



PROFESSIONAL
CERTIFICATION
COALITION

February 26, 2024

Rep. A. Cory Maloy, *Chair*
House Committee on Business and Labor
corymaloy@le.utah.gov

Rep. Stephen L. Whyte, *Vice Chair*
House Committee on Business and Labor
swhyte@le.utah.gov

Re: HB 508

Dear Rep. Maloy and Rep. Whyte:

The Professional Certification Coalition (PCC)¹ writes regarding HB 508. In its current form, HB 508 would incentivize individuals to challenge occupational licensing regulations, inviting administrative burden and expensive litigation. HB 508 could have an adverse effect on the health, safety, and welfare of Utah citizens who trust the state to protect the public from low-quality or harmful services and could also compel the state to expend taxpayer dollars unnecessarily. **For these reasons, unless the bill is amended to remove Sections 13-1b-302(3) and 13-1b-401, the PCC must oppose HB 508.**

The PCC supports a careful review of licensure laws to ensure that unnecessary obstacles to practicing a profession are removed. However, HB 508 invites a burdensome petition process and costly litigation against government agencies by directly creating a private right of action for individuals to seek injunctions against licensure regulations that currently protect the public from unqualified practitioners. The PCC opposes these provisions of the bill, for several reasons. *First*, the bill permits a petitioner to bring an action in court based only on disagreement with action taken by the Office of Professional Licensure in response to a petition. The bill does not require that a petitioner have any basis for their disagreement.

Second, the Office of Professional Licensure faces a significant disadvantage in establishing that the challenged regulation is necessary to address a “present, recognizable, and significant harm to the health, safety, or financial welfare of the public,” and is the least burdensome regulation available. Because current regulations already protect the public from “present” harm at the hands of unqualified professionals, these regulations will be unable to meet this evidentiary standard. Accordingly, the standard would need to be changed to justify regulations based on a “*threat* of recognizable and significant harm” in order to avoid setting an impossible evidentiary

¹ The PCC is a nonprofit, nonpartisan 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.

standard for licensing authorities. Unless the bill is amended in this way, the public will lose the protections that the Utah legislature has adopted in its licensure laws.

Moreover, inviting costly litigation that the state would have to defend would waste limited state resources and taxpayer dollars. The threat and likelihood of litigation, and the cost burden of the resulting legal expenses, would create significant budgetary pressures on the state to eliminate occupational licensure wherever feasible, even when doing so would not be in the best interest of Utah citizens. The PCC respectfully suggests that the legislature and state agencies should instead take a leadership role in carefully considering whether any licensure requirements for specific occupations may be unduly restrictive, rather than enacting legislation that applies broadly to all occupations, spurring litigation battles for judges to resolve. Specifically, the PCC proposes the amendments attached in **Appendix A**, which include amendments that recognize the legitimacy of licensing requirements that are uniform and have been widely adopted nationwide, as for physicians, CPAs, professional engineers, and similar professions. The PCC's proposed amendments also include a provision that protects against this legislation being used as a tool to attack regulations that recognize private certification qualifications.

The PCC stands ready to work with lawmakers who seek to craft legislation that strikes a reasonable balance between the benefits of occupational licensing and the desire for free markets in employment. Unfortunately, in its current form, this legislation goes too far in enabling removal of protections for the public.

Thank you for your consideration of these issues. Please feel free to reach out to us using the contact information identified below.

Sincerely,



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Legal Counsel to the PCC
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cc: Rep. Ryan Wilcox
ryanwilcox@le.utah.gov

Appendix A

- **Remove Sections 13-1b-302(3) and 13-1b-401.**
- Revise the evidentiary standard in current law by amending proposed Section 13-1b-302(1)(a) to read: “whether the regulation of the occupation is necessary to address a **threat of or** present, recognizable, and significant harm to the health, safety, or financial welfare of the public;”
- Add a safe harbor provision: “**Regulatory requirements for an occupation shall be presumed to be necessary where the regulatory 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.**”
- Add another safe harbor provision: “**Nothing in this chapter shall require the Office 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.**”



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 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)

Beingcert

Board of
Certification/Accreditation
(BOC)

Board of Certified Safety
Professionals (BCSP)

Board of Pharmacy Specialties
(BPS)

Building Commissioning
Certification Board (BCCB)

Building Industry Consulting
Service International, Inc.
(BICSI)

Certification Board for Diabetes
Care and Education (CBDCE)

Certification Board for Music
Therapists (CBMT)

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)

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

Financial Planning Association
(FPA)

Healthcare Sterile Processing
Association (HSPA)

Hearth, Patio, & Barbecue
Education Foundation (HPBA)

Heuristic Solutions

Hospice and Palliative
Credentialing Center (HPCC)

Human Resource Certification
Institute, Inc. (HRCI)

Institute for Credentialing
Excellence (ICE)

Institute of Hazardous Materials
Management (IHMM)

International Coach Federation
(ICF)

International Information
System Security Certification
Consortium (ISC²)

Investments & Wealth Institute
(IWI)

Irrigation Association	National Recreation and Park Association (NRPA)
IT Certification Council (ITCC)	National Restaurant Association (NRA)
Laborers' International Union of North America Training & Education Fund (LIUNA)	National Roofing Contractors Association (NRCA)
Medical-Surgical Nursing Certification Board (MSNCB)	National Society of Professional Engineers (NSPE)
National Association of Insurance and Financial Advisors (NAIFA)	Nephrology Nursing Certification Commission (NNCC)
National Association of Personal Financial Advisors (NAPFA)	Oncology Nursing Certification Corporation (ONCC)
National Athletic Trainers' Association Board of Certification, Inc. (NATA/BOC)	Pearson Vue
National Board of Certification and Recertification for Nurse Anesthetists (NBCRNA)	Pediatric Nursing Certification Board (PNCB)
National Board of Certification in Hearing Instrument Sciences (NBC-HIS)	Pharmacy Technician Certification Board (PTCB)
National Board of Certification in Occupational Therapy (NBCOT)	Professional Association of Therapeutic Horsemanship International (PATH)
National Board of Public Health Examiners (NBPHE)	PSI Services
National Board of Surgical Technology and Surgical Assisting (NBSTSA)	QualityPro
National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM)	Rehabilitation Nursing Certification Board (RNCB)
National Certification Corporation (NCC)	School Nutrition Association (SNA)
National Commission for Health Education Credentialing (NCHEC)	SeaCrest Consulting
National Commission on Certification of Physician Assistants (NCCPA)	Security Industry Association (SIA)
National Council on Family Relations (NCFR)	Society of Broadcast Engineers (SBE)
National Kitchen and Bath Association (NKBA)	Specialty Pharmacy Certification Board (SPCB)
	Spray Polyurethane Foam Alliance (SPFA)
	Towing and Recovery Association of America, Inc. (TRA)