AN ACT

Providing for licensure of behavior analysts; establishing the Behavior Analyst Licensing Board and providing for its membership, powers and duties; establishing the Behavior Analyst Licensure Fund; and providing for penalties.

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The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Legislative findings and declaration of policy.

The General Assembly finds and declares as follows:

(1) The practice of applied behavior analysis affects the health, safety and welfare of the citizens of this Commonwealth.

(2) Individuals practicing applied behavior analysis shall be subject to regulation to protect the public from the practice of applied behavior analysis by unqualified individuals and to prevent unprofessional, unethical and harmful conduct.

Section 2. Short title.

This act shall be known and may be cited as the Behavior Analyst Licensure Act.

Section 3. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Applied behavior analysis." The term shall include all of the following:

(1) The design, implementation and evaluation of instructional and environmental modifications to produce socially significant improvements in human behavior or prevent the loss of attained skill or function.

(2) The empirical identification of functional relations between behavior and environmental factors, known as functional assessment and analysis.
(3) Interventions derived from scientific research, functional relations and direct and indirect observation and measurement of behavior and environmental events or conditions.

(4) Utilization of contextual factors, motivating operations, antecedent stimuli, reinforcement and other procedures to help individuals develop new behaviors, increase or decrease existing behaviors and emit behaviors under specific environmental conditions.

"Behavior technician." A paraprofessional who practices under the close, ongoing clinical supervision of a license holder and delivers services as assigned by the clinical supervisor responsible for the individual's work and who does not design assessment or intervention plans or procedures.

"Board." The Behavior Analyst Licensing Board established under section 12.

"Certifying entity." The Behavior Analyst Certification Board or another entity whose programs to credential practitioners of applied behavior analysis are accredited by the National Commission for Certifying Agencies or the American National Standards Institute.

"Conviction." A judgment, admission of guilt or plea of nolo contendere.

"Fund." The Behavior Analyst Licensure Fund established under section 12(g).

"License holder." An individual holding an active license under this act.

"Licensed assistant behavior analyst." An individual who is certified by a certifying entity as a board-certified assistant behavior analyst and who meets the requirements under section 4.
"Licensed behavior analyst." An individual who is certified by a certifying entity as a board-certified behavior analyst or a board-certified behavior analyst-doctoral and who meets the requirements under section 4.

Section 4. Qualifications for licensure.

(a) Application.--An applicant for licensure shall submit an application, a completed attestation and disclosure form and requisite fees as provided by the board. The application shall include evidence of the following:

   (1) Proof of a criminal background check conducted by the Pennsylvania State Police, a State-approved child abuse clearance and a Federal Bureau of Investigation fingerprint-based record check in accordance with applicable Federal law and 23 Pa.C.S. Ch. 63 (relating to child protective services) conducted through either the Department of Education or the Department of Human Services.

   (2) For a licensed behavior analyst applicant, the applicant has a current certification as a board-certified behavior analyst or board-certified behavior analyst-doctoral verified with the certifying entity.

   (3) For a licensed assistant behavior analyst applicant, the applicant has a current certification as a board-certified assistant behavior analyst verified with the certifying entity and maintains proof of ongoing supervision by a licensed behavior analyst who is approved as a supervisor by the certifying entity, in accordance with the certifying entity's current supervision standards.

   (4) Good moral character as determined by the board.

(b) Licensure restrictions.--The board may not grant a license to an applicant who:
(1) Has been convicted of a felony offense under section 635.2(g)(3) of the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921, unless at least 10 years have elapsed from the date of conviction and the applicant has satisfactorily demonstrated to the board that the applicant has made significant progress in personal rehabilitation since the conviction and that licensure of the applicant should not be expected to create a substantial risk of harm to the health and safety of the applicant's patients or the public or a substantial risk of further criminal violations.

(2) Has been convicted of, entered a plea of nolo contendere to or adjudicated delinquent of a crime for which the applicant has been required to register under 42 Pa.C.S. Ch. 97 Subch. H (relating to registration of sexual offenders), without regard to the time elapsed since the date of the conviction, plea or adjudication or the length of the registration required.

(3) Has failed to satisfy the board that the applicant is of good moral character.

Section 5. License enforcement and penalty.

