

As Introduced

132nd General Assembly

Regular Session

2017-2018

H. B. No. 289

Representatives Hood, McColley

**Cosponsors: Representatives Brenner, Thompson, Becker, Brinkman, Riedel,
Dean, Goodman, Keller, Lipps**

A BILL

To enact sections 101.62, 101.63, 101.64, 101.65, 1
103.26, 103.27, 107.56, 4798.01, 4798.02, and 2
4798.03 of the Revised Code to establish a 3
statewide policy on occupational regulation, to 4
require standing committees of the General 5
Assembly to periodically review occupational 6
licensing boards regarding their sunset, to 7
require the Common Sense Initiative Office to 8
review certain actions taken by occupational 9
licensing boards, and to require the Legislative 10
Service Commission to perform assessments of 11
occupational licensing bills and state 12
regulation of occupations. 13

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

Section 1. That sections 101.62, 101.63, 101.64, 101.65, 14
103.26, 103.27, 107.56, 4798.01, 4798.02, and 4798.03 of the 15
Revised Code be enacted to read as follows: 16

Sec. 101.62. (A) As used in sections 101.62 to 101.65 of 17
the Revised Code, "least restrictive regulation," "occupational 18

license," and "occupational licensing board" have the meanings 19
defined in section 4798.01 of the Revised Code. 20

(B) An occupational licensing board shall expire at the 21
end of the thirty-first day of December of the fifth year after 22
it was created or last renewed, or on December 31, 2023, 23
whichever is later. The expiration of an occupational licensing 24
board under this section emancipates a person to lawfully engage 25
in the profession, occupation, or occupational activity, which 26
has been previously licensed by that board, without an 27
occupational license, notwithstanding any law of the state that 28
requires a person to possess a license to lawfully engage in 29
that profession, occupation, or occupational activity. 30

(C) The director of budget and management shall not 31
authorize the expenditure of any moneys for an occupational 32
licensing board on or after the date of its expiration. 33

(D) The general assembly may provide by law for the 34
orderly, efficient, and expeditious conclusion of an 35
occupational licensing board's business and operation. The 36
orders, licenses, contracts, and other actions made, taken, 37
granted, or performed by the board continue in effect according 38
to their terms notwithstanding the board's abolition, unless the 39
general assembly provides otherwise by law. The general assembly 40
may provide by law for the temporary or permanent transfer of 41
some or all of an expired or abolished board's functions and 42
personnel to a successor agency, board, or officer. 43

The expiration or abolition of a board does not cause the 44
termination or dismissal of any claim pending against the board 45
by any person, or any claim pending against any person by the 46
board. Unless the general assembly provides otherwise by law for 47
the substitution of parties, the attorney general shall succeed 48

the board with reference to any pending claim. 49

(E) An occupational licensing board may be renewed by 50
enactment of a law that continues the statutes creating, 51
empowering, governing, or regulating the board. The amendment of 52
a statute creating, empowering, governing, or regulating a 53
board, between the time the board was last reviewed and the time 54
it is next scheduled to be reviewed does not change the next 55
scheduled review date of the board. The next scheduled review 56
date changes only if the amendment expressly so provides. 57

Sec. 101.63. (A) (1) Not later than the first day of March 58
of a calender year during which an occupational licensing board 59
is scheduled to expire under section 101.62 of the Revised Code, 60
the president of the senate and the speaker of the house of 61
representatives each shall direct a standing committee of the 62
senate and of the house of representatives, respectively, to 63
hold hearings to receive the testimony of the public and of the 64
chief executive officer of the board, and otherwise to review, 65
consider, and evaluate the usefulness, performance, and 66
effectiveness of the board. 67

(2) The president of the senate and the speaker of the 68
house of representatives may, in the same manner as described in 69
division (A) (1) of this section, direct a standing committee to 70
review an occupational licensing board for which the director of 71
the legislative service commission, under section 103.27 of the 72
Revised Code, has performed a review. 73

(3) The president of the senate and the speaker of the 74
house of representatives shall direct standing committees to 75
review approximately twenty per cent of the occupational 76
licensing boards each year. All occupational licensing boards 77
shall be reviewed over a five-year period including calendar 78

years 2019 through 2023, and also during each subsequent five- 79
year period. 80

