

Professional Certification Coalition Member Strategy Call
Thursday, December 10, 2020
12:00 pm ET

Steering Committee: ICE (Denise Roosendaal), ASAE (Mary Kate Cunningham/Jeff Evans)
Legal Counsel: Jerry Jacobs, Craig Saperstein, Julia Judish, and Lori Panosyan (Pillsbury)

1. Welcome

- a. Thank you to our members for your continued support.
- b. We wish you all a safe and healthy holiday season!

2. Strategic Discussion – State Legislation

a. Missouri regulatory interpretation on use of the term “registered”

- i. Right before PCC was founded in July 2018, two occupational licensure reform bills passed in Missouri – H.B. 1719 and H.B. 1500 – that defined registration as the process by which applicants register with the state. The law states that unless an applicant engages in the state registration process, he or she is prohibited from using the term “registered” in Missouri or performing the occupation for compensation.
- ii. The PCC has been working with both the legislature and regulators over the past two years to either amend or re-interpret the statute. See our previous meeting minutes and member emails for further background.
- iii. Recently, the PCC sent a letter to Interim Director of the Missouri Division of Professional Registration, Sarah E. Ledgerwood, requesting a formal interpretation that would permit individuals to use the title “registered” to reflect the title of their privately issued certification, as applicable. Director Ledgerwood replied by asserting that the Division does not have the legal authority to issue formal letters of interpretation.
- iv. After receiving PCC member feedback, we determined that we would ask the Department of Commerce and Insurance (of which the Division of Professional Registration is a part) to request a formal legal opinion on the matter from the MO Attorney General.
- v. With welcome assistance from Director Ledgerwood (and using language we provided), the Department submitted the request for the Attorney General’s opinion on December 1st.
- vi. **Thank you for all your valuable feedback on this effort** – we are hopeful that this sign of progress is foreshadowing a victory on this issue in Missouri.
- vii. Member question: Does the PCC have a sense of how long it will take to receive a decision from the Attorney General?

1. We hope to receive an update by the end of the year, but are not sure what the typical turnaround time is. We will keep in touch with the Division and keep members apprised of any progress.
- viii. Member comment: In Missouri, session is scheduled to begin on January 6 and adjourn on May 30, so we may want to keep those dates in mind in case we need to take legislative action based on the Attorney General's response.
1. This is a great reminder – we hope that legislative action will not be necessary, but should it be, we have contacts in Missouri that we are ready to activate as necessary.

b. Michigan S.B. 40

- i. S.B. 40 is an occupational licensing reform bill that was introduced in 2019 and rolled over into the current legislative session. A hearing was held on the bill this summer, but our on-the-ground intelligence suggests this bill will not move forward in the remaining days of this legislative session.

c. Michigan H.B. 4488 *[Note: the status of this bill has changed since our member strategy call. This update reflects the bill's status as of Dec. 15, 2020.]*

- i. H.B. 4488 purports to limit and restrict how licensure agencies may consider the criminal conviction history and civil judgment history of applicants or holders of professional licenses. However, this bill is an outlier from other ex-offender reentry bills: even as amended by the House, it would prohibit licensing agencies from considering non-felony criminal convictions, felony convictions that are not directly related to the activities the agency licenses, and judgments in a civil action against an individual for lack of good moral character, unless there has been more than one civil judgement.
- ii. The way the bill is drafted suggests that the intent of the legislature is to avoid having a criminal conviction or civil judgment be used as a “scarlet letter” or stigma without any thought given to the underlying facts.
- iii. However, in its current form, the bill could easily be applied to prevent licensure agencies from considering whether criminal behavior or fraud has a bearing on whether an individual should hold a license.
- iv. Although the bill does not purport to directly restrict or limit certification organizations, this affects PCC members because professional certification organizations have codes of conduct and professional societies have ethics codes – both of which often rely on public records of licensure actions to obtain information on what a credential holder or certificant has done and whether they are complying with applicable conduct/ethics codes. It could

both tie the hands of licensure agencies and block important information on the fitness for certification to certification organizations.

