

[First Reprint]

ASSEMBLY, No. 4608

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED OCTOBER 18, 2018

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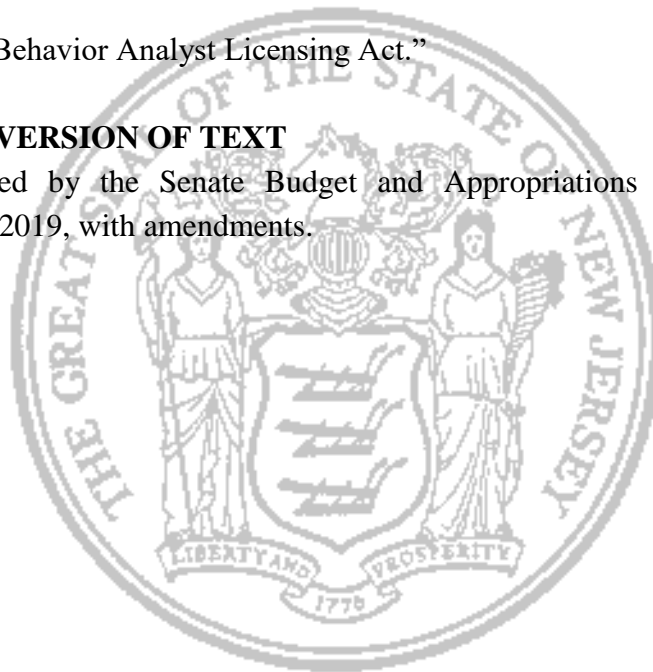
Assemblywoman Murphy, Assemblymen Mejia, Giblin and Senator Singleton

SYNOPSIS

“Applied Behavior Analyst Licensing Act.”

CURRENT VERSION OF TEXT

As reported by the Senate Budget and Appropriations Committee on December 5, 2019, with amendments.



(Sponsorship Updated As Of: 12/17/2019)

1 AN ACT providing for the licensure of ¹applied¹ behavior analysts
2 and 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:

6

7 1. This act shall be known and may be cited as the “¹Applied¹
8 Behavior Analyst Licensing Act.”

9

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 ¹applied¹ behavior analysts and assistant ¹applied¹
16 behavior analysts.

17

18 3. As used in this act:

19 “Board” means the State Board of ¹Applied¹ Behavior Analyst
20 Examiners.

21 “¹**Behavior** Applied behavior¹ analysis” means the practice of
22 designing, implementing, and evaluating instructional and
23 environmental modifications to produce socially significant
24 improvements in human behavior, including the empirical
25 identification of functional relations between behavior and
26 environmental factors, known as functional assessment and
27 analysis. ¹**Behavior** Applied behavior¹ analysis interventions are
28 based on scientific research and direct and indirect observation and
29 measurement of behavior and environment. ¹**Behavior** Applied
30 behavior¹ analysts utilize contextual factors, motivating operations,
31 antecedent stimuli, positive reinforcement, and other procedures to
32 help individuals develop new behaviors, increase or decrease
33 existing behaviors, and emit behaviors under specific environmental
34 conditions. The practice of behavior analysis does not include
35 psychological testing, diagnosis of mental ¹**or** ¹ physical ¹ or
36 speech language, hearing, and other communication and
37 swallowing¹ disorders, neuropsychology, psychotherapy, cognitive
38 therapy, sex therapy, psychoanalysis, hypnotherapy, and counseling
39 as treatment modalities.

40 ¹**“Certifying entity”** means the Behavior Analyst Certification
41 Board, Incorporated, or any successor organization whose programs
42 to certify professional practitioners of behavior analysis are
43 accredited by the National Commission on Certifying Agencies or
44 the American National Standards Institute.]¹

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SBA committee amendments adopted December 5, 2019.

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

3 “Licensed assistant ¹applied¹ behavior analyst” means a person
4 who holds a current, valid license ¹[as a licensed assistant behavior
5 analyst pursuant to this act, who is certified by the certifying entity
6 as a Board Certified Assistant Behavior Analyst, and who
7 practices] to practice applied¹ behavior analysis under the ongoing
8 supervision of a licensed ¹applied¹ behavior analyst pursuant to this
9 act¹ .

