



Members Brief

An informational brief prepared by the LSC staff for members and staff of the Ohio General Assembly

Author: Prince Senayah, LSC Fellow
Reviewer: Joe McDaniels, Attorney

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Occupational Regulation Law

S.B. 255 of the 132nd General Assembly, enacted in late 2018, established the state’s Occupational Regulation Law – a general policy of reliance on market competition and private remedies to protect the interests of consumers, favoring the least restrictive regulation necessary to prevent “present, significant, and substantiated harms.” It instituted processes for conducting a comprehensive review of the state’s occupational licensing boards as well as bills that substantially modify or enact occupational regulations. This memorandum summarizes the policies and processes set in place by S.B. 255 and the Legislative Service Commission’s role in implementing them.

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General state policy

The state’s Occupational Regulation Law establishes a general policy to be used by the General Assembly and other bodies when reviewing an occupational licensing board, the actions of such a board, or legislation that substantially changes or enacts an occupational regulation. The policy addresses all statutes, policies, rules, adjudication orders, practices, and other state laws “requiring an individual to possess certain personal qualifications to use an occupational

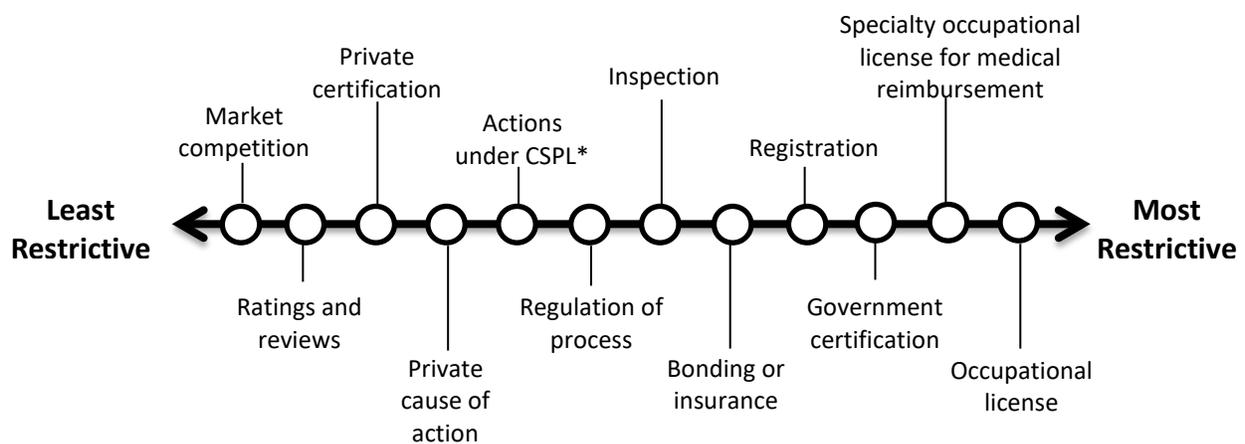
title or work in a lawful occupation . . .” It does not apply to business licenses, facility licenses, building permits, zoning and land use regulations, or driver’s licenses.¹

Government regulation disfavored

The Occupational Regulation Law confers a general preference for market competition and private remedies as the primary means of protecting the interests of consumers in commercial transactions. When the General Assembly determines that additional safeguards are necessary to address “present, significant, and substantiated harms that threaten health, safety, or welfare,” the Law advises enactment of the “least restrictive regulation that will adequately protect consumers from such harms.” Once enacted, occupational regulations must be construed and applied to increase economic opportunities, promote competition, and encourage innovation.²

Least restrictive regulation

Occupational Regulation Law assigns a degree of “restrictiveness” to each type of occupational regulation. The following graphic identifies each type of occupational regulation identified by state law, from least to most restrictive:



*CSPL – The Consumer Sales Practices Law

The Law attempts to strike a balance between free market principles and the need to protect consumers by prescribing the appropriate type of regulation to address specific policy concerns. The table below describes when each type of regulation is appropriate, according to the Law.

¹ R.C. 4798.01.

