

By: Representatives Wilson, Paden, Baker,
Hines

To: Judiciary A

HOUSE BILL NO. 1425
(As Sent to Governor)

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 CREATE THE OCCUPATIONAL LICENSING REVIEW COMMISSION; TO REQUIRE
5 THE COMMISSION TO PROVIDE ACTIVE SUPERVISION OF OCCUPATIONAL
6 LICENSING BOARDS; TO PROVIDE THAT THIS ACT SHALL NOT BE APPLICABLE
7 TO OCCUPATIONAL LICENSING BOARDS THAT ARE NOT CONTROLLED BY ACTIVE
8 MARKET PARTICIPANTS; AND FOR RELATED PURPOSES.

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

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

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

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

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

21 (i) Licensed by an occupational licensing board;



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

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

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

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

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

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

36 (d) "State policy" means the policy provided in Section
37 4 of this act;

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

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

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

46 (iii) Controlled by active market participants.



47 (f) "Occupational regulation" means a rule, regulation,
48 restraint, practice or policy that allows an individual to use an
49 occupational title or work in a lawful occupation. "Occupational
50 regulation" includes registrations, certifications and
51 occupational licenses, and does not include a business license,
52 facility license, building permit or zoning and land use
53 regulation except to the extent those state laws regulate an
54 individual's personal qualifications to perform a lawful
55 occupation;

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

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



72 "registered" as a designated title. Registration is not
73 transferable;

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

81 (j) "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 (k) "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; and
- 102 (x) Occupational license.

103 **SECTION 4.** For occupational regulations promulgated by
104 occupational licensing boards, it is the policy of the State of
105 Mississippi to:

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

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

112 **SECTION 5.** (1) There is hereby created the Occupational
113 Licensing Review Commission which shall be composed of the
114 Governor, the Secretary of State and the Attorney General, or his
115 or her respective designee. The Governor shall be the Chairman of
116 the commission and the Secretary of State shall be the Secretary.
117 The commission shall meet quarterly and at such other times as
118 meetings may be called by the chair. A majority of the members
119 shall constitute a quorum at any meeting. Any final action taken
120 by the commission shall require the affirmative vote of a majority



121 of the members. The Office of the Governor shall provide such
122 support of the commission necessary to accomplish the purposes of
123 this act, including, but not limited to, research and clerical
124 assistance. Any department, division, board, bureau, commission
125 or agency of the state shall provide, at the request of the chair
126 of the commission, such assistance and data as will enable the
127 commission to carry out its duties.

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

137 (3) An occupational licensing board must submit any proposed
138 occupational regulation to the commission before the occupational
139 licensing board may file the occupational regulation in the Office
140 of the Secretary of State if the occupational regulation is
141 required to be filed in the Office of the Secretary of State by
142 Chapter 43, Title 25, Mississippi Code of 1972, (Mississippi
143 Administrative Procedures Law), or before the occupational
144 regulation becomes effective if filing is not required.



145 (4) The commission shall issue resolutions necessary to
146 effectuate the provisions of this act, including the process,
147 procedures and timelines that will govern any submission filed in
148 accordance with the act. Nothing in this act shall be interpreted
149 to subject the commission to any of the administrative procedures
150 of Chapter 43, Title 25, Mississippi Code of 1972, (Mississippi
151 Administrative Procedures Law).

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

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

