

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 746*
Committee Substitute Favorable 4/30/09
Committee Substitute #2 Favorable 5/20/09
Senate Commerce Committee Substitute Adopted 6/17/09

Short Title: Amend Professional Counselors Act/Fees.

(Public)

Sponsors:

Referred to:

March 24, 2009

1 A BILL TO BE ENTITLED
2 AN ACT AMENDING THE LICENSED PROFESSIONAL COUNSELORS ACT AND
3 AUTHORIZING THE NORTH CAROLINA BOARD OF LICENSED PROFESSIONAL
4 COUNSELORS TO INCREASE CERTAIN FEES.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 90-330 reads as rewritten:

7 "**§ 90-330. Definitions; practice of ~~marriage and family therapy counseling.~~**

8 (a) Definitions. – As used in this Article certain terms are defined as follows:

9 (1) Repealed by Session Laws 1993, c. 514, s. 1.

10 (1a) The "Board" means the Board of Licensed Professional Counselors.

11 (2) A "licensed professional counselor" is a person engaged in the practice of
12 counseling who holds a license as a licensed professional counselor issued
13 under the provisions of this Article.

14 (2a) A "licensed professional counselor associate" is a person engaged in the
15 supervised practice of counseling who holds a license as a licensed
16 professional counselor associate issued under the provisions of this Article.

17 (2b) A "licensed professional counselor supervisor" is a person engaged in the
18 practice of counseling who holds a license as a licensed professional
19 counselor and is approved by the Board to provide clinical supervision under
20 the provisions of this Article.

21 (3) The "practice of counseling" means holding oneself out to the public as a
22 professional counselor offering counseling services that include, but are not
23 limited to, the following:

24 a. Counseling. – Assisting individuals, groups, and families through the
25 counseling relationship by evaluating and treating mental disorders
26 and other conditions through the use of a combination of clinical
27 mental health and human development principles, methods,
28 diagnostic procedures, treatment plans, and other psychotherapeutic
29 techniques, to develop an understanding of personal problems, to
30 define goals, and to plan action reflecting the client's interests,
31 abilities, aptitudes, and mental health needs as these are related to
32 personal-social-emotional concerns, educational progress, and
33 occupations and careers.

34 b. Appraisal Activities. – Administering and interpreting tests for
35 assessment of personal characteristics.



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- 1 c. Consulting. – Interpreting scientific data and providing guidance and
 2 personnel services to individuals, groups, or organizations.
 3 d. Referral Activities. – Identifying problems requiring referral to other
 4 specialists.
 5 e. Research Activities. – Designing, conducting, and interpreting
 6 research with human subjects.

7 The "practice of counseling" does not include the facilitation of
 8 communication, understanding, reconciliation, and settlement of conflicts by
 9 mediators at community mediation centers authorized by G.S. 7A-38.5.

- 10 (4) A "supervisor" means any licensed professional counselor supervisor or,
 11 when one is inaccessible, a licensed professional counselor or an
 12 ~~equivalently credentialed mental health professional, as determined by the~~
 13 ~~Board, with a minimum of five years of counseling experience~~equivalently
 14 and actively licensed mental health professional, as determined by the
 15 Board, who meets the qualifications established by the Board.

16 (b) Repealed by Session Laws 1993, c. 514, s. 1.

17 (c) Practice of Marriage and Family Therapy, Psychology, or Social Work. – No person
 18 licensed as a licensed professional counselor or licensed professional counselor associate under
 19 the provisions of this Article shall be allowed to hold himself or herself out to the public as a
 20 licensed marriage and family therapist, licensed practicing psychologist, psychological
 21 associate, or licensed clinical social worker unless specifically authorized by other provisions
 22 of law."

23 **SECTION 2.** G.S. 90-331 reads as rewritten:

24 "**§ 90-331. Prohibitions.**

25 It shall be unlawful for any person who is not licensed under this Article to engage in the
 26 practice of counseling, use the title "~~licensed professional counselor~~," "Licensed Professional
 27 Counselor Associate," "Licensed Professional Counselor," or "Licensed Professional Counselor
 28 Supervisor," use the letters "LPCA," "LPC," "LPC," or "LPCS," use any facsimile or
 29 combination of these words or letters, abbreviations, or insignia, or indicate or imply orally, in
 30 writing, or in any other way that the person is a licensed professional counselor."

