

**SB335 ENROLLED**



1 U4M7DG-3  
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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1 Enrolled, An Act,

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

10 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

11 Section 1. A new Article 3, commencing with Section  
12 34-8A-80, is added to Chapter 8A, Title 34 of the Code of  
13 Alabama 1975, to read as follows:

14 §34-8A-80

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

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

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

24 §34-8A-81

25 (a) The board shall promote the early identification,  
26 intervention, treatment, and rehabilitation of licensees who  
27 may be impaired.

28 (b) The board may contract with any nonprofit



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29 corporation or medical professional association for the  
30 purpose of creating, supporting, and maintaining the Alabama  
31 Licensed Counselor Wellness Committee. The committee shall  
32 consist of not less than three nor more than nine licensees.  
33 Committee members shall be appointed by the board for terms of  
34 three years and shall be eligible for reappointment. The  
35 board, for just cause, may remove a committee member before  
36 the expiration of his or her term.

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

43 §34-8A-82

44 The Alabama Licensed Counselor Wellness Program is  
45 created to develop, maintain, and make available treatment  
46 programs for all licensees who voluntary seek medical  
47 intervention, treatment, and rehabilitation for an impairment.  
48 The program shall operate under the direction of the  
49 committee.

50 §34-8A-83

51 The committee may perform all of the following  
52 functions and duties:

53 (1) Receive and evaluate reports of suspected  
54 impairment from any source, including referrals from the  
55 board.

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



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57 (3) Refer impaired licensees to appropriate treatment  
58 programs.

59 (4) Monitor the treatment and rehabilitation of  
60 impaired licensees.

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

63 (6) Submit an annual statistical report to the board on  
64 the activities of the committee in a form approved by the  
65 board.

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

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

70 b. Appears to be in need of intervention, treatment, or  
71 rehabilitation.

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

74 (8) Develop outreach and awareness programs that  
75 promote and publicize the services available through the  
76 wellness program.

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

78 a. Develop standards for the evaluation of treatment  
79 facilities to be used by licensees referred by the committee  
80 for treatment.

81 b. Evaluate and recommend to the board the approval of  
82 treatment and rehabilitation facilities or programs, or both,  
83 to be used by licensees referred by the committee for  
84 treatment.



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85 (10) Other functions and duties mutually agreed on by  
86 the committee and the board.

87 §34-8A-84

88 (a) The wellness program is a confidential non-punitive  
89 alternative to disciplinary sanction for an impaired licensee  
90 who voluntarily seeks medical intervention, evaluation,  
91 treatment, counseling, or rehabilitation for his or her  
92 impairment.

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

96 a. Voluntarily commits to the committee for treatment  
97 of an impairment.

98 b. Successfully completes the recommended course of  
99 treatment and therapy.

100 c. Abides by the terms and conditions of any  
101 recommended aftercare agreements for the period of time  
102 specified.

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

105 (2) A licensee who completes treatment or  
106 rehabilitation, or both, and aftercare as recommended by the  
107 committee shall truthfully respond to all inquiries by  
108 employers, state or federal licensing or regulatory agencies,  
109 credentialing bodies, courts, malpractice insurance carriers,  
110 and specialty boards concerning his or her treatment,  
111 rehabilitation, and aftercare, and the committee shall  
112 advocate on behalf of and provide support for the licensee



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113 before those entities.

114 (3) A licensee who knows or has reason to know that  
115 another licensee is impaired, shall report that information to  
116 the committee. A report to the committee shall be deemed to be  
117 a report to the board for the purpose of mandatory reporting  
118 requirements.

119 (4) If the board has reasonable cause to believe that a  
120 licensee is impaired, the board may order an evaluation of the  
121 licensee by an appropriate medical professional to determine  
122 if an impairment exists. The committee shall report its  
123 findings to the board.

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

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

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

138 b. Has discontinued an evaluation, treatment, or  
139 rehabilitation against medical advice.

140 c. Has failed to abide by the terms and conditions of



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141 an aftercare agreement with the committee.

142 d. Whose continuation in practice, in the opinion of  
143 the committee, constitutes a threat to the safety of his or  
144 her clients or to the public.

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



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

176 §34-8A-85

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

187 (b) All records and proceedings of the committee are  
188 confidential and may only be used by the committee and the  
189 members of the committee for the specific purposes of the  
190 committee.

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

194 (1) When essential to further the intervention,  
195 treatment, counseling, or rehabilitation needs of the  
196 licensee, and then, only to those individuals or entities with





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197 a need to know.

198 (2) When the release is authorized in writing by the  
199 licensee.

200 (3) When the committee is required to make a report to  
201 the board.

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

206 §34-8A-86

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

224 Section 2. This act shall become effective on the first



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225 day of the third month following its passage and approval by  
226 the Governor, or its otherwise becoming law.



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President and Presiding Officer of the Senate

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Speaker of the House of Representatives

SB335

Senate 01-Jun-23

I hereby certify that the within Act originated in and passed the Senate, as amended.

Patrick Harris,  
Secretary.

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House of Representatives

Passed: 01-Jun-23

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By: Senator Hatcher