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OHIO LEGISLATIVE SERVICE COMMISSION

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S.B. 256*
134th General Assembly

Occupational Regulation Report

[Click here for S.B. 256's Bill Analysis/Fiscal Note](#)

Primary Sponsor: Sen. Wilson

Impacted Professions: Travel insurance agents, retailers, and administrators

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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.¹

LEAST RESTRICTIVE REGULATION COMPARISON

Ohio's general regulatory policy

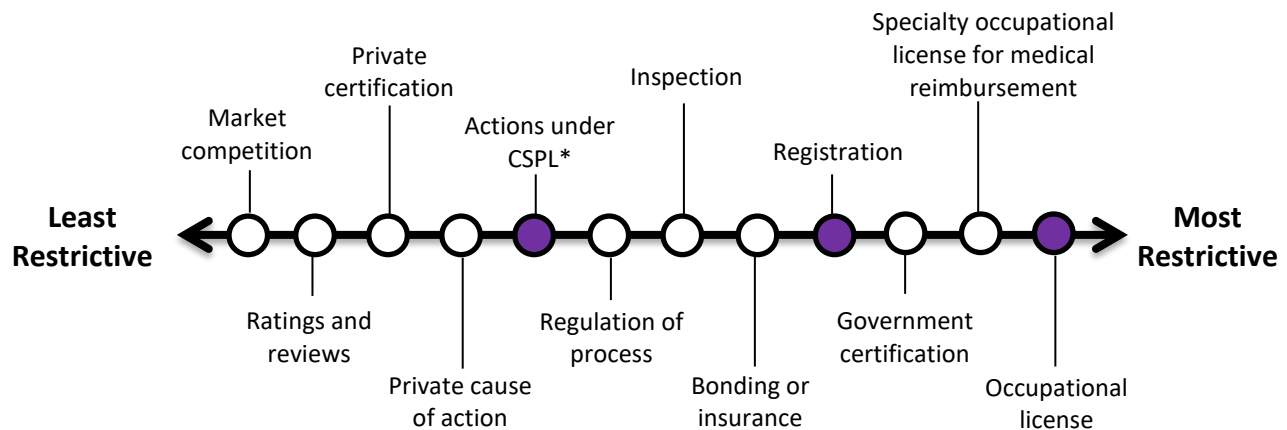
The general policy of the state is reliance on market competition and private remedies to protect the interests of consumers in commercial transactions involving the sale of goods or services. For circumstances in which the General Assembly determines that additional safeguards are necessary to protect 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."²

* This report addresses the "As Introduced" version of S.B. 256. It does not account for changes that may have been adopted after the bill's introduction.

¹ R.C. 103.26, not in the bill.

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

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:



*CSPL – The Consumer Sales Practices Law

S.B. 256 includes a mix of occupational and industry regulations. This report addresses only the occupational regulations (i.e., those that require individuals to possess certain personal qualifications to use an occupational title or work in a lawful occupation); specifically, the bill’s changes to the registration requirement for travel retailers, the express extension of Ohio’s Unfair and Deceptive Practices Act to all persons selling travel insurance, and the requirement that an individual obtain one of three existing insurance licenses before presenting themselves as a travel administrator.

Necessity of regulations

Senator Wilson, the bill’s primary sponsor, testified that the bill’s changes are essential for both the protection of consumers and the continued growth of the travel insurance industry. He contends that the bill’s changes to the travel retailer registration requirement provide clearer accountability as to who is responsible for the sale of travel insurance. He suggests that the bill’s unfair and deceptive trade practices provisions create a “forward-looking” and “workable regulatory structure” for practitioners that will allow them to grow their businesses without fear of unforeseeable administrative enforcement actions.³

Restrictiveness of regulations

Registration of travel retailers

The state’s general policy provides that a registration requirement is the appropriate means by which to protect consumers “against potential damages by transient providers.”⁴

³ Senator Steve Wilson, *S.B. 256 Sponsor Testimony*, Senate Insurance Committee, October 27, 2021.

⁴ R.C. 4798.02(B)(4).

Senator Wilson’s testimony did not directly address transient providers, but he did indicate that the intent of bill’s registration provision is to increase accountability among travel retailers – a purpose that is somewhat in line with the state’s policy. Insurance purchasers are inherently vulnerable to fraudulent sellers due to the intangible nature of insurance contracts.⁵ Requiring licensed travel insurance agents to maintain a registry of the travel retailers authorized to sell insurance on their behalf creates an opportunity for consumers to vet the legitimacy of insurance salespersons. Furthermore, it establishes a link between the travel retailer and a licensed agent, from whom a defrauded consumer might be more likely to recover damages.

