



PROFESSIONAL  
CERTIFICATION  
COALITION

April 15, 2019

Representative Jim Cox  
Room 209  
Ryan Office Building  
451 North Third Street  
Harrisburg, PA 17120

**Re: Professional Certification Coalition Position on H.B. 811**

Dear Representative Cox:

The Professional Certification Coalition (PCC) writes to express significant concerns about the effects of H.B. 811 on Pennsylvania residents who have earned credentials from private certification organizations and on such organizations themselves. In its current form, H.B. 811 appears to apply to private certification organizations operating in Pennsylvania. If that is the intent of the bill, the PCC is concerned that the legislation would inappropriately interfere with the right of private credentialing organizations to adopt and enforce ethics codes. If, on the other hand, the bill is intended to apply only to governmental licensing and certifying bodies, its restriction on use of the title “certified” is both unconstitutional and would deny Pennsylvania residents the right to use professional titles they have lawfully earned. In addition, the PCC is concerned that the bill, in its present form, could be interpreted as restricting or invalidating licensure regulations that condition licensure on current private certification. Given that private certifications provide important assurances to the public that certified professionals have relevant qualifications and meet established standards, we request that you modify the bill to avoid these negative impacts.

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, including health care, professional and civil engineering, human resources, financial services, and information technology, among many others. The PCC advances the best interests of those who use or rely on professional certification—such as employers, reimbursors, and the general public—as well as of individual professionals themselves who achieve professional certification status, including many residents of Pennsylvania. 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 PCC has three principal concerns about the bill.

1. *Interference with Private Certification Organization Eligibility and Disciplinary Decisions.* The PCC supports H.B. 811's worthy objective of reducing recidivism by expanding opportunities for ex-offenders to earn a living. We believe, however, that the government should refrain from interfering with the right of private certification organizations to determine what profession-specific certification requirements, both substantive and conduct-related, are necessary to qualify for the organization's credentials. The bill prohibits any "licensing and certifying body" from denying approval to an individual with a non-violent misdemeanor conviction and also mandates specific procedures and restrictions with respect to applications by individuals with felony or violent misdemeanor convictions. The bill also defines "licensing or certifying body" as "the issuing body to whom an individual has applied for a license or certification to conduct or perform a lawful occupation or profession for which the license or certification is required in this Commonwealth." In some fields, such as health care, safety-related roles, and the engineering and financial industries, regulatory agencies have incorporated the competency and ethical conduct standards established by non-governmental professional certification programs into state licensure requirements. Because those certifications are required to perform those occupations in the Commonwealth, private certification organizations would be included in the current definition of "licensing or certifying body." Accordingly, we request that the legislature amend H.B. 811 to clarify that the requirements apply only to governmental entities, by making the following change:
  - Amend the definition of "Licensing or certifying body" in both Chapter 31 and Chapter 33 to mean "**a governmental** issuing body to whom an individual has applied for a license or certification to conduct or perform a lawful occupation or profession for which the license or certification is required in this Commonwealth."
2. *Interfering with the Right of Individuals to Cite Their Earned Credentials.* Although the clarifying amendment requested above would prevent applying the bill's restrictions to private organization, it would create a different set of problems without further amendments to the legislation. The bill defines "Certification" as a "Nontransferable certification provided by a licensing or certifying body to an applicant who is not disqualified under section 3105 (relating to disqualifications)." Section 3108 then states that "An individual who did not receive certification may also perform the lawful occupation for compensation **but may not use the title certified.**" If a "certifying body" is limited to a state entity as we have proposed above, then individuals holding a certification from a private credentialing entity would be prohibited from using that title, which would be unconstitutional. The U.S. Supreme Court has held that states "may

not ... completely ban statements that are not actually or inherently misleading, such as certification as a specialist by bona fide organizations.”

- To avoid this outcome, we ask that Section 3108 be amended to add a new subsection (c): **“Notwithstanding any other provision of this chapter, nothing shall preclude an individual holding a current certification issued by a private certification organization from using the title or designation “certified” as permitted by the private organization in connection with a credential that the organization has issued to the individual.”**
3. Undercutting licensure laws that build on private certifications. The ethics codes of some private certification programs call for revocation or denial of certification due to nonviolent criminal convictions relevant to the practice of a specific occupation. For example, convictions for abuse of prescription privileges typically lead to loss of certification for healthcare professionals, and convictions for embezzlement or fraud typically lead to loss of certification for financial professionals. This is relevant to H.B. 811 because, as noted above, licensure laws for healthcare and financial professionals require current private certification, as do licensure laws for safety-related roles, civil and professional engineers, and other professions in which significant expertise is needed to practice competently. These regulatory requirements serve to acknowledge both the importance of setting knowledge and conduct 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. The current language of H.B. 811, however, bars disqualification from licensure based on certain nonviolent convictions – “notwithstanding any other statute or rule.”

The PCC believes it is important to clarify that H.B. 811 is not intended to interfere with the ethics code enforcement of private certification organizations, nor is it intended remove certification requirements from practice acts. We therefore request the following amendment:

- To avoid creating barriers to state recognition of private certification in licensure requirements, we request that the bill be revised to add that **“nothing in this chapter is intended to restrict an agency from requiring, as a condition 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.”**

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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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