



PROFESSIONAL
CERTIFICATION
COALITION

March 2, 2021

Senator Richard Hilderbrand
300 SW Tenth Avenue
Kansas State Capitol, Rm. 445-S
Topeka, KS 66612-1504
richard.hilderbrand@senate.ks.gov

Senator Michael Fagg
300 SW Tenth Avenue
Kansas State Capitol, Rm. 234-E
Topeka, KS 66612-1504
michael.fagg@senate.ks.gov

Senator Mark Steffen
300 SW Tenth Avenue
Kansas State Capitol, Rm. 235-E
Topeka, KS 66612-1504
mark.steffen@senate.ks.gov

Senator Alicia Straub
300 SW Tenth Avenue
Kansas State Capitol, Rm. 237-E
Topeka, KS 66612-1504
alicia.straub@senate.ks.gov

Senator Michael Thompson
300 SW Tenth Avenue
Kansas State Capitol, Rm. 225-E
Topeka, KS 66612-1504
mike.thompson@senate.ks.gov

Senator Richard Wilborn
300 SW Tenth Avenue
Kansas State Capitol, Rm. 341-E
Topeka, KS 66612-1504
richard.wilborn@senate.ks.gov

Re: S.B. 10

Dear Senators Hilderbrand, Fagg, Steffen, Straub, Thompson, and Wilborn:

The Professional Certification Coalition (PCC) writes regarding S.B. 10, to address our concerns that it could weaken important occupational regulations that protect public health, safety, and welfare.

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.

Members of the PCC provide certifications that communicate to the public that certified professionals have met established standards for knowledge, skill, and competency in their fields. As subject matter experts, private certification organizations are in the best position to develop and define the *content* of the standards that certificants must demonstrate to earn a recognized credential in their field. Private certification is not a substitute for occupational licensure, however, in fields such as health care, safety-related roles, and the engineering and financial industries, in which the competency standards established by private professional certification programs have been incorporated into licensure requirements. For these professions, *enforcement* of competency and conduct standards is more effectively done by the licensing agency. In professions for which state licensing boards have historically provided oversight, it would not serve the public interest to eliminate or weaken licensure requirements and shift the enforcement function currently performed by licensure boards onto private certification

programs. A private certification organization lacks the legal authority and the resources to serve as a substitute for a licensing board for a profession for which licensure is required to protect public health, safety, or welfare.

S.B. 10 has two key components. Our issues with these components are discussed in turn.

Review of Occupational Licensing Regulations

The first calls on state licensing agencies to review all occupational regulations to ensure they are limited to those demonstrably necessary and carefully tailored to fulfill legitimate public health, safety, or welfare objectives. The PCC supports careful review of licensure laws to ensure that unnecessary obstacles to professional practice are reformed or removed. However, we regard the bill's current definition of "welfare" as too narrow, as it only encompasses protection 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 authority 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 licensure laws appropriately set baseline levels of professional competence above inflicting harm on members of the public. It promotes public welfare, for example, to ensure that Kansas public school teachers pass the three competency-based teacher tests required to become certified to teach in Kansas public schools. Quantifying the "harm" to the public from classroom 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.

Burden of Proof for Determining Public Interest

Second, the government would bear the burden of proof in establishing that regulations 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 such a list was not a factor at the time of adoption of the regulations. **Although the PCC does not oppose a procedure to modify or repeal regulations that do not promote the public interest, 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 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 Kansas citizens.

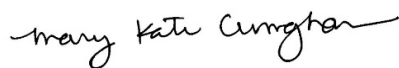
Proposed Amendments

With these considerations in mind, the PCC proposes the following amendments to ensure the bill's protection of the public and the certification community:

- Delete Section 3 of the bill, which provides for the private cause of action.
- Add a safe harbor provision: **“Nothing in this chapter shall be construed to require a private certification organization to grant or deny private certification to any individual, nor alter any requirement in a licensure statute or regulation for an individual to hold current private certification as a condition of licensure or renewal of licensure.”**
- Add a definition of “private certification” stating that **“‘Private Certification’ means “a nontransferable recognition granted to an individual by a private organization in which the individual meets personal qualifications relevant to performance of the occupation to which the certification pertains, including by demonstrating a specified level of knowledge and skill required to meet standards in the profession, as established by the private organization that issues credentials that are widely recognized in the field.”**
- Add **“Notwithstanding other provisions in this chapter, the state may regulate a profession or occupation and impose licensure requirements for practice of that occupation if the licensure requirements are based on uniform national laws, practices, and/or examinations that have been adopted by at least two-thirds of states and territories in the United States.”**

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,



Mary Kate Cunningham
Senior 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: drosendaal@credentialingexcellence.org

CC: Sen. Robert Olson, *Chair*
Senate Committee on Commerce
rob.olson@senate.ks.gov

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Current List of PCC Members

ABRET Neurodiagnostic
Credentialing &
Accreditation (ABRET)

ABSA International: the
Association for Biosafety and
Biosecurity (ABSA)

Academy of Nutrition and
Dietetics (AND)

Academy for Certification of
Vision Rehabilitation &
Education Professionals
(ACVREP)

Alliance of Hazardous
Materials Professionals

American Association of
Post-Acute Care Nurses
(AAPACN)

