

1 H.588

2 Introduced by Representative Birong of Vergennes

3 Referred to Committee on

4 Date:

5 Subject: Professions and occupations

6 Statement of purpose of bill as introduced: This bill proposes to explicitly

7 enable the Office of Professional Regulation to rescind licenses and enforce

8 against attempted fraudulent or deceptive procurement or use of a license. It

9 will also require professional regulation board members to be adults. This bill

10 modifies the uniform process for foreign credential verification and license

11 denials. It will create a limited academic dentist license. This bill modifies

12 regulations for massage therapist establishments. It will eliminate the advisory

13 committee on midwifery that reports to the Director of the Office of

14 Professional Regulation and the Commissioner of Health, and changes the

15 license renewal requirement for midwives to submit individual practice data to

16 a discretionary decision to be made by the Director. This bill modifies

17 recommendation requirements for pharmacists prescribing vaccinations for

18 patients 18 years of age or older and pharmacy technicians administering

19 immunizations. The bill will modify the definition of “practice of funeral

20 service” to include disposing of dead human bodies by cremation, alkaline

21 hydrolysis, or natural organic reduction. This bill will also create a temporary

1 expedited rule-making process for physiologist licensure educational
2 requirements.

3 An act relating to professions and occupations regulated by the Office of
4 Professional Regulation

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

6 * * * General Powers * * *

7 Sec. 1. 3 V.S.A. § 123 is amended to read:

8 § 123. DUTIES OF OFFICE

12 * * *

16 (3) Revoking, rescinding, or suspending licenses as ordered by the
17 boards, the Director, an administrative law officer, or a court.

18 * * *

1 disorders or other professional practice issues as designated by the boards or
2 Director.

3 * * *

4 Sec. 2. 3 V.S.A. § 128 is amended to read:

5 § 128. DISCIPLINARY ACTION TO BE REPORTED TO THE OFFICE

6 (a)(1) Any hospital, clinic, community mental health center, or other health
7 care institution in which a licensee performs professional services shall report
8 to the Office, along with supporting information and evidence, any disciplinary
9 action taken by it or its staff that limits or conditions the licensee's privilege to
10 practice or leads to suspension or expulsion from the institution.

11 * * *

14 (A) a disciplinary or adverse action;

(B) an adverse action report to the National Practitioner Data Bank;

(C) an unexpected adverse outcome in the care or treatment of a

17 patient:

17 patient;

18

19 (E) the initiation or process of an action to limit

²⁰ suspend a licensee's privilege to practice in an institution;

1 (F) an action to expel the licensee from an institution; or
2 (G) any other action that could lead to an outcome described in
3 subdivisions (A) through (F) of this subdivision (3).

4 * * *

6 § 129a. UNPROFESSIONAL CONDUCT

13 (1) Fraudulent or deceptive procurement or use of a license or attempted
14 fraudulent or deceptive procurement or use of a license by making or causing
15 to be made a false, fraudulent, or forged statement or representation.

16 * * *

1 Sec. 4. 3 V.S.A. § 129b is amended to read:

2 § 129b. BOARD MEMBER AND ADVISOR APPOINTMENTS

3 (a) Notwithstanding any provision of law to the contrary relating to terms
4 of office and appointments for members of boards attached to the Office of
5 Professional Regulation, all board members appointed by the Governor shall
6 be the age of majority, appointed for staggered five-year terms, and shall serve
7 at the pleasure of the Governor. Appointments under this section shall not be
8 subject to the advice and consent of the Senate. The Governor may remove
9 any member of a board as provided in section 2004 of this title. Vacancies
10 created other than by expiration of a term shall be filled in the same manner
11 that the initial appointment was made for the unexpired portion of the term.
12 Terms shall begin on January 1 of the year of appointment and run through
13 December 31 of the last year of the term. The Governor may request
14 nominations from any source but shall not be bound to select board members
15 from among the persons nominated. As provided in section 2004 of this title,
16 board members shall hold office and serve until a successor has been
17 appointed.

18 * * *

19 Sec. 5. 3 V.S.A. § 137 is amended to read:

20 § 137. UNIFORM PROCESS FOR FOREIGN CREDENTIAL

21 VERIFICATION

1

* * *

2 (d) The provisions relating to ~~preliminary~~ license denials set forth in
3 subsection 129(e) of this subchapter shall apply to a license application that is
4 ~~preliminarily~~ denied for nonequivalence under this section.

