



Legislative Monitoring Analysis: Ohio SB 255

Bill Name: [“Reform Occupational Licensing Act”](#)

Principal Sponsor: Sen. McColley (R)

Introduced: 2/12/2018

Stated Purpose: “to establish a statewide policy on occupational regulation, to require standing committees of the General Assembly to periodically review occupational licensing boards regarding their sunset, and to require the Legislative Service Commission to perform assessments of occupational licensing bills and state regulation of occupations.”

Status (as of 7/27/2018): Active

Substitute bill reported out of Senate Government Oversight and Reform Committee on 6/27/18; Passed the Senate 24-8 on 6/27/18; Introduced in the House on 7/2/18. The House has adjourned until 9/19/2018.

Comments: The Senate Government Oversight and Reform Committee held four hearings on the bill. Americans for Prosperity testified as a proponent of the bill. The Ohio Society of Professional Engineers, Ohio Auctioneers Association, and the Ohio Society of Association Executives and ASAE testified in opposition. The Committee reported out to the Senate floor a substitute bill that amended certain provisions, and the substitute bill passed the Senate with no amendments.

Overview:

SB 255, if enacted in its current version, poses three principal threats to professional certification organizations:

- It opens the door for the state to create professional certification programs that compete with certifications issued by private organizations.
- It imperils continued recognition of professional certifications that are currently recognized or required by licensure regulations in Ohio by establishing presumptions and evidentiary standards likely to lead to elimination of some occupational licensure boards.
- For non-governmental professional certification organizations that rely on the enforcement actions and decisions of state licensing boards with respect to their own ethics and conduct procedures and codes, it would shift the fact-finding and enforcement burden to the private organizations.

Analysis:

The bill calls for elimination of every occupational licensing board, unless, by December 31 of the fifth year after a licensing board was created or last renewed – or by December 31, 2023, if later – the board establishes “a public need for its continued existence.” The board has the burden of justifying its continued

existence to standing House and Senate committees, which are directed to consider twenty-seven factors. (Section 101.63.) Those include:

(1) Whether or not continuation of the board is necessary to protect the health, safety, and welfare of the public, and if so, whether or not the board's authority is narrowly tailored to protect against present, recognizable, and significant harms to the health, safety, and welfare of the public;

(2) Whether or not the public could be protected or served in an alternate or less restrictive manner; ...

(24) Whether the requirement for the occupational license ... serves a meaningful, defined public interest, and provides the least restrictive form of regulation that adequately protects the public interest;

(25) 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 for a license, particularly those with moderate or low incomes, seeking to enter the occupation or profession; [and]

(26) The extent to which the requirement for the occupational license stimulates or restricts competition, affects consumer choice, and affects the cost of services.

The original version of the bill omitted "welfare" from the public interest standard, but the substitute version that passed the Senate added "and welfare" to the provision mentioning "public health and safety. (Sections 101.63(C), 103.26(B), and 4798.02(B).)

Even with the addition of public welfare as a consideration, the evidentiary standard that a licensure regulation be "narrowly tailored to protect against **present, recognizable, and significant harms** to the health, safety, and welfare of the public" may be difficult for some occupational licensure boards to meet. Under this standard, boards would not be able to justify regulations adopted to prevent against potential harms that are foreseeable but must instead have evidence of present and significant harms resulting from the lack of regulatory protection. That evidentiary burden may be especially difficult to meet if foreseeable harms have thus far already been avoided because of licensure protections.

This problem could be mitigated through amendments if all of the provisions in the bill that use the phrasing "present, recognizable, and significant harms to the health, safety, and welfare of the public," are changed to "present or potential, recognizable, and significant harms or threats to the health, safety, and welfare of the public."

Because the bill is structured as a review of whether to renew authorization for the existence of licensing boards, rather than review of specific regulations issued by the board, it is unclear whether a board need only show that one of the regulations it enforces meet this high standard or whether it must justify all of its regulations.

