

Model Private Certification Bill

SECTION 1. DEFINITIONS

1. “Government” means the State of _____ and its political subdivisions.
2. “Lawful occupation” means a course of conduct, pursuit, or profession that includes the sale of goods or services that is not itself illegal irrespective of an occupational regulation.
3. “Occupational regulation” means a statute, ordinance, rule, or other requirement in law that requires an individual to possess certain personal qualifications to work in a lawful occupation.
4. “Qualifications” are criteria related to an individual’s personal background that may include completion of an approved educational program, satisfactory performance on an examination, work experience, criminal history, moral standing, completion of continuing education, a standard of ethical behavior, or other criteria as determined by a private certifying organization to qualify the individual to perform a service to an acceptable standard as determined by the private certifying organization.
5. “Private certification” is a nontransferable recognition by a private certifying organization that an individual meets qualifications determined by the private certifying organization.
6. “Private certifying organization” means a nongovernmental organization that allows any individual to apply for private certification regardless of the individual’s race, creed, color, ethnicity, national origin, religion, sex, sexual orientation, or marital status.
7. “Participating private certifying organization” means a private certifying organization that registers and otherwise meets the criteria specified in Section 2(C) of this act.
8. “Privately certified” is a designated title that an individual may use if the individual is certified by a participating private certifying organization.

SECTION 2. PRIVATE CERTIFYING ORGANIZATIONS; BOND

- A. A private certifying organization may voluntarily participate and register with the government under this section.
- B. To participate, a private certification organization shall register with the Secretary of State. It shall provide the Secretary with the organization’s name, address, officers, and the names of individuals initially privately certified. The Secretary may impose a registration fee to recoup its costs and promulgate rules and forms to facilitate registration.

C. A participating private certifying organization shall:

1. Publish on a publicly accessible website all of the following:

(a) The scope of practice for each lawful occupation that the organization certifies;

(b) The qualifications that an individual must possess to become certified by the private certifying organization;

(c) Other factors the private certifying organization uses to certify individuals, which may include consumer comments, rankings, and other consumer-initiated elements;

(d) The names, business addresses, and websites of all individuals privately certified by the organization; and

(e) The states in which the private certifying organization is registered.

2. Require qualifications that are related to the lawful occupation for which an individual is certified.

3. Verify an individual's qualifications before certification and periodically verify that the certified individual remains eligible for certification.

4. Require a privately certified individual to prominently display the private certification and make available materials about the qualifications and other factors required for the private certification on request.

5. Have at least fifty (50) privately certified individuals in active practice in the United States after one year of applying for registration with the Secretary.

D. A participating private certifying organization may require individuals it certifies to obtain and maintain a bond for liability that is related to the practice of the individual's privately certified lawful occupation.

E. A participating private certification organization may require a privately certified individual to pay initial and ongoing fees.

SECTION 3. RIGHT TO ENGAGE IN A LAWFUL OCCUPATION

A. An individual who is certified by a participating private certifying organization may engage in the lawful occupation for which that individual is privately certified notwithstanding any other occupational regulation enacted by the government.

B. The government shall not prohibit or impose a penalty, fine, or fee on an individual who is certified by a participating private certifying organization for engaging in a lawful occupation in compliance with this chapter.

SECTION 4. SIGN; VIOLATION; CLASSIFICATION

A. An individual who is certified by a participating private certifying organization and who engages in a lawful occupation for which the government has otherwise enacted an occupational regulation must prominently display a sign with lettering that is at least one inch in height stating that (1) the government licenses the service; (2) the individual is not licensed by the government, (3) the individual is privately certified by _____(the name of the private certifying organization), and (4) the contact information of the private certification organization.

B. An individual who is certified by a participating private certifying organization and who is not licensed, registered, or certified by the government shall not use the term “licensed,” “certified,” or “registered” to describe the individual’s credential or any words, titles, abbreviations, or letters that would induce a reasonably knowledgeable consumer of such services to believe the privately certified individual using them is occupationally regulated by the government.

C. An individual who is certified by a participating private certifying organization may use the term “privately certified” to describe the individual’s credentials or as part of a title or designation.

SECTION 5. FALSE CLAIM; VIOLATION; CLASSIFICATION

An individual who knowingly and falsely claims to be privately certified pursuant to this chapter is guilty of fraud and subject to penalties under the state’s deceptive trade practices act.

SECTION 6. ENFORCEMENT

A. The Secretary shall enforce this chapter and has the authority to terminate the government’s registration of the participating private certifying organization for failure to continue to meet the requirements in section 2(C).

B. The participating private certifying organization that continues to operate 90 days after failing to meet the requirements in section 2(C) is guilty of fraud and subject to a fine under the state’s deceptive trade practices act.

C. Except to the extent that this act requires a privately certified individual to possess qualifications established by the government to perform a lawful occupation, this chapter does not limit the government's authority to enact and enforce laws relating to:

1. A business license or permit, facility license, building permit or land use regulation; and
2. Public health, safety, and environmental regulations through the enforcement of regulations other than occupational licenses, including the sale and use of substances that endanger public health and safety if mishandled or improperly dispensed, including chemicals, explosives, and pharmaceuticals.

D. Nothing in this chapter shall be construed to:

1. Change the government's sole authority to require an individual to obtain and maintain a government-issued driver's license and related insurance for personal or commercial vehicle use;
2. Limit damages in a private civil action against an individual who is privately certified or who knowingly and falsely claims to be privately certified;
3. Require a private party or the government to do business with an individual who is not licensed, certified, or registered with the government;
4. Create a cause of action against a private party or the government;
5. Allow for private certification of occupations regulated by the federal government or required by federal law to be occupationally licensed by the government;
6. Require a private certification organization to participate and register with the government under this chapter;
7. Increase the authority of the government to regulate nonparticipating private certification organizations;
8. Require doctors and other medical professional to obtain operating room privileges or other credentials from the state, hospitals, or clinics to perform surgery or an operation or;
9. Reduce the authority of the state supreme court to regulate who may issue subpoenas, serve discovery, and litigate cases before state judges.