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# OHIO LEGISLATIVE SERVICE COMMISSION

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Office of Research  
and Drafting

Legislative Budget  
Office

**H.B. 346\***  
**136<sup>th</sup> General Assembly**

## Occupational Regulation Report

[Click here for H.B. 346's Bill Analysis / Fiscal Note](#)

**Primary Sponsors:** Reps. Kishman and Williams

**Impacted Professions:** Mandatory reporters of child abuse and neglect

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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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## 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."<sup>2</sup>

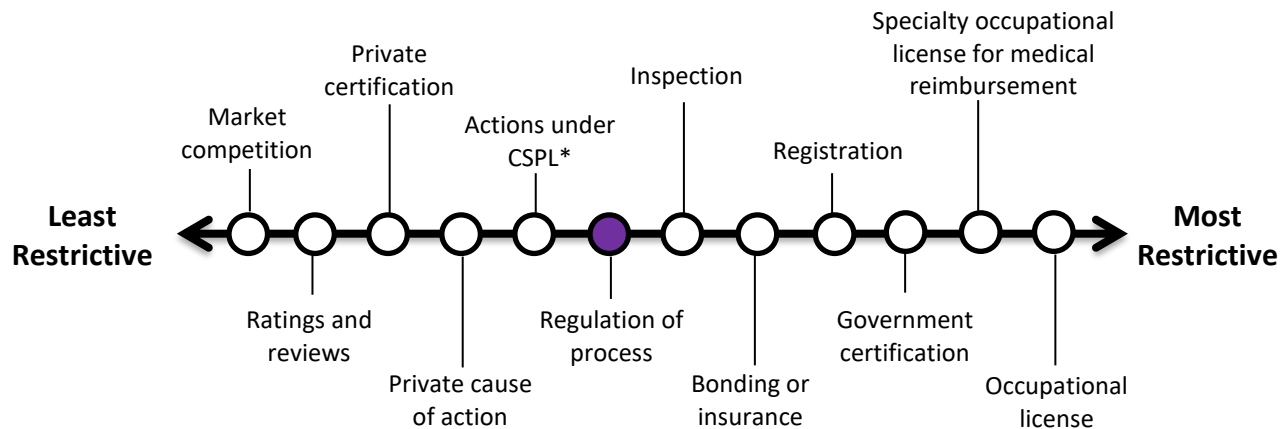
The degree of "restrictiveness" of an occupational regulation is prescribed by statute. The following graphic identifies each type of occupational regulation expressly mentioned in the state's policy by least to most restrictive:

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\* This report addresses the "As Introduced" version of H.B. 346. It does not account for changes that may have been adopted after the bill's introduction.

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

<sup>2</sup> R.C. 4798.01 and 4798.02, neither in the bill.



\*CSPL – The Consumer Sales Practices Law

H.B. 346 requires a mandatory reporter of child abuse or neglect to report to both a peace officer and a public children services agency (PCSA) as opposed to either one or the other as is currently required. Under continuing law, mandatory reporters include attorneys, various health care professionals, marriage and family therapists, school teachers and employees, peace officers, and other specified professionals.<sup>3</sup> For a full list of mandatory reporters, see page 2 of LSC’s *Members Brief* on [Child Abuse or Neglect Reporting \(PDF\)](#).<sup>4</sup>

## Necessity of regulations

Representative Matthew Kishman, the bill’s joint sponsor, testified that the bill is aimed at strengthening Ohio’s mandatory reporting guidelines for suspected child abuse. Representative Kishman also noted that the bill will foster better collaboration between agencies, empower quicker interventions, and prioritize child safety.

Additionally, Representative Josh Williams, the bill’s other joint sponsor, testified that when it comes to child abuse, there is no acceptable level of communication error because it could mean life or death. Representative Williams also stated that when child abuse is suspected, the police need to be involved every step of the way.<sup>5</sup>

## Restrictiveness of regulations

### Regulation of process

The state’s general policy does not specify when regulation of process is the appropriate means of protecting consumers. The policy suggests a process regulation is preferred when

<sup>3</sup> R.C. 2151.421 and 2151.99.

<sup>4</sup> Available by conducting a keyword “child abuse” search on the LSC website: [lsc.ohio.gov](http://lsc.ohio.gov).

