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OHIO LEGISLATIVE SERVICE COMMISSION

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Office of Research
and Drafting

Legislative Budget
Office

S.B. 109*
135th General Assembly

Occupational Regulation Report

[Click here for S.B. 109's Bill Analysis / Fiscal Note](#)

Primary Sponsor: Sen. Hackett

Impacted Professions: Physicians, physician assistants, and other occupations regulated by the State Medical Board

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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

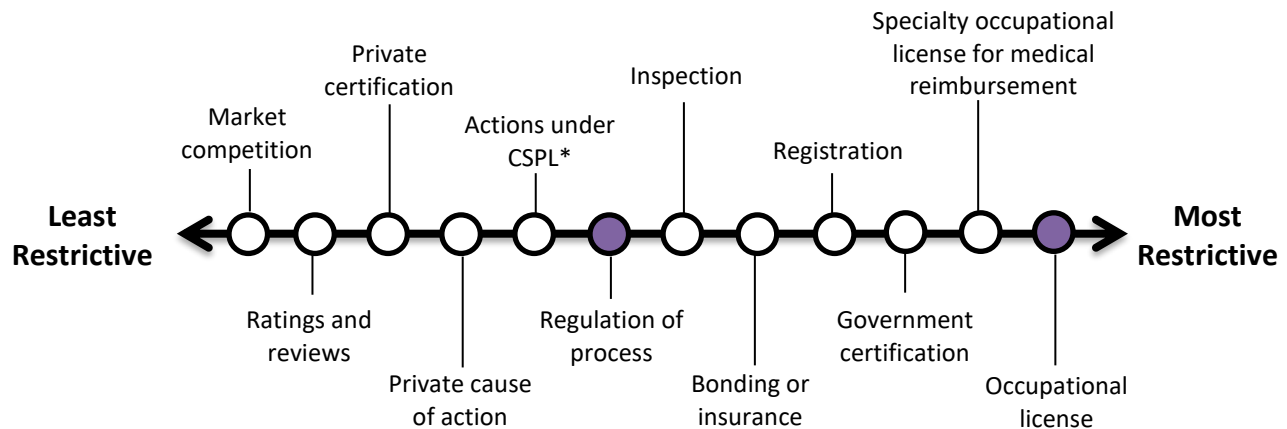
The general policy of the state is reliance on market competition and private remedies to protect the interests of consumers in commercial transactions involving the sale of goods or services. For circumstances in which the General Assembly determines that additional safeguards are necessary to protect 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. 109. 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. 109 makes various changes that affect holders of licenses issued by the State Medical Board, which include physicians, podiatrists,³ physician assistants⁴ (PAs), massage therapists, mechanotherapists, naprapaths,⁵ dietitians, anesthesiologist assistants, respiratory care professionals, acupuncturists, radiologist assistants, and genetic counselors.⁶ For those licensees, the bill does both of the following:

- Expands grounds for license suspension without a prior hearing and for automatic license suspension;⁷
- Increases reporting requirements concerning criminal offenses and violations of the State Medical Board Law.⁸

The bill also subjects certain health care professionals who commit certain sex offenses to increased criminal penalties. The bill does so by expanding the offenses of sexual battery and rape to include specified circumstances involving medical treatment.⁹

In addition, under the bill, certain health care professionals who sexually abuse a minor patient (or a patient under 21 with disabilities) in the course of medical treatment are subject to

³ R.C. Chapter 4731.

⁴ R.C. Chapter 4730.

⁵ R.C. Chapter 4731.

⁶ R.C. Chapters 4759, 4760, 4761, 4762, 4774, and 4778, respectively.

⁷ R.C. 4730.25(I), 4731.22(I) and (Q), 4759.07(M), 4760.13(J), 4761.09(L), 4762.13(J), 4774.13(J), and 4778.14(J).

⁸ R.C. 4730.32(C), 4730.99(B), 4731.224(C), 4731.99(E), 4759.14(B), 4759.99, 4760.16(C), 4760.99(B), 4761.14, 4761.99, 4762.16(C), 4762.99(B), 4774.16(C), 4774.99(B), 4778.171(B), and 4778.99.

⁹ R.C. 2907.02 and 2907.03.

the comparatively lengthy statute of limitations within which the victim may sue them for childhood sexual abuse.¹⁰

Necessity of regulations

S.B. 109's primary sponsor, Senator Bob Hackett, testified that the bill is the culmination of hard work done by a working group convened by an executive order that Governor Mike DeWine issued in 2019. He stated that the working group was tasked with better understanding the State Medical Board's handling of a matter involving Richard Strauss, an Ohio State University doctor who abused numerous patients. He further explained that the working group looked at not only the Board's handling of the Strauss case in the 1990s and early 2000s but also at the Board's current operations. In addition, he said that the working group reviewed 25 years of closed sexual misconduct cases to ensure that the Board handled them properly. He indicated that the bill is a direct result of the working group's recommendations.

