

HOUSE BILL 56

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3lr0765

(PRE-FILED)

By: **Delegates Smigiel and Dumais**

Requested: November 13, 2012

Introduced and read first time: January 9, 2013

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Professional Counselors and Therapists – Qualifications, Surrender of**
3 **Licenses and Certificates, and Disciplinary Actions**

4 FOR the purpose of requiring applicants who intend to practice as a clinical alcohol
5 and drug counselor, clinical marriage and family therapist, clinical professional
6 art therapist, clinical professional counselor, certified professional counselor, or
7 certified professional counselor–marriage and family therapist to submit to a
8 certain criminal history records check; requiring certain applicants to submit
9 certain fingerprints and certain fees to the Criminal Justice Information System
10 Central Repository of the Department of Public Safety and Correctional
11 Services under certain circumstances; requiring the Central Repository to
12 forward certain information to the State Board of Professional Counselors and
13 Therapists and to certain applicants; providing that certain information is
14 confidential and may be used only for certain purposes; authorizing the subject
15 of a certain criminal history records check to contest the contents of a certain
16 statement; altering certain application requirements; requiring the Board to
17 consider certain facts, circumstances, and evidence in determining whether to
18 grant or renew certain licenses or certificates; prohibiting the Board from
19 issuing or renewing certain licenses or certificates if certain criminal history
20 record information has not been received; requiring the Board to report certain
21 admissions of guilt to local law enforcement agencies under certain
22 circumstances; altering certain requirements for the renewal of certain licenses
23 and certificates; authorizing the Board to deny certain applicants a license or
24 certificate, to place certain license and certificate holders on probation, to
25 reprimand certain license and certificate holders, or to suspend or revoke
26 certain licenses or certificates of certain license or certificate holders for failure
27 to submit to a certain criminal history records check or for engaging in certain
28 behavior with certain patients during certain periods of time; and generally
29 relating to the regulation of professional counselors and therapists.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY adding to
2 Article – Health Occupations
3 Section 17–301.1, 17–301.2, 17–401.1, and 17–503(d)
4 Annotated Code of Maryland
5 (2009 Replacement Volume and 2012 Supplement)

6 BY repealing and reenacting, with amendments,
7 Article – Health Occupations
8 Section 17–501, 17–504(d) and (e), 17–508(c), and 17–509
9 Annotated Code of Maryland
10 (2009 Replacement Volume and 2012 Supplement)

11 BY repealing and reenacting, without amendments,
12 Article – Health Occupations
13 Section 17–508(b)
14 Annotated Code of Maryland
15 (2009 Replacement Volume and 2012 Supplement)

16 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
17 MARYLAND, That the Laws of Maryland read as follows:

18 **Article – Health Occupations**

19 **17–301.1.**

20 IN ADDITION TO OTHER QUALIFICATIONS REQUIRED UNDER THIS
21 SUBTITLE TO PRACTICE AS A CLINICAL ALCOHOL AND DRUG COUNSELOR,
22 CLINICAL MARRIAGE AND FAMILY THERAPIST, CLINICAL PROFESSIONAL ART
23 THERAPIST, OR CLINICAL PROFESSIONAL COUNSELOR IN THE STATE, AN
24 APPLICANT SHALL SUBMIT TO A CRIMINAL HISTORY RECORDS CHECK IN
25 ACCORDANCE WITH § 17–301.2 OF THIS SUBTITLE.

26 **17–301.2.**

27 (A) IN THIS SECTION, “CENTRAL REPOSITORY” MEANS THE CRIMINAL
28 JUSTICE INFORMATION SYSTEM CENTRAL REPOSITORY OF THE DEPARTMENT
29 OF PUBLIC SAFETY AND CORRECTIONAL SERVICES.

