COMMITTEE REPORT

February 13, 2019

**H. 3157**

Introduced by Rep. Parks

S. Printed 2/13/19--H.

Read the first time January 8, 2019.

**THE COMMITTEE ON MEDICAL,**

**MILITARY, PUBLIC AND MUNICIPAL AFFAIRS**

To whom was referred a Bill (H. 3157) to amend the Code of Laws of South Carolina, 1976, by adding Chapter 84 to Title 40 so as to provide for the regulation of genetic counselors, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, Section 40‑84‑40(D), as contained in SECTION 1, pages 4‑5, by deleting the subsection in its entirety and inserting:

/ (D) The board may issue a limited license to an applicant who meets all of the requirements for licensure except the certification requirement in this section establishing eligibility to sit for the certification examination administered by the ABGC or the ABMGG. /

Amend the bill further, Section 40‑84‑50(B), as contained in SECTION 1, page 5, lines 12‑14, by deleting the subsection in its entirety and inserting:

/ (B) A renewal applicant shall provide documentation that he continues to maintain certification required in Section 40‑84‑40. /

Renumber sections to conform.

Amend title to conform.

LEON HOWARD for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**Introduced on January 8, 2019**

**State Expenditure**

**Department of Labor, Licensing and Regulation.** This bill requires anyone engaged in the practice of genetic counseling to obtain a license from the State Board of Medical Examiners. The board will be responsible for all activities related to the licensing, regulation, and disciplinary oversight of Genetic Counselors. According to the National Society of Genetic Counselors (NGSC), there are currently 45 Genetic Counselors practicing in South Carolina. NGSC estimates an additional 30 to 60 out-of-state counselors will be providing services to South Carolina constituents via telemedicine. These counselors will also need to be licensed by the board.

LLR will require 1 additional Program Assistant to assist with the day-to-day activities of the board associated with licensure and administrative functions directly related to this program. The salary and fringe benefits for 1 additional FTE are expected to total $43,867. The associated non-recurring costs for infrastructure and technological requirements for this position are expected to be $1,350. Therefore, this bill will increase other funds expenditures by $45,217 in FY 2019-20 and $43,867 each year thereafter.

This bill creates the Genetic Counselors Committee. The committee will serve as an advisory committee for the State Board of Medical Examiners, which is under the regulation of LLR. The committee will be composed of five members and will meet annually. Additional meetings may be held as necessary. Committee members are entitled to a per diem of $35 and travel reimbursement at the rate of 58 cents per mile. LLR is unable to predict the total number of meetings required and the travel costs associated with these meetings. Therefore, the expenditure impact on other funds is undetermined.

This bill will require additional meetings of the board for the purposes of regulating and administering this program. Board members are entitled to a per diem of $35, and mileage reimbursement of 58 cents per mile. In addition, committee meetings require a court reporter at a cost of $2,156 per meeting. LLR is unable to predict the number of additional board meetings that will be required as a result of this bill. In addition, associated travel costs are unknown. Therefore, the expenditure impact on other funds is undetermined.

The level of activity required of the board cannot be determined because total demand for Genetic Counselor licenses is unknown. Therefore, the expenditure impact on Other Funds is undetermined. However, LLR is authorized to adjust licensure fees biennially to ensure that revenue is sufficient to cover these expenses. There will be no expenditure impact on the general fund or federal funds.

**Administrative Law Court.** This bill allows LLR and the board to petition an administrative law judge for injunctive relief against a person violating this chapter. The ALC has indicated that the agency will administer policies resulting from the bill with the use of existing staff and resources.

**State Revenue**

**Department of Labor, Licensing and Regulation.** This bill allows LLR to collect a fee for licenses issued and renewed for Genetic Counselors. LLR is required, pursuant to Section 40-1-50(D), to adjust fees biennially to ensure that fee revenue is sufficient, but not excessive, to cover expenses of each respective board. The fee amount for this license has not yet been determined. In addition, LLR cannot predict the demand for licenses as a result of this bill. Therefore, the revenue generated by application fees is undetermined.

