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OHIO LEGISLATIVE SERVICE COMMISSION

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Office of Research
and Drafting

Legislative Budget
Office

H.B. 313*
135th General Assembly

Occupational Regulation Report

[Click here for H.B. 313's Bill Analysis / Fiscal Note](#)

Primary Sponsors: Reps. Callender and Mathews

Impacted Profession: Fire investigators

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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

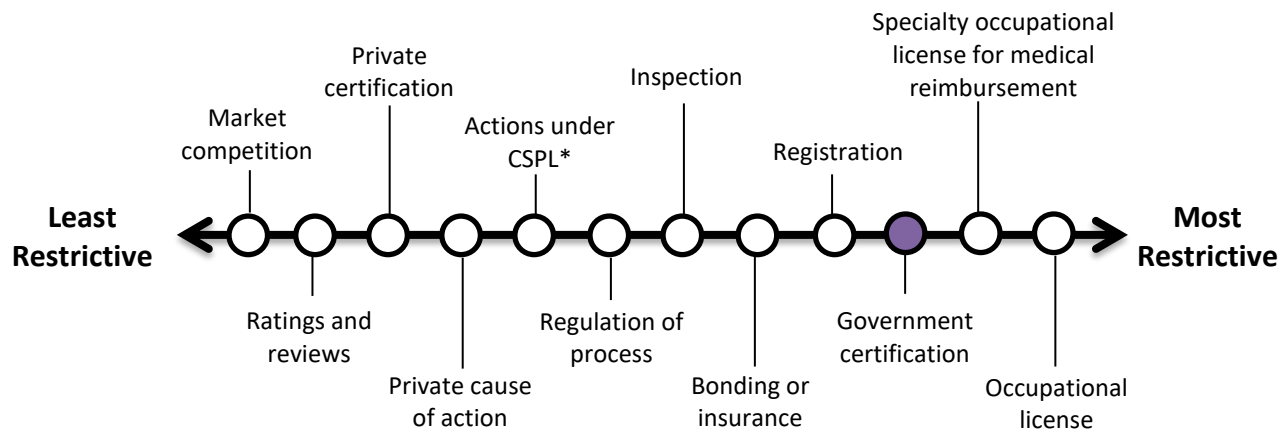
The general policy of the state is reliance on market competition and private remedies to protect the interests of consumers in commercial transactions involving the sale of goods or services. For circumstances in which the General Assembly determines that additional safeguards are necessary to protect 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 H.B. 313. 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

The bill establishes firearms training certification for fire investigators and makes related changes. Specifically, the bill allows a fire investigator to carry firearms while on duty if both of the following apply:

- The investigator’s employer authorizes the investigator to do so and is a type of governmental employer specified in the bill; and
- The investigator either has: (1) obtained certification from the Ohio Peace Officer Training Commission’s executive director attesting to the investigator’s completion of a Commission-approved firearms training program that is described in the bill and that qualifies the investigator to carry firearms or (2) completed a Commission-approved firearms training program before the bill’s effective date and before or during employment as a fire investigator.³

The bill defines “fire investigator” as an employee of a governmental fire department who has been authorized to investigate the origin and cause of fires and explosions and is charged with performing those duties. A fire investigator uses the scientific method to investigate elements of the event including the circumstances, actions, persons, means, and motives that resulted in the fire or explosion or the report thereof in Ohio. Under the bill, “fire investigator” does not include a person who is acting as a fire investigator on behalf of an insurance company or any other privately owned or operated enterprise.⁴

³ R.C. 109.774(A).

⁴ R.C. 109.71(J).

Necessity of regulations

The bill's sponsors, Representatives Jamie Callender and Adam Mathews, testified that the legislation is necessary to address current inconsistencies and grey areas concerning the authority and duties of fire investigators. They explained that, although there are approximately 1,000 fire investigators in Ohio, the Revised Code currently contains only three sentences governing their role; that language has not been changed in 70 years.⁵ The sponsors asserted that fire departments vary in their interpretations of these sentences regarding whether fire investigators may defend themselves and the public while investigating the cause of a fire. They said that this is the case even though the investigations entail determining whether arson, a felony, is involved.

