



Notes
PCC Member Strategy Call
Wednesday, May 26, 2021
12:00 pm ET

Steering Committee: ICE (Denise Roosendaal), ASAE (Jeff Evans)

Legal Counsel: Jerry Jacobs, Craig Saperstein, Julia Judish, Lori Panosyan, Nicole Steinberg (Pillsbury)

1. Welcome

- a. As we approach the end of the PCC fiscal year, we appreciate the prompt submission of any remaining dues.
- b. Thank you to all who submitted responses to ICE's survey!

2. State Legislation

- a. The PCC continues to monitor legislation of interest to the certification community as legislative sessions wind down in many states. You can find the most updated information on the legislative watchlists [[Found Here](#)] on the for members portion of the website.
- b. There are only two bills we want to flag; both are ex-offender reentry bills.
 - i. **AR SB 705:** prohibits a conviction from being considered if more than 5 years have passed since the individual's date of conviction (with no reference as to whether the person has been incarcerated for the entirety of the 5 years). The only exceptions are for crimes that are violent or sexual in nature, multiple felony convictions of a violent or sexual nature, or multiple convictions during the 5-year period.
 - ii. **ME LD 1465:** distinguishes between crimes for which convictions cannot be considered after the passage of a specified time and those which can be considered in perpetuity by whether the offense at issue would violate conduct or discipline rules for current licensees.
- c. **Member question:** Do you anticipate other states will embrace this [ME LD 1465] approach?
 - i. **Answer:** As this is the first time we've seen such an approach, we don't know. It does not appear to be from any model legislation. It provides an opportunity for the PCC to analyze whether we should add it to our toolkit of suggestions for ex-offender reentry bills. We have seen two trends in ex-offender bills: (1) no automatic bar on consideration of criminal conviction history at all and the requirement of individualized consideration on a case-by-case basis, allowing applicants to establish why they should be eligible. However, we have heard from stakeholder groups that there is significant distrust in that approach: that it looks good on paper, but in practice licensing boards will simply reject applicants. (2) An automatic bar on consideration of certain categories of convictions and on felony convictions after a designated period of time, with enumerated exceptions, usually for sexual or violent crimes. Often there is a standard of "directly related to" the profession/duties of the license. Our concern is that "directly related to" can be construed very narrowly. For example, a home health nurse's duties are not "directly related to" identity theft or fraud, but such offenses are relevant to whether an individual with those convictions should be eligible for a license.

- d. **Member comment:** As states start to decriminalize drug offenses, language specifically around nonviolent drug crimes may help bridge some of this.
- i. **Response:** The PCC does not object to automatic bars due to the lapse of time for nonviolent drug offenses. This is an entirely different category, particularly if there are no recent, intervening charges indicating the individual is at risk for active addiction.

a. **Update on High Priority Bills**

Recently Added

Bill Name	Status	Description
AR SB 705	In Senate; Recommended for study in Committee on April 27, 2021	Ex-offender reentry (no consideration permitted of convictions > 5 years past date of conviction, unless offense was violent or sexual, or multiple felony convictions)
ME LD 1465	In House; Referred to the Judiciary Committee on April 8, 2021	Ex-offender reentry (Medium priority bill with interesting approach: bar on considering convictions after 3 years, unless conduct is otherwise a ground for disciplinary action against a licensee, registrant, or permit holder)

Advanced in Past Month

CT SB 1019: an ex-offender reentry bill that provides for automatic erasure of criminal conviction history for felonies that carry a maximum prison sentence of 10 years, 5 years after the date of the most recent conviction (as amended). This bill also directly restricts private organizations by making it a discriminatory practice for any association, board, or other organization to refuse to accept an applicant based on their erased criminal history record information. The bill has passed the Senate and is being considered in the House. The PCC is contacting House Committee members and if you have a Connecticut presence, this is the time to reach out to legislators. We have posted our letters on the member portion of the website [\[Found Here\]](#) if you want to use them as an example.

