

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

H.B. 714  
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HOUSE PRINCIPAL CLERK

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HOUSE DRH40355-MMfqq-116 (03/11)

Short Title: Behavior Analyst Licensure. (Public)

Sponsors: Representatives Jeter, McGrady, Shepard, and Cotham (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO CREATE LICENSURE PROCESS FOR BEHAVIOR ANALYSTS.

3 The General Assembly of North Carolina enacts:

4 **SECTION 1.** Chapter 90 of the General Statutes is amended by adding a new  
5 Article to read:

6 "Article 43.

7 "Behavior Analyst Licensure.

8 **"§ 90-726.1. Declaration of purpose.**

9 The practice of behavior analysis in North Carolina is hereby declared to affect the public  
10 health, safety, and welfare of citizens of North Carolina and to be subject to regulation to  
11 protect the public from (i) the practice of behavior analysis by unqualified persons and (ii)  
12 unprofessional, unethical, or harmful conduct by individuals licensed to practice behavior  
13 analysis.

14 **"§ 90-726.2. Definitions.**

15 The following definitions apply in this Article:

- 16 (1) Board. – The North Carolina Behavior Analyst Board.  
17 (2) Certifying entity. – The nationally accredited Behavior Analyst Certification  
18 Board, Inc., or its successor.  
19 (3) Licensed assistant behavior analyst. – An individual who is certified by the  
20 certifying entity as a Board Certified Assistant Behavior Analyst and to  
21 whom a license has been issued pursuant to this Article, if the license is in  
22 force and not suspended or revoked, and whose license permits the  
23 individual to engage in the practice of behavior analysis under the  
24 supervision of a licensed behavior analyst.  
25 (4) Licensed behavior analyst. – An individual who is certified by the certifying  
26 entity as a Board Certified Behavior Analyst and to whom a license has been  
27 issued pursuant to this Article, if the license is in force and not suspended or  
28 revoked.  
29 (5) Practice of behavior analysis. – The design, implementation, and evaluation  
30 of instructional and environmental modifications to produce socially  
31 significant improvements in human behavior. The practice of behavior  
32 analysis includes the empirical identification of functional relations between  
33 behavior and environmental factors, known as functional assessment and  
34 analysis. Behavior analysis interventions are based on scientific research and  
35 the direct observation and measurement of behavior and the environment. In  
36 the practice of behavior analysis, behavior analysts utilize contextual factors,



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1 motivating operations, antecedent stimuli, positive reinforcement, and other  
2 consequences to help people develop new behaviors, increase or decrease  
3 existing behaviors, and emit behaviors under specific environmental  
4 conditions. The practice of behavior analysis expressly excludes  
5 psychological testing, cognitive therapy, sex therapy, psychoanalysis,  
6 hypnotherapy, and long-term counseling as treatment modalities.

7 **"§ 90-726.2A. Practice of psychology not permitted.**

8 Nothing in this Article shall be construed as permitting licensed behavior analysts or  
9 licensed assistant behavior analysts to engage in any manner in the practice of psychology as  
10 defined in G.S. 90-270.2(8), other than the practice of behavior analysis, as defined in  
11 G.S. 90-726.2(5). A licensed behavior analyst or licensed assistant behavior analyst shall assist  
12 his or her client or patient in obtaining professional help for all aspects of the client's or  
13 patient's problems that fall outside the boundaries of the licensed behavior analyst's or licensed  
14 assistant behavior analyst's own competence, including diagnosis, counseling, psychological  
15 testing, neuropsychology, psychotherapy, cognitive-behavior therapy, sex therapy,  
16 psychoanalysis, or hypnotherapy as treatment modalities.

17 **"§ 90-726.3. North Carolina Behavior Analysis Board.**

18 (a) Establishment. – The North Carolina Behavior Analysis Board is created. The  
19 Board shall consist of seven members who shall serve staggered terms. The initial Board shall  
20 be selected on or before August 1, 2015, as follows:

21 (1) The General Assembly, upon the recommendation of the Speaker of the  
22 House of Representatives, shall appoint the following three members:

- 23 a. One licensed behavior analyst, who is certified by the certifying  
24 entity as a Board Certified Behavior Analyst, to serve a one-year  
25 term.  
26 b. One licensed behavior analyst, who is certified by the certifying  
27 entity as a Board Certified Behavior Analyst, to serve a two-year  
28 term.  
29 c. One licensed assistant behavior analyst, who is certified by the  
30 certifying entity as a Board Certified Assistant Behavior Analyst, to  
31 serve a three-year term.

