



PROFESSIONAL
CERTIFICATION
COALITION

March 1, 2021

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Re: Connecticut H.B. 6474

Dear Senator Kushner, Representative Porter, Senator Cabrera, and Representative Sanchez:

The Professional Certification Coalition (PCC) writes to share our views regarding H.B. 6474. We appreciate that this bill aims to advance the important goal of reducing recidivism by making it easier for an ex-offender to earn a living in certain occupations. Unfortunately, **in its current form, H.B. 6474 intrudes on the right of private associations and organizations to enforce their ethics codes or eligibility requirements and weakens important protections for the public in licensure decisions.** We respectfully request that H.B. 6474 be amended to address these issues.

The PCC is a nonprofit association formed to address legislation that affects professional certification programs, those who hold private certification credentials, and the many constituencies that rely on professional certification. The PCC's organizational members include non-governmental professional certification organizations, professional societies, and service providers. The PCC's members reflect a wide spectrum of professions, including health care, engineering, financial services, and information technology, among many others. 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) – govern the PCC.

We support H.B. 6474's worthy objectives, which are consistent with national efforts to reform the criminal justice system and to ensure pathways to opportunity for ex-offenders. As reflected

in the attached [statement of principles](#), however, these objectives must be balanced against the need to protect the public and the ability of both state licensing boards and private organizations to consider relevant conduct for which individuals have been provided full due process. Moreover, H.B. 6474 seeks to bar private organizations from denying membership on the basis of criminal history record information. In contrast to “ban the box” laws applicable to employment decisions, **this interference with the membership decisions of associations and credentialing organizations violates the First Amendment rights of those private organizations.** As the U.S. Supreme Court explained in *Roberts v. United States Jaycees*:

There can be no clearer example of an intrusion into the internal structure or affairs of an association than a regulation that forces the group to accept members it does not desire. Such a regulation may impair the ability of the original members to express only those views that brought them together. Freedom of association therefore plainly presupposes a freedom not to associate.

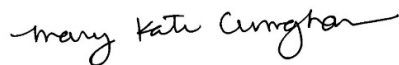
Although the Supreme Court held that states nonetheless may have a compelling interest in barring discrimination on the basis of race or gender, a person’s commission of criminal offenses is not entitled to the same legal protections and does not outweigh the constitutional rights of private organizations. Some criminal offenses may be antithetical to a credentialing or membership organization’s purposes and values. For example, a professional society of financial advisors may legitimately screen applicants for embezzlement or fraud convictions, and an association of youth counselors may appropriately exclude applicants with records of criminal violence or sexual offenses. To avoid this unconstitutional interference with associations’ eligibility decisions and enforcement of their ethics codes, **the PCC urges that that the bill be amended to delete the reference to criminal history record information in Section 5(a).**

The PCC supports H.B. 6474 in restricting licensing agencies from treating criminal records as automatic disqualifiers and instead requiring individualized consideration of an applicant’s circumstances. In its current form, however, H.B. 6474 unduly constrains that process. The bill would prohibit denying a license, permit, certificate, or registration unless the denial is consistent with “business necessity” and “there is a substantial nexus between the circumstances of the person’s criminal history record information and the occupational license the person is seeking.” This provides insufficient protections to the public. Some crimes outside the scope of practice nonetheless indicate that a person poses a threat to the public. For example, a conviction for identity theft is relevant to whether to license a person to work as a licensed practical nurse who cares for vulnerable seniors in their homes, and person convicted of distributing child pornography may appropriately be denied a teaching license, even if neither crime occurred in connection with the practice of those professions.

The PCC therefore urges that Section 4(a) be amended to add a fourth basis on which a licensing agency may determine that denial of an occupational license is consistent with business necessity: **“The offense reflects that the person poses a threat to the health, safety, or welfare of members of the public the individual would encounter in the practice of the occupation.”** Further, the PCC urges that any of the enumerated bases be considered sufficient for denial, and that therefore the “and” at the end of line 208 of the current bill be changed to **“or.”**

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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Professional Certification Coalition Members

