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# OHIO LEGISLATIVE SERVICE COMMISSION

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**H.B. 88\***  
**134<sup>th</sup> General Assembly**

## Occupational Regulation Report

[Click here for H.B. 88's Bill Analysis / Fiscal Note](#)

**Primary Sponsor:** Rep. Patton

**Impacted Profession:** Roofing 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.<sup>1</sup>

## 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."<sup>2</sup>

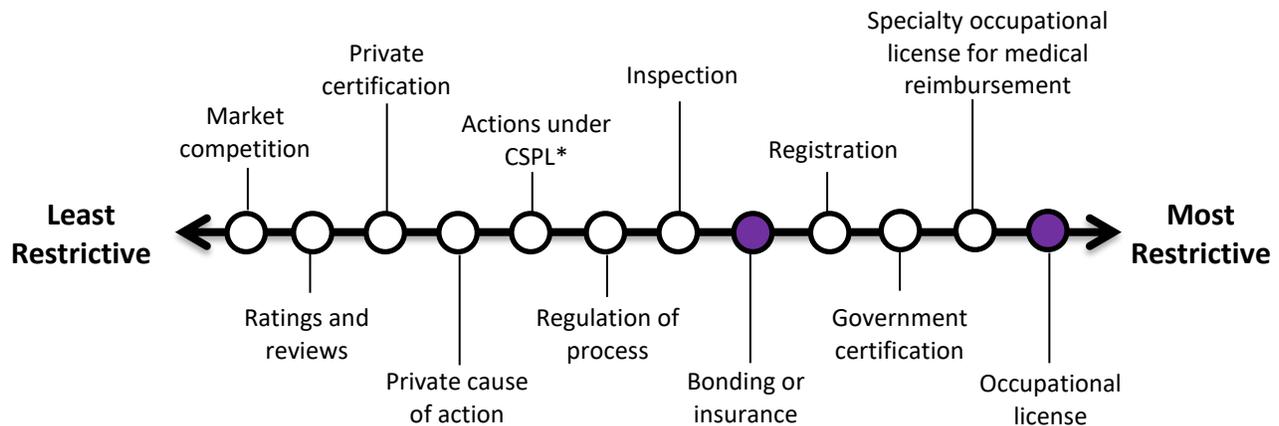
The degree of "restrictiveness" of an occupational regulation is prescribed by statute. The following graphic identifies each type of occupational regulation expressly mentioned in the state's policy by least to most restrictive:

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\* This report addresses the "As Introduced" version of H.B. 88. It does not account for changes that may have been adopted after the bill's introduction.

<sup>1</sup> R.C. 103.26, not in the bill.

<sup>2</sup> R.C. 4798.01 and 4798.02, neither in the bill.



\*CSPL – The Consumer Sales Practices Law

The bill establishes a new licensure requirement for commercial roofing contractors.<sup>3</sup> Like other specialty contractors licensed by the Ohio Construction Industry Licensing Board (OCILB), commercial roofing contractors would be required to maintain contractor’s liability insurance in order to obtain a license and remain in good standing.<sup>4</sup> The bill prohibits local governments from imposing additional eligibility requirements on state-licensed commercial roofing contractors seeking a local license or registration.<sup>5</sup>

## Necessity of regulations

Representative Patton, the bill’s sponsor, testified that H.B. 88 is needed to protect the general public and curb “1099 abuse;” the practice of wrongfully classifying employees as independent contractors to avoid withholding state and federal income taxes and paying into workers’ compensation and unemployment compensation. The testimony references increasing complexity of the roofing trade – particularly when commercial buildings are involved – as a reason for requiring licensure.<sup>6</sup>

## Restrictiveness of regulations

### Licensure

Licensure is the most restrictive of all regulatory options within the state’s continuum. 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 the provision of a service regulated by both state and federal law, (2) the

<sup>3</sup> R.C. 4740.01, 4740.02, 4740.04, and 4740.12.

<sup>4</sup> R.C. 4740.06(B)(4), not in the bill.

<sup>5</sup> R.C. 715.27 and 3781.012.

