

GENERAL ASSEMBLY OF NORTH CAROLINA



Legislative Fiscal Note

**BILL NUMBER:** Senate Bill 705 (Fifth Edition)

**SHORT TITLE:** Amend Substance Abuse Laws.

**SPONSOR(S):** Senator Nesbitt

<b>FISCAL IMPACT</b>					
	<b>Yes (X)</b>	<b>No ( )</b>	<b>No Estimate Available ( )</b>		
	<b><u>FY 2005-06</u></b>	<b><u>FY 2006-07</u></b>	<b><u>FY 2007-08</u></b>	<b><u>FY 2008-09</u></b>	<b><u>FY 2009-10</u></b>
<b>REVENUES:</b>					
<b>General Fund</b>					
Justice	\$38 per background check; less than \$7,600 annually anticipated.				
<b>Licensing Board</b>	\$1,825	\$1,550	\$1,425	\$1,225	\$1,225
<b>EXPENDITURES:</b>					
<b>General Fund</b>					
Justice	\$38.33 per background check; less than \$7,666 annually anticipated.				
Dept. of Correction	Exact amount cannot be determined; no substantial impact anticipated.				
Judicial Branch	Exact amount cannot be determined; no substantial impact anticipated.				
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> North Carolina Substance Abuse Professional Certification Board; Department of Justice; Department of Correction; Judicial Branch					
<b>EFFECTIVE DATE:</b> When it becomes law.					

**BILL SUMMARY:** Makes substantial changes to former NC Substance Abuse Act. Renames Article 5C of GS Chapter 90 the “North Carolina Substance Abuse Professional Practice Act” and amends GS 90-113.30 to rename licensing authority the “North Carolina Substance Abuse Professional Practice Board.” Repeals former definitional statute GS 90-113.31 and replaces with newly enacted GS 90-113.31A. Charges Board with credentialing and licensing substance abuse professionals rather than merely certifying professionals.

Amends GS 90-113.33 through 90-113.40 and enacts new GS 114-19.11A to require applicants to submit to check of criminal history. Enacts new GS 90-113.46A providing that prior conviction does not automatically bar issuance of credential. Instructs Board to consider

seriousness, date, and circumstances of crime, nexus between criminal conduct and job duties of position, and rehabilitation of applicant.

Repeals GS 90-113.37, which set forth requirements for renewing certification, and enacts new GS 90-113.37A governing renewal and lapse of credentials. Imposes oral exam requirement upon applicants for certification as substance abuse counselor. Enacts new GS 90-113.40(d1), creating new category of certified criminal justice addictions professional. Amends GS 90-113.42 to render it unlawful for any person not licensed or credentialed as a substance abuse professional or regulated by another profession to practice as a substance abuse professional.

Enacts new GS 90-113.44(2a), (10), and (11) to include as grounds for disciplinary action (1) the impairing use of drugs or alcohol, (2) a conviction of driving while impaired, (3) an improper dual relationship, and (4) practicing outside scope of credential. Amends GS 90-113.44 to make conviction of any criminal offense other than a traffic offense grounds for disciplinary action (was, conviction of narcotic or controlled substance offense).

Makes technical and conforming changes.

Second edition makes the following changes to first edition. Amends GS 90-113.33 to provide that the NC Substance Abuse Professional Practice Board's employment of legal counsel is subject to the provisions of GS 114-2.3 (requiring the Attorney General's approval before employing private counsel) and to delete provision authorizing the Board to recover attorneys' fees from any person disciplined by Board. Amends Section 4 of act to also require that to be certified as a criminal justice addictions professional, a person must provide documentation of at least 270 clock hours of Board-approved education and 300 hours of Board-approved supervised training. Makes technical changes.

Third edition makes the following changes to second edition. Amends GS 90-113.40 to provide that Certified Clinical Supervisors must meet the requirement in subsection (a)(5a) (requiring a complete criminal history record check). Deletes duplicate requirement in subsection (b)(5a).

Fourth edition adds new Sections 5 through 9, which were substantially similar to H 76.

Fifth edition removes the new sections added in the fourth edition.

*Source: Adapted from Bill Digest S.B. 705 (03/21/0200)*

**ASSUMPTIONS AND METHODOLOGY:** There are 1,392 certified substance abuse professionals in North Carolina according to the North Carolina Substance Abuse Professional Certification Board. The major fees for certification of substance abuse professionals, including licensure and renewal of licensure, have not been changed by this legislation. SB 705 adds a classification of licensure for criminal justice addictions professionals, which is a specialty within the field of substance abuse professionals and is estimated to generate approximately 20 extra examinations per year. Within the schedule of new fees, this only affects the projected number of examination rescheduling fees by increasing it by one per year. The following fees would be new fees:

1. *Exam rescheduling fee.* The Board administers many exams through a testing firm, and they are charged for each testing booklet ordered whether or not that booklet is actually used, in accordance with standardized testing procedures. Applicants are currently allowed 60 days before taking the test in which to reschedule in writing before they will incur a

rescheduling fee. This procedure will not be changed. This fee is intended as a deterrent to those who skip examinations without giving notice.

