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# OHIO LEGISLATIVE SERVICE COMMISSION

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**H.B. 454\***  
**134<sup>th</sup> General Assembly**

## Occupational Regulation Report

[Click here for H.B. 454's Bill Analysis / Fiscal Note](#)

**Primary Sponsors:** Reps. Click and Grendell

**Impacted Professions:** Medical health care professionals and school staff

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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

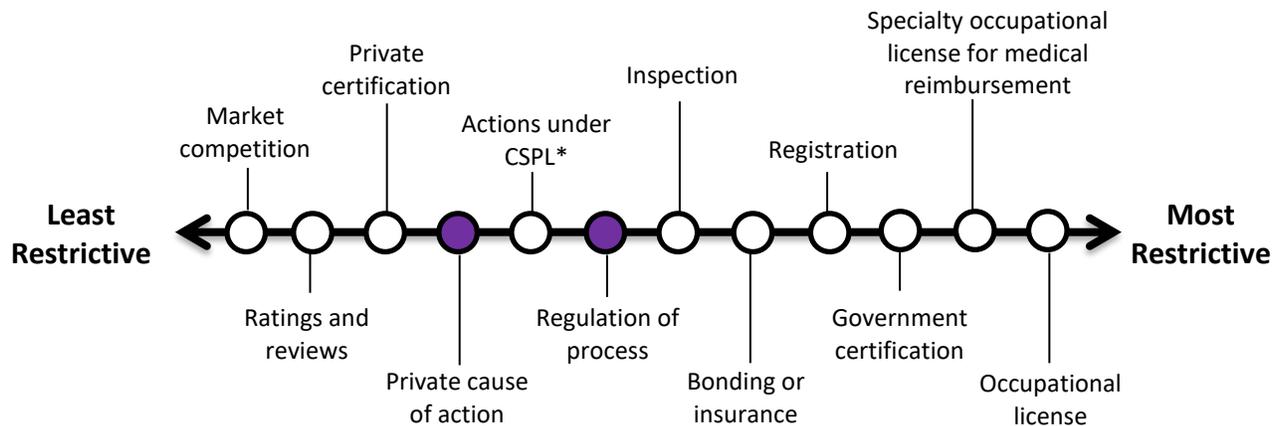
The general policy of the state is reliance on market competition and private remedies to protect the interests of consumers in commercial transactions involving the sale of goods or services. For circumstances in which the General Assembly determines that additional safeguards are necessary to protect 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 H.B. 454. 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

The bill establishes new process regulations for certain licensed professions and school staff. It prohibits licensed nurses, physicians, pharmacists, psychiatrists, and other professionals that provide mental health care services (medical health professionals) from providing gender transition procedures to any person under age 18, or from referring any person under age 18 to a medical doctor for gender transition procedures.<sup>3</sup> The bill also prohibits a licensed nurse, counselor, teacher, principal, or any other official or staff member at a public or private school from withholding information from a minor's parent or legal guardian that a minor's gender identity is inconsistent with the minor's biological sex or from encouraging or coercing a student to withhold such information.<sup>4</sup>

Persons who violate the bill's process regulations are subject to discipline by their licensing board. The Attorney General may bring an action to enforce compliance with the regulations. The Attorney General, the state, any state agency, any officer of the state, or any employee of the state may act as currently authorized to institute or intervene in any proceeding.

The bill also expressly allows the assertion of an actual or threatened violation as a claim or defense in a judicial or administrative proceeding. As a result, that person may obtain compensatory damages, injunctive relief, reasonable attorney's fees, and other appropriate relief. A private cause of action must be brought within two years if the person bringing the claim is not the affected minor. An affected minor may bring an action through a parent or guardian, or independently after turning 18 until 20 years after turning 18.<sup>5</sup>

<sup>3</sup> R.C. 3129.02, 3129.03, and 3129.04; see the [LSC Bill Analysis](#) for a more detailed explanation of gender transition procedures.

<sup>4</sup> R.C. 3129.05.

<sup>5</sup> R.C. 3129.08.

## Necessity of regulations

Representative Click, one of the bill's sponsors, testified that the proposed process regulations are needed "to ensure that children receive appropriate, ethical, and safe healthcare" and to "protect" the rights of minors to make healthcare choices at a "time that they are able to legally and rationally consider the risks and rewards."<sup>6</sup> The bill's other sponsor, Representative Grendell, had not submitted sponsor testimony at the time this report was published.

## 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.

Private remedies for a minor who alleges physical or mental distress as a result of a gender transition procedure are limited. The most obvious recourse is to seek damages through a malpractice lawsuit against the medical health care professional who administered the treatment. The outcome of malpractice cases depends on the specific facts and circumstances involved but, generally, the plaintiff must demonstrate that the professional failed to act with "ordinary skill, care, and diligence."<sup>7</sup>

Some private medical organizations, like the American Medical Association and the American Academy of Pediatrics, proffer guidance and recommendations on the procedures and activities addressed in the bill. However, there is not universal agreement among medical health care professionals as to the advisability of such procedures and activities with respect to minor patients. Therefore, it might be difficult for a court to determine if a practitioner exercised a sufficient degree of care in choosing and administering a particular form of treatment. The bill resolves much of the ambiguity associated with this analysis by providing clear-cut rules as to which treatments and activities are permissible, and which are not. On the other hand, by establishing clear rules, the bill inhibits the flexibility of medical health care professionals and their patients in choosing what they think is the best form of treatment.

