

HOUSE BILL 56

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3lr0765

(PRE-FILED)

By: ~~Delegates Smigiel and Dumais~~, Dumais, Bromwell, Costa, Cullison, Elliott, Frank, Hammen, Kach, A. Kelly, Kipke, McDonough, Morhaim, Murphy, Nathan-Pulliam, Oaks, Pena-Melnyk, Ready, and Reznik

Requested: November 13, 2012

Introduced and read first time: January 9, 2013

Assigned to: Health and Government Operations

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 21, 2013

CHAPTER _____

1 AN ACT concerning

2 ~~Professional Counselors and Therapists – Qualifications, Surrender of~~
3 ~~Licenses and Certificates, and Disciplinary Actions~~
4 State Board of Professional Counselors and Therapists – Criminal History
5 Records Checks

6 FOR the purpose of requiring applicants ~~who intend to practice as a clinical alcohol~~
7 ~~and drug counselor, clinical marriage and family therapist, clinical professional~~
8 ~~art therapist, clinical professional counselor, certified professional counselor, or~~
9 ~~certified professional counselor – marriage and family therapist~~ for a license or
10 certificate from the State Board of Professional Counselors and Therapists to
11 submit to a certain criminal history records check; requiring certain applicants
12 to submit certain fingerprints and certain fees to the Criminal Justice
13 Information System Central Repository of the Department of Public Safety and
14 Correctional Services under certain circumstances; requiring the Central
15 Repository to forward certain information to the ~~State Board of Professional~~
16 ~~Counselors and Therapists~~ Board and to certain applicants; providing that
17 certain information is confidential and may be used only for certain purposes;
18 authorizing the subject of a certain criminal history records check to contest the
19 contents of a certain statement; altering certain application requirements;
20 requiring the Board to consider certain facts, circumstances, and evidence in
21 determining whether to ~~grant~~ issue or renew certain licenses or certificates;
22 requiring the Board, beginning with a certain renewal cycle, to begin a process

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 of requiring criminal history records checks on selected renewal applicants and
 2 former licensees who file for reinstatement after failing to renew a license after
 3 a certain period of time; requiring an additional criminal history records check
 4 to be performed with a certain frequency; prohibiting the Board from issuing or
 5 renewing certain licenses or certificates if certain criminal history record
 6 information has not been received; ~~requiring the Board to report certain~~
 7 ~~admissions of guilt to local law enforcement agencies under certain~~
 8 ~~circumstances; altering certain requirements for the renewal of certain licenses~~
 9 and certificates; authorizing the Board to deny certain applicants a license or
 10 certificate, to place certain license and certificate holders on probation, to
 11 reprimand certain license and certificate holders, or to suspend or revoke
 12 certain licenses or certificates of certain license or certificate holders for failure
 13 to submit to a certain criminal history records check ~~or for engaging in certain~~
 14 ~~behavior with certain patients during certain periods of time; and generally~~
 15 relating to the ~~regulation of professional counselors and therapists~~ criminal
 16 history records checks for individuals regulated by the State Board of
 17 Professional Counselors and Therapists.

18 BY adding to
 19 Article – Health Occupations
 20 Section ~~17-301.1, 17-301.2, 17-401.1, and 17-503(d)~~ 17-501.1, 17-503(d), and
 21 17-504(f)
 22 Annotated Code of Maryland
 23 (2009 Replacement Volume and 2012 Supplement)

24 BY repealing and reenacting, with amendments,
 25 Article – Health Occupations
 26 Section ~~17-501, 17-504(d) and (e), 17-508(e), and 17-509~~
 27 Annotated Code of Maryland
 28 (2009 Replacement Volume and 2012 Supplement)

29 ~~BY repealing and reenacting, without amendments,~~
 30 ~~Article – Health Occupations~~
 31 ~~Section 17-508(b)~~
 32 ~~Annotated Code of Maryland~~
 33 ~~(2009 Replacement Volume and 2012 Supplement)~~