32 (2) The General Assembly, upon the recommendation of the President Pro  
33 Tempore of the Senate, shall appoint the following three members:

- 34 a. One licensed assistant behavior analyst, who is certified by the  
35 certifying entity as a Board Certified Assistant Behavior Analyst, to  
36 serve a one-year term.  
37 b. One licensed behavior analyst, who is certified by the certifying  
38 entity as a Board Certified Behavior Analyst, to serve a two-year  
39 term.  
40 c. One licensed behavior analyst, who is certified by the certifying  
41 entity as a Board Certified Behavior Analyst, to serve a three-year  
42 term.

43 (3) The Governor shall appoint one public member to serve a two-year term.

44 Upon the expiration of the terms of the initial Board members, each member shall be  
45 appointed by the appointing authorities designated in subdivisions (1) through (3) of this  
46 subsection for a three-year term, shall be required to be licensed under this Article, and shall  
47 serve until a successor is appointed and qualified. No member may serve more than two  
48 consecutive full terms.

49 (b) Vacancies. – In the event that a member of the Board cannot complete a term of  
50 office, the vacancy shall be filled in the same manner as the original appointment, for the

1 remainder of the unexpired term. No Board member shall participate in any matter before the  
2 Board in which the member has a pecuniary interest or similar conflict of interest.

3 (c) Qualifications of Board Members; Removal of Board Members. –

4 (1) Each licensed behavior analyst or licensed assistant behavior analyst  
5 member of the Board shall have all the following qualifications:

6 a. Shall be a resident of this State and a citizen of the United States.

7 b. Shall be free of conflict of interest or the appearance of such conflict  
8 in performing the duties of the Board.

9 (2) Each public member of the Board shall have all the following qualifications:

10 a. Shall be a resident of this State and a citizen of the United States.

11 b. Shall be free of conflict of interest or the appearance of such conflict  
12 in performing the duties of the Board.

13 c. Shall not be a licensed behavior analyst or licensed assistant behavior  
14 analyst, an applicant or former applicant for licensure as a behavior  
15 analyst or assistant behavior analyst, or a member of a household that  
16 includes a licensed behavior analyst or licensed assistant behavior  
17 analyst.

18 (3) A Board member shall be automatically removed from the Board if he or she  
19 does any of the following:

20 a. Ceases to meet the qualifications specified in this subsection.

21 b. Fails to attend three successive Board meetings without just cause as  
22 determined by the remainder of the Board.

23 c. Is found by the remainder of the Board to be in violation of the  
24 provisions of this Article or to have engaged in immoral,  
25 dishonorable, unprofessional, or unethical conduct, and such conduct  
26 is deemed to compromise the integrity of the Board.

27 d. Is found to be guilty of a felony or an unlawful act involving moral  
28 turpitude by a court of competent jurisdiction or is found to have  
29 entered a plea of nolo contendere to a felony or an unlawful act  
30 involving moral turpitude.

31 e. Is found guilty of malfeasance, misfeasance, or nonfeasance in  
32 relation to his or her Board duties by a court of competent  
33 jurisdiction.

34 f. Is incapacitated and without reasonable likelihood of resuming Board  
35 duties, as determined by the Board.

36 (d) Meetings. – The Board shall elect annually a chair and other officers as it deems  
37 necessary to carry out the purposes of this Article. The Board may hold additional meetings  
38 upon the call of the chairperson or any two board members. A majority of the Board shall  
39 constitute a quorum.

40 (e) Compensation of Members; Expenses; Employees. – Members of the Board shall  
41 receive no compensation for their services but shall receive per diem and necessary travel and  
42 subsistence expenses as provided in G.S. 138-5. The Board may employ necessary personnel  
43 for the performance of its functions and fix the compensation. The Board shall not employ any  
44 of its members to perform inspectional or similar ministerial tasks for the Board. In no event  
45 shall the State of North Carolina be liable for expenses incurred by the Board in excess of the  
46 income derived from this Article.

