

SENATE No. 135

The Commonwealth of Massachusetts

PRESENTED BY:

Barbara A. L'Italien

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act providing for the licensing of applied behavior analysts.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Barbara A. L'Italien</i>	<i>Second Essex and Middlesex</i>	
<i>John W. Scibak</i>	<i>2nd Hampshire</i>	<i>1/30/2017</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>2/1/2017</i>

SENATE No. 135

By Ms. L'Italien, a petition (accompanied by bill, Senate, No. 135) of Barbara A. L'Italien, John W. Scibak and James B. Eldridge for legislation to provide for the licensing of applied behavior analysts. Consumer Protection and Professional Licensure.

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act providing for the licensing of applied behavior analysts.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 88 of chapter 13 of the General Laws, as appearing in the 2014
2 Official Edition, is hereby amended by striking out the figure “13” and inserting in place thereof
3 the following figure:- “11”.

4 SECTION 2. Section 89 of said chapter 13 of the General Laws is hereby further
5 amended by striking out the figure “13” and inserting in place thereof the following figure:-
6 “11”.

7 SECTION 3. Said chapter 13 of the General Laws is hereby further amended by adding
8 the following 3 sections:-

9 Section 109. (a) There shall be within the division of professional licensure a board of
10 registration of applied behavior analysts. The board shall consist of 9 members who shall be
11 residents of the commonwealth and who shall be appointed by the governor for terms of 3 years.
12 Five members of the board shall be applied behavior analysts licensed under sections 266 to 280,

13 inclusive, of chapter 112 who shall have been actively engaged in the practice of applied
14 behavior analysis for the 5 years preceding their appointments, 2 members shall be assistant
15 applied behavior analysts licensed under said sections 266 to 280, inclusive, of said chapter 112
16 who shall have been actively engaged in the practice as an assistant in applied behavior analysis
17 for the 5 years preceding their appointments and 2 members shall be selected from and shall
18 represent the public.

19 (b) Each member of the board shall hold office until a successor has been appointed and
20 qualified. A vacancy in the membership of the board shall be filled for the unexpired term in the
21 manner provided for the original appointment. No member shall serve more than 2 full
22 consecutive terms. A member appointed for less than a full term may serve 2 full terms in
23 addition to that part of a full term.

24 (c) The governor may remove a member of the board for cause, but no board member
25 shall be removed without first being informed in writing at least 30 days in advance of the
26 reasons for such removal and of the members right to a public or private hearing and to have
27 counsel present at the hearing.

28 Section 110. At its first meeting and annually thereafter, the board of registration of
29 applied behavior analysts shall organize by electing from among its members, by majority vote, a
30 chair, a vice chair and a secretary. Such officers shall serve until their successors are elected and
31 qualified. The board shall hold at least 2 meetings annually and may hold additional meetings
32 upon the call of the chair or the secretary or at the written request of any 3 members of the board.
33 A majority of the board shall constitute a quorum. The members of the board shall serve without
34 compensation but shall be reimbursed for actual expenses reasonably incurred in the

35 performance of their board duties. The board may hire such staff as it deems necessary to carry
36 out the its activities.

37 Section 111. (a) The board of registration of applied behavior analysts may: (i) pass upon
38 the qualifications of an application for a license under sections 266 to 280, inclusive, of chapter
39 112 and shall issue a license to an applicant who is determined to be qualified to practice as a
40 licensed applied behavior analyst or licensed assistant applied behavior analyst; (ii) adopt rules
41 and regulations governing the licensure of applied behavior analysts and assistant behavior
42 analysts; (iii) establish eligibility and renewal requirements; (iv) establish specifications for the
43 licensing examination that are consistent and fair; (v) define, by regulation, the appropriate
44 standards for education and experience necessary to qualify for licensing including, but not
45 limited to, continuing professional education requirements for licensed applied behavior analysts
46 and assistant behavior analysts; (vi) define, by regulation, the appropriate standards for conduct
47 and ethics which shall govern the practice of applied behavior analysis; (vii) receive, review and
48 approve or disapprove an application for a reciprocal license for an applicant who is licensed or
49 certified as an applied behavior analyst in another state and who has demonstrated qualifications
50 which equal or exceed those required under sections 266 to 280, inclusive, of chapter 112; (viii)
51 adopt rules and regulations necessary to regulate and inspect the business associations of its
52 licensees and, in its discretion, require licensure of business associations not regulated or
53 licensed by the department of public health; (ix) fine, censure, revoke, suspend or deny a license
54 and place on probation, reprimand or otherwise discipline a licensee for a violation of the code of
55 ethics or the rules and regulations of the board under said sections 266 to 270, inclusive, of said
56 chapter 112; (x) summarily suspend the license of a licensee who poses an imminent danger to
57 the public; provided, however, that a hearing shall be afforded to the licensee within 10 days

58 after any such action by the board to determine whether such summary action is warranted; and
59 (xi) perform any other functions and duties as may be required to carry out this section.

