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OHIO LEGISLATIVE SERVICE COMMISSION

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Office of Research
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Legislative Budget
Office

H.B. 466*
135th General Assembly

Occupational Regulation Report

[Click here for H.B. 466's Bill Analysis / Fiscal Note](#)

Primary Sponsors: Reps. Schmidt and Brennan

Impacted Profession: Real estate brokers and salespersons

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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

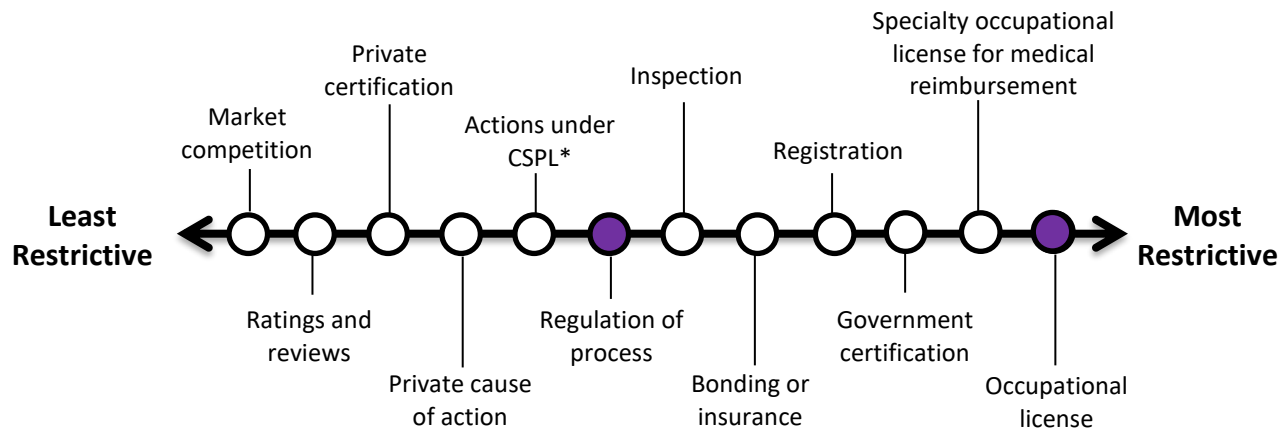
The general policy of the state is reliance on market competition and private remedies to protect the interests of consumers in commercial transactions involving the sale of goods or services. For circumstances in which the General Assembly determines that additional safeguards are necessary to protect 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. 466. 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. 466 requires individuals licensed as real estate brokers and salespersons under continuing law to enter into written agency agreements before engaging in specified activities on behalf of a client. Entering into such an agreement is optional under current law. However, current law specifies certain information that must be included in a written agency agreement if a licensee chooses to enter into one. The bill expands the information required of a written agency agreement.³ The bill also expands the reasons for which a licensed real estate broker or salesperson may be disciplined to include violations of the bill’s requirements.⁴

Necessity of regulations

Representative Sean Brennan, one of the bill’s primary sponsors, testified that the bill’s requirement ensures clarity and reduces the chances of misunderstandings or disputes later on. Representative Brennan asserted that because of changes resulting from recent lawsuits, homebuyers may now need to pay their real estate professional directly, as sellers may no longer offer to share commissions with the buyer’s agent. Thus, it is imperative that the homebuyer know right away under what circumstances and how much the agent will be compensated.⁵

According to Representative Jean Schmidt, one of the bill’s primary sponsors, the National Association of Realtors (NAR) recently announced a settlement related to nationwide litigation that came from homebuyer complaints about commissions. As part of that settlement, NAR will put into place new rules requiring realtors using the Multiple Listing Service to have written agreements with their clients. Representative Schmidt said it is vital that Ohio establish standards for these agreements so that both the real estate professional and the buyer have a transparent

³ R.C. 4735.55.

⁴ R.C. 4735.18(A)(9), not in the bill.

