

By: Representatives Wilson, Paden, Baker,  
Hines

To: Judiciary A

COMMITTEE SUBSTITUTE  
FOR  
HOUSE BILL NO. 1425

1 AN ACT TO CREATE THE OCCUPATIONAL BOARD COMPLIANCE ACT OF  
2 2017; TO PROVIDE DEFINITIONS TO BE USED IN THE ACT; TO PROVIDE THE  
3 POLICY CONCERNING OCCUPATIONAL REGULATIONS AND THEIR BOARDS; TO  
4 REQUIRE THE GOVERNOR TO PROVIDE ACTIVE SUPERVISION OF OCCUPATIONAL  
5 LICENSING BOARDS; TO PROVIDE THAT THIS ACT SHALL NOT BE APPLICABLE  
6 TO OCCUPATIONAL LICENSING BOARDS THAT ARE NOT CONTROLLED BY ACTIVE  
7 MARKET PARTICIPANTS; AND FOR RELATED PURPOSES.

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

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

11 **SECTION 2.** By establishing and executing the policies  
12 provided in this act, the State of Mississippi intends to ensure  
13 that occupational boards and board members shall avoid liability  
14 under federal antitrust laws.

15 **SECTION 3.** As used in this act, the following words and  
16 phrases shall have the meanings ascribed in this section unless  
17 the context clearly indicates otherwise:

18 (a) "Active market participant" means an individual who  
19 is:



20 (i) Licensed by an occupational licensing board;

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

23 (iii) Is subject to the jurisdiction of an  
24 occupational licensing board;

25 (b) "Active supervision" means the Governor shall  
26 independently review the substance of occupational regulation  
27 proposed by any occupational licensing board and approve, veto or  
28 modify any rules, regulations, restraints or the enforcement  
29 thereof, to ensure compliance with state policy provided in this  
30 act;

31 (c) "Governor" means the Governor or the Governor's  
32 designee;

33 (d) "State policy" means the policy provided in Section  
34 4 of this act;

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

41 (f) "Occupational regulation" means a statute, rule,  
42 regulation, restraint, practice, policy or other state law that  
43 allows an individual to use an occupational title or work in a  
44 lawful occupation. "Occupational regulation" includes



45 registrations, certifications and occupational licenses, and does  
46 not include a business license, facility license, building permit  
47 or zoning and land use regulation except to the extent those state  
48 laws regulate an individual's personal qualifications to perform a  
49 lawful occupation;

50 (g) "Personal qualifications" means the criteria  
51 related to an individual's personal background and  
52 characteristics, including completion of an approved educational  
53 program, satisfactory performance on an examination, work  
54 experience, other evidence of attainment of requisite skills or  
55 knowledge, moral standing, criminal history and completion of  
56 continuing education;

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

68 (i) "Certifications" mean a voluntary program in which  
69 a private organization or the state grants nontransferable



70 recognition to an individual who meets personal qualifications  
71 established by the private organization or the state. Upon  
72 approval, the individual may use "certified" as a designated  
73 title. A noncertified individual may also perform the occupation  
74 for compensation but may not use the title "certified";

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

82 (k) "Least restrictive regulation" means, from least to  
83 most restrictive:

84 (i) Market competition;

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

87 (iii) Private certification;

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

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

92 (vi) Inspection;

93 (vii) Bonding or insurance;

94 (viii) Registration;



95 (ix) Government certification; and

96 (x) Occupational license.

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

99 (a) Increase economic opportunities for all of its  
100 citizens by promoting competition and thereby encouraging  
101 innovation and job growth; and

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

105 **SECTION 5.** (1) The Governor shall be responsible for  
106 actively supervising state occupational licensing boards to ensure  
107 compliance with state policy in both the adoption and enforcement  
108 of occupational regulations promulgated by occupational licensing  
109 boards. The Governor is authorized to employ or engage one or  
110 more competent attorneys to carry out the duties and functions of  
111 this act. These positions may not be filled by an attorney who  
112 provides general counsel to any board or exercises control over a  
113 board's processes and substantive actions.

114 (2) An occupational licensing board must submit proposed  
115 occupational regulations and enforcement actions to the Governor  
116 before the occupational licensing board may file them in the  
117 Office of the Secretary of State if the occupational regulation is  
118 required to be filed in the Office of the Secretary of State by  
119 Chapter 43, Title 25, Mississippi Code of 1972, (Mississippi



120 Administrative Procedures Law) or before the rule, regulation,  
121 restraint or enforcement action becomes effective, if filing is  
122 not required.

123 (3) The Governor's responsibilities shall include:

124 (a) Upon submission of an occupational regulation,  
125 review of the occupational regulation or enforcement action,  
126 including substantive review for consistency with state policy,  
127 and, in writing, approval, modification or veto of the  
128 occupational regulation or enforcement action;

129 (b) Review of existing occupational regulations  
130 promulgated by occupational licensing boards to ensure compliance  
131 with state policy; and

132 (c) Reporting to the Legislature by October 1 of every  
133 year of recommendations for changes to statutory occupational  
134 regulations that would increase compliance with state policy.

135 (4) The Governor shall issue proclamations necessary to  
136 effectuate the provisions of this section, including the process,  
137 procedures and timelines that will govern any submission filed in  
138 accordance with the act. Nothing in this act shall be interpreted  
139 to subject the Governor to any of the administrative procedures of  
140 Chapter 43, Title 25, Mississippi Code of 1972, (Mississippi  
141 Administrative Procedures Law).

142 **SECTION 6.** This act shall not apply to occupational  
143 licensing boards that are not controlled by active market  
144 participants.



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

