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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

**H.B. 199**  
**133<sup>rd</sup> General Assembly**

## Occupational Regulation Report

[Click here for H.B. 199's Bill Analysis / Fiscal Note](#)

**Primary Sponsor:** Rep. Patton

**Impacted Profession:** Roofing contractors

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LSC is required by law to issue a report for each introduced bill that substantially changes or enacts an occupational regulation. The report must: (1) explain the bill's regulatory framework in the context of Ohio's statutory policy of using the least restrictive regulation necessary to protect consumers, (2) compare the regulatory schemes governing the same occupation in other states, and (3) examine the bill's potential impact on employment, consumer choice, market competition, and cost to government.<sup>1</sup>

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## SUMMARY OF PROPOSED REGULATIONS

The bill requires roofing contractors to obtain a license from the Ohio Construction Industry Licensing Board (OCILB)<sup>2</sup> before performing roofing services or employing tradespersons to perform roofing services on commercial buildings. No state license would be required to perform roofing services on residential buildings or industrialized units (self-sufficient building units fabricated off-site).<sup>3</sup>

The bill's licensure framework mirrors the licensure requirements, under continuing law, for specialty contractors performing electrical, HVAC, hydronics, plumbing, or refrigeration services. As is the case for specialty contractors, the bill requires a person who wishes to perform roofing services to apply for licensure in writing to the appropriate section of the OCILB. Each application must demonstrate that the applicant:

- Is at least 18 years of age and a U.S. citizen or legal resident;

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<sup>1</sup> R.C. 103.26, not in the bill.

<sup>2</sup> OCILB is part of the Division of Industrial Compliance within the Ohio Department of Commerce.

<sup>3</sup> R.C. 4740.01(F), by reference to R.C. 3781.06, not in the bill.

- Has been a tradesperson in roofing for at least five years before the date the application is filed, is currently registered as an engineer in Ohio with three years of business experience in roofing, or has other acceptable experience;
- Maintains contractor’s liability insurance in the amount required by the Roofing Section of the OCILB (created by the bill);
- Has not been convicted of or pleaded guilty to a crime of moral turpitude or a disqualifying offense as defined under continuing law; violated the OCILB law; obtained an OCILB contractor license by fraud, misrepresentation, or deception; or engaged in fraud, misrepresentation, or deception in the conduct of business.

Each qualified applicant who passes the examination prescribed by the Roofing Section of the OCILB is entitled to licensure.<sup>4</sup> The examination requirement is waived for any applicant who holds a roofing contractor license issued in any state that extends reciprocity to roofing contractors licensed in Ohio.<sup>5</sup>

Like the existing specialty contractor licenses, the roofing contractor’s license expires annually.<sup>6</sup> Renewal is conditioned upon completion of ten hours of continuing education each year.<sup>7</sup> Subject to the approval of the Controlling Board, the bill vests the Roofing Section of the OCILB with authority to set and modify fee schedules for licensure and renewal.<sup>8</sup> Under current law, existing specialty contractors must pay: (1) a \$25 application processing fee, (2) a \$25 examination fee, (3) an annual \$60 renewal fee, and (4) any additional fees required for continuing education.<sup>9</sup> It might be reasonable to assume a similar fee schedule for roofing contractors.

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## **LEAST RESTRICTIVE REGULATION COMPARISON**

### **Ohio’s general regulatory policy**

The general policy of the state is reliance on market competition and private remedies to protect the interests of consumers in commercial transactions involving the sale of goods or services. For circumstances in which the General Assembly determines that additional safeguards are necessary to protect consumers from “present, significant, and substantiated

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<sup>4</sup> R.C. 4740.06, not in the bill.

<sup>5</sup> R.C. 4740.08, not in the bill.

<sup>6</sup> R.C. 4740.06(E), not in the bill.

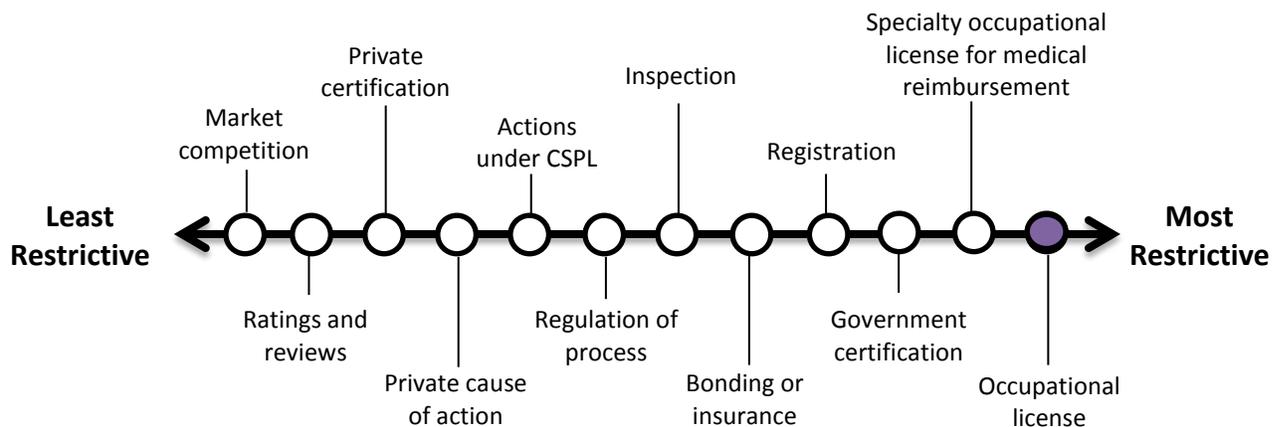
<sup>7</sup> R.C. 4740.04(G)(2).

