

As Introduced

132nd General Assembly

Regular Session

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S. B. No. 255

Senator McColley

**Cosponsors: Senators Wilson, Jordan, Huffman, Terhar, LaRose, Coley,
Hoagland, Lehner, Eklund, Beagle**

A BILL

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

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

Section 1. That sections 101.62, 101.63, 101.64, 101.65, 11
103.26, 103.27, 4798.01, 4798.02, and 4798.03 of the Revised 12
Code be enacted to read as follows: 13

Sec. 101.62. (A) As used in sections 101.62 to 101.65 of 14
the Revised Code, "least restrictive regulation," "occupational 15
license," and "occupational licensing board" have the meanings 16
defined in section 4798.01 of the Revised Code. 17

(B) An occupational licensing board shall expire at the 18
end of the thirty-first day of December of the fifth year after 19
it was created or last renewed, or on December 31, 2023, 20
whichever is later. The expiration of an occupational licensing 21
board under this section emancipates a person to lawfully engage 22
in the profession, occupation, or occupational activity, which 23
has been previously licensed by that board, without an 24
occupational license, notwithstanding any law of the state that 25
requires a person to possess a license to lawfully engage in 26
that profession, occupation, or occupational activity. 27

(C) The director of budget and management shall not 28
authorize the expenditure of any moneys for an occupational 29
licensing board on or after the date of its expiration. 30

(D) The general assembly may provide by law for the 31
orderly, efficient, and expeditious conclusion of an 32
occupational licensing board's business and operation. The 33
orders, licenses, contracts, and other actions made, taken, 34
granted, or performed by the board continue in effect according 35
to their terms notwithstanding the board's abolition, unless the 36
general assembly provides otherwise by law. The general assembly 37
may provide by law for the temporary or permanent transfer of 38
some or all of an expired or abolished board's functions and 39
personnel to a successor agency, board, or officer. 40

The expiration or abolition of a board does not cause the 41
termination or dismissal of any claim pending against the board 42
by any person, or any claim pending against any person by the 43
board. Unless the general assembly provides otherwise by law for 44
the substitution of parties, the attorney general shall succeed 45
the board with reference to any pending claim. 46

(E) An occupational licensing board may be renewed by 47

enactment of a law that continues the statutes creating, 48
empowering, governing, or regulating the board. The amendment of 49
a statute creating, empowering, governing, or regulating a 50
board, between the time the board was last reviewed and the time 51
it is next scheduled to be reviewed does not change the next 52
scheduled review date of the board. The next scheduled review 53
date changes only if the amendment expressly so provides. 54

Sec. 101.63. (A) (1) Not later than the first day of March 55
of a calendar year during which an occupational licensing board 56
is scheduled to expire under section 101.62 of the Revised Code, 57
the president of the senate and the speaker of the house of 58
representatives each shall direct a standing committee of the 59
senate and of the house of representatives, respectively, to 60
hold hearings to receive the testimony of the public and of the 61
chief executive officer of the board, and otherwise to review, 62
consider, and evaluate the usefulness, performance, and 63
effectiveness of the board. 64

(2) The president of the senate and the speaker of the 65
house of representatives may, in the same manner as described in 66
division (A) (1) of this section, direct a standing committee to 67
review an occupational licensing board for which the director of 68
the legislative service commission, under section 103.27 of the 69
Revised Code, has performed a review. 70

(3) The president of the senate and the speaker of the 71
house of representatives shall direct standing committees to 72
review approximately twenty per cent of the occupational 73
licensing boards each year. All occupational licensing boards 74
shall be reviewed over a five-year period including calendar 75
years 2019 through 2023, and also during each subsequent five- 76
year period. 77

(B) Each occupational licensing board that is scheduled to 78
be reviewed by a standing committee shall submit to the standing 79
committee a report that contains all of the following 80
information: 81

(1) The board's primary purpose and its various goals and 82
objectives; 83

(2) The board's past and anticipated workload, the number 84
of staff required to complete that workload, and the board's 85
total number of staff; 86

(3) The board's past and anticipated budgets and its 87
sources of funding; 88

(4) The number of members of its governing board or other 89
governing entity and their compensation, if any. 90