Representatives Callender and Mathews indicated that this lack of statewide statutory guidance has created a problematic patchwork of interpretations. For example, they stated that some fire departments allow their fire investigators to carry firearms on duty for self-defense while others do not. Likewise, they stated that only certain larger departments tend to send their fire investigators to training courses such as those offered by the Ohio Peace Officer Training Academy (OPOTA). The sponsors pointed out that although fire investigators have the authority to compel witnesses, enter properties, and make arrests, they lack the statutory protection and consistent training available to peace officers.

Representatives Callender and Mathews testified that the bill addresses these issues. They asserted that it provides clarity by defining "fire investigator," allowing fire investigators to carry firearms in the line of duty, and establishing OPOTA certification as the training standard for those who choose to do so. The sponsors stated that the bill mirrors current law governing members of certain other occupations who may carry firearms while on duty and who have related qualified immunity, including tactical medical providers (i.e., the paramedics or firefighters who are called into action with SWAT teams) and medical examiners.⁶

Restrictiveness of regulations

Government certification

The state policy defines "certification" to include a voluntary program in which the state grants nontransferable recognition to an individual who meets personal qualifications established by state law.⁷ The bill's regulation of fire investigators appears to fit this definition because carrying firearms while on duty is a voluntary choice for them; under the bill, being authorized to carry firearms is not necessary to work as a fire investigator. In addition, the bill's regulation of fire investigators fits the definition of "certification" because the Ohio Peace Officer

⁵ R.C. 737.27.

⁶ See Representatives Jamie Callender's and Adam Mathews's [H.B. 313 Sponsor Testimony](#) which is available on the General Assembly's website, legislature.ohio.gov, by searching for "HB 313" and looking under the "Committee Activity" tab.

⁷ R.C. 4798.01.

Training Commission is a state entity, the certificate it issues is nontransferable recognition to an individual, and the firearms training is a personal qualification established by state legislation.

The state policy specifies that offering certification is the appropriate state action if both of the following apply:

- Regulations are intended to protect consumers against asymmetrical information between the seller and buyer; and
- Suitable privately offered voluntary certification for the relevant occupation is unavailable. (“Suitable” means widely recognized as reflecting established standards of competency, skill, or knowledge in the field.)⁸

It does not appear that the bill satisfies the first criterion. Because the bill does not involve consumers, it does not appear that the intent behind the bill is to protect consumers against asymmetrical information between the buyer and seller. Furthermore, testimony by the bill’s sponsors indicates that the intent of certification under the bill is to show that a fire investigator has completed specified training. This training qualifies the investigator to carry a firearm while on duty if the investigator so chooses for the purpose of defense of self and of the public while investigating the cause of a fire.

It also does not appear that the bill satisfies the second criterion because suitable privately offered voluntary certification appears to be available. For example, the International Association of Arson Investigators offers a fire investigator certification.⁹ In addition, many private organizations offer firearms training programs. Under Ohio’s Concealed Carry Law, an applicant for a permit to carry a concealed handgun must submit proof of competency certification. This can be established with a certificate of completion of a firearms safety course offered by a national gun advocacy organization.¹⁰ It appears that this privately offered voluntary certification would be considered suitable under the state policy because it reflects established standards of competency.

Although the bill does not appear to satisfy the state policy’s criteria for a government certification, it should be noted that continuing law establishes similar certifications for members of other occupations who wish to carry firearms while on duty. Such occupations include tactical medical providers, security guards, and certain employees of the Department of Youth Services.¹¹

⁸ R.C. 4798.02.

⁹ See [Certified Fire Investigator](#), which may be accessed using a “certified fire investigator” keyword search on the International Association of Arson Investigators website: firearson.com.

¹⁰ R.C. 2923.125, not in the bill. See also p. 4 of [Ohio’s Concealed-Carry Laws and License Application, June 2022 \(PDF\)](#), which may be accessed by conducting a keyword “concealed carry laws” search on the Ohio Attorney General’s website: ohioattorneygeneral.gov.

¹¹ R.C. 109.771, 109.78, and 5139.53, not in the bill.

