

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

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SENATE BILL 208\*  
Health Care Committee Substitute Adopted 5/3/05  
Finance Committee Substitute Adopted 8/10/05

Short Title: Amend Occupational Therapy Laws/Fee.

(Public)

Sponsors:

Referred to:

February 24, 2005

A BILL TO BE ENTITLED

AN ACT AMENDING CERTAIN LAWS RELATING TO THE NORTH CAROLINA  
OCCUPATIONAL THERAPY PRACTICE ACT AND AUTHORIZING THE  
NORTH CAROLINA BOARD OF OCCUPATIONAL THERAPY TO RAISE THE  
FEE FOR A LIMITED PERMIT.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 90-270.66 reads as rewritten:

**"§ 90-270.66. Declaration of purpose.**

The North Carolina Occupational Therapy Practice Act is enacted to safeguard the public health, safety and welfare, to protect the public from being harmed by unqualified persons, to assure the highest degree of professional ~~care~~ services and conduct on the part of occupational therapists and occupational ~~therapist~~ therapy assistants, to provide for the establishment of ~~standards of education,~~ licensure requirements, and to insure the availability of occupational therapy services of high quality to persons in need of such services. It is the purpose of this Article to provide for the regulation of persons offering occupational therapy services to the public."

**SECTION 2.** G.S. 90-270.67 reads as rewritten:

**"§ 90-270.67. Definitions.**

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

- (1) Accrediting body. – The Accrediting Council for Occupational Therapy Education.
- ~~(1)(1a)~~ "Board" means the Board. – The North Carolina Board of Occupational Therapy.
- (1b) Examining body. – The National Board for Certification in Occupational Therapy.
- (2) "Occupational therapist" means an Occupational therapist. – An individual licensed in good standing to practice occupational therapy as defined in this Article.

- 1           (3) ~~"Occupational therapist assistant" means an~~Occupational therapy  
2           assistant. – An individual licensed in good standing to assist in the  
3           practice of occupational therapy under this Article, who performs  
4           activities commensurate with his or her education and training under  
5           the supervision of a licensed occupational therapist.
- 6           (4) "Occupational therapy" means a health care profession providing  
7           evaluation, treatment and consultation to help individuals achieve a  
8           maximum level of independence by developing skills and abilities  
9           interfered with by disease, emotional disorder, physical injury, the  
10          aging process, or impaired development. Occupational therapists use  
11          purposeful activities and specially designed orthotic and prosthetic  
12          devices to reduce specific impairments and to help individuals achieve  
13          independence at home and in the work place.
- 14          (5) ~~"Person" means any~~Person. – Any individual, partnership,  
15          unincorporated organization, or corporate body, except that only an  
16          individual may be licensed under this Article."

17          **SECTION 3.** G.S. 90-270.68 reads as rewritten:

18          "**§ 90-270.68. Establishment of Board, ~~terms of members, terms, vacancies,~~**  
19          **removal, meetings, compensation.**

20          (a) Establishment of Board. – The North Carolina Board of Occupational  
21          Therapy is created. The Board shall ~~have six members. All members shall be~~consist of  
22          seven members who are appointed by the Governor and ~~shall be~~ residents of this  
23          State at the time of and during their ~~appointment.~~appointment, as follows:

- 24           (1) Three members shall be occupational therapists and one member shall  
25           be an occupational ~~therapist assistant; each~~therapy assistant. Each  
26           of these members shall be licensed to practice in North Carolina and have  
27           practiced, taught, or engaged in research in occupational therapy for at  
28           least three of the five years immediately preceding appointment to the  
29           Board.
- 30           (2) ~~The fifth board~~One member shall be a physician in good standing with  
31           the North Carolina Medical Board and licensed by and registered with  
32           the North Carolina Medical Board to practice medicine; andmedicine  
33           in this State.
- 34           (3) ~~the sixth board~~One member shall represent the public at large and shall  
35           be a person who is not a health care provider licensed under this  
36           ~~Chapter.~~Chapter or the spouse of a licensed health care provider.
- 37           (4) One member shall be a counselor, educator, or school-based  
38           professional certified or licensed under North Carolina law who is  
39           employed in the North Carolina public school system and is not an  
40           occupational therapist or an occupational therapy assistant.