31 **SECTION 3.** G.S. 90-332.1 reads as rewritten:

32 "**§ 90-332.1. Exemptions from licensure.**

33 (a) It is not the intent of this Article to regulate members of other regulated professions
 34 who do counseling in the normal course of the practice of their profession. Accordingly, this
 35 Article does not apply to:

- 36 (1) Lawyers licensed under Chapter 84, doctors licensed under Chapter 90, and
 37 any other person registered, certified, or licensed by the State to practice any
 38 other occupation or profession while rendering counseling services in the
 39 performance of the occupation or profession for which the person is
 40 registered, certified, or licensed.
 41 (2) Any school counselor certified by the State Board of Education while
 42 counseling within the scope of employment by a board of education or
 43 private school.
 44 (3) Any student intern or trainee in counseling pursuing a course of study in
 45 counseling in a regionally accredited institution of higher learning or training
 46 institution, if the intern or trainee is a designated "counselor intern" and the
 47 activities and services constitute a part of the supervised course of study.
 48 (4) ~~Any person counseling as a supervised counselor in a supervised~~
 49 ~~professional practice under G.S. 90-336(b)(2).~~
 50 (4a) Any person counseling within the scope of employment ~~at a local~~
 51 ~~community college.~~ at: (i) a local community college as defined in

- 1 G.S. 115D-2(2); (ii) a public higher education institution as defined in
2 G.S. 116-2(4); or (iii) a private higher education institution as defined in
3 G.S. 116-22(1).
- 4 (4b) ~~Any person counseling within the scope of employment at a private higher~~
5 ~~education institution as defined in G.S. 116-22(1).~~
- 6 (5) Any ordained minister or other member of the clergy while acting in a
7 ministerial capacity who does not charge a fee for the service, or any person
8 invited by a religious organization to conduct, lead, or provide counseling to
9 its members when the service is not performed for more than 30 days a year.
- 10 (6) Any nonresident temporarily employed in this State to render counseling
11 services for not more than 30 days in a year, if the person holds a license or
12 certificate required for counselors in another state.
- 13 (7) Any person employed by State, federal, county, or municipal government
14 while counseling within the scope of employment.
- 15 (8) ~~Any person performing counseling solely as an employee of an area facility,~~
16 ~~as defined in G.S. 122C-3(14)a., if both of the following apply:~~
- 17 a. ~~The services are provided by (i) a qualified professional as defined in~~
18 ~~G.S. 122C-3(31) and subject to the rules adopted by the Commission~~
19 ~~for Mental Health, Developmental Disabilities, and Substance Abuse~~
20 ~~Services, or (ii) an employee supervised by a qualified professional~~
21 ~~as defined in G.S. 122C-3(31);~~
- 22 b. ~~The area facility has obtained written verification from the following~~
23 ~~boards that the employee has not had his or her license, registration,~~
24 ~~or certification revoked, rescinded, or suspended: the North Carolina~~
25 ~~Board of Licensed Professional Counselors, the North Carolina State~~
26 ~~Board of Examiners of Practicing Psychologists, the North Carolina~~
27 ~~Social Work Certification and Licensure Board, and the North~~
28 ~~Carolina Marriage and Family Therapy Licensure Board;~~
- 29 (9) ~~Any person performing counseling as an employee of a hospital or other~~
30 ~~health care facility licensed under Chapter 131D, 131E, or 122C who is~~
31 ~~performing this counseling under the supervision of a qualified professional~~
32 ~~as defined in G.S. 122C-3(31); and~~
- 33 (10) ~~Any employee assistance professional providing core specific employee~~
34 ~~assistance program (EAP) activities, as defined by the Employee Assistance~~
35 ~~Professionals Association Standards for Employee Assistance Programs Part~~
36 ~~II: Professional Guidelines (1988).~~
- 37 (b) Persons who claim to be exempt under subsection (a) of this section are prohibited
38 from advertising or offering themselves as "licensed professional counselors".
- 39 (c) Persons licensed under this Article are exempt from rules pertaining to counseling
40 adopted by other occupational licensing boards.
- 41 (d) Nothing in this Article shall prevent a person from performing substance abuse
42 counseling or substance abuse prevention consulting as defined in Article 5C of this Chapter."
- 43 **SECTION 4.** G.S. 90-333 reads as rewritten:
- 44 **"§ 90-333. North Carolina Board of Licensed Professional Counselors; appointments;**
45 **terms; composition.**
- 46 (a) For the purpose of carrying out the provisions of this Article, there is hereby created
47 the North Carolina Board of Licensed Professional Counselors which shall consist of seven
48 members appointed by the Governor in the manner hereinafter prescribed. Any State or
49 nationally recognized professional association representing professional counselors may submit
50 recommendations to the Governor for Board membership. The Governor may remove any

1 member of the Board for neglect of duty or malfeasance or conviction of a felony or other
2 crime of moral turpitude, but for no other reason.

