3/19/18 3:21 P.M.

Chapter No. 390
18/HR26/R1549
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HOUSE BILL NO. 708

Originated in House _____ Clerk

HOUSE BILL NO. 708

AN ACT RELATING TO THE REGULATION OF LICENSED PROFESSIONAL COUNSELORS (LPC); TO AMEND SECTIONS 73-30-1 AND 73-30-3, MISSISSIPPI CODE OF 1972, TO EXTEND THE AUTHORITY OF THE STATE BOARD OF EXAMINERS FOR LICENSED PROFESSIONAL COUNSELORS TO THE USE OF THE TITLE "PROVISIONAL LICENSED PROFESSIONAL COUNSELOR"; TO AMEND SECTION 73-30-5, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE TERM OF OFFICE OF BOARD MEMBERS; TO AMEND SECTION 73-30-9, MISSISSIPPI CODE OF 1972, TO PRESCRIBE QUALIFICATIONS FOR LICENSURE AS A PROVISIONAL LICENSED PROFESSIONAL COUNSELOR AND AS A LICENSED PROFESSIONAL COUNSELOR; TO PRESCRIBE FEES AND TO REQUIRE FINGERPRINT CRIMINAL HISTORY RECORDS BACKGROUND CHECKS FOR LICENSEES; TO AMEND SECTION 73-30-11, MISSISSIPPI CODE OF 1972, TO PROVIDE VENUE FOR AN APPEAL OF DISCIPLINARY ACTION BY THE BOARD; TO AMEND SECTION 73-30-21, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE BOARD TO ASSESS INVESTIGATION AND PROSECUTION COSTS AGAINST ANY LICENSEE; TO AMEND SECTION 73-30-25, MISSISSIPPI CODE OF 1972, TO DELETE CERTAIN COUNSELORS FROM THE SCOPE OF PRACTICE EXEMPTION FROM REGULATION CATEGORIES; TO AMEND SECTION 73-30-29, MISSISSIPPI CODE OF 1972, TO REMOVE THE JULY 1, 2020 REPEAL DATE; TO AMEND SECTIONS 73-30-7, 73-30-17 AND 73-30-19, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PRECEDING SECTIONS; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Section 73-30-1, Mississippi Code of 1972, is amended as follows:

73-30-1. It is declared to be the policy of this state that the activities of those persons who render services to the public

as licensed professional counselors and use the title "Provisional Licensed Professional Counselor" (P-LPC) or "Licensed Professional Counselor" be regulated to ensure the protection of the public health, safety and welfare.

It is the intent of the Legislature to provide for the regulation of the practice of counseling as well as the use of the title "Provisional Licensed Professional Counselor" or "Licensed Professional Counselor" for those who offer services to the public for a fee, monetary or otherwise.

SECTION 2. Section 73-30-3, Mississippi Code of 1972, is amended as follows:

73-30-3. The following terms shall have the meaning ascribed herein unless the context shall otherwise require:

(a) "Licensed professional counselor" shall mean and is restricted to any person who holds himself or herself out to the public by any title or description of services incorporating the words licensed professional counselor or psychotherapist, and who offers to render professional counseling or psychotherapy services to individuals, groups, organizations, corporations, institutions, government agencies or the general public for a fee, monetary or otherwise, implying that he or she is licensed.

(b) "Provisional licensed professional counselor" (P-LPC) shall mean and is restricted to any person who holds himself or herself out to the public by any title or description of services incorporating the words provisional licensed

professional counselor or psychotherapist, and who offers to render professional counseling or psychotherapy services, under the supervision of a board qualified supervisor, to individuals, groups, organizations, corporations, institutions, government agencies or the general public for a fee, monetary or otherwise, implying that he or she is licensed.

(* * *c) "Practice of counseling/psychotherapy" shall mean rendering, offering to render or supervising those who render to individuals, groups, organizations, corporations, institutions, government agencies or the general public any service involving the applications of counseling procedures and other related areas of the behavioral sciences to help in learning how to solve problems or make decisions related to personal growth, marriage, family or other interpersonal or intrapersonal concerns.