<sup>5</sup> Representatives Matthew Kishman and Josh Williams, [H.B. 346 Sponsor Testimony](#), available on the General Assembly’s website, [legislature.ohio.gov](http://legislature.ohio.gov), by searching “H.B. 346” and navigating to the Committee Activity tab.

market competition, ratings and reviews, private certifications, private lawsuits, and actions under the Consumer Sales Practices Law<sup>6</sup> are not sufficient to achieve the regulation's intent.<sup>7</sup>

Whether these mechanisms are a sufficient means of protecting consumers is a policy decision. However, continuing Ohio law establishes numerous process regulations, including mandatory child abuse or neglect reporting requirements involved in the bill, that appear to be aimed at protection from present, significant, and substantiated harm as expressed in the state's general policy.<sup>8</sup>

### **Background: federal law on child abuse and neglect reporting**

Ohio's current mandatory framework for reporting child abuse and neglect stems from the federal Child Abuse Prevention and Treatment Act (CAPTA),<sup>9</sup> which establishes minimum requirements that a state must satisfy to receive federal funding for improving its child protective systems. Under CAPTA, the state must require reporting of child abuse or neglect.<sup>10</sup> CAPTA, however, does not specify who must report or the reporting procedure. Each state therefore has discretion to regulate those aspects of reporting.<sup>11</sup> Thus, the level of administrative duties placed on mandatory reporters depends on how a state crafts its reporting requirements.

### **Dual reporting requirement**

In Ohio, continuing law requires a mandatory reporter to make a child abuse or neglect report containing specified information by telephone, in person, or electronically, and in some cases, in writing.<sup>12</sup> To comply with the bill, a mandatory reporter must duplicate the reporter's efforts by reporting to both a PCSA and a peace officer as opposed to only one or the other as is currently required. Thus, the bill's dual reporting requirement appears to increase restrictiveness by expanding an existing administrative duty for mandatory reporters. (Note that continuing law requires, in most cases, a PCSA or a peace officer initially receiving a report to refer it to the other party so that both are ultimately notified.<sup>13</sup>)

### ***Criminal penalty and culpable mental state***

Under continuing law, a mandatory reporter who violates reporting requirements concerning child abuse or neglect is guilty of a first or fourth degree misdemeanor, depending on

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<sup>6</sup> R.C. Chapter 1345.

<sup>7</sup> R.C. 4798.01 and 4798.02, not in the bill.

<sup>8</sup> See R.C. 4798.02, not in the bill.

<sup>9</sup> 42 United States Code (U.S.C.) 5101, et seq.

<sup>10</sup> 42 U.S.C. 5106a.

<sup>11</sup> See, e.g., page 149 of [The Runaway Train of Mandated Reporting \(PDF\)](#), which is available by conducting a keyword "mandated reporting" search on the Digital USD website: [digital.sandiego.edu](http://digital.sandiego.edu).

<sup>12</sup> R.C. 2151.421(C).

<sup>13</sup> R.C. 2151.421(E).

the circumstances. Because the criminal penalty is unchanged, this aspect of the bill does not appear to impact restrictiveness.

However, the bill heightens the culpable mental state necessary for a mandatory reporter to incur the criminal penalty. Currently, a mandatory reporter who “recklessly” fails to report to either a peace officer or a PCSA is guilty. (Because current law does not specify a culpable mental state, “reckless” is the default.) The bill instead specifies that a mandatory reporter who “knowingly” violates the dual-reporting requirement is guilty.<sup>14</sup> Under continuing law, “knowingly” is a higher culpable mental state than “recklessly.”<sup>15</sup> Because this change potentially makes it more difficult to prove that a mandatory reporter is guilty, it appears to decrease restrictiveness.

For a complete explanation of the bill, see the [LSC bill analysis \(PDF\)](#).

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## IMPACT STATEMENT

### Opportunities for employment

The bill’s requirement that a mandatory reporter of child abuse or neglect make a dual report to both a PCSA and peace officer, as opposed to just one or the other, would not be expected to have significant effects on opportunities for employment for mandatory reporters. To any extent that the increase in administrative burden encouraged any mandatory reporters to leave their respective fields, the bill could be viewed as decreasing opportunities for employment for these individuals. Mandatory reporters willing and able to comply with the bill’s dual reporting requirement would be expected to have their career prospects unaffected by the bill.

### Consumer choice and market competition

The bill would not be expected to lead to significant changes in consumer choice or market competition among the various professions of mandatory reporters. If the increase in administrative burden due to the bill’s reporting requirements or the addition of criminal and civil penalties for mandatory reporters who fail to meet their reporting requirements were to cause fewer mandatory reporters to continue working in their field, the bill could decrease consumer choice between, and market competition among, those mandatory reporters who followed the bill’s requirements and continued working in their given field.

