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OHIO LEGISLATIVE SERVICE COMMISSION

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Office of Research
and Drafting

Legislative Budget
Office

H.B. 68*
135th General Assembly

Occupational Regulation Report

[Click here for H.B. 68's Bill Analysis / Fiscal Note](#)

Primary Sponsors: Rep. Click

Impacted Professions: Physicians and mental health 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.¹

LEAST RESTRICTIVE REGULATION COMPARISON

Ohio's general regulatory policy

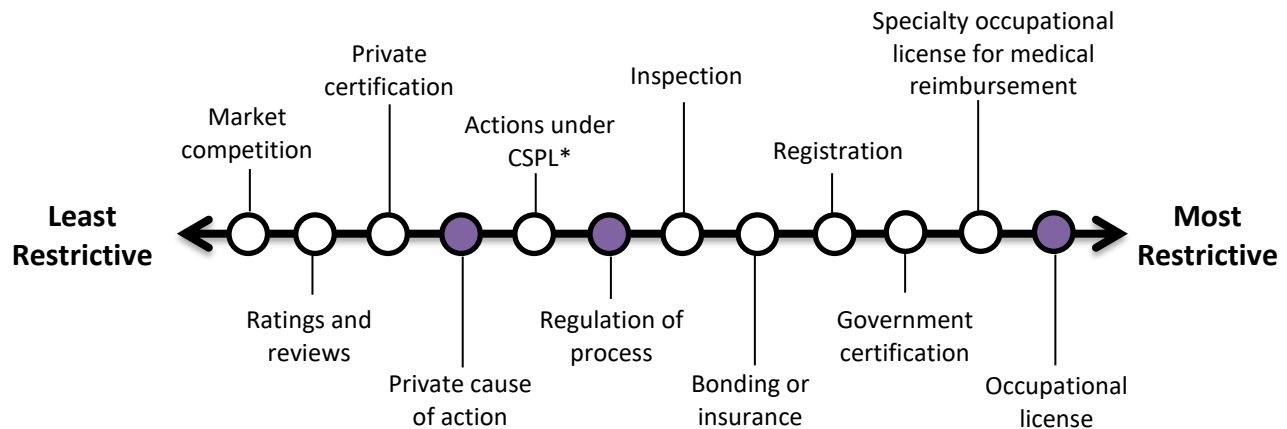
The general policy of the state is reliance on market competition and private remedies to protect the interests of consumers in commercial transactions involving the sale of goods or services. For circumstances in which the General Assembly determines that additional safeguards are necessary to protect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

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. 68. 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.



*CSPL – The Consumer Sales Practices Law

H.B. 68, which is designated as the Ohio Saving Adolescents from Experimentation (SAFE) Act,³ establishes new process regulations for physicians and specified mental health professionals. Individuals who violate the bill's process regulations are subject to civil liability, an Attorney General enforcement action (including that the Attorney General, the state, and any state agency, officer, or employee may act as currently authorized to file or intervene in any proceeding), and discipline by their respective licensing board.⁴ Although it is unclear, it appears that this discipline potentially may include license suspension or revocation.

The process regulations include prohibiting a physician from knowingly performing gender reassignment surgery on a minor, prescribing a cross-sex hormone or puberty-blocking drug to a minor to assist with gender transition, or aiding or abetting those prohibited practices.⁵ The process regulations also prohibit a mental health professional (defined as psychiatric-mental health clinical nurse specialists, psychiatric-mental health nurse practitioners, psychiatrists, psychologists, school psychologists, social workers, professional counselors, and marriage and family therapists) from diagnosing or treating a minor for a gender-related condition without first obtaining parental consent and screening for other comorbidities, abuse, and traumas.⁶

Necessity of regulations

Representative Gary Click, the bill's primary sponsor, testified that the rapidly growing practice of medicalizing children for the purpose of changing their sex began in Europe. However, he stated that European nations have come to recognize that, rather than producing the desired results, this experiment has created great harm. He explained that, as a result, Great Britain,

³ Section 4.

⁴ R.C. 3129.05.

⁵ R.C. 3129.02.

⁶ R.C. 3129.03(A).

Sweden, France, the Netherlands, and Finland have taken corrective action that involves closing clinics and revisiting their procedures.

Representative Click stated that minors do not have the ability to provide informed consent to the dangerous procedures involved. He said that the prefrontal cortex of the brain, which is responsible for risk assessment, does not fully develop until an individual reaches their mid-twenties. Consequently, he asserted that minors are incapable of reconciling the procedures' consequences, including sterility, loss of the ability to experience physical intimacy, loss of bone density, osteoporosis, osteopenia, blood clots, cardiovascular disease, genital atrophy, diabetes, strokes, and other confirmed risks.

