

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

H

3

HOUSE BILL 91
Committee Substitute Favorable 2/23/21
Committee Substitute #2 Favorable 3/11/21

Short Title: Reduce Reg. To Help Children with Autism.

(Public)

Sponsors:

Referred to:

February 17, 2021

1 A BILL TO BE ENTITLED
2 AN ACT TO REDUCE UNNECESSARY REGULATORY CONSTRAINTS FOR APPLIED
3 BEHAVIOR ANALYSIS.

4 The General Assembly of North Carolina enacts:

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

7 "Article 43.

8 "Behavior Analyst Licensure.

9 "**§ 90-726.1. Declaration of purpose.**

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

14 "**§ 90-726.2. Definitions.**

15 The following definitions apply in this Article:

- 16 (1) Behavior technician. – A paraprofessional who delivers applied behavior
17 analysis services and who practices under the close, ongoing supervision of a
18 licensed behavior analyst, licensed assistant behavior analyst, or other
19 professional licensed under this Chapter or Chapter 90B of the General
20 Statutes, so long as the services of the licensed professional are within the
21 scope of practice of the license possessed by that licensed professional, and
22 the services performed are commensurate with the licensed professional's
23 education, training, and experience. The behavior technician does not design
24 assessment or intervention plans or procedures but delivers services as
25 assigned by a supervisor who is responsible for the behavior technician's
26 work.
- 27 (2) Board. – The North Carolina Behavior Analyst Board.
- 28 (3) Certifying entity. – The Behavior Analyst Certification Board, Inc., or its
29 successor.
- 30 (4) Institution of higher education. – A university, college, professional school,
31 or other institution accredited in the United States, Canada, or other country.
32 For the purposes of this subdivision, accreditation shall be granted by the
33 Commission on Recognition of Postsecondary Accreditation or comparable
34 official organization having accreditation authority.



- 1 (5) Licensed assistant behavior analyst. – An individual who is certified by the
2 certifying entity as a Board Certified Assistant Behavior Analyst and has been
3 issued a license under this Article that (i) is active, (ii) is not suspended or
4 revoked, and (iii) is supervised by a licensed behavior analyst in North
5 Carolina who is approved by the certifying entity to supervise assistant
6 behavior analysts.
- 7 (6) Licensed behavior analyst. – An individual who is certified by the certifying
8 entity as a Board Certified Behavior Analyst and has been issued a license
9 under this Article that is active and not suspended or revoked.
- 10 (7) Practice of behavior analysis. – The practice of behavior analysis includes the
11 design, implementation, and evaluation of instructional and environmental
12 modifications to produce socially significant improvements in human
13 behavior. Behavior analysts utilize contextual factors, motivating operations,
14 antecedent stimuli, positive reinforcement, and other consequences to help
15 people develop new behaviors, increase or decrease existing behaviors, and
16 emit behaviors under specific environmental conditions. The practice of
17 behavior analysis expressly excludes any kind of psychological evaluation,
18 diagnosis or intervention, including, but not limited to, psychological and
19 neuropsychological testing, cognitive therapy, sex therapy, psychoanalysis,
20 hypnotherapy, and long-term counseling as treatment modalities.

21 **§ 90-726.3. North Carolina Behavior Analysis Board.**

22 (a) Establishment. – The North Carolina Behavior Analysis Board is created. The Board
23 shall consist of five members who shall serve staggered terms. The initial Board shall be selected
24 as follows:

- 25 (1) The General Assembly, upon the recommendation of the Speaker of the House
26 of Representatives, shall appoint one behavior analyst, who is certified by the
27 certifying entity as a Board Certified Behavior Analyst, to serve a three-year
28 term.
- 29 (2) The General Assembly, upon the recommendation of the President Pro
30 Tempore of the Senate, shall appoint one behavior analyst, who is certified by
31 the certifying entity as a Board Certified Behavior Analyst, to serve a
32 three-year term.
- 33 (3) The Governor shall appoint the following three members:
- 34 a. One behavior analyst, who is certified by the certifying entity as a
35 Board Certified Behavior Analyst, to serve a two-year term.
- 36 b. One assistant behavior analyst, who is certified by the certifying entity
37 as a Board Certified Assistant Behavior Analyst, to serve a two-year
38 term.
- 39 c. One public member to serve a two-year term.

