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OHIO LEGISLATIVE SERVICE COMMISSION

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Office of Research
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Legislative Budget
Office

S.B. 224*
134th General Assembly

Occupational Regulation Report

[Click here for S.B. 224's Bill Analysis/Fiscal Note](#)

Primary Sponsor: Sen. Cirino

Impacted Profession: Funeral 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

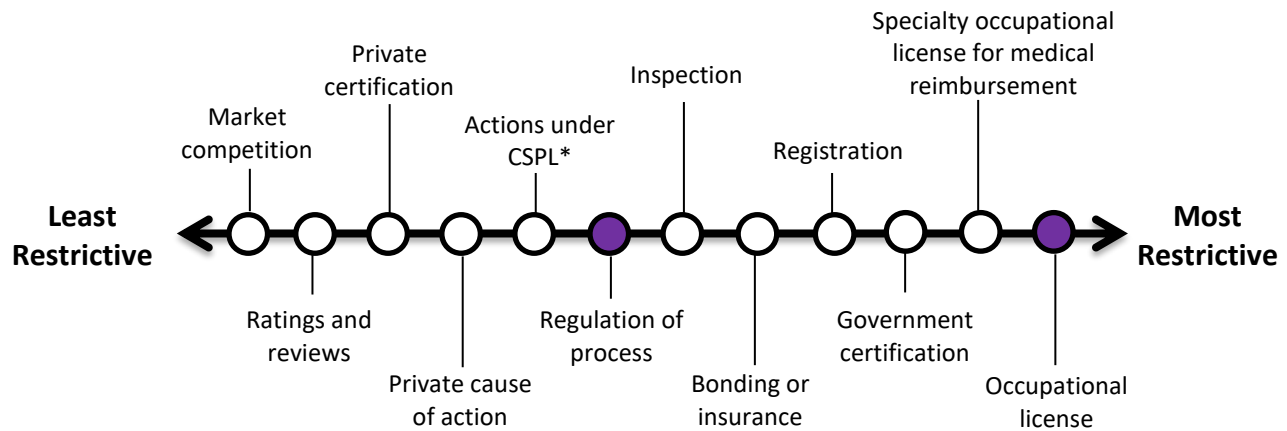
The general policy of the state is reliance on market competition and private remedies to protect the interests of consumers in commercial transactions involving the sale of goods or services. For circumstances in which the General Assembly determines that additional safeguards are necessary to protect 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 S.B. 224. 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

The bill makes a number of changes to the law governing embalmers, funeral directors, and crematory operators (funeral professionals). The changes primarily decrease the restrictiveness of existing license requirements and process regulations. The only provisions that appear to increase the restrictiveness of current regulations are the fee increase for reactivating an embalmer or funeral director license and the provision authorizing disciplinary action against funeral professionals who obtain business through an unlicensed person.

The bill also makes a number of changes to the law governing funeral homes, embalming facilities, and crematory facilities (funeral facilities) but those changes are not occupational regulations within the meaning of the state’s policy and, therefore, are beyond the scope of this report. (Business and facility licenses are expressly excluded from the definition of occupational regulation.³) Continuing law prescribes separate licensure requirements for funeral facilities, but stipulates that such a license may be issued only by application of a licensed funeral professional who is “in charge and ultimately responsible for” the facility. Consequently, the bill’s funeral facility regulations are closely linked to the services performed by funeral professionals in charge of those facilities. However, the law does not require all licensed funeral professionals to obtain a funeral facility license. A licensed funeral professional could perform their occupation without a facility license; for example, by working at a facility licensed through another funeral professional.⁴

The bill’s changes to the law governing preneed funeral contracts are also outside the scope of this report as they do not “require an individual to possess certain personal qualifications to use an occupational title or work in a lawful occupation.”⁵

³ R.C. 4798.01, not in the bill.

⁴ R.C. 4717.06.

⁵ R.C. 4798.01, not in the bill.

