

SB335 ENGROSSED



1 U4M7DG-2
2 By Senator Hatcher
3 RFD: Fiscal Responsibility and Economic Development
4 First Read: 18-May-23
5 2023 Regular Session



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A BILL
TO BE ENTITLED
AN ACT

Relating to the Alabama Board of Examiners in Counseling; to add a new Article 3 to Chapter 8A of Title 34, Code of Alabama 1975, to create and provide for the operation of an Alabama Licensed Counselor Wellness Committee and voluntary treatment program for impaired licensed professional counselors and associate licensed counselors.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. A new Article 3, commencing with Section 34-8A-80, is added to Chapter 8A, Title 34 of the Code of Alabama 1975, to read as follows:

§34-8A-80

For the purposes of this article, the following terms shall have the following meanings:

(1) IMPAIRED. An inability to practice counseling with reasonable skill and safety to clients by reason of illness, inebriation, excessive use of drugs, narcotics, alcohol, chemicals, or other substances or as a result of any physical or mental condition.

(2) LICENSEE. A licensed professional counselor or associate licensed counselor as defined in Section 34-8A-2.



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29 §34-8A-81

30 (a) The board shall promote the early identification,
31 intervention, treatment, and rehabilitation of licensees who
32 may be impaired.

33 (b) The board may contract with any nonprofit
34 corporation or medical professional association for the
35 purpose of creating, supporting, and maintaining the Alabama
36 Licensed Counselor Wellness Committee. The committee shall
37 consist of not less than three nor more than nine licensees.
38 Committee members shall be appointed by the board for terms of
39 three years and shall be eligible for reappointment. The
40 board, for just cause, may remove a committee member before
41 the expiration of his or her term.

42 (c) The board may expend any available funds as
43 necessary to cover the operational expenses of the committee
44 including, but not limited to, the actual cost of travel,
45 office overhead, personnel expenses, and compensation of
46 committee members and staff. Funds expended pursuant to this
47 subsection are not subject to competitive bid laws.

48 §34-8A-82

49 The Alabama Licensed Counselor Wellness Program is
50 created to develop, maintain, and make available treatment
51 programs for all licensees who voluntary seek medical
52 intervention, treatment, and rehabilitation for an impairment.
53 The program shall operate under the direction of the
54 committee.

55 §34-8A-83

56 The committee may perform all of the following



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57 functions and duties:

58 (1) Receive and evaluate reports of suspected
59 impairment from any source, including referrals from the
60 board.

61 (2) Intervene in the case of a verified impairment.

62 (3) Refer impaired licensees to appropriate treatment
63 programs.

64 (4) Monitor the treatment and rehabilitation of
65 impaired licensees.

66 (5) Provide post-treatment monitoring and aftercare
67 support for rehabilitated impaired licensees.

68 (6) Submit an annual statistical report to the board on
69 the activities of the committee in a form approved by the
70 board.

71 (7) Report to the board any licensee who, in the
72 opinion of the committee, satisfies all of the following:

73 a. Is unable to continue in the practice of counseling
74 with reasonable skill and safety to his or her clients.

75 b. Appears to be in need of intervention, treatment, or
76 rehabilitation.

77 c. Has failed or refused to participate in treatment
78 programs or rehabilitation as recommended by the committee.

79 (8) Develop outreach and awareness programs that
80 promote and publicize the services available through the
81 wellness program.

82 (9) Upon request of the board, do any of the following:

83 a. Develop standards for the evaluation of treatment
84 facilities to be used by licensees referred by the committee



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85 for treatment.

86 b. Evaluate and recommend to the board the approval of
87 treatment and rehabilitation facilities or programs, or both,
88 to be used by licensees referred by the committee for
89 treatment.

90 (10) Other functions and duties mutually agreed on by
91 the committee and the board.

92 §34-8A-84

93 (a) The wellness program is a confidential non-punitive
94 alternative to disciplinary sanction for an impaired licensee
95 who voluntarily seeks medical intervention, evaluation,
96 treatment, counseling, or rehabilitation for his or her
97 impairment.

98 (b) (1) A licensee who does all of the following may not
99 be reported by the committee to the board for violating
100 Section 34-8A-24:

101 a. Voluntarily commits to the committee for treatment
102 of an impairment.

103 b. Successfully completes the recommended course of
104 treatment and therapy.

105 c. Abides by the terms and conditions of any
106 recommended aftercare agreements for the period of time
107 specified.

108 d. Continues the private practice of counseling with
109 reasonable skill and safety and free from impairment.

110 (2) A licensee who completes treatment or
111 rehabilitation, or both, and aftercare as recommended by the
112 committee shall truthfully respond to all inquiries by



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113 employers, state or federal licensing or regulatory agencies,
114 credentialing bodies, courts, malpractice insurance carriers,
115 and specialty boards concerning his or her treatment,
116 rehabilitation, and aftercare, and the committee shall
117 advocate on behalf of and provide support for the licensee
118 before those entities.

119 (3) A licensee who knows or has reason to know that
120 another licensee is impaired, shall report that information to
121 the committee. A report to the committee shall be deemed to be
122 a report to the board for the purpose of mandatory reporting
123 requirements.