(a) Violations.--The following shall constitute a violation of this act:

(1) The unlicensed practice of applied behavior analysis in this Commonwealth, unless exempt under section 6.

(2) Holding oneself out to be a licensed behavior analyst or licensed assistant behavior analyst unless the individual meets the applicable requirements under section 4.

(3) Except as provided under section 6, using the title "licensed behavior analyst" or "licensed assistant behavior
analyst" or any title that is substantially the same unless
the individual is licensed under this act.

(b) Penalty.--A violation of this section shall be
punishable by a fine to be determined by the board.

Section 6. Exceptions.

The provisions of this act shall not be construed as
prohibiting or restricting the practice of any of the following:

(1) An Individual licensed to practice psychology in
this Commonwealth, so long as the applied behavior analysis
services provided by the licensed psychologist are within the
boundaries of the licensed psychologist's education, training
and competence and the licensed psychologist does not
represent oneself as a licensed behavior analyst unless also
licensed under this act.

(2) A behavior technician or family member who delivers
applied behavior analysis services under the extended
authority and direction of a licensed behavior analyst or a
licensed assistant behavior analyst. The individual may not
represent oneself as a professional behavior analyst and
shall use a title that indicates the individual's
nonprofessional status.

(3) A behavior analyst who practices with nonhumans,
including applied animal behaviorists and animal trainers.
The individual may use the title behavior analyst but may not
represent oneself as a licensed behavior analyst or a
licensed assistant behavior analyst unless licensed under
this act.

(4) A professional who provides general applied behavior
analysis services to organizations so long as these services
are for the benefit of the organizations and do not involve
direct services to individuals. The professional may use the
title behavior analyst but may not represent oneself as a
licensed behavior analyst or a licensed assistant behavior
analyst unless licensed under this act.

(5) A matriculated college or university student or
postdoctoral fellow whose applied behavior analysis
activities are part of a defined program of study, course,
practicum, internship or fellowship and are directly
supervised by a licensed behavior analyst in this
Commonwealth or a qualified faculty member. The individual
may not represent oneself as a licensed behavior analyst and
shall use a title that clearly indicates the individual's
trainee status.

(6) An unlicensed individual pursuing experience in
applied behavior analysis consistent with a certifying
entity's experience requirements, provided such experience is
supervised by a licensed behavior analyst in this
Commonwealth. The individual may not represent oneself as a
licensed behavior analyst and shall use a title that clearly
indicates the individual's trainee status.

(7) An individual who teaches behavior analysis or
conducts behavior-analytic research, provided that such
activities do not involve the direct delivery of applied
behavior analysis services beyond the typical parameters of
applied research. The individual may use the title behavior
analyst but may not represent oneself as a licensed behavior
analyst or a licensed assistant behavior analyst unless
licensed under this act.

(8) An individual directly employed by a school district
who delivers applied behavior analysis services to students
of that district. The individual may not represent oneself as
a licensed behavior analyst or a licensed assistant behavior
analyst unless licensed under this act and may not offer
applied behavior analysis services to any individuals or
entities other than the school employer or accept
remuneration for providing applied behavior analysis services
other than the remuneration the individual receives from the
school employer.

(9) A licensed behavior specialist under section 635.2
of the act of May 17, 1921 (P.L.682, No.284), known as The
Insurance Company Law of 1921, shall be exempt from licensure
under this act if:

   (i) The services the individual provides are within
   the boundaries of the individual's education, training
   and competence.

   (ii) The individual does not represent oneself as a
   licensed behavior analyst, licensed assistant behavior
   analyst or represent oneself as a professional behavior
   analyst or use a substantially similar term.

   (iii) A licensed behavior specialist who wishes to
   practice as a licensed behavior analyst or a licensed
   assistant behavior analyst must meet the licensure
   requirements of this act.

Section 7. Temporary license.

A behavior analyst licensed in another jurisdiction or
certified by a certifying entity to practice independently who
provides applied behavior analysis services in this Commonwealth
on a short-term basis may apply for a temporary license. An
applicant for a temporary license shall submit an application
and fee as provided by the board and evidence that their
practice in the jurisdiction is temporary as defined by the board in regulation. A temporary license shall only be granted if the board verifies the applicant's licensure or certification status with the relevant certifying entity.

