

# ASSEMBLY, No. 4608

## STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED OCTOBER 18, 2018

**Sponsored by:**

**Assemblyman ANDREW ZWICKER**

**District 16 (Hunterdon, Mercer, Middlesex and Somerset)**

**Assemblywoman JOANN DOWNEY**

**District 11 (Monmouth)**

**Co-Sponsored by:**

**Assemblywoman Murphy and Assemblyman Mejia**

**SYNOPSIS**

“Behavior Analyst Licensing Act.”

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 12/7/2018)**

1 AN ACT providing for the licensure of behavior analysts and  
2 supplementing Title 45 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

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7 1. This act shall be known and may be cited as the “Behavior  
8 Analyst Licensing Act.”

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10 2. The practice of applied behavior analysis in the State of New  
11 Jersey is determined to affect the public safety and welfare, and to  
12 be subject to regulation and control in the public interest in order to  
13 protect the public by setting standards of qualification, education,  
14 training, and experience for those persons seeking to practice and  
15 be licensed as behavior analysts and assistant behavior analysts.

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17 3. As used in this act:

18 “Board” means the State Board of Behavior Analyst Examiners.

19 “Behavior analysis” means the practice of designing,  
20 implementing, and evaluating instructional and environmental  
21 modifications to produce socially significant improvements in  
22 human behavior, including the empirical identification of functional  
23 relations between behavior and environmental factors, known as  
24 functional assessment and analysis. Behavior analysis interventions  
25 are based on scientific research and direct and indirect observation  
26 and measurement of behavior and environment. Behavior analysts  
27 utilize contextual factors, motivating operations, antecedent stimuli,  
28 positive reinforcement, and other procedures to help individuals  
29 develop new behaviors, increase or decrease existing behaviors, and  
30 emit behaviors under specific environmental conditions. The  
31 practice of behavior analysis does not include psychological testing,  
32 diagnosis of mental or physical disorders, neuropsychology,  
33 psychotherapy, cognitive therapy, sex therapy, psychoanalysis,  
34 hypnotherapy, and counseling as treatment modalities.

35 “Certifying entity” means the Behavior Analyst Certification  
36 Board, Incorporated, or any successor organization whose programs  
37 to certify professional practitioners of behavior analysis are  
38 accredited by the National Commission on Certifying Agencies or  
39 the American National Standards Institute.

40 “Director” means the Director of the Division of Consumer  
41 Affairs in the Department of Law and Public Safety.

42 “Licensed assistant behavior analyst” means a person who holds  
43 a current, valid license as a licensed assistant behavior analyst  
44 pursuant to this act, who is certified by the certifying entity as a  
45 Board Certified Assistant Behavior Analyst, and who practices  
46 behavior analysis under the ongoing supervision of a licensed  
47 behavior analyst.

1       “Licensed behavior analyst” means a person who holds a current,  
2 valid license as a licensed behavior analyst pursuant to this act, and  
3 who is certified by the certifying entity as a Board Certified  
4 Behavior Analyst or Board Certified Behavior Analyst – Doctoral.

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6       4. There is created within the Division of Consumer Affairs in  
7 the Department of Law and Public Safety the State Board of  
8 Behavior Analyst Examiners. The board shall consist of seven  
9 members who are residents of this State and who shall be appointed  
10 by the Governor, as follows: two shall be public members to  
11 represent the interests of the public, pursuant to the provisions of  
12 subsection b. of section 2 of P.L.1971, c.60 (C.45:1-2.2); one  
13 member shall be from a department in the Executive Branch of  
14 State Government, pursuant to the provisions of subsection c. of  
15 section 2 of P.L.1971, c.60 (C.45:1-2.2); three members shall be,  
16 except for the members first appointed, licensed behavior analysts;  
17 and one member shall be, except for the member first appointed, a  
18 licensed assistant behavior analyst. The Governor shall appoint  
19 each member, other than the State executive department member,  
20 for terms of four years, except that of the members first appointed,  
21 two shall serve for a term of four years, two shall serve for a term  
22 of three years, and two shall serve for a term of two years. Any  
23 vacancy in the membership of the board shall be filled for the  
24 unexpired term in the manner provided for the original appointment.  
25 No member of the board may serve more than two successive terms  
26 in addition to any unexpired term to which the member has been  
27 appointed.