5 * * * Dentists * * *

6 Sec. 6. 26 V.S.A. § 603 is added to read:

7 § 603. LIMITED ACADEMIC DENTIST LICENSE

8 (a) Scope of dentist practice. A limited academic dentist license is a
9 credential that authorizes the practice of dentistry only:

10 (1) at a teaching facility operated by a dental program that is accredited
11 by the American Dental Association's Commission on Dental Accreditation to
12 grant doctoral degrees in dental medicine or dental surgery; and

13 (2) under the general supervision of a dentist who is fully licensed in
14 good standing.

15 (b) Eligibility. To qualify for a limited academic dentist license, an
16 applicant must:

17 (1) be appointed as a full-time dental instructor of an accredited dental
18 program;

19 (2) hold a dental degree sufficient for licensure by examination under
20 section 601 of this title; and

1 (3) complete any courses in emergency office procedures or
2 cardiopulmonary resuscitation required for a licensed dentist.

3 (c) Specialties unavailable. A limited academic dentist license holder who
4 is not otherwise licensed as a dentist in this State is ineligible for sedation and
5 general anesthesia specialties.

6 (d) Notification of termination required. A limited academic dentist license
7 holder must notify the Office within 48 hours after any termination as a full-
8 time dental instructor. Continued practice after termination constitutes
9 unauthorized practice under 3 V.S.A. § 127.

10 (e) Renewal. For license renewal, a limited academic dentist license holder
11 must:

12 (1) meet all renewal requirements set forth in subsections 661(a)–(d) for
13 a licensed dentist, except no fee is required; and
14 (2) continue to be a full-time dental instructor of an accredited dental
15 program.

16 Sec. 7. 26 V.S.A. § 662 is amended to read:

17 § 662. FEES

18 (a) Applicants and persons regulated under this chapter shall pay the
19 following fees:

20 (1) Application
21 (A) Dentist \$285.00

1 (B) Limited Academic Dentist \$0.00

2 (C) Dental therapist \$215.00

5 (2) Biennial renewal

6 (A) Dentist \$655.00

7 (B) Limited Academic Dentist \$0.00

8 (C) Dental therapist \$310.00

11 (b) The licensing fee for a dentist, dental therapist, or dental hygienist or

12 the registration fee for a dental assistant who is otherwise eligible for licensure

13 or registration and whose practice in this State will be limited to providing pro

14 bono services at a free or reduced-fee clinic or similar setting approved by the

15 Board shall be waived.

16 * * * Massage Therapists, Bodyworkers, and Touch Professionals * * *

17 Sec. 8. 26 V.S.A. chapter 105 is amended to read:

18 CHAPTER 105. MASSAGE THERAPISTS, BODYWORKERS, AND

19 TOUCH PROFESSIONALS

20 Subchapter 1. General Provisions

1 § 5401. DEFINITIONS

2 As used in this chapter:

3 * * *

4 (2)(A) "Establishment" means any ~~place of business~~ that location:

5 (i)(A) offers the practice of massage or the practice of bodywork
6 or where the practice of massage or the practice of bodywork is conducted on
7 the premises of the business where the practice of massage or the practice of
8 bodywork is regularly engaged in; or

14 (B) A “place of business” includes any office, clinic, facility, salon,
15 spa, or other location not otherwise exempted under section 5404 of this
16 chapter where a person or persons engage in the practice of massage or the
17 practice of bodywork.

18 * * *

19 § 5403. UNAUTHORIZED PRACTICE

20 Any individual who owns or operates an unregistered establishment or who
21 engages in the practice of massage or the practice of bodywork without a

1 registration from the Office shall be subject to the penalties provided in 3
2 V.S.A. § 127 (~~unauthorized practice~~).

3 § 5404. EXEMPTIONS

4 * * *

5 (c) Nothing in this chapter shall prohibit a massage therapist, bodyworker,
6 or touch professional from engaging in or offering the practice of massage or
7 the practice of bodywork at a location that is not ~~an~~ a registered establishment;
8 if:

9 (1) so long as prior to engaging in that practice at that location, the
10 registrant massage therapist and his or her the client agree in advance that the
11 location is acceptable; and

12 (2) the location is not an establishment as defined in subdivision 5401(2)
13 of this title.

14 (d) Establishment registration is not required for a location where the
15 practice of massage or the practice of bodywork is provided solely by:

16 (1) persons exempt from registration; or
17 (2) a single massage therapist, bodyworker, or touch professional.

