


2017, No. 56 (H.22), *An act relating to the professional regulation of law enforcement officers by the Vermont Criminal Justice Training Council*

2017, No. 79 (S.8), *An act relating to establishing the State Ethics Commission and standards of governmental ethical conduct*

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Background on LEO Professional Regulation: Vermont Criminal Justice Training Council

- Commissioner of Public Safety
- Commissioner of Corrections
- Commissioner of Motor Vehicles
- Commissioner of Fish and Wildlife
- Attorney General
- Member of the Vermont Troopers' Association
- Member of the Vermont Police Association
- Five members appointed by the Governor

- Three-year terms
- Each member may appoint a designee

Issue Addressed in Act 56: Conduct considered “unprofessional” and scope of regulatory authority

Private Investigators and Security Guards (regulated by OPR)

26 V.S.A. § 3151:

- (1) Conviction of any felony or a crime involving fraud or dishonesty.
- (2) Failing to make available, upon request of a person using the licensee's services, copies of documents in the possession or under the control of the licensee, when those documents have been prepared for and purchased by the user of services.
- (3) Violating a confidential relationship with a client, or disclosing any confidential client information except:
 - (A) with the client's permission;
 - (B) in response to a court order;
 - (C) when necessary to establish or collect a fee from the client; or
 - (D) when the information is necessary to prevent a crime that the client intends to commit.
- (4) Accepting any assignment which would be a conflict of interest because of confidential information obtained during employment for another client.
- (5) Accepting an assignment that would require the violation of any municipal, state, or federal law or client confidence.
- (6) Using any badge, seal, card, or other device to misrepresent oneself as a police officer, sheriff, or other law enforcement officer.
- (7) Knowingly submitting a false or misleading report or failing to disclose a material fact to a client.
- (8) Falsifying or failing to provide required compulsory minimum training in firearms or guard dog handling as required by this chapter.
- (9) Failing to complete in a timely manner the registration of an employee.
- (10) Allowing an employee to carry firearms or handle guard dogs prior to being issued a permanent registration card.
- (11) Allowing an employee to work without carrying the required evidence of temporary or permanent registration.
- (12) Allowing an employee to use or be accompanied by an untrained guard dog while rendering professional services.
- (13) Failing to provide information requested by the board.
- (14) Failing to return the temporary or permanent registration of an employee.
- (15) Failing to notify the board of a change in ownership, partners, officers, or qualifying agent.
- (16) Providing incomplete, false, or misleading information on an application.
- (17) Any of the following except when reasonably undertaken in an emergency situation in order to protect life, health, or property:
 - (A) practicing or offering to practice beyond the scope permitted by law;
 - (B) accepting and performing occupational responsibilities which the licensee knows or has reason to know that he or she is not competent to perform; or
 - (C) performing occupational services which have not been authorized by the consumer or his or her legal representative.
- (18) For armed and guard dog certified licensees, brandishing, exhibiting, displaying, or otherwise misusing a firearm or guard dog in a careless, angry, or threatening manner unnecessary for the course of the licensee's duties.

PLUS the list of **16** descriptions of unprofessional conduct that apply to **all** OPR licensees set forth in **3 V.S.A. § 129a**.

Law Enforcement Officers (regulated by VCJTC)

20 V.S.A. § 2355(a)(11) and (12):

- decertification of persons who have been convicted of a felony subsequent to their certification as law enforcement officers
- decertification of persons who have not complied with in-service training requirements

Act 56 **Changes** to LEO Professional Regulation: *Agency-Hopping*

- Prior to hiring an LEO who is no longer employed at his/her last agency, a potential hiring agency must:
 - Require the LEO to sign a written waiver allowing the former agency to disclose the reason the LEO is no longer employed there; and
 - Contact that former agency to determine the reason.
- An LEO who refuses to sign the written waiver cannot be hired by the potential hiring agency.
- The former agency shall disclose in writing the reason the LEO is no longer employed there, and send a copy to the LEO.
 - The former agency is immune from liability for this disclosure, unless it would constitute intentional misrepresentation or gross negligence.
 - The act exempts former agencies from the disclosure if there is a binding nondisclosure agreement in effect on the effective date (7/1/17).