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29       5. The board shall organize within 30 days after the  
30 appointment of its members and shall annually elect from among its  
31 members a chairperson and vice-chairperson, and shall appoint a  
32 secretary who need not be a member of the board. The board shall  
33 meet twice a year and may hold additional meetings as necessary to  
34 discharge its duties. A majority of the board membership shall  
35 constitute a quorum.

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37       6. The board shall:

- 38       a. adopt a seal to authenticate its records and proceedings;
- 39       b. prescribe rules pertaining to types and methods of  
40 examination of applicants for licensure consistent with procedures  
41 established by the certifying entity;
- 42       c. examine and pass on the qualifications of applicants for  
43 licensure under this act, and issue a license to each qualified and  
44 successful applicant, attesting to the applicant’s professional  
45 qualification to practice as a licensed behavior analyst or licensed  
46 assistant behavior analyst;

- 1 d. keep records of its proceedings and a register of all persons  
2 to whom licenses have been issued, and a record of all license  
3 renewals, suspensions and revocations;
- 4 e. maintain records of expenses incurred by members of the  
5 board in the performance of their duties;
- 6 f. take disciplinary action, in accordance with P.L.1978, c.73  
7 (C.45:1-14 et seq.), against any licensed behavior analyst or  
8 licensed assistant behavior analyst who violates the provisions of  
9 this act or any regulation promulgated hereunder;
- 10 g. adopt rules and regulations pursuant to the “Administrative  
11 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.) as it deems  
12 necessary to administer the provisions of this act; and
- 13 h. pursuant to P.L.1974, c.46 (C.45:1-3.1 et seq.), prescribe or  
14 change the charges for licensure, renewal and other services  
15 performed.

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17 7. There shall be an Executive Director of the board appointed  
18 by the director who shall serve at the director's pleasure. The salary  
19 of the Executive Director shall be determined by the director within  
20 the limits of available funds. The director may, within the limits of  
21 available funds, hire any assistants as are necessary to administer  
22 this act.

23

24 8. a. No person shall practice, attempt to practice, or make any  
25 representation as being able to practice as a licensed behavior  
26 analyst or licensed assistant behavior analyst unless the person is  
27 licensed in accordance with the provisions of this act.

28 b. No person shall use the title “licensed behavior analyst” or  
29 “licensed assistant behavior analyst” or the abbreviation “LBA” or  
30 “LABA” or any other title, designation, words, letters,  
31 abbreviations or insignia, except for those persons exempted  
32 pursuant to section 13 of this act, indicating the practice of behavior  
33 analysis unless licensed pursuant to the provisions of this act.

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35 9. To be eligible to be licensed as a licensed behavior analyst,  
36 an applicant shall fulfill the following requirements:

- 37 a. be at least 21 years of age;
- 38 b. be of good moral character; and
- 39 c. have a current certification as a Board Certified Behavior  
40 Analyst or Board Certified Behavior Analyst – Doctoral verified by  
41 the certifying entity.

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43 10. To be eligible to be licensed as a licensed assistant behavior  
44 analyst, an applicant shall fulfill the following requirements:

- 45 a. be at least 21 years of age;
- 46 b. be of good moral character;
- 47 c. have a current certification as a Board Certified Assistant  
48 Behavior Analyst verified by the certifying entity; and

1 d. submit proof satisfactory to the board of ongoing  
2 supervision by a licensed behavior analyst in accordance with the  
3 certifying entity's requirements for Board Certified Assistant  
4 Behavior Analysts.

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6 11. a. All licenses shall be issued for a two-year period and  
7 shall be renewed upon filing a renewal application. A license shall  
8 not be renewed until the license holder submits satisfactory  
9 evidence to the board that the license holder continues to be  
10 certified by the certifying entity.

