



PROFESSIONAL
CERTIFICATION
COALITION

March 8, 2019

Senator Wayne Harper
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Re: Utah S.B. 158

Dear Senator Harper and Representative Thurston:

The Professional Certification Coalition (PCC) writes to express concerns about Utah S.B. 158, which modifies the Occupational and Professional Licensure Review Committee Act. In its current form, S.B. 158 and the Occupational and Professional Licensure Review Committee Act impose obstacles to state recognition of professional certification standards that protect the public from low-quality or harmful services and open the door to unnecessary expenditure of taxpayer funds to create government programs that compete with existing private certification programs.

The PCC is a nonprofit association founded last year to address legislative initiatives that affect professional certification programs and those who hold private certification credentials. The PCC currently has well over 100 members, including prominent non-governmental professional certification organizations, professional societies and service providers. The PCC's members reflect a full spectrum of professions, including healthcare professionals, professional and civil engineers, human resources managers, financial professionals, and information technology professionals, among many others. The PCC advances the best interests of those who use or rely on professional certification—such as employers, reimbursers, and the general public—as well as of individual professionals themselves who achieve professional certification status, including many residents of Utah. Our founding organizations – the American Society of Association Executives (the leading organization for association management) and the Institute for Credentialing Excellence (the leading developer of accreditation standards for professional certification programs) – serve as the Steering Committee for the PCC.

The public rightfully expects licensure laws to set a high standard for knowledge, skill, and competency from professionals. The PCC appreciates that S.B. 158 seeks to provide a definition of public interest that covers more than just health and safety interests. The PCC respectfully requests, however, that the bill be amended to modify

Senator Wayne Harper
Representative Norman Thurston
March 8, 2019
Page 2

existing provisions of the Utah Code that do not go far enough to protect the public from low-quality or harmful services. Utah should ensure that it establishes a fair standard for determining whether an occupational licensing regulation for a certain field should be adopted or renewed.

In particular, Utah's existing Occupational and Professional Licensure Review Committee Act (enacted before the formation of the PCC) places an evidentiary burden on licensure requirements that is difficult for currently regulated professions to meet. In particular, Section 36-23-107(2) provides that the committee should do the following with respect to conducting sunrise and sunset reviews of licensure regulations:

(c) if the committee determines that state regulation of the lawful occupation is not necessary to protect against **present, recognizable, and significant harm** to the health or safety of the public, **recommend to the Legislature that the state not regulate the profession;**

(d) if the committee determines that state regulation of the lawful occupation is necessary in protecting against present, recognizable, and significant harm to the health or safety of the public, consider whether:

(i) the proposed or existing statute is narrowly tailored to protect against present, recognizable, and significant harm to the health or safety of the public; and

(ii) a potentially less restrictive alternative to licensing, including **state certification**, state registration, or exemption, would avoid unnecessary regulation while still protecting the health and safety of the public; and

(e) recommend to the Legislature any necessary changes to the proposed or existing statute to ensure it is **narrowly tailored to protect against present, recognizable, and significant harm** to the health or safety of the public.

Many professions, including in the healthcare, financial, safety, and engineering fields, have state licensure requirements that have been widely adopted by states and that condition licensure on personal qualifications that include holding a current private certification. These regulatory requirements serve to acknowledge both the importance of setting competency standards for the protection of the public and the value of having those standards defined by subject matter experts rather than by government officials. For these professions, the *content* of the standards is best

Senator Wayne Harper
Representative Norman Thurston
March 8, 2019
Page 3

established by the non-governmental professional certification program, but *enforcement* of the standards is more effectively done by the licensing agency. In professions for which state licensing boards have historically provided oversight, it would not serve the interests either of the public or of private certification organizations to eliminate or weaken licensure requirements and shift the enforcement function currently performed by licensure boards onto private certification programs. Private certification organizations lack the legal authority and the resources to serve as a substitute for licensing boards for professions for which licensure is required to protect public health, safety or welfare. Nonetheless, the Act erects a barrier to continued licensure requirements in those professions because the evidentiary standard does not permit consideration of foreseeable harms that have been prevented. In those regulated professions, there is no evidence of “present [and] significant harm” to the public, because existing licensure requirements that incorporate private certification standards already protect the public from unqualified practitioners.

In addition, the PCC is concerned that the provision of the Act calling for the committee to consider “state certification” as a less restrictive alternative to licensure opens the door to unnecessary expenditures of taxpayer money, given that well-established and recognized private voluntary professional certifications already exist. There is no reason for the state to spend taxpayer resources to enter into the certification business by establishing costly new programs, in many instances competing with private organizations that have already established private certification programs based on their unique expertise in the field or profession.

With these considerations in mind, the PCC requests amendments be made to the bill to eliminate presumptions against retaining licensure requirements for certification. Specifically, we recommend that the bill call for an addition of a new Section 36-23-107(4) to state the following:

Nothing in this Section is intended to restrict the state from requiring, as a condition of licensure or renewal of licensure, that an individual’s personal qualifications include obtaining or maintaining private certification from a private organization that credentials individuals in the relevant occupation. The committee may recommend that the state regulate and adopt licensure requirements for any occupation for which the licensure requirements are based on uniform national laws, practices, and/or examinations that have been adopted by at least two-thirds of states and territories in the United States.

Senator Wayne Harper
Representative Norman Thurston
March 8, 2019
Page 4

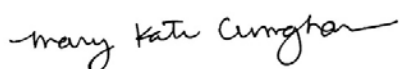
The PCC also encourages the Legislature to amend the definition of “health or safety of the public” in § 36-23-101.5(3) to read as follows:

(3) “Health or safety of the public” includes protections from items or events that can cause disease, illness, or injury to a person or damage to property, or financial harm, or have detrimental effects on the public good.

The PCC applauds Utah for its efforts to remove unnecessary barriers to entry into professions in order to promote market competition and employment opportunities through S.B. 158 and current law. We respectfully request, however, that you and your colleagues in the legislature amend the bill as we have requested above to better balance the protections to the public derived from professional certification with the laudable objectives of professional licensing reform.

Thank you for your consideration of these amendments. If you have any questions regarding this letter, please feel free to reach out to us using the contact information identified below.

Sincerely,



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