In addition, the licensure board for Genetic Counselors falls under the Division of Professional and Occupational Licensing. Pursuant to Proviso 81.3 of the FY 2018-19 Appropriations Act, LLR is required to remit annually to the general fund an amount equal to 10 percent of expenditures. Therefore, this bill will increase general fund revenue by at least $4,522 in FY 2019-20 and $4,387 each year thereafter due to expenditures for additional personnel. However, because the total increase of expenditures is unknown, the total revenue increase to the general fund is undetermined.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 84 TO TITLE 40 SO AS TO PROVIDE FOR THE REGULATION OF GENETIC COUNSELORS; TO ESTABLISH THE BOARD OF GENETIC COUNSELOR EXAMINERS; TO PROVIDE THE POWERS AND DUTIES OF THE BOARD; TO DEFINE NECESSARY TERMINOLOGY; TO PROVIDE PROCEDURES AND CRITERIA FOR LICENSURE BY THE BOARD; TO PROVIDE RELATED DUTIES OF THE DEPARTMENT OF LABOR, LICENSING AND REGULATION; TO PROVIDE FOR THE INVESTIGATION OF VIOLATIONS AND IMPOSITION OF PENALTIES; AND TO PROVIDE CERTAIN EXEMPTIONS FROM THE PROVISIONS OF THIS CHAPTER, AMONG OTHER THINGS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Title 40 of the 1976 Code is amended by adding:

“CHAPTER 84

Genetic Counselors

Section 40‑84‑10. (A) There is created the Genetic Counselors Committee, an advisory committee under the auspices of the State Board of Medical Examiners, to license genetic counselors. The purpose of this committee is to protect the public through the regulation of professionals who educate and communicate with the public regarding the human problems associated with the occurrence, or the risk of occurrence, of a genetic disorder in a family, including the provision of services to help an individual or family.

(B)(1) The committee must be composed of five members appointed by the Governor. The committee shall review and make recommendations to the board regarding all matters relating to genetic counselors including, but not limited to:

(a) applications for licensure;

(b) licensure renewal requirements;

(c) disciplinary investigations or actions; and

(d) promulgation of administrative regulations.

(2) Members of the committee shall serve three‑year terms, except for initial appointments, and must consist of five practicing licensed genetic counselors.

(3) The chair of the committee must be elected by a majority vote of the committee members and must preside over meetings. Meetings must be held annually at a time and location designated by the chair. Additional meetings may be held at the call of the chair or upon the written request of three committee members.

(4) Initial appointments must be for staggered terms. Two members shall serve a three‑year term, two members shall serve a two‑year term, and one member shall serve a one‑year term.

(a) Initial members shall serve without a license until licenses become available.

(b) Initial members must be ABGC‑certified for a minimum of five years.

(5) A member of the committee is entitled to per diem, subsistence, and mileage as provided by law for members of state boards, committees, and commissions.

(6) A committee member may be removed by the board for good cause or if he misses two consecutive committee meetings without good cause.

(7) Upon the death, resignation, or removal of any member, the vacancy for the unexpired term must be filled by the Governor.

(8) The quorum required for any meeting of the committee is three members. No action by the committee or its members may have any effect unless a quorum of the committee is present at the meeting where the action is taken.

Section 40‑84‑20. As used in this chapter:

(1) ‘ABGC’ means the American Board of Genetic Counseling, its successor or equivalent.

(2) ‘ABMGG’ means the American Board of Medical Genetics and Genomics, its successor or equivalent.

(3) ‘ACGC’ means the Accreditation Council for Genetic Counseling, its successor or equivalent.

(4) ‘Committee’ means the Genetic Counselors Committee created in Section 40‑84‑10.

(5) ‘Board’ means the State Board of Medical Examiners.

(6) ‘Department’ means the Department of Labor, Licensing and Regulation.

(7) ‘Genetic counselor’ means a person who has met all the conditions of this chapter and is licensed in this State to practice genetic counseling.

(8) ‘Limited permittee’ means a person who obtains a limited license by the board who meets all the requirements except the examination, and whose activities are supervised and directed by a supervisor.

(9) ‘NSGC’ means the National Society of Genetic Counselors, its successor or equivalent.