The bill would require the standing committee to create and publish a report of its findings and recommendations. The report must indicate whether implementation of the committee's recommendations would, among other factors, improve efficiency, improve services to citizens, promote competition, and further the state's interest in adopting the least restrictive regulations. (Section 101.65.) None of the

standing committee's required reporting or review addresses public health, safety, or welfare. If those interests are not addressed, it is much more likely they will be ignored.

Similarly, Section 103.26 would require the director of the legislative service commission to perform an assessment of any new legislation proposed that would substantially change or enact an occupational regulation. The bill omits any reporting or consideration of non-economic interests, highlighting instead the consequences of the potential legislation for employment opportunities, consumer choices and cost, market competition, and cost to government. The director of the legislative service commission would also be required to perform any assessment and report on twenty percent (20%) of occupations subject to regulation by the state each year. (Section 103.27.)

The bill also establishes "the policy of the state" with regard to occupational regulation of individuals. (Section 4798.02.) The bill provides that "Occupational regulations shall be construed and applied to increase economic opportunities, promote competition, and encourage innovation." The bill creates a presumption that "market competition and private remedies are sufficient to protect consumers," and sets a hierarchy of regulatory actions to be taken where a finding of "present, recognizable, and significant harms to the health, safety, and welfare of the public" overcomes that presumption. The hierarchy includes that: "If regulations are intended to protect consumers against asymmetrical information between the seller and buyer, **the appropriate state action shall be to offer voluntary certification.**" As currently phrased, this provision would mandate that the state enter into the certification business. To avoid this outcome, the bill could be amended to change "offer" to "promote or require."

If authorization for an occupational licensing board is not renewed by the expiration date set by the bill, any person will be "emancipate[d] ... to lawfully engage in the profession, occupation, or occupational activity, which has been previously licensed by that board, without an occupational license, notwithstanding any law of the state that requires a person to possess a license to lawfully engage in that profession, occupation, or occupational activity. (Section 101.62(B).) In that event, members of the public may begin to expect that private certification organizations provide the same level of oversight, policing, and enforcement of conduct standards that licensure boards previously required, even though non-governmental certification organizations do not have the legal authority, tools, and resources to serve as primary fact-finders and enforcers.

The substitute bill does include a provision, not present in the original bill, that would preserve occupational regulations that have been adopted by the vast majority of states. The bill, in Section 4798.02(D), now provides that:

"Occupational regulations 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 forty-five United States states are deemed to be narrowly tailored and the least restrictive regulations."

If the content of a licensure law has been adopted by forty-four or fewer states, however, the board must justify the regulation under the high evidentiary standards discussed. Given that there tends to be wide variation in licensure laws with respect to whether to require licensed professionals to maintain professional certifications and/or to pass recertification exams, those licensure regulations may be in particular jeopardy if this bill is enacted.

As Passed by the Senate

132nd General Assembly

Regular Session

Sub. S. B. No. 255

2017-2018

Senator McColley

**Cosponsors: Senators Wilson, Jordan, Huffman, Terhar, LaRose, Coley,
Hoagland, Lehner, Eklund, Beagle, Balderson, Hackett, Obhof, O'Brien, Peterson,
Uecker**

A B I L L

To enact sections 101.62, 101.63, 101.64, 101.65,
103.26, 103.27, 4798.01, 4798.02, and 4798.03 of
the Revised Code to establish a statewide policy
on occupational regulation, to require standing
committees of the General Assembly to
periodically review occupational licensing
boards regarding their sunset, and to require
the Legislative Service Commission to perform
assessments of occupational licensing bills and
state regulation of occupations.

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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 101.62, 101.63, 101.64, 101.65,
103.26, 103.27, 4798.01, 4798.02, and 4798.03 of the Revised
Code be enacted to read as follows:

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Sec. 101.62. (A) As used in sections 101.62 to 101.65 of
the Revised Code:

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"Individual" means a natural person.

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"Least restrictive regulation," "occupational license,"
and "occupational licensing board" have the meanings defined in
section 4798.01 of the Revised Code.

