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# OHIO LEGISLATIVE SERVICE COMMISSION

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**S.B. 50\***  
**134<sup>th</sup> General Assembly**

## Occupational Regulation Report

[Click here for S.B. 50's Bill Analysis / Fiscal Note](#)

**Primary Sponsors:** Sens. Maharath and Antonio

**Impacted Professions:** Health care professionals

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LSC is required by law to issue a report for each introduced bill that substantially changes or enacts an occupational regulation. The report must: (1) explain the bill's regulatory framework in the context of Ohio's statutory policy of using the least restrictive regulation necessary to protect consumers, (2) compare the regulatory schemes governing the same occupation in other states, and (3) examine the bill's potential impact on employment, consumer choice, market competition, and cost to government.<sup>1</sup>

## LEAST RESTRICTIVE REGULATION COMPARISON

### Ohio's general regulatory policy

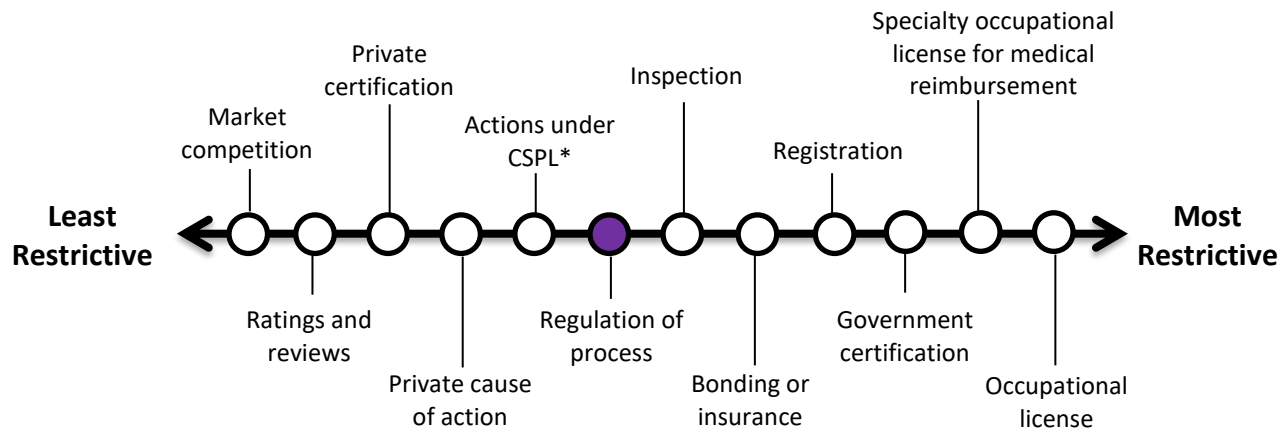
The general policy of the state is reliance on market competition and private remedies to protect the interests of consumers in commercial transactions involving the sale of goods or services. For circumstances in which the General Assembly determines that additional safeguards are necessary to protect consumers from "present, significant, and substantiated harms that threaten health, safety, or welfare," the state's expressed intent is to enact the "least restrictive regulation that will adequately protect consumers from such harms."<sup>2</sup>

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

\*This report addresses the "As Introduced" version of S.B. 50. It does not account for changes that may have been adopted after the bill's introduction.

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

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



\*CSPL – The Consumer Sales Practices Law

By prohibiting a form of treatment for minor patients, S.B. 50 creates a new regulation of process for nurses, physicians, psychologists, counselors, social workers, chemical dependency professionals, and marriage and family therapists (referred to, collectively, by the bill as “health care professionals”). Health care professionals who currently utilize conversion therapy techniques would be required to either refrain from accepting minor patients or switch to an alternative form of treatment for those patients. This adjustment might be an obstacle for certain health care professionals; particularly those who specialize in conversion therapy.

## Necessity of regulations

At the time this report was completed, S.B. 50 had not yet received a first hearing in the Senate Health Committee. Therefore, the bill’s sponsors (Senator Maharath and Senator Antonio) had not yet provided a direct statement as to their intent in proposing the regulation. Generally, it appears that the bill would decrease the likelihood of a minor patient receiving conversion therapy from a health care professional.

## Restrictiveness of regulations

The state’s policy does not provide specific guidance as to when a regulation of process is the best means of protecting the health, safety, and welfare of consumers. However, the policy as a whole suggests that regulations of process are the most preferred method of regulation when market competition, ratings and reviews, private certifications, private causes of action, and actions under the state’s Consumer Sales Practices Law (CSPL) do not provide sufficient protection. The process regulation in S.B. 50 appears to be consistent with the state’s policy.