47 **§ 90-726.5. Powers and duties of Board.**

48 (a) The Board shall have the following powers and duties:

49 (1) Administer, coordinate, and enforce the provisions of this Article.

50 (2) Adopt, amend, or repeal rules to administer and enforce this Article.

- 1           (3)   Establish and determine qualification and fitness of applicants for licensure
- 2           under this Article.
- 3           (4)   Issue, renew, deny, suspend, revoke, or refuse to issue or renew any license
- 4           under this Article.
- 5           (5)   Establish fees for applications, initial and renewal licenses, and other
- 6           services provided by the Board.
- 7           (6)   Discipline persons licensed under this Article.

8           (b)   The Board may empower any member to conduct any proceeding or investigation  
9           necessary to its purposes and may empower its agent or counsel to conduct any investigation  
10           necessary to its purposes, but any final action requires a quorum of the Board. The Board may  
11           order that any records concerning the practice of psychology relevant to a complaint received  
12           by the Board or an inquiry or investigation conducted by or on behalf of the Board be produced  
13           before the Board or for inspection and copying by representatives of or counsel to the Board by  
14           the custodian of such records. The Board shall adopt an official seal, which shall be affixed to  
15           all licenses issued by it.

16    **"§ 90-726.6. Annual report.**

17           On June 30 of each year, the Board shall submit a report to the Governor of the Board's  
18           activities since the preceding July 1, including the names of all licensed behavior analysts and  
19           licensed assistant behavior analysts to whom licenses have been granted under this Article, any  
20           cases heard and decisions rendered in matters before the Board, the recommendations of the  
21           Board as to future actions and policies, and a financial report. Each member of the Board shall  
22           review and sign the report before its submission to the Governor. Any Board member shall  
23           have the right to record a dissenting view.

24    **"§ 90-726.7. License application.**

25           (a)   Each individual desiring to obtain a license under this Article shall apply to the  
26           Board upon the form and in the manner prescribed by the Board. Each applicant shall furnish  
27           evidence satisfactory to the Board that the applicant meets all of the following criteria:

- 28           (1)   The individual is of good moral character and conducts his or her
- 29           professional activities in accordance with accepted professional and ethical
- 30           standards.
- 31           (2)   The individual has not engaged in or is not engaged in any practice that
- 32           would be a ground for denial, revocation, or suspension of a license under
- 33           G.S. 90-726.11.
- 34           (3)   The individual has submitted the required criminal history record, as
- 35           required by G.S. 90-726.13.
- 36           (4)   The individual is qualified for licensure pursuant to the requirements of this
- 37           Article.

38           (b)   A license obtained through fraud or by any false representation is void.

39    **"§ 90-726.8. Requirements for licensure as a behavior analyst.**

40           Each applicant shall be issued a license by the Board to engage in the practice of behavior  
41           analysis as a licensed behavior analyst if the applicant meets the qualifications set forth in  
42           G.S. 90-726.5(a) and provides satisfactory evidence to the Board of all the following criteria:

- 43           (1)   The applicant has passed the certifying entity's Board Certified Behavior
- 44           Analyst examination.
- 45           (2)   The applicant has an active status with the certifying entity as a Board
- 46           Certified Behavior Analyst.

47    **"§ 90-726.9. Requirement of licensure as an assistant behavior analyst.**

48           Each applicant shall be issued a license by the Board to engage in the practice of behavior  
49           analysis as a licensed assistant behavior analyst if the applicant meets the qualifications set  
50           forth in G.S. 90-726.5(a) and provides satisfactory evidence to the Board of all the following  
51           criteria:

- 1           (1)   The applicant has passed the certifying entity's Board Certified Assistant  
2           Behavior Analyst examination.
- 3           (2)   The applicant has an active status with the certifying entity as a Board  
4           Certified Assistant Behavior Analyst.
- 5           (3)   The applicant has an ongoing arrangement for supervision by a licensed  
6           behavior analyst in a manner consistent with the certifying entity's  
7           requirements for supervision of Board Certified Assistant Behavior  
8           Analysts.

