



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

Emily E. Wendel

Sub. S.B. 255

132nd General Assembly
(As Passed by the Senate)

Sens. McColley, Wilson, Jordan, Huffman, Terhar, LaRose, Coley, Hoagland, Lehner, Eklund, Beagle, Balderson, Hackett, Obhof, O'Brien, Peterson, Uecker

BILL SUMMARY

Expiration of occupational licensing boards

- Requires all occupational licensing boards to be renewed at least once every five years by the General Assembly.
- States that a board that is not renewed within five years of its last renewal or creation expires.
- Requires all boards to be reviewed and renewed by December 31, 2023, unless created within five years of that date.
- Creates a process for concluding the business and operation of an expired board and allows any person to engage in an occupation if the board that licensed that occupation has expired.

General Assembly to review occupational licensing boards

- Requires the President of the Senate and the Speaker of the House of Representatives to create standing committees in each chamber to review occupational licensing boards scheduled to expire in a calendar year.
- Requires the standing committees to review approximately 20% of the boards each year, and to review all boards at least once every five years.
- Requires a board before a standing committee to submit a report containing information about the board's purpose, workload, budget, and staffing.

- States that the board has the burden of proving the need for its continued existence and lists factors for a House or Senate standing committee to consider when making a determination about a board.
- Requires the Senate President and the Speaker of the House to notify the Chief of the Common Sense Initiative Office (CSIO) when a board is to be reviewed, and requires the Chief or the Chief's designee to testify before the standing committee about any information the CSIO has received regarding the board.
- Allows a standing committee to publish a report of the committee's findings and recommendations and suggests information that the report should include.

Legislative Service Commission Director to produce assessment of bills

- Requires the Director of the Legislative Service Commission (LSC) to assess all bills introduced in a General Assembly that propose to substantially change or enact occupational regulations.
- States that the Director's assessment must determine whether a bill's regulatory scheme is consistent with the state's policy on occupational licensing and regulation, and the bill's potential impact on employment, consumer choice, market competition, and cost to government.
- Requires the assessment also to compare the bill's regulatory scheme with those of other states and with any state policy set forth in the sections of the Revised Code governing the occupation that is the subject of the bill.
- Allows the sponsor of a bill that the Director assesses to submit information to the Director to aid in the assessment.

LSC Director to assess occupations

- Requires the Director of LSC to assess 20% of the occupations regulated by the state each calendar year beginning in 2018, requires all occupations to be assessed at least once before 2022, and on a five-year rolling basis after 2022.
- Permits the Director to align the assessments of occupations with a standing committee's review of occupational licensing boards.
- Requires the assessment to attempt to determine whether the current regulatory scheme for an occupation is consistent with the state's policy on occupational licensing and regulation.



- States that an assessment must describe how the current regulatory scheme could be improved to better align with the state's policy on occupational licensing and regulation.

Official state policy on occupational licensing and regulation

- Establishes a state policy on occupational licensing and regulation of individuals to be used when a body is reviewing an occupational licensing board or the actions of a board.
- Requires the state to use the least restrictive regulation where the state finds it necessary to displace competition, and states that the least restrictive regulation is that which relies on market competition and private remedy to protect consumers.
- Lists appropriate state actions to be taken to protect against specific harms to consumers.
- Preempts local law or regulation inconsistent with the state's policy on occupational licensing and regulation to the extent that a political subdivision regulates an occupation that the state also regulates.

TABLE OF CONTENTS

| | |
|---|----|
| Expiration of occupational licensing boards..... | 3 |
| General Assembly to review occupational licensing boards | 4 |
| Report submitted by occupational licensing board to committee | 5 |
| Evidence submitted by occupational licensing board to committee | 5 |
| Common Sense Initiative Office Chief to appear before standing committee..... | 8 |
| Requirements for report published by standing committee | 8 |
| LSC Director to produce assessment of bills | 9 |
| LSC Director to assess occupations..... | 12 |
| Official state policy on occupational licensing and regulation | 12 |
| Least restrictive regulation | 14 |

CONTENT AND OPERATION

Expiration of occupational licensing boards

The bill requires all occupational licensing boards to be renewed at least once every five years by the General Assembly. If a board is not renewed within five years of its last renewal or creation, the board expires on the 31st day of December of the fifth year after that renewal or creation.¹ Any board that is not renewed before December 31,

¹ R.C. 101.62(B).



