

The Vermont Statutes Online

Title 26: Professions And Occupations

Chapter 57: Review Of Regulatory Laws

§ 3101. Policy and purpose

(a) It is the policy of the State of Vermont that regulation be imposed upon a profession or occupation solely for the purpose of protecting the public. The General Assembly believes that all individuals should be permitted to enter into a profession or occupation unless there is a demonstrated need for the State to protect the interests of the public by restricting entry into the profession or occupation.

(b) If such a need is identified, the form of regulation adopted by the State shall be the least restrictive form of regulation necessary to protect the public interest. If regulation is imposed, the profession or occupation may be subject to review by the Office of Professional Regulation and the General Assembly to ensure the continuing need for and appropriateness of such regulation. (Added 1977, No. 183 (Adj. Sess.), § 1; amended 1985, No. 96, § 1; 1985, No. 255 (Adj. Sess.), § 1; 2015, No. 156 (Adj. Sess.), § 1.)

§ 3101a. Definitions

As used in this chapter, unless the context clearly requires otherwise:

(1) "Certification" means a voluntary process by which a statutory regulatory entity grants to a person who has met certain prerequisite qualifications the right to assume or to use the title of the profession or occupation, or the right to assume or use the term "certified" in conjunction with the title. Use of the title or the term "certified," as the case may be, by a person who is not certified is unlawful.

(2) "Licensing" and "licensure" mean a process by which a statutory regulatory entity grants to a person who has met certain prerequisite qualifications the right to perform prescribed professional or occupational tasks and to use the title of the profession or occupation. Practice without a license is unlawful.

(3) "License" means an individual, nontransferable authorization to carry on an activity based on qualifications such as:

(A) satisfactory completion of or graduation from an accredited or approved educational or training program; or

(B) acceptable performance on a qualifying examination or series of examinations.

(4) "Office" means the Office of Professional Regulation.

(5) "Practitioner" means a person who is actively engaged in a specified profession or occupation.

(6) "Public member" means an individual who has no material financial interest in the profession or occupation being regulated other than as a consumer.

(7) "Registration" means a process requiring that, prior to rendering services, a practitioner formally notify a regulatory entity of his, her, or its intent to engage in the profession or occupation. Notification may include the name and address of the practitioner, the location of the activity to be performed, and a description of the service to be provided.

(8) "Regulatory entity" means the statutory entity responsible for regulating a profession or occupation, such as a board or an agency of the State.

(9) "Regulatory law" means any law in this State that requires a person engaged in a profession or occupation to be registered, certified, or licensed or that otherwise regulates the operation of that profession or occupation. (Added 1985, No. 255 (Adj. Sess.), § 2; amended 2015, No. 156 (Adj. Sess.), § 1.)

§ 3102. Repealed. 2015, No. 156 (Adj. Sess.), § 1.

§ 3103. Repealed. 1985, No. 96, § 5.

§ 3104. Process for review of regulatory laws

(a) The Office may review a regulatory law that is within its jurisdiction, and shall review any regulatory law within or outside its jurisdiction upon the request of the House or Senate Committee on Government Operations. Notwithstanding any provisions of this section to the contrary, the Office shall not review regulatory laws within the jurisdiction of the Agency of Education. The Office shall base its review on the criteria and standards set forth in section 3105 of this chapter.

(b) The review shall also include the following inquiries in the discretion of the Office or in response to a Committee request:

(1) the extent to which a regulatory entity's actions have been in the public interest and consistent with legislative intent;

(2) the extent to which the profession's historical performance, including the actual history of complaints and disciplinary actions in Vermont, indicates that the costs of regulation are justified by the realized benefits to the public;

(3) the extent to which the scope of the existing regulatory scheme for the profession is commensurate to the risk of harm to the public;

(4) the extent to which the profession's education, training, and examination requirements for a license or certification are consistent with the public interest;

(5) the extent to which a regulatory entity's resolutions of complaints and disciplinary actions have been effective to protect the public;

(6) the extent to which a regulatory entity has sought ideas from the public and from those it regulates, concerning reasonable ways to improve the service of the entity and the profession or occupation regulated;

(7) the extent to which a regulatory entity gives adequate public notice of its hearings and meetings and encourages public participation;

(8) whether a regulatory entity makes efficient and effective use of its funds and meets its responsibilities; and

(9) whether a regulatory entity has sufficient funding to carry out its mandate.

(c)(1) The Office shall give adequate notice to the public, the applicable regulatory entity, and the appropriate professional societies that it is reviewing a particular regulatory law and, as applicable, that regulatory entity. Notice to the regulatory entity and the professional societies shall be in writing.