Senator Hackett testified that the bill updates provisions of the criminal code to increase licensed medical professionals' accountability for prohibited sexual activity. He explained that the bill also gives the Board more tools to hold licensees accountable and to offer greater protection to the public, such as authorizing an automatic 90-day suspension of the Ohio license of an individual whose license was suspended, revoked, or surrendered in another state.

Senator Hackett stated that Ohio has a duty to protect its citizens from unthinkable tragedies like the Richard Strauss matter. He said that the bill does so by holding medical professionals to the same standards as those who practice other professions involving a similarly unbalanced power dynamic with those they serve, such as teachers, coaches, and mental health professionals. He asserted that the bill provides the Board with adequate resources to remove bad actors from practice in a timely manner.¹¹

Restrictiveness of regulations

Licensing provisions

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

¹⁰ R.C. 2305.111.

¹¹ See [Senator Bob Hackett Sponsor Testimony \(PDF\)](#), available on the General Assembly's website, legislature.ohio.gov, by searching for "SB 109" and looking under the "Committee Activity" tab.

- 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.¹²

The health care professionals regulated by the bill must be licensed to practice.¹³ These licenses appear to satisfy the state policy's first criterion because they provide services regulated by both state and federal law. For example, physicians and PAs are authorized to prescribe controlled substances, which is a service that is regulated by both state law and the Federal Comprehensive Drug Abuse Prevention and Control Act.¹⁴ Another example involves federal law governing the Veterans Health Administration, which requires physicians appointed to a position with the Administration to satisfy specified educational requirements and to be licensed to practice in a state.¹⁵

As for the state policy's second criterion, the licensed occupations regulated by the bill appear to satisfy it. The Occupational Licenses for Out-of-State Applicants Law generally requires the State Medical Board to issue licenses to applicants who hold analogous out-of-state occupational licenses.¹⁶

It does not appear that the licensed health care occupations involved with the bill satisfy the state policy's third criterion, and the bill does not bring them into alignment with it. The applicable licensing requirements generally are established in state laws rather than being based on uniform national laws, practices, and examinations.

In this report, Board-issued certificates are referred to as licenses. This is because certificates issued by the State Medical Board (such as a certificate to recommend the use of medical marijuana¹⁷) meet the state policy's definition of a license (i.e., a nontransferable authorization in law that an individual must possess to perform a lawful occupation for compensation based on meeting personal qualifications, such as education or training, that are established by statute or rule).¹⁸

License suspension without prior hearing

The bill appears to increase restrictiveness by adding a circumstance in which a State Medical Board-regulated licensee may have the license suspended without a prior hearing. This change applies to all of the occupations that the Board licenses, including physicians,

¹² R.C. 4798.02, not in the bill.

¹³ R.C. Chapters 4730, 4731, 4759, 4760, 4761, 4762, 4774, and 4778.

¹⁴ 21 United States Code (U.S.C.) 801 *et seq*; R.C. 3719.01, 3719.06, and 4729.01, not in the bill.

¹⁵ 38 U.S.C. 7402.

¹⁶ R.C. 4796.03, not in the bill.

¹⁷ R.C. 4731.30, not in the bill.

¹⁸ R.C. 4798.01, not in the bill.

podiatrists,¹⁹ PAs,²⁰ massage therapists, mechanotherapists, naprapaths,²¹ dietitians, anesthesiologist assistants, respiratory care professionals, acupuncturists, radiologist assistants, and genetic counselors.²²

The bill adds that the Board may suspend a license without a prior hearing if it receives verifiable information that both of the following apply:

- A licensee has been charged in any state or federal court with a crime classified as a felony under the charging court's law;
- The conduct constitutes a disciplinary violation under Ohio law.

Under continuing law, the Board may suspend any such license without a prior hearing if both of the following apply:

- Clear and convincing evidence exists that a disciplinary violation has occurred;
- The licensee's continued practice or prescribing presents a danger of immediate and serious harm to the public.

Thus, it appears that, under the bill, a licensee charged with a felony may have the licensee's license suspended without a prior hearing even if no clear and convincing evidence exists that the licensee's continued practice presents a danger of immediate and serious harm to the public. Therefore, in this respect, the bill appears to increase restrictiveness.²³

Automatic suspension

The bill expands grounds for automatic license suspension by the Board to include both of the following:

- Commission of the offense of human trafficking; and
- Disciplinary actions by agencies in other states.

