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~~Red strikethrough~~ = language removed from bill as introduced

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1 TO THE HONORABLE SENATE:

2 The Committee on Government Operations to which was referred Senate Bill
3 No. 136 entitled “An act relating to licensing and regulating applied behavior
4 analysts and their assistants” respectfully reports that it has considered the
5 same and recommends that the bill be amended by striking out all after the
6 enacting clause and inserting in lieu thereof the following:

7 Sec. 1. FINDINGS

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

12 (b) Licensure protects the public from harm and the misuse of behavioral
13 technologies by untrained or undertrained practitioners,~~providing legal~~
14 ~~oversight of professionals who do not meet criteria established by the State and~~
15 ~~who advertise~~ **and ensures that individuals holding** themselves **out** as “behavior
16 analysts” **are appropriately trained and otherwise qualified.**

17 (c) Licensure provides the State with the authority to respond to complaints
18 of unethical practices,~~which protects not only consumers but also~~
19 ~~professionals who practice by following ethical and responsible conduct~~

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1 ~~guidelines~~ **unprofessional conduct and to enforce appropriate practice**
2 **standards within the field of applied behavior analysis.**

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

4 § 122. OFFICE OF PROFESSIONAL REGULATION

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

9 * * *

10 (43) Property Inspectors

11 (44) Applied Behavior Analysts.

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

13 CHAPTER 95. APPLIED BEHAVIOR ANALYSIS

14 Subchapter 1. General Provisions

15 § 4901. PURPOSE AND EFFECT

16 In order to safeguard the life and health of the people of this State, a person
17 shall not **hold himself or herself out as practicing,** practice, or offer to practice,
18 as an applied behavior analyst or an assistant behavior analyst unless currently
19 licensed under this chapter.

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1 § 4902. DEFINITIONS

2 As used in this chapter:

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

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

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

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

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

16 (A) It includes the identification of functional relationships between
17 behavior and environments.

18 (B) It uses direct observation and measurement of behavior and
19 environment. Contextual factors, establishing operations, antecedent stimuli,
20 positive reinforcers, and other consequences are used, based on identified

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1 functional relationships with the environment, in order to produce practical
2 behavior change.

3 § 4903. PROHIBITIONS; OFFENSES

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

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

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

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

15 (4) represent himself or herself as being licensed or otherwise
16 authorized by this State to practice applied behavior analysis or use in
17 connection with a name any words, letters, signs, or figures that imply that a
18 person is an applied behavior analyst or assistant behavior analyst when not
19 licensed or otherwise authorized under this chapter;

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

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

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

7 § 4904. EXCEPTIONS

8 This chapter does not prohibit:

9 (1) The practice of a person who is not licensed under this chapter, who
10 does not use the term “behavior analysis” or similar descriptors suggesting
11 licensure under this chapter, and who is engaged in the course of his or her
12 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;

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- 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; or
5 (H) incident to the practice of any other legally recognized profession
6 or occupation.
- 7 (2) A person engaged or acting in the discharge of his or her duties as a
8 student of applied behavior analysis or preparing for the practice of applied
9 behavior analysis, provided that the person’s title indicates his or her training
10 status and that the preparation occurs under the supervision of an applied
11 behavior analyst in a recognized training institution or facility ~~or in a training~~
12 ~~program approved by the Director.~~
- 13 (3) ~~The practice of any other occupation or profession by a person duly~~
14 ~~licensed or otherwise authorized under the laws of this State~~ **A behavior**
15 **interventionist or paraprofessional, employed by a school, from working under**
16 **the close direction of a supervisor licensed under this chapter, in relation to the**
17 **direct implementation of skill-acquisition and behavior-reduction plans**
18 **developed by the supervisor or in relation to data collection or assessment**
19 **designed by the supervisor, provided the supervisor retains ultimate**

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1 responsibility for delegating professional responsibilities in a manner
2 consistent with 3 V.S.A. § 129a(a)(6).

3 Subchapter 2. Administration

4 § 4911. DUTIES OF THE DIRECTOR

5 (a) The Director shall:

6 (1) provide general information to applicants for licensure under this
7 chapter;

8 (2) receive applications for licensure; ~~administer examinations;~~ and
9 provide licenses to applicants qualified under this chapter;

10 (3) administer fees as established by law;

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

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

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

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

18 § 4912. ADVISOR APPOINTEES

19 (a) The Secretary of State shall appoint three persons in accordance with
20 3 V.S.A. § 129b for three-year staggered terms to serve at the Secretary's

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1 pleasure as advisors in matters relating to applied behavior analysis. One of
2 the initial appointments shall be for less than a three-year term.

