



PROFESSIONAL
CERTIFICATION
COALITION

February 16, 2021

Senator Wes Climer
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Columbia, South Carolina 29201
WesClimer@scsenate.gov

Senator Mike Fanning
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MikeFanning@scsenate.gov

Re: South Carolina S. 295

Dear Senator Climer and Senator Fanning:

The Professional Certification Coalition (PCC) writes to share our views regarding S. 295. 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, S. 295 removes vital protections for the public and could prevent private certification organizations from enforcing their ethics codes or eligibility requirements. We respectfully request that S. 295 be amended to protect the public by permitting both state licensing boards and private certification organizations to consider relevant criminal conduct and violations of civil laws for which individuals have been provided due process.

The PCC is a nonprofit association formed 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'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, professional and civil 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.

The PCC supports the goal of S. 295 to broaden access to licensure for ex-offenders so they may earn a living in their chosen profession. We agree that simply having a criminal conviction record should not stigmatize or automatically disqualify an individual from an occupational license. It is critical, however, that licensure boards have the ability to consider underlying facts relating to an applicant's past conduct so they may make independent, individual determinations about that applicant's fitness to practice the profession with the state's endorsement.

Not all professions are the same, nor are all criminal convictions. Members of the public view licensure as the state's recognition that the licensed individual is qualified to perform the profession safely and competently, without harming public safety, health, or welfare. As currently drafted, however, S. 295 fails to provide that protection to the public.

- Although the bill permits licensing boards to develop a list of disqualifying criminal convictions, the list may include only “criminal convictions that are specific and directly related to the duties and responsibilities of the occupation or profession.”
- For any unlisted offense, the bill would prohibit the licensing authority from denying an initial license to any individual based “solely or in part” on judicial findings or convictions.
- The bill would preclude the licensing authority from considering even a listed offense if more than five years have elapsed since the conviction, unless there has been an intervening conviction of a crime or the initial disqualifying conviction was related to a crime of violence or criminal sexual conduct.
- In considering convictions or judicial findings for a listed offense within the permissible time window, the bill puts the burden on the licensing authority to establish by a “clear and convincing” standard that disqualification is warranted.

A pre-determined list of criminal convictions that are “directly related” to the duties and responsibilities of a profession removes important discretion from licensing agencies and as a result, provides insufficient protections to the public. Under this framework, licensing authorities would be unable even to consider an applicant’s conduct that had been admitted or proven beyond a reasonable doubt in circumstances in which that conduct is relevant to the licensing decision, including in these illustrative situations:

- The applicant has been convicted of fraud or identity theft and is seeking a health care professional license with the intention of taking a home health care position for vulnerable adults. Although the job would place the applicant in a position in which the applicant can easily gain access to financial records of home care patients, the conviction does not directly relate to the duties and responsibilities of a licensed health care professional or constitute a violent or sexual offense.
- The applicant fraudulently claimed to hold a license in one profession and is now seeking a license in a different profession that would place the applicant in a position of trust.
- The applicant has several past convictions for check fraud and is seeking a CPA license; the completion of the applicant’s last sentence was more than five years ago, but the applicant has pending charges, not yet adjudicated, for check fraud.
- The applicant was charged with child sexual abuse but entered into a plea deal to plead guilty to a child endangerment charge, while admitting the underlying facts; five years have now elapsed since completion of the applicant’s sentence, and the applicant seeks a license as a teacher, or a psychologist, or a similar profession that would place the applicant in unsupervised contact with a child.

As these examples demonstrate, the current structure of S. 295 exposes the public to substantial risks by forcing licensing authorities to turn a blind eye to admitted or adjudicated facts in an applicant’s history simply due to the passage of time, mandating approval of a license unless the authorities can meet a clear and convincing evidence standard, and requiring authorities to develop comprehensive knowledge of the elements of all criminal offenses so that they can develop lists of disqualifying offenses.

To avoid these unintended negative consequences, the PCC recommends the following amendments:

- Replace Section 40-1-75(B) with, “**A criminal conviction is ‘specifically and directly related to the duties and responsibilities of an occupation or profession’ if the circumstances of the offense and the nature of the occupation would create an unreasonable risk to public safety, health, or welfare for an ex-offender to practice the licensed profession.**”
- Add to the list of factors in Section 40-1-75(C)(1) that a licensing agency should consider when determining whether to deny a license a new subsection (e) “**whether the applicant poses an unacceptable risk to the people with whom the applicant would interact in the conduct of the profession or occupation.**”
- Amend the provision establishing early binding determinations of disqualifications to treat such decisions as preliminary, and to allow the licensing authority to consider any new evidence relevant to the application at the time it is made, and not just subsequent convictions or identification of failures to disclose information. For example, subsequent pending criminal charges or evidence of an active substance abuse problem may be a legitimate reason to deny a license.
- Add a safe harbor provision: “**Nothing in this section shall be construed to require a private certification organization to grant or deny private certification to any individual, nor alter or impair 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.**”

Further, the PCC recommends amending S. 295 to instead adopt a structure similar to Section 3113 of [Pennsylvania Act 53](#) (attached), which was enacted into law in 2020. That law expressly endorses the role of licensing authorities in protecting public health, welfare, and public safety, and does not prohibit such authorities from considering any information that is relevant to a licensure decision. Unlike S. 295, it does not mandate that licensing boards turn a blind eye to an applicant’s history. Instead, it creates a presumption that an applicant convicted of a crime directly related to the licensed occupation poses a substantial risk to the public and should be denied a license, unless the individual rebuts the presumption with evidence of rehabilitation. And for applicants with criminal conviction histories unrelated to the licensed occupation, the Act mandates that the licensing board “conduct an individualized assessment of the individual with respect to criminal convictions and rehabilitation.” In this way, no individual is automatically denied licensure opportunities by the mere fact of having a criminal record, and the public can also be assured of careful decision-making and protections. Ex-offenders get a fair opportunity to show they should be granted a license based on the individual circumstances of the facts underlying their offenses and their subsequent rehabilitation, but they are not entitled to have their personal history erased from consideration.

The public expects licensing authorities to serve as gatekeepers in this way, as do private certification organizations. Private certification organizations in regulated professions rely on licensing boards to exercise their authority to deny licenses to individuals who have engaged in conduct that casts serious doubt on their fitness to practice the profession or indicates that the individual poses an unacceptable risk to the people to whom the applicant would interact in the conduct of the profession. As non-governmental entities without the resources or legal authority to conduct full-fledged

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investigations, issue subpoenas, and hold trial-type proceedings, most private certification organizations rely on agency determinations in their own eligibility and ethics code enforcement.

The PCC applauds South Carolina for advancing important pathways to employment opportunities for ex-offenders through S. 295. We respectfully request, however, that the legislature amend the bill as suggested above to better protect the public.

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)

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 & Electrodagnostic Medicine (AANEM)

American Association of Professional Landmen

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American Board of 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)

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 for 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)

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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

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)