10 “Licensed ¹applied¹ behavior analyst” means a person who holds
11 a current, valid license ¹[as a licensed behavior analyst] to practice
12 applied behavior analysis¹ pursuant to this act ¹[, and who is
13 certified by the certifying entity as a Board Certified Behavior
14 Analyst or Board Certified Behavior Analyst – Doctoral]¹ .

15

16 4. There is created within the Division of Consumer Affairs in
17 the Department of Law and Public Safety the State Board of
18 ¹Applied¹ Behavior Analyst Examiners. The board shall consist of
19 seven members who are residents of this State and who shall be
20 appointed by the Governor, as follows: two shall be public members
21 to represent the interests of the public, pursuant to the provisions of
22 subsection b. of section 2 of P.L.1971, c.60 (C.45:1-2.2); one
23 member shall be from a department in the Executive Branch of
24 State Government, pursuant to the provisions of subsection c. of
25 section 2 of P.L.1971, c.60 (C.45:1-2.2); three members shall be ¹[,
26 except for the members first appointed,]¹ licensed ¹applied¹
27 behavior analysts ¹, except for the members first appointed, who shall
28 be Board Certified Behavior Analysts or Board Certified Behavior
29 Analysts-Doctoral¹ ; and one member shall be ¹[, except for the
30 member first appointed,]¹ a licensed assistant ¹applied¹ behavior
31 analyst ¹, except for the member first appointed, who shall be a Board
32 Certified Assistant Behavior Analyst¹. The Governor shall appoint
33 each member, other than the State executive department member,
34 for terms of four years, except that of the members first appointed,
35 two shall serve for a term of four years, two shall serve for a term
36 of three years, and two shall serve for a term of two years. Any
37 vacancy in the membership of the board shall be filled for the
38 unexpired term in the manner provided for the original appointment.
39 No member of the board may serve more than two successive terms
40 in addition to any unexpired term to which the member has been
41 appointed.

42

43 5. The board shall organize within 30 days after the
44 appointment of its members and shall annually elect from among its
45 members a chairperson and vice-chairperson, and shall appoint a
46 secretary who need not be a member of the board. The board shall

1 meet twice a year and may hold additional meetings as necessary to
2 discharge its duties. A majority of the board membership shall
3 constitute a quorum.

4

5 6. The board shall:

6 a. adopt a seal to authenticate its records and proceedings;

7 b. prescribe rules pertaining to ¹the requirements of qualification
8 for licensure, including education, professional experience, and the¹
9 types and methods of examination of applicants for licensure
10 ¹consistent with procedures established by the certifying entity¹;

11 c. examine and pass on the qualifications of applicants for
12 licensure under this act, and issue a license to each qualified and
13 successful applicant, attesting to the applicant's professional
14 qualification to practice as a licensed ¹applied¹ behavior analyst or
15 licensed assistant ¹applied¹ behavior analyst;

16 d. keep records of its proceedings and a register of all persons
17 to whom licenses have been issued, and a record of all license
18 renewals, suspensions and revocations;

19 e. maintain records of expenses incurred by members of the
20 board in the performance of their duties;

21 f. take disciplinary action, in accordance with P.L.1978, c.73
22 (C.45:1-14 et seq.), against any licensed ¹applied¹ behavior analyst
23 or licensed assistant ¹applied¹ behavior analyst who violates the
24 provisions of this act or any regulation promulgated hereunder;

25 g. adopt rules and regulations pursuant to the "Administrative
26 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) as it deems
27 necessary to administer the provisions of this act; and

28 h. pursuant to P.L.1974, c.46 (C.45:1-3.1 et seq.), prescribe or
29 change the charges for licensure, renewal and other services
30 performed.

31

32 7. There shall be an Executive Director of the board appointed
33 by the director who shall serve at the director's pleasure. The salary
34 of the Executive Director shall be determined by the director within
35 the limits of available funds. The director may, within the limits of
36 available funds, hire any assistants as are necessary to administer
37 this act.

38

39 8. a. No person shall practice, attempt to practice, or make any
40 representation as being able to practice ¹as a licensed behavior
41 analyst or licensed assistant behavior analyst ¹applied behavior
42 analysis¹ unless the person is licensed in accordance with the
43 provisions of this act.