60 (b) The board shall make available to the public a list of licensed applied behavior
61 analysts and licensed assistant applied behavior analysts.

62 (c) The members of the board, its officers and employees shall be indemnified by the
63 commonwealth for all actions taken as part of their responsibilities described in this chapter.

64 SECTION 4. Section 163 of chapter 112 of the General Laws is hereby amended by
65 striking out the eighteenth, nineteenth, and twentieth paragraphs.

66 SECTION 5. Chapter 112 of the General Laws is hereby amended by adding the
67 following 15 sections:-

68 Section 266. As used in this section and sections 267 to 269, inclusive, the following
69 words shall, unless the context clearly requires otherwise, have the following meanings :

70 “Applied behavior analyst”, an individual who, by training, experience and examination
71 meets the requirements for licensing by the board and is duly licensed to engage in the practice
72 of applied behavior analysis in the commonwealth.

73 "Assistant applied behavior analyst”, an individual who, by training, experience and
74 examination meets the requirements for licensing by the board and is duly licensed to engage in
75 the practice of applied behavior analysis under the supervision of a licensed applied behavior
76 analyst.

77 “Board”, the board of registration of applied behavior analysts.

78 “Recognized educational institution”, a degree-granting college or university which is
79 accredited by a regional accreditation body recognized by the United States Department of
80 Education.

81 “Scope of practice of applied behavior analysis”, the design, implementation and
82 evaluation of systematic instructional and environmental modifications, using behavioral stimuli
83 and consequences, to produce socially significant improvements in human behavior, including
84 the direct observation and measurement of behavior and the environment, the empirical
85 identification of functional relations between behavior and environmental factors, known as
86 functional assessment and analysis, and the introduction of interventions based on scientific
87 research and which utilize contextual factors, antecedent stimuli, positive reinforcement and
88 other consequences to develop new behaviors, increase or decrease existing behaviors and elicit
89 behaviors under specific environmental conditions that are delivered to individuals and groups of
90 individuals; and provided further, that the scope of practice of applied behavior analysis shall not
91 include psychological testing, neuropsychology, diagnosis of mental health or developmental
92 conditions, psychotherapy, cognitive therapy, sex therapy, psychoanalysis,
93 psychopharmacological recommendations, hypnotherapy or academic teaching by college or
94 university faculty.

95 Section 267. The board may issue a license to an applicant as an applied behavior
96 analyst; provided, however, that each such applicant demonstrates to the board, the successful
97 completion of (1) a doctoral degree from a recognized educational institution in which the
98 doctoral program included a minimum of 60 graduate credit hours in courses directly related to
99 the study of behavior analysis or a master’s degree from a recognized educational institution
100 wherein the master’s program included a minimum of 30 graduate credit hours in courses

101 directly related to the study of behavior analysis or for individuals with a recognized doctoral or
102 masters degree in another field of human services, successful completion of a board approved
103 certificate program in behavior analysis with an approved course sequence approved by the
104 Board; (2) has successfully completed a practicum or supervised experience in the practice of
105 behavior analysis that meets the standards established by the board; and (3) has successfully
106 completed a board-approved examination related to the principles and independent practice of
107 applied behavior analysis.

108 Section 268. The board may issue a license to an applicant as an assistant applied
109 behavior analyst; provided, however, that each such applicant demonstrates to the board, the
110 successful completion of (1) a bachelor's degree from a recognized educational institution
111 wherein a minimum of 45 credit hours specifically in behavior analysis or possesses a bachelor's
112 degree combined with successful completion of a board-approved course sequence or course
113 work which otherwise meets professional standards, as determined by the board; (2) has
114 successfully completed a practicum or supervised experience in the practice of behavior analysis
115 that meets board established eligibility requirements; and

116 (3) has successfully completed a board-approved examination related to the principles
117 and practice of applied behavior analysis.

118 Section 269. Each person desiring to obtain a license as an applied behavior analyst or as
119 an assistant applied behavior analyst shall make application to the board upon such form and in
120 such manner as the board shall prescribe and shall furnish evidence satisfactory to the board that
121 the person is of good moral character including, but not limited to, the fact that such applicant
122 has not been convicted of a felony; provided, however, that for the purposes of this section, a

123 conviction shall include a judgment, an admission of guilt or a plea of nolo contendere to any
124 such felony charges or a conviction of an offense under the laws of another jurisdiction which, if
125 committed in the commonwealth, would be a felony unless:

126 (i) at least 10 years have elapsed from the date of the conviction; and

127 (ii) the applicant satisfactorily demonstrates to the board that the applicant has made
128 significant progress in personal rehabilitation since the conviction so that licensure of the
129 applicant would not be expected to create a substantial risk of harm to the health and safety of
130 the applicant's clients or the public or a substantial risk of further criminal violations.

