



PROFESSIONAL CERTIFICATION COALITION

February 13, 2020

Senator Nathan Dahm
2300 North Lincoln Boulevard
State Capitol Building, Room 526
Oklahoma City, OK 73105

Re: S.B. 1109 and S.B. 651

Dear Senator Dahm:

The Professional Certification Coalition (PCC) writes to share our views on S.B. 1109 and S.B. 651, the “Right to Earn a Living Act,” both of which would have a significant impact on the professional certification community.

- The PCC enthusiastically **supports S.B. 1109**, but respectfully suggests expanding the scope of the bill to provide a tax credit for qualified fees required to obtain and renew both licenses and private certifications. The tax credit proposed in the bill would open new avenues for professional growth and development for low-income workers and support industries struggling to find adequately trained workers.
- At the same time, the PCC is concerned about the **potential negative effects of S.B. 651**, including its proposals to mandate that agencies repeal regulations unless an extremely high evidentiary standard is met and to permit a private cause of action for individuals to challenge occupational licensing regulations. We are concerned that S.B. 651 could have an adverse effect on the health, safety, and welfare of Oklahoma citizens who trust the state to protect the public from low-quality or harmful services and could also compel the state to expend taxpayer dollars unnecessarily.

About the Professional Certification Coalition

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. 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 Oklahoma. 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’s Support for S.B. 1109

Professional certifications signal to employers and potential customers that certification-holders have met established standards for knowledge, specialized skills, and competencies in their fields. This is the case whether the professional certification is issued by the government or a private certification organization, and whether or not the certification is required by law to practice an occupation. We are pleased that you have introduced S.B. 1109, which aims to help workers obtain the credentials necessary to compete for jobs in the 21st century economy.

As you work to advance S.B. 1109, the PCC suggests expanding the definition of “qualified fees” to include “fees required for an individual taxpayer to obtain and renew a license or certification in an occupation, whether charged by the state or a nongovernmental certifying entity, when such license or certification is required by state law to work in this state.” The PCC also suggests further expanding the definition to include fees for certifications that are “a gateway to entry into or advancement in a profession, even if not required for licensure.” We would be pleased to work directly with you and your staff to refine the legislation accordingly and to generate grassroots support for your legislation among Oklahomans who hold or seek credentials and also generate grassroots support from national organizations that represent or certify such individuals.

The PCC’s Concerns Regarding S.B. 651

S.B. 651 has two key components. The first calls on state agencies to review all occupational regulations to ensure that they are limited to those demonstrably necessary and carefully tailored to fulfill legitimate public health, safety or welfare objectives. The PCC supports the objective of careful review of licensing laws to ensure that unnecessary obstacles to the practice of professions is lightened or removed. However, we regard the bill’s current definition of “welfare” as too narrow, as it only encompasses protection of members of the public against fraud or harm. This evidentiary burden is extremely high, and the “demonstrably necessary” standard suggests that proof of actual harms from the absence of the regulatory requirements would be needed to meet it. This would impose an impracticable burden on the licensing agency to collect appropriate data, as there is in fact no existing data available that gathers evidence of public harm from each level of restriction and compares the level of harm from requiring, for example, bonding and insurance versus an occupational license requirement. In addition, some licensing laws appropriately set baseline levels of professional competence above mere avoidance of inflicting harm on members of the public. It promotes public welfare, for example, to ensure that public school teachers pass the competency-based teacher tests required to become certified to teach in Oklahoma public schools. Quantifying the “harm” to the public from teachers who fall short of those measures would be extremely difficult to do and would require longitudinal data that would be unavailable at the time of review of those regulations.

February 13, 2020

Page 3

The second component of the bill invites costly litigation against government agencies by directly creating a private right of action for individuals to seek injunctions against licensing regulations. The PCC opposes this component of the bill, for several reasons. First, the bill effectively shifts the burden of proof to the government in all cases, as any petitioner would be able to meet the threshold of burden of showing that a regulation “burdens the entry into a profession or occupation.” By definition, all licensure laws do that. Second, the government would bear the burden of proof in establishing that regulations both serve the public interest and are drafted in the least restrictive manner, according to the hierarchy of least restrictive to most restrictive listed in the bill. No government agency will have data comparing the effects of the various levels of regulation in the list, because that list was not a factor at the time of adoption of the regulations. Although the PCC does not oppose a procedure in which regulations that fail to promote the public interest are modified or repealed, the measure of whether a regulation promotes the public interest should not be an artificial hierarchy that bears no relation to the issues a state agency oversees. Moreover, inviting costly litigation that the state would have to defend would waste limited state resources and taxpayer dollars. The threat and likelihood of litigation, and the cost burden of the resulting legal expenses, would require agencies would create significant budgetary pressures on the state to eliminate occupational licensure wherever feasible, even when doing so would not be in the best interest of Oklahoma citizens.

With these considerations in mind, we request that you withdraw or significantly amend S.B.651 to protect Oklahoma citizens.

Thank you for your consideration of this letter. The PCC, along with our members in Oklahoma and around the country, would be pleased to work with you to advance your objectives of ensuring access to meaningful training and workforce development opportunities for Oklahomans without compromising public health, safety, or welfare.

Sincerely,



Mary Kate Cunningham
Vice President, Public Policy
ASAE: The Center for Association
Leadership
Phone: (202) 626-2787
Email: mcunningham@asaecenter.org



Denise Roosendaal
Executive Director
Institute for Credentialing Excellence
Phone: (202) 367-1165
Email: droosendaal@credentialingexcellence.org