Private remedies for a minor who alleges physical or mental distress resulting from conversion therapy appear to be limited. The most obvious recourse for such a minor is to seek damages through a malpractice lawsuit against the health care professional who administered the treatment. The outcome of malpractice cases depends on the specific facts and circumstances involved, but there does not appear to be precedent in Ohio case law establishing that the administration of conversion therapy, in itself, constitutes a failure to act with “ordinary

skill, care, and diligence” as required by law.<sup>3</sup> According to a statement by the American Medical Association (AMA) and Health Professionals Advancing LGBTQ Equality (GLMA), “[a]ll leading professional medical and mental health associations reject ‘conversion therapy’ as a legitimate medical treatment.”<sup>4</sup> However, opposition to the technique is not universal among patients and practitioners.

The practicality of the malpractice remedy is further complicated by the time limit for bringing medical malpractice actions. Continuing law generally requires that such actions be commenced within one year of the event that caused damages. There are exceptions to the rule; for example, the time limit does not begin tolling until a minor plaintiff reaches the age of adulthood and it may be extended for up to an additional three years if the injury is not discovered immediately.<sup>5</sup> Nonetheless, a malpractice action is not a suitable remedy for injuries that manifest themselves much later in life.

It might also be relevant that medical malpractice actions are reactionary in nature – they reimburse plaintiffs for harm that has already occurred. Conversely, the process regulations in S.B. 50 apply prospectively – they prohibit conduct that has yet to occur. If the goal is to shield minors from conversion therapy, a prospective regulation against such treatments is a more direct way to achieve it.

## **Other regulatory policies**

S.B. 50 modifies established regulatory frameworks that apply to health care professionals who practice in Ohio. The law does not contain a general statement explaining the state’s intent in regulating the professions.<sup>6</sup>

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# **IMPACT STATEMENT**

## **Opportunities for employment**

The process regulations prescribed by the bill would reduce the scope of practice for health care professionals; however, conversion therapy to minors is unlikely to be a significant portion of any health care practice.<sup>7</sup> As such, this bill is unlikely to have a significant impact on employment.

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<sup>3</sup> See, *Ault v. Hall*, 119 Ohio St. 422, 428 (1928).

<sup>4</sup> AMA and GLMA, *Issue Brief: LGBTQ change efforts (so-called “conversion therapy”)*, (2018).

<sup>5</sup> R.C. 2305.113 and 2305.16, neither in the bill.

<sup>6</sup> See, e.g., R.C. chapters 4723, 4731, 4732, 4757, and 4758.

<sup>7</sup> The Williams Institute estimates in “Conversion Therapy and LGBT Youth” that, as of June 2019, in the states that did not ban the practice, approximately 16,000 LGBT youth will receive conversion therapy from a licensed professional before they reach the age of 18. This would equal approximately 500 LGBT youth in Ohio.

## **Consumer choice**

This bill would reduce consumer choice by eliminating conversion therapy as a treatment option for minor patients. Due to the small number of such patients, such restrictions are unlikely to significantly reduce the availability of health care professionals, or the availability of conversion therapy to adults.

## **Market competition**

This bill would eliminate competition among licensed health care professionals who provide this conversion therapy to minors.

## **Cost to government**

This bill may impose some additional cost to government in the form of any additional investigative or disciplinary procedures.

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## **SUMMARY OF PROPOSED REGULATION.**

The bill prohibits the use of conversion therapy when providing mental health treatment to a minor.<sup>8</sup> Conversion therapy is defined as, “the practice of seeking to change a person’s sexual orientation, including efforts to change behaviors, gender identity, or gender expression, or to reduce or eliminate sexual or romantic attractions or feelings toward a person of the same gender.”<sup>9</sup> This prohibition applies to all health care professionals.<sup>10</sup> The appropriate state licensing board must suspend, revoke, or refuse to renew the license or certificate of registration of practitioners who engage in conversion therapy with a minor.<sup>11</sup> The bill does not prohibit assisting in a patient-initiated gender transition, preventing or addressing unlawful conduct or unsafe sexual practices, or providing counseling, including counseling that may help a patient manage their gender identity or sexual orientation but does not seek to change it.<sup>12</sup>

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<sup>8</sup> R.C. 4743.09(B).

<sup>9</sup> R.C. 4743.09(A)(2).

<sup>10</sup> R.C.4743.09(A)(3).

<sup>11</sup> R.C. 4743.09(D), 4723.93, 4731.45, 4732.34, 4757.46, and 4758.73.

<sup>12</sup> R.C. 4743.09(C).

