

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 and ensures that
14 individuals holding themselves out as “behavior analysts” are appropriately
15 trained and otherwise qualified.

16 (c) Licensure provides the State with the authority to respond to complaints
17 of unprofessional conduct and to enforce appropriate practice standards within
18 the field of applied behavior analysis.

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

2 § 122. OFFICE OF PROFESSIONAL REGULATION

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

7 * * *

8 (43) Property Inspectors

9 (44) Applied Behavior Analysts.

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

11 CHAPTER 95. APPLIED BEHAVIOR ANALYSIS

12 Subchapter 1. General Provisions

13 § 4901. PURPOSE AND EFFECT

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

18 § 4902. DEFINITIONS

19 As used in this chapter:

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

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

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

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

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

12 (A) It includes the identification of functional relationships between
13 behavior and environments.

14 (B) It uses direct observation and measurement of behavior and
15 environment. Contextual factors, establishing operations, antecedent stimuli,
16 positive reinforcers, and other consequences are used, based on identified
17 functional relationships with the environment, in order to produce practical
18 behavior change.

19 § 4903. PROHIBITIONS; OFFENSES

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

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

4 (2) practice applied behavior analysis under cover of any degree,
5 diploma, registration, license, or related document or record illegally or
6 fraudulently obtained or signed or issued unlawfully or under fraudulent
7 representation;

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

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

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

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

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

1 § 4904. EXCEPTIONS

2 This chapter does not prohibit:

3 (1) The practice of a person who is not licensed under this chapter, who
4 does not use the term “behavior analysis” or similar descriptors suggesting
5 licensure under this chapter, and who is engaged in the course of his or her
6 customary duties:

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

8 (B) in employment or rehabilitation counseling;

9 (C) as an employee of or under contract with the Agency of Human
10 Services;

11 (D) as a mediator;

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

13 (F) as a member of a self-help group, such as Alcoholics
14 Anonymous, peer counseling, or domestic violence groups, whether or not for
15 consideration;

16 (G) as a respite caregiver, foster care worker, or hospice worker; or

17 (H) incident to the practice of any other legally recognized profession
18 or occupation.

19 (2) A person engaged or acting in the discharge of his or her duties as a
20 student of applied behavior analysis or preparing for the practice of applied
21 behavior analysis, provided that the person’s title indicates his or her training

1 status and that the preparation occurs under the supervision of an applied
2 behavior analyst in a recognized training institution or facility.

3 (3) A behavior interventionist or paraprofessional, employed by a
4 school, from working under the close direction of a supervisor licensed under
5 this chapter, in relation to the direct implementation of skill-acquisition and
6 behavior-reduction plans developed by the supervisor or in relation to data
7 collection or assessment designed by the supervisor, provided the supervisor
8 retains ultimate responsibility for delegating professional responsibilities in a
9 manner consistent with 3 V.S.A. § 129a(a)(6).

10 Subchapter 2. Administration

11 § 4911. DUTIES OF THE DIRECTOR

12 (a) The Director shall:

13 (1) provide general information to applicants for licensure under this
14 chapter;

15 (2) receive applications for licensure and provide licenses to applicants
16 qualified under this chapter;

17 (3) administer fees as established by law;

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

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

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

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

5 § 4912. ADVISOR APPOINTEES

6 (a) The Secretary of State shall appoint three persons in accordance with
7 3 V.S.A. § 129b for three-year staggered terms to serve at the Secretary's
8 pleasure as advisors in matters relating to applied behavior analysis. One of
9 the initial appointments shall be for less than a three-year term.

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

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

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

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

3 (2) Successfully complete an approved practicum or supervised
4 experience in the practice of applied behavior analysis, totaling at least 1,500
5 hours over a period of not less than one calendar year, of which at least
6 75 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. This subdivision (3) shall not be construed to
11 require the Director to develop or administer any examination.

12 § 4922. ELIGIBILITY FOR LICENSURE BY EXAMINATION AS AN
13 ASSISTANT BEHAVIOR ANALYST

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

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

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

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

10 § 4923. LICENSURE BY ENDORSEMENT

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

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

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

19 (2) meets any active practice requirements established by the Director
20 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, 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 may by rule require that a
12 licensee establish that he or she has completed continuing education. The
13 Director may accept proof of current certification from the Behavior Analyst
14 Certification Board as evidence of continuing competency if the Director finds
15 that the maintenance of such certification implies appropriate continuing
16 education.

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

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

7 § 4926. LICENSE AND RENEWAL FEES

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

10 § 4927. APPLICATIONS

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

15 § 4928. SCOPE OF PRACTICE OF APPLIED BEHAVIOR ANALYSTS

16 (a) A person licensed under this chapter shall only engage in the practice of
17 applied behavior analysis upon, and within the scope of, a referral from a
18 licensed health professional or school official duly authorized to make such a
19 referral.

20 (b) The practice of applied behavior analysis shall not include
21 psychological testing, neuropsychology, diagnosis of mental health or

1 developmental conditions, psychotherapy, cognitive therapy, sex therapy,
2 psychoanalysis, psychopharmacological recommendations, hypnotherapy, or
3 academic teaching by college or university faculty.

4 § 4929. SUPERVISION OF ASSISTANT BEHAVIOR ANALYSTS

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

11 § 4930. DISCLOSURE OF INFORMATION

12 The Director may adopt rules requiring a person licensed under this chapter
13 to disclose the licensee's professional qualifications and experience, those
14 actions that constitute unprofessional conduct, and the method for filing a
15 complaint or making a consumer inquiry, and the manner in which that
16 information shall be made available and to whom.

17 § 4931. UNPROFESSIONAL CONDUCT

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

- 1 (1) making or causing to be made a false, fraudulent, or forged
- 2 statement or representation in procuring or attempting to procure licensure or
- 3 renew a license to practice under this chapter;
- 4 (2) using dishonest or misleading advertising;
- 5 (3) misusing a title in professional activity;
- 6 (4) engaging in any sexual conduct with a client, or with the immediate
- 7 family member of a client, with whom the licensee has had a professional
- 8 relationship within the previous five years;
- 9 (5) harassing, intimidating, or abusing a client;
- 10 (6) entering into an additional relationship with a client, supervisee,
- 11 research participant, or student that might impair the person's objectivity or
- 12 otherwise interfere with a licensee's obligations;
- 13 (7) practicing outside or beyond a licensee's area of training,
- 14 experience, or competence;
- 15 (8) being or having been convicted of a misdemeanor related to the
- 16 practice of applied behavior analysis or a felony;
- 17 (9) being unable to practice applied behavior analysis competently by
- 18 reason of any cause;
- 19 (10) willfully or repeatedly violating any of the provisions of this
- 20 chapter;

1 (11) being habitually intemperate or addicted to the use of habit-forming
2 drugs;

3 (12) having a mental, emotional, or physical disability, the nature of
4 which interferes with the ability to practice applied behavior analysis
5 competently;

6 (13) engaging in conduct of a character likely to deceive, defraud, or
7 harm the public, including exposing clients to unjustifiably degrading or cruel
8 interventions or implementing therapies not supported by a competent clinical
9 rationale; or

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

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, an initial advisor appointee may serve while reasonably expected within

1 one year of appointment to become eligible for licensure as an applied
2 behavior analyst or an assistant behavior analyst and to satisfy the other
3 requirements of 26 V.S.A. § 4912(a)(1).

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

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

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

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

18 (1) has graduated with a bachelor’s degree from a regionally accredited
19 university and is a Board Certified Assistant Behavior Analyst certificant of
20 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.

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16 (Committee vote: _____)

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Senator _____

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FOR THE COMMITTEE