- v. In the other direction, the bill threatens to create a loophole where licensure agencies may not consider a certification organization's denial of an applicant if that denial was based on a criminal conviction or civil judgment.
- vi. The PCC engaged a lobbyist in Michigan who persuaded the bill's sponsor, Representative Brandt Iden, to support a proposed amendment we drafted that would provide legal safe harbor for private professional certification. The PCC's lobbyist negotiated with legislators and other stakeholder groups related to our amendment.
- vii. **POST-MEMBER CALL UPDATE:** Unfortunately, based on extenuating circumstances (namely, a COVID-19 outbreak in the legislature) and the opposition of several influential stakeholder organizations – notably, the ACLU Michigan chapter on the left and the libertarian Mackinac Center on the right – legislators decided to push through passage of dozens of bills and to slow down the voting by including any amendments (including ours). Accordingly, H.B. 4488 passed the Senate on December 10 without the amended language we had persuaded Rep. Iden to accept. Rep. Iden will not be serving another term, but we are already in discussions with another legislator regarding introduction of a new bill next session that would encompass our proposed amendment or would rewrite the new law to reflect the principles contained in PA SB 637, which we consider to be our model legislation for criminal conviction history matters.
- viii. Member question: Do you think this bill would survive constitutional muster?
 - 1. State legislatures have significant authority to decide how to conduct the licensing process, including what to consider and what is relevant to licensure. As this provision is not preventing individuals from being licensed or restricting individuals from practicing or from using private title they have earned, it would likely be seen as constitutional.
- ix. Member question: Governor Snyder's "ban the box" executive order in 2018 [required](#) the Michigan Department of Licensing and Regulatory Affairs (LARA) to remove the question "were you convicted of a felony" from licensing applications. If we cannot achieve the language we're hoping for, would this impact LARA's own applications?
 - 1. This is a very insightful point and could be an unintended consequence of the bill.

- d. **Ohio H.B. 263** *[Note: the status of this bill has changed since our member strategy call. This update reflects the bill's status as of Dec. 15, 2020.]*
- i. We have been closely monitoring this bill and gathering intelligence from on-the-ground sources, including state licensing boards, who feel the bill will have harmful effects.
 1. As the PCC's interactions have mainly been focused on legislators, we appreciated the opportunity to learn more about the perspective of regulators.
 2. Regulators expressed gratitude for our work. They feel like bills such as this gut their ability to protect the public but they are constrained by the fact that legislators provide funding for their agencies.
 - ii. This ex-offender reentry bill would effectively put blinders on the eyes of licensing agencies. It requires a "clear and convincing" evidence standard for considering any criminal convictions, requires state agencies to publish a list of disqualifying offenses, prohibits consideration of offenses that are 5 years or older, and prohibits consideration of convictions that do not directly relate to the duties and functions of the position.
 - iii. Similar to Michigan H.B. 4488, we have provided Pennsylvania S.B. 637 as a model for reform: where no relevant information is off limits. Instead of prohibiting consideration, S.B. 637 directs licensing agencies to consider specific factors in making individualized determinations about whether ex-offenders can be granted a license.
 - iv. We submitted a letter to the bill's sponsor that was offered as formal testimony for the hearing and we were hopeful that the bill would either be amended to reflect our concerns or would fail to advance further in the Ohio Senate.
 - v. Further, several organizations (such as the Ohio Society of Professional Engineers) formally testified.
 - vi. **POST-MEMBER STRATEGY CALL UPDATE:** H.B. 263 was approved in committee in the Senate and is likely to be considered on the Senate floor over the next few days. The bill was amended in committee in ways that do not address our primary concerns, so it will have to go back to the House, but we expect the legislative process to move fast at the end of session. **We have asked PCC members to mobilize in opposing enactment of the bill this session.**
- e. **Election recap and preview of 2020 state legislative season**
- i. Despite significant effort to flip state legislatures and influence redistricting, the 2020 election surprisingly resulted in a largely status quo

political landscape with respect to the balance of power between Democrats and Republicans in state legislatures.

