

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 714
Committee Substitute Favorable 6/10/15
PROPOSED COMMITTEE SUBSTITUTE H714-PCS20372-SHf-49

Short Title: Behavior Analyst Licensure.

(Public)

Sponsors:

Referred to:

April 15, 2015

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 Analysis Board.
17 (2) Certifying entity. – The Behavior Analyst Certification Board, Inc., whose
18 certification programs are nationally accredited, 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 individual
23 to engage in the practice of behavior analysis under the supervision of a
24 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



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

9 **"§ 90-726.3. North Carolina Behavior Analysis Board.**

10 (a) Establishment. – The North Carolina Behavior Analysis Board is created. The
11 Board shall consist of nine members.

12 (b) Appointments. – The appointments to the Board are as follows:

13 (1) The General Assembly, upon the recommendation of the Speaker of the
14 House of Representatives, shall appoint one licensed behavior analyst, one
15 licensed assistant behavior analyst, and one public member.

16 (2) The General Assembly, upon the recommendation of the President Pro
17 Tempore of the Senate, shall appoint one licensed behavior analyst, one
18 licensed assistant behavior analyst, and one public member.

19 (3) The Governor shall appoint one licensed behavior analyst, one licensed
20 assistant behavior analyst, and one public member.

21 (4) The initial behavior analytic appointees to the Board shall be persons who
22 have been certified by the certifying entity and who meet the requirements
23 for licensure under this Article. The initial appointees that are certified
24 behavior analysts and certified assistant behavior analysts shall become
25 licensed as soon as practicable. The initial appointees shall be appointed on
26 or before October 1, 2015. For the initial appointments made under
27 subdivision (1) of this subsection, the behavior analyst shall serve a one-year
28 term, the assistant behavior analyst shall serve a two-year term, and the
29 public member shall serve a three-year term. For the initial appointments
30 under subdivision (2) of this subsection, the behavior analyst shall serve a
31 two-year term, the assistant behavior analyst shall serve a three-year term,
32 and the public member shall serve a one-year term. For the initial
33 appointments under subdivision (3) of this subsection, the behavior analyst
34 shall serve a three-year term, the assistant behavior analyst shall serve a
35 one-year term, and the public member shall serve a two-year term.

36 (5) Upon the expiration of the terms of the initial Board members established
37 under subdivision (4) of this subsection, each member shall be appointed by
38 the appointing authorities designated in subdivisions (1) through (3) of this
39 subsection for a three-year term to begin on October 1, shall be licensed
40 under this Article, and shall serve until a successor is appointed and
41 qualified. No member may serve more than two consecutive full terms.

42 (c) Qualifications of Board Members. –

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

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

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

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

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

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

1 c. Shall not be a licensed behavior analyst or licensed assistant behavior
2 analyst, an applicant or former applicant for licensure as a behavior
3 analyst or assistant behavior analyst, or a member of a household that
4 includes a licensed behavior analyst or licensed assistant behavior
5 analyst.

6 (d) Removal of Board Members. – A Board member shall be automatically removed
7 from the Board if the member does any of the following:

8 (1) Ceases to meet the qualifications specified in this section.

9 (2) Fails to attend three successive Board meetings without just cause as
10 determined by the remainder of the Board.

11 (3) Is found by the remainder of the Board to be in violation of the provisions of
12 this Article or to have engaged in immoral, dishonorable, unprofessional, or
13 unethical conduct, and such conduct is deemed to compromise the integrity
14 of the Board.

15 (4) Is found to be guilty of a felony or an unlawful act involving moral turpitude
16 by a court of competent jurisdiction or is found to have entered a plea of
17 nolo contendere to a felony or an unlawful act involving moral turpitude.

18 (5) Is found guilty of malfeasance, misfeasance, or nonfeasance in relation to
19 the member's Board duties by a court of competent jurisdiction.

20 (6) Is incapacitated and without reasonable likelihood of resuming Board duties
21 as determined by the Board.