(C) Each board shall have the burden of demonstrating to 91
the standing committee a public need for its continued 92
existence. In determining whether a board has demonstrated that 93
need, the standing committee shall consider, as relevant, all of 94
the following: 95

(1) Whether or not continuation of the board is necessary 96
to protect the health and safety of the public, and if so, 97
whether or not the board's authority is narrowly tailored to 98
protect against present, recognizable, and significant harms to 99
the health and safety of the public; 100

(2) Whether or not the public could be protected or served 101
in an alternate or less restrictive manner; 102

(3) Whether or not the board serves a specific private 103
interest; 104

(4) Whether or not rules adopted by the board are 105

<u>consistent with the legislative mandate of the board as</u>	106
<u>expressed in the statutes that created and empowered the board;</u>	107
<u>(5) The extent to which the board's jurisdiction and</u>	108
<u>programs overlap or duplicate those of other boards, the extent</u>	109
<u>to which the board coordinates with those other boards, and the</u>	110
<u>extent to which the board's programs could be consolidated with</u>	111
<u>the programs of other state departments or boards;</u>	112
<u>(6) How many other states regulate the occupation, and the</u>	113
<u>amount of regulation exercised by the board compared to the</u>	114
<u>regulation, if any, in other states;</u>	115
<u>(7) Whether or not private contractors could be used, in</u>	116
<u>an effective and efficient manner, either to assist the board in</u>	117
<u>the performance of its duties or to perform these duties instead</u>	118
<u>of the board;</u>	119
<u>(8) Whether or not the operation of the board has</u>	120
<u>inhibited economic growth, reduced efficiency, or increased the</u>	121
<u>cost of government;</u>	122
<u>(9) An assessment of the authority of the board regarding</u>	123
<u>fees, inspections, enforcement, and penalties;</u>	124
<u>(10) The extent to which the board has permitted qualified</u>	125
<u>applicants to serve the public;</u>	126
<u>(11) The cost-effectiveness of the board in terms of</u>	127
<u>number of employees, services rendered, and administrative costs</u>	128
<u>incurred, both past and present;</u>	129
<u>(12) Whether or not the board's operation has been impeded</u>	130
<u>or enhanced by existing statutes and procedures and by</u>	131
<u>budgetary, resource, and personnel practices;</u>	132
<u>(13) Whether the board has recommended statutory changes</u>	133

to the general assembly that would benefit the public as opposed 134
to the persons regulated by the board, if any, and whether its 135
recommendations and other policies have been adopted and 136
implemented; 137

(14) Whether the board has required any persons it 138
regulates to report to it the impact of board rules and 139
decisions on the public as they affect service costs and service 140
delivery; 141

(15) Whether persons regulated by the board, if any, have 142
been required to assess problems in their business operations 143
that affect the public; 144

(16) Whether the board has encouraged public participation 145
in its rule-making and decision-making; 146

(17) The efficiency with which formal public complaints 147
filed with the board have been processed to completion; 148

(18) Whether the purpose for which the board was created 149
has been fulfilled, has changed, or no longer exists; 150

(19) Whether federal law requires that the board be 151
renewed in some form; 152

(20) An assessment of the administrative hearing process 153
of a board if the board has an administrative hearing process, 154
and whether or not the hearing process is consistent with due 155
process rights; 156

(21) Whether the requirement for the occupational license 157
is consistent with the policies expressed in section 4798.02 of 158
the Revised Code, serves a meaningful, defined public interest, 159
and provides the least restrictive form of regulation that 160
adequately protects the public interest; 161

(22) 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 and safety, 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; 162
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(23) The extent to which the requirement for the occupational license stimulates or restricts competition, affects consumer choice, and affects the cost of services; 169
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(24) 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 divisions (C) (1) to (23) of this section. 172
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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, significant, and substantiated harms to the health and safety of the public. 176
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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: 180
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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 188
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107.62 of the Revised Code; 191

(B) Whether or not the common sense initiative office has, 192
within the previous five years, received advice from the small 193
business advisory council with respect to rules of the board; 194