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

36 **Article – Health Occupations**

37 ~~17-301.1.~~

38 ~~IN ADDITION TO OTHER QUALIFICATIONS REQUIRED UNDER THIS~~
 39 ~~SUBTITLE TO PRACTICE AS A CLINICAL ALCOHOL AND DRUG COUNSELOR,~~
 40 ~~CLINICAL MARRIAGE AND FAMILY THERAPIST, CLINICAL PROFESSIONAL ART~~

~~1 THERAPIST, OR CLINICAL PROFESSIONAL COUNSELOR IN THE STATE, AN
2 APPLICANT SHALL SUBMIT TO A CRIMINAL HISTORY RECORDS CHECK IN
3 ACCORDANCE WITH § 17-301.2 OF THIS SUBTITLE.~~

~~4 17-301.2.~~

~~5 (A) IN THIS SECTION, "CENTRAL REPOSITORY" MEANS THE CRIMINAL
6 JUSTICE INFORMATION SYSTEM CENTRAL REPOSITORY OF THE DEPARTMENT
7 OF PUBLIC SAFETY AND CORRECTIONAL SERVICES.~~

~~8 (B) AS PART OF AN APPLICATION TO THE CENTRAL REPOSITORY FOR A
9 STATE AND NATIONAL CRIMINAL HISTORY RECORDS CHECK, AN APPLICANT
10 SHALL SUBMIT TO THE CENTRAL REPOSITORY:~~

~~11 (1) TWO COMPLETE SETS OF LEGIBLE FINGERPRINTS TAKEN ON
12 FORMS APPROVED BY THE DIRECTOR OF THE CENTRAL REPOSITORY AND THE
13 DIRECTOR OF THE FEDERAL BUREAU OF INVESTIGATION;~~

~~14 (2) THE FEE AUTHORIZED UNDER § 10-221(B)(7) OF THE
15 CRIMINAL PROCEDURE ARTICLE FOR ACCESS TO STATE CRIMINAL HISTORY
16 RECORDS; AND~~

~~17 (3) THE PROCESSING FEE REQUIRED BY THE FEDERAL BUREAU
18 OF INVESTIGATION FOR A NATIONAL CRIMINAL HISTORY RECORDS CHECK.~~

~~19 (C) IN ACCORDANCE WITH §§ 10-201 THROUGH 10-228 OF THE
20 CRIMINAL PROCEDURE ARTICLE, THE CENTRAL REPOSITORY SHALL FORWARD
21 TO THE BOARD AND THE APPLICANT THE CRIMINAL HISTORY RECORD
22 INFORMATION OF THE APPLICANT.~~

~~23 (D) IF AN APPLICANT HAS MADE THREE OR MORE UNSUCCESSFUL
24 ATTEMPTS AT SECURING LEGIBLE FINGERPRINTS, THE BOARD MAY ACCEPT AN
25 ALTERNATE METHOD OF A CRIMINAL HISTORY RECORDS CHECK AS ALLOWED BY
26 THE DIRECTOR OF THE CENTRAL REPOSITORY AND THE DIRECTOR OF THE
27 FEDERAL BUREAU OF INVESTIGATION.~~

~~28 (E) INFORMATION OBTAINED FROM THE CENTRAL REPOSITORY UNDER
29 THIS SECTION:~~

~~30 (1) SHALL BE CONFIDENTIAL;~~

~~31 (2) MAY NOT BE REDISSEMINATED; AND~~

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

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

~~17 401.1.~~

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

17-501.

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

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

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

~~(3) IF REQUIRED UNDER § 17 301.1 OR § 17 401.1 OF THIS TITLE, SUBMIT SUBMIT TO A CRIMINAL HISTORY RECORDS CHECK IN ACCORDANCE WITH § 17 301.2 OF THIS TITLE § 17-501.1 OF THIS SUBTITLE.~~

17-501.1.

(A) IN THIS SECTION, "CENTRAL REPOSITORY" MEANS THE CRIMINAL JUSTICE INFORMATION SYSTEM CENTRAL REPOSITORY OF THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES.

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

(1) A COMPLETE SET OF LEGIBLE FINGERPRINTS TAKEN ON FORMS APPROVED BY THE DIRECTOR OF THE CENTRAL REPOSITORY AND THE 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 17-503.