Necessity of regulations

According to Senator Cirino, the bill's primary sponsor, S.B. 224 is intended to "clean up outdated rules and regulations." Senator Cirino's testimony to the Senate General Government Budget Oversight Committee suggests that the bill "simplifies and streamlines" the law governing funeral professionals in a way that will benefit "the more than 900 funeral homes in the state . . . while simultaneously ensuring consumer protections are provided to the thousands of families that rely on funerary services."⁶

Proponent testimony submitted by Scott Gilligan, the General Counsel for the Ohio Funeral Directors Association, suggests that the intent of the bill's extension of disciplinary measures to funeral professionals who obtain business through an unlicensed person is to "discourage out-of-state internet scammers from selling funeral and creation services to Ohio families without a license."⁷

Restrictiveness of regulations

Licensure of funeral professionals

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: (1) the occupation involves providing a service regulated by both state and federal law, (2) the licensing framework allows individuals licensed in other states and territories to practice in Ohio, and (3) 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.⁸

The funeral industry is regulated by both state and federal law. For example, the Federal Trade Commission's "funeral rule" requires funeral professionals to give consumers an itemized list of funeral goods and services that states prices and contains specific disclosures.⁹

Ohio's funeral professional licensing law allows reciprocity for funeral professionals licensed in states with substantially similar licensing requirements. In fact, the bill *requires* the Board of Embalmers and Funeral Directors to issue a reciprocal license under those circumstances. Out-of-state licensees may also apply for a courtesy card permit, which allows a person without an Ohio license to perform certain services related to death certificates, funeral ceremonies, internments, and entombments. The bill appears to enhance the clarity of administrative rules related to courtesy card permits by requiring the Board to determine under what conditions a courtesy card permit is to be issued to funeral directors in bordering states.

⁶ Senator Jerry Cirino, *S.B. 224 Sponsor Testimony*, Senate General Government Budget Oversight Committee, September 22, 2021.

⁷ Scott Gilligan, *S.B. 224 Proponent Testimony*, Senate General Government Budget Oversight Committee, September 28, 2021.

⁸ R.C. 4798.02, not in the bill.

⁹ 16 Code of Federal Regulations 453.

Ohio law does not allow a funeral professional licensed in another state to provide funerary services in Ohio without first applying to the Board for an Ohio license or courtesy card permit.¹⁰

According to the International Conference of Funeral Service Examining Boards, all states other than Colorado require licensure of funeral professionals (Colorado requires licensure of funeral facilities, but not the persons in charge of those facilities). It does not appear that Ohio's licensing framework is based on a uniform national law. In fact, there is a lot of variance among states in terms of funerary license qualifications.¹¹

The bill does not impose a new licensure requirement or extend the reach of existing funeral professional licenses. It makes peripheral changes to the state's existing license requirements. It appears that, if enacted today, the state's funeral professional licenses might not meet the standards prescribed by the state's general policy. However, the policy offers no guidance as to whether the same standards apply to a bill that modifies existing licensure requirements, as opposed to enacting a new requirement. Particularly, as in this case, when the bill primarily decreases the restrictiveness of existing regulations.

Fee increase

The bill's fee increase would raise costs for the subset of embalmers and funeral directors who elect to place their license in inactive status. However, the increase produces a logical alignment between the cost to reactivate a license and the cost to renew a license. Under the bill, those costs are the same whereas, under current law, the cost to reactivate such a license is \$60 less than the cost to renew. Three surrounding states allow funeral professionals to reclassify their license to inactive status. The bill's reactivation fee is not the highest or the lowest among those states but, in each of those states, the fee to reactivate a license equals or exceeds the fee to renew the same license.

Disciplinary provisions

Three of the surrounding states have laws similar to the bill's provision that effectively prohibits funeral professionals procuring business through an unlicensed person. Whether such a rule is necessary to protect consumers from fraudulent service providers is a policy decision.¹²

¹⁰ R.C. 4717.10.

¹¹ International Conference of Funeral Service Examining Boards, [Regulations in Funeral Service Licensing](#), updated May 2021.