Human trafficking

The bill appears to increase restrictiveness by adding a new reason for which the Board may automatically suspend a license: a licensee's conviction of the offense of trafficking in persons. This change applies to all holders of a Board-issued license.

Under continuing law, grounds for such automatic license suspension include conviction of other specified felonies such as murder, kidnapping, and rape. Both current law and the bill

¹⁹ R.C. Chapter 4731.

²⁰ R.C. Chapter 4730.

²¹ R.C. Chapter 4731.

²² R.C. Chapters 4759, 4760, 4761, 4762, 4774, and 4778, respectively.

²³ R.C. 4730.25(G), 4731.22(G), 4759.07(H), 4760.13(H), 4761.09(H), 4762.13(H), 4774.13(H), and 4778.14(H).

specify that continued practice during an automatic suspension is considered to be practicing without a license, for which the continuing penalties are as follows:

Prohibition Against Practicing Without a License	Penalty for First Offense	Penalty for Subsequent Offense
Physicians, podiatrists, massage therapists, naprapaths, and mechanotherapists <i>(R.C. 4731.15(E) 4731.41, 4731.43, and 4731.60, not in the bill)</i>	Fifth degree felony <i>(R.C. 4731.99(A))</i>	Fourth degree felony <i>(R.C. 4731.99(A))</i>
PAs, anesthesiologist assistants, acupuncturists, and radiologist assistants <i>(R.C. 4730.02(A), 4760.02, 4762.02, and 4774.02, not in the bill)</i>	First degree misdemeanor <i>(R.C. 4730.99(A), 4760.99(A), 4762.99(A), and 4774.99(A))</i>	Fourth degree felony <i>(R.C. 4730.99(A), 4760.99(A), 4762.99(A), and 4774.99(A))</i>
Dieticians <i>(R.C. 4759.02, not in the bill)</i>	Minor misdemeanor <i>(R.C. 4759.99)</i>	First degree misdemeanor <i>(R.C. 4759.99)</i>
Respiratory care professionals <i>(R.C. 4761.10(A), not in the bill)</i>	Minor misdemeanor <i>(R.C. 4761.99)</i>	Fourth degree misdemeanor <i>(R.C. 4761.99)</i>
Genetic counselors <i>(R.C. 4778.02, not in the bill)</i>	First degree misdemeanor <i>(R.C. 4778.99)</i>	Fifth degree felony <i>(R.C. 4778.99)</i>

Continuing law specifies that the licensee subject to the automatic suspension is entitled to notification from the Board by certified mail or in person. The Board must provide the notice in accordance with the Administrative Procedure Act. If the licensee fails to make a timely request for an adjudication under that law, the license is permanently revoked.²⁴

Discipline by agencies in other states

The bill appears to increase restrictiveness by specifying that the practice of a physician, podiatrist, massage therapist, mechanotherapist, or naprapath, as well as the individual's Board-issued license, is automatically suspended if either of the following occurs:

- A health care professional regulatory agency in Ohio or in another jurisdiction suspends or revokes the individual's license or certificate to practice; or
- The license or certificate is relinquished in lieu of discipline by such an agency.

²⁴ R.C. 4730.25(I), 4731.22(I), 4759.07(M), 4760.13(J), 4761.09(L), 4762.13(J), 4774.13(J), and 4778.14(J).

Under the bill, the automatic suspension begins immediately on entry of the order by the regulatory agency and lasts for 90 days to permit the Board to investigate. A licensee who continues to practice during the automatic suspension is considered to be practicing without a license (for related penalties, see “**Human trafficking**,” above).

The bill specifies that the licensee is entitled to notification of the automatic suspension from the Board by certified mail or in person. The Board must provide the notice in accordance with the Administrative Procedure Act. Under the bill, a licensee who fails to make a timely request for an adjudication under that law is not entitled to a hearing; instead, the Board may adopt a final order containing its findings. In that final order, the Board may subject the licensee to disciplinary action (such as license limitation or revocation) available under continuing law.²⁵

Process regulations

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.²⁶

Whether these mechanisms are a sufficient means of protecting consumers of health care provided by licensees regulated under the bill is unclear. To protect the health and safety of patients, current Ohio law establishes numerous process regulations that govern the providing of medical services and mental health services. However, with respect to the bill, determining if its process regulations are appropriate to protect consumers is a policy decision.

