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REFERRED TO COMMITTEE ON PROFESSIONAL LICENSURE, SEPTEMBER 30, 2019

AN ACT

1 Providing for licensure of behavior analysts and assistant 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:

CHAPTER 1

PRELIMINARY PROVISIONS

Section 101. 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 residents 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 102. Short title.
This act shall be known and may be cited as the Behavior
Analyst Licensure Act.
Section 103. 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:
"Behavior technician." An individual who practices under the
supervision and direction of a licensed professional, delivers
services as assigned by the clinical supervisor responsible for
the individual's work and does not design assessment or
intervention plans or procedures. A behavior technician may be
employed or supervised by another professional licensed in this
Commonwealth, provided that any applied behavior analysis
services delivered by the technician are supervised by a
licensed behavior analyst, licensed assistant behavior analyst
or other professional licensed in this Commonwealth whose
legislated scope of practice includes applied behavior analysis
and who is practicing within the boundaries of the
professional's code of ethics. A behavior technician who holds
the Behavior Analyst Certification Board's registered behavior
technician credential shall obtain supervision from a licensed
behavior analyst, licensed assistant behavior analyst or other
professional licensed in this Commonwealth who is approved by
the certifying entity to supervise registered behavior
technicians in accordance with the certifying entity's current
supervision requirements.
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"Board." The Behavior Analyst Licensing Board established under section 301.

"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 701.

"Licensed assistant behavior analyst." An individual who is certified by the certifying entity as a board-certified assistant behavior analyst and who is licensed under this act to engage in the practice of applied behavior analysis under the supervision of a licensed behavior analyst who is approved by the certifying entity to supervise assistant behavior analysts. A licensed assistant behavior analyst may be employed or supervised by another professional licensed in this Commonwealth whose legislated scope of practice includes applied behavior analysis, provided that the licensed professional practices within the boundaries of the professional's code of ethics. If the licensed professional is not approved by the certifying entity to supervise assistant behavior analysts, then the licensed assistant behavior analyst shall also obtain supervision from a licensed behavior analyst in this Commonwealth who is approved by the certifying entity to supervise assistant behavior analysts in accordance with the certifying entity's current supervision requirements.

"Licensed behavior analyst." An individual who is certified
by the certifying entity as a board-certified behavior analyst or board-certified behavior analyst-doctoral and is licensed under this act to engage in the practice of applied behavior analysis.

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

"Practice of applied behavior analysis." The design, implementation and evaluation of instructional and environmental modifications to produce socially significant improvements in human behavior or prevent the loss of an attained skill or function. The practice of applied behavior analysis includes the empirical identification of functional relations between behavior and environmental factors, known as functional assessment and analysis. Applied behavior analysis interventions are based on scientific research analysis and direct and indirect observation and measurement of behavior and environment. An individual practicing applied behavior analysis utilizes contextual factors, motivating operations, antecedent stimuli, positive reinforcement and other procedures to help individuals develop new behaviors, increase or decrease existing behaviors and emit behaviors under specific environmental conditions. The practice of applied behavior analysis excludes diagnosis of disorders, psychological testing, psychotherapy, cognitive therapy, psychoanalysis and counseling.

CHAPTER 3

BOARD

Section 301. Behavior Analyst Licensing Board.

(a) Establishment.--The Behavior Analyst Licensing Board is established. The board shall 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 board-certified behavior analyst-doctoral
who is eligible for licensure under this act and has a
minimum of five years' post-doctoral experience
designing, overseeing or delivering applied behavior
analysis services.

(ii) Two board-certified behavior analysts who are
eligible for licensure under this act and have a minimum
of five years' experience designing, overseeing or
delivering applied behavior analysis services.

(iii) One board-certified behavior analyst or
assistant behavior analyst who is eligible for licensure
under this act and has a minimum of five years'
experience in or experience assisting with the design,
oversight or delivery of applied behavior analysis
services.

(iv) One public member who is not a professional
behavior analyst.

(2) The board-certified behavior analyst-doctoral,
board-certified behavior analyst 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 members shall be as follows:

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

(ii) The board-certified behavior analysts under paragraph (1)(ii) shall serve terms of two years.