40 Upon the expiration of the terms of the initial Board members, each member shall be
41 appointed by the appointing authorities designated in subdivisions (1) through (3) of this
42 subsection for a three-year term and shall serve until a successor is appointed and qualified. All
43 members appointed to the Board, except for the public member appointed by the Governor under
44 subdivision (3) of this subsection, shall be required to be licensed under this Article and shall
45 seek licensure in this State as soon as the first application period begins. No member may serve
46 more than two consecutive full terms.

47 (b) Vacancies. – If a member of the Board cannot complete a term of office, the vacancy
48 shall be filled in the same manner as the original appointment for the remainder of the unexpired
49 term. No Board member shall participate in any matter before the Board in which the member
50 has a pecuniary interest or similar conflict of interest.

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

- 1 (1) Each licensed behavior analyst or licensed assistant behavior analyst member
2 of the Board shall have all of the following qualifications:
3 a. Shall be a resident of this State and a citizen of the United States.
4 b. Shall be free of conflict of interest or the appearance of a conflict of
5 interest in performing the duties of the Board.
6 (2) Each public member of the Board shall have all of the following
7 qualifications:
8 a. Shall be a resident of this State and a citizen of the United States.
9 b. Shall be free of conflict of interest or the appearance of a conflict of
10 interest in performing the duties of the Board.
11 c. Shall not be a licensed behavior analyst or licensed assistant behavior
12 analyst, an applicant or former applicant for licensure as a behavior
13 analyst or assistant behavior analyst, or a member of a household that
14 includes a licensed behavior analyst or licensed assistant behavior
15 analyst.
16 (3) A Board member shall be automatically removed from the Board for any of
17 the following:
18 a. Ceasing to meet the qualifications specified in this subsection.
19 b. Failing to attend three successive Board meetings without just cause
20 as determined by the remainder of the Board.
21 c. Is found by the remainder of the Board to be in violation of the
22 provisions of this Article or to have engaged in immoral, dishonorable,
23 unprofessional, or unethical conduct, and the conduct is deemed to
24 compromise the integrity of the Board.
25 d. Is found guilty of a felony or an unlawful act involving moral turpitude
26 by a court of competent jurisdiction or is found to have entered a plea
27 of nolo contendere to a felony or an unlawful act involving moral
28 turpitude.
29 e. Is found guilty of malfeasance, misfeasance, or nonfeasance regarding
30 Board duties by a court of competent jurisdiction.
31 f. Is incapacitated and without reasonable likelihood of resuming Board
32 duties, as determined by the Board.

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

36 (e) Compensation of Members; Expenses; Employees. – Members of the Board shall
37 receive no compensation for their services but shall receive per diem and necessary travel and
38 subsistence expenses as provided in G.S. 138-5 and G.S. 138-6. The Board may employ
39 necessary personnel for the performance of its functions and fix the compensation. The Board
40 shall not employ any of its members to perform inspectional or similar ministerial tasks for the
41 Board. In no event shall the State of North Carolina be liable for expenses incurred by the Board
42 in excess of the income derived from this Article.

43 **"§ 90-726.4. Powers and duties of Board.**

- 44 (a) The Board shall have the following powers and duties:
45 (1) Administer, coordinate, and enforce the provisions of this Article.
46 (2) Adopt, amend, or repeal rules to administer and enforce this Article.
47 (3) Establish and determine qualification and fitness of applicants for licensure
48 under this Article.
49 (4) Issue, renew, deny, suspend, revoke, or refuse to issue or renew any license
50 under this Article.

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

3 (6) Discipline individuals licensed under this Article.

4 (b) The Board may empower any member to conduct any proceeding or investigation
5 necessary to its purposes and may empower its agent or counsel to conduct any investigation
6 necessary to its purposes, but any final action requires a quorum of the Board. The Board shall
7 adopt an official seal, which shall be affixed to all licenses issued by it.

