

SENATE BILL No. 469

By Committee on Public Health and Welfare

1-27

10 AN ACT concerning the behavioral sciences regulatory board; relating  
11 to impaired licensees.

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13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. (a) This section shall be known and may be cited as the  
15 ~~impaired licensee treatment~~ **behavioral sciences licensing and pre-**  
16 **vention** act.

17 (b) As used in this section:

18 (1) "Board" means the behavioral sciences regulatory board.

19 (2) "Impairment" means a ~~physical or mental condition, or both, that~~  
20 ~~renders a licensee unable or unfit to practice with reasonable skill, safety~~  
21 ~~or competence due to a physical or mental disability or incapacity, or~~  
22 ~~both, including, but not limited to, deterioration through the aging pro-~~  
23 ~~cess, loss of motor skill or abuse of drugs or alcohol~~ **licensee's conduct**  
24 **has resulted in the licensee being unable to practice the licensee's**  
25 **profession with reasonable skill and safety.**

26 (3) "Licensee" means an individual licensed by the behavioral sci-  
27 ences regulatory board.

28 (4) ~~"Impaired licensee treatment provider" means a board approved~~  
29 ~~person, organization or program that evaluates, or causes to be evaluated,~~  
30 ~~a licensee for impairment, and if warranted subsequently monitors the~~  
31 ~~licensee for compliance with a course of treatment~~ **"Treatment con-**  
32 **tractor" means a professional organization or professional program**  
33 **that has contracted with the board to evaluate or cause to be eval-**  
34 **uated a licensee for impairment and, if warranted, subsequently**  
35 **monitors the licensee for compliance with a course of treatment.**

36 ~~(5) "Professional" means a board approved person licensed or reg-~~  
37 ~~istered by the behavioral sciences regulatory board, licensed by the board~~  
38 ~~of healing arts, or certified as a drug and alcohol treatment program~~  
39 ~~through the Kansas social and rehabilitation services, including an indi-~~  
40 ~~vidual treatment provider.~~

41 (5) **"Reportable incident" means conduct by a licensee which**  
42 **(1) is or may be below the applicable standard of care; or (2) may**  
43 **be grounds for disciplinary action by the board.**

1 (c) (1) ~~Any person may file a complaint or report with the board~~  
2 ~~concerning any information or reasonable suspicion such person may have~~  
3 ~~relating to an alleged impaired licensee. Additionally, any report or com-~~  
4 ~~plaint the board receives alleging a violation of a statute or regulation~~  
5 ~~under the board's jurisdiction may be preliminarily assessed for impair-~~  
6 ~~ment issues if impairment reasonably appears to be a factor related to~~  
7 ~~the reported conduct. **Any person who has information relating to a**~~  
8 ~~**reportable incident may file a complaint or a report with the board.**~~

9 (2) The board may investigate the report or complaint. In the alter-  
10 native or additionally, if the board has reasonable cause to believe that a  
11 licensee is impaired, the board may require the licensee who is the subject  
12 of the report or complaint to obtain a mental or physical evaluation, or  
13 both, from a board approved impaired licensee treatment provider or a  
14 board approved professional for the purpose of determining whether the  
15 licensee is impaired. The impaired licensee treatment provider may refer  
16 the licensee to a physician or other licensed mental or physical health  
17 professional for a mental or physical evaluation, or both, for the purpose  
18 of determining whether the licensee is impaired. Any costs associated  
19 with a licensee obtaining such an evaluation or evaluations shall be borne  
20 by the licensee. ~~could be impaired, the board may refer the licensee~~  
21 ~~to the treatment contractor for assessment for possible impairment.~~  
22 ~~The treatment contractor may refer the licensee to a physician or~~  
23 ~~other licensed mental health or physical health professional for~~  
24 ~~evaluation for the purpose of determining a course of treatment and~~  
25 ~~monitoring schedule. Any cost associated with the licensee obtain-~~  
26 ~~ing such an evaluation or evaluations shall be borne by the licensee.~~

27 (3) If the board requires a licensee to submit to such an evaluation  
28 or evaluations, the board shall receive and consider any other evaluation  
29 from one or more professionals of the licensee's choice. ~~If the board~~  
30 ~~refers the licensee to the treatment contractor, the board shall re-~~  
31 ~~ceive and consider the conclusions of the evaluation or evaluations~~  
32 ~~from the treatment contractor.~~ Any costs associated with a licensee  
33 obtaining such an evaluation or evaluations shall be borne by the licensee.

