

Professional Certification Coalition Member Strategy Call
Tuesday, February 2, 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. “Second half” invoices.
 - i. We will be sending out invoices for the second half of the year later this week and would greatly appreciate your attention to any remaining dues.
 - ii. The predictability of resources is essential to our ability to take action, such as determining whether to hire on-the-ground lobbying assistance in states where high priority bills are pending.

2. State Legislation

a. **2020 Year-End Activity**

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

1. The PCC has been in frequent communication with Interim Director of the Missouri Division of Professional Registration, Sarah E. Ledgerwood, about our effort to receive a formal interpretation from the Attorney General that would permit individuals to use the title “registered” to reflect the title of their privately issued certification, as applicable.
2. Director Ledgerwood has not yet heard back from the Attorney General’s office, so she is going to re-submit our request, to position it at the top of the Attorney General’s agenda.
3. We will remain persistent and have no reason to think that our efforts will be unsuccessful.

ii. **MI H.B. 4488**

1. Unfortunately, H.B. 4488 was enacted into law, due to larger legislative dynamics beyond the PCC’s control.
2. The PCC had received a commitment from the bill’s sponsor to support a proposed amendment the PCC drafted that would provide a legal safe harbor for private professional certification.

3. However, amid hearings over certification of the presidential election and concerns over a COVID-19 outbreak at the Capitol, the legislature decided to refrain from considering any amendments considered “controversial”; ours was considered as such because both the ACLU and Mackinac Institute raised concerns about it. The legislature adjourned earlier than had been scheduled and rushed bills through passage, without considering amendments, on their final day in session.
4. Over the next few weeks, we will assess our options for introducing our proposed amendments as a new bill this legislative session. We have already identified a legislator who supports amending the now-enacted H.B. 4488.
5. Our experience with the bill has reinforced how careful we need to be about communicating our nuanced position on criminal conviction history bills to stakeholders, as such bills consistently receive support from both sides of the political aisle.

iii. **OH H.B. 263**

1. Despite strenuous efforts by the PCC, our members, and numerous state regulators to oppose the bill, H.B. 263 was passed by the Ohio legislature and signed into law in late 2020.
2. State regulators contacted the PCC expressing concern about the bill’s impact and seeking our help. Unfortunately, formal testimony by the PCC and several of our members expressing the need for amendments was not enough to tip the scales.
3. The PCC sincerely appreciates your swift efforts in opposing enactment of the bill!
4. Member question: Is there anything we could have done differently to achieve our objectives on this bill?
 - a. Although we are constantly assessing our performance and strategy, the PCC believes we generally took the right approach in responding to this bill. We served as a loud and persistent (though always respectful!) voice of the certification community in both formal testimony and individual communications with legislators. We also think we effectively mobilized our membership in opposition to the bill. We chose not to expend resources to hire an on-the-ground lobbyist in Columbus given that numerous state occupational licensing regulators had raised their opposition to the bill; we were disappointed to see that legislators cast aside their views.

- b. Moving forward, we are refining our understanding of the disparate forces in support of these kinds of bills and have been engaging in outreach to groups that were both supportive and less supportive of our amendments.
- c. A better understanding of their arguments allows the PCC to tailor its position and include it in initial outreach, so legislators can achieve their goals in ways that are more desirable for the certification community.
- d. We also think that the impact of the pandemic cannot be discounted, particularly regarding ex-offender reentry bills, when individuals are economically displaced due to COVID-19.

b. 2021 High-Priority Bills: *Returning Bills*

- i. MS S.B. 2048: Review and repeal (repeal 30% of regulations)
 - 1. This bill approaches all regulations as equivalent and seeks to reduce them by a numerical percentage, from least to most restrictive.
- ii. AZ S.B. 1218: Review and repeal bill for non-health professions.
- iii. NJ A. 2178: Ex-offender reentry (carryover)
 - 1. The language of this bill grants a certificate of rehabilitation to individuals who meet certain standards, but purports to remove any barriers to professional licensure or certification. It does not specify that it is limited to *government* certification, so the PCC is concerned that it could be used to mount legal challenges to decisions by private certification organizations to deny certification.
- iv. OK S.B. 542: Review and Repeal/Right to Earn a Living Act
 - 1. This bill establishes a private cause of action against occupational regulations and places the burden of proof on the state.
- v. Please refer to the legislative monitoring watchlist on the PCC For Members website for further details.

c. 2021 High-Priority Bills: *New Bills*

- i. KS S.B. 10: Right to Earn a Living Act/private right of action
- ii. MN H.F. 266: Seeks to abolish all licensure laws

- iii. MS H.B. 663: Review and repeal/Regulatory Reduction Pilot Program (repeal 30% of regulations)
- iv. MO H.B. 584: License reciprocity (no requirement of equivalence in licensure requirements; waives exams)
 - 1. This bill does not require any equivalence in scope of practice or requirements and specifically waives exam requirements. For certification organizations whose exams are required for entry in many but not all states, this bill would create a loophole to evade such a requirement.
- v. NH H.B. 405: License reciprocity (certification + work experience as substitute)
 - 1. This bill provides that an individual can be licensed in NH if they have a certification in another state that does not require licensure in that profession – essentially making private certification organizations a substitute for vetting individuals NH would give a license to. The PCC is not comfortable with that kind of enforcement expectation on certification organizations. In addition, there are no standards for what qualifies as a certification that can substitute for licensure.
- vi. OK S.B. 756: Limited Consumer Choice/“Oklahoma Certification Opportunity Act”
 - 1. Most “consumer choice” bills allow individuals to practice without a license as long as they inform consumers that they do not have a license.
 - 2. This bill follows the same model, except it only allows those who are certified to practice without a license. It calls for the state to establish a registry of certifications, but its definition of certification is not robust.
- vii. SC S. 295: Ex-offender reentry
- viii. SC H. 3474: Ex-offender reentry
- ix. Please refer to the legislative monitoring watchlist on the PCC For Members website for further details.

