PROFESSIONAL
CERTIFICATION
COALITION

Legislative Monitoring Analysis: Missouri HB 1719 and HB 1500

HB 1719

Bill Name: "Professional Employer Organization Act"

Principle Sponsor: Derek Grier (R)

Introduced: 12-20-2017

HB 1500

Bill Title: "Modifies provisions relating to the practice of cosmetology and barbering"

Principle Sponsor: Shamed Dogan (R)

Introduced: 12-05-2017

Status: Both bills were **signed into law** on June 1, 2018.

This session of the Missouri legislature has ended.

Comments:

These two omnibus licensing bills contain numerous provisions that garnered significant support, but also have nearly identical provisions relating to professional certification that are troubling. HB 1719 is a 122-page bill; its primary focus and title relate to Professional Employer Organizations (PEOs) and regulating the co-employment relationship, but it also has provisions relating to licensure of dietitians, interior designers, electrical contractors, barbers, hair braiders, chiropractors, nurses, psychologists, pharmacy distributors, and other specified occupations. HB 1500 is 20-page bill; its primary focus relates to occupational qualifications for cosmetologists, estheticians, manicurists, barbers, hair braiders, and hair dressers. Neither bill, when introduced, contained provisions addressing professional certification.

The principal problems with the bills for professional certification organizations and certified professionals could be fixed through enactment of a bill in the next session of the legislature to amend these laws. The next session of the Missouri General Assembly begins on January 9, 2019.***Overview:***

HB 1719 and HB 1500, as enacted into law, create three principal threats to professional certification organizations:

- They pressure the Missouri legislature to weaken licensure laws that recognize private certifications and/or to supplant them with governmental certification programs.
- They create the potential to shift enforcement obligations onto private certification programs for professions that currently have both state licensing boards and private certification programs.

- They preclude professionals who hold private credentials that confer the "registered" titled from accurately advertising their credentials, unless the state has established a registration system with which the individual has registered.

***Analysis*:**

Both laws define "certification" as a "program in which the government grants nontransferable recognition to an individual who meets personal qualifications established by a regulatory entity. Upon approval, the individual may use 'certified' as a designated title." (Section 324.047(2)(2)). This definition is problematic for those professions for which Missouri licensure laws currently recognize certifications issued by private, nonprofit certification organizations. Due to other provisions in the laws, this definition is also problematic for currently unregulated nongovernmental certification programs that prefer that the state not establish competing certification programs.

Other provisions in the laws encourage or require the Missouri government to establish certification programs as a form of occupational regulation. Both statutes provide, for example, that "if the consumer has challenges accessing credentialing information or possesses significantly less information on how to report abuses such that the practitioner puts the consumer in a disadvantageous position relative to the practitioner to judge the quality of the practitioner's services, the regulation shall implement a system of certification." (Section 324.047(5)(2)). Read together with the definition of certification as a solely governmental program, the laws create pressure to weaken licensure laws that recognize private certification and/or to supplant them with governmental certification programs.

Both laws also include a ban on using "registered' as a title unless the state has a registration requirement. "Registration" is defined as "a requirement established by the general assembly in which an individual: (a) Submits notification to a state agency; and (b) May use 'registered' as a designated title." If these requirements are not met, "the individual is prohibited from performing the occupation for compensation or using 'registered' as a designated title" (Section 324.047(2)(13)).

Although it is unlikely that the Missouri legislature intended this result, professionals who hold private credentials from certification organizations that use the term "registered" for credential holders may now be prohibited from accurately advertising their credentials under the new laws. The new laws do not limit the reach of the provision or provide for the laws to be grandfathered. This provision is almost certainly unconstitutional on First Amendment grounds, as applied to those who have legitimately earned a credential that confers a "registered" designation on them, as the U.S. Supreme Court held in *Peel v. Att'y Registration and Disciplinary Comm'n*., 496 U.S. 91 (1990) (holding that "A State may not … completely ban statements that are not actually or inherently misleading, such as certification as a specialist by bona fide organization"). Until the laws are amended or this provision is struck down in court, however, the prohibition on using the title "registered" without specific state authorization is the law in Missouri.

The laws also require that the state adopt "the least restrictive type of occupational regulation consistent with the type of public interest to be protected." The types of regulations are

listed in order from least to most restrictive as "(1) bonding or insurance, (2) registration, (3) certification, and (4) occupational license." (Section 324.047(2)(8)). The state must also consider "governmental, economic and societal costs and benefits" before adopting an occupational regulation. Both laws suggest that only registration with the state, rather than an occupational license, should be required for any professions in which the public has access to "credentialing information" or the ability to "report abuses" – a category that appears to apply to any profession whose certifying body allows public verification of credentials and has an ethics code and procedures. (Section 324.047(5)(2)).

As a consequence of these provisions, the new laws create the potential to shift enforcement obligations onto private certification programs for professions that currently have both state licensing boards and private certification programs. Most professional certification programs provide easy and accessible credentialing verification tools to the public and accept reports of complaints against credentialed professionals. These measures are meant to complement state licensure oversight and are not intended to serve as a substitute or replacement for state occupational licensure board oversight. In contrast to governmental licensing bodies, voluntary credentialing organizations lack the legal authority and resources to fully investigate reports of abuses.