Training requirement

The bill requires a fire investigator seeking certification to carry a firearm while on duty to complete a firearms training program that is offered at OPOTA or that is approved by the Ohio Peace Officer Training Commission.¹² If the investigator seeks to carry a rifle or carbine, training specifically on their carrying and use is required.¹³ These requirements appear to increase restrictiveness for fire investigators who carry firearms while on duty.

Firearms requalification requirement

The bill requires fire investigators who are authorized to carry firearms while on duty to annually complete a firearms requalification program approved by the executive director of the Ohio Peace Officer Training Commission. This requirement appears to increase restrictiveness for fire investigators who carry firearms while on duty.¹⁴

IMPACT STATEMENT

Opportunities for employment

The bill's provisions would have no significant effect on opportunities for employment, as some fire investigators already completed a comparable training program and currently carry firearms. Because these prior qualifications would be recognized, applicable individuals would not be required to obtain the initial certification set forth in the bill. Moreover, only those fire investigators granted authorization from their public employer to carry firearms while on duty are subject to the training program requirements.

Consumer choice and market competition

Consumer choice and market competition will not be affected by the bill.

Cost to government

For costs of the bill to government, please see the [LBO fiscal note \(PDF\)](#).

SUMMARY OF PROPOSED REGULATIONS

Protection from liability

Under the bill, a fire investigator who is carrying a firearm while on duty after satisfying the bill's requirements to do so has protection from potential civil or criminal liability to the same extent that a law enforcement officer has such protection.¹⁵

¹² R.C. 109.774(A).

¹³ R.C. 109.7481(A).

¹⁴ R.C. 109.801(A).

¹⁵ R.C. 109.774(B).

Same rights as concealed carry permittee

The bill specifies that a fire investigator who is qualified to carry firearms while on duty has the same right to carry a concealed handgun in Ohio as a person who was issued a concealed handgun permit.¹⁶ Thus, such a fire investigator can carry a handgun when traveling in states that honor Ohio's concealed-carry permit and also can skip the background check when purchasing a gun.¹⁷

Right to attend OPOTA training courses

The bill gives fire investigators the right to attend OPOTA training courses at the academy that are designed to qualify them to carry firearms while on duty. In addition, the bill specifies that the related tuition costs may be paid by the political subdivision served by a fire investigator who attends the academy.¹⁸

Rulemaking

The bill requires the Attorney General to adopt rules governing the training of fire investigators to qualify them to carry firearms while on duty.¹⁹ It also requires the Ohio Peace Officer Training Commission make recommendations concerning these rules.²⁰

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

¹⁶ R.C. 2923.126(E).

¹⁷ See letter from Attorney General Dave Yost in [Ohio's Concealed-Carry Laws and License Application, June 2022 \(PDF\)](#), which may be accessed on the Ohio Attorney General's website: ohioattorneygeneral.gov.

¹⁸ R.C. 109.79.

¹⁹ R.C. 109.7481.

²⁰ R.C. 109.73(A).

COMPARISON TO OTHER STATES

The table below compares the bill with laws in states surrounding Ohio regarding a fire investigator's authority to carry a firearm while on duty. Please note that states differ in how they refer to an individual who is responsible for investigating a fire's cause and origins.

Under the bill and laws in Indiana and Michigan, an individual with such responsibilities is called a "fire investigator." In Pennsylvania, the individual is called a "fire marshal." In West Virginia, the individual is called a "deputy fire marshal."²¹

Additionally, under Kentucky law, "fire investigator" means an individual who is responsible for investigating the crime of arson and determining who committed it. Michigan calls such an individual a "fire arson investigator."²²

For purposes of the table below, "fire investigator" refers to an individual who works for a local fire department and is responsible for investigating a fire's causes and origins (which sometimes may involve arson). "Arson investigator" refers to an individual who works for a local fire department and is responsible for investigating the crime of arson and related offenses and identifying the perpetrator. (The table only discusses an arson investigator's authority to carry a firearm while on duty if the state does not allow fire investigators to do so.)

²¹ R.C. 109.774; Ind. Code 36-8-17-7 and 36-8-17-7.5; Mich. Comp. Laws 29.362; 11 Pa. Cons. Stat. 12104, 16 P.S. 1953, 16 P.S. 6101-A and 6104, 35 P.S. 1181 and 1182, and 53 P.S. 14521; and W. Va. Code 15A-10-3.

