

HOUSE No. 3479

The Commonwealth of Massachusetts

PRESENTED BY:

Tackey Chan

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 relative to applied behavior analysts.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Tackey Chan</i>	<i>2nd Norfolk</i>	<i>1/17/2019</i>
<i>Steven Ultrino</i>	<i>33rd Middlesex</i>	<i>1/23/2019</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>1/30/2019</i>
<i>Carmine Lawrence Gentile</i>	<i>13th Middlesex</i>	<i>2/1/2019</i>
<i>Michelle L. Ciccolo</i>	<i>15th Middlesex</i>	<i>2/1/2019</i>
<i>Natalie M. Higgins</i>	<i>4th Worcester</i>	<i>2/1/2019</i>
<i>Christine P. Barber</i>	<i>34th Middlesex</i>	<i>2/1/2019</i>
<i>Nick Collins</i>	<i>First Suffolk</i>	<i>2/1/2019</i>

HOUSE No. 3479

By Mr. Chan of Quincy, a petition (accompanied by bill, House, No. 3479) of Tackey Chan and others relative to the establishment of a board of registration of applied behavior analysts. Public Health.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act relative to 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 2016
2 Official Edition, is hereby amended by striking out the figure “13”, in line 4, and inserting in
3 place thereof 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 “10”, in line 17, and inserting in place thereof the following
6 figure:-“8”.

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

9 Section 110.

10 (a) There shall be within the division of professional licensure a board of registration
11 of applied behavior analysts. The board shall consist of 9 members to be appointed by the

12 governor, 2 of whom shall be doctoral-level, board-certified behavior analysts designated as such
13 by the Behavior Analyst Certification Board, 4 of whom shall be board-certified behavior
14 analysts designated as such by the Behavior Analyst Certification Board, 1 of whom shall be a
15 board-certified assistant behavior analyst designated as such by the Behavior Analyst
16 Certification Board and 2 of whom shall be selected from and shall represent the public, subject
17 to section 9B of said chapter 13. Of the first board members appointed three shall continue in
18 office for one year, three for two years and three for three years.

19 (b) Each member of the board shall hold office until a successor has been appointed
20 and qualified. A vacancy in the membership of the board shall be filled for the unexpired term in
21 the 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 111. The chair of the board shall be appointed by the governor. The board shall
29 hold at least 2 meetings annually and will determine an appropriate schedule of meetings that
30 meets the needs of licensees. A majority of the board shall constitute a quorum. The members of
31 the board shall serve without compensation but shall be reimbursed for actual expenses
32 reasonably incurred in the performance of their board duties. The board may hire such staff as it
33 deems necessary to carry out its activities.

34 Section 112.

35 (a) The board of registration of applied behavior analysts may: (i) pass upon the
36 qualifications of an application for a license under sections 266 to 278, inclusive, of chapter 112
37 and shall issue a license to an applicant who is determined to be qualified to practice as a
38 licensed applied behavior analyst or licensed assistant applied behavior analyst; (ii) adopt rules
39 and regulations governing the licensure of applied behavior analysts and assistant behavior
40 analysts; (iii) establish eligibility and renewal requirements; (iv) receive, review and approve or
41 disapprove an application for a reciprocal license for an applicant who is licensed or certified as
42 an applied behavior analyst in another state and who has demonstrated qualifications which
43 equal or exceed those required under sections 266 to 279, inclusive, of chapter 112; (v) fine,
44 censure, revoke, suspend or deny a license and place on probation, reprimand or otherwise
45 discipline a licensee for a violation of the code of ethics or the rules and regulations of the board
46 under said sections 266 to 279, inclusive, of said chapter 112; (vi) summarily suspend the license
47 of a licensee who poses an imminent danger to the public; provided, however, that a hearing
48 shall be afforded to the licensee within 10 day after any such action by the board to determine
49 whether such summary action is warranted; and (vii) perform any other functions and duties as
50 may be required to carry out this section.

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

53 (c) Individuals licensed as applied behavior analysts or assistant applied behavior
54 analysts in the Commonwealth at the effective date of this statute shall be grandfathered, and

55 would not be affected, nor required to resubmit applications for licensure until the time as their
56 application is due for renewal.

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

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

61 SECTION 5. Chapter 112 of the General Laws is hereby amended by adding the
62 following 13 sections:-

63 Section 275. As used in this section and sections 276 to 287, inclusive, the following
64 words shall, unless the context clearly requires otherwise, have the following meanings :

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

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

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

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

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

90 Section 276. The board may issue a license to an applicant as an applied behavior
91 Analyst; provided that each such applicant demonstrates to the board that they are a Board
92 Certified Behavior Analyst (BCBA; BCBA-D) in good standing with the Behavior Analyst
93 Certification Board (BACB) or has the equivalent certification from a Board-approved program
94 that is accredited by the National Commission for Certifying Agencies (NCCA).

95 Section 277. The board may issue a license to an applicant as an assistant applied
96 behavior analyst; provided that each such applicant demonstrates to the board that they are a
97 Board Certified Assistant Behavior Analyst (BCaBA) in good standing with the Behavior

98 Analyst Certification Board (BACB) or has the equivalent certification from a Board-approved
99 program that is accredited by the National Commission for Certifying Agencies (NCCA).

