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OHIO LEGISLATIVE SERVICE COMMISSION

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Office of Research
and Drafting

Legislative Budget
Office

H.B. 438*
135th General Assembly

Occupational Regulation Report

[Click here for H.B. 438's Bill Analysis / Fiscal Note](#)

Primary Sponsors: Reps. Williams and Jarrells

Impacted Professions: 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

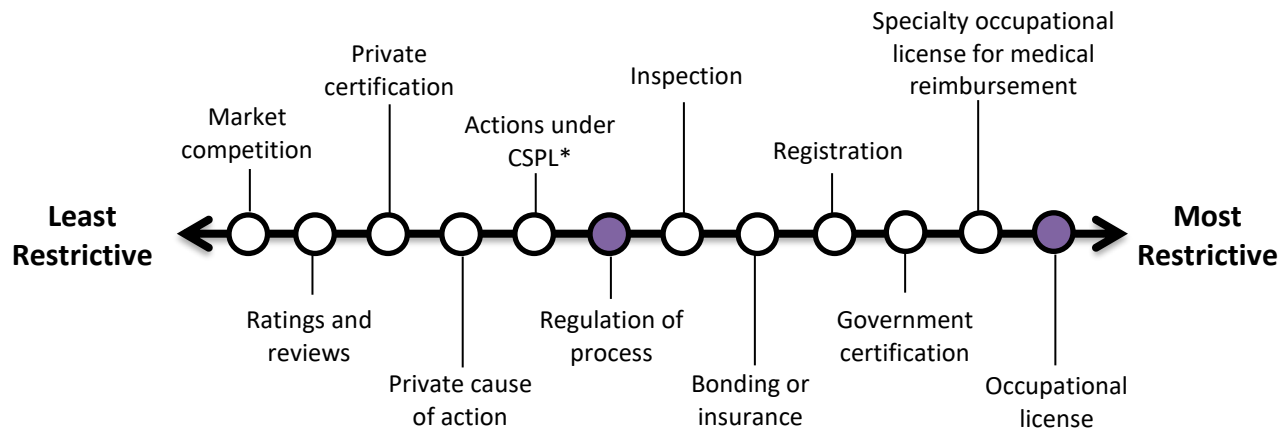
The general policy of the state is reliance on market competition and private remedies to protect the interests of consumers in commercial transactions involving the sale of goods or services. For circumstances in which the General Assembly determines that additional safeguards are necessary to protect 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. 438. 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. 438, named the “Homebuyer Protection Act,” prohibits a real estate broker or salesperson from disclosing a prospective purchaser’s name, age, race, or address on specified documents before the purchaser and seller agree to the contract terms in a real estate transaction.³ Under the bill, the penalty for violating this prohibition potentially includes suspension or revocation of the broker’s or salesperson’s license (in addition to or in lieu of other penalties).⁴

Necessity of regulations

Representative Joshua Williams, a primary joint sponsor of H.B. 438, testified that the purchase of a home is the most important transaction of most families’ lives. He stated that a home in a good neighborhood means safety, a good education, a better quality of life, and the creation of generational wealth.

Representative Dontavius Jarrells, also a joint primary sponsor of the bill, testified however that a 2023 National Association of Realtors study revealed that approximately one in six prospective home buyers encountered discrimination. He said that a significant majority of Black (63%), Asian (60%), and Hispanic (52%) respondents attributed this discrimination to their race or ethnicity. In addition, he stated that a Kinder Institute for Urban Research report described accounts of blatant racism and revealed that real estate agents seldom challenged these discriminatory attitudes or refused to collaborate with clients harboring such biases.

Representative Jarrells further pointed out that discrimination extends beyond race and ethnicity, as evidenced by instances in which individuals were denied opportunities to buy homes based on their marital status, sexual orientation, or political beliefs. He asserted that these actions not only contravene the spirit of Title XIII of the Civil Rights Act of 1968 (the federal Fair

³ R.C. 4735.80 and Section 3.

⁴ R.C. 4735.181.

Housing Act) but also underscore the insidious nature of de facto discrimination that persists in the private sector of the housing market.

Representative Williams explained that current procedures for real estate transactions require a buyer to disclose the buyer's name and address to the seller. He indicated that sellers can use this information to easily identify prospective buyers online on social media and to uncover their race, religion, or political beliefs.

Representative Williams testified that the goal of the bill is to prevent discrimination from occurring in the real estate market. He stated that the bill's solution is simple: require the prospective buyer's name and address to be redacted until the property is under contract. Representative Jarrells elaborated that redacting personal identifying information from offers can mitigate the influence of unconscious bias and overt discrimination in the homebuying process. Representative Williams asserted that securing a prospective home buyer's privacy in the offer stage will ensure that a seller evaluates an offer purely on its financial merit.

Representative Williams explained that, under the bill, when a seller accepts an offer, an addendum to the contract that includes the buyer's name and address will be delivered to the seller within 48 hours. He pointed out that sellers will still have the option to terminate the transaction in the contract stage for nondiscriminatory reasons.

In conclusion, Representative Jarrells testified that the bill represents a critical step toward rectifying historical inequities that have marred the housing market. He stated that, by championing the legislation, he and Representative Williams affirm their commitment to fairness, dignity, and equality for all Ohioans seeking a place to call home.⁵

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.⁶

⁵ See [Representative Joshua E. Williams Sponsor Testimony \(PDF\)](#) and [Representative Dontavius L. Jarrells Sponsor Testimony \(PDF\)](#) (House Civil Justice Committee, April 9, 2024), which is accessible by conducting a keyword "HB 438" search and looking under the "Committee Activity" tab on the General Assembly's website, legislature.ohio.gov.

⁶ R.C. 4798.02, not in the bill.