3 (b) At least five members of the Board shall be licensed professional counselors except
4 that initial appointees shall be persons who meet the educational and experience requirements
5 for licensure as licensed professional counselors under the provisions of this Article; and two
6 members shall be public-at-large members appointed from the general public. Composition of
7 the Board as to the race and sex of its members shall reflect the ~~composition of the~~ population
8 of the State and each member shall reside in a different congressional district.

9 (c) At all times the Board shall include at least one counselor primarily engaged in
10 counselor education, at least one counselor primarily engaged in the public sector, at least one
11 counselor primarily engaged in the private sector, and two licensed professional counselors at
12 large.

13 (d) All members of the Board shall be residents of the State of North Carolina, and,
14 with the exception of the public-at-large members, shall be licensed by the Board under the
15 provisions of this Article. Professional members of the Board must be actively engaged in the
16 practice of counseling or in the education and training of students in counseling, and have been
17 for at least three years prior to their appointment to the Board. The engagement in this activity
18 during the two years preceding the appointment shall have occurred primarily in this State.

19 (e) The term of office of each member of the Board shall be three years; provided,
20 however, that of the members first appointed, three shall be appointed for terms of one year,
21 two for terms of two years, and two for terms of three years. No member shall serve more than
22 two consecutive three-year terms.

23 (f) Each term of service on the Board shall expire on the 30th day of June of the year in
24 which the term expires. As the term of a member expires, the Governor shall make the
25 appointment for a full term, or, if a vacancy occurs for any other reason, for the remainder of
26 the unexpired term. Appointees to the Board shall continue to serve until a successor is
27 appointed and qualified.

28 (g) Members of the Board shall receive compensation for their services and
29 reimbursement for expenses incurred in the performance of duties required by this Article, at
30 the rates prescribed in G.S. 93B-5.

31 (h) The Board may employ, subject to the provisions of Chapter 126 of the General
32 Statutes, the necessary personnel for the performance of its functions, and fix their
33 compensation within the limits of funds available to the Board."

34 **SECTION 5.** G.S. 90-334 reads as rewritten:

35 "**§ 90-334. Functions and duties of the Board.**

36 (a) The Board shall administer and enforce the provisions of this Article.

37 (b) The Board shall elect from its membership, a chairperson, a vice-chairperson, and
38 secretary-treasurer, and adopt rules to govern its proceedings. A majority of the membership
39 shall constitute a quorum for all Board meetings.

40 (c) The Board shall examine and pass on the qualifications of all applicants for licenses
41 under this Article, and shall issue a license or renewal of license to each successful applicant
42 therefor.

43 (d) The Board may adopt a seal which may be affixed to all licenses issued by the
44 Board.

45 (e) The Board may authorize expenditures deemed necessary to carry out the provisions
46 of this Article from ~~the fees which it collects, but in no event shall expenditures exceed the~~
47 revenues of the Board during any fiscal year. fees paid to the Board pursuant to this section. No
48 State appropriations shall be subject to the administration of the Board.

49 (f) The Board shall establish and receive fees not to exceed ~~one two~~ hundred dollars
50 ~~(\$100.00)~~ (\$200.00) for initial or renewal application, ~~not to exceed one hundred dollars~~
51 ~~(\$100.00) for examination,~~ application and not to exceed ~~twenty five~~ seventy-five dollars

1 (~~(\$25.00)~~(\$75.00) for late renewal, maintain Board accounts of all receipts, and make
2 expenditures from Board receipts for any purpose which is reasonable and necessary for the
3 proper performance of its duties under this Article.

4 (g) The Board shall have the power to establish or approve study or training courses and
5 to establish reasonable standards for licensure and license renewal, including but not limited to
6 the power to adopt or use examination materials and accreditation standards of any recognized
7 counselor accrediting agency and the power to establish reasonable standards for continuing
8 counselor education.

