

1 S.136

2 Introduced by Senator Pollina

3 Referred to Committee on

4 Date:

5 Subject: Professions and occupations; Office of Professional Regulation;
6 applied behavior analysts; licensure

7 Statement of purpose of bill as introduced: This bill proposes to require the
8 Office of Professional Regulation to license and regulate applied behavior
9 analysts and assistant behavior analysts.

10 An act relating to licensing and regulating applied behavior analysts and
11 their assistants

12 It is hereby enacted by the General Assembly of the State of Vermont:

13 Sec. 1. FINDINGS

14 (a) Licensure of applied behavior analysts and their assistants allows
15 consumers to identify behavior analysts and assistants with defined
16 competencies. It promotes creditability in the field of applied behavior
17 analysis and defines scope of practice within State law.

18 (b) Licensure protects the public from harm and the misuse of behavioral
19 technologies by untrained or undertrained practitioners, providing legal

1 oversight of professionals who do not meet criteria established by the State and
2 who advertise themselves as “behavior analysts.”

3 (c) Licensure provides the State with the authority to respond to complaints
4 of unethical practices, which protects not only consumers but also
5 professionals who practice by following ethical and responsible conduct
6 guidelines.

7 Sec. 2. 3 V.S.A. § 122 is amended to read:

8 § 122. OFFICE OF PROFESSIONAL REGULATION

9 An Office of Professional Regulation is created within the Office of the
10 Secretary of State. The Office shall have a director who shall be appointed by
11 the Secretary of State and shall be an exempt employee. The following boards
12 or professions are attached to the Office of Professional Regulation:

13 * * *

14 (43) Property Inspectors

15 (44) Applied Behavior Analysts.

16 Sec. 3. 26 V.S.A. chapter 95 is added to read:

17 CHAPTER 95. APPLIED BEHAVIOR ANALYSIS

18 Subchapter 1. General Provisions

19 § 4901. PURPOSE AND EFFECT

1 In order to safeguard the life and health of the people of this State, a person
2 shall not practice, or offer to practice, as an applied behavior analyst or an
3 assistant behavior analyst unless currently licensed under this chapter.

4 § 4902. DEFINITIONS

5 As used in this chapter:

6 (1) “Applied behavior analyst” means a person who is licensed under
7 this chapter to engage in the practice of applied behavior analysis.

8 (2) “Assistant behavior analyst” means a person who is licensed under
9 this chapter to engage in the practice of applied behavior analysis under the
10 supervision of an applied behavior analyst.

11 (3) “Director” means the Director of Professional Regulation.

12 (4) “License” means a current authorization granted by the Director
13 permitting the practice of applied behavior analysis.

14 (5) “Practice of applied behavior analysis” means the design,
15 implementation, and evaluation of systematic instructional and environmental
16 modifications for the purpose of producing socially significant improvements
17 in and understanding of behavior based on the principles of behavior identified
18 through the experimental analysis of behavior.

19 (A) It includes the identification of functional relationships between
20 behavior and environments.

1 (B) It uses direct observation and measurement of behavior and
2 environment. Contextual factors, establishing operations, antecedent stimuli,
3 positive reinforcers, and other consequences are used, based on identified
4 functional relationships with the environment, in order to produce practical
5 behavior change.

6 § 4903. PROHIBITIONS; OFFENSES

7 (a) It shall be a violation of this chapter for any person, including any
8 corporation, association, or individual, to:

9 (1) sell or fraudulently obtain or furnish any applied behavior analysis
10 degree, diploma, certificate of registration, license, or any other related
11 document or record or to aid or abet another person to do so;

12 (2) practice applied behavior analysis under cover of any degree,
13 diploma, registration, license, or related document or record illegally or
14 fraudulently obtained or signed or issued unlawfully or under fraudulent
15 representation;

16 (3) practice applied behavior analysis unless currently licensed or
17 otherwise authorized to do so under the provisions of this chapter;

18 (4) represent himself or herself as being licensed or otherwise
19 authorized by this State to practice applied behavior analysis or use in
20 connection with a name any words, letters, signs, or figures that imply that a

1 person is an applied behavior analyst or assistant behavior analyst when not
2 licensed or otherwise authorized under this chapter;

3 (5) practice applied behavior analysis during the time a license or
4 authorization issued under this chapter is suspended or revoked; or

5 (6) employ an unlicensed or unauthorized person to practice as an
6 applied behavior analyst or assistant behavior analyst.

7 (b) Any person violating this section shall be subject to the penalties
8 provided in 3 V.S.A. § 127.