41          The ~~medical doctor, occupational therapists, and occupational therapist~~  
42          ~~assistant~~occupational therapist members and the occupational therapy assistant member  
43          shall be ~~appointed by the Governor from a list compiled~~nominated by the North  
44          Carolina Occupational Therapy Association, Inc., following the use of a ~~nomination~~

1 procedure made available to all occupational therapists and occupational therapist  
2 therapy assistants licensed and residing in North Carolina. In soliciting nominations and  
3 compiling its list, the Association shall give consideration to geographic distribution,  
4 clinical specialty, and other factors that will promote representation of all aspects of  
5 occupational therapy practice. The records of the nomination procedures shall be filed  
6 with the Board and made available for a period of six months following nomination for  
7 reasonable inspection by any licensed practitioner of occupational therapy.

8 The physician member shall be nominated by the North Carolina Occupational  
9 Therapy Association, Inc., after consultation with the North Carolina Medical Society.  
10 The counselor, educator, or school-based professional member shall be nominated by  
11 the North Carolina Occupational Therapy Association, Inc., after consultation with the  
12 North Carolina School Counselors Association.

13 (b) Terms. – Members of the Board shall serve four-year staggered terms. No  
14 member shall serve more than two consecutive four-year terms, unless a member is  
15 appointed to fill a vacancy for an unexpired term, then that member may complete the  
16 unexpired term and serve one additional four-year term.

17 (c) Vacancies. – In the event ~~that~~ a member of the Board cannot complete a term  
18 of office, the vacancy shall be filled by appointment by the Governor, in accordance  
19 with the procedures set forth in this section, for the remainder of the unexpired term.  
20 Vacancies shall be filled by the Governor within 45 days of receipt of the nominations  
21 from the North Carolina Occupational Therapy Association, Inc., or, in the case of  
22 public members, within 45 days of the receipt of notice of vacancy.

23 (d) Removal. – The Board may remove any of its members for neglect of duty,  
24 incompetence, or unprofessional conduct. A member subject to disciplinary proceedings  
25 shall be disqualified from participating in Board business until the charges are resolved.

26 (e) Meetings. – Each year the Board shall meet and designate a ~~chairman~~  
27 chairperson, a vice-chairperson, and a secretary-treasurer from among its members. The  
28 Board may hold additional meetings upon call of the ~~chairman~~ chairperson or any two  
29 board members. A majority of the Board membership shall constitute a quorum.

30 (f) Compensation. – Members of the Board shall receive no compensation for  
31 their services, but shall be entitled to travel, per diem, and other expenses authorized by  
32 G.S. 93B-5."

33 **SECTION 4.** G.S. 90-270.69 reads as rewritten:

34 **"§ 90-270.69. Powers and duties of the Board.**

35 The Board shall have the following powers and duties:

36 (1) ~~Examine~~ Establish and determine the qualifications and fitness of  
37 applicants for licensure to practice occupational therapy in this  
38 State;State.

39 (2) Conduct investigations, subpoena individuals and records, and do all  
40 other things necessary and proper to discipline persons licensed under  
41 this Article and to enforce this Article;Article.

42 (2a) Communicate disciplinary actions to relevant State and federal  
43 authorities and to other state occupational therapy licensing authorities.