(iii) The board-certified behavior analyst or assistant behavior analyst under paragraph (1)(iii) shall serve a term of one year.

(iv) The 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 and subsistence and receive a 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 is necessary for proper performance of the board's duties, including compensation of the executive secretary.

Section 302. Powers and duties of board.

(a) General rule.--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 licenses if appropriate.

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

(3) Have the power and duty to deny, approve, issue, revoke, suspend or renew licenses of applicants and licensed behavior analysts and licensed assistant behavior analysts under this act and conduct hearings in connection with those powers and duties.
(4) Have the authority to administer oaths, receive evidence, interview individuals, issue subpoenas and require the production of books, papers, documents or other evidence.

(5) 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 by the member.

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

(7) 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 last reported 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.

(8) Annually update the board's records.

(9) Annually make available a current directory of all licensed behavior analysts, licensed assistant behavior analysts and temporary license holders.

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

(b) 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 that:

(i) Establish standards for temporary licensure and inactive and retirement status.
(ii) Govern the physical and mental examination of licensed behavior analysts, licensed assistant behavior analysts and temporary license holders who may be impaired by reason of a mental, physical or other condition that impedes the individual's 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 license holder 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 license holders.

CHAPTER 5

LICENSURE

Section 501. Qualifications for licensure.

(a) Licenses.--Except as provided in subsection (b), no person may practice or hold oneself out as being able to practice applied behavior analysis in this Commonwealth unless the person holds a current, unsuspended, unrevoked license issued by the board.

(b) Exclusions.--The provisions of this section 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

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services provided by the licensed psychologist are practiced within the psychologist's code of ethics as determined by the State Board of Psychology and the licensed psychologist does not represent oneself as a licensed behavior analyst unless also licensed under this act.

(2) An individual licensed to practice another profession in this Commonwealth and those who deliver services under the licensed individual's supervision, so long as applied behavior analysis is in the profession's legislated scope of practice and the professional practices in accordance within the professional's code of ethics. The licensed individual shall not represent oneself as a licensed behavior analyst unless also licensed under this act.

(3) A behavior technician or family member who delivers applied behavior analysis services under the extended authority and direction of a licensed behavior analyst, a licensed assistant behavior analyst or another licensed professional excluded under this act, provided that in the latter case, applied behavior analysis is in the legislated scope of practice of that profession and the licensed professional practices within the professional's code of ethics. The individual may not represent oneself as a professional behavior analyst and shall use a title that indicates the individual's nonprofessional status.

(4) 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 also licensed under this act.
(5) An individual 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 individual may use the title "behavior analyst" but may not represent oneself as a licensed behavior analyst or a licensed assistant behavior analyst unless also licensed under this act.

(6) 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.

(7) An unlicensed individual pursuing supervised experiential training in applied behavior analysis consistent with a certifying entity's requirements, provided that the experience is supervised by a licensed behavior analyst or licensed psychologist in this Commonwealth who is approved by the certifying entity to provide the supervision. The individual may not represent oneself as a licensed behavior analyst and shall use a title that clearly indicates the individual's trainee status.

(8) An individual who teaches behavior analysis or conducts behavior-analytic research at an accredited college or university, provided that those 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 also licensed under this act.

(9) An individual employed by an entity regulated by the Department of Education who delivers applied behavior analysis services to individuals served by the entity. 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 employers other than the entity or accept remuneration for providing applied behavior analysis services other than the remuneration the individual receives from the entity.

Section 502. Application process.

(a) Application.--An applicant for licensure as a behavior analyst or assistant behavior analyst shall submit an application and requisite fees as provided by the board. The application shall include evidence of the following:

(1) 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, a copy of the applicant's current certification as a board-certified behavior analyst or board-certified behavior analyst-doctoral. The board shall verify the applicant's status with...
the certifying entity.

(3) For a licensed assistant behavior analyst applicant, the following:

   (i) A copy of the applicant's current certification as a board-certified assistant behavior analyst. The board shall verify the applicant's status with the certifying entity.