It might also be relevant that the bill modifies an existing registration requirement; current law already requires travel agents to maintain a registry of travel retailers. In some ways, it decreases the restrictiveness of current regulations. For instance, by allowing travel retailers to sell travel insurance without also making, arranging, or offering travel services. The bill’s requirement that policy materials be reviewed by the licensed agent and its stipulation of the contents of the travel retailer registration appear to slightly increase in the restrictiveness of travel insurance regulations. However, the changes appear to be consistent with the Travel Insurance Model Act, published by the National Association of Insurance Commissioners (NAIC) and with similar laws in the surrounding states.⁶

Application of Unfair and Deceptive Practices Act

The state’s general policy indicates that strengthening the Unfair and Deceptive Practices Act is the appropriate action when a regulation is intended to protect consumers against fraud. As discussed above, the insurance consumers are particularly vulnerable to fraudulent actors. Furthermore, all of the surrounding states expressly reference their own unfair and deceptive practices law in regulations governing the sale of travel insurance. In addition, the NAIC Travel Insurance Model Act includes similar prohibitions against unfair and deceptive trade practices.

Travel administrators must be licensed

Licensure is the most restrictive of all regulatory options identified within the state’s continuum of regulations. Accordingly, the state’s policy prescribes a narrow range of situations in which required licensure is appropriate; specifically, when all of the following circumstances are present: (1) the occupation involves providing a service regulated by both state and federal law, (2) the licensing framework allows individuals licensed in other states and territories to practice in Ohio, and (3) the licensing requirement is based on uniform national laws, practices, and examinations that have been adopted by at least 50 U.S. states and territories.⁷

The McCarran-Ferguson Act of 1945, generally delegates regulation of the insurance industry to the states.⁸ Nonetheless, Congress somewhat frequently enacts insurance-related

⁵ See, e.g., Jason Metz, *Be on the Lookout for these COVID-19 Insurance Scams*, Forbes, April 2, 2020.

⁶ NAIC, *Travel Insurance Model Act*, 2018.

⁷ R.C. 4798.02, not in the bill.

⁸ See 15 United States Code (U.S.C.) 1011.

regulations – for example, the Patient Protection and Affordable Care Act of 2010.⁹ According to the Insurance Information Institute, all 50 states have licensure laws for the insurance industry.¹⁰

All three of the licenses that, under the bill, permit an individual to portray themselves as a travel administrator allow reciprocity for persons licensed in another state that has similar license qualifications.¹¹

The bill's travel administrator provisions are nearly identical to the NAIC Travel Insurance Model Act.¹² However, none of the surrounding states have adopted NAIC's language related to travel administrators.

IMPACT STATEMENT

Opportunities for employment

The provision requiring all persons operating as travel administrators in the travel insurance marketplace to hold a license as defined in the bill, may slightly raise the cost of obtaining employment in such a position. The fee structure for obtaining licenses ranges from \$20 to \$300; annual renewal fees are up to \$200.¹³ The bill's application of the Unfair and Deceptive Practices Insurance Law to all persons selling travel insurance will not materially impact demand for persons serving in the occupation. Other administrative changes that could affect the day-to-day activities of market participants will not directly impact demand for labor among providers of travel insurance products.

Consumer choice and cost and market competition

The bill's occupational licensing provisions are unlikely to result in any change to participation in the travel insurance marketplace. Consequently, none of the provisions is expected to notably impact consumers.

Cost to government

For the fiscal impact of the bill to government, please refer to the [LBO fiscal note](#).

⁹ See, e.g., 42 U.S.C. 18001.

¹⁰ Insurance Information Institute, *Insurance Companies by State*, 2020.

¹¹ R.C. 3905.07, 3905.071, 3905.072, 3905.08, 3905.72(D), and 3959.04(B).

¹² NAIC, *Travel Insurance Model Act*, Section 8, 2018.

¹³ If the travel administrator also writes policies, a further \$15 annual fee is applied for each authorized line added by the business.