Representative Click cited a statistic that individuals who proceed with gender conversion are 19 times more likely to take their own lives. He advised contrasting this statistic with claims that gender affirmation saves lives. He asserted that such reports only indicate a temporary reduction in suicidal ideation during the "honeymoon phase" after transition.

Further, he said studies demonstrate that 85%-95% of children who experience gender dysphoria will naturally identify with their sex after experiencing puberty. Representative Click testified that nevertheless, 98% of children experiencing gender dysphoria who have their life choices altered through the use of puberty blockers, which result in overwhelming health risks, will proceed with further gender conversion treatments.

Representative Click also stated that the bill is necessary because medical institutions have found it difficult to self-regulate in politically driven practice areas. He asserted that three factors stand in the way of such self-regulation with respect to gender conversion for minors: ideology, financial interest, and intimidation. He said that these are the primary three reasons that the industry has failed children experiencing gender dysphoria.

Representative Click said that several states have passed legislation similar to the bill, including Kentucky, Indiana, West Virginia, Tennessee, Iowa, Missouri, Arkansas, Mississippi, Montana, Kansas, Alabama, Georgia, Florida, South Dakota, Arizona, Idaho, Texas, and Utah. He asserted that additional states are in the process of doing so.⁷

For more information regarding the necessity of regulations, please see the "Legislative findings" portion of the bill.⁸

Restrictiveness of regulations

Licensing provisions

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

⁷ See [Representative Gary Click Sponsor Testimony \(PDF\)](#), available on the General Assembly's website, legislature.ohio.gov, by searching for "HB 68" and looking under the "Committee Activity" tab.

⁸ Section 2.

in which required licensure is appropriate; specifically, when all of the following circumstances are present:

- The occupation involves providing a service regulated by both state and federal law;
- The licensing framework allows individuals licensed in other states and territories to practice in Ohio; and
- 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.⁹

The physicians and mental health professionals regulated by the bill must be licensed to practice.¹⁰ These licenses appear to satisfy the state policy's first criterion because they provide services regulated by both state and federal law. For example, physicians, psychiatrists, psychiatric-mental health clinical nurse specialists, and psychiatric-mental health clinical nurse practitioners are authorized to prescribe controlled substances, which is a service that is regulated by both state law and the Federal Comprehensive Drug Abuse Prevention and Control Act.¹¹ Another example involves federal law governing the Veterans Health Administration, which requires physicians and mental health professionals appointed to a position with the Administration to satisfy specified educational requirements and to be licensed to practice in a state.¹²

As for the state policy's second criterion, the licensed occupations regulated by the bill appear to satisfy it. The state's recently enacted Licensure Reciprocity Law, effective December 29, 2023, generally requires the applicable licensing boards to issue licenses to applicants who hold analogous out-of-state occupational licenses.¹³

It does not appear that the licensed occupations involved with the bill satisfy the state policy's third criterion, and the bill does not bring them into alignment with it. The applicable licensing requirements generally are established in state laws rather than being based on uniform national laws, practices, and examinations.¹⁴

Discipline for unprofessional conduct

The bill potentially affects licensure by subjecting members of the following occupations who violate the bill's prohibitions to discipline for unprofessional conduct by their respective licensing boards:

⁹ R.C. 4798.02, not in the bill.

¹⁰ R.C. 3301.07 and 3319.22, not in the bill, and R.C. Chapters 4723, 4731, 4732, and 4757.

¹¹ 21 United States Code (U.S.C.) 801 *et seq*; R.C. 3719.01, 3719.06, and 4729.01, not in the bill.

¹² 38 U.S.C. 7402.

¹³ R.C. 4796.03, not in the bill.

¹⁴ As reflected, for example, in 38 U.S.C. 7402.

- Physicians, including psychiatrists (State Medical Board);
- Psychiatric-mental health clinical nurse specialists and psychiatric-mental health nurse practitioners (Board of Nursing);
- Psychologists and school psychologists (State Board of Psychology and Department of Education); and
- Social workers, professional counselors, and marriage and family therapists (Counselor, Social Worker, and Marriage and Family Therapist Board).

Continuing law regarding each of these licensing boards allows a board to suspend or revoke a license for specified, enumerated reasons.¹⁵ Except with respect to the Department of Education, “unprofessional conduct” is not included as such an enumerated reason in either continuing law or the bill. Further, it is not defined in continuing law governing these boards. Therefore, it is unclear how a board would discipline for unprofessional conduct under the bill and whether that discipline would include license suspension or revocation. It appears that each licensing board may need to determine whether the unprofessional conduct possibly may fit within an existing, enumerated reason for discipline.