34 ~~(4) The impaired licensee treatment provider or the board approved~~  
35 ~~professional shall report the findings of the mental or physical evaluation,~~  
36 ~~or both, to the board.~~

37 (d) (1) The board shall develop procedures for processing complaints  
38 or reports after receipt of the mental or physical evaluation, or both ~~re-~~  
39 ~~ceiving the conclusions of the evaluation or evaluations from the~~  
40 ~~treatment contractor.~~ The procedures may vary depending on whether:

41 (A) The initial complaint or report alleged a violation of a statute or  
42 regulation;

43 (B) an impairment is substantiated by the evaluation or evaluations;

- 1 (C) an impairment, if substantiated, is likely to improve with a course  
2 of treatment; and
- 3 (D) the licensee can practice with reasonable skill, ~~safety and com-~~  
4 ~~petence~~ **and safety** during a course of treatment for the impairment.
- 5 (2) If an impairment is substantiated, the board may, but is not re-  
6 quired to, divert the matter from a disciplinary proceeding, and may take  
7 any of the following actions ~~in accordance with the Kansas administrative~~  
8 ~~procedure act:~~
- 9 (A) Authorize the licensee to continue practicing on specified con-  
10 ditions, restrictions or limitations;
- 11 (B) suspend the license on specified conditions, restrictions or limi-  
12 tations; **or**
- 13 (C) cancel the license upon the licensee's voluntary surrender of the  
14 license; ~~or~~
- 15 ~~(D) place the licensee on inactive status either by voluntary request~~  
16 ~~of the licensee or by order of the board without a voluntary request of~~  
17 ~~the licensee.~~
- 18 (3) As an alternative to subsection (b), the board may take any au-  
19 thorized disciplinary action if a licensee's impairment is substantiated by  
20 clear and convincing evidence or if the licensee has violated any applicable  
21 statute or regulation under the board's jurisdiction.
- 22 (4) Cost of any course of treatment required pursuant to subsection  
23 (b) or (c) shall be borne by the licensee.
- 24 (5) If a licensee practices in violation of any action taken by the board  
25 under subsection (d)(2) or if the board receives a report from the im-  
26 paired licensee treatment provider pursuant to subsection (e)(2)(C) or  
27 (e)(2)(D), the board may suspend or revoke the license after providing  
28 notice and an opportunity to be heard in accordance with the Kansas  
29 administrative procedure act.
- 30 (e) (1) The board shall have the authority to enter into an agreement  
31 ~~with an impaired licensee treatment provider or other professional a~~  
32 **treatment contractor** to undertake those functions and responsibilities  
33 specified in the agreement and to provide for payment of administrative  
34 expenses from moneys appropriated to the agency for that purpose. Such  
35 functions and responsibilities may include any or all of the following:
- 36 (A) Contracting with providers of treatment programs;
- 37 (B) receiving and evaluating reports of suspected impairment from  
38 any source;
- 39 (C) intervening in cases of verified impairment;
- 40 (D) referring an impaired licensee to a treatment program or to a  
41 licensed mental or physical health professional;
- 42 (E) monitoring the treatment and rehabilitation of impaired  
43 licensees;

- 1 (F) providing post-treatment monitoring and support of rehabilitated  
2 impaired licensees; and
- 3 (G) performing such other activities as agreed upon by the board and  
4 the ~~impaired licensee treatment provider~~ **a treatment contractor**.
- 5 (2) The ~~impaired licensee treatment provider or other professional~~  
6 **treatment contractor** shall develop procedures in consultation with the  
7 board for:
- 8 (A) Periodic reporting of statistical information regarding impaired  
9 licensee program activity;
- 10 (B) periodic disclosure and joint review of such information as the  
11 board considers appropriate regarding reports received, contacts, evalu-  
12 ations or investigations made and the disposition of each report;
- 13 (C) immediate reporting to the board of the name and results of any  
14 contact or investigation regarding any impaired licensee who is believed  
15 to constitute an imminent danger to the public or to self;
- 16 (D) reporting to the board, in a timely fashion, any impaired licensee  
17 who refuses to cooperate with the ~~impaired licensee treatment provider~~  
18 ~~or other professional~~ **treatment contractor** or refuses to submit to treat-  
19 ment, or whose impairment is not substantially alleviated through treat-  
20 ment; and
- 21 (E) informing each participant of the ~~impaired licensee treatment~~  
22 ~~provider's or other professional's~~ **treatment contractor's** plan of the pro-  
23 cedures, the responsibilities of participants and the possible consequences  
24 of noncompliance.
- 25 (3) Notwithstanding any other provision of law, any person making a  
26 report or complaint to the board, ~~an impaired licensee treatment provider~~  
27 ~~or any other professional~~ **or treatment contractor** shall not be liable to  
28 any person for any acts, omissions or recommendations made in good  
29 faith while acting within the scope of the authority granted or responsi-  
30 bilities imposed pursuant to this act.
- 31 (f) (1) The reports and records made pursuant to this act, and  
32 amendments thereto, shall be confidential and privileged, including:
- 33 (A) Reports and records of the board or ~~an impaired licensee treat-~~  
34 ~~ment provider or other professional~~ **treatment contractor**; and
- 35 (B) reports and records made pursuant to this act to or by any board  
36 committee, employee or any consultant. Such reports and records shall  
37 not be subject to discovery, subpoena or other means of legal compulsion  
38 for their release to any person or entity and shall not be admissible in any  
39 civil or administrative action other than a proceeding pursuant to subsec-  
40 tion (d)(2) or (d)(4) or a disciplinary proceeding by the board pursuant  
41 to subsection (d)(3).
- 42 (2) No person in attendance at any meeting of the board or board  
43 committee engaged in the duties imposed by this act and amendments

