



March 4, 2024

Del. Chris Phillips, *Chair*
House Committee on Government
Organization
chris.phillips@wvhouse.gov

Del. Patrick McGeehan, *Vice Chair*
House Committee on Government
Organization
pat.mcgeehan@wvhouse.gov

Re: SB 493

Dear Del. Phillips and Del. McGeehan:

The Professional Certification Coalition (PCC)¹ writes regarding SB 493. We respectfully request amendments to ensure that licensing agencies can carry out their statutory responsibilities, and to protect the public and the certification organizations that rely on licensure decisions.

The PCC agrees that having a criminal record should not stigmatize or automatically disqualify an individual from an occupational license. Safeguarding applicants against automatic disqualification from a license, however, does not require blocking licensing boards from holding applicants to the same conduct standards that apply to a current licensee. **Issuing a license conveys the state's endorsement that an applicant is fit to practice the profession without jeopardizing public health, safety, and welfare. Licensing boards must be able to make decisions that hold applicants and current licensees to consistent disciplinary standards.**

A wide range of conduct that may result in criminal convictions can be relevant to decisions on whether to grant a license that places practitioners in a position of trust or gives them access to vulnerable individuals. Even nonviolent and non-sex-offender crimes can merit a continuing disqualification from certain professions: for example, if a home health nurse has engaged in identity theft or embezzlement, the licensing board should be permitted to consider whether that applicant would still pose a risk to clients, whether the misconduct resulted in a misdemeanor or felony conviction. A misdemeanor conviction may result from a plea bargain based on the same underlying conduct that could otherwise have resulted in a felony conviction. Whether conduct is relevant to determining if an applicant is fit to perform an occupation cannot be determined solely based on the classification of the offense.

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.

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Because of its broad sweep – applying to licensing agencies across all regulated professions – SB 493 as currently drafted would prevent licensing boards from taking action based on information that was determined with due process to the applicant and that is relevant to licensing decisions. To address these concerns, the PCC proposes the amendments in **Appendix A**.

Overly restricting licensing board decisions based on past conduct that appears in an applicant’s criminal conviction history has downstream effects on the information available to private certification organizations. Most private certification organizations rely on agency determinations to enforce their eligibility and ethics codes, as they are non-governmental entities without the resources or legal authority to conduct full-fledged investigations, issue subpoenas, and hold trial-type proceedings.

Both the public and private certification organizations rely on licensing authorities to make informed decisions. Licensing boards must have authority to deny licenses to individuals who have engaged in conduct that casts serious doubt on their fitness to practice the profession or that indicates that the individual poses an unacceptable risk to the people to whom the applicant would interact in the conduct of the profession.

Thank you for your consideration of these amendments. 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, FASAE, CAE
Executive Director
Institute for Credentialing Excellence
Phone: (202) 367-1165
Email: droosendaal@credentialingexcellence.org

cc:

Sen. Laura Chapman
laura.chapman@wvsenate.gov

Sen. Patricia Rucker
patricia.rucker@wvsenate.gov

Sen. Jason Barrett
jason.barrett@wvsenate.gov

Sen. Mike Woelfel
mike.woelfel@wvsenate.gov

APPENDIX A

- Amend Section 21-1-6(a) to add a definition of “directly and specifically relates”: “The commissioner may not disqualify an applicant from initial licensure, as required in this chapter, except for §21-5-5c of this code, because of a prior criminal conviction that remains unreversed unless that conviction is for a crime that directly and specifically relates to the duties and responsibilities of the activity requiring licensure such that granting the applicant licensure would pose an **unreasonable** ~~direct and substantial~~ risk to the public **safety, health, or welfare** because the applicant has not been rehabilitated. **A criminal conviction ‘directly and specifically relates’ to the activity requiring licensure if the circumstances of the offense and the nature of the profession or occupation would create an unreasonable risk to public safety, health, or welfare for an individual to practice the licensed profession, or if the underlying conduct resulting in the conviction would be grounds for disciplinary action against a current licensee.**”
- Add to the list of factors an agency or administrator must consider in Section 21-1-6(a)(4) a new factor: “**Whether the circumstances of the offense and the nature of the occupation would create an unreasonable risk to public safety, health, or welfare for an individual to practice the licensed profession or occupation.**”
- Add a safe harbor provision to Chapter 21: “**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.**”



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)