9 (h) Subject to the provisions of Chapter 150B of the General Statutes, the Board shall
10 have the power to adopt, amend, or repeal rules to carry out the purposes of this Article,
11 including but not limited to the power to adopt ethical and disciplinary standards.

12 (i) The Board shall establish the criteria for determining the qualifications constituting
13 "supervised professional practice".

14 (j) The Board may ~~examine counselor applicants,~~ examine, approve, issue, deny,
15 revoke, suspend, and renew the licenses of counselor applicants and licensees under this
16 Article, and conduct hearings in connection with these actions.

17 (k) The Board shall investigate, subpoena individuals and records, and take necessary
18 appropriate action to properly discipline persons licensed under this Article and to enforce this
19 Article."

20 **SECTION 6.** G.S. 90-336 reads as rewritten:

21 "**§ 90-336. Title and qualifications for licensure.**

22 (a) Each person desiring to be a licensed professional counselor associate, licensed
23 professional counselor-counselor, or licensed professional counselor supervisor shall make
24 application to the Board upon such forms and in such manner as the Board shall prescribe,
25 together with the required application fee.

26 (b) The Board shall issue a license as "~~licensed professional counselor~~" a "licensed
27 professional counselor associate" to an applicant who meets all of the following criteria:

28 (1) ~~Has earned one of the following:~~

29 a. ~~A masters degree in counseling from a regionally accredited~~
30 ~~institution of higher education, which includes a minimum of 48~~
31 ~~semester hours.~~

32 b. ~~A graduate degree in a related field supplemented with courses that~~
33 ~~the Board determines to be substantially equivalent.~~

34 Has earned a minimum of 48 semester hours or 72 quarter credit hours of
35 graduate training as defined by the Board, including a master's degree in
36 counseling or a related field from a regionally accredited institution of
37 higher education if the applicant enrolled in the master's program before July
38 1, 2009; a minimum of 54 semester hours or 81 quarter credit hours of
39 graduate training as defined by the Board, including a master's degree in
40 counseling or a related field from a regionally accredited institution of
41 higher education if the applicant enrolled in the master's program before July
42 1, 2013, but after June 30, 2009; or a minimum of 60 semester hours or 90
43 quarter credit hours of graduate training as defined by the Board, including a
44 master's degree in counseling or a related field from a regionally accredited
45 institution of higher education if the applicant enrolled in the master's
46 program after June 30, 2013.

47 (2) ~~Has had no less than two years of masters or post-masters counseling~~
48 ~~experience, or of both, in a professional setting, including a minimum of~~
49 ~~2,000 hours of supervised professional practice as defined by the Board.~~

50 (3) Has passed an examination as in accordance with rules adopted by the
51 Board.

1 (c) The Board shall issue a license as a "licensed professional counselor" to an applicant
 2 who meets all of the following criteria:

3 (1) Has met all of the requirements under subsection (b) of this section.

4 (2) Has completed a minimum of 3,000 hours of supervised professional
 5 practice as determined by the Board.

6 (d) A licensed professional counselor may apply to the Board for recognition as a
 7 "licensed professional counselor supervisor" and receive the credential "licensed professional
 8 counselor supervisor" upon meeting all of the following criteria:

9 (1) Has met all of the requirements under subsection (c) of this section.

10 (2) Has one of the following:

11 a. At least five years of full-time licensed professional counseling
 12 experience, including a minimum of 2,500 hours of direct client
 13 contact;

14 b. At least eight years of part-time licensed professional counseling
 15 experience, including a minimum of 2,500 hours of direct client
 16 contact; or

17 c. A combination of full-time and part-time professional counseling
 18 experience, including a minimum of 2,500 hours of direct client
 19 contact as determined by the Board.

20 (3) Has completed minimum education requirements in clinical supervision as
 21 approved by the Board.

22 (4) Has an active license in good standing as a licensed professional counselor
 23 approved by the Board."

24 **SECTION 7.** G.S. 90-338 reads as rewritten:

25 **"§ 90-338. Exemptions.**

26 Applicants holding certificates of registration as Registered Practicing Counselors and in
 27 good standing with the Board shall be issued licenses as licensed professional counselors
 28 without meeting the requirements of ~~G.S. 90-336(b)~~.G.S. 90-336(c). The following applicants
 29 shall be exempt from the academic qualifications required by this Article for licensed
 30 professional counselor associates or licensed professional counselors and shall be licensed upon
 31 passing the Board examination and meeting the experience requirements:

32 (1) An applicant who was engaged in the practice of counseling before July 1,
 33 1993, and who ~~applies~~ applied to the Board prior to January 1, 1996.