Reporting requirements regarding violations

Report concerning any Board licensee

The bill appears to increase restrictiveness by adding a reason for which a Board licensee must report to the Board. Specifically, a licensee who has reasonable cause to suspect that a Board licensee has committed or participated in criminal conduct or sexual misconduct must report that information within 30 days. The suspicion must be based on facts that would cause a reasonable person in a similar position to suspect. (These provisions also apply to licensee professional associations.)²⁷

A person who violates this provision is guilty of a fourth degree misdemeanor, unless the offender has previously been convicted of the same violation. In that case, the person is guilty of

²⁵ R.C. 4731.22(Q).

²⁶ R.C. 4798.01, not in the bill.

²⁷ R.C. 4730.32(C), 4731.224(C), 4759.14(B), 4760.16(C), 4761.14(C), 4762.16(C), 4774.16(C), and 4778.171(B).

a first degree misdemeanor.²⁸ In addition, the person may be disciplined by the Board via disciplinary authority established under continuing law, which includes taking actions such as license revocation or suspension.²⁹

Report concerning self

The bill appears to increase restrictiveness by expanding the information that a Board licensee must self-report to the Board. Specifically, a licensee must self-report criminal *charges* regarding criminal conduct, sexual misconduct, or any conduct involving the use of a motor vehicle while under the influence of alcohol or drugs. The report must be made within 30 days of the criminal charge being filed. (This requirement adds to the current requirement to self-report criminal *offenses* for purposes of license renewal.)

A person who fails to comply with the bill's self-reporting requirement may be disciplined by the Board via disciplinary authority established under continuing law.³⁰

Self-disclosure to patients regarding certain probationary orders

Content, timing, recipients, and maintaining of disclosure

The bill appears to increase restrictiveness by requiring a Board licensee³¹ who is subject to a probationary order related to sexual misconduct or patient harm to provide a written disclosure to each patient regarding probation status and length, any practice restrictions, and contact information. The disclosure also must include an explanation of how the patient can find additional information regarding the probation via the licensee's profile page on the Board's website. Alternatively, the bill allows the licensee to make the disclosure to the patient's guardian or to a key third party who is closely involved in a patient's health care decision-making.

The licensee must provide the disclosure before the patient's first visit following the probationary order. The patient (or the patient's guardian or a key third party) must sign the disclosure, and the licensee must maintain a signed copy in the patient's medical record.

Situations that require disclosure

Unless an exception described in the bill applies, the bill requires a licensee to make the written disclosure in both of the following circumstances:

- The Board issues a final order, final adjudicative order, or ratified consent agreement establishing the licensee's commission of any of the following: (1) sexual misconduct with

²⁸ R.C. 4730.99(B), 4731.99(E), 4759.99, 4760.99(B), 4761.99, 4762.99(B), 4774.99(B), and 4778.99.

²⁹ R.C. 4730.25(B), 4731.22(B), 4759.07(A), 4760.13(B), 4761.09(A), 4762.13(B), 4774.13(B), and 4778.14(B).

³⁰ R.C. 4730.25(B), 4730.32(C), 4731.22(B), 4731.224(C), 4759.07(A), 4759.14(B), 4760.13(B), 4760.16(C), 4761.09(A), 4761.14(D), 4762.13(B), 4762.16(C), 4774.13(B), 4774.16(C), 4778.14(B), and 4778.171(B).

³¹ An LSC technical amendment is needed to remove mention of oriental medicine practitioners from the bill, as those practitioners are not regulated by the State Medical Board, effective April 12, 2021 (see R.C. 4762.011, not in the bill).

a patient or key third party, (2) drug or alcohol abuse resulting in patient harm or impairing safe practice, (3) criminal conviction resulting in harm to patient health, or (4) inappropriate prescribing resulting in patient harm.

- A statement of issues alleged that the licensee committed any of the acts described directly above and, notwithstanding a lack of admission of guilt, a Board-ratified consent agreement includes express acknowledgement that patient disclosure would serve to protect the public interest.

The exceptions concern emergency situations, the patient being unconscious, or the practitioner's lack of direct interaction with the patient.³²

Other regulatory policies

Sex offenses

The bill expands the criminal offense of sexual battery to include specified circumstances involving medical treatment (and potentially mental health treatment) as described below. These changes increase restrictiveness from a criminal penalty standpoint.

