



Model Legislation Analysis: Occupational Licensing Review Act

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Stakeholders: American Legislative Exchange Council (“ALEC”) and Institute for Justice (“IJ”)

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Overview: The Occupational Licensing Review Act is an omnibus bill relating to occupational regulations. The model bill requires that the state use only the least restrictive occupational regulation necessary to protect consumers from present, significant, and substantiated harms that threaten public health and safety. It also requires legislative leaders to assign the responsibility of conducting sunrise and sunset reviews of occupational licensing proposals to appropriate staff. The model bill also limits the state’s ability to deny licensure to individuals with a criminal conviction history and mandates that the governor establish an Office of Antitrust and Active Supervision of Occupational Boards.

ALEC and IJ have incorporated a number of the PCC’s proposed amendments to its model Occupational Licensing Review Act. While this version of the bill is more acceptable to the certification community than previous iterations of ALEC’s model occupational licensing reform bills, ALEC has not addressed several important changes sought by the PCC, and the PCC’s interests do not perfectly align with those of IJ and ALEC. The PCC will continue to engage in constructive dialogue with IJ, ALEC, and other stakeholders, but anticipates that it will still be necessary to continue to advocate for the interests of the certification community as state legislation based on the model legislation is considered.

Analysis:

The latest draft of the IJ and ALEC model Occupational Licensing Review Act creates a single omnibus bill that covers similar ground to several previously published occupational licensing reform model bills specific to certain aspects of occupational licensing reform. The PCC has held in-person meetings and calls with IJ and ALEC to raise concerns about the prior versions of the bill and shared proposed amendments to both the previous bills and the Occupational Licensing Review Act. ALEC has incorporated several changes that address or eliminate a number of these concerns:

- The new model bill clearly distinguishes between “government certification” and “private certification.” The restrictions on individuals’ right to hold themselves out as certified are limited only to use of the titles “government certified” or “state certified.”
- The new model bill adopts a more modest structure for sunrise and sunset reviews of existing and proposed occupational licensing laws. The new model bill would charge legislative/regulatory staff with analyzing the rationale for each occupational licensing

law. The staff's analysis and recommendations would be reported to the relevant legislative committees with oversight of the occupational licensing law, but the recommendation would have no legal force.

- The new model bill now includes “private certification” among the few listed “private remedies” that fall within the “rebuttable presumption that consumers are sufficiently protected by market competition and [certain enumerated] private remedies.”
- The new model bill includes provisions that limit the state’s ability to deny licensure to individuals with a criminal conviction history. The new model bill includes, however, a provision that clarifies that the bill does not require a private certification organization to grant or deny private certification to any individual.

While this version of the bill is more palatable to the certification community and reflects changes specifically sought by the PCC, ALEC and IJ have rejected several important changes sought by the PCC. For example:

- The new model bill still calls for the reviewing staff entity to “recommend enacting government certification” in certain circumstances, with no deference to or preference for private certification programs.
- The new model bill makes no changes to ALEC’s public policy position that “where the state finds it is necessary to displace competition, it will use the least restrictive regulation to protect consumers from present, significant, and substantiated harms that threaten public health and safety.” The new model bill thus refrains from including language proposed by the PCC’s proposals setting forth that public welfare, not just health and safety, warrants regulatory protections, and that the evidentiary standard recognize the value of licensure standards designed to avoid foreseeable and recognizable threats to the public.

We remain in communication with ALEC, IJ, and other stakeholders to persuade them to contemplate our policy positions as they work with state legislators on bills relevant to the PCC’s interests. We are also actively monitoring introduction of state legislation that utilizes language from the Occupational Licensing Review Act.