8 **"§ 90-726.5. Annual report.**

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

16 **"§ 90-726.6. License application.**

17 (a) Each individual desiring to obtain a license under this Article shall apply to the Board
18 in accordance with the procedure and rules prescribed by the Board. Each applicant shall furnish
19 evidence satisfactory to the Board that the applicant meets all of the following criteria:

20 (1) The individual is of good moral character and conducts all professional
21 activities in accordance with accepted professional and ethical standards.

22 (2) The individual has not engaged in any practice at any time that would be a
23 ground for denial, revocation, or suspension of a license under
24 G.S. 90-726.12.

25 (3) The individual has submitted the required criminal history record, as required
26 by G.S. 90-726.14.

27 (4) The individual is qualified for licensure under the requirements of this 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 by the
32 Board in accordance with G.S. 90-726.4(a) and provides an official verification letter by the
33 certifying entity.

34 **"§ 90-726.8. Requirements for licensure as an assistant behavior analyst.**

35 Each applicant shall be issued a license by the Board to engage in the practice of behavior
36 analysis as a licensed assistant behavior analyst if the applicant meets the qualifications set forth
37 by the Board in accordance with G.S. 90-726.4(a) and provides satisfactory evidence to the Board
38 of all the following criteria:

39 (1) An official verification letter by the certifying entity.

40 (2) That the applicant has an ongoing arrangement for supervision by a licensed
41 behavior analyst in a manner consistent with the certifying entity's
42 requirements for supervision of Board Certified Assistant Behavior Analysts.

43 **"§ 90-726.9. Renewal of license.**

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

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

47 (1) Payment of the renewal fee.

48 (2) Providing evidence of active certification with an official verification letter by
49 the certifying entity.

- 1 (3) For licensed assistant behavior analysts, providing evidence of the ongoing
2 arrangement for supervision by a licensed behavior analyst, as required by
3 G.S. 90-726.8.

4 **"§ 90-726.10. Temporary licensure.**

5 (a) An actively licensed or certified behavior analyst who resides and practices behavior
6 analysis in another state may apply to the Board for a temporary license to practice behavior
7 analysis in this State.

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

10 **"§ 90-726.11. Reciprocity.**

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

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

16 (1) Proof of ethical compliance.

17 (2) Proof of current licensure.

18 (3) An official verification letter by the certifying entity.

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

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

21 **"§ 90-726.12. Denial, suspension, or revocation of licenses and other disciplinary and**
22 **remedial actions for violations of the Code of Conduct; relinquishing of license.**

23 (a) Any applicant for licensure and any individual licensed under this Article shall
24 comply with the ethical and professional standards specified in this Code of Conduct and in the
25 rules of the Board. The Board may deny, suspend, or revoke licensure and may discipline, place
26 on probation, limit practice, and require examination, remediation, and rehabilitation of any
27 applicant or licensee, as provided for in subsection (b) of this section, for any violation listed in
28 this subsection. The following are considered violations of the Code of Conduct:

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

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

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

40 (4) Using fraud, deceit, or misrepresentation upon the public, the Board, or any
41 individual in connection with the practice of behavior analysis, the filing of
42 Medicare, Medicaid, or other claims to any third-party payor, or in any manner
43 otherwise relevant to fitness for the practice of behavior analysis.

44 (5) Making fraudulent, misleading, or intentionally or materially false statements
45 pertaining to education, licensure, license renewal, supervision, continuing
46 education, any disciplinary actions or sanctions pending or occurring in any
47 other jurisdiction, professional credentials, or qualifications or fitness for the
48 practice of behavior analysis to the public, any individual, the Board, or any
49 other organization.

50 (6) Revocation or suspension of a certification by the certifying entity for the
51 practice of behavior analysis in any other jurisdiction or having been