However, the changes do not appear to affect restrictiveness regarding whether a licensed medical professional is subject to discipline (such as license suspension or revocation) by the Board, as the Board already may discipline a licensee for either of the following:

- A misdemeanor that is committed in the course of practice or that involves moral turpitude; or
- A felony.³³

Likewise, the potential changes regarding mental health professionals do not appear to affect restrictiveness regarding whether the Counselor, Social Worker, and Marriage and Family (CSW) Board may take disciplinary action (such as license suspension or revocation) against a licensed clinical counselor, professional counselor, independent marriage and family therapist, marriage and family therapist, social worker assistant, social worker, independent social worker, art therapist, or music therapist. Under continuing law, the CSW Board already may discipline such a licensee for either of the following:

- A misdemeanor that is committed in the course of practice; or
- A felony.³⁴

³² R.C. 4731.2210.

³³ R.C. 4730.25(B), 4731.22(B), 4759.07(A), 4760.13(B), 4761.09(A), 4762.13(B), 4774.13(B), and 4778.14(B).

³⁴ R.C. 4757.36(C), not in the bill.

Sexual battery

Under the bill, a “licensed medical professional” (defined as a Board-licensed physician, podiatrist, PA, or massage therapist³⁵) who engages in sexual activity with another who is not their spouse; who causes another, not their spouse, to engage in sexual activity with them; or who causes two or more persons to engage in sexual activity commits the offense of sexual battery if both of the following apply:

- The other person, or one of the other persons, is their patient;
- The sexual activity occurs in the course of medical treatment.³⁶

The bill defines “medical treatment” as in-person examination, consultation, health care, treatment, procedure, surgery, or other in-person services provided by a licensed medical professional under the legal authority conferred by a license or certificate.³⁷

Continuing law defines “sexual activity” as either or both of the following:

- “Sexual conduct,” which means vaginal intercourse between a male and female; anal intercourse, fellatio, and cunnilingus between persons regardless of sex; and, without privilege to do so, the insertion, however slight, of any part of the body or any instrument, apparatus, or other object into the vaginal or anal opening of another. Penetration, however slight, is sufficient to complete vaginal or anal intercourse.
- “Sexual contact,” which means any touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or, if the person is a female, a breast, for the purpose of sexually arousing or gratifying either person.³⁸

It appears that the bill’s expansion of the offense of sexual battery to include the above-described, prohibited activity subjects offending licensed health professionals to increased criminal penalties. Therefore, the bill appears to increase restrictiveness. Under current law, that activity committed by a licensed medical professional might, depending on the facts, constitute the lesser offense of sexual imposition (for which the penalty ranges from a third degree misdemeanor to a first degree misdemeanor).³⁹ Under both current law and the bill, the penalty for sexual battery is higher (under the bill, it ranges from a fifth degree felony to a second degree felony).⁴⁰

³⁵ R.C. 2907.01(S).

³⁶ R.C. 2907.03(A).

³⁷ R.C. 2907.03(C).

³⁸ R.C. 2907.01.

³⁹ R.C. 2907.06.

⁴⁰ R.C. 2907.03(B).

The bill also requires a prosecuting attorney or court to notify the Board of the indictment or conviction, respectively, of a licensed health professional who was charged with the sexual battery of a patient in the course of medical treatment.⁴¹

Sexual imposition

The effect of the bill's modification of the offense of sexual imposition on restrictiveness is unclear. Currently, a mental health professional commits a criminal offense if:

- The mental health professional engages in sexual conduct or has sexual contact with another who is not their spouse; causes another, not their spouse, to engage in sexual conduct or have sexual contact with the mental health professional; or causes two or more persons to engage in sexual conduct or have sexual contact;
- The other person or one of the other persons is the mental health professional's client or patient; and
- The mental health professional induces the client or patient to submit by falsely representing to him or her that the sexual conduct or sexual contact is necessary for mental health treatment purposes.⁴²

If the circumstances described above involve in sexual conduct, the professional commits the offense of sexual battery. If the circumstances involve sexual contact, the professional commits the offense of sexual imposition.

A "mental health professional" is either:

- An individual who is licensed, certified, or registered under Ohio law, or otherwise authorized in this state, to provide mental health services for compensation, remuneration, or other personal gain; or
- An individual who is not so licensed, certified, registered, or authorized, but who regularly provides or purports to provide mental health services for compensation or remuneration at an established place of business.⁴³

The bill retains the general offense of sexual imposition, but eliminates the specific circumstances that also constitute the offense, including the circumstances described above. For a mental health professional who is a licensed medical professional (e.g., a psychiatrist), the bill may increase restrictiveness because these activities may fall under the new circumstances that constitute sexual battery as described under "**Sexual battery**," above. For a mental health professional who is not a licensed medical professional (e.g., a psychologist), the effect on restrictiveness is not clear, as that professional does not appear to be covered by those new circumstances, but the general offense of sexual imposition remains.