34 (2) An applicant who holds a masters degree from a college or university
 35 accredited by one of the regional accrediting associations or from a college
 36 or university determined by the Board to have standards substantially
 37 equivalent to a regionally accredited institution, provided the applicant was
 38 enrolled in the masters program prior to July 1, 1994."

39 **SECTION 8.** G.S. 90-340 reads as rewritten:

40 **"§ 90-340. Protection of the public.**

41 (a) The Board may, in accordance with the provisions of Chapter 150B of the General
 42 Statutes, ~~refuse to grant or to renew, may suspend, or may revoke the license~~deny, suspend, or
 43 revoke licensure, discipline, place on probation, limit practice, or require examination,
 44 remediation, or rehabilitation of any person licensed under this Article on one or more of the
 45 following grounds:

46 (1) ~~Conviction of a misdemeanor under this Article.~~Has been convicted of a
 47 felony or entered a plea of guilty or nolo contendere to any felony charge
 48 under the laws of the United States or of any state of the United States.

49 (2) ~~Conviction of a felony under the laws of the United States or of any state of~~
 50 the United States.Has been convicted of or entered a plea of guilty or nolo
 51 contendere to any misdemeanor involving moral turpitude,

- 1 misrepresentation, or fraud in dealing with the public, or conduct otherwise
2 relevant to fitness to practice professional counseling, or a misdemeanor
3 charge reflecting the inability to practice professional counseling with due
4 regard to the health and safety of clients or patients.
- 5 (3) Gross unprofessional conduct, dishonest practice or incompetence in the
6 practice of counseling. Has engaged in fraud or deceit in securing or
7 attempting to secure or renew a license under this Article or has willfully
8 concealed from the Board material information in connection with
9 application for a license or renewal of a license under this Article.
- 10 (4) Procuring or attempting to procure a license by fraud, deceit, or
11 misrepresentation. Has practiced any fraud, deceit, or misrepresentation upon
12 the public, the Board, or any individual in connection with the practice of
13 professional counseling, the offer of professional counseling services, the
14 filing of Medicare, Medicaid, or other claims to any third-party payor, or in
15 any manner otherwise relevant to fitness for the practice of professional
16 counseling.
- 17 (5) Any fraudulent or dishonest conduct in counseling. Has made fraudulent,
18 misleading, or intentionally or materially false statements pertaining to
19 education, licensure, license renewal, certification as a health services
20 provider, supervision, continuing education, any disciplinary actions or
21 sanctions pending or occurring in any other jurisdiction, professional
22 credentials, or qualifications or fitness for the practice of professional
23 counseling to the public, any individual, the Board, or any other
24 organization.
- 25 (6) Inability of the person to perform the functions for which a license has been
26 issued due to impairment of mental or physical faculties. Has had a license or
27 certification for the practice of professional counseling in any other
28 jurisdiction suspended or revoked, or has been disciplined by the licensing or
29 certification board in any other jurisdiction for conduct which would subject
30 him or her to discipline under this Article.
- 31 (7) Violations of any of the provisions of this Article or rules of the Board. Has
32 violated any provision of this Article or any rules adopted by the Board.
- 33 (8) Violations of the American Counseling Association Ethical Standards
34 adopted by the Board. Has aided or abetted the unlawful practice of
35 professional counseling by any person not licensed by the Board.
- 36 (9) Has been guilty of immoral, dishonorable, unprofessional, or unethical
37 conduct as defined in this subsection or in the current code of ethics of the
38 American Counseling Association. However, if any provision of the code of
39 ethics is inconsistent and in conflict with the provisions of this Article, the
40 provisions of this Article shall control.
- 41 (10) Has practiced professional counseling in such a manner as to endanger the
42 welfare of clients.
- 43 (11) Has demonstrated an inability to practice professional counseling with
44 reasonable skill and safety by reason of illness, inebriation, misuse of drugs,
45 narcotics, alcohol, chemicals, or any other substance affecting mental or
46 physical functioning, or as a result of any mental or physical condition.
- 47 (12) Has practiced professional counseling outside the boundaries of
48 demonstrated competence or the limitations of education, training, or
49 supervised experience.
- 50 (13) Has exercised undue influence in such a manner as to exploit the client,
51 patient, student, supervisee, or trainee for the financial or other personal

1 advantage or gratification of the licensed professional counselor associate,
2 licensed professional counselor, or a third party.

