

By: Representative Turner

To: Accountability,
Efficiency, Transparency

HOUSE BILL NO. 1104

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

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

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

17 73-47-5. As used in this chapter, the following words and
 18 phrases shall have the meanings ascribed in this section unless
 19 the context clearly indicates otherwise:

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

22 (i) Licensed by an occupational licensing board;



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

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

27 (b) "Active supervision" means the Occupational
28 Licensing Review Commission * * *:

29 (i) Shall review the substance of an occupational
30 regulation proposed by any occupational licensing board * * * and
31 * * * approve, disapprove, disapprove with suggested amendment,
32 or allow the occupational licensing board to withdraw for revision
33 such occupational regulation to ensure compliance with state
34 policy; and

35 (ii) May review the substance of any existing
36 occupational regulation that was promulgated on or after July 1,
37 2012, by any occupational licensing board and determine whether
38 such occupational regulations comply with state policy. If the
39 commission determines that any occupational regulation does not
40 comply with state policy, then the commission shall:

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

43 2. Allow the occupational licensing board to
44 revise the regulation to ensure compliance with state policy and
45 then review the proposed regulation as provided in subparagraph
46 (i) of this paragraph (b);



47 (c) "Commission" means the Occupational Licensing
48 Review Commission created in Section 73-47-9;

49 (d) "State policy" means the policy provided in Section
50 73-47-7;

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

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

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

59 (iii) Controlled by active market
60 participants * * *;

61 (f) "Occupational regulation" means a rule, regulation,
62 restraint, practice or policy that allows an individual to use an
63 occupational title or work in a lawful occupation. "Occupational
64 regulation" includes registrations, certifications and
65 occupational licenses, and does not include a business license,
66 facility license, building permit or zoning and land use
67 regulation except to the extent those state laws regulate an
68 individual's personal qualifications to perform a lawful
69 occupation;

70 (g) "Personal qualifications" means the criteria
71 related to an individual's personal background and



72 characteristics, including completion of an approved educational
73 program, satisfactory performance on an examination, work
74 experience, other evidence of attainment of requisite skills or
75 knowledge, moral standing, criminal history and completion of
76 continuing education;

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

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

95 (j) "Occupational license" means a nontransferable
96 authorization in law for an individual to exclusively perform a



97 lawful occupation for compensation based on meeting certain
98 personal qualifications. In an occupation for which a license is
99 required, it is illegal for an individual who does not possess a
100 valid occupational license to perform the occupation for
101 compensation;

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

104 (i) Market competition;

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

107 (iii) Private certification;

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

110 (v) Regulation of the process of providing the
111 specific goods or services to consumers;

112 (vi) Inspection;

113 (vii) Bonding or insurance;

114 (viii) Registration;

115 (ix) Government certification; and

116 (x) Occupational license.

117 **SECTION 2.** Section 73-47-9, Mississippi Code of 1972, is
118 amended as follows:

119 73-47-9. (1) There is hereby created the Occupational
120 Licensing Review Commission which shall be composed of the
121 Governor, the Secretary of State and the Attorney General, or his



122 or her respective designee. The Governor shall be the Chairman of
123 the commission and the Secretary of State shall be the Secretary.
124 The commission shall meet quarterly and at such other times as
125 meetings may be called by the chair. A majority of the members
126 shall constitute a quorum at any meeting. Any final action taken
127 by the commission shall require the affirmative vote of a majority
128 of the members. The Office of the Governor shall provide such
129 support of the commission necessary to accomplish the purposes of
130 this chapter, including, but not limited to, research and clerical
131 assistance. Any department, division, board, bureau, commission
132 or agency of the state shall provide, at the request of the chair
133 of the commission, such assistance and data as will enable the
134 commission to carry out its duties.

135 (2) The commission shall be responsible for the active
136 supervision of state executive branch occupational licensing
137 boards controlled by active market participants to ensure
138 compliance with state policy * * * for any occupational
139 regulation * * * proposed by an occupational licensing board and
140 for any existing occupational regulation that was promulgated on
141 or after July 1, 2012, by an occupational licensing board. The
142 active supervision required under this act shall not extend to
143 individual disciplinary actions taken or imposed by an
144 occupational licensing board as to any active market participant
145 subject to the jurisdiction of the occupational licensing board.



146 (3) An occupational licensing board must submit any proposed
147 occupational regulation to the commission before the occupational
148 licensing board may file the occupational regulation in the Office
149 of the Secretary of State if the occupational regulation is
150 required to be filed in the Office of the Secretary of State by
151 Chapter 43, Title 25, Mississippi Code of 1972, (Mississippi
152 Administrative Procedures Law), or before the occupational
153 regulation becomes effective if filing is not required.

154 (4) The commission shall issue resolutions necessary to
155 effectuate the provisions of this chapter, including the process,
156 procedures and timelines that will govern any submission filed in
157 accordance with the chapter. Nothing in this chapter shall be
158 interpreted to subject the commission to any of the administrative
159 procedures of Chapter 43, Title 25, Mississippi Code of 1972,
160 (Mississippi Administrative Procedures Law).

161 **SECTION 3.** This act shall take effect and be in force from
162 and after July 1, 2020.

