

Regular Session, 2013

SENATE BILL NO. 86

BY SENATOR MORRELL

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

COMMERCIAL REGULATIONS. Provides relative to the Louisiana Mental Health Counselor Licensing Act. (1/1/14) (2/3 - CA7s2.1(A))

1 AN ACT

2 To amend and reenact R.S. 37:1106(A) and (D) and 1110 and to enact R.S. 37:1107(F),
3 1116(C), and 1123, relative to the Louisiana Mental Health Counselor Licensing
4 Act; to provide for fees; to provide for temporary licenses and registrations; to
5 provide for criminal history record information; to provide for costs of administrative
6 proceedings; to provide for the recovery of certain costs on judicial review; to
7 provide for terms, procedures, and conditions; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 37:1106(A) and (D) and 1110 are hereby amended and reenacted and
10 R.S. 37:1107(F), 1116(C), and 1123 are hereby enacted to read as follows:

11 §1106. Fees; application for license; **violations; penalties**

12 A.**(1)** ~~The board shall collect the following fees:~~ **Fees established and**
13 **collected by the board pursuant to this Chapter shall be set by rule and shall not**
14 **exceed the following maximum amounts:**

- 15 (1) ~~For privileging review and registration, a fee of \$100 per occurrence.~~
- 16 (2) ~~For applications, licenses, and seals, a fee of \$200.~~
- 17 (3) ~~For renewal of licenses, a fee of \$150.~~

1 than ninety days after the decision of the board becomes final and delays for
 2 seeking judicial review of the decision have expired without action by an
 3 aggrieved party. No license, certificate, or registration shall be issued,
 4 reinstated, or renewed until such costs and fees have been paid.

5 (2) A person aggrieved by a final decision of the board who prevails
 6 upon judicial review may recover reasonable costs, attorney fees, and other
 7 expenses incurred as a result of the administrative investigation, adjudication
 8 and judicial review, in addition to other remedies provided by law.

9 * * *

10 §1107. Requirements for licensed professional counselor; temporary license or
 11 registration; renewal of license or registration

12 * * *

13 F.(1) Pending the results of the criminal history information inquiry, the
 14 board may issue a temporary license or registration authorizing the practice of
 15 licensed professional counseling, for a period of time not to exceed ninety
 16 calendar days from the date of issuance.

17 (2) The board shall adopt rules and regulations in accordance with the
 18 Administrative Procedure Act establishing the necessary qualifications,
 19 requirements, and formalities for the issuance of such licenses and registrations
 20 as are necessary for the adequate protection of the health and welfare of the
 21 citizens of this state.

22 * * *

23 §1110. Denial, revocation, or suspension of license or registration

24 A. The board shall withhold, deny, revoke, or suspend any license or
 25 registration issued or applied for in accordance with the provisions of this Chapter
 26 or otherwise discipline a licensee upon proof that the applicant, ~~or~~ licensee, or
 27 registrant:

28 (1) Has been convicted in a court of competent jurisdiction of a felony, the
 29 conviction being final, or upon a plea of guilty or nolo contendere to a felony, the

1 record of conviction or plea being conclusive evidence thereof.

2 (2) Has been convicted in a court of competent jurisdiction of any crime or
3 offense which reflects the inability of the practitioner to practice with due regard for
4 the health and safety of clients or patients.

5 (3) Has violated the code of ethics adopted by the board.

6 (4) Is abusing drugs or alcohol to an extent or in a manner dangerous to any
7 other person or the public, or to an extent that said use impairs his ability to perform
8 the work of a licensee **or registrant**.

9 (5) Has impersonated another person holding a professional license **or**
10 **registration** issued pursuant to this Chapter or allowed another person to use his
11 license **or registration**.

12 (6) Has used fraud or deception in applying for a license **or registration** or
13 in taking an examination provided for in this Chapter.

14 (7) Has allowed his name or license **or registration** issued under this Chapter
15 to be used in connection with any person or persons who practice outside of the area
16 of their training, experience, or competence.