9   **"§ 90-726.10. Renewal of license.**

- 10          (a)   A license shall be granted under this Article for the period of two years.
- 11          (b)   The Board shall renew a license granted under this Article upon completion of the  
12          following:
  - 13               (1)   Proof of completion of any continuing education required by the certifying  
14               entity.
  - 15               (2)   Payment of the renewal fee.
  - 16               (3)   Evidence of active certification by certifying entity.
  - 17               (4)   For assistant behavior analysts, evidence of the ongoing arrangement for  
18               supervision by a licensed behavior analyst, as required by G.S. 90-726.7.

19   **"§ 90-726.11. Temporary licensure.**

- 20          (a)   An individual residing and practicing behavior analysis in another state and who is  
21          certified as a Board Certified Behavior Analyst by the certifying entity may apply to the Board  
22          for a temporary license to practice behavior analysis in North Carolina.
- 23          (b)   An individual residing and practicing behavior analysis in another state who is  
24          actively licensed in another state as a behavior analyst may apply to the Board for a temporary  
25          license to practice behavior analysis in North Carolina.
- 26          (c)   A temporary license is available only if the behavior analysis services are to be  
27          delivered during a limited and defined period of service approved by the Board.

28   **"§ 90-726.12. Reciprocity.**

- 29          (a)   The Board shall issue a license to an individual who is actively licensed as a  
30          behavior analyst or assistant behavior analyst in another state that currently imposes  
31          comparable licensure requirements as those imposed by this Article and that offers reciprocity  
32          to individuals licensed under this Article.
- 33          (b)   Applicants for licensure by reciprocity shall submit the following items:
  - 34               (1)   Proof of ethical compliance.
  - 35               (2)   Proof of current licensure.
  - 36               (3)   Proof of current certification by the certifying entity.
  - 37               (4)   A criminal history record check as required by G.S. 90-726.15.
  - 38               (5)   Any other eligibility requirement as deemed appropriate by the Board.

39   **"§ 90-726.13. Denial, suspension, or revocation of licenses and other disciplinary and**  
40   **remedial actions for violations of the Code of Conduct; relinquishing of license.**

- 41          (a)   Any applicant for licensure and any person licensed under this Article shall comply  
42          with the ethical and professional standards specified in this Code of Conduct and in the rules of  
43          the Board. The Board may deny, suspend, or revoke licensure and may discipline, place on  
44          probation, limit practice, and require examination, remediation, and rehabilitation, or any  
45          combination thereof, all as provided for in subsection (b) below. The following are considered  
46          violations of the Code of Conduct:
  - 47               (1)   Conviction of a felony or entry of a plea of guilty or nolo contendere to any  
48               felony charge.
  - 49               (2)   Conviction of a felony or entry of a plea of guilty or nolo contendere to any  
50               misdemeanor involving moral turpitude, misrepresentation or fraud in  
51               dealing with the public, or conduct otherwise relevant to fitness to practice,