3 (14) Has harassed or abused, sexually or otherwise, a client, patient, student,
4 supervisee, or trainee.

5 (15) Has failed to cooperate with or to respond promptly, completely, and
6 honestly to the Board, to credentials committees, or to ethics committees of
7 professional associations, hospitals, or other health care organizations or
8 educational institutions, when those organizations or entities have
9 jurisdiction.

10 (16) Has refused to appear before the Board after having been ordered to do so in
11 writing by the chair.

12 (17) Has a finding listed on the Division of Health Service Regulation of the
13 Department of Health and Human Services Health Care Personnel Registry.

14 (b) The Board may, in lieu of denial, suspension, or revocation, take any of the
15 following disciplinary actions:

16 (1) Issue a formal reprimand or formally censure the applicant or licensee.

17 (2) Place the applicant or licensee on probation with the appropriate conditions
18 on the continued practice of professional counseling deemed advisable by
19 the Board.

20 (3) Require examination, remediation, or rehabilitation for the applicant or
21 licensee, including care, counseling, or treatment by a professional or
22 professionals designated or approved by the Board, the expense to be borne
23 by the applicant or licensee.

24 (4) Require supervision of the professional counseling services provided by the
25 applicant or licensee by a licensee designated or approved by the Board, the
26 expense to be borne by the applicant or licensee.

27 (5) Limit or circumscribe the practice of professional counseling provided by
28 the applicant or licensee with respect to the extent, nature, or location of the
29 professional counseling services provided, as deemed advisable by the
30 Board.

31 (6) Discipline and impose any appropriate combination of the types of
32 disciplinary action listed in this section.

33 In addition, the Board may impose conditions of probation or restrictions on continued
34 practice of professional counseling at the conclusion of a period of suspension or as a
35 requirement for the restoration of a revoked or suspended license. In lieu of or in connection
36 with any disciplinary proceedings or investigation, the Board may enter into a consent order
37 relative to discipline, supervision, probation, remediation, rehabilitation, or practice limitation
38 of a licensee or applicant for a license.

39 (c) The Board may assess costs of disciplinary action against an applicant or licensee
40 found to be in violation of this Article.

41 (d) When considering the issue of whether an applicant or licensee is physically or
42 mentally capable of practicing professional counseling with reasonable skill and safety with
43 patients or clients, upon a showing of probable cause to the Board that the applicant or licensee
44 is not capable of practicing professional counseling with reasonable skill and safety with
45 patients or clients, the Board may petition a court of competent jurisdiction to order the
46 applicant or licensee in question to submit to a psychological evaluation by a psychologist to
47 determine psychological status or a physical evaluation by a physician to determine physical
48 condition, or both. The psychologist or physician shall be designated by the court. The
49 expenses of the evaluations shall be borne by the Board. Where the applicant or licensee raises
50 the issue of mental or physical competence or appeals a decision regarding mental or physical
51 competence, the applicant or licensee shall be permitted to obtain an evaluation at the applicant

1 or licensee's expense. If the Board suspects the objectivity or adequacy of the evaluation, the
2 Board may compel an evaluation by its designated practitioners at its own expense.

3 (e) Except as otherwise provided in this Article, the procedure for revocation,
4 suspension, denial, limitations of the license, or other disciplinary, remedial, or rehabilitative
5 actions shall be in accordance with the provisions of Chapter 150B of the General Statutes. The
6 Board is required to provide the opportunity for a hearing under Chapter 150B to any applicant
7 whose license or health services provider certification is denied or to whom licensure or health
8 services provider certification is offered subject to any restrictions, probation, disciplinary
9 action, remediation, or other conditions or limitations, or to any licensee before revoking,
10 suspending, or restricting a license or health services provider certificate or imposing any other
11 disciplinary action or remediation. If the applicant or licensee waives the opportunity for a
12 hearing, the Board's denial, revocation, suspension, or other proposed action becomes final
13 without a hearing having been conducted. Notwithstanding the provisions of this subsection, no
14 applicant or licensee is entitled to a hearing for failure to pass an examination. In any
15 proceeding before the Board, in any record of any hearing before the Board, in any complaint
16 or notice of charges against any licensee or applicant for licensure, and in any decision
17 rendered by the Board, the Board may withhold from public disclosure the identity of any
18 clients who have not consented to the public disclosure of services provided by the licensee or
19 applicant. The Board may close a hearing to the public and receive in closed session evidence
20 involving or concerning the treatment of or delivery of services to a client who has not
21 consented to the public disclosure of the treatment or services as may be necessary for the
22 protection and rights of the client of the accused applicant or licensee and the full presentation
23 of relevant evidence.