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.⁷ In addition, state governments issue licenses to sell real estate.⁸

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 and meet requirements specified in the Real Estate Brokers Law.⁹

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.¹⁰

Penalties for violating bill's prohibition and requirements

The bill subjects real estate brokers and salespersons to a new prohibition and related requirements (see "**Disclosure of specified information about purchaser**," below) and establishes penalties for violating these provisions. The penalties potentially may include suspension or revocation of the broker's or salesperson's license. These provisions appear to increase restrictiveness.

When the Superintendent of Real Estate determines that a real estate broker or salesperson has violated the bill, the Superintendent may either initiate disciplinary action or serve a citation.¹¹ Both options are governed by continuing law.

If the Superintendent chooses to take disciplinary action, then after notice and a hearing, the following sanctions may be imposed on a broker or salesperson who has *willfully* disregarded or violated the bill:

- License suspension or revocation;
- A fine of up to \$2,500 per violation;
- A public reprimand;
- Completion of additional continuing education course work.¹²

⁷ 42 United States Code (U.S.C.) 3601 *et seq.*

⁸ See [Licensing for Real Estate Professionals](#), which is accessible by conducting a keyword "licensing for real estate professionals" search on the National Association of Realtors' website: nar.realtor.

⁹ R.C. 4735.07, 4735.09, and 4796.03, not in the bill.

¹⁰ See [Licensing for Real Estate Professionals](#).

¹¹ R.C. 4735.181.

¹² R.C. 4735.181 and R.C. 4735.051 and 4735.18, not in the bill.

If the Superintendent instead serves a citation, the citation must provide notice of the alleged violation and the opportunity to request a hearing as well as a statement of a fine of up to \$200 per violation. In addition, the Superintendent may take disciplinary action against violators who have been issued a citation and who commit repeated violations within specified time frames. Once the citation is final (based on a hearing, failure to timely request a hearing, or failure to reach an alternative agreement), the violator must meet all the requirements in the citation, such as payment of a fine, within 30 days. Automatic license suspension is required for failure to do so.¹³

Process regulation

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.¹⁴

Whether these mechanisms are a sufficient means of protecting consumers is a policy decision. However, continuing Ohio law establishes several process regulations that govern the real estate industry. For example, a licensee who is a buyer's agent or a seller's subagent working with a buyer must provide the buyer with an agency disclosure statement containing specified information.¹⁵ In addition, a real estate broker or salesperson who provides the name of a home inspector to a buyer or seller must provide names of at least three such inspectors.¹⁶ Also, agency agreements must contain specified provisions.¹⁷

Disclosure of specified information about purchaser

The bill appears to increase restrictiveness for real estate brokers and salespersons by creating new process regulations with which they must comply. Specifically, the bill prohibits a real estate broker or salesperson from disclosing a prospective purchaser's name, age, race, or address to the seller (or to the seller's agent or subagent) on specified documents before the purchaser and seller agree to the contract terms in a real estate transaction. Instead, under the bill, the prospective purchaser's initials may be used on the documents.

Additionally, the bill establishes requirements for purposes of relaying information to the seller regarding a pre-approval letter or proof-of-funds document. Specifically, the bill requires the prospective purchaser's real estate broker or salesperson to provide the seller (or the seller's agent or subagent) with a signed and notarized affidavit. The affidavit must acknowledge the

¹³ R.C. 4735.181.

¹⁴ R.C. 4798.01, not in the bill.

¹⁵ R.C. 4735.57 and 4735.58, neither in the bill.

¹⁶ R.C. 4735.22, not in the bill.

¹⁷ R.C. 4735.55, not in the bill.

broker's or salesperson's receipt of a proof-of-approval letter or proof-of-funds document regarding the prospective purchaser and must state the amount of funds pre-approved or the amount accessible and legitimate.

Under the bill, once the purchaser and seller agree to the contract terms for the real estate transaction, within 48 hours the purchaser's real estate broker or salesperson must supplement the offer contract and other specified documents with the purchaser's name, address, and other relevant information that had been redacted. (In addition, the broker or salesperson may provide the pre-approval letter or proof-of-funds document.)¹⁸

For a detailed description of the bill, please see the [LSC bill analysis \(PDF\)](#).

IMPACT STATEMENT

Opportunities for employment

Under H.B. 438, employment opportunities for real estate brokers and salespersons are unlikely to be affected since the bill mainly addresses how real estate brokers and salespersons handle buyer information, without imposing hiring restrictions or changing the structure of the labor market.

Consumer choice

The bill protects the freedom of homebuyers to choose housing free from discriminatory practices, enhancing consumer choice and expanding housing opportunities for all qualified buyers.

Market competition

The market competition will not be affected by the bill.

Cost to government

The bill would incur minimal administrative costs for the Superintendent of Real Estate and Professional Licensing to issue citations and fines for violations of the bill, which could be offset by fines collected from real estate brokers and salespersons. For further details, please refer to the [LBO fiscal note \(PDF\)](#).

COMPARISON TO OTHER STATES

It appears that no other state prohibits a real estate broker or salesperson from disclosing a purchaser's name, age, race, or address before the purchaser and seller agree to the contract terms in a real estate transaction.

¹⁸ R.C. 4735.80.

However, note that the federal Fair Housing Act prohibits discrimination in housing based on race, national origin, religion, sex, familial status, and disability.¹⁹ (The Ohio Fair Housing Law establishes similar prohibitions and adds ancestry and military status to these protected statuses.)²⁰

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¹⁹ 42 U.S.C. 3601 *et seq.* See also [What Everyone Should Know About Equal Opportunity Housing](#), which is accessible by conducting a keyword “equal opportunity housing” search on the National Association of Realtors’ website: nar.realtor.

²⁰ R.C. 4112.02(H), not in the bill.