(B) Each occupational licensing board that is scheduled to 81
be reviewed by a standing committee shall submit to the standing 82
committee a report that contains all of the following 83
information: 84

(1) The board's primary purpose and its various goals and 85
objectives; 86

(2) The board's past and anticipated workload, the number 87
of staff required to complete that workload, and the board's 88
total number of staff; 89

(3) The board's past and anticipated budgets and its 90
sources of funding; 91

(4) The number of members of its governing board or other 92
governing entity and their compensation, if any. 93

(C) Each board shall have the burden of demonstrating to 94
the standing committee a public need for its continued 95
existence. In determining whether a board has demonstrated that 96
need, the standing committee shall consider, as relevant, all of 97
the following: 98

(1) Whether or not continuation of the board is necessary 99
to protect the health and safety of the public, and if so, 100
whether or not the board's authority is narrowly tailored to 101
protect against present, recognizable, and significant harms to 102
the health and safety of the public; 103

(2) Whether or not the public could be protected or served 104
in an alternate or less restrictive manner; 105

(3) Whether or not the board serves a specific private 106

<u>interest;</u>	107
<u>(4) Whether or not rules adopted by the board are</u>	108
<u>consistent with the legislative mandate of the board as</u>	109
<u>expressed in the statutes that created and empowered the board;</u>	110
<u>(5) The extent to which the board's jurisdiction and</u>	111
<u>programs overlap or duplicate those of other boards, the extent</u>	112
<u>to which the board coordinates with those other boards, and the</u>	113
<u>extent to which the board's programs could be consolidated with</u>	114
<u>the programs of other state departments or boards;</u>	115
<u>(6) How many other states regulate the occupation, and the</u>	116
<u>amount of regulation exercised by the board compared to the</u>	117
<u>regulation, if any, in other states;</u>	118
<u>(7) Whether or not private contractors could be used, in</u>	119
<u>an effective and efficient manner, either to assist the board in</u>	120
<u>the performance of its duties or to perform these duties instead</u>	121
<u>of the board;</u>	122
<u>(8) Whether or not the operation of the board has</u>	123
<u>inhibited economic growth, reduced efficiency, or increased the</u>	124
<u>cost of government;</u>	125
<u>(9) An assessment of the authority of the board regarding</u>	126
<u>fees, inspections, enforcement, and penalties;</u>	127
<u>(10) The extent to which the board has permitted qualified</u>	128
<u>applicants to serve the public;</u>	129
<u>(11) The cost-effectiveness of the board in terms of</u>	130
<u>number of employees, services rendered, and administrative costs</u>	131
<u>incurred, both past and present;</u>	132
<u>(12) Whether or not the board's operation has been impeded</u>	133
<u>or enhanced by existing statutes and procedures and by</u>	134

<u>budgetary, resource, and personnel practices;</u>	135
<u>(13) Whether the board has recommended statutory changes</u>	136
<u>to the general assembly that would benefit the public as opposed</u>	137
<u>to the persons regulated by the board, if any, and whether its</u>	138
<u>recommendations and other policies have been adopted and</u>	139
<u>implemented;</u>	140
<u>(14) Whether the board has required any persons it</u>	141
<u>regulates to report to it the impact of board rules and</u>	142
<u>decisions on the public as they affect service costs and service</u>	143
<u>delivery;</u>	144
<u>(15) Whether persons regulated by the board, if any, have</u>	145
<u>been required to assess problems in their business operations</u>	146
<u>that affect the public;</u>	147
<u>(16) Whether the board has encouraged public participation</u>	148
<u>in its rule-making and decision-making;</u>	149
<u>(17) The efficiency with which formal public complaints</u>	150
<u>filed with the board have been processed to completion;</u>	151
<u>(18) Whether the purpose for which the board was created</u>	152
<u>has been fulfilled, has changed, or no longer exists;</u>	153
<u>(19) Whether federal law requires that the board be</u>	154
<u>renewed in some form;</u>	155
<u>(20) An assessment of the administrative hearing process</u>	156
<u>of a board if the board has an administrative hearing process,</u>	157
<u>and whether or not the hearing process is consistent with due</u>	158
<u>process rights;</u>	159
<u>(21) Whether the requirement for the occupational license</u>	160
<u>is consistent with the policies expressed in section 4798.02 of</u>	161
<u>the Revised Code, serves a meaningful, defined public interest,</u>	162

and provides the least restrictive form of regulation that 163
adequately protects the public interest; 164