Bill Name	Status	Description
CT SB 1019	Passed Senate; In House; Favorably reported by Committee on May 19	Ex-offender reentry (automatic erasure of criminal conviction history plus prohibits certain private association membership decisions)
ME LD 1131 (LD 612)	In House but stalled; Committee accepted Ought Not to Pass Report on May 19	Reciprocity (work experience/private certification in lieu of qualifications; no equivalence of standards)
MI HB 4377 (SB 158 and SB 312)	Passed House; In Senate; Passed Roll Call on May 25	Reciprocity (lifetime exemption from exam requirements for veterans and their spouses)

Not Advanced in Past Month

Bill Name	Status	Description
NV SB 402	In Senate; In Committee with no movement since April 20	Reciprocity (lifetime exemption from exams for vets and spouses)
CT HB 6474	In House; No movement since it was reported out of Legislative Commissioners' Office on April 12	Ex-offender reentry/directly targets association eligibility requirements
CT HB 6445	In Senate; No movement since it was reported out of Legislative Commissioners' Office on April 8	Reciprocity (work experience in lieu of qualifications)
CT HB 6407	In House; In Committee with no movement since March 30	Reciprocity (no equivalence of scope or standards)
AR HB 1667	In House; In Committee with no movement since March 17	Reciprocity (work experience/private certification in lieu of qualifications; no equivalence of scope or standards)
OH SB 131 (HB 203)	In Senate; In Committee with no movement since March 17	Reciprocity (work experience/private certification in lieu of qualifications; no equivalence of standards)
NE LB 263	In Legislature; In Committee with no movement since March 4	Reciprocity (work experience/private certification in lieu of qualifications; no equivalence of standards)
TN HB 1081	In House; In Committee with no movement since February 22	Review and Repeal/Right to Earn a Living Act
WA HB 1403	In House; In Committee with no movement since February 15	Review and repeal/sunset review (enacts government certification programs as an alternative to licensure)
PA SB 211	In Senate; In Committee with no movement since February 11	Broad liability on limitation if conducting business during pandemic
OK SB 542	In Senate; In Committee with no movement since February 2	Review and Repeal/Right to Earn a Living Act
OK SB 756	In Senate; In Committee with no movement since February 2	Limited Consumer Choice/"Oklahoma Certification Opportunity Act"
MN HF 266	In House; In committee with no movement since January 21	Seeks to abolish all licensure laws
KS SB 10	In Senate; In Committee with no movement since January 20	Right to Earn a Living Act/private right of action
SC H 3334	In House; In Committee with no movement since January 14	Ex-offender reentry/"Ban the Box Act"
SC H 3474	In House; In Committee with no movement since January 13	Ex-offender reentry
SC S 295	In Senate; In committee with no movement since January 12	Ex-offender reentry
RI HB 5960 (SB 432)	Committee recommended measure be held for further study on March 29, 2021	Reciprocity (work experience/private certification in lieu of qualifications; no equivalence of standards)

Enacted

Bill Name	Description
KS HB 2066 (S.B. 137)	Reciprocity (work experience/private certification in lieu of qualifications; no equivalency of standards)
AZ HB 2787	Ex-offender reentry (licensing agencies must disregard nonviolent misdemeanors and, if 7 years have passed since incarceration, felonies)
WV SB 472	Review and Repeal / Sunrise Review (least restrictive hierarchy, but only calls for report with recommendations)
ID S 1083	Reciprocity (lifetime exemption form exams for vets and spouses)
AZ SB 1218	Review and repeal bill for non-health professionals (calls for least restrictive regulation)

Dead

Bill Name
MO HB 584
NH HB 405
WV HB 2007
RI HB 5428
WV HB 3052
UT HB 183
WV HB 2909
WV SB 269

3. Federal Legislation

a. Freedom to Invest in Tomorrow’s Workforce Act (S. 905/H.R. 2171) Update

- i. *Recap:* bipartisan, bicameral bill introduced by Representative Spanberger and Representative Upton on the House side and Senator Klobuchar and Senator Braun on the Senate side. The bill would expand the eligible uses of 529 savings plans to cover the costs of obtaining and maintaining postsecondary credentials, including certification.
- ii. We will be focusing our attention on building support in committees of jurisdiction, including the House Ways and Means Committee and the Senate Finance Committee.
- iii. A few months ago, ASAE had several meetings and the bill was received positively.
- iv. We are optimistic about the bill in general and will work to cultivate more support.
- v. **Member question:** Are you currently working with any test sponsors on this?
 1. **Answer:** Some stakeholders in the grant management space have been very involved, but we welcome anyone and everyone’s involvement.

