

By: Representative Wilson

To: Judiciary A

HOUSE BILL NO. 1425

1 AN ACT TO CREATE THE OCCUPATIONAL BOARD COMPLIANCE ACT OF
2 2017; TO PROVIDE DEFINITIONS TO BE USED IN THE ACT; TO PROVIDE THE
3 POLICY CONCERNING OCCUPATIONAL REGULATIONS AND THEIR BOARDS; TO
4 REQUIRE THE GOVERNOR TO PROVIDE ACTIVE SUPERVISION OF OCCUPATIONAL
5 LICENSING BOARDS; TO PROVIDE THAT THIS ACT SHALL NOT BE APPLICABLE
6 TO OCCUPATIONAL LICENSING BOARDS THAT ARE NOT CONTROLLED BY ACTIVE
7 MARKET PARTICIPANTS; AND FOR RELATED PURPOSES.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

9 **SECTION 1.** This act shall be known and may be cited as the
10 "Occupational Board Compliance Act of 2017."

11 **SECTION 2.** By establishing and executing the policies
12 provided in this act, the State of Mississippi intends to ensure
13 that occupational boards and board members shall avoid liability
14 under federal antitrust laws.

15 **SECTION 3.** As used in this act, the following words and
16 phrases shall have the meanings ascribed in this section unless
17 the context clearly indicates otherwise:

18 (a) "Active market participant" means an individual who
19 is:

20 (i) Licensed by an occupational licensing board;



21 (ii) Provides any service subject to the
22 regulatory authority of an occupational licensing board; or

23 (iii) Is subject to the jurisdiction of an
24 occupational licensing board;

25 (b) "Active supervision" means the Governor shall
26 independently review the substance of occupational regulation
27 proposed by any occupational licensing board and approve, veto or
28 modify any rules, regulations, restraints or the enforcement
29 thereof, to ensure compliance with state policy provided in this
30 act;

31 (c) "Governor" means the Governor or the Governor's
32 designee;

33 (d) "State policy" means the policy provided in Section
34 4 of this act;

35 (e) "Occupational licensing board" means any state
36 board, commission, department or other agency that is established
37 for the primary purpose of regulating the entry of persons into,
38 or regulating the conduct of persons within, a particular
39 profession or occupation, and which is authorized to issue and
40 revoke occupational licenses;

41 (f) "Occupational regulation" means a statute, rule,
42 regulation, restraint, practice, policy or other state law that
43 allows an individual to use an occupational title or work in a
44 lawful occupation. "Occupational regulation" includes
45 registrations, certifications and occupational licenses, and does



46 not include a business license, facility license, building permit
47 or zoning and land use regulation except to the extent those state
48 laws regulate an individual's personal qualifications to perform a
49 lawful occupation;

50 (g) "Personal qualifications" means the criteria
51 related to an individual's personal background and
52 characteristics, including completion of an approved educational
53 program, satisfactory performance on an examination, work
54 experience, other evidence of attainment of requisite skills or
55 knowledge, moral standing, criminal history and completion of
56 continuing education;

57 (h) "Registration" means a requirement to give notice
58 to the government that may include the individual's name and
59 address, the individual's agent for service of process, the
60 location of the activity to be performed, and a description of the
61 service the individual provides. "Registration" does not include
62 personal qualifications, but may require a bond or insurance.
63 Upon the government's receipt of notice, the individual may use
64 "registered" as a designated title. A nonregistered individual
65 may not perform the occupation for compensation or use
66 "registered" as a designated title. Registration is not
67 transferable;

68 (i) "Certifications" mean a voluntary program in which
69 a private organization or the state grants nontransferable
70 recognition to an individual who meets personal qualifications



71 established by the private organization or the state. Upon
72 approval, the individual may use "certified" as a designated
73 title. A noncertified individual may also perform the occupation
74 for compensation but may not use the title "certified";

75 (j) "Specialty occupation license for medical
76 reimbursement" means a nontransferable and nonexclusive
77 authorization in law for an individual to qualify for payment or
78 reimbursement from a government agency for the nonexclusive
79 provision of medical services based on meeting certain personal
80 qualifications. A private company may recognize this credential;

81 (k) "Occupational license" means a nontransferable
82 authorization in law for an individual to exclusively perform a
83 lawful occupation for compensation based on meeting certain
84 personal qualifications. In an occupation for which a license is
85 required, it is illegal for an individual who does not possess a
86 valid occupational license to perform the occupation for
87 compensation;

88 (l) "Least restrictive regulation" means, from least to
89 most restrictive:

90 (i) Market competition;

91 (ii) Third-party or consumer-created ratings and
92 reviews;

93 (iii) Private certification;

94 (iv) Specific private civil cause of action to
95 remedy consumer harm under a deceptive trade practice act;



- 96 (v) Regulation of the process of providing the
97 specific goods or services to consumers;
- 98 (vi) Inspection;
- 99 (vii) Bonding or insurance;
- 100 (viii) Registration;
- 101 (ix) Government certification;
- 102 (x) Specialty occupational license for medical
103 reimbursement; and
- 104 (xi) Occupational license.

105 **SECTION 4.** For occupational regulations and their boards, it
106 is the policy of the State of Mississippi to:

107 (a) Increase economic opportunities for all of its
108 citizens by promoting competition and thereby encouraging
109 innovation and job growth; and

110 (b) Use the least restrictive regulation necessary to
111 protect consumers from present, significant and substantiated
112 harms that threaten public health and safety.

113 **SECTION 5.** (1) The Governor shall be responsible for
114 actively supervising state occupational licensing boards to ensure
115 compliance with state policy in both the adoption and enforcement
116 of occupational regulations promulgated by occupational licensing
117 boards. The Governor is authorized to employ or engage one or
118 more competent attorneys to carry out the duties and functions of
119 this act. These positions may not be filled by an attorney who



120 provides general counsel to any board or exercises control over a
121 board's processes and substantive actions.

122 (2) An occupational licensing board must submit proposed
123 occupational regulations and enforcement actions to the Governor
124 before the occupational licensing board may file them in the
125 Office of the Secretary of State if the occupational regulation is
126 required to be filed in the Office of the Secretary of State by
127 Chapter 43, Title 25, Mississippi Code of 1972, (Mississippi
128 Administrative Procedures Law) or before the rule, regulation,
129 restraint or enforcement action becomes effective, if filing is
130 not required.

131 (3) The Governor's responsibilities shall include:

132 (a) Upon submission of an occupational regulation,
133 review of the occupational regulation or enforcement action,
134 including substantive review for consistency with state policy,
135 and, in writing, approval, modification or veto of the
136 occupational regulation or enforcement action;

137 (b) Review of existing occupational regulations
138 promulgated by occupational licensing boards to increase
139 compliance with state policy; and

140 (c) Reporting to the Legislature by October 1 of every
141 year of recommendations for changes to statutory occupational
142 regulations that would increase compliance with state policy.

143 (4) The Governor shall issue proclamations necessary to
144 effectuate the provisions of this section, including the process,



145 procedures and timelines that will govern any submission filed in
146 accordance with the act. Nothing in this act shall be interpreted
147 to subject the Governor to any of the administrative procedures of
148 Chapter 43, Title 25, Mississippi Code of 1972, (Mississippi
149 Administrative Procedures Law).

150 **SECTION 6.** This act shall not apply to occupational
151 licensing boards that are not controlled by active market
152 participants.

153 **SECTION 7.** This act shall take effect and be in force from
154 and after July 1, 2017.

