

House Bill 412

By: Representatives Dempsey of the 13th, Powell of the 32nd, Bennett of the 94th, Cooper of the 43rd, and Stephens of the 164th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 43 of the Official Code of Georgia Annotated, relating to professions and
2 businesses, so as to provide for the licensure of individuals in the practice of applied behavior
3 analysis; to provide legislative findings; to provide for definitions; to create the Georgia
4 Behavior Analyst Licensing Board; to provide for its membership and duties; to provide for
5 licensing requirements; to provide for penalties; to provide for statutory construction; to
6 provide for temporary licenses; to provide for reciprocity; to provide for related matters; to
7 repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Title 43 of the Official Code of Georgia Annotated, relating to professions and businesses,
11 is amended by adding a new chapter to read as follows:

12 "CHAPTER 7A

13 43-7A-1.

14 The General Assembly finds that the practice of applied behavior analysis in Georgia is
15 hereby declared to affect the public health, safety, and welfare of citizens of Georgia and
16 should be subject to regulation to protect the public from: (i) the practice of applied
17 behavior analysis by unqualified persons; and (ii) unprofessional, unethical, and harmful
18 conduct by behavior analysis practitioners.

19 43-7A-2.

20 As used in this chapter, the term:

21 (1) 'Applied behavior analysis' means the design, implementation, and evaluation of
22 systematic instructional and environmental modifications by a behavior analyst, to
23 produce socially significant improvements in behavior.

24 (2) 'Behavior technician' means a paraprofessional who practices under the close,
25 ongoing supervision of a licensed behavior analyst or licensed assistant behavior analyst
26 and delivers services as assigned by such licensee but does not design assessment or
27 intervention plans or procedures.

28 (3) 'Board' means the Georgia Behavior Analyst Licensing Board created pursuant to this
29 chapter.

30 (4) 'Board certified' means a certification issued by a certifying entity to a practitioner
31 of applied behavior analysis demonstrating that such practitioner meets specific
32 requirements.

33 (5) 'Certifying entity' means the Behavior Analyst Certification Board, Inc., or its
34 successor, or another entity that conducts programs to certify professional practitioners
35 of behavior analysis that are accredited by the National Commission on Certifying
36 Agencies or the American National Standards Institute as identified by the board.

37 (6) 'Licensed assistant behavior analyst' means an individual who is licensed pursuant
38 to this chapter to practice as an assistant behavior analyst.

39 (7) 'Licensed behavior analyst' means an individual who is licensed pursuant to this
40 chapter to practice as a behavior analyst.

41 (8) 'Practice of applied behavior analysis' means the design, implementation, and
42 evaluation of instructional and environmental modifications to produce socially
43 significant improvements in human behavior. Such term includes the empirical
44 identification of functional relations between behavior and environmental factors, known
45 as functional assessment and analysis; interventions based on scientific research and
46 direct and indirect observation and measurement of behavior and the environment; and
47 the utilization of contextual factors, motivating operations, antecedent stimuli, positive
48 reinforcement, and other consequences to help people develop new behaviors, increase
49 or decrease existing behaviors, and emit behaviors under specific environmental
50 conditions. Such term expressly excludes psychological testing, diagnosis of a mental
51 or physical disorder, psychotherapy, cognitive therapy, psychoanalysis, and counseling.

52 43-7A-3.

53 (a) The Georgia Behavior Analyst Licensing Board is hereby established. The board shall
54 be composed of five members appointed by the Governor.

55 (b)(1) The initial board members shall include:

56 (A) Three members each of whom are either a board certified behavior analyst or a
57 board certified behavior analyst-doctoral and who are eligible for licensure under this
58 chapter. Such members shall apply for licensure as soon as feasible after appointment;

59 (B) One member who is a board certified assistant behavior analyst who is eligible for
60 licensure under this chapter. Such member shall apply for licensure as soon as feasible
61 after appointment; and

62 (C) One public member who:

- 63 (i) Is not a licensed behavior analyst or a licensed assistant behavior analyst or the
64 spouse of such person;
- 65 (ii) Has never been in the practice of applied behavior analysis or the spouse of such
66 person; and
- 67 (iii) Does not have and has never had a material interest in the practice of applied
68 behavior analysis.
- 69 (2) Subsequent board members shall include:
- 70 (A) Three licensed behavior analysts;
- 71 (B) One licensed assistant behavior analyst; and
- 72 (C) One public member who:
- 73 (i) Is not a licensed behavior analyst or a licensed assistant behavior analyst or the
74 spouse of such person;
- 75 (ii) Has never been in the practice of applied behavior analysis or the spouse of such
76 person; and
- 77 (iii) Does not have and has never had a material interest in the practice of applied
78 behavior analysis.
- 79 (c) The membership of the board shall reflect the racial, gender, geographic, urban/rural,
80 and economic diversity of the state.
- 81 (d) Members shall serve three-year terms and until their successors are duly appointed and
82 qualified; provided, however, that initial terms shall be staggered so that one member
83 serves an initial term of one year, two members serve initial terms of two years, and two
84 members serve initial terms of three years, as designated by the Governor. No member
85 shall be appointed to more than two consecutive three-year terms.
- 86 (e) A vacancy on the board for any reason other than expiration of the term shall be filled
87 for the remainder of the unexpired term by appointment of the Governor.
- 88 (f) Members of the board shall receive the expense allowance as provided by
89 subsection (b) of Code Section 45-7-21 and the same mileage allowance for the use of a

