

Summary of Professional Certification Coalition Strategy Call – January 23, 2019

I. Membership

- a. Update on Current Members.
 - i. The PCC currently has 109 members.
 - ii. Current PCC members are encouraged to continue to reach out to peer organizations to seek out new members.
- b. Invoices
 - i. New dues or remaining dues invoices to arrive shortly. Members are encouraged to process those invoices promptly, especially with costs rising as the state legislative season intensifies.

II. Strategic Discussion

- a. 22 bills identified relevant to Coalition concerns. This information can be found on the Watchlist posted to the PCC website.
- b. Non-threatening bills include those introduced in California, Indiana, Michigan, New Hampshire. We will monitor these bills for now, but there are no substantive provisions materially affecting private certification. We will monitor to make sure no harmful provisions are added.
- c. Bills Related to Criminal Reentry. This is the most frequent category of bill that has been introduced. The bills create a high bar to prevent licensure solely or in part based on a person's criminal history, unless the state can show relevancy of past convictions. In most cases, the PCC does not need to engage directly, but we do want to clarify that the bills aren't meant to control what private certifications can allow. See: MD (H.B.0022), MO (H.B. 472, 564, S.B. 561), ND (H.B. 1253), OK (H.B. 1373), SC (H.B. 3163).
 - i. Direct communication to bill sponsor may be beneficial.
 - ii. Members with connections to bill sponsors or with a significant presence in a particular state are encouraged reach out to any known contacts.

III. Government vs. Private Certification Legislation

- a. Drafted to create a hierarchy from least to most restrictive and to limit regulation to least restrictive means for regulation. These bills provide that, if there is any imbalance of knowledge between seller and buyer, the government should enact

certification programs. Bills include CO H.B. 19-117, VA H.B. 2028, and IN S.B. 384.

- i. We would like to amend these to ensure that a government will only offer certification if there is no suitable private certification alternative available in a field/occupation.
- ii. VA H.B. 2028 – Existing Virginia law allows the government to offer certification, which could lead to the government competing with private certification. H.B. 2028 could be a vehicle to fix current provision of law. Any members with resources in VA, please reach out to the PCC.

IV. Legislation Establishing Evidentiary Burden

- a. These bills create a review process for regulations that present evidentiary hurdles to regulatory recognition of certification programs in licensure laws. The evidentiary standard offer requires a showing of present harms, i.e. there needs to be evidence of current harms to public health and safety. This is a difficult standard to meet for occupations that already prevent such harms through licensure laws. The PCC addressed this in Ohio through the addition of a safe harbor provision exempting recognition of private certification from this evidentiary burden. Similar bills have been introduced in other states (e.g. AZ H.B. 2231, IN S.B. 384, CO H.B. 19-1117, OR S.B. 502).
 - i. In the hierarchy in these bills, deceptive trade practices need to be justified. For voluntary certification programs, the programs have remedies to sue individuals who falsely claim to hold the program's credentials, but consumers who rely on false statements of credentials may need to rely of deceptive trade practices acts to obtain redress.
 - ii. May need on-the-ground resources to gather intelligence.
- Question: We've encountered individuals lying about certification, but we have an advantage in federal law that requires confirmation for laboratory certification. Is this something that could be implemented on a state level for other certifications?
 - o Answer: The deceptive trade practices acts are more important for voluntary certifications, such as in the IT field.
- Question: Could the white paper developed by the PCC be turned into a checklist for elements in a bill and provided to bill makers?
 - o Answer: We have created a list of drafting principles. It's something we will review and perhaps expand on regarding danger areas and is a guide to bill authors as to how to deal with private certification when drafting legislation.
- Question: We are concerned with the burden of justifying the professional licensure requirements in many different jurisdictions. It would be helpful to exempt from such

reviews licensure laws that have been adopted by at least two-thirds of states. We are also concerned that these regulatory reviews are performed by Attorney General's offices or other committees or officials who do not understand certification.

- Answer: Burden is an important issue and who they're hearing from is as well. The safe harbor provisions help. There are two paths: 1) amendments that deal with evidentiary standards, or 2) safe harbor provisions, which sidestep time and cost burdens.

V. Unlicensed Practice

- a. Indiana House Bill 1271: Indiana has a "consumer choice bill" which defines "occupation" as only the 22 listed on the bill itself. This bill would implement a system that would do an end run around license requirements for all occupations on the list if an unlicensed individual puts a provision in their contract with a consumer disclosing that they are unlicensed and has the consumer sign the contract.
- b. IN H.B. 1271 and other consumer choice bills fail to recognize the value of education and experience to upholding public health and safety. The PCC is considering allocating resources to hire lobbyists to protect our interests with respect to these "consumer choice" bills.

VI. Other Legislation

- a. The PCC appreciates notifications we have received from members regarding new legislation introduced and other developments. Please continue forwarding this information.

VII. Stakeholder Outreach

- a. In January, members of the PCC Steering Committee had a constructive meeting with representatives from ALEC and IJ, including the primary author of the ALEC/IJ model occupational licensing reform legislation.
 - i. We are pleased to report that ALEC and IJ have implemented many suggestions the PCC has shared with them. After competing head-to-head with PCC's predecessor coalition in Louisiana, ALEC and IJ have decided they want to avoid confrontation with the PCC wherever possible. Indeed, Lee McGrath from IJ relayed that his number one piece of advice to legislators working on occupational licensing reform bill is: "Don't screw up the private certification portion of your bills".
 - ii. Differences remain between ALEC/IJ's model legislation and our ideal legislation, but we believe further progress is attainable. In particular, IJ told us that it plans to add clarification on the provision that the government certification would not be required if a private certification program is already available.

b. Women in Government (WiG)

- i. PCC members had a productive meeting with the leadership of WiG. We are actively looking at ways to get in front of WIG membership, which consists of numerous women legislators from around the country. We may explore the possibility of sponsoring an event or a portion of an event because this is a valuable audience.

VIII. Reminder – In-Person Meeting February 13 at Pillsbury DC Offices

- a. Agenda has been forwarded to members via email and revisions or questions regarding this agenda are welcome. Lunch will be served at 12:30.