



PROFESSIONAL
CERTIFICATION
COALITION

February 26, 2021

Representative Kera Birkeland
350 North State Street
State Capitol, Suite 350
Salt Lake City, UT 84114
kbirkeland@le.utah.gov

Re: H.B. 183

Dear Rep. Birkeland:

The Professional Certification Coalition (PCC) writes regarding H.B. 183, which provides for licensing reciprocity and for alternative pathways to Utah licensure for unlicensed individuals based on work experience. The PCC writes to urge amendments to H.B. 183 to ensure that Utah residents can rely on your state's occupational licensing agencies to protect against granting licenses to unqualified individuals.

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.

The PCC supports reducing unnecessary barriers for licensed professionals who move to a new state. However, not all state-specific requirements are unwarranted: substantive state-specific licensing requirements protect the public from unqualified or unethical practitioners and uphold the integrity of licensed professions as a whole. Moreover, not all state licensure requirements are interchangeable or equivalent. As reflected in the attached Statement of Principles, the PCC urges the legislature to avoid treating all licensure grants as equivalent, and to amend H.B. 183 as necessary to reflect the following five principles:

- 1. Require further profession-specific action by licensing agencies, rather than automatically providing sweeping recognition of all out-of-state licenses.**
- 2. Require the licensing agency/board to make an initial assessment of whether licenses in other jurisdictions are, in fact, equivalent in standards and scope of practice.**

3. **Permit reciprocal licensure as a general matter only if there is substantial similarity between the requirements, knowledge, and scope of practice for two jurisdictions.**
4. **Condition reciprocity on joint oversight of the licensee, as well as communication and mandatory reporting between the in-state and out-of-state licensing agencies.**
5. **Consider whether residency requirements are warranted to qualify for reciprocal licensure.**

The PCC appreciates that H.B. 183 has been drafted to include the PCC's principle of substantial similarity between Utah and the out-of-state jurisdiction's requirements and scope of practice. However, in its current form, if Utah licenses an occupation that includes certification as a condition of licensure, H.B. 183 would allow an individual to circumvent such a requirement and would treat work experience as a substitute for establishing qualifications through examination or certification. The bill directs the Division of Occupational and Professional Licensing (DOPL) to look only at education and training, not demonstrated expertise, knowledge, or skills.

Therefore, the PCC proposes that an amendment to Subsection 2(c)(i): **“the person's education and training are similar in scope to the requirements to qualify to receive a license in this state and the person has demonstrated that the person has at least substantially equivalent or education, training, examination record, credentials, and experience as are otherwise required for licensure in this state.”** This would ensure that, for professions in which Utah conditions licensure on private certification, a pathway to reciprocal licensure is opened for out-of-state individuals who hold that certification and who are not required to be licensed in their home state, while at the same time protecting Utah residents against unqualified practitioners.

The PCC members view these principles as important both to protect the public and because reciprocity bills directly affect PCC members that credential professionals in regulated occupations, such as health care. In many of these occupations, licensure statutes and regulations make certification by recognized private certification organizations a condition of licensure. Certification organizations exist to establish standards of knowledge and skill for a profession, and to assure the public that certified individuals have demonstrated that they are qualified to practice their professions competently and safely. If, due to variations in licensing laws, reciprocal licensure allows unqualified or unfit individuals to practice, the public's trust in such certified professionals and their respective regulated professions will be irreparably damaged, especially for occupations in which the public conflates certification status with licensure.

Further, even PCC members that issue certifications to individuals in fields that do not require licensure have an interest in this issue. Certification organizations – and professional societies that represent individuals who hold certification credentials – rely on the role of licensing agencies to protect the public. By their nature, they are also interested in upholding professional standards for knowledge, skills, conduct, and qualifications. If reciprocal licensure laws create loopholes that weaken how state licensing agencies enforce such standards, this is a matter of great concern to the certification community.

Thank you for your attention to these issues and consideration of the PCC's views.

Sincerely,



Craig J. Saperstein | Partner

Pillsbury Winthrop Shaw Pittman

LLP

1200 Seventeenth Street NW |

Washington, DC 20036-3006

t +1.202.663.9244 |

craig.saperstein@pillsburylaw.com

CC: Rep. Joel M. Ferry, *Chair*
House Committee on Business and Labor
jferry@le.utah.gov

Rep. Walter Brooks, *Vice Chair*
House Committee on Business and Labor
wbrooks@le.utah.gov