Section 8. Reciprocity.

(a) General rule.--The board shall issue a license to an individual who is currently licensed as a behavior analyst or assistant behavior analyst in good standing in another jurisdiction that imposes licensure requirements comparable to those specified in this act. An applicant for reciprocal licensure shall have their current licensure verified by the board and comply with other requirements provided in this act.

(b) Requirements.--An applicant for reciprocity shall provide the board with a State-approved criminal background check, a State-approved child abuse clearance and a Federal Bureau of Investigation fingerprint-based record check in accordance with applicable Federal law and 23 Pa.C.S. Ch. 63 (relating to child protective services) conducted through either the Department of Education or the Department of Human Services.

Section 9. License expiration, renewal and other status.

(a) General rule.--A license issued under this act shall be valid for two years. Prior to expiration of a license, the board may issue a license renewal upon submission of the following:

(1) An application for renewal as provided by the board.

(2) Board verification of current certification by the certifying entity, which signifies that the applicant for renewal has met the continuing education requirements established by the certifying entity.

(3) Payment of the renewal fee imposed by the board.

(4) Record completion of a State-approved criminal background check.
background check, a State-approved child abuse clearance and
a Federal Bureau of Investigation fingerprint-based record
check in accordance with applicable Federal law and 23
Pa.C.S. Ch. 63 (relating to child protective services)
conducted through either the Department of Education or the
Department of Human Services.

(b) Inactive or retired status.--The board may adopt a
system for placing an individual licensed under this act on
inactive or retired status.

Section 10. Sanctions and disciplinary action.

(a) General rule.--The board, after due notice of a
violation of this act and an opportunity for an administrative
hearing, may take any one or a combination of the following
actions against a licensed behavior analyst, licensed assistant
behavior analyst or an applicant:

(1) Refuse to license an applicant.
(2) Refuse to renew the license of an individual.
(3) Suspend or revoke the license of an individual.
(4) Impose restrictions on the scope of practice of an
individual.
(5) Issue an administrative reprimand to an individual.
(6) Issue a private admonishment to an individual.
(7) Impose fines for violations of this act, not to
exceed $2,500.
(8) Issue a notice to a certifying entity.

(b) Revocation and other disciplinary action.--A license
issued under this act may be revoked or a license holder may be
sanctioned by the board or face disciplinary action upon
demonstration of the following:

(1) ineligibility for licensure, including, but not
limited to, failure to maintain active certification or
failure to maintain inactive status by a certifying entity or
falsification of documentation submitted for licensure;
(2) aiding and abetting an unlicensed individual to
directly or indirectly perform activities requiring a license
for the practice of behavior analysis;
(3) engaging in professional misconduct, incompetence,
gross negligence or manifest incapacity in the practice of
behavior analysis;
(4) engaging in the practice of behavior analysis while
impaired by alcohol or drugs;
(5) engaging in conduct or practice contrary to a
certifying entity's current professional and ethical
standards;
(6) failing to comply with, observe or adhere to any law
in a manner that causes the board to determine that the
applicant or license holder is unfit to hold a license;
(7) having a license revoked or suspended or other
disciplinary action by a Federal or State agency for any
reason that is provided by the applicable licensing laws or
by this section;
(8) having been convicted of a crime directly related to
the qualifications, functions or duties of the practice of
behavior analysis;
(9) failing to report in writing to the board any
disciplinary decision issued against the applicant or license
holder in another jurisdiction within 30 days of the
disciplinary decision;
(10) failing to report in writing to the board
revocation or disciplinary action of the certification of a
license holder by a certifying entity within 15 days of the
revocation; or
(11) employing, whether gratuitously or for pay, an
individual not licensed under this act to perform the
functions or duties of the practice of behavior analysis.
(c) Appeal.—Any individual aggrieved by a final order of
the board denying, suspending or revoking a license may appeal
to the Bureau of Professional and Occupational Affairs in the
Department of State.
Section 11. Reinstatement of license.
(a) Lapsed license.—Within three years, the board may
reinstate a license that has lapsed, upon completion of all
renewal requirements, including payment of the required renewal
fee and a reinstatement fee to be established by the board.
(b) Revoked or suspended license.—The board may reinstate a
license that has been revoked or suspended if the board
determines that the applicant is currently certified at the
appropriate level by a certifying entity. As a condition of
reinstatement, the board may impose reasonable restrictions
under which the license holder may practice.
Section 12. Behavior Analyst Licensing Board.
(a) Establishment.—The Behavior Analyst Licensing Board is
hereby established. The board may promulgate regulations and
establish fees necessary to implement this act and investigate
complaints relating to the practice of applied behavior analysis
by a licensed behavior analyst, licensed assistant behavior
analyst or any other individual alleged to be in violation of
this act.
(b) Membership.—The board shall consist of five members
appointed by the Governor as follows:
(1) The members shall include:

