

GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2009

Legislative Fiscal Note

BILL NUMBER: House Bill 746 (Second Edition)

SHORT TITLE: Amend Professional Counselors Act/Fees.

SPONSOR(S): Representative Insko

FISCAL IMPACT (\$)					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2009-10</u>	<u>FY 2010-11</u>	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>
REVENUES					
Board of Licensed Professional Counselors	\$33,500	\$33,500	\$0	\$0	\$0
Department of Justice	\$6,400+	\$6,400+	\$6,400+	\$6,400+	\$6,400+
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Board of Licensed Professional Counselors, Department of Justice					
EFFECTIVE DATE: Effective when bill becomes law					

BILL SUMMARY:

Sections 5 and 11 of HB 746 make the following fee changes to the Licensed Professional Counselors Act:

Section 5 deletes the requirement that the Board expenditures may not exceed revenues during any fiscal year and raises the fees collected by the Board as follows:

- Raises fees for initial or renewal applications from "not to exceed \$100" to "not to exceed \$300."
- Raises late renewal fee from "not to exceed \$25" to "not to exceed \$150".

Section 11 authorizes the Department of Justice to provide the criminal history of any applicant for licensure or reinstatement of a license under the Act and to charge a fee to offset the cost incurred in conducting the criminal record check.

The remaining sections of House Bill 746 make the following changes:

Section 1 would amend all of the following definitions in G.S. 90-330:

- the catch line of G.S. 90-330 to read *Definitions; practice of counseling*
- the term "counseling" to apply to offering assistance through the counseling relationship by evaluating and treating mental disorders and other conditions; and
- the term "supervisor" to include a licensed professional counselor supervisor (LPCS) and to provide that when a LPCS is unavailable that "supervisor" applies to a licensed professional counselor (LPC) or an equivalently and actively licensed mental health professional as determined by the NC Board of Licensed Professional Counselors (Board).

Would add definitions for the following terms:

- "licensed professional counselor associate"; and
- "licensed professional counselor supervisor".

Would provide that a person who is a LPC or a licensed professional counselor associate (LPCA) under the provisions of the Licensed Professional Counselors Act would not be permitted to identify themselves as a licensed marriage and family therapist, licensed practicing psychologist, psychological associate, or licensed clinical social worker unless specifically authorized by other provisions of law.

Section 2 would make it unlawful for anyone who is not licensed under the Licensed Professional Counselors Act to engage in the practice of counseling or to use in any way the titles and acronyms Licensed Professional Counselor Associate, Licensed Professional Counselor, Licensed Professional Counselor Supervisor, LPC, LPCA, or LPCS to indicate or imply that the person is a licensed professional counselor.

Section 3 would amend the section of the Licensed Professional Counselors Act pertaining to exemptions from licensure by:

- Clarifying that any person counseling within the scope of employment at a private institution of higher education in addition to a public institution of higher education or a community college would be exempt; and
- Removing from the list of exemptions any person (i) counseling as a supervised counselor in a supervised professional practice for a specified period of time, (ii) performing counseling solely as an employee of an area facility that is operated by or under contract with mental health, developmental disabilities, and substance abuse authority if certain conditions apply, (iii) performing counseling as an employee of a licensed hospital or other health care facility who is performing this counseling under the supervision of a qualified professional, and (iv) any employee assistance professional providing core specific employee assistance program activities.

Section 4 would clarify that (i) any State or nationally recognized professional association representing professional counselors may make recommendations to the Governor for membership on the North Carolina Board of Licensed Professional Counselors (Board), and (ii) appointees to the Board would continue to serve until a successor is appointed and qualified.

Section 6 would amend G.S. 90-336 by adding the qualifications for licensure for licensed professional counselor associate and licensed professional counselor supervisor and modifying licensure and qualifications for licensed professional counselor in terms of education requirements,

exam requirements, hours of supervised professional practice, and hours of professional experience.

Section 7 provides for exemptions for applicants who are Registered Practicing Counselors and in good standing with the Board, and exemptions from the new academic qualifications for licensed professional counselor associates or licensed professional counselors for certain individuals who meet specified experience requirements.

Section 8 would rewrite G.S. 90-340 to do all of the following:

Make substantial changes to the Board's authority to deny, suspend, or revoke licensure, discipline, place on probation, limit practice, or require examination, remediation, or rehabilitation of any person licensed under this Act, and would provide detailed acts or omissions that would constitute grounds for the board to take action against a person licensed under this Act such as:

- Being convicted of a felony or entering a plea of guilty or nolo contendere to any felony charge under federal law or any state law;
- Being convicted of or entering 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 professional counseling;
- Having engaged in fraud or deceit in securing or attempting to secure or renew a license;
- Having practiced professional counseling in such a manner as to endanger the welfare of clients;
- Having harassed or abused, sexually or otherwise, a client, patient, student, supervisee, or trainee.
- Refusing to appear before the Board after having been ordered to do so in writing by the chair; and
- Having violated any provision of this Act or any rules adopted by the Board.