⁴¹ R.C. 2907.17 and 2907.18.

⁴² R.C. 2907.06(A).

⁴³ R.C. 2907.01(O).

The bill specifies that the penalty for sexual battery ranges from a fifth degree felony to a second degree felony.⁴⁴ This is greater than continuing law's penalty for sexual imposition, which ranges from a third degree misdemeanor to a first degree misdemeanor.⁴⁵

Rape involving impairment due to medical or dental treatment

The bill expands the offense of rape to include circumstances in which the victim is substantially impaired due to the influence of any drug or intoxicant administered with victim's consent for the purpose of any kind of medical or dental examination, treatment, or surgery.

It should be emphasized that this prohibition applies to any person and not just to licensees. However, for an offender who holds a license issued by the State Medical Board (or by the State Dental Board), the bill's expansion of the offense of rape appears to increase restrictiveness; rape is the sex offense that entails the greatest criminal penalty, a first degree felony.⁴⁶

Related provisions governing sex offenders

Under the bill, any individual, including a Board licensee, who is convicted of sexual battery or rape (as those offenses are expanded under the bill) is subject to increased requirements under the Sex Offender Registration and Notification Law⁴⁷ and potentially to increased sentences as a sexually violent predator.⁴⁸ In these ways, the bill appears to increase restrictiveness.

Lawsuits for childhood sexual abuse

The bill makes changes to current law governing lawsuits brought by victims of childhood sexual abuse. These changes appear to increase restrictiveness by subjecting the following individuals to the comparatively lengthy statute of limitations within which a victim of childhood sexual abuse may sue them:

- Physicians, podiatrists, PAs, and massage therapists who commit the criminal offense of sexual battery, sexual imposition, or gross sexual imposition against a patient in the course of medical treatment; and
- Any person who commits the offense of rape as expanded under the bill.

Continuing law specifies that, in order to sue, the victim of the offense must have been under age 18 (or under age 21 with a developmental disability or physical impairment) at the

⁴⁴ R.C. 2907.03.

⁴⁵ R.C. 2907.06.

⁴⁶ R.C. 2907.02.

⁴⁷ R.C. Chapter 2950.

⁴⁸ R.C. 2950.01(F) and (G), 2950.151, and 2971.01(I) and (L).

time it occurred. Under continuing law, a perpetrator of childhood sexual abuse may be sued regardless of whether the perpetrator pled guilty to or was convicted of the offense.⁴⁹

Under continuing law, a lawsuit for childhood sexual abuse must be brought within 12 years after the victim reaches the age of majority, which is 18.⁵⁰ Comparatively, this is much longer than continuing law's one-year statute of limitations for bringing a lawsuit for assault and battery involving the sexual abuse of an adult.⁵¹

IMPACT STATEMENT

Opportunities for employment

The employment effects of the bill are minor. The bill does not increase the requirements for employment in a licensed health care profession, so the burden of gaining such a position would be unchanged.

Consumer choice

The consumer choice effects of the bill are negligible. To be sure, removing the license of a health care professional found to be in violation of the conditions of the bill would reduce the number of choices available to consumers, but the number of such license removals would presumably be very low.

Market competition

The market competition effects of the bill are slight, while also complex. The state's preferred policy is reliance on market competition when possible. By potentially reducing the number of licensed providers, the bill could reduce market competition in healthcare markets. However, market competition can fail to produce the efficient amount of consumer protection. Here efficiency is defined as providers with different reputations for patient violation experiencing appropriately corresponding demand for their services, such that the marginal consumer is indifferent between the cost saving that arises from using a less-reputable provider and the increased likelihood of violation by that provider. Instead of this efficiency, a suboptimal outcome arises from an information asymmetry. That is, reputational change requires complete information, but not all violations are reported, not all reported violations become news items, and not all news items are known to all consumers. Thus the laissez-faire solution of relying on ex-post reputational change in a competitive market will not result in efficiency. While the bill could reduce competition by lowering the number of providers in the market, it would increase efficiency by reducing the information asymmetry.

Cost to government

For the bill's fiscal impact on government, please refer to [the LBO fiscal note](#).

⁴⁹ R.C. 2305.111(A) and (C).

⁵⁰ R.C. 2305.111(C) and 3109.01, not in the bill.

⁵¹ R.C. 2305.111(B).