(i) One physician or psychologist whose scope of practice includes prescribing applied behavior analysis services and has a minimum of 10 years' experience.

(ii) One board-certified behavior analyst or board-certified behavior analyst-doctoral who is eligible for licensure under this act and has a minimum of five years' experience.

(iii) One board-certified assistant behavior analyst or board-certified behavior analyst who is eligible for licensure under this act and has a minimum of five years' experience.

(iv) Two public members who are not professional behavior analysts.

(2) The board-certified behavior analyst, board-certified behavior analyst-doctoral and board-certified assistant behavior analyst members of the board shall apply for licensure under this act as soon as feasible.

(3) Appointments to the board shall be made without regard to the race, color, disability, sex, sexual orientation, religion, age or national origin of the appointee.

(4) Terms of the initial board shall be as follows:

(i) The physician or psychologist shall serve a term of one year.

(ii) The board-certified behavior analyst or board-certified behavior analyst-doctoral shall serve a term of three years.

(iii) The board-certified behavior analyst or board-certified assistant behavior analyst shall serve a term
of two years.

(iv) One public member shall serve a term of one year.

(v) One public member shall serve a term of two years.

(5) The terms of subsequent board members shall be for three years and no member shall serve more than two consecutive terms.

(6) A vacancy on the board shall be filled in the manner of the original appointment for the unexpired portion of the term.

(7) The Governor, after notice and opportunity for a hearing, may remove any member of the board for malfeasance, neglect of duty, incompetency or revocation or suspension of a license.

(8) The board may request the removal of a board member by the Governor.

(9) The board shall annually elect a chair, vice-chair and secretary.

(10) Members of the board may not receive a salary but shall be allowed reimbursement for mileage, subsistence and receive per diem as deemed necessary by the board.

(11) There shall be no liability on the part of, and no action for damages against, any current or former board member, representative, agent or employee of the board when the individual is functioning within the scope of board duties, acting without malice and with the reasonable belief that the actions taken by the individual are permitted by law.

(c) Meetings of board.—The board shall meet at least twice
annually and may meet at such other times as necessary to complete the business required. A majority of the members of the board shall constitute a quorum for the transaction of business. (d) Board staff and expenses.--The board may employ an executive secretary and any clerical or other assistants as necessary for the performance of the board's work and may make expenditures of funds for any purpose which in the opinion of the board are necessary for proper performance of its duties, including compensation of the executive secretary. (e) Regulations.--The board shall: (1) Promulgate regulations necessary to carry out the provisions of this act. (2) Promulgate temporary regulations which shall expire no later than five years following the publication of the temporary regulations. The board may promulgate temporary regulations not subject to: (i) Sections 201, 202, 203, 204 and 205 of the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law. (ii) Section 204(b) of the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act. (iii) The act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act. (3) The authority provided to the board to adopt temporary regulations under paragraph (2) shall expire five years following the publication of the temporary regulations. Regulations adopted after this period shall be promulgated as provided by law. (f) Duties of board.--The board shall:
(1) Review applications for initial licensure and renewals, collect required fees, make determinations on alleged violations, check certifications and clearances and issue a license if appropriate.

(2) Have the power to institute criminal proceedings for a violation of this act and to institute civil proceedings to enjoin a violation of this act.

(3) Investigate alleged violations of this act brought to the board's attention and take action as it may deem appropriate.

(4) Conduct investigations and schedule and conduct administrative hearings to enforce the provisions of this act or regulations promulgated under this act.

(5) Have the authority to administer oaths, receive evidence, interview individuals, issue subpoenas and require the production of books, papers, documents or other evidence.