- 1                    or a misdemeanor charge reflecting the inability to practice behavior analysis  
2                    with due regard to the health and safety of clients or patients.
- 3                    (3)                Using fraud or deceit in securing or attempting to secure or renew a license  
4                    under this Article or has willfully concealed from the Board material  
5                    information in connection with application for a license or for renewal of a  
6                    license under this Article.
- 7                    (4)                Using fraud, deceit, or misrepresentation upon the public, the Board, or any  
8                    individual in connection with the practice of behavior analysis, the filing of  
9                    Medicare, Medicaid, or other claims to any third-party payor, or in any  
10                   manner otherwise relevant to fitness for the practice of behavior analysis.
- 11                   (5)                Making fraudulent, misleading, or intentionally or materially false  
12                   statements pertaining to education, licensure, license renewal, supervision,  
13                   continuing education, any disciplinary actions or sanctions pending or  
14                   occurring in any other jurisdiction, professional credentials, or qualifications  
15                   or fitness for the practice of behavior analysis to the public, any individual,  
16                   the Board, or any other organization.
- 17                   (6)                Revocation or suspension of a license for the practice of behavior analysis in  
18                   any other jurisdiction or having been disciplined by the licensing board or  
19                   certifying entity in any other jurisdiction for conduct which would subject  
20                   the licensee to discipline under this Article.
- 21                   (7)                Violation of any provision of this Article or of the duly adopted rules of the  
22                   Board.
- 23                   (8)                Aiding or abetting the unlawful practice of behavior analysis by any person  
24                   not licensed by the Board.
- 25                   (9)                Engaging in immoral, dishonorable, unprofessional, or unethical conduct as  
26                   defined in this subsection, or the current Ethics Code of the certifying entity.
- 27                   (10)               Practicing behavior analysis in such a manner as to endanger the welfare of  
28                   clients or patients.
- 29                   (11)               Demonstrating an inability to practice behavior analysis with reasonable  
30                   skill and safety by reason of illness, inebriation, misuse of drugs, narcotics,  
31                   alcohol, chemicals, or any other substance affecting mental or physical  
32                   functioning, or as a result of any mental or physical condition.
- 33                   (12)               Practicing behavior analysis outside the boundaries of demonstrated  
34                   competence or the limitations of education, training, or supervised  
35                   experience.
- 36                   (13)               Failing to provide competent treatment, consultation, or supervision, in  
37                   keeping with standards of usual and customary practice in this State.
- 38                   (14)               Failing to take all reasonable steps to ensure the competence of services.
- 39                   (15)               Failing to maintain a clear and accurate case record which documents the  
40                   following for each patient or client:
- 41                   a.                Presenting problems, diagnosis, or purpose of the evaluation,  
42                   treatment, or other services provided.
- 43                   b.                Fees, dates of services, and itemized charges.
- 44                   c.                Summary content of each session of evaluation, treatment, or other  
45                   services, except that summary content need not include specific  
46                   information that may cause significant harm to any person if the  
47                   information were released.
- 48                   d.                Copies of all reports prepared.
- 49                   (16)               Except when prevented from doing so by circumstances beyond the behavior  
50                   analyst's control, failing to retain securely and confidentially the complete  
51                   case record for at least seven years from the date of the last provision of

1 services; or, except when prevented from doing so by circumstances beyond  
2 the behavior analyst's control, has failed to retain securely and  
3 confidentially the complete case record indefinitely if there are pending legal  
4 or ethical matters or if there is any other compelling circumstance.

5 (17) Failing to cooperate with other behavior analysts or other professionals to  
6 the potential or actual detriment of clients, patients, or other recipients of  
7 service, or behaving in ways which substantially impede or impair other  
8 licensed behavior analysts, licensed assistant behavior analysts, or other  
9 professionals' abilities to perform professional duties.

10 (18) Exercising undue influence in such a manner as to exploit the client, patient,  
11 student, supervisee, or trainee for the financial or other personal advantage  
12 or gratification of the licensed behavior analyst, licensed assistant behavior  
13 analyst, or a third party.

14 (19) Harassing or abusing, sexually or otherwise, a client, patient, student,  
15 supervisee, or trainee.

16 (20) Failing to cooperate with or to respond promptly, completely, and honestly  
17 to the Board, to credentials committees, or to ethics committees of  
18 professional behavior analyst associations, hospitals, or other health care  
19 organizations or educational institutions, when those organizations or  
20 entities have jurisdiction; or has failed to cooperate with institutional review  
21 boards or professional standards review organizations, when those  
22 organizations or entities have jurisdiction.

23 (21) Refusing to appear before the Board after having been ordered to do so in  
24 writing by the Chair.

25 (b) Upon proof that an applicant or licensee under this Article has engaged in any of the  
26 prohibited actions specified in subsection (a) of this section, the Board may, in lieu of denial,  
27 suspension, or revocation, issue a formal reprimand or formally censure the applicant or  
28 licensee, may place the applicant or licensee on probation with such appropriate conditions  
29 upon the continued practice as the Board may deem advisable, may require examination,  
30 remediation, or rehabilitation for the applicant or licensee, including care, counseling, or  
31 treatment by a professional or professionals designated or approved by the Board, the expense  
32 to be borne by the applicant or licensee, may require supervision for the services provided by  
33 the applicant or licensee by a licensee designated or approved by the Board, the expense to be  
34 borne by the applicant or licensee, may limit or circumscribe the practice of behavior analysis  
35 provided by the applicant or licensee with respect to the extent, nature, or location of the  
36 services provided, as the Board deems advisable, or may discipline and impose any appropriate  
37 combination of the foregoing. In addition, the Board may impose such conditions of probation  
38 or restrictions upon continued practice at the conclusion of a period of suspension or as  
39 requirements for the restoration of a revoked or suspended license. In lieu of or in connection  
40 with any disciplinary proceedings or investigation, the Board may enter into a consent order  
41 relative to the discipline, supervision, probation, remediation, rehabilitation, or practice  
42 limitation of a licensee or applicant for a license.