90 personal car as that received by other state officials and employees or a travel allowance
91 of actual transportation cost if traveling by public carrier within this state for attendance
92 at board meetings.

93 (g) The board shall meet at least twice annually and may meet at such other times as
94 necessary, at the call of the chair or by a majority of the members, as necessary to transact
95 its business.

96 (h) Three members of the board shall constitute a quorum.

97 (i) The board shall annually elect a chairperson from among its membership and such other
98 officers as deemed necessary.

99 43-7A-4.

100 The board shall be authorized to:

101 (1) Adopt, amend, and repeal such rules and regulations as shall be reasonably necessary
102 for the administration, enforcement, and implementation of the provisions and purposes
103 of this chapter;

104 (2) Issue, renew, and reinstate the licenses of duly qualified applicants for licensure;

105 (3) Deny, suspend, revoke, or otherwise sanction licensees;

106 (4) Initiate investigations for the purpose of discovering violations of this chapter;

107 (5) Conduct hearings upon charges calling for the discipline of a licensee or on violations
108 of this chapter;

109 (6) Conduct national background checks by the submission of fingerprints to the Federal
110 Bureau of Investigation through the Georgia Crime Information Center;

111 (7) Adopt a seal; and

112 (8) Do all other things necessary to administer and enforce this chapter and all rules and
113 regulations adopted by the board pursuant to this chapter.

114 43-7A-5.

115 (a) Each person desiring to obtain a license pursuant to this chapter shall submit an
116 application and applicable fees to the board. An application shall furnish satisfactory
117 evidence demonstrating that the applicant:

118 (1) Is of good moral character;

119 (2) Conducts his or her professional activities in accordance with accepted professional
120 and ethical standards and guidelines for responsible conduct for behavior analysts
121 established by a certifying entity; and

122 (3) Has received satisfactory results from a fingerprint record check report conducted by
123 the Georgia Crime Information Center and the Federal Bureau of Investigation, as
124 determined by the board. Application for the issuance of a license under this chapter
125 shall constitute express consent and authorization for the board or its representative to
126 perform a criminal background check. Each applicant who submits an application to the
127 board for licensure agrees to provide the board with any and all information necessary to
128 run a criminal background check, including, but not limited to, classifiable sets of
129 fingerprints. Such applicant shall be responsible for all fees associated with the
130 performance of such background check.

131 (b) An applicant to be a licensed behavior analyst shall furnish satisfactory evidence
132 demonstrating that the applicant:

133 (1) Has successfully passed a behavior analyst examination conducted by a certifying
134 entity; and

135 (2) Maintains active status as a board certified behavior analyst.

136 (c) An applicant to be a licensed assistant behavior analyst shall furnish satisfactory
137 evidence demonstrating that the applicant:

138 (1) Has successfully passed an assistant behavior analyst examination conducted by a
139 certifying entity;

140 (2) Maintains active status as a board certified assistant behavior analyst; and

141 (3) Will have ongoing supervision by a licensed behavior analyst in a manner consistent
142 with the certifying entity's requirements for supervision of board certified assistant
143 behavior analysts.

144 (d) The board shall issue and renew licenses to qualified applicants no later than 90 days
145 after receipt of a complete application or renewal application.

146 43-7A-6.

147 (a) The unlicensed practice of applied behavior analysis is prohibited in this state, except
148 as otherwise provided in Code Section 43-7A-7.

149 (b) No person shall hold himself or herself out to be a licensed behavior analyst or licensed
150 assistant behavior analyst unless he or she is licensed pursuant to this chapter.

151 (c) Any person in violation of subsection (a) or (b) of this Code section shall be subject to
152 a fine of \$1,000.00 for each violation.

153 43-7A-7.

