



PROFESSIONAL
CERTIFICATION
COALITION

February 19, 2020

Senator Mark Maynard
Chair, Senate Committee on Government Organization
Room 217W, Building 1
State Capitol Complex
Charleston, WV 25305
(Mark.Maynard@wvsenate.gov)

Re: West Virginia S.B. 218

Dear Chairman Maynard:

The Professional Certification Coalition (PCC) writes regarding the potential harmful effects of West Virginia S.B. 218 on important protections for the public. In its current form, S.B. 218 could place the public at risk. It lacks adequate safeguards to ensure consumers are in fact aware they are consenting to the services of an unlicensed individual, and it endangers other members of the public who may be harmed by another consumer's hiring of an unqualified and unlicensed individual.

The PCC is a nonprofit association founded in 2018 to address legislative initiatives that affect professional certification programs, those who hold private certification credentials, and the many constituencies that rely on professional certification as a signal of professional competence. The PCC currently has more than 100 organizational members, including non-governmental professional certification organizations, professional societies and service providers. The PCC's members reflect a wide spectrum of professions, including health care, professional and civil engineering, 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, reimbursers, and the general public—as well as of individual professionals themselves who achieve professional certification status, including many residents of West Virginia. 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.

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 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.

The public rightfully expects licensure laws to set a high standard for knowledge, skill, and competency from professionals. The current language of S.B. 218, however, would allow individuals in West Virginia to practice in licensed professions without a license, with the exception of only five identified healthcare professions. Although such unlicensed individuals would be required to provide a “nonlicensed disclosure,” the bill does not provide any assurance that the consumer actually sees or provides informed consent to the required disclosure.

The bill does not require any of the following elements that would support informed decision-making by a consumer that:

- Any website, business card, or other advertisement of the unlicensed individual disclose that the individual does not have a license.
- The disclosure be a stand-alone document.
- The unlicensed individual orally highlight to the consumer his or her unlicensed status and invite discussion or questions about it.
- The disclosure list the requirements for obtaining a license to practice the occupation and identify which of those requirements the individual does not meet.
- The disclosure list the educational, work experience, and other relevant qualifications of the individual to practice the occupation.
- The disclosure state whether the individual has been denied a license or has been the subject of any disciplinary or regulatory action by the licensing board for the profession.

This bill, if enacted as drafted, shifts considerable risk onto consumers. When occupations are licensed, consumers have an expectation that any individual practicing that occupation holds a license. By enacting a licensure requirement, the state creates an assumption in consumers that practitioners of that occupation meet state requirements for qualifications for a license and that practitioners are subject to state enforcement oversight. S.B. 218 opens the door for unscrupulous individuals to take advantage of that assumption and lacks sufficient safeguards for consumers to make an informed decision regarding services of an unlicensed individual. For example, the individual who contracts with an unlicensed professional may not be the end-user of the professional’s services (e.g., child-care workers, bridge builders, etc.). The current version of the bill treats the disclosure requirement as met if it is included in a stack of paperwork that the consumer signs, without fully reading or understanding the import of the document. Similarly, nothing in the bill bars an individual whose license has been revoked for unsafe practices, fraud, or other disciplinary reasons from continuing to practice the occupation by means of this minimal disclosure procedure.

Moreover, even if the bill were amended to require informed consumer consent, rather than just posting a notice that a consumer may or may not see, many licensed professionals perform services that are relied on by individuals other than the individual hiring the service provider. Licensed civil and professional engineers, for example, build structures that members of the public enter or traverse; the public has a reasonable expectation that such structures were

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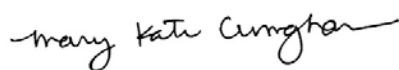
designed by individuals qualified to make judgments about structural integrity, based on their knowledge, experience, and skills, as demonstrated to the satisfaction of the state of West Virginia. It would imperil public safety to permit unqualified individuals to practice as civil or professional engineers, regardless of any nonlicensed disclosure or consent form the unlicensed individual uses. The same holds true of many licensed professions, as the person hiring the unlicensed professional may not be the end-user of the services or work product for which the person has contracted.

To avoid harms to the public and preserve the assurances offered by professional certifications that have been incorporated into licensure laws, please find enclosed our proposed amendments, in redline. These proposed amendments retain the positive aspects of the bill by allowing qualified individuals, such as those holding comparable licenses in other states, to avoid licensure fees and other requirements that are unrelated to their personal qualifications, but it limits this alternative to occupations in which permitting this approach would not expose consumers or the public to risk. In addition, the proposed amendments are designed to ensure that any consumer contracting with an unlicensed individual in an otherwise licensed profession has the information necessary to make an informed choice.

The PCC supports efforts to remove unnecessary barriers to entry into professions in order to promote market competition and employment opportunities. We respectfully request, however, that you and your colleagues in the legislature amend the bill as we have proposed to avoid imperiling public health, safety, and welfare.

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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