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**OCCUPATIONAL LICENSURE OF MILITARY SPOUSES IN MISSISSIPPI:
BARRIERS AND SOLUTIONS**



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INTRODUCTION

Occupational licensing is a form of governmental oversight regulating the entry into and practice of certain professions, and it is primarily a matter of state law. The purpose of occupational licensing regulations is to prevent exploitation of and harm to the public from incompetent and fraudulent practitioners. However, state regulations that impose burdensome licensing requirements often hinder workforce growth and development by making it difficult or impossible for professionals licensed in one state to migrate to another state while maintaining active licensure.

This problem is particularly prevalent in Mississippi's military community, and it affects the spouses of military service members most of all. When service members move into this State, their spouses—many of whom hold professional licenses issued in other jurisdictions—often find it difficult or impossible to continue practicing their occupations due to Mississippi's occupational licensing restrictions. In fact, over 40% of military spouses have experienced problems transferring professional licenses. Ultimately, overly restrictive occupational licensing regulations cause employment gaps and sustained underemployment, and these effects in turn cause financial strain within military families. This added stress can undermine service members' military readiness as well as their units' effectiveness.¹ Furthermore, the barriers to entry into the Mississippi workforce created by such regulations can have long-term negative effects on the State's economy.

This report provides an overview of the barriers to professional licensure created by onerous occupational licensing regulations, as well as recommendations aimed at eliminating those barriers and facilitating the assimilation of military spouses into Mississippi's workforce.

In preparing this report, the authors analyzed Mississippi's statutes and regulations governing occupational licensure to identify the specific requirements imposed by licensing boards upon Mississippi residents licensed in other states. The authors also interviewed various stakeholders with first-hand knowledge of the barriers faced by professionally licensed military spouses when they move to Mississippi. These included **Eric Sherman** (Southeast Regional Liaison, DoD),

¹ University of Minnesota (2017) *Military Spouse Licensure Portability Examination*.

Richard L. Weaver (Commander, Camp McCain Training Center), **Capt. William L. Whitmire** (Naval Construction Battalion Center) and **Chris Thomas** (Director of Legislative Affairs & Economic Development, Mississippi Military Department). Finally, the authors analyzed the approaches adopted by other states to identify the most effective means of removing obstacles to professional licensure of military spouses.

