

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

SESSION LAW 2009-393
SENATE BILL 935

AN ACT AMENDING THE MARRIAGE AND FAMILY THERAPY LICENSURE LAWS AND AUTHORIZING THE NORTH CAROLINA MARRIAGE AND FAMILY THERAPY LICENSURE BOARD TO INCREASE FEES.

The General Assembly of North Carolina enacts:

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

"§ 90-270.47. Definitions.

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

- (1) ~~"Allied mental health field" and "degree" mean:~~ "Related degree" means:
 - a. Master's or doctoral degree in clinical social work;
 - b. Master's or doctoral degree in psychiatric nursing;
 - c. Master's or doctoral degree in counseling or clinical or counseling psychology;
 - d. Doctor of medicine or doctor of osteopathy degree with an appropriate residency training in psychiatry; or
 - e. Master's or doctoral degree in any mental health field the course of study of which is equivalent to the master's degree in marriage and family therapy.
- (2) "Board" means the North Carolina Marriage and Family Therapy Licensure Board.
- (2a) "Clinical experience" means face-to-face therapy between a therapist and a client, whether individuals, couples, families, or groups, conducted from a larger systems perspective that relates to client treatment plans, is goal-directed, and assists the client in affecting change in cognition and behavior and effect.
- (2b) "Larger systems" means any individual or group that is a part of the client's environment and that potentially impacts the client's functioning or well-being and potentially can assist in the development and implementation of a treatment plan.
- (3) "Licensed marriage and family therapist" means a person to whom a license has been issued pursuant to this Article, if the license is in force and not suspended or revoked.
- (3a) "Licensed marriage and family therapy associate" means an individual to whom a license has been issued pursuant to this Article whose license is in force and not suspended or revoked and whose license permits the individual to engage in the practice of marriage and family therapy under the 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) The person is (i) ~~preparing for the practice of marriage and family therapy in a manner prescribed by rules of the Board,~~enrolled in a master's level program or higher in a recognized educational institution, (ii) under qualified supervision as approved by the Board in a training institution or facility or supervisory arrangement recognized and approved by the Board, and (iii)

designated by a title such as "marriage and family therapy intern," or "~~marriage and family therapy supervisee,~~" or another similar title approved by the Board.~~intern."~~

- (2) The person is practicing marriage and family therapy as an employee of a recognized educational institution, or a governmental institution or agency and the practice is included in the duties for which the person was employed by the institution or agency.
- (3) ~~The person is practicing marriage and family therapy as an employee of a nonprofit organization which the Board has determined meets community needs and the practice is included in the duties for which the person was employed by the nonprofit organization.~~
- (4) The person is practicing marriage and family therapy as an employee of a hospital licensed under Article 5 of Chapter 131E or Article 2 of Chapter 122C of the General Statutes.

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

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

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

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

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

SECTION 5.1. G.S. 90-270.51(e) reads as rewritten:

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

SECTION 5.2. G.S. 90-270.51 is amended by adding a new subsection to read:

"(h) The Board may order that any records concerning the practice of marriage and family therapy and relevant to a complaint received by the Board, or an inquiry or investigation conducted by or on behalf of the Board, shall be produced by the custodian of the records to the Board or for inspection and copying by employees, representatives of or counsel to the Board. These records shall not become public records as defined by G.S. 132-1. A licensee or an agency employing a licensee shall maintain records for a minimum of five years from the date the licensee terminates services to the adult client and the client services record is closed. For minor clients the licensee or agency employing the licensee shall maintain records until the client is 22 or five years after the termination of services, whichever occurs later. A licensee shall cooperate fully and in a timely manner with the Board and its designated employees, representatives, or investigators in an inquiry or investigation conducted by or on behalf of the Board."

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

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

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

(1) Meets educational and experience qualifications as follows:

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

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

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

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

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

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

- (1) Has completed a marriage and therapy degree or related degree in accordance with G.S. 90-270.54(a)(1)a.
- (2) Has shown evidence of intent to accrue the required supervised clinical experience for licensure under G.S. 90-270.54(a)(1)b.
- (3) Has filed with the Board an application for licensure as a marriage and family therapy associate, which application includes evidence of the appropriate coursework and an agreement by at least one supervisor

approved by the American Association of Marriage and Family Therapy to provide supervision to the applicant.

(4) Has passed the examination approved by the Board pursuant to G.S. 90-270.54(a)(2).

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

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

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

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

"§ 90-270.55. Examinations.

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

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

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

"§ 90-270.56. Reciprocal licenses.

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

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

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

"§ 90-270.57. Fees.