- 1 (3) Issue and renew, and deny, suspend, revoke or refuse to issue or renew  
2 any license under this ~~Article;~~Article.
- 3 (4) Adopt, amend, or repeal any reasonable rules or regulations necessary  
4 to carry out the purposes of this Article, including but not limited to  
5 rules establishing ethical standards of ~~practice;~~practice.
- 6 (5) Employ professional, clerical, investigative or special personnel  
7 necessary to carry out the provisions of this Article, and purchase or  
8 rent office space, equipment and ~~supplies;~~supplies.
- 9 (6) Adopt a seal by which it shall authenticate its proceedings, official  
10 records, and ~~licenses;~~licenses.
- 11 (7) Conduct administrative hearings in accordance with Chapter 150B of  
12 the General Statutes when a "contested case" as defined in  
13 G.S. 150B-2(2) arises under this ~~Article;~~Article.
- 14 (8) Establish reasonable fees for ~~applications for examination; initial,~~  
15 ~~provisional, applications, limited permits, initial~~ and renewal  
16 ~~licenses;~~licenses, and other services provided by the ~~Board;~~Board.
- 17 (9) Submit an annual report to the Governor and General Assembly of all  
18 its official actions during the preceding year, together with any  
19 recommendations and findings regarding improvement of the  
20 profession of occupational ~~therapy;~~therapy.
- 21 (10) Publish and make available upon request the licensure standards  
22 prescribed under this Article and all rules and regulations established  
23 by the ~~Board;~~Board.
- 24 (11) ~~Approve educational curricula and field work experience accredited by~~  
25 ~~the American Medical Association and American Occupational~~  
26 ~~Therapy Association for persons seeking licensure under this~~  
27 ~~Article.~~Conduct a training program as needed for new Board members  
28 designed to familiarize new members with their duties."

29 **SECTION 5.** G.S. 90-270.70 reads as rewritten:

30 **"§ 90-270.70. Requirements for licensure.**

31 (a) Any individual who desires to be licensed as an occupational therapist or  
32 occupational ~~therapist-therapy~~ assistant shall file a written application with the Board on  
33 forms provided by the Board, showing to the satisfaction of the Board that the applicant:

- 34 (1) Is of good moral character; and  
35 (2) Has passed an examination approved by the Board as provided in this  
36 Article.

37 Applicants for licensure as an occupational therapist must also have successfully  
38 completed an accredited occupational therapy educational curriculum and the required  
39 supervised field work experience of at least six months' duration.~~fieldwork as~~  
40 determined by the Board. Applicants for licensure as an occupational ~~therapist-therapy~~  
41 assistant must also have successfully completed an accredited occupational therapy  
42 assistant educational curriculum and the required supervised field work experience of at  
43 least two months' duration.~~fieldwork as determined by the Board.~~

1       (b) Occupational therapists who are trained outside of the United States and its  
2 territories shall satisfy the examination and educational requirements as stated in  
3 subsection (a) of this section. The Board shall require these applicants to meet  
4 examination eligibility requirements as established by the credentialing body recognized  
5 by the Board before taking the examination."

6           **SECTION 6.** G.S. 90-270.71 is repealed.

7           **SECTION 7.** G.S. 90-270.72 reads as rewritten:

8       **"§ 90-270.72. Exemption from requirements.**

9       (a) ~~The Board shall waive the examination, education, and field work~~  
10 ~~requirements of G.S. 90-270.70 and shall grant a license to any applicant who presents~~  
11 ~~evidence satisfactory to the Board that he or she has been engaged in the practice of~~  
12 ~~occupational therapy as an occupational therapist or occupational therapist assistant~~  
13 ~~before September 1, 1984. Proof of such actual practice shall be presented to the Board~~  
14 ~~as established by regulation. To qualify for exemption under this section, the applicant~~  
15 ~~shall file an application for licensure no later than September 1, 1985.~~

16       (b) ~~The Board may grant a license without examination to any applicant who~~  
17 ~~exempt an applicant from certain licensure requirements if the applicant presents proof~~  
18 ~~satisfactory to the Board of current licensure as an occupational therapist or~~  
19 ~~occupational therapist-therapy assistant in another state or the District of Columbia,~~  
20 ~~Puerto Rico, or Guam, provided the other jurisdiction's licensure standards are~~  
21 ~~considered by the Board to be substantially equivalent to or higher than those prescribed~~  
22 ~~in this Article."~~

23           **SECTION 8.** G.S. 90-270.73 reads as rewritten:

24       **"§ 90-270.73. Issuance of license.**

25       (a) The Board shall issue a license to any individual who meets the requirements  
26 of this Article upon payment of the license fee prescribed in G.S. 90-270.77.

27       (b) Any individual licensed as an occupational therapist under this Article may  
28 use the words "occupational therapist" and may use the letters "O.T." or "O.T.R./L."  
29 "O.T./L." in connection with his or her name or place of business.