OCCUPATIONAL LICENSING - A NATIONAL PERSPECTIVE

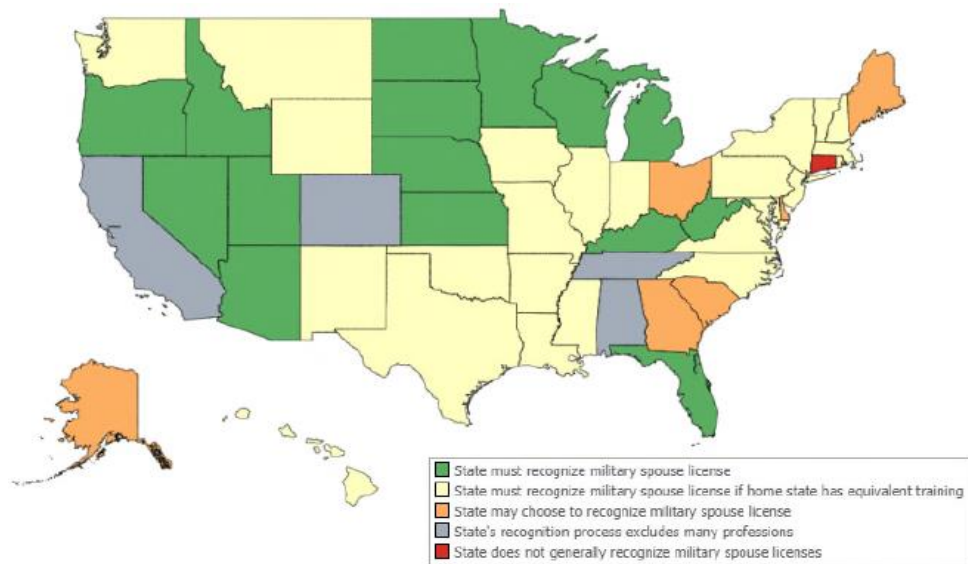


Figure 1²

Figure 1 above reflects the various approaches to military spousal licensure taken by states throughout the country. The State of Florida honors all valid and current professional licenses of military spouses from other states and issues corresponding in-state licenses upon application.³ Arizona, Oregon, Idaho, Nevada, Utah, North Dakota, South Dakota, Nebraska, Kansas, Minnesota, Wisconsin, and Michigan follow a similar approach.

Kentucky requires an occupational licensing board to issue a license or certification to a military spouse within 30 days of application unless substantial deficiencies in the applicant's education or training pose significant risks to public health or safety.⁴

Texas passed a bill last year which allows a military spouse licensed in good standing in another jurisdiction to practice for 3 years without a corresponding Texas license.⁵ Given the temporary nature of military postings, this approach allows the spouse to avoid the licensure application process altogether, so long as his or her stay within the state is temporary.

Alabama requires licensing boards to endorse military spouses licensed in other jurisdictions, so long as those jurisdictions have licensing standards that are equal to or more rigorous than those in Alabama. Alabama's law also provides for the issuance of temporary licenses for applicants

² <https://www.veterans.gov/milspouses/>

³ www.myfloridalicense.com/DBPR/military-services/military-and-veteran-spouses/

⁴ Ky. Rev. Stat. Ann. § 12.245

⁵ <https://capitol.texas.gov/tlodocs/86R/billtext/pdf/SB01200L.pdf#navpanes=0>

from states with less stringent licensing requirements. The purpose behind temporary licensure is to allow an applicant to earn a living while completing the Alabama-specific requirements for licensure in the applicant’s given profession. Finally, Alabama requires occupational licensing boards to waive application fees for military spouses.⁶

In short, the trend among states is to move toward an approach that affords military spouses broad exemptions from standard professional licensing requirements.

OCCUPATIONAL LICENSURE IN MISSISSIPPI

There are 39 occupational licensing boards (“licensing boards”) in the State of Mississippi responsible for issuing approximately 56 types of professional licenses. Currently, 29 of those boards are subject to limited oversight by the Occupational Licensing Review Commission (the “OLRC”).⁷ However, the remaining licensing boards operate with no active supervision. The OLRC regulates licensing boards that are controlled by “active market participants.” In 2015, the U.S. Supreme Court issued an opinion in the case of *N. Carolina State Bd. of Dental Examiners v. F.T.C.* which involved the North Carolina Dental Board’s challenge to a previous FTC ruling prohibiting the Board from issuing an order restricting the ability of non-dentists to provide teeth whitening services.⁸ The Court recognized that state licensing boards comprised of “active market” participants created the “risk that [those] active market participants [would] pursue private interests in restraining trade.” *Id.* In other words, placing dentists in a position to regulate their competitors created an incentive for self-dealing.

Following the Supreme Court’s *North Carolina* decision, the Mississippi Legislature created the OLRC to provide active supervision of such licensing boards in the State of Mississippi.⁹

The OLRC is comprised of designees from offices of the Governor, the Secretary of State and the Attorney General, and its stated mission is to:

- (a) [i]ncrease economic opportunities for all of its citizens by promoting competition and thereby encouraging innovation and job growth; and (b) [u]se the least restrictive regulation necessary to protect consumers from present, significant and substantiated harms that threaten public health and safety.¹⁰

The benefit of the OLRC’s creation is threefold. First, licensing boards know their actions are being reviewed, which deters abuse of power. Second, the boards within the OLRC’s jurisdiction must submit any new or amended regulations to the OLRC for approval before they are enacted.¹¹ Third, all boards subject to the OLRC are required to review all of their rules every 3 years to determine if any should be amended or updated.¹² The licensing boards are then required to submit a report to the OLRC with their findings.