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)	Entertainment Services and Technology Association (ESTA)	International Certification & Reciprocity Consortium (IC&RC)
CFA Institute	ETA International (ETA)	International Coach Federation (ICF)
Certification Board for Music Therapists (CBMT)	Events Industry Council (EIC)	International Foundation for Retirement Education (InFRE)
Certification Board of Infection Control and Epidemiology (CBIC)	Financial Planning Association (FPA)	International Society of Automation (ISA)
Certification Council for Professional Dog Trainers	Hearth, Patio, & Barbecue Education Foundation	Institute of Real Estate Management (IREM)
Certified Financial Planner Board of Standards (CFP)	Heuristic Solutions	International Information System Security Certification Consortium (ISC ²)
Certified Fund Raising Executive International (CFRE)	Hospice and Palliative Credentialing Center (HPCC)	IT Certification Council (ITCC)
Commercial Real Estate Certification Institute	Institute for Credentialing Excellence (ICE)	Laborers' International Union of North America Training & Education Fund (LIUNA)
Commission for Case Manager Certification (CCMC)	Institute of Certified Management Accountants (ICMA)	Medical-Surgical Nursing Certification Board (MSNCB)
Commission on Nurse Certification (CNC)	Institute of Hazardous Materials Management (IHMM)	National Association of Legal Assistants, Inc. (NALA)
CompTIA	Institute of Internal Auditors (IIA)	National Association of Insurance and Financial Advisors (NAIFA)
Community Association Institute (CAI)	Inteleos (includes the American Registry for Diagnostic Medical Sonography (ARDMS) and the Alliance for Physician Certification & Advancement (APCA))	National Association of Personal Financial Advisors (NAPFA)
Construction Management Association of America (CMAA)	Irrigation Association	National Athletic Trainers' Association Board of Certification, Inc. (NATA)
Council of Engineering and Scientific Specialty Boards (CESB)	International Association of Healthcare Central Service Materiel Management (IAHCSMM)	National Board of Certification and Recertification for Nurse Anesthetists (NBCRNA)
Dental Assisting National Board (DANB)	International Association of Lighting Designers (IALD)	
Design-Build Institute of America (DBIA)		
Diving Equipment and Marketing Association (DEMA)		

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

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)



Statement of Principles for Universal Licensure Recognition and Reciprocity

The PCC supports the objective of reducing unnecessary barriers to entry to practice for licensed professionals who move to a new state. Not all state-specific licensure requirements are unwarranted, however. In their current form, many universal licensing bills may undermine protections for the public by adopting a one-size-fits-all approach to universal licensure and by exempting out-of-state applicants from establishing that they possess the same qualifications as in-state applicants.

Background:

Occupational licensing laws operate as the gatekeepers to licensed professions: they establish the standards of education, training, and testing required to practice in a specific field. The purpose of licensing laws is to protect the public from unqualified or unethical practitioners, but opponents of licensing contend that the administrative and financial burdens of complying with licensing laws also limit opportunities to earn a living. Moreover, as each state independently establishes its own licensing laws, requirements vary by location; as a result, professionals must apply for a license each time they relocate across state borders. This can impose significant costs in time and money. Critics of state-specific licensure laws argue that, rather than protecting the public from unqualified practitioners, they primarily serve to insulate in-state professionals from out-of-state competition and are unnecessary barriers to practice for professionals who already hold a license in their field from another state.

In response, some states have adopted universal licensure recognition—or licensing reciprocity—and recognize a valid out-of-state license as sufficient for a professional to practice in their state, subject to additional conditions such as residency and background checks. Initially, this practice was largely restricted to specific interstate agreements or to populations with special circumstances. Many states now grant reciprocal licensure or temporary permits to military spouses who move into the state due to their spouse's change of duty assignment.¹ The COVID-19 pandemic national emergency has also led some states to enact reciprocal or accelerated licensing provisions for some professions.²

Recently, some states have enacted more expansive universal licensure bills, and many more such bills have been introduced. Unlike profession-specific reciprocal licensing state compacts, these bills generally apply to any licensing authority in the state, with limited exceptions. Some bills provide only for reciprocal licensure to applicants holding an occupational license granted by

¹ See <https://www.veterans.gov/milspouses/>.

² See, e.g., <https://www.fsmb.org/siteassets/advocacy/pdf/state-emergency-declarations-licensure-requirements-covid-19.pdf> and <https://www.aanp.org/advocacy/state/emergency-state-licensure-covid-19-response>.

another state.³ Other bills go further and authorize granting licenses to applicants based on work experience and/or private certification credentials, if the applicant's home state does not require a license to practice the occupation.

Criteria for Responsible Legislation:

The PCC urges state legislatures considering universal licensure bills to take into account the following key principles in order to ensure sufficient safeguards remain in place to protect the public and uphold the integrity of substantive licensure requirements.