American Association of
Critical-Care Nurses (AACN)

American Association of
Neuromuscular &
Electrodiagnostic Medicine
(AANEM)

American Association of
Professional Landmen

American Board for
Certification in Orthotics,
Prosthetics and Pedorthics
(ABCOP)

American Board of
Certification for
Gastroenterology Nurses
(ABCGN)

American Board of
Neuroscience Nursing
(ABNN)

American Board of Post-
Acute and Long-Term Care
Medicine (ABPLM)

American Board of Foot and
Ankle Surgery (ABFAS)

American Board of Wound
Management (ABWM)

American Industrial Hygiene
Association (AIHA)

American Medical
Certification Association
(AMCA)

American Nurses
Credentialing Center
(ANCC)

American Payroll
Association (APA)

American Road &
Transportation Builders
Association Foundation
(ARTBA)

American Society of
Association Executives
(ASAE)

American Society of Civil
Engineers (ASCE)

American Speech-Language-
Hearing Association (ASHA)

American Traffic Safety
Services Association
(ATSSA)

American Translators
Association (ATA)

American Veterinary Medical
Association (AVMA)

APICS (formerly the
American Production and
Inventory Control Society)

Association for Financial
Counseling & Planning
Education (AFCPE)

Association for Financial
Professionals (AFP)

Association of Surgical
Technologists (AST)

Behavior Analyst
Certification Board (BACB)

Building Industry Consulting
Service International (BICSI)

Board of
Certification/Accreditation
(BOC)

Board of Certified Safety
Professionals (BCSP)

Board of Pharmacy
Specialties (BPS)

Building Commissioning
Certification Board (BCCB)

CCIM Institute (issues the
Certified Commercial
Investment Member
designation)

CFA Institute

Certification Board for Music
Therapists (CBMT)

Certification Board of
Infection Control and
Epidemiology (CBIC)

Certification Council for
Professional Dog Trainers

Certified Financial Planner
Board of Standards (CFP)

Certified Fund Raising
Executive International
(CFRE)

Commercial Real Estate
Certification Institute

Commission for Case
Manager Certification
(CCMC)

Commission on Nurse
Certification (CNC)

CompTIA

Community Association
Institute (CAI)

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Construction Management Association of America (CMAA)
Council of Engineering and Scientific Specialty Boards (CESB)
Dental Assisting National Board (DANB)
Design-Build Institute of America (DBIA)
Diving Equipment and Marketing Association (DEMA)
Entertainment Services and Technology Association (ESTA)
ETA International (ETA)
Events Industry Council (EIC)
Financial Planning Association (FPA)
Hearth, Patio, & Barbecue Education Foundation
Heuristic Solutions
Hospice and Palliative Credentialing Center (HPCC)
Institute for Credentialing Excellence (ICE)
Institute of Certified Management Accountants (ICMA)
Institute of Hazardous Materials Management (IHMM)
Institute of Internal Auditors (IIA)
Inteleos (includes the American Registry for Diagnostic Medical Sonography (ARDMS) and the Alliance for Physician Certification & Advancement (APCA))

Irrigation Association
International Association of Healthcare Central Service Materiel Management (IAHCSMM)
International Association of Lighting Designers (IALD)
International Certification & Reciprocity Consortium (IC&RC)
International Coach Federation (ICF)
International Foundation for Retirement Education (InFRE)
International Society of Automation (ISA)
Institute of Real Estate Management (IREM)
International Information System Security Certification Consortium (ISC²)
IT Certification Council (ITCC)
Laborers' International Union of North America Training & Education Fund (LIUNA)
Medical-Surgical Nursing Certification Board (MSNCB)
National Association of Legal Assistants, Inc. (NALA)
National Association of Insurance and Financial Advisors (NAIFA)
National Association of Personal Financial Advisors (NAPFA)
National Athletic Trainers' Association Board of Certification, Inc. (NATA)

National Board of Certification and Recertification for Nurse Anesthetists (NBCRNA)
National Board of Certification in Hearing Instrument Sciences (NBC-HIS)
National Kitchen and Bath Association (NKBA)
National Board of Certification in Occupational Therapy (NBCOT)
National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM)
National Certification Board for Diabetes Educators (NCBDE)
National Certification Corporation (NCC)
National Commission on Certification of Physician Assistants (NCCPA)
National Commission for Health Education Credentialing
National Council on Family Relations (NCFR)
National Recreation and Park Association (NRPA)
National Restaurant Association (NRA)
National Roofing Contractors Association (NRCA)
National Society of Professional Engineers (NSPE)
Nephrology Nursing Certification Commission
Oncology Nursing Certification Corporation

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Professional Association of
Therapeutic Horsemanship
International (PATH)

Pediatric Nursing
Certification Board (PNCB)

Pharmacy Technician
Certification Board (PTCB)

PSI Services

Pearson Vue

QualityPro

School Nutrition Association
(SNA)

SeaCrest Consulting

Security Industry Association

Society of Broadcast
Engineers (SBE)

Specialty Pharmacy
Certification Board (SPCB)

Spray Polyurethane Foam
Alliance (SPFA)

Towing and Recovery
Association of America, Inc.
(TRA)