1 thereto shall be compelled to testify in any civil, criminal or administrative  
 2 action, other than a proceeding pursuant to subsection (d)(2) or (d)(4) or  
 3 a disciplinary proceeding by the board pursuant to subsection (d)(3), as  
 4 to any board committee discussions or proceedings.

5 (3) ~~Nothing in this act shall limit the authority of the board to require~~  
 6 ~~an impaired licensee treatment provider or other professional to report~~  
 7 ~~to the board any mental or physical evaluation, action, recommendation~~  
 8 ~~or course of treatment of such impaired licensee treatment provider or~~  
 9 ~~other professional or to transfer to the board records and reports of such~~  
 10 ~~impaired licensee treatment provider's or other professional's proceed-~~  
 11 ~~ings or actions.~~ Reports and records furnished to the board by any im-  
 12 ~~paired licensee treatment provider or other professional~~ **treatment con-**  
 13 **tractor** shall not be subject to discovery, subpoena or other means of  
 14 legal compulsion for their release to any person or entity and shall not be  
 15 admissible in evidence in any judicial or administrative proceeding other  
 16 than a proceeding pursuant to subsection (d)(2) or (d)(4) or a disciplinary  
 17 proceeding by the board pursuant to subsection (d)(3).

18 (4) A board committee or employee may report to and discuss its  
 19 activities, information and findings with other committee members or  
 20 employees without waiver of confidentiality or the privilege provided un-  
 21 der this section, and the records of all such committees or employees  
 22 relating to such report shall be confidential and privileged as provided  
 23 under this section.

24 (5) Meetings of the board or a board committee in which a licensee's  
 25 impairment will be discussed may be conducted in a closed session.

26 (g) No person or entity which, in good faith, reports or provides in-  
 27 formation or investigates any licensee as authorized by this act, and  
 28 amendments thereto, shall be liable in a civil action for damages or other  
 29 relief arising from the reporting, providing of information or investigation  
 30 except upon clear and convincing evidence that the report or information  
 31 was completely false, or that the investigation was based on false infor-  
 32 mation, and that the falsity was actually known to the person making the  
 33 report, providing the information or conducting the investigation at the  
 34 time thereof.

35 (h) (1) No person or entity shall be subject to liability in a civil action  
 36 for failure to report as authorized by this act, and amendments thereto.

37 (2) In no event shall the board, a board committee, ~~an impaired li-~~  
 38 ~~censee treatment provider or other professional~~ **or treatment contractor**  
 39 be liable in damages for the alleged failure to properly investigate, evalu-  
 40 ate or act upon any report or complaint made pursuant to this act and  
 41 amendments thereto.

42 (i) ***The board may deny, revoke, limit, condition or suspend any***  
 43 ***license issued by the board in the event that the licensee, after being***

1 *referred to a treatment contractor, has failed to comply with the*  
2 *course of treatment and monitoring schedule related to an impair-*  
3 *ment that has reasonable probability of causing harm to a client or*  
4 *may be grounds for disciplinary action by the board.*

5 ~~(i)~~ (j) The board is authorized to adopt rules and regulations to im-  
6 plement the provisions of this act.

7 Sec. 2. This act shall take effect and be in force from and after its  
8 publication in the statute book.