(2) The regulatory entity shall provide to the Office the information described in section 3107 of this chapter and available data the Office requests for purposes of the review.

(3) The Office shall seek comments and information from the public and from members of the profession or occupation. It also shall give the regulatory entity a chance to present its position and to respond to any matters raised in the review.

(4) The Office, upon its request, shall have assistance from the Department of Finance and Management, the Auditor of Accounts, the Attorney General, the Joint Fiscal Committee, or any other State agency.

(d)(1) The Office shall file a separate written report for each review with the House and Senate Committees on Government Operations, any legislative committees of jurisdiction for the underlying field of regulation, and the applicable regulatory entity. The reports shall contain:

(A) findings, alternative courses of action, and recommendations;

(B) a copy of the regulatory entity's administrative rules; and

(C) appropriate legislative proposals.

(2)(A) If the review is in regard to a regulatory law outside its jurisdiction, the Office shall submit the report in conjunction with the agency with jurisdiction over the licensing of the relevant profession.

(B) In the event the Office and the agency with jurisdiction do not agree to any aspects of the report, the report shall incorporate separate responses of the Office and that agency.

(e) [Repealed.]

(f) [Repealed.]

(g) [Repealed.] (Added 1977, No. 183 (Adj. Sess.), § 1; amended 1981, No. 105, § 2; 1981, No. 227 (Adj. Sess.), § 2; 1985, No. 96, § 3; 1985, No. 255 (Adj. Sess.), § 4; 1989, No. 250 (Adj. Sess.), § 4(d); 1991, No. 241 (Adj. Sess.), §§ 1, 2; 2015, No. 156 (Adj. Sess.), § 1.)

§ 3105. Criteria and standards

(a) A profession or occupation shall be regulated by the State only when:

(1) it can be demonstrated that the unregulated practice of the profession or occupation can clearly harm or endanger the health, safety, or welfare of the public, and the potential for the harm is recognizable and not remote or speculative;

(2) the public can reasonably be expected to benefit from an assurance of initial and continuing professional ability; and

(3) the public cannot be effectively protected by other means.

(b) After evaluating the criteria in subsection (a) of this section and considering governmental and societal costs and benefits, if the General Assembly finds that it is necessary to regulate a profession or occupation, the least restrictive method of regulation shall be imposed, consistent with the public interest and this section:

(1) if existing common law and statutory civil remedies and criminal sanctions are insufficient to reduce or eliminate existing harm, regulation should occur through enactment of stronger civil remedies and criminal sanctions;

(2) if a professional or occupational service involves a threat to the public and the service is performed primarily through business entities or facilities that are not regulated, the business entity or the facility should be regulated rather than its employee practitioners;

(3) if the threat to the public health, safety, or welfare, including economic welfare, is relatively small, regulation should be through a system of registration;

(4) if the consumer may have a substantial interest in relying on the qualifications of the practitioner, regulation should be through a system of certification; or

(5) if it is apparent that the public cannot be adequately protected by any other means, a system of licensure should be imposed.

(c) Any of the issues set forth in subsections (a) and (b) of this section and section 3107 of this chapter may be considered in terms of their application to professions or occupations generally.

(d) Prior to review under this chapter and consideration by the General Assembly of any bill to regulate a profession or occupation and upon the request of the House or Senate Committee on Government Operations, the Office shall make, in writing, a preliminary assessment of whether any particular request for regulation meets the criteria set forth in subsection (a) of this section. The Office shall report its preliminary assessment to the appropriate House or Senate Committee on Government Operations.

(e) After the review of a proposal to regulate a profession, the Office may decline to conduct an analysis and evaluation of the proposed regulation if it finds that:

(1) the proposed regulatory scheme appears to regulate fewer than 250 individuals; and

(2) the Office previously conducted an analysis and evaluation of the proposed regulation of the same profession or occupation, and no new information has been submitted that would cause the Office to alter or modify the recommendations made in its earlier report on that proposed regulation. (Added 1977, No. 183 (Adj. Sess.), § 1; amended 1985, No. 96, § 4; 1985, No. 255 (Adj. Sess.), § 5; amended 1997, No. 145 (Adj. Sess.), § 16; 2009, No. 35, § 39; 2013, No. 142 (Adj. Sess.), § 42; 2015, No. 131 (Adj. Sess.), § 29; 2015, No. 156 (Adj. Sess.), § 1.)

§ 3106. Director of the Office of Professional Regulation; annual report

(a) Annually, prior to the commencement of each legislative session, the Director of the Office shall prepare a concise report on the activities of all boards and advisor professions under his or her jurisdiction. The report shall include his or her assessments, conclusions, and recommendations regarding those boards and advisor professions.

