

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 935
Commerce Committee Substitute Adopted 6/1/09

Short Title: Amend Marriage & Family Licensure Laws/Fees.

(Public)

Sponsors:

Referred to:

March 26, 2009

1 A BILL TO BE ENTITLED
2 AN ACT AMENDING THE MARRIAGE AND FAMILY THERAPY LICENSURE LAWS
3 AND AUTHORIZING THE NORTH CAROLINA MARRIAGE AND FAMILY
4 THERAPY LICENSURE BOARD TO INCREASE FEES.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 90-270.47 reads as rewritten:

7 "§ 90-270.47. Definitions.

8 As used in this Article, unless the context clearly requires a different meaning:

9 (1) ~~"Allied mental health field" and "degree" mean:~~ "Related degree" means:

- 10 a. Master's or doctoral degree in clinical social work;
11 b. Master's or doctoral degree in psychiatric nursing;
12 c. Master's or doctoral degree in counseling or clinical or counseling
13 psychology;
14 d. Doctor of medicine or doctor of osteopathy degree with an
15 appropriate residency training in psychiatry; or
16 e. Master's or doctoral degree in any mental health field the course of
17 study of which is equivalent to the master's degree in marriage and
18 family therapy.

19 (2) "Board" means the North Carolina Marriage and Family Therapy Licensure
20 Board.

21 (2a) "Clinical experience" means face-to-face therapy between a therapist and a
22 client, whether individuals, couples, families, or groups, conducted from a
23 larger systems perspective that relates to client treatment plans, is
24 goal-directed, and assists the client in affecting change in cognition and
25 behavior and effect.

26 (2b) "Larger systems" means any individual or group that is a part of the client's
27 environment and that potentially impacts the client's functioning or
28 well-being and potentially can assist in the development and implementation
29 of a treatment plan.

30 (3) "Licensed marriage and family therapist" means a person to whom a license
31 has been issued pursuant to this Article, if the license is in force and not
32 suspended or revoked.

33 (3a) "Licensed marriage and family therapy associate" means an individual to
34 whom a license has been issued pursuant to this Article whose license is in
35 force and not suspended or revoked and whose license permits the individual
36 to engage in the practice of marriage and family therapy under the
37 supervision of an American Association for Marriage and Family Therapy



(AAMFT) approved supervisor in accordance with rules adopted by the Board.

(3a)(3b) "Marriage and family therapy" is the clinical practice, within the context of individual, couple, and marriage and family systems, of the diagnosis and treatment of psychosocial aspects of mental and emotional disorders. Marriage and family therapy involves the professional application of psychotherapeutic and family systems theories and techniques in the delivery of services to families, couples, and individuals for the purpose of treating these diagnosed mental and emotional disorders. Marriage and family therapy includes referrals to and collaboration with ~~other~~ health care and other professionals when appropriate.

(4) "Practice of marriage and family therapy" means the rendering of professional marriage and family therapy services to individuals, couples, or families, singly or in groups, whether the services are offered directly to the general public or through organizations, either public or private, for a fee, monetary or otherwise.

(5) "Recognized educational institution" means any ~~educational institution that grants a bachelor's, master's, or doctoral degree and is recognized by the Board and by a nationally or regionally recognized educational or professional accrediting body~~ university, college, professional school, or other institution of higher learning that:

a. In the United States, is regionally accredited by bodies approved by the Commission on Recognition of Postsecondary Accreditation or its successor.

b. In Canada, holds a membership in the Association of Universities and Colleges of Canada.

c. In another country, is accredited by the comparable official organization having this authority and is recognized by the Board."

SECTION 2. G.S. 90-270.48 reads as rewritten:

"§ 90-270.48. Prohibited acts.

Except as specifically provided elsewhere in this Article, it is unlawful for a person not licensed as a marriage and family therapist or as a licensed marriage and family therapy associate under this Article to practice marriage or family therapy or hold himself or herself out to the public as a person practicing marriage and family therapy."

SECTION 3. G.S. 90-270.48A reads as rewritten:

"§ 90-270.48A. Exemptions.