17 (8) Is legally adjudicated mentally incompetent, the record of such
18 adjudication being conclusive evidence thereof.

19 (9) Has willfully or negligently violated any of the provisions of this Chapter.

20 B. Notice of denial, revocation, suspension, or disciplinary action shall be
21 sent to the applicant, ~~or licensee,~~ **or registrant** by registered mail or personal service
22 setting forth the particular reasons for the proposed action and fixing a date at which
23 time the applicant or licensee shall be given an opportunity for a prompt and fair
24 hearing. The written notice shall be sent to the person's last known address, but the
25 nonappearance of the person shall not prevent such a hearing. For the purpose of
26 such hearing, the board may subpoena persons, books, and papers, on its own behalf
27 or on behalf of the applicant, ~~or licensee,~~ **or registrant** who may appear by counsel
28 or personally in his own behalf.

29 C. On the basis of any hearing or upon default of applicant, ~~or licensee,~~ **or**

1 registrant, the board shall make a determination specifying its findings of fact and
 2 conclusions of law. A copy of such determination shall be sent by registered mail
 3 or served personally upon the applicant, ~~or licensee,~~ or registrant. The decision of
 4 the board denying, revoking, or suspending the license or registration, shall become
 5 final thirty days after receipt of the copy of the determination unless within said
 6 period the applicant, ~~or licensee,~~ or registrant appeals the decision as provided by
 7 the Louisiana Administrative Procedure Act, R.S. 49:950 et seq. No such appeal
 8 while pending appropriate court action shall supersede such denial, revocation, or
 9 suspension. All proceedings and evidence presented at hearings before the board
 10 may be admissible during appellate proceedings.

11 D. Every order and judgment of the board shall take effect immediately on
 12 its promulgation unless the board in such order or judgment fixes a probationary
 13 period for applicant, ~~or licensee,~~ or registrant. Such order and judgment shall
 14 continue in effect until expiration of any specified time period or termination by a
 15 court of competent jurisdiction. The board shall notify all licensees or registrants
 16 of any action taken against a licensee and may make public its orders and judgments
 17 in such manner and form as it deems proper if such orders and judgments are not
 18 consent orders or compromise judgments.

19 E. The board is authorized to suspend the license of a licensee and the
 20 registration of a registrant for a period not exceeding two years. At the end of this
 21 period, the board shall re-evaluate the suspension and may recommend to the
 22 chairman the reinstatement or revocation of the license or registration. A person
 23 whose license or registration has been revoked under the provisions of this Section
 24 may apply for reinstatement after a period of not less than two years from the date
 25 such denial, or revocation is legally effective. The board may, upon favorable action
 26 by a majority of the board members present and voting, recommend such
 27 reinstatement.

28 * * *

29 §1116. Licensure application for marriage and family therapists; temporary license

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C. (1) Pending the results of the criminal history information inquiry, the board may issue a temporary license or registration authorizing the practice of marriage and family therapy, for a period of time not to exceed ninety calendar days from the date of issuance.

(2) The board shall adopt rules and regulations in accordance with the Administrative Procedure Act establishing the necessary qualifications, requirements, and formalities for the issuance of such licenses and registrations as are necessary for the adequate protection of the health and welfare of the citizens of this state.

* * *

§1123. Louisiana Licensed Professional Counselors Board of Examiners; authorization to obtain criminal history record information

A. As used in this Section, the following terms shall have the following meanings:

(1) "Applicant" means an individual who has made application to the board for the issuance, renewal, or reinstatement of any form of licensure which the board is authorized by law to issue.

(2) "Board" means the Louisiana Licensed Professional Counselors Board of Examiners.

(3) "Bureau" means the Louisiana Bureau of Criminal Identification and Information of the office of state police within the Department of Public Safety and Corrections.

(4) "Criminal history record information" means information collected by state and federal criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, bills of information, or any formal criminal charges, and any disposition arising therefrom, including sentencing, criminal correctional supervision and release.