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

Least Restrictive Regulation	
Regulation	Purpose
Deceptive Trade Practices Act	Protect consumers against fraud (<i>R.C. 4798.02(B)(1)</i>).
Periodic inspections	Protect consumers against unsanitary facilities and general health, safety, and welfare concerns (<i>R.C. 4798.02(B)(2)</i>).
Bonding or insurance	Protect against potential damages to third parties who are not a party to a contract between the seller and buyer, and other types of externalities (<i>R.C. 4798.02(B)(3)</i>).
Registration	Protect consumers against potential damages by transient providers (<i>R.C. 4798.02(B)(4)</i>).
Voluntary private certification	Protect consumers against asymmetrical information between the seller and buyer (<i>R.C. 4798.02(B)(5)</i>).
Voluntary public certification	Protect consumers against asymmetrical information between the seller and buyer when no suitable private certification is available (<i>R.C. 4798.02(B)(5)</i>).
Specialty occupational license for medical reimbursement	Facilitate government reimbursement for providing medical services for an emerging medical specialty (<i>R.C. 4798.02(B)(6)</i>).
Occupational license	Appropriate only if (1) the occupation involves providing 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 (<i>R.C. 4798.02(B)(7)</i>).

Preemption of local regulations

The policies prescribed by the state's Occupational Regulation Law preempt inconsistent local laws and regulations, to the extent that a political subdivision regulates an occupation that is also regulated by the state.³

Expiration of licensing boards

An occupational licensing board – defined by the Occupational Regulation Law as a board, commission, committee, council, administrative department, agency, division, office, or other similar state public body that issues an occupational license – expires by operation of law if it is not periodically renewed by an act of the General Assembly. If a licensing board is not renewed on or before December 31 of the sixth year following its creation or last renewal, the board must

³ R.C. 4798.03.

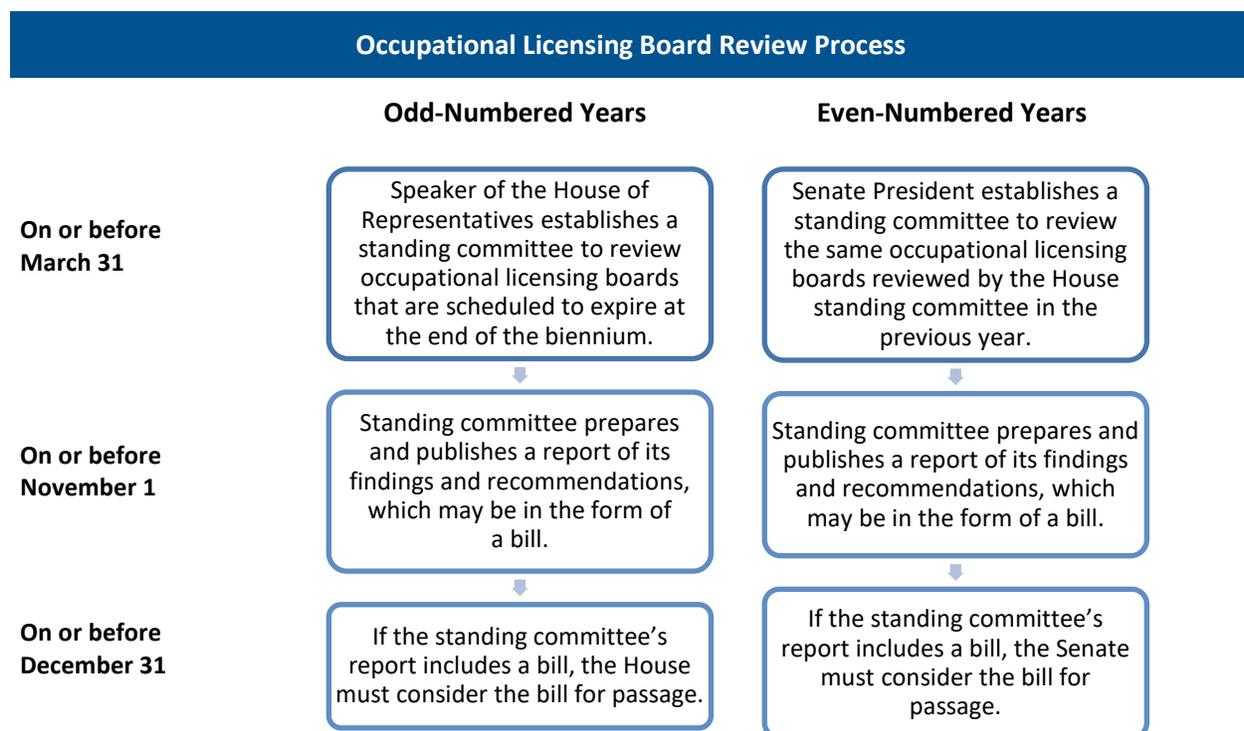
begin winding up its affairs. The orders, licenses, contracts, and other actions taken by the board remain in effect until June 30 of the following year. If the licensing board performs functions other than licensing or regulating an occupation, the board is not fully dissolved. Only the occupational regulation duties of the board are eradicated. No occupational licensing board is triggered to expire before December 31, 2024.