131 The board shall have access to criminal offender record information to review such
132 felony or misdemeanor convictions as are necessary to carry out this section.

133 Section 270. Notwithstanding sections 267 and 268, the board may issue a license without
134 examination to an applicant who presents evidence that such applicant has been licensed or
135 certified as an applied behavior analyst by a similar board of another jurisdiction the standards of
136 which are at least the same as those required in the commonwealth.

137 Section 271. The board may grant a temporary license to practice applied behavior
138 analysis for a period not to exceed 1 year to an applied behavior analyst or an assistant applied
139 behavior analyst who submits conclusive evidence the applicant submitted a certificate issued by
140 a national certifying body acceptable to the board. To be eligible for license by the board as an
141 applied behavior analyst, an applicant shall comply with all requirements for licensure as
142 outlined in Section 264 through Section 277 of Chapter 112.

143 Notwithstanding any general or special law, or rule or regulation to the contrary,
144 insurance companies shall accept the provisional license of an applied behavior analyst or an
145 assistant applied behavior analyst as a full license for the purpose of credentialing clinicians.

146 Section 272. A license to practice applied behavior analysis or to practice as an assistant
147 applied behavioral analyst shall be valid for 2 years and shall be renewed on or before the
148 anniversary of the date of birth of the licensee next occurring more than 24 months after the date
149 of issuance of the license and every 2 years thereafter. Under the renewal, the applicant shall
150 attest to the completion of and, if requested, present to the board documented evidence of the
151 completion of a minimum number of hours of continuing education programs as specified by the
152 board and which are designed to improve the professional competence of the licensee. Such
153 programs shall be completed during the licensed period immediately prior to renewal. Such
154 continuing education programs shall meet the standards specified by the board. The board may
155 provide for the late renewal of a license which has lapsed and may require the payment of a late
156 fee.

157 Section 273. All fees required by sections 267 to 279, inclusive, shall be determined
158 annually by the secretary of administration and finance under section 3B of chapter 7. All
159 licensing and application fees and civil administrative penalties collected under said sections 265
160 to 277, inclusive, shall be deposited into the Division of Professional Licensure Trust Fund
161 established in section 35V of chapter 10.

162 Section 274. Nothing in sections 266 to 279, inclusive, shall be construed to prevent
163 qualified members of other professions or occupations including, but not limited to, physicians,
164 psychologists, teachers, members of the clergy, authorized Christian Science practitioners,

165 attorneys-at-law, social workers, guidance counselors, clinical counselors, adjustment
166 counselors, speech pathologists, audiologists or rehabilitation counselors from practicing applied
167 behavior analysis if it is consistent with the accepted standards of their respective professions;
168 provided, however, that no such Christian Science practitioner, attorneys-at-law, social worker,
169 guidance counselor, clinical counselor, adjustment counselor, speech pathologist, audiologist or
170 rehabilitation counselor shall use any title or description stating or implying that such person is a
171 licensed applied behavior analyst without holding said license.

172 Section 275. A person licensed under sections 266 to 272, inclusive, shall comply with
173 the standards of ethical practice as adopted by the board.

174 Section 276. A person not licensed to practice applied behavior analysis who holds
175 himself out to be an applied behavior analyst or who uses the title “applied behavior analyst” or
176 engages in the practice of applied behavior analysis shall be subject to the penalties set forth in
177 section 65A of chapter 112.

178 Section 277. The penalties in section 276 shall not apply to faculty or students of applied
179 behavior analysis currently enrolled in a recognized educational institution which meets
180 educational standards determined by the board or to interns or persons preparing for the practice
181 of applied behavior analysis under qualified supervision in any such program; provided, that they
182 are designated by such titles as “applied behavior analyst intern”, “applied behavior analyst
183 trainee” or other title clearly indicating such training status.

184 Section 278. The board shall investigate all complaints relating to the proper practice of
185 applied behavior analysis by a person licensed under sections 266 to 279, inclusive.