(a) This Article does not prevent members of the clergy or licensed, certified, or registered members of professional groups recognized by the Board from advertising or performing services consistent with their own profession. Members of the clergy include, but are not limited to, persons who are ordained, consecrated, commissioned, or endorsed by a recognized denomination, church, faith group, or synagogue. Professional groups the Board shall recognize include, but are not limited to, licensed or certified social workers, licensed professional counselors, fee-based pastoral counselors, licensed practicing psychologists, psychological associates, physicians, and attorneys-at-law. However, in no event may a person use the title "Licensed Marriage and Family ~~Therapist,"~~ "Therapist" or "Licensed Marriage and Family Therapy Associate," use the letters "~~LMFT,"~~"LMFT" or "LMFTA," or in any way imply that the person is a licensed marriage and family therapist or a licensed marriage and family therapy associate unless the person is licensed as such under this Article.

(b) A person is exempt from the requirements of this Article if any of the following conditions are met:

- 1 (1) The person is (i) ~~preparing for the practice of marriage and family therapy in~~
2 ~~a manner prescribed by rules of the Board, enrolled in a master's level~~
3 ~~program or higher in a recognized educational institution,~~ (ii) ~~under qualified~~
4 ~~supervision as approved by the Board in a training institution or facility or~~
5 ~~supervisory arrangement recognized and approved by the Board,~~ and (iii)
6 ~~designated by a title such as "marriage and family therapy intern," or~~
7 ~~"marriage and family therapy supervisee," or another similar title approved~~
8 ~~by the Board.~~ intern."
- 9 (2) The person is practicing marriage and family therapy as an employee of a
10 recognized educational institution, or a governmental institution or agency
11 and the practice is included in the duties for which the person was employed
12 by the institution or agency.
- 13 ~~(3) The person is practicing marriage and family therapy as an employee of a~~
14 ~~nonprofit organization which the Board has determined meets community~~
15 ~~needs and the practice is included in the duties for which the person was~~
16 ~~employed by the nonprofit organization.~~
- 17 (4) The person is practicing marriage and family therapy as an employee of a
18 hospital licensed under Article 5 of Chapter 131E or Article 2 of Chapter
19 122C of the General Statutes.

20 (c) No such person practicing marriage and family therapy under the exemptions
21 provided by this section shall hold himself or herself out as a licensed marriage and family
22 therapist or licensed marriage and family therapy associate."

23 **SECTION 4.** G.S. 90-270.49(a) reads as rewritten:

24 "(a) Establishment. – There is established as an agency of the State of North Carolina the
25 North Carolina Marriage and Family Therapy Licensure Board, which shall be composed of
26 seven Board members to be appointed as provided in G.S. 90-270.50. Board members shall be
27 appointed for terms of four years each, except that any person chosen to fill a vacancy shall be
28 appointed only for the unexpired term of the Board member whom ~~he~~ the appointee shall
29 succeed. Upon the expiration of a Board member's term of office, the Board member shall
30 continue to serve until a successor has qualified. No person may be appointed more than once
31 to fill an unexpired term or for more than two consecutive full terms. ~~The Governor shall~~
32 ~~designate one Board member to serve as chairperson of the Board.~~ The Board shall elect a chair
33 and vice-chair from its membership to serve a term of four years. No person may serve as
34 chairperson for more than four years.

35 The Governor may remove any member from the Board or remove the chairperson from the
36 position of chairperson only for neglect of duty, malfeasance, or conviction of a felony or crime
37 of moral turpitude while in office.

38 No Board member shall participate in any matter before the Board in which the member has
39 a pecuniary interest, personal bias, or other similar conflict of interest."

40 **SECTION 5.** G.S. 90-270.51(e) reads as rewritten:

41 "(e) The Board may authorize expenditures to carry out the provisions of this Article
42 from the fees that it collects, but expenditures may not exceed the revenues or reserves of the
43 Board during any fiscal year."

44 **SECTION 5.1.** G.S. 90-270.51 is amended by adding a new subsection to read:

45 "(h) The Board may order that any records concerning the practice of marriage and
46 family therapy and relevant to a complaint received by the Board, or an inquiry or investigation
47 conducted by or on behalf of the Board, shall be produced by the custodian of the records to the
48 Board or for inspection and copying by employees, representatives of or counsel to the Board.
49 These records shall not become public records as defined by G.S. 132-1. A licensee or an
50 agency employing a licensee shall maintain records for a minimum of five years from the date
51 the licensee terminates services to the adult client and the client services record is closed. For

1 minor clients the licensee or agency employing the licensee shall maintain records until the
2 client is 22 or five years after the termination of services, whichever occurs later. A licensee
3 shall cooperate fully and in a timely manner with the Board and its designated employees,
4 representatives, or investigators in an inquiry or investigation conducted by or on behalf of the
5 Board."

