

# Protection of Professional Certification in State Occupational Licensing Reform Legislation

*December 11, 2019: Presentation to the Citizen Advocacy Center*



# History of Professional Certification Coalition

*Ad hoc* coalitions in early 2018  
in response to legislation  
defining and restricting use of  
the titles “certified” and  
“registered”

Government vs. Private  
Certification confusion

Evidentiary burdens and  
presumptions against state  
recognition of private  
certification in licensure laws

Recognized need for proactive  
and continuing coalition to  
respond to legislative and  
regulatory activity.

Coalition of non-governmental,  
private certification  
organizations and professional  
societies, to protect the public  
and other stakeholders who  
rely on those credentials.

# Professional Certification Coalition

- Started in July 2018 by ICE and ASAE, with support of Pillsbury law firm.
- Organizational members (100+)
  - private professional certification organizations
  - membership associations/professional societies
  - service providers
- *Fields:* health care, financial services, engineering, information technology, safety association management, human resources, etc.
- *Mission:* Serve as the voice of those who use or rely on professional certification by advocating for sound legislative initiatives and educating stakeholders about private professional certification.



# Professional Certification Coalition

- Meet monthly for strategy discussion
- Develop White Papers
- Monitor and analyze legislation
- Advocate and lobby as needed
- Stakeholder outreach and education

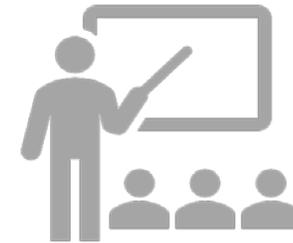


# Professional Certification: educating others



## Key elements:

- Voluntary – private organizations don't decide licensure requirements
- Usually granted by non-governmental (mostly nonprofit) organizations
- Reflects established standards of knowledge, skills and/or competencies in the field, as identified by subject matter experts in that field
- Credential issued only to individuals who can establish that they have the necessary qualifications



## Key Benefits

- Promotes competition and informed choice in selecting professional providers
- Enables the public to distinguish between those who have attained some qualifications from those who haven't
- Provides a way for people pursuing careers in specialized fields to identify the skills/knowledge base they need to master for a specific profession and to demonstrate that mastery

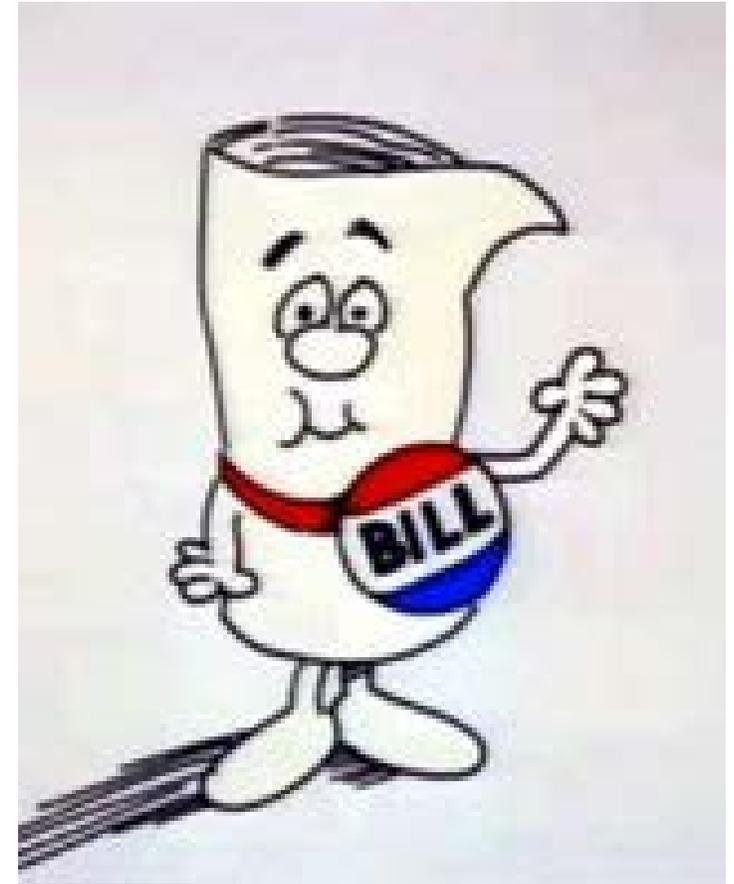
# Stakeholder Conversations





# Key Legislative Areas

- Five Categories:
  - Occupational Reform Packages
  - Government vs. Private Certification
  - Consumer Choice Acts
  - Right to Earn a Living Acts
  - Ex-Offender Re-entry Legislation