30 (B) AS PART OF AN APPLICATION TO THE CENTRAL REPOSITORY FOR A
31 STATE AND NATIONAL CRIMINAL HISTORY RECORDS CHECK, AN APPLICANT
32 SHALL SUBMIT TO THE CENTRAL REPOSITORY:

33 (1) TWO COMPLETE SETS OF LEGIBLE FINGERPRINTS TAKEN ON
34 FORMS APPROVED BY THE DIRECTOR OF THE CENTRAL REPOSITORY AND THE
35 DIRECTOR OF THE FEDERAL BUREAU OF INVESTIGATION;

1 **(2) THE FEE AUTHORIZED UNDER § 10-221(B)(7) OF THE**
2 **CRIMINAL PROCEDURE ARTICLE FOR ACCESS TO STATE CRIMINAL HISTORY**
3 **RECORDS; AND**

4 **(3) THE PROCESSING FEE REQUIRED BY THE FEDERAL BUREAU**
5 **OF INVESTIGATION FOR A NATIONAL CRIMINAL HISTORY RECORDS CHECK.**

6 **(C) IN ACCORDANCE WITH §§ 10-201 THROUGH 10-228 OF THE**
7 **CRIMINAL PROCEDURE ARTICLE, THE CENTRAL REPOSITORY SHALL FORWARD**
8 **TO THE BOARD AND THE APPLICANT THE CRIMINAL HISTORY RECORD**
9 **INFORMATION OF THE APPLICANT.**

10 **(D) IF AN APPLICANT HAS MADE THREE OR MORE UNSUCCESSFUL**
11 **ATTEMPTS AT SECURING LEGIBLE FINGERPRINTS, THE BOARD MAY ACCEPT AN**
12 **ALTERNATE METHOD OF A CRIMINAL HISTORY RECORDS CHECK AS ALLOWED BY**
13 **THE DIRECTOR OF THE CENTRAL REPOSITORY AND THE DIRECTOR OF THE**
14 **FEDERAL BUREAU OF INVESTIGATION.**

15 **(E) INFORMATION OBTAINED FROM THE CENTRAL REPOSITORY UNDER**
16 **THIS SECTION:**

17 **(1) SHALL BE CONFIDENTIAL;**

18 **(2) MAY NOT BE REDISSEMINATED; AND**

19 **(3) SHALL BE USED ONLY FOR THE LICENSING OR**
20 **CERTIFICATION PURPOSE AUTHORIZED BY THIS TITLE.**

21 **(F) THE SUBJECT OF A CRIMINAL HISTORY RECORDS CHECK UNDER**
22 **THIS SECTION MAY CONTEST THE CONTENTS OF THE PRINTED STATEMENT**
23 **ISSUED BY THE CENTRAL REPOSITORY AS PROVIDED IN § 10-223 OF THE**
24 **CRIMINAL PROCEDURE ARTICLE.**

25 **17-401.1.**

26 **IN ADDITION TO OTHER QUALIFICATIONS REQUIRED UNDER THIS**
27 **SUBTITLE TO PRACTICE AS A CERTIFIED PROFESSIONAL COUNSELOR OR**
28 **CERTIFIED PROFESSIONAL COUNSELOR-MARRIAGE AND FAMILY THERAPIST, AN**
29 **APPLICANT SHALL SUBMIT TO A CRIMINAL HISTORY RECORDS CHECK IN**
30 **ACCORDANCE WITH § 17-301.2 OF THIS TITLE.**

31 **17-501.**

1 To apply for a license or certificate, an applicant shall:

2 (1) Submit an application on the form that the Board requires; [and]

3 (2) Pay to the Board the application fee set by the Board; AND

4 (3) **IF REQUIRED UNDER § 17-301.1 OR § 17-401.1 OF THIS TITLE,**
5 **SUBMIT TO A CRIMINAL HISTORY RECORDS CHECK IN ACCORDANCE WITH §**
6 **17-301.2 OF THIS TITLE.**

7 17-503.

