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| <u>KEY</u> | |
|---|--|
|  = High Priority | |
| <u>Dead</u> | |
| <u>Under consideration in one chamber</u> | |
| <u>Passed one chamber and under consideration in the other</u> | |
| <u>Awaiting governor's signature</u> | |
| <u>Enacted</u> | |

Arizona

Session End


Crossover Deadline

Carryover

4/25/2020

2/21/2020

No

| <u>State</u> | <u>Bill #</u> | <u>Introduced</u> | <u>Primary Sponsor(s)</u> | <u>Last Action</u> | <u>Status</u> | <u>Position</u> | <u>Priority</u> |
|--------------|---|-------------------|---------------------------|--|---------------|-----------------|-----------------|
| AZ | SB 1142  | 1/16/2020 | Tyler Pace (R) | Assigned to Senate Rules Committee ((1/16/2020) Senate Republican Caucus Yes(2/11/2020) | In Senate | Amend | High |

Bill Summary

- Amends the Arizona statute on “nonhealth professions; occupations; regulations.”
- Adds the “extent to which the level of regulation exercised by [an] agency compares to other states and is appropriate and whether less or more stringent levels of regulation would be appropriate and, if the agency administers an occupational regulation [...], the extent to which the occupational regulation meets the requirements of section 41-3502 [on regulating nonhealth professions and occupations; criteria]” to the enumerated factors that each committee of reference, must consider in determining the need for continuation or termination of each agency.
- Requires the committee of reference to deliver a final sunset review report, which, if the state agency administers an occupational regulation, includes one or more of the following recommendations: (1) repeal the occupational license; (2) convert the occupational license to a less restrictive regulation; and/or (3) instruct the state agency to seek legislation or adopt rules to reflect the committee of reference’s recommendation to: (i) impose less restrictive regulations than occupational licenses; (ii) change the requisite personal qualifications of an occupational license.; or (iii) redefine the scope of practice in an occupational license.
- Provides that a profession or occupation shall not be regulated except in the least restrictive manner for the exclusive purpose of protecting the public interest, and regulation shall not be imposed to protect a discrete interest group from economic competition; “private certification” is listed as the third least restrictive form of regulation.
- Provides that there is a rebuttable presumption that “the public is sufficiently protected from unregulated practice by market competition and private remedies, including third-party or consumer-created ratings and reviews and private certification”
- Permits the state to regulate a profession or occupation only if all of the following apply (1) there is credible empirical evidence of present, significant and substantiated harm that the unregulated practice threatens the public health, safety or welfare in this state; (2) the actual or anticipated public benefit of the regulation clearly exceeds the costs imposed on consumers, businesses and individuals.; (3) the public needs and can reasonably be expected to benefit from government regulation; and (4) the public cannot be effectively protected by less restrictive regulations.
- Permits the legislative committee of reference to request information from state agencies that contract with individuals in regulated occupations and others with knowledge of the occupation, labor market economics or other factors.
- Requires the legislative committee of reference to provide its findings and recommendations to the standing committee to which the proposed legislation is assigned and the standing committee shall address (1) the type of regulations, if any, that are appropriate and (2) if applicable, the scope of practice and requisite personal qualifications that are appropriate for a government certification or occupational license.
- Provides that the bill does “not preempt federal regulations or require a private certification organization to grant or deny private certification to an individual.”
- Provides that upon receiving initial and continuing approval from the government, and individual may use the title “government certified” or “state certified” and that an individual may use the title “certified” as allowed by a private organization that grants private certification.
- Permits a noncertified individual to perform a lawful occupation for compensation but prohibits them from using the title “government certified” or “state certified;” provides that it is illegal for an individual who does not possess a valid occupational license to perform the occupation for compensation.
- Defines “government certification” as “a voluntary program in which this state grants nontransferable recognition to an individual who meets personal qualifications that are established by law.”

- Defines "private certification" as a "voluntary program in which a private organization grants nontransferable recognition to an individual who meets personal qualifications that are established by the private organization" and lists it as the third least restrictive form of regulation.

Comments and Proposed Changes

- Add "nothing in this chapter shall be construed to 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."
- The definition of "private certification" should be revised to state 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."
- Amend Section 41-3502(H) to add: "Notwithstanding any other provision of Section B, C, and D, no individual shall be restricted from using the title "certified" or the title "registered" to the extent that title reflects a credential held by the individual that was issued by a private certification organization that confers credentials to individuals meeting the qualifications set by the organization's certification or certificate program."
- 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."
- Amend Section 41-3502 to replace "there is credible empirical evidence of present, significant and substantiated harm that the unregulated practice threatens the public health, safety or welfare in this state" with "it can be demonstrated that the unregulated practice of the profession or occupation can clearly harm or endanger the health, safety, or welfare of the public and the potential for the harm is recognizable and not remote or speculative."

| <u>State</u> | <u>Bill #</u> | <u>Introduced</u> | <u>Primary Sponsor(s)</u> | <u>Last Action</u> | <u>Status</u> | <u>Position</u> | <u>Priority</u> |
|--------------|-------------------------|-------------------|---------------------------|-----------------------------------|---------------|-----------------|-----------------|
| AZ | HB 2359 | 1/21/2020 | Ben Toma (R) | House Minority Caucus (2/11/2020) | In House | Amend | Medium |

Bill Summary

- Provides that notwithstanding any other law, an agency may not deny to an otherwise qualified applicant who has been convicted of criminal drug offenses (ranging from marijuana to manufacturer of meth to unauthorized use or possession of prescription drugs) the regular occupational license for which the applicant has applied or a provisional occupational license.
- Defines "Occupational License" as "any agency permit, certificate, approval, registration, chapter or similar form of permission that allows an individual to use an occupational title or work in a lawful occupation, trade, or profession."

Comments and Proposed Changes

- This bill is far too broad, prohibiting the denial of a license to any individual convicted of any drug crime, ranging from the minor (e.g., possession of marijuana for personal use) to the major (running a meth distribution ring) to the job-related (abusing prescription privileges to distribute opioids to addicts) to the safety-related (a conviction for opioid use that results from an active substance abuse addiction).
- Change "Notwithstanding any other law, an agency may not deny to an otherwise qualified applicant who has been convicted of an offense that involves a violation of title 13, chapter 34 or 34.1 or an offense committed in another jurisdiction that has the same elements as an offense listed in title 13, chapter 34 or 34.1 either of the following" to "A qualified applicant convicted of an offense that involves a violation of title 13, chapter 34 or 34.1 or an offense committed in another jurisdiction that has the same elements as an offense listed in title 13, chapter 34 or 34.1 may not be disqualified by an agency from the following solely on the basis of the conviction if (i) the individual has completed all sentences for the conviction, (ii) the individual has not reoffended since the conviction, (iii) the individual has no pending charges, (iv) if the conviction was related to substance abuse, the individual has provided evidence establishing rehabilitation and the ability to practice the profession safely and without substance abuse, and (v) the offense does not relate to the practice of the occupation or pose a danger to members of the public the individual would encounter in the practice of the occupation."
- Add a safe harbor provision: "nothing in the 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."

| <u>State</u> | <u>Bill #</u> | <u>Introduced</u> | <u>Primary Sponsor(s)</u> | <u>Last Action</u> | <u>Status</u> | <u>Position</u> | <u>Priority</u> |
|--|-------------------------|-------------------|---------------------------|----------------------------------|---------------|-----------------------|---------------------|
| AZ | HB 2402 | 1/28/2020 | Bret Roberts (R) | House Second Reading (1/28/2020) | In House | Amend | Low |
| <u>Bill Summary</u> | | | | | | | |
| <ul style="list-style-type: none"> Amends Section 13-905 of the Arizona revised statute. Provides that the court may issue an order that includes a certificate of second chance to a person whose judgment of guilt is set aside pursuant to this section; provides a list of factors that the court must consider when determining whether to set aside the conviction. Provides that the clerk of the court must notify the department of public safety if a conviction is set aside; The department of public safety must update the person's criminal history with an annotation that the conviction has been set aside and, if applicable, a certificate of second chance has been issued but may not redact or remove any part of the person's record. Provides that if the state or the victim objects to an application to have a judgment of guilt set aside, an objection to the application must be filed within thirty days after the application is filed with the court; if an objection is filed, the court may set a hearing where the victim has the right to be present and heard . Requires the court order to include a certificate of second chance when the court grants the application to set aside the judgment of guilt, if the person has not previously received a certificate of second chance and the person was convicted of a misdemeanor, if the person was convicted of a class 4, 5 or 6 felony and at least two years have elapsed since the person fulfilled the conditions of probation or sentence, or if the person was convicted of a class 2 or 3 felony and at least five years have elapsed since the person fulfilled the conditions of probation or sentence. Provides that the certificate of second chance (1) unless specifically excluded by this section, releases the person from all barriers and disabilities in obtaining an occupational license issued under title 32 that resulted from the conviction if the person is otherwise qualified; (2) in addition to the protections included in section 12-558.03, releases an employer from liability for negligently hiring or independently contracting for services from the person if the theory of the employer's liability is premised on the existence of the person's prior criminal offense; (3) releases a person or entity from liability for providing housing to the person if the theory of the person's or entity's liability is premised on the existence of the person's prior criminal offense; and (4) is not a recommendation or sponsorship for or a promotion of the person who possesses the certificate of second chance when applying for an occupational license, employment or housing. Permits a person whose conviction was set aside but who was not issued a certificate of second chance to apply to the court for a certificate of second chance after meeting the requirements prescribed in this section; provides that if a victim has made a request for postconviction notice, the attorney for the state shall provide the victim with notice of the person's application for a certificate of second chance and the victim's rights under this section. Provides that the section does not apply to certain convictions relating to dangerous offenses, sexual offenses, etc. Add a safe harbor provision: "nothing in the 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." | | | | | | | |
| <u>Comments and Proposed Changes</u> | | | | | | | |

California

Session End

11/30/2020

Crossover Deadline

None

Carryover

No

| <u>State</u> | <u>Bill #</u> | <u>Introduced</u> | <u>Primary Sponsor(s)</u> | <u>Last Action</u> | <u>Status</u> | <u>Position</u> | <u>Priority</u> |
|--------------------------------------|------------------------|---|---------------------------|--|---------------|-----------------|-----------------|
| CA | AB 193 | 4/30/2019 | Jim Patterson (R) | From Committee Filed With The Chief Clerk Pursuant To Joint Rule 56 (2/3/2020) | In Assembly | Monitor | Low |
| <u>Bill Summary</u> | | <ul style="list-style-type: none">• Requires the Department of Consumer Affairs in the Business, Consumer Services, and Housing Agency to, beginning in 2021, conduct a comprehensive review of all occupational licensing requirements and identify unnecessary licensing requirements that "cannot be adequately justified".• Requires the department to report to the Legislature on January 1, 2023, and every 2 years thereafter, on the department's progress, and requires the department to issue a final report to the Legislature no later than January 1, 2033.• Requires the department to apply for federal funds that have been made available specifically for the purpose of reviewing, updating, and eliminating overly burdensome licensing requirements, as provided | | | | | |
| <u>Comments and Proposed Changes</u> | | <ul style="list-style-type: none">• Current version does not warrant intervention.• The bill provides no parameters to define the criteria on which the department "shall identify unnecessary licensing requirements that cannot be adequately justified." As such, the bill requires a purely procedural review process. | | | | | |

District of Columbia

Session End

12/1/2020

Crossover Deadline

None

Carryover

Yes

| <u>State</u> | <u>Bill #</u> | <u>Introduced</u> | <u>Primary Sponsor(s)</u> | <u>Last Action</u> | <u>Status</u> | <u>Position</u> | <u>Priority</u> |
|--------------------------------------|-----------------------------|--|---------------------------|---|----------------------|-----------------|-----------------|
| DC | B 3-con0440 | 9/17/2019 | Charles Allen (D) | Public Hearing on B 23-0440 (1/29/2020) | Under Council Review | Amend | Medium |
| <u>Bill Summary</u> | | <ul style="list-style-type: none"> • Titled "Removing Barriers for Occupational Licensing for Returning Citizens." • Establishes a uniform standard for occupational licensing boards to consider only pending criminal accusations or prior convictions that are directly related to the occupation for which the license is sought, as determined by enumerated factors. • Requires notice to and an opportunity to respond with mitigating evidence for individuals who receive an adverse decision based on their criminal history. • Requires the Mayor to submit reports to the Council with information about applications by individuals with criminal histories and adverse decisions made by boards based on criminal histories. • Requires the Deputy Mayor for Public Safety and Justice to prepare and submit to the Mayor and Council a report identifying the statutory and regulatory collateral consequences of criminal histories in the District, along with recommendations for their mitigation or elimination. | | | | | |
| <u>Comments and Proposed Changes</u> | | <ul style="list-style-type: none"> • The new paragraph (7) specifies that the Deputy Mayor for Public Safety and Justice's report applies only to <i>the statutory and regulatory</i> collateral consequences of criminal histories and recommendations for their mitigation or elimination., but it would be useful to add a clarification: "Decisions by nongovernmental persons or entities shall not be considered collateral consequences under this Subchapter, except for government contractors." • Add a safe harbor provision: "nothing in the 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 new paragraph stating that "Directly related to the occupation' means that the nature of the criminal conduct for which the person was convicted has a direct bearing on the person's fitness or ability to perform one or more of the duties or responsibilities necessarily related to the license or employment or that the applicant poses an unacceptable risk to the people with whom the applicant would interact in the conduct of the profession or occupation." | | | | | |

Florida

Session End

3/13/2020

Crossover Deadline

None

Carryover

No

| <u>State</u> | <u>Bill #</u> | <u>Introduced</u> | <u>Primary Sponsor(s)</u> | <u>Last Action</u> | <u>Status</u> | <u>Position</u> | <u>Priority</u> |
|--------------|-------------------------|-------------------|---------------------------|--|---------------|-----------------|-----------------|
| FL | HB 707 | 11/19/2019 | Paul Renner (R) | Added to Second Reading Calendar (2/10/2020) | In House | Amend | Low |
| | SB 1124 | 12/4/2019 | Manny Diaz (R) | Introduced -S 82 (1/14/2020) | In Senate | Amend | Low |

Bill Summary

- Titled the "Occupational Regulation Sunset Act."
- Defines "Occupational regulatory program" or "program" as " any statutory regulatory provision or scheme which places a condition on practicing an occupation, including, but not limited to, programs that require a license, certification, registration, or credential."
- Provides that there "is established a schedule for systematic review of the costs and benefits of occupational regulatory programs," in accordance to which the legislature will review each program before its scheduled date of expiration to "determine whether to allow the program to expire, renew the program without modifications, renew the program with modifications, or provide for other appropriate actions."
- Provides for automatic repeal of licensure regulatory programs and elimination of licensure requirements and enforcement unless legislature affirmatively renews the program, with or without modifications, prior to the program's expiration date.
- Addresses the allocation of revenue and the litigation of any relevant pending claims in the event of expiration of an occupational regulatory program.
- Provides that any occupational regulatory program that expires may not be subsequently regulated by a local government.

Comments and Proposed Changes

- Amend bill to require legislative approval of repeal, in order to prevent unwanted elimination of licensure laws and agencies, as occurred in Texas with plumbers.

| <u>State</u> | <u>Bill #</u> | <u>Introduced</u> | <u>Primary Sponsor(s)</u> | <u>Last Action</u> | <u>Status</u> | <u>Position</u> | <u>Priority</u> |
|--------------|-------------------------|-------------------|---------------------------|--|---------------|-----------------|-----------------|
| FL | SB 1308 | 12/20/2019 | Jeff Brandes (R) | Last Action Now In Appropriations Subcommittee On Criminal And Civil Justice (2/10/2020) | In Senate | Monitor | Low |

Bill Summary

- Titled "The Second Look Act."
- Provides that the Office of Program Policy and Governmental Accountability ("OPPAGA") must conduct a study to evaluate the various opportunities available to persons returning to the community from imprisonment and submit it to the Governor, the President of the Senate, the Minority Leader of the Senate, the Speaker of the House of Representatives, and the Minority Leader of the House of Representatives by November 1, 2020; the scope of the study must include but need not be limited to, any barriers to such opportunities, the collateral consequences that are present, if applicable, for persons who are released from incarceration into the community, and methods for reducing the collateral consequences identified.
- Addresses criminal sentencing for juvenile offenders.

Comments and Proposed Changes

- Does not warrant intervention at present.
- If the bill is enacted into law, the PCC may consider reaching out to OPPAGA to educate the agency about the distinctions between certification and licensure in the criminal history context.

Illinois

Session End

1/6/2021

Crossover Deadline

4/12/2019

Carryover

Yes

| <u>State</u> | <u>Bill #</u> | <u>Introduced</u> | <u>Primary Sponsor(s)</u> | <u>Last Action</u> | <u>Status</u> | <u>Position</u> | <u>Priority</u> |
|--------------|-------------------------|-------------------|---------------------------|--|--|-----------------|-----------------|
| IL | SB 1286 | 2/7/2019 | Jason Plummer (R) | Rule 3-9(a) / Re-referred to Assignments (3/22/2019) | Failed to Meet Crossover Deadline (but can move forward without being reintroduced if it is referred to the rules committee) | Monitor | Low |

Bill Summary

- Creates the Regulatory Sunrise Review Act.
- Provides that the General Assembly shall commence the process established by this Act to investigate and review the necessity of new State regulation over a previously unregulated profession by passage of a resolution.
- Requires that an applicant that proposes legislation to license a profession or occupation submit a petition for licensure on forms provided by the Department of Financial and Professional Regulation and pay a fee of \$1,000 within 30 days after introduction of the proposed professional regulation legislation. Provides that the Department shall prepare a report within 12 months assessing the need for the proposed new licensure upon receipt of a complete petition and petition fee; the report shall be principally authored by an expert currently associated with an Illinois post-secondary educational institution; the expert must be a labor market economist with a doctoral degree or a person with an advanced quantitative degree and an expertise in post-benefit analysis.
- Provides the various requirements, factors, criteria, and standards that must be included in a report; for example, (1) whether regulation is necessary or beneficial, including any potential harm or threat to the public if the profession or occupation is not regulated or specific examples of the harm or threat identified, if any; (2) the efforts that have been made to address any concerns that give rise to the need for regulation, including: (A) voluntary efforts, if any, by members of the profession or occupation to: (i) establish a code of ethics; (ii) help resolve disputes between practitioners and consumers; and (iii) establish requirements for continuing education; (B) the existence of any national accreditation or national certification systems for the profession or occupation; (C) recourse to and the extent of use of existing law; and (D) any prior attempts to regulate the profession or occupation in Illinois; (3) whether alternatives to licensure would be adequate to protect the public interest; and (4) the extent to which regulation might harm the public, including: (A) "whether regulation will restrict entry into the profession or occupation, including: (i) whether the standards are the least restrictive necessary to ensure safe and effective performance; and (ii) whether persons who are registered or licensed in another jurisdiction that has requirements that are substantially equivalent to those of this State will be eligible for endorsement or some form of reciprocity."
- Provides that a profession or occupation shall be regulated by the state only when the following criteria are met: "(1) it can be demonstrated that the unregulated practice of the profession or occupation can clearly harm or endanger the health, safety, or welfare of the public and the potential for the harm is recognizable and not remote or speculative; (2) the public can reasonably be expected to benefit from an assurance of initial and continuing professional ability; (3) the public cannot be effectively protected by other means; and (4) regulation of the profession does not impose significant new economic hardships on the public, significantly diminish the supply of qualified practitioners, or otherwise create barriers to service that are not consistent with the public welfare or interest.
- Provides that "If there exists a national ... certification system for the profession or occupation that adequately ensures quality and protects the public health, safety, and welfare, regulation by the State shall be restricted to addressing those concerns that are not covered by the national program."