2023, except for boards created within five years of that date, will expire on that date. A board is renewed when the General Assembly enacts a law that expressly continues statutes creating, empowering, governing, or regulating the board.² The review date for a board does not change under the bill when a statute creating, empowering, governing, or regulating a board is amended. Rather, the review date is only changed if the amendment expressly alters the review date.

The bill creates a process for winding up the affairs of an expired board. Under the bill, if an occupational board expires, any person may engage in the profession or activity that was formerly licensed by the board without a license, notwithstanding any other state law to the contrary.³ Additionally, the Director of Budget and Management cannot authorize the expenditure of money for a board on or after the board's expiration date.⁴

Under the bill, the General Assembly also may enact laws to conclude a board's operations in an orderly fashion. Unless the General Assembly enacts contrary laws, the orders, licenses, contracts, and other actions taken by the board remain in effect according to their terms.⁵ Similarly, any claims pending against the expired board are not terminated, but the Attorney General succeeds the board in any pending claim. The General Assembly may also transfer functions of some or all of an expired board to a successor agency, board, or officer.

General Assembly to review occupational licensing boards

The bill requires the President of the Senate and the Speaker of the House of Representatives, before March 1 in each calendar year, to establish respective standing committees to review those occupational licensing boards that are scheduled to expire in that calendar year.⁶ The Senate President and the Speaker of the House also may direct those standing committees to review a board that does not expire in that year but for which the Director of the Legislative Service Commission (LSC) has performed a review (see "**LSC Director to assess occupations**," below). The standing committees must review 20% of the occupational licensing boards in each year, and all boards must be reviewed at least once every five years.

² R.C. 101.62(E).

³ R.C. 101.62(B).

⁴ R.C. 101.62(C).

⁵ R.C. 101.62(D).

⁶ R.C. 101.63(A).



Report submitted by occupational licensing board to committee

Under the bill, each occupational licensing board that appears before a standing review committee must submit a report that contains all of the following information:

- The board's primary purpose and its various goals and objectives;
- The board's past and anticipated workload, the number of staff required to complete that workload, and the board's total number of staff;
- The board's past and anticipated budgets and its sources of funding; and
- The number of members of its governing board or other governing entity and their compensation, if any.⁷

Evidence submitted by occupational licensing board to committee

The bill requires each occupational licensing board to demonstrate to the standing committee a public need for its continued existence. In determining whether a board has demonstrated that need, the standing committee must consider, as relevant, all of the following:

- Whether continuing the board is necessary to protect the public's health, safety, and welfare, and if so, whether the board's authority is narrowly tailored to protect against present, recognizable, and significant harms to the public's health, safety, and welfare;
- Whether the public could be protected or served in an alternate or less restrictive manner;
- Whether the board serves a specific private interest;
- Whether the board's rules are consistent with the legislative mandate expressed in the statutes that created and empowered the board;
- The extent to which:
 - The board's jurisdiction and programs overlap or duplicate those of other boards;
 - The board coordinates with those other boards;

⁷ R.C. 101.63(B).



- The board's programs could be consolidated with the programs of other state departments or boards.
- How many other states regulate the occupation, whether a license is required to engage in the occupation in other states, whether the initial licensing and license renewal requirements for the occupation are substantially equivalent in every state, and the amount of regulation the board exercises compared to other states;
- The extent to which significant changes in the board's rules could prevent an individual licensed in Ohio from practicing, or allow an individual licensed in Ohio to practice, the same occupation in another jurisdiction without obtaining an occupational license for that occupation in that other jurisdiction;
- Whether the board recognizes national uniform licensure requirements for the occupation;
- Whether private contractors could be used, in an effective and efficient manner, either to assist the board in the performance of its duties or to perform those duties instead of the board;
- Whether the operation of the board has inhibited economic growth, reduced efficiency, or increased the cost of government;
- An assessment of the board's authority regarding fees, inspections, enforcement, and penalties;
- The extent to which the board has permitted qualified applicants to serve the public;
- The extent to which the board has permitted individuals to practice elements of the occupation without a license;
- The cost-effectiveness of the board in terms of number of employees, services rendered, and administrative costs incurred, both past and present;
- Whether the board's continued operation has been impeded or enhanced by existing statutes and procedures and by budgetary, resource, and personnel practices;