24 (f) All records, papers, and other documents containing information collected and
25 compiled by or on behalf of the Board as a result of investigations, inquiries, or interviews
26 conducted in connection with licensing or disciplinary matters shall not be considered public
27 records within the meaning of Chapter 132 of the General Statutes. However, any notice or
28 statement of charges against any licensee or applicant, or any notice to any licensee or applicant
29 of a hearing in any proceeding, or any decision rendered in connection with a hearing in any
30 proceeding shall be a public record within the meaning of Chapter 132 of the General Statutes,
31 though the record may contain information collected and compiled as a result of the
32 investigation, inquiry, or hearing. Any identifying information concerning the treatment of or
33 delivery of services to a client who has not consented to the public disclosure of the treatment
34 or services may be deleted. If any record, paper, or other document containing information
35 collected and compiled by or on behalf of the Board, as provided in this section, is received and
36 admitted in evidence in any hearing before the Board, it shall be a public record within the
37 meaning of Chapter 132 of the General Statutes, subject to any deletions of identifying
38 information concerning the treatment of or delivery of services to a client who has not
39 consented to the public disclosure of treatment or services.

40 (g) A person whose license has been denied or revoked may reapply to the Board for
41 licensure after one calendar year from the date of the denial or revocation.

42 (h) A licensee may voluntarily relinquish his or her license at any time.
43 Notwithstanding any provision to the contrary, the Board retains full jurisdiction to investigate
44 alleged violations of this Article by any person whose license is relinquished under this
45 subsection and, upon proof of any violation of this Article by the person, the Board may take
46 disciplinary action as authorized by this section.

47 (i) The Board may adopt rules deemed necessary to interpret and implement this
48 section."

49 **SECTION 9.** Article 24 of Chapter 90 of the General Statutes is amended by
50 adding a new section to read:

1 "§ 90-345. Criminal history record checks of applicants for licensure as professional
2 counselors.

3 (a) Definitions. – The following definitions shall apply in this section:

4 (1) Applicant. – A person applying for licensure as a licensed professional
5 counselor associate pursuant to G.S. 90-336(b) or licensed professional
6 counselor pursuant to G.S. 90-336(c).

7 (2) Criminal history. – A history of conviction of a State or federal crime,
8 whether a misdemeanor or felony, that bears on an applicant's fitness for
9 licensure to practice professional counseling. The crimes include the
10 criminal offenses set forth in any of the following Articles of Chapter 14 of
11 the General Statutes: Article 5, Counterfeiting and Issuing Monetary
12 Substitutes; Article 5A, Endangering Executive and Legislative Officers;
13 Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8,
14 Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious
15 Injury or Damage by Use of Explosive or Incendiary Device or Material;
16 Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other
17 Burnings; Article 16, Larceny; Article 17, Robbery; Article 18,
18 Embezzlement; Article 19, False Pretenses and Cheats; Article 19A,
19 Obtaining Property or Services by False or Fraudulent Use of Credit Device
20 or Other Means; Article 19B, Financial Transaction Card Crime Act; Article
21 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public
22 Morality and Decency; Article 26A, Adult Establishments; Article 27,
23 Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct
24 in Public Office; Article 35, Offenses Against the Public Peace; Article 36A,
25 Riots and Civil Disorders; Article 39, Protection of Minors; Article 40,
26 Protection of the Family; Article 59, Public Intoxication; and Article 60,
27 Computer-Related Crime. The crimes also include possession or sale of
28 drugs in violation of the North Carolina Controlled Substances Act in Article
29 5 of Chapter 90 of the General Statutes and alcohol-related offenses
30 including sale to underage persons in violation of G.S. 18B-302 or driving
31 while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In
32 addition to the North Carolina crimes listed in this subdivision, such crimes
33 also include similar crimes under federal law or under the laws of other
34 states.