(22) The extent to which licensing ensures that 165
practitioners have occupational skill sets or competencies that 166
are substantially related to protecting consumers from present, 167
significant, and substantiated harms that threaten public health 168
and safety, and the impact that those criteria have on 169
applicants for a license, particularly those with moderate or 170
low incomes, seeking to enter the occupation or profession; 171

(23) The extent to which the requirement for the 172
occupational license stimulates or restricts competition, 173
affects consumer choice, and affects the cost of services; 174

(24) An assessment of whether or not changes are needed in 175
the enabling laws of the board in order for it to comply with 176
the criteria suggested by the considerations listed in divisions 177
(C) (1) to (23) of this section. 178

For division (C) of this section, a government regulatory 179
requirement protects or serves the public interest if it 180
provides protection from present, significant, and substantiated 181
harms to the health and safety of the public. 182

Sec. 101.64. The president of the senate and the speaker 183
of the house of representatives shall notify the chief of the 184
common sense initiative office, established under section 107.61 185
of the Revised Code, when a board is identified to be reviewed 186
by a standing committee under section 101.63 of the Revised 187
Code. The chief or the chief's designee shall appear and testify 188
before the standing committee, with respect to the board, and 189
shall testify on at least all of the following: 190

(A) Whether or not the common sense initiative office has, 191

within the previous five years, received commentary related to 192
the board through the comment system established under section 193
107.62 of the Revised Code; 194

(B) Whether or not the common sense initiative office has, 195
within the previous five years, received advice from the small 196
business advisory council with respect to rules of the board; 197

(C) Any other information the chief believes will 198
elucidate the effectiveness and efficiency of the board and in 199
particular the quality of customer service provided by the 200
board. 201

Sec. 101.65. (A) After the completion of the review of a 202
board under section 101.63 of the Revised Code, the standing 203
committee that conducted the review may prepare and publish a 204
report of its findings and recommendations. A standing committee 205
may include in a single report its findings and recommendations 206
regarding more than one board. If the standing committee 207
prepares and publishes a report, the committee shall furnish a 208
copy of the report to the president of the senate, the speaker 209
of the house of representatives, the governor, and each affected 210
board. Any published report shall be made available to the 211
public in the offices of the house of representatives and senate 212
clerks during reasonable hours. As part of a report, the 213
standing committee may present its recommendations to the 214
general assembly in bill form. 215

(B) Recommendations made by the standing committee shall 216
indicate how or whether their implementation will do each of the 217
following: 218

(1) Improve efficiency in the management of state 219
government; 220

<u>(2) Improve services rendered to citizens of the state;</u>	221
<u>(3) Simplify and improve preparation of the state budget;</u>	222
<u>(4) Conserve the natural resources of the state;</u>	223
<u>(5) Promote the orderly growth of the state and its</u> <u>government;</u>	224 225
<u>(6) Promote that occupational regulations shall be</u> <u>construed and applied to increase economic opportunities,</u> <u>promote competition, and encourage innovation;</u>	226 227 228
<u>(7) Provide for the least restrictive regulation by</u> <u>repealing the current regulation and replacing it with a less</u> <u>restrictive regulation that is consistent with the policies</u> <u>expressed in section 4798.02 of the Revised Code;</u>	229 230 231 232
<u>(8) Improve the effectiveness of the services performed by</u> <u>the service departments of the state;</u>	233 234
<u>(9) Avoid duplication of effort by state agencies or</u> <u>boards;</u>	235 236
<u>(10) Improve the organization and coordination of the</u> <u>state government in one or more of the ways listed in divisions</u> <u>(B)(1) to (9) of this section.</u>	237 238 239
<u>Sec. 103.26. (A) As used in this section and section</u> <u>103.27 of the Revised Code:</u>	240 241
<u>"Least restrictive regulation" has the meaning defined in</u> <u>section 4798.01 of the Revised Code.</u>	242 243
<u>"Occupational regulation" means a statute or rule that</u> <u>controls an individual's practice of a trade or profession.</u>	244 245
<u>(B) With respect to legislation that has been introduced</u> <u>in the house of representatives or in the senate, which proposes</u>	246 247

to substantially change or enact an occupational regulation, the 248
director of the legislative service commission shall perform an 249
assessment of the legislation. The assessment shall attempt to 250
ascertain whether or not the regulatory scheme proposed in the 251
legislation is consistent with the policies expressed in section 252
4798.02 of the Revised Code with respect to proposing the least 253
restrictive regulation to protect consumers from present, 254
significant, and substantiated harms that threaten public health 255
and safety. The director shall issue a report of the assessment, 256
to the general assembly, in a timely manner. 257

