

CHAPTER 31
FORMERLY
HOUSE BILL NO. 67
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE RELATING TO LICENSURE OF MENTAL HEALTH AND CHEMICAL DEPENDENCY PROFESSIONALS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §3009(a), Title 24 of the Delaware Code by adding new paragraphs (8), (9), and (10) as follows:

“(8) Been convicted of a felony sexual offense.

(9) Failed to report child abuse or neglect as required by § 903 of Title 16, or any successor thereto.

(10) Failed to report to the Division of Professional Regulation as required by § 3018 of this Chapter.”.

Section 2. Amend § 3011, Title 24 of the Delaware Code by adding a new subsection (d) as follows:

“(d) The Board shall permanently revoke the license of any person who the Board determines has violated § 3009(a)(8) of this title.”.

Section 3. Amend § 3032(a)(5), Title 24 of the Delaware Code by adding a new subparagraph as follows:

“d. The applicant has not been convicted of a felony sexual offense.”.

Section 4. Amend § 3032(a), Title 24 of the Delaware Code by adding new paragraphs (7) and (8) as follows:

“(7) Has not been convicted of a felony sexual offense.

(8) Has submitted, at the applicant's expense, fingerprints and other necessary information in order to obtain the following:

a. A report of the applicant's entire criminal history record from the State Bureau of Identification or a statement from the State Bureau of Identification that the State Central Repository contains no such information relating to that person.

b. A report of the applicant's entire federal criminal history record pursuant to the Federal Bureau of Investigation appropriation of Title II of Public Law 92-544 (28 U.S.C. § 534). The State Bureau of Identification shall be the intermediary for purposes of this section and the Board of Mental Health and Chemical Dependency Professionals shall be the screening point for the receipt of said federal criminal history records.

An applicant may not be licensed as a licensed professional counselor of mental health until the applicant's criminal history reports have been produced. An applicant whose record shows a prior criminal conviction may not be certified by the Board unless a waiver is granted pursuant to paragraph (a)(5) of this section. The State Bureau of Identification may release any subsequent criminal history to the Board.”.

Section 5. Amend §3032, Title 24 of the Delaware Code by adding a new subsection (d) as follows:

“(d) All individuals licensed as a licensed professional counselor of mental health in this state shall be required to be fingerprinted by the State Bureau of Identification every 10 years, at the licensee's expense, for the purposes of performing subsequent criminal background checks. Licensees shall submit by January 1, 2013, at the applicant's expense, fingerprints and other necessary information in order to obtain a criminal background check.”.

Section 6. Amend §3044(a)(6), Title 24 of the Delaware Code by adding a new subparagraph as follows:

“d. The applicant has not been convicted of a felony sexual offense.”.

Section 7. Amend §3044(a), Title 24 of the Delaware Code by adding new paragraphs (8) and (9) as follows:

“(8) Has not been convicted of a felony sexual offense.

(9) Has submitted, at the applicant's expense, fingerprints and other necessary information in order to obtain the following:

a. A report of the applicant's entire criminal history record from the State Bureau of Identification or a statement from the State Bureau of Identification that the State Central Repository contains no such information relating to that person.

b. A report of the applicant's entire federal criminal history record pursuant to the Federal Bureau of Investigation appropriation of Title II of Public Law 92-544 (28 U.S.C. § 534). The State Bureau of Identification shall be the intermediary for purposes of this section and the Board of Mental Health and Chemical Dependency Professionals shall be the screening point for the receipt of said federal criminal history records.

An applicant may not be licensed as a chemical dependency professional until the applicant's criminal history reports have been produced. An applicant whose record shows a prior criminal conviction may not be certified by the Board unless a waiver is granted pursuant to paragraph (a)(6) of this section. The State Bureau of Identification may release any subsequent criminal history to the Board.”.

