



PROFESSIONAL
CERTIFICATION
COALITION

March 15, 2019

Senator Lana Theis
P.O. Box 30036
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SenLTheis@senate.michigan.gov

Re: Michigan S.B. 0040

Dear Senator Theis:

The Professional Certification Coalition (“PCC”) writes to express concerns about the potential effect of Michigan S.B. 40, legislation to modify the review process for Michigan’s occupational licensing regulations. Although the PCC shares your objective that occupational licensing regulations should balance the needs of market competition with consumer protection, we believe that, in its current form, S.B. 40 could have a negative impact on the public, on professional certification organizations, and on Michigan citizens who have earned those certifications. As currently drafted, the bill could also compel the state to expend taxpayer dollars unnecessarily. In addition, the language of the bill should be amended so as not to impair the right of Michigan residents to use the titles they earned through 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 non-governmental professional certification organizations, professional societies and service providers. The PCC’s members reflect a full spectrum of professions: healthcare professionals, professional and civil engineers, legal assistants, human resources managers, financial professionals, nutritionists, construction managers, 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 Michigan. 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. Members of the PCC provide certifications that communicate to the public that certified professionals have met established standards for knowledge, skill, and competency in their fields. These certifications protect the public from low quality

and even negligent services. The credentials issued, held, or relied upon by our members include both wholly voluntary certifications and some private certifications that are a recognized condition of holding an occupational license.

As the legislature continues to consider S.B. 40, the PCC respectfully requests that the legislature make the following amendments to the bill:

1. In its current form, section 404(3)(E) of S.B. 40 appears to call for the government to enact “voluntary certification” where there is “asymmetrical information between the seller and buyer,” rather than relying on private sector certifications. If our interpretation of your legislation is correct, having the government establish voluntary certification programs would be a waste of taxpayer money, given that well-established and recognized private voluntary professional certifications already exist. There is no reason for the state to expend taxpayer resources to enter into the certification business by establishing costly new programs, in many instances competing with private organizations that have already established certification programs based on their unique expertise in the field or profession.

The PCC encourages adoption of the following amendment to this provision:

“Asymmetrical information between a seller and a buyer, by **enacting government certification unless suitable, private certification for the relevant occupation is available. As used in this section, “suitable” means widely recognized as reflecting established standards of competency, skill, or knowledge in the field.”**

This language is modeled on similar language adopted by the Ohio legislature in its enactment in 2018 of S.B. 255, after the PCC raised similar concerns about that legislation.

2. Members of the PCC provide certifications that communicate to the public that certified professionals have met established standards for knowledge, skill, and competency in their fields. Unfortunately, in its current form, S.B. 40 would have the effect of restricting regulatory agencies from requiring private certification as a condition of licensure. As subject matter experts, private certification organizations are in the best position to develop requirements for their certificants that to protect the public and reflect appropriate standards for the field. In some fields, such as health care, safety-related roles, and the engineering and financial industries, regulatory agencies have incorporated the competency standards established by non-governmental professional certification programs into licensure requirements. 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 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.

With these considerations in mind, the PCC requests amendments be made to the bill to eliminate presumptions against retaining licensure requirements for certification. Specifically, the introductory paragraph of Section 404(3) should be revised as follows:

In its analysis under subsections (1) and (2), the Commission shall employ a rebuttable presumption that market competition and private remedies are sufficient to protect consumers; **for purposes of this Section, “private remedies” shall include the measures listed in subsection 404(5)(c)(i) through (v). Nothing in this Section is intended to restrict an agency from requiring, as a condition of licensure or renewal of licensure, that an individual’s personal qualifications include obtaining or maintaining certification from or passing an assessment developed by a private organization that credentials individuals in the relevant occupation.** If that presumption is rebutted, where appropriate, state regulations should be tailored to address specific market failures identified by the Commission to protect consumers from one or more of the following, as appropriate:

3. Similarly, we recommend the inclusion of a new § 404(6) to state the following:

(6) The state may 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.

Representative Lana Theis

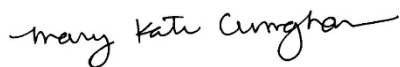
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4. Finally, we note that, while the majority of private certification organizations confer a credential that includes the title “certified,” some private organizations confer credentials with the designation “registered” and refer to their organizations as “registries.” As currently drafted, Section 404(5)(G) would bar any individual who has not provided registration information to the state from using the title “registered.” Accordingly, Section 404(5)(G) should be amended to change “registered” in all instances to “government registered” so as not to preclude individuals from using the titles of credentials earned in non-governmental programs.

We respectfully request that Michigan follow the example established by other states by revising this legislation to more accurately distinguish between occupational licensure and private, professional certification. 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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