To the extent possible with readily available or 258
obtainable information, the assessment shall consider the 259
potential consequences of the legislation with respect to: 260

- (1) Opportunities for employment within the occupation; 261
- (2) Consumer choices and costs; 262
- (3) Market competition; 263
- (4) Cost to government. 264

(C) The assessment performed under division (B) of this 265
section may include a comparison of the regulatory scheme put 266
forth in the legislation with the current regulatory scheme in 267
other similar states for the same occupation. 268

(D) The sponsor of a bill, in order to assist the director 269
of the legislative service commission with the director's duties 270
under division (B) of this section, may submit to the director 271
any relevant information, including the following: 272

(1) Evidence of present, significant, and substantiated 273
harms to consumers in the state; 274

(2) An explanation of why existing civil or criminal laws 275

<u>or procedures are inadequate to prevent or remedy any harm to</u>	276
<u>the public;</u>	277
<u>(3) An explanation of why a less restrictive regulation,</u>	278
<u>that is consistent with the policies expressed in section</u>	279
<u>4798.02 of the Revised Code, is not proposed;</u>	280
<u>(4) The names of associations, organizations, or other</u>	281
<u>groups representing the occupation seeking regulation and the</u>	282
<u>approximate number of members in each in this state;</u>	283
<u>(5) The functions typically performed by members of this</u>	284
<u>occupation and whether they are identical or similar to those</u>	285
<u>performed by another occupation;</u>	286
<u>(6) Whether specialized training, education, or experience</u>	287
<u>is required to engage in the occupation and, if so, how current</u>	288
<u>practitioners acquired that training, education, or experience;</u>	289
<u>(7) Whether or not the proposed regulation would change</u>	290
<u>the way practitioners of the occupation acquire any necessary</u>	291
<u>specialized training, education, or experience and, if so, why;</u>	292
<u>(8) Whether or not any current practitioners of the</u>	293
<u>occupation in this state lack whatever specialized training,</u>	294
<u>education, or experience might be required to engage in the</u>	295
<u>occupation and, if so, how the proposed regulation would address</u>	296
<u>that deficiency;</u>	297
<u>(9) Whether or not new entrants into the occupation would</u>	298
<u>be required to provide evidence of any necessary training,</u>	299
<u>education, or experience, or to pass an examination, or both;</u>	300
<u>(10) Whether or not current practitioners would be</u>	301
<u>required to provide evidence of any necessary training,</u>	302
<u>education, or experience, or to pass an examination, and, if</u>	303

not, why not; 304

(11) The expected impact of the proposed regulation on the 305
supply of practitioners of the occupation and on the cost of 306
services or goods provided by the occupation; 307

(12) Information from others knowledgeable about the 308
occupation, and the related economic factors. 309

(E) A bill which proposes to substantially change or enact 310
an occupational regulation shall not be favorably reported out 311
of committee until after the committee members have received and 312
considered the assessment provided under division (B) of this 313
section, unless two-thirds of the members of the committee vote 314
in the affirmative to favorably report the bill. 315

Sec. 103.27. (A) Each calender year, beginning in 2018, 316
the director of the legislative service commission shall perform 317
an assessment of approximately twenty per cent of occupations 318
subject to regulation by the state. The assessment shall attempt 319
to ascertain whether or not the current regulatory scheme being 320
utilized in this state is consistent with the policies expressed 321
in section 4798.02 of the Revised Code. 322

The director shall issue a report of the assessments 323
performed during a calendar year, not later than the first day 324
of December of that year, to the general assembly and to the 325
attorney general. The report shall include instructions, as 326
necessary, which describe how the current regulatory scheme may 327
be amended to improve consistency with the policies expressed in 328
section 4798.02 of the Revised Code. 329

The director may require that information be submitted by 330
any department or board that regulates the occupation. 331