(6) Hold meetings at the call of the chair or at the call of a majority of members of the board upon not less than 10 days' written notice, unless notice shall be waived. The presence of any member at a meeting of the board shall constitute a waiver of notice thereof by the member.

(7) Maintain a book to keep the minutes containing a record of all meetings of the board.

(8) Maintain a register of all individuals licensed under this act. The register shall contain the names of every license holder in this Commonwealth, the license holder's current business and residential address and telephone numbers and the date and number of the holder's license. A license holder shall notify the board of a change of name, address or telephone number within 90 days of the change.
(9) Annually update the board's records.

(10) Annually publish and make available a current directory of all licensed behavior analysts, licensed assistant behavior analysts and temporary licensees.

(11) Adopt a seal which shall be affixed to every license granted by the board.

(g) Regulation of practice of applied behavior analysis.--

The board shall:

(1) Have the responsibility of evaluating the qualifications of applicants for licensure.

(2) Promulgate rules and regulations which:

   (i) Establish standards for temporary licensure, inactive and retirement status.

   (ii) Govern the physical and mental examination of licensed behavior analysts, licensed assistant behavior analysts and temporary licensees who may be impaired by reason of a mental, physical or other condition that impedes their ability to practice competently. For purposes of enforcing this section, the board shall have the power to order an immediate temporary suspension of licensure if there is a reasonable cause to believe that a licensed behavior analyst, licensed assistant behavior analyst, temporary licensee or applicant may be impaired by reason of a mental, physical or other condition that impedes the individual's ability to practice competently.

   (iii) Establish reasonable fees for the licensure and license renewal of licensed behavior analysts, licensed assistant behavior analysts and temporary licensees.

(h) Behavior Analyst Licensure Fund.--The Behavior Analyst
Licensure Fund is established as a special fund in the State Treasury. All fees received by the board and all penalties assessed in accordance with this act shall be deposited into the Behavior Analyst Licensure Fund to be used by the board for the administration of this act.

Section 13. Consumer protection and complaint procedures.

(a) Duty to report by license holders and employers.--A license holder or an employer of a license holder having actual or direct knowledge of facts shall report to the board a licensed behavior analyst or licensed assistant behavior analyst who:

(1) has been convicted of a felony that involved an act that bears directly on the qualifications or ability of the applicant or license holder to practice behavior analysis;

(2) is suspected of fraud or deceit in procuring or attempting to procure a license to practice behavior analysis or of negligently performing actions that justify action against a licensed behavior analyst's or licensed assistant behavior analyst's license;

(3) has had a license to practice as a behavior analyst or assistant behavior analyst denied, limited, suspended, probated or revoked in another jurisdiction on grounds sufficient to cause a license or certificate to be denied, limited, suspended, probated or revoked in this Commonwealth; or

(4) has had a certification revoked or suspended by a certifying entity.

(b) Duty to report by others.--An individual having actual or direct knowledge of facts shall report to the board an individual who is practicing behavior analysis without a current
license issued by the board. The following shall apply:

(1) The board shall provide reasonable assistance to an individual who wishes to file a complaint regarding an individual or activity regulated under this act.

(2) The board shall list a toll-free telephone number that may be called to present a complaint about a licensed behavior analyst, assistant behavior analyst or temporary license holder or an individual who is practicing behavior analysis without a license.

(c) Confidentiality of complaint information.--All of the following shall apply:

(1) Except as provided by law a complaint and investigation and all information and materials compiled by the board in connection with the complaint and investigation shall remain confidential.

(2) A complaint or investigation under this section and relevant information and materials compiled by the board in connection with the complaint may be disclosed to:

(i) The board and its employees or agents involved in discipline.

(ii) A party to a disciplinary action or that party's designated representative.

(iii) A law enforcement agency if required by law.

(iv) A governmental agency if:

(A) The disclosure is required by law.

(B) The agency obtaining the disclosure protects the identity of any patient whose records are examined.

(3) The board shall protect the identity of a patient whose records are examined in connection with a disciplinary
investigation or proceeding, except:

(i) a patient who initiates the disciplinary action;

or

(ii) a patient who has submitted a written consent to release records.

Section 14. Effective date.

This act shall take effect in one year.