¹² See "**COMPARISON TO OTHER STATES**," below.

IMPACT STATEMENT

Opportunities for employment

During FY 2020, the Board of Embalmers and Funeral Directors issued 7,118 licenses in total.¹³ A detailed summary of license totals for each occupation can be found in LSC's *FY 2020 Report for Occupational and Licensing Regulatory Boards*.¹⁴

The bill does not alter demand for the products and services of funeral establishments, embalmers, or crematories within the state. The bill's authorization for disciplinary action against funeral professionals who obtain business through an unlicensed person might tend to reduce opportunities for employment, but the effect is likely very small.

Consumer choice, consumer cost, and market competition

Similar to the explanation above, the bill's authorization for disciplinary action against funeral professionals might tend to reduce consumer choice and market competition and increase consumer costs, but the effect would likely be very small. And any such effect may be offset, in whole or in part, by requiring rather than permitting that the Board grant license reciprocity to professional embalmers and funeral directors who hold licenses and are in good standing in other states.

Cost to government

For the cost of S.B. 224 to government, please refer to the [LBO fiscal note](#).

SUMMARY OF PROPOSED REGULATIONS

Funeral professional regulations

Increase fee to reactivate license

The bill increases the fee to reactivate the license of an inactive embalmer or funeral director from \$140 to \$200, which is the same fee charged for initial licenses and biennial renewals. Under continuing law, a licensed embalmer or funeral director who is in good standing and current on all continuing education requirements may apply to the Board for inactive status. While the license is inactive, the licensee is not required to pay license fees or complete continuing education, but the licensee is prohibited from engaging in activities for which a funeral director's or embalmer's license is required. After a minimum of two years of inactivity, the

¹³ These licenses include: crematory, certified embalmer apprenticeship, embalmer, embalming facility, certified funeral director apprenticeship, funeral director, funeral home, courtesy card permit, and crematory operator permit. A comparison of Ohio license totals with employment estimates provided by the Bureau of Labor Statistics Occupational Employment Statistics program suggests it is common that persons employed in this industry hold more than one license issued by the Board of Embalmers and Funeral Directors.

¹⁴ <https://www.lsc.ohio.gov/documents/budget/documents/occupationallicensingandregulatoryboard/2020/2020boardreport.pdf>.

licensee may reactivate the license by passing an examination on Ohio laws and paying the reactivation fee.¹⁵

Discipline for soliciting business through unlicensed person

The bill permits the Board to take disciplinary action against a licensed funeral professional who provides services to a person knowing that those services were sold to that person by another person who lacked a license or permit to perform the services. Continuing law authorizes the Board to take disciplinary action, such as a suspension, revocation, or refusal to renew, against a licensed funeral professional who violates certain rules of professional conduct. For example, the Board may discipline a funeral professional who is convicted of a felony or who misrepresented their qualifications on a license application.¹⁶

Increase reciprocity

Requires the Board to issue an embalmer's or funeral director's license to an applicant who holds an equivalent license in another state, is in good standing with that state, shows proof that the other state's license requirements are substantially equal to those that apply in Ohio, and submits Ohio's \$200 license fee. Current law *permits* but does not *require* the Board to issue an Ohio license under those conditions.¹⁷

Continuing law permits the Board to issue courtesy card permits, which permit the holder to perform limited actions related to death certificates, funeral ceremonies, internments, and entombments. The bill requires, rather than permits, the Board to determine under what conditions a courtesy card permit is to be issued to funeral directors in bordering states.¹⁸

Identification of cremated remains

If a body is cremated, current law requires the funeral director or other person in charge of the final disposition of the body to place a tag identifying the person who died in any vessel containing the cremated remains. The bill narrows this regulation by requiring a tag only if the vessel contains all of the cremated remains or more than ten cubic inches of cremated remains.¹⁹

Extend civil immunity

Under current law, a crematory operator or funeral director has civil immunity for certain actions or omissions, unless the actions or omissions were reckless or certain other conditions are met. These protected actions or omissions include cremating a person or disposing of the cremated remains when done in accordance with a cremation authorization form. The bill also provides immunity if the cremation was performed in accordance with the laws governing the disposition of cremated remains, which apply generally when the authorization form does not direct disposition of the remains or when the remains remain unclaimed.²⁰

¹⁵ R.C. 4717.05(F) and (G) and 4717.07(A)(1).