9 § 4904. EXCEPTIONS

10 This chapter does not prohibit:

11 (1) The practice of a person who is not licensed under this chapter who
12 is engaged in the course of his or her customary duties:

13 (A) in the practice of a religious ministry;

14 (B) in employment or rehabilitation counseling;

15 (C) as an employee of or under contract with the Agency of Human
16 Services, provided the person does not engage in the practice of applied
17 behavior analysis;

18 (D) as a mediator;

19 (E) in an official evaluation for court purposes;

1 (F) as a member of a self-help group, such as Alcoholics
2 Anonymous, peer counseling, or domestic violence groups, whether or not the
3 person is serving for a consideration; or

4 (G) as a respite caregiver, foster care worker, or hospice worker.

5 (2) A person engaged or acting in the discharge of his or her duties as a
6 student of applied behavior analysis or preparing for the practice of applied
7 behavior analysis, provided that the person's title indicates his or her training
8 status and that the preparation occurs under the supervision of an applied
9 behavior analyst in a recognized training institution or facility or in a training
10 program approved by the Director.

11 (3) The practice of any other occupation or profession by a person duly
12 licensed or otherwise authorized under the laws of this State.

13 Subchapter 2. Administration

14 § 4911. DUTIES OF THE DIRECTOR

15 (a) The Director shall:

16 (1) provide general information to applicants for licensure under this
17 chapter;

18 (2) receive applications for licensure; administer examinations; and
19 provide licenses to applicants qualified under this chapter;

20 (3) administer fees as established by law;

21 (4) refer all disciplinary matters to an administrative law officer;

1 (5) renew, revoke, and reinstate licenses as ordered by an administrative
2 law officer; and

3 (6) explain appeal procedures to persons licensed under this chapter and
4 to applicants and complaint procedures to the public.

5 (b) The Director may adopt rules necessary to perform his or her duties
6 under this section.

7 § 4912. ADVISOR APPOINTEES

8 (a) The Secretary of State shall appoint three persons in accordance with
9 3 V.S.A. § 129b for three-year staggered terms to serve at the Secretary's
10 pleasure as advisors in matters relating to applied behavior analysis. One of
11 the initial appointments shall be for less than a three-year term.

12 (1) Two of these appointees shall be applied behavior analysts, or an
13 applied behavior analyst and an assistant behavior analyst.

14 (A) An applied behavior analyst advisor appointee shall have not less
15 than three years' experience as an applied behavior analyst immediately
16 preceding appointment, shall be licensed as an applied behavior analyst in
17 Vermont, and shall be actively engaged in the practice of applied behavior
18 analysis in this State during incumbency.

19 (B) An assistant behavior analyst advisor appointee shall have not
20 less than two years' experience as an assistant behavior analyst immediately
21 preceding appointment, shall be licensed as an assistant behavior analyst in

1 Vermont, and shall be actively engaged in the practice of applied behavior
2 analysis in this State during incumbency.

3 (C) Not more than one of these appointees may be employed by a
4 designated agency. As used in this subdivision, “designated agency” shall
5 have the same meaning as in 18 V.S.A. § 7252.

6 (2) One of these appointees shall be the parent of an individual with
7 autism who is a recipient of applied behavior analysis services. This appointee
8 shall not have a child or other family member who is receiving applied
9 behavior analysis services from one of the advisor appointees appointed under
10 subdivision (1) of this subsection.

11 (b) The Director shall seek the advice of the advisor appointees in carrying
12 out the provisions of this chapter.

13 Subchapter 3. Licenses

14 § 4921. ELIGIBILITY FOR LICENSURE BY EXAMINATION AS AN
15 APPLIED BEHAVIOR ANALYST

16 To be eligible for licensure as an applied behavior analyst, an applicant
17 shall:

18 (1) Obtain a doctoral or master’s degree from a recognized educational
19 program accredited by the Association for Behavior Analysis International
20 Accreditation Board, or from a program at a recognized educational institution
21 that is approved by the Director and that substantially meets the educational

1 standards of the Association for Behavior Analysis International Accreditation
2 Board or the Behavior Analysis Certification Board. Any program shall
3 include an approved course sequence of the Behavior Analyst Certification
4 Board.

5 (2) Successfully complete an approved practicum or supervised
6 experience in the practice of applied behavior analysis, totaling at least 1,500
7 hours over a period of not less than one calendar year, of which at least
8 75 hours are in direct one-to-one contact with a supervisor.

9 (3) Successfully complete, as defined by the Director, a nationally
10 recognized examination adopted from the Behavior Analyst Certification
11 Board and approved by the Director, related to the principles and practice of
12 applied behavior analysis.

