



PROFESSIONAL CERTIFICATION COALITION

March 4, 2022

Sen. Tom Brewer, *Chair*
Senate Committee on Government, Military and Veterans Affairs
1445 K Street
State Capitol, Room 1101
Lincoln, NE 68508
tbrewer@leg.ne.gov

Re: L.B. 709

Dear Senator Brewer:

The Professional Certification Coalition (PCC) writes to share our views on the amended version of L.B. 709. We appreciate the inclusion of a provision clarifying that the restrictions in the bill do not apply to decisions by private certification organizations, but urge inclusion of additional amendments to ensure protections for the public and certification organizations that rely on licensure decisions.

The PCC is a nonprofit association formed to address legislation that affects professional certification programs, those who hold private certification credentials, and the many constituencies that rely on professional certification. The PCC's organizational members include non-governmental professional certification organizations, professional societies, and service providers. The PCC's members reflect a wide spectrum of professions, including health care, engineering, financial services, and information technology, among many others. Our founding organizations – the American Society of Association Executives (the leading organization for association management) and the Institute for Credentialing Excellence (the leading developer of accreditation standards for professional certification programs) – govern the PCC.

The PCC supports the goal of L.B. 709 to broaden access to licensure for ex-offenders so they may earn a living in their chosen profession. We agree that simply having a criminal record should not stigmatize or automatically disqualify an individual from an occupational license. **It is critical, however, that licensing boards be able to consider the underlying facts relating to an applicant's past conduct and make independent, individual determinations about that applicant's fitness to practice the profession with the state's endorsement.**

Not all professions are the same, nor are all criminal records. L.B. 709 would remove discretion from licensing agencies to deny licenses to individuals proven to have committed offenses relevant to their fitness to practice a profession and narrowly only considers public safety, not public health or welfare. Even extensive fraud on the order of a Bernie Madoff would be excluded from consideration under this standard.

In addition, the requirement that licensing agencies may only consider disqualifying “a felony conviction expressly listed as a disqualifying offense in the statutes governing the occupation” will prevent licensing authorities from considering many directly relevant convictions. How many licensing acts currently list in the statute all criminal code sections that can be disqualifying?

In practical effect, this bill would necessitate reopening every practice act by the legislature in order to meet this standard. That is also an impossible task. Many prosecutions are resolved by plea bargains that convert a charged offense to a lesser and differently named offense, despite the individual's admission to the underlying conduct. It is critical that the standard for whether a crime directly relates to an occupation include the kinds of misconduct that violate the ethics or conduct standards applicable to licensees. Because an applicant may have a relevant conviction record from a jurisdiction with a different taxonomy for criminal offenses, this approach will also exclude relevant offenses that would have been considered potentially disqualifying if charged under Nebraska's criminal code.

The PCC proposes the following amendments to L.B. 709 to address these concerns:

- **Strike Section 84-9473(a)** (relating a list of disqualifying offenses).

March 4, 2022

Page 2

- Amend **Section 84-947 (3)(c)** to provide: “The individual obtaining such license, certification, or state recognition would pose a direct and substantial risk to public safety, **health, or welfare**, because the individual has not been rehabilitated, as evidenced by information described in subdivision (2)(b) of this section, to safely **and without substantial risk to the health or welfare of people with whom the individual would interact in the conduct of the occupation** perform the duties and responsibilities of the occupation.”
- Add to the list of circumstances in **Section 84-947 (3)** in which a criminal conviction will disqualify an individual from receiving a license: “**The applicant poses an unacceptable risk to the health, safety, or welfare of people with whom the applicant would interact in the conduct of the profession or occupation.**”
- Amend **Section 84-947 (6)** to provide: “An individual shall not be required to disclose nor shall consideration be given in a determination under this section to the following, **except with respect to the offenses described in Section (6)(e) (f), or (g), any offense involving underlying conduct that, if committed by a current licensee, would independently of the conviction record be a basis for disciplinary action by the licensing authority...**”
- 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.**”

Private certification organizations in regulated professions rely on licensing boards to exercise their authority to deny licenses to individuals who have engaged in conduct that casts serious doubt on their fitness to practice the profession or indicates that the individual poses an unacceptable risk to the people to whom the applicant would interact in the conduct of the profession. Even if a criminal conviction record is not an automatic disqualifier from licensure, licensing boards should have the ability to consider the facts and circumstances of a licensee’s or applicant’s history.

Most private certification organizations also rely on agency determinations in their own eligibility and ethics code enforcement, as they are non-governmental entities without the resources or legal authority to conduct full-fledged investigations, issue subpoenas, and hold trial-type proceedings. Withholding criminal conviction history from licensing boards therefore also has downstream effects on the information available to private certification organizations.

The PCC applauds Nebraska for advancing important criminal justice reforms through the L.B. 709. We respectfully request, however, that the legislature amend L.B. 709 as we have requested above to better protect the public.

Thank you for your consideration of these amendments. If you have any questions regarding this letter, please feel free to reach out to us using the contact information identified below.