⁶ Ala. Code § 31-1-6.

⁷ The boards are required to submit any new regulations or amended regulations to the OLRC for approval.

⁸ 574 U.S. 494, 191 L. Ed. 2d 35 (2015).

⁹ Miss. Code Ann. § 73-47-1, *et seq.*

¹⁰ Miss. Code. Ann. § 73-47-7.

¹¹ Miss. Code. Ann. § 73-47-9.

¹² Miss. Code. Ann. § 25-43-3.114.

Nearly 3 years have passed since the creation of the OLRC, and the licensing board reports—which are due soon—should prompt compliance with the military-specific licensing statute referenced below. Boards not subject to the OLRC are simply required to conduct an internal review of their rules every 5 years, but no enforcement of this provision exists, as there is no penalty for failing to conduct the review.

Boards Subject to OLRC		Boards Not Subject to OLRC	
Board of Public Accountancy	Board of Examiners for Licensed Professional Counselors	Motor Vehicle Commission	Air Ambulance Service Board
Board of Architecture	Board of Dental Examiners	Board of Nursing	Emergency Medical Services Advisory Council
Auctioneer Commission	Board of Funeral Service	Board of Law Enforcement Officer Standards and Training	Health Department Professional Licensure Division
Board of Contractors	Board of Massage Therapy	Board of Education	<ul style="list-style-type: none"> • Art Therapists • Athletic Trainers • Audiologists • Body Piercing Operators • Dieticians • Eye Enucleators • Hemodialysis Technicians
Board of Licensure for Professional Engineers and Surveyors	Board of Medical Licensure	Insurance Department Licensing Division	
Board of Forestry	Board of Optometry	Department of Agriculture	
Board of Registered Professional Geologists	Board of Pharmacy		
Board of Professional Polygraph Examiners	Board of Physical Therapy		
Appraisal Board	Board of Psychology Examiners		
Real Estate Commission	Fire Personnel Minimum Standards and Certification Board		
Board of Veterinary Medicine	Autism Board		
Board of Barber Examiners	Counsel of Advisors in Acupuncture		
Board of Examiners for Social Workers and Marriage & Family Therapists	Home Inspectors Regulatory Board		
Board of Chiropractic Examiners	Board of Nursing Home Administrators		
Board of Cosmetology			

MISS. CODE ANN. § 73-50-1: MISSISSIPPI'S FIRST STEP TOWARD MILITARY SPOUSAL LICENSURE REFORM

Recognizing occupational licensing as an important issue for the military, the Mississippi Legislature passed Miss. Code Ann. § 73-50-1 (the “OLB Statute”) in 2013 with the intent of easing impediments to license transfers by military personnel and their spouses. The OLB Statute requires boards to issue a license if the applicant:

- (1) holds a license from a state with licensing standards “substantially equivalent” to those of the Mississippi board,
- (2) can demonstrate competency through methods determined by the board such as completing continuing education or working two (2) of the last five (5) years in the profession,
- (3) has not committed any disqualifying acts and is in good standing with the agency that issued the license, and
- (4) pays any applicable fees.

However, the legislation allows individual boards too much discretion to determine if the transferring jurisdiction’s licensing requirements are “substantially equivalent” to their own. The current statute also allows for temporary permits until the board’s final decision is issued, however it does not make the issuing of such temporary permits mandatory. Nevertheless, there is a bill pending before the Mississippi Legislature—Senate Bill 2117—which strengthens the OLB Statute by:

- (1) broadly defining “military” to include all branches of the military and any military reserves, naval militia and the National Guard,
- (2) requiring a final determination by the board within four (4) months for all applicants, not just applicants that will be in the state less than thirty-six (36) months,
- (3) requiring boards to issue temporary practice permits to applicants licensed in other jurisdictions with thirty (30) days if those applicants submit affidavits affirming that they meet the requirements of (2) and (3) above (the permit provision is discretionary under the current statute, but would be mandatory under the new bill); and
- (4) specifying that any appeal of a board’s decision shall be made to a court of competent jurisdiction.