- 1 disciplined by the licensing board or certifying entity for conduct that would
2 subject the licensee to discipline under this Article.
- 3 (7) Violation of any provision of this Article or of the rules adopted by the Board.
4 (8) Aiding or abetting the unlawful practice of behavior analysis by any individual
5 not licensed by the Board.
- 6 (9) Engaging in immoral, dishonorable, unprofessional, or unethical conduct as
7 defined in this subsection, or the current ethics code of the certifying entity.
- 8 (10) Practicing behavior analysis in a manner that endangers the welfare of clients
9 or patients.
- 10 (11) Demonstrating an inability to practice behavior analysis with reasonable skill
11 and safety by reason of illness, inebriation, misuse of drugs, narcotics, alcohol,
12 chemicals, or any other substance affecting mental or physical functioning, or
13 as a result of any mental or physical condition.
- 14 (12) Practicing behavior analysis outside the boundaries of demonstrated
15 competence or the limitations of education, training, or supervised experience.
- 16 (13) Failing to provide competent treatment, consultation, or supervision, in
17 keeping with standards of usual and customary practice in this State.
- 18 (14) Failing to take all reasonable steps to ensure the competence of services.
19 (15) Failing to maintain a clear and accurate case record documenting the
20 following for each patient or client:
- 21 a. Purpose of the evaluation, treatment, or other services provided.
22 b. Fees, dates of services, and itemized charges.
23 c. Summary content of each session of evaluation, treatment, or other
24 services, except summary content that may cause significant harm to
25 any individual if the information were released.
26 d. Copies of all reports prepared.
- 27 (16) Failing to retain securely and confidentially the complete case record
28 indefinitely if there are pending legal or ethical matters or if there is any other
29 compelling circumstance, or failing to retain securely and confidentially the
30 complete case record for at least seven years from the date of the last provision
31 of services, except when under either circumstance, the behavior analyst was
32 prevented from doing so by circumstances beyond the behavior analyst's
33 control.
- 34 (17) Failing to cooperate with other behavior analysts or other professionals to the
35 potential or actual detriment of clients, patients, or other recipients of service,
36 or behaving in ways which substantially impede or impair other licensed
37 behavior analysts, licensed assistant behavior analysts, or other professionals'
38 abilities to perform professional duties.
- 39 (18) Exercising undue influence in a manner that exploits the client, patient,
40 student, supervisee, or trainee for the financial or other personal advantage or
41 gratification of the licensed behavior analyst, licensed assistant behavior
42 analyst, or a third party.
- 43 (19) Harassing or abusing, sexually or otherwise, a client, patient, student,
44 supervisee, or trainee.
- 45 (20) Failing to cooperate with or to respond promptly, completely, and honestly to
46 the Board, to credentialing committees, institutional review boards,
47 professional standards review organizations, or ethics committees of
48 professional behavior analyst associations, hospitals, or other health care
49 organizations or educational institutions, when those organizations or entities
50 have jurisdiction.

