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Senate Bill 386 (Substitute S-3 as passed by the Senate)

Senate Bill 387 (as passed by the Senate)

Sponsor: Senator Vern Ehlers

Committee: Health Policy

Date Completed: 3-8-88

RATIONALE

Professional counselors are an integral part of approaches used today to help individuals, families, and groups cope with and resolve personal, vocational, and educational problems. Counselors have been characterized as educators who understand that people must learn new skills in order to survive in today's society. Often, counselors work in conjunction with other mental health professionals — such as psychologists, social workers, and psychiatrists. All members of such helping teams are subject to State regulation, except counselors. Despite this recognition within the mental health field of the importance of counselors in treating personal adjustment problems, some people fear that there are persons practicing as counselors who have neither the education nor the skills to perform this service. In order to protect the public, some people believe that the counseling profession should be licensed in this State, as other mental health professions already are regulated.

CONTENTSenate Bill 386 (S-3)

The bill would amend Article 15 of the Public Health Code, which governs health care professionals, to:

- Establish the Michigan Board of Professional Counseling within the Department of Licensing and Regulation.
- Set requirements and provide for the issuance and renewal of a professional counselor license, a limited license, a restricted limited license, and a specialty certification.
- Require that a professional disclosure statement, be furnished to a client before a counselor engaged in counseling services.
- Exempt from the bill's provisions certain persons including those engaged in a "statutorily regulated profession or occupation", a spiritual leader or ordained clergy member, or volunteers with public or private nonprofit organizations, charities, and churches.
- Provide for confidentiality between a client and a licensed professional counselor, a limited licensed counselor, or a restricted limited license counselor.

The bill would take effect January 1, 1989.

Senate Bill 387

The bill would amend the State License Fee Act to establish fees for a person who was licensed or certified

or was seeking licensure as a professional counselor, limited licensed counselor, restricted limited license counselor, or a specialty counselor under the Public Health Code, as proposed in Senate Bill 386. The fees would be set as follows:

Professional counselor license	\$75.00
Limited licensed counselor	25.00
Restricted limited license counselor	50.00
Specialty certification	25.00
Professional counselor license renewal	50.00
Restricted limited license renewal	25.00
Specialty certification renewal	10.00
Late renewal fee	10.00

The bills are tie-barred. A more detailed description of Senate Bill 386 follows.

Board of Professional Counselors

The Michigan Board of Counseling would be created in the Department of Licensing and Regulation and would consist of nine voting members who would have to meet the general requirements for boards set forth in Part 161 of Article 15. Six members of the Board would have to be engaged in the field of counseling and would consist of: three members who were engaged primarily in providing counseling techniques, behavior modification techniques, or preventive techniques to clients; two members who were engaged primarily in teaching, training, or research in counseling; and one member who was engaged primarily in the administration of counseling services. Three members would be required to represent the general public. The Board would have to be fairly representative of the racial and ethnic composition, gender, educational levels, and specialized areas of practice of persons practicing counseling in the State. Three years after the effective date of the bill each new board member who did not represent the general public would have to be licensed as a counselor. The terms of office for board members, except those appointed to fill vacancies, would expire four years after appointment on December 31.

Professional Counselor License

A professional counselor license would have to be issued by the Department to a person who completed an application form that was furnished by the Department and contained satisfactory evidence that the applicant:

- Was not less than 19 years of age.

S.B. 386 & 387 (3-8-88)

- Was of good moral character, as defined and determined under Public Act 381 of 1974, which provides for the licensing of former offenders. (Under the Act, "good moral character" means the propensity on the part of the person to serve the public in a fair, honest, and open manner.)
- Was not in violation of Article 15 or rules promulgated under Article 15.
- Had received, from an accredited college or university approved by the Department, a graduate degree in counseling, student personnel work, or a similar field that met standards promulgated by rule. The Department, with assistance of the Board, would be required to develop an examination, pursuant to the Code's provisions on an application for licensure or registration (MCL 333.16177), to determine professional competence. The examination could be written, oral, practical, or a combination of these. A person who graduated from a college or university whose program was nationally accredited by an appropriate professional counseling association could be determined by the Board to have graduated from an approved program. Other programs would have to be evaluated by the Board according to standards promulgated by rule. The Board would be required to approve only those programs that included graduate studies in the following areas: research, group techniques, counseling theories, ethics, counseling techniques, counseling philosophy testing procedures, career development, consulting, practicum, and internship.
- Had at least two years of counseling experience under the direction of a licensed professional counselor. The Department could decrease the required length of counseling experience to one year if an applicant had completed 30 hours of postgraduate study in the field of counseling. An applicant could not be licensed before completing one year of counseling experience under the direction of a licensed professional counselor. This provision would take effect five years after the bill's effective date.
- Submitted the completed application to the Department together with the fee specified in the State License Fee Act and the professional disclosure statement, as provided in the bill.