⁵ See [Representative Sean Brennan Sponsor Testimony \(PDF\)](#), House Civil Justice Committee, April 9, 2024, available on the General Assembly’s website, legislature.ohio.gov, by searching for “HB 466” and looking under the “Committee Activity” tab.

understanding of the services being provided, compensation, and the responsibilities of both parties.⁶

Restrictiveness of regulations

Licensure

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:

- 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.⁷

Continuing law satisfies the state policy's first criterion regarding concurrent state and federal law. For example, real estate transactions are subject to the federal Fair Housing Act, which prohibits discrimination based on specified factors.⁸ In addition, state governments issue licenses to sell real estate.⁹

The state policy's second criterion regarding licensure of out-of-state individuals also is satisfied by continuing law. Specifically, the state's Out-of-State Applicant Licensure Law generally requires the Ohio Real Estate Commission to issue licenses to applicants who hold analogous out-of-state occupational licenses.¹⁰

As for the state policy's third criterion, neither continuing law nor the bill satisfies it because laws governing the transfer of real estate, including licensure laws, generally are not consistent across the nation.¹¹

⁶ See [Representative Jean Schmidt Sponsor Testimony \(PDF\)](#), House Civil Justice Committee, April 9, 2024, available on the General Assembly's website, legislature.ohio.gov, by searching for "HB 466" and looking under the "Committee Activity" tab.

⁷ R.C. 4798.02, not in the bill.

⁸ 42 United States Code 3601 *et seq.*

⁹ See [Licensing for Real Estate Professionals](#), which may be accessed by conducting a "licensing for real estate professionals" keyword search on the National Association of Realtors website: nar.realtor.

¹⁰ R.C. 4735.07, 4735.09, and 4796.03, not in the bill.

¹¹ See [Licensing for Real Estate Professionals](#).

Regulation of process

The state's general policy does not specify when a process regulation is the appropriate means of protecting consumers. Presumably, process regulations are preferred when market competition, ratings and reviews, private certifications, private causes of action, and actions under the Consumer Sales Practice Act are not sufficient to achieve the intent of the regulation.¹²

Whether these mechanisms are a sufficient means of protecting consumers is a policy decision. However, to protect consumers, current Ohio law establishes many process regulations that govern the provision of real estate broker and salesperson services. For example, current law requires licensed real estate brokers and salespersons to provide clients with a written brokerage policy on agency. A "brokerage policy on agency" is a written policy regarding the agency relationship and each brokerage must develop this policy.¹³

The bill regulates process by requiring a licensed real estate broker or salesperson to enter into a written agency agreement before marketing or showing a seller's real estate or making an offer to purchase or lease real estate on behalf of a buyer. As discussed above, entering into a written agency agreement is optional under current law. However, current law requires that the following information must be included in a written agency agreement if a licensee chooses to enter into one:

- An expiration date;
- A statement regarding state and federal fair housing law;
- A statement defining the practice known as "blockbusting" and stating that it is illegal;
- A copy of the U.S. Department of Housing and Urban Development Equal Housing Opportunity logotype.

The bill expands the information required to be in a written agency agreement to also include all of the following:

- A statement that the broker is appointed as the client's agent;
- An indication of whether the agency relationship is exclusive or nonexclusive;
- The terms by which the broker is to be compensated.¹⁴

The bill also makes conforming changes to the law governing real estate brokers and salespersons to specify that entering into a written agency agreement as required under the bill triggers when the following continuing law requirements must occur:

- The requirement that a licensee must provide a client with a brokerage policy on agency;

¹² R.C. 4798.01, not in the bill.

¹³ R.C. 4735.56.

¹⁴ R.C. 4735.55.

- The requirement that a licensee must obtain written consent to represent another party in a transaction.¹⁵

The bill expands the reasons for which a licensed real estate broker or salesperson may be disciplined by the Ohio Real Estate Commission to include violations of the bill's requirements. Under continuing law, discipline by the Commission may include revocation or suspension of the licensee's license, imposition of a fine, reprimand, or additional continuing education requirements.¹⁶

To the extent these changes impose more duties on a licensee, the bill may be more restrictive.