6 **SECTION 6.** G.S. 90-270.54 reads as rewritten:

7 **"§ 90-270.54. Requirements for ~~license~~ licensure as a marriage and family therapist.**

8 (a) Each applicant shall be issued a license by the Board to engage in the practice of
9 marriage and family therapy as a licensed marriage and family therapist if the applicant meets
10 the qualifications set forth in G.S. 90-270.52(a) and provides satisfactory evidence to the Board
11 that the applicant:

12 (1) Meets educational and experience qualifications as follows:

- 13 a. Educational requirements: Possesses a minimum of a master's degree
14 from a recognized educational institution in the field of marriage and
15 family therapy, or a related degree ~~in an allied mental health~~
16 ~~field, degree,~~ which degree is evidenced by the applicant's official
17 ~~transcripts which establish that the applicant has completed an~~
18 ~~appropriate course of study in an allied mental health~~
19 ~~field, transcripts.~~ An applicant with a related degree ~~in an allied~~
20 ~~mental health field~~ may meet the educational requirements if the
21 applicant presents satisfactory evidence of post-master's or
22 post-doctoral training taken in the field of marriage and family
23 therapy from a program recognized by the Board regardless whether
24 the training was taken at a nondegree granting institution or in a
25 nondegree program, as long as the training, by itself or in
26 combination with any other training, is the equivalent in content and
27 quality, as defined in the rules of the Board, of a master's or doctoral
28 degree in marriage and family therapy;
- 29 b. Experience requirements: Has at least 1,500 hours of supervised
30 clinical experience in the practice of marriage and family therapy,
31 not more than 500 hours of which were obtained while the candidate
32 was a student in a master's degree program and at least 1,000 of
33 which were obtained after the applicant was granted a degree in the
34 field of marriage and family therapy or ~~an allied mental health field~~
35 related degree (with ongoing supervision consistent with standards
36 approved by the Board); and

37 (2) Passes an examination ~~administered~~ approved by the Board.

38 (b) Any person who is a certified marriage and family therapist on January 1, 1995,
39 shall be deemed to be a licensed marriage and family therapist as of that date. Valid and
40 unexpired certificates operate as licenses for the purposes of this Article until the date set for
41 renewal of the certificate, at which time the Board shall issue the certificate holder a license in
42 accordance with G.S. 90-270.58."

43 **SECTION 7.** Article 18C of Chapter 90 of the General Statutes is amended by
44 adding the following new section to read:

45 **"§ 90-270.54A. Requirements for licensure as a marriage and family therapy associate.**

46 (a) Each applicant shall be issued a license by the Board to engage in practice as a
47 marriage and family therapy associate if the applicant meets the qualifications set forth in
48 G.S. 90-270.52(a) and provides satisfactory evidence to the Board that the applicant:

- 49 (1) Has completed a marriage and therapy degree or related degree in
50 accordance with G.S. 90-270.54(a)(1)a.

- 1 (2) Has shown evidence of intent to accrue the required supervised clinical
2 experience for licensure under G.S. 90-270.54(a)(1)b.
- 3 (3) Has filed with the Board an application for licensure as a marriage and
4 family therapy associate, which application includes evidence of the
5 appropriate coursework and an agreement by at least one supervisor
6 approved by the American Association of Marriage and Family Therapy to
7 provide supervision to the applicant.
- 8 (4) Has passed the examination approved by the Board pursuant to
9 G.S. 90-270.54(a)(2).

10 (b) Upon approval by the Board, a license designating the applicant as a licensed
11 marriage and family therapy associate shall be issued. Notwithstanding G.S. 90-270.58, a
12 license issued under this section shall be valid for three years from the date of issuance.

13 (c) A marriage and family therapy associate license shall not be renewed. However, if
14 upon written petition to the Board a person licensed pursuant to this section demonstrates
15 special circumstances and steady progress towards licensure as a marriage and family therapist,
16 the Board may grant a one-year extension of the marriage and family therapy associate license
17 upon receipt and approval of an application for extension and payment of the fee authorized by
18 G.S. 90-270.57(a)(9).