8 **(D) (1) ON RECEIPT OF THE CRIMINAL HISTORY RECORD**
9 **INFORMATION OF AN APPLICANT FOR LICENSURE OR CERTIFICATION**
10 **FORWARDED TO THE BOARD IN ACCORDANCE WITH § 17-301.2 OF THIS TITLE,**
11 **IN DETERMINING WHETHER TO GRANT A LICENSE OR CERTIFICATE, THE BOARD**
12 **SHALL CONSIDER:**

13 **(I) THE AGE AT WHICH THE CRIME WAS COMMITTED;**

14 **(II) THE CIRCUMSTANCES SURROUNDING THE CRIME;**

15 **(III) THE LENGTH OF TIME THAT HAS PASSED SINCE THE**
16 **CRIME;**

17 **(IV) SUBSEQUENT WORK HISTORY;**

18 **(V) EMPLOYMENT AND CHARACTER REFERENCES; AND**

19 **(VI) OTHER EVIDENCE THAT DEMONSTRATES WHETHER THE**
20 **APPLICANT POSES A THREAT TO THE PUBLIC HEALTH OR SAFETY.**

21 **(2) THE BOARD MAY NOT ISSUE A LICENSE OR CERTIFICATE IF**
22 **THE CRIMINAL HISTORY RECORD INFORMATION REQUIRED UNDER § 17-301.2**
23 **OF THIS TITLE HAS NOT BEEN RECEIVED.**

24 17-504.

25 (d) Before the license or certificate expires, the licensee or certificate holder
26 periodically may renew it for an additional 2-year term, if the licensee or certificate
27 holder:

28 (1) Otherwise is entitled to be licensed or certified;

1 (2) Pays to the Board the renewal fee set by the Board;

2 (3) Submits to the Board a renewal application on the form that the
3 Board requires; [and]

4 (4) Submits satisfactory evidence of compliance with any continuing
5 education requirements as required by the Board for license or certificate renewal;
6 **AND**

7 **(5) FOR A LICENSEE WHO WAS LICENSED UNDER SUBTITLE 3 OF**
8 **THIS TITLE, OR A CERTIFICATE HOLDER WHO WAS CERTIFIED UNDER SUBTITLE**
9 **4 OF THIS TITLE, BEFORE OCTOBER 1, 2013, SUBMITS TO A CRIMINAL HISTORY**
10 **RECORDS CHECK IN ACCORDANCE WITH § 17-301.2 OF THIS TITLE.**

11 (e) (1) The Board shall renew the license or certificate of and issue a
12 renewal license or certificate to each licensee or certificate holder who meets the
13 requirements of this section.

14 (2) The Board shall include the term of the renewal on each renewal
15 license or certificate that the Board issues.

16 **(3) (I) ON RECEIPT OF THE CRIMINAL HISTORY RECORD**
17 **INFORMATION OF AN APPLICANT FOR LICENSE OR CERTIFICATE RENEWAL**
18 **FORWARDED TO THE BOARD IN ACCORDANCE WITH § 17-301.2 OF THIS TITLE,**
19 **IN DETERMINING WHETHER TO RENEW A LICENSE OR CERTIFICATE, THE BOARD**
20 **SHALL CONSIDER:**

21 1. **THE AGE AT WHICH THE CRIME WAS COMMITTED;**

22 2. **THE CIRCUMSTANCES SURROUNDING THE CRIME;**

23 3. **THE LENGTH OF TIME THAT HAS PASSED SINCE**
24 **THE CRIME;**

25 4. **SUBSEQUENT WORK HISTORY;**

26 5. **EMPLOYMENT AND CHARACTER REFERENCES;**
27 **AND**

28 6. **OTHER EVIDENCE THAT DEMONSTRATES**
29 **WHETHER THE APPLICANT POSES A THREAT TO THE PUBLIC HEALTH OR**
30 **SAFETY.**

1 **(II) THE BOARD MAY NOT RENEW A LICENSE OR**
2 **CERTIFICATE IF THE CRIMINAL HISTORY RECORD INFORMATION REQUIRED**
3 **UNDER § 17-301.2 OF THIS TITLE HAS NOT BEEN RECEIVED.**

4 17-508.

5 (b) Unless the Board agrees to accept the surrender of a license or certificate,
6 while the licensee or certificate holder is under investigation or while charges are
7 pending against the licensee or certificate holder, a regulated counselor or therapist
8 may not:

9 (1) Surrender the license or certificate; or

10 (2) Allow the license or certificate to lapse by operation of law.