Comments and Proposed Changes

- Current version does not warrant intervention.
- This bill does not affect current occupational licensure regulations, only newly proposed occupational licensure regulations.
- The bill allows for consideration of harms or threats and does not create evidentiary presumptions or burdens similar to those in the ALEC model bill.
- The bill includes an even-handed consideration of benefits and detriments from enacting new licensure.
- The bill is supportive of and deferential to private certification programs.

Indiana

Session End

3/14/2020

Crossover Deadline

2/3/2020

Carryover

No

| <u>State</u> | <u>Bill #</u> | <u>Introduced</u> | <u>Primary Sponsor(s)</u> | <u>Last Action</u> | <u>Status</u> | <u>Position</u> | <u>Priority</u> |
|--------------|------------------------|-------------------|---------------------------|--|---------------|-----------------|-----------------|
| IN | SB 364 | 1/13/2020 | Victoria Spartz (R) | First Committee Referred to Committee on Rules and Legislative Procedure (2/11/2020) | In House | Amend | <u>Low</u> |

Bill Summary

- Requires the legislative services agency to determine whether a bill may impose a regulatory requirement on businesses and individuals, and, if so, include a statement in the fiscal analysis that the bill may impose a regulatory requirement on businesses and individuals.
- Requires the small business ombudsman, in coordination with the office of management and budget and the department of workforce development, to submit: (1) an executive summary summarizing each state agency that may issue a license, and each of the specific license types that may be issued by each state agency; (2) an executive summary concerning the comparative advantages of regions across the state and strategies to promote small businesses and entrepreneurship; and (3) an executive summary with recommendations on regulatory oversight if any, for streamlining regulatory oversight, eliminating barriers of entry for small businesses, and promoting a competitive business climate, innovation, and the least restrictive regulatory environment.
- "Private certification" is listed as the third least restrictive form of regulation.
- "License" is defined as "a franchise, permit, certification, approval, registration, charter, or similar form of authorization required by law that is issued by an agency."
- Requires the Indiana professional licensing agency to prepare an executive summary concerning the portability and reciprocity of Indiana occupational licenses relative to other states.
- Requires the Indiana department of education to prepare an executive summary concerning portability and reciprocity of Indiana licenses relative to other states.

Comments and Proposed Changes

- Results of sunrise review does not automatically result in changes to regulations or statutes.
- Amend the bill to add **"The executive summary shall also address the extent to which the regulation furthers public health, safety, or welfare."**
- The review process contains no evidentiary presumptions
- Would be helpful to add a provision requiring the small business ombudsman to request information from any relevant private certification organization that might be affected by the review before submitting its report.

Iowa

Session End

5/3/2019

4/21/2020

Crossover Deadline

None

Carryover

Yes

| <u>State</u> | <u>Bill #</u> | <u>Introduced</u> | <u>Primary Sponsor(s)</u> | <u>Last Action</u> | <u>Status</u> | <u>Position</u> | <u>Priority</u> |
|--------------|------------------------|-------------------|---------------------------|----------------------------------|---------------|-----------------|-----------------|
| IA | HF 752 | 3/27/2019 | Jacob Bossman (R) | END OF 2019 ACTIONS (12/31/2019) | In Senate | Amend | Low |

Bill Summary

- Instructs the state government efficiency review committee to review and analyze approximately “one-third of all professional licenses, certifications, and registrations available in the state” during each two-year period in which the committee must meet and to recommend.
- Authorizes the committee to require the submission of information from the relevant licensing, certifying, and registering entities and other interested parties.
- Instructs the committee to recommend that the legislature:
 - (a) Repeal a professional license, certification, or registration.
 - (b) Convert and occupational license to a certification or registration or converts a certification to a registration.
 - (c) Change the requisite qualifications for a professional license, certification, or registration.
 - (d) Redefine the scope of practice of a professional license, certification, or registration (or take other action).
- Requires the committee to consider the direct and indirect costs, utility, and health and safety implications of requiring such licenses, certifications, and registrations and to make recommendations regarding the reviewed licenses, certifications, and registrations in its statutorily mandated report; the general assembly must vote on the adoption of each such report.
- Allows a person seeking to obtain a professional license to submit a petition to a licensing board for a determination as to whether that person's criminal record will disqualify the person from receiving a license from the board.

Comments and Proposed Changes

- As written, the bill could apply also to private certifications. Amend “one-third of all professional licenses, certifications, and registrations *available in the state*” to “one-third of all professional licenses, certifications, and registrations **issued by the state**”
- Add “Nothing in this Chapter is intended to restrict an agency from requiring, as a condition of licensure or renewal of licensure, that an individual's personal qualifications include obtaining or maintaining private certification from a private organization that credentials individuals in the relevant occupation.”
- Add another safe harbor provision: “the committee shall not recommend repeal of licensure requirements for any occupation for which 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.”

Massachusetts

Session End

1/6/2021

Crossover Deadline

None

Carryover

Yes

| <u>State</u> | <u>Bill #</u> | <u>Introduced</u> | <u>Primary Sponsor(s)</u> | <u>Last Action</u> | <u>Status</u> | <u>Position</u> | <u>Priority</u> |
|--------------|-------------------------|-------------------|---------------------------|--|--|-----------------|-----------------|
| MA | HB 1477 | 1/17/2019 | Mary Keefe (D) | Referred to Consumer Protection and Professional Licensure (1/15/2020) | In Joint Judiciary Committee (Senate Concurred 1/22/2019)) | Amend | Low |

Bill Summary

- Titled the "Uniform Collateral Consequences of Convictions Act," the bill addresses penalties or disadvantages "imposed on an individual as a result of the individual's conviction of an offense which applies by operation of law," regardless of whether the consequence was stated in the judgment or sentence for the convicted individual. "Collateral consequence," "collateral sanction," and "disqualification" are all defined terms having a nexus with state action.
- Applies to "decision-makers," defined as "the state acting through a department, agency, officer, or instrumentality, including a political subdivision, educational institution, board, or commission, or its employees, or a government contractor, including a subcontractor, made subject to this chapter by contract, by law other than this chapter, or by ordinance."
- Provides that in deciding whether to impose a disqualification, a "decision-maker" shall undertake an individualized assessment to determine whether the benefit or opportunity at issue should be denied the individual; the decision-maker may consider, if substantially related to the benefit or opportunity at issue: the particular facts and circumstances involved in the offense, and the essential elements of the offense and other relevant information, including the effect on third parties of granting the benefit or opportunity.
- Allows an individual convicted of an offense to petition for an order of limited relief from "one or more collateral sanctions related to employment, education, housing, public benefits, or occupational licensing" at the sentencing court or probation department.
- Provides that an individual convicted of an offense may petition the trial court for a certificate of restoration of rights relieving collateral sanctions not sooner than 5 years after the individual's most recent conviction of a felony or misdemeanor in any jurisdiction, or not sooner than five years after the individual's release from confinement pursuant to a criminal sentence in any jurisdiction, whichever is later.

Comments and Proposed Changes

- The provision creating a right to petition for an order of limited relief from collateral sanctions suggests that an individual could seek a court order prohibiting a certification organization from denying or revoking certification due to a criminal conviction. The definitions suggest that the intention of the bill is limited to consequences imposed by the government, but it would be useful to add a clarification to the definition of "collateral consequence": **"Decisions by nongovernmental persons or entities shall not be considered collateral consequences under this chapter, except for government contractors to the extent they assume the role of decision-makers as defined in Section 2(e)."**
- To confirm that this provision does not open the door to legal challenges to private certification organizations' eligibility and disciplinary decision, a safe harbor provision should be added: **"Nothing in this chapter shall be construed to require a private certification organization to grant or deny private certification to any individual, nor shall it impair the right of private certification organizations to establish and enforce eligibility criteria, ethics codes, or disciplinary policies. In addition, nothing in this chapter shall be construed to 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."**

| <u>State</u> | <u>Bill #</u> | <u>Introduced</u> | <u>Primary Sponsor(s)</u> | <u>Last Action</u> | <u>Status</u> | <u>Position</u> | <u>Priority</u> |
|--------------|-----------------------|-------------------|---------------------------|--|--|-----------------|-----------------|
| MA | S 827 | 1/14/2019 | Joe Boncore (D) | Accompanied A Study Order See S 2496 (2/3/2020) (10/15/2019) | In Joint Judiciary Committee (House concurred, 1/22/2019)) | Amend | Low |

Bill Summary

- Creates the "Uniform Collateral Consequences of Conviction Act."
- Provides that an individual convicted of an offense may petition for an order of limited relief from one or more collateral sanctions related to employment, education, housing, public benefits, or occupational licensing. The petition may be presented to the: (1) sentencing court at or before sentencing; or (2) Probation Department at any time after sentencing.

- The court or the trial court may issue an order of limited relief relieving one or more of the collateral sanctions if, after reviewing the petition, the individual's criminal history, any filing by a victim or a prosecutor, and any other relevant evidence, it finds the individual has established by a preponderance of the evidence that: (1) granting the petition will materially assist the individual in obtaining or maintaining employment, education, housing, public benefits, or occupational licensing; (2) the individual has substantial need for the relief requested in order to live a law abiding life; and (3) granting the petition would not pose an unreasonable risk to the safety or welfare of the public or any individual."

Comments and Proposed Changes

- The provision creating a right to petition for an order of limited relief from collateral sanctions suggests that an individual could seek a court order prohibiting a certification organization from denying or revoking certification due to a criminal conviction. The definitions suggest that the intention of the bill is limited to consequences imposed by the government, but it would be useful to add a clarification to the definition of "collateral consequence": **"Decisions by nongovernmental persons or entities shall not be considered collateral consequences under this chapter, except for government contractors to the extent they assume the role of decision-makers as defined in Section 2(e)."**
- To confirm that this provision does not open the door to legal challenges to private certification organizations' eligibility and disciplinary decision, a safe harbor provision should be added: **"Nothing in this chapter shall be construed to require a private certification organization to grant or deny private certification to any individual, nor shall it impair the right of private certification organizations to establish and enforce eligibility criteria, ethics codes, or disciplinary policies. In addition, nothing in this chapter shall be construed to 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."**

| <u>State</u> | <u>Bill #</u> | <u>Introduced</u> | <u>Primary Sponsor(s)</u> | <u>Last Action</u> | <u>Status</u> | <u>Position</u> | <u>Priority</u> |
|--------------|------------------------|-------------------|---------------------------|---|---------------|-----------------|-----------------|
| MA | SD 580 | 1/22/2019 | Joe Boncore (D) | Accompanied a study order, see S2496 (2/3/2020) | In Senate | Amend | Medium |

Bill Summary

- Titled the "Uniform Collateral Consequences of Convictions Act."
- Applies to "decision-makers," defined as "the state acting through a department, agency, officer, or instrumentality, including a political subdivision, educational institution, board, or commission, or its employees, or a government contractor, including a subcontractor, made subject to this chapter by contract, by law other than this chapter, or by ordinance."
- Provides that in deciding whether to impose a disqualification, a "decision-maker" shall undertake an individualized assessment to determine whether the benefit or opportunity at issue should be denied the individual; the decision-maker may consider, if substantially related to the benefit or opportunity at issue: the particular facts and circumstances involved in the offense, and the essential elements of the offense and other relevant information, including the effect on third parties of granting the benefit or opportunity and whether the individual has been granted relief such as an order of limited relief or a certificate of restoration of rights.
- Provides for the effect of conviction by another state or the United States and relieved or pardoned convictions.
- Allows an individual convicted of an offense to petition for an order of limited relief from "one or more collateral sanctions related to employment, education, housing, public benefits, or occupational licensing" at the sentencing court or probation department.
- The court or the trial court may issue an order of limited relief relieving one or more of the collateral sanctions if, after reviewing the petition, the individual's criminal history, any filing by a victim or a prosecutor, and any other relevant evidence, it finds the individual has established by a preponderance of the evidence that: (1) granting the petition will materially assist the individual in obtaining or maintaining employment, education, housing, public benefits, or occupational licensing; (2) the individual has substantial need for the relief requested in order to live a law abiding life; and (3) granting the petition would not pose an unreasonable risk to the safety or welfare of the public or any individual."
- Provides that an individual convicted of an offense may petition the trial court for a certificate of restoration of rights relieving collateral sanctions not sooner than 5 years after the individual's most recent conviction of a felony or misdemeanor in any jurisdiction, or not sooner than five years after the individual's release from confinement pursuant to a criminal sentence in any jurisdiction, whichever is later.
- Provides exceptions for collateral sanctions subject to order of limited relief or certificate of restoration of rights (e.g. sex offender registration, motor vehicle license suspension, ineligibility for employment "pursuant to by law enforcement agencies," etc.).
- Provides for the issuance, modification, and revocation of an order of limited relief or certificate of restoration of rights

- Permits a victim of an offense to participate in a proceeding for issuance, modification, or revocation of an order of limited relief or a certificate of restoration of rights in the same manner as at a sentencing proceeding.

Comments and
Proposed Changes

- The provision creating a right to petition for an order of limited relief from collateral sanctions suggests that an individual could seek a court order prohibiting a certification organization from denying or revoking certification due to a criminal conviction. The definitions suggest that the intention of the bill is limited to consequences imposed by the government, but it would be useful to add a clarification to the definition of "collateral consequence": **"Decisions by nongovernmental persons or entities shall not be considered collateral consequences under this chapter, except for government contractors to the extent they assume the role of decision-makers as defined in Section 2(e)."**
- To confirm that this provision does not open the door to legal challenges to private certification organizations' eligibility and disciplinary decision, a safe harbor provision should be added: **"Nothing in this chapter shall be construed to require a private certification organization to grant or deny private certification to any individual, nor shall it impair the right of private certification organizations to establish and enforce eligibility criteria, ethics codes, or disciplinary policies. In addition, nothing in this chapter shall be construed to 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."**

Michigan

Session End


12/31/2019
12/31/2020

Crossover Deadline

None

Carryover

Yes

| <u>State</u> | <u>Bill #</u> | <u>Introduced</u> | <u>Primary Sponsor(s)</u> | <u>Last Action</u> | <u>Status</u> | <u>Position</u> | <u>Priority</u> |
|--------------|---|-------------------|---------------------------|--|---------------|-----------------|-----------------|
| MI | HB 4488  | 4/23/2019 | Brandt Iden (R) | Bill electronically reproduced (4/24/2019) | In House | Amend | High |


Bill Summary

- Defines "license" to include a registration; defines "licensing board or agency" as a principal department (a department that has jurisdiction over a licensing board or agency) or a board or agency within a principal department, that issues occupational or professional licenses; defines "good moral character" as the "propensity on the part of an individual to serve the public in the licensed area in a fair, honest, and open manner."
- Provides that "a licensing board or agency shall not consider a judgment in a civil action against an individual as evidence of his or her lack of good moral character" and "shall not consider an individual's criminal conviction, in and of itself, as conclusive proof of his or her lack of good moral character."
- Permits "a licensing board or agency to consider an individual's criminal conviction as evidence in the determination of good moral character" only if the licensing board or agency finds all of the following are met: (A) the individual's criminal record includes a conviction for a felony. (b) the type of felony of which the individual was convicted is codified as a disqualifying offense in the applicable occupational or professional licensing statute. (c) the licensing board or agency concludes that the specific offense of which the individual was convicted has a direct and specific negative effect on his or her ability to perform the duties authorized by the occupational or professional license. (d) the licensing board or agency determines that the state's interest in protecting public safety is superior to the individual's right to pursue the occupation or profession, based on clear and convincing evidence that all of the following are met: (i) the specific offense of which the individual was convicted is substantially related to the state's interest in protecting public safety (ii) the individual, based on the nature of the offense for which he or she was convicted and on any additional information provided by the licensee [...], is more likely to commit a subsequent offense because he or she has the occupational or professional license than if he or she does not have the occupational or professional license (iii) a subsequent offense committed with the aid of the occupational or professional license will cause greater harm to the public than it would if the individual did not have the occupational or professional license."
- Lists the types of criminal records that a licensing board or agency "shall not use, examine, or request" in making a determination of good moral character "for use as a requirement to establish or operate an organization or facility regulated" by the state for purposes of occupational or professional licensure.
- Provides that "This act does not prohibit the use by a licensing board or agency in its determination of an individual's good moral character of any other public record that is not related to his or her arrest, prosecution, or conviction or the use of any other source of unbiased and accurate information."
- Requires each licensing board or agency to promulgate rules that prescribe the offenses or categories of offenses that the department considers indicate an individual is not likely to serve the public as a licensee or registrant in a fair, honest, and open manner; before the promulgation of such rules, all felonies shall be considered to be relevant to the ability or likelihood that an individual will serve the public in a fair, honest, and open manner.
- Provides administrative and judicial procedures to contest licensing board or agency rulings that an individual is not eligible for a license because of a lack of good moral character.

Comments and Proposed Changes

- This bill goes much further than other occupational licensing bills by barring licensing agencies from considering – at all – any civil judgment against an individual as bearing on that individual's propensity to serve the public in a fair, honest, and open manner. Unlike the similar prohibitions against consideration of criminal convictions, this restriction is not qualified in any way. Taken at face value, this provision would bar a licensing agency from considering a fraud or theft civil judgment against an applicant or licensee as evidence bearing on the individual's honesty. For certification organizations with ethics code procedures that are triggered by licensure actions and that rely on reporting by licensing boards of such actions, this provision may make it more difficult to enforce those ethics codes.
- A similar concern applies to the restriction on consideration of criminal convictions, which prohibits licensing boards from considering (among other convictions) any misdemeanor conviction or any conviction that does not present a risk to public "safety" – without any consideration of public health or welfare.
- The provision that licensure boards may consider a public record that is "not related to [an] arrest, prosecution, or conviction" suggests that a licensing board may not consider public records (including certification status) that do relate to a criminal conviction. This could interfere with enforcement of licensure laws that require current certification, if the certification was denied or lost due to conduct resulting in a criminal conviction.