b. Proposed Credentialing, Education, Resources, and Training (“CERT”) Act Update

- i. *Recap:* our proposed bill would provide federal funding, through payroll tax credits, for certification organizations to offer scholarships to cover enrollment and/or exam fees for individuals displaced from their jobs due to the pandemic.
- ii. Over the past month we have had several conversations with staffers of potential sponsors and committees of jurisdiction, at the express encouragement of some

- potential sponsors. We have encountered great enthusiasm and have an interested sponsor in the House.
- iii. There is some concern from the Senate Health Committee that there are insufficient protections against flimsy or bogus organizations participating, and that there needs to be more government oversight over what a qualifying program is. On the other hand, there are concerns that such careful government oversight would be costly for the government to administer.
 - iv. We are continuing to reach out to other stakeholder groups to learn more about how we can revise the bill to address these concerns and expand its popularity, and to find congressional vehicles to attach it to.
 - v. We are considering expanding the categories of eligible individuals beyond those who have been displaced from their careers in the pandemic to include returning servicemembers and military spouses. The expansion would allow us to attempt to include the bill in the National Defense Authorization Act (NDAA), which is passed every year.
 - vi. **Member question:** If an employer pays for the certification program for employees, who would receive the credit?
 1. **Answer:** The cost of any program that is approved to offer career rebuilding scholarships would be reduced by the cost of the scholarship. The cost would be recouped by the certification organization by a payroll tax credit similar to the FFCRA.
 - vii. Some of the feedback from committees of jurisdiction is to find a way to screen out certification programs that are not as legitimate as our members. One idea is to provide outcome data, such as data on placement rates for certificates and the earnings of certificates and provide that information to applicants. However, our sense is that many certification programs don't collect that information.
 - viii. **Question for members:** If collecting data is the price of admission to the CERT Act, is it worth including in the act?
 1. **Responses:**
 - a. This is likely due to a comprehension gap on what certification bodies do, as the skepticism likely is more directed to education certifications and online universities – where federal funding is going toward degrees that did not have any credible placement.
 - b. We don't track this data and even if we did, it would be self-reported.
 - c. For our program, you can't sit for the exam unless you have been part of the industry for at least 2 years. It is a means of advancing in the industry, not entry into it.
 - d. We only collect demographic information.
 - e. There may be an opportunity to collect data from various practice analysis studies – these are comprehensive, national studies that would provide a policymaker with information about patterns and trends.
 - f. Maybe maintenance of the certification itself is an indication of quality.
 - g. Job analysis studies may be an alternative means of documenting the legitimacy of a certification.

4. Outreach to Allies

- a. Department of Defense (DoD) and military Service Departments' Credentialing Programs
 - i. The PCC contacted Lisa Lutz, an active I.C.E. member who recently worked on the

Military Toolkit initiative. Lisa is the president of SOLID, a data consulting firm that created and maintains the military Credentialing Opportunities On-Line (COOL) sites.

- ii. COOL only includes certifications that have a (broadly defined) connection to military operations. The DOD provides the level of government oversight that the Senate Health Committee wants incorporated into the bill to protect against predatory or flimsy programs.
- iii. Unlike the COOL program, the GI bill (administered by the VA) funds certification programs that are not tied to military skills. The VA does some screening but it is not as robust as the DOD screening. A certification program must apply to the state where it is based in order to be approved by the VA to participate.
- iv. The PCC is working on a new draft of the CERT Act that incorporates these building blocks and meeting with sponsor staff to further discuss it.
- v. First Lady Jill Biden is a big proponent of workforce development for military spouses, so we will be reaching out to get that level of support from the administration as well as pushing the bill through Congress.

b. American Board of Medical Specialties (ABMS)

- i. The PCC has had several calls with ABMS about ways we can work together as allies.
- ii. We are trying to get them to reach out on CT SB 1019 and hope to report back on our next member call on ways that the relationship can may bear fruit.

c. American Civil Liberties Union (ACLU)

- i. We have also been attempting to engage in outreach with the ACLU, but have not successfully connected yet.
- ii. We will continue this outreach as we transition out of the heavy period of state legislation.