(10) ‘Practice of genetic counseling’ means:

(a) obtain and evaluate individual, family, and medical histories to determine genetic risk for genetic/medical conditions and diseases in a patient, his offspring, and other family members;

(b) discuss the features, natural history, means of diagnosis, genetic and environmental factors, and management of risk for genetic/medical conditions and diseases;

(c) identify and coordinate genetic laboratory tests and coordinate other diagnostic studies as appropriate for the genetic assessment;

(d) integrate genetic laboratory test results and other diagnostic studies with personal and family medical histories to assess and communicate risk factors for genetic/medical conditions and diseases;

(e) explain the clinical implications of genetic laboratory tests and other diagnostic studies and their results;

(f) evaluate responses of the client and his family to the condition or risk of recurrence and provide client‑centered counseling and anticipatory guidance;

(g) identify and use community resources that provide medical, educational, financial, and psychosocial support and advocacy; and

(h) provide written documentation of medical, genetic, and counseling information for families and health care professionals.

(11) ‘Student’ or ‘genetic counselor student’ means an individual enrolled in an ACGC‑approved genetic counselor program while engaged in completing the clinical education requirement for graduation.

(12) ‘Supervision’ means supervision provided by a licensed physician and shall mean the review of genetic counseling and case management as appropriate that include regular chart reviews of clients with the limited permittee and the supervisor.

Section 40‑84‑30. A person may not engage in the practice of genetic counseling without a license issued in accordance with this chapter. A person who practices as a genetic counselor without being licensed under this chapter, whose license has been suspended or revoked, or who uses in connection with his name the words or letters ‘GC’, ‘LGC,’ or uses the title ‘gene counselor’, ‘genetic associate’, ‘genetic counselor’, ‘genetic consultant’, or ‘licensed genetic counselor’, or any other letters, words, or insignia indicating or implying that he is a genetic counselor or who in any other way, orally, in writing, in print, by sign directly or by implication, represents himself as a genetic counselor without being licensed by the board is subject to the penalties provided in this chapter.

Section 40‑84‑40. (A) A person desiring to be licensed as a genetic counselor under this chapter shall apply to the department on a form approved by the board.

(B) The board shall license an applicant who:

(1) has completed the application form and remitted the required fees;

(2) is of good moral character;

(3) provides satisfactory documentation of having earned:

(a) a master’s degree from a genetic counseling training program accredited by the ACGC or an equivalent program as determined by the board; or

(b) a doctoral degree from a medical genetics training program that is accredited by the ABMGG.

(C) An exception to item (3)(a) must be provided by the board for genetic counselors who did not attend a traditional master’s training program but are certified by the ABMGG, have been practicing for at least ten years, are in good standing with their employer, and were grandfathered into ABGC certification. These individuals are not exempt from the continuing education requirements for licensure set in Section 40‑84‑50(C).

(D) The board may issue a limited license to an applicant who meets all of the requirements for licensure except the certification requirement in this section and has obtained active candidate status establishing eligibility to sit for the certification examination administered by the ABGC or the ABMGG.

(E) An applicant may be licensed pursuant to this chapter if he demonstrates to the satisfaction of the board that he is licensed or registered under the laws of another state, territory, or jurisdiction of the United States which, in the opinion of the board, imposes substantially the same licensing requirements as this chapter.

Section 40‑84‑50. (A) The department shall renew a license upon receipt of the renewal application and fee set by the board, not to exceed three hundred dollars biannually.

(B) A renewal applicant shall provide documentation that he continues to maintain certification required in Section 40‑84‑40(B)(3)(b).

(C) The board shall require NSGC‑approved course criteria, not to exceed twenty‑five hours biennially, as a condition for license renewal.

(D) The board shall establish fees at levels which are adequate to ensure the continued operation of the regulatory program under this chapter. The board may not set or maintain the fees at a level that will substantially exceed this need.

Section 40‑84‑60. The Department of Labor, Licensing and Regulation shall provide all administrative, fiscal, investigative, inspectional, clerical, secretarial, and license renewal operations and activities of the board in accordance with Chapter 1.

Section 40‑84‑70. The board may adopt rules governing its proceedings and may promulgate regulations recommended by the committee necessary to carry out the provisions of this chapter including, but not limited to, promulgation of regulations for the practice of genetic counseling, and establishing disciplinary procedures.