11 (c) **(1) [The] SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE**
12 **Board may set conditions on its agreement with the regulated counselor or therapist**
13 **under investigation or against whom charges are pending to accept surrender of the**
14 **license or certificate.**

15 **(2) IF THE REGULATED COUNSELOR OR THERAPIST UNDER**
16 **INVESTIGATION OR AGAINST WHOM CHARGES ARE PENDING PROVIDES THE**
17 **BOARD WITH AN ADMISSION OF GUILT ACCOMPANYING THE SURRENDER OF**
18 **THE LICENSE OR CERTIFICATE, THE BOARD SHALL REPORT THE ADMISSION OF**
19 **GUILT TO THE LOCAL LAW ENFORCEMENT AGENCY.**

20 17-509.

21 Subject to the hearing provisions of § 17-511 of this subtitle, the Board, on the
22 affirmative vote of a majority of its members then serving, may deny a license or
23 certificate to any applicant, place any licensee or certificate holder on probation,
24 reprimand any licensee or certificate holder, or suspend or revoke a license of any
25 licensee or a certificate of any certificate holder if the applicant, licensee, or certificate
26 holder:

27 (1) Fraudulently or deceptively obtains or attempts to obtain a license
28 or certificate for the applicant, licensee, or certificate holder or for another;

29 (2) Habitually is intoxicated;

30 (3) Provides professional services:

31 (i) While under the influence of alcohol; or

- 1 (ii) While using any narcotic or controlled dangerous substance,
2 as defined in § 5–101 of the Criminal Law Article, or other drug that is in excess of
3 therapeutic amounts or without valid medical indication;
- 4 (4) Aids or abets an unauthorized individual in practicing clinical or
5 nonclinical counseling or therapy or representing to be an alcohol and drug counselor,
6 marriage and family therapist, professional counselor, or professional art therapist;
- 7 (5) Promotes the sale of drugs, devices, appliances, or goods to a
8 patient so as to exploit the patient for financial gain;
- 9 (6) Willfully makes or files a false report or record in the practice of
10 counseling or therapy;
- 11 (7) Makes a willful misrepresentation while counseling or providing
12 therapy;
- 13 (8) Violates the code of ethics adopted by the Board;
- 14 (9) Knowingly violates any provision of this title;
- 15 (10) Is convicted of or pleads guilty or nolo contendere to a felony or a
16 crime involving moral turpitude, whether or not any appeal or other proceeding is
17 pending to have the conviction or plea set aside;
- 18 (11) Is professionally, physically, or mentally incompetent;
- 19 (12) Submits a false statement to collect a fee;
- 20 (13) Violates any rule or regulation adopted by the Board;
- 21 (14) Is disciplined by a licensing or disciplinary authority of any other
22 state or country or convicted or disciplined by a court of any state or country for an act
23 that would be grounds for disciplinary action under the Board’s disciplinary statutes;
- 24 (15) Refuses, withholds from, denies, or discriminates against an
25 individual with regard to the provision of professional services for which the licensee is
26 licensed and qualified or the certificate holder is certified and qualified to render
27 because the individual is HIV positive;
- 28 (16) Commits an act of immoral or unprofessional conduct in the
29 practice of clinical or nonclinical counseling or therapy;
- 30 (17) Knowingly fails to report suspected child abuse in violation of §
31 5–704 of the Family Law Article; [or]

1 (18) Fails to cooperate with a lawful investigation conducted by the
2 Board;

3 **(19) IF REQUIRED UNDER § 17-301.1 OR § 17-401.1 OF THIS TITLE,**
4 **FAILS TO SUBMIT TO A CRIMINAL HISTORY RECORDS CHECK IN ACCORDANCE**
5 **WITH § 17-301.2 OF THIS TITLE; OR**

6 **(20) ENGAGES IN SEXUAL BEHAVIOR WITH A PATIENT DURING THE**
7 **PROFESSIONAL RELATIONSHIP OR DURING THE 2-YEAR PERIOD FOLLOWING**
8 **TERMINATION OF THE PROFESSIONAL RELATIONSHIP.**

9 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
10 October 1, 2013.