19 (d) Nothing in this Article shall be construed to require direct third-party
20 reimbursement under private insurance policies to a person licensed as a marriage and family
21 therapy associate under this Article."

22 **SECTION 8.** G.S. 90-270.55 reads as rewritten:

23 **"§ 90-270.55. Examinations.**

24 ~~The Board shall conduct an examination at least once a year at a time and place designated~~
25 ~~by the Board. Examinations may be written, oral, or both.~~ Each applicant for licensure as a
26 licensed marriage and family therapist shall pass an examination as determined by the Board.
27 Examinations shall include questions in theoretical and applied fields to test an applicant's
28 knowledge and competence to engage in the practice of marriage and family therapy. ~~The~~
29 ~~Board shall set the passing score for examinations. Any person who fails an examination~~
30 ~~conducted by the Board shall not be admitted to a subsequent examination for a period of at~~
31 ~~least six months.~~ Any request by an applicant for reasonable accommodations in taking the
32 examination shall be submitted in writing to the Board and shall be supported by
33 documentation as may be required by the Board in assessing the request."

34 **SECTION 9.** G.S. 90-270.55A is repealed.

35 **SECTION 10.** G.S. 90-270.56 reads as rewritten:

36 **"§ 90-270.56. Reciprocal licenses.**

37 ~~The Board shall may issue a license as a marriage and family therapist or a marriage and~~
38 family therapy associate by reciprocity to any person who applies for the license as prescribed
39 by the Board and who is licensed or certified as a marriage and family therapist in another state
40 whose requirements for the license or certificate are equivalent to or exceed the requirements of
41 this State at all times during the application process:

- 42 (1) Has been licensed for five continuous years and is currently licensed as a
43 marriage and family therapist or marriage and family therapy associate in
44 another state.
- 45 (2) Has an unrestricted license in good standing in the other state.
- 46 (3) Has no unresolved complaints in any jurisdiction.
- 47 (4) Has passed the National Marriage and Family Therapy examination."

48 **SECTION 11.** G.S. 90-270.57 reads as rewritten:

49 **"§ 90-270.57. Fees.**

50 (a) In order to fund the Board's activities under this Article, the Board may charge and
51 collect fees not exceeding the following:

1	(1)	Each license examination	\$50.00
2	(2)	Each license application as a marriage and family therapist	150.00 200.00
3	(2a)	<u>Each license application as a marriage and family therapy</u>	
4		<u>associate</u>	200.00
5	(3)	Each renewal of license	100.00 200.00
6	(4)	Each reciprocal license application	150.00 200.00
7	(5)	Each reinstatement of an expired license	125.00 200.00
8	(6)	Each application to return to active status	125.00 200.00
9	(7)	<u>Each duplicate license</u>	25.00
10	(8)	<u>Each annual maintenance of inactive status</u>	50.00
11	(9)	<u>Each application to extend associate license</u>	50.00.

In addition to the examination fee provided in subdivision (1) of this section, the Board may charge and collect from each applicant for license examination the cost of processing test results and the cost of test materials.

The Board is authorized to return all or a portion of fees paid in cases where the applicant is ~~ineligible or in cases of undue hardship, ineligible.~~

(b) The Board may establish fees for the actual cost of (i) document duplication services, (ii) materials, and (iii) returned bank items as allowed by law. All fees listed in subsection (a) of this section shall be nonrefundable."

SECTION 12. G.S. 90-270.58 reads as rewritten:

"§ 90-270.58. **Renewal of license.**

All licenses for marriage and family therapists issued under this Article shall expire automatically on the first day of July of each year. The Board shall renew a license upon (i) completion of the continuing education requirements of ~~G.S. 90-270.58B~~ G.S. 90-270.58C and (ii) payment of the renewal fee."

SECTION 13. G.S. 90-270.58B(a) reads as rewritten:

"(a) A person who holds a valid and unexpired license and who is not actively engaged in the practice of marriage and family therapy may apply to the Board to be placed on inactive status. A person on inactive status shall not be required to pay annual renewal ~~fees~~ fees, but shall be required to pay an annual inactive status maintenance fee. A person who is on inactive status shall not have to meet continuing education requirements."