- 1 (21) Refusing to appear before the Board after having been ordered to do so in
2 writing by the chair.
- 3 (b) Upon proof that an applicant or licensee under this Article has engaged in any of the
4 prohibited actions specified in subsection (a) of this section, the Board may, in lieu of denial,
5 suspension, or revocation, do all of the following:
- 6 (1) Issue a formal reprimand or formally censure the applicant or licensee.
7 (2) Place the applicant or licensee on probation with appropriate conditions as the
8 Board may deem advisable.
- 9 (3) Require examination, remediation, or rehabilitation for the applicant or
10 licensee, including care, counseling, or treatment by a professional or
11 professionals designated or approved by the Board, the expense of which shall
12 be paid by the applicant or licensee.
- 13 (4) Require supervision for the services provided by the applicant or licensee by
14 a licensee designated or approved by the Board, the expense of which shall be
15 paid by the applicant or licensee.
- 16 (5) Limit or circumscribe the practice of behavior analysis provided by the
17 applicant or licensee with respect to the extent, nature, or location of the
18 services provided, as the Board deems advisable.
- 19 (6) Impose conditions of probation or restrictions upon continued practice at the
20 conclusion of a period of suspension or as requirements for the restoration of
21 a revoked or suspended license.
- 22 (c) In lieu of or in connection with any disciplinary proceedings or investigation, the
23 Board may enter into a consent order relative to the discipline, supervision, probation,
24 remediation, rehabilitation, or practice limitation of a licensee or applicant for a license.
- 25 (d) The Board may assess costs of disciplinary action against an applicant or licensee
26 found to be in violation of this Article.
- 27 (e) When considering whether an applicant or licensee is physically or mentally capable
28 of practicing behavior analysis with reasonable skill and safety with patients or clients, the Board
29 may petition a court of competent jurisdiction to order the applicant or licensee to submit to a
30 psychological evaluation by a psychologist to determine psychological status or a physical
31 evaluation by a physician to determine physical condition, or both, upon a showing of probable
32 cause to the Board that the applicant or licensee is not capable of practicing behavior analysis
33 with reasonable skill and safety with patients or clients. The psychologist or physician that
34 conducts an evaluation of the applicant or licensee shall be designated by the court of competent
35 jurisdiction. The Board shall be responsible for the expenses of evaluations ordered under this
36 subsection. If the applicant or licensee raises the issue of mental or physical competence or
37 appeals a decision regarding mental or physical competence, the applicant or licensee shall be
38 permitted to obtain an evaluation at the applicant's or licensee's expense. If the Board suspects
39 the objectivity or adequacy of the evaluation, the Board may compel an evaluation by its
40 designated practitioners at its own expense.
- 41 (f) Except as provided otherwise in this Article, the procedure for revocation, suspension,
42 denial, limitations of the license, or other disciplinary, remedial, or rehabilitative actions shall be
43 in accordance with the provisions of Chapter 150B of the General Statutes. The Board is required
44 to provide the opportunity for a hearing under Chapter 150B of the General Statutes to any
45 applicant whose license is denied or to whom licensure is offered subject to any restrictions,
46 probation, disciplinary action, remediation, or other conditions or limitations or to any licensee
47 before revoking, suspending, or restricting a license or imposing any other disciplinary action or
48 remediation. If the applicant or licensee waives the opportunity for a hearing, the Board's denial,
49 revocation, suspension, or other proposed action becomes final without a hearing having been
50 conducted. Notwithstanding the foregoing, no applicant or licensee is entitled to a hearing for
51 failure to pass an examination.

1 (g) In any proceeding, record of hearing, complaint, notice of charges, or decision before
 2 the Board, the Board may withhold from public disclosure the identity of any clients or patients
 3 who have not consented to the public disclosure of behavior analysis services having been
 4 provided by the licensee or applicant. The Board may close a hearing to the public and receive
 5 in executive session evidence involving or concerning the treatment of or delivery of behavior
 6 analysis services to a client or a patient who has not consented to the public disclosure of
 7 treatment or services as may be necessary for the protection and rights of the patient or client of
 8 the accused applicant or licensee and the full presentation of relevant evidence. All records,
 9 papers, and other documents containing information collected and compiled by or on behalf of
 10 the Board, as a result of investigations, inquiries, or interviews conducted in connection with
 11 licensing or disciplinary matters, will not be considered public records as defined in G.S. 132-1.
 12 However, any notice or statement of charges, notice of hearing, or decision against or to any
 13 licensee or applicant shall be a public record notwithstanding that it may contain information
 14 collected and compiled as a result of an investigation, inquiry, or hearing except that identifying
 15 information concerning the treatment or delivery of services to a patient or client who has not
 16 consented to the public disclosure of treatment or services shall be deleted. If any record, paper,
 17 or other document containing information collected and compiled by or on behalf of the Board
 18 is received and admitted in evidence in any hearing before the Board, it shall be a public record,
 19 subject to any deletions of identifying information concerning the treatment or delivery of
 20 behavior analysis services to a patient or client who has not consented to the public disclosure of
 21 treatment or services.

22 (h) A license issued under this Article is suspended automatically by operation of law
 23 after failure to renew a license for a period of more than 60 days after the renewal date. The
 24 Board may reinstate a license suspended under this subsection upon payment of a fee as specified
 25 in G.S. 90-726.13 and may require that the applicant file a new application, furnish references,
 26 update credentials, or submit to examination for reinstatement. Notwithstanding any provision to
 27 the contrary, the Board retains full jurisdiction to investigate alleged violations of this Article by
 28 any individual whose license is suspended under this subsection, and, upon proof of any violation
 29 of this Article by any individual, the Board may take disciplinary action as authorized by this
 30 section.

31 (i) An individual whose license has been denied or revoked may reapply to the Board for
 32 licensure after the passage of one calendar year from the date of the denial or revocation.