26 **(D) (1) ON RECEIPT OF THE CRIMINAL HISTORY RECORD**
27 **INFORMATION OF AN APPLICANT FOR LICENSURE OR CERTIFICATION**
28 **FORWARDED TO THE BOARD IN ACCORDANCE WITH ~~§ 17-301.2 OF THIS TITLE~~ §**
29 **17-501.1 OF THIS SUBTITLE, IN DETERMINING WHETHER TO GRANT A LICENSE**
30 **OR CERTIFICATE, THE BOARD SHALL CONSIDER:**

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

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

1 (III) THE LENGTH OF TIME THAT HAS PASSED SINCE THE
2 CRIME;

3 (IV) SUBSEQUENT WORK HISTORY;

4 (V) EMPLOYMENT AND CHARACTER REFERENCES; AND

5 (VI) OTHER EVIDENCE THAT DEMONSTRATES WHETHER THE
6 APPLICANT POSES A THREAT TO THE PUBLIC HEALTH OR SAFETY.

7 (2) THE BOARD MAY NOT ISSUE A LICENSE OR CERTIFICATE IF
8 THE CRIMINAL HISTORY RECORD INFORMATION REQUIRED UNDER ~~§ 17-301.2~~
9 ~~OF THIS TITLE~~ § 17-501.1 OF THIS SUBTITLE HAS NOT BEEN RECEIVED.

10 17-504.

11 ~~(d) Before the license or certificate expires, the licensee or certificate holder~~
12 ~~periodically may renew it for an additional 2-year term, if the licensee or certificate~~
13 ~~holder:~~

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

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

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

18 ~~(4) Submits satisfactory evidence of compliance with any continuing~~
19 ~~education requirements as required by the Board for license or certificate renewal;~~
20 ~~AND~~

21 ~~(5) FOR A LICENSEE WHO WAS LICENSED UNDER SUBTITLE 3 OF~~
22 ~~THIS TITLE, OR A CERTIFICATE HOLDER WHO WAS CERTIFIED UNDER SUBTITLE~~
23 ~~4 OF THIS TITLE, BEFORE OCTOBER 1, 2013, SUBMITS TO A CRIMINAL HISTORY~~
24 ~~RECORDS CHECK IN ACCORDANCE WITH § 17-301.2 OF THIS TITLE.~~

25 ~~(e) (1) The Board shall renew the license or certificate of and issue a~~
26 ~~renewal license or certificate to each licensee or certificate holder who meets the~~
27 ~~requirements of this section.~~

28 ~~(2) The Board shall include the term of the renewal on each renewal~~
29 ~~license or certificate that the Board issues.~~

1 **(F) (1) (i) BEGINNING WITH THE RENEWAL CYCLE IN 2015, THE**
 2 **BOARD SHALL BEGIN A PROCESS OF REQUIRING CRIMINAL HISTORY RECORDS**
 3 **CHECKS IN ACCORDANCE WITH § 17-501.1 OF THIS SUBTITLE ON:**

4 **1. SELECTED RENEWAL APPLICANTS AS**
 5 **DETERMINED BY REGULATIONS ADOPTED BY THE BOARD; AND**

6 **2. EACH FORMER LICENSEE WHO FILES FOR**
 7 **REINSTATEMENT UNDER § 17-505 OF THIS SUBTITLE AFTER FAILING TO RENEW**
 8 **THE LICENSE FOR A PERIOD OF 1 YEAR OR MORE.**

9 **(ii) AN ADDITIONAL CRIMINAL HISTORY RECORDS CHECK**
 10 **SHALL BE PERFORMED EVERY 6 YEARS AFTER THE INITIAL RECORDS CHECK**
 11 **REQUIRED UNDER SUBPARAGRAPH (i) OF THIS PARAGRAPH.**

12 **(~~3~~) (2) (i) ON RECEIPT OF THE CRIMINAL HISTORY RECORD**
 13 **INFORMATION OF AN APPLICANT FOR LICENSE OR CERTIFICATE RENEWAL**
 14 **FORWARDED TO THE BOARD IN ACCORDANCE WITH ~~§ 17-301.2 OF THIS TITLE~~ §**
 15 **17-501.1 OF THIS SUBTITLE, IN DETERMINING WHETHER TO RENEW A LICENSE**
 16 **OR CERTIFICATE, THE BOARD SHALL CONSIDER:**