Act 56 **Changes** to LEO Professional Regulation:
Defining Unprofessional Conduct

- Category A (crimes)
 - Felonies
 - Misdemeanors on-duty
 - These misdemeanors off-duty: simple assault (2nd offense); domestic assault; false reports and statements; DUI (2nd offense); violation of a relief from abuse or condition of release; stalking; false pretenses; voyeurism; prostitution or soliciting prostitution; distributing a regulated substance; simple assault on an LEO; or possession of a regulated substance (2nd offense)



Act 56 **Changes** to LEO Professional Regulation:
Defining Unprofessional Conduct (cont.)

- Category B (gross professional misconduct)
 - Sexual harassment involving physical contact or misuse of position
 - Misuse of official position for personal or economic gain
 - Excessive use of force (2nd offense)
 - Biased enforcement
 - Use of electronic criminal records database for personal, political, or economic gain



Act 56 **Changes** to LEO Professional Regulation:
Defining Unprofessional Conduct (cont.)

- Category C (re: Council processes)
 - Intentionally exceeding scope of practice
 - Knowingly making material false statements or reports to the Council
 - Intentional interference with Council investigations
 - Intentional failure to conduct a valid unprofessional conduct investigation
 - Failure to complete annual in-service training



Act 56 **Changes** to LEO Professional Regulation: *Investigations and Reporting*

- Investigations
 - Most agencies will have to conduct their own investigation of alleged LEO unprofessional conduct, unless it's re: the agency's highest-ranking LEO
 - Council conducts Category C investigations
- Reports to Council
 - Agencies must report alleged unprofessional conduct in specified circumstances, depending on whether the conduct was Category A or B or if the LEO was terminated or resigned



Act 56 **Changes** to LEO Professional Regulation: *Permitted Council Discipline*

- Warning
- Suspension, to run concurrently with an agency's length of suspension
- Revocation, with the option of recertification
- Permanent revocation




Act 56 **Changes** to LEO Professional Regulation: *Limits on Council Discipline*

- **Temporary Voluntary Surrender**
 - If Council intends to permanently revoke, LEO has ability to temporarily voluntarily surrender his/her certification if there a related labor proceeding pending
 - Temporary surrender can remain in effect until final adjudication of the labor proceedings, although Council is not bound by the outcome
- **First Offense of Category B**
 - Council cannot take action on a first offense of Category B

Act 56 Effective Dates

- Most unprofessional conduct provisions will take effect on **July 1, 2018**
- However, the Council and OPR are required to report by **Oct. 1, 2017** re: whether there are certain LEO professional regulation duties that OPR should perform



2017, No. 79 (S.8), *An act relating to establishing the State Ethics Commission and standards of governmental ethical conduct*



Act 79 Topics

- Post-public employment restrictions
- Financial disclosures
- Contractor contribution restrictions
- State Ethics Commission
- Municipal conflicts of interest and ethics

Act 79:

Post-Public Employment Restrictions

- Legislators and Executive officers, for one year after leaving office, are prohibited from being lobbyists
 - “Executive officer” = Gov., Lt. Gov., Treasurer, Sec. of State, Auditor of Accounts, Attorney General, agency secretaries or deputies or department commissioners or deputies
 - “Lobbyist” = Those paid to lobby as set forth in 2 V.S.A. ch. 11
- Executive officers cannot be paid to advocate for a private entity before a public body on a matter in which the officer:
 - Participated personally and substantively while in State employ; or
 - Exercised official responsibility

Act 79:

Financial Disclosures

- Candidates for State and Legislative office must file with their nomination papers a disclosure listing:
 - Sources – but not amounts – of personal income over \$5,000 of the candidate and his/her spouse or domestic partner
 - Boards or other entities on which the candidate served, and the candidate's position on the entity
 - Companies of which the candidate or his/her spouse or domestic partner owned more than 10%
 - Leases or contracts with the State held by the candidate or his/her spouse or domestic partner
 - If the candidate's spouse or domestic partner is a lobbyist, his or her name and the name of the lobbying firm, if applicable
- Statewide candidates must also provide a copy of his or her most recent IRS Tax Return Form 1040 (sensitive info redacted)



Act 79:

Financial Disclosures (cont.)