Provide additional disciplinary action that the Board may take in lieu of denial, suspension, or revocation including issuing a formal reprimand, placing an applicant on probation, and requiring supervision of the professional counseling services provided by the applicant or licensee;

Authorize the Board to assess the costs of disciplinary action against an applicant or licensee and to petition a court of competent jurisdiction to order an applicant or licensee whose physical or mental competence is in question to submit to a psychological or physical evaluation or both;

Require the Board to provide the opportunity for a hearing under specified circumstances;

Provide guidelines regarding a hearing;

Provide that 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. However, any notice or statement of charges against any applicant or licensee or any notice to a licensee or applicant of a hearing in any proceeding or any decision made in connection with a hearing in any proceeding is a public record;

Allow a person whose license has been denied or revoked to reapply to the Board for licensure after one calendar year from the date of the denial or revocation;

Allow a licensee to voluntarily relinquish his or her license at any time; and

Authorizes the Board to adopt rules deemed necessary to interpret and implement this section.

Section 9 would repeal the section of the Licensed Professional Counselors Act regarding third-party reimbursements.

Section 10 would set out the definitions and procedure providing for criminal history record checks for applicants for licensure as professional counselors. The Board would have limited immunity from civil liability provided the Board acted in good faith and in compliance with this section.

Section 12 would allow licensed professional counselors who are approved by the Board as qualified clinical supervisors before July 1, 2012 to have until July 1, 2014 to meet the new licensed professional counselor supervisor requirements.

Source: Adopted from the Bill Analysis done by Committee Counsel to the House Finance Committee 05/15/2009

ASSUMPTIONS AND METHODOLOGY:

House Bill 746 amends the Professional Counselors Act to increase the maximum fee that may be charged for new licensure or renewal as a counselor from \$100 to \$300 and increases the fee for late applications from \$25 to \$150. According to the North Carolina Board of Licensed Professional Counselors, there are typically 2,000 applications for renewal and 400 applications for a new license each year. Of these applications, 100 are late. The Board does not plan to increase its fees within the foreseeable future. Therefore, the fee changes will have no fiscal impact. Should the Board, however, choose to impose a higher fee up to the \$300 maximum allowed by this bill, it will result in an increase in revenues as high as \$412,500 annually.

House Bill 746 alters and clarifies the positions regulated by the North Carolina Board of Licensed Professional Counselors. The qualifications of certain positions are altered; however, the bill provides exemptions from the new academic qualifications for licensed professional counselor associates or licensed professional counselors for individuals who meet certain experience requirements and are in good standing with the Board. These individuals are encouraged to apply for relicensing within the next two years and will be exempted from renewal fees. This situation applies to board professionals who seek to become relicensed as professional counselor associates under the new standards. These individuals were previously exempted from fees. There are currently 335 board professional applicants who seek relicensing as counselor associates. The Board emphasizes that this number is variable and that it is uncertain how this number will change in the future. This analysis assumes that in 2010 there will also be 335 applicants for relicensing and that most people will relicense within the first two years of the qualification changes. Since the Board does not plan on increasing application fees to their statutory maximum, the fiscal impact from relicensing will be the number of board professional applicants multiplied by the current application fee. This results in a \$33,500 increase in revenues for Fiscal Year 2009-10. Should the Board, however, impose a higher fee up to the \$300 maximum allowed by this bill, the increase could be as high as \$100,500. These changes are not expected have an additional impact.

Finally, House Bill 746 grants the Board of License Professional Counselors increased authority in disciplining and investigating the individuals they license. While these powers were not explicitly listed before, they were already practiced by the Board. The bill, however, gives the Board new authority to levy penalties against applicants or licensees to recoup the costs of disciplinary action. This will result an increase in revenues. Because the Board has not yet determined what the penalties will be, the size of this increase cannot be determined.

Department of Justice

The Department of Justice (DOJ) reports that a fee of \$38 is charged to perform each criminal background check. Of this fee, \$22 is forward to the Federal Bureau of Investigation (FBI) for a check of federal databases, \$14 goes to a check of NC databases, \$2 is used for the processing cost associated with the request, and the remaining \$16 is retained as DOJ receipts. All individuals applying for a new license or for reinstatement of a license would be subject to this background check. Using the information provided by the NC Board of Licensed Professional Counselors, there are 400 applications for a new license each year. These 400 background checks are expected to provide a total annual receipt of \$6,400 for DOJ.

The proposed bill gives the NC Board of Licensed Professional Counselors the authorization to request background checks on licensees under investigation by the Board. The number of requests cannot be determined with the information provided, however, these additional background checks will result in an increase in receipts for DOJ. In addition, the number of requests for background checks for individuals seeking to reinstate a license cannot be determined, but any background check requested for this purpose will also result in an increase in DOJ receipts.

SOURCES OF DATA: NC Board of Licensed Professional Counselors, Department of Justice

TECHNICAL CONSIDERATIONS: None

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