

By: Senator(s) Polk

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

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