²² Ky. Rev. Stat. 15.310, 95A.100, and 227.200; Mich. Comp. Laws 28.602.

State	Is a Fire Investigator Working for a Local Fire Department Authorized to Carry a Firearm on Duty?	Must the Fire Investigator Obtain Government Certification to do so?	Must the Fire Investigator Complete Training to do so?
Ohio (under the bill)	<p>Yes</p> <p>Fire investigators may carry a firearm on duty if authorized to do so by a type of governmental employer specified in the bill</p> <p><i>(R.C. 109.774(A))</i></p>	<p>Yes</p> <p>Fire investigators must obtain certification from the Ohio Peace Officer Training Commission's executive director attesting to completion of a firearms training program</p> <p><i>(R.C. 109.774(A))</i></p>	<p>Yes</p> <p>Fire investigators must complete a firearms training program offered or approved by the commission that qualifies the fire investigator to carry firearms (the training is required to receive the certification)</p> <p><i>(R.C. 109.774(A))</i></p>
Indiana	<p>Yes</p> <p>Fire investigators in cities with a population of 34,000 or more residents may exercise specified police powers, including carrying a firearm on duty, if authorized by the city's police chief and fire chief</p> <p><i>(Ind. Code 36-4-1-1, 36-8-17-7, and 36-8-17-7.5)</i></p>	<p>No</p>	<p>Yes</p> <p>Fire investigators must complete same training as law enforcement officers</p> <p><i>(Ind. Code 36-8-17-7.5 and 5-2-1-9)</i></p>
Kentucky	<p>No</p> <p>But arson investigators (who are either appointed by a local fire chief or deputized by the State Fire Marshal) may exercise peace officer powers, which include carrying a firearm on duty</p> <p><i>(Ky. Rev. Stat. 15.310, 95A.100, 227.200, 227.230, and 227.235)</i></p>	<p>N/A</p> <p>But arson investigators must be certified by the Kentucky Law Enforcement Council</p> <p><i>(Ky. Rev. Stat. 15.380)</i></p>	<p>N/A</p> <p>But arson investigators must complete peace officer training to be certified</p> <p><i>(Ky. Rev. Stat. 15.404)</i></p>

State	Is a Fire Investigator Working for a Local Fire Department Authorized to Carry a Firearm on Duty?	Must the Fire Investigator Obtain Government Certification to do so?	Must the Fire Investigator Complete Training to do so?
Michigan	<p>No</p> <p>Fire investigators are not authorized to carry a firearm on duty <i>(Mich. Comp. Laws 29.362 and 29.369)</i></p> <p>But arson investigators empowered by the chief of police are law enforcement officers who may carry a firearm on duty <i>(Mich. Comp. Laws 28.602(f))</i></p>	<p>N/A</p> <p>But fire investigators must obtain certification (that does not involve firearms) from the State Fire Marshal <i>(Mich. Comp. Laws 29.362 and 29.369; Mich. Admin. Code R. 29.403)</i></p> <p>And arson investigators must be licensed as law enforcement officers <i>(Mich. Comp. Laws 28.609)</i></p>	<p>N/A</p> <p>But fire investigators must complete specified training (not firearm related) <i>(Mich. Comp. Laws 29.369)</i></p> <p>And arson investigators must complete law enforcement officer training to receive a license <i>(Mich. Comp. Laws 28.609)</i></p>
Pennsylvania	No	N/A	N/A
West Virginia	<p>Yes</p> <p>Fire investigators may carry a firearm on duty if they are a full-time deputy fire marshal (i.e., are deputized by the State Fire Marshal to act as his or her assistant for investigating fires) <i>(W. Va. Code 15A-10-3(j) and (r))</i></p>	<p>Yes</p> <p>Fire investigators must obtain firearms certification equivalent to that provided to officers attending the entry level law-enforcement certification course at the West Virginia State Police Academy <i>(W. Va. Code 15A-10-3(r))</i></p>	<p>Yes</p> <p>Fire investigators must complete firearms training equivalent to that required for law enforcement officers to obtain the certification <i>(W. Va. Code 15A-10-3(r))</i></p>