2. *Late renewal fee.* Although the Board already has the authority to charge a late renewal fee, no maximum amount was set in statute. The Board intends to assess this fee on a graduated scale depending on the number of years a substance abuse professional's certification has lapsed, i.e., \$25 for a one-year lapse, \$50 for a two-year lapse, etc. Currently, the Board only handles two cases of late renewals per year. The projection assumes that a total of \$125 in late renewal fees is assessed per year.
3. *Extra copy of Board-issued credential.* The Board issues approximately five extra copies of certifications per year.
4. *Fee for administering USDOT substance abuse professional exam.* The Board administers approximately five of these exams per year. The certification is required by the USDOT for substance abuse professionals who perform assessments of people working in motion-sensitive jobs involved in interstate transport, such as trucking, shipping, rail, and air.

<b>Proposed Fee Revenues</b>						
	Maximum fee	Fee revenue				
		2005-06	2006-07	2007-08	2008-09	2009-10
Fee for rescheduling an examination	\$ 25	\$ 825	\$ 550	\$ 425	\$ 225	\$ 225
Late renewal fee	\$ 125	125	125	125	125	125
Extra copy of Board-issued credential	\$ 25	125	125	125	125	125
USDOT test administration	\$ 150	750	750	750	750	750
<b>Total</b>		<b>\$ 1,825</b>	<b>\$ 1,550</b>	<b>\$ 1,425</b>	<b>\$ 1,225</b>	<b>\$ 1,225</b>

**Criminal Record Checks: Department of Justice & NCSAP Certification Board**

The Department of Justice (DOJ) provides state and national criminal background checks to non-criminal justice agencies and charges a fee to cover its costs. For a state and national check, DOJ charges \$38, of which \$22 is remitted to the Federal Bureau of Investigation (FBI). For each background check conducted, DOJ would incur costs, on average, of \$16.33<sup>1</sup> in addition to the \$22 remitted to the FBI. The North Carolina Substance Abuse Professionals Certification Board would require applicants to pay the \$38 charge.

The Board administers 200 credential exams per year. Many substance abuse professionals hold multiple credentials; therefore, the number of individuals applying for their first credential and requiring a background check is anticipated to be less than 200 per year. If, for example, 100 additional background checks were required, the internal cost to DOJ would be \$1,633, and payments from the Board would total \$1,600. In addition, DOJ would collect \$2,200 to remit to the FBI.

Each employee can process an average of nearly 10,000 background checks (criminal justice and non-criminal justice) per year. DOJ currently has the capacity to perform some additional background checks without increasing the number of positions. However, DOJ has stated that increased workload may affect turnaround time.

<sup>1</sup> In 2003, 75 percent of fee-exempt background checks were submitted via hard copy, and 25 percent were submitted electronically. This figure is a weighted average assuming the same distribution will apply to the new population.

## **Department of Correction**

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on January 2005 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory group, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts. Based on the most recent population projections and estimated available prison bed capacity, *there are no surplus prison beds available for the five-year fiscal note horizon and beyond.*

This bill would expand existing Class 1 misdemeanors under G.S. 90-113.43 to apply to registrants, interns, and certified criminal justice addictions professionals, in addition to the substance abuse professionals for which the current offenses apply. Presently, the Administrative Office of the Courts does not maintain an offense code for violations G.S. 90-113.43, which is some indication that these offenses are infrequently charged and rarely result in convictions.

- In FY 2003-04, 19 percent of Class 1 misdemeanors resulted in active sentences and the average estimated time served was 31 days. Offenders with active sentences of less than ninety days are housed in county jails, and DOC reimburses counties for housing offenders between thirty and ninety days at a rate of \$18 per offender per day.
- The remaining 81 percent of Class 1 misdemeanants received non-active sentences. For those offenders sentenced to supervised probation, the Division of Community Corrections (DCC) would incur costs of \$1.87 per offender per day. Offenders sentenced to community service would cost \$0.67 per offender per day, and offenders given unsupervised probation would not impact DCC.

*Because most Class 1 misdemeanants serving active time as a result of this bill would be housed in county jails, this legislation is not expected to significantly impact prison population.*

## **Judicial Branch**

For most criminal penalty bills, the Administrative Office of the Courts (AOC) provides Fiscal Research with an analysis of the fiscal impact of the specific bill. For these bills, fiscal impact is typically based on the assumption that court time will increase due to an expected increase in trials and a corresponding increase in the hours of work for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

Because AOC does not maintain an offense code for present violations of G.S. 90-113.43, no historical data is available regarding Class 1 misdemeanor charges for these offenses. As such, the number of charges that would result from making the offenses applicable to additional individuals cannot be determined. However, the lack of an offense code for existing violations of G.S. 90-113.43 may be some indication that there would be relatively few charges for these offenses.

Based on the costs of time in court, attorney preparation time, and indigent defense, the average estimated cost to process one Class 1 misdemeanor is \$3,213 per trial and \$284 per guilty plea. The trial cost includes an estimated \$1,880 in jury fees, costs of time in court, and attorney costs

and an additional \$1,333 in indigent defense. *Based on prior-year data, the majority of any new Class 1 misdemeanor charges that are not dismissed are likely to be settled by plea.*

**SOURCES OF DATA:** North Carolina Substance Abuse Professional Certification Board; Office of State Budget and Management; Department of Justice; Department of Correction; Judicial Branch

**TECHNICAL CONSIDERATIONS:** None

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**Signed Copy Located in the NCGA Principal Clerk's Offices**