d. 2021 Other Bills of Interest

- i. IA S.S.B. 1046: Review and Repeal/Sunset Review – includes PCC safe harbors

- 1. The PCC has categorized this bill as medium priority because it includes safe harbor provisions that the PCC has advocated for in other bills. Otherwise, it is a relatively standard “review and repeal” bill that categorizes regulation from least to most restrictive, requires substantiated harms, and does not recognize public welfare as a basis for occupational licensure regulations.

3. Outreach: [ARPL](#), the Alliance for Responsible Professional Licensing

- a. The PCC connected with ARPL last week and discussed their outreach in order to identify ways the PCC can coordinate efforts for a greater impact.
- b. When we first spoke with ARPL, the organization was more focused on public affairs, rather than government affairs, but it has clearly intensified its government affairs activity, targeting 6 key states.
- c. This is a great opportunity for us to see where our interests align and consider opportunities to partner in hiring on-the-ground advocates.

4. License Reciprocity: template legislator letter

- a. The PCC has circulated a template legislator letter that will be used for reciprocity/universal licensure bills that are not considered high priority.
- b. It explains the principles the PCC recommends for incorporation into reciprocal licensure laws and will be sent along with the statement of principles. The PCC’s plan is not to engage beyond this initial outreach with non-high priority bills.
- c. However, we will engage specifically with high-priority bills and so far, have classified two as such (see above).
- d. **Please feel free to use the template letter in your own communications if reciprocal licensure is a high priority for your organization.**
- e. Member question: Does the PCC plan to engage with bills that include a residency requirement? This can be an 8-12 month process, depending on state rules.
 - i. The template letter urges legislators to consider whether residency requirements are appropriate for licensure for each profession, because the issue has two sides. The PCC does not support reciprocity bills impeding mobility. However, particularly if a bill does not require substantially equivalent criteria for licensure, the absence of a residency requirement could permit residents of other states who have no interest in moving to or practicing in the state to use the process as a backdoor to gain licensure

without meeting higher licensure requirements. Thus, the PCC does not plan to take a position either way but will flag it as something that requires consideration.

- f. Member question: Will an unfavorable or vague definition of “certification” cause a bill to become high priority?
 - i. It depends on the significance of the definition of certification. We would not engage with a bill with a passing reference to certification if the definition does not affect the impact of the bill. However, as with NH H.B. 405, if certification is used as a substitute for licensure, then the definition matters greatly and we would engage.

5. Federal Legislation

- a. 529 plan legislation
 - i. Based on a conversation with her staff, Congresswoman Abigail Spanberger (D-VA) intends to reintroduce the 529 plan legislation that the PCC initially drafted, likely some time in February. They are trying to find the best time for reintroduction – be it as a standalone bill or as part of a larger tax package. Rep. Spanberger is unlikely to partner with Rep. Rob Wittman (R-VA) as a co-sponsor this year but is looking for other bipartisan sponsorship.
 - ii. Rep. Spanberger is very interested in the PCC taking a leadership role and would appreciate a letter of support from the organization, which we are happy to provide.
 - iii. Member question: If we are interested in sending a letter of support, to whom do we send it?
 - 1. The PCC will share contact information.
- b. Skills Renewal Act
 - i. Last year, bipartisan members of the Senate introduced the Skills Renewal Act, which would provide a \$4,000 tax credit for individuals displaced from their job due to the pandemic to use toward job training.
 - ii. The PCC had great conversations with the Senate offices and our proposed changes to have certification exam expenses covered under the bill were well received. We have remained in touch, and Senator Klobuchar’s staff has communicated that she will be reintroducing it imminently.
- c. Potential legislation to enable certification organizations/training programs to apply to participate in a federally funded program allowing them to offer discount examinations/enrollment to those affected by pandemic

- i. The PCC has circulated a short summary of our proposed alternative to the Skills Renewal Act, where instead of individuals displaced from their job due to the pandemic applying for tax credits, certification organizations would offer discounted enrollment and/or exam fees to those individuals, supported by a federally funded Skills Renewal Scholarship Fund.
- ii. The funding would come from a self-administered payroll tax credit, similar to the paid leave provisions of the Families First Coronavirus Response Act (FFCRA).
- iii. Certification organizations would be responsible for reviewing applications from eligible individuals and promoting the scholarship program, which would also provide the opportunity to promote their certification programs.
- iv. This approach would give unemployed individuals direct access to reduced cost training and credentialing, without having to front the expenses and recoup them later through a tax credit.
- v. The Secretary of Labor would be directed to come up with a directory of programs that are not required for licensure. Such a centralized database of approved, legitimate training and certification programs—and this model in general—could be useful in many other contexts, beyond the pandemic.
- vi. Although Sen. Klobuchar intends to reintroduce the original version of the Skills Renewal Act at present, Senator Klobuchar’s office is interested in our version of the bill and will strongly consider pursuing it, either as part of a larger COVID relief package or on a standalone basis.
- vii. The PCC has finalized a draft of the legislation and shared it with Sen. Klobuchar’s staff. We will also be meeting with the House sponsors of the Skills Renewal Act to “shop” our version over the coming days.