11 b. All applicants shall pay a fee for licensure and renewal for  
12 licensure under this act. Fees shall be determined by the board and  
13 established by regulation. The revenue generated from these fees  
14 shall not exceed the operating costs incurred by the board in  
15 administering this act.

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17 12. Upon payment to the board of a fee and the submission of a  
18 written application provided by the board, the board shall issue a  
19 license to any person who holds a valid license issued by another  
20 state or possession of the United States or the District of Columbia  
21 which has standards substantially equivalent to those of this State,  
22 as determined by the board.

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24 13. Nothing in this act shall be construed to apply to:

25 a. the practice, activities, and services of qualified members of  
26 other professions, including physicians, psychologists,  
27 psychoanalysts, marriage and family therapists, social workers,  
28 professional or rehabilitation counselors, or any other profession  
29 licensed by the State, provided that:

30 (1) qualified members of other professions do not hold  
31 themselves out to the public as possessing a license issued pursuant  
32 to this act or represent themselves by any professional title  
33 regulated by this act;

34 (2) applied behavior analysis is in the scope of practice of the  
35 other profession as defined by law; and

36 (3) the services provided by qualified members of other  
37 professions are within the boundaries of the licensed professional's  
38 education, training, and competence; and

39 b. provided they do not represent themselves as possessing a  
40 license issued pursuant to this act or represent themselves by any  
41 professional title regulated by this act:

42 (1) family members of recipients of applied behavior analysis  
43 services who implement behavior analysis treatment plans with the  
44 recipients under the extended authority and direction of a licensed  
45 behavior analyst or a licensed assistant behavior analyst;

46 (2) paraprofessional technicians who deliver applied behavior  
47 analysis services under the extended authority and direction of a  
48 licensed behavior analyst or licensed assistant behavior analyst,

- 1 provided that such paraprofessional technicians use titles that  
2 indicate their nonprofessional status;
- 3 (3) behavior analysts who practice with nonhumans, and who  
4 may use the title “behavior analyst,” including applied animal  
5 behaviorists and animal trainers;
- 6 (4) professionals who provide general applied behavior analysis  
7 services to organizations, and who may use the title “behavior  
8 analyst,” if those services are for the benefit of the organizations  
9 and do not involve direct services to individuals;
- 10 (5) matriculated college or university students whose applied  
11 behavior analysis activities are part of a defined program of study,  
12 course, practicum, internship, or postdoctoral fellowship, if the  
13 applied behavior analysis activities under this exemption are  
14 directly supervised by a licensed behavior analyst in this State, an  
15 instructor in a course sequence approved by the certifying entity, or  
16 another qualified faculty member, provided that such students use  
17 titles that indicate their nonprofessional status;
- 18 (6) unlicensed persons pursuing experience in applied behavior  
19 analysis consistent with the experience requirements of the  
20 certifying entity, if the experience is supervised in accordance with  
21 the requirements of the certifying entity;
- 22 (7) persons who teach behavior analysis or conduct behavior  
23 analytic research, and who may use the title “behavior analyst,” if  
24 the teaching or research does not involve the direct delivery of  
25 applied behavior analysis services to individuals;
- 26 (8) behavior analysts licensed in another jurisdiction or certified  
27 by the certifying entity to practice independently and who work in  
28 this State not more than 10 consecutive business days, or not more  
29 than 15 intermittent business days, in any 90-day period;
- 30 (9) employees of a school district, charter school, education  
31 services commission, or private school in the performance of  
32 regular employment duties, if the provision of applied behavior  
33 analysis services is only on behalf of the school employer and  
34 remuneration for the provision of those services is provided solely  
35 by the school employer; and
- 36 (10) with respect to the three years following the effective date  
37 of this act, persons who are working under the authority of the  
38 Division of Developmental Disabilities, in the Department of  
39 Human Services, if the provision of applied behavior analysis  
40 services is only on behalf of the Division of Developmental  
41 Disabilities and remuneration for the provision of those services is  
42 provided solely by the Division of Developmental Disabilities.
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- 44 14. This act shall take effect on the 180th day next following  
45 enactment.

