MISSISSIPPI LEGISLATURE

REGULAR SESSION 2020

By: Representative Turner

To: Accountability, Efficiency, Transparency

HOUSE BILL NO. 1104

AN ACT TO AMEND SECTION 73-47-5, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE OCCUPATIONAL LICENSING REVIEW COMMISSION TO REVIEW THE SUBSTANCE OF ANY EXISTING OCCUPATIONAL REGULATION THAT WAS PROMULGATED ON OR AFTER JULY 1, 2012, BY ANY OCCUPATIONAL LICENSING BOARD AND DETERMINE WHETHER SUCH OCCUPATIONAL REGULATIONS COMPLY WITH STATE POLICY; TO PROVIDE THAT IF THE COMMISSION DETERMINES THAT ANY OCCUPATIONAL REGULATION DOES NOT COMPLY WITH STATE POLICY, THEN THE COMMISSION SHALL EITHER DECLARE THE REGULATION TO BE INVALID AFTER SIXTY DAYS, RENDERING IT UNENFORCEABLE UNDER THE LAW, OR ALLOW THE OCCUPATIONAL LICENSING BOARD TO REVISE THE REGULATION TO ENSURE COMPLIANCE WITH STATE POLICY; TO AMEND SECTION 73-47-9, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PRECEDING SECTION; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 73-47-5, Mississippi Code of 1972, is amended as follows:

73-47-5. As used in this chapter, 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 * * *:

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

   (ii) May review the substance of any existing occupational regulation that was promulgated on or after July 1, 2012, by any occupational licensing board and determine whether such occupational regulations comply with state policy. If the commission determines that any occupational regulation does not comply with state policy, then the commission shall:

       1. Declare the regulation to be invalid after sixty (60) days, rendering it unenforceable under the law; or

       2. Allow the occupational licensing board to revise the regulation to ensure compliance with state policy and then review the proposed regulation as provided in subparagraph (i) of this paragraph (b);
(c) "Commission" means the Occupational Licensing Review Commission created in Section 73-47-9;

(d) "State policy" means the policy provided in Section 73-47-7;

(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 2. Section 73-47-9, Mississippi Code of 1972, is amended as follows:

73-47-9. (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 chapter, 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 for any occupational
regulation proposed by an occupational licensing board and
for any existing occupational regulation that was promulgated on
or after July 1, 2012, 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 chapter, including the process, procedures and timelines that will govern any submission filed in accordance with the chapter. Nothing in this chapter 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 3. This act shall take effect and be in force from and after July 1, 2020.