22 (e) Vacancies. – In the event that a member of the Board cannot complete a term of
23 office, the vacancy shall be filled in the same manner as the original appointment for the
24 remainder of the unexpired term. No Board member shall participate in any matter before the
25 Board in which the member has a pecuniary interest or similar conflict of interest.

26 (f) Meetings. – The Board shall annually elect a chair and other officers as it deems
27 necessary to carry out the purposes of this Article. The Board may hold additional meetings
28 upon the call of the chair or any two Board members. A majority of the Board shall constitute a
29 quorum.

30 (g) Per Diem. – Members of the Board shall receive no compensation for their services
31 but shall receive per diem and necessary travel and subsistence expenses as provided in
32 G.S. 93B-5.

33 (h) Employees. – The Board may employ necessary personnel for the performance of
34 its functions and fix the compensation. The Board shall not employ any of its members to
35 perform inspectional or similar ministerial tasks for the Board. In no event shall the State of
36 North Carolina be liable for expenses incurred by the Board in excess of the income derived
37 from this Article.

38 **"§ 90-726.4. Powers and duties of Board.**

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

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

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

42 (3) Establish and determine qualification and fitness of applicants for licensure
43 under this Article.

44 (4) Issue, renew, deny, suspend, revoke, or refuse to issue or renew any license
45 under this Article.

46 (5) Establish fees for applications, initial and renewal licenses, and other
47 services provided by the Board.

48 (6) Discipline persons licensed under this Article.

49 (7) Adopt an official seal, which shall be affixed to all licenses issued.

50 (b) The Board may empower any member to conduct any proceeding or investigation
51 necessary to its purposes and may empower its agent or counsel to conduct any investigation

1 necessary to its purposes, but any action shall be taken at a meeting of the Board by a majority
2 of the members of the Board. The Board may order that any records concerning the practice of
3 behavior analysis relevant to a complaint received by the Board or an inquiry or investigation
4 conducted by or on behalf of the Board be produced before the Board or for inspection and
5 copying by representatives of or counsel to the Board by the custodian of such records.

6 **"§ 90-726.5. Annual report.**

7 On June 30 of each year, the Board shall submit a report to the Governor of the Board's
8 activities since the preceding July 1 that includes the names of all licensed behavior analysts
9 and licensed assistant behavior analysts to whom licenses have been granted under this Article,
10 any cases heard and decisions rendered in matters before the Board, the recommendations of
11 the Board as to future actions and policies, and a financial report. Each member of the Board
12 shall review and sign the report before its submission to the Governor. Any Board member
13 shall have the right to record a dissenting view.

14 **"§ 90-726.6. License application.**

15 (a) Each individual who desires to obtain a license under this Article shall apply to the
16 Board upon the form and in the manner prescribed by the Board. Each applicant shall furnish
17 evidence satisfactory to the Board that the applicant meets all of the following criteria:

- 18 (1) The individual is of good moral character and conducts his or her
19 professional activities in accordance with accepted professional and ethical
20 standards.
- 21 (2) The individual has not engaged in or is not engaged in any practice that
22 would be a ground for denial, revocation, or suspension of a license under
23 G.S. 90-726.12.
- 24 (3) The individual has submitted the required criminal history record, as
25 required by G.S. 90-726.14.
- 26 (4) The individual is qualified for licensure pursuant to the requirements of this
27 Article.

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

29 **"§ 90-726.7. Requirements for licensure as a behavior analyst.**

30 Each applicant shall be issued a license by the Board to engage in the practice of behavior
31 analysis as a licensed behavior analyst if the applicant meets the qualifications set forth in
32 G.S. 90-726.6(a) and provides satisfactory evidence to the Board of all the following criteria:

- 33 (1) The applicant has passed the certifying entity's Board Certified Behavior
34 Analyst examination.
- 35 (2) The applicant has an active status with the certifying entity as a Board
36 Certified Behavior Analyst.
- 37 (3) Payment of application fee.