1 It shall not include intelligence information gathered for investigatory purposes
2 or any identification information which does not indicate involvement of the
3 individual in the criminal justice system.

4 (5) "FBI" means the Federal Bureau of Investigation of the United States
5 Department of Justice.

6 (6) "Licensure" means any license, certification, or registration which
7 the board is authorized to issue.

8 B. In addition to any other requirements established by board rules, the
9 board may require an applicant, as a condition of eligibility for licensure:

10 (1) To submit a full set of fingerprints, in a form and manner prescribed
11 by the board.

12 (2) To permit the board to request and obtain state and national criminal
13 history record information on the applicant.

14 (3) To pay the reasonable costs incurred by the board in requesting and
15 obtaining state and national criminal history record information on the
16 applicant.

17 C. In accordance with the provisions and procedure prescribed by this
18 Section, the board may request and obtain state and national criminal history
19 record information from the bureau and the FBI relative to any applicant for
20 licensure whose fingerprints the board has obtained pursuant to this Section for
21 the purpose of determining the applicant's suitability and eligibility for
22 licensure.

23 D. Upon request by the board and upon the board's submission of an
24 applicant's fingerprints, and such other identifying information as may be
25 required, the bureau shall conduct a search of its criminal history record
26 information relative to the applicant and report the results of its search to the
27 board within sixty days from receipt of any such request. The bureau may
28 charge the board a reasonable processing fee for conducting and reporting on
29 any such search.

1 **E. If the criminal history record information reported by the bureau to**
 2 **the board does not provide grounds for disqualification of the applicant for**
 3 **licensure under the applicable law administered by the board, the board shall**
 4 **have the authority to forward the applicant's fingerprints and such other**
 5 **identifying information as may be required to the FBI with a request for a**
 6 **search of national criminal history record information relative to the applicant.**

7 **F. Any and all state or national criminal history record information**
 8 **obtained by the board from the bureau or FBI which is not already a matter of**
 9 **public record shall be deemed nonpublic and confidential information restricted**
 10 **to the exclusive use by the board, its members, officers, investigators, agents,**
 11 **and attorneys in evaluating the applicant's eligibility or disqualification for**
 12 **licensure. No such information or records related thereto shall, except with the**
 13 **written consent of the applicant or by order of a court of competent jurisdiction,**
 14 **be released or otherwise disclosed by the board to any other person or agency.**

15 **G. Upon investigation of the application and other evidence submitted,**
 16 **the board shall notify each applicant that the application and evidence**
 17 **submitted for consideration is satisfactory and accepted, or is unsatisfactory**
 18 **and rejected. If an application is rejected, such notice shall state the reasons for**
 19 **the rejection and the applicant's right to a compliance hearing in accordance**
 20 **with the rules and regulations promulgated by the board.**

21 Section 2. This Act shall become effective on January 1, 2014.

The original instrument and the following digest, which constitutes no part
 of the legislative instrument, were prepared by Michelle Ducharme.

DIGEST

Morrell (SB 86)

Present law provides the fee schedule for the Louisiana Licensed Professional Counselors Board of Examiners ("board").

Proposed law provides the maximum amount of each fee the board may collect as follows:

- | | | |
|-----|---|-------|
| (1) | Application of privilege, credential, or registration | \$200 |
| (2) | Application of licensure | \$325 |

(3)	Renewal of privilege, credential, registration, or license	\$300
(4)	Examination or reexamination	\$250
(5)	Late fees	\$100
(6)	Failure to update contact information with board	\$100
(7)	Reissuance of privilege, credential, registration, or license	\$50
(8)	Name changes on record	\$50
(9)	Copies of documents in the board's possession	\$50
(10)	Formal verification of status of any privilege, credential, registration, or license	\$25

Proposed law provides that the board shall not increase any fee by more than a total of 15% over a consecutive three year period.

Present law allows the board to assess and collect fines in an amount not to exceed \$500.

Proposed law increases the amount the board may assess and collect in fines from not to exceed \$500 to not to exceed \$1,500.

