A. § 4103 is amended to read:

15 § 4103. DIRECTOR; FUNCTION; COMMISSIONER OF HEALTH;

16 RULES

17 \* \* \*

18 (c) The Director may adopt rules necessary to perform ~~his or her~~ the  
19 Director’s duties pursuant to this chapter. These rules may include:

20 (1) provisions governing tattooist, body piercer, and permanent  
21 cosmetologist apprenticeships; and

1           (2) requirements for the supervision and temporary licensure of tattoo  
2 artists, body piercers, ~~and~~ permanent cosmetologists, and shops as may be  
3 necessary to allow this State to be a venue for appropriately regulated special  
4 events such as conventions, festivals, or professional conferences.

5   \* \* \*

6           Sec. 15. 26 V.S.A. § 4104 is amended to read:

7           § 4104. ADVISOR APPOINTEES

8           (a)(1) The Secretary of State shall appoint: one licensed operator practicing  
9 tattooing, one licensed operator practicing body piercing, and one licensed  
10 operator practicing permanent cosmetics to serve as advisors in matters  
11 relating to tattooing, body piercing, and permanent cosmetics.

12                     ~~(A) a professional in the field of public health and medicine from a~~  
13 ~~list of persons provided by the Commissioner of Health; and~~

14                     ~~(B) two licensed operators who~~

15           (2) Advisors shall have been practicing tattooing ~~and~~, body piercing, or  
16 permanent cosmetics for at least the three years immediately preceding  
17 appointment and ~~who~~ shall actively be engaged in the practice of tattooing ~~and~~,  
18 body piercing, and permanent cosmetics in Vermont during incumbency.

19           ~~(2) The appointees shall be appointed to serve as advisors in matters~~  
20 ~~relating to tattooing, permanent cosmetics, and body piercing.~~

21           (3) The appointees shall be appointed as set forth in 3 V.S.A. § 129b.

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Sec. 16. 26 V.S.A. § 4105 is amended to read:

§ 4105. LICENSE REQUIREMENTS

\* \* \*

(b) Tattoois and body piercers.

(1)(A) As a prerequisite to licensure, a tattooist or body piercer applicant shall provide proof of an apprenticeship of at least 1,000 hours of experience obtained within two calendar years working under the direct supervision of a body piercer or tattooist licensed and in good standing with this State or the state in which ~~he or she~~ the body piercer or tattooist is regulated, and who has been in practice a minimum of three years.

(B) ~~Proof may be in the form of a sworn affidavit from the supervising tattooist or body piercer, including information as the Director may reasonably require on forms provided by the Director.~~ The Director may adopt rules to require additional information from applicants to prove completion of an apprenticeship.

\* \* \*

(3) Apprentices shall ~~contact~~ register with the Office for the appropriate ~~forms~~ prior to beginning the apprenticeship in accordance with rules adopted by the Director.

\* \* \*

1 (c) Permanent cosmetologists.

2 (1)(A) As a prerequisite to licensure for the practice of permanent  
3 cosmetics, an applicant shall provide proof of a course of approved study  
4 lasting at least 60 hours.

5 (B)(i) In addition, the applicant shall obtain at least 40 hours of  
6 practical experience, within two calendar years preceding the application,  
7 working under the direct supervision of a tattooist or permanent cosmetologist  
8 licensed and in good standing with this State or the state in which ~~he or she~~ the  
9 tattooist or permanent cosmetologist is regulated, and who has been in practice  
10 a minimum of three years.

11 (ii) ~~Proof may be in the form of a sworn affidavit from the~~  
12 ~~supervising permanent cosmetologist or tattooist, including information as the~~  
13 ~~Director may reasonably require on forms provided by the Director. The~~  
14 Director may adopt rules to require additional information from applicants to  
15 prove completion of an apprenticeship.

16 \* \* \*

17 (3) Prior to training and obtaining practical experience, applicants  
18 shall ~~contact~~ register with the Office and ~~submit the appropriate forms in~~  
19 accordance with rules adopted by the Director.

20 \* \* \*

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

4 \* \* \*

5 (2) All shops shall designate a person who is licensed under this chapter  
6 ~~in the practice of tattooing or body piercing~~ at least one of the professions  
7 being practiced in the shop, be it tattooing, body piercing, or permanent  
8 cosmetics, who shall be responsible for overall cleanliness and sanitation of the  
9 shop.

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

12 (4) The practice of permanent cosmetics ~~may be performed~~ shall be  
13 permitted only in:

14 (A) a licensed permanent cosmetic shop;

15 (B) a cosmetology shop licensed under chapter 6 of this title;

16 (C) anywhere the practice of tattooing is permitted;

17 (D) on the premises of a health care professional licensed pursuant to  
18 this title, or; and

19 (E) on premises meeting the sanitation requirements of this chapter as  
20 determined by the Director or as set forth by rule.

1 (5) Notwithstanding the provisions of this subsection, a tattoo shop  
2 licensed under this chapter or a cosmetology shop licensed under chapter 6 of  
3 this title may provide permanent cosmetics services by a person licensed under  
4 this chapter without obtaining a second an additional shop license for the same  
5 premises, provided that the Director may require by rule permanent  
6 cosmetologists to report all locations of their practice to the Director as a  
7 condition of licensure or license renewal.

8 (6) All registered shops shall report to the Director within 48 hours after  
9 a change of location. The Director may require shops to undergo a new  
10 inspection prior to beginning the practice of tattooing, body piercing, or  
11 permanent cosmetics at the new location. The Director may permit a relocated  
12 shop to continue operation under its existing registration.

13 \* \* \*

14 Sec. 17. 26 V.S.A. § 4108 is amended to read:

15 § 4108. UNPROFESSIONAL CONDUCT

16 \* \* \*

17 (b) Unprofessional conduct means the following conduct and conduct set  
18 forth in 3 V.S.A. § 129a:

19 (1) Using dishonest or misleading advertising.



1           ~~(2) Addiction to narcotics, habitual drunkenness, or rendering~~  
2           ~~professional services to a client if the operator is intoxicated or under the~~  
3           ~~influence of drugs.~~

4           ~~(3)(2) Sexual harassment of a client.~~

5           ~~(4)(3) Tattooing or body piercing a minor in violation of the provisions~~  
6           ~~of section 4102 of this title.~~

7           ~~(e) After hearing and upon a finding of unprofessional conduct, an~~  
8           ~~administrative law officer may take disciplinary action against a licensed or~~  
9           ~~registered operator or applicant.~~

10   \* \* \* Electrologists \* \* \*

11           Sec. 18. 26 V.S.A. § 4402 is amended to read:

12           § 4402. DEFINITIONS

13           As used in this chapter:

14   \* \* \*

15           (3) “Electrology” means the removal of hair by electrical current using  
16           needle/probe electrode-type epilation, which would include electrolysis (direct  
17           current/DC), thermolysis (alternating current/AC), or a combination of both  
18           (superimposed or sequential blend). “Electrology” includes, solely for the  
19           purpose of hair removal, the use of lasers approved by the U.S. Food and Drug  
20           Administration for electrology by electrologists possessing a special license  
21           endorsement set forth in subsection 4404(d) of this chapter. “Electrology”

1 does not include any practice, activity, or treatment that constitutes the practice  
2 of medicine, as defined in section 1311 of this title, including injections of any  
3 substance or the practices of permanent cosmetics as defined in section 4101 of  
4 this title.

5 \* \* \*

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

7 Sec. 19. EFFECTIVE DATE

8 This act shall take effect on passage.