

SENATE No. 3040

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Second General Court
(2021-2022)

1 by adding after section 162 the following section:- "SECTION 163: SECTION 1. Section
2 88 of chapter 13 of the General Laws, as appearing in the 2018 Official Edition, is hereby
3 amended by striking out the figure "13", in line 4, and inserting in place thereof the following
4 figure:- 11

5 SECTION 2. Section 89 of said chapter 13 of the General Laws is hereby amended by
6 striking out subsection (A), and inserting in place thereof the following:-

7 (A) Eight members shall be licensed practicing mental health and human services
8 professionals, two of whom shall be marriage and family therapists, two of whom shall be
9 rehabilitation counselors, two of whom shall be clinical mental health counselors, two of whom
10 shall be educational psychologists; and each shall have been, for at least five years immediately
11 preceding appointment, actively engaged as a practitioner rendering professional services in that
12 field, or in the education and training of graduate students or interns in the field, or in appropriate
13 human developmental research, or in other areas substantially equivalent thereto, and shall have
14 spent the majority of the professional time in such activity during the two years preceding the
15 appointment in the commonwealth. One of the 8 shall also be a member of a union licensable
16 under sections 163 to 172, inclusive, of chapter 112; and

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

19 Section 110. (a) There shall be within the division of professional licensure a board of
20 registration of behavior analysts. The board shall consist of 9 members to be appointed by the
21 governor, 2 of whom shall be Licensed Behavior Analysts licensed under this section who hold
22 doctoral degrees, 4 of whom shall be Licensed Behavior Analysts licensed under this section
23 who hold master's degrees, 1 of whom shall be a Licensed Assistant Behavior Analyst licensed
24 under this section who holds a bachelor's degree, and 2 members of the general public, subject to
25 section 9B. Members of the board shall be residents of the commonwealth.

26 (b) Each member of the board shall serve for a term of 3 years and until a successor has
27 been appointed and qualified. A vacancy in the membership of the board shall be filled for the
28 unexpired term in the manner provided for the original appointment. No member shall serve
29 more than 2 full consecutive terms. A member appointed for less than a full term may serve 2
30 full terms in addition to that part of a full term. A former member shall be eligible for
31 appointment after a lapse of 1 year.

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

36 Section 111. The board shall hold at least 2 meetings annually and will determine an
37 appropriate schedule of meetings that meets the needs of licensees. At its first regular meeting in
38 each year the board shall elect from its own members by majority vote a chair. A majority of the

39 board shall constitute a quorum. The members of the board shall serve without compensation but
40 shall be reimbursed for actual expenses reasonably incurred in the performance of their board
41 duties. The board may hire such staff as it deems necessary to carry out its activities.

42 Section 112. (a) The board of registration of behavior analysts may: (i) pass upon the
43 qualifications of an application for a license under sections 275 to 287, inclusive, of chapter 112
44 and shall issue a license to an applicant who is determined to be qualified to practice as a
45 licensed behavior analyst or licensed assistant behavior analyst; (ii) adopt rules and regulations
46 governing the licensure of behavior analysts and assistant behavior analysts; (iii) establish
47 eligibility and renewal requirements; (iv) receive, review and approve or disapprove an
48 application for a reciprocal license for an applicant who is licensed or certified as a behavior
49 analyst in another state and who has demonstrated qualifications that equal or exceed those
50 required under sections 275 to 287, inclusive, of said chapter 112; (v) fine, censure, revoke,
51 suspend or deny a license and place on probation, reprimand or otherwise discipline a licensee
52 for a violation of the code of ethics or the rules and regulations of the board under said sections
53 275 to 287, inclusive, of said chapter 112; (vi) summarily suspend the license of a licensee who
54 poses an imminent danger to the public; provided, however, that a hearing shall be afforded to
55 the licensee within 10 day after any such action by the board to determine whether such
56 summary action is warranted; and (vii) perform any other functions and duties as may be
57 required to carry out this section.

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

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

62 SECTION 4. Section 163 of chapter 112 of the General Laws is hereby amended by
63 striking out the definitions, “Licensed applied behavior analyst” and “Licensed assistant applied
64 behavior analyst”, and inserting in place thereof the following definitions:-

65 "Licensed assistant behavior analyst", an individual who, by training, experience and
66 examination meets the requirements for licensing by the board of registration of behavior
67 analysts and is duly licensed to engage in the practice of applied behavior analysis under the
68 supervision of a licensed behavior analyst under sections 275 through 287, inclusive.