38 **"§ 90-726.8. Requirement of licensure as an assistant behavior analyst.**

39 Each applicant shall be issued a license by the Board to engage in the practice of behavior
40 analysis as a licensed assistant behavior analyst if the applicant meets the qualifications set
41 forth in G.S. 90-726.6(a) and provides satisfactory evidence to the Board of all the following
42 criteria:

- 43 (1) The applicant has passed the certifying entity's Board Certified Assistant
44 Behavior Analyst examination.
- 45 (2) The applicant has an active status with the certifying entity as a Board
46 Certified Assistant Behavior Analyst.
- 47 (3) Payment of application fee.
- 48 (4) The applicant has an ongoing arrangement for supervision by a licensed
49 behavior analyst in a manner consistent with the certifying entity's
50 requirements for supervision of Board Certified Assistant Behavior
51 Analysts.

"§ 90-726.9. Renewal of license.

(a) A license shall be granted under this Article for a period of two years.

(b) The Board shall renew a license granted under this Article upon receipt of the following:

(1) Proof of completion of any continuing education required by the certifying entity.

(2) Payment of the renewal fee.

(3) Evidence of active certification by the certifying entity.

(4) For assistant behavior analysts, evidence of an ongoing arrangement for supervision by a licensed behavior analyst, as required by G.S. 90-726.8.

"§ 90-726.10. Temporary licensure.

(a) An individual residing and practicing behavior analysis in another state and who is certified as a Board Certified Behavior Analyst by the certifying entity may apply to the Board for a temporary license to practice behavior analysis in North Carolina.

(b) An individual residing and practicing behavior analysis in another state who is actively licensed in another state as a behavior analyst may apply to the Board for a temporary license to practice behavior analysis in North Carolina.

(c) A temporary license is available only if the behavior analysis services are to be delivered during a limited and defined period of service approved by the Board.

"§ 90-726.11. Reciprocity.

(a) The Board shall issue a license to an individual who is actively licensed as a behavior analyst or assistant behavior analyst in another state that currently imposes comparable licensure requirements as those imposed by this Article and that offers reciprocity to individuals licensed under this Article.

(b) Applicants for licensure by reciprocity shall submit the following items:

(1) Proof of ethical compliance.

(2) Proof of current licensure.

(3) Proof of current certification by the certifying entity.

(4) A criminal history record check as required by G.S. 90-726.14.

(5) Any other eligibility requirement as deemed appropriate by the Board.

"§ 90-726.12. Denial, suspension, or revocation of licenses and other disciplinary and remedial actions for violations of the Code of Conduct; relinquishing of license.

(a) Any applicant for licensure and any person licensed under this Article shall comply with the ethical and professional standards adopted by the Board by rule and shall not violate the Code of Conduct as set forth in this subsection. The Board may deny, suspend, or revoke licensure and may discipline, place on probation, limit practice, and require examination, remediation, and rehabilitation, or any combination thereof, all as provided for in subsection (b) of this section. The following are considered violations of the Code of Conduct:

(1) Conviction of a felony or entry of a plea of guilty or nolo contendere to any felony charge.

(2) Conviction of a felony or entry of a plea of guilty or nolo contendere to any misdemeanor involving moral turpitude, misrepresentation or fraud in dealing with the public, or conduct otherwise relevant to fitness to practice, or a misdemeanor charge reflecting the inability to practice behavior analysis with due regard to the health and safety of clients or patients.

(3) Using fraud or deceit in securing or attempting to secure or renew a license under this Article or willfully concealing from the Board material information in connection with application for a license or for renewal of a license under this Article.

(4) Using fraud, deceit, or misrepresentation upon the public, the Board, or any individual in connection with the practice of behavior analysis, the filing of

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

1 licensed behavior analysts, licensed assistant behavior analysts, or other
2 professionals' abilities to perform professional duties.

