

[First Reprint]

**SENATE, No. 3099**

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**STATE OF NEW JERSEY**  
**218th LEGISLATURE**

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INTRODUCED OCTOBER 18, 2018

**Sponsored by:**

**Senator LORETTA WEINBERG**

**District 37 (Bergen)**

**Senator THOMAS H. KEAN, JR.**

**District 21 (Morris, Somerset and Union)**

**Co-Sponsored by:**

**Senator Singleton**

**SYNOPSIS**

“Behavior Analyst Licensing Act.”

**CURRENT VERSION OF TEXT**

As reported by the Senate Commerce Committee on December 3, 2018, with amendments.



**(Sponsorship Updated As Of: 10/30/2018)**

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:*

6  
7 1. This act shall be known and may be cited as the “Behavior  
8 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 behavior analysts and assistant behavior analysts.

16  
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

**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:

<sup>1</sup>Senate SCM committee amendments adopted December 3, 2018.

1 behavior analysis under the ongoing supervision of a licensed  
2 behavior analyst.

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

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

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

38  
39 6. The board shall:  
40 a. adopt a seal to authenticate its records and proceedings;  
41 b. <sup>1</sup>prescribe rules pertaining to types and methods of  
42 examination of applicants for licensure consistent with procedures  
43 established by the certifying entity;  
44 c. examine and pass on the qualifications of applicants for  
45 licensure under this act, and issue a license to each qualified and  
46 successful applicant, attesting to the applicant’s professional  
47 qualification to practice as a licensed behavior analyst or licensed

1 assistant behavior analyst] issue and renew licenses pursuant to this  
2 act<sup>1</sup>;

3 <sup>1</sup>[d.] c.<sup>1</sup> keep records of its proceedings and a register of all  
4 persons to whom licenses have been issued, and a record of all  
5 license renewals, suspensions and revocations;

6 <sup>1</sup>[e.] d.<sup>1</sup> maintain records of expenses incurred by members of  
7 the board in the performance of their duties;

8 <sup>1</sup>[f.] e.<sup>1</sup> take disciplinary action, in accordance with P.L.1978,  
9 c.73 (C.45:1-14 et seq.), against any licensed behavior analyst or  
10 licensed assistant behavior analyst who violates the provisions of  
11 this act or any regulation promulgated hereunder;

12 <sup>1</sup>[g.] f.<sup>1</sup> adopt rules and regulations pursuant to the  
13 “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et  
14 seq.) as it deems necessary to administer the provisions of this act;  
15 and

16 <sup>1</sup>[h.] g.<sup>1</sup> pursuant to P.L.1974, c.46 (C.45:1-3.1 et seq.),  
17 prescribe or change the charges for licensure, renewal and other  
18 services performed.

19

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

26

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

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

37

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

40 a. be at least 21 years of age;

41 b. be of good moral character; and

42 c. have a current certification as a Board Certified Behavior  
43 Analyst or Board Certified Behavior Analyst – Doctoral verified by  
44 the certifying entity.

45

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

- 1       a.   be at least 21 years of age;
- 2       b.   be of good moral character;
- 3       c.   have a current certification as a Board Certified Assistant
- 4 Behavior Analyst verified by the certifying entity; and
- 5       d.   submit proof satisfactory to the board of ongoing
- 6 supervision by a licensed behavior analyst in accordance with the
- 7 certifying entity's requirements for Board Certified Assistant
- 8 Behavior Analysts.

9

10       11. a. All licenses shall be issued for a two-year period and

11 shall be renewed upon filing a renewal application. A license shall

12 not be renewed until the license holder submits satisfactory

13 evidence to the board that the license holder continues to be

14 certified by the certifying entity.

15       b. All applicants shall pay a fee for licensure and renewal for

16 licensure under this act. Fees shall be determined by the board and

17 established by regulation. The revenue generated from these fees

18 shall not exceed the operating costs incurred by the board in

19 administering this act.

20

21       12. Upon payment to the board of a fee and the submission of a

22 written application provided by the board, the board shall issue a

23 license to any person who holds a valid license issued by another

24 state or possession of the United States or the District of Columbia

25 which has standards substantially equivalent to those of this State,

26 as determined by the board.

27

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

29       a. the practice, activities, and services of qualified members of

30 other professions, including physicians, psychologists,

31 psychoanalysts, marriage and family therapists, social workers,

32 professional or rehabilitation counselors, or any other profession

33 licensed by the State, provided that:

34       (1) qualified members of other professions do not hold

35 themselves out to the public as possessing a license issued pursuant

36 to this act or represent themselves by any professional title

37 regulated by this act;

38       (2) applied behavior analysis is in the scope of practice of the

39 other profession as defined by law; and

40       (3) the services provided by qualified members of other

41 professions are within the boundaries of the licensed professional's

42 education, training, and competence; and

43       b. provided they do not represent themselves as possessing a

44 license issued pursuant to this act or represent themselves by any

45 professional title regulated by this act:

46       (1) family members of recipients of applied behavior analysis

47 services who implement behavior analysis treatment plans with the

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

1 by the Division of Developmental Disabilities <sup>1</sup>or one of its  
2 contracted providers. This paragraph shall be in effect only during  
3 the first three years after the effective date of this act<sup>1</sup>.  
4

5 14. This act shall take effect on the 180th day next following  
6 enactment.