18 * * *

19 § 5411. DUTIES OF THE DIRECTOR

20 * * *

1 (b) Rules.

5 (A) the professional qualifications and experience of the registrant;

6 (B) actions that constitute unprofessional conduct;

7 (C) the method for filing a complaint against a registrant; and

8 (D) the method for making a consumer inquiry with the Office.

9 (2) The Director shall adopt rules regarding the display of:

10 (A) the registrations of employed or contracted massage therapists,
11 bodyworkers, or touch professionals at an establishment; and
12 (B) information regarding unprofessional conduct and filing
13 complaints with the Office.

3 * * *

4 § 5423. ESTABLISHMENTS; DESIGNEE AND INSPECTION

11 (b) An establishment is responsible for ensuring its lawful operation,
12 regardless of whether the establishment's owner is on-site or has personal
13 knowledge of its operations. The Office may prosecute an establishment for
14 unprofessional conduct or unauthorized practice occurring at the establishment.

15 (c) The Director may require that an application for establishment
16 registration include:

17 (1) the management and ownership of the business;

18 (2) the name, location, and licensing history of any past or present

19 massage establishment under the same management or ownership;

20 (3) the location and ownership of the establishment's premises;

1 (4) proof of business registration with the Secretary of State; and
2 (5) other information required by the Director in rule.
3 (d) The Director may deny an establishment registration of a location
4 where unprofessional conduct, as defined in subdivision 5427(2) or (3) of this
5 title, has previously occurred, even if under different ownership or
6 management. A denial on this basis shall follow the same procedures as a
7 denial for unprofessional conduct under 3 V.S.A. § 128.

8 (e) A person authorized by the Director may enter any establishment for the
9 purpose of inspection ~~when a complaint has been filed with the Office~~
10 ~~regarding the practice of massage or the practice of bodywork at that~~
11 establishment. The Director may require an establishment to undergo
12 inspection prior to registration. A fee shall not be charged for any inspection
13 under this subsection.

14 * * *

15 § 5426. DISPLAY OF REGISTRATION

16 A ~~massage therapist, bodyworker, or touch professional shall conspicuously~~
17 ~~display his or her registration in any establishment where the registrant is~~
18 ~~engaged in the practice of massage or the practice of bodywork An~~
19 establishment must conspicuously display the registrations of:

1 (1) the establishment; and
2 (2) any massage therapist, bodyworker, or touch professional engaged in
3 the practice of massage or the practice of bodywork in the establishment.

4 § 5427. UNPROFESSIONAL CONDUCT

5 Unprofessional conduct means the conduct set forth in 3 V.S.A. § 129a and
6 the following:

7 (1) engaging in activities in violation of 13 V.S.A. § 2605 (voyeurism);
8 (2) engaging in a sexual act with a client in sexual conduct as defined in
9 13 V.S.A. § 2821:

10 (A) at an establishment; or
11 (B) while engaging in, offering to engage in, or purporting to engage
12 in the practice of massage or the practice of bodywork;

13 (3) meeting a client at an establishment for the purpose of sexual
14 conduct;

15 (3)(4) conviction of a crime committed while engaged in the practice of
16 massage or the practice of bodywork;

17 (4)(5) performing massage or bodywork that the massage therapist,
18 bodyworker, or touch professional knows or has reason to know has not been
19 authorized by a client or the client's legal representative; and

20 (5)(6) engaging in conduct of a character likely to deceive, defraud, or
21 harm the public; and

1 (7) engaging in the practice of massage or the practice of bodywork at
2 an unregistered establishment.

3 Sec. 9. 13 V.S.A. § 2638 is amended to read:

4 § 2638. IMMUNITY FROM LIABILITY

5 (a) As used in this section:

6 (1) “Human trafficking” has the same meaning as in section 2651 of this
7 title.

8 (2) “Prostitution” has the same meaning as in section 2631 of this title.