17 1. THE AGE AT WHICH THE CRIME WAS COMMITTED;
 18 2. THE CIRCUMSTANCES SURROUNDING THE CRIME;
 19 3. THE LENGTH OF TIME THAT HAS PASSED SINCE
 20 THE CRIME;

21 4. SUBSEQUENT WORK HISTORY;
 22 5. EMPLOYMENT AND CHARACTER REFERENCES;

23 AND

24 6. OTHER EVIDENCE THAT DEMONSTRATES
 25 WHETHER THE APPLICANT POSES A THREAT TO THE PUBLIC HEALTH OR
 26 SAFETY.

27 **(ii) THE BOARD MAY NOT RENEW A LICENSE OR**
 28 **CERTIFICATE IF THE CRIMINAL HISTORY RECORD INFORMATION REQUIRED**
 29 **UNDER ~~§ 17-301.2 OF THIS TITLE~~ § 17-501.1 OF THIS SUBTITLE HAS NOT BEEN**
 30 **RECEIVED.**

31 ~~17-508.~~

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

~~(1) Surrender the license or certificate; or~~

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

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

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

17-509.

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

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

(2) Habitually is intoxicated;

(3) Provides professional services:

(i) While under the influence of alcohol; or

(ii) While using any narcotic or controlled dangerous substance, as defined in § 5-101 of the Criminal Law Article, or other drug that is in excess of therapeutic amounts or without valid medical indication;

(4) Aids or abets an unauthorized individual in practicing clinical or nonclinical counseling or therapy or representing to be an alcohol and drug counselor, marriage and family therapist, professional counselor, or professional art therapist;

1 (5) Promotes the sale of drugs, devices, appliances, or goods to a
2 patient so as to exploit the patient for financial gain;

3 (6) Willfully makes or files a false report or record in the practice of
4 counseling or therapy;

5 (7) Makes a willful misrepresentation while counseling or providing
6 therapy;

7 (8) Violates the code of ethics adopted by the Board;

8 (9) Knowingly violates any provision of this title;

9 (10) Is convicted of or pleads guilty or nolo contendere to a felony or a
10 crime involving moral turpitude, whether or not any appeal or other proceeding is
11 pending to have the conviction or plea set aside;

12 (11) Is professionally, physically, or mentally incompetent;

13 (12) Submits a false statement to collect a fee;

14 (13) Violates any rule or regulation adopted by the Board;

15 (14) Is disciplined by a licensing or disciplinary authority of any other
16 state or country or convicted or disciplined by a court of any state or country for an act
17 that would be grounds for disciplinary action under the Board's disciplinary statutes;

18 (15) Refuses, withholds from, denies, or discriminates against an
19 individual with regard to the provision of professional services for which the licensee is
20 licensed and qualified or the certificate holder is certified and qualified to render
21 because the individual is HIV positive;

22 (16) Commits an act of immoral or unprofessional conduct in the
23 practice of clinical or nonclinical counseling or therapy;

24 (17) Knowingly fails to report suspected child abuse in violation of §
25 5-704 of the Family Law Article; [or]

26 (18) Fails to cooperate with a lawful investigation conducted by the
27 Board; OR

28 (19) ~~IF REQUIRED UNDER § 17-301.1 OR § 17-401.1 OF THIS TITLE,~~
29 ~~FAILS~~ FAILS TO SUBMIT TO A CRIMINAL HISTORY RECORDS CHECK IN
30 ACCORDANCE WITH ~~§ 17-301.2 OF THIS TITLE~~ § 17-501.1 OF THIS SUBTITLE; OR

1 ~~(20) ENGAGES IN SEXUAL BEHAVIOR WITH A PATIENT DURING THE~~
 2 ~~PROFESSIONAL RELATIONSHIP OR DURING THE 2 YEAR PERIOD FOLLOWING~~
 3 ~~TERMINATION OF THE PROFESSIONAL RELATIONSHIP.~~

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

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.