MISSISSIPPI LEGISLATURE
REGULAR SESSION 2017

By: Representatives Wilson, Paden, Baker, Hines

To: Judiciary A

HOUSE BILL NO. 1425
(As Sent to Governor)

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

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

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

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

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

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

(i) Licensed by an occupational licensing board;
(ii) Provides any service subject to the regulatory authority of an occupational licensing board; or

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

(b) "Active supervision" means the Occupational Licensing Review Commission shall:

(i) Review the substance of an occupational regulation proposed by any occupational licensing board; and

(ii) Approve, disapprove, disapprove with suggested amendment, or allow the occupational licensing board to withdraw for revision such occupational regulation to ensure compliance with state policy;

(c) "Commission" means the Occupational Licensing Review Commission created in Section 5 of this act;

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

(e) "Occupational licensing board" means any state executive branch board, commission, department or other agency that is:

(i) Established for the primary purpose of regulating the entry of persons into, or regulating the conduct of persons within, a particular profession or occupation;

(ii) Authorized to issue and revoke occupational licenses; and

(iii) Controlled by active market participants.
(f) "Occupational regulation" means a rule, regulation, restraint, practice or policy that allows an individual to use an occupational title or work in a lawful occupation. "Occupational regulation" includes registrations, certifications and occupational licenses, and does not include a business license, facility license, building permit or zoning and land use regulation except to the extent those state laws regulate an individual's personal qualifications to perform a lawful occupation;

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

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

(i) "Certifications" mean a voluntary program in which a private organization or the state grants nontransferable recognition to an individual who meets personal qualifications established by the private organization or the state. Upon approval, the individual may use "certified" as a designated title. A noncertified individual may also perform the occupation for compensation but may not use the title "certified";

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

(k) "Least restrictive regulation" means, from least to most restrictive:

(i) Market competition;

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

(iii) Private certification;

(iv) Specific private civil cause of action to remedy consumer harm under a deceptive trade practice act;
(v) Regulation of the process of providing the specific goods or services to consumers;
(vi) Inspection;
(vii) Bonding or insurance;
(viii) Registration;
(ix) Government certification; and
(x) Occupational license.

SECTION 4. For occupational regulations promulgated by occupational licensing boards, it is the policy of the State of Mississippi to:
(a) Increase economic opportunities for all of its citizens by promoting competition and thereby encouraging innovation and job growth; and
(b) Use the least restrictive regulation necessary to protect consumers from present, significant and substantiated harms that threaten public health and safety.

SECTION 5. (1) There is hereby created the Occupational Licensing Review Commission which shall be composed of the Governor, the Secretary of State and the Attorney General, or his or her respective designee. The Governor shall be the Chairman of the commission and the Secretary of State shall be the Secretary. The commission shall meet quarterly and at such other times as meetings may be called by the chair. A majority of the members shall constitute a quorum at any meeting. Any final action taken by the commission shall require the affirmative vote of a majority
of the members. The Office of the Governor shall provide such support of the commission necessary to accomplish the purposes of this act, including, but not limited to, research and clerical assistance. Any department, division, board, bureau, commission or agency of the state shall provide, at the request of the chair of the commission, such assistance and data as will enable the commission to carry out its duties.

(2) The commission shall be responsible for the active supervision of state executive branch occupational licensing boards controlled by active market participants to ensure compliance with state policy in the adoption of an occupational regulation promulgated by an occupational licensing board. The active supervision required under this act shall not extend to individual disciplinary actions taken or imposed by an occupational licensing board as to any active market participant subject to the jurisdiction of the occupational licensing board.

(3) An occupational licensing board must submit any proposed occupational regulation to the commission before the occupational licensing board may file the occupational regulation in the Office of the Secretary of State if the occupational regulation is required to be filed in the Office of the Secretary of State by Chapter 43, Title 25, Mississippi Code of 1972, (Mississippi Administrative Procedures Law), or before the occupational regulation becomes effective if filing is not required.
(4) The commission shall issue resolutions necessary to effectuate the provisions of this act, including the process, procedures and timelines that will govern any submission filed in accordance with the act. Nothing in this act shall be interpreted to subject the commission to any of the administrative procedures of Chapter 43, Title 25, Mississippi Code of 1972, (Mississippi Administrative Procedures Law).

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

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