(B) An occupational licensing board shall expire at the
end of the thirty-first day of December of the fifth year after
it was created or last renewed, or on December 31, 2023,
whichever is later. ~~The expiration of an occupational licensing~~
~~board under this section emancipates a person to lawfully engage~~
~~in the profession, occupation, or occupational activity, which~~
~~has been previously licensed by that board, without an~~
~~occupational license, notwithstanding any law of the state that~~
~~requires a person to possess a license to lawfully engage in~~
~~that profession, occupation, or occupational activity.~~

(C) The director of budget and management shall not
authorize the expenditure of any moneys for an occupational
licensing board on or after the date of its expiration.

(D) The general assembly may provide by law for the
orderly, efficient, and expeditious conclusion of an
occupational licensing board's business and operation. The
orders, licenses, contracts, and other actions made, taken,
granted, or performed by the board continue in effect according
to their terms notwithstanding the board's abolition, unless the
general assembly provides otherwise by law. The general assembly
may provide by law for the temporary or permanent transfer of
some or all of an expired or abolished board's functions and
personnel to a successor agency, board, or officer.

The expiration or abolition of a board does not cause the
termination or dismissal of any claim pending against the board
by any person, or any claim pending against any person by the
board. Unless the general assembly provides otherwise by law for

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Commented [PCC1]: We recommend deletion of this sentence. The expiration of a board may be a signal that legislation is needed to abolish existing licensure statutes, but automatically allowing unlicensed practitioners to practice could present threats to public health, safety, or welfare.

the substitution of parties, the attorney general shall succeed the board with reference to any pending claim.

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(E) An occupational licensing board may be renewed by enactment of a law that continues the statutes creating, empowering, governing, or regulating the board. The amendment of a statute creating, empowering, governing, or regulating a board, between the time the board was last reviewed and the time it is next scheduled to be reviewed does not change the next scheduled review date of the board. The next scheduled review date changes only if the amendment expressly so provides.

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Sec. 101.63. (A)(1) Not later than the first day of March of a calendar year during which an occupational licensing board is scheduled to expire under section 101.62 of the Revised Code, the president of the senate and the speaker of the house of representatives each shall direct a standing committee of the senate and of the house of representatives, respectively, to hold hearings to receive the testimony of the public and of the chief executive officer of the board, and otherwise to review, consider, and evaluate the usefulness, performance, and effectiveness of the board.

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(2) The president of the senate and the speaker of the house of representatives may, in the same manner as described in division (A)(1) of this section, direct a standing committee to review an occupational licensing board for which the director of the legislative service commission, under section 103.27 of the Revised Code, has performed a review.

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(3) The president of the senate and the speaker of the house of representatives shall direct standing committees to review approximately twenty per cent of the occupational licensing boards each year. All occupational licensing boards

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shall be reviewed over a five-year period including calendar years 2019 through 2023, and also during each subsequent five-year period.

(B) Each occupational licensing board that is scheduled to be reviewed by a standing committee shall submit to the standing committee a report that contains all of the following information:

(1) The board's primary purpose and its various goals and objectives;

(2) The board's past and anticipated workload, the number of staff required to complete that workload, and the board's total number of staff;

(3) The board's past and anticipated budgets and its sources of funding;

(4) The number of members of its governing board or other governing entity and their compensation, if any.

(C) Each board shall have the burden of demonstrating to the standing committee a public need for its continued existence. In determining whether a board has demonstrated that need, the standing committee shall consider, as relevant, all of the following:

(1) Whether or not ~~continuation of the board is~~ **issues or enforces regulations that are necessary** to protect the health, safety, and welfare of the public, and if so, whether or not the board's authority is narrowly tailored to protect against **present or potential**, recognizable, and significant harms **or threats** to the health, safety, ~~and~~ **or** welfare of the public;

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Commented [PCC2]: This proposed revision separates out, as the first factor, the core issue of whether the regulations issued or enforced by the board are necessary, from the fifth factor, of whether the board has overlapping or duplicative jurisdiction with other boards.

Commented [PCC3]: This proposed change allows regulations to protect the public against foreseeable harms. Any regulation that currently requires professional certification for licensure already protects the public from harm at the hands of unqualified individuals, so no "present" data of significant harms or systemic harms will exist. Similar changes are made throughout the mark-up.