The director shall, over a five-year period including 332

calendar years 2018 through 2022, perform assessments of all 333
occupations subject to regulation by the state. The director's 334
assessment of an occupation may be scheduled to coincide with, 335
and be done in conjunction with, the review of an occupational 336
licensing board being done by a standing committee of the 337
general assembly under section 101.63 of the Revised Code. 338

Sec. 107.56. As used in this section, "board or 339
commission" means any multi-member body created under state law, 340
including an occupational licensing board as defined in section 341
4798.01 of the Revised Code, that licenses or otherwise 342
regulates an occupation or industry to which one or more members 343
of the body belong. 344

(B) The common sense initiative office shall review an 345
action taken or proposed by a board or commission that is 346
subject to review under this section and that is referred to the 347
office pursuant to division (C) of this section. 348

(1) The following actions are subject to review under this 349
section: 350

(a) Any action that directly or indirectly has an effect 351
of any of the following: 352

(i) Fixing prices, limiting price competition, or 353
increasing prices in this state for the goods or services that 354
are provided by the occupation or industry regulated by the 355
board or commission; 356

(ii) Dividing, allocating, or assigning customers, 357
potential customers, or geographic markets in this state among 358
members of the occupation or industry regulated by the board or 359
commission; 360

(iii) Excluding present or potential competitors from the 361

<u>occupation or industry regulated by the board or commission;</u>	362
<u>(iv) Limiting the output or supply in this state of any</u>	363
<u>good or service provided by the members of the occupation or</u>	364
<u>industry regulated by the board or commission.</u>	365
<u>(b) Any other activity that could be subject to state or</u>	366
<u>federal antitrust law if the action were undertaken by a private</u>	367
<u>person or combination of private persons.</u>	368
<u>(2) Except as provided in division (H) of this section,</u>	369
<u>the following actions are not subject to review under this</u>	370
<u>section:</u>	371
<u>(a) Denying an application to obtain a license because the</u>	372
<u>applicant has violated or has not complied with the Ohio Revised</u>	373
<u>Code or the Ohio Administrative Code;</u>	374
<u>(b) Taking disciplinary action against a person or other</u>	375
<u>entity that is licensed by a board or commission for violations</u>	376
<u>of the Ohio Revised Code or the Ohio Administrative Code.</u>	377
<u>(C) (1) The following boards, commissions, or persons may</u>	378
<u>refer an action to the office for review under this section:</u>	379
<u>(a) A board or commission that has taken or is proposing</u>	380
<u>to take an action;</u>	381
<u>(b) A person who is affected by an action taken by a board</u>	382
<u>or commission or is likely to be affected by an action proposed</u>	383
<u>by a board or commission;</u>	384
<u>(c) A person who has been granted a stay pursuant to</u>	385
<u>division (G) of this section.</u>	386
<u>(2) A board or commission or person who refers an action</u>	387
<u>to the office shall prepare a brief statement explaining the</u>	388

action and its consistency or inconsistency with state or 389
federal antitrust law, or with the policies expressed in section 390
4798.01 of the Revised Code, and file the statement with the 391
office. If the action is in writing, the board or commission or 392
person shall attach a copy of it to the statement. The person 393
shall transmit a copy of the statement to the board or 394
commission. 395

(3) The referral of an action by a board or commission for 396
review by the office does not constitute an admission that the 397
action violates any state or federal law. 398

(4) A person who is affected by an action taken by a board 399
or commission or is likely to be affected by an action proposed 400
by a board or commission shall refer the action to the office 401
for review within thirty days after receiving notice of the 402
action or proposed action. 403

(5) If an ongoing action or an action proposed by a board 404
or commission is referred to the office for review under this 405
section, the board or commission shall cease the ongoing action 406
or not take the proposed action until the office has approved of 407
the action pursuant to division (E) of this section and prepared 408
and transmitted the memorandum required under division (F) of 409
this section. 410

(D) The office shall determine whether an action referred 411
to the office under this section is supported by, and consistent 412
with, a clearly articulated state policy as expressed in the 413
statutes creating the board or commission or the statutes and 414
rules setting forth the board's or commission's powers, 415
authority, and duties. If the office finds this to be the case, 416
the office shall determine whether the clearly articulated state 417
policy is merely a pretext by which the board or commission 418

enables the members of an occupation or industry the board or 419
commission regulates to engage in anticompetitive conduct that 420
could be subject to state or federal antitrust law if the action 421
were taken by a private person or combination of private 422
persons. 423