- Whether the board has recommended statutory changes to the General Assembly that would benefit the public as opposed to the persons the board regulates, if any, and whether its recommendations and other policies have been adopted and implemented;
- Whether the board has required any persons it regulates to report to it the impact of board rules and decisions on the public as they affect service costs and service delivery;
- Whether persons the board regulates, if any, have been required to assess problems in their business operations that affect the public;
- Whether the board has encouraged public participation in its rule-making and decision-making;
- The efficiency with which formal public complaints filed with the board have been processed to completion;
- Whether the purpose for which the board was created has been fulfilled, has changed, or no longer exists;
- Whether federal law requires that the board be renewed in some form;
- An assessment of the board's administrative hearing process, if the board has one, and whether that hearing process is consistent with due process rights;
- Whether the requirement for occupational licensure is consistent with the official state policy on occupational licensing (see "**Official state policy on occupational licensing and regulation**," below), serves a meaningful, defined public interest, and provides the least restrictive form of regulation that adequately protects the public interest;
- The extent to which licensing ensures that practitioners have occupational skill sets or competencies that are substantially related to protecting consumers from present, significant, and substantiated harms that threaten public health, safety, and welfare, and the impact that those criteria have on applicants, particularly those with moderate or low incomes, seeking to enter the occupation or profession;
- The extent to which the requirement for the occupational license stimulates or restricts competition, affects consumer choice, and affects the cost of services; and



- An assessment of whether changes are needed in the board's enabling laws for it to comply with the criteria suggested by the considerations listed above.⁸

The bill establishes that, for the purposes of reviewing a board, a government regulatory requirement protects or serves the public interest if it provides protection from present, significant, and substantiated harms to the health, safety, and welfare of the public.

Common Sense Initiative Office Chief to appear before standing committee

The bill requires the Senate President and the Speaker of the House to notify the Chief of the Common Sense Initiative Office (CSIO) when an occupational licensing board is identified to be reviewed by a standing committee to determine whether the board should be renewed.⁹ The Chief, or the Chief's designee, must appear before the committee and testify, with respect to the board, about at least all of the following:

- Whether CSIO has, within the past five years, received commentary related to the board under CSIO's process for adverse impact review;
- Whether CSIO has, within the past five years, received advice from the Small Business Advisory Council related to the board; and
- Any other information the Chief believes will address the board's effectiveness and efficiency, and in particular, the quality of customer service the board provides.¹⁰

Requirements for report published by standing committee

Under the bill, a standing committee of the Senate or the House that has reviewed an occupational licensing board may publish a report of its findings and recommendations.¹¹ The report may include information for more than one board the committee reviewed. If the committee prepares and publishes a report, it must send a copy to the Senate President, the Speaker of the House, the Governor, and each affected board. Any published report must be made available to the public in the offices of the President of the Senate and the Speaker of the House of Representatives during

⁸ R.C. 101.63(C)(1) through (24).

⁹ R.C. 101.64.

¹⁰ R.C. 101.64(A) through (C).

¹¹ R.C. 101.65(A).



reasonable hours. As part of a report, a committee may present its recommendations to the General Assembly in bill form.