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

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

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

7 (e) Except as provided otherwise in this Article, the procedure for revocation,  
8 suspension, denial, limitations of the license, or other disciplinary, remedial, or rehabilitative  
9 actions shall be in accordance with the provisions of Chapter 150B of the General Statutes. The  
10 Board is required to provide the opportunity for a hearing under Chapter 150B of the General  
11 Statutes to any applicant whose license is denied or to whom licensure 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 imposing any other  
14 disciplinary action or remediation. If the applicant or licensee waives the opportunity for a  
15 hearing, the Board's denial, revocation, suspension, or other proposed action becomes final  
16 without a hearing having been conducted. Notwithstanding the foregoing, no applicant or  
17 licensee is entitled to a hearing for failure to pass an examination. In any proceeding before the  
18 Board, in any record of any hearing before the Board, in any complaint or notice of charges  
19 against any licensee or applicant for licensure, and in any decision rendered by the Board, the  
20 Board may withhold from public disclosure the identity of any clients or patients who have not  
21 consented to the public disclosure of behavior analysis services having been provided by the  
22 licensee or applicant. The Board may close a hearing to the public and receive in executive  
23 session evidence involving or concerning the treatment of or delivery of behavior analysis  
24 services to a client or a patient who has not consented to the public disclosure of such treatment  
25 or services as may be necessary for the protection and rights of such patient or client of the  
26 accused applicant or licensee and the full presentation of relevant evidence. All records, papers,  
27 and other documents containing information collected and compiled by or on behalf of the  
28 Board, as a result of investigations, inquiries, or interviews conducted in connection with  
29 licensing or disciplinary matters will not be considered public records as defined in G.S. 132-1.  
30 However, any notice or statement of charges against any licensee or applicant, or any notice to  
31 any licensee or applicant of a hearing in any proceeding, or any decision rendered in connection  
32 with a hearing in any proceeding, shall be a public record notwithstanding that it may contain  
33 information collected and compiled as a result of such investigation, inquiry, or hearing except  
34 that identifying information concerning the treatment of or delivery of services to a patient or  
35 client who has not consented to the public disclosure of such treatment or services may be  
36 deleted. If any such record, paper, or other document containing information theretofore  
37 collected and compiled by or on behalf of the Board, as hereinbefore provided, is received and  
38 admitted in evidence in any hearing before the Board, it shall thereupon be a public record,  
39 subject to any deletions of identifying information concerning the treatment of or delivery of  
40 behavior analysis services to a patient or client who has not consented to the public disclosure  
41 of such treatment or services.

42 (f) A license issued under this Article is suspended automatically by operation of law  
43 after failure to renew a license for a period of more than 60 days after the renewal date. The  
44 Board may reinstate a license suspended under this subsection upon payment of a fee as  
45 specified in G.S. 90-726.14, and may require that the applicant file a new application, furnish  
46 references or otherwise update his or her credentials, or submit to examination for  
47 reinstatement. Notwithstanding any provision to the contrary, the Board retains full jurisdiction  
48 to investigate alleged violations of this Article by any person whose license is suspended under  
49 this subsection, and, upon proof of any violation of this Article by any such person, the Board  
50 may take disciplinary action as authorized by this section.



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

3       (h) A licensee may, with the consent of the Board, voluntarily relinquish his or her  
4 license at any time. The Board may delay or refuse the granting of its consent as it may deem  
5 necessary in order to investigate any pending complaint, allegation, or issue regarding violation  
6 of any provision of this Article by the licensee. Notwithstanding any provision to the contrary,  
7 the Board retains full jurisdiction to investigate alleged violations of this Article by any person  
8 whose license is relinquished under this subsection, and, upon proof of any violation of this  
9 Article by any such person, the Board may take disciplinary action as authorized by this  
10 section.