69 “Licensed behavior analyst”, an individual who, by training, experience and examination
70 meets the requirements for licensing by the board of registration of behavior analysts and is duly
71 licensed to engage in the practice of applied behavior analysis in the commonwealth under
72 sections 275 through 287, inclusive.

73 SECTION 5. Section 165 of chapter 112 of the General Laws is hereby amended by
74 striking out the following words in the title of the section:- “applied behavior analysts”.

75 SECTION 6. Said Section 165 of chapter 112 of the General Laws is hereby further
76 amended by striking out the eighth through fifteenth paragraphs in their entirety.

77 SECTION 7. Chapter 112 of the General Laws is hereby amended by adding the
78 following 13 sections:-

79 Section 275. As used in sections 275 to 287, inclusive, the following words shall, unless
80 the context clearly requires otherwise, have the following meanings:

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

82 “Certifying entity”, the Behavior Analyst Certification Board, Inc. (BACB), or another
83 entity whose programs to credential practitioners of applied behavioral analysis are accredited by
84 the National Commission on Certifying Agencies (NCCA) or American National Standards
85 Institute (ANSI) and approved by the board. "Licensed assistant behavior analyst”, an individual
86 who, by training, experience and examination meets the requirements for licensing by the board
87 and is duly licensed to engage in the practice of applied behavior analysis under the supervision
88 of a licensed behavior analyst.

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

92 “Practice of applied behavior analysis”, the design, implementation and evaluation of
93 systematic instructional and environmental modifications, using behavioral stimuli and
94 consequences, to produce socially significant improvements in human behavior, including the
95 direct observation and measurement of behavior and the environment, the empirical
96 identification of functional relations between behavior and environmental factors, known as
97 functional assessment and analysis, and the introduction of interventions based on scientific
98 research and which utilize contextual factors, antecedent stimuli, positive reinforcement and
99 other consequences to develop new behaviors, increase or decrease existing behaviors and elicit
100 behaviors under specific environmental conditions that are delivered to individuals and groups of
101 individuals; provided, however, that the "practice of applied behavior analysis" shall not include
102 psychological testing, neuropsychology, diagnosis of mental health or developmental conditions,

103 psychotherapy, cognitive therapy, sex therapy, psychoanalysis, psychopharmacological
104 recommendations, hypnotherapy or academic teaching by college or university faculty.

105 “Recognized educational institution”, a degree-granting college or university which is
106 accredited by (i) a regional accreditation body recognized by the United States Department of
107 Education and (ii) a certifying entity.

108 Section 276. The board may issue a license to an applicant as a behavior analyst provided
109 that the applicant:

110 (a) is of good moral character;

111 (b) has not engaged or is not engaging in any practice or conduct that would be grounds
112 for refusing to issue a license under section 286; and

113 (c) has current certification at the appropriate level verified with the certifying entity by
114 the board; and any other requirements and qualifications as deemed necessary by the board

115 Section 277. The board may issue a license to an applicant as an assistant behavior
116 analyst provided that the applicant:

117 (a) is of good moral character;

118 (b) has not engaged or is not engaging in any practice or conduct that would be grounds
119 for refusing to issue a license under section 286;

120 (c) has current certification at the appropriate level verified with the certifying entity by
121 the board; and

122 (d) can provide the board upon request with evidence of current and ongoing supervision
123 by a licensed behavior analyst who is approved as a supervisor by the certifying entity; and any
124 other requirements and qualifications as deemed necessary by the board.

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

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

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

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

140 Section 279. Notwithstanding sections 276 and 277, the board may issue a license to an
141 applicant who presents evidence that such applicant has been licensed or certified as a behavior
142 analyst or assistant behavior analyst by a similar board of another jurisdiction the standards of
143 which are at least the same as those required in the commonwealth.

144 Section 280. A fee shall be paid to the board for the original license. A license to practice
145 as a licensed behavior analyst or a licensed assistant behavior analyst shall be valid for 2 years
146 and must be renewed biennially. Any application for renewal of a license that has expired shall
147 require the payment of a re-registration fee.