30       (c) Any individual licensed as an occupational ~~therapist-therapy~~ assistant under  
31 this Article may use the words "occupational ~~therapist-therapy~~ assistant" and may use  
32 the ~~letter-letters~~ "O.T.A." or "C.O.T.A./L." "O.T.A./L." in connection with his or her  
33 name or place of business.

34       (d) Any individual possessing a limited permit to practice occupational therapy  
35 may use the words "occupational therapy limited permittee" or "occupational therapy  
36 assistant limited permittee" and may use the letters "O.T./L.P." or "O.T.A./L.P." in  
37 connection with his or her name or place of business."

38           **SECTION 9.** G.S. 90-270.74 reads as rewritten:

39       **"§ 90-270.74. ~~Provisional licenses.~~ Limited permits.**

40       The Board may grant a ~~provisional license for a period not exceeding nine months~~  
41 ~~to any~~ limited permit to an individual who has successfully completed the educational  
42 and ~~field work~~ fieldwork ~~experience~~ requirements and ~~has made application to take the~~  
43 ~~examination~~ for examination but has not yet taken or received the results of the  
44 examination required under G.S. 90-270.70. A ~~provisional license~~ limited permit shall

1 allow the individual to practice as an occupational therapist or occupational therapist  
 2 therapy assistant under the supervision of an occupational therapist licensed in this State  
 3 and shall be valid until revoked by the Board. A provisional licenseState. A limited  
 4 permit shall expire after 120 days, when the individual is issued a license under  
 5 G.S. 90-270.73, or if the individual is notified that he or she did not pass the  
 6 examination, whichever occurs ~~shall not be issued to applicant who has failed the~~  
 7 ~~examination in this State or another jurisdiction~~first. The provisions of this section shall  
 8 expire October 1, 2007."

9 **SECTION 10.** G.S. 90-270.75(a) reads as rewritten:

10 "(a) Licenses issued under this Article shall be subject to annual renewal upon  
 11 completion of ~~such~~ continuing education and competency requirements as may be  
 12 required by the Board, upon the payment of a renewal fee specified under  
 13 G.S. 90-270.77 and in compliance with this Article, and shall expire unless renewed in  
 14 the manner prescribed by the Board. The Board may provide for the late renewal of a  
 15 license upon the payment of a late fee in accordance with G.S. 90-270.77, but no such  
 16 late renewal may be granted more than five years after a license expires."

17 **SECTION 11.** G.S. 90-270.76 reads as rewritten:

18 **"§ 90-270.76. Suspension, revocation and refusal to renew license.**

19 (a) The Board may deny or refuse to renew a license, may suspend or revoke a  
 20 license, or may impose probationary conditions on a license if the licensee or applicant  
 21 for licensure has engaged in any of the following conduct:

- 22 (1) ~~Employment of fraud, deceit or misrepresentation in obtaining or~~  
 23 ~~attempting to obtain a license, or the renewal thereof;~~Obtaining a  
 24 license by means of fraud, misrepresentation, or concealment of  
 25 material facts.
- 26 (2) ~~Conviction of or a plea of guilty or nolo contendere to any crime~~  
 27 ~~involving moral turpitude;~~Engaging in unprofessional conduct  
 28 pursuant to rules established by the Board or violating the Code of  
 29 Ethics adopted and published by the Board.
- 30 (3) ~~Adjudication of insanity or incompetency, until proof of recovery from~~  
 31 ~~the condition can be established;~~Having been convicted of or pleaded  
 32 guilty or nolo contendere to a crime involving moral turpitude or any  
 33 crime which indicates that the occupational therapist or occupational  
 34 therapy assistant is unfit or incompetent to practice occupational  
 35 therapy or that the occupational therapist or occupational therapy  
 36 assistant has deceived or defrauded the public.
- 37 (4) Engaging in any act or practice violative of any of the provisions of  
 38 this Article or any rule or regulation adopted by the Board ~~hereunder,~~  
 39 or aiding, abetting or assisting any person in such a ~~violation;~~violation.
- 40 (5) Committing an act or acts of malpractice, gross negligence or  
 41 incompetence in the practice of occupational ~~therapy;~~therapy.
- 42 (6) Practicing as a licensed occupational therapist or occupational  
 43 ~~therapist~~ therapy assistant without a current ~~license;~~license.
- 44 (7) Engaging in conduct that could result in harm or injury to the public.