- To fix these issues, add a provision stating, “Notwithstanding any other provision of this act, nothing shall restrict a licensing board or agency from considering factual findings from a civil or criminal proceeding in which the individual was provided due process, if those factual findings are directly relevant to the individual’s ability to perform the duties authorized by the occupational or professional license, to meet the conditions for licensure, or to the state’s interest in public health, safety, or welfare.”
- Add a safe harbor provision: “nothing in the act shall be construed to require a private credentialing organization to grant or deny private certification or certificate to any individual. Notwithstanding any other provision, the act does not alter or restrict enforcement of 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.”

| <u>State</u> | <u>Bill #</u> | <u>Introduced</u> | <u>Primary Sponsor(s)</u> | <u>Last Action</u> | <u>Status</u> | <u>Position</u> | <u>Priority</u> |
|--------------------------------------|---|---|---------------------------|--|---------------|-----------------|-----------------|
| MI | SB 40  | 1/22/2019 | Lana Theis (R) | Referred to Committee on Regulatory Reform (1/22/2019) | In Senate | Amend | High |
| <u>Bill Summary</u> | | <ul style="list-style-type: none"> • Requires the Michigan Law Revision Commission (“Commission”) to review new legislation to determine whether the legislation uses the least restrictive regulation necessary to protect consumers from present, significant, and substantiated harms that threaten public health and safety; the Commission may require the legislation’s proponents to submit “evidence of present, significant, and substantiated harms to consumers in the state,” along with “information from other individuals who are knowledgeable about the occupation, labor economics, and other relevant factors.” • Requires the Commission to complete a report to the committee to which the legislation was referred. • Requires the Commission to review annually (beginning January 1, 2020) the occupational regulations of approximately 20% of the occupations that are subject to state regulation, and over each 5-year period review all occupational regulations that are subject to state regulation; to evaluate whether those regulations “use the least restrictive regulation necessary to protect consumers from present, significant, and substantiated harms that threaten public health and safety,” and to submit a report with recommendations to the legislature to not enact new legislation or enact legislation that repeals, rescinds, or modifies the regulation. • The Commission shall “employ a rebuttable presumption that market competition and private remedies are sufficient to protect consumers.” • “Private certification” is listed as the third least restrictive form of regulation. • Defines “Certification” as “a voluntary program in which a private organization or the government of this state grants nontransferable recognition to an individual who meets personal qualifications established by the private organization or the government of this state.” • Defines “Registration” as registering with the state and provides that “a nonregistered individual may not perform the occupation for compensation or use “registered” as a designated title.” | | | | | |
| <u>Comments and Proposed Changes</u> | | <ul style="list-style-type: none"> • Section 404(3)(E) should be revised to state: “Asymmetrical information between a seller and a buyer, by enacting government certification unless suitable, private certification for the relevant occupation is available. As used in this section, “suitable” means widely recognized as reflecting established standards of competency, skill, or knowledge in the field” or delete the provision entirely. • Section 404(3) should be revised to state: “In its analysis under subsections (1) and (2), the Commission shall employ a rebuttable presumption that market competition and private remedies are sufficient to protect consumers; For purposes of this Chapter, “private remedies” shall include the measures listed in subsection 404(5)(c)(i-v). Nothing in this Chapter is intended to restrict an agency from requiring, as a condition of licensure or renewal of licensure, that an individual’s personal qualifications include obtaining or maintaining private certification from a private organization that credentials individuals in the relevant occupation.” • In Section 404(5)(G), change all “Registered” in all instances to “government registered” so as not to ban use of the title “registered” that is conferred by private certification organizations. • Add another safe harbor provision: “the state may regulate and adopt licensure requirements for any occupation for which 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.” | | | | | |

Minnesota

Session End

5/18/2020

Crossover Deadline

None

Carryover

Yes

| <u>State</u> | <u>Bill #</u> | <u>Introduced</u> | <u>Primary Sponsor(s)</u> | <u>Last Action</u> | <u>Status</u> | <u>Position</u> | <u>Priority</u> |
|--------------|------------------------|-------------------|-------------------------------------|---|---------------------------------|-----------------|-----------------|
| MN | HF 981 | 2/11/2019 | Jerry Hertaus (R) | Introduction and first reading, referred to Public Safety and Criminal Justice Reform Finance and Policy Division | In Committee; no pending action | Amend | Low |
| | HF 982 | 2/11/2019 | John Poston (R) Jamie Long (DFL) | (2/11/2019) Introduction and first reading, referred to Public Safety and Criminal Justice Reform Finance and Policy Division (2/11/2019) | In Committee; no pending action | Amend | Low |


Bill Summary

- Titled the "Uniform Collateral Consequences of Convictions Act," the bill addresses penalties or disadvantages "imposed on an individual as a result of the individual's conviction of an offense which applies by operation of law," regardless of whether the consequence was stated in the judgment or sentence for the convicted individual. "Collateral consequence," "collateral sanction," and "disqualification" are all defined terms having a nexus with state action.
- Applies to "decision-makers," defined as "the state acting through a department, agency, officer, or instrumentality, including a political subdivision, educational institution, board, or commission, or its employees, or a government contractor, including a subcontractor, made subject to this chapter by contract, by law other than this chapter, or by ordinance."
- Provides that in deciding whether to impose a disqualification, a "decision-maker" shall undertake an individualized assessment to determine whether the benefit or opportunity at issue should be denied the individual; the decision-maker may consider, if substantially related to the benefit or opportunity at issue: the particular facts and circumstances involved in the offense, and the essential elements of the offense and other relevant information, including the effect on third parties of granting the benefit or opportunity.
- Provides that an individual convicted of an offense may petition for an order of limited relief from one or more collateral sanctions related to employment, education, housing, public benefits, or occupational licensing. The petition may be brought before the court at any time after sentencing.
- The judge may issue an order of limited relief relieving one or more of the collateral sanctions described listed in the bill if,
- after reviewing the petition, the individual's criminal history, and any other relevant evidence, "the judge finds the individual has established by a preponderance of the evidence that: (1) granting the petition will materially assist the individual in obtaining or maintaining employment, education, housing, public benefits, or occupational licensing; (2) the individual has substantial need for the relief requested in order to live a law-abiding life; and (3) granting the petition would not pose an unreasonable risk to the safety or welfare of the public."
- Provides that an individual convicted of an offense may petition the trial court for a certificate of restoration of rights relieving collateral sanctions not sooner than 5 years after the individual's most recent conviction of a felony or misdemeanor in any jurisdiction, or not sooner than five years after the individual's release from confinement pursuant to a criminal sentence in any jurisdiction, whichever is later.

Comments and Proposed Changes

- The provision creating a right to petition for an order of limited relief from collateral sanctions suggests that an individual could seek a court order prohibiting a certification organization from denying or revoking certification due to a criminal conviction. The definitions suggest that the intention of the bill is limited to consequences imposed by the government, but it would be useful to add a clarification to the definition of "collateral consequence": **"Decisions by nongovernmental persons or entities shall not be considered collateral consequences under this chapter, except for government contractors to the extent they assume the role of decision-makers as defined in Section 2(e)."**
- To confirm that this provision does not open the door to legal challenges to private certification organizations' eligibility and disciplinary decision, a safe harbor provision should be added: **"Nothing in this chapter shall be construed to require a private certification organization to grant or deny private certification to any individual, nor shall it impair the right of private certification organizations to establish and enforce eligibility criteria, ethics codes, or disciplinary policies. In addition, nothing in this chapter shall be construed to 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."**

| <u>State</u> | <u>Bill #</u> | <u>Introduced</u> | <u>Primary Sponsor(s)</u> | <u>Last Action</u> | <u>Status</u> | <u>Position</u> | <u>Priority</u> |
|--------------------------------------|-------------------------|--|--|--|---------------------------------|-----------------|-----------------|
| MN | HF 2394 | 3/11/2019 | Ray Dehn (DFL) Aisha Gomez (DFL) Fue Lee (DFL) John Lesch (DFL) | Introduction and first reading, referred to Health and Human Services Policy (3/11/2019) | In Committee; no pending action | Amend | Low |
| | SF 2850 | 4/25/2019 | Scott Newman (R) Ron Latz (DFL) Jerry Relph (R) | Introduction and first reading (4/25/2019) | In Committee; no pending action | | |
| <u>Bill Summary</u> | | <ul style="list-style-type: none"> Provides that a state licensing board, agency, or department ("board") "must not automatically bar an individual from state recognition because of a criminal record and must provide individualized consideration." Provides that a board may only consider a conviction of a nonexcluded crime that is a felony or violent misdemeanor; the bill enumerates excluded crimes. The board may not consider any conviction that occurred more than three years before the date of the board's consideration except for a conviction of: (i) a felony crime of violence; (ii) a felony criminal sexual conduct; or (iii) a felony related to fraud or embezzlement." Provides that a board may deny, diminish, suspend, revoke, withhold, or otherwise limit state recognition only if the board determines: (1) the state has an important interest in the regulation of a lawful occupation that is directly, substantially, and adversely impaired by the individual's nonexcluded criminal record as mitigated by the individual's current circumstances; and (2) the state's interest outweighs the individual's fundamental right to pursue a lawful occupation; The board has the burden of making its decision by clear and convincing evidence. Permits an individual with a criminal record to petition a board at any time, including before obtaining any required personal qualifications, for a decision whether the individual's criminal record will disqualify the individual from obtaining state recognition. Requires the commissioner of administration to establish an annual reporting requirement. Provides that nothing in the section "shall be construed to require a private certification organization to grant or deny private certification to any individual." | | | | | |
| <u>Comments and Proposed Changes</u> | | <ul style="list-style-type: none"> Includes many provisions the PCC proposed to ALEC and IJ. Many felony charges are reduced to misdemeanors as part of plea bargains; this bill would prohibit licensure boards from considering any non-violent misdemeanor conviction, including embezzlement, fraud, abuse of prescription authority, etc. These kinds of convictions are often considered by certification organizations in enforcing ethics codes. Although the bill includes language designed to avoid intruding on private certification decisions, it is not clear whether boards may rely on an individual's loss of certification if a criminal conviction led to that loss. To ensure that this bill does not restrict enforcement of certification standards incorporated into licensure laws, the bill should add a new Subd. 8 to Section 214.52: "nothing in sections 214.50 to 214.54 shall be construed to 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." | | | | | |

| <u>State</u> | <u>Bill #</u> | <u>Introduced</u> | <u>Primary Sponsor(s)</u> | <u>Last Action</u> | <u>Status</u> | <u>Position</u> | <u>Priority</u> |
|--------------|--|-------------------|---------------------------|--|---------------|-----------------|-----------------|
| MO | SB 647  | 12/1/2019 | Andrew Koenig (R) | Hearing Scheduled S General Laws Committee (2/11/2020) | In Senate | Amend | High |


Bill Summary

- Creates the “Fresh Start Act of 2020.”
- “Licensing” is defined as “any training, education, or fee to work in a specific occupation, profession, or activity in the state.”
- Provides that “no person shall be disqualified by a state licensing authority from pursuing, practicing, or engaging in any occupation for which a license is required solely or in part because of a prior conviction of a crime [...] unless the criminal conviction directly relates to the duties and responsibilities for the licensed occupation.”
- Requires all state licensing authorities to publicly list the specific criminal offenses that may disqualify an applicant from receiving a license.
- Lists offenses that directly relate to the duties and responsibilities of all licensed profession and certain specific licensed professions.
- Prohibits the licensing entity from using vague or generic terms, including without limitation the phrase “moral turpitude” and “good character.”
- Requires a licensing authority to consider the following when determining if an applicant will be denied a license: the nature and seriousness of the crime; the passage of time since its commission; the relationship of the crime to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the occupation; and any evidence of rehabilitation of the person in the period of time following the prior conviction that might mitigate against direct relation.
- Provides that disqualification shall not apply to an individual who has been exonerated for a crime.
- Provides that at any time an individual may petition a licensing authority for a determination as to whether the individual’s prior conviction would disqualify the individual from obtaining a license; the decision “shall be binding, unless the individual has subsequent criminal convictions or failed to disclose information in his or her petition..”
- Requires that a licensing board that prohibits an applicant from being licensed solely or in part because of a criminal conviction to notify the applicant of the reasons for the decision and notify the applicant of his or her rights under the statute in writing.
- Provides that in any administrative hearing or civil litigation, the licensing authority shall carry the burden of proof on the question of whether the applicant’s criminal conviction directly relates to the occupation for which the license is sought.

Comments and Proposed Changes

- We will seek both amendment to this bill’s provisions and to use it as a vehicle to amend existing law that restricts title use.
- Add to the list of factors that a licensing entity should consider when determining whether to deny a license: **“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 disqualification 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, not just subsequent convictions or identification of failures to disclose information. For example, subsequent pending criminal charges of evidence of an active substance abuse problem may be a legitimate reason to deny a license.
- Add provision that **“Nothing in this chapter shall be construed to require a private certification organization to grant or deny private credentials 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.”**

- Add provision that **“Notwithstanding any other provision of this Section, no individual shall be restricted from using the title “certified” or the title “registered” to the extent that title reflects a credential held by the individual that was issued by a private certification organization that confers credentials on individuals meeting the qualifications set by the organization’s certification or certificate program.”**

| <u>State</u> | <u>Bill #</u> | <u>Introduced</u> | <u>Primary Sponsor(s)</u> | <u>Last Action</u> | <u>Status</u> | <u>Position</u> | <u>Priority</u> |
|--------------|---|-------------------|---------------------------|---|---------------|-----------------|-----------------|
| MO | HB 2141  | 1/14/2020 | Derek Grier (R) | Referred: Corrections and Public Institutions(H) (1/23/2020) | In House | Amend | High |

Bill Summary

- Creates the “Fresh Start Act of 2020.”
- “Licensing” is defined as any “required training, education, or fee to work in a specific occupation, profession, or activity in the state.”
- Provides that “no person shall be disqualified by a state licensing authority from pursuing, practicing, or engaging in any occupation for which a license is required solely or in part because of a prior conviction of a crime [...] unless the criminal conviction directly relates to the duties and responsibilities for the licensed occupation.”
- Requires all state licensing authorities to publicly list the specific criminal offenses that may disqualify an applicant from receiving a license.
- Lists offenses that directly relate to the duties and responsibilities of all licensed profession and certain specific licensed professions.
- Prohibits the licensing entity from using vague or generic terms, including without limitation the phrase “moral turpitude” and “good character.”
- Requires a licensing authority to consider the following when determining if an applicant will be denied a license: the nature and seriousness of the crime; the passage of time since its commission; the relationship of the crime to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the occupation; and any evidence of rehabilitation of the person in the period of time following the prior conviction that might mitigate against direct relation.
- Provides that if an individual has a valid criminal conviction for a crime that could disqualify them from receiving a license, “the disqualification shall not last longer than five years from the date of conviction, provided that the conviction is not for a crime that is violent or sexual in nature or is not specifically or directly related to the duties and responsibilities for the licensed occupation and the individual has not been convicted of any other crime during the five-year disqualification period.”
- Provides that if an individual was incarcerated at any time during the previous five years for a crime that could disqualify them from receiving a license, “the disqualification may last longer than five years but shall not last longer than five years from the date the individual was released from incarceration, provided that the incarceration was not for a crime that was violent or sexual in nature or was not specifically or directly related to the duties and responsibilities for the licensed occupation.” Provides that if an individual has
- Provides that at any time an individual may petition a licensing authority for a determination as to whether the individual’s prior conviction would disqualify the individual from obtaining a license; the decision “shall be binding, unless the individual has subsequent criminal convictions or failed to disclose information in his or her petition..”
- Requires that a licensing board that prohibits an applicant from being licensed solely or in part because of a criminal conviction to notify the applicant of the reasons for the decision and notify the applicant of his or her rights under the statute in writing.
- Provides that in any administrative hearing or civil litigation authorized under this subsection, the licensing authority shall carry the burden of proof on the question of 71 whether the applicant’s criminal conviction directly relates to the occupation for which the license is sought.

Comments and Proposed Changes

- The bill’s text is very similar, but not identical to MO SB 647, above.
- We will seek both amendment to this bill’s provisions and to use it as a vehicle to amend existing law that restricts title use.
- Add to the list of factors that a licensing entity should consider when determining whether to deny a license: **“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 disqualification 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, not just subsequent convictions or identification of failures to disclose information. For example, subsequent pending criminal charges of evidence of an active substance abuse problem may be a legitimate reason to deny a license.
- Add provision that **"Nothing in this chapter shall be construed to require a private certification organization to grant or deny private credentials 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."**
- Add provision that **"Notwithstanding any other provision of this Section, no individual shall be restricted from using the title "certified" or the title "registered" to the extent that title reflects a credential held by the individual that was issued by a private certification organization that confers credentials on individuals meeting the qualifications set by the organization's certification or certificate program."**

| <u>State</u> | <u>Bill #</u> | <u>Introduced</u> | <u>Primary Sponsor(s)</u> | <u>Last Action</u> | <u>Status</u> | <u>Position</u> | <u>Priority</u> |
|--------------|------------------------|-------------------|---------------------------|--|---------------|-----------------|-----------------|
| NJ | A 2178 | 1/14/2020 | Raj Mukherji (D) | Introduced, Referred to Assembly Law and Public Safety Committee (1/14/2020) | In Assembly | Amend | Medium |

Bill Summary

- Provides for the issuance of a certificate of rehabilitation to certain offenders with substance abuse disorders.
- Provides that the certificate of rehabilitation shall “supersede all laws to the contrary, suspend and relieve all disabilities and forfeitures imposed by law by reason of the individual’s conviction of any crime or offense enumerated in the certificate, and remove any bars to employment or professional licensure or certification applicable to persons convicted of criminal offenses, except as required pursuant to federal statute or the provisions of this act.”
- Enumerates “disabilities, forfeitures and bars that may be suspended and relieved by the certificate” of rehabilitation, including “qualification for a license or certification to engage in the practice of a profession, occupation, or business” and “admission to an examination to qualify for such a license or certificate.”
- Prohibits the denial of an employment application submitted by a person who has been issued a certificate of rehabilitation because the applicant has been previously convicted of one or more crimes or offenses, or by reason of a finding of lack of “good moral character” except when (1) there is a direct relationship between one or more of the previous crimes or offenses and the specific employment sought; and (2) less than 10 years have elapsed since the commission of the most recent crime other than disorderly persons offenses.
- Defines “direct relationship” and provides that the certificate of rehabilitation is considered presumptive evidence of rehabilitation.
- Defines “license” as “any certificate, license, permit, or grant of permission required by the laws of this State or any political subdivision thereof, or of any instrumentality of this State or its political subdivision, as a condition for the lawful practice of any act, occupation, employment, trade, vocation, business, or profession. License shall not include any license or permit to own, possess, carry, or discharge a firearm.”
- Prohibits the issuance of certificate of rehabilitation to a number of enumerated violent, sexual, and other crimes.