<sup>6</sup> Representative Tom Patton, [H.B. 88 Sponsor Testimony](#), House Commerce and Labor Committee, May 5, 2021.

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.<sup>7</sup>

The roofing trade is currently subject to regulation under chapter 15 of the International Building Code (IBC) which has been adopted in all 50 U.S. states.<sup>8</sup> The IBC prescribes minimum construction standards to ensure public safety, health, and welfare in commercial and industrial buildings. The regulations do not require, recommend, or provide uniform standards for the licensure of roofing contractors.

The bill does not allow roofing contractors licensed in other states to perform commercial roofing services in Ohio without first obtaining a license in this state. Out-of-state contractors are exempt only from the bill's examination requirement and only if the state in which the contractor is licensed offers at least the same degree of reciprocity to Ohio contractors.

There appears to be no national consensus regarding the licensure of roofing contractors. Of the states that regulate roofers, the bill's regulatory framework would not be the most restrictive; however, a substantial number of U.S. states have no statutory roofing contractor licensure requirements. In many states, including Ohio, local governments may impose licensure requirements for contractors performing services within the local government's jurisdiction.

## **Insurance**

Under the state's general policy on occupational regulations, an insurance requirement is appropriate when the intent of the regulation is to protect against potential damages to third parties other than the seller or the buyer, and other types of externalities.<sup>9</sup> As emphasized in Representative Patton's sponsor testimony, roofing installation and repairs can be dangerous when not preformed properly. The bill's insurance requirement would seemingly increase the likelihood that a person who is injured or incurs property damage resulting from negligent work of a roofing contractor will be compensated for those damages. For that reason, the regulation appears to be consistent with the state's policy.

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# **IMPACT STATEMENT**

## **Opportunities for employment**

The bill limits employment opportunities for unlicensed roofing contractors and their employees to the provision of roofing services on residential buildings and industrialized units. Only roofing contractors who are willing and able to meet the bill's requirements, as listed above, are permitted, under the bill, to take advantage of employment opportunities in commercial roofing.

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<sup>7</sup> R.C. 4798.02(B)(7), not in the bill.

<sup>8</sup> See, Ohio Administrative Code (O.A.C.) Chapter 4101:1-15 and International Code Council, *International Building Code*, Chapter 15.

<sup>9</sup> R.C. 4798.02(B)(3), not in the bill.

## Consumer choice

The bill may reduce the number of roofing contractors available for Ohio consumers to choose from to provide commercial roofing services. If market competition in the industry is reduced, there may be an increase in the cost of services.

## Market competition

The bill may reduce the number of roofing contractors providing commercial roofing services in Ohio, which could, in turn, reduce competition in the industry. Presumably, most Ohio contractors for whom commercial roofing is a significant portion of their current business will obtain licenses. The bill permits current contractors who have been actively engaged as roofing contractors in Ohio for at least three years immediately before the bill's effective date to obtain a license without passing an examination as long as they apply within a year of the bill's effective date and meet other criteria. However, some contractors may choose not to become licensed; particularly those for whom commercial roofing services in Ohio are a small part of their business (perhaps because they mainly provide residential roofing services or mostly work outside Ohio).

## Cost to government

For the costs of the bill to government, please see the [LBO fiscal note](#).

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## SUMMARY OF PROPOSED REGULATIONS

The bill requires roofing contractors to obtain a license from the OCILB before performing roofing services or employing tradespersons to perform roofing services on commercial buildings. No state license would be required to perform roofing services on residential buildings or industrialized units (self-sufficient building units fabricated off-site).<sup>10</sup>

The bill's regulatory framework mirrors the licensure requirements, under continuing law, for specialty contractors performing electrical, HVAC, hydronics, plumbing, or refrigeration services. As is the case for specialty contractors, the bill requires a person who wishes to perform commercial roofing services to apply in writing to the appropriate section of the OCILB for the license examination. The application must demonstrate that the applicant:

- Is at least 18 years of age and a U.S. citizen or legal resident;
- Has been a tradesperson in roofing for at least five years before the date the application is filed, is currently registered as an engineer in Ohio with three years of business experience in roofing, or has other acceptable experience;
- Maintains contractor's liability insurance in the amount required by the Roofing Section of the OCILB (created by the bill);

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<sup>10</sup> R.C. 4740.01(F), by reference to R.C. 3781.06, not in the bill.