33 (j) A licensee may voluntarily relinquish a license at any time with the consent of the
 34 Board. The Board may delay or refuse granting consent as necessary in order to investigate any
 35 pending complaint, allegation, or issue regarding violation of any provision of this Article by the
 36 licensee. Notwithstanding any provision to the contrary, the Board retains full jurisdiction to
 37 investigate alleged violations of this Article by any individual whose license is relinquished under
 38 this subsection, and, upon proof of any violation of this Article by any individual, the Board may
 39 take disciplinary action as authorized by this section.

40 (k) The Board may adopt rules to interpret and implement the provisions of this section.

41 **"§ 90-726.13. Fees.**

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

44 (1)	<u>Application fee for licensure.....</u>	<u>\$250.00.</u>
45 (2)	<u>License renewal.....</u>	<u>\$200.00.</u>
46 (3)	<u>Late renewal fee.....</u>	<u>\$50.00.</u>
47 (4)	<u>Reciprocal license application.....</u>	<u>\$250.00.</u>
48 (5)	<u>Temporary license application.....</u>	<u>\$100.00.</u>

49 **"§ 90-726.14. Criminal history record checks of applicants for licensure.**

50 (a) All applicants for licensure shall consent to a criminal history record check. Refusal
 51 to consent to a criminal history record check may constitute grounds for the Board to deny

1 licensure to an applicant. The Board shall ensure that each applicant has completed a criminal
2 history record check and fingerprinting by the North Carolina Department of Justice, consenting
3 to the criminal history record check and the use of fingerprints and other identifying information
4 required by the State or National Repositories, and any additional information required by the
5 Department of Justice. The Board shall keep all information obtained in accordance with this
6 section confidential.

7 (b) The cost of the criminal history record check and the fingerprinting shall be paid by
8 the applicant. The Board may collect any fees required by the Department of Justice and may
9 remit the fees to the Department of Justice for expenses associated with conducting the criminal
10 history record check.

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

14 (1) The level of seriousness of the crime.

15 (2) The date of the crime.

16 (3) The age of the individual at the time of conviction.

17 (4) The circumstances surrounding the commission of the crime, if known.

18 (5) The nexus between the criminal conduct of the individual and the job duties
19 of the position to be filled.

20 (6) The applicant's prison, jail, probation, parole, rehabilitation, and employment
21 records since the date the crime was committed.

22 (d) If, after reviewing the factors, the Board determines that any of the grounds to deny
23 licensure exist, the Board may deny licensure of the applicant. The Board may disclose to the
24 applicant information contained in the criminal history record that is relevant to the denial if
25 disclosure of the information is permitted by applicable State and federal law. The Board shall
26 not provide a copy of the criminal history to the applicant. The applicant shall have the right to
27 appear before the Board to appeal the Board's decision. An appearance before the full Board shall
28 constitute an exhaustion of administrative remedies in accordance with Chapter 150B of the
29 General Statutes.

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

33 **"§ 90-726.15. Exemptions from licensure.**

34 An individual is exempt from the requirements of this Article if any of the following
35 conditions are met:

36 (1) The individual is a licensed psychologist or psychological associate in this
37 State or provides ancillary services in accordance with G.S. 90-270.154.

38 (2) The individual is a behavior technician delivering applied behavior analysis
39 services under the extended authority and direction of a licensed behavior
40 analyst, licensed assistant behavior analyst, or other professional licensed
41 under this Chapter or Chapter 90B of the General Statutes, so long as the
42 services of the licensed professional are within the scope of practice of the
43 license possessed by that licensed professional, and the services performed are
44 commensurate with the licensed professional's education, training, and
45 experience. The behavior technician does not design assessment or
46 intervention plans or procedures but delivers services as assigned by a
47 supervisor who is responsible for the behavior technician's work.

48 (3) The individual is a family member, guardian, or other caretaker implementing
49 a behavior analysis treatment plan under the direction of a licensed behavior
50 analyst or a licensed assistant behavior analyst.