Commented [PCC4]: Changing "and" to "or" clarifies that any of health, safety, or welfare, standing alone, are sufficient to warrant regulatory protection. Similar changes are made throughout the mark-up.

<u>(2) Whether or not the public could be protected or served in an alternate or less restrictive manner;</u>	104 105
<u>(3) Whether or not the board serves a specific private interest;</u>	106 107
<u>(4) Whether or not rules adopted by the board are consistent with the legislative mandate of the board as expressed in the statutes that created and empowered the board;</u>	108 109 110
<u>(5) The extent to which the board's jurisdiction and programs overlap or duplicate those of other boards, the extent to which the board coordinates with those other boards, and the extent to which the board's programs could be consolidated with the programs of other state departments or boards;</u>	111 112 113 114 115
<u>(6) 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 exercised by the board compared to the regulation, if any, in other states;</u>	116 117 118 119 120 121
<u>(7) The extent to which significant changes in the board's rules could prevent an individual licensed in this state from practicing, or allow an individual licensed in this state to practice, the same occupation in another jurisdiction without obtaining an occupational license for that occupation in that other jurisdiction;</u>	122 123 124 125 126 127
<u>(8) Whether the board recognizes national uniform licensure requirements for the occupation;</u>	128 129
<u>(9) Whether or not private contractors could be used, in an effective and efficient manner, either to assist the board in</u>	130 131

<u>the performance of its duties or to perform these duties instead</u>	132
<u>of the board;</u>	133
<u>(10) Whether or not the operation of the board has</u>	134
<u>inhibited economic growth, reduced efficiency, or increased the</u>	135
<u>cost of government;</u>	136
<u>(11) An assessment of the authority of the board regarding</u>	137
<u>fees, inspections, enforcement, and penalties;</u>	138
<u>(12) The extent to which the board has permitted qualified</u>	139
<u>applicants to serve the public;</u>	140
<u>(13) The extent to which the board has permitted</u>	141
<u>individuals to practice elements of the occupation without a</u>	142
<u>license;</u>	143
<u>(14) The cost-effectiveness of the board in terms of</u>	144
<u>number of employees, services rendered, and administrative costs</u>	145
<u>incurred, both past and present;</u>	146
<u>(15) Whether or not the board's operation has been impeded</u>	147
<u>or enhanced by existing statutes and procedures and by</u>	148
<u>budgetary, resource, and personnel practices;</u>	149
<u>(16) Whether the board has recommended statutory changes</u>	150
<u>to the general assembly that would benefit the public as opposed</u>	151
<u>to the persons regulated by the board, if any, and whether its</u>	152
<u>recommendations and other policies have been adopted and</u>	153
<u>implemented;</u>	154
<u>(17) Whether the board has required any persons it</u>	155
<u>regulates to report to it the impact of board rules and</u>	156
<u>decisions on the public as they affect service costs and service</u>	157
<u>delivery;</u>	158

(18) Whether persons regulated by the board, if any, have been required to assess problems in their business operations that affect the public; 159
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(19) Whether the board has encouraged public participation in its rule-making and decision-making; 162
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(20) The efficiency with which formal public complaints filed with the board have been processed to completion; 164
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(21) Whether the purpose for which the board was created has been fulfilled, has changed, or no longer exists; 166
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(22) Whether federal law requires that the board be renewed in some form; 168
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(23) An assessment of the administrative hearing process of a board if the board has an administrative hearing process, and whether or not the hearing process is consistent with due process rights; 170
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(24) Whether the requirement for the occupational license is consistent with the policies expressed in section 4798.02 of the Revised Code, serves a meaningful, defined public interest, and provides the least restrictive form of regulation that adequately protects the public interest; 174
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(25) The extent to which licensing ensures that practitioners have occupational skill sets or competencies that are substantially related to protecting consumers from present, or potential and significant, and substantiated harms that threaten or threats to public health, safety, and or welfare, and the impact that those criteria have on applicants for a license, particularly those with moderate or low incomes, seeking to enter the occupation or profession; 179
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Commented [PCC5]: Deleted "substantiated," as it implies regulations cannot prevent foreseeable harms because of the absence of data from harms that have already occurred.