(* * *d) "Counseling/Psychotherapy procedures" shall mean the application of mental health, psychological or human development principles, through cognitive, affective, behavioral or systematic intervention strategies that address wellness, personal growth or career development, as well as pathology. Counseling/Psychotherapy involves diagnosis, assessment and treatment by use of the following:

(i) Counseling/psychotherapy methods and techniques, both verbal and nonverbal, which require the application of principles, methods or procedures of understanding, predicting and/or influencing behavior, and motivation;

(ii) Informational and community resources for personal or social development;

(iii) Group and/or placement methods and techniques which serve to further the goals of counseling;

(iv) Designing, conducting and interpreting research on human subjects or any consultation on any item above; and

(v) Appraisal techniques including, but not limited to, testing of achievement, abilities, interests, aptitudes and personality.

(* * *e) "Fees for licensed counseling services" shall mean any form of compensation received for the practice of counseling.

(* * *f) "Board" shall mean the Mississippi State Board of Examiners for Licensed Professional Counselors.

SECTION 3. Section 73-30-5, Mississippi Code of 1972, is amended as follows:

73-30-5. (1) There is hereby established the Mississippi State Board of Examiners for Licensed Professional Counselors which shall consist of five (5) members. The initial appointments to the board shall consist of one (1) member from each of the five (5) congressional districts of Mississippi, who shall be appointed by the Governor with the advice and consent of the Senate. From and after January 1, 2004, the board shall be reconstituted to consist of five (5) members, one (1) member from each of the four

(4) congressional districts, as such districts existed on January 1, 2002, and one (1) member to be selected from the state at large, who shall be appointed by the Governor with the advice and consent of the Senate. A list shall be provided to the Governor by the Mississippi Counseling Association from which the Governor may choose board members. At least two (2) names shall be included from each congressional district. Such appointments shall be made initially within sixty (60) days of the submission of the list of qualified counselors by the Mississippi Counseling Association. Thereafter, all vacancies occurring on the board shall be filled by the Governor within sixty (60) days after the vacancy occurs. The Mississippi Counseling Association shall provide a list of suggested board members for each vacancy.

(2) The board shall consist of five (5) licensed counselors, three (3) of whom are primarily engaged as licensed counselors in private or institutional practice and two (2) who are primarily engaged in teaching, training or research in counseling at the corporate or university level. All members shall be qualified electors of the State of Mississippi.

(3) The initial appointments to the board shall be for staggered terms, to be designated by the Governor at the time of appointment as follows: two (2) members to serve for three (3) years, two (2) members to serve for two (2) years, and one (1) member to serve for one (1) year. When the board is reconstituted on January 1, 2004, all members serving on the board on that date

shall continue to serve for a term of five (5) years from the beginning of the term to which he or she was appointed. From and after January 1, 2004, all subsequent appointments shall be for five-year terms. No board member shall succeed himself or herself without waiting a period of at least five (5) years after having served one (1) full five-year term. Members may hold office until their successors have been appointed and qualified, or a maximum of twelve (12) months after their term ends.

(4) There shall be appointed to the board no more than one (1) person who is employed by, or receives compensation from, any one (1) institution, organization or partnership at the time of appointment.

(5) Board members shall be reimbursed for necessary and ordinary expenses and mileage incurred while performing their duties as members of the board, at the rate authorized for public employees, from fees collected for license applications and renewals.

SECTION 4. Section 73-30-9, Mississippi Code of 1972, is amended as follows:

73-30-9. (1) The board shall issue a license as a Provisional Licensed Professional Counselor, without regard to race, religion, sex or national origin, to each applicant who furnishes satisfactory evidence of the following:

(a) The applicant has completed an application on a form prescribed by the board accompanied by a nonrefundable licensing fee of Fifty Dollars ($50.00).

(b) The applicant is at least twenty-one (21) years of age.

(c) The applicant is of good moral character.

(d) The applicant is a citizen of the United States, or has an immigration document to verify legal alien work status in the United States. The immigration document must be current and issued by the United States Immigration Bureau.

(e) The applicant is not in violation of any of the provisions of this chapter and the rules and regulations adopted hereunder.