SUMMARY OF PROPOSED REGULATIONS

The bill makes the following changes in addition to those described above under **“Restrictiveness of regulation”**:

Failure to report a crime to law enforcement authorities

- Expands the offense of failure to report a crime by prohibiting any person who knows, or has reasonable cause to suspect, that a licensed medical professional (a physician, podiatrist, PA, or massage therapist) has committed a sex offense against the medical professional’s patient from failing to report such knowledge or reasonable cause to suspect to law enforcement authorities within a certain period of time.
- Grants civil or criminal immunity generally to a person as a result of making a report as described above so long as the person is acting in good faith without fraud or malice.
- Provides that the physician-patient relationship or PA-patient relationship is not a valid reason for excluding evidence against the medical professional in any judicial proceeding resulting from such report regarding the person’s knowledge of, or reasonable cause to suspect, the medical professional’s commission of a sex offense.⁵²

Notice of conviction sent to Board

- Requires the prosecutor to notify the Board of the conviction of, or plea of guilty to, a felony or specified type of misdemeanor of any person licensed or authorized to practice as dietitians, anesthesiology assistants, respiratory care professionals, acupuncturists, radiology assistants, and genetic counselors.⁵³

Peer review committee proceedings

- Excludes proceedings and records in the scope of a peer review committee from confidentiality if they are related to an allegation of sexual misconduct or criminal conduct, as defined, and if they must be produced to comply with a Board-issued subpoena.
- Requires health care entities to provide to the Board, pursuant to a Board-issued subpoena, information, documents, or records related to allegations of sexual misconduct or criminal conduct of Board licensees that were produced or presented during peer review committee proceedings.⁵⁴

⁵² R.C. 2921.22(F).

⁵³ R.C. 2929.42(A).

⁵⁴ R.C. 2305.252(A).

- For purposes of peer review committee proceedings, specifies that Board hearings and investigations involving allegations of sexual misconduct or criminal conduct, as defined, are not considered civil actions.⁵⁵

Health care facility reporting requirement

- Requires health care facilities to report to the Board investigations regarding criminal conduct or sexual misconduct against Board licensees within 30 days of beginning the investigation.⁵⁶
- Shortens from 60 days to 30 days the deadline by which health care facilities that take disciplinary action against a Board licensee must report that information to the Board.⁵⁷ In the case of dietitians and genetic counselors, the bill adds this reporting requirement for health care facilities, thus making the dietitian and genetic counselor law parallel to current law for physicians and other practitioners the Board regulates.⁵⁸

Public Records Law

- Excludes from the definition of “public records” the license or certificate application or renewal responses and supporting documentation submitted to the Board regarding an applicant’s, or a license holder’s, inability to practice according to acceptable and prevailing standards of care by reason of a medical condition.⁵⁹

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

⁵⁵ R.C. 4730.26(E), 4731.22(F), 4759.05(B), 4760.14(D), 4761.03(E), 4762.14(D), 4774.14(D), and 4778.18(D).

⁵⁶ R.C. 4730.32(B), 4731.224(B), 4759.14(B), 4760.16(B), 4761.14(B), 4762.16(B), 4774.16(B), and 4778.171(B).

⁵⁷ R.C. 4730.32(B), 4731.224(B), 4760.16(B), 4761.14(B), 4762.16(B), and 4774.16(B).

⁵⁸ R.C. 4759.14(B)(1) and 4778.171(B)(1)

⁵⁹ R.C. 149.43(A).

COMPARISON TO OTHER STATES

S.B. 109’s provisions share some similarities with laws in the states surrounding Ohio. Like the bill, Michigan law defines certain criminal sex offenses to include specified circumstances involving medical treatment. However, the other surrounding states do not do so.

In addition, the surrounding states generally authorize automatic suspension of a medical license or suspension without a prior hearing. Typical grounds for such disciplinary actions include conviction of a specified felony, disciplinary action by a medical licensing board in another state, or the protection of public health and safety.

The table below explains these provisions in greater detail.

Regulation of Health Care Professionals		
State	Sex Offenses Specifically Involving Medical Situations	Criteria for Suspension Without a Prior Hearing or for Automatic Suspension of Physician’s License
Ohio (under the bill)	<p>Rape (criminal offense): when any individual engages in sexual conduct with another person who is substantially impaired due to the influence of any drug administered with consent for the purpose of medical or dental examination, treatment, or surgery.</p> <p>Sexual battery (criminal offense): when a licensed medical professional engages in sexual activity with a patient (or causes the patient to engage in sexual activity) in the course of medical treatment.</p> <p>Childhood sexual abuse (civil cause of action): when all of the following apply: (1) a licensed medical professional commits the crime of gross sexual imposition or sexual imposition, (2) the victim is the professional’s patient who is</p>	<p>Suspension without a prior hearing for either of the following: (1) a finding of clear and convincing evidence of a disciplinary violation such that continued practice presents a danger of serious and immediate harm to the public, or (2) a felony charge that constitutes a disciplinary violation.</p> <p>Temporary automatic suspension (pending Board hearing or order) on conviction of specified felonies including murder and certain other violent crimes; certain sex crimes; kidnapping; arson, robbery, or burglary that is aggravated; and human trafficking.</p> <p>90-day automatic suspension if a regulatory agency in another state revokes, suspends, or accepts surrender of physician’s license.</p>