(26) The extent to which the requirement for the occupational license stimulates or **unreasonably** restricts competition, affects consumer choice, and affects the cost of services;

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18 **Commented [PCC6]:** Almost by definition, any
18 licensure requirement will restrict
18 competition and reduce consumer choice by
19 restricting competition. To make this
19 meaningful, the question would be whether it
19 **unreasonably** restricts competition by imposing
19 requirements that lack valid justification.

(27) An assessment of whether or not changes are needed in the enabling laws of the board in order for it to comply with the criteria suggested by the considerations listed in division (C) of this section.

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For division (C) of this section, a government regulatory requirement protects or serves the public interest if it provides protection from present **or potential, significant, and substantiated** recognizable harms **or threats** to the health, safety, **and/or** welfare of the public.

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Commented [PCC7]: See previous comments related to proposed changes to this evidentiary standard.

Sec. 101.64. The president of the senate and the speaker of the house of representatives shall notify the chief of the common sense initiative office, established under section 107.61 of the Revised Code, when a board is identified to be reviewed by a standing committee under section 101.63 of the Revised Code. The chief or the chief's designee shall appear and testify before the standing committee, with respect to the board, and shall testify on at least all of the following:

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(A) Whether or not the common sense initiative office has, within the previous five years, received commentary related to the board through the comment system established under section 107.62 of the Revised Code;

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(B) Whether or not the common sense initiative office has, within the previous five years, received advice from the small business advisory council with respect to rules of the board;

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(C) Any other information the chief believes will elucidate the effectiveness and efficiency of the board and in particular the quality of customer service provided by the board.

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Sec. 101.65. (A) After the completion of the review of a board under section 101.63 of the Revised Code, the standing committee that conducted the review may prepare and publish a report of its findings and recommendations. A standing committee may include in a single report its findings and recommendations regarding more than one board. the report shall include a summary of the factors considered and the evidence considered by the standing committee. Such report shall identify whether each item of evidence supports the standing committee's recommendation, weighs against the standing committee's recommendation, or is neutral with respect to the committee's recommendation. If the standing committee prepares and publishes a report, the committee shall furnish a copy of the report to the president of the senate, the speaker of the house of representatives, the governor, and each affected board. Any published report shall be made available to the public online and in the offices of the house of representatives and senate clerks during reasonable hours. As part of a report, the standing committee may present its recommendations to the general assembly in bill form.

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Commented [PCC8]: These additions increase the transparency of the standing committee's work and make the report a useful document for the state to consider.

Commented [PCC9]: These additions increase the transparency of the standing committee's work and make the report a useful document for the state to consider.

Commented [PCC10]: We would suggest that the report be made available online. Providing such transparency allows stakeholder groups and the public to provide information and feedback to the decisionmakers. Making the report available only onsite during office hours could prevent many members of the public from having access to the information.

- (3) Simplify and improve preparation of the state budget; 245
- (4) Conserve the natural resources of the state; 246
- (5) Promote the orderly growth of the state and its government; 247
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- (6) Promote that occupational regulations shall be construed and applied to increase economic opportunities, promote competition, and encourage innovation, to the extent those values can be achieved without harm or threat of significant harm to public health, safety, or welfare; 249
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- (7) Provide for the least restrictive regulation by repealing the current regulation and replacing it with a less restrictive regulation that is consistent with the policies expressed in section 4798.02 of the Revised Code; 255
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- (8) Improve the effectiveness of the services performed by the service departments of the state; 258
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- (9) Avoid duplication of effort by state agencies or boards; 260
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- (10) Improve the organization and coordination of the state government in one or more of the ways listed in divisions (B)(1) to (9) of this section. 262
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- (11) Avoid weakening protections to public health, safety, or welfare; 265
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- Sec. 103.26.** (A) As used in this section and section 103.27 of the Revised Code: 26
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- "Individual" means a natural person. 269

Commented [PCC11]: We suggest this additional language to ensure that public health, safety, and welfare are considered, in addition to the economic factors already listed.