The amendment also requires that each licensing board update its regulations by January 1, 2021.

MISSISSIPPI LICENSING BOARDS ARE ACTING INCONSISTENTLY WITH THE OLB STATUTE.

(A) Reciprocity requirements

There are some Mississippi licensing boards that refuse to grant a license by reciprocity if other jurisdictions do not do the same for Mississippians. For example, the Mississippi Pharmacy Board's regulations state that "[n]o applicant shall be eligible for license transfer unless the state in which the applicant was licensed as a Pharmacist also grants licensure transfer to Pharmacists duly licensed by examination in [Mississippi], under like circumstances and conditions."¹³ Similarly, the Mississippi State Board of Public Accountancy applies the same restriction to CPAs licensed in other states.¹⁴

MILITARY SPOUSES EMPLOYMENT AND LICENSURE

About 53% of active-duty military spouses are in the work force (employee or an employee seeking work)

Approximately 34% of employees' spouses require licenses. Their current professional fields are broken down into the following categories:

- 19% work in health-related services.
- 10% work in education.
- 2% work in crafts and trades.
- 5% work in other occupations requiring professional licenses.

Figure 215

In yet another example, the Mississippi Board of Registration of Foresters requires that out-of-state licensed applicants submit "evidence of licensure with a state that has a current reciprocity agreement with Mississippi."¹⁶ Requiring reciprocity from a transferring applicant's previous state of licensure is inconsistent with the OLB Statute, bears no rational relationship to a given applicant's qualifications and may prevent applicants from entering the workforce, supporting Mississippi's economy and remitting taxes to the State.

(B) Prior Employment Requirements

The OLB Statute permits an occupational licensing board to require applicants for reciprocal licenses to "demonstrate competency in [their] occupation[s] through methods as determined by the board, such as having completed **continuing education units** or having had recent experience for at least **two (2) of the five (5) years preceding the date of the application under this section.**"¹⁷ While this provision is arguably quite broad, it should nevertheless be interpreted as permitting licensing boards to create only *reasonable minimum* standards of competency (*e.g.*, 2 years of experience out of the last 5). Interpreting this provision broadly, on the other hand, would allow licensing boards to create onerous competency requirements,

¹³ 30 Code Miss. R. Pt. 3001, Art. I.

¹⁴ 30 Code Miss. R. Pt. 1, R. 2.6.

¹⁵ Military Spouse Demographics and Employment Information, https://www.whitehouse.gov/wp-content/uploads/2018/09/DoDMilitarySpouseDemographicsandEmployment_20180912.pdf.

¹⁶ 30 Code Miss. R. Pt. 1001, R. 11.4.

¹⁷ Miss. Code Ann. § 73-50-1(3)(b).

thereby undermining the purpose of the statute and making it more difficult for military spouses - already licensed in other states - to enter Mississippi's workforce.

Further, the OLB Statute says that a licensing board must take *all* of an applicant's relevant work experience into account, including full-time and part-time experience, regardless of whether it was performed in a paid or volunteer capacity.¹⁸

However, several Mississippi licensing boards impose prior employment requirements on transferring applicants that appear to exceed this standard. For example, to transfer a license to spray herbicides or pesticides, an applicant must have 4 years of full-time experience. To obtain a nursing home preceptor license, an applicant must have 3 years of full-time experience, and a license to practice professional counseling requires 5 years of full-time experience.¹⁹

