



PROFESSIONAL
CERTIFICATION
COALITION

April 22, 2019

Senator Rodger Smitherman
Suite 719
Alabama State House
11 South Union Street
Montgomery, AL
36130-4600

Senator Cam Ward
Suite 719
Alabama State House
11 South Union Street
Montgomery, AL
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Representative Arnold Mooney
Suite 400-F
Alabama State House
11 South Union Street
Montgomery, AL
36130-2950

Re: Alabama S.B. 163 and H.B. 356

Dear Senators Smitherman and Ward and Representative Mooney:

The Professional Certification Coalition (PCC) writes to express concerns about the potential effects of S.B. 163 and H.B. 356 relating to occupational licensing reform. In their current form, S.B. 163 and H.B. 356 could be interpreted to restrict private certification organizations' enforcement of their ethics codes or eligibility requirements. In addition, they 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 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 Alabama. 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 two principal concerns about the bill:

1. *Interference with Private Certification Organizations' Eligibility and Disciplinary Decisions*

The PCC supports the 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. Unfortunately, in their current form, S.B. 163 and H.B. 356 appear to apply to and restrict the independent decisions of private certification organizations operating in Alabama.

The bills prohibit any "occupational licensing board" from automatically denying a "license" or certificate to any individual holding a valid Order of Limited Relief. The bills define a "license" to include any "evidence of qualification which an individual is required to obtain before he may engage in or represent himself or herself to be a member of a particular profession or occupation." The bill also defines an "occupational licensing board" to include any "entity in this state that is established for the primary purpose of regulating the entry of persons into, and the conduct of persons within, or both, a particular profession or occupation, and that is authorized to issue licenses." Based on a plain reading of this language, the bills could be interpreted to apply to private certification organizations operating in Alabama. Moreover, 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 Alabama, many non-governmental certifications would be included in the current definition of a "license," and many private certification organizations would meet the current definition of an "occupational licensing board."

To avoid such interference, we request that the legislature amend S.B. 163 and H.B. 356 to clarify that the requirements apply only to governmental entities. One small wording change would accomplish this:

- Amend the definition of "license" to cover any "certificate, or other evidence of qualification **issued by the state** that an individual is required to obtain before he or she may engage in or represent himself or herself to be a member of a particular profession or occupation."

2. 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 criminal convictions that are relevant to the practice of a specific occupation. For example, convictions for abusing prescription privileges to distribute opioids 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 S.B. 163 and H.B. 356 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 S.B. 163 and H.B. 356, however, would prevent withholding a license from an individual based on certain criminal convictions.

The PCC believes it is important to clarify that S.B. 163 and H.B. 356 are not intended to interfere with the ethics code enforcement of private certification organizations, nor are the bills intended remove certification requirements from practice acts. We therefore request the addition of a new provision:

Nothing in this chapter shall be construed to require a private certification organization to grant or deny private certification to any individual, nor shall it impair the right of private certification organizations to establish and enforce eligibility criteria, ethics codes, or disciplinary policies. In addition, nothing in this chapter shall be construed to alter any requirement in a licensure statute or regulation for an individual to hold current private certification as a condition of licensure or renewal of licensure.

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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Representative Thad McClammy, Ranking Member, House Committee on Judiciary
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