13 § 4922. ELIGIBILITY FOR LICENSURE BY EXAMINATION AS AN
14 ASSISTANT BEHAVIOR ANALYST

15 To be eligible for licensure as an assistant behavior analyst, an applicant
16 shall:

17 (1) Obtain a bachelor's degree from a program at a recognized
18 educational institution that is approved by the Director and that substantially
19 meets the educational standards of the Association for Behavior Analysis
20 International Accreditation Board or the Behavior Analysis Certification

1 Board. Any program shall include an approved course sequence of the
2 Behavior Analyst Certification Board.

3 (2) Successfully complete an approved practicum or supervised
4 experience in the practice of applied behavior analysis, totaling at least 1,000
5 hours over a period of not less than one calendar year, of which at least
6 50 hours are in direct one-to-one contact with a supervisor.

7 (3) Successfully complete, as defined by the Director, a nationally
8 recognized examination adopted from the Behavior Analyst Certification
9 Board and approved by the Director, related to the principles and practice of
10 applied behavior analysis.

11 § 4923. LICENSURE BY ENDORSEMENT

12 A person may be licensed under this chapter if he or she:

13 (1)(A) possesses a valid registration or license to engage in the practice
14 of applied behavior analysis issued by the appropriate regulatory authority of a
15 state, territory, or possession of the United States, or the District of Columbia,
16 based on requirements and qualifications shown by the application to be equal
17 to or greater than the requirements of this chapter; or

18 (B) is certified as a board certified behavior analyst by the Behavior
19 Analyst Certification Board; and

20 (2) meets any active practice requirements established by the Director
21 by rule.

1 § 4924. ISSUANCE OF LICENSES

2 The Director shall issue a license, upon payment of the fees prescribed in
3 this chapter, to any applicant who has satisfactorily met all the requirements of
4 this chapter.

5 § 4925. RENEWALS

6 (a) Licenses shall be renewed every two years upon payment of the
7 renewal fee.

8 (b) Biennially, the Director shall provide notice to each licensee of license
9 expiration and renewal requirements. Upon receipt of the completed form and
10 the renewal fee, the Director shall issue a new license.

11 (c) As a condition of renewal, the Director shall require that a licensee
12 establish that he or she has completed continuing education, as approved by the
13 Director, for each two-year renewal period. At least three hours of continuing
14 education shall be in regard to professional ethics.

15 (1) An applied behavior analyst shall be required to complete at least 24,
16 but not more than 30, hours of continuing education.

17 (2) An assistant behavior analyst shall be required to complete at least
18 16, but not more than 20, hours of continuing education.

19 (d)(1) The Director may reinstate the license of an individual whose license
20 has expired upon payment of the required fee and reinstatement penalty.

1 provided the individual has satisfied all the requirements for renewal, including
2 continuing education.

3 (2) The Director may adopt rules necessary for the protection of the
4 public to assure the Director that an applicant whose license has expired or
5 who has not worked for more than three years as an applied behavior analyst or
6 an assistant behavior analyst is professionally qualified for license renewal.
7 Conditions imposed under this subsection shall be in addition to the other
8 requirements of this section.

9 § 4926. LICENSE AND RENEWAL FEES

10 Applicants and persons regulated under this chapter shall pay those fees set
11 forth in 3 V.S.A. § 125(b).

12 § 4927. APPLICATIONS

13 Applications for licensure and license renewal shall be on forms provided
14 by the Director. Each application shall contain a statement under oath showing
15 the applicant's education, experience, and other pertinent information and shall
16 be accompanied by the required fee.

17 § 4928. SCOPE OF PRACTICE OF APPLIED BEHAVIOR ANALYSTS

18 (a) A person licensed under this chapter shall only engage in the practice of
19 applied behavior analysis upon referral from a licensed health professional, a
20 school team, or other service provider or a family member.

1 (b) The practice of applied behavior analysis shall not include
2 psychological testing, neuropsychology, diagnosis of mental health or
3 developmental conditions, psychotherapy, cognitive therapy, sex therapy,
4 psychoanalysis, psychopharmacological recommendations, hypnotherapy, or
5 academic teaching by college or university faculty.

6 § 4929. SUPERVISION OF ASSISTANT BEHAVIOR ANALYSTS

7 An assistant behavior analyst shall only engage in the practice of applied
8 behavior analysis if she or she has a minimum of five hours per month of
9 off-site case supervision by an applied behavior analyst. A supervising applied
10 behavior analyst may require that his or her supervision of an assistant
11 behavior analyst exceed the minimum requirements of this section, including
12 the requirement that the supervision be on-site.