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

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<sup>6</sup> See page 9 of [The SAFE Act: H.B. 454 Sponsor Testimony \(PDF\)](#), Representative Gary Click, which is available on the "Committee Activity" tab of the page for H.B. 454 on the General Assembly's website: [legislature.ohio.gov](http://legislature.ohio.gov).

<sup>7</sup> See, *Ault v. Hall*, 119 Ohio St. 422, 428 (1928).

adulthood and it may be extended for up to an additional three years if the injury is not discovered immediately.<sup>8</sup> Nonetheless, a malpractice action is not a suitable remedy for injuries that manifest themselves later in life. The bill addresses the timing issue by allowing a civil action up to 20 years after the minor plaintiff reaches age 18.

Medical malpractice actions are reactionary in nature – they reimburse plaintiffs for harm that has already occurred. The process regulations in H.B. 454 also apply prospectively – they prohibit conduct that has yet to occur. If the goal is to prevent all gender transition procedures on minors, a prospective regulation is a more direct way to achieve it.

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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 gender transition procedures on minors is unlikely to be a significant portion of any health care practice.<sup>9</sup> For that reason, this bill is unlikely to have a significant impact on employment.

### **Consumer choice**

This bill would reduce consumer choice by eliminating gender transition procedures 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 gender transition procedures to adults.

### **Market competition**

This bill would eliminate competition among licensed health care professionals who provide gender transition procedures to minors.

### **Cost to government**

The bill prohibits public funds from being directly or indirectly used, granted, paid, or distributed to any entity, organization, or individual that provides gender transition procedures to any minor and prohibits health care services furnished by or in a health care facility owned or operated by the state, a county or local government entity, or by a physician or other individual employed by the state, or a county or local government entity from including gender transition procedures for minors, and prohibits health insurance policies, Medicaid, and other plans providing health care coverage from including reimbursements for gender transition procedures for any person under 18 years of age. Currently, the Ohio Administrative Code expressly excludes Medicaid coverage of provider-based physician services for gender transformation. Therefore,

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<sup>8</sup> R.C. 2305.113 and 2305.16, neither in the bill.

<sup>9</sup> The Williams Institute estimates in “Conversion Therapy and LGBT Youth” that, as of June 2019, in the 32 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.

this bill will not affect Medicaid spending. If any other state or local programs pay for any procedures prohibited under the bill, those programs may realize a savings.

The bill requires certain licensing entities to discipline physicians, mental health providers, or other medical health care professionals who perform gender transition procedures on minors. As a result, it is possible that these licensing entities could realize an increase in administrative costs to investigate any complaints or to discipline any individuals who violate the prohibition. Any increase is anticipated to be minimal, but will depend on the number of complaints.

## COMPARISON TO OTHER STATES

None of the surrounding states prohibit medical health care professionals from providing gender transition procedures to minors, nor do those states prohibit school officials and staff from withholding information about a minor's gender identity from the minor's parent or legal guardian. Only three states – Alabama, Arkansas, and Arizona – have adopted laws similar to H.B. 454. The Alabama and Arkansas restrictions on gender transition procedures are enjoined, in part, by federal courts. The Arizona law is not yet in effect, but is already the subject of pending litigation. Texas and Florida restrict gender affirming care through executive order and administrative rule, respectively. The restrictions in those states are also partially enjoined by federal courts.

The table below compares the process regulations adopted by the Alabama, Arkansas, and Arizona legislatures.

States that Restrict Gender Affirming Care			
State	Restricted Procedures and Activities	Professions Impacted	Penalty
Alabama ( <i>blocked, in part, by U.S. District Court</i> ) <sup>10</sup>	Prohibits procedures and activities that “alter the appearance of or affirm [a] minor’s perception of his or her gender or sex, if that appearance or perception is inconsistent with the minor’s [biological] sex.” ( <i>Code Ala. 26-26-4.</i> )  Prohibits school officials and staff from withholding information about a minor’s gender identity from the minor’s parent or legal guardian ( <i>Code Ala. 26-6-5.</i> )	Applies, generally, to all persons regardless of status as a medical health care professional. Pharmacists are expressly excluded. ( <i>Code Ala. 26-26-4 and 26-26-9.</i> )  School nurses, counselors, principals, administrative officials, and other staff ( <i>Code Ala. 26-6-5.</i> )	Felony, punishable by up to ten years in prison ( <i>Code Ala. 26-26-4.</i> )  Not specified.

<sup>10</sup> See, The Associated Press, [A Judge Blocks Part of an Alabama Law that Criminalizes Gender-Affirming Medication](https://www.npr.org/2018/05/01/614844441/alabama-judge-blocks-part-of-law-that-criminalizes-gender-affirming-medication), available on NPR’s website: [npr.org](https://www.npr.org).

States that Restrict Gender Affirming Care			
State	Restricted Procedures and Activities	Professions Impacted	Penalty
Arkansas ( <i>blocked by U.S. District Court</i> ) <sup>11</sup>	Prohibits the provision of “gender transition procedures” to a minor patient ( <i>Ark. Code Ann. 20-9-1501 and 20-9-1502</i> ).	Physicians and other healthcare professionals ( <i>Ark. Code Ann. 20-9-1502</i> ).	Discipline by licensing board plus civil liability ( <i>Ark. Code Ann. 20-9-1504</i> ).
Arizona ( <i>effective April 1, 2023</i> )	Prohibits provision of “irreversible gender reassignment surgery” to a minor patient ( <i>Ariz. Rev. Stat. 32-3230</i> ).	Physicians ( <i>Ariz. Rev. Stat. 32-3230</i> ).	Not specified.

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<sup>11</sup> See, *Brandt v. Rutledge*, 551 F.Supp.3d 882 (E.D. Ark. 2021).