124 (4) If the board has reasonable cause to believe that a
125 licensee is impaired, the board may order an evaluation of the
126 licensee by an appropriate medical professional to determine
127 if an impairment exists. The committee shall report its
128 findings to the board.

129 (5) If the board, as a result of an investigation or an
130 evaluation, finds that a licensee may be impaired, the board
131 may administratively report that finding to the committee and
132 request that the licensee be evaluated by an appropriate
133 medical professional. The board shall provide information to
134 the committee as necessary to perform an intervention and
135 evaluation. The committee shall report its findings and
136 recommendations to the board and provide follow-up reports
137 upon request of the board.

138 (6) The committee shall report to the board the name of
139 any licensee who the committee believes may be impaired and
140 who also satisfies any of the following:



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141 a. Has failed or refused to follow the recommendations
142 of the committee for evaluation, treatment, or rehabilitation.

143 b. Has discontinued an evaluation, treatment, or
144 rehabilitation against medical advice.

145 c. Has failed to abide by the terms and conditions of
146 an aftercare agreement with the committee.

147 d. Whose continuation in practice, in the opinion of
148 the committee, constitutes a threat to the safety of his or
149 her clients or to the public.

150 (7) Any report to the board made by the committee
151 pursuant to this section may include reports, evaluations,
152 treatment records, medical records, documents, or other
153 information relevant to the licensee, unless specifically
154 prohibited by federal law, and notwithstanding any state law
155 that provides the reports, evaluations, treatment records,
156 medical records, documents, or other information are
157 confidential or privileged. All reports, evaluations,
158 treatment records, medical records, documents, or other
159 information received by the board in a committee report
160 submitted pursuant to this subsection is privileged and
161 confidential and shall not be a public record nor available
162 for court subpoena or for discovery proceedings, unless the
163 impaired licensee's impairment was the conduct at issue in a
164 civil or criminal action and the court determines through an
165 in camera review that the evidence of the licensee's
166 impairment is substantially more probative than prejudicial.
167 Such information may be used by the board in the course of its
168 investigations and may be introduced as evidence in



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169 administrative hearings conducted by the board. Records
170 otherwise available from original sources may not be construed
171 as immune from discovery or use in any civil proceeding merely
172 because the records were presented during a proceeding of the
173 committee.

174 (8) A licensee may be disciplined or sanctioned by the
175 board with a voluntary or involuntary restriction on his or
176 her license to practice counseling, which requires the
177 licensee to enter into and comply with an aftercare agreement
178 proposed by the committee. The committee shall report to the
179 board any violation or deviation by the licensee of the terms
180 and conditions of his or her aftercare agreement.

181 §34-8A-85

182 (a) All information, interviews, reports, statements,
183 memorandum, or other documents furnished to or produced by the
184 committee and any findings, conclusions, interventions,
185 treatment, or rehabilitation, and related actions of the
186 committee are privileged and confidential and not subject to
187 subpoena or discovery, unless the impaired licensee's
188 impairment was the conduct at issue in a civil or criminal
189 action and the court determines through an in camera review
190 that the evidence of the licensee's impairment is
191 substantially more probative than prejudicial.

192 (b) All records and proceedings of the committee are
193 confidential and may only be used by the committee and the
194 members of the committee for the specific purposes of the
195 committee.

196 (c) The committee may only disclose wellness,



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197 treatment, or disciplinary information relating to an impaired
198 licensee in the following circumstances:

199 (1) When essential to further the intervention,
200 treatment, counseling, or rehabilitation needs of the
201 licensee, and then, only to those individuals or entities with
202 a need to know.

203 (2) When the release is authorized in writing by the
204 licensee.

205 (3) When the committee is required to make a report to
206 the board.

207 (4) When ordered by a court after an in camera review
208 that the evidence of an impaired licensee's impairment was the
209 conduct at issue in a civil or criminal action and the
210 evidence is substantially more probative than prejudicial.

211 §34-8A-86

212 Any licensee appointed to serve as a member of the
213 committee and any auxiliary personnel, consultants, attorneys,
214 or other volunteers or employees of the committee taking any
215 action authorized by this article, engaging in the performance
216 of any functions or duties on behalf of the committee, or
217 participating in any administrative or judicial proceeding
218 resulting therefrom, in the performance and operation thereof,
219 shall be immune from any liability, civil or criminal, that
220 might otherwise be incurred or imposed while acting within the
221 scope of his or her duties as a committee member. Any
222 nonprofit corporation or medical professional association or
223 state or county medical association that contracts with or
224 receives funds from the board for the creation, support, and



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225 operation of the committee, in so doing, shall be immune from
226 any liability, civil or criminal, that might otherwise be
227 incurred or imposed while acting within the scope of his or
228 her duties as a committee member.

229 Section 2. This act shall become effective on the first
230 day of the third month following its passage and approval by
231 the Governor, or its otherwise becoming law.



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234 Senate

235 Read for the first time and referred18-May-23
236 to the Senate committee on Fiscal
237 Responsibility and Economic
238 Development
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240 Read for the second time and placed24-May-23
241 on the calendar:
242 1 amendment
243
244 Read for the third time and passed25-May-23
245 as amended
246 Yeas 30
247 Nays 0
248 Abstains 0
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Patrick Harris,
Secretary.

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