(C) Any other information the chief believes will 195
elucidate the effectiveness and efficiency of the board and in 196
particular the quality of customer service provided by the 197
board. 198

Sec. 101.65. (A) After the completion of the review of a 199
board under section 101.63 of the Revised Code, the standing 200
committee that conducted the review may prepare and publish a 201
report of its findings and recommendations. A standing committee 202
may include in a single report its findings and recommendations 203
regarding more than one board. If the standing committee 204
prepares and publishes a report, the committee shall furnish a 205
copy of the report to the president of the senate, the speaker 206
of the house of representatives, the governor, and each affected 207
board. Any published report shall be made available to the 208
public in the offices of the house of representatives and senate 209
clerks during reasonable hours. As part of a report, the 210
standing committee may present its recommendations to the 211
general assembly in bill form. 212

(B) Recommendations made by the standing committee shall 213
indicate how or whether their implementation will do each of the 214
following: 215

(1) Improve efficiency in the management of state 216
government; 217

(2) Improve services rendered to citizens of the state; 218

(3) Simplify and improve preparation of the state budget; 219

<u>(4) Conserve the natural resources of the state;</u>	220
<u>(5) Promote the orderly growth of the state and its government;</u>	221 222
<u>(6) Promote that occupational regulations shall be construed and applied to increase economic opportunities, promote competition, and encourage innovation;</u>	223 224 225
<u>(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;</u>	226 227 228 229
<u>(8) Improve the effectiveness of the services performed by the service departments of the state;</u>	230 231
<u>(9) Avoid duplication of effort by state agencies or boards;</u>	232 233
<u>(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.</u>	234 235 236
<u>Sec. 103.26. (A) As used in this section and section 103.27 of the Revised Code:</u>	237 238
<u>"Least restrictive regulation" has the meaning defined in section 4798.01 of the Revised Code.</u>	239 240
<u>"Occupational regulation" means a statute or rule that controls an individual's practice of a trade or profession.</u>	241 242
<u>(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</u>	243 244 245 246

assessment of the legislation. The assessment shall attempt to 247
ascertain whether or not the regulatory scheme proposed in the 248
legislation is consistent with the policies expressed in section 249
4798.02 of the Revised Code with respect to proposing the least 250
restrictive regulation to protect consumers from present, 251
significant, and substantiated harms that threaten public health 252
and safety. The director shall issue a report of the assessment, 253
to the general assembly, in a timely manner. 254

To the extent possible with readily available or 255
obtainable information, the assessment shall consider the 256
potential consequences of the legislation with respect to: 257

(1) Opportunities for employment within the occupation; 258

(2) Consumer choices and costs; 259

(3) Market competition; 260

(4) Cost to government. 261

(C) The assessment performed under division (B) of this 262
section may include a comparison of the regulatory scheme put 263
forth in the legislation with the current regulatory scheme in 264
other similar states for the same occupation. 265

(D) The sponsor of a bill, in order to assist the director 266
of the legislative service commission with the director's duties 267
under division (B) of this section, may submit to the director 268
any relevant information, including the following: 269

(1) Evidence of present, significant, and substantiated 270
harms to consumers in the state; 271

(2) An explanation of why existing civil or criminal laws 272
or procedures are inadequate to prevent or remedy any harm to 273
the public; 274

<u>(3) An explanation of why a less restrictive regulation,</u>	275
<u>that is consistent with the policies expressed in section</u>	276
<u>4798.02 of the Revised Code, is not proposed;</u>	277
<u>(4) The names of associations, organizations, or other</u>	278
<u>groups representing the occupation seeking regulation and the</u>	279
<u>approximate number of members in each in this state;</u>	280
<u>(5) The functions typically performed by members of this</u>	281
<u>occupation and whether they are identical or similar to those</u>	282
<u>performed by another occupation;</u>	283
<u>(6) Whether specialized training, education, or experience</u>	284
<u>is required to engage in the occupation and, if so, how current</u>	285
<u>practitioners acquired that training, education, or experience;</u>	286
<u>(7) Whether or not the proposed regulation would change</u>	287
<u>the way practitioners of the occupation acquire any necessary</u>	288
<u>specialized training, education, or experience and, if so, why;</u>	289
<u>(8) Whether or not any current practitioners of the</u>	290
<u>occupation in this state lack whatever specialized training,</u>	291
<u>education, or experience might be required to engage in the</u>	292
<u>occupation and, if so, how the proposed regulation would address</u>	293
<u>that deficiency;</u>	294
<u>(9) Whether or not new entrants into the occupation would</u>	295
<u>be required to provide evidence of any necessary training,</u>	296
<u>education, or experience, or to pass an examination, or both;</u>	297
<u>(10) Whether or not current practitioners would be</u>	298
<u>required to provide evidence of any necessary training,</u>	299
<u>education, or experience, or to pass an examination, and, if</u>	300
<u>not, why not;</u>	301
<u>(11) The expected impact of the proposed regulation on the</u>	302

