

SENATE No. 134

The Commonwealth of Massachusetts

PRESENTED BY:

Sal N. DiDomenico

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:	
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>1/31/2019</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>2/8/2019</i>

SENATE No. 134

By Mr. DiDomenico, a petition (accompanied by bill, Senate, No. 134) of Sal N. DiDomenico, James B. Eldridge and Jason M. Lewis for legislation relative to applied behavior analysts. Consumer Protection and Professional Licensure.

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. (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 to be appointed
11 by the governor, 2 of whom shall be doctoral-level, board-certified behavior analysts designated
12 as such by the Behavior Analyst Certification Board, 4 of whom shall be board-certified

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

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

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

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

33 Section 112. (a) The board of registration of applied behavior analysts may: (i) pass upon
34 the qualifications of an application for a license under sections 266 to 278, inclusive, of chapter

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

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

51 (c) Individuals licensed as applied behavior analysts or assistant applied behavior
52 analysts in the Commonwealth at the effective date of this statute shall be grandfathered, and
53 would not be affected, nor required to resubmit applications for licensure until the time as their
54 application is due for renewal.

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

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

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

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

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

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

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

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

74 “Scope of practice of applied behavior analysis”, the design, implementation and
75 evaluation of systematic instructional and environmental modifications, using behavioral stimuli
76 and consequences, to produce socially significant improvements in human behavior, including
77 the direct observation and measurement of behavior and the environment, the empirical

78 identification of functional relations between behavior and environmental factors, known as
79 functional assessment and analysis, and the introduction of interventions based on scientific
80 research and which utilize contextual factors, antecedent stimuli, positive reinforcement and
81 other consequences to develop new behaviors, increase or decrease existing behaviors and elicit
82 behaviors under specific environmental conditions that are delivered to individuals and groups of
83 individuals; and provided further, that the scope of practice of applied behavior analysis shall not
84 include psychological testing, neuropsychology, diagnosis of mental health or developmental
85 conditions, psychotherapy, cognitive therapy, sex therapy, psychoanalysis,
86 psychopharmacological recommendations, hypnotherapy or academic teaching by college or
87 university faculty.

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

93 Section 277. The board may issue a license to an applicant as an assistant applied
94 behavior analyst; provided that each such applicant demonstrates to the board that they are a
95 Board Certified Assistant Behavior Analyst (BCaBA) in good standing with the Behavior
96 Analyst Certification Board (BACB) or has the equivalent certification from a Board-approved
97 program that is accredited by the National Commission for Certifying Agencies (NCCA).

98 Section 278. Each person desiring to obtain a license as an applied behavior analyst or as
99 an assistant applied behavior analyst shall make application to the board upon such form and in

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

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

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

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

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

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

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

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

130 Section 282. Nothing in sections 275 to 287, inclusive, shall be construed to prevent
131 qualified members of other professions or occupations including, but not limited to, physicians,
132 psychologists, teachers, members of the clergy, authorized Christian Science practitioners,
133 attorneys-at-law, social workers, guidance counselors, clinical counselors, adjustment
134 counselors, speech pathologists, audiologists or rehabilitation counselors from practicing applied
135 behavior analysis if it is consistent with the accepted standards of their respective professions;
136 provided, however, that no such Christian Science practitioner, attorneys-at-law, social worker,
137 guidance counselor, clinical counselor, adjustment counselor, speech pathologist, audiologist or
138 rehabilitation counselor shall use any title or description stating or implying that such person is a
139 licensed applied behavior analyst without holding said license.

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

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

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

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

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

158 (i) fraudulently procured the license;

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

161 (iii) engaged in conduct that calls into question the applied behavior analyst’s
162 competence to practice applied behavior analysis including, but not limited to, gross misconduct

163 in the practice of applied behavior analysis or of practicing applied behavior analysis
164 fraudulently, or beyond its authorized scope, or with gross incompetence, or with gross
165 negligence on a particular occasion or negligence on repeated occasions;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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