



PROFESSIONAL
CERTIFICATION
COALITION

April 12, 2023

Rep. Mark White
rep.mark.white@capitol.tn.gov

Re: H.B. 1149

Dear Representative White:

The Professional Certification Coalition (PCC) writes regarding H.B. 1149. We appreciate that the bill aims to advance the important goal of expanding opportunities for those with criminal conviction histories. We respectfully propose amendments to ensure protections for the public and certification organizations that rely on licensure decisions.

The PCC is a nonpartisan, 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 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 ensuring that individuals who have learned from past mistakes are not stigmatized in perpetuity. **But licensing agencies and certification organizations need access to the record of certain past criminal convictions to make critical decisions about conferring credentials that endorse the individual as trustworthy.**

Automatic expungement or “clean slate” bills, by their nature, operate to place blinders on employers, landlords, and others who interact with individuals with prior criminal convictions, preventing them from learning about past conduct that may influence employment, renting, or other decisions. As a matter of public policy, “clean slate” laws deem these restrictions on access to information to be justified by the societal value in promoting reentry into society by ex-offenders who might otherwise be stigmatized by their criminal record. **But licensing agencies and certification organizations fall in a different category than employers and landlords:** a license or professional certifications signals to the public that the licensee or credential holder meets the conduct codes and values needed for that occupation. Licensing boards play a critical role in ensuring that the public can safely engage the services of a licensed professional. Licensing boards should not be prevented from having access to information that bears on an applicant's fitness to perform a profession, especially where that information has been established beyond a reasonable doubt, with due process to the applicant. Before conferring that affirmative endorsement, licensing agencies should be able to consider directly relevant information. Private certification organizations also play an important role in conferring credentials on which the public relies and which conveys the certification organization's endorsement that the individual meets the competency, knowledge, and conduct standards required for the credential.

H.B. 1149 takes an aggressive stance towards expungement of criminal conviction records. The bill provides automatic expungement upon release from custody, before an ex-offender has reentered society and demonstrated any rehabilitation, unlike clean slate bills in other jurisdictions that expunge records

April 12, 2023

Page 2

only after a period of several years from completion of a sentence or the conviction date. Moreover, even apart from the timing of the automatic expungement, some nonviolent and non-sex-offender crimes merit a continuing disqualification from certain professions, such as if a licensed financial advisor has engaged in identity theft or embezzled from clients. Further, many misdemeanor convictions result from plea bargains, even though the underlying offense would constitute a felony or a misdemeanor that carries a longer maximum sentence. A misdemeanor conviction for which the sentence has been served may still be relevant to whether an applicant merits an affirmative endorsement as fit to perform an occupation.

To address these concerns, the PCC proposes that a new safe harbor provision be added that is narrowly tailored to provide access to criminal conviction records solely in connection with licensure or certification decisions on an ex-offender, and without treating the criminal record as broadly stigmatizing:

“Notwithstanding any other provision of law to the contrary, nothing in this chapter shall prevent a licensing authority or certification organization from accessing, or requiring an individual to disclose, the individual’s expunged misdemeanor and felony conviction records in connection with a decision on the licensing or certification status of the individual. A licensing agency or certification organization may use such information solely in connection with that decision and may take an action based on an expunged conviction only if the underlying conduct resulting in the prior conviction would, if committed by a current licensee or certificant, be the basis for disciplinary action by the licensing authority or certification organization.”

Consistent with this safe harbor, Section 3 of the bill should be amended such that new subsection (I)(4)(F) of Tennessee Code Annotated, Section 40-32-101 reads:

The clerk of the court maintaining records expunged pursuant to this subsection (I) shall keep the records confidential. These records are not public and can only be used to enhance a sentence if the petitioner is subsequently charged and convicted of another crime, **or as otherwise permitted under this chapter**. This confidential record is only accessible to the district attorney general, the defendant, the defendant's attorney, and the circuit or criminal court judge, **or as otherwise permitted under this chapter**.

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,



Craig Saperstein
Partner, Pillsbury Winthrop Shaw Pittman LLP
Legal Counsel to the PCC
Email: craig.saperstein@pillsburylaw.com

CC:

Rep. Bud Hulsey, *Chair*
House Committee on Criminal Justice
rep.bud.hulsey@capitol.tn.gov

Rep. John Gillespie, *Vice Chair*
House Committee on Criminal Justice
rep.john.gillespie@capitol.tn.gov

Rep. Clay Doggett, *Chair*
House Criminal Justice Subcommittee
rep.clay.doggett@capitol.tn.gov



AABC Commissioning Group
ABRET Neurodiagnostic
Credentialing & Accreditation
(ABRET)
ABSA International: the
Association for Biosafety and
Biosecurity (ABSA)
Academy for Certification of
Vision Rehabilitation &
Education Professionals
(ACVREP)
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 Foot and
Ankle Surgery (ABFAS)
American Board of Medical
Specialties (ABMS)
American Board of
Neuroscience Nursing (ABNN)
American Board of Nursing
Specialties (ABNS)
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)
Arcitura Education, Inc.
Association for Financial
Counseling & Planning
Education (AFCPE)
Association of Surgical
Technologists (AST)
Behavior Analyst Certification
Board (BACB)
Board of
Certification/Accreditation
(BOC)
Board of Certified Safety
Professionals (BCSP)
Board of Pharmacy Specialties
(BPS)
Building Commissioning
Certification Board (BCCB)
Certification Board for Diabetes
Care and Education (CBDCE)
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 Board)
Certified Fund Raising
Executive International (CFRE)
CertiProf, LLC

Chartered Financial Analyst
Institute (CFA Institute)
Commission for Case Manager
Certification (CCMC)
Commission on Nurse
Certification (CNC)
Community Association
Institute (CAI)
Computing Technology Industry
Association (CompTIA)
Construction Management
Association of America
(CMAA)
Council for Interior Design
Qualification (CIDQ)
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
Financial Planning Association
(FPA)
Healthcare Sterile Processing
Association (HSPA)
Hearth, Patio, & Barbecue
Education Foundation (HPBA)
Heuristic Solutions
Hospice and Palliative
Credentialing Center (HPCC)
Institute for Credentialing
Excellence (ICE)
Institute of Hazardous Materials
Management (IHMM)
Institute of Inspection Cleaning
and Restoration Certification
(IICRC)

International Coach Federation (ICF)

International Information System Security Certification Consortium (ISC²)

Investments & Wealth Institute (IWI)

Irrigation Association

IT Certification Council (ITCC)

Laborers' International Union of North America Training & Education Fund (LIUNA)

Medical-Surgical Nursing Certification Board (MSNCB)

National Association of Insurance and Financial Advisors (NAIFA)

National Association of Personal Financial Advisors (NAPFA)

National Athletic Trainers' Association Board of Certification, Inc. (NATA/BOC)

National Board of Certification and Recertification for Nurse Anesthetists (NBCRNA)

National Board of Certification in Hearing Instrument Sciences (NBC-HIS)

National Board of Certification in Occupational Therapy (NBCOT)

National Board of Surgical Technology and Surgical Assisting (NBSTSA)

National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM)

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 Kitchen and Bath Association (NKBA)

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)

Pediatric Nursing Certification Board (PNCB)

Pharmacy Technician Certification Board (PTCB)

Professional Association of Therapeutic Horsemanship International (PATH)

PSI Services

Pearson Vue

QualityPro

Rehabilitation Nursing Certification Board (RNCB)

School Nutrition Association (SNA)

SeaCrest Consulting

Security Industry Association (SIA)

Society of Broadcast Engineers (SBE)

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)

National Board of Public Health Examiners (NBPHE)