

SB335 INTRODUCED



1 U4M7DG-1
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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SYNOPSIS:

Under existing law, the Alabama Board of Examiners in Counseling is responsible for licensing and regulating licensed professional counselors and associate licensed counselors.

This bill would create and provide for the operation of an Alabama Licensed Counselor Wellness Committee and voluntary wellness program for impaired licensees of the board.

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:



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29 §34-8A-80

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

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

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

39 §34-8A-81

40 (a) The board shall promote the early identification,
41 intervention, treatment, and rehabilitation of licensees who
42 may be impaired.

43 (b) The board may contract with any nonprofit
44 corporation or medical professional association for the
45 purpose of creating, supporting, and maintaining the Alabama
46 Licensed Counselor Wellness Committee. The committee shall
47 consist of not less than three nor more than nine licensees.
48 Committee members shall be appointed by the board for terms of
49 three years and shall be eligible for reappointment. The
50 board, for just cause, may remove a committee member before
51 the expiration of his or her term.

52 (c) The board may expend any available funds as
53 necessary to cover the operational expenses of the committee
54 including, but not limited to, the actual cost of travel,
55 office overhead, personnel expenses, and compensation of
56 committee members and staff. Funds expended pursuant to this



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57 subsection are not subject to competitive bid laws.

58 §34-8A-82

59 The Alabama Licensed Counselor Wellness Program is
60 created to develop, maintain, and make available treatment
61 programs for all licensees who voluntary seek medical
62 intervention, treatment, and rehabilitation for an impairment.
63 The program shall operate under the direction of the
64 committee.

65 §34-8A-83

66 The committee may perform all of the following
67 functions and duties:

68 (1) Receive and evaluate reports of suspected
69 impairment from any source, including referrals from the
70 board.

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

72 (3) Refer impaired licensees to appropriate treatment
73 programs.

74 (4) Monitor the treatment and rehabilitation of
75 impaired licensees.

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

78 (6) Submit an annual statistical report to the board on
79 the activities of the committee in a form approved by the
80 board.

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

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



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85 b. Appears to be in need of intervention, treatment, or
86 rehabilitation.

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

89 (8) Develop outreach and awareness programs that
90 promote and publicize the services available through the
91 wellness program.

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

93 a. Develop standards for the evaluation of treatment
94 facilities to be used by licensees referred by the committee
95 for treatment.

96 b. Evaluate and recommend to the board the approval of
97 treatment and rehabilitation facilities or programs, or both,
98 to be used by licensees referred by the committee for
99 treatment.

100 (10) Other functions and duties mutually agreed on by
101 the committee and the board.

102 §34-8A-84

103 (a) The wellness program is a confidential non-punitive
104 alternative to disciplinary sanction for an impaired licensee
105 who voluntarily seeks medical intervention, evaluation,
106 treatment, counseling, or rehabilitation for his or her
107 impairment.

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

111 a. Voluntarily commits to the committee for treatment
112 of an impairment.



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113 b. Successfully completes the recommended course of
114 treatment and therapy.

115 c. Abides by the terms and conditions of any
116 recommended aftercare agreements for the period of time
117 specified.

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

120 (2) A licensee who completes treatment or
121 rehabilitation, or both, and aftercare as recommended by the
122 committee shall truthfully respond to all inquiries by
123 employers, state or federal licensing or regulatory agencies,
124 credentialing bodies, courts, malpractice insurance carriers,
125 and specialty boards concerning his or her treatment,
126 rehabilitation, and aftercare, and the committee shall
127 advocate on behalf of and provide support for the licensee
128 before those entities.

129 (3) A licensee who knows or has reason to know that
130 another licensee is impaired, shall report that information to
131 the committee. A report to the committee shall be deemed to be
132 a report to the board for the purpose of mandatory reporting
133 requirements.

134 (4) If the board has reasonable cause to believe that a
135 licensee is impaired, the board may order an evaluation of the
136 licensee by an appropriate medical professional to determine
137 if an impairment exists. The committee shall report its
138 findings to the board.

139 (5) If the board, as a result of an investigation or an
140 evaluation, finds that a licensee may be impaired, the board



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141 may administratively report that finding to the committee and
142 request that the licensee be evaluated by an appropriate
143 medical professional. The board shall provide information to
144 the committee as necessary to perform an intervention and
145 evaluation. The committee shall report its findings and
146 recommendations to the board and provide follow-up reports
147 upon request of the board.

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

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

153 b. Has discontinued an evaluation, treatment, or
154 rehabilitation against medical advice.

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

157 d. Whose continuation in practice, in the opinion of
158 the committee, constitutes a threat to the safety of his or
159 her clients or to the public.

160 (7) Any report to the board made by the committee
161 pursuant to this section may include reports, evaluations,
162 treatment records, medical records, documents, or other
163 information relevant to the licensee, unless specifically
164 prohibited by federal law, and notwithstanding any state law
165 that provides the reports, evaluations, treatment records,
166 medical records, documents, or other information are
167 confidential or privileged. All reports, evaluations,
168 treatment records, medical records, documents, or other



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169 information received by the board in a committee report
170 submitted pursuant to this subsection is privileged and
171 confidential and shall not be a public record nor available
172 for court subpoena or for discovery proceedings, and may be
173 used by the board in the course of its investigations and may
174 be introduced as evidence in administrative hearings conducted
175 by the board.

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

183 §34-8A-85

184 (a) All information, interviews, reports, statements,
185 memorandum, or other documents furnished to or produced by the
186 committee and any findings, conclusions, interventions,
187 treatment, or rehabilitation, and related actions of the
188 committee are privileged and confidential and not subject to
189 subpoena or discovery.

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

194 (c) The committee may only disclose wellness,
195 treatment, or disciplinary information relating to an impaired
196 licensee in the following circumstances:



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

201 (2) When the release is authorized in writing by the
202 licensee.

203 (3) When the committee is required to make a report to
204 the board.

205 §34-8A-86

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

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