<sup>8</sup> R.C. 4740.09, not in the bill.

<sup>9</sup> Ohio Legislative Service Commission, *Agency Fees: Department of Commerce*, pg. 68, available at: <https://www.lsc.ohio.gov/documents/budget/documents/stateagencyfees/2019/COM.pdf> (last accessed May 24, 2019).

harms that threaten health, safety, or welfare[.]” the state’s expressed intent is to enact the “least restrictive regulation that will adequately protect consumers from such harms.”<sup>10</sup>

The degree of “restrictiveness” of an occupational regulation is prescribed by statute. The following graphic identifies each type of occupational regulation expressly mentioned in the state’s policy by least to most restrictive<sup>11</sup>:



## Proposed regulation

As previously noted, the bill establishes a new occupational licensure requirement for roofing contractors. Licensure is the most restrictive of all regulatory options within the state’s continuum. Accordingly, the state’s policy prescribes a narrow range of situations in which required licensure is appropriate; specifically, when all of the following circumstances are present: (1) the occupation involves the provision of a service regulated by both state and federal law, (2) the licensing framework allows individuals licensed in other states and territories to practice in Ohio, and (3) the licensing requirement is based on uniform national laws, practices, and examinations that have been adopted by at least 50 U.S. states and territories.<sup>12</sup>

### Necessity

Representative Patton indicated in his sponsor testimony that licensure of commercial roofing contractors is necessary to ensure public safety due to the increasing complexity of the roofing trade. He also conveyed that licensure is an efficient way of curbing “1099 abuse” – the practice of a business wrongfully classifying its employees as independent contractors in order

<sup>10</sup> R.C. 4798.02, not in the bill.

<sup>11</sup> CSPL refers to the Consumer Sales Practices Law found in R.C. Chapter 1345, not in the bill.

<sup>12</sup> R.C. 4798.02(B)(7), not in the bill.

to avoid withholding income taxes and paying into workers compensation and unemployment compensation.<sup>13</sup>

LSC could not readily obtain data addressing the prevalence of health and safety-related incidents stemming from faulty roofing work. Nor was LSC able to readily obtain substantiated information (other than anecdotal accounts) regarding the presence or absence of 1099 abuse within the roofing trade.

However, there is evidence suggesting at least some malfeasance on the part of roofing contractors in Ohio. Of the 22,780 consumer complaints filed with the Ohio Attorney General's Consumer Complaints Division in 2018, 226 (about 1%) involved roofing contractors. Notably, this figure includes disputes involving residential contractors (the bill requires licensure of commercial roofers only) and concerning matters other than work quality (such as payment, timely completion, or property damage).<sup>14</sup>

### **Restrictiveness**

The roofing trade is currently subject to regulation under chapter 15 of the International Building Code (IBC) which has been adopted in all 50 U.S. states.<sup>15</sup> The IBC prescribes minimum construction standards to ensure public safety, health, and welfare in commercial and industrial buildings. The regulations do not require, recommend, or provide uniform standards for the licensure of roofing contractors.

The bill does not allow roofing contractors licensed in other states to perform commercial roofing services in Ohio without first obtaining a license in this state. Out-of-state contractors are exempt only from the bill's examination requirement and only if the state in which the contractor is licensed offers at least the same degree of reciprocity to Ohio contractors.

There appears to be no national consensus regarding the licensure of roofing contractors. Of the states that regulate roofers, the bill's regulatory framework would not be the most restrictive; however, a substantial number of U.S. states have no statutory roofing contractor licensure requirements. In many states, including Ohio, local governments may impose licensure requirements for contractors performing services within the local government's jurisdiction.

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<sup>13</sup> Representative Thomas F. Patton, *House Bill 199 Sponsor Testimony*, pg. 1 and 3, available at: [http://search-prod.lis.state.oh.us/cm\\_pub\\_api/api/unwrap/chamber/133rd\\_ga/ready\\_for\\_publication/committee\\_docs/cmte\\_h\\_commerce\\_1/testimony/cmte\\_h\\_commerce\\_1\\_2019-05-22-0300\\_604/hb199pattonsponsor.pdf](http://search-prod.lis.state.oh.us/cm_pub_api/api/unwrap/chamber/133rd_ga/ready_for_publication/committee_docs/cmte_h_commerce_1/testimony/cmte_h_commerce_1_2019-05-22-0300_604/hb199pattonsponsor.pdf), (last accessed May 26, 2019).