186 The board, after a hearing held under chapter 30A, may revoke, suspend or cancel the
187 license, or reprimand, censure or otherwise discipline a licensed applied behavior analyst or
188 licensed assistant applied behavior analyst upon proof satisfactory to a majority of the board that
189 the applied behavior analyst or assistant applied behavior analyst:

190 (i) fraudulently procured the license;

191 (ii) is guilty of an offense under any law of the commonwealth relating to the practice of
192 applied behavior analysis or a rule or regulation adopted under those laws;

193 (iii) engaged in conduct that calls into question the applied behavior analyst's
194 competence to practice applied behavior analysis including, but not limited to, gross misconduct
195 in the practice of applied behavior analysis or of practicing applied behavior analysis
196 fraudulently, or beyond its authorized scope, or with gross incompetence, or with gross
197 negligence on a particular occasion or negligence on repeated occasions;

198 (iv) practiced applied behavior analysis while the ability to practice was impaired by
199 alcohol, drugs, physical disability or mental instability;

200 (v) has been habitually drunk or being or having been within a reasonable period of time
201 addicted to, dependent on or a habitual user of narcotics, barbiturates, amphetamines,
202 hallucinogens or other drugs having similar effects;

203 (vi) knowingly permitted, aided or abetted an unlicensed individual to perform activities
204 requiring a license for purposes of fraud, deception or personal gain;

205 (vii) has been convicted of a criminal offense which reasonably calls into question the
206 licensee's ability to practice applied behavior analysis;

207 (viii) violated any rule or regulation of the board governing the practice of applied
208 behavior analysis; or

209 (ix) violated any professional disciplinary or ethical standard established by the board.

210 No person who files a complaint or who reports or provides information under this
211 section or assists the board at its request in any manner in discharging its duties and functions
212 shall be liable in a cause of action arising out of the receiving of such information or assistance if
213 the person making the complaint or reporting or providing the information or assistance does so
214 in good faith and without malice.

215 If the applied behavior analyst or assistant applied behavior analyst is found not to have
216 violated this section, the board shall forthwith order a dismissal of the charges.

217 Written notice of a contemplated revocation or suspension of a license or the cause
218 therefor, in sufficient particularity, and the date of a hearing thereon, shall be sent by registered
219 or certified mail to the licensee at the licensee's last known address at least 15 days before the
220 date of the hearing. The applied behavior analyst or assistant applied behavior analyst against
221 whom a charge is filed shall have a right to appear before the board in person or by counsel, or
222 both, may produce witnesses, introduce evidence and question witnesses. No license shall be
223 revoked or suspended without such hearing, but the nonappearance of the licensee, after notice,
224 shall not prevent such revocation or suspension. All matters upon which a contemplated
225 revocation or suspension is based shall be introduced in evidence at the proceeding. The licensee
226 shall be notified in writing of the board's decision. The board may make such rules and
227 regulations as it deems proper for the filing of charges and the conduct of hearings.

228 After issuing an order of revocation or suspension, the board may file a petition in equity
229 in the superior court in a county in which the respondent resides or transacts business, or in
230 Suffolk County, to ensure appropriate injunctive relief to expedite and secure the enforcement of
231 its order, pending the final determination.

232 A decision by the board under this section shall be subject to review in superior court
233 under chapter 30A.

234 Section 279. After three years from the date of revocation, an application for
235 reinstatement may be made to the board and the board may, upon the affirmative vote of a
236 majority of its members, grant such reinstatement.

237 Section 280. The board shall issue a provisional license as an applied behavior analyst or
238 an assistant applied behavior analyst to each applicant who meets the requirements set forth in
239 this section. It shall issue the provisional license to each person so licensed, which shall be
240 conclusive evidence of the right of such person to practice for a period during which the board is
241 processing an application for licensure which includes a requirement the applicant submit a
242 certificate issued by a national certifying body acceptable to the board. The provisional license
243 shall be valid for a period of no longer than one year.

244 To be eligible for license by the board as an applied behavior analyst, an applicant shall
245 comply with all requirements for licensure as outlined in Section 266 to 279 of Chapter 112.

246 Notwithstanding any general or special law, or rule or regulation to the contrary,
247 insurance companies shall accept the provisional license of an applied behavior analyst or an
248 assistant applied behavior analyst as a full license for the purpose of credentialing clinicians.

249 SECTION 6. Notwithstanding section 109 of chapter 13 of the General Laws, the initial
250 members of the board of registration of applied behavior analysts shall consist of 9 members to
251 be appointed by the governor, 2 of whom shall be doctoral-level, board-certified behavior
252 analysts designated as such by the Behavior Analyst Certification Board, 4 of whom shall be
253 board-certified behavior analysts designated as such by the Behavior Analyst Certification
254 Board, 1 of whom shall be a board-certified assistant behavior analyst designated as such by the
255 Behavior Analyst Certification Board and 2 of whom shall be selected from and shall represent
256 the public, subject to section 9B of said chapter 13. Of the initial members appointed to the
257 board, 3 shall serve for terms of 3 years, 3 shall serve for terms of 2 years and 3 shall serve for a
258 term of 1 year.

259 SECTION 7. Section 165 of chapter 112 of the General Laws is amended by striking out
260 the following words in the title of the section “applied behavior analysts”.

261 SECTION 8. Section 165 of chapter 112 of the General Laws is further amended by
262 striking out the eighth through fifteenth paragraphs.