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

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|------|---|--------------------------|
| (1) | Each license examination | \$50.00 |
| (2) | Each license application as a marriage and family therapist | 150.00 200.00 |
| (2a) | Each license application as a marriage and family therapy associate | 200.00 |
| (3) | Each renewal of license | 100.00 200.00 |

(4)	Each reciprocal license application	150.00 200.00
(5)	Each reinstatement of an expired license	125.00 200.00
(6)	Each application to return to active status	125.00 200.00
(7)	<u>Each duplicate license</u>	25.00
(8)	<u>Each annual maintenance of inactive status</u>	50.00
(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.~~

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

- (1) ~~Conviction of a felony under the laws of the United States or of any state of the United States.~~ Has been convicted of a felony or entered a plea of guilty

- or nolo contendere to any felony charge under the laws of the United States or of any state of the United States.
- (2) Conviction of any crime, an essential element of which is dishonesty, deceit, or fraud. Has been convicted of or entered 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 marriage and family therapy, or a misdemeanor charge reflecting the inability to practice marriage and family therapy with due regard to the health and safety of clients.
 - (3) Fraud or deceit in obtaining a license as a marriage and family therapist. Has engaged in fraud or deceit in securing or attempting to secure or renew a license under this Article or has willfully concealed from the Board material information in connection with application for a license or renewal of a license under this Article.
 - (4) Dishonesty, fraud or gross negligence in the practice of marriage and family therapy. Has practiced any fraud, deceit, or misrepresentation upon the public, the Board, or any individual in connection with the practice of marriage and family therapy, the offer of professional marriage and family therapy services, the filing of Medicare, Medicaid, or other claims to any third-party payor, or in any manner otherwise relevant to fitness for the practice of marriage and family therapy.
 - (5) Violation of any rule of professional ethics and professional conduct adopted by the Board. Has made fraudulent, misleading, or intentionally or materially false statements pertaining to education, licensure, license renewal, supervision, continuing education, any disciplinary actions or sanctions pending or occurring in any other jurisdiction, professional credentials, or qualifications or fitness for the practice of marriage and family therapy to the public, any individual, the Board, or any other organization.
 - (6) Has had a license or certification for the practice of marriage and family therapy in any other jurisdiction suspended or revoked, or has been disciplined by the licensing or certification board in any other jurisdiction for conduct which would subject the licensee to discipline under this Article.
 - (7) Has violated any provision of this Article or any rules adopted by the Board.
 - (8) Has aided or abetted the unlawful practice of marriage and family therapy by any person not licensed by the Board.
 - (9) Has been guilty of immoral, dishonorable, unprofessional, or unethical conduct as defined in this subsection or in the current code of ethics of the American Association for Marriage and Family Therapy. However, if any provision of the code of ethics is inconsistent and in conflict with the provisions of this Article, the provisions of this Article shall control.
 - (10) Has practiced marriage and family therapy in such a manner as to endanger the welfare of clients.
 - (11) Has demonstrated an inability to practice marriage and family therapy with reasonable skill and safety by reason of illness, inebriation, misuse of drugs, narcotics, alcohol, chemicals, or any other substance affecting mental or physical functioning, or as a result of any mental or physical condition.
 - (12) Has practiced marriage and family therapy outside the boundaries of demonstrated competence or the limitations of education, training, or supervised experience.

- (13) Has exercised undue influence in such a manner as to exploit the client, student, supervisee, or trainee for the financial or other personal advantage or gratification of the marriage and family therapist or a third party.
- (14) Has harassed or abused, sexually or otherwise, a client, student, supervisee, or trainee.
- (15) Has failed to cooperate with or to respond promptly, completely, and honestly to the Board, to credentials committees, or to ethics committees of professional associations, hospitals, or other health care organizations or educational institutions, when those organizations or entities have jurisdiction.
- (16) Has refused to appear before the Board after having been ordered to do so in writing by the chair.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Department of Justice may provide to the North Carolina Marriage and Family Therapy Licensure Board from the State and National Repositories of Criminal Histories the criminal history of any applicant for licensure or reinstatement of a license or licensee under Article 18C of Chapter 90 of the General Statutes. Along with the request, the Board shall provide to the Department of Justice the fingerprints of the applicant or licensee, a form signed by the applicant or licensee consenting to the criminal history record check and use of fingerprints and other identifying information required by the State and National Repositories, and any additional information required by the Department of Justice. The applicant's or licensee's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Board shall keep all information obtained pursuant to this section confidential. The Department of Justice may charge a fee to offset the cost incurred by the Department to conduct a criminal history record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information."

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

In the General Assembly read three times and ratified this the 23rd day of July, 2009.

s/ Walter H. Dalton
President of the Senate

s/ William L. Wainwright
Speaker Pro Tempore of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 12:40 p.m. this 31st day of July, 2009