No person could be granted a professional counselor license if the person did not have a graduate degree in counseling or student personnel work until rules had been promulgated according to the bill's educational requirements for the granting of a professional counselor license.

A person who, within five years of the bill's effective date, met the bill's requirements as to age and character and was not in violation of Article 15 or rules promulgated under the Article, and who held a graduate degree in counseling, student personnel work, or a similar field that did not meet the educational requirements of the bill, could be granted either a full or limited license by the Board.

Limited License

A limited license would have to be issued by the Department to a person who did the following:

- Filed an application on a form provided by the Department that contained evidence that the applicant: met the criteria for a professional counselor license as to age, character, compliance with Article 15, and education; or, met the criteria as to age, character, and compliance with Article 15 and had five years of

counseling experience and within two years after the bill's effective date demonstrated an equivalent level of professional competence as determined by examination; and, was currently completing or would complete a program of counseling experience under the direction of a licensed professional counselor.

- Submitted the application to the Department, along with the fee specified in the State License Fee Act.

Upon completion of the counseling experience under the direction of a licensed professional counselor, a person issued a limited license could apply for a license under provisions for issuing a professional counselor license.

A person who held a valid limited license could not engage in the practice of counseling except pursuant to a program of counseling experience under the direction of a licensed professional counselor.

General Provisions

A licensee could not perform any acts, tasks, or functions within the practice of counseling unless he or she were trained to perform such acts, tasks, or functions. A person could not engage in the practice of counseling unless licensed or authorized under Article 15.

The Board could promulgate rules in order to implement the bill. The Department could contract with other State agencies, private agencies, organizations, and consultants to assist the Board in carrying out its functions.

Restricted Limited License

The Department, with the assistance of the Board, could issue a restricted limited license within the practice of counseling to a person who: was employed in or who volunteered to work in a program licensed by the Office of Substance Abuse Services, met the requirements of that Office, had received training under the direction of a licensed professional counselor, and had demonstrated competency through examination.

With assistance of the Board, the Department would be required to establish by rule criteria and procedures for the restricted limited licensure of a person in an area of restricted practice. Application for restricted limited licensure would have to be accompanied by the fee specified in the State License Fee Act.

A person who had been issued a restricted limited license for restricted practice could not engage in the practice of counseling outside of the scope of the restricted practice defined by rule unless otherwise authorized by Article 15. A counselor who operated in an area of restricted practice would be exempt from licensing requirements for a professional counselor.

Specialty Certification

The Department, with the assistance of the Board, could issue a counseling profession specialty certification to a licensed professional counselor who had advanced training beyond that required for initial licensure and who had demonstrated competency through examination or other evaluation process in a specialty area as determined by the Board. The Department could receive a request to define a specific area of specialization from a group that represented the proposed specialty.

With the assistance of the Board, the Department would be required to establish criteria and procedures for the issuance of a specialty certification. Application for a counseling profession specialty certification would have to

be accompanied by the fee specified in the State License Fee Act.

A counseling profession specialty certification would be in addition to a license issued pursuant to provisions on the licensing of professional counselors, and would not limit the licensee from practicing outside of the specialty area for which he or she was licensed.

Petition for Review

A person seeking a license, specialty certification, or renewal could petition the Department for a review, pursuant to the Code's provisions on hearings (MCL 333.16232), if that person did not receive a license, certificate, or renewal.

To renew a license, a licensee would be required to submit proof of completion of a continuing professional education program, as required in the rules promulgated by the Board. Upon applying for license renewal, the licensee would be required to submit to the Department:

- A copy of his or her current disclosure statement, as required in the bill.
- A statement that he or she had not been charged with or convicted of a misdemeanor or a felony.
- A statement that disciplinary proceedings before a similar licensing, registration, or specialty certification board of any other state or country were not pending against the licensee.

Disclosure Statement

A licensee would be required to furnish a professional disclosure statement to a prospective client before engaging in counseling services. The statement would have to contain:

- The licensee's name, business address, and telephone number.
- A description of that licensee's practice.
- A description of the licensee's education and experience.
- Any restrictions or licensed areas of specialization of the licensee.
- A description of the continuing education of the licensee.
- A counseling fee schedule.
- The name, address, and telephone number of the Department and the Board.

