

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>Carmin 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

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

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

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

Section 111. The chair of the board shall be appointed by the governor. The board shall hold at least 2 meetings annually and will determine an appropriate schedule of meetings that meets the needs of licensees. A majority of the board shall constitute a quorum. The members of the board shall serve without compensation but shall be reimbursed for actual expenses reasonably incurred in the performance of their board duties. The board may hire such staff as it deems necessary to carry out its activities.

Section 112.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) fraudulently procured the license;

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

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

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

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

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

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

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

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

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

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

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

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

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

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