

By: Senator(s) Tindell

To: Accountability,
Efficiency, Transparency

SENATE BILL NO. 2489

1 AN ACT TO CREATE THE OCCUPATIONAL BOARD COMPLIANCE ACT OF
2 2017; TO ENACT DEFINITIONS; TO ENUNCIATE POLICY CONCERNING
3 OCCUPATIONAL REGULATIONS AND THEIR BOARDS; TO REQUIRE THE GOVERNOR
4 TO PROVIDE ACTIVE SUPERVISION OF OCCUPATIONAL LICENSING BOARDS; TO
5 MAKE EXCEPTIONS; AND FOR RELATED PURPOSES.

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

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

9 **SECTION 2.** By establishing and executing the policies
10 herein, the State of Mississippi intends to ensure that
11 occupational boards and board members will avoid liability under
12 federal antitrust laws.

13 **SECTION 3.** (1) As used in this section, the following
14 words and phrases shall have the meanings ascribed herein unless
15 the context clearly indicates otherwise:

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

18 (i) Licensed by an occupational licensing board;



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

21 (iii) Subject to the jurisdiction of an
22 occupational licensing board.

23 (b) "Active supervision" means the Governor will
24 independently review the substance of occupational regulation
25 proposed by any occupational licensing board and approve, veto, or
26 modify any rules, regulations, restraints, or the enforcement
27 thereof, to ensure compliance with state policy herein.

28 (c) "Governor" means the Governor or the Governor's
29 designee.

30 (d) "State policy" means the policy articulated in
31 Section 4 of this act.

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

38 (f) "Occupational regulation" means a statute, rule,
39 regulation, restraint, practice, policy or other state law that
40 allows an individual to use an occupational title or work in a
41 lawful occupation. It includes registrations, certifications and
42 occupational licenses. It excludes a business license, facility
43 license, building permit, or zoning and land use regulation except



44 to the extent those state laws regulate an individual's personal
45 qualifications to perform a lawful occupation.

46 (g) "Personal qualifications" are criteria related to
47 an individual's personal background and characteristics including
48 completion of an approved educational program, satisfactory
49 performance on an examination, work experience, other evidence of
50 attainment of requisite skills or knowledge, moral standing,
51 criminal history and completion of continuing education.

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

63 (i) "Certifications" means a voluntary program in which
64 a private organization or the state grants nontransferable
65 recognition to an individual who meets personal qualifications
66 established by the private organization or the state. Upon
67 approval, the individual may use "certified" as a designated



68 title. A noncertified individual may also perform the occupation
69 for compensation but may not use the title "certified."

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

76 (k) "Occupational license" is a nontransferable
77 authorization in law for an individual to perform exclusively a
78 lawful occupation for compensation based on meeting certain
79 personal qualifications. In an occupation for which a license is
80 required, it is illegal for an individual who does not possess a
81 valid occupational license to perform the occupation for
82 compensation.

83 (l) "Least restrictive regulation" means, from least to
84 most restrictive:

85 (i) Market competition;

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

88 (iii) Private certification;

89 (iv) Specific private civil cause of action to
90 remedy consumer harm; deceptive trade practice act;

91 (v) Regulation of the process of providing the
92 specific goods or services to consumers;



- 93 (vi) Inspection;
- 94 (vii) Bonding or insurance;
- 95 (viii) Registration;
- 96 (ix) Government certification;
- 97 (x) Specialty occupational license for medical
- 98 reimbursement; and
- 99 (xi) Occupational license.

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

102 (a) Increase economic opportunities for all of its
103 citizens by promoting competition and thereby encouraging
104 innovation and job growth;

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

108 **SECTION 5.** (1) The Governor shall provide active
109 supervision of occupational licensing boards.

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



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

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

128 (c) The Governor's responsibilities will include:

129 (i) Upon submission of an occupational regulation,
130 review of the occupational regulation or enforcement action,
131 including substantive review for consistency with state policy,
132 and, in writing, approval, modification or veto of the
133 occupational regulation or enforcement action;

134 (ii) Review of existing occupational regulations
135 promulgated by occupational licensing boards to increase
136 compliance with state policy;

137 (iii) Reporting to the Legislature by October 1st
138 of every year of recommendations for changes to statutory
139 occupational regulations that would increase compliance with state
140 policy articulated in Section 4 of this act.



141 (d) The Governor shall issue proclamations necessary to
142 effectuate the provisions of this section, including the process,
143 procedures, and timelines that will govern any submission filed in
144 accordance with the act. Nothing in this act shall be interpreted
145 to subject the Governor to any of the administrative procedures of
146 Title 25, Chapter 43, Mississippi Code of 1972 (Mississippi
147 Administrative Procedures Law).

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

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