supply of practitioners of the occupation and on the cost of 303
services or goods provided by the occupation; 304

(12) Information from others knowledgeable about the 305
occupation, and the related economic factors. 306

(E) A bill which proposes to substantially change or enact 307
an occupational regulation shall not be favorably reported out 308
of committee until after the committee members have received and 309
considered the assessment provided under division (B) of this 310
section, unless two-thirds of the members of the committee vote 311
in the affirmative to favorably report the bill. 312

Sec. 103.27. (A) Each calendar year, beginning in 2018, 313
the director of the legislative service commission shall perform 314
an assessment of approximately twenty per cent of occupations 315
subject to regulation by the state. The assessment shall attempt 316
to ascertain whether or not the current regulatory scheme being 317
utilized in this state is consistent with the policies expressed 318
in section 4798.02 of the Revised Code. 319

The director shall issue a report of the assessments 320
performed during a calendar year, not later than the first day 321
of December of that year, to the general assembly and to the 322
attorney general. The report shall include instructions, as 323
necessary, which describe how the current regulatory scheme may 324
be amended to improve consistency with the policies expressed in 325
section 4798.02 of the Revised Code. 326

The director may require that information be submitted by 327
any department or board that regulates the occupation. 328

The director shall, over a five-year period including 329
calendar years 2018 through 2022, perform assessments of all 330
occupations subject to regulation by the state. The director's 331

assessment of an occupation may be scheduled to coincide with, 332
and be done in conjunction with, the review of an occupational 333
licensing board being done by a standing committee of the 334
general assembly under section 101.63 of the Revised Code. 335

Sec. 4798.01. (A) As used in this chapter: 336

"Certification" means a voluntary program in which a 337
private organization or the state grants nontransferable 338
recognition to an individual who meets personal qualifications 339
established by the private organization or state law. 340

"Lawful occupation" means a course of conduct, pursuit, or 341
profession that includes the sale of goods or services that are 342
not themselves illegal to sell irrespective of whether the 343
individual selling the goods or services is subject to an 344
occupational regulation. 345

"Least restrictive regulation" means the public policy of 346
relying on one of the following, listed from the least to the 347
most restrictive, as a means of consumer protection: market 348
competition; third-party or consumer-created ratings and 349
reviews; private certification; specific private civil cause of 350
action to remedy consumer harm; actions under Chapter 1345. of 351
the Revised Code; regulation of the process of providing the 352
specific goods or services to consumers; inspection; bonding or 353
insurance; registration; government certification; specialty 354
occupational license for medical reimbursement; and occupational 355
license. 356

"Occupational license" means nontransferable authorization 357
in law that an individual must possess in order to perform a 358
lawful occupation for compensation based on meeting personal 359
qualifications established by statute, or by a rule authorized 360

by statute. 361

"Occupational licensing board" means any board, 362
commission, committee, or council, or any other similar state 363
public body, and any administrative department enumerated under 364
section 121.02 of the Revised Code, and any agency, division, or 365
office of state government, that issues an occupational license. 366

"Occupational regulation" means a statute, policy, rule, 367
adjudication order, practice, or other state law requiring an 368
individual to possess certain personal qualifications to use an 369
occupational title or work in a lawful occupation. "Occupational 370
regulation" includes registration, certification, and 371
occupational license. "Occupational regulation" excludes a 372
business license, facility license, building permit, or zoning 373
and land use regulation, except to the extent those laws 374
regulate an individual's personal qualifications to perform a 375
lawful occupation. 376