If the committee makes recommendations about a board in its report, the recommendations should indicate how the implementation of the recommendations will accomplish each of the following:

- Improving efficiency in the management of state government;
- Improving services rendered to Ohio citizens;
- Simplifying and improving preparation of the state budget;
- Conserving Ohio natural resources;
- Promoting the orderly growth of Ohio and its government;
- Promoting the idea that occupational regulations must be construed and applied to increase economic opportunities, promote competition, and encourage innovation;
- Providing for the least restrictive regulation by repealing the current regulation and replacing it with a less restrictive regulation that is consistent with the state's policies on occupational licensing (see "**Official state policy on occupational licensing and regulation**," below);
- Improving the effectiveness of the services performed by the service departments of the state;
- Avoiding duplication of effort by state agencies or boards; and
- Improving the organization and coordination of the state government in one or more of the ways listed above.¹²

LSC Director to produce assessment of bills

The bill requires the Director of LSC to perform an assessment of all bills introduced in the General Assembly that propose to substantially change or enact occupational regulations.¹³ An occupational regulation means a regulation or rule that controls an individual's (that is, a natural person's) practice of a trade or profession. The

¹² R.C. 101.65(B).

¹³ R.C. 103.26(B).



assessment must attempt to determine whether the regulatory scheme proposed in the legislation is consistent with the state's policies on occupational licensing (see "**Official state policy on occupational licensing and regulation**," below) with respect to proposing the least restrictive regulation to protect consumers from present, significant, and substantiated harms that threaten public health, safety, and welfare.

Under the bill, the Director of LSC's assessment must consider the potential consequences of the legislation with respect to the following:

- Opportunities for employment within the occupation;
- Consumer choices and costs;
- Market competition; and
- Cost to government.¹⁴

The assessment also must include all of the following:

- A comparison of the regulatory scheme the bill proposes with the current regulatory scheme in other similar states for the same occupation and a consideration of the extent to which significant changes in the board's rules could prevent an individual licensed in Ohio from practicing, or allow an individual licensed in Ohio to practice, the same occupation in another jurisdiction without obtaining an occupational license for that occupation in that other jurisdiction;
- A comparison of the regulatory scheme the bill proposes with the policy of Ohio as set forth in the sections of the Revised Code governing the occupation that is the subject of the bill, if those sections include such a policy.

Additionally, the bill allows the sponsor of a bill substantially changing or enacting occupational regulation to submit relevant information to the Director of LSC to aid in the Director's assessment of the bill. The information submitted by the sponsor may include all of the following:

- Evidence of present, significant, and substantiated harms to consumers in Ohio;

¹⁴ R.C. 103.26(A) and (B)(1) through (4).

- An explanation of why existing civil or criminal laws or procedures are inadequate to prevent or remedy any harm to the public;
- An explanation of why a less restrictive regulation consistent with the state's policies on occupational regulation is not proposed;
- The names of associations, organizations, or other groups representing the occupation seeking regulation and the approximate number of members in each in Ohio;
- The functions typically performed by members of this occupation and whether they are identical or similar to those performed by another occupation;
- Whether specialized training, education, or experience is required to engage in the occupation and, if so, how current practitioners acquired that training, education, or experience;
- Whether the proposed regulation would change the way practitioners of the occupation acquire any necessary specialized training, education, or experience, and if so, why;
- Whether any current practitioners of the occupation in Ohio lack whatever specialized training, education, or experience and how the proposed regulation would address that deficiency;
- Whether new entrants into the occupation would be required to provide evidence of any necessary training, education, or experience, or to pass an examination, or both;
- Whether current practitioners would be required to provide evidence of any necessary training, education, or experience, or to pass an examination, and, if not, why not;
- The expected impact of the proposed regulation on the supply of practitioners of the occupation and on the cost of services or goods provided by the occupation; and
- Information from others knowledgeable about the occupation, and the related economic factors.¹⁵

¹⁵ R.C. 103.26(C) and (D)(1) through (12).