Exemptions

The bill specifies that Article 15 would not limit a person in, nor prevent a person from, the practice of a "statutorily regulated profession or occupation" if counseling were part of the services provided by that profession or occupation, and the person did not claim to be a counselor regulated under Article 15. A "statutorily regulated profession or occupation" would include, but not be limited to: a physician, attorney, marriage counselor, debt management counselor, social worker, certified social worker, social work technician, licensed psychologist, limited licensed psychologist, temporary limited licensed psychologist, or school counselor.

The bill would not apply to:

- A spiritual leader or ordained member of the clergy if counseling were incidental to his or her religious duties performed under the auspices or recognition of a legally recognized church, denomination, religious association, or sect, if the spiritual leader or member of the clergy did not hold himself or herself out as a counselor licensed under Article 15.

- A person who performed volunteer services for a public or private nonprofit organization, church, or charity if the person were approved by the organization or agency for which the services were rendered.

The bill specifies that it would not prohibit a member of any other profession whose practice could include counseling or preventive techniques from practicing his or her profession as long as he or she was trained in those techniques and was in practice consistent with a code of ethics for that profession.

The bill would not prohibit the use of "counselor" without the qualifying words "licensed" or "professional" used in conjunction with "counselor", except as otherwise provided by law.

Confidentiality

The confidential relations and communications between a licensed professional counselor, a limited licensed counselor, or a restricted practice counselor and a client would be privileged communications. Nothing in the bill could require any privileged information to be disclosed. Confidential information could be disclosed only upon consent of the client.

Definitions

"Practice of counseling" or "counseling" would mean the rendering by a licensed professional counselor or limited licensed counselor to individuals, groups, families, organizations, or the general public a service involving the application of "clinical counseling principles, methods, or procedures" for the purpose of achieving optimal social, personal, career, and emotional development. The practice of counseling would not include the administration of electroconvulsive therapy, the prescription of drugs or medicine, the practice of medicine as defined in the code (MCL 333.17001), or the practice of psychology as defined in the code (MCL 333.18201) except for those preventive techniques, counseling techniques, or behavior modification techniques for which the licensed professional counselor or limited licensed counselor had been specifically trained. A counselor could not hold out himself or herself as a psychologist as defined in the code (MCL 333.18201).

"Clinical counseling principles, methods, or procedures" would mean an approach to counseling that systematically assisted a person through the application of any of the following procedures consistent with the licensed professional counselor's or limited licensed counselor's training and code of ethics:

- Evaluation and appraisal techniques. "Appraisal techniques" would mean selecting, administering, scoring, and interpreting instruments and procedures designed to assess a person's aptitudes, interests, attitudes, abilities, achievements, and personal characteristics.
- Exploring alternative solutions.
- Developing and providing a treatment plan for mental and emotional development.
- Guidance, psychoeducational consulting, learning theory, individual and group techniques emphasizing prevention, counseling techniques, behavioral modification techniques, and referrals.

MCL 333.16131 et al. (Senate Bill 386 (S-3))

Proposed MCL 338.2274 (Senate Bill 387)

FISCAL IMPACT

According to the Michigan Association of Counseling and Development, there are an estimated 3,000 professional counselors who would be affected by the licensing requirements of Senate Bills 386 (S-3) and 387. If all were to apply for professional counselor licenses, the total revenue generated for the State in the first year would be \$225,000 ($\$75 \times 3,000$), and \$150,000 ($\$50 \times 3,000$) in subsequent years. The estimated cost for the program would be about \$95,000 annually and would be allocated as follows:

Per diem (9 members) \$50/diem \times 9 members \times 8 meetings	\$ 3,600
Travel and miscellaneous \$80/member \times 9 members \times 8 meetings	5,760
1 typist/clerk III ($\$10.14/\text{hr} \times 2,088 \text{ hrs.}$) + 37.5% (21,172.32)	= 29,112
1 Dept. Analyst VII ($\$14.83/\text{hr} \times 2,088 \text{ hrs.}$) + 37.5% (30,965.04)	= 42,580
Phone equipment and charges	= 1,000
Building rental (or outstate exam sites)	= 500
Consulting services (expert witness, micro film processing)	= 7,000
Postage	= 2,500
Printing and office supplies	= 2,500
	<u>\$94,552</u>

These estimated costs are based on the costs for the operation of a similar program, licensure of psychologists, which covers about 3,400 psychologists and has a structure and requirements similar to the proposed professional counselor licensing program. Although these would be licensing fees, they would not be restricted solely to the financing of the professional counseling program. Upon collection, they would be deposited to the general revenue account in the General Fund, which is used to fund various regulatory programs. Any unused funds, therefore, could lapse to the General Fund.