ABRET Neurodiagnostic Credentialing & Accreditation (ABRET)	American Nurses Credentialing Center (ANCC)	CCIM Institute (issues the Certified Commercial Investment Member designation)
ABSA International: the Association for Biosafety and Biosecurity (ABSA)	American Payroll Association (APA)	CFA Institute
Academy of Nutrition and Dietetics (AND)	American Road & Transportation Builders Association Foundation (ARTBA)	Certification Board for Music Therapists (CBMT)
Academy for Certification of Vision Rehabilitation & Education Professionals (ACVREP)	American Society of Association Executives (ASAE)	Certification Board of Infection Control and Epidemiology (CBIC)
Alliance of Hazardous Materials Professionals	American Society of Civil Engineers (ASCE)	Certification Council for Professional Dog Trainers
American Association of Post-Acute Care Nurses (AAPACN)	American Speech-Language-Hearing Association (ASHA)	Certified Financial Planner Board of Standards (CFP)
American Association of Critical-Care Nurses (AACN)	American Traffic Safety Services Association (ATSSA)	Certified Fund Raising Executive International (CFRE)
American Association of Neuromuscular & Electrodiagnostic Medicine (AANEM)	American Translators Association (ATA)	Commercial Real Estate Certification Institute
American Association of Professional Landmen	American Veterinary Medical Association (AVMA)	Commission for Case Manager Certification (CCMC)
American Board for Certification in Orthotics, Prosthetics and Pedorthics (ABCOP)	APICS (formerly the American Production and Inventory Control Society)	Commission on Nurse Certification (CNC)
American Board of Certification for Gastroenterology Nurses (ABCGN)	Association for Financial Counseling & Planning Education (AFCPE)	CompTIA
American Board of Neuroscience Nursing (ABNN)	Association for Financial Professionals (AFP)	Community Association Institute (CAI)
American Board of Post-Acute and Long-Term Care Medicine (ABPLM)	Association of Surgical Technologists (AST)	Construction Management Association of America (CMAA)
American Board of Foot and Ankle Surgery (ABFAS)	Behavior Analyst Certification Board (BACB)	Council of Engineering and Scientific Specialty Boards (CESB)
American Board of Wound Management (ABWM)	Building Industry Consulting Service International (BICSI)	Dental Assisting National Board (DANB)
American Industrial Hygiene Association (AIHA)	Board of Certification/Accreditation (BOC)	Design-Build Institute of America (DBIA)
American Medical Certification Association (AMCA)	Board of Certified Safety Professionals (BCSP)	Diving Equipment and Marketing Association (DEMA)
	Board of Pharmacy Specialties (BPS)	Entertainment Services and Technology Association (ESTA)
	Building Commissioning Certification Board (BCCB)	ETA International (ETA)
		Events Industry Council (EIC)
		Financial Planning Association (FPA)

Hearth, Patio, & Barbecue Education Foundation	IT Certification Council (ITCC)	National Council on Family Relations (NCFR)
Heuristic Solutions	Laborers' International Union of North America Training & Education Fund (LIUNA)	National Recreation and Park Association (NRPA)
Hospice and Palliative Credentialing Center (HPCC)	Medical-Surgical Nursing Certification Board (MSNCB)	National Restaurant Association (NRA)
Institute for Credentialing Excellence (ICE)	National Association of Legal Assistants, Inc. (NALA)	National Roofing Contractors Association (NRCA)
Institute of Certified Management Accountants (ICMA)	National Association of Insurance and Financial Advisors (NAIFA)	National Society of Professional Engineers (NSPE)
Institute of Hazardous Materials Management (IHMM)	National Association of Personal Financial Advisors (NAPFA)	Nephrology Nursing Certification Commission
Institute of Internal Auditors (IIA)	National Athletic Trainers' Association Board of Certification, Inc. (NATA)	Oncology Nursing Certification Corporation
Inteleos (includes the American Registry for Diagnostic Medical Sonography (ARDMS) and the Alliance for Physician Certification & Advancement (APCA))	National Board of Certification and Recertification for Nurse Anesthetists (NBCRNA)	Professional Association of Therapeutic Horsemanship International (PATH)
Irrigation Association	National Board for Certification in Hearing Instrument Sciences (NBC-HIS)	Pediatric Nursing Certification Board (PNCB)
International Association of Healthcare Central Service Materiel Management (IAHCSMM)	National Kitchen and Bath Association (NKBA)	Pharmacy Technician Certification Board (PTCB)
International Association of Lighting Designers (IALD)	National Board of Certification in Occupational Therapy (NBCOT)	PSI Services
International Certification & Reciprocity Consortium (IC&RC)	National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM)	Pearson Vue
International Coach Federation (ICF)	National Certification Board for Diabetes Educators (NCBDE)	QualityPro
International Foundation for Retirement Education (InFRE)	National Certification Corporation (NCC)	School Nutrition Association (SNA)
International Society of Automation (ISA)	National Commission on Certification of Physician Assistants (NCCPA)	SeaCrest Consulting
Institute of Real Estate Management (IREM)	National Commission for Health Education Credentialing	Security Industry Association
International Information System Security Certification Consortium (ISC ²)		Society of Broadcast Engineers (SBE)
		Specialty Pharmacy Certification Board (SPCB)
		Spray Polyurethane Foam Alliance (SPFA)
		Towing and Recovery Association of America, Inc. (TRA)



Principles for Legislation Restricting Consideration of Criminal Conviction History

Legislation at the state and federal level would restrict consideration of criminal conviction history by occupational licensing boards and, under some legislation, also by private certification organizations. The Professional Certification Coalition supports expanded opportunities for ex-offenders to earn a living, which advances the important goal of reducing recidivism. This is a worthy objective and an important next step in national efforts to reform the criminal justice system.