154 The provisions of this chapter shall not be construed to prohibit or restrict the practice of
155 any of the following:

156 (1) An individual licensed to practice psychology in this state, so long as the applied
157 behavior analysis services provided by the licensed psychologist are within his or her
158 education, training, and experience or an individual acting under the extended authority
159 and direction of a licensed psychologist;

160 (2) A behavior technician or a family member implementing a plan within the home,
161 who acts under the extended authority and direction of a licensed behavior analyst or a
162 licensed assistant behavior analyst; provided, however, that he or she shall not represent
163 themselves as a licensed behavior analyst or a licensed assistant behavior analyst and he
164 or she shall use titles that indicate their nonprofessional status, such as 'Registered

165 Behavior Technician,' if applicable, 'ABA technician,' 'behavior technician,' 'tutor,' or
166 'therapist';

167 (3) A behavior analyst who practices with nonhuman or nonpatient clients or consumers,
168 including, but not limited to, applied animal behaviorists and practitioners of
169 organizational behavior management. Such individuals may use the title 'behavior
170 analyst' but shall not represent themselves as licensed behavior analysts or licensed
171 assistant behavior analysts unless they are licensed pursuant to this chapter;

172 (4) A licensed professional authorized to practice in this state who is not a behavior
173 analyst, so long as the licensed professional does not represent that he or she is a licensed
174 behavior analyst or licensed assistant behavior analyst and so long as any applied
175 behavior analysis services performed are within the scope of practice of his or her
176 profession and are commensurate with the licensed professional's education, training, and
177 experience;

178 (5) A matriculated graduate student or postdoctoral fellow whose activities are part of
179 a defined behavior analysis program of study, practicum, or intensive practicum, provided
180 that such program of study, practicum, or intensive practicum is directly supervised by
181 a licensed behavior analyst or an instructor in a course sequence approved by a certifying
182 entity. Such individuals shall not represent themselves as licensed behavior analysts or
183 licensed assistant behavior analysts unless they are licensed pursuant to this chapter and
184 shall only use titles that clearly indicate their trainee status, such as 'student,' 'intern,' or
185 'trainee';

186 (6) Unlicensed individuals pursuing experience in applied behavior analysis consistent
187 with the experience requirements of a certifying entity, provided that such experience is
188 supervised in accordance with the requirements of a certifying entity and that such
189 experience is supervised by a licensed behavior analyst;

190 (7) Professionals who provide general applied behavior analysis services to
191 organizations, so long as those services are for the benefit of the organizations and do not

192 involve direct services to individuals. Such individuals may use the title 'behavior
193 analyst' but shall not represent themselves as licensed behavior analysts or licensed
194 assistant behavior analysts unless they are licensed pursuant to this chapter;

195 (8) Individuals who teach behavior analysis or conduct behavior analysis research,
196 provided that such teaching or research does not involve the direct delivery of applied
197 behavior analysis services. Such individuals may use the title 'behavior analyst' but shall
198 not represent themselves as licensed behavior analysts or licensed assistant behavior
199 analysts unless they are licensed pursuant to this chapter;

200 (9) Behavior analysts licensed in another jurisdiction or certified by the certifying entity
201 to practice independently and who work in Georgia no more than 14 days within a
202 calendar year and have received a temporary behavior analyst license pursuant to this
203 chapter;

204 (10) An individual employed by a local board of education performing the duties of their
205 positions; provided, however, that such individuals shall not represent themselves as
206 licensed behavior analysts or licensed assistant behavior analysts or offer or provide
207 applied behavior analysis services to any persons or entities other than their employing
208 local board of education or accept remuneration for providing applied behavior analysis
209 services other than the remuneration they receive from their employing local board of
210 education unless he or she is licensed pursuant to this chapter; or

211 (11) A licensed physician who is practicing medicine.

212 43-7A-8.

213 A Board Certified Behavior Analyst or Board Certified Assistant Behavior Analyst residing
214 and practicing in another state who temporarily provides applied behavior analysis services
215 in this state to a resident of this state may apply for a temporary license to practice behavior
216 analysis in this state. A temporary behavior analysis license may be issued only if the

217 behavior analysis services are to be delivered during a limited and defined period of not
218 more than 14 days within a calendar year or shorter term otherwise approved by the board.

219 43-7A-9.

220 The board shall issue a license to a person who is actively licensed as a behavior analyst
221 in good standing in another state if such state imposes comparable licensure requirements
222 as those imposed pursuant to this chapter and such state offers reciprocity to individuals
223 licensed in this state. Applicants for reciprocity shall submit proof of current licensure,
224 current certification by a certifying entity, compliance with ethical standards, and
225 satisfactory results on a criminal background check.

226 43-7A-10.

227 A license shall be granted for a period of two years. Prior to expiration of a license, the
228 license may be renewed upon submission of an application for renewal, including proof of
229 continued certification by a certifying entity and payment of the renewal fee imposed by
230 the board."

231 **SECTION 2.**

232 All laws and parts of laws in conflict with this Act are repealed.