Commented [PCC12]: We recommend that the report expressly address whether the changes will weaken patient/consumer protections. Some occupational licensure laws may not promote greater protection of the public, but others do.

"Least restrictive regulation" has the meaning defined in section 4798.01 of the Revised Code.

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"Occupational regulation" means a statute or rule that controls an individual's practice of a trade or profession.

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(B) With respect to legislation that has been introduced in the house of representatives or in the senate, which proposes to substantially change or enact an occupational regulation, the director of the legislative service commission shall perform an assessment of the legislation. The assessment shall attempt to ascertain whether or not the regulatory scheme proposed in the legislation is consistent with the policies expressed in section 4798.02 of the Revised Code with respect to proposing ~~the least restrictive regulation to protect consumers from present or potential, significant, and substantiated~~recognizable harms ~~that threaten or threats to~~ public health, safety, ~~and~~or welfare. The director shall issue a report of the assessment, to the general assembly, in a timely manner.

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Commented [PCC13]: Please see previous comments related to this evidentiary standard.

To the extent possible with readily available or obtainable information, the assessment shall consider the potential consequences of the legislation with respect to:

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(1) Opportunities for employment within the occupation;

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(2) Consumer choices and costs;

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(3) Market competition;

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(4) Cost to government~~;~~

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(5) ~~Protection of public safety, health, or welfare.~~

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Commented [PCC14]: As noted above, we believe strongly that any assessment pertaining to whether a regulatory regime should be changed should evaluate protection of public health, safety, or welfare as a potential consequence of legislation.

(C) The assessment performed under division (B) of this section shall include all of the following:

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Commented [PCC15]: As noted above, we believe strongly that any assessment pertaining to whether a regulatory regime should be changed should evaluate protection of public health, safety, or welfare as a potential consequence of legislation.

(1) A comparison of the regulatory scheme put forth in the legislation 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 this state from practicing, or allow an individual licensed in this state to practice, the same occupation in another jurisdiction without obtaining an occupational license for that occupation in that other jurisdiction;

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(2) A comparison of the regulatory scheme put forth in the legislation with the policy of this state as set forth in the sections of the Revised Code governing the occupation that is the subject of the legislation, if those sections include such a policy.

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(D) The sponsor of a bill, in order to assist the director of the legislative service commission with the director's duties under division (B) of this section, may submit to the director any relevant information, including the following:

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(1) Evidence or identification of present or potential, significant, and substantiated recognizable harms or threats to consumers in the state;

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(2) An explanation of why existing civil or criminal laws or procedures are inadequate to prevent or remedy any harm or threat to the public;

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(3) An explanation of why a less restrictive regulation, that is consistent with the policies expressed in section 4798.02 of the Revised Code, is not proposed;

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Commented [PCC16]: As elsewhere in the bill, this wording is designed to allow regulations that protect the public against foreseeable harm, even if there is not significant data about harm to the public from the absence of the regulation (e.g., deaths due to unlicensed and unqualified practitioners practicing medicine).

(4) The names of associations, organizations, or other groups representing the occupation seeking regulation and the approximate number of members in each in this state; 324
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(5) The functions typically performed by members of this occupation and whether they are identical or similar to those performed by another occupation; 327
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(6) 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; 330
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(7) Whether or not the proposed regulation would change the way practitioners of the occupation acquire any necessary specialized training, education, or experience and, if so, why; 333
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(8) Whether or not any current practitioners of the occupation in this state lack whatever specialized training, education, or experience might be required to engage in the occupation and, if so, how the proposed regulation would address that deficiency; 336
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(9) Whether or not 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; 341
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(10) Whether or not 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; 344
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(11) 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; 348
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(12) Information from others knowledgeable about the occupation, and the related economic and public protection factors.

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Commented [PCC17]: As noted above information regarding public protection should be relevant to the assessment.