Section 8. Amend §3044, Title 24 of the Delaware Code by adding a new subsection (d) as follows:

“(d) All individuals licensed as a chemical dependency professional in this state shall be required to be fingerprinted by the State Bureau of Identification every 10 years, at the licensee's expense, for the purposes of performing subsequent criminal background checks. Licensees shall submit by January 1, 2013, at the applicant's expense, fingerprints and other necessary information in order to obtain a criminal background check.”.

Section 9. Amend §3052(a)(6), Title 24 of the Delaware Code by adding a new subparagraph as follows:

“d. The applicant has not been convicted of a felony sexual offense.”.

Section 10. Amend §3052(a), Title 24 of the Delaware Code by adding new paragraphs (9) and (10) as follows:

“(9) Has not been convicted of a felony sexual offense.

(10) Has submitted, at the applicant's expense, fingerprints and other necessary information in order to obtain the following:

a. A report of the applicant's entire criminal history record from the State Bureau of Identification or a statement from the State Bureau of Identification that the State Central Repository contains no such information relating to that person.

b. A report of the applicant's entire federal criminal history record pursuant to the Federal Bureau of Investigation appropriation of Title II of Public Law 92-544 (28 U.S.C. § 534). The State Bureau of Identification shall be the intermediary for purposes of this section and the Board of Mental Health and Chemical Dependency Professionals shall be the screening point for the receipt of said federal criminal history records.

An applicant may not be licensed as a marriage and family therapist until the applicant's criminal history reports have been produced. An applicant whose record shows a prior criminal conviction may not be certified by the Board unless a waiver is granted pursuant to paragraph (a)(6) of this section. The State Bureau of Identification may release any subsequent criminal history to the Board.”.

Section 11. Amend § 3052, Title 24 of the Delaware Code by adding a new subsection (d) as follows:

“(d) All individuals licensed as a marriage and family therapist in this state shall be required to be fingerprinted by the State Bureau of Identification every 10 years, at the licensee's expense, for the purposes of performing subsequent criminal background checks. Licensees shall submit by January 1, 2013, at the applicant's expense, fingerprints and other necessary information in order to obtain a criminal background check pursuant to paragraph (a)(10) of this section.”.

Section 12. Amend Title 24 of the Delaware Code by adding a new § 3018 as follows:

“§ 3018. Duty to report conduct that constitutes grounds for discipline or inability to practice.

(a) Every person to whom a license to practice has been issued under this Chapter has a duty to report to the Division of Professional Regulation in writing information that the licensee reasonably believes indicates that any other practitioner licensed under this chapter or any other healthcare provider has engaged in or is engaging in conduct that would constitute grounds for disciplinary action under this chapter or the other healthcare provider's licensing statute.

(b) Every person to whom a license to practice has been issued under this Chapter has a duty to report to the Division of Professional Regulation in writing information that the licensee reasonably believes indicates that any other practitioner licensed under this chapter or any other healthcare provider may be unable to practice with reasonable skill and safety to the public by reason of mental illness or mental incompetence; physical illness, including deterioration through the aging process or loss of motor skill; or excessive abuse of drugs, including alcohol.

(c) Every person to whom a license to practice has been issued under this Chapter has a duty to report to the Division of Professional Regulation any information that the reporting person reasonably believes indicates that a person certified and registered to practice medicine in this State is or may be guilty of unprofessional conduct or may be unable to practice medicine with reasonable skill or safety to patients by reason of mental illness or mental incompetence; physical illness, including deterioration through the aging process or loss of motor skill; or excessive use or abuse of drugs, including alcohol.

(d) All reports required under paragraphs (a), (b) and (c) must be filed within 30 days of becoming aware of such information. A person reporting or testifying in any proceeding as a result of making a report pursuant to this section is immune from claim, suit, liability, damages, or any other recourse, civil or criminal, so long as the person acted in good faith and without gross or wanton negligence; good faith being presumed until proven otherwise, and gross or wanton negligence required to be shown by the complainant.”.

Approved May 19, 2011