100 Section 278. Each person desiring to obtain a license as an applied behavior analyst or as
101 an assistant applied behavior analyst shall make application to the board upon such form and in
102 such manner as the board shall prescribe and shall furnish evidence satisfactory to the board that
103 the person is of good moral character including, but not limited to, the fact that such applicant
104 has not been convicted of a felony; provided, however, that for the purposes of this section, a
105 conviction shall include a judgment, an admission of guilt or a plea of nolo contendere to any
106 such felony charges or a conviction of an offense under the laws of another jurisdiction which, if
107 committed in the commonwealth, would be a felony unless:

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

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

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

115 Section 279. Notwithstanding sections 276 and 277, the board may issue a license
116 without examination to an applicant who presents evidence that such applicant has been licensed
117 or certified as an applied behavior analyst by a similar board of another jurisdiction the standards
118 of which are at least the same as those required in the commonwealth.

119 Section 280. A fee shall be paid to the board for the original license. A license to
120 practice applied behavior analysis or to practice as an assistant applied behavioral analyst shall
121 be valid for 2 years and must be renewed biennially. Any application for renewal of a license
122 which has expired shall require the payment of a re-registration fee.

123 On or before September thirtieth of the year preceding the expiration of a license, the
124 secretary of the board shall forward to the holder of the license a form of application for renewal
125 thereof. Upon the receipt of the completed form and the renewal fee on or before November
126 thirtieth, the secretary shall issue a new license for the year commencing January first.

127 Section 281. All fees required by sections 275 to 287, inclusive, shall be determined
128 annually by the secretary of administration and finance under section 3B of chapter 7. All
129 licensing and application fees and civil administrative penalties collected under said sections 275
130 to 287, inclusive, shall be deposited into the Division of Professional Licensure Trust Fund
131 established in section 35V of chapter 10.

132 Section 282. Nothing in sections 275 to 287, inclusive, shall be construed to prevent
133 qualified members of other professions or occupations including, but not limited to, physicians,
134 psychologists, teachers, members of the clergy, authorized Christian Science practitioners,
135 attorneys-at-law, social workers, guidance counselors, clinical counselors, adjustment
136 counselors, speech pathologists, audiologists or rehabilitation counselors from practicing applied
137 behavior analysis if it is consistent with the accepted standards of their respective professions;
138 provided, however, that no such Christian Science practitioner, attorneys-at-law, social worker,
139 guidance counselor, clinical counselor, adjustment counselor, speech pathologist, audiologist or

140 rehabilitation counselor shall use any title or description stating or implying that such person is a
141 licensed applied behavior analyst without holding said license.

142 Section 283. A person licensed under sections 275 to 287, inclusive, shall comply with
143 the standards of ethical practice as adopted by the board.

144 Section 284. A person not licensed to practice applied behavior analysis who holds
145 himself out to be an applied behavior analyst or who uses the title “applied behavior analyst” or
146 engages in the practice of applied behavior analysis shall be subject to the penalties set forth in
147 section 65A of chapter 112.

148 Section 285. The penalties in section 284 shall not apply to faculty or students of applied
149 behavior analysis currently enrolled in a recognized educational institution which meets
150 educational standards determined by the board or to interns or persons preparing for the practice
151 of applied behavior analysis under qualified supervision in any such program; provided, that they
152 are designated by such titles as “applied behavior analyst intern”, “applied behavior analyst
153 trainee” or other title clearly indicating such training status.

154 Section 286. The board shall investigate all complaints relating to the proper practice of
155 applied behavior analysis by a person licensed under sections 275 to 287, inclusive.

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

160 (i) fraudulently procured the license;

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

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

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

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

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

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

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

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

180 No person who files a complaint or who reports or provides information under this
181 section or assists the board at its request in any manner in discharging its duties and functions

182 shall be liable in a cause of action arising out of the receiving of such information or assistance if
183 the person making the complaint or reporting or providing the information or assistance does so
184 in good faith and without malice.

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

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

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

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

204 Section 287. After three years from the date of revocation, an application for
205 reinstatement may be made to the board and the board may, upon the affirmative vote of a
206 majority of its members, grant such reinstatement.

207 SECTION 6. Notwithstanding section 110 of chapter 13 of the General Laws, the initial
208 members of the board of registration of applied behavior analysts shall consist of 9 members to
209 be appointed by the governor, 2 of whom shall be doctoral-level, board-certified behavior
210 analysts designated as such by the Behavior Analyst Certification Board, 4 of whom shall be
211 board-certified behavior analysts designated as such by the Behavior Analyst Certification
212 Board, 1 of whom shall be a board-certified assistant behavior analyst designated as such by the
213 Behavior Analyst Certification Board and 2 of whom shall be selected from and shall represent
214 the public, subject to section 9B of said chapter 13. Of the initial members appointed to the
215 board, 3 shall serve for terms of 3 years, 3 shall serve for terms of 2 years and 3 shall serve for a
216 term of 1 year.

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

219 SECTION 8. Section 165 of chapter 112 of the General Laws is further amended by
220 striking out the eighth through fifteenth paragraphs in their entirety.