9 (b) A person who, in good faith and in a timely manner, reports to law
10 enforcement that the person is a victim of or a witness to a crime that arose
11 from the person’s involvement in prostitution or human trafficking shall not be
12 cited, arrested, or prosecuted for a violation of the following offenses:

13 (1) section 2632 of this title (prostitution);

14 (2) section 2601a of this title (prohibited conduct);

15 (3) 18 V.S.A. § 4230(a)(1)–(3) (cannabis possession);

16 (4) 18 V.S.A. § 4231(a)(1) and (2) (cocaine possession);

17 (5) 18 V.S.A. § 4232(a)(1) and (2) (LSD possession);

18 (6) 18 V.S.A. § 4233(a)(1) and (2) (heroin possession);

19 (7) 18 V.S.A. § 4234(a)(1) and (2) (depressant, stimulant, and narcotic
20 drugs possession);

1 (8) 18 V.S.A. § 4234a(a)(1) and (2) (methamphetamine possession);
2 (9) 18 V.S.A. § 4235(b)(1) (hallucinogenic drugs possession); and
3 (10) 18 V.S.A. § 4235a(a)(1) (Ecstasy possession); and
4 (11) 26 V.S.A. § 5403 (unauthorized practice of massage or bodywork).

5 * *

6 * * * Midwives * * *

7 Sec. 10. 26 V.S.A. chapter 85 is amended to read:

CHAPTER 85. MIDWIVES

9 * * *

10 § 4185. DIRECTOR; DUTIES

11 * * *

12 (e)(1) The Director shall appoint an advisory committee to study and report
13 to the Director and to the Commissioner of Health on matters relating to
14 midwifery, including recommendations if necessary for revisions to the
15 administrative rules. The Committee shall focus on improving communication
16 and collaboration among birth providers.

17 (2) The Committee shall be composed of at least six members: three
18 midwives licensed under this chapter, two physicians licensed by the Board of
19 Medical Practice or the Board of Osteopathic Physicians and Surgeons, and
20 one advanced practice registered nurse midwife licensed by the Board of
21 Nursing.

3 * * *

4 § 4187. RENEWALS

11 (A) completed 20 hours of continuing education approved by the
12 Director by rule:

(B) participated in at least four peer reviews;

14 (C) submitted individual practice data;

16 and

17 (E)(D) filed a timely certificate of birth for each birth at which he or
18 she the licensee was the attending midwife, as required by law; and

19 (E) maintained current certification by the North American Registry
20 of Midwives.

14 (d) The Director may, as a condition of license renewal, require that
15 licensed midwives submit individual practice data to the Office or its designee.
16 The required data may include information such as client demographics,
17 complications of labor and delivery, breastfeeding and postpartum health, and
18 such other information as the Director may require.

19 * * * Pharmacists * * *

20 Sec. 11. 26 V.S.A. § 2023 is amended to read:

21 § 2023. CLINICAL PHARMACY; PRESCRIBING

1

* * *

2

(b) A pharmacist may prescribe in the following contexts:

3

* * *

4

(2) State protocol.

5

(A) A pharmacist may prescribe, order, or administer in a manner

6

consistent with valid State protocols that are approved by the Commissioner of

7

Health after consultation with the Director of Professional Regulation and the

8

Board and the ability for public comment:

9

(i) opioid antagonists;

10

(ii) epinephrine auto-injectors;

11

(iii) tobacco cessation products;

12

(iv) tuberculin purified protein derivative products;

13

(v) self-administered hormonal contraceptives, including

14

subcutaneous depot medroxyprogesterone acetate;

15

(vi) dietary fluoride supplements;

16

(vii) vaccinations for patients 18 years of age or older;

17

~~vaccinations recommended by the Centers for Disease Control and~~

18

~~Prevention's Advisory Committee on Immunization Practices (ACIP) and~~

19

~~administered consistently with the ACIP approved immunization schedules, as~~

20

~~may be amended from time to time;~~

1 (viii) for patients five years of age or older, influenza vaccine,
2 COVID-19 vaccine, and subsequent formulations or combination products
3 thereof;

4 * * *

5 Sec. 12. 26 V.S.A. § 2042a is amended to read:

8 * * *

9 (c) Pharmacy technicians shall only administer immunizations:

10 (1) to patients 18 years of age or older, as established in subdivision
11 2023(b)(2)(A)(vii) and the resulting State protocol;

12 (2) to patients five years of age or older, influenza vaccine, COVID-19
13 vaccine, and subsequent formulations or combination products thereof, in
14 accordance with subdivision 2023(b)(2)(A)(viii) and the resulting State
15 protocol; and

16 (3) pursuant to the schedules and recommendations of the Advisory
17 Committee on Immunization Practices' recommendations for the
18 administration of immunizations, as those recommendations may be updated
19 from time to time; and

20 (4) when a licensed pharmacist who is trained to immunize is present
21 and able to assist with the immunization, as needed.