Comments and Proposed Changes

- Carryover of bill from prior legislative session.
- Amend definition of “license” to “any **government-issued** certificate, license, permit, or grant of permission required by the laws of this State or any political subdivision thereof...”,
- Amend definition of “direct relationship” to: “As used in this section ‘direct relationship’ means that the nature of the criminal conduct for which the person was convicted has a direct bearing on the person’s fitness or ability to perform one or more of the duties or responsibilities necessarily related to the license or employment **or that the applicant poses an unacceptable risk to the people with whom the applicant would interact in the conduct of the profession or occupation.**”
- 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.**”

New Mexico

Session End

2/20/2020

Crossover Deadline

None

Carryover

No

| <u>State</u> | <u>Bill #</u> | <u>Introduced</u> | <u>Primary Sponsor(s)</u> | <u>Last Action</u> | <u>Status</u> | <u>Position</u> | <u>Priority</u> |
|--------------------------------------|------------------------|--|---------------------------|--|---------------|-----------------|-----------------|
| NM | HB 325 | 1/31/2020 | Andrea Romero (D) | Referred to House State Government, Elections & Indian Affairs Committee (2/11/2020) | In House | Amend | Low |
| <u>Bill Summary</u> | | <ul style="list-style-type: none">• Expands the criminal offender employment act list of criminal records that cannot be considered in an application for public employment or licensure to include “a conviction that has been sealed, dismissed, expunged, or pardoned; “a juvenile adjudication;” or “a conviction for a crime that is not directly related to the duties or responsibilities of the employment or licensed occupation.”• Requires public agencies to promulgate rules identifying mitigating circumstances and disqualifying criminal convictions.• Establishes employment or licensure eligibility considerations for applicants with criminal records; the employment or licensing authority shall consider (1) the public policy of this state, as provided in the Criminal Offender Employment Act, to encourage the licensure of individuals with arrest and conviction records; (2) whether the elements of an applicant's potential disqualifying criminal conviction are directly related to the specific duties and responsibilities of the employment or license sought; (3) whether the employment or license sought by an applicant offers an unwarranted opportunity for the same or a similar crime as that of the applicant's prior conviction to occur; and (4) the relationship, if any, of the applicant's potential disqualifying criminal conviction to the public safety purposes of regulating the employment or licensed occupation sought.• Requires notice of disqualifying events and an applicant's right to challenge or provide justification of disqualifying events.• Requires annual reporting of the number of applicants with potential disqualifying criminal convictions.• Amends the uniform licensing act to align with the criminal offender employment act. | | | | | |
| <u>Comments and Proposed Changes</u> | | <ul style="list-style-type: none">• 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 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.”• Add to the factors that the licensing authority shall consider “and (5) evidence of whether the individual poses an unacceptable risk to the people with whom the individual would interact in the conduct of the profession or occupation.”• Amend the definition of license to mean “a certificate, registration, permit or other authorization that is issued by the government to engage in the professions or occupations regulated by a licensing authority in this state.” | | | | | |

New York

Session End

1/1/2021

Crossover Deadline

TBD

Carryover

Yes

| <u>State</u> | <u>Bill #</u> | <u>Introduced</u> | <u>Primary Sponsor(s)</u> | <u>Last Action</u> | <u>Status</u> | <u>Position</u> | <u>Priority</u> |
|--------------|------------------------|-------------------|---------------------------|------------------------------|-----------------------------------|-----------------|-----------------|
| NY | A 6957 | 3/27/2019 | Joe Lentol (D) | Referred to Codes (1/8/2020) | In Committee; no pending movement | Monitor | Low |

Bill Summary

- Titled the "Uniform Collateral Consequences of Convictions Act," the bill addresses penalties, disabilities or disadvantages "imposed on an individual as a result of the individual's conviction of an offense which applies by operation of law," regardless of whether the consequence was stated in the judgment or sentence for the convicted individual. "Collateral consequence," "collateral sanction," and "disqualification" are all defined terms having a nexus with state action.
- Applies to "decision-makers," defined as "the state acting through a department, agency, officer, or instrumentality, including a political subdivision, educational institution, board, or commission, or its employees, or a government contractor, including a subcontractor, made subject to this chapter by contract, by law other than this chapter, or by ordinance."
- Provides that in deciding whether to impose a disqualification, a "decision-maker" shall undertake an individualized assessment to determine whether the benefit or opportunity at issue should be denied the individual; the decision-maker may consider, if substantially related to the benefit or opportunity at issue: the particular facts and circumstances involved in the offense, and the essential elements of the offense and other relevant information, including the effect on third parties of granting the benefit or opportunity.
- Allows an individual convicted of an offense to petition for an order of limited relief from "one or more collateral sanctions related to employment, education, housing, public benefits, or occupational licensing" at the sentencing court or probation department.
- Provides that an individual convicted of an offense may petition for a certificate of restoration of rights relieving collateral sanctions not sooner than 3 years after the individual's most recent conviction of a felony or misdemeanor in any jurisdiction, or not sooner than 3 years after the individual's release from confinement pursuant to a criminal sentence in any jurisdiction, whichever is later.

Comments and Proposed Changes

- The provision creating a right to petition for an order of limited relief from collateral sanctions suggests that an individual could seek a court order prohibiting a certification organization from denying or revoking certification due to a criminal conviction. The definitions suggest that the intention of the bill is limited to consequences imposed by the government, but it would be useful to add a clarification to the definition of "collateral consequence": "**Decisions by nongovernmental persons or entities shall not be considered collateral consequences under this chapter, except for government contractors to the extent they assume the role of decision-makers as defined in Section 435.70(2).**"
- To confirm that this provision does not open the door to legal challenges to private certification organizations' eligibility and disciplinary decision, a safe harbor provision should be added: "**Nothing in this chapter shall be construed to require a private certification organization to grant or deny private certification to any individual, nor shall it impair the right of private certification organizations to establish and enforce eligibility criteria, ethics codes, or disciplinary policies. In addition, nothing in this chapter shall be construed to 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.**"

North Carolina

Session End

7/1/2020

Crossover Deadline

TBD

Carryover

Yes

| <u>State</u> | <u>Bill #</u> | <u>Introduced</u> | <u>Primary Sponsor(s)</u> | <u>Last Action</u> | <u>Status</u> | <u>Position</u> | <u>Priority</u> |
|--------------|------------------------|-------------------|--------------------------------------|--|---|-----------------|-----------------|
| NC | SB 562 | 4/2/2019 | J.R. Britt (R) Warrant Daniel (R) | Withdrawn From Calendar and Re-Referred to Committee On Rules, Calendar, and Operations of the House (8/29/2019) | Passed Senate (5/8/2019); in Committee in House | Monitor | Low |

Bill Summary

- Allows for expunction of certain nonviolent misdemeanors and felonies.
- Provides that a person whose administrative action has been vacated by an occupational licensing board pursuant to an expunction under this section may then reapply for licensure and must satisfy the board's then current education and preliminary licensing requirements in order to obtain licensure.

Comments and Proposed Changes

- Does not warrant intervention at present.

Oklahoma

Session End

5/29/2020

Crossover Deadline

3/12/2020


Carryover

Yes

| <u>State</u> | <u>Bill #</u> | <u>Introduced</u> | <u>Primary Sponsor(s)</u> | <u>Last Action</u> | <u>Status</u> | <u>Position</u> | <u>Priority</u> |
|--------------------------------------|-------------------------|--|---------------------------|--|---------------|--------------------------------------|-----------------|
| OK | SB 1109 | 2/3/2020 | Nathan Dahm (R) | Second Reading Referred To Finance Committee Then To Appropriations Committee (2/4/2020) | In Senate | Monitor; seek beneficial amendments. | Medium |
| <u>Bill Summary</u> | | <ul style="list-style-type: none">Creates tax credit for qualified fees required to obtain and renew certain license or certification.Establishes certain requirements for taxpayers claiming the credit.Defines "qualified fees" eligible for a tax credit as "any fees or other charges established by rule or statute which are assessed by an entity," including an entity "With the statutory duty for administering an examination, conferring a license or certification, or renewing a license or certification." | | | | | |
| <u>Comments and Proposed Changes</u> | | <ul style="list-style-type: none">This bill is not harmful at all, but it could be improved to benefit those seeking private professional certification. The definition of "qualified fees" should be expanded so that "qualified fees required for an individual taxpayer to obtain and renew a license or certification in an occupation, when such license or certification is required by state law to work in this state" includes fees that are established and charged by nongovernmental certification organizations, provided that the certification is required for licensure. | | | | | |

| <u>State</u> | <u>Bill #</u> | <u>Introduced</u> | <u>Primary Sponsor(s)</u> | <u>Last Action</u> | <u>Status</u> | <u>Position</u> | <u>Priority</u> |
|--------------------------------------|-------------------------|--|---------------------------|---|---------------|-----------------|-----------------|
| OK | SB 1177 | 2/3/2020 | Ron Sharp (R) | Second Reading Referred To Business Commerce And Tourism (2/4/2020) | In Senate | Amend | Low |
| <u>Bill Summary</u> | | <ul style="list-style-type: none">Provides that a person with a criminal record may request an initial determination of whether their criminal history record would potentially disqualify them from obtaining the desired license or certification in the occupation from a state licensing or certification authority at any time, including before obtaining any required education or training for such occupation.Requires that such a request be in writing and include information on each conviction in their record and permits that the request include additional information such as, but not limited to, "information about his or her current circumstances, the length of time since conviction and what has changed since the conviction, evidence of rehabilitation, testimonials or personal reference statements and his or her employment aspirations."Provides a process for the issuance of a determination by the licensing authority.Requires each state entity charged with oversight of an occupational license or certification to list any criminal offense that is a disqualifying offense for such occupation; any disqualifying offense must substantially relate to the duties and responsibilities of the occupation and pose a reasonable threat to public safety ("pose a reasonable threat" is defined as criminal conduct that involves "an act or threat of harm against another and has a bearing on the fitness or ability to serve the public or work with others in the occupation").Does not apply to professions identified in the Professional Entity Act (includes certain medical professionals, engineers, attorneys, etc.). | | | | | |
| <u>Comments and Proposed Changes</u> | | <ul style="list-style-type: none">Add a safe harbor provision: "nothing in this section shall be construed to require a private credentialing organization to grant or deny private certification or certificate to any individual. Notwithstanding any other provision, the act does not alter or restrict enforcement of 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." | | | | | |

| <u>State</u> | <u>Bill #</u> | <u>Introduced</u> | <u>Primary Sponsor(s)</u> | <u>Last Action</u> | <u>Status</u> | <u>Position</u> | <u>Priority</u> |
|--------------------------------------|--|--|---------------------------|--|----------------------------|-----------------|-----------------|
| OK | SB 651  | 4/4/2019 | Nathan Dahm (R) | Reported Do Pass Business and Commerce committee; CR filed (2/14/2019) | Pre-filed for 2020 Session | Oppose | High |
| <u>Bill Summary</u> | | <ul style="list-style-type: none"> Called the "Right to Earn A Living Act" Requires every agency to conduct a comprehensive review of all occupational regulations and occupational licenses within their jurisdiction, and (1) "articulate with specificity the public health, safety, or welfare objective(s) served by the regulation, (2) "articulate the reasons why the regulation is necessary to serve the specified objectives," (3) analyze, where information is readily available, the effects of regulation on opportunities for workers, consumer choices and costs, general unemployment, market competition, governmental costs and other effects; and (4) "compare the regulation to whether and how other states regulate the business or profession." Provides that "all occupational regulations shall be limited to those demonstrably necessary and carefully tailored to fulfill legitimate public health, safety or welfare objectives." If an agency determines that this standard is not met, it must repeal or modify the regulation or recommend that the legislature take action giving authority to the agency to repeal or modify the regulation. Provides that the term "Welfare" shall be narrowly construed to encompass protection of members of the public against fraud or harm." Requires each agency to report to the legislature on all actions taken to conform with the Act. Provides that any person may petition any agency to repeal or modify any occupational regulation or file an action in court to challenge an occupational regulation. Provides that a court can enjoin enforcement of a regulation and award attorney's fees as costs to the petitioner if the court determines that the agency has failed to prove by "a preponderance of evidence that the challenged occupational regulation is not demonstrably necessary and carefully tailored to fulfill legitimate public health, safety or welfare objectives" or "where the challenged occupational regulation is necessary to the legitimate public health, safety or welfare objectives, such objectives can be effectively served by using a less restrictive regulation." "Private certification" is listed as the third least restrictive form of regulation. | | | | | |
| <u>Comments and Proposed Changes</u> | | <ul style="list-style-type: none"> This bill is a more direct threat to occupational licensing. Unlike other bills calling for a commission or a report, this bill mandates that agencies repeal regulations that do not meet the designated evidentiary standards. It also allows a private cause of action for individuals to challenge occupational licensing regulations. Efforts to broaden the kinds of information agency must consider may be advisable, as well as broadening the definition of public welfare an agency or a court may consider. The bill invites expensive litigation over regulations. The PCC opposes passage, even if amended to add safe harbors to protect both regulatory recognition of private certifications and statutory prohibitions on deceptive trade practices. | | | | | |

| <u>State</u> | <u>Bill #</u> | <u>Introduced</u> | <u>Primary Sponsor(s)</u> | <u>Last Action</u> | <u>Status</u> | <u>Position</u> | <u>Priority</u> |
|---------------------|---|---|---------------------------|--|---------------|-----------------|-----------------|
| OK | SB 1678  | 2/3/2020 | Michael Bergstrom (R) | Second Reading (2/6/2020); referred to Senate Business, Commerce and Tourism Committee | In Senate | Amend | High |
| <u>Bill Summary</u> | | <ul style="list-style-type: none"> Requires the Speaker of the House of Representatives, the President Pro Tempore of the Senate and the Chair of each relevant standing committee of the Legislature to the designate staff the responsibility to analyze proposals and legislation that create new occupational regulations or modify existing occupational regulations. Requires the staff to determine if the proposed regulation uses the least restrictive regulation necessary to protect consumers from present, significant, and substantiated harm. Requires proponents of legislation to submit evidence of present, significant, and substantiated harms to consumers in the state; permits the staff to request information from state agencies that contract with individuals in regulated occupations and others knowledgeable of the occupation, labor-market economics, or other factors, costs and benefits. | | | | | |

- Provides that “there is a rebuttable presumption that the public is sufficiently protected from unregulated practice by market competition and private remedies” and that “the staff will give added consideration to the use of private certification programs that allow a provider to give consumers information about the provider’s knowledge, skills and association with a private certification organization;” provides that “the staff may rebut the presumption if it finds credible empirical evidence of present, significant and substantiated harm to consumers that warrants enacting a regulation to protect consumers. If evidence of such harm is found, the staff will recommend the least restrictive government regulation to address the harm...”
- Provides guidelines for the staff in forming its recommendations to the committees that will hear the legislation, including “if there is a shortfall or imbalance of knowledge about the good or service relative to the seller’s knowledge (asymmetrical information), staff may recommend enacting government certification” and if there is “the need to address multiple types of harm, staff may recommend a combination of regulations. This may include a government regulation combined with a private remedy including third-party or consumer created ratings and reviews, or private certification.”
- Provides that if there is “a systematic information shortfall in which a reasonable consumer of the service is permanently unable to distinguish between the quality of providers and there is an absence of institutions that provide guidance to consumers, staff may recommend enacting an occupational license.”
- Defines “Private Certification” as “a voluntary program in which a private organization grants nontransferable recognition to an individual who meets personal qualifications established by the private organization. The individual may use a designated title of “certified” in conjunction with the private organization’s name, as permitted by the private organization.”
- Lists “Private certification” is listed as the third least restrictive form of regulation.
- Requires a standing committee of the legislature to review annually (beginning January 1, 2021) the occupational regulations of approximately 20% of the occupations that under the committee’s jurisdiction; all occupational licenses under the committee’s jurisdiction will be reviewed within the subsequent five (5) years and will repeat such review processes in each five-year period thereafter; the same criteria as the sunrise review process above will be used.
- Starting on January 1, 2021, the staff will report annually the findings of its reviews to the Speaker of the House of Representatives, the President Pro Tempore of the Senate, Chairs of the relevant standing committees, the Governor, and the Attorney General; in its report, the staff will make recommendations to the Legislature.
- Provides that nothing “shall be construed to preempt federal regulation or to require a private certification organization to grant or deny private certification to any individual.”

Comments and Proposed Changes

- Because the bill calls only for a report with recommendations, the bill is not as immediately dangerous as bills calling for expiration or abolition of regulations or licensure agencies
- Change all “present, significant, or substantiated harms present, significant, and substantiated harms that threaten public health and safety” references to “significant, and substantiated or recognized imminent harms that threaten public health, and safety, or welfare,” and change “evidence of present, significant, and substantiated harm” to “identification of significant, and substantiated or recognized imminent harms that threaten public health, and safety, or welfare.”
- The definition of “private certification” should be revised to state that “‘Private Certification’ means “a voluntary program in which a private organization grants nontransferable recognition to an individual who 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.**”
- Add that “**notwithstanding any other provision of this chapter, nothing shall preclude an individual holding a current certification issued by a private certification organization from using the title or designation “certified” in as permitted by the private organization in connection with a credential that the organization has issued to the individual.**”
- Add that “**nothing in this Chapter is intended to restrict an agency from requiring, as a condition of licensure, that an individual’s personal qualifications include obtaining or maintaining private certification from a private organization that credentials individuals in the relevant occupation.**”
- Add another safe harbor provision: “**the state may regulate and adopt licensure requirements for any occupation for which 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.**”.
- Change the canon of interpretation to state “Occupational regulations will be construed and applied to increase economic opportunities, promote competition, and encourage innovation **while protecting public health, safety, and welfare.**”

- Modify the provision calling for enactment of government certification by adding “**unless suitable, private certification for the relevant occupation is available. As used in this section, ‘suitable’ means widely recognized as reflecting established standards of competency, skill, or knowledge in the field**” or delete the provision entirely.
- Change provision on when staff may recommend occupational licensure to state that if there is “a systematic information shortfall in which a reasonable consumer of the service is unable to distinguish between the quality of providers or **there is an imbalance in the consumer’s knowledge about the good or service relative to the provider’s knowledge** (asymmetrical information), staff may recommend enacting an occupational license **and may consider recognizing or requiring private certification or as a condition of licensure.**”
- Provide that “**staff must also invite public comment from licensees, the occupational licensing board, and the public about the impact of the existing occupational license requirements**” in reviewing existing occupational licensure laws.
- Provide that staff’s “**reports must be publicly available and posted on the website of the office, and must include the rationale for the staff’s recommendation, including a description of the expected impact of any regulatory changes on public health, safety, or welfare.**”

| <u>State</u> | <u>Bill #</u> | <u>Introduced</u> | <u>Primary Sponsor(s)</u> | <u>Last Action</u> | <u>Status</u> | <u>Position</u> | <u>Priority</u> |
|--------------------------------------|-------------------------|--|---------------------------|---|---------------|-----------------|-----------------|
| OK | HB 3411 | 2/3/2020 | Randy Randleman (R) | Second Reading referred to Rules (2/4/2020) | In House | Monitor | Low |
| <u>Bill Summary</u> | | <ul style="list-style-type: none"> • Provides that “a new section of law not to be codified in the Oklahoma Statutes reads as follows: This act shall be known and may be cited as the “Occupational Licensing Reform Act of 2020.” • Provides that the act shall become effective November 1, 2020. | | | | | |
| <u>Comments and Proposed Changes</u> | | <ul style="list-style-type: none"> • No text available. | | | | | |

| <u>State</u> | <u>Bill #</u> | <u>Introduced</u> | <u>Primary Sponsor(s)</u> | <u>Last Action</u> | <u>Status</u> | <u>Position</u> | <u>Priority</u> |
|--------------------------------------|-------------------------|---|---------------------------|---|---------------|-----------------|-----------------|
| OK | HB 3069 | 2/3/2020 | Lundy Kiger (R) | Second Reading referred to Rules (2/4/2020) | In House | Monitor | Low |
| <u>Bill Summary</u> | | <ul style="list-style-type: none"> • Provides that “a new section of law not to be codified in the Oklahoma Statutes reads as follows: This act shall be known and may be cited as the “Occupational Licensing Act of 2020.” • Provides that the act shall become effective November 1, 2020. | | | | | |
| <u>Comments and Proposed Changes</u> | | <ul style="list-style-type: none"> • No text available. | | | | | |

| <u>State</u> | <u>Bill #</u> | <u>Introduced</u> | <u>Primary Sponsor(s)</u> | <u>Last Action</u> | <u>Status</u> | <u>Position</u> | <u>Priority</u> |
|---------------------|----------------------------|---|---------------------------|---|---------------|-----------------|-----------------|
| OK | OK SB 1708 | 2/3/2020 | Michael Bergstrom (R) | Second Reading Referred To Business Commerce And Tourism (2/6/2020) | In Senate | Amend | Medium |
| <u>Bill Summary</u> | | <ul style="list-style-type: none"> • Titled the “Criminal Records Review for Licensing Act.” • Provides that.” Except as otherwise provided by law, a board, agency, department or other state agency (hereafter “board”) may use this act to deny, diminish, suspend, revoke, withhold or otherwise limit state recognition because of a criminal conviction.” | | | | | |

- Provides that a “board will not automatically bar an individual from state recognition because of a criminal record but will provide individualized consideration;” a board may consider only a conviction of a non-excluded crime that is a felony or violent misdemeanor;” lists information that a board may not consider.
- Requires the board to consider the individual's current circumstances (e.g. the time since the offense, the completion of the criminal sentence, the age of the individual when the offense was committed, etc.).
- Prohibits the board from using vague terms in its consideration and decision included “good moral character,” “moral turpitude,” or “character and fitness.”
- Requires the Board to hold a public hearing if the individual requests one pursuant to the Administrative Procedures Act.
- Permits the Board from denying, diminishing, suspending, revoking, withholding or otherwise limiting state recognition only if the board determines (a) “the state has an important interest in the regulation of a lawful occupation that is directly, substantially and adversely impaired by the individual's nonexcluded criminal record as mitigated by the individual's current circumstance...” and (b) “the state's interest outweighs the individual's fundamental right to pursue a lawful occupation;” the board must make its decision by clear and convincing evidence.
- Permits the individual to appeal the board's decision as provided in the Administrative Procedures Act.
- Provides a process whereby “an individual with a criminal record may petition a board at any time, including before obtaining any required personal qualifications, for a decision whether the individual's criminal record will disqualify the individual from obtaining state recognition” and the board must issue a determination.
- Requires the Department of Labor to establish an annual reporting requirement of the number of times that each board acts to deny, diminish, suspend, revoke, withhold or otherwise limit state recognition from a licensed individual because of a criminal conviction, offenses for each board acted, number of applicants petitioning each board, numbers of each board's approvals and denials, and offenses for which each board approved or denied petitions.
- Provides that “Nothing in this act shall be construed to require a private certification organization to grant or deny private certification to any individual.”