ARGUMENTS

Supporting Argument

There are no legally recognized standards in Michigan by which a consumer can differentiate between qualified professional counselors and unqualified persons purporting to be counselors. There is no requirement that these persons have completed any course work, supervised practicum, supervised work experience, or examinations in order to provide counseling services. Thus, regardless of their level of education, training, or experience, persons can hold themselves out to the public as a counselor. Furthermore, there is no way to prevent counselors whose licenses had been suspended in another state from setting up practices in Michigan. If the bill were enacted, those counselors would have to meet licensing requirements in this State. Currently, a consumer harmed by a person claiming to be a counselor has no recourse, except through the courts, since there is no State board to regulate the practice of counseling. In fact, protecting the public from unqualified health practitioners has become a national concern. U.S. Senator John Glenn, of Ohio, reportedly has introduced legislation to establish a national computer system to track health care providers whose licenses have been suspended or revoked in any state to prevent these persons from establishing a practice in another state. This system,

however, would work only with licensed practitioners. The public is best served when minimum standards are established and there is a recognized authority to bring disciplinary action.

Supporting Argument

his legislative action reflects an increase in activity throughout the health care field to establish professional credentials: Virginia was the first state to license counselors in 1976, and since then, 23 other states have enacted counselor licensure laws. Increased regulation has developed in response to public concerns about professional competence, and the establishment of credentials has become the standard by which to judge professional competence. Furthermore, hospitals, agencies, and institutions have adopted stricter standards for credential requirements. Not only does licensure protect the public, it also grants the counseling profession credibility equal to that of other mental health professions.

Supporting Argument

A consumer's freedom of choice is hampered when counselors are not licensed. Consumers of both mental and physical health care services should have the option of selecting the treatment that best suits them and their situation. When agency guidelines mandate that only State-regulated professionals be employed, however, or that a hospital grant privileges only to licensed professionals, clients of that agency or patients in that hospital are denied access to a professional counselor, even if that would be in their best interest, because counselors are not licensed in Michigan.

Supporting Argument

Since there is no law regulating the counseling profession, it is argued that there is no confidentiality or privileged communication for clients served by a counselor. The privilege that currently exists between a physician and patient, an attorney and client, and a priest and penitent does not exist between a counselor and client. Thus, a counselor could be called to testify as to the communication he or she has had with a client. Because there is no protection in the law, a counselor also could be required to reveal a confidence entrusted to him or her by a client. The bill would protect the confidentiality of the relationship and communications between a counselor and a client.

Opposing Argument

During the past 20 years, there has been a change in the way consumer advocates view the licensing of occupations. While licensing is touted as a method of protecting the consumer, licensing is not necessarily a benign endeavor. Licensing limits the ability of everyone, not just the incompetent, to enter a profession. The ability, or inability, to enter a market affects the number of practitioners, which determines the price consumers must pay. Regulation of occupations limits a consumer's choices, raises costs, increases income for the practitioner, and restricts the mobility of practitioners due to the variety and severity of standards. Licensing should be used prudently and only when there is a significant threat to the public's health and safety, when there is no other regulation available, and when consumers cannot make rational choices. Furthermore, some people argue that there is little

relationship between competence and academic credentials. Therefore, it is inappropriate to use licensing as a method to identify competence.

Opposing Argument

While the licensure of professionals to perform any work for which they are qualified through education and training should be supported, Senate Bill 386 suffers from vague educational and training requirements, while proposing to establish a complex, multilevel licensing process for counselors. The highest level of licensure, a professional counselor license, would require a master's degree, although the degree would not have to be in counseling or student personnel, as such, but could be in a "similar" field. Furthermore, a person who had no formal education but possessed five years of experience in counseling could obtain a "limited license", which would require supervision by a fully licensed counselor. After two years of supervised experience, the limited-license counselor could apply for the full license, notwithstanding the absence of educational qualifications. The bill also provides for a "restricted" license for persons working in substance abuse services who otherwise would not qualify even for the limited license. From the provisions for the limited license, it is apparent that five years of experience as a restricted-license counselor could qualify an individual for the limited license, and in two more years, for a full license. The provisions for limited and restricted licensing of counselors are inadvisable as is the waiver of any specific educational requirements. When licensure, even at the highest level, would be possible for individuals who had no particular educational qualifications, the practice of counseling could not be effectively regulated. Thus, the public would not be protected effectively from unqualified practitioners through the bill.

Opposing Argument

Senate Bill 386 lacks any defined limit to the scope of counselor practice and could be considered so broad as to encompass the diagnosis and treatment of mental and emotional disorders. Given the lack of explicit and invariant training and education requirements for counselor licensing, the scope of practice could exceed the qualifications of those persons who would be licensed.

Legislative Analyst: L. Arasim

Fiscal Analyst: L. Burghardt

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.