- 1           (8) Having an occupational therapy license revoked or suspended or other  
 2           disciplinary action taken whether in this State or another jurisdiction.  
 3           (9) Being unfit or incompetent to practice occupational therapy by reason  
 4           of deliberate or negligent acts or omissions regardless of whether  
 5           actual injury to a patient is established.

6           (b) ~~Such~~ The denial, refusal to renew, suspension, revocation or imposition of  
 7 probationary conditions upon a license may be ordered by the Board after a hearing held  
 8 in accordance with G.S. Chapter 150B and rules adopted by the Board. An application  
 9 may be made to the Board for reinstatement of a revoked license if the revocation has  
 10 been in effect for at least one year."

11           **SECTION 12.** G.S. 90-270.77 reads as rewritten:

12           "**§ 90-270.77. Fees.**

13           The Board shall adopt and publish, in the manner established by its rules and  
 14 regulations, fees reasonably necessary to cover the cost of services rendered for the  
 15 following purposes:

- 16           (1) For an initial application, a fee not to exceed ten dollars  
 17           ~~(\$10.00);~~(\$10.00).  
 18           (2) For ~~examination, reexamination, or~~ issuance of a ~~license~~ an initial  
 19           license, a fee not to exceed one hundred dollars ~~(\$100.00);~~(\$100.00).  
 20           (3) For the renewal of a license, a fee not to exceed fifty dollars  
 21           ~~(\$50.00);~~(\$50.00).  
 22           (4) For the late renewal of a license, a fee not to exceed fifty dollars  
 23           ~~(\$50.00);~~(\$50.00).  
 24           (5) For a ~~provisional license,~~limited permit, a fee not to exceed ~~thirty five~~  
 25           ~~dollars~~ ~~(\$35.00);~~ and fifty dollars (\$50.00). This fee shall expire  
 26           October 1, 2007.  
 27           (6) For copies of Board rules and licensure standards, charges not  
 28           ~~exceeding to exceed~~ the actual cost of printing and mailing."

29           **SECTION 13.** G.S. 90-270.78 reads as rewritten:

30           "**§ 90-270.78. False representation of license prohibited.**

31           (a) It is unlawful for any person who is not licensed in accordance with this  
 32 Article or whose license has been suspended, revoked or not renewed by the Board to:

- 33           (1) Engage in the practice of occupational ~~therapy;~~therapy.  
 34           (2) Orally, in writing, in print or by sign, or in any other manner, directly  
 35           or by implication, represent that he or she is engaging in occupational  
 36           ~~therapy;~~ or therapy.  
 37           (3) Use in connection with his or her name or place of business the words  
 38           ~~"occupational therapist" or "occupational therapist~~  
 39           ~~assistant";~~ "occupational therapist", "occupational therapy assistant",  
 40           "occupational therapist limited permittee", or "occupational therapy  
 41           assistant limited permittee", or the letters "O.T.", "~~O.T.R./L.~~",  
 42           ~~"O.T./L.", "O.T.A.", or "C.O.T.A./L."~~ "O.T.A./L.", "O.T./L.P.", or  
 43           ~~'O.T.A./L.P.'~~ or any other words, letters, abbreviations or insignia  
 44           indicating or implying that the person is an occupational ~~therapist~~

1           ~~or therapist, occupational therapist—assistant;therapy assistant,~~  
2           occupational therapist limited permittee, or occupational therapy  
3           assistant limited permittee.

4           (b) Any person who resides in another state or foreign country and who, by use  
5 of electronic or other medium, performs any of the acts described as the practice of  
6 occupational therapy pursuant to this Article, but is not licensed pursuant to this Article,  
7 shall be regarded as practicing occupational therapy without a North Carolina license  
8 and is subject to the provisions of this Article and appropriate regulation by the Board."