### Cost to government

For costs to government, consult the [LSC fiscal note \(PDF\)](#).

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<sup>14</sup> R.C. 2151.421 and 2151.99 and R.C. 2901.21 and 2901.22, not in the bill. See also *State v. Collins*, 89 Ohio St.3d 524, 530 (2000).

<sup>15</sup> R.C. 2901.22, not in the bill.

## COMPARISON TO OTHER STATES

In addition to Ohio, the surrounding states – Indiana, Kentucky, Michigan, Pennsylvania, and West Virginia – all have mandatory reporting laws. The table below compares those laws by addressing (1) to whom a mandatory reporter must report child abuse or neglect and (2) the criminal penalty for failing to report. The criminal penalties described below address only the potential maximum jail term and fine amount.

| Comparison of Mandatory Reporting Laws in States Surrounding Ohio |   |  |
|---|---|--|
| State   | Report Recipient  | Criminal Penalty   |
| Ohio (under the bill)   | Public children services agency and peace officer<br><i>(R.C. 2151.421)</i>   | Knowingly failing to report is a fourth degree misdemeanor (jail term up to 30 days and up to a \$250 fine) or, if the child suffers or may suffer harm and other circumstances are present, a first-degree misdemeanor (jail term up to 180 days and up to a \$1,000 fine)<br><br>Knowingly failing to report also is a first degree misdemeanor if the offender knows that the person who committed the abuse or neglect is a leader of the same church, religious society, or faith of which the offender is a member<br><br><i>(R.C. 2151.421 and 2151.99 and R.C. 2929.24 and 2929.28, not in the bill)</i> |
| Indiana   | The Indiana Department of Child Services or an appropriate law enforcement agency<br><i>(Ind. Code 31-33-5-1, 31-33-5-2, and 31-33-5-4)</i> | Knowingly failing to report is a class B misdemeanor (jail term up to 180 days and up to a \$1,000 fine)<br><br><i>(Ind. Code 31-33-22-1 and 35-50-3-3)</i>  |
| Kentucky  | A local law enforcement agency, the Department of Kentucky State Police, the Cabinet for Health and   | Intentionally failing to report is a class B misdemeanor for a first offense (jail term up to 90 days and up to a \$250 fine), a class A misdemeanor for a second offense (jail term up to 12 months and up to a \$500 fine), and a class D felony for each subsequent offense (jail   |

| Comparison of Mandatory Reporting Laws in States Surrounding Ohio |  |   |
|---|--|---|
| State   | Report Recipient   | Criminal Penalty  |
|   | Family Services, or a state or county attorney<br><i>(Ky. Rev. Stat. 620.030)</i>  | term between one and five years and a fine between \$1,000 and \$10,000)<br><i>(Ky. Rev. Stat. 532.060, 532.090, 534.030, 534.040, and 620.030)</i>   |
| Michigan  | Michigan Department of Health and Human Services<br><i>(Mich. Comp. Laws 722.623)</i>  | Knowingly failing to report is a misdemeanor (jail term up to 93 days and up to a \$500 fine)<br><i>(Mich. Comp. Laws 722.633)</i>  |
| Pennsylvania  | Pennsylvania Department of Human Services<br><i>(23 Pa. Cons. Stat. 6311 and 6313)</i>   | Willfully failing to report is a second degree misdemeanor (jail term up to two years and a fine up to \$5,000) or, if the abuse constitutes at least a first-degree felony and the mandatory reporter has direct knowledge of the abuse, a third degree felony (jail term up to seven years and a fine up to \$15,000)<br><i>(23 Pa. Cons. Stat. 6319 and 18 Pa. Cons. Stat. 1101, 1103, and 1104)</i> |
| West Virginia   | West Virginia Department of Human Services and, if the reporter believes the child suffered serious abuse, also to the State Police and law enforcement agency having jurisdiction to investigate the abuse<br><i>(W. Va. Code 49-2-803)</i> | Knowingly failing to report is a misdemeanor (jail term up to 90 days and up to a \$5,000 fine) or, if the abuse is of a sexual nature, a separate misdemeanor (jail term up to six months and up to a \$10,000 fine)<br><i>(W. Va. Code 49-2-812)</i>  |