The bill requires the Director of LSC to provide the assessment in a timely fashion. Any bill that proposes to substantially change or enact an occupational regulation cannot be reported out of committee until after the committee has received and considered the assessment, unless two-thirds of the committee members vote to favorably report the bill without the assessment.¹⁶

LSC Director to assess occupations

The bill requires the Director of LSC to perform an assessment of 20% of the occupations regulated by the state each calendar year, beginning in 2018.¹⁷ All occupations must be assessed at least once before 2022, and at least once every five years after 2022. The Director may assess occupations on a schedule that coordinates with a standing committee's review of an occupational licensing board (see "**General Assembly to review and renew occupational licensing boards**," above). The assessment must attempt to determine whether the current regulatory scheme is consistent with the state's policies on occupational regulation (see "**Official state policy on occupational licensing and regulation**," below). The Director must issue a report containing all assessments performed during a calendar year by December 1 of each year, and must send the report to the General Assembly and the Attorney General. The report must include instructions as necessary to describe how the current regulatory scheme could be improved in order to more consistently align with the state's policies on occupational regulation and licensing. The Director may require a department or board that regulates an occupation being assessed to submit relevant information to the Director.

Official state policy on occupational licensing and regulation

The bill establishes a state policy on occupational licensing and regulation of individuals (meaning natural persons), to be used when the General Assembly or other body is reviewing an occupational licensing board or the actions of a board. The policy states that occupational regulations must be construed and applied to increase economic opportunities, promote competition, and encourage innovation.¹⁸

Where the state finds it necessary to displace competition, the bill requires the state to use the least restrictive regulation to protect consumers. The bill presumes that the least restrictive regulation is that which relies on market competition and private remedy to protect consumers, provided that under the bill, occupational regulations

¹⁶ R.C. 103.26(B) and (E).

¹⁷ R.C. 103.27.

¹⁸ R.C. 4798.02(A).



that are created by adopting national or international standards and that are substantially equivalent to the occupational regulations for that occupation adopted in at least 45 U.S. states are deemed to be narrowly tailored and the least restrictive regulations.¹⁹

The bill also lists the appropriate state action to be taken to protect consumers from specific harms as follows:

- For regulations intended to protect consumers against fraud, the appropriate state action is to strengthen powers under the Deceptive Trade Practices Acts.²⁰
- For regulations intended to protect consumers against unsanitary facilities and general health, safety, and welfare concerns, the appropriate state action is to require periodic inspections.
- For regulations intended to protect consumers against potential damages to third parties who are not party to a contract between the seller and the buyer, and other externalities, the appropriate state action is to require bonding or insurance.
- For regulations intended to protect consumers against potential damages by transient providers, the appropriate state action is to require registration with the Secretary of State.
- For regulations intended to protect consumers against asymmetrical information between the seller and buyer, the appropriate state action is to offer voluntary certification.
- For regulations intended to facilitate governmental reimbursement for providing medical services for an emerging medical specialty, the appropriate state action is to require a specialty occupational license for medical reimbursement.²¹

The bill limits enforcement of an occupational regulation to the extent that an individual sells goods or services that are included explicitly in the statute that defines the occupation's scope of practice. The bill also states that the state policy contained in the bill preempts local law or regulation that is inconsistent with these provisions, to the

¹⁹ R.C. 4798.02(B) and (D).

²⁰ Chapters 1345. and 4165. of the Revised Code, not in the bill.

²¹ R.C. 4798.02(B)(1) through (6).



extent that a political subdivision regulates an occupation that is also regulated by the state.²²

Least restrictive regulation

The bill defines "least restrictive regulation" as the public policy of relying on one of the following, listed from the least to the most restrictive, as a means of consumer protection:

- Market competition;
- Third-party or consumer-created ratings and reviews;
- Private certification;
- Specific private civil cause of action to remedy consumer harm;
- Actions under the Consumer Sales Practices Law;²³
- Regulation of the process of providing the specific goods or services to consumers;
- Inspection;
- Bonding or insurance;
- Registration;
- Government certification;
- Specialty occupational license for medical reimbursement; or
- Occupational license.²⁴

The bill declares that the state must use the least restrictive regulation under this policy that will protect consumers from significant and present harms.

²² R.C. 4798.03.

²³ Chapter 1345. of the Revised Code, not in the bill.

²⁴ R.C. 4798.01.



HISTORY

| ACTION | DATE |
|---------------------------------------|----------|
| Introduced | 02-12-18 |
| Reported, S. Gov't Oversight & Reform | 06-27-18 |
| Passed Senate (24-8) | 06-27-18 |