9           **SECTION 14.** Article 18D of Chapter 90 of the General Statutes is amended  
10 by adding a new section to read:

11 **"§ 90-270.80A. Civil penalties, disciplinary costs.**

12           (a) Authority to Assess Civil Penalties. – The Board may assess a civil penalty  
13 not in excess of one thousand dollars (\$1,000) for the violation of any section of this  
14 Article or the violation of any rules adopted by the Board. The clear proceeds of any  
15 civil penalty assessed under this section shall be remitted to the Civil Penalty and  
16 Forfeiture Fund in accordance with G.S. 115C-457.2.

17           (b) Consideration Factors. – Before imposing and assessing a civil penalty, the  
18 Board shall consider the following factors:

19                   (1) The nature, gravity, and persistence of the particular violation.

20                   (2) The appropriateness of the imposition of a civil penalty when  
21 considered alone or in combination with other punishment.

22                   (3) Whether the violation was willful and malicious.

23                   (4) Any other factors that would tend to mitigate or aggravate the  
24 violations found to exist.

25           (c) Schedule of Civil Penalties. – The Board shall establish a schedule of civil  
26 penalties for violations of this Article and rules adopted by the Board.

27           (d) Costs. – The Board may assess the costs of disciplinary actions against any  
28 person found to be in violation of this Article or rules adopted by the Board."

29           **SECTION 15.** G.S. 90-270.81 reads as rewritten:

30 **"§ 90-270.81. Persons and practices not affected.**

31 Nothing in this Article shall be construed to prevent or restrict:

32           (1) Any person registered, certified, credentialed, or licensed to engage in  
33 another profession or occupation or any person working under the  
34 supervision of a person registered, certified, credentialed, or licensed  
35 to engage in another profession or occupation in this State from  
36 performing work incidental to the practice of that profession or  
37 occupation as long as the person does not represent himself or herself  
38 as an occupational therapist or occupational ~~therapist assistant;~~therapy  
39 assistant.

40           (2) Any person employed as an occupational therapist or occupational  
41 ~~therapist—therapy~~ assistant by the government of the United States, if  
42 he or she provides occupational therapy solely under the direction or  
43 control of the organization by which he or she is ~~employed;~~employed.



- 1 (3) Any person pursuing a course of study leading to a degree or  
2 certificate in occupational therapy at an accredited or approved  
3 educational program if ~~such~~the activities and services constitute a part  
4 of a supervised course of study and if the person is designated by a  
5 title which clearly indicates his or her status as a student or  
6 ~~trainee~~trainee.
- 7 (4) Any person fulfilling the supervised ~~field work~~fieldwork experience  
8 required for licensure under this Article if the person is designated by a  
9 ~~title which~~title, which clearly indicates his or her status as a student or  
10 ~~trainee~~trainee.
- 11 (5) Occupational therapists or occupational ~~therapist~~therapy assistants  
12 licensed in other jurisdictions who are ~~teaching consulting, teaching,~~ or  
13 participating in special occupational therapy education projects,  
14 demonstrations or courses in this State, provided their evaluation and  
15 treatment of patients is minimal.
- 16 (6) The practice of occupational therapy by an occupational therapist or  
17 occupational therapy assistant licensed in another jurisdiction who  
18 comes into this State, whether in person or by use of any electronic or  
19 other medium, on an irregular basis, to consult with a North Carolina  
20 licensed occupational therapist or occupational therapy assistant or to  
21 consult with faculty at an academic facility about education and  
22 training. This shall not apply to occupational therapists or occupational  
23 therapy assistants residing in a neighboring state and regularly  
24 practicing in this State."

25 **SECTION 16.** All members serving on the North Carolina Board of  
26 Occupational Therapy on the effective date of this act shall complete their current terms.  
27 Upon completion of their current terms, the occupational therapist members shall serve  
28 one additional term of either three or four years as follows: the occupational therapist  
29 member who served the longest may serve an additional three-year term; the other two  
30 occupational therapist members, the occupational therapy assistant member, and the  
31 physician member shall be eligible to serve one additional four-year term. The  
32 Governor shall appoint a new public member to serve a four-year term. The Governor  
33 shall also appoint the counselor, educator, or school-based professional member for a  
34 four-year term pursuant to G.S. 90-270.68(a)(4), as enacted in Section 4 of this act, to  
35 begin October 1, 2005. Members appointed thereafter shall serve four-year terms.

36 **SECTION 17.** This act is effective when it becomes law.