- Executive officers, members of the State Ethics Commission, and the Commission's Executive Director must also file these disclosures
- The Commission's Executive Director prepares all disclosure forms
- Candidates' disclosures will be posted on the Sec. of State's webpage; all others will be posted on the Ethics Commission's webpage

Act 79:

Contractor Contribution Restrictions

Contributor restrictions on contracting

- If a person makes a contribution to a State officer or candidate for State office – or if his, her, or its principal or spouse makes such a contribution – the person cannot negotiate or enter into a sole source contract valued at \$50,000 or more or multiple sole source contracts valued at \$100,000 or more with that State office or the State on behalf of the office within *one year* of:
 - the contribution, if made to the incumbent; or
 - the beginning of the term of office, if made to a winning non-incumbent candidate

Act 79:

Contractor Contribution Restrictions (cont.)

Contractor restrictions on contributions

- A person who enters into a sole source contract valued at \$50,000 or more or multiple sole source contracts valued at \$100,000 or more with the office of a State officer or the State on behalf of that office, or the person's principal or spouse, shall not make a contribution to that State officer or a candidate for the State office during the term of the contract



Act 79:

State Ethics Commission; Overview

- No investigative or enforcement authority
- Accept, review, make referrals regarding, and track complaints of alleged violations of governmental conduct regulated by law, of the Department of Human Resource's employee code of ethics, and of the State's campaign finance law
- In consultation with DHR, create and maintain the State Code of Ethics, which sets forth general principles of governmental ethical conduct
- Provide ethics training
- Issue advisory opinions and guidance regarding governmental ethical conduct
- Be staffed by a part-time Executive Director
- Annually report to the General Assembly
- Be temporarily funded through a per-position charge assessed on Executive Branch agencies, departments, and offices

Act 79:

State Ethics Commission; Membership

- Five members, appointed by:
 - Chief Justice of the SCOV
 - League of Women Voters of Vermont
 - Bd. of Dir. of the Vermont Society of CPAs
 - Bd. of Managers of the Vermont Bar Assoc.
 - Bd. of Dir. of the Vermont Human Resource Assoc.
- Members cannot hold office or employment in State gov't; hold State Ks; be a lobbyist; be a candidate for State or legislative office; or hold office in a State or legislative candidate's committee, a PAC, or a political party
- Three-year staggered terms; limit on two consecutive terms



Act 79:

State Ethics Commission; Executive Director

- Part-time exempt State employee appointed by and serving at the pleasure of the Commission
- On behalf of the Commission, accepts complaints from any source re: governmental ethics in any of the three branches of State government or re: campaign finance law
 - Complaints must be in writing and include the identity of the complainant

Act 79:

State Ethics Commission; Executive Director; Referral of Complaints

Ex. Dir. refers complaints to all relevant entities:

- **Governmental conduct regulated by law** (conduct re: the operation of gov't that is restricted or prohibited by law, incl. bribery, false claims, neglect of public duty, retaliating against whistleblowers): *to State's Attorney or AG*, with a required report back
- **Department of Human Resources Employee Code of Ethics**: *to Comm'r of DHR*, with a required report back
- **Campaign finance**: *to AG or State's Attorney*, with a required report back
- **Re: State Senator**: *to Senate Ethics Panel*, with a requested report back
- **Re: a State Rep.**: *to House Ethics Panel*, with a requested report back
- **Re: a Judicial officer**: *to Judicial Conduct Board*, with a requested report back
- **Re: an attorney**: *to the Professional Responsibility Board*, with a requested report back



Act 79:

State Ethics Commission; Reports to General Assembly

Annually, the Commission must report to the General Assembly re: the following issues:

- *Complaints*. Number and summary, incl. any disposition; no personal identifying info
- *Guidance*. Number and summary of guidance docs issued, separated by topic; no personal identifying info
- *Recommendations*. Any recommendations for legislative action to address State gov't ethics or campaign finance



Act 79:

Municipal Ethics and Conflicts of Interest

- Amends 24 V.S.A. § 1984 to require each town, city, and incorporated village to adopt a conflict of interest prohibition for its elected and appointed officials (eff. 7/1/19)
- Amends 24 V.S.A. § 2291(20) to allow these municipalities to adopt ethical conduct policies for elected and appointed officials and employees
- Until Dec. 2020, requires the Sec. of State to accept written complaints re: municipal governmental ethical conduct, to forward them to the muni, and to report them to the Ethics Commission, so that the Comm'n will include them in its annual reports