# Issues Affecting Professional Certification in Occupational Licensing Reform Efforts

- **Defining the terms “certified” and “registered”** as titles that only the government can issue and including provisions barring people from using those titles without state authorization, thereby precluding individuals from marketing themselves as having earned their credentials.
- Characterizing “certification” as a recognition issued only by the government or calling for state action to offer voluntary certification programs, which, contrary to free-market principles, would position **the government as a competitor** to private certification programs and unnecessarily spend taxpayer money.
- Ensuring that legislation aiming to provide **opportunities for ex-offenders** is **balanced against the need to protect the public**; avoiding unconstitutional intrusions into private certification organizations’ rights to define the standards for their credentials.

# PCC Principles for Occupational Licensing Reform

- Avoid restricting or intruding on the important role of voluntary professional certification programs.
- Private certification organizations have a **right to define and enforce their own standards** and to control the quality of their “products.”
- State legislators/regulators should conduct careful review before repealing any current requirements for professional certification in licensure statutes and regulations.
- Ensure **balanced standards** for determining whether an occupational licensing regime for a certain field should be renewed.
  - Particular focus on recognizing that the public expects licensure laws to set a higher bar than merely protecting them from gross negligence and injury

# Enforcement Function of State Regulators

- In some fields, state agencies have incorporated private certification programs' competency standards into licensure requirements.
- **Importance of competency standards** for protecting the public and the value of having those standards **defined by subject matter experts**.
- For these professions, **content** of standards is best established by the non-governmental professional certification program, but **enforcement** of standards is more effectively done by the licensing agency.
- Weakening licensure requirements and shifting the enforcement function currently performed by licensure boards onto private certification programs is contrary to the interests of the public and those programs.

# PCC Principles for Ex-Offender Reentry Legislation

- Private certification organizations and professional societies have a **Constitutional right to define and enforce ethics and conduct codes and eligibility standards** for their credential-holders and members.
- Private certifications convey to the public that the credential-holder meets all of the eligibility, qualification, competence, and conduct requirements of that organization's standards and policies.
- To **protect the public from unacceptable risks**, some criminal convictions permanently and automatically disqualify offenders from holding certain professional certifications, even if the conviction was for a non-violent charge or a number of years have elapsed since the conviction.

# PCC Principles for Ex-Offender Reentry Legislation (cont'd)

- Conduct requirements for conforming with the high standards established for private professional certifications often overlap with legal requirements that carry criminal penalties.
- **Private certification organizations lack both the legal authority and the resources** to engage in a full- fledged independent investigation and fact-finding hearings about violations of ethics and conduct rules.
- Restricting consideration of criminal convictions based on whether they are felonies or misdemeanors is unwarranted, because the underlying conduct may be the same.
- Where private certification is a condition of licensure, that requirement reflects the considered judgment of the legislature or the licensure agency that the **standards established by the recognized credentialing organization for the profession are necessary to protect the public.**

## Key Message

The worthy objectives of **occupational licensing reform** should be balanced with **protections to public health, safety and welfare** derived from professional certification and shouldn't create any obstacles to **informed consumer choice in seeking high quality professional services.**

# Federal Legislation

- Senator Booker Bill – Fair Chance Act II
  - Addresses various criminal justice reform measures eliminating criminal records from being considered when issuing licenses
  - Problematic for certification bodies that rely on licensure board decisions for Code of Ethics enforcement
- Senator Klobuchar Bill – IRS 529 Plans
  - Would allow for use of funds in an IRS 529 account to be used for specialized training and certification/licensure fees



## Standing behind professionals.

The Professional Certification Coalition will address efforts to enact legislation that would undermine the recognition of certifications developed or offered by private certification organizations.

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### PCC LEADERSHIP



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For more info on the PCC, please visit [profcertcoalition.org](http://profcertcoalition.org).

# QUESTIONS?

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