

# DRAFT Private Certification Act

## *Summary*

This Act establishes criteria by which a privately certified individual may engage in the lawful occupation for which that individual is privately certified. An individual may receive recognition from a private-certifying organization to perform a lawful occupation, and this private certification would be a legal substitute for fulfilling occupational regulations and licensing requirements established by the government.

## *Model Policy*

{Title, Enacting clause, etc.}

### **Section 1. {Definitions}**

- (A) “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.
- (B) “Occupational regulation” means a statute, ordinance, rule, or other requirement in law that an individual possess certain personal qualifications established by the government to work in a lawful occupation.
- (C) “Personal qualifications” are criteria related to an individual’s personal background including completion of an approved educational program, satisfactory performance on an examination, work experience, criminal history, moral standing, and completion of continuing education.
- (D) “Private certification” is a voluntary program in which a private-certifying organization grants nontransferable recognition to an individual to perform a lawful occupation within the scope of practice established by the private-certifying organization based on the individual possessing certain personal qualifications established by the private-certifying organization.
- (E) “Private-certifying organization” is a non-governmental organization that:
  - (1) allows any individual to apply for private certification regardless of gender, race, or ethnicity;
  - (2) publishes on a publicly accessible website the scope of practice for each lawful occupation the organization certifies;
  - (3) publishes on a publicly accessible website the personal qualifications that an individual must possess to become certified by the private-certifying organization including the nature of each personal qualification;

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(4) requires personal qualifications related to the lawful occupation for which the individual is certified beyond mere registration and/or payment of a fee.

(5) verifies the personal qualifications of individuals it certifies prior to certification and periodically verifies that certified individuals remain eligible for certification;

(6) requires a privately certified individual display prominently the private certification, and make available materials about the personal qualifications required for the private certification, upon request; and

(7) publishes on a publicly accessible website the names and business addresses of all individuals it has privately certified.

(F) “Privately certified” is a designated title an individual may use if the individual is certified by a private-certifying organization.

**Section 2. {Bonding requirement by private-certifying organization allowed}**

(A) As a condition to obtain certification, a private-certifying organization may require individuals it certifies to obtain and maintain a bond for liability related to the practice of the individual’s certified lawful occupation.

**Section 3. {Right of a privately certified individual to engage in a lawful occupation}**

(A) An individual who is certified by a private-certifying organization has a right to engage in the lawful occupation for which that individual is privately certified, regardless of any state-enacted occupational regulation including occupational licensing.

(B) Except as permitted by this Act, no state occupational licensing board, state agency or department, or subdivision of this state may impose any monetary assessment, penalty, fine, fee or impost on a privately certified individual for engaging in a lawful occupation in compliance with this Act.

**Section 4. {Obligations of a privately certified individual}**

(A) A privately certified individual who engages in a lawful occupation for which the government has enacted an occupational regulation must prominently display a sign with lettering at least one inch high stating the individual is not licensed or otherwise occupationally regulated by the government.

92 (B) A privately certified individual who uses the term “license” in any of its forms to  
93 describe the individual’s credential and is not otherwise licensed by a government  
94 agency shall be guilty of a felony and subject to a \$2,500 fine or a penalty as  
95 defined in statute for a specific licensed occupation for which the individual has  
96 falsely claimed a license.  
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98 **Section 5. {False claim of private certification}**  
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100 (A) Any individual who knowingly and falsely claims to be privately certified is  
101 guilty of a felony and subject to imprisonment for up to two years and a fine of up  
102 to an amount equal to the last 12 months of the individual’s revenue from the  
103 occupation or \$5,000, whichever is greater.  
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105 **Section 6. {Enforcement and liability}**  
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107 (A) It is the responsibility of the attorney general to enforce this law.  
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109 (B) Nothing in this act limits damages in a private civil action against a person who is  
110 privately-certified or who knowingly and falsely claims to be privately certified.  
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112 (C) Nothing in this act limits the government’s authority to enact and enforce  
113 commercial regulations including a business license, facility license, building  
114 permit and land-use regulation except to the extent those commercial regulations  
115 require a privately certified individual to possess personal qualifications  
116 established by the government to perform a lawful occupation.  
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118 **Section 7. {Exemptions}**  
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120 **Section 8. {Severability clause}**  
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122 **Section 9. {Repealer clause}**  
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124 **Section 10. {Effective date}**