SECTION 14. G.S. 90-270.58C reads as rewritten:

"§ 90-270.58C. **Continuing education requirements.**

The Board shall prescribe continuing education requirements for licensees. These requirements shall be designed to maintain and improve the quality of professional services in marriage and family therapy provided to the public, to keep the licensee knowledgeable of current research, techniques, and practice, and to provide other resources that will improve skill and competence in marriage and family therapy. The number of hours of continuing education shall not exceed the number of hours available that year in Board-approved courses within the State. The Board may waive these continuing education requirements for not more than 12 months, but only upon the licensee's satisfactory showing to the Board of undue hardship. The Board may waive, upon request, continuing education requirements for licensees who are on active military duty and serving overseas."

SECTION 15. G.S. 90-270.59 reads as rewritten:

"§ 90-270.59. **Disposition of funds.**

All ~~moneys~~ monies received by the Board shall be used to implement this Article."

SECTION 16. G.S. 90-270.60 reads as rewritten:

"§ 90-270.60. **Denial, revocation, or suspension of ~~license~~ license; other disciplinary or remedial actions.**

(a) ~~Grounds for Denial, Revocation, or Suspension.~~—The Board may deny, revoke, or suspend a license granted pursuant to this Article on any of the following grounds: licensure,

1 discipline, place on probation, limit practice, or require examination, remediation, or
2 rehabilitation, or any combination of the disciplinary actions described in this subsection, of
3 any applicant or person licensed under this Article on one or more of the following grounds:

- 4 (1) Conviction of a felony under the laws of the United States or of any state of
5 the United States. Has been convicted of a felony or entered a plea of guilty
6 or nolo contendere to any felony charge under the laws of the United States
7 or of any state of the United States.
- 8 (2) Conviction of any crime, an essential element of which is dishonesty, deceit,
9 or fraud. Has been convicted of or entered a plea of guilty or nolo contendere
10 to any misdemeanor involving moral turpitude, misrepresentation, or fraud
11 in dealing with the public, or conduct otherwise relevant to fitness to
12 practice marriage and family therapy, or a misdemeanor charge reflecting
13 the inability to practice marriage and family therapy with due regard to the
14 health and safety of clients.
- 15 (3) Fraud or deceit in obtaining a license as a marriage and family therapist. Has
16 engaged in fraud or deceit in securing or attempting to secure or renew a
17 license under this Article or has willfully concealed from the Board material
18 information in connection with application for a license or renewal of a
19 license under this Article.
- 20 (4) Dishonesty, fraud or gross negligence in the practice of marriage and family
21 therapy. Has practiced any fraud, deceit, or misrepresentation upon the
22 public, the Board, or any individual in connection with the practice of
23 marriage and family therapy, the offer of professional marriage and family
24 therapy services, the filing of Medicare, Medicaid, or other claims to any
25 third-party payor, or in any manner otherwise relevant to fitness for the
26 practice of marriage and family therapy.
- 27 (5) Violation of any rule of professional ethics and professional conduct adopted
28 by the Board. Has made fraudulent, misleading, or intentionally or materially
29 false statements pertaining to education, licensure, license renewal,
30 supervision, continuing education, any disciplinary actions or sanctions
31 pending or occurring in any other jurisdiction, professional credentials, or
32 qualifications or fitness for the practice of marriage and family therapy to the
33 public, any individual, the Board, or any other organization.
- 34 (6) Has had a license or certification for the practice of marriage and family
35 therapy in any other jurisdiction suspended or revoked, or has been
36 disciplined by the licensing or certification board in any other jurisdiction
37 for conduct which would subject the licensee to discipline under this Article.
- 38 (7) Has violated any provision of this Article or any rules adopted by the Board.
- 39 (8) Has aided or abetted the unlawful practice of marriage and family therapy by
40 any person not licensed by the Board.
- 41 (9) Has been guilty of immoral, dishonorable, unprofessional, or unethical
42 conduct as defined in this subsection or in the current code of ethics of the
43 American Association for Marriage and Family Therapy. However, if any
44 provision of the code of ethics is inconsistent and in conflict with the
45 provisions of this Article, the provisions of this Article shall control.
- 46 (10) Has practiced marriage and family therapy in such a manner as to endanger
47 the welfare of clients.
- 48 (11) Has demonstrated an inability to practice marriage and family therapy with
49 reasonable skill and safety by reason of illness, inebriation, misuse of drugs,
50 narcotics, alcohol, chemicals, or any other substance affecting mental or
51 physical functioning, or as a result of any mental or physical condition.