Regulation of Health Care Professionals		
State	Sex Offenses Specifically Involving Medical Situations	Criteria for Suspension Without a Prior Hearing or for Automatic Suspension of Physician's License
	under 18 (or under 21 with a disability), and (3) the sexual contact occurs in the course of medical treatment. <i>(R.C. 2305.111, 2907.02, and 2907.03)</i>	Interstate Medical Licensure Compact (Section 10(d)): Automatic 90-day suspension if a physician's license issued in another member state is suspended, surrendered in lieu of discipline, or revoked. ⁶⁰ <i>(R.C. 4731.22(G), (I), and (Q), and 4731.11, not in the bill)</i>
Indiana	No clear equivalent.	Summary suspension for 90 days before final adjudication or during appeals process if practitioner represents a clear and immediate danger to the public health and safety if the practitioner is allowed to continue to practice. Interstate Medical Licensure Compact: Same as Ohio. <i>(Ind. Code 25-1-9-4 and 25-22.5-16-10)</i>
Kentucky	No clear equivalent.	Issuance of an emergency order to suspend, limit, or restrict a license without a prior hearing for probable cause to believe that a disciplinary order has been violated or that continued practice is a danger to the health, welfare, and safety of patients or the general public. Interstate Medical Licensure Compact: Same as Ohio. <i>(Ky. Rev. Stat. 13B.125, 311.592, and 311.6208)</i>
Michigan	Criminal sexual conduct in the first degree: when any person does all of the following: (1) engages in sexual	Summary suspension of a license or registration if the public health, safety, or welfare requires emergency action in

⁶⁰ See [Participating States](#), which may be accessed by searching "participating states" on the Interstate Medical Licensure Compact website: imlcc.org.

Regulation of Health Care Professionals		
State	Sex Offenses Specifically Involving Medical Situations	Criteria for Suspension Without a Prior Hearing or for Automatic Suspension of Physician’s License
	<p>penetration with another person, (2) engages in the medical treatment or examination of that person in a manner or for purposes that are medically recognized as unethical or unacceptable, and (3) causes personal injury to that person.</p> <p>Criminal sexual conduct in the second degree: when any person does all of the following: (1) engages in sexual contact with another person, (2) is aided or abetted by one or more other persons, and (3) to accomplish the sexual contact, engages in unethical or unacceptable medical treatment or an examination as described above.</p> <p>Criminal sexual conduct in the third degree: when any person engages in both of the following: (1) sexual penetration with another person and (2) unethical or unacceptable medical treatment or examination as described above.</p> <p>Criminal sexual contact in the fourth degree: when any person engages in both of the following: (1) sexual contact with another person and (2) unethical or unacceptable medical treatment or examination as described above.</p> <p><i>(Mich. Comp. Laws 750.520b(1), 750.520c(1), 750.520d(1), and 750.520e(1))</i></p>	<p>accordance with Michigan’s administrative Procedure Act, which includes if a licensee or registrant is convicted of a felony; a misdemeanor punishable by imprisonment for a maximum term of 2 years; or a misdemeanor involving the illegal delivery, possession, or use of a controlled substance.</p> <p>Interstate Medical Licensure Compact: Same as Ohio <i>(Mich. Comp. Laws 333.16189 and 333.16233)</i></p>
Pennsylvania	No clear equivalent.	30-day temporary suspension without a prior hearing for circumstances presenting immediate and clear danger to public health and safety.

Regulation of Health Care Professionals		
State	Sex Offenses Specifically Involving Medical Situations	Criteria for Suspension Without a Prior Hearing or for Automatic Suspension of Physician’s License
		Automatic suspension on conviction of felony drug offense or on commitment to an institution due to mental incompetency. <i>(63 P.S. 42.16a, 271.14, and 422.40)</i>
West Virginia	No clear equivalent.	15-day temporary suspension or revocation without prior hearing if continued practice is an immediate danger to the public Interstate Medical Licensure Compact: Same as Ohio. <i>(W. Va. Code 30-1C-10 and 30-3-14)</i>