Comments and
Proposed Changes

- Amend to state “Except as otherwise provided by law, a board, agency, department or other state agency (hereinafter “board”), **when determining eligibility for a license, registration, permit, government certification, or other state recognition (hereinafter “state recognition”), may consider convictions of the applicant of crimes only in accordance with this act.**”
- Amend to state “A board will not automatically bar an individual from state recognition because of a criminal record, **except as provided in this act.**”
- Delete that “A Board may consider only a conviction of a non-excluded crime that is a felony or violent misdemeanor.”
- Revise Section 4(D) as follows (including deleting subsection 4(D)(6):

“In considering an application for state recognition, a board will not consider:

 1. information related to a deferred adjudication, participation in a diversion program, or an arrest not followed by a conviction;
 2. a conviction for which no sentence of incarceration can be imposed;
 3. a conviction that has been sealed, dismissed, **annulled**, expunged or pardoned;
 4. a juvenile adjudication; or
 5. **a conviction for an offense unrelated to the applicant's suitability for the trade, occupation, or profession for which the applicant seeks state recognition.**”
- Add new Section 4(E) to provide that “A board may refuse to grant or renew, or may suspend or revoke any state recognition based in whole or in part on a conviction of a crime if all of the following apply: (1) The individual has been convicted of a felony or a misdemeanor which directly relates to the trade, occupation or profession for which the state recognition is sought or that reflects that the individual poses an unacceptable risk to the people with whom the individual would interact in the conduct of the profession or occupation. (2) The board has conducted an individualized assessment of the relation of the conviction to the individual's overall suitability to engage in the trade, occupation or profession for which the state recognition is sought. An individualized assessment conducted under this paragraph shall include a consideration of the particular facts or circumstances surrounding the offense or criminal conduct and the grade and seriousness of the offense or criminal conduct.”

- Revise existing Section 4(E) to replace "The Board will consider the individual's current circumstances" with **"A board may not refuse to grant or renew and may not suspend or revoke any license, certificate, registration or permit under Section 4(E) if the individual can establish sufficient mitigation or rehabilitation and fitness to perform the duties of the trade, occupation or profession for which the state recognition is sought. Where the criminal conduct is directly related to the state recognition being sought, the board shall consider relevant proof of any factors that would rebut an adverse presumption or show rehabilitation, "**
- Delete Section 4(H).
- Revise or add the following in the list in the existing Section 4(E): **"the facts or circumstances regarding the offense or criminal conduct;" "the time since the offense and since the completion of any criminal sentence;" "other evidence of rehabilitation or of repeat offenses;" "whether the individual poses an unacceptable risk to the people with whom the applicant would interact in the conduct of the profession or occupation;" and "whether the individual is bonded."**
- Add provision that **"Nothing in this chapter shall be construed to alter a board's authority to enforce other conditions of state recognition, such as eligibility requirements or compliance with board regulations."**
- Revise Section 5(D) to add **"The decision may include conditions affecting whether state recognition should be granted."**
- Revise Section 5(E) to add **"... material and adverse change in the petitioner's criminal record or new material information having a bearing on the decision comes to light."**
- Amend to state **"Nothing in this act shall be construed to require a private certification organization to grant or deny private credentials 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."**
- Add provision that **"Notwithstanding any other provision of this act, no individual shall be restricted from using the title "certified" to the extent that title reflects a credential held by the individual that was issued by a private certification organization that confers credentials on individuals meeting the qualifications set by the organization's certification or certificate program."**

Pennsylvania

Session End

12/31/2019


TBA [November]

Crossover Deadline

None

Carryover

Yes

| <u>State</u> | <u>Bill #</u> | <u>Introduced</u> | <u>Primary Sponsor(s)</u> | <u>Last Action</u> | <u>Status</u> | <u>Position</u> | <u>Priority</u> |
|--------------------------------------|--|---|---------------------------|---|---------------|-----------------|-----------------|
| PA | HB 811  | 4/9/2019 | Jim Cox (R) | Referred to Professional Licensure (4/9/2019) | In House | Amend | High |
| <u>Bill Summary</u> | | <ul style="list-style-type: none">• Defines "Certification" as a "Nontransferable certification provided by a licensing or certifying body to an applicant who is not disqualified under section 3105 (relating to disqualifications)."• Defines "Licensing or certifying body" as "the issuing body to whom an individual has applied for a license or certification to conduct or perform a lawful occupation or profession for which the license or certification is required in this Commonwealth."• Provides § 3108 on Individual certification:<ul style="list-style-type: none">"(a) General rule.--An individual who has received certification may use the term certified as a designated title.(b) Noncertified.--An individual who did not receive certification may also perform the lawful occupation for compensation but may not use the title certified."• Provides that an "individual with a criminal record may petition a licensing or certifying body at any time, including prior to obtaining required education or training, for a determination of whether the individual's criminal record will disqualify the individual from obtaining State recognition;" the licensing or certifying body that received the individual's petition is authorized to determine whether the individual's criminal record disqualifies the individual from obtaining the requested license or certification.• The licensing or certifying body must approve an individual unless it finds all of the following: "(1) The individual's criminal record includes a conviction for a felony or violent misdemeanor. (2) The type of felony or violent misdemeanor for which the individual was convicted is expressly codified as a disqualifying offense in the relevant licensing or certification statute. (3) The licensing or certifying body concludes the State has an important interest in protecting public safety that is superior to the individual's right," determined by "clear and convincing evidence at the time of the petition, that: (i) the specific offense for which the individual was convicted is substantially related to the State's interest; (ii) the individual, based on the nature of the specific offense for which the individual was convicted and the individual's current circumstances, is more likely to reoffend by virtue of having the license than if the individual did not have the license or certification; and (iii) a subsequent offense will cause greater harm than the reoffense would if the individual did not have the license or certification."• Provides a process for the issuance of the determination and the submission of a revised petition.• Caps fees for low-income individuals to obtain an occupational license from a "licensing or certifying body." | | | | | |
| <u>Comments and Proposed Changes</u> | | <ul style="list-style-type: none">• This bill includes a dangerous restriction on use of the title "certified." Amend Section 3108 to add a new subsection (c): "Notwithstanding any other provision of this chapter, nothing shall preclude an individual holding a current certification issued by a private certification organization from using the title or designation "certified" in as permitted by the private organization in connection with a credential that the organization has issued to the individual."• Add that "nothing in this Chapter is intended to restrict an agency from requiring, as a condition of licensure, that an individual's personal qualifications include obtaining or maintaining private certification from a private organization that credentials individuals in the relevant occupation."• Amend definition of "Licensing or certifying body" in both Chapter 31 and Chapter 33 to mean "a governmental issuing body to whom an individual has applied for a license or certification to conduct or perform a lawful occupation or profession for which the license or certification is required in this Commonwealth." | | | | | |

| <u>State</u> | <u>Bill #</u> | <u>Introduced</u> | <u>Primary Sponsor(s)</u> | <u>Last Action</u> | <u>Status</u> | <u>Position</u> | <u>Priority</u> |
|--------------------------------------|-------------------------|--|---------------------------|--|--------------------------------------|-----------------|-----------------|
| PA | HB 1477 | 10/30/2019 | Sheryl M. Delozier (R) | Referred to Consumer Protection and Professional Licensure (1/15/2020) | Passed House (12/18/2019); In Senate | Amend | High |
| <u>Bill Summary</u> | | As Amended: | | | | | |
| | | <ul style="list-style-type: none"> Requires a licensing board or a licensing commission to engage in a two-stage analysis of the criminal convictions of an applicant: <ol style="list-style-type: none"> The licensing board may not consider criminal convictions except as expressly allowed by the bill. The licensing board must determine whether the criminal conviction directly relates to the occupation, trade or profession for which the individual seeks licensure by reviewing the schedule of offenses relating to list of criminal offenses provided in the statute. If the offense is found on the list of offenses that are directly related to the occupation, trade or profession, the licensing board or licensing commission shall then determine whether licensure of the individual would pose a substantial risk to the health and safety of the individual's patients or clients or the public or a substantial risk of further criminal convictions by conducting the individualized assessment specified in the bill. Provides that there shall be a rebuttable presumption that licensure of the individual with a criminal conviction that directly relates to the occupation, trade or profession would pose a substantial risk to the health and safety of the individual's patients or clients or the public or a substantial risk of further criminal convictions, which the individual may rebut the presumption by showing evidence of rehabilitation; If it is determined that the conviction does not directly relate to the occupation, trade or profession the licensing board or commission shall determine whether, due to the nature of the criminal conviction, licensure of the individual would pose a substantial risk to the health and safety of the individual's patients or clients or the public or a substantial risk of further criminal convictions by conducting the individualized assessment, which the individual may rebut by showing evidence of rehabilitation. Requires individualized assessment of whether an individual with a conviction history may be granted a license. Enumerates conditions that must apply for an individual convicted of a crime to be granted a license, registration, certificate, or permit, with separate factors for crimes of violence. Provides for restricted licensing for barbering and includes language to allow for other boards and commissions to develop restricted licenses in other professions if the Department of Corrections begins training in other licensed, certified or registered professions. Provides for reciprocity of licensure. | | | | | |
| <u>Comments and Proposed Changes</u> | | <ul style="list-style-type: none"> While the PCC supported a prior version of the bill, it cannot support this version without amendment. The bill justifies withholding a license for crimes that are not directly related to the occupation only if "licensure of the individual would pose a substantial risk to the health and safety" of the public; this should be expanded to include the "welfare" of the public. Rephrase Section 3112(b) to place the determination to grant a restricted license in the hands of the licensure board, as follows: "A licensing board or licensing commission may consider the following in determining whether an applicant for a restricted license has demonstrated fitness for issuance of a restricted license." | | | | | |

| <u>State</u> | <u>Bill #</u> | <u>Introduced</u> | <u>Primary Sponsor(s)</u> | <u>Last Action</u> | <u>Status</u> | <u>Position</u> | <u>Priority</u> |
|---------------------|---------------|--|---------------------------|---|--------------------------------------|-----------------|-----------------|
| PA | SB 637 | 10/30/2019 | John DiSanto (R) | Referred to House Judiciary Committee (12/2/2019) | Passed Senate (11/21/2019); In House | Favor Enactment | Medium |
| <u>Bill Summary</u> | | <ul style="list-style-type: none"> Requires each of the boards and commissions under the Bureau of Professional and Occupational Affairs to work toward the promulgation of regulations listing each of the offenses that they consider excluding an individual from consideration for certification, registration or licensure. It would also establish a procedure for applicants with past conviction histories to demonstrate sufficient rehabilitation to be granted a license and sets out a balanced list of factors for a board considering a rehabilitation petition to consider. Establishes a procedure for applicants with past conviction histories to demonstrate sufficient rehabilitation to be granted a license and sets out a balanced list of factors for a board considering a rehabilitation petition to consider. | | | | | |

Comments and
Proposed Changes

- Provides a process for an applicant to file a petition for preliminary review with the board or commission to seek a preliminary decision on whether the applicant's criminal history would disqualify the applicant from receiving a license, certificate, registration or permit.
- Passed the Senate with amendments proposed by the PCC to allow a board or commission under the Department of State's Bureau of Professional & Occupational Affairs to make licensure or certification decisions by permitting consideration of an applicant's conviction of a crime that does not directly relate to the applicable duties, functions and responsibilities in the practice of the profession only when the board determines, based on an individualized assessment, that the applicant does not "pose an unacceptable risk to the people to whom the applicant would interact in the conduct of the profession."
- Because the bill only applies to boards and commissions under the Bureau of Professional & Occupational Affairs, its reference to applications for "certifications" as well as licenses and registrations does not affect private certification organizations.
- In its current form, the PCC regards this bill as a model of a balanced ex-offender reentry bill.

| <u>State</u> | <u>Bill #</u> | <u>Introduced</u> | <u>Primary Sponsor(s)</u> | <u>Last Action</u> | <u>Status</u> | <u>Position</u> | <u>Priority</u> |
|---------------------|---|---|--|---|---------------|-----------------|-----------------|
| RI | HB 7359  | 1/30/2020 | David Place (R) George Nardone (R) Bob Quattrocchi (R) | Committee recommended measure be held for further study (2/12/2020) | In House | Amend | High |
| Bill Summary | | <ul style="list-style-type: none"> • Titled "Occupational Licensing Review Act." • Requires the speaker of the house of representatives and the president of the senate to assign to the small business committee of the house and the labor committee of the senate (hereinafter "committees") the responsibility to analyze proposals and legislation that create new occupational regulations and/or modifying existing occupational regulations. • The committees will determine if the proposed regulation meets the state's policy of using the least restrictive regulation necessary to protect consumers from present, significant, and substantiated harms. • Provides that the committees will require proponents to submit evidence of present, significant, and substantiated harms to consumers in the state; the committees may also request information from state agencies that contract with individuals in regulated occupations and others knowledgeable of the occupation, labor-market economics, or other factors, cost and benefits. • The committees "will employ a rebuttable presumption that consumers are sufficiently protected by market competition and private remedies" and "the committees will give added consideration to the use of private certification programs that allow a provider to give consumers information about the provider's knowledge, skills and association with a private certification organization;" the committee may rebut the presumption if they find both credible, empirical evidence of present, significant, and substantiated harm, and that consumers do not have the information and means to protect themselves against such harm. If evidence of such unmanageable harm is found, the committees may recommend "the least restrictive government regulation to address the harm..." • Provides guidelines for the "least restrictive" regulation required, including that a "shortfall or imbalance in the consumer's knowledge about the goods or services relative to the provider's knowledge (asymmetrical information), the committees may recommend enacting government certification" and if there is the need "to address multiple types of harm, the committees may recommend a combination of regulations to include, but not be limited to, a government regulation combined with a private remedy including third-party or consumer-created ratings and reviews, or private certification." • Provides that if there is a "systematic information shortfall in which a reasonable consumer of the goods or services is permanently unable to distinguish between the quality of providers and there is an absence of institutions that provide guidance to consumers, the committees may recommend enacting an occupational license." • Defines "Private certification" as "a voluntary program in which a private organization grants non-transferable recognition to an individual who meets personal qualifications and standards relevant to performing the occupation as determined by the private organization. The individual may use a designated title of "certified," as permitted by the organization." • "Private certification" is listed as the third least restrictive form of regulation. • Requires the committee to consider the effects of legislation on "opportunities for workers, consumer choices and costs, general unemployment, market competition, governmental costs, and other effects," to compare the legislation to determine whether and how other states regulate the occupation, and to issue a report. • Requires, beginning in 2021, each standing committee of the legislature to review and analyze approximately 20% of the occupational licenses under the committee's jurisdiction and, beginning in 2022, prepare and submit a report to the speaker of the house of representatives, the president of the senate, and the governor to make recommendations regarding whether the occupational license should be repealed, continued, or modified; each committee must complete this "process within five years and every five years thereafter. | | | | | |

- Provides that nothing in this section “shall be construed to preempt federal regulation or to require a private certification organization to grant or deny private certification to any individual.”
- Provides that “Notwithstanding any other law, a board, agency, department or other state agency (hereafter “board”) shall only utilize this chapter to deny, diminish, suspend, revoke, withhold or otherwise limit state recognition because of a criminal conviction.”
- Provides that a “board may not automatically bar an individual from state recognition because of a criminal record but will provide individualized consideration;” a board may consider only a conviction of a non-excluded crime that is a felony or violent misdemeanor;” lists information that a board may not consider.
- Requires the board to consider the individual’s current circumstances (e.g. the time since the offense, the completion of the criminal sentence, the age of the individual when the offense was committed, etc.).
- Prohibits the board from using vague terms in its consideration and decision included “good moral character,” “moral turpitude,” or “character and fitness.”
- Requires the Board to hold a public hearing if the individual requests one.
- Permits the Board from denying, diminishing, suspending, revoking, withholding or otherwise limiting state recognition only if the board determines (a) “the state has an important interest in the regulation of a lawful occupation that is directly, substantially and adversely impaired by the individual’s nonexcluded criminal record as mitigated by the individual’s current circumstance...” and (b) “the state’s interest outweighs the individual’s fundamental right to pursue a lawful occupation;” the board must make its decision by clear and convincing evidence.
- Permits the individual to appeal the board’s decision as provided in the administrative procedures act.
- Provides a process whereby “an individual with a criminal record may petition a board at any time, including before obtaining any required personal qualifications, for a decision whether the individual’s criminal record will disqualify the individual from obtaining state recognition” and the board must issue a determination.
- Requires the legislature to establish an annual reporting requirement of the number of times that each board acts to deny, diminish, suspend, revoke, withhold or otherwise limit state recognition from a licensed individual because of a criminal conviction, offenses for each board acted, numbers of each board’s approvals and denials, and offenses for which each board approved or denied petitions.
- Provides that “Nothing in this chapter shall be construed to require a private certification organization to grant or deny private certification to any individual.”
- Because the bill calls only for a report with recommendations, the review and repeal aspects of the bill are not as immediately dangerous as bills calling for expiration or abolition of regulations or licensure agencies
- Change “necessary to protect consumers from present, significant, or substantiated harms” references to **“designed to provide protections against significant, and substantiated or recognized imminent harms that threaten public health, and safety, or welfare”** and change “evidence of present, significant, and substantiated harm” to **“identification of significant, and substantiated or recognized imminent harms that threaten public health, and safety, or welfare.”**
- The definition of “private certification” should be revised to state that “‘Private Certification’ means “a voluntary program in which a private organization grants nontransferable recognition to an individual who meets personal qualifications and standards relevant to performing 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 determined by the private organization. The individual may use a designated title of “certified,” as permitted by the organization.”
- Add that **“notwithstanding any other provision of this Chapter, nothing shall preclude an individual holding a current certification issued by a private certification organization from using the title or designation “certified” in as permitted by the private organization in connection with a credential that the organization has issued to the individual.”**
- Add that **“nothing in this Chapter is intended to restrict an agency from requiring, as a condition of licensure, that an individual’s personal qualifications include obtaining or maintaining private certification from a private organization that credentials individuals in the relevant occupation.”**
- Add another safe harbor provision: **“the state may regulate and adopt licensure requirements for any occupation for which 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.”**