SUMMARY OF PROPOSED REGULATIONS

Travel insurance sellers

Travel retailers

Continuing law allows unlicensed travel retailers to sell travel insurance in conjunction with a licensed agent if certain requirements are met. One of those requirements is that a licensed agent must create a register of the travel retailers selling insurance on the agent's behalf. The bill requires the travel insurance agent to update the register as often as necessary to maintain its accuracy. Furthermore, it requires the register to include the name, address, and contact information of the travel retailer and of an officer or person who directs or controls the travel retailer's operations and the federal tax ID number of the travel retailer.¹⁴

The bill removes a requirement that travel retailers sell insurance only in conjunction with the making, arranging, or offering of travel services.¹⁵

Continuing law requires that travel retailers offering or selling travel insurance provide materials to consumers containing the material terms of the policy, a description of how to file a claim or cancel the policy, and the contact information of the insurer and licensed agent issuing the policy. The bill specifies that these materials are to be approved by the licensed agent under which the travel retailer is selling travel insurance and must be provided to a policyholder or certificate holder as soon as practicable after the purchase of a travel protection plan.¹⁶

Unfair and deceptive practices

The bill specifies that all persons offering or selling travel insurance are subject to the Unfair and Deceptive Practices Insurance Law. Possible sanctions for violating these provisions include suspending or revoking the insurer's license (or, for travel retailers, the authorization to sell travel insurance), being required to make restitution, or a civil penalty.¹⁷

The bill explicitly designates the following as unfair and deceptive practices:

- Offering or selling a travel insurance policy that could never result in payment of any claims;
- Marketing blanket travel insurance as free.

Beyond the penalties for engaging in an unfair or deceptive practice, violations of these prohibitions are subject to the penalties imposed on individual insurance agents, which includes: suspension, revocation, or refusal to issue or renew a license, a civil fine, or the imposition of any other sanction or sanctions authorized under the Insurance Producers Licensing Act.¹⁸

¹⁴ R.C. 3905.065(C).

¹⁵ R.C. 3905.064(E)(5) and (G)(2)(d).

¹⁶ R.C. 3905.065(H)(3) and 3905.066(A)(1) and (B).

¹⁷ R.C. 3901.21 and 3901.22, not in the bill.

¹⁸ R.C. 3905.067(A) and (C); R.C. 3905.14, not in the bill.

The bill explicitly designates certain actions as *not* being an unfair or deceptive practice. The act of marketing travel insurance directly to a consumer through a travel insurer's website or through an aggregator site is not an unfair and deceptive act or practice if both of the following conditions are met:

- An accurate summary or short description of coverage is provided on the website;
- The consumer has access to the full provisions of the policy through electronic means.

Furthermore, where a consumer's destination jurisdiction requires insurance coverage, it is not a deceptive practice to require the consumer to choose between the following options as a condition of purchasing a trip or travel package:

- Purchasing the coverage required by the destination jurisdiction through the travel retailer or limited lines travel insurance agent supplying the trip or travel package;
- Agreeing to obtain and provide proof of coverage that meets the destination jurisdiction's requirements prior to departure.¹⁹

The bill also explicitly authorizes the Superintendent of Insurance to apply the grounds for license suspension, license revocation, and the imposition of penalties that pertain to resident insurance agents to limited lines travel insurance agents and travel retailers.²⁰

Travel administrators

The bill requires persons who underwrite, collect charges, collateral, or premiums from, or adjust or settle claims in connection with travel insurance to obtain a property and casualty license, managing general agent license, or third-party administrator license before portraying themselves as a travel administrator. It also provides that the travel insurer is responsible for the acts a travel administrator with respect to policies underwritten by the insurer. Current law is silent on travel administrators.²¹

¹⁹ R.C. 3901.067(D) and (E).

²⁰ R.C. 3905.065(C).

²¹ R.C. 3905.069.

COMPARISON TO OTHER STATES

The table below compares the bill’s occupational regulations with those that apply in the surrounding states. All of the surrounding states require registration or licensure of travel retailers and apply unfair and deceptive practices laws to persons selling travel insurance. None of the surrounding states have regulations specific to travel administrators, though some states require a license to engage in underwriting, collecting of charges, collateral, or premiums from, or adjusting or settling claims in connection with insurance policies.