¹⁶ R.C. 4717.14.

¹⁷ R.C. 4717.10(A).

¹⁸ R.C. 4717.10(B) and (C).

¹⁹ R.C. 4717.13(B)(3).

²⁰ R.C. 4717.30.

COMPARISON TO OTHER STATES

The table below compares the occupational regulations enacted or modified by the bill to similar regulations that apply in each of the surrounding states.

Regulation of Funeral Professionals						
	Ohio	Indiana	Kentucky	Michigan	Pennsylvania	West Virginia
License reactivation fee	<p>\$140 under current law.</p> <p>\$200 under the bill – same as fee for initial license or renewal.</p> <p><i>(R.C. 4717.05(F) and (G) and 4717.07(A)(1).)</i></p>	<p>\$50 – same as fee for initial license or renewal <i>(832 Ind. Admin. Code 2-1-2; Ind. Code 25-15-6-7).</i></p>	<p>Does not appear to allow for “inactive status.” Individuals who are 70 years of age or older or who are not actively engaged in the profession may apply to be exempted from continuing education requirements. <i>(Ky. Rev. Stat. 316.130.)</i></p>	<p>Does not appear to allow for “inactive status.”</p>	<p>\$400 – same as fee for initial license or renewal <i>(49 Pa. Code 13.231(d) and 13.12).</i></p>	<p>\$10 plus the standard renewal fee for the license (\$80 for a funeral director or \$200 for funeral services) <i>(W.Va. Code R. 6-7-6).</i></p>
Discipline for soliciting business through an unlicensed person	<p>No provision under current law.</p> <p>The bill permits the Board to take disciplinary action against a licensed funeral professional who</p>	<p>No similar provision.</p>	<p>No similar provision.</p>	<p>A person may not procure a capper, steerer, or solicitor to obtain funeral directing or embalming. A person may not allow a capper, steerer, or</p>	<p>Authorizes disciplinary action against a licensee who pays or extends an offer to pay an unlicensed person for the solicitation or procurement of</p>	<p>Authorizes disciplinary action against a licensee for employing cappers, steerers, solicitors, or other similar persons to obtain funeral or cremation</p>

Regulation of Funeral Professionals						
	Ohio	Indiana	Kentucky	Michigan	Pennsylvania	West Virginia
	provides services to a person knowing that those services were sold to that person by another person who lacked a license or permit to perform the services (<i>R.C. 4717.14</i>).			solicitor to obtain funeral directing or embalming for a licensed person or funeral establishment. (<i>Mich. Comp. Laws 339.1810(1)(b.)</i>)	clientele (<i>49 Pa. Code 13.202(5)</i>).	business (<i>W. Va. Code 30-6-23(a)(12)</i>).
Identification of cremated remains	Current law requires that an identification tag be placed on any vessel containing cremated remains. Under the bill, an identification tag is required only if the vessel contains all of the cremated remains or more than ten cubic inches of cremated remains. (<i>R.C. 4717.13(B)(3)</i> .)	Requires crematory authorities to maintain an identification system that ensures the authority can identify the human remains in the authority's possession throughout all stages of the cremation process (<i>Ind. Code. 23-14-31-42</i>).	Appropriate identification must be placed upon the exterior of a cremation container. When a temporary container is used, the outside must clearly identify the name of the decedent. (<i>Ky. Rev. Stat. 367.97507(2) and 367.97521(4)</i> .)	No similar provision.	No similar provision.	Crematory must place within the container an identifying disk, tag, or other permanent label, which must be made of durable materials and contain the name of the decedent along with a reference number for the crematory to record (<i>W. Va. CSR 6-2-14.2</i>).