(E) After making the determinations required under 424
division (D) of this section, the office shall take one of the 425
following actions: 426

(1) Approve the board or commission action if the office 427
determines that the action is pursuant to a clearly articulated 428
state policy and that the policy is not a pretext as described 429
in division (D) of this section. If the office approves the 430
board's or commission's action, the board or commission may 431
proceed to take or may continue the action. 432

(2) Disapprove the board or commission action if the 433
office determines that the action is not pursuant to a clearly 434
articulated state policy or that if it is pursuant to a clearly 435
articulated state policy, that policy is a pretext as described 436
in division (D) of this section. If the office disapproves the 437
board's or commission's action, the action is void. 438

(F) The office shall prepare a memorandum that explains 439
the office's approval or disapproval. The office shall transmit 440
a copy of the memorandum to the person and the board or 441
commission or to the board or commission if only the board or 442
commission is involved. The office shall post the memorandum on 443
the web site maintained by the office. 444

(G) (1) A person having standing to commence and prosecute 445
a state or federal antitrust action against a board or 446
commission shall exhaust the remedies provided by this section 447

before commencing such an action. This division shall not apply 448
to the attorney general, a county prosecuting attorney, or any 449
assistant prosecutor designated to assist a county prosecuting 450
attorney. 451

(2) The state, a board or commission, or a member of a 452
board or commission in the member's official capacity, may 453
request a stay of any lawsuit alleging that a board or 454
commission engaged in anticompetitive conduct by taking an 455
action described in division (B)(1) or (2) of this section that 456
has not been previously reviewed by the office under this 457
section. If the lawsuit was initiated by a person other than the 458
attorney general, a county prosecuting attorney, or any 459
assistant prosecutor designated to assist a county prosecuting 460
attorney, the court shall grant the request. If the lawsuit was 461
initiated by the attorney general, a county prosecuting 462
attorney, or any assistant prosecutor designated to assist a 463
county prosecuting attorney, the court shall deny the request. 464
Any stay granted under this division will continue in effect 465
until the office has prepared and transmitted the memorandum 466
required under division (F) of this section. 467

(H) The office shall review any action referred to the 468
office by a party who has been granted a stay pursuant to 469
division (G) of this section. 470

(I) Notwithstanding any provision of this section to the 471
contrary, an action taken by a board or commission is not 472
subject to review under this section if the members of the board 473
or commission who are members of the occupation or industry 474
affected by the action are prohibited by statute from hearing, 475
considering, deciding, or otherwise participating in the action. 476

(J) The office shall adopt rules under Chapter 119. of the 477

Revised Code that are necessary for the implementation and 478
administration of this section. 479

Sec. 4798.01. (A) As used in this chapter: 480

"Certification" means a voluntary program in which a 481
private organization or the state grants nontransferable 482
recognition to an individual who meets personal qualifications 483
established by the private organization or state law. 484

"Lawful occupation" means a course of conduct, pursuit, or 485
profession that includes the sale of goods or services that are 486
not themselves illegal to sell irrespective of whether the 487
individual selling the goods or services is subject to an 488
occupational regulation. 489

"Least restrictive regulation" means the public policy of 490
relying on one of the following, listed from the least to the 491
most restrictive, as a means of consumer protection: market 492
competition; third-party or consumer-created ratings and 493
reviews; private certification; specific private civil cause of 494
action to remedy consumer harm; actions under Chapter 1345. of 495
the Revised Code; regulation of the process of providing the 496
specific goods or services to consumers; inspection; bonding or 497
insurance; registration; government certification; specialty 498
occupational license for medical reimbursement; and occupational 499
license. 500

"Occupational license" means nontransferable authorization 501
in law that an individual must possess in order to perform a 502
lawful occupation for compensation based on meeting personal 503
qualifications established by statute, or by a rule authorized 504
by statute. 505

"Occupational licensing board" means any board, 506

commission, committee, or council, or any other similar state 507
public body, and any administrative department enumerated under 508
section 121.02 of the Revised Code, and any agency, division, or 509
office of state government, that issues an occupational license. 510