Proposed law authorizes the board to assess all costs incurred in connection with any disciplinary proceeding, including but not limited to the costs of an investigator, a stenographer, legal fees, or witness fees, and any costs and fees incurred by the board on any judicial review or appeal.

Proposed law provides that all costs and fees shall be paid no later than 90 days after the decision of the board becomes final and delays for seeking judicial review of the decision have expired without action by an aggrieved party.

Proposed law prohibits any license, certificate, or registration from being issued, reinstated, or renewed until such costs and fees have been paid.

Proposed law provides that a person aggrieved by a final decision of the board who prevails upon judicial review may recover reasonable costs, attorney fees, and other expenses incurred as a result of the administrative investigation, adjudication, and judicial review, in addition to other remedies provided by law.

Proposed law provides for the issuance of temporary licenses and registrations effective for a period of 90 calendar days from the date of issuance.

Present law provides for the denial, revocation, or suspension of licenses.

Proposed law maintains present law and provides for the denial, revocation, or suspension of registrations.

Proposed law authorizes the board to require an applicant, as a condition of eligibility for licensure, to do the following:

- (1) Submit a full set of fingerprints, in a form and manner prescribed by the board.
- (2) Permit the board to request and obtain state and national criminal history record information on the applicant.

- (3) Pay the reasonable costs incurred by the board in requesting and obtaining state and national criminal history record information on the applicant.

Proposed law provides that the board may request and obtain state and national criminal history record information from the Louisiana Bureau of Criminal Identification and Information of the office of state police within the Department of Public Safety and Corrections ("bureau") and the Federal Bureau of Investigation ("FBI") relative to any applicant for licensure whose fingerprints the board has obtained pursuant to law for the purpose of determining the applicant's suitability and eligibility for licensure.

Proposed law provides that upon request by the board and upon the board's submission of an applicant's fingerprints, and such other identifying information as may be required, the bureau shall conduct a search of its criminal history record information relative to the applicant and report the results of its search to the board within 60 days from receipt of any such request. The bureau may charge the board a reasonable processing fee for conducting and reporting on any such search.

Proposed law provides that if the criminal history record information reported by the bureau to the board does not provide grounds for disqualification of the applicant for licensure under the applicable law administered by the board, the board shall have the authority to forward the applicant's fingerprints and such other identifying information as may be required to the FBI with a request for a search of national criminal history record information relative to the applicant.

Proposed law provides that any and all state or national criminal history record information obtained by the board from the bureau or FBI which is not already a matter of public record shall be deemed nonpublic and confidential information restricted to the exclusive use by the board, its members, officers, investigators, agents, and attorneys in evaluating the applicant's eligibility or disqualification for licensure. No such information or records related thereto shall, except with the written consent of the applicant or by order of a court of competent jurisdiction, be released or otherwise disclosed by the board to any other person or agency.

Proposed law provides that upon investigation of the application and other evidence submitted, the board shall notify each applicant that the application and evidence submitted for consideration is satisfactory and accepted, or unsatisfactory and rejected. If an application is rejected, such notice shall state the reasons for such rejection and the applicant's right to a compliance hearing in accordance with the rules and regulations promulgated by the board.

Effective January 1, 2014.

(Amends R.S. 37:1106(A) and (D) and 1110; adds R.S. 37:1107(F), 1116(C), and 1123)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Commerce, Consumer Protection, and International Affairs to the original bill

1. Reduces the amount of fines the board may collect ~~from~~ to not to exceed \$5,000 ~~to~~ not to exceed \$1,500.
2. Provides that all costs and fees shall be paid no later than 90 days after the decision of the board becomes final and delays for seeking judicial review of the decision have expired without action by an aggrieved party.

3. Provides that a person aggrieved by a final decision of the board who prevails upon judicial review may recover reasonable costs, attorney fees, and other expenses incurred as a result of the administrative investigation, adjudication, and judicial review, in addition to other remedies provided by law.