(f) The applicant shall have a minimum acceptable graduate semester hour or acceptable quarter-hour master's degree as determined by Section 73-30-5 primarily in counseling or related counseling field from a regionally or nationally accredited college or university program in counselor education or a related counseling program subject to Mississippi State Board of Examiners for Licensed Professional Counselors' approval. All applicants shall provide official transcripts of all graduate work.

(g) The applicant must pass the examination approved by the board, as set forth in Section 73-30-7(5).

(h) A provisional license issued under this section shall require that the individual confine one's practice to a board-approved site and accrue counseling experience under the supervision of a board-qualified supervisor.

(i) The limited license shall be renewable for not more than four (4) years, with a nonrefundable license fee of Fifty Dollars ($50.00) per year. Licensees may appeal to the board for an extension of the renewal period.

(j) Each applicant for licensure and renewal shall apply to undergo a fingerprint-based criminal history records check of the Mississippi central criminal database and the Federal Bureau of Investigation criminal history database. Each applicant shall submit a full set of the applicant's fingerprints in a form and manner prescribed by the board, which shall be forwarded to the Mississippi Department of Public Safety and the Federal Bureau of Investigation Identification Division for this purpose.

(2) The board shall issue a license as a licensed professional counselor, without regard to race, religion, sex or national origin, to each applicant who furnishes satisfactory evidence of the following:

(a) The applicant has completed an application on a form prescribed by the board accompanied by a nonrefundable * * * full application licensing fee of * * * Fifty Dollars ($50.00).

(b) The applicant is at least twenty-one (21) years of age.

(c) The applicant is of good moral character.

(d) The applicant is a * * * citizen of the United States, or has an immigration document to verify legal alien work status in the United States. The immigration document must be current and issued by the United States Immigration Bureau.

(e) The applicant is not in violation of any of the provisions of this chapter and the rules and regulations adopted hereunder.

(f) The applicant shall have * * * a minimum acceptable graduate semester hour or acceptable quarter-hour master's degree as determined by the Mississippi State Board of Examiners for Licensed Professional Counselors in Section 73-30-5 primarily in counseling * * * or a related counseling field * * * from a regionally or nationally accredited college or university program in counselor education or a related counseling program subject to board approval. * * * All applicants shall provide official transcripts of all graduate work.

(g) The applicant must pass the examination approved by the board, as set forth in Section 73-30-7(5).

(h) The applicant has had * * * post graduate supervised experience in professional counseling * * * acceptable to the board * * *. Applicant shall submit verification of * * * supervised experience.

Each application or filing made under this section shall include the social security number(s) of the applicant in accordance with Section 93-11-64 * * *.

(i) * * * The board shall require each first-time applicant for licensure and may require applicants for license renewal to * * * undergo a fingerprint-based criminal history records check of the Mississippi central criminal database and the Federal Bureau of Investigation criminal history database. Each applicant for licensure and renewal shall apply to undergo a fingerprint-based criminal history records check of the Mississippi central criminal database and the Federal Bureau of Investigation criminal history database. Each applicant shall submit a full set of the applicant's fingerprints in a form and manner prescribed by the board, which shall be forwarded to the Mississippi Department of Public Safety and the Federal Bureau of Investigation Identification Division for this purpose.

SECTION 5. Section 73-30-11, Mississippi Code of 1972, is amended as follows:

73-30-11. Following a decision by the board not to license, the applicant may request a hearing at the next regularly scheduled meeting of the board. The applicant will be notified of the decision of the majority of the board members within sixty (60) days of the hearing. Upon a final decision by the board not to license, the applicant may (after waiting a period of at least one (1) year) resubmit the application accompanied by new evidence

and a nonrefundable application fee of One Hundred Dollars ($100.00) for reconsideration for licensure.

The applicant may appeal the decision of the board to the circuit court of the county of the applicant's residence. If an applicant does not reside in Mississippi, the applicant may appeal the decision of the board to the Hinds County Circuit Court. Any appeal to the circuit court must be taken within * * * thirty (30) days of the date of the board's decision. An appeal of the decision of the circuit court may be taken to the Mississippi Supreme Court not later than sixty (60) days from the date of the decision by the circuit court.

