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OHIO LEGISLATIVE SERVICE COMMISSION

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Office of Research
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Legislative Budget
Office

S.B. 238*
135th General Assembly

Occupational Regulation Report

[Click here for S.B. 238's Bill Analysis / Fiscal Note](#)

Primary Sponsor: Sen. Schaffer

Impacted Profession: Specialty residential contractors

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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

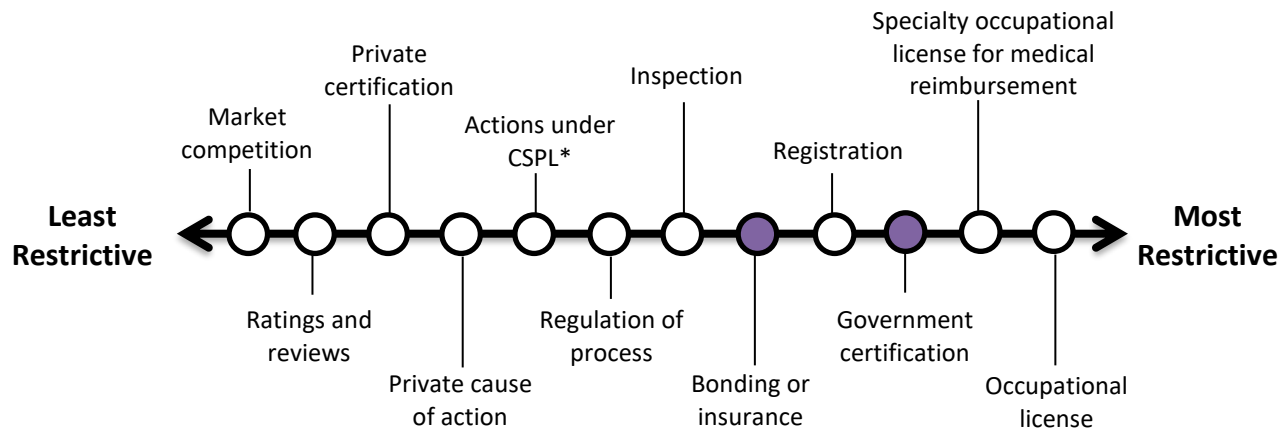
The general policy of the state is reliance on market competition and private remedies to protect the interests of consumers in commercial transactions involving the sale of goods or services. For circumstances in which the General Assembly determines that additional safeguards are necessary to protect 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 S.B. 238. 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

S.B. 238 creates an optional certification program for residential contractors specializing in heating, ventilating, air conditioning, refrigeration, electrical, plumbing, or hydronics work. The program is administered by the Ohio Construction Industry Licensing Board (OCILB).³

Note that the state currently does not require licensure, certification, or other credentialing of specialty contractors who work only on residential projects,⁴ but local governments may do so. The bill does not affect this local authority.

Necessity of regulations

The bill's sponsor, Senator Tim Schaffer, testified that the bill's optional residential-only certification program for specialty contractors will give the contractors the opportunity for title protection and will encourage best practices that protect consumers. Senator Schaffer explained that an untrained contractor can blow up, burn down, or flood a residence. He said that such an event not only puts clients and neighbors at risk of injury, sickness, disease, and even death but also results in potential criminal or civil proceedings against the contractor. He provided an example in which an incompetent or unethical contractor improperly installed a water heater in a home, resulting in the need for the residents to seek treatment for carbon monoxide poisoning that could have become fatal.

Senator Schaffer stated that those currently holding a commercial contractor license are exempt from the bill and that the bill's state certification does not supersede local licensure requirements for residential contractors. He also emphasized again that the certification is

³ R.C. 4740.18 and 4740.99.

⁴ R.C. 4740.01(A), (B), and (F) and 4740.13(A), neither in the bill.

optional, thus establishing new standards for specialty residential contractors' training and competency in the least restrictive manner possible.⁵

Restrictiveness of regulations

Generally, the certification program created by the bill does not appear to increase restrictiveness because the certification is optional and thus is not required to practice as a specialty residential contractor.⁶

However, for those contractors who choose to become certified (perhaps for marketing purposes), the bill increases restrictiveness. This is due to the requirements they must satisfy to obtain and renew the certification, including paying a \$100 fee, maintaining liability insurance (see "**Liability insurance,**" below), and completing 20 hours of OCILB-approved continuing education in each five-year certification period.⁷ Additionally, under the bill, an individual who knowingly acts as or claims to be a certified residential only-contractor without holding the certification is subject to a civil action brought by the Attorney General and is guilty of a minor misdemeanor on the first violation and a fourth-degree misdemeanor on subsequent violations.⁸

Government certification

The state policy defines "certification" to include a voluntary program in which a private organization or the state grants nontransferable recognition to an individual who meets personal qualifications established by the organization or by state law.⁹ The bill's regulation of specialty residential construction contractors appears to fit this definition.