IMPACT STATEMENT

Opportunities for employment

Requiring written agreements of all brokers and the other terms of the bill appear unlikely to alter opportunities for employment in the industry. Whether the NAR settlement and the changes following in its wake will alter employment in the industry is a separate question not addressed here.

Consumer choice

Similarly, quite apart from the broader implications of the NAR settlement, the bill's requirements in and of themselves are not expected to alter choices available to consumers.

Market competition

The bill's provisions appear unlikely to change the extent of competition in the market for real estate brokerage services.

Cost to government

For the costs to government, please see the [LBO fiscal note \[PDF\]](#), which anticipates that the bill is unlikely to cause a significant increase in complaints filed with the Department of Commerce's Division of Real Estate and Professional Licensing.

COMPARISON TO OTHER STATES

Of Ohio's surrounding states (Michigan, Indiana, Kentucky, West Virginia, and Pennsylvania), Pennsylvania and Indiana appear to be the only states that require written agency agreements. An explanation of those laws is below.

¹⁵ R.C. 4735.56 and R.C. 4735.59.

¹⁶ R.C. 4735.18(A)(9) and 4735.051(I) not in the bill.

Pennsylvania

Pennsylvania law prohibits a licensed real estate broker from recovering a fee, commission, or other valuable consideration in the absence of a written agreement between the broker and the consumer setting forth the nature of the services and the fee to be charged. Pennsylvania law specifies that it does not prohibit a broker from providing services before an agreement is signed – it simply bars a licensee from recovering a fee, commission, or other valuable consideration in the absence of a signed agreement. The Pennsylvania law does not apply to real estate salespersons.¹⁷

Indiana

Beginning July 1, 2024, licensed real estate brokers will be required to enter into written listing agreements and buyer agency agreements, as applicable, that must include the agreement's expiration date.¹⁸ A licensee who violates the requirement is subject to discipline by the licensing board, which may include revocation or suspension of the licensee's license, censure, reprimand, probation, a civil penalty, or an order to pay restitution.¹⁹ Under Indiana law a real estate broker license appears to cover both brokers and salespersons, as those terms are defined in Ohio.²⁰

INFORMATION FROM SPONSOR

Sponsors of bills involving occupational regulations are expressly permitted by law to provide LSC with information that may be relevant to this report.²¹ The information below was submitted by Representative Sean Brennan, a primary sponsor of the bill. Inclusion of sponsor provided information in this section of the report is not an endorsement or affirmation of accuracy by LSC.

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- 1) Evidence of present, significant, and substantiated harms to Ohio consumers.

On March 15, 2024, the National Association of Realtors (NAR) announced a proposed settlement agreement that would end litigation of claims brought on behalf of home sellers related to broker commissions. The settlement resolves claims against NAR, over one million NAR members, all state and local Realtor associations, all association-owned MLSs, and all brokerage entities with an NAR member as principal that had a residential transaction volume in 2022 of \$2 billion or below. As part of the settlement, NAR has agreed to put in place a new rule prohibiting offers of compensation on the MLS. The settlement also provides that MLS participants working with buyers must enter into written agreements with those buyers.

¹⁷ 63 P.S. 455.606a and 455.608a.

¹⁸ Ind. Code 25-34.1-12-1 and 25-34.1-12-2, effective July 1, 2024.

¹⁹ Ind. Code 25-1-11-5 and 25-1-11-12.

²⁰ Ind. Code 25-34.1-1-2 and R.C. 4735.01.

²¹ R.C. 103.26(D), not in the bill.

Realtors covered under the settlement will need to meet these new requirements, specifically the requirement to enter into written agreements with homebuyers they represent. Those Realtors who are not covered under the settlement as well as non-Realtor salespeople and brokers will not be required to enter into written agreements.