(E) A bill which proposes to substantially change or enact an occupational regulation shall not be favorably reported out of committee until after the committee members have received and considered the assessment provided under division (B) of this section, unless two-thirds of the members of the committee vote in the affirmative to favorably report the bill.

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Sec. 103.27. Each calendar year, beginning in 2018, the director of the legislative service commission shall perform an assessment of approximately twenty per cent of occupations subject to regulation by the state. The assessment shall attempt to ascertain whether or not the current regulatory scheme being utilized in this state is consistent with the policies expressed in section 4798.02 of the Revised Code.

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The director shall issue a report of the assessments performed during a calendar year, not later than the first day of December of that year, to the general assembly and to the attorney general. The report shall include instructions, as necessary, which describe how the current regulatory scheme may be amended to improve consistency with the policies expressed in section 4798.02 of the Revised Code.

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The director may require that information be submitted by any department or board that regulates the occupation.

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The director shall, over a five-year period including calendar years 2018 through 2022, perform assessments of all occupations subject to regulation by the state. The director's assessment of an occupation may be scheduled to coincide with, and be done in conjunction with, the review of an occupational

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licensing board being done by a standing committee of the 381
general assembly under section 101.63 of the Revised Code. 382

Sec. 4798.01. (A) As used in this chapter: 383

"Certification" means a voluntary program in which a 384
private organization or the state grants nontransferable 385
recognition to an individual who meets personal qualifications 386
established by the private organization or state law. 387

"Individual" means a natural person. 388

"Lawful occupation" means a course of conduct, pursuit, or 389
profession that includes the sale of goods or services that are 390
not themselves illegal to sell irrespective of whether the 391
individual selling the goods or services is subject to an 392
occupational regulation. 393

"Least restrictive regulation" means the public policy of 394
relying on one of the following, listed from the least to the 395
most restrictive, as a means of consumer protection: market 396
competition; third-party or consumer-created ratings and 397
reviews; private certification; specific private civil cause of 398
action to remedy consumer harm; actions under Chapter 1345. of 399
the Revised Code; regulation of the process of providing the 400
specific goods or services to consumers; inspection; bonding or 401
insurance; registration; government certification; specialty 402
occupational license for medical reimbursement; and occupational 403
license. 404

"Occupational license" means nontransferable authorization 405
in law that an individual must possess in order to perform a 406
lawful occupation for compensation based on meeting personal 407
qualifications established by statute, or by a rule authorized 408
by statute. 409

"Occupational licensing board" means any board, commission, committee, or council, or any other similar state public body, and any administrative department enumerated under section 121.02 of the Revised Code, and any agency, division, or office of state government, that issues an occupational license.

"Occupational regulation" means a statute, policy, rule, adjudication order, practice, or other state law requiring an individual to possess certain personal qualifications to use an occupational title or work in a lawful occupation. "Occupational regulation" includes registration, certification, and occupational license. "Occupational regulation" excludes a business license, facility license, building permit, or zoning and land use regulation, except to the extent those laws regulate an individual's personal qualifications to perform a lawful occupation.

"Personal qualifications" mean criteria related to an individual's personal background and characteristics including completion of an approved educational program, satisfactory performance on an examination, work experience, other evidence of attainment of requisite skills or knowledge, moral standing, criminal history, and completion of continuing education.

"Registration" means a requirement to give notice to the government that may include the individual's name and address, the individual's agent for service of process, the location of the activity to be performed, and a description of the service the individual provides. "Registration" does not include personal qualifications but may require a bond or insurance.

"Specialty occupational license for medical reimbursement" is a nontransferable authorization in law for an individual to qualify for payment or reimbursement from a government agency,

for providing identified medical services, based on meeting personal qualifications established in law, which may be recognized by a private company.

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(B) For purposes of this chapter:

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(1) The terms "certification" and "registration" are not synonymous with "occupational license."

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(2) The use of the words "certification" and "certified" in other statutes to mean requiring an individual to meet certain personal qualifications to work legally shall be interpreted for the purposes of this chapter as requiring an individual to meet the requirements of an "occupational license."