## COMPARISON TO OTHER STATES

According to the Movement Advancement Project (MAP), 20 states have banned conversion therapy for minors.<sup>13</sup> One additional state, North Carolina, restricts conversion therapy for minors by prohibiting the use of taxpayer dollars for conversion therapy practices.<sup>14</sup> See the table below for a comparison of laws banning conversion therapy for minors in Illinois, New York, California, New Mexico, and Maryland. The language in S.B. 50 is comparable to these five states.

| Conversion Therapy for Minors |  |  |   |
|-------------------------------|--|--|---|
| State                         | Penalties for Practicing Conversion Therapy With Minors  | Professions Impacted   | Other Notable Provisions  |
| Illinois <sup>15</sup>        | May be subject to discipline by the practitioner's licensing entity or disciplinary review board. Depending on the board, discipline may include refusal to issue a license, license suspension or revocation, reprimand, fines, probation, or other actions deemed appropriate. | Clinical psychologists, school psychologists, psychiatrists, clinical social workers, social workers, marriage and family therapists, associate licensed marriage and family therapists, professional counselors, clinical professional counselors, and any students, interns, volunteers, or other persons assisting or acting under the direction or guidance of these licensed professionals. | Prohibits commercial messaging that represents homosexuality as a mental illness with the intent to encourage concealment or suppression of sexual orientation. |

<sup>13</sup> MAP, [Conversion "Therapy" Laws](#) (March 12, 2021).

<sup>14</sup> N.C. Exec. Order No. 97 (August 2, 2019).

<sup>15</sup> 405 Illinois Compiled Statutes (ILCS) 48/15, 48/25, and 48/30; 225 ILCS 15/15, 20/19, 55/85, and 107/80.

| Conversion Therapy for Minors   |  |   |                          |
|---------------------------------|--|---|--------------------------|
| State                           | Penalties for Practicing Conversion Therapy With Minors  | Professions Impacted  | Other Notable Provisions |
| <b>New York</b> <sup>16</sup>   | Shall be subject to discipline by the State Board for Professional Medical Conduct that may include license suspension, limitation, revocation, and annulment, limitation on registration or issuance of any further license, censure and reprimand, fines, education or training, and public service. | All professionals licensed by the State Board of Medicine, the State Board of Psychology, the State Board of Social Work, the State Board for Mental Health Practitioners, or any other person designated as a mental health professional pursuant to law, rule, or regulation. | N/A                      |
| <b>California</b> <sup>17</sup> | Shall be subject to discipline by the practitioner's licensing entity. Depending on the board, discipline may include license revocation or suspension, reprimand, probation, or any other actions deemed appropriate.   | Mental health professionals including psychiatrists; psychologists; psychological assistants, interns, or trainees; marriage and family therapists and trainees; licensed educational psychologists, credentialed school psychologists; social workers; and counselors.         | N/A                      |
| <b>New Mexico</b> <sup>18</sup> | May be subject to discipline by the practitioner's licensing entity. Depending on the board, discipline may include refusal to issue a license, license suspension or revocation, censure, reprimand, fines, or probation.   | All professionals regulated by the state of New Mexico.   | N/A                      |

<sup>16</sup> New York Consolidated Laws Service Pub Health 230-a; Educ. 6509-e, 6511, and 6531-a.

<sup>17</sup> California Business and Professions Code 865, 865.1, 865.2., 2227, 2960, 4983, and 4996.11.

<sup>18</sup> New Mexico Statutes Annotated 61-1-3.3, 61-3-28, 61-6-15, 61-9-13, 61-9A-26, 61-10-15.1, and 61-31-17.

| Conversion Therapy for Minors |   |  |   |
|-------------------------------|---|--|---|
| State                         | Penalties for Practicing Conversion Therapy With Minors   | Professions Impacted   | Other Notable Provisions  |
| <b>Maryland</b> <sup>19</sup> | Shall be subject to discipline by the practitioner’s licensing or certifying board. Depending on the board, discipline may include license or certification suspension or revocation, reprimand, fines, or probation. | All professionals credentialed by the State Board of Physicians, the State Board of Professional Counselors and Therapists, the State Board Examiners of Psychologists, the State Board of Social Work Examiners, and the State Board for Certification of Residential Child Care Program Professionals. | Prohibits the use of state funds to conduct, refer an individual to, or provide health coverage for conversion therapy or to provide a grant or contract with any entity that conducts or refers individuals to receive conversion therapy. |

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<sup>19</sup> Maryland Health Occupations Code 1-212.1, 14-404, 17-509, 18-313, 19-311, and 20-313.