148 On or before September 13 of the year preceding the expiration of a license, the board
149 shall forward to the holder of the license a form of application for renewal thereof. Upon the
150 receipt of the completed form and the renewal fee on or before November 13, the board shall
151 verify with the certifying entity that the applicant is certified at the appropriate level and is not
152 the subject of any active investigation or disciplinary action by the certifying entity. If such
153 verification is attained, the board shall issue a new license for the year commencing January 1.

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

159 Section 282. Nothing in sections 275 to 287, inclusive, shall be construed to prevent
160 qualified members of other professions or occupations including, but not limited to, physicians,
161 psychologists, teachers, members of the clergy, authorized Christian Science practitioners,
162 attorneys-at-law, social workers, guidance counselors, clinical counselors, adjustment
163 counselors, speech pathologists, audiologists or rehabilitation counselors from practicing applied
164 behavior analysis if it is consistent with the legislated scope of practice and accepted ethical
165 standards of their respective professions and the individual professional's training and

166 competence; provided, however, that no such Christian Science practitioner, attorneys-at-law,
167 social worker, guidance counselor, clinical counselor, adjustment counselor, speech pathologist,
168 audiologist or rehabilitation counselor shall use any title or description stating or implying that
169 such person is a licensed behavior analyst or licensed assistant behavior analyst without holding
170 said license.

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

173 Section 284. A person not licensed to practice applied behavior analysis who holds
174 himself out to be a licensed behavior analyst or licensed assistant behavior analyst or who uses
175 the title “licensed behavior analyst” or “licensed assistant behavior analyst” or engages in the
176 practice of applied behavior analysis shall be subject to the penalties set forth in section 65A.

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

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

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

- 188 (i) fraudulently procured the license;
- 189 (ii) is guilty of an offense under any law of the commonwealth relating to the practice of
190 applied behavior analysis or a rule or regulation adopted under those laws;
- 191 (iii) engaged in conduct that calls into question their competence to practice applied
192 behavior analysis including, but not limited to, gross misconduct in the practice of applied
193 behavior analysis or of practicing applied behavior analysis fraudulently, or beyond its
194 authorized scope, or with gross incompetence, or with gross negligence on a particular occasion
195 or negligence on repeated occasions;
- 196 (iv) practiced applied behavior analysis while the ability to practice was impaired by
197 alcohol, drugs, physical disability or mental instability;
- 198 (v) has been habitually drunk or being or having been within a reasonable period of time
199 addicted to, dependent on or a habitual user of narcotics, barbiturates, amphetamines,
200 hallucinogens or other drugs having similar effects;
- 201 (vi) knowingly permitted, aided or abetted an unlicensed individual to perform activities
202 requiring a license for purposes of fraud, deception or personal gain;
- 203 (vii) has been convicted of a criminal offense which reasonably calls into question the
204 licensee's ability to practice applied behavior analysis;
- 205 (viii) violated any rule or regulation of the board governing the practice of applied
206 behavior analysis; or
- 207 (ix) violated any professional disciplinary or ethical standard established by the board.

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

213 If the licensee is found not to have violated this section, the board shall forthwith order a
214 dismissal of the charges.

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

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

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

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

235 SECTION 8. Notwithstanding section 110 of chapter 13 of the General Laws, the initial
236 members of the board of registration of behavior analysts shall consist of 9 members to be
237 appointed by the governor, 2 of whom shall be doctoral-level, Board-Certified Behavior Analysts
238 designated as such by the Behavior Analyst Certification Board, 4 of whom shall be Board-
239 Certified Behavior Analysts designated as such by the Behavior Analyst Certification Board who
240 hold master's degrees, 1 of whom shall be a Board-certified Assistant Behavior Analyst
241 designated as such by the Behavior Analyst Certification Board who holds a bachelor's degree,
242 and 2 members of the general public, subject to section 9B of chapter 13. Of the said initial
243 members appointed to the board, 3 shall serve for terms of 3 years, 3 shall serve for terms of 2
244 years and 3 shall serve for a term of 1 year.

245 SECTION 9. Individuals licensed in good standing as applied behavior analysts or
246 assistant applied behavior analysts within the commonwealth upon the effective date of this Act
247 shall be grandfathered, and not required to resubmit applications for licensure until the time as
248 their license is due for renewal."

249

250