11       (i) The Board may adopt such rules as it deems reasonable and appropriate to interpret  
12 and implement the provisions of this section.

13 **"§ 90-726.14. Fees.**

14       The Board may collect fees established by its rules, but those fees shall not exceed the  
15 amounts listed below:

16           (1)	<u>Application fee for licensure</u>	<u>\$250.00</u>
17           (2)	<u>License renewal</u>	<u>\$200.00</u>
18           (3)	<u>Late renewal fee</u>	<u>\$50.00</u>
19           (4)	<u>Reciprocal license application</u>	<u>\$250.00</u>
20           (5)	<u>Temporary license application</u>	<u>\$100.00.</u>

21 **"§ 90-726.15. Criminal history record checks of applicants for licensure.**

22       (a) All applicants for licensure shall consent to a criminal history record check. Refusal  
23 to consent to a criminal history record check may constitute grounds for the Board to deny  
24 licensure to an applicant. The Board shall be responsible for providing to the North Carolina  
25 Department of Justice the fingerprints of the applicant to be checked, a form signed by the  
26 applicant consenting to the criminal history record check and the use of fingerprints and other  
27 identifying information required by the State or National Repositories, and any additional  
28 information required by the Department of Justice. The Board shall keep all information  
29 obtained pursuant to this section confidential.

30       (b) The cost of the criminal history record check and the fingerprinting shall be borne  
31 by the applicant. The Board shall collect any fees required by the Department of Justice and  
32 shall remit the fees to the Department of Justice for expenses associated with conducting the  
33 criminal history record check.

34       (c) If an applicant's criminal history record reveals one or more criminal convictions,  
35 the conviction shall not automatically bar licensure. The Board shall consider all of the  
36 following factors regarding the conviction:

- 37           (1) The level of seriousness of the crime.
- 38           (2) The date of the crime.
- 39           (3) The age of the person at the time of conviction.
- 40           (4) The circumstances surrounding the commission of the crime, if known.
- 41           (5) The nexus between the criminal conduct of the person and the job duties of  
42 the position to be filled.
- 43           (6) The applicant's prison, jail, probation, parole, rehabilitation, and  
44 employment records since the date the crime was committed.

45       (d) If, after reviewing the factors, the Board determines that any of the grounds to deny  
46 licensure exist, the Board may deny licensure of the applicant. The Board may disclose to the  
47 applicant information contained in the criminal history record that is relevant to the denial if  
48 disclosure of the information is permitted by applicable State and federal law. The Board shall  
49 not provide a copy of the criminal history to the applicant. The applicant shall have the right to  
50 appear before the Board to appeal the Board's decision. An appearance before the full Board

1 shall constitute an exhaustion of administrative remedies in accordance with Chapter 150B of  
2 the General Statutes.

3 (e) The Board, its officers, and employees, acting in good faith and in compliance with  
4 this section, shall be immune from civil liability for denying licensure to an applicant based on  
5 information provided in the applicant's criminal history record."

6 **SECTION 2.** Article 43 of Chapter 90 of the General Statutes is amended by  
7 adding the following new sections to read:

8 **"§ 90-726.16. Prohibited acts and penalties.**

9 (a) Except as permitted in G.S. 90-726.18, it shall be a violation of this Article for any  
10 person not licensed in accordance with the provisions of this Article to practice behavior  
11 analysis or to hold himself or herself out to the public as a person practicing behavior analysis.

12 (b) Any person not licensed in accordance with the provisions of this Article practicing  
13 behavior analysis or holding himself or herself out to the public as a person practicing behavior  
14 analysis in violation of this Article is guilty of a Class 2 misdemeanor. Each violation shall  
15 count as a separate offense.

16 **"§ 90-726.17. Injunction.**

17 The Board may apply to the Superior Court of Wake County for an injunction to prevent  
18 violations of this Article or any rules enacted pursuant thereto. The court is empowered to grant  
19 such injunctions regardless of whether criminal prosecution or other action has been or may be  
20 instituted as a result of such violation.

