

1 HB596  
2 113903-2  
3 By Representative Payne  
4 RFD: Boards and Commissions  
5 First Read: 18-FEB-10

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8 SYNOPSIS: Under existing law, certain records  
9 contained in licensee complaint and investigation  
10 files of the Board of Examiners in Counseling are  
11 intended to be confidential and not available for  
12 court subpoena or for discovery in civil  
13 proceedings and other certain records are not  
14 intended to be confidential.

15 This bill would eliminate an inconsistency  
16 regarding the confidentiality of licensee complaint  
17 and investigation files.

18  
19 A BILL  
20 TO BE ENTITLED  
21 AN ACT

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23 To amend Section 34-8A-16, Code of Alabama 1975, as  
24 amended by Act 2009-587, 2009 Regular Session, relating to the  
25 Board of Examiners in Counseling, to correct an inconsistency  
26 in the law regarding the confidentiality of records of  
27 complaint and investigation files.

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

2 Section 1. Section 34-8A-16, Code of Alabama 1975,  
3 as amended by Act 2009-587, 2009 Regular Session, is amended  
4 to read as follows:

5 "§34-8A-16.

6 "(a) The board by a majority of the board members  
7 present and voting is authorized to withhold, deny, revoke, or  
8 suspend, any license or certificate issued or applied for in  
9 accordance with this chapter or otherwise discipline a  
10 licensed professional counselor or associate licensed  
11 counselor upon proof by proper hearing that the applicant,  
12 licensed professional counselor, or associate licensed  
13 counselor:

14 "(1) Has been convicted, within or without the  
15 jurisdiction of this state, of a felony, or any offense  
16 involving moral turpitude, the record of conviction being  
17 conclusive evidence thereof.

18 "(2) Has violated the current code of ethics adopted  
19 by the board.

20 "(3) Is using any narcotic or any alcoholic beverage  
21 to an extent or in a manner dangerous to any other person or  
22 the public, or to an extent that it impairs his or her ability  
23 to perform the work of a licensed professional counselor or  
24 associate licensed counselor with safety to the public.

25 "(4) Has impersonated another person holding a  
26 professional counselor license or associate licensed counselor

1 license or allowed another person to use his or her license or  
2 certificate.

3 "(5) Has used fraud or deception in applying for a  
4 license or certificate or in taking an examination provided  
5 for in this chapter.

6 "(6) Has allowed his or her name or license or  
7 certificate issued under this chapter to be used in connection  
8 with any person or persons who perform counseling services in  
9 private practice outside the area of their training,  
10 experience, or competence.

11 "(7) Is legally adjudicated mentally incompetent,  
12 the record of the adjudication being conclusive evidence  
13 thereof.

14 "(8) Has willfully or negligently violated any of  
15 the provisions of this chapter or any of the rules and  
16 regulations adopted thereunder.

17 "(9) Has been practicing as a counselor without a  
18 license.

19 "(b) (1) Notice of denial, revocation, suspension, or  
20 disciplinary action is required to be sent by registered mail  
21 or personal service setting forth the particular reasons for  
22 the proposed action and fixing a date not less than 30 days  
23 nor more than 60 days from the date of the mailing or service,  
24 at which time the applicant, licentiate, or associate shall be  
25 given an opportunity for a prompt and fair hearing. The  
26 written notice shall be sent to the last known address of the  
27 person, but the nonappearance of the person shall not prevent

1 the hearing. The hearing shall be conducted by the board by  
2 means of sworn, recorded testimony. Parties have the right to  
3 be represented by counsel and to conduct cross-examination of  
4 witnesses.

5 "(2) On the basis of any hearing or upon default of  
6 applicant, licentiate, or associate, the board shall make a  
7 determination specifying its findings of fact and conclusions  
8 of law. A copy of the determination shall be sent by  
9 registered mail or served personally upon the applicant,  
10 licentiate, or associate. The decision of the board denying,  
11 revoking, or suspending the license or certificate shall  
12 become final 30 days after so mailed or served unless within  
13 that period the applicant, licentiate, or associate appeals  
14 the decision to the courts of this state in the same manner  
15 and subject to the same powers and conditions as now provided  
16 by law in regard to rulings, orders, and findings of other  
17 quasi-judicial bodies in Alabama, where not otherwise  
18 specifically provided. No appeal, while pending appropriate  
19 court action, shall supersede the denial, revocation, or  
20 suspension. All proceedings and evidence, together with  
21 exhibits presented at the hearings before the board in the  
22 event of appeal, are admissible in evidence in the court.