(C) Broad Discretion

Mississippi licensing boards have also used their rule-making power to promulgate regulations that render their licensing duties set forth in the OLB Statute discretionary when the Legislature clearly intended them to be mandatory. Not surprisingly, this undermines the State's efforts to promote fair and uniform treatment of military personnel and their spouses. An example of this problem is reflected in the regulations governing chiropractors, which state that a license by reciprocity "shall be granted at the board's option on an individual basis and by a majority vote of the State Board of Chiropractic Examiners."²⁰ Similarly, the Mississippi State Board of Optometry views the granting of licenses by reciprocity as a purely discretionary function, which is reflected in its regulations which state that the Board "will consider" applications for licensure by reciprocity "on a case-by-case basis."²¹

This type of discretionary language ensures that if a board wants to exclude an out-of-state licensee, it has the ability to do so for virtually any reason, which is contrary to the plain language of the OLB Statute.

(D) Extra Requirements

Some licensing boards also add additional requirements to an applicant for a reciprocal license which is not permitted under the OLB Statute. For example, the Mississippi Forestry Commission requires an applicant to (a) maintain a personal and/or business residence outside the political boundaries of Mississippi and (b) maintain his out-of-state license in perpetuity in order to preserve his Mississippi license.²²

Other boards, such as the Mississippi Board of Cosmetology, require an applicant to submit a multitude of sworn documents and other proof of competency, marriage and education. Any one of these requirements may not, in and of itself, impose a significant burden on the applicant. However, in the aggregate, they require a significant amount of time and effort.

¹⁸ Miss. Code Ann. § 73-50-1(5).

¹⁹ 30 Code Miss. R. Pt. 2703, R. 1.3 and 30 Code Miss. R. Pt. 2201, R. 4.7.

²⁰ 30 Code Miss. R. Pt. 2001, R. 05.

²¹ 30 Code Miss. R. Pt. 2901, R. 1.7.

²² 30 Code Miss. R. Pt. 1001, R. 11.

Finally, several licensing boards require out-of-state licensees to take an exam before receiving a reciprocal license. This is true in the case of engineers, land surveyors, and professional counselors.

(E) Lack of any Regulations Permitting Licensure by Reciprocity

One of the most significant issues, however, is the fact that numerous boards have failed to even create any regulations permitting the granting of licenses by reciprocity. This is the case with respect to numerous medical jobs, including radiation technologists, limited x-ray machine operators, dietitians, athletic trainers and radiologist assistants. The same is true in the case of geologists, home inspectors, barbers and auctioneers. Lack of such regulations ensures, at best, inconsistent treatment of out-of-state licensees.

RECOMMENDATIONS FOR EFFECTING CHANGE IN MISSISSIPPI

Recommendation # 1: Raise awareness of the impact that licensing barriers have on Mississippi and the importance of preserving the State’s military assets.

It is imperative that occupational licensing boards know and understand their statutory obligations with respect to licensing of military spouses. To the extent that the barriers identified above are the result of a lack of awareness among licensing boards, outreach efforts aimed at educating boards on the legal requirements applicable to them may yield a substantial return on the time invested.

Efforts should also be made to raise awareness among licensing boards of the importance placed on the issue of military spousal licensure by the U.S. Department of Defense and the State of Mississippi. Various stakeholders have emphasized that strong education systems and spousal licensure accommodations are two of the most important factors affecting the quality of life of military service members. Given the importance of Columbus Air Force Base, Keesler and other military installations to Mississippi’s economy, ensuring their long-term viability and national significance by easing the transition of service members into this State should be a priority for all Mississippians, including members of occupational licensing boards.