<sup>14</sup> Data obtained by LSC from the Ohio Attorney General's Office.

<sup>15</sup> See, Ohio Administrative Code (O.A.C.) Chapter 4101:1-15 and International Code Council, *International Building Code*, Chapter 15, available at: <https://codes.iccsafe.org/content/IBC2015/chapter-15-roof-assemblies-and-rooftop-structures>, (last accessed May 26, 2019).

## Other regulatory policies

The stated policy of the OCILB is to provide “common sense, business-friendly regulation for Ohio’s commercial construction industry.”<sup>16</sup> There are no other existing state policies concerning the regulation of Ohio’s roofing trade.

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## STATE BY STATE COMPARISON

### Surrounding states

Of the five surrounding states, only Michigan and West Virginia have statewide roofing contractor licensure requirements. In both of those states, a license is required for both residential and commercial roofing services. See **APPENDIX** for a more detailed comparison of Michigan and West Virginia’s licensing requirements with those proposed by the bill.

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## IMPACT STATEMENT

### Opportunities for employment

The bill limits employment opportunities for unlicensed roofing contractors and their employees to the provision of roofing services on residential buildings and industrialized units. Only roofing contractors who are willing and able to meet the bill’s requirements, as listed above, are permitted, under the bill, to take advantage of employment opportunities in commercial roofing.

### Market competition

The bill may reduce the number of roofing contractors providing commercial roofing services in Ohio, which could, in turn, reduce competition in the industry. Presumably, most Ohio contractors for whom commercial roofing is a significant portion of their current business will obtain licenses. The bill permits current contractors who have been actively engaged as roofing contractors in Ohio for at least three years immediately before the bill’s effective date to obtain a license without passing an examination as long as they apply within a year of the bill’s effective date and meet other criteria. However, some contractors may choose not to become licensed; particularly those for whom commercial roofing services in Ohio are a small part of their business (perhaps because they mainly provide residential roofing services or mostly work outside Ohio).

### Consumer choices and costs

The bill may reduce the number of roofing contractors available for Ohio consumers to choose from to provide commercial roofing services. If market competition in the industry is reduced, there may be an increase in the cost of the services.

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<sup>16</sup> Ohio Department of Commerce, *OCILB: About Us*, available at: <https://www.com.ohio.gov/dico/ocilb/>, (last accessed May 26, 2019).

## **Cost to government**

For the costs of the bill to government, please see the [LBO fiscal note](#).

## APPENDIX

Regulation of Roofing Contractors						
State	License required?	Commercial or residential?	Examination required?	Other prerequisites	Continuing education	Fees
Ohio <sup>17</sup>	Yes	Commercial	Yes	5 years of experience as a roofing tradesperson (or 3 years for registered engineers)	10 hours per year	\$25 application \$25 exam \$60 renewal (annual) <sup>18</sup>
Indiana	No	—	—	—	—	—
Kentucky	No	—	—	—	—	—
Michigan <sup>19</sup>	Yes	Both	Yes	60 hour pre-licensure course	21 hours every 3 years for the first two renewal periods and 3 hours every 3 years thereafter	\$195 application \$111 exam \$150 renewal (every 3 years)

<sup>17</sup> Proposed by the bill.

<sup>18</sup> Estimates based on current fees for other specialty contractors licensed by OCILB. Actual fee amounts will be designated by the Roofing Section of OCILB.

<sup>19</sup> Mich. Comp. Laws §§ 339.2404 and 339.2404b; Michigan Department of Licensing and Regulatory Affairs, License Fees, available at: [https://www.michigan.gov/lara/0,4601,7-154-89334\\_72600\\_72602\\_72731\\_72862-365041--,00.html](https://www.michigan.gov/lara/0,4601,7-154-89334_72600_72602_72731_72862-365041--,00.html), (last accessed May 28, 2019); Michigan Department of Licensing and Regulatory Affairs, *Residential Builders and M&A Contractors Renewal & Continuing Competency Requirements*, available at: [https://www.michigan.gov/documents/lara/Continuing\\_Competency\\_Flyer2016\\_517085\\_7.pdf](https://www.michigan.gov/documents/lara/Continuing_Competency_Flyer2016_517085_7.pdf), (last accessed May 28, 2019).

Regulation of Roofing Contractors						
State	License required?	Commercial or residential?	Examination required?	Other prerequisites	Continuing education	Fees
Pennsylvania	No	—	—	—	—	—
West Virginia <sup>20</sup>	Yes	Both	Yes	—	—	\$150 application \$51.95 exam \$150 renewal (annual)

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<sup>20</sup> W.Va. Code § 21-11-3, 6, and 7; West Virginia Contractor Licensing Board, *Examinations Candidate Information Bulletin*, available at: [https://labor.wv.gov/Licensing/Contractor\\_License/Documents/contractor-forms/WVCLCIB.pdf](https://labor.wv.gov/Licensing/Contractor_License/Documents/contractor-forms/WVCLCIB.pdf), (last accessed May 28, 2019).