

By: Senator(s) Polk

To: Business and Financial  
Institutions; Accountability,  
Efficiency, Transparency

SENATE BILL NO. 2790

1 AN ACT TO AMEND SECTION 73-47-5, MISSISSIPPI CODE OF 1972, TO  
2 REVISE THE DEFINITION OF THE TERM "ACTIVE SUPERVISION" TO INCLUDE  
3 REVIEW OF EXISTING REGULATIONS; TO AMEND SECTION 73-47-9,  
4 MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE OCCUPATIONAL LICENSING  
5 REVIEW COMMISSION TO EXERCISE ACTIVE SUPERVISION OVER EXISTING  
6 OCCUPATIONAL REGULATIONS PROMULGATED BY OCCUPATIONAL LICENSING  
7 BOARDS; AND FOR RELATED PURPOSES.

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

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

11 73-47-5. As used in this chapter, the following words and  
12 phrases shall have the meanings ascribed in this section unless  
13 the context clearly indicates otherwise:

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

16 (i) Licensed by an occupational licensing board;

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

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



21 (b) "Active supervision" means the Occupational  
22 Licensing Review Commission \* \* \*:

23 (i) Shall review the substance of an occupational  
24 regulation proposed by any occupational licensing board \* \* \*  
25 and \* \* \* approve, disapprove, disapprove with suggested  
26 amendment, or allow the occupational licensing board to withdraw  
27 for revision such occupational regulation to ensure compliance  
28 with state policy; or

29 (ii) May review the substance of an existing  
30 occupational regulation promulgated by an occupational licensing  
31 board and, if the commission determines the regulation does not  
32 comply with state policy, it may, in its discretion: 1. declare  
33 that the noncomplying regulation will become invalid sixty (60)  
34 days after the date of review, at which time the regulation will  
35 cease to have any force of law; or 2. allow the occupational  
36 licensing board opportunity to amend the noncomplying regulation  
37 to conform with state policy;

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

40 (d) "State policy" means the policy provided in Section  
41 73-47-7;

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



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

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

50 (iii) Controlled by active market  
51 participants \* \* \*;

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

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

68 (h) "Registration" means a requirement to give notice  
69 to the government that may include the individual's name and



70 address, the individual's agent for service of process, the  
71 location of the activity to be performed, and a description of the  
72 service the individual provides. "Registration" does not include  
73 personal qualifications, but may require a bond or insurance.  
74 Upon the government's receipt of notice, the individual may use  
75 "registered" as a designated title. A nonregistered individual  
76 may not perform the occupation for compensation or use  
77 "registered" as a designated title. Registration is not  
78 transferable;

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

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

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



- 95 (i) Market competition;
- 96 (ii) Third-party or consumer-created ratings and  
97 reviews;
- 98 (iii) Private certification;
- 99 (iv) Specific private civil cause of action to  
100 remedy consumer harm under a deceptive trade practice act;
- 101 (v) Regulation of the process of providing the  
102 specific goods or services to consumers;
- 103 (vi) Inspection;
- 104 (vii) Bonding or insurance;
- 105 (viii) Registration;
- 106 (ix) Government certification; and
- 107 (x) Occupational license.

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

110 73-47-9. (1) There is hereby created the Occupational  
111 Licensing Review Commission which shall be composed of the  
112 Governor, the Secretary of State and the Attorney General, or his  
113 or her respective designee. The Governor shall be the Chairman of  
114 the commission and the Secretary of State shall be the Secretary.  
115 The commission shall meet quarterly and at such other times as  
116 meetings may be called by the chair. A majority of the members  
117 shall constitute a quorum at any meeting. Any final action taken  
118 by the commission shall require the affirmative vote of a majority  
119 of the members. The Office of the Governor shall provide such



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

126 (2) The commission shall be responsible for the active  
127 supervision of state executive branch occupational licensing  
128 boards controlled by active market participants to ensure  
129 compliance with state policy in the adoption of an occupational  
130 regulation promulgated by an occupational licensing board, to  
131 include existing occupational regulations promulgated by an  
132 occupational licensing board. The active supervision required  
133 under this act shall not extend to individual disciplinary actions  
134 taken or imposed by an occupational licensing board as to any  
135 active market participant subject to the jurisdiction of the  
136 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 chapter, including the process,  
147 procedures and timelines that will govern any submission filed in  
148 accordance with the chapter. Nothing in this chapter shall be  
149 interpreted to subject the commission to any of the administrative  
150 procedures of Chapter 43, Title 25, Mississippi Code of 1972,  
151 (Mississippi Administrative Procedures Law).

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

