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OHIO LEGISLATIVE SERVICE COMMISSION

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Office of Research
and Drafting

Legislative Budget
Office

S.B. 245*
135th General Assembly

Occupational Regulation Report

[Click here for S.B. 245's Bill Analysis / Fiscal Note](#)

Primary Sponsors: Sens. Reynolds and Craig

Impacted Profession: Real estate brokers and salespersons

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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.¹

LEAST RESTRICTIVE REGULATION COMPARISON

Ohio's general regulatory policy

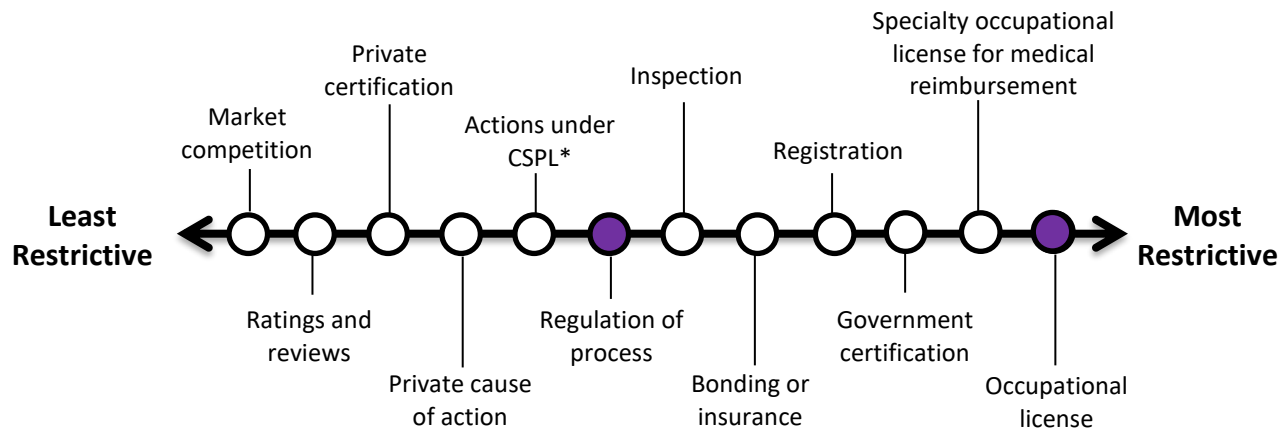
The general policy of the state is reliance on market competition and private remedies to protect the interests of consumers in commercial transactions involving the sale of goods or services. For circumstances in which the General Assembly determines that additional safeguards are necessary to protect consumers from "present, significant, and substantiated 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."²

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:

* This report addresses the "As Introduced" version of S.B. 245. It does not account for changes that may have been adopted after the bill's introduction.

¹ R.C. 103.26, not in the bill.

² R.C. 4798.01 and 4798.02, neither in the bill.



*CSPL – The Consumer Sales Practices Law

S.B. 245 requires individuals licensed as real estate brokers and salespersons under continuing law to enter into written agency agreements before engaging in specified activities on behalf of a client. Entering into such an agreement is optional under current law. However, current law specifies certain information that must be included in a written agency agreement if a licensee chooses to enter into one. The bill expands the information required of a written agency agreement.³ The bill also expands the reasons for which a licensed real estate broker or salesperson may be disciplined to include violations of the bill's requirements.⁴

Necessity of regulations

Senators Reynolds and Craig, the bill's primary sponsors, testified that the need for this legislation stems from a recent settlement reached by the National Association of Realtors (NAR) resolving litigation brought on behalf of home sellers related to broker commissions. As part of this settlement, NAR agreed to create a new rule prohibiting offers of compensation on the Multiple Listing Service (MLS). Offers of compensation, where the listing broker offers compensation to the buyer broker, will need to be negotiated outside of the MLS. Further, NAR agreed to create a new rule, requiring NAR members working with homebuyers participating in the MLS to enter into written agreements with their buyers. While the settlement requires written agreements for NAR members representing buyers, it does not apply to all licensed real estate professionals, resulting in uncertainty over whether these agreements must be used, when they must be entered, and what they must contain. Senators Reynolds and Craig said that the bill provides clarity to changing industry practices by establishing a statewide standard for all licensed real estate professionals.⁵

³ R.C. 4735.55.

⁴ R.C. 4735.18(A)(9), not in the bill.

⁵ See [Senators Reynolds and Craig Sponsor Testimony \(PDF\)](#), Senate Select Committee on Housing, May 8, 2024, available on the General Assembly's website, legislature.ohio.gov, by searching for "SB 245" and looking under the "Committee Activity" tab.

Restrictiveness of regulations

Licensure

Licensure is the most restrictive of all regulatory options identified within the state's continuum of regulations. 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:

- The occupation involves providing a service regulated by both state and federal law;
- The licensing framework allows individuals licensed in other states and territories to practice in Ohio; and
- 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.⁶

Continuing law satisfies the state policy's first criterion regarding concurrent state and federal law. For example, real estate transactions are subject to the federal Fair Housing Act, which prohibits discrimination based on specified factors.⁷ In addition, state governments issue licenses to sell real estate.⁸

The state policy's second criterion regarding licensure of out-of-state individuals also is satisfied by continuing law. Specifically, the state's Out-of-State Applicant Licensure Law generally requires the Ohio Real Estate Commission to issue licenses to applicants who hold analogous out-of-state occupational licenses.⁹

As for the state policy's third criterion, neither continuing law nor the bill satisfies it because laws governing the transfer of real estate, including licensure laws, generally are not consistent across the nation.¹⁰

Regulation of process

The state's general policy does not specify when a process regulation is the appropriate means of protecting consumers. Presumably, process regulations are preferred when market competition, ratings and reviews, private certifications, private causes of action, and actions under the Consumer Sales Practices Act are not sufficient to achieve the intent of the regulation.¹¹

⁶ R.C. 4798.02, not in the bill.