- 1 (4) The individual engages in the practice of behavior analysis with nonhuman
2 subjects, including individuals who are animal behaviorists and animal
3 trainers.
- 4 (5) The individual provides general behavior analysis services to organizations,
5 so long as the services are for the benefit of the organizations and do not
6 involve direct services to individuals.
- 7 (6) The individual is a professional licensed under this Chapter or Chapter 90B of
8 the General Statutes, so long as the licensed professional does not represent
9 that the licensed professional is a licensed behavior analyst or licensed
10 assistant behavior analyst and the services of the licensed professional are
11 within the scope of practice of the license possessed by that licensed
12 professional and the services performed are commensurate with the licensed
13 professional's education, training, and experience.
- 14 (7) The individual is a matriculated college or university student or a postdoctoral
15 fellow whose applied behavior analysis activities are part of a defined program
16 of study, course, practicum, internship, or fellowship and are directly
17 supervised by a licensed behavior analyst in this jurisdiction or a qualified
18 faculty member. The individual must not represent himself or herself as a
19 professional behavior analyst and must use a title that clearly indicates the
20 individual's trainee status, such as "student," "intern," or "trainee."
- 21 (8) The individual is pursuing experience in behavior analysis consistent with the
22 certifying entity's experience requirements, so long as the individual's
23 activities are supervised by a licensed behavior analyst."

24 **SECTION 1.(b)** G.S. 90-270.138 is amended by adding a new subsection to read:

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

28 **SECTION 1.(c)** The North Carolina Behavior Analysis Board shall adopt temporary
29 rules to implement this section. The temporary rules shall remain in effect until permanent rules
30 that replace the temporary rules become effective.

31 **SECTION 2.(a)** Article 43 of Chapter 90 of the General Statutes, as enacted by
32 Section 1 of this act, is amended by adding new sections to read:

33 "§ 90-726.16. Prohibited acts and penalties.

34 (a) Except as permitted in G.S. 90-726.15, it is a violation of this Article for any
35 individual not licensed under this Article to practice behavior analysis or to hold oneself out to
36 the public as an individual practicing behavior analysis.

37 (b) Any individual not licensed in accordance with the provisions of this Article
38 practicing behavior analysis or holding oneself out to the public as an individual practicing
39 behavior analysis in violation of this Article is guilty of a Class 2 misdemeanor. Each violation
40 shall count as a separate offense.

41 "§ 90-726.17. Injunction.

42 The Board may apply to the Superior Court of Wake County for an injunction to prevent
43 violations of this Article or any rules enacted by the Board. The court is empowered to grant
44 injunctions regardless of whether criminal prosecution or other action has been or may be
45 instituted as a result of the violation."

46 **SECTION 2.(b)** This section becomes effective January 1, 2022, and applies to acts
47 committed on or after that date.

48 **SECTION 3.** Article 7 of Chapter 8 of the General Statutes is amended by adding a
49 new section to read:

50 "§ 8-53.14. Communications between behavior analyst and client or patient.

1 No individual authorized as a licensed behavior analyst, or any of the individual's employees
2 or associates, shall be required to disclose any information that the individual may have acquired
3 in the practice of behavior analysis and which information was necessary to enable the individual
4 to practice behavior analysis. Any resident or presiding judge in the district in which the action
5 is pending may, subject to G.S. 8-53.6, compel disclosure, either at or before trial, if in the judge's
6 opinion, disclosure is necessary to a proper administration of justice. If the case is in district
7 court, the judge shall be a district court judge, and if the case is in superior court, the judge shall
8 be a superior court judge.

9 Notwithstanding the provisions of this section, the behavior analyst–client or behavior
10 analyst–patient privilege shall not be grounds for failure to report suspected child abuse or neglect
11 to the appropriate county department of social services or for failure to report a disabled adult
12 suspected to be in need of protective services to the appropriate county department of social
13 services. Notwithstanding the provisions of this section, the behavior analyst–client or behavior
14 analyst–patient privilege shall not be grounds for excluding any evidence of abuse, neglect,
15 illness, or injuries of a child or for excluding any evidence regarding the abuse, neglect,
16 exploitation, illness, or injuries of a disabled adult in any judicial proceeding related to a report
17 pursuant to Article 3 of Chapter 7B of the General Statutes."

18 **SECTION 4.** Except where otherwise provided, this act is effective when it becomes
19 law and applies to licenses granted or renewed on or after that date.