This will result in two different sets of standards when it comes to the use of written agreements in the real estate industry. HB 466 will ensure that every licensed real estate broker enters into written agreements with their clients, ensuring that consumers are aware of the terms of services being provided and the commission structure of their broker. This transparency will provide clarity to consumers and practitioners, help avoid disputes during the home buying process, and ensure that consumers are aware of and can negotiate the compensation being paid to the broker.

Should the long-standing practice of sellers offering broker compensation to their buyers change, homebuyers will be required to pay for their services directly. Written agreements ensures that the homebuyer is aware of the commissions before they make an offer on a home.

HB 466 establishes a statewide standard for what the written agreements must contain and when they must be entered into ensuring that all consumers are working with real estate salespeople and brokerages that are operating under the same guidelines.

- 2) An explanation of why existing laws and procedures are inadequate to prevent those harms.

Existing language in ORC 4735.55 establishes what written agreements must contain, but it doesn't mandate their usage. Current law also does not require that the written agreements contain information on whether the relationship is exclusive or nonexclusive nor the terms of compensation for the broker.

- 3) An explanation of why a less restrictive regulation is not proposed.

HB 466 is necessary as without a statewide standard for the use of written representation agreements their usage will be inconsistent and the information they contain will vary.

- 4) The names of associations, organizations, or other groups representing the occupation and the approximate number of Ohio members in each.

Ohio REALTORS® is the state's largest professional trade association with approximately 36,000 members representing both residential and commercial practitioners. REALTORS® are licensed real estate professionals who have taken the added commitment to the industry by joining the National Association of REALTORS® (NAR) and agree to abide by NAR's Code of Ethics, which outlines the ethical standards that REALTORS® must follow when dealing with other professionals and their clients. The training REALTORS® complete on NAR's Code of Ethics is intended to protect clients, the public, and other professionals in the real estate industry.

- 5) The functions typically performed by members of the occupation and a list of any other occupations that perform the same or similar functions.

Licensed real estate professionals include: real estate brokers, salespersons, appraisers, appraisal management companies, foreign real estate dealers and salespeople, manufactured home dealers, brokers, and salespersons, and home inspectors. Licensed real estate

professionals help buyers and sellers navigate the maze of forms and complexity associated with purchasing or selling a property. They coordinate with lenders, inspectors, other agents, escrow companies, title companies, and appraisers to ensure their clients' interests are well represented. A complete list of functions of a licensed real estate broker or salesperson can be found in ORC 4735.01 - [Section 4735.01 - Ohio Revised Code | Ohio Laws](#) .

- 6) An indication of whether specialized training, education, or experience is required to engage in the profession and a description of how that training, education, or experience is acquired by current practitioners.

The pre-licensing education requirements for real estate brokers can be found in ORC 4735.07 and for real estate salesperson can be found in ORC 4735.09.

- 7) A description of any way in which the bill would change how practitioners of the occupation acquire necessary specialized training, education, or experience.

HB 466 does not change how practitioners of the occupation acquire the training or education.

- 8) An indication of whether current practitioners in Ohio lack necessary training, education, or experience and a description of how the bill addresses that deficiency.

HB 466 does not change the training, education, or experience required to obtain a license. It merely establishes standards for the use of written agency agreements after practitioners become licensed.

- 9) An indication of whether new entrants into the occupation or current practitioners would be required to provide evidence of training, education, or experience or to pass an examination.

HB 466 does not require changes in how new entrants or current practitioners provide evidence of training, education, or experience.

- 10) The expected impact of the bill on the supply of practitioners of the occupation and on the cost of services or goods provided by the occupation.

HB 466 should not impact the supply of practitioners. The required use of written representation agreements will ensure that consumers are aware of the terms of compensation for the real estate practitioner and ensures that the consumer can negotiate those terms.

- 11) Information from others knowledgeable about the occupation and the related economic factors.

- a. [The Truth About the NAR Settlement Agreement](#)
- b. [Help Agents Explain the Importance of Written Buyer Agreements](#)