21 **"§ 90-726.18. Exemptions from licensure.**

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

- 24 (1) The person is a duly licensed psychologist or psychological associate in this  
25 State or a person providing ancillary services pursuant to G.S. 90-270.21.
- 26 (2) The person is a Registered Behavior Technician and is acting under the  
27 extended authority or direction of a licensed behavior analyst or a licensed  
28 assistant behavior analyst.
- 29 (3) The person is a family member, guardian, or other caretaker implementing a  
30 behavior analysis treatment plan under the direction of a licensed behavior  
31 analyst or a licensed assistant behavior analyst.
- 32 (4) The person engages in the practice of behavior analysis with nonhuman  
33 subjects. This includes, but is not limited to, persons who are animal  
34 behaviorists and animal trainers.
- 35 (5) The person provides general behavior analysis services to organizations, so  
36 long as the services are for the benefit of the organizations and do not  
37 involve direct services to individuals.
- 38 (6) The person is a professional licensed under this Chapter or Chapter 90B of  
39 the General Statutes, so long as the licensed professional does not represent  
40 that he or she is a licensed behavior analyst or licensed assistant behavior  
41 analyst and the services of the licensed professional are within the scope of  
42 practice of the license possessed by that professional and the services  
43 performed are commensurate with the licensed professional's education,  
44 training, and experience.
- 45 (7) The activities are part of a defined college or university course program of  
46 study, practicum, or intensive practicum, so long as that person is under  
47 direct supervision of (i) a licensed behavior analyst, (ii) an instructor in a  
48 course sequence approved by the certifying entity, or (iii) a qualified faculty  
49 member.

1           (8) The person is pursuing experience in behavior analysis consistent with the  
2           certifying entity's experience requirements, so long as the person's activities  
3           are supervised by a licensed behavior analyst."

4           **SECTION 3.** G.S. 90-270.4 is amended by adding a new subsection to read:

5           "(f1) Nothing in this Article shall be construed to prevent a behavior analyst or an  
6           assistant behavior analyst licensed under Article 43 of Chapter 90 of the General Statutes from  
7           offering services within the scope of practice authorized by the North Carolina Behavior  
8           Analysis Board."

9           **SECTION 4.** The North Carolina Behavior Analysis Board shall adopt temporary  
10          rules to implement this section no later than November 1, 2015. The temporary rules shall  
11          remain in effect until permanent rules that replace the temporary rules become effective.

12          **SECTION 5.** Chapter 8 of the General Statutes is amended by adding a new  
13          section to read:

14          "§ 8-53.14. Communications between behavior analyst and client or patient.

15          No person, duly authorized as licensed behavior analyst, nor any of the person's employees  
16          or associates, shall be required to disclose any information which the person may have acquired  
17          in the practice of behavior analysis and which information was necessary to enable the person  
18          to practice behavior analysis. Any resident or presiding judge in the district in which the action  
19          is pending may, subject to G.S. 8-53.6, compel disclosure, either at the trial or prior thereto, if  
20          in his or her opinion disclosure is necessary to a proper administration of justice. If the case is  
21          in district court the judge shall be a district court judge, and if the case is in superior court the  
22          judge shall be a superior court judge.

23          Notwithstanding the provisions of this section, the behavior analyst-client or behavior  
24          analyst-patient privilege shall not be grounds for failure to report suspected child abuse or  
25          neglect to the appropriate county department of social services or for failure to report a disabled  
26          adult suspected to be in need of protective services to the appropriate county department of  
27          social services. Notwithstanding the provisions of this section, the behavior analyst-client or  
28          behavior analyst-patient privilege shall not be grounds for excluding evidence regarding the  
29          abuse or neglect of a child, or an illness of or injuries to a child, or the cause thereof, or for  
30          excluding evidence regarding the abuse, neglect, or exploitation of a disabled adult, or an  
31          illness of or injuries to a disabled adult, or the cause thereof, in any judicial proceeding related  
32          to a report pursuant to the Child Abuse Reporting Law, Article 3 of Chapter 7B of the General  
33          Statutes."

34          **SECTION 6.** Sections 2 and 3 of this act become effective January 1, 2016. The  
35          remainder of this act is effective when it becomes law.