This objective must be balanced against the need to protect the public and the ability of both state licensing boards and private certification organizations to consider relevant conduct for which individuals have been provided full due process. Therefore, the PCC opposes legislative language that:

- *Restricts the right of private certification organizations to adopt or enforce ethics codes or eligibility requirements in which criminal conviction history is a factor, either by prohibiting consideration of a criminal conviction or by mandating the procedures used for disqualification of an individual with a criminal conviction, or*
- *Prevents licensing boards from requiring current professional certification as a condition of licensure or consistently enforcing such requirements, if the reason an individual does not hold current certification relates to a criminal conviction.*

The PCC's position is grounded on core legal principles, practical considerations, and policy views:

- *Private certification organizations and professional societies have a Constitutional right to establish and enforce ethics codes and codes of conduct for their credential-holders and members. The Supreme Court has held that it violates the First Amendment rights of private organizations for the government to “intru[de] into the internal structure or affairs of an association [through] a regulation that forces the group to accept members it does not desire,” unless the requirements of the law are supported by “compelling state interests, unrelated to the suppression of ideas, that cannot be achieved through means significantly less restrictive of associational freedoms.”¹*
- *Private certifications convey to the public that the credential-holder meets all of the eligibility, qualification, competence, and conduct requirements of that organization's standards and policies. Consumers, employers, and other members of the public legitimately rely on certification standards in selecting which professionals to entrust with their business. Unless the state government has decided that no individual without the private credential may hold a license to practice an occupation, private certifications are voluntary enhancements to an individual's credentials. Individuals are free to practice those professions without the private certification and are not entitled to the endorsement of the certification organization unless they meet that organization's standards and comply with that organization's rules.*
- *To protect the public from unacceptable risks, some criminal convictions permanently and automatically disqualify offenders from holding certain professional certifications, even if the conviction was for a non-violent charge or a number of years have elapsed since the conviction. For example, an organization that certifies individuals who work alone with children may appropriately withhold its professional “seal of approval” from an individual convicted of a crime of child exploitation (sexual abuse, child pornography, etc.). Likewise, an organization that certifies individuals*

¹ *Roberts v. United States Jaycees*, 468 U.S. 609 (1984).

who are provided access to their clients' or employers' financial accounts may appropriately withhold its endorsement from an individual with a record of fraud or embezzlement. In such situations, the desire of ex-offenders to obtain a credential that would advance them in their preferred career does not outweigh the risk of significant and lasting harm to members of the public if the ex-offender engages in similar misconduct again. A contrary rule, prohibiting consideration of that individual's conviction record, would make certification organizations complicit in persuading individuals to place their trust in individuals who have previously violated that trust.

- *Conduct requirements for conforming with the high standards established for private professional certifications often overlap with legal requirements that carry criminal penalties.* Because a criminal conviction necessarily provides the defendant with substantial due process and carries a high burden of proof, private certification organizations should be able to rely on those factual determinations about an individual's conduct.
- *Private certification organizations lack both the legal authority and the resources to engage in a full-fledged independent investigation and fact-finding hearings about violations of ethics and conduct rules.* Unlike licensing boards or criminal and civil courts, private certification organizations cannot compel witnesses to testify or subpoena documents for their internal disciplinary or eligibility reviews. Moreover, most private certification organizations are nonprofit organizations; many operate with few employees and rely heavily on volunteers, including for disciplinary reviews. Requiring individualized review of the context and circumstances of every applicant's criminal conviction history, rather than automatic disqualification for certain convictions, would be an impossible requirement for those organizations to meet.
- *Restricting consideration of criminal convictions based on whether they are felonies or misdemeanors is unwarranted, because the underlying conduct may be the same.* Facts that support a felony charge may be pled down to a misdemeanor conviction, despite the gravity of the underlying conduct. Indeed, the vast majority of convictions are the result of plea bargains.² Moreover, the definitions of felonies and misdemeanors vary across jurisdictions; an offense that carries a nine-month sentence may be classed as a felony in one state and as a misdemeanor in another state.
- *Where private certification is a condition of licensure, that requirement reflects the considered judgment of the legislature or the licensure agency that the standards established by the recognized credentialing organization for the profession are necessary to protect the public.* There is no basis to treat ex-offenders more favorably than any other applicant who fails to hold a certification required under licensure laws.

The PCC supports private certification organizations engaging in self-regulation and careful review of their eligibility standards, ethics codes, and enforcement procedures. The PCC encourages certification organizations to target disciplinary rules at conduct that is demonstrably relevant to the individual's suitability to hold the credential. In addition, the PCC encourages adoption of enforcement procedures that, where appropriate, provide for individualized review of a certificant's circumstances before imposing disqualifying sanctions. Courts recognize that those holding private certifications have basic common law due process rights, so no legislation is needed to confer those rights on certificants. In addition, the standards for accreditation of private certification programs call for the programs to establish and publish policies for taking disciplinary actions, including allowing reconsideration or appeal of adverse certification decisions under procedures that are appropriate and that promote fairness to the applicant, candidate, or certificants.³ Whether a certification program is accredited or not, the PCC supports adoption of these best practices.

² See *Missouri v. Frye*, 566 U.S. 134 (2012) (noting that 94% of state convictions are the result of guilty pleas).

³ See, e.g., the National Commission of Certifying Agency's *Standards for the Accreditation of Certification Programs*.