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

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

9 (20) Failing to cooperate with or to respond promptly, completely, and honestly
10 to the Board, to credentials committees, or to ethics committees of
11 professional behavior analyst associations, hospitals, or other health care
12 organizations or educational institutions when those organizations or entities
13 have jurisdiction or failing to cooperate with institutional review boards or
14 professional standards review organizations when those organizations or
15 entities have jurisdiction.

16 (21) Refusing to appear before the Board after having been ordered to do so in
17 writing by the chair.

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

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

38 (d) When considering whether an applicant or licensee is physically or mentally capable
39 of practicing behavior analysis with reasonable skill and safety with patients or clients, then,
40 upon a showing of probable cause to the Board that the applicant or licensee is not capable of
41 practicing behavior analysis with reasonable skill and safety with patients or clients, the Board
42 may petition a court of competent jurisdiction to order the applicant or licensee in question to
43 submit to a psychological evaluation by a psychologist to determine psychological status or a
44 physical evaluation by a physician to determine physical condition, or both. Such psychologist
45 or physician shall be designated by the court. The expenses of such evaluations shall be borne
46 by the Board. Where the applicant or licensee raises the issue of mental or physical competence
47 or appeals a decision regarding mental or physical competence, the applicant or licensee shall
48 be permitted to obtain an evaluation at the applicant's or licensee's expense. If the Board
49 suspects the objectivity or adequacy of the evaluation, the Board may compel an evaluation by
50 its designated practitioners at its own expense.

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

36 (f) A license issued under this Article is suspended automatically by operation of law
37 after failure to renew a license for a period of more than 60 days after the renewal date. The
38 Board may reinstate a license suspended under this subsection upon payment of a fee as
39 specified in G.S. 90-726.13 and may require that the applicant file a new application, furnish
40 references or otherwise update the applicant's credentials, or submit to examination for
41 reinstatement. Notwithstanding any provision to the contrary, the Board retains full jurisdiction
42 to investigate alleged violations of this Article by any person whose license is suspended under
43 this subsection, and, upon proof of any violation of this Article by any such person, the Board
44 may take disciplinary action as authorized by this section.

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

47 (h) A licensee may, with the consent of the Board, voluntarily relinquish his or her
48 license at any time. The Board may delay or refuse the granting of its consent as it may deem
49 necessary in order to investigate any pending complaint, allegation, or issue regarding violation
50 of any provision of this Article by the licensee. Notwithstanding any provision of this
51 subsection, the Board retains full jurisdiction to investigate alleged violations of this Article by

1 any person whose license is relinquished under this subsection, and, upon proof of any
2 violation of this Article by any such person, the Board may take disciplinary action as
3 authorized by this section.

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

6 **"§ 90-726.13. Fees.**

7 The Board may collect fees established by its rules, but those fees shall not exceed the
8 following amounts:

9	(1) <u>Application fee for licensure</u>	<u>\$250.00</u>
10	(2) <u>License renewal</u>	<u>\$200.00</u>
11	(3) <u>Late renewal fee</u>	<u>\$50.00</u>
12	(4) <u>Reciprocal license application</u>	<u>\$250.00</u>
13	(5) <u>Temporary license application</u>	<u>\$100.00.</u>

14 **"§ 90-726.14. Criminal history record checks of applicants for licensure.**

15 (a) Criminal History Record Check. – All applicants for licensure shall consent to a
16 criminal history record check. Refusal to consent to a criminal history record check may
17 constitute grounds for the Board to deny licensure to an applicant. The Board shall be
18 responsible for providing to the North Carolina Department of Public Safety the fingerprints of
19 the applicant to be checked, a form signed by the applicant consenting to the criminal history
20 record check and the use of fingerprints and other identifying information required by the State
21 or National Repositories of Criminal Histories, and any additional information required by the
22 Department of Public Safety. The Board shall keep all information obtained pursuant to this
23 section confidential.

24 (b) Cost. – The cost of the criminal history record check and the fingerprinting shall be
25 borne by the applicant. The Board shall collect any fees required by the Department of Public
26 Safety and shall remit the fees to the Department of Public Safety for expenses associated with
27 conducting the criminal history record check.