⁷ 42 United States Code 3601 *et seq.*

⁸ See [Licensing for Real Estate Professionals](#), which may be accessed by conducting a "licensing for real estate professionals" keyword search on the National Association of Realtors website: nar.realtor.

⁹ R.C. 4735.07, 4735.09, and 4796.03, not in the bill.

¹⁰ See [Licensing for Real Estate Professionals](#).

¹¹ R.C. 4798.01, not in the bill.

Whether these mechanisms are a sufficient means of protecting consumers is a policy decision. However, to protect consumers, current Ohio law establishes many process regulations that govern the provision of real estate broker and salesperson services. For example, current law requires licensed real estate brokers and salespersons to provide clients with a written brokerage policy on agency. A “brokerage policy on agency” is a written policy regarding the agency relationship and each brokerage must develop this policy.¹²

The bill regulates process by requiring a licensed real estate broker or salesperson to enter into a written agency agreement before providing services that require a license to, or on behalf of, a seller or purchaser. As discussed above, entering into a written agency agreement is optional under current law. However, current law requires that the following information must be included in a written agency agreement if a licensee chooses to enter into one:

- An expiration date;
- A statement regarding state and federal fair housing law;
- A statement defining the practice known as “blockbusting” and stating that it is illegal;
- A copy of the U.S. Department of Housing and Urban Development Equal Housing Opportunity logotype.

The bill expands the information required to be in a written agency agreement to also include all of the following:

- A statement that the broker is appointed as the client’s agent;
- An indication of whether the agency relationship is exclusive or nonexclusive;
- The terms by which the broker is to be compensated.¹³

The bill also makes conforming changes to the law governing real estate brokers and salespersons to specify that entering into a written agency agreement as required under the bill triggers when the following continuing law requirements must occur:

- The requirement that a licensee must provide a client with a brokerage policy on agency;
- The requirement that a licensee must obtain written consent to represent another party in a transaction.¹⁴

The bill expands the reasons for which a licensed real estate broker or salesperson may be disciplined by the Ohio Real Estate Commission to include violations of the bill’s disclosure requirements. Under continuing law, discipline by the Commission may include revocation or

¹² R.C. 4735.56.

¹³ R.C. 4735.55.

¹⁴ R.C. 4735.56 and R.C. 4735.59.

suspension of the licensee's license, imposition of a fine, reprimand, or additional continuing education requirements.¹⁵

To the extent these changes impose more duties on a licensee, the bill may be more restrictive.

IMPACT STATEMENT

Opportunities for employment

Requiring written agency agreements of all licensed real estate brokers and salespersons before providing services to real estate buyers or sellers, and related terms of the bill, appear unlikely to alter opportunities for employment in the industry. Whether the NAR settlement and the changes following in its wake will alter employment in the industry is a separate question not addressed here. This assessment is limited to those portions of the bill dealing with these subjects.

Consumer choice

Similarly, quite apart from the broader implications of the NAR settlement, the bill's requirements in and of themselves are not expected to alter choices available to consumers.

Market competition

The bill's provisions appear unlikely to change the extent of competition in the market for real estate brokerage services.

Cost to government

For the costs to government, please see the [LBO fiscal note \(PDF\)](#), which anticipates that the bill is unlikely to cause a significant increase in complaints filed with the Department of Commerce's Division of Real Estate and Professional Licensing.

SUMMARY OF PROPOSED REGULATIONS

In addition to the changes described above, the bill makes several changes to the law that does not affect occupational regulations, such as changes related to the law governing evictions, real property, and building inspections.

For a full explanation of the bill's provisions, see the [S.B. 245 bill analysis \(PDF\)](#).

¹⁵ R.C. 4735.18(A)(9) and 4735.051(I), not in the bill.

COMPARISON TO OTHER STATES

Of Ohio's surrounding states (Michigan, Indiana, Kentucky, West Virginia, and Pennsylvania), Pennsylvania and Indiana appear to be the only states that require written agency agreements. An explanation of those laws is below.

Pennsylvania

Pennsylvania law prohibits a licensed real estate broker from recovering a fee, commission, or other valuable consideration in the absence of a written agreement between the broker and the consumer setting forth the nature of the services and the fee to be charged. Pennsylvania law specifies that it does not prohibit a broker from providing services before an agreement is signed – it simply bars a licensee from recovering a fee, commission, or other valuable consideration in the absence of a signed agreement. The Pennsylvania law does not apply to real estate salespersons.¹⁶

Indiana

Beginning July 1, 2024, licensed real estate brokers will be required to enter into written listing agreements and buyer agency agreements, as applicable, that must include the agreement's expiration date.¹⁷ A licensee who violates the requirement is subject to discipline by the licensing board, which may include revocation or suspension of the licensee's license, censure, reprimand, probation, a civil penalty, or an order to pay restitution.¹⁸ Under Indiana law a real estate broker license appears to cover both brokers and salespersons, as those terms are defined in Ohio.¹⁹

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¹⁶ 63 P.S. 455.606a and 455.608a.

¹⁷ Ind. Code 25-34.1-12-1 and 25-34.1-12-2, effective July 1, 2024.

¹⁸ Ind. Code 25-1-11-5 and 25-1-11-12.

¹⁹ Ind. Code 25-34.1-1-2 and R.C. 4735.01.