"Personal qualifications" mean criteria related to an 377
individual's personal background and characteristics including 378
completion of an approved educational program, satisfactory 379
performance on an examination, work experience, other evidence 380
of attainment of requisite skills or knowledge, moral standing, 381
criminal history, and completion of continuing education. 382

"Registration" means a requirement to give notice to the 383
government that may include the individual's name and address, 384
the individual's agent for service of process, the location of 385
the activity to be performed, and a description of the service 386
the individual provides. "Registration" does not include 387
personal qualifications but may require a bond or insurance. 388

"Specialty occupational license for medical reimbursement" 389

is a nontransferable authorization in law for an individual to 390
qualify for payment or reimbursement from a government agency, 391
for providing identified medical services, based on meeting 392
personal qualifications established in law, which may be 393
recognized by a private company. 394

(B) For purposes of this chapter: 395

(1) The terms "certification" and "registration" are not 396
synonymous with "occupational license." 397

(2) The use of the words "certification" and "certified" 398
in other statutes to mean requiring an individual to meet 399
certain personal qualifications to work legally shall be 400
interpreted for the purposes of this chapter as requiring an 401
individual to meet the requirements of an "occupational 402
license." 403

(3) The use of the words "registration" and "registered" 404
in other statutes to mean requiring an individual to meet 405
certain personal qualifications to work legally shall be 406
interpreted for the purposes of this chapter as requiring an 407
individual to meet the requirements of an "occupational 408
license." 409

Sec. 4798.02. With respect to occupational regulation, all 410
of the following are the policy of the state: 411

(A) Occupational regulations shall be construed and 412
applied to increase economic opportunities, promote competition, 413
and encourage innovation. 414

(B) Where the state finds it is necessary to displace 415
competition, the state will use the least restrictive regulation 416
to protect consumers from present, significant, and 417
substantiated harms that threaten public health and safety. The 418

policy of employing the least restrictive regulation shall 419
presume that market competition and private remedies are 420
sufficient to protect consumers. Where needed, regulations shall 421
be tailored to meet the predominate identified need to protect 422
consumers, as follows: 423

(1) If regulations are intended to protect consumers 424
against fraud, the appropriate state action shall be to 425
strengthen powers under deceptive trade practices acts. 426

(2) If regulations are intended to protect consumers 427
against unsanitary facilities and general health and safety 428
concerns, the appropriate state action shall be to require 429
periodic inspections. 430

(3) If regulations are intended to protect consumers 431
against potential damages to third parties who are not party to 432
a contract between the seller and buyer, and other types of 433
externalities, the appropriate state action shall be to require 434
bonding or insurance. 435

(4) If regulations are intended to protect consumers 436
against potential damages by transient providers, the 437
appropriate state action shall be to require registration with 438
the secretary of state. 439

(5) If regulations are intended to protect consumers 440
against asymmetrical information between the seller and buyer, 441
the appropriate state action shall be to offer voluntary 442
certification. 443

(6) If regulations are intended to facilitate governmental 444
reimbursement for providing medical services for an emerging 445
medical specialty, the appropriate state action shall be to 446
require a specialty occupational license for medical 447

<u>reimbursement.</u>	448
<u>(C) An occupational regulation may be enforced against an</u>	449
<u>individual only to the extent the individual sells goods and</u>	450
<u>services that are included explicitly in the statute that</u>	451
<u>defines the occupation's scope of practice.</u>	452
<u>By establishing and executing the policies in this</u>	453
<u>section, in concert with section 107.56 of the Revised Code, the</u>	454
<u>state intends to ensure that occupational licensing boards and</u>	455
<u>board members will avoid liability under federal antitrust laws.</u>	456
<u>Sec. 4798.03. This chapter preempts any ordinance or other</u>	457
<u>local law or regulation, which conflicts with or is inconsistent</u>	458
<u>with any policy of the state expressed in this chapter, by any</u>	459
<u>political subdivision that regulates an occupation that is also</u>	460
<u>regulated by the state.</u>	461