23 "(3) Every order and judgment of the board shall  
24 take effect immediately on its promulgation unless the board  
25 in the order or judgment fixes a probationary period for  
26 applicant, licentiate, or associate. The order and judgment  
27 shall continue in effect unless upon appeal the courts by

1 proper order or decree terminate it earlier. The board may  
2 make public its order and judgments in the manner and form as  
3 it deems proper.

4 "(4) The board may suspend the license of a licensed  
5 professional counselor or of an associate licensed counselor  
6 for a period of one year. At the end of this period, the board  
7 shall reevaluate the suspension and may recommend to the chair  
8 the extension of the suspension not to exceed one additional  
9 year, the reinstatement, or revocation of the license. A  
10 person whose license has been revoked under this section may  
11 apply for reinstatement after a period of not less than three  
12 years from the date the denial or revocation is legally  
13 effective. The board may, upon favorable action by a majority  
14 of the board members present and voting, recommend  
15 reinstatement.

16 "(c) In addition to any other disciplinary action,  
17 the board may levy and collect administrative fines for  
18 violations of this chapter or the rules or regulations of the  
19 board in an amount not to exceed one thousand dollars (\$1,000)  
20 for each violation. In addition to fines, the board may assess  
21 all legal costs for the preparation and execution of a  
22 disciplinary action against a licensee.

23 "(d) The board may issue written reprimands to  
24 licensees as an alternative to a formal hearing before the  
25 board. The board shall determine the procedures for a written  
26 reprimand that shall authorize the investigative committee and  
27 members of the board to deliberate and issue written

1 reprimands. No less than two members of the board, along with  
2 the investigative committee, shall participate in  
3 deliberations leading to a written reprimand. All other  
4 members of the board shall remain available for possible  
5 appeal. The written reprimand shall not be published by the  
6 board, unless required by law, though a copy of the reprimand  
7 will be entered into the permanent file of the licensee for a  
8 period of time determined by the investigative committee and  
9 the members of the board issuing the reprimand. Licensees  
10 wishing to appeal the written reprimand may demand a formal  
11 hearing before the board members who were not involved in the  
12 original reprimand decision. The result of such an appeal may  
13 lead to withdrawal of the reprimand, retention of the  
14 reprimand, or imposition of additional penalties on the  
15 licensee by the board.

16 "(e) (1) Except as provided in ~~subdivision~~  
17 subdivisions (2), (3), and (4), all records, reports,  
18 documents, photographs, and information contained in a  
19 complaint and investigation files shall be confidential, shall  
20 not be a public record, and shall not be available for court  
21 subpoena or for discovery in civil proceedings.

22 "(2) The board shall release all of the following  
23 information to the public regarding complaint files and  
24 disciplinary action proceedings:

25 "a. A settlement agreement adopted and ratified by  
26 the board that closes a complaint file and represents the  
27 board's final decision in the disciplinary action proceedings.

1            "b. The formal charges or orders to show cause  
2 against an associate licensed counselor or a licensed  
3 professional counselor filed by the board's executive director  
4 and any amendments thereto.

5            "c. The board's final decision in disciplinary  
6 action proceedings entered after a formal disciplinary action  
7 hearing.

8            "(3) Notwithstanding any other provisions of this  
9 subsection, all complaint and investigation files shall be  
10 available to the Department of Examiners of Public Accounts  
11 for the purposes of any audit, examination, or review  
12 authorized by law.

13            "(4) A party to any civil or administrative  
14 proceeding may discover documents, reports, or other tangible  
15 items under Act 2009-587 upon a showing that the party seeking  
16 discovery has need of the materials in the preparation of the  
17 party's case and that party is unable without undue hardship  
18 and expense to obtain the substantial equivalent of the  
19 documents, reports, or other tangible items by other means."

20            Section 2. This act shall become effective  
21 immediately following its passage and approval by the  
22 Governor, or its otherwise becoming law.