Process 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 do not provide sufficient protection.¹⁶

Whether these mechanisms are a sufficient means of protecting consumers of gender transition services for minors is unclear. To protect the health and safety of patients, current Ohio law establishes numerous process regulations that govern the providing of medical services and mental health services. However, with respect to the bill, determining if its process regulations are appropriate to protect consumers is a policy decision.

Physicians

The bill prohibits physicians from knowingly doing any of the following:

- Performing genital or nongenital reassignment surgery on a minor;

¹⁵ R.C. 3319.31 (Department of Education), 4731.22 (State Medical Board), 4723.28 (Board of Nursing), 4732.17 (State Board of Psychology), and 4757.36 (Counselor, Social Worker, and Marriage and Family Therapist Board), none in the bill.

¹⁶ R.C. 4798.01, not in the bill.

- Prescribing a cross-sex hormone or puberty-blocking drug for a minor for the purpose of assisting the minor with gender transition; or
- Aiding or abetting those prohibited practices (provided that this prohibition may not be construed to impose liability on any protected speech).¹⁷

See the [LSC Bill Analysis \(PDF\)](#) for a more detailed explanation of gender transition procedures.

Under the bill, a physician may provide treatment, including performing surgery or prescribing drugs or hormones, to a minor who:

- Was born with a medically verifiable disorder of sex development, including ambiguous external biological sex characteristics;
- Was diagnosed with a chromosomal or hormonal disorder of sexual development, which a physician has determined through genetic or biochemical testing; or
- Needs treatment for a complication of a previous gender transition service.¹⁸

Mental health professionals

Prohibition and screening requirement

The bill prohibits a mental health professional from diagnosing or treating a minor for a gender-related condition without first obtaining parental consent and screening for specified issues, including other comorbidities that may be influencing the minor's gender-related condition as well as physical, sexual, mental, and emotional abuse and other traumas.¹⁹ This prohibition may restrict a mental health professional's practice. Currently, a mental health professional may provide outpatient mental health services (but not use of medication) to a minor who is 14 years old or older without the minor's parent's or guardian's consent or knowledge. The amount of services is limited, and after six sessions or 30 days of service, whichever is sooner, the professional either must terminate the services or, if the minor consents, notify the parent or guardian to obtain consent to provide further outpatient services.²⁰

Reporting

Under the bill, each mental health professional who diagnoses or treats a minor for a gender-related condition must annually report specified information to the Ohio Department of Health (ODH) by March 1. This information includes items such as the number of minors who were diagnosed or treated in the previous year and their ages as well as any other items ODH requires by rule. The mental health professional must organize this information by month, when

¹⁷ R.C. 3129.02.

¹⁸ R.C. 3129.04.

¹⁹ R.C. 3129.03(A).

²⁰ R.C. 5122.04.

appropriate, and may not include information that identifies or tends to identify a specific individual. It is not clear the extent to which these reports will cause an administrative burden on the professionals; it likely depends on the number of minors the professional sees regarding these conditions.

Medicaid

Under the bill, a physician would not be able to be reimbursed by Medicaid for gender transition services provided to minors. The bill prohibits Medicaid from covering such services, which appears to increase restrictiveness. However, the exclusion does not include mental health services provided for a minor's gender-related condition, any services that are not gender transition services, or any services that are allowed under the bill.²¹

Private cause of action

The state's policy does not provide specific guidance as to when a private cause of action is the best means of protecting the health, safety, and welfare of consumers. However, the policy as a whole suggests that a private cause of action is the most preferred method of regulation when market competition, ratings and reviews, and private certifications do not provide sufficient protection.²² Whether these mechanisms are a sufficient means of protecting consumers is a policy decision.

Lawsuit brought under the bill

The bill specifically allows a physician or mental health professional who violates one of the bill's prohibitions to be sued by an individual who brings a claim within two years of the date the cause of action accrues. In addition, a minor may bring an action through a parent or guardian, or, on turning 18, may do so independently within 20 years. The bill specifies that it does not preempt any other private cause of action that arises under the common law of Ohio.²³

Comparison with medical malpractice lawsuit

Under continuing law, an individual who alleges physical or mental distress as a result of a gender transition procedure may seek damages in a malpractice lawsuit against the physician who administered the treatment. However, it may be more difficult, due to timing issues, for the individual to establish a malpractice claim as opposed to a claim brought under the bill.

Continuing law generally requires malpractice actions to be brought 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.²⁴ Nonetheless, a malpractice action is not a suitable remedy for injuries that manifest themselves later in life. The

²¹ R.C. 3129.07(D).

²² R.C. 4798.01, not in the bill.

²³ R.C. 3129.05(B).

²⁴ R.C. 2305.113 and 2305.16, neither in the bill.

bill's provision that allows a minor plaintiff to bring a civil action against a physician up to 20 years after the plaintiff turns 18 addresses this timing issue.