The bill's residential-only certification fits this definition firstly because it is voluntary; being certified is not necessary to work as a specialty residential construction contractor (or a direct labor subcontractor).¹⁰ In addition, the bill's certification fits the state policy's definition because the OCILB is a state entity, and the certificate it issues is nontransferable recognition to an individual. Finally, the continuing education that is required to renew the certification constitutes a personal qualification established by state law.¹¹

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

⁵ See [Senator Tim Schaffer S.B. 238 Sponsor Testimony \(PDF\)](#) (Senate Government Oversight Committee, May 22, 2024), which is accessible by conducting a keyword "SB 238" search and looking under the "Committee Activity" tab on the General Assembly's website: legislature.ohio.gov.

⁶ R.C. 4740.18(J).

⁷ R.C. 4740.18(B) and (D).

⁸ R.C. 4740.18(I) and 4740.99.

⁹ R.C. 4798.01, not in the bill.

¹⁰ R.C. 4740.18(J) and (K).

¹¹ R.C. 4740.18(D) and 4798.01, not in the bill.

- Regulations are intended to protect consumers against asymmetrical information between the seller and buyer;
- 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.)¹²

It appears that the bill satisfies the first criterion. Sponsor testimony indicated that the bill is intended to protect consumers. In addition, the bill’s continuing education requirement, for example, may assure consumers that a certified individual has completed specified training, thus minimizing asymmetrical information between the parties.

However, it does not appear that the bill satisfies the second criterion because suitable privately offered voluntary certification is available for specialty residential construction contractors. National associations offer optional training and certifications through which members of each specialty occupation addressed by the bill can demonstrate proficiency to potential employers and clients.¹³ Note that the bill’s prohibition against knowingly acting as or claiming to be a certified residential only-contractor without the bill’s state certification may cause confusion for specialty residential construction contractors who hold these private certifications.¹⁴

Liability insurance

Under the state’s general policy on occupational regulations, a bonding or insurance requirement is appropriate when the intent of the regulation is to protect against potential damages to third parties and other types of externalities.¹⁵

The bill requires an applicant for a residential-only certification to maintain and provide proof of contractor’s liability insurance of at least \$250,000 for complete operations and an equal amount for work performed by direct labor subcontractors.¹⁶ Although contractor liability insurance generally is designed to protect the contractor from financial loss in the event of a lawsuit brought by a third party (such as a client), it also may be construed to protect the third party by ensuring that funds are available to pay a claim.¹⁷ Thus, the bill’s insurance requirement may be viewed as satisfying the state’s policy.

¹² R.C. 4798.02, not in the bill.

¹³ See, e.g., [Become NATE Certified](#), which is accessible by clicking on “Become NATE Certified” on the North American Technician Excellence’s website: [natex.org](#); [Certified Professional Electrician](#), which is accessible by conducting a keyword “certified” search on the Independent Electrical Contractors’ website: [ieci.org](#); and [STAR Certifications](#), which is accessible by conducting a keyword “STAR” search on the National Inspecting Testing Certification’s website: [nationalitc.com](#).

¹⁴ R.C. 4740.18(H) and (I) and R.C. 4740.99.

¹⁵ R.C. 4798.02(B), not in the bill.

¹⁶ R.C. 4740.18(B).

¹⁷ See, e.g., [General Liability Insurance for Contractors](#), which is accessible by conducting a keyword “general liability contractors” search on The Hartford’s website: [thehartford.com](#).

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

IMPACT STATEMENT

Opportunities for employment

Under S.B. 238, employment opportunities for specialty residential contractors would not be affected since the bill establishes an optional certification rather than a mandatory requirement for practice. The impact on employment would be limited to those contractors who choose to become certified, which includes meeting requirements such as a certification fee, liability insurance, and completion of educational courses.

Consumer choice

The optional certification of specialty residential contractors would enhance consumer choice by helping consumers to identify qualified contractors.

Market competition

In terms of market competition, the optional certification for specialty residential contractors could lead to a more competitive market. In response to consumer preferences, uncertified contractors may offer better prices or improve the quality of their services. Alternatively, some would decide to become certified to meet these demand expectations.