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(3) The use of the words "registration" and "registered" in other statutes to mean requiring an individual to meet certain personal qualifications to work legally shall be interpreted for the purposes of this chapter as requiring an individual to meet the requirements of an "occupational license."

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Sec. 4798.02. With respect to occupational regulation of individuals, all of the following are the policy of the state:

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(A) Occupational regulations shall be construed and applied to increase economic opportunities, promote competition, and encourage innovation to the extent those values can be achieved without harm or threat of significant harm to public health, safety, or welfare.

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(B) Where the state finds it is necessary to displace competition, the state will use the least restrictive regulation to protect consumers from present or potential, significant, and

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Commented [PCC18]: The policy of the state should expressly include protection of the public.

~~substantiated~~recognizable harms that threaten public or threats
to public health, safety, and/or welfare. ~~The policy of employing~~
~~the least restrictive regulation shall presume that market~~
~~competition and private remedies are sufficient to protect~~
~~consumers.~~ Where needed, regulations shall be tailored to meet
the ~~predominate~~predominant identified need to protect consumers,
as follows:

(1) If regulations are intended to protect consumers
against fraud, the appropriate state action shall be to
strengthen powers under deceptive trade practices acts.

(2) If regulations are intended to protect consumers
against unsanitary facilities and general health, safety, and
welfare concerns, the appropriate state action shall be to
require periodic inspections.

(3) If regulations are intended to protect consumers
against potential damages to third parties who are not party to
a contract between the seller and buyer, and other types of
externalities, the appropriate state action shall be to require
bonding or insurance.

(4) If regulations are intended to protect consumers
against potential damages by transient providers, the
appropriate state action shall be to require registration with
the secretary of state.

(5) If regulations are intended to protect consumers
against asymmetrical information between the seller and buyer,
the appropriate state action shall be to ~~offer~~ defer to
voluntary certification.

(65) If regulations are intended to facilitate governmental
reimbursement for providing medical services for an emerging

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Commented [PCC19]: Please see previous comments related to this evidentiary standard.

Commented [PCC20]: Per our conversation with Sen. McColley, we appreciate his view that the state should not seek to supplant private certification with government certification, but that having government "promote" private certification could also be problematic. As such, we suggest changing "offer" to "defer to" to emphasize the value of private, voluntary certification without having the government promote it outright.

medical specialty, the appropriate state action shall be to require a specialty occupational license for medical reimbursement.

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(C) An occupational regulation may be enforced against an individual only to the extent the individual sells goods and services that are included explicitly in the statute that defines the occupation's scope of practice.

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502 **Commented [PCC21]:** In our experience, many statutes do not include exhaustive, specific lists but instead contain a general statement and direction to the regulatory agency to implement the statute. The key question is whether the regulation goes beyond the intended coverage of the statute, not whether the statute includes the same level of specific detail as the regulations.

(D) Occupational regulations 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 forty-five United States states are deemed to be narrowly tailored and the least restrictive regulations.

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(E) Nothing in this Chapter is intended to restrict an occupational licensing board from requiring, as a condition of licensure or renewal of licensure, that an individual's personal qualifications include obtaining or maintaining certification from a private organization that credentials individuals in the relevant occupation, field, or industry.

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514 **Commented [PCC22]:** Where a regulatory agency deems the knowledge, skill, and competency standards developed by certification organizations as worthy of state enforcement, dropping licensure board enforcement would result in a public expectation that the private organization assume the enforcement function. Private certification organizations have neither the legal authority nor the resources to do so. We recommend the inclusion of this provision to ensure that private certification organizations are not responsible for such enforcement.

(F) By establishing and executing the policies in this section, in concert with section 107.56 of the Revised Code, the state intends to ensure that occupational licensing boards and board members will avoid liability under federal antitrust laws.

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Sec. 4798.03. This chapter preempts any ordinance or other local law or regulation, which conflicts with or is inconsistent with any policy of the state expressed in this chapter, by any political subdivision that regulates an occupation that is also regulated by the state.

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