Comments and Proposed Changes

- Modify the provision calling for enactment of government certification by adding “**unless suitable, private certification for the relevant occupation is available. As used in this section, ‘suitable’ means widely recognized as reflecting established standards of competency, skill, or knowledge in the field**” or delete the provision entirely.
- Change provision on when committees may recommend occupational licensure to state that if there is “a systematic information shortfall in which a reasonable consumer of the service is unable to distinguish between the quality of providers **or there is an imbalance in the consumer’s knowledge about the good or service relative to the provider’s knowledge** (asymmetrical information), the committees may recommend enacting an occupational license **and may consider recognizing or requiring private certification or as a condition of licensure.**”
- Provide that “**committees must also invite public comment from licensees, the occupational licensing board, and the public about the impact of the existing occupational license requirements**” in reviewing existing occupational licensure laws.
- Provide that the committees’ “**reports must be publicly available and posted on the website of the office, and must include the rationale for the committees’ recommendation, including a description of the expected impact of any regulatory changes on public health, safety, or welfare.**”
- Amend Section 5-90-8(b) to state “Notwithstanding any other law, a board, agency, department or other state agency (hereinafter “board”), **when determining eligibility for a license, registration, permit, government certification, or other state recognition (hereinafter “state recognition”), may consider convictions of the applicant of crimes only in accordance with this act.**”
- Amend to state “A board will not automatically bar an individual from state recognition because of a criminal record, **except as provided in this act.**”
- Delete that “A Board may consider only a conviction of a non-excluded crime that is a felony or violent misdemeanor.”
- Revise Section 5-90-8(e) as follows (including by deleting 5-90-8(e)(6)):
 - “**In considering an application for state recognition, a board will not consider:**
 1. information related to a deferred adjudication, participation in a diversion program, or an arrest not followed by a conviction;
 2. a conviction for which no sentence of incarceration can be imposed;
 3. a conviction that has been sealed, dismissed, **annulled**, expunged or pardoned;
 4. a juvenile adjudication; **or**
 5. a conviction for an offense unrelated to the applicant’s suitability for the trade, occupation, or profession for which the applicant seeks state recognition.”
- Add new Section 5-90-8(g) to provide that “**A board may refuse to grant or renew, or may suspend or revoke any state recognition based in whole or in part on a conviction of a crime if all of the following apply: (1) The individual has been convicted of a felony or a misdemeanor which directly relates to the trade, occupation or profession for which the state recognition is sought or that reflects that the individual poses an unacceptable risk to the people with whom the individual would interact in the conduct of the profession or occupation. (2) The board has conducted an individualized assessment of the relation of the conviction to the individual’s overall suitability to engage in the trade, occupation or profession for which the state recognition is sought. An individualized assessment conducted under this paragraph shall include a consideration of the particular facts or circumstances surrounding the offense or criminal conduct and the grade and seriousness of the offense or criminal conduct.**”
- Revise existing Section 5-90-8(g) to replace “The Board shall consider the individual’s current circumstances” with “**A board may not refuse to grant or renew and may not suspend or revoke any license, certificate, registration or permit under Section 4(E) if the individual can establish sufficient mitigation or rehabilitation and fitness to perform the duties of the trade, occupation or profession for which the state recognition is sought. Where the criminal conduct is directly related to the state recognition being sought, the board shall consider relevant proof of any factors that would rebut an adverse presumption or show rehabilitation,**”
- Delete Section 5-90-8(i).
- Revise or add the following in the list in the existing Section 5-90-8(g): “**the facts or circumstances regarding the offense or criminal conduct;**” “the passage of time since the offense **and since the completion of any criminal sentence;**” “other evidence of rehabilitation or of repeat offenses;” “**whether the individual poses an unacceptable risk to the people with whom the applicant would interact in the conduct of the profession or occupation;**” and “**whether the individual is bonded.**”

- Add provision that **“Nothing in this chapter shall be construed to alter a board’s authority to enforce other conditions of state recognition, such as eligibility requirements or compliance with board regulations.”**
- Revise Section 5-90-9(d) to add **“The decision may include conditions affecting whether state recognition should be granted.”**
- Revise Section 5-90-9(e) to add **“... material and adverse change in the petitioner’s criminal record or new material information having a bearing on the decision comes to light.”**
- Amend to state **“Nothing in this act shall be construed to require a private certification organization to grant or deny private credentials 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.”**
- Add provision that **“Notwithstanding any other provision of this act, no individual shall be restricted from using the title “certified” to the extent that title reflects a credential held by the individual that was issued by a private certification organization that confers credentials on individuals meeting the qualifications set by the organization’s certification or certificate program.”**

| <u>State</u> | <u>Bill #</u> | <u>Introduced</u> | <u>Primary Sponsor(s)</u> | <u>Last Action</u> | <u>Status</u> | <u>Position</u> | <u>Priority</u> |
|--------------|-------------------------|-------------------|--|---|---------------|-----------------|-----------------|
| RI | HB 7352 | 1/30/2020 | Scott Slater (D) Grace Diaz (D) Jay Edwards (D) Bob Craven (D) Chris Blazewski (D) | Committee Postponed at Request of Sponsor (2/12/2020) | In House | Amend | High |

Bill Summary

- Amends the “Equal Opportunity and Affirmative Action.”
- Applies to “those departments enumerated in [§ 42-6-1](#) and the state agencies, licensing boards and commissions under the jurisdiction of those departments.”
- Provides that “no person shall be disqualified to practice, pursue or engage in any occupation, trade, vocation, profession or business, for which an occupational license, permit, certificate or registration is required to be issued by the state or any of its agencies or any state licensing board or commission, solely or in part, because of a prior conviction of a crime or crimes unless the underlying crime or crimes substantially relate to the occupation to which the license applies, notwithstanding any prior general laws to the contrary.”
- Provides that “no occupational license, permit, certificate, or registration issued by the state or any of its agencies or any state licensing board or commission shall be suspended or revoked, solely or in part, because of a prior conviction of a crime or crimes unless the underlying crime or crimes substantially relate to the occupation which requires the license, notwithstanding any prior general laws to the contrary.”
- Lists factors that the licensing authority may consider when determining whether a conviction substantially relates to the occupation for which license is sought: “(1) The state’s legitimate interest in equal access to employment for individuals who have had past contact with the criminal justice system; (2) The relationship of the crime or crimes to the purposes of regulating the occupation for which the license is sought; and (3) The relationship of the crime or crimes to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the position of employment or occupation.”
- Provides that “a person who has been convicted of a crime or crimes which substantially relate to the occupation for which a license is sought shall not be disqualified from the occupation if the person can show competent evidence of sufficient rehabilitation and present fitness to perform the duties of the occupation for which the license is sought. The licensing authority shall consider the time elapsed since the conviction, when determining if there has been sufficient rehabilitation”, as well as certain other evidence presented by the applicant.
- Lists criminal records that may not be used in connection with any application for license, permit, certificate, or registration, including “a conviction that is not related to the occupation for which a license is being sought.”
- Requires a licensing authority to notify an applicant if it intends to deny, suspend, or revoke an occupational license, permit, or certificate solely or in part because of the individual’s prior conviction of a crime prior to their potential final adverse decision; outlines requirements for that notice, opportunity for applicant to respond, and requirements for final adverse decision.
- Requires each state agency and licensing body to issue an annual report, which must include “(1) The number of initial applicants for every occupational license, permit, or certificate under their jurisdiction within the preceding calendar year, including the number of applicants granted licenses, the number of applicants denied licenses for any reason, and, to the

extent available, the demographic breakdown of the applicants, including race, ethnicity, and gender, and city or town of residence; and (2) The number of applicants denied solely, or in part, because of a criminal conviction.”

Comments and
Proposed Changes

- Section 42-6-1 of the Rhode Island General Laws lists every state agency, so this legislation applies to all licensure boards.
- The bill should be narrowed to clarify that the restrictions apply only to licensing authorities and restricts only decisions made on the basis of the conviction record, not on the basis of other factors,
- Add a new section 28-5.1-14(f)(4): **“whether the crime or crimes reflect that the individual poses an unacceptable risk to the people with whom the individual would interact in the conduct of the profession or occupation.”**
- For the avoidance of doubt, revise Section 28.5.1-14 (d) to state “No person shall be disqualified to practice, pursue or engage in any occupation, trade, vocation, profession or business, for which an occupational license, permit, **government** certificate or **government** registration is required to be issued by the state or any of its agencies or any state licensing board or commission, solely or in part, because of a prior conviction of a crime or crimes unless the underlying crime or crimes substantially relate to the occupation to which the license applies, notwithstanding any prior general laws to the contrary.”
- Amend to state **“A licensing authority shall not, on the basis of an applicant’s conviction record, disqualify a person who has been convicted of a crime or crimes which substantially relate to the occupation for which a license is sought from the occupation if the person can show competent evidence of sufficient rehabilitation and present fitness to perform the duties of the occupation for which the license is sought. The licensing authority shall consider the time elapsed since the conviction, when determining if there has been sufficient rehabilitation, as well as any evidence presented by the applicant regarding...”**
- Add a new provision after Section 28-5.1-14(g) to state **“The applicant must also provide information about the applicant’s activities since the conviction as well as additional information requested by the licensing authority that is relevant to the licensing authority’s determination of the sufficiency of the evidence of mitigation or rehabilitation and fitness to perform the duties of the occupation. The applicant must also disclose any pending charges against the applicant at the time of the application and during the licensing authority’s consideration of the application. 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 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.”**

South Carolina

Session End

6/8/2020

Crossover Deadline

TBD

Carryover

Yes

| <u>State</u> | <u>Bill #</u> | <u>Introduced</u> | <u>Primary Sponsor(s)</u> | <u>Last Action</u> | <u>Status</u> | <u>Position</u> | <u>Priority</u> |
|--------------|-------------------------|-------------------|---------------------------|---|---|-----------------|-----------------|
| SC | HB 3163 | 12/18/2018 | Todd Rutherford (D) | Introduced and read first time (1/8/2019) | Failed 2019 Crossover Deadline (but may be introduced in second year of 2-year legislative session) | Amend | Low |

Bill Summary

- Provides that no person may be disqualified from public employment, nor may a person be disqualified from pursuing, practicing, or engaging in any occupation for which a license is required solely or in part because of a prior conviction of a crime, unless the crime for which he was convicted directly relates to the position of employment sought or the occupation for which the license is sought.
- A person who has been convicted of a crime that directly relates to the public employment sought or to the occupation for which a license is sought must not be disqualified from the employment or occupation if the person can show competent evidence of sufficient rehabilitation and present fitness to perform the duties of the public employment sought or the occupation for which the license is sought.
- "License" means all licenses, permits, certificates, registrations, or other means required to engage in an occupation which are granted or issued by the state before a person can pursue, practice, or engage in any occupation.

Comments and Proposed Changes

- The "in part because" language would seem to include disqualification for lack of a required certification, if loss of eligibility for certification stemmed from a criminal conviction.
- Add a safe harbor provision: **"nothing in the 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."**

| <u>State</u> | <u>Bill #</u> | <u>Introduced</u> | <u>Primary Sponsor(s)</u> | <u>Last Action</u> | <u>Status</u> | <u>Position</u> | <u>Priority</u> |
|--------------|-----------------------|-------------------|---------------------------|--|---|-----------------|-----------------|
| SC | S 330 | 1/8/2019 | Tom David (R) | Referred to Committee on Labor, Commerce and Industry (1/8/2019) | Failed 2019 Crossover Deadline (but may be introduced in second year of 2-year legislative session) | Amend | Low |

Bill Summary

- Titled the "Occupational Licensure and Reform Act."
- Accelerates the Department of Labor, Licensing, and Regulation's review cycle of all regulations from every five years to every two years.
- Requires a Senate Committee to "identify whether present, significant, or substantiated harms [justify the regulation and] consider alternative provisions that would be the least restrictive.

Comments and Proposed Changes

- Add a safe harbor provision, as in Ohio SB 255 – **"nothing in this chapter is intended to restrict an occupational licensing board from requiring, as a condition of licensure or renewal of licensure, that an individual's personal qualifications include obtaining or maintaining certification from a private organization that credentials individuals in the relevant occupation, field, or industry"** and
- Add another safe harbor provision: **"the state may regulate and adopt licensure requirements for any occupation for which 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."**

or

- Change “present, significant, or substantiated harms” references to “significant, and substantiated or recognized imminent harms that threaten public health, and safety, or welfare.”

| <u>State</u> | <u>Bill #</u> | <u>Introduced</u> | <u>Primary Sponsor(s)</u> | <u>Last Action</u> | <u>Status</u> | <u>Position</u> | <u>Priority</u> |
|--------------|---|-------------------|---------------------------|--|---------------|-----------------|-----------------|
| TN | SB 1914  | 1/28/2020 | Janice Bowling (R) | Passed on Second Consideration, refer to Senate Commerce and Labor Committee (1/30/2020) | In Senate | Oppose | High |

Bill Summary

- Provides that the certification/licensure/registration requirements of certain chapters of Title 62 on Professions, Businesses and Trades “do not apply when a person, acting as a customer, enters into a written agreement with a person to perform work that is governed by this chapter,” and the written agreement waives (1) the certification/licensure/registration required by the chapter; and (2) “any liability action the customer may acquire against the person performing work that is governed by this chapter, except for an action brought for intentional, willful, or malicious conduct.”
- Applies to certain accountants, barbers, cosmetologists, funeral directors, embalmers, home improvement contractor, other contractors, home inspector, locksmiths, real estate brokers, land surveyors, soil scientists, pesticide professionals, rental location agents, private investigators, polygraph examiners, fire protection and alarm system specialists/technicians, alarm contractors, private protective services professionals, geologists, tattoo and body piercing artists, real estate appraisers, and professional employer service professionals.
- Any such written agreement must be entered into by both parties prior to any work commencing and must acknowledge (1) The customer is aware that the person is not certified/licensed/registered under the chapter; and (2) “the customer releases the person performing the work from all liability that may arise from the person’s performance of the work, except for an action brought for intentional, willful, or malicious conduct.”
- Permits a third-party not privy to the written agreement to bring an action against either party to the written agreement when the third-party is injured from the actions deriving from the written agreement.

Comments and Proposed Changes

- This would allow certain unlicensed individuals in Tennessee to practice without a license.
- The bill does not require any of the following elements that would support informed decision-making by a consumer:
 - That any website, business card, or other advertisement of the unlicensed individual disclose that the individual does not have a license.
 - That the disclosure be a standalone document.
 - That the unlicensed individual orally highlight to the consumer his or her unlicensed status and invite discussion or questions about it.
 - That the disclosure list the requirements for obtaining a license to practice the occupation and identify which of those requirements the individual does not meet.
 - That the disclosure list the educational, work experience, and other relevant qualifications of the individual to practice the occupation.
 - That the disclosure state whether the individual has been denied a license or has been the subject of any disciplinary or regulatory action by the licensing board for the profession.
- The bill places the public at risk, because the individual who contracts with an unlicensed professional may not be the end-user of the professional’s services (e.g., soil scientists, geologists); the only remedy would be a civil action against either party.
- This bill, if enacted as drafted, shifts considerable risk onto consumers. When occupations are licensed, consumers have an expectation that any individual practicing that occupation holds a license. The state has created through enacting a licensure requirement an assumption by consumers that practitioners of that occupation meet state requirements for qualifications for a license and that practitioners are subject to state enforcement oversight. The bill opens the door for unscrupulous individuals to take advantage of that assumption and contains insufficient safeguards for consumers to make an informed decision regarding using the services of an unlicensed individual
- The PCC is proposing specific amendments to sharply limit the professions in which exceptions to licensure requirements are granted, and specifically to exclude professions that include national licensure or certification exams as a condition of licensure.