Section 40‑84‑80. The Department of Labor, Licensing and Regulation shall investigate complaints and violations of this chapter as provided in Chapter 1. The board may designate individuals to serve as advisors to provide professional expertise to inspectors or investigators.

Section 40‑84‑90. For the purpose of an investigation or proceeding under this chapter, the board or its designee may subpoena witnesses, take evidence, and require the production of documents or records which the board considers relevant to the inquiry.

Section 40‑84‑100. In addition to other remedies provided in this chapter or Chapter 1, the board, in accordance with Section 40‑1‑100, also may issue a cease and desist order or may petition an administrative law judge for a temporary restraining order or other equitable relief to enjoin a violation of this chapter.

Section 40‑84‑110. (A) In addition to other grounds provided in Section 40‑1‑110, the board, after notice and hearing, may restrict or refuse to grant a license to an applicant and may refuse to renew the license of a licensed person, and may suspend, revoke, or otherwise restrict the license of a licensed person who:

(1) requests, receives, participates, or engages, directly or indirectly, in the dividing, transferring, assigning, rebating, or refunding of fees received for professional services or profits by means of a credit or other valuable consideration including, but not limited to, wages, an unearned commission, discount, or gratuity with a person who referred a patient, or with a relative or business associate of the referring person;

(2) has treated or undertaken to treat human ailments otherwise than by a genetic counselor or has practiced genetic counseling and failed to refer to a licensed medical doctor a patient whose medical condition should have been determined at the time of evaluation or treatment to be beyond the scope of practice of a genetic counselor; or

(3) knowingly aided, assisted, procured, or advised a person to practice genetic counseling contrary to this chapter or to regulations promulgated by the board pursuant to this chapter or knowingly performed an act which aids, assists, procures, or advises an unlicensed person to practice genetic counseling.

(B)(1) An act or omission by a licensee causing the denial, revocation, suspension, or restriction of a license to practice genetic counseling in another state is sufficient for the issuance of a formal complaint and the commencement of disciplinary proceedings as provided in this section. Proof of an act or omission may be shown by a copy of the transcript of record of the disciplinary proceedings in another state or a copy of the final order, consent order, or similar order stating the basis for the action taken. This subsection only applies when the disciplinary action taken in another state is based on grounds that would constitute grounds for disciplinary action under subsection (A) and Section 40‑1‑110.

(2) Upon the filing of an initial complaint alleging that a licensee has been disciplined in another state, the licensee must submit to the board copies of all transcripts, documents, and orders used, relied upon, or issued by the licensing authority in the other state. Failure to submit these items within ninety days of the board’s request results in the suspension of the individual’s license to practice genetic counseling in this State until all of the items have been provided to the board.

(3) A licensee may present mitigating testimony to the board regarding disciplinary action taken in another state or evidence that the acts or omissions committed in another state do not constitute grounds for disciplinary action under subsection (A) and Section 40‑1‑110.

(C) A complaint may be made in writing to the board or may be made by the board on its own initiative.

(D) In enforcing the provisions of this chapter, the board, upon reasonable grounds, may require a licensee or applicant to submit to a mental or physical examination performed by a physician designated by the board and including, but not limited to, urinalysis and blood work to determine the presence of drugs. The results of an examination are admissible in a hearing before the board, notwithstanding a claim or privilege under a contrary rule of law or statute. A person who accepts the privilege of practicing genetic counseling in this State is considered to have consented to submit to a mental or physical examination and to have waived all objections to the admissibility of the results in a hearing before the board upon the grounds that the same constitutes a privileged communication. If a licensee or applicant fails to submit to an examination when properly directed to do so by the board, unless the failure was due to circumstances beyond the person’s control, the board shall enter an order automatically suspending or denying the license pending compliance and further order of the board. A licensee or applicant who is prohibited from practicing genetic counseling under this subsection must be afforded at reasonable intervals the opportunity to demonstrate to the board the ability to resume or begin the practice of genetic counseling with reasonable skill and safety to patients.