13 § 4930. DISCLOSURE OF INFORMATION

14 (a) The Director shall adopt rules requiring a person licensed under this
15 chapter to disclose to each client the licensee's professional qualifications and
16 experience, those actions that constitute unprofessional conduct, the method
17 for filing a complaint or making a consumer inquiry, and provisions relating to
18 the manner in which the information shall be displayed and signed by both the
19 licensee and the client.

1 (b) The rules may include provisions for applying or modifying these
2 requirements in cases involving institutionalized clients, minors, and adults
3 under the supervision of a guardian.

4 § 4931. UNPROFESSIONAL CONDUCT

5 (a) Unprofessional conduct means the following conduct and the conduct
6 set forth in 3 V.S.A. § 129a committed by a licensee, an applicant, or a person
7 who later becomes an applicant:

8 (1) has made or caused to be made a false, fraudulent, or forged
9 statement or representation in procuring or attempting to procure licensure or
10 renew a license to practice under this chapter;

11 (2) using dishonest or misleading advertising;

12 (3) misusing a title in professional activity;

13 (4) engaging in any sexual conduct with a client, or with the immediate
14 family member of a client, with whom the licensee has had a professional
15 relationship within the previous five years;

16 (5) harassing, intimidating, or abusing a client;

17 (6) entering into an additional relationship with a client, supervisee,
18 research participant, or student that might impair the person's objectivity or
19 otherwise interfere with a licensee's obligations;

20 (7) independently practicing outside or beyond a licensee's area of
21 training, experience, or competence without appropriate supervision;

1 (8) whether or not committed in this State, has been convicted of a
2 crime related to the practice of applied behavior analysis or a felony which
3 evinces an unfitness to practice applied behavior analysis;

4 (9) is unable to practice applied behavior analysis competently by
5 reason of any cause;

6 (10) has willfully or repeatedly violated any of the provisions of this
7 chapter;

8 (11) is habitually intemperate or is addicted to the use of habit-forming
9 drugs;

10 (12) has a mental, emotional, or physical disability, the nature of which
11 interferes with the ability to practice applied behavior analysis competently; or

12 (13) engages in conduct of a character likely to deceive, defraud, or
13 harm the public.

14 (b) A person shall not be liable in a civil action for damages resulting from
15 the good faith reporting of information to the Director or the Office of
16 Professional Regulation about alleged incompetent, unprofessional, or
17 unlawful conduct of a person licensed under this chapter.

18 Sec. 4. TRANSITIONAL PROVISIONS

19 (a) Advisor appointees. Notwithstanding the provisions of 26 V.S.A.
20 § 4912(a)(1) (advisor appointees; qualifications of appointees) in Sec. 3 of this
21 act that require an advisor appointee to be licensed as an applied behavior

1 analyst or assistant behavior analyst in Vermont, an initial advisor appointee
2 may be in the process of applying for licensure if he or she otherwise meets the
3 requirements for licensure as an applied behavior analyst or an assistant
4 behavior analyst and the other requirements of 26 V.S.A. § 4912(a)(1).

5 (b) Licensing of applied behavior analysts. The Director of the Office of
6 Professional Regulation shall establish a procedure so that an individual may
7 become licensed as an applied behavior analyst without being required to take
8 an examination if he or she:

9 (1) has graduated with a doctoral or master's degree from a regionally
10 accredited university and is a Board Certified Behavior Analyst certificant of
11 the Behavior Analyst Certification Board; or

12 (2) holds either a doctoral or master's degree in behavior analysis or a
13 related field and can demonstrate competency in applied behavior analysis by
14 virtue of training and experience as determined by the Director.

15 (c) Licensing of assistant behavior analysts. The Director of the Office of
16 Professional Regulation shall establish a procedure so that an individual may
17 become licensed as an assistant behavior analyst without being required to take
18 an examination if he or she:

19 (1) has graduated with a bachelor's degree from a regionally accredited
20 university and is a Board Certified Assistant Behavior Analyst certificant of
21 the Behavior Analyst Certification Board; or

1 (2) holds a bachelor's degree in behavior analysis or a related field and
2 can demonstrate competency in applied behavior analysis by virtue of training
3 and experience as determined by the Director.

4 (d) Any person licensed under subsection (b) or (c) of this section shall
5 thereafter be eligible for licensure renewal pursuant to 26 V.S.A. § 4925.

6 (e) The ability of a person to become licensed under the provisions of
7 subsection (b) or (c) of this section shall expire on July 1, 2017.

8 Sec. 5. EFFECTIVE DATES

9 This act shall take effect on passage, except for Secs. 2 (amending 3 V.S.A.
10 § 122) and 3 (adding 26 V.S.A. chapter 95), which shall take effect on July 1,
11 2016.