Travel Insurance Regulations						
	Ohio <i>(under S.B. 256)</i>	Indiana	Kentucky	Michigan	Pennsylvania	West Virginia
Travel retailers	<p>Licensed agent must maintain a register of travel retailers selling insurance on the agent’s behalf.</p> <p>Travel retailer may sell insurance without also making, arranging, or offering travel services.</p> <p>Materials provided by travel retailers to consumers must be approved by licensed agent.</p> <p><i>(R.C. 3905.065.)</i></p>	<p>Employees and authorized representatives of a registered travel retailer – i.e., a business entity that offers travel insurance under the direction of a licensed limited lines travel insurance agent – may sell insurance on the agent’s behalf.</p> <p>The business entity is registered, but its employees are not. However, all employees that</p>	<p>Licensed limited lines travel insurance agent must maintain a register of travel retailers selling insurance on the agent’s behalf.</p> <p>No requirement that travel retailers also provide travel services.</p> <p>Materials provided by travel retailers must be approved by licensed agent.</p> <p><i>(Ky. Rev. Stat. 304.52-030.)</i></p>	<p>Solicitor’s license required to negotiate or sell insurance on behalf of a licensed agent. Agent must notify the Insurance Commissioner when appointing a solicitor to act on the agent’s behalf.</p> <p>No requirement that a solicitor also provide travel insurance.</p> <p>No requirement that the licensed agent review and</p>	<p>Employees and authorized representatives of a travel retailer – i.e., a business that offers travel services and disseminates travel insurance under the direction of a licensed insurance agent – may sell insurance on the agent’s behalf.</p> <p>Licensed agent must maintain a register of travel retailers selling</p>	<p>Travel retailers may sell travel insurance on behalf of a licensed travel insurance agent.</p> <p>Licensed agent must maintain a register of travel retailers selling insurance on the agent’s behalf.</p> <p>No requirement that a travel retailer also provide travel insurance.</p> <p>Written materials provided to consumers must</p>

Travel Insurance Regulations						
	Ohio <i>(under S.B. 256)</i>	Indiana	Kentucky	Michigan	Pennsylvania	West Virginia
		<p>sell insurance must complete a training course.</p> <p>No requirement that travel retailers also provide travel services.</p> <p>No requirement that the licensed agent review and approve materials distributed to consumers.</p> <p><i>(Ind. Code 27-1-15.6-2 and 27-1-15.6-19.7.)</i></p>		<p>approve materials distributed to consumers.</p> <p><i>(Mich. Comp. Laws 500.1212.)</i></p>	<p>insurance on the agent’s behalf.</p> <p>A travel retailer, by definition, must make or arrange for travel services other than travel insurance.</p> <p>Written materials provided to consumers must comply with certain statutory requirements. No requirement that the materials be reviewed or approved by the licensed agent.</p> <p><i>(40 Pa. Stat. 4602, 4603, and 4604.)</i></p>	<p>comply with certain statutory requirements. No requirement that the materials be reviewed or approved by the licensed agent.</p> <p><i>(W. Va. Code 33-12-32b.)</i></p>
Unfair and deceptive practices law	Travel insurance agents and travel retailers are subject to the Unfair and Deceptive	Persons engaged in selling insurance are subject to the Unfair and Deceptive	Persons that offer or sell travel insurance are subject to the Unfair and Deceptive	Persons that offer travel insurance are subject to the Unfair and Deceptive Practices Law	Persons that offer travel insurance are subject to the Unfair Insurance Practices Act <i>(40 Pa. Stat. 4607)</i> .	Travel insurance agents are subject to the Unfair and Deceptive Practice Law <i>(W. Va. Code 33-12-</i>

Travel Insurance Regulations						
	Ohio <i>(under S.B. 256)</i>	Indiana	Kentucky	Michigan	Pennsylvania	West Virginia
	Practices Act (<i>R.C. 3905.067</i>).	Practices Law (<i>Ind. Code 27-4-1-3</i>).	Practices Law (<i>Ky. Rev. Stat. 304.52-050</i>).	<i>(Mich. Comp. Laws 500.1289)</i> .		<i>32b and 33-12-24</i>).
Travel administrators	Prohibits any person from portraying themselves as a travel administrator unless they hold a property and casualty license, managing general agent license, or third-party administrator license (<i>R.C. 3905.069</i>).	No similar provision but it appears that a limited lines travel insurance producer license would be required to engage in such activities (<i>Ind. Code 27-1-15.6-2</i>).	Requires adjuster license, administrator license, insurance agent license with property and casualty lines of authority, or managing general agent license to underwrite, collect charges, collateral, or premiums from, or adjust or settle claims in connection with travel insurance (<i>Ky. Rev. Stat. 304.52-060</i>).	No similar provision. Adjuster's license appears to be required to engage in certain similar activities. (<i>Mich. Comp. Laws 500.1222</i> .)	No similar provision.	No similar provision. Adjuster's license appears to be required to engage in certain similar activities. (<i>W. Va. Code 33-12B-2</i> .)