SECTION 6. Section 73-30-21, Mississippi Code of 1972, is amended as follows:

73-30-21. (1) The board may, after notice and opportunity for a hearing, suspend, revoke or refuse to issue or renew a license or may reprimand the license holder, upon a determination by the board that such license holder or applicant for licensure has:

(a) Been adjudged by any court to be mentally incompetent or have had a guardian of person appointed;

(b) Been convicted of a felony;

(c) Sworn falsely under oath or affirmation;

(d) Obtained a license or certificate by fraud, deceit or other misrepresentation;

(e) Engaged in the conduct of professional counseling in a grossly negligent or incompetent manner;

(f) Intentionally violated any provision of this chapter;

(g) Violated any rules or regulations of the board; or

(h) Aided or assisted another in falsely obtaining a license under this chapter.

(2) Appeals from disciplinary action are to be brought in the circuit court in the county of residence of the practitioner. In the event the practitioner resides out of state the appeal should be brought in Hinds County Circuit Court.

(3) The board may assess and levy upon any licensee, practitioner or applicant for licensure the costs incurred or expended by the board in the investigation and prosecution of any licensure or disciplinary action, including, but not limited to, the costs of process service, court reporters, expert witnesses, investigators and attorney's fees.

(* * *4) No revoked license may be reinstated within twelve (12) months after such revocation. Reinstatement thereafter shall be upon such conditions as the board may prescribe, which may include, without being limited to, successful passing of the examination required by this chapter.

(* * *5) A license certificate issued by the board is the property of the board and must be surrendered on demand.

(* * *6) The chancery court is hereby vested with the jurisdiction and power to enjoin the unlawful practice of counseling and/or the false representation as a licensed counselor in a proceeding brought by the board or any members thereof or by any citizen of this state.

(* * *7) In addition to the reasons specified in subsection (1) of this section, the board shall be authorized to suspend the license of any licensee for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a license for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a license suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a license suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

SECTION 7. Section 73-30-25, Mississippi Code of 1972, is amended as follows:

73-30-25. It is not the intent of this chapter to regulate against members of other duly regulated professions in this state who do counseling in the normal course of the practice of their own profession. This chapter does not apply to:

(a) Any person registered, certified or licensed by the state to practice any other occupation or profession while rendering counseling services in the performance of the occupation or profession for which he or she is registered, certified or licensed;

(b) Certified school counselors when they are practicing counseling within the scope of their employment;

(c) Certified vocational counselors when they are practicing vocational counseling within the scope of their employment;

(d) * * * [Deleted]

(e) Student interns or trainees in counseling pursuing a course of study in counseling in a regionally or nationally accredited institution of higher learning or training institution if activities and services constitute a part of the supervised course of study, provided that such persons be designated a counselor intern;

(f) * * * [Deleted]

(g) [Deleted]

(h) Duly ordained ministers or clergy while functioning in their ministerial capacity and duly accredited Christian Science practitioners;

(i) Professional employees of regional mental health centers, state mental hospitals, vocational rehabilitation institutions, youth court counselors and employees of the

Mississippi Department of Employment Security or other governmental agency so long as they practice within the scope of their employment;

(j) Professional employees of alcohol or drug abuse centers or treatment facilities, whether privately or publicly funded, so long as they practice within the scope of their employment;

(k) Private employment counselors;

(l) Any nonresident temporarily employed in this state to render counseling services for not more than thirty (30) days in any year, if in the opinion of the board the person would qualify for a license under this chapter and if the person holds any license required for counselors in his or her home state or country; and

(m) * * * [Deleted]

SECTION 8. Section 73-30-29, Mississippi Code of 1972, is amended as follows:

73-30-29. (1) Except as provided in Section 33-1-39, the renewal of license fee under this chapter shall be Two Hundred Dollars ($200.00) per biennial licensing renewal period. License renewal fees may be increased by the board as deemed necessary, but may not be increased by more than ten percent (10%) of the previous year's fee.

(2) From and after January 1, 2004, a licensed professional counselor and provisional licensed professional counselor must

complete twelve (12) hours of continuing education before a license may be renewed. Continuing education courses must be in the field in which the counselor practices. A minimum of three (3) hours of continuing education must be in the field of professional ethics. The board may determine which continuing education courses are admissible, and the decisions of the board are final. Courses submitted for other certification processes will be admissible. The board must adhere to the guidelines as provided by the National Board of Certified Counselors with regard to credit for teaching courses, workshops and serving on boards.