"Occupational regulation" means a statute, policy, rule, 511
adjudication order, practice, or other state law requiring an 512
individual to possess certain personal qualifications to use an 513
occupational title or work in a lawful occupation. "Occupational 514
regulation" includes registration, certification, and 515
occupational license. "Occupational regulation" excludes a 516
business license, facility license, building permit, or zoning 517
and land use regulation, except to the extent those laws 518
regulate an individual's personal qualifications to perform a 519
lawful occupation. 520

"Personal qualifications" mean criteria related to an 521
individual's personal background and characteristics including 522
completion of an approved educational program, satisfactory 523
performance on an examination, work experience, other evidence 524
of attainment of requisite skills or knowledge, moral standing, 525
criminal history, and completion of continuing education. 526

"Registration" means a requirement to give notice to the 527
government that may include the individual's name and address, 528
the individual's agent for service of process, the location of 529
the activity to be performed, and a description of the service 530
the individual provides. "Registration" does not include 531
personal qualifications but may require a bond or insurance. 532

"Specialty occupational license for medical reimbursement" 533
is a nontransferable authorization in law for an individual to 534
qualify for payment or reimbursement from a government agency, 535
for providing identified medical services, based on meeting 536

personal qualifications established in law, which may be 537
recognized by a private company. 538

(B) For purposes of this chapter: 539

(1) The terms "certification" and "registration" are not 540
synonymous with "occupational license." 541

(2) The use of the words "certification" and "certified" 542
in other statutes to mean requiring an individual to meet 543
certain personal qualifications to work legally shall be 544
interpreted for the purposes of this chapter as requiring an 545
individual to meet the requirements of an "occupational 546
license." 547

(3) The use of the words "registration" and "registered" 548
in other statutes to mean requiring an individual to meet 549
certain personal qualifications to work legally shall be 550
interpreted for the purposes of this chapter as requiring an 551
individual to meet the requirements of an "occupational 552
license." 553

Sec. 4798.02. With respect to occupational regulation, all 554
of the following are the policy of the state: 555

(A) Occupational regulations shall be construed and 556
applied to increase economic opportunities, promote competition, 557
and encourage innovation. 558

(B) Where the state finds it is necessary to displace 559
competition, the state will use the least restrictive regulation 560
to protect consumers from present, significant, and 561
substantiated harms that threaten public health and safety. The 562
policy of employing the least restrictive regulation shall 563
presume that market competition and private remedies are 564
sufficient to protect consumers. Where needed, regulations shall 565

be tailored to meet the predominate identified need to protect 566
consumers, as follows: 567

(1) If regulations are intended to protect consumers 568
against fraud, the appropriate state action shall be to 569
strengthen powers under deceptive trade practices acts. 570

(2) If regulations are intended to protect consumers 571
against unsanitary facilities and general health and safety 572
concerns, the appropriate state action shall be to require 573
periodic inspections. 574

(3) If regulations are intended to protect consumers 575
against potential damages to third parties who are not party to 576
a contract between the seller and buyer, and other types of 577
externalities, the appropriate state action shall be to require 578
bonding or insurance. 579

(4) If regulations are intended to protect consumers 580
against potential damages by transient providers, the 581
appropriate state action shall be to require registration with 582
the secretary of state. 583

(5) If regulations are intended to protect consumers 584
against asymmetrical information between the seller and buyer, 585
the appropriate state action shall be to offer voluntary 586
certification. 587

(6) If regulations are intended to facilitate governmental 588
reimbursement for providing medical services for an emerging 589
medical specialty, the appropriate state action shall be to 590
require a specialty occupational license for medical 591
reimbursement. 592

(C) An occupational regulation may be enforced against an 593
individual only to the extent the individual sells goods and 594

services that are included explicitly in the statute that 595
defines the occupation's scope of practice. 596

By establishing and executing the policies in this 597
section, in concert with section 107.56 of the Revised Code, the 598
state intends to ensure that occupational licensing boards and 599
board members will avoid liability under federal antitrust laws. 600

Sec. 4798.03. This chapter preempts any ordinance or other 601
local law or regulation, which conflicts with or is inconsistent 602
with any policy of the state expressed in this chapter, by any 603
political subdivision that regulates an occupation that is also 604
regulated by the state. 605