1 (d) ~~Pharmacy technicians shall administer only those immunizations that:~~

2 ~~(1) are recommended by the Centers for Disease Control and~~

3 ~~Prevention's Advisory Committee on Immunization Practices (ACIP); and~~

4 ~~(2) licensed pharmacists are permitted to administer under the State~~

5 ~~clinical pharmacy protocol, as established in subdivision 2023(b)(2) of this~~

6 ~~title.~~

7 (e) Pharmacy technicians performing COVID-19 tests shall do so only:

8 (1) when a licensed pharmacist who is trained to perform COVID-19

9 tests is present and able to assist with the test, as needed;

10 (2) in accordance with a State protocol adopted under subdivision

11 2023(b)(2)(A)(x) of this title; and

12 (3) in accordance with rules adopted by the Board.

13 (f) The Board may adopt rules regarding the administration of

14 immunizations and the performance of COVID-19 tests by pharmacy

15 technicians.

16 * * * Funeral Services * * *

17 Sec. 13. 26 V.S.A. § 1211 is amended to read:

18 § 1211. DEFINITIONS

19 (a) As used in this chapter, unless a contrary meaning is required by the

20 context:

21 * * *

4 (A) meeting with the public to select a method of disposition or
5 funeral observance and merchandise:

6 (B) entering into contracts, either at-need or pre-need, for the

7 provision of dispositions, funeral observances, and merchandise;

10 (D) securing or filing certificates, permits, forms, or other
11 documents;

12 (E) supervising or arranging a funeral, memorial, viewing, or
13 graveside observance; and

1 **(b) Temporary rules adopted pursuant to this section shall be:**

2 **(1) developed in consultation with the Board and the Vermont**

3 **Psychological Association; and**

4 **(2) consistent with 26 V.S.A. chapter 57.**

5 **(c)(1) Temporary rules may be adopted without having been prefiled or**

6 **filed in proposed or final proposed form and may be adopted after whatever**

7 **notice and hearing the Director finds to be practicable under the circumstances.**

8 **The Director shall make reasonable efforts to ensure that temporary rules are**

9 **known to persons who may be affected by them.**

10 **(2) Temporary rules proposed under this section shall be filed with the**

11 **Secretary of State and with the Legislative Committee on Administrative**

12 **Rules. The rules shall include as much of the information required for the**

13 **filing of a proposed rule as is practicable under the circumstances. The**

14 **Legislative Committee on Administrative Rules shall distribute copies of**

15 **temporary rules to the appropriate standing committees.**

16 **(3) On a majority vote of the entire Committee, the Committee may**

17 **object under this subsection if a temporary rule is:**

18 **(A) beyond the authority of the Director;**

19 **(B) contrary to the intent of the General Assembly; or**

20 **(C) arbitrary.**

1 (4) When objection is made under this subsection, on majority vote of
2 the entire Committee, the Committee may file the objection in certified form
3 with the Secretary of State. The objection shall contain a concise statement of
4 the Committee's reasons for its action. The Secretary shall affix to each
5 objection a certification of its filing and as soon as practicable transmit a copy
6 to the Director. After a Committee objection is filed with the Secretary under
7 this subsection, to the extent that the objection covers a rule or portion of a
8 rule, the burden of proof thereafter shall be on the Director in any action for
9 judicial review or for enforcement of the rule to establish that the part objected
10 to is within the authority delegated to the Director, is consistent with the intent
11 of the General Assembly, and is not arbitrary. If the Director fails to meet its
12 burden of proof, the court shall declare the whole or portion of the rule
13 objected to invalid. The failure of the Committee to object to a rule is not an
14 implied legislative authorization of its substantive or procedural lawfulness.

15 (5) When the Committee makes an objection to a temporary rule under
16 this subsection, the Director may withdraw the rule to which an objection was
17 made. Prior to withdrawal, the Director shall give notice to the Committee of
18 its intent to withdraw the rule. A rule shall be withdrawn upon the filing of a
19 notice of withdrawal with the Secretary of State and the Committee. If the
20 temporary rule amended an existing rule, upon withdrawal of the temporary

1 rule, the existing rule shall revert to its original form, as though the temporary
2 rule had never been adopted.

6 (d) The Director may propose a permanent rule on the same subject at the
7 same time that the Board of Psychological Examiners adopts a temporary rule.

13 * * * Effective Date * * *

14 Sec. 15. EFFECTIVE DATE

15 This act shall take effect on passage.