44 b. No person shall use the title "licensed behavior analyst ¹₁"
45 ¹or¹ "licensed assistant behavior analyst ¹₁" ¹licensed applied
46 behavior analyst, "licensed assistant applied behavior analyst,"¹ or
47 the abbreviation "LBA" or "LABA" or any other title, designation,

1 words, letters, abbreviations or insignia, except for those persons
2 exempted pursuant to section 13 of this act, indicating the practice
3 of ¹applied¹ behavior analysis unless licensed pursuant to the
4 provisions of this act.

5
6 9. To be eligible to be licensed as a licensed ¹applied¹ behavior
7 analyst, an applicant shall fulfill the following requirements:

8 a. be at least 21 years of age;

9 b. be of good moral character; ¹[and]¹

10 c. have a current certification ¹[as a Board Certified Behavior
11 Analyst or Board Certified Behavior Analyst – Doctoral verified by
12 the certifying entity] from a nonprofit organization accredited by
13 the National Commission for Certifying Agencies, the American
14 National Standards Institute, or a substantial equivalent to
15 credential professional practitioners of applied behavior analysis
16 related to the principles and practice of the profession of applied
17 behavior analysis that is approved by the board; and

18 d. submit proof that the applicant holds a graduate degree from
19 an accredited university or other institution of higher learning.¹

20

21 10. To be eligible to be licensed as a licensed assistant ¹applied¹
22 behavior analyst, an applicant shall fulfill the following
23 requirements:

24 a. be at least 21 years of age;

25 b. be of good moral character;

26 c. have a current certification ¹[as a Board Certified Assistant
27 Behavior Analyst verified by the certifying entity; and] from a
28 nonprofit organization accredited by the National Commission for
29 Certifying Agencies, the American National Standards Institute, or
30 a substantial equivalent to credential professional practitioners of
31 applied behavior analysis related to the principles and practice of
32 the profession of applied behavior analysis that is approved by the
33 board;¹

34 d. ¹submit proof that the applicant holds an undergraduate degree
35 from an accredited university or other institution of higher learning;
36 and

37 e.¹ submit proof satisfactory to the board of ongoing
38 supervision by a licensed ¹applied¹ behavior analyst in accordance
39 with the ¹[certifying entity's] board's¹ requirements ¹[for Board
40 Certified Assistant Behavior Analysts]¹.

41

42 11. a. All licenses shall be issued for a two-year period and
43 shall be renewed upon filing a renewal application. A license shall
44 not be renewed until the license holder submits satisfactory
45 evidence to the board that the license holder continues to ¹[be

1 certified by the certifying entity] fulfill the requirements for
2 licensure¹ .

3 b. All applicants shall pay a fee for licensure and renewal for
4 licensure under this act. Fees shall be determined by the board and
5 established by regulation. The revenue generated from these fees
6 shall not exceed the operating costs incurred by the board in
7 administering this act.

8
9 12. Upon payment to the board of a fee and the submission of a
10 written application provided by the board, the board shall issue a
11 license to any person who holds a valid license issued by another
12 state or possession of the United States or the District of Columbia
13 which has standards substantially equivalent to those of this State,
14 as determined by the board.

15
16 13. Nothing in this act shall be construed to apply to:

17 a. the practice, activities, and services of qualified members of
18 other professions, including physicians, psychologists,
19 psychoanalysts, marriage and family therapists, social workers,
20 professional or rehabilitation counselors, ¹speech-language
21 pathologists or audiologists,¹ or any other profession licensed by
22 the State, provided that:

23 (1) qualified members of other professions do not hold
24 themselves out to the public as possessing a license issued pursuant
25 to this act or represent themselves by any professional title
26 regulated by this act; ¹and¹

27 (2) ¹[applied behavior analysis is in the scope of practice of the
28 other profession as defined by law; and

29 (3) ¹] the services provided by qualified members of other
30 professions are within the boundaries of the licensed professional's
31 education, training, and competence; and

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

35 (1) family members of recipients of applied behavior analysis
36 services who implement ¹applied¹ behavior analysis treatment plans
37 with the recipients under the extended authority and direction of a
38 licensed ¹applied¹ behavior analyst or a licensed assistant ¹applied¹
39 behavior analyst;