Regulation of Funeral Professionals						
	Ohio	Indiana	Kentucky	Michigan	Pennsylvania	West Virginia
Civil and criminal immunity	The bill extends civil immunity to funeral directors and crematory operators if the cremation was performed in accordance with the laws governing the disposition of cremated remains (<i>R.C. 4717.30</i>).	Crematory or funeral home is not liable for carrying out a cremation in accordance with a cremation authorization form. In certain cases in which remains were transferred from a crematory to a funeral home because the cremation authorization form did not identify the manner of final disposition, the funeral home is not liable for disposition of the remains in any manner permitted by law. <i>(Ind. Code 23-14-31-28(d), 23-14-31-30(b), 23-14-31-47, 25-15-9-19(b), and 23-14-31-27(a)(1)(H).)</i>	A crematory or funeral director is not liable for good faith reliance on representations made by the declaration or authorizing agent regarding the authority or decision to cremate (<i>Ky. Rev. Stat. 367.97524(4) and (5) and 367.97527(3)</i>).	A person licensed in mortuary science is immune from civil liability for the proper disposition of unclaimed cremated remains if the person otherwise complies with the requirements regarding unclaimed cremated remains (<i>Mich. Comp. Laws 339.1809a(1)</i>).	No similar provision.	Funeral establishment, crematory, or funeral director is not subject to criminal or civil liability for carrying out the lawful instructions of a decedent or the person believed to be the authorized representative (<i>W. Va. Code 30-6-22a(e) and 30-6-3; W. Va. CSR 6-1-24.7 and 6-2-23.7</i>).

Regulation of Funeral Professionals						
	Ohio	Indiana	Kentucky	Michigan	Pennsylvania	West Virginia
Reciprocity	<p>Under current law, the Board may issue an embalmer's or funeral director's license to an applicant who holds an equivalent license in another state, is in good standing with that state, shows proof that the other state's license requirements are substantially equal to those that apply in Ohio, and submits Ohio's \$200 license fee.</p> <p>The bill requires the Board to issue a reciprocal license under those conditions. <i>(R.C. 4717.10(A).)</i></p>	<p>Waives exam and experience requirements for funeral director license applicants who are licensed in another state with requirements that are substantially equal to those in Indiana <i>(Ind. Code 25-15-4-5)</i>.</p>	<p>The Board of Embalmers and Funeral Directors is required to issue a reciprocal funeral director or embalmer license to a person who holds an equivalent license in another state, has met the same or similar requirements that apply in Kentucky, and that pays the standard license renewal fee <i>(Ky. Rev. Stat. 316.140)</i>.</p>	<p>The Mortuary Science Board is required to issue a reciprocal mortuary science license to a person holding a dual license as a funeral director and embalmer in another state who completed an accredited mortuary science program, passed all required parts of an exam administered and developed by a national or international association of funeral service licensing boards, files a statement from the examining board of the state in which they are licensed that shows the basis on which the</p>	<p>The Board of Funeral Directors is permitted (but not required) to issue a "limited license" to a person who is licensed as a funeral director in a "reciprocal state," is in good standing with that state, and pays the standard Pennsylvania license fee <i>(49 Pa. Code 13.77)</i>.</p>	<p>The Board of Funeral Service Examiners is permitted (but not required) to issue a reciprocal license to a person of good moral character who holds an equivalent license in another state that has substantially equivalent educational and exam requirements and extends similar reciprocity to West Virginia licensees. Reciprocal license is not available to persons who are under investigation by a disciplinary authority in another state or who have failed the West Virginia</p>

Regulation of Funeral Professionals						
	Ohio	Indiana	Kentucky	Michigan	Pennsylvania	West Virginia
				license was granted and whether that board has disciplined the licensee, and passes an examination on Michigan mortuary science laws (<i>Mich. Comp. Laws 339.1806</i>).		examination for licensure as an embalmer or funeral director. Applicants for a reciprocal license must pay the standard West Virginia license fee. <i>(W. Va. Code 30-6-12.)</i>