- Has not been convicted of or pleaded guilty to a crime of moral turpitude or a disqualifying offense; violated the OCILB law; obtained an OCILB contractor license by fraud, misrepresentation, or deception; or engaged in fraud, misrepresentation, or deception in the conduct of business.

Each qualified applicant who passes the examination prescribed by the Roofing Section of the OCILB is entitled to licensure.<sup>11</sup> The examination is waived for any applicant who holds a roofing contractor license issued in any state that waives its examination for roofing contractors licensed in Ohio.<sup>12</sup>

Like the existing specialty contractor licenses, the standard roofing contractor's license expires annually and renewal is generally conditioned upon completion of ten hours of continuing education each year.<sup>13</sup> However, under continuing law, contractors who qualify for the compliant contractor program can choose to renew their license triennially, and complete only 24 hours of continuing education during that period.<sup>14</sup>

Subject to the approval of the Controlling Board, the bill vests the Roofing Section of the OCILB with authority to set and modify fee schedules for licensure and renewal.<sup>15</sup> Under current law, other specialty contractors must pay: (1) a \$25 application processing fee, (2) a \$25 initial licensing fee, (3) an annual \$60 renewal fee, and (4) any additional fees required for continuing education.<sup>16</sup> It might be reasonable to predict a similar fee schedule for roofing contractors.

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<sup>11</sup> R.C. 4740.06, not in the bill.

<sup>12</sup> R.C. 4740.08, not in the bill.

<sup>13</sup> R.C. 4740.06(E), not in the bill; R.C. 4740.04(G)(2).

<sup>14</sup> O.A.C. 4101:16-1-08, not in the bill.

<sup>15</sup> R.C. 4740.09, not in the bill.

<sup>16</sup> Ohio Legislative Service Commission, *2021 State Agency Fees: Department of Commerce*, pg. 69.

## COMPARISON TO OTHER STATES

Of the five surrounding states, only Michigan and West Virginia have statewide roofing contractor licensure requirements. See the table below for a more detailed comparison of Michigan and West Virginia’s licensing requirements with those proposed by the bill.

Licensure of Roofing Contractors						
State	License required?	Commercial or residential?	Examination required?	Other prerequisites	Continuing education	Fees
Ohio <sup>17</sup>	Yes	Commercial	Yes	Five years of experience as a roofing tradesperson (or three years for registered engineers)	Ten hours per year	\$25 application \$25 processing fee \$60 renewal (annual) <sup>18</sup>
Michigan <sup>19</sup>	Yes – maintenance and alteration contractor’s license	Residential or combination residential and commercial	Yes	60 hour pre-licensure course	21 hours every three years for the first two renewal periods and three hours every	\$195 application \$150 renewal (every three years)

<sup>17</sup> Proposed by the bill.

<sup>18</sup> Estimates based on current fees for other specialty contractors licensed by OCILB. Actual fee amounts will be designated by the Roofing Section of OCILB.

<sup>19</sup> Mich. Comp. Laws 339.601, 339.2404, and 339.2404b; Michigan Department of Licensing and Regulatory Affairs (LARA), [Prelicensure Education Requirements for Residential Builder and Maintenance & Alteration Contractor Applicants](#); LARA, [License Fees](#); LARA, [Residential Builders and M&A Contractors Renewal & Continuing Competency Requirements](#).

Licensure of Roofing Contractors						
State	License required?	Commercial or residential?	Examination required?	Other prerequisites	Continuing education	Fees
		Local license requirements may apply to commercial roofers			three years thereafter	
West Virginia <sup>20</sup>	Yes – contractor’s license	Both	Yes	N/A	N/A	Up to \$150 for initial licensure Up to \$150 for renewal (currently \$90) Expires annually

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<sup>20</sup> W.Va. Code § 21-11-3, 6, and 7; West Virginia Division of Labor, Contractor Licensing Board, [Contractor FAQ](#).