40 (2) paraprofessional technicians who deliver applied behavior
41 analysis services under the extended authority and direction of a
42 licensed ¹applied¹ behavior analyst ¹[or] ¹ licensed assistant
43 ¹applied¹ behavior analyst, provided that such paraprofessional
44 technicians use titles that indicate their nonprofessional status;

45 (3) ¹applied¹ behavior analysts who practice with nonhumans,
46 and who may use the title “ ¹applied¹ behavior analyst,” including
47 applied animal behaviorists and animal trainers;

- 1 (4) professionals who provide general applied behavior analysis
2 services to organizations, and who may use the title “ ‘applied’
3 behavior analyst,” if those services are for the benefit of the
4 organizations and do not involve direct services to individuals;
- 5 (5) matriculated college or university students whose applied
6 behavior analysis activities are part of a defined program of study,
7 course, practicum, internship, or postdoctoral fellowship, if the
8 applied behavior analysis activities under this exemption are
9 directly supervised by a licensed ‘applied’ behavior analyst ’,
10 psychologist or exempt professional¹ in this State, an instructor in a
11 course sequence approved by the ‘[certifying entity] board’ ¹, or
12 another qualified faculty member, provided that such students use
13 titles that indicate their nonprofessional status;
- 14 (6) unlicensed persons pursuing experience in applied behavior
15 analysis consistent with the experience requirements of the
16 ‘[certifying entity] board’ ¹, if the experience is supervised in
17 accordance with the requirements of the ‘[certifying entity] board’¹;
- 18 (7) persons who teach ‘applied’ behavior analysis or conduct
19 behavior analytic research, and who may use the title “ ‘applied’
20 behavior analyst,” if the teaching or research does not involve the
21 direct delivery of applied behavior analysis services to individuals;
- 22 (8) ‘applied’ behavior analysts ‘[licensed in another jurisdiction
23 or certified by the certifying entity to practice independently and]
24 or applied assistant behavior analysts¹ who work in this State not
25 more than 10 consecutive business days, or not more than 15
26 intermittent business days, in any 90-day period ¹, if the analyst
27 resides outside, and the analyst’s major practice is outside of, the State
28 of New Jersey, and the analyst gives the board a summary of
29 qualifications and a minimum of 10 days written notice of the
30 analyst’s intention to practice in the State under this section, provided
31 the analyst: (a) is certified or licensed in another state under
32 substantially equivalent requirements as an applied behavior analyst
33 under this act; (b) is a Board Certified Behavior Analyst, Board
34 Certified Behavior Analyst-Doctoral, or Board Certified Assistant
35 Behavior Analyst; or (c) resides in a state which does not certify or
36 license applied behavior analysts and the board considers the analyst’s
37 professional qualifications to be substantially equivalent to the
38 requirements for licensing under this act; and is not adjudged and
39 notified by the board to be ineligible for licensing under this act¹;
- 40 (9) employees of a school district, charter school, education
41 services commission, or private school in the performance of
42 regular employment duties, if the provision of applied behavior
43 analysis services is only on behalf of the school employer and
44 remuneration for the provision of those services is provided solely
45 by the school employer; ‘[and]’¹

1 (10) ¹【with respect to the three years following the effective date
2 of this act,】¹ persons who are working under the authority of ¹or
3 under contract with¹ the Division of Developmental Disabilities, in
4 the Department of Human Services, if the provision of applied
5 behavior analysis services is only on behalf of ¹or under contract
6 with¹the Division of Developmental Disabilities and remuneration
7 for the provision of those services is provided solely by the
8 Division of Developmental Disabilities ¹or one of its contracted
9 providers. This paragraph shall be in effect only during the first
10 three years after the effective date of this act; and

11 (11) persons who are working under the authority of and under
12 contract with the New Jersey Early Intervention Program, in the
13 Department of Health, if the provision of applied behavior analysis
14 services is only on behalf of or under contract with the New Jersey
15 Early Intervention Program or one of its contracted providers. This
16 paragraph shall be in effect only during the first five years after the
17 effective date of this act¹.

18

19 14. This act shall take effect on the 180th day next following
20 enactment.