The PCC supports universal or reciprocal licensure laws that:

- 1. Require further profession-specific action by licensing agencies, rather than automatically providing sweeping recognition of all out-of-state licenses.**
 - a. The level of oversight required to protect the public varies between licensed professions, and not all licensed professions merit the same level of reciprocity. For example, state licensing laws for some professions require licensees to demonstrate state-specific substantive knowledge (e.g., state Bar exams for lawyers⁴ and California's requirement that all California-licensed engineers demonstrate knowledge about seismic strengthening for projects including retrofitting⁵). For other professions, licensing laws may have uniform requirements adopted by every state, such as in professions that require all licensees to have passed a national certification exam or to have completed specialized training.
 - b. State agencies should seek input from relevant, industry-specific stakeholders on the potential positive and negative consequences of universal licensure.
- 2. Require the licensing agency make an initial assessment of whether licenses in other jurisdictions are, in fact, equivalent in standards and scope of practice.**
 - a. The requirements to get licensed in a profession can vary widely between states. Depending on the profession, state licensure requirements may include different elements or differing levels of requirements for formal education, training, practical experience, national certification, verification of prior disciplinary or criminal conviction history, and character examinations.
 - b. Differences in licensing requirements across states cannot be broadly written off as bureaucratic red tape. Often, variance in licensing requirements corresponds

³ Arizona became the first state to adopt universal licensure when H.B. 2569 was signed into law on April 10, 2019. Under A.R.S. § 32-4302, Arizona will issue a license to new residents with a current, out-of-state license in the licensed profession, if the out-of-state licensee is in good standing, has been licensed for at least a year, and has passed a criminal background check. Montana, New Jersey, and Pennsylvania have passed similar statutes.

⁴ See, e.g., https://www.ncbex.org/pdfviewer/?file=%2Fassets%2FBarAdmissionGuide%2FCompGuide2020_021820_Online_Final.pdf#page=40.

⁵ See https://www.bpelsg.ca.gov/pubs/consumer_guide.pdf.

with differences in the scope of practice a license permits. For example, in several states, licensed pharmacy technicians may administer immunizations, but also are subject to related training requirements associated with vaccinations.⁶ In many other states, however, pharmacy technicians are not authorized to administer immunizations and therefore may not have received the relevant training.⁷

- c. Different states also have varying substantive prerequisites for licensure or renewal of licensure for some professions. For example, states vary as to whether passage of a national certification exam is required for licensure as a dental assistant,⁸ and not all states require current certification for renewal of licensure as a physician assistant.⁹

3. Permit reciprocal licensure as a general matter only if there is substantial similarity between the requirements, knowledge, and scope of practice for two jurisdictions.

- a. Subject to limited and temporary exceptions, as for national emergencies and military spouses, state agencies should be authorized to grant reciprocal licensure only if the out-of-state license reflects an assurance of comparable qualifications and authorizes the full scope of practice granted by the in-state licensing law. Otherwise, in a race to the bottom, less qualified individuals could apply for initial licensure in states with less stringent requirements and rely on a universal licensure law to bypass the licensure conditions that other states have determined should be required for protection of the public.
- b. States with stricter licensing requirements should consider adopting bridging requirements that would enable licensed practitioners from other states to have an abbreviated path to licensure, by establishing that they have met the additional qualifications of that state.

4. Condition reciprocity on joint oversight of the licensee, as well as communication and mandatory reporting between the in-state and out-of-state licensing agencies.

- a. Licensees subject to pending disciplinary proceedings should not be granted reciprocal licensure until the proceedings are resolved. Mobility between states should not be a means to evade disciplinary oversight by a licensing board, even if a license in one state expires.
- b. Individuals granted reciprocity should be jointly subject to the new and old state licensing agencies' enforcement authority and rules.

⁶ See, e.g., https://dopl.utah.gov/pharm/vaccine_administration_protocol.pdf.

⁷ See <https://www.pharmacist.com/article/pharmacy-technicians-gear-immunize>.

⁸ See <https://www.ada.org/en/education-careers/careers-in-dentistry/dental-team-careers/dental-assistant/education-training-requirements-dental-assistant>.

⁹ See <https://www.aapa.org/download/19739/>.

5. Grant alternative pathways to licensure for unlicensed out-of-state applicants only if the applicant demonstrates at least substantially equivalent educational, training, examination, credentials, and experience as are required of in-state applicants.

- a. Prior work experience is not a substitute for examination-based or certification credentials, as it does not establish competency or skill. Similarly, not all private certifications are equivalent. There is no basis to presume that an unlicensed individual holding an unspecified private certification credential possesses equivalent qualifications as in-state licensed professionals hold, unless that private certification is a condition of licensure in the state.
- b. Requiring unlicensed out-of-state applicants to demonstrate substantive qualifications that are at least comparable to those required of in-state applicants would protect against bogus or flimsy certification programs being used as a substitute for licensure. At the same time, for licensed professions that condition licensure on private certification, accepting that certification from out-of-state applicants can provide an alternative pathway to universal licensure that still safeguards the public.

6. Consider residency requirements.

- a. State legislatures should consult with licensing agencies and industry stakeholders to determine whether intent to relocate should be a requirement for granting reciprocal licensure.