35 (b) The Board may request that an applicant for licensure, an applicant seeking
36 reinstatement of a license, or a licensee under investigation by the Board for alleged criminal
37 offenses in violation of this Article consent to a criminal history record check. Refusal to
38 consent to a criminal history record check may constitute grounds for the Board to deny
39 licensure to an applicant, deny reinstatement of a license to an applicant, or revoke the license
40 of a licensee. The Board shall ensure that the State and national criminal history of an applicant
41 is checked. The Board shall be responsible for providing to the North Carolina Department of
42 Justice the fingerprints of the applicant or licensee to be checked, a form signed by the
43 applicant or licensee consenting to the criminal record check and the use of fingerprints and
44 other identifying information required by the State or National Repositories of Criminal
45 Histories, and any additional information required by the Department of Justice in accordance
46 with G.S. 114-19.26. The Board shall keep all information obtained pursuant to this section
47 confidential. The Board shall collect any fees required by the Department of Justice and shall
48 remit the fees to the Department of Justice for expenses associated with conducting the criminal
49 history record check.

1 (c) If an applicant or licensee's criminal history record check reveals one or more
2 convictions listed under subdivision (a)(2) of this section, the conviction shall not automatically
3 bar licensure. The Board shall consider all of the following factors regarding the conviction:

- 4 (1) The level of seriousness of the crime.
5 (2) The date of the crime.
6 (3) The age of the person at the time of the conviction.
7 (4) The circumstances surrounding the commission of the crime, if known.
8 (5) The nexus between the criminal conduct of the person and the job duties of
9 the position to be filled.
10 (6) The person's prison, jail, probation, parole, rehabilitation, and employment
11 records since the date the crime was committed.
12 (7) The subsequent commission by the person of a crime listed in subdivision
13 (a)(2) of this section.

14 If, after reviewing these factors, the Board determines that the applicant or licensee's criminal
15 history disqualifies the applicant or licensee for licensure, the Board may deny licensure or
16 reinstatement of the license of the applicant or revoke the license of the licensee. The Board
17 may disclose to the applicant or licensee information contained in the criminal history record
18 check that is relevant to the denial. The Board shall not provide a copy of the criminal history
19 record check to the applicant or licensee. The applicant or licensee shall have the right to
20 appear before the Board to appeal the Board's decision. However, an appearance before the full
21 Board shall constitute an exhaustion of administrative remedies in accordance with Chapter
22 150B of the General Statutes.

23 (d) Limited Immunity. – The Board, its officers, and employees, acting in good faith
24 and in compliance with this section, shall be immune from civil liability for denying licensure
25 or reinstatement of a license to an applicant or revoking a licensee's license based on
26 information provided in the applicant or licensee's criminal history record check."

27 **SECTION 10.** Article 4 of Chapter 114 of the General Statutes is amended by
28 adding a new section to read:

29 **"§ 114-19.26. Criminal record checks of applicants for licensure as professional**
30 **counselors.**

31 The Department of Justice may provide to the North Carolina Board of Licensed
32 Professional Counselors from the State and National Repositories of Criminal Histories the
33 criminal history of any applicant for licensure or reinstatement of a license or licensee under
34 Article 24 of Chapter 90 of the General Statutes. Along with the request, the Board shall
35 provide to the Department of Justice the fingerprints of the applicant or licensee, a form signed
36 by the applicant or licensee consenting to the criminal record check and use of fingerprints and
37 other identifying information required by the State and National Repositories, and any
38 additional information required by the Department of Justice. The applicant or licensee's
39 fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's
40 criminal history record file, and the State Bureau of Investigation shall forward a set of
41 fingerprints to the Federal Bureau of Investigation for a national criminal history record check.
42 The Board shall keep all information obtained pursuant to this section confidential. The
43 Department of Justice may charge a fee to offset the cost incurred by it to conduct a criminal
44 record check under this section. The fee shall not exceed the actual cost of locating, editing,
45 researching, and retrieving the information."

46 **SECTION 11.** Licensed professional counselors who are approved by the North
47 Carolina Board of Licensed Professional Counselors as qualified clinical supervisors before
48 July 1, 2012, shall have until July 1, 2014, to meet the licensed professional counselor
49 supervisor requirements of G.S. 90-336(d), as enacted in Section 6 of this act.

50 **SECTION 12.** This act becomes effective October 1, 2009.