Sincerely,



Jeff Evans
Director, Public Policy
ASAE: The Center for Association Leadership
Phone: (202) 626-2722
Email: jevans@asaecenter.org



Denise Roosendaal, CAE
Executive Director
Institute for Credentialing Excellence
Phone: (202) 367-1165
Email: droosendaal@credentialingexcellence.org

CC: Sen. John McCollister
jmccollister@leg.ne.gov

Current Members of the PCC

ABRET Neurodiagnostic Credentialing & Accreditation (ABRET)
ABSIA International: the Association for Biosafety and Biosecurity (ABSIA)
AABC Commissioning Group
Academy for Certification of Vision Rehabilitation & Education Professionals (ACVREP)
Alliance of Hazardous Materials Professionals (AHMP)
American Association of Critical-Care Nurses (AACN)
American Association of Professional Landmen (AAPL)
American Board for Certification in Orthotics, Prosthetics and Pedorthics (ABCOP)
American Board of Certification for Gastroenterology Nurses (ABCGN)
American Board of Medical Specialties (ABMS)
American Board of Neuroscience Nursing (ABNN)
American Board of Foot and Ankle Surgery (ABFAS)
American Board of Wound Management (ABWM)
American Industrial Hygiene Association (AIHA)
American Legal Nurse Consultant Certification Board (ALNCCB)
American Medical Certification Association (AMCA)
American Nurses Credentialing Center (ANCC)
American Payroll Association (APA)
American Society of Association Executives (ASAE)
American Society of Civil Engineers (ASCE)
American Speech-Language-Hearing Association (ASHA)
American Traffic Safety Services Association (ATSSA)
American Translators Association (ATA)
American Veterinary Medical Association (AVMA)
Association for Financial Counseling & Planning Education (AFCPE)
Association for Financial Professionals (AFP)
Association of Surgical Technologists (AST)
Behavior Analyst Certification Board (BACB)
Building Industry Consulting Service International (BICSI)
Board of Certification/Accreditation (BOC)
Board of Certified Safety Professionals (BCSP)
Board of Pharmacy Specialties (BPS)
Building Commissioning Certification Board (BCCB)
CCIM Institute (issues the Certified Commercial Investment Member designation)
CFA Institute
Certification Board for Music Therapists (CBMT)
Certification Board of Infection Control and Epidemiology (CBIC)
Certification Council for Professional Dog Trainers (CCPDT)
Certified Financial Planner Board of Standards (CFP)
Certified Fund Raising Executive International (CFRE)
CertiProf, LLC
Commission for Case Manager Certification (CCMC)
Commission on Nurse Certification (CNC)
CompTIA
Community Association Institute (CAI)
Construction Management Association of America (CMAA)
Council of Engineering and Scientific Specialty Boards (CESB)
Dental Assisting National Board (DANB)
Diving Equipment and Marketing Association (DEMA)
Entertainment Services and Technology Association (ESTA)
ETA International (ETA)
Financial Planning Association (FPA)
Hearth, Patio, & Barbecue Education Foundation (HPBA)
Heuristic Solutions
Hospice and Palliative Credentialing Center (HPCC)
Institute for Credentialing Excellence (ICE)
Institute of Certified Management Accountants (ICMA)
Institute of Hazardous Materials Management (IHMM)
Institute of Internal Auditors (IIA)
Irrigation Association (IA)
International Association of Healthcare Central Service Materiel Management (IAHCSSM)
International Association of Lighting Designers (IALD)
International Coach Federation (ICF)
International Foundation for Retirement Education (InFRE)
International Information System Security Certification Consortium (ISC²)
Investments & Wealth Institute (IWI)
IT Certification Council (ITCC)
Laborers' International Union of North America Training & Education Fund (LIUNA)
Medical-Surgical Nursing Certification Board (MSNCB)
National Association of Legal Assistants, Inc. (NALA)
National Association of Insurance and Financial Advisors (NAIFA)
National Association of Personal Financial Advisors (NAPFA)
National Athletic Trainers' Association Board of Certification, Inc. (BOC)
National Board of Certification and Recertification for Nurse Anesthetists (NBCRNA)
National Board of Certification in Hearing Instrument Sciences (NBC-HIS)
National Healthcareer Association (NHA)
National Kitchen and Bath Association (NKBA)
National Board of Certification in Occupational Therapy (NBCOT)
National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM)
Certification Board for Diabetes Care and Education (CBDCE)
National Certification Corporation (NCC)
National Commission on Certification of Physician Assistants (NCCPA)
National Commission for Health Education Credentialing (NCHEC)
National Council on Family Relations (NCFR)
National Recreation and Park Association (NRPA)
National Restaurant Association (NRA)
National Roofing Contractors Association (NRCA)
National Society of Professional Engineers (NSPE)
Nephrology Nursing Certification Commission (NNCC)
Oncology Nursing Certification Corporation (ONCC)
Professional Association of Therapeutic Horsemanship International (PATH)
Pediatric Nursing Certification Board (PNCB)
Pharmacy Technician Certification Board (PTCB)
PSI Services (PSI)
Pearson Vue
QualityPro
School Nutrition Association (SNA)
Security Industry Association (SIA)
Society of Broadcast Engineers (SBE)
100. Specialty Pharmacy Certification Board (SPCB) c/o National Association of Specialty Pharmacy Certification Board
Spray Polyurethane Foam Alliance (SPFA)
Towing and Recovery Association of America, Inc. (TRA)