Following expiration of a licensing board, any person may engage in the professions or activities formerly regulated by the board without a license, notwithstanding any state law to the contrary. Additionally, the Director of Budget and Management is prohibited from authorizing expenditures for the board after the board's expiration date (unless the board continues to perform functions other than licensing or regulating an occupation). Claims pending against the expired board are not terminated, but the Attorney General succeeds the board in resolving those claims. The General Assembly may transfer some or all of the functions of an expired board to a successor agency, board, or officer.⁴

General Assembly review of licensing boards

Review process

Standing committees of the House of Representatives and the Senate must review $\frac{1}{3}$ of the state's occupational licensing boards in each biennium. All occupational licensing boards must be reviewed at least once every six years. The chart below describes the timeline of the review process.⁵



⁴ R.C. 101.62.

⁵ R.C. 101.63(A) and (D) and 101.65.

Participation of licensing boards

Each occupational licensing board that appears before a standing 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.

Each licensing board must also submit evidence demonstrating to the standing committee a public need for its continued existence. Specifically, that the board provides protection from present, significant, and substantiated harms to health, safety, or welfare of the public.⁶

Participation of Common Sense Initiative Office

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

- Whether CSIO has, within the past six years, received commentary related to the board under CSIO's process for adverse impact review;
- Whether CSIO has, within the past six 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.⁷

Factors considered by standing committees

The Occupational Regulation Law includes an extensive list of factors to be considered by the standing committees in determining whether to renew an occupational licensing board. In practice, these factors help guide both the committee members' decision making and the boards' testimony and reporting. The factors emphasize the effects of regulations on workforce mobility, conformity with national standards, protection of public health and safety, facilitation of marketplace competitiveness, and avoidance of unnecessary or duplicative regulations.⁸

⁶ R.C. 101.63(B) and (C).

⁷ R.C. 101.64.

⁸ R.C. 101.63(C).

Role of the Legislative Service Commission

Staff services

The Legislative Service Commission (LSC) provides staff services to the standing committees to assist in the legislative review of the state's occupational licensing boards.⁹

Biennial report on occupational regulation

The LSC Director is required to issue a biennial report on approximately one-third of the occupations regulated by the state. (Notably, the LSC report covers one-third of *occupations*, while the General Assembly's review covers one-third of the occupational licensing *boards*.) All occupations must be reported on at least once before 2024, and at least once every six years thereafter. The LSC report is intended to assist the General Assembly in its review of occupational licensing boards for the following biennium.¹⁰

The most recent report is available on [LSC's website](#) under the Publications heading. The report includes surveys completed by the occupational licensing boards and a surrounding state comparison, conducted by LSC staff, for each occupation regulated by those boards.

Reports on bills

LSC is also required 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. These reports are published under the Documents tab of the bill's page on the General Assembly's website. A bill that proposes to substantially change or enact an occupational regulation cannot be reported out of committee until after the committee has received the report, unless two-thirds of the committee members vote to favorably report the bill.¹¹

⁹ R.C. 101.63(D).

¹⁰ R.C. 103.27.

¹¹ R.C. 103.26.