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

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

10 (B) An assistant behavior analyst advisor appointee shall have not
11 less than two years' experience as an assistant behavior analyst immediately
12 preceding appointment, shall be licensed as an assistant behavior analyst in
13 Vermont, and shall be actively engaged in the practice of applied behavior
14 analysis in this State during incumbency.

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

18 (2) One of these appointees shall be the parent of an individual with
19 autism who is a recipient of applied behavior analysis services. This appointee
20 shall not have a child or other family member who is receiving applied

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1 behavior analysis services from one of the advisor appointees appointed under
2 subdivision (1) of this subsection.

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

5 Subchapter 3. Licenses

6 § 4921. ELIGIBILITY FOR LICENSURE BY EXAMINATION AS AN
7 APPLIED BEHAVIOR ANALYST

8 To be eligible for licensure as an applied behavior analyst, an applicant
9 shall:

10 (1) Obtain a doctoral or master's degree from a recognized educational
11 program accredited by the Association for Behavior Analysis International
12 Accreditation Board, or from a program at a recognized educational institution
13 that is approved by the Director and that substantially meets the educational
14 standards of the Association for Behavior Analysis International Accreditation
15 Board or the Behavior Analysis Certification Board. Any program shall
16 include an approved course sequence of the Behavior Analyst Certification
17 Board.

18 (2) Successfully complete an approved practicum or supervised
19 experience in the practice of applied behavior analysis, totaling at least 1,500

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1 hours over a period of not less than one calendar year, of which at least
2 75 hours are in direct one-to-one contact with a supervisor.

3 (3) Successfully complete, as defined by the Director, a nationally
4 recognized examination adopted from the Behavior Analyst Certification
5 Board and approved by the Director, related to the principles and practice of
6 applied behavior analysis. This subdivision (3) shall not be construed to
7 require the Director to develop or administer any examination.

8 § 4922. ELIGIBILITY FOR LICENSURE BY EXAMINATION AS AN
9 ASSISTANT BEHAVIOR ANALYST

10 To be eligible for licensure as an assistant behavior analyst, an applicant
11 shall:

12 (1) Obtain a bachelor's degree from a program at a recognized
13 educational institution that is approved by the Director and that substantially
14 meets the educational standards of the Association for Behavior Analysis
15 International Accreditation Board or the Behavior Analysis Certification
16 Board. Any program shall include an approved course sequence of the
17 Behavior Analyst Certification Board.

18 (2) Successfully complete an approved practicum or supervised
19 experience in the practice of applied behavior analysis, totaling at least 1,000

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1 hours over a period of not less than one calendar year, of which at least
2 50 hours are in direct one-to-one contact with a supervisor.

3 (3) Successfully complete, as defined by the Director, a nationally
4 recognized examination adopted from the Behavior Analyst Certification
5 Board and approved by the Director, related to the principles and practice of
6 applied behavior analysis. This subdivision (3) shall not be construed to
7 require the Director to develop or administer any examination.

8 § 4923. LICENSURE BY ENDORSEMENT

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

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

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

17 (2) meets any active practice requirements established by the Director
18 by rule.

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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, on a schedule determined by
7 the Director, upon payment of the 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 may by rule require that a
12 licensee establish that he or she has completed continuing education, as
13 ~~approved by the Director, for each two-year renewal period. At least three~~
14 ~~hours of continuing education shall be in regard to professional ethics. The~~
15 Director may accept proof of current certification from the Behavior Analyst
16 Certification Board as evidence of continuing competency if the Director finds
17 that the maintenance of such certification implies appropriate continuing
18 education.

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

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

3 (d)(1) The Director may reinstate the license of an individual whose license
4 has expired upon payment of the required fee and reinstatement penalty,
5 provided the individual has satisfied all the requirements for renewal, including
6 continuing education.

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

13 § 4926. LICENSE AND RENEWAL FEES

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

16 § 4927. APPLICATIONS

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

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1 § 4928. SCOPE OF PRACTICE OF APPLIED BEHAVIOR ANALYSTS

2 (a) A person licensed under this chapter shall only engage in the practice of
3 applied behavior analysis upon, and within the scope of, a referral from a
4 licensed health professional, ~~a school team, or other service provider or a~~
5 ~~family member~~ or school official duly authorized to make such a referral.