Vermont

Session End

5/12/2020 [TBA]

Crossover Deadline

None

Carryover

Yes

| <u>State</u> | <u>Bill #</u> | <u>Introduced</u> | <u>Primary Sponsor(s)</u> | <u>Last Action</u> | <u>Status</u> | <u>Position</u> | <u>Priority</u> |
|--------------------------------------|-----------------------|--|---------------------------|--|---------------|-----------------|-----------------|
| VT | H 377 | 2/22/2019 | Barbara Rachelson (D) | Read First Time and Referred to the Committee on Judiciary (2/22/2019) | In House | Amend | Low |
| <u>Bill Summary</u> | | <ul style="list-style-type: none"> Provides that a regulatory entity may consider an applicant's criminal conviction history in determining whether to grant a license, but that the existence of one or more convictions alone shall not constitute a basis to deny licensure. Requires each regulatory entity to adopt uniform standards for the type or types of criminal convictions that would disqualify any applicant for licensure for each profession that the entity regulates and otherwise outlines the standard and scope of criminal records inquiries. Provides that, at any time, an applicant or potential applicant may petition a regulatory entity for a determination regarding whether the individual's criminal conviction history would disqualify the individual from licensure. Provides standards for regulatory entities obtaining an applicant's criminal conviction history report, including a requirement that the regulatory entity must obtain an applicant's prior authorization. Provides a procedure for license denial, including that if a regulatory entity intends to deny licensure based on an applicant's criminal conviction history, the regulatory entity shall provide the applicant with notice of that intent and an opportunity to present evidence of mitigating circumstances or of his or her rehabilitation. Requires each regulatory entity to submit to the General Assembly a biennial report stating the number of licenses granted in the previous two-year period and the number of licenses denied in the previous two-year period based on an applicant's criminal conviction history, along with a list of each conviction that constituted the basis for each denial. | | | | | |
| <u>Comments and Proposed Changes</u> | | <ul style="list-style-type: none"> Add a safe harbor provision: "nothing in the 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." | | | | | |

| <u>State</u> | <u>Bill #</u> | <u>Introduced</u> | <u>Primary Sponsor(s)</u> | <u>Last Action</u> | <u>Status</u> | <u>Position</u> | <u>Priority</u> |
|---------------------|-----------------------|---|---|---|---------------|-----------------|-----------------|
| VT | S 233 | 1/7/2020 | B.C. Collamore (R) Jeanette White (D) Alison Clarkson (D) | Read First Time and Referred to Committee on Government Operations (1/7/2020) | In Senate | Amend | Medium |
| <u>Bill Summary</u> | | <ul style="list-style-type: none"> For any profession attached to it, the Office of Professional Regulation (the "Office") must provide a pre-application determination of an individual's criminal background, if the individual submits a "second chance" determination request; such request must include documentation "related to the individual's conviction or convictions, evidence of rehabilitation, and identification of the profession or professions for which the individual seeks licensure." Provides that a determination shall not be binding on the Office in a future application if the individual violates probation or parole or is convicted of another crime following the determination. Provides a process for the issuance of a determination by the Office. Provides that "not less than once every five years, each profession attached to the Office shall review its continuing education and other continuing competency requirements;" the review results must be in writing and (a) address the renewal requirements of the profession, (b) the renewal requirements in other jurisdictions, particularly in the Northeast region, (c) the cost of the renewal requirements for the profession's licensees, (d) an analysis of the utility and effectiveness of the renewal requirements with respect to public protection, and (e) recommendations to the Director on whether the continuing education or other continuing competency requirements should be modified. | | | | | |

- Provides that upon review of the submitted results, the Director may require a profession to “reduce, modify, or otherwise change the renewal requirements, including by proposing any necessary amendments to statute or rule.”
- Amends certain sections relating to specific professions (well drillers, medical professionals, plumbers, educators etc.).
- Amend Section 123(k) to provide that the determination shall not be binding if the changed determination is based on relevant new facts, including parole or probation violations, new pending charges or convictions, or the discovery that the individual withheld or misrepresented material facts in the determination request.
- Amend Section 136a to add “**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.**”

Comments and
Proposed Changes

Virginia

Session End


3/8/2020

Crossover Deadline

2/11/2020

Carryover

Yes

| <u>State</u> | <u>Bill #</u> | <u>Introduced</u> | <u>Primary Sponsor(s)</u> | <u>Last Action</u> | <u>Status</u> | <u>Position</u> | <u>Priority</u> |
|--------------|--|----------------------|---------------------------|---|---------------|-----------------|-----------------|
| VA | HB 601  | 1/6/2020 (Pre-filed) | Nicholas J. Freitas (R) | House: Left In General Laws (2/11/2020) | Failed | Oppose | High |

Bill Summary

- Permits any person from petitioning an agency to request the agency to review an existing regulation for compliance with the provisions of § 54.1-100 (which provides that Virginia cannot abridge a person's right to engage in any lawful profession, trade, or occupation unless "it is clearly found that such abridgment is necessary for the protection or preservation of the health, safety, and welfare of the public and (ii) any such abridgment is no greater than necessary to protect or preserve the public health, safety, and welfare" and allows for occupational regulation only "for the exclusive purpose of protecting the public interest when: [among other factors] the unregulated practice of the profession or occupation can harm or endanger the health, safety or welfare of the public, and the potential for harm is recognizable and not remote or dependent upon tenuous argument)." The bill also provides a process for an agency to respond to such a petition; if the agency finds that the regulation is not in compliance with § 54.1-100 the agency "shall take appropriate steps to repeal such regulation."
- Permits any individual feeling burdened by an occupational regulation to challenge the regulation in court, provided they can meet the burden of "demonstrat[ing] by a preponderance of the evidence that the challenged occupational regulation on its face or in its effect burdens the entry into or participation in an occupation;" if this burden is met, the burden shifts to the agency "to demonstrate by a preponderance of the evidence that the challenged occupational regulation is necessary to protect or preserve the health, safety, and welfare of the public and otherwise complies with the provisions of § 54.1-100.

Comments and Proposed Changes

- The bill invites expensive and distracting litigation over regulations and does not exempt any professions from its coverage.
- Almost any individual seeking to enter a regulated profession can meet the burden of establishing that a regulation "burdens the entry into" a profession. As a practical matter, this means the bill will almost always place the burden of justifying a regulation on the state.
- The bill exempts no professions from its provisions, including traditionally regulated professions such as healthcare practitioners, lawyers, CPAs, etc.
- Safe harbors should be added to protect both regulatory recognition of private certifications and statutory prohibitions on deceptive trade practices.
- To cut down on expensive and unnecessary litigation, challenges should be permitted only for professions that are not subject to similar regulation in at least half of the other states.

Washington

Session End

3/14/2020

Crossover Deadline

TBD

Carryover

Yes

| <u>State</u> | <u>Bill #</u> | <u>Introduced</u> | <u>Primary Sponsor(s)</u> | <u>Last Action</u> | <u>Status</u> | <u>Position</u> | <u>Priority</u> |
|--------------|-------------------------|-------------------|---------------------------|--|---|-----------------|-----------------|
| WA | HB 1770 | 1/30/2019 | Jim Walsh (R) | By resolution; reintroduced and retained in present statutes (1/13/2020) | Failed to meet 3/13/2019 cross-over deadline (may be placed on the 2020 docket) | Amend | Low |

Bill Summary

- Defines "private certification" as "a nontransferable recognition granted to an individual by a private organization through a voluntary program in which the individual meets personal qualifications established by the private organization."
- With respect to healthcare professionals, imports the definition of certification in existing statute RCW 18.120.020: "Certificate' and 'certification' mean a voluntary process by which a statutory regulatory entity grants recognition to an individual who (a) has met certain prerequisite qualifications specified by that regulatory entity, and (b) may assume or use 'certified' in the title or designation to perform prescribed health professional tasks."
- Defines "'Registration" as a nontransferable registration granted to an individual under which (i) the individual is required to give notice to the government that may include the individual's name and address, the individual's agent for service of process, the location of the activity to be performed, and a description of the service the individual provides; (ii) upon receipt of the notice by the government, the individual may use the term registered as a designated title to engage in a lawful occupation; and (iii) such notice is required to engage in the lawful occupation for compensation and is required in order to use the term registered as a designated title to engage in the lawful occupation."
- Private certification" is listed as the third least restrictive form of regulation, "consistent with the health, safety, and welfare of the public." "Unfair or deceptive acts or practices under chapter 19.86 RCW 13" are listed as the fifth least restrictive form of regulation.
- Requires, beginning in 2020, each standing committee of the legislature to "annually review and analyze approximately twenty percent of the occupational regulations within the jurisdiction of the committee and prepare and submit an annual report electronically to the chief clerk of the house of representatives, the secretary of the senate, and each member of the house of representatives and senate by August 31st of each year as provided in this section;" each committee must complete this "process within five years and every five years thereafter.
- Requires each report to include the committee's recommendations regarding whether the occupational regulations should be terminated, continued, or modified; provides the information that must be included in the report, including " for the immediately preceding five calendar years, or for the period of time less than five years for which the information is practically available, the number of government certifications, occupational licenses, and registrations the occupational board has issued, revoked, denied, or assessed penalties against, listed anonymously and separately per type of credential, and the reasons for such revocations, denials, and other penalties" and an analysis of "whether the occupational regulations meet the policies stated in [...] this act."
- Provides that the committee shall recommend "enact[ing] government certification" if it identifies a "need is to protect consumers against a shortfall or imbalance of knowledge about the goods or services relative to the providers' knowledge."
- Provides that an "individual who has a criminal conviction may submit to the appropriate occupational board a preliminary application for an occupational license, government certification, or state recognition of the individual's personal qualifications for a determination as to whether the individual's criminal conviction would disqualify the individual."

Comments and Proposed Changes

- Note that Democrats control both chambers, which may increase the likelihood that the bill won't advance or will advance only with amendments. .
- The definition of "private certification" should be revised to state 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.**"

- Add a provision to amend RCW 18.120.020 to provide: **"Notwithstanding any other provision of this chapter, nothing shall preclude an individual holding a current certification issued by a private certification organization from using the title or designation "certified" in as permitted by the private organization in connection with a credential that the organization has issued to the individual."**
- Add that **"nothing in this Chapter is intended to restrict an agency from requiring, as a condition of licensure, that an individual's personal qualifications include obtaining or maintaining private certification from a private organization that credentials individuals in the relevant occupation."**
- Add another safe harbor provision: **"the state may regulate and adopt licensure requirements for any occupation for which 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."**
- Change "Registered" and "registration" in all instances to "government registered" and "government registration" so as not to ban use of the title "registered" that is conferred by private certification organizations.
- Modify the provision calling for enactment of government certification by adding **"unless suitable, private certification for the relevant occupation is available. As used in this section, 'suitable' means widely recognized as reflecting established standards of competency, skill, or knowledge in the field"** or delete the provision entirely.
- Add a safe harbor provision: **"nothing in the 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, nor shall it be construed to limit, impair, or preclude enactment or enforcement of unfair or deceptive acts or practices under chapter 19.86 RCW 13 or implementing regulations."**

| <u>State</u> | <u>Bill #</u> | <u>Introduced</u> | <u>Primary Sponsor(s)</u> | <u>Last Action</u> | <u>Status</u> | <u>Position</u> | <u>Priority</u> |
|--------------|-------------------------|-------------------|---------------------------|--|---------------|-----------------|-----------------|
| WA | HB 2357 | 1/10/2020 | Larry Hoff (R) | Public Hearing In The House Committee On Consumer Protection Business At 1 30 Pm (1/22/2020) | In House | Amend | Medium |


Bill Summary

- Establish a sunset review process for all professional licensing requirements regulated by the department of licensing (the "department").
- Requires that the department annually review and analyze approximately twenty percent of the professional licenses regulated by the department and prepare and submit an annual report electronically to the chief clerk of the house of representatives, the secretary of the senate, and each member of the house of representatives and senate, beginning in 2021; the department must complete this process for all professional licenses within its jurisdiction within five years and every five years thereafter.
- Requires that each report shall include the department's recommendations regarding whether the professional licenses should be terminated, continued, or modified.
- Outlines the information required to be included in the department's report.
- Provides that if the relevant legislative committee determines further analysis is needed after it receives the report, it may request the department to conduct further analysis; the extended report must include (1) a determination of whether professional license meets the policies stated and the recommended courses of action for meeting such policies listed in the bill (e.g. "If the need is to protect consumers against a shortfall or imbalance of knowledge about the goods or services relative to the providers' knowledge, the recommended course of action should be to enact government certification") and (2) if education, training, or experience is a qualification in the professional license under review, a review and analysis of the hours or other amount of education, training, or experience required to ensure such requirements are as least restrictive as necessary to protect the public's health, safety, and welfare.
- Provides that if the lawful profession is subject to RCW [Chapter 18.120](#) on Regulation of Health Professions, the analysis the determination described in (1) above must be made using the least restrictive method of regulation as set out in RCW [18.120.010](#).
- Provides that if "the department finds that it is necessary to change professional licenses, the department shall recommend the least restrictive regulation consistent with the public interest and the policies in this section"

Comments and Proposed Changes

- Note that Democrats control both chambers, which may increase the likelihood that the bill won't advance or will advance only with amendments.

- The bill only calls for review and a report to the legislature with recommendations; the recommendations are not binding, and unlike some other review and repeal bills, do not have the force of law in eliminating regulations or licensing agencies.
- Add that “nothing in this chapter is intended to restrict an agency from requiring, as a condition of licensure, that an individual’s personal qualifications include obtaining or maintaining private certification from a private organization that credentials individuals in the relevant occupation.”
- Add a safe harbor provision: “the department may exempt from its review and reporting requirements any licensure requirements for any occupation for which 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.”
- Modify the provision calling for enactment of government certification by adding “unless suitable, private certification for the relevant occupation is available. As used in this section, ‘suitable’ means widely recognized as reflecting established standards of competency, skill, or knowledge in the field” or delete the provision entirely.


| <u>State</u> | <u>Bill #</u> | <u>Introduced</u> | <u>Primary Sponsor(s)</u> | <u>Last Action</u> | <u>Status</u> | <u>Position</u> | <u>Priority</u> |
|--------------|---|-------------------|---------------------------|--|---------------|-----------------|-----------------|
| WA | HB 2355  | 1/10/2020 | Brandon Vick (R) | Referred To Appropriations (1/31/2020) | In House | Oppose | High |

Bill Summary

- Authorizes the state department of licensing to develop a “competency-based assessment” which allows individuals to demonstrate proficiency of the knowledge and skills otherwise required by an occupational licensing examination and which would permit them to practice a licensed profession without meeting the examination requirements.
- The stated justification for the bill is that existing licensing requirements “discriminate against people of color, low-income individuals, and trained or untrained immigrant populations, who may possess the ability to excel in a profession but lack the ability to readily fulfill the occupational licensing requirements to practice.”
- Defines “Competency-based licensing requirement” as “a practical assessment of knowledge and skills that clearly demonstrate a person is prepared to engage in an occupation or profession regulated by the department, and which the director of the department of licensing determines is at least as effective as examination-based occupational licensing requirements at demonstrating proficiency and protecting the health and safety of the public.” The assessment may include, but is not limited to, “any combination of training, experience, testing, or observation.”
- Defines “Occupational license” as “a license, certificate, registration, permit, or other form of authorization required by law or a state agency rule that must be obtained by an individual to engage in a particular occupation or profession which is regulated by the department of licensing.”
- Provides that the department of licensing “may issue an occupational license, without regard to other requirements, to an applicant if the applicant meets all competency-based licensing requirements for a specific occupational license issued by the department.”
- Provides that this section does not apply when there is a reciprocity licensing agreement with a national organization in place to facilitate reciprocal professional licensing of an individual licensed in new states.

Comments and Proposed Changes

- This bill would create an end-run around licensure requirements that require current private certification for initial licensure or renewal of licensure, substituting the judgment of the department of licensure as to what “experience” is equivalent to the tests of competencies developed and recognized by subject matter experts in the relevant field.

| <u>State</u> | <u>Bill #</u> | <u>Introduced</u> | <u>Primary Sponsor(s)</u> | <u>Last Action</u> | <u>Status</u> | <u>Position</u> | <u>Priority</u> |
|--------------|---|-------------------|---------------------------|--|---------------|-----------------|-----------------|
| WA | HB 2477  | 1/15/2020 | Brandon Vick (R) | Placed on Second Reading By Rules Committee (2/4/2020) (1/28/2020) | In House | Amend | High |


Bill Summary

- Establishes a sunrise review process for any such future regulation “to ensure concerns for public health and safety are warranted and that the rights and well-being of current and future practitioners of the profession be given full protection from unnecessary regulatory burden.”

- Defines "Professional license" as "a license, certificate, registration, permit, or other form of authorization required by law or a state agency rule that must be obtained by an individual to engage in a particular occupation or profession which is regulated by the department of licensing."
- Defines "Public interest" as "protection from a present and recognizable harm to public health, safety, or welfare," but provides that "the term does not include speculative threats, or other nondemonstrable menaces to public health, safety, or welfare."
- Defines "welfare" to include "the financial health of the public when the absence of governmental regulation unreasonably increases risk and liability to broad classes of consumers."
- Provides that after July 31, 2020, no regulation shall be imposed upon a professional license except for the exclusive purpose of protecting the public interest and that all bills introduced to regulate and implement a professional license for the first time should be regulated by the state only when: "(a) Unregulated practice can clearly harm or endanger the health, safety, or welfare of the public, and the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument; (b) The public needs can reasonably be expected to benefit from an assurance of initial and continuing professional ability; and (c) The public cannot be effectively protected by other means in a more cost-beneficial manner."
- Provides that if the legislature finds that it is necessary to regulate an occupation by implementing a professional license requirement not previously required by law after evaluating the above criteria, the "the least restrictive alternative method of regulation should be implemented, consistent with the public interest and this section."
- Lists the required courses of action for various harms (e.g. "where the consumer may have a substantial basis for relying on the services of a practitioner, the regulation should implement a system of certification").

Comments and Proposed Changes

- Note that Democrats control both chambers, which may increase the likelihood that the bill won't advance or will advance only with amendments.
- Amend the definition of a "professional license" to "license, certificate, registration, permit, or other form of authorization issued by the state and required by law or a state agency rule that must be obtained by an individual to engage in a particular occupation or profession which is regulated by the department of licensing."
- Modify the provision calling for enactment of certification by adding "unless suitable, private certification for the relevant occupation is available. As used in this chapter, 'suitable' means widely recognized as reflecting established standards of competency, skill, or knowledge in the field" or delete the provision entirely.
- Change all references to "registration" and "certification" in all instances to "government registered" or "government certification" so as not to ban use of the title "registered" or "certified" that is conferred by private certification organizations.
- Add that "nothing in this chapter is intended to restrict an agency from requiring, as a condition of licensure, that an individual's personal qualifications include obtaining or maintaining private certification from a private organization that credentials individuals in the relevant occupation."
- Add another safe harbor provision: "the state may regulate and adopt licensure requirements for any occupation for which 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."

| <u>State</u> | <u>Bill #</u> | <u>Introduced</u> | <u>Primary Sponsor(s)</u> | <u>Last Action</u> | <u>Status</u> | <u>Position</u> | <u>Priority</u> |
|--------------|---|-------------------|---------------------------|---|---------------|-----------------|-----------------|
| WA | HB 2875  | 1/28/2020 | Larry Hoff (R) | Public Hearing in the House Committee on Appropriations at 1:30pm (2/10/2020) | In House | Amend | High |

Bill Summary

- Establishes a sunset review process for all professional licensing requirements regulated by the department of licensing "to ensure that the public's health, safety, and general welfare is protected. Furthermore, technological innovation continues to change the responsibilities and practices surrounding these professions, and by result, the potential harms associated with them."
- Requires, beginning in 2021, each standing committee of the legislature to "annually review and analyze approximately twenty percent of the professional licenses regulated by the department and prepare and submit an annual report electronically to the chief clerk of the house of representatives, the secretary of the senate, and each member of the house of representatives and senate by August 31st of each year as provided in this section;" each committee must complete this process within five years and every five years thereafter.
- Requires each report to include the committee's recommendations regarding whether the occupational regulations should be terminated, continued, or modified; provides the information that must be included in the report, including " for the immediately preceding five calendar years, or for the period of time less than five years for which the information is practically available, the number of government certifications, professional licenses, and registrations the department, professional board, or commission has issued, revoked, denied,

or assessed penalties against, listed anonymously and separately per type of credential, and the reasons for such revocations, denials, and other penalties” and an analysis of “whether the professional license meets the policies stated [in this act].”