(3) All licenses will be renewed biennially on or before June 30 of the applicable year. The evidence of the following must be received in the Office of the State Board of Examiners for Licensed Professional Counselors on or before June 30 of the year of renewal by every license holder who intends to continue to practice: Each active Licensed Professional Counselor <u>and Provisional Licensed Professional Counselor</u> licensee must accrue twenty-four (24) Continuing Education Hours during the preceding license period, six (6) of which must involve topics in professional ethics or legal issues in the delivery of counseling services.

* * *

SECTION 9. Section 73-30-7, Mississippi Code of 1972, is amended as follows:

73-30-7. (1) The members of the board shall take an oath to perform faithfully the duties of their office. The oath shall be administered by a person qualified by law to administer oaths. Upon taking the oath as board members, the initial members shall be deemed licensed counselors for all purposes under this chapter. Within thirty (30) days after taking the oath of office, the first board appointed under this chapter shall meet for an organizational meeting on call by the Governor. At such meeting and at an organizational meeting in January every odd-numbered year thereafter, the board shall elect from its members a * * * chair, vice * * * chair and secretary-treasurer to serve for terms of two (2) years.

(2) The board shall adopt rules and regulations in compliance with the Mississippi Administrative Procedures Law, using the standards of the American Counseling Association as a guide, not inconsistent with this chapter, for the conduct of its business and the carrying out of its duties.

(3) After a person has applied for licensure, no member of the board may supervise such applicant for a fee, nor shall any member vote on any applicant previously supervised by that member.

(4) The board shall hold at least two (2) regular meetings each year, and additional meetings may be held upon the call of the * * * chair of the board or at the written request of any four (4) members of the board.

(5) The board-approved examination for licensure shall be administered at least once a year. Examinations may be written, oral, situational, or any combination thereof, and shall deal with theoretical and applied fields in counseling. In written examinations, the examinee's name shall not be disclosed to any person grading the examination until that grading is complete.

(6) The board shall be empowered to make reasonable rules and regulations regarding its operation and to receive and disburse revenues derived from application, licensing, examination and renewal fees. All monies received by the board shall be deposited in a special account in the State Treasury to be designated "Board of Examiners for Licensed Professional Counselors Account." This account shall fund all activities of the board.

(7) Upon the filing of a complaint by any citizen of this state with the board against a licensed professional counselor <u>or provisional licensed professional counselor</u> or upon the board's own motion, the board may:

(a) Compel the attendance of witnesses;

(b) Request the production of books, documents and other papers;

(c) Administer oaths to witnesses; and

(d) Hear testimony and receive evidence concerning all matters within its jurisdiction.

(8) The members of the board are hereby individually exempt from any civil liability as a result of any action taken by the board.

SECTION 10. Section 73-30-17, Mississippi Code of 1972, is amended as follows:

73-30-17. No licensed professional counselor or provisional licensed professional counselor may disclose any information acquired during professional consultation with clients except:

(a) With the written consent of the client or, in the case of death or disability or in the case of a minor, with the written consent of his parent, legal guardian or conservator, or other person authorized by the court to file suit;

(b) When a communication reveals the contemplation of a crime or harmful act, or intent to commit suicide; or

(c) When a person waives the privilege by bringing charges against a licensed professional counselor or provisional licensed professional counselor for breach of privileged communication, or any other charges.

SECTION 11. Section 73-30-19, Mississippi Code of 1972, is amended as follows:

73-30-19. Any person who represents himself or herself by the title "Licensed Professional Counselor" or "Provisional Licensed Professional Counselor" without having first complied with the provisions of this chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a

fine of not less than Five Hundred Dollars ($500.00) nor more than One Thousand Dollars ($1,000.00) for each offense.

SECTION 12. This act shall take effect and be in force from and after July 1, 2018.

PASSED BY THE HOUSE OF REPRESENTATIVES
February 1, 2018

Philip Gunn

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
March 6, 2018

Tate Reeves

PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR

Phil Bryant

GOVERNOR

3/19/18
3:21pm