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

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

39 (d) Denial of Licensure. – If, after reviewing the factors, the Board determines that any
40 of the grounds to deny licensure exist, the Board may deny licensure of the applicant. The
41 Board may disclose to the applicant information contained in the criminal history record that is
42 relevant to the denial if disclosure of the information is permitted by applicable State and
43 federal law. The Board shall not provide a copy of the criminal history to the applicant. The
44 applicant shall have the right to appear before the Board to appeal the Board's decision. An
45 appearance before the full Board shall constitute an exhaustion of administrative remedies in
46 accordance with Chapter 150B of the General Statutes.

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

50 **"§ 90-726.15. Practice of psychology not permitted.**

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

10 **SECTION 2.** Article 43 of Chapter 90 of the General Statutes, as enacted by
11 Section 1 of this act, is amended by adding the following new sections to read:

12 **"§ 90-726.16. Prohibited acts and penalties.**

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

16 (b) Any person who is not licensed in accordance with the provisions of this Article
17 practicing behavior analysis or holding himself or herself out to the public as a person
18 practicing behavior analysis in violation of this Article is guilty of a Class 2 misdemeanor.
19 Each violation shall constitute a separate offense.

20 **"§ 90-726.17. Injunction.**

21 The Board may apply to the superior court for an injunction to prevent violations of this
22 Article or any rules enacted pursuant to this Article. The court is empowered to grant such
23 injunctions regardless of whether criminal prosecution or other action has been or may be
24 instituted as a result of such violation.

25 **"§ 90-726.18. Exemptions from licensure.**

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

28 (1) The person is a duly licensed psychologist or psychological associate in this
29 State; a psychologist who is exempt from licensure as a psychologist
30 pursuant to G.S. 90-270.4; a student in a defined college or university
31 course, program of study, or practicum in behavior analysis under the direct
32 supervision of a psychologist, an individual acting under the extended
33 authority and direction of a licensed psychologist (e.g., graduate students,
34 interns, postdoctoral trainees); or a person providing ancillary services
35 pursuant to G.S. 90-270.21.

36 (2) The person only implements an intervention based on behavior analysis
37 under the direction of an appropriately licensed individual.

38 (3) The person is a family member, guardian, or other caretaker implementing a
39 behavior analysis treatment plan under the direction of a licensed behavior
40 analyst or a licensed assistant behavior analyst.

41 (4) The person is engaged in the practice of behavior analysis with nonhuman
42 subjects. This includes persons who are animal behaviorists and animal
43 trainers.

44 (5) The person provides general behavior analysis services to organizations, so
45 long as the services are for the benefit of the organizations and do not
46 involve direct services to individuals.

47 (6) The person is a professional licensed under this Chapter or Chapter 90B of
48 the General Statutes, so long as the licensed professional does not represent
49 that he or she is a licensed behavior analyst or licensed assistant behavior
50 analyst, and the services of the licensed professional are within the scope of
51 practice of the license possessed by that professional and the services

1 performed are commensurate with the licensed professional's education,
2 training, and experience.

3 (7) The activities the person participates in are part of a defined college or
4 university course program of study, practicum, or intensive practicum in
5 behavior analysis, so long as that person is under direct supervision of (i) a
6 licensed behavior analyst, (ii) an instructor in a course sequence approved by
7 the certifying entity, or (iii) a qualified faculty member.

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

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

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

16 **SECTION 4.** The North Carolina Behavior Analysis Board shall adopt temporary
17 rules to implement this act no later than January 1, 2016. The temporary rules shall remain in
18 effect until permanent rules that replace the temporary rules become effective.

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

21 **"§ 8-53.14. Communications between behavior analyst and client or patient.**

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

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

42 **SECTION 6.** Sections 2 and 3 of this act become effective March 1, 2016. The
43 remainder of this act is effective when it becomes law.