## STATEMENT

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This bill provides for the regulation and licensing of behavior analysts. The bill establishes the State Board of Behavior Analyst Examiners in the Division of Consumer Affairs in the Department of Law and Public Safety, which will consist of seven members. Two members will be public members; three members will be licensed behavior analysts, except for the members first appointed; one member will be a licensed assistant behavior analyst, except for the member first appointed; and one member will be a State Executive Department member.

The bill permits the board to establish fees for those licensed under the bill and incorporates the terms of the law on fees of professional boards, P.L.1974, c.46 (C.45:1-3.1 et seq.), and the uniform enforcement and procedure act, P.L.1978, c.73 (C.45:1-14 et seq.), for enforcement of standards and punishment of violations.

The bill also prohibits persons from practicing, attempting to practice, or making any representation as being able to practice as a licensed behavior analyst or licensed assistant behavior analyst unless the person is licensed in accordance with the provisions of the bill. Additionally, the bill prohibits persons from using the title “licensed behavior analyst” or “licensed assistant behavior analyst” or the abbreviation “LBA” or “LABA” or any other title, designation, words, letters, abbreviations or insignia, except for those persons specifically exempted under the bill, indicating the practice of behavior analysis unless licensed pursuant to this provisions of the bill.

To be eligible to be licensed as a licensed behavior analyst, an applicant shall: be at least 21 years of age; be of good moral character; and have a current certification as a Board Certified Behavior Analyst or Board Certified Behavior Analyst – Doctoral verified by the certifying entity.

To be eligible to be licensed as a licensed assistant behavior analyst, an applicant shall: be at least 21 years of age; be of good moral character; have a current certification as a Board Certified Assistant Behavior Analyst verified by the certifying entity; and submit proof satisfactory to the board of ongoing supervision by a licensed behavior analyst in accordance with the certifying entity’s requirements for Board Certified Assistant Behavior Analysts.

Currently, certification as a Board Certified Behavior Analyst or Board Certified Behavior Analyst – Doctoral requires completion of a graduate degree, completion of hours of applied experience, and passing an examination. Similarly, current requirements for certification as a Board Certified Assistant Behavior Analyst include completion of an undergraduate degree, completion of hours of applied experience, and passing an examination.

Under the bill, “certifying entity” is defined as the Behavior Analyst Certification Board, Incorporated, or any successor

1 organization whose programs to certify professional practitioners of  
2 behavior analysis are accredited by the National Commission on  
3 Certifying Agencies or the American National Standards Institute.

4 The bill provides for licenses to be issued for a two-year period,  
5 which may be renewed upon filing a renewal application. A license  
6 will not be renewed until the license holder submits satisfactory  
7 evidence to the board that the license holder continues to be  
8 certified by the certifying entity. The bill also provides that, upon  
9 payment to the board of a fee and the submission of a written  
10 application provided by the board, the board will issue a license to  
11 any person who holds a valid license issued by another state or  
12 possession of the United States or the District of Columbia which  
13 has standards substantially equivalent to those of this State, as  
14 determined by the board.

15 Finally, the bill provides an exemption to the licensure  
16 requirements for any other profession licensed by the State,  
17 provided that: qualified members of other professions do not hold  
18 themselves out to the public as possessing a license issued pursuant  
19 to this bill or represent themselves by any professional title  
20 regulated by this bill; applied behavior analysis is in the scope of  
21 practice of the other profession as defined by law; and the services  
22 provided by qualified members of other professions are within the  
23 boundaries of the licensed professional's education, training, and  
24 competence. The exemption to the licensure requirements also  
25 apply to various persons under certain circumstances, provided that  
26 they do not represent themselves as possessing a license issued  
27 pursuant to this bill or represent themselves by any professional  
28 title regulated by this bill.