6 (b) The practice of applied behavior analysis shall not include
7 psychological testing, neuropsychology, diagnosis of mental health or
8 developmental conditions, psychotherapy, cognitive therapy, sex therapy,
9 psychoanalysis, psychopharmacological recommendations, hypnotherapy, or
10 academic teaching by college or university faculty.

11 § 4929. SUPERVISION OF ASSISTANT BEHAVIOR ANALYSTS

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

18 § 4930. DISCLOSURE OF INFORMATION

19 ~~(a)~~ The Director ~~shall~~ **may** adopt rules requiring a person licensed under
20 this chapter to disclose ~~to each client~~ the licensee's professional qualifications

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1 and experience, those actions that constitute unprofessional conduct, **and** the
2 method for filing a complaint or making a consumer inquiry, and ~~provisions~~
3 ~~relating to~~ the manner in which ~~the~~ **that** information shall be ~~displayed and~~
4 ~~signed by both the licensee and the client~~ **made available and to whom.**

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

8 § 4931. UNPROFESSIONAL CONDUCT

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

12 (1) ~~has made or caused~~ **making or causing** to be made a false,
13 fraudulent, or forged statement or representation in procuring or attempting to
14 procure licensure or renew a license to practice under this chapter;

15 (2) using dishonest or misleading advertising;

16 (3) misusing a title in professional activity;

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

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

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1 (6) entering into an additional relationship with a client, supervisee,
2 research participant, or student that might impair the person’s objectivity or
3 otherwise interfere with a licensee’s obligations;

4 (7) ~~independently~~ practicing outside or beyond a licensee’s area of
5 training, experience, or competence ~~without appropriate supervision~~;

6 (8) ~~whether or not committed in this State, has~~ **being or having** been
7 convicted of a ~~crime~~ **misdemeanor** related to the practice of applied behavior
8 analysis or a felony ~~which evinces an unfitness to practice applied behavior~~
9 ~~analysis~~;

10 (9) **is being** unable to practice applied behavior analysis competently by
11 reason of any cause;

12 (10) ~~has~~ willfully or repeatedly ~~violated~~ **violating** any of the provisions
13 of this chapter;

14 (11) **is being** habitually intemperate or ~~is~~ addicted to the use of habit-
15 forming drugs;

16 (12) ~~has~~ **having** a mental, emotional, or physical disability, the nature of
17 which interferes with the ability to practice applied behavior analysis
18 competently; ~~or~~

19 (13) ~~engages~~ **engaging** in conduct of a character likely to deceive,
20 defraud, or harm the public, **including exposing clients to unjustifiably**

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1 degrading or cruel interventions or implementing therapies not supported by a
2 competent clinical rationale; or

3 (14) failing to notify the Director in writing within ten days of the loss,
4 revocation, discontinuation, or invalidation of any certification or degree
5 offered to support eligibility for licensure or to demonstrate continuing
6 competency.

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

11 Sec. 4. TRANSITIONAL PROVISIONS

12 (a) Advisor appointees. Notwithstanding the provisions of 26 V.S.A.
13 § 4912(a)(1) (advisor appointees; qualifications of appointees) in Sec. 3 of this
14 act ~~that require an advisor appointee to be licensed as an applied behavior~~
15 ~~analyst or assistant behavior analyst in Vermont,~~ an initial advisor appointee
16 may ~~be in the process of applying for licensure if he or she otherwise meets the~~
17 ~~requirements~~ serve while reasonably expected within one year of appointment
18 to become eligible for licensure as an applied behavior analyst or an assistant
19 behavior analyst and to satisfy the other requirements of
20 26 V.S.A. § 4912(a)(1).

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

5 (1) has graduated with a doctoral or master’s degree from a regionally
6 accredited university and is a Board Certified Behavior Analyst certificant of
7 the Behavior Analyst Certification Board; or

8 (2) holds either a doctoral or master’s degree in behavior analysis or a
9 related field and can demonstrate competency in applied behavior analysis by
10 virtue of training and experience as determined by the Director.

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

15 (1) has graduated with a bachelor’s degree from a regionally accredited
16 university and is a Board Certified Assistant Behavior Analyst certificant of
17 the Behavior Analyst Certification Board; or

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

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

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

5 Sec. 5. EFFECTIVE DATES

6 This act shall take effect on passage, except for Secs. 2 (amending 3 V.S.A.
7 § 122) and 3 (adding 26 V.S.A. chapter 95), which shall take effect on July 1,
8 2016.

9

10

11

12 (Committee vote: _____)

13

14

Senator _____

15

FOR THE COMMITTEE