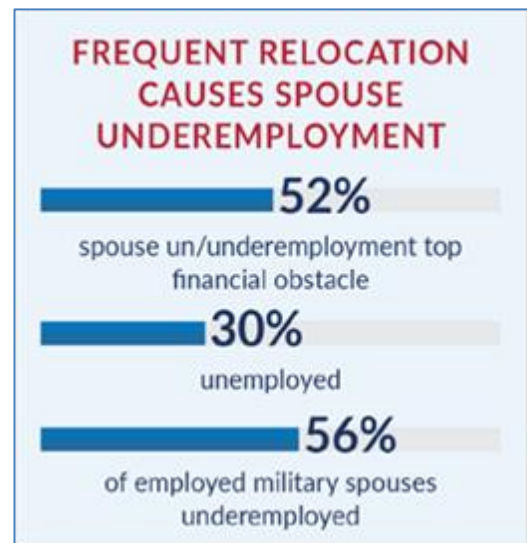


Figure 3²³

²³ Hisako Sonethavilay et al., Military Family Lifestyle Survey: Comprehensive Report, bluestarfam.org (2019), <https://bluestarfam.org/wp-content/uploads/2019/03/2018MFLS-ComprehensiveReport-DIGITAL-FINAL.pdf>.

Recommendation # 2: Facilitate the promulgation of new regulations that comply with the OLB Statute.

Licensing boards are required by the OLB Statute to bring their existing regulatory schemes into compliance with the OLB Statute by January 1, 2021. This can be accomplished either by modifying existing regulations or enacting new regulations. Given the short period of time before this deadline expires, as well as the time-consuming nature of the rule-making process,²⁴ MDI should consider providing assistance to licensing boards in the form of a draft regulation that complies with the OLB Statute and can be easily modified to fit any given licensing board's regulatory structure. A template regulation meeting these requirements has been attached to this report as **Exhibit "A"**.²⁵

We also recommend seeking the OLRC's assistance in communicating to individual licensing boards the importance of bringing their regulations and practices in line with the OLB Statute and facilitating military spousal licensure to the greatest extent feasible.

Recommendation # 3: Encourage licensing boards to reduce licensing fees.

In addition to urging licensing boards to enact new regulations, it may also be helpful to encourage them to reduce or eliminate licensure fees for military spouses. In fact, the OLB Statute itself encourages fee reduction, but many licensing boards maintain their fee structures unchanged. Most boards set fees ranging from \$25 - \$275, and reduction or elimination of these fees would make the transition process for new military families less burdensome.

Recommendation # 4: Provide service members a licensure "toolkit" upon arrival in Mississippi.

Upon arrival in Mississippi, military service members should be provided with materials that will make it easier for spouses holding licenses in other states to navigate the professional licensure process in Mississippi. Attached to this report as **Exhibit "B"** is a licensure "toolkit" containing (a) a list of all Mississippi licensing boards and the contact information for each, (b) a brief list of the requirements imposed upon licensing boards by the OLB Statute (*e.g.*, the fact that licensing boards must issue temporary permits), and (c) a form affidavit which can be executed by a military spouse and submitted to any licensing board as evidence that the spouse meets the OLB Statute's requirements for licensure by reciprocity and/or temporary licensure.

²⁴ Miss. Code. Ann. § 73-47-9 requires that each licensing board submit its new regulations to the OLRC before they may be filed with the Secretary of State's Office (as required under the Administrative Procedures Act). Upon the approval of the OLRC, Miss. Code. Ann. § 25-43-3.103 requires each licensing board to post its proposed regulations with the Secretary of State's Office for a 25-day notice and comment period. Assuming no oral proceeding is required and no public comments are made during that period requiring substantive revisions, the proposed regulations will become effective 30 days after filing with the Secretary of State's Office. Miss. Code. Ann. § 25-43-3.113.

²⁵ It may also be helpful to provide a copy of this template to the OLRC, which it can use for comparison purposes when licensing boards submit their proposed regulations for approval.

Recommendation # 5: Conduct a survey to identify licensing boards that may be creating obstacles to licensure of military spouses.

MDI should also consider conducting a survey among current military spouses in Mississippi to determine which boards may be causing problems, if any. Ideally, this survey would be conducted within 12 to 24 months following the passage of the amended OLB Statute by means of an online platform such as SurveyMonkey.