- ii. Therefore, we will largely be tracking the same states and same types of bills, including pre-filed bills we are already tracking in state legislatures.

3. Strategic Discussion – Federal Legislation

a. Further COVID-19 relief legislation (Update from ASAE)

- i. When the CARES Act and the Paycheck Protection Program (PPP) was released in March and 501(c)(6) organizations were excluded, gaining their inclusion in a future relief package has been a top priority.
- ii. The latest bipartisan relief bill includes 501(c)(6) organizations at a modest level: those with 150 or fewer employees and who do not exceed lobbying thresholds.
- iii. As this will exclude many associations, ASAE continues to try and improve 501(c)(6) eligibility. While lobbying restrictions are unlikely to go away, ASAE's priority is to widen eligibility as much as possible.
- iv. There continues to be negotiations between lawmakers on how to move forward on COVID relief. There are various proposals, including proposals from moderates in the House and Senate, Senator McConnell and Secretary Mnuchin. Speaker Pelosi and Senator Schumer have expressed support for the bipartisan package put forward by moderates, and ASAE is hopeful that in the ensuing days a package has the potential to pass.

b. S. 3779/H.R. 7032 – Skills Renewal Act

- i. It appears unlikely that the Skills Renewal Act will be included in the next COVID relief package, as the bipartisan proposal is much smaller than what congressional Democrats have pushed for since the summer.
- ii. The Biden transition team has signaled that it considers the next COVID relief bill to be a down payment for future pandemic-related investment, and it fully expects to come back to Congress for a supplemental COVID relief package after the presidential inauguration.

c. H.R. 5339 (529 plan legislation)

- i. We plan to make another push for 529 plans to cover expenses associated with obtaining and maintaining certification, including exam related costs.
- ii. We have not had detailed conversations yet with the presumed sponsors of a future bill – Senator Klobuchar, Representative Wittman, and Representative Spanberger.

- iii. We believe it will be reintroduced in the next Congress and that our approach is favored.
- iv. As a moderate member from a “swing” district, Representative Spanberger has received significant attention recently for her position on how the Democratic party should define itself moving forward and we see her as an increasingly influential member.

d. Election recap and preview of 117th Congress and Biden Administration

- i. Control of the Senate will be determined by the Georgia Senate runoff elections, while the House remains under Democratic control, albeit with a smaller majority. In what was a surprise to most political prognosticators, Democrats lost about a dozen seats, leaving a much tighter balance of power in the House.
- ii. We have noticed that the Biden transition team includes a representative from the National Employment Law Project, which has been an influential stakeholder on criminal conviction history legislation at the federal level.
- iii. An infrastructure bill is likely to be a high priority and Democrats have signaled that such a bill may include a criminal justice reform provision that aims to provide jobs to ex-offenders.
- iv. We will continue to be on the lookout for issues that will impact the certification community and remain actively engaged with stakeholders to ensure our interests are being protected.

4. Strategic Discussion

a. Universal licensure/reciprocal licensure bills: Draft Statement of Principles

- i. During our last meeting, members expressed getting more information about universal licensure/reciprocal licensure and drafting points that the PCC or members individually could use for advocacy when such bills are introduced.
- ii. To recap: for our first 2 years, we have not included universal/reciprocal licensure bills in our watchlist because they are neutral on their face with respect to certification.
- iii. However, there are aspects of this occupational licensure reform that could be concerning for PCC members, particularly those who provide certifications for regulated professions and those certifications that are conditions of licensure. For example, licensees could obtain licensure in states with laxer requirements for licensure – and no requirement for certification – to obtain reciprocal licensure in a state that does otherwise

require certification as a condition of licensure.

- iv. To further our conversation and offered as a resource for members, we have drafted a statement of principles, which you can access here.
[<https://members.profcertcoalition.org/sitefiles/33691/draft%20statement%20of%20principles%20-%20universal%20licensure.pdf>]
- v. **We welcome any feedback you wish to provide!**