Cost to government

The bill would incur minimal administrative costs for the OCILB for issuing and renewing certificates, which would be offset by application and renewal fees. In addition, the costs associated with penalties under this bill would be partly offset by fines for violations, which are expected to be infrequent. For further details, please refer to the [LBO fiscal note \(PDF\)](#).

COMPARISON TO OTHER STATES

Each of the five states surrounding Ohio requires a state credential for members of one or more of the following occupations involved in residential work: contractors; electricians; heating, ventilating, air conditioning, and related technicians; or plumbers. In certain states (such as Indiana, Kentucky, and Pennsylvania), occupations that are not credentialed at the state level are credentialed at the local level.

The table below summarizes the relevant laws of the surrounding states. Note that the table lists only the most restrictive credential required for each occupation. For example, in Indiana, plumbing contractors and journeyman plumbers must be licensed, but apprentice plumbers merely must be registered; thus, Indiana’s table entry for plumbers mentions only licensure.

State regulation of residential contractors			
State	Is a state credential required to practice?	Is a bond or liability insurance required?	Is continuing education required?
Ohio (under the bill)	No, but residential-only contractors specializing in heating, ventilating, air conditioning, refrigeration, electrical, plumbing, or hydronics may obtain an optional state certification <i>(R.C. 4740.18)</i>	No, but to obtain the optional state certification, liability insurance is required (\$250,000 for complete operations coverage and \$250,000 coverage for work performed by direct labor subcontractors) <i>(R.C. 4740.18(B))</i>	No, but to maintain the optional state certification, 20 hours of continuing education are required every five years <i>(R.C. 4740.18(D))</i>
Indiana	Yes, a license is required to do plumbing work <i>(Ind. Code 25-28.5-1-11 and 25-28.5-1-18.1)</i>	No ¹⁸	No

¹⁸ See, [Plumbing Licensing Information](#), which is accessible by conducting a keyword “plumbing” search on the Indiana Professional Licensing Agency’s website: www.in.gov/pla.

State regulation of residential contractors			
State	Is a state credential required to practice?	Is a bond or liability insurance required?	Is continuing education required?
Kentucky	Yes, licenses are required to do heating, ventilation, and air conditioning (HVAC), electrical, or plumbing work <i>(Ky. Rev. Stat. 198B.656, 227A.020, and 318.030)</i>	Yes, general liability insurance is required as follows: <ul style="list-style-type: none"> ▪ HVAC contractors--\$500,000 (plus \$300,000 property damage insurance); ▪ Electrical contractors-- \$1,000,000; ▪ Plumbers--\$250,000 <i>(Ky. Rev. Stat. 198B.668, 227A.060, and 318.030)</i>	Yes, six hours of annual continuing education are required for license renewal <i>(815 Ky. Admin. Regs. 2:010)</i>
Michigan	Yes, licenses generally are required for residential builders and for residential maintenance and alteration contractors Licenses are required to do HVAC, refrigeration, hydronics, electrical, or plumbing work (persons doing only such work under the pertinent license are not required to obtain an additional license as a residential builder or a residential maintenance and alteration contractor) <i>(Mich. Comp. Laws 339.601, 339.2403, 339.5737, 339.5807, and 339.6107)</i>	No	Yes, 21 hours of continuing education are required every three years for residential builders and for residential maintenance and alteration contractors <i>(Mich. Comp. Laws 339.2404b)</i>
Pennsylvania	Yes, registration is required for home improvement contractors <i>(73 P.S. 517.3)</i>	Yes, liability insurance is required in the amount of \$50,000 for personal injury and \$50,000 for property damage <i>(73 P.S. 517.4)</i>	No

State regulation of residential contractors			
State	Is a state credential required to practice?	Is a bond or liability insurance required?	Is continuing education required?
West Virginia	<p>Yes, a license generally is required for contractors.</p> <p>Licenses are required to do HVAC, electrical, or plumbing work (but a general building contractor license covers these types of work on a residential structure)</p> <p><i>(W. Va. Code 30-42-3, 30-42-6, 21-14-3, 21-16-3, 21-16-4(c), and 29-3B-2; W. Va. Code R 28-2-3(3.19))</i></p>	<p>Generally, no (except that a bond for wages and benefits is required for employers of those doing construction work and a bond or insurance may be required as a penalty in disciplinary actions against contractors)</p> <p><i>(W. Va. Code 21-5-14 and 30-42-15(a)(7))</i></p>	No