   (ii) A letter from a licensed behavior analyst in this Commonwealth who is approved by the certifying entity to supervise board-certified assistant behavior analysts stating that the licensed behavior analyst is supervising the applicant in accordance with the certifying entity's current requirements. The board shall verify with the certifying entity that the licensed behavior analyst has the necessary approval to supervise.

(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 has been 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 503. 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 time-limited basis as defined by the board by regulation 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 the applicant's practice in the jurisdiction is time limited. A temporary license shall only be granted if the board verifies the validity of the applicant's certification with the licensed certifying entity or determines that the individual is licensed in good standing in another jurisdiction that imposes licensure requirements comparable to those specified in this act.

Section 504. Licensure by endorsement.

(a) Board authority.--The board may 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 licensure shall have the applicant's current license verified by the board and comply with other requirements under this act.
(b) Requirements.--An applicant for licensure 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.

(c) Limitation.--A person holding a valid license in another state to practice applied behavior analysis and who has applied for a license in this Commonwealth under the provisions of this act may practice applied behavior analysis under the supervision of a person fully licensed in this Commonwealth while awaiting approval of the license application.

Section 505. 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 in good standing by the certifying entity, which signifies that the applicant for renewal has met all requirements for maintaining certification at the appropriate level.

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

(4) Record of completion of 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.
(5) Updated records of completion of the child abuse recognition and reporting continuing education required under section 506(b), if applicable.

(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 506. Child abuse recognition and reporting continuing education.

(a) Applicants for license.--An applicant for licensure under this act shall report suspected child abuse as provided under 23 Pa.C.S. Ch. 63 (relating to child protective services) and shall complete at least three hours of approved child abuse recognition and reporting continuing education as provided under 23 Pa.C.S. § 6383(b)(3) (relating to education and training).

(b) License renewals.--A license holder subject to subsection (a) applying for the renewal of a license under this act shall complete at least two hours of approved child abuse recognition and reporting continuing education as provided under 23 Pa.C.S. § 6383(b)(3).

CHAPTER 7

ADMINISTRATION AND ENFORCEMENT

Section 701. 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 702. Sanctions and disciplinary action.

(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 501(b).

(2) To hold oneself out to be a licensed behavior analyst or licensed assistant behavior analyst unless the individual is licensed under this act.

(3) To hold oneself out as a professional, clinical behavior analyst, or use a substantially similar term, unless the individual is exempt under section 501(b).

(b) Revocation and other disciplinary action.--The board may refuse to issue or renew and may suspend or revoke a license of any person or applicant by a vote of at least a majority of the members of the board for any of the following reasons:

(1) Ineligibility for licensure, including, but not limited to, failure to maintain active certification 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 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.

(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) Board action.--When the board, after notice of a violation of this act and an opportunity for a hearing, finds that the license of any behavior analyst or assistant behavior analyst may be refused, revoked or suspended under this section, the board may:

(1) Administer a public reprimand.

(2) Mandate specific continuing education.

(3) Revoke, suspend, limit or otherwise restrict a license as determined by the board.

(4) Suspend enforcement of the board's finding thereof and place a license holder on probation with the right to vacate the probationary order for noncompliance.
(5) Restore or reissue, in the board's discretion, a suspended license to practice applied behavior analysis and impose any disciplinary or corrective measure which the board might originally have imposed.

(6) Issue a notice to a certifying authority.

(7) Impose a fine of not more than $2,500.

(d) Appeal.--An 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 703. 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 in good standing 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 704. 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 the 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 provide information on filing a complaint about a licensed behavior analyst, licensed 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 employees or agents of the board 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.

CHAPTER 21
MISCELLANEOUS PROVISIONS

Section 2101. Application.

An individual eligible for and seeking licensure under this act must submit an application for licensure within 24 months of the effective date of this section.

Section 2102. Regulations.

(a) General rule.--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 publication. 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.


(b) Temporary regulations.--The authority provided to the board to adopt temporary regulations under subsection (a)(2) shall expire five years following the publication of the temporary regulations. Regulations adopted after this period shall be promulgated as provided by law.

Section 2103. Effective date.

(1) Sections 501(a) and 702(a) shall take effect in two years.

(2) The remainder of this act shall take effect in 60 days.