(E) In enforcing the provisions of this chapter, the board upon reasonable grounds, may obtain records relating to the mental or physical condition of a licensee or applicant including, but not limited to, psychiatric records; and these records are admissible in a hearing before the board, notwithstanding another provision of law. A person who accepts the privilege of practicing genetic counseling in this State or who files an application to practice genetic counseling in this State is considered to have consented to the board obtaining these records and to have waived all objections to the admissibility of these records in a hearing before the board upon the grounds that the same constitutes a privileged communication. If a licensee or applicant refuses to sign a written consent for the board to obtain these records when properly requested by the board, unless the failure was due to circumstances beyond the person’s control, the board shall enter an order automatically suspending or denying the license pending compliance and further order of the board. A licensee or applicant who is prohibited from practicing genetic counseling under this subsection must be afforded reasonable opportunity to demonstrate to the board the ability to resume or begin the practice of genetic counseling with reasonable skill and safety to patients.

Section 40‑84‑120. The board has jurisdiction over the actions of licensees and former licensees as provided in Section 40‑1‑115.

Section 40‑84‑130. In addition to the sanctions the board may impose against a person pursuant to this chapter, the board may take disciplinary action against a person as provided in Section 40‑1‑120, and also may impose a civil penalty of not more than two thousand dollars for each violation of this chapter or of a regulation promulgated under this chapter, the total penalty not to exceed ten thousand dollars.

Section 40‑84‑140. As provided in Section 40‑1‑130, the board may restrict or deny licensure to an applicant based on the same grounds for which the board may take disciplinary action against a licensee.

Section 40‑84‑150. A license may be denied based on a person’s prior criminal record only as provided in Section 40‑1‑140.

Section 40‑84‑160. A licensee under investigation for a violation of this chapter or a regulation promulgated under this chapter may voluntarily surrender the license in accordance with Section 40‑1‑150.

Section 40‑84‑170. A person aggrieved by a final action of the board may seek review of the decision in accordance with Section 40‑1‑160.

Section 40‑84‑180. A person found in violation of this chapter or a regulation promulgated pursuant to this chapter may be required to pay costs associated with the investigation and prosecution of the case in accordance with Section 40‑1‑170.

Section 40‑84‑190. All costs and fines imposed pursuant to this chapter must be paid in accordance with and are subject to the collection and enforcement provisions of Section 40‑1‑180.

Section 40‑84‑200. Investigations and proceedings conducted under this chapter are confidential, and all communications are privileged as provided in Section 40‑1‑190.

Section 40‑84‑210. A person who engages in the practice of or offers to engage in the practice of genetic counseling in the State in violation of this chapter or who knowingly submits false information to the board for the purpose of obtaining a license or who violates another provision of this chapter is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than ninety days, or both. Each violation is a separate offense.

Section 40‑84‑220. The department, on behalf of the board and in accordance with Section 40‑1‑120, may petition an administrative law judge, in the name of the State, for injunctive relief against a person violating this chapter.

Section 40‑84‑230. The provisions of this act do not apply to:

(1) a ‘genetic counselor student’ who is a student enrolled in an ACGC‑approved genetic counselor program while engaged in completing the clinical education requirement for graduation under the on‑site supervision of a genetic counselor or physician who is licensed to practice in this State;

(2) a genetic counselor licensed in another state who is teaching or participating in special genetic counselor education projects, nonprofit delivery of service from outside the state, demonstrations, or courses in this State;

(3) a genetic counselor solely employed by the United States Armed Services, United States Public Health Service, Veterans Administration, or another federal agency and practicing within the scope of employment; or

(4) a person licensed by the State to practice in a profession such as a physician or nurse practitioner when acting within the scope of the person’s profession and doing work of a nature consistent with the person’s training. The person cannot hold himself out to the public as a genetic counselor in accordance with Section 40‑84‑30.

Section 40‑84‑240. Nothing in this chapter may be construed to authorize a licensed genetic counselor or another person to practice medicine, surgery, osteopathy, homeopathy, chiropractic, naturopathy, magnetic healing, or another form, branch, or method of healing as authorized by the laws of this State. Nothing in this chapter may be construed to restrict, inhibit, or limit the practice of licensed physicians, nurse practitioners, or licensed physician assistants.”

SECTION 2. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 3. This act takes effect upon approval by the Governor.

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