- Provides that the committee shall recommend “enact[ing] government certification” if it identifies a “need is to protect consumers against a shortfall or imbalance of knowledge about the goods or services relative to the providers’ knowledge.”
- Because the bill calls only for a report with recommendations, the bill is not as immediately dangerous as bills calling for expiration or abolition of regulations or licensure agencies.
- Add that “**notwithstanding any other provision of this chapter, nothing shall preclude an individual holding a current certification issued by a private certification organization from using the title or designation “certified” in as permitted by the private organization in connection with a credential that the organization has issued to the individual.**”
- Add that “**nothing in this Chapter is intended to restrict an agency from requiring, as a condition of licensure, that an individual’s personal qualifications include obtaining or maintaining private certification from a private organization that credentials individuals in the relevant occupation.**”
- Add another safe harbor provision: “**the state may regulate and adopt licensure requirements for any occupation for which 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.**”
- Modify the provision calling for enactment of government certification by adding “**unless suitable, private certification for the relevant occupation is available. As used in this section, ‘suitable’ means widely recognized as reflecting established standards of competency, skill, or knowledge in the field**” or delete the provision entirely.
- Change provision on when staff may recommend occupational licensure to state that if there is “a systematic information shortfall in which a reasonable consumer of the service is unable to distinguish between the quality of providers **or there is an imbalance in the consumer’s knowledge about the good or service relative to the provider’s knowledge** (asymmetrical information), staff may recommend enacting an occupational license **and may consider recognizing or requiring private certification or as a condition of licensure.**”
- Provide that “**staff must also invite public comment from licensees, the occupational licensing board, and the public about the impact of the existing occupational license requirements**” in reviewing existing occupational licensure laws.
- Provide that staff’s “**reports must be publicly available and posted on the website of the office, and must include the rationale for the staff’s recommendation, including a description of the expected impact of any regulatory changes on public health, safety, or welfare.**”
- Change “present, significant, and substantiated harm” to “**identification of significant, and substantiated or recognized imminent harms that threaten public health, and safety, or welfare.**”

Comments and
Proposed Changes

West Virginia

Session End

3/6/2020

Crossover Deadline

2/6/2020

Carryover

Yes

| <u>State</u> | <u>Bill #</u> | <u>Introduced</u> | <u>Primary Sponsor(s)</u> | <u>Last Action</u> | <u>Status</u> | <u>Position</u> | <u>Priority</u> |
|--------------------------------------|-------------------------|---|---------------------------|---|---|-----------------|-----------------|
| WV | HB 2697 | 1/28/2019 | Gary Howell (R) | To House Industry and Labor (1/28/2019) | Failed to meet Crossover Deadline of 2/27/2019 (legislatures may request carryover into 2020 session) | Oppose | Low |
| <u>Bill Summary</u> | | <ul style="list-style-type: none">Requires that, "to provide a service for which state law otherwise requires an occupational license, an unlicensed person must make a nonlicensed disclosure using no less than a 14-point font set in boldface that (A) The unlicensed person is working in a lawful occupation without a license; (B) The state otherwise requires that providers of the service hold an occupational license; and (C) The unlicensed person is allowed to provide the service under §30-1-22 of this code."Provides that the disclosure can be made by one or more of the following means: notice on the homepage of the unlicensed person's website, posting the notice at the entry of the person's facility, sending a letter or email to the consumer prior to providing the services, or stating it in a written contract with the consumer.Provides that production of a "nonlicense disclosure shall require immediate dismissal with prejudice of any administrative, civil or criminal action brought by a state authority for the purpose of enforcing the personal qualifications necessary to obtain and maintain an occupational license against an unlicensed person engaged in a lawful occupation."Permits any consumers injured by an unlicensed person operating under this code section to bring a small-claims or district court civil action and recover damages.Lists five healthcare professions for which the bill does not apply: medical doctors, registered nurses, licensed practical nurses, dentists, and pharmacists. All other licensed professions are subject to the act.States that "nothing in this section shall be construed to require [...] a private certification organization to grant or deny its private certification to any person." | | | | | |
| <u>Comments and Proposed Changes</u> | | <ul style="list-style-type: none">This very far-reaching statute would allow unlicensed individuals in West Virginia to practice without a license, regardless of qualifications, except in five identified healthcare professions, without any assurance that the consumer has in fact seen the required nonlicensed disclosure. It raises even graver concerns than identified about Indiana H.B. 1271 in the Legislative Analysis Memorandum on that bill. | | | | | |

| <u>State</u> | <u>Bill #</u> | <u>Introduced</u> | <u>Primary Sponsor(s)</u> | <u>Last Action</u> | <u>Status</u> | <u>Position</u> | <u>Priority</u> |
|---------------------|-------------------------|--|---------------------------|--|---------------|-----------------|-----------------|
| WV | SB 313 | 1/13/2020 | Mark Maynard (R) | To Government Organization (1/13/2020) | In Senate | Amend | Medium |
| | HB 4011 | 1/9/2020 | Chuck Little (R) | Reported do pass, with amendment, but first to Judiciary (2/11/2020) | In Senate | | |
| | HB 4122 | 1/13/2020 | Dean Jeffries (R) | To House Government Organization (1/13/2020) | In House | | |
| <u>Bill Summary</u> | | <ul style="list-style-type: none">Reorganizes the articles in the current Chapter 30 titled "Health-Related Professions and Occupations", regarding licensing of professions and occupations, into three separate chapters arranged by duties and educational requirements, both prior to and following licensing.Defines "Board" as the "board, authority, or other agency authorized by the provisions of this chapter to issue licenses, certifications, registrations, or other authorizations to engage in a particular profession or occupation."Provides that the "Boards subject to the requirements of this section may not disqualify an applicant from initial licensure to engage in a profession or occupation because of a prior criminal conviction that remains unreversed unless that conviction is for a crime that bears a rational nexus to the profession or occupation requiring licensure." | | | | | |

- Provides that in determining whether a criminal conviction bears a rational nexus to a profession or occupation, the board shall consider at a minimum: "(A) The nature and seriousness of the crime for which the individual was convicted; (B) The passage of time since the commission of the crime; (C) The relationship of the crime to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the profession or occupation; and (D) Any evidence of rehabilitation or treatment undertaken by the individual."
- Prohibits the licensing entity from relying on the term "moral turpitude" as a description of a crime.
- Provides that if an applicant is disqualified from licensure because of a prior criminal conviction, a board shall permit the applicant to apply for initial licensure if "(A) A period of five years has elapsed from the date of conviction or the date of release from incarceration, whichever is later; (B) The individual has not been convicted of any other crime during the period of time following the disqualifying offense; and (C) The conviction was not for an offense of a violent or sexual nature." (A conviction for an offense of a violent or sexual nature may subject an individual to a longer period of disqualification from licensure, to be determined by the individual board.)
- Permits an individual with a criminal record who has not previously applied for licensure may petition the appropriate board at any time for a determination of whether the individual's criminal record will disqualify the individual from obtaining a license.
- States that the requirements of this section do not apply to the criteria that boards may consider when making determinations regarding relicensure or discipline of licensees.

Comments and Proposed Changes

- Carryover of bill from prior legislative session.
- Add a safe harbor provision: "**Nothing in the 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.**"
- Amend definition of "rational nexus" to add "**and (E) evidence of whether the individual poses an unacceptable risk to the people with whom the individual would interact in the conduct of the profession or occupation.**"
- Amend § 30A-1-29(3)(B) to state: "The individual has not been convicted of any other crime during the period of time following the disqualifying offense **and has no pending criminal charges,**"
- Amend § 30A-1-29(3)(C) to state: "The conviction **was not for an offense that directly relates to the individual's fitness to practice the occupation, did not relate to fraud in connection with the practice of the occupation, and** was not for an offense of a violent or sexual nature."


| <u>State</u> | <u>Bill #</u> | <u>Introduced</u> | <u>Primary Sponsor(s)</u> | <u>Last Action</u> | <u>Status</u> | <u>Position</u> | <u>Priority</u> |
|--------------|-------------------------|-------------------|---------------------------|--|---------------|-----------------|-----------------|
| WV | SB 499 | 1/15/2020 | Mark Maynard (R) | To Government Organization (1/15/2020) | In Senate | Amend | Medium |
| | HB 4353 | 1/15/2020 | Gary Howell (R) | On 2nd Reading (2/14/2020) | In Senate | | |

Bill Summary

- Amends Chapter 21 on Labor in the Code of West Virginia to provide that an applicant may not be disqualified from initial licensure because of a prior criminal conviction that remains unreversed unless that conviction is for a crime that bears a rational nexus to the profession or occupation requiring licensure."
- Provides that in determining whether a criminal conviction bears a rational nexus to a profession or occupation, the board shall consider at a minimum: "(1) The nature and seriousness of the crime for which the individual was convicted; (2) The passage of time since the commission of the crime; (3) The relationship of the crime to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the profession or occupation; and (4) Any evidence of rehabilitation or treatment undertaken by the individual."
- Provides that if an applicant is disqualified from licensure because of a prior criminal conviction, a board shall permit the applicant to apply for initial licensure if "(1) A period of five years has elapsed from the date of conviction or the date of release from incarceration, whichever is later; (2) The individual has not been convicted of any other crime during the period of time following the disqualifying offense; and (3) The conviction was not for an offense of a violent or sexual nature." (A conviction for an offense of a violent or sexual nature may subject an individual to a longer period of disqualification from licensure, to be determined by the individual board.)

Comments and Proposed Changes

- Permits an individual with a criminal record who has not previously applied for licensure may petition the appropriate board at any time for a determination of whether the individual's criminal record will disqualify the individual from obtaining a license.
- Carryover of bill from prior legislative session.
- Amend definition of "rational nexus" to add **"and (5) evidence of whether the individual poses an unacceptable risk to the people with whom the individual would interact in the conduct of the profession or occupation."**
- Add a safe harbor provision: **"Nothing in the 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."**
- Amend § 17A-6-6)(d)(2) to state: **"The individual has not been convicted of any other crime during the period of time following the disqualifying offense and has no pending criminal charges,"**
- Amend § 17A-6-6)(d)(3) to state: **"The conviction was not for an offense that directly relates to the individual's fitness to practice the occupation, did not relate to fraud in connection with the practice of the occupation, and was not for an offense of a violent or sexual nature."**

| <u>State</u> | <u>Bill #</u> | <u>Introduced</u> | <u>Primary Sponsor(s)</u> | <u>Last Action</u> | <u>Status</u> | <u>Position</u> | <u>Priority</u> |
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| WV | SB 218 | 1/9/2020  | None listed. | To Government Organization (1/9/2020) | In Senate | Oppose | High |


Bill Summary

- Titled "The Occupational Licensing and Consumer Choice Act."
- Permits an unlicensed person to provide a service for which state law otherwise requires an occupational license, provided such unlicensed person makes a nonlicensed disclosure stating that the unlicensed person is working in a lawful occupation without a license, that the state requires that providers of the service hold an occupational license, and that the unlicensed person is allowed to provide the service under this act; disclosures shall be made by at least one of several means set forth in the act.
- Permits an employer or contractor to hire or contract with an unlicensed person and may offer such unlicensed person's services to a consumer provided the employer or contractor makes a nonlicensed disclosure.
- Prohibits an unlicensed person from being denied any benefit granted to a person holding an occupational license, provided such unlicensed person, or such unlicensed person's employer or contractor provides a nonlicensed disclosure.
- Requires state authorities to disclose on their internet website, and on all written or digital and online application forms for occupational licenses that a person may work in the state without an occupational license otherwise required.
- Provides that production of a nonlicensed disclosure shall act as a defense against any administrative, civil or criminal action brought by a state authority for the purpose of enforcing the personal qualifications necessary to obtain and maintain an occupational license.
- Permits any consumer injured by an unlicensed person to bring in small-claims or district court a civil action and may recover damages.
- Applies to all licensed occupations in the state except for certain health care professions set forth in the act.
- Provides that nothing in the act shall be construed to require a private certification organization to grant or deny its private certification to any person.

Comments and Proposed Changes

- Carryover of bill from prior legislative session.
- This very far-reaching statute would allow unlicensed individuals in West Virginia to practice without a license, except in five identified healthcare professions, without any assurance that the consumer has in fact seen or consented to the required nonlicensed disclosure.
- The bill does not require any of the following elements that would support informed decision-making by a consumer:
 - That any website, business card, or other advertisement of the unlicensed individual disclose that the individual does not have a license.

- That the disclosure be a standalone document.
 - That the unlicensed individual orally highlight to the consumer his or her unlicensed status and invite discussion or questions about it.
 - That the disclosure list the requirements for obtaining a license to practice the occupation and identify which of those requirements the individual does not meet.
 - That the disclosure list the educational, work experience, and other relevant qualifications of the individual to practice the occupation. That the disclosure state whether the individual has been denied a license or has been the subject of any disciplinary or regulatory action by the licensing board for the profession.
- The bill places the public at risk, because the individual who contracts with an unlicensed professional may not be the end-user of the professional's services (e.g., child-care workers, bridge builders, etc.)
 - This bill, if enacted as drafted, shifts considerable risk onto consumers. When occupations are licensed, consumers have an expectation that any individual practicing that occupation holds a license. The state has created through enacting a licensure requirement an assumption by consumers that practitioners of that occupation meet state requirements for qualifications for a license and that practitioners are subject to state enforcement oversight. The bill opens the door for unscrupulous individuals to take advantage of that assumption and contains insufficient safeguards for consumers to make an informed decision regarding using the services of an unlicensed individual
 - The PCC is proposing specific amendments to sharply limit the professions in which exceptions to licensure requirements are granted, and specifically to exclude professions that include national licensure or certification exams as a condition of licensure.

| <u>State</u> | <u>Bill #</u> | <u>Introduced</u> | <u>Primary Sponsor(s)</u> | <u>Last Action</u> | <u>Status</u> | <u>Position</u> | <u>Priority</u> |
|--------------|--|-------------------|---------------------------|--|---------------|-----------------|-----------------|
| WV | SB 646  | 1/29/2020 | Mark Maynard (R) | To Government Organization (1/29/2020) | In Senate | Amend | High |

Bill Summary

- Defines "Private certification" as a "voluntary program in which a private organization grants nontransferable recognition to an individual who meets personal qualifications and standards relevant to performing the occupation as determined by the private organization. The individual may use a designated title of "certified" or other title conferred by the private organization."
- "Private certification" is listed as the third least restrictive form of regulation.
- Provides that The Performance Evaluation and Research Division (the "Division") shall determine if the proposed regulation meets the policy of using the least restrictive regulation necessary to protect consumers from present, significant, and substantiated harms; the Division will "employ a rebuttable presumption that consumers are sufficiently protected by market competition and private remedies" and "will give added consideration to the use of private certification programs that allow a provider to give consumers information about the provider's knowledge, skills, and association with a private certification organization."
- Provides that the Division may rebut the presumption "if it finds both credible, empirical evidence of present, significant, and substantiated harm, and that consumers do not have the information or means to protect themselves against such harm. If evidence of such unmanageable harm is found, the committee will recommend the least restrictive government regulation to address the harm."
- Provides guidelines for the Division in forming its recommendations to the committees that will hear the legislation, including if there is "a shortfall or imbalance of knowledge about the good or service relative to the provider's knowledge (asymmetrical information), the office may recommend enacting government certification" and if there is "the need to address multiple types of harm, the office may recommend a combination of regulations. This may include a government regulation combined with a private remedy including third-party or consumer created ratings and reviews, or private certification."
- Provides that if there is "a systematic information shortfall in which a reasonable consumer of the service is permanently unable to distinguish between the quality of providers and there is an absence of institutions that provide guidance to consumers, staff may recommend enacting an occupational license."
- Requires the Division to consider the effects of legislation on "opportunities for workers, consumer choices and costs, general unemployment, market competition, governmental costs, and other effects," to "request information from state agencies that contract with individuals in regulated occupations and others knowledgeable of the occupation, labor-market economics, or other factors, costs and benefit," to compare the legislation to determine whether and how other states regulate the occupation, and to issue a report.
- The Division's report shall include evaluation, analysis, and findings as to (1) whether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety, or welfare of the public, and the evidence present, significant, and substantiated harms to consumers in the state; (2) the requisite personal qualifications, if any; (3) the scope

of practice, if applicable; (4) if regulation is required to address evidence of harm to consumers in the state, the least restrictive regulation of the occupation or profession; and whether the professional or occupational group or organization should be regulated as proposed in the application.

- Provides that, after receiving the Division's report, the "Joint Committee on Government Organization may issue additional findings and recommendations regarding: (1) The least restrictive regulation of the occupation or profession; and (2) Whether regulation would result in the creation of a new agency or board or could be implemented more efficiently through an existing agency or board."
- Requires the House of Delegates and the Senate to adopt a rule requiring any committee considering legislation to enact or modify an occupational regulation to receive the Performance Evaluation and Research Division's report and the Joint Standing Committee on Government Organization's findings and recommendations if applicable, prior to voting on the legislation.
- Provides that "Nothing in this article shall be construed to preempt federal regulation or to require a private certification organization to grant or deny private certification to any individual."
- Requires the Division to review annually (beginning January 1, 2021) the occupational regulations of approximately 20% of the occupations that under the committee's jurisdiction; all occupational licenses under the committee's jurisdiction will be reviewed within the subsequent five (5) years and will repeat such review processes in each five-year period thereafter; using the criteria in section 30-1A-3 and research or other credible evidence whether an existing regulation directly helps consumers to avoid present, significant, and recognizable harm.
- Requires the Division, beginning in 2022, to prepare and submit a report to the speaker of the house of delegates, the president of the senate, the joint standing committee on government organization, and the governor to make recommendations regarding whether the occupational license should be repealed, continued, or modified.
- Provides that "Nothing in this article shall be construed to preempt federal regulation, to authorize the office to review the means that a private certification organization uses to issue, deny or revoke a private certification to any individual, or to require a private certification organization to grant or deny private certification to any individual."
- Provides that "In construing any governmental regulation of occupations, including an occupational licensing statute, rule, policy, or practice, the following canons of interpretation are to govern, unless the regulation is unambiguous: (1) Occupational regulations will be construed and applied to increase economic opportunities, promote competition, and encourage innovation; (2) Any ambiguities in occupational regulations will be construed in favor of workers and aspiring workers to work; and (3) The scope of practice in occupational regulations is to be construed narrowly to avoid burdening individuals with regulatory requirements that only have an attenuated relationship to the goods and services they provide."
- Because the bill calls only for a report with recommendations, the bill is not as immediately dangerous as bills calling for expiration or abolition of regulations or licensure agencies.
- Change all "present, significant, or substantiated harms to consumers" references to "**significant, and substantiated or recognized imminent harms that threaten public health, and safety, or welfare,**" and change "evidence of present, significant, and substantiated harm" to "**identification of significant, and substantiated or recognized imminent harms that threaten public health, and safety, or welfare.**"
Change provision on when committees may recommend occupational licensure to state that if there is "a systematic information shortfall in which a reasonable consumer of the service is unable to distinguish between the quality of providers **or there is an imbalance in the consumer's knowledge about the good or service relative to the provider's knowledge** (asymmetrical information), the committees may recommend enacting an occupational license **and may consider recognizing or requiring private certification or as a condition of licensure.**"
- Provide that "staff must also invite public comment from licensees, the occupational licensing board, and the public about the impact of the existing occupational license requirements" in reviewing existing occupational licensure laws.
- Provide that staff's "reports must be publicly available and posted on the website of the office, and must include the rationale for the staff's recommendation, including a description of the expected impact of any regulatory changes on public health, safety, or welfare."
- The definition of "private certification" should be revised to state that "Private Certification" means a "voluntary program in which a private organization grants nontransferable recognition to an individual who meets **personal qualifications relevant to performing the occupation, including by demonstrating a specified level of knowledge and skill required to meet standards in the profession,** as determined by the private organization. The individual may use a designated title of "certified" or other title conferred by the private organization."

Comments and Proposed Changes

- Add that “nothing in this Chapter is intended to restrict an agency from requiring, as a condition of licensure, that an individual’s personal qualifications include obtaining or maintaining private certification from a private organization that credentials individuals in the relevant occupation.”
- Add another safe harbor provision: “the state may regulate and adopt licensure requirements for any occupation for which 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.”
- Modify the provision calling for enactment of government certification by adding “unless suitable, private certification for the relevant occupation is available. As used in this section, ‘suitable’ means widely recognized as reflecting established standards of competency, skill, or knowledge in the field” or delete the provision entirely.