IMPACT STATEMENT

Opportunities for employment

The process regulations prescribed by the bill for physicians would reduce the scope of practice for physicians, however gender transition procedures on minors is unlikely to be a significant portion of any health care practice. For that reason, this bill is unlikely to have a significant impact on employment for physicians.

The process regulations prescribed by the bill for mental health professionals may increase their work load if any mental health professionals are not currently receiving consent of the minor's residential parent and legal custodian or the minor's guardian, or screening for comorbidities, abuse, and other traumas. However, this is not likely to affect employment for mental health professionals.

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 physicians or the availability of gender transition procedures to adults. Additionally, the additional requirements for mental health professionals diagnosing or treatment of a minor for a gender-related condition is unlikely to have an effect on the availability of mental health professionals or consumer choice for these services.

Market competition

This bill would eliminate competition among licensed physicians who provide gender transition procedures to minors. There is not likely to be an effect on market competition for mental health professionals.

Cost to government

For cost to government, see the [LBO Fiscal Note \(PDF\)](#).

SUMMARY OF PROPOSED REGULATIONS

The bill has changes in addition to the requirements, prohibitions, and enforcement discussed above. For example, regarding the information that ODH receives through required reports from mental health professionals who diagnose or treat a minor for a gender-related condition, the bill requires ODH to submit a report to the General Assembly that compiles the information by June 1 of each year. Under the bill, the ODH Director may adopt rules on the reporting process.²⁵

²⁵ R.C. 3129.06.

The bill takes effect six months after the effective date.²⁶

For a complete explanation of the bill, please see the [LSC Bill Analysis \(PDF\)](#).

²⁶ Section 3.



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COMPARISON TO OTHER STATES

Of the states surrounding Ohio, only Kentucky and West Virginia have enacted prohibitions against providing gender transition procedures to minors. The table below describes these prohibitions as well as those enacted in Arizona, Arkansas, and Iowa. All of the states have exceptions to their prohibitions.

States That Prohibit Gender Transition Services for Minors			
State	Prohibited Procedures and Activities	Occupations Impacted	Penalty
Ohio (under the bill)	<p>Knowingly performing gender reassignment surgery on a minor, prescribing a cross-sex hormone or puberty-blocking drug to a minor, or aiding or abetting those practices <i>(R.C. 3129.02)</i></p> <p>Diagnosing or treating a minor for a gender-related condition without first obtaining parental consent and screening for other comorbidities, abuse, and traumas <i>(R.C. 3129.03(A))</i></p>	<p>Physicians and mental health professionals <i>(R.C. 3129.02 and 3129.03)</i></p>	<p>Discipline by licensing board for unprofessional conduct</p> <p>Civil liability</p> <p>Attorney General enforcement action <i>(R.C. 3129.05)</i></p>

States That Prohibit Gender Transition Services for Minors			
State	Prohibited Procedures and Activities	Occupations Impacted	Penalty
Arizona	Providing irreversible gender reassignment surgery to a minor <i>(Ariz. Rev. Stat. 32-3230)</i>	Physicians <i>(Ariz. Rev. Stat. 32-3230)</i>	None specified
Arkansas <i>(blocked by U.S. Court of Appeals)</i> ²⁷	Providing gender transition procedures to a minor or providing a referral for gender transition procedures <i>(Ark. Code Ann. 20-9-1501 and 20-9-1502)</i>	Physicians and other health care professionals <i>(Ark. Code Ann. 20-9-1502)</i>	Same as Ohio <i>(Ark. Code Ann. 20-9-1504)</i>
Iowa	Knowingly performing gender reassignment surgery on a minor or prescribing a puberty-blocking drug or cross-sex hormone to a minor <i>(Iowa Code 147.164)</i>	Health care professionals <i>(Iowa Code 147.164)</i>	Same as Ohio and Arkansas <i>(Iowa Code 147.164)</i>

²⁷ *Brandt v. Rutledge*, 47 F.4th 661 (8th Cir. 2022).

States That Prohibit Gender Transition Services for Minors			
State	Prohibited Procedures and Activities	Occupations Impacted	Penalty
Kentucky (effective June 29, 2023)	Same as Iowa <i>(Ky. Rev. Stat. 311.372)</i>	Health care providers <i>(Ky. Rev. Stat. 311.372)</i>	Revocation of license or certification Civil liability <i>(Ky. Rev. Stat. 311.372)</i>
West Virginia (effective January 1, 2024)	Providing irreversible gender reassignment surgery Providing gender altering medication to a minor <i>(W. Va. Code 30-3-20 and 30-14-17)</i>	Physicians <i>(W. Va. Code 30-3-20 and 30-14-17)</i>	None specified