- 1 (12) Has practiced marriage and family therapy outside the boundaries of
2 demonstrated competence or the limitations of education, training, or
3 supervised experience.
- 4 (13) Has exercised undue influence in such a manner as to exploit the client,
5 student, supervisee, or trainee for the financial or other personal advantage
6 or gratification of the marriage and family therapist or a third party.
- 7 (14) Has harassed or abused, sexually or otherwise, a client, student, supervisee,
8 or trainee.
- 9 (15) Has failed to cooperate with or to respond promptly, completely, and
10 honestly to the Board, to credentials committees, or to ethics committees of
11 professional associations, hospitals, or other health care organizations or
12 educational institutions, when those organizations or entities have
13 jurisdiction.
- 14 (16) Has refused to appear before the Board after having been ordered to do so in
15 writing by the chair.

16 (b) ~~Any disciplinary action taken shall be in accordance with Chapter 150B of the~~
17 ~~General Statutes.~~ The Board may, in lieu of denial, suspension, or revocation, take any of the
18 following disciplinary actions:

- 19 (1) Issue a formal reprimand or formally censure the applicant or licensee.
- 20 (2) Place the applicant or licensee on probation with the appropriate conditions
21 on the continued practice of marriage and family therapy deemed advisable
22 by the Board.
- 23 (3) Require examination, remediation, or rehabilitation for the applicant or
24 licensee, including care, counseling, or treatment by a professional or
25 professionals designated or approved by the Board, the expense to be borne
26 by the applicant or licensee.
- 27 (4) Require supervision of the marriage and family therapy services provided by
28 the applicant or licensee by a licensee designated or approved by the Board,
29 the expense to be borne by the applicant or licensee.
- 30 (5) Limit or circumscribe the practice of marriage and family therapy provided
31 by the applicant or licensee with respect to the extent, nature, or location of
32 the marriage and family therapy services provided, as deemed advisable by
33 the Board.
- 34 (6) Discipline and impose any appropriate combination of the types of
35 disciplinary action listed in this subsection.

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

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

44 (d) When considering the issue of whether an applicant or licensee is physically or
45 mentally capable of practicing marriage and family therapy with reasonable skill and safety
46 with patients or clients, upon a showing of probable cause to the Board that the applicant or
47 licensee is not capable of practicing professional counseling with reasonable skill and safety
48 with patients or clients, the Board may petition a court of competent jurisdiction to order the
49 applicant or licensee in question to submit to a psychological evaluation by a psychologist to
50 determine psychological status or a physical evaluation by a physician to determine physical
51 condition, or both. The psychologist or physician shall be designated by the court. The

1 expenses of the evaluations shall be borne by the Board. Where the applicant or licensee raises
2 the issue of mental or physical competence or appeals a decision regarding mental or physical
3 competence, the applicant or licensee shall be permitted to obtain an evaluation at the applicant
4 or licensee's expense. If the Board suspects the objectivity or adequacy of the evaluation, the
5 Board may compel an evaluation by its designated practitioners at its own expense.

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

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

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

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

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

1 SECTION 17. Article 18C of Chapter 90 of the General Statutes is amended by
2 adding the following new section to read:

3 **"§ 90-270.63. Criminal history record checks of applicants for licensure as a marriage**
4 **and family therapist and a marriage and family therapy associate.**

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

6 (1) Applicant. – A person applying for licensure as a licensed marriage and
7 family therapy associate pursuant to G.S. 90-270.54A or licensed marriage
8 and family therapist pursuant to G.S. 90-270.54.

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

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

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

27 **SECTION 18.** Article 4 of Chapter 114 of the General Statutes is amended by
28 adding a new section to read:

29 **"§ 114-26. Criminal history record checks of applicants for licensure as marriage and**
30 **family therapists and marriage and family therapy associates.**

31 The Department of Justice may provide to the North Carolina Marriage and Family
32 Therapy Licensure Board 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 18C 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 the Department to
44 conduct a criminal record check under this section. The fee shall not exceed the actual cost of
45 locating, editing, researching, and retrieving the information."

46 **SECTION 19.** This act becomes effective October 1, 2009.