(b) The Director shall publish the report on the Office's website and shall also provide written copies of the report to the House and Senate Committees on Government Operations.

(c) The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report to be made under this section. (Added 1981, No. 227 (Adj. Sess.), § 3; amended 1985, No. 255 (Adj. Sess.), § 6; 1989, No. 250 (Adj. Sess.), §§ 2, 4(d); 1997, No. 145 (Adj. Sess.), § 6; 2003, No. 60, § 16; 2013, No. 142 (Adj. Sess.), § 43; 2015, No. 156 (Adj. Sess.), § 1.)

§ 3107. Information required

Prior to review under this chapter and prior to consideration by the General Assembly of any bill that proposes to regulate a profession or occupation, the profession or occupation being reviewed or seeking regulation shall explain each of the following factors, in writing, to the extent requested by the House or Senate Committee on Government Operations:

(1) Why regulation is necessary, including:

(A) the nature of the potential harm or threat to the public if the profession or occupation is not regulated;

(B) specific examples of the harm or threat identified in subdivision (A) of this subsection (1);

(C) the extent to which consumers will benefit from a method of regulation that permits identification of competent practitioners, indicating typical employers, if any, of practitioners.

(2) The extent to which practitioners are autonomous, as indicated by:

(A) the degree to which the profession or occupation requires the use of independent judgment, and the skill or experience required in making such judgment;

(B) the degree to which practitioners are supervised.

(3) The efforts that have been made to address the concerns that give rise to the need for regulation, including:

(A) voluntary efforts, if any, by members of the profession or occupation to:

- (i) establish a code of ethics;
- (ii) help resolve disputes between practitioners and consumers;
- (iii) establish requirements for continuing education.

(B) recourse to and the extent of use of existing law.

(4) Why the alternatives to licensure specified in this subdivision would not be adequate to protect the public interest:

(A) stronger civil remedies or criminal sanctions;

(B) regulation of the business entity or facility providing the service rather than the employee practitioners;

(C) regulation of the program or service rather than the individual practitioners;

(D) registration of all practitioners;

(E) certification of practitioners;

(F) other alternatives.

(5) The benefit to the public if regulation is granted, including:

(A) how regulation will result in reduction or elimination of the harms or threats identified under subdivision (1) of this section;

(B) the extent to which the public can be confident that a practitioner is competent:

(i) whether the registration, certification, or licensure will carry an expiration date;

(ii) whether renewal will be based only upon payment of a fee, or whether renewal will involve reexamination, peer review, or other enforcement;

(iii) the standards for registration, certification, or licensure as compared with the standards of other jurisdictions;

(iv) the nature and duration of the educational requirement, if any, including whether the educational requirement includes a substantial amount of supervised field experience; whether educational programs exist in this State; whether there will be an experience requirement; whether the experience must be acquired under a registered, certified, or licensed practitioner; whether there are alternative routes of entry or methods of satisfying the eligibility requirements and qualifications; whether all applicants will be required to pass an examination; and, if an examination is required, by whom it will be developed and how the costs of development will be met.

(6) The form and powers of the regulatory entity, including:

(A) whether the regulatory entity is or would be a board composed of members of the profession or occupation and public members, or a State agency, or both, and, if appropriate, their respective responsibilities in administering the system of registration, certification, or licensure;

(B) the composition of the board, if any, and the number of public members, if any;

(C) the powers and duties of the regulatory entity regarding examinations;

(D) the system for receiving complaints and taking disciplinary action against practitioners.

(7) The extent to which regulation might harm the public, including:

(A) whether regulation will restrict entry into the profession or occupation, including:

(i) whether the standards are the least restrictive necessary to ensure safe and effective performance; and

(ii) whether persons who are registered, certified, or licensed in another jurisdiction that the regulatory entity believes has requirements that are substantially equivalent to those of this State will be eligible for endorsement or some form of reciprocity;

(B) whether there are similar professions or occupations that should be included, or portions of the profession or occupation that should be excluded from regulation.

(8) How the standards of the profession or occupation will be maintained, including:

(A) whether effective quality assurance standards exist in the profession or occupation, such as legal requirements associated with specific programs that define or enforce standards, or a code of ethics; and

(B) how the proposed form of regulation will assure quality, including:

(i) the extent to which a code of ethics, if any, will be adopted; and

(ii) the grounds for suspension, revocation, or refusal to renew registration, certification, or licensure.

(9) A profile of the practitioners in this State, including a list of associations, organizations, and other groups representing the practitioners and including an estimate of the number of practitioners in each group.

(10) The effect that registration, certification, or licensure will have on the costs of the services to the public. (Added 1985, No. 255 (Adj. Sess.), § 7; amended 2015, No. 156 (Adj. Sess.), § 1.)