



PROFESSIONAL  
CERTIFICATION  
COALITION

February 28, 2020

Senator Janice Bowling  
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Nashville, TN 37243  
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**Re: S.B. 1914**

Dear Senator Bowling:

The Professional Certification Coalition (PCC) writes regarding the potential harmful effects of S.B. 1914 on important protections for the public. In its current form, S.B. 1914 places 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 places at risk other members of the public who may be harmed by relying on low quality products or services that result from 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. 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 Tennessee. 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 health care, 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 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.

The public rightfully expects licensure laws to set a high standard for knowledge, skill, and competency from professionals. The current language of S.B. 1914, however, would allow

individuals in Tennessee to practice in licensed professions without a license. Although such unlicensed individuals would be required to enter into a written agreement with the customer, this agreement would waive “any liability action” the customer wishes to pursue except “an action brought for intentional, willful, or malicious conduct.”

Further, 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.
- That the disclosure be a stand-alone document.
- That the unlicensed individual orally highlight to the consumer his or her unlicensed status and invite discussion or questions about it at the time of initial contact, not just prior to beginning work.
- That the disclosure identify the requirements for obtaining a license to practice the occupation and which of those requirements the individual does not meet.
- That the disclosure list the educational, work experience, and other relevant qualifications of the individual to practice the occupation.
- That 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 meets the qualifications to hold a license and that practitioners are subject to state enforcement oversight. S.B. 1914 opens the door for unscrupulous individuals to take advantage of that expectation and lacks sufficient safeguards for consumers to make an informed decision regarding services of an unlicensed individual. The current version of the bill treats the written agreement 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 agreement procedure.

Moreover, 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 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 Tennessee. It would imperil public safety to permit unqualified individuals to practice as civil or professional engineers, regardless of any written agreement 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.

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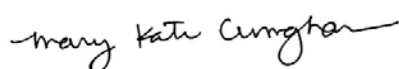
The PCC recognizes that, in some situations, it may be appropriate for the state to permit consumers to make an informed decision to use the services of an unlicensed person, such as if a homeowner with a leaky faucet wants to hire an unlicensed neighbor to fix the leak, rather than call a licensed plumber. The stakes there are low, and the consumer would be the primary person affected by the consumer's choice not to hire a plumber who has met Tennessee's standards for licensure. In other situations, however, most consumers will have insufficient knowledge to evaluate the risk of harm from hiring an individual who has not met licensure requirements – or the hiring decision will foist the risks onto third party end-users of the services or products.

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 through S.B. 1914. 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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