

SENATE No. 188

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>Anne M. Gobi</i>	<i>Worcester, Hampden, Hampshire and Middlesex</i>	<i>3/12/2021</i>
<i>Patrick M. O'Connor</i>	<i>Plymouth and Norfolk</i>	<i>4/6/2021</i>

SENATE No. 188

By Mr. DiDomenico, a petition (accompanied by bill, Senate, No. 188) of Sal N. DiDomenico, Anne M. Gobi and Patrick M. O'Connor for legislation relative to applied behavior analysts. Consumer Protection and Professional Licensure.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 134 OF 2019-2020.]

The Commonwealth of Massachusetts

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

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 2018
2 Official Edition, is hereby amended by striking out the figure "13" and inserting in place thereof
3 the following figure:- "11"

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

6 "(A) Eight members shall be licensed practicing mental health and human services
7 professionals, two of whom shall be marriage and family therapists, two of whom shall be
8 rehabilitation counselors, two of whom shall be clinical mental health counselors, two of whom
9 shall be educational psychologists; and each shall have been, for at least five years immediately

10 preceding appointment, actively engaged as a practitioner rendering professional services in that
11 field, or in the education and training of graduate students or interns in the field, or in appropriate
12 human developmental research, or in other areas substantially equivalent thereto, and shall have
13 spent the majority of the professional time in such activity during the two years preceding the
14 appointment in the commonwealth. One of the 8 shall also be a member of a union licensable
15 under sections 163 to 172, inclusive, of chapter 112";

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

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

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

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

35 Section 111.. The board shall hold at least 2 meetings annually and will determine an
36 appropriate schedule of meetings that meets the needs of licensees. At its first regular meeting in
37 each year the board shall elect from its own members by majority vote a chair. A majority of the
38 board shall constitute a quorum. The members of the board shall serve without compensation but
39 shall be reimbursed for actual expenses reasonably incurred in the performance of their board
40 duties. The board may hire such staff as it deems necessary to carry out its activities.

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

54 the licensee within 10 day after any such action by the board to determine whether such
55 summary action is warranted; and (vii) perform any other functions and duties as may be
56 required to carry out this section.

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

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

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

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

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

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

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

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

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

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

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

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

91 “Practice of applied behavior analysis”, the design, implementation and evaluation of
92 instructional and environmental modifications to produce socially significant improvements in
93 human behavior. The practice of applied behavior analysis includes the empirical identification
94 of functional relations between behavior and environmental factors, known as functional

95 assessment and analysis. Applied behavior analysis interventions are based on scientific research
96 and direct and indirect observation and measurement of behavior and environment. They utilize
97 contextual factors, motivating operations, antecedent stimuli, positive reinforcement, and other
98 procedures to help individuals develop new behaviors, increase or decrease existing behaviors,
99 and emit behaviors under specific environmental conditions. The practice of applied behavior
100 analysis excludes diagnosis disorders, psychological testing, psychotherapy, cognitive therapy,
101 psychoanalysis, and counseling.

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

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

107 (a) is of good moral character;

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

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

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

114 (a) is of good moral character;

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

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

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

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

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

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

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

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

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

145 On or before September 30 of the year preceding the expiration of a license, the board
146 shall forward to the holder of the license a form of application for renewal thereof. Upon the
147 receipt of the completed form and the renewal fee on or before November 30, the board shall
148 verify with the certifying entity that the applicant is certified at the appropriate level and is not
149 the subject of any active investigation or disciplinary action by the certifying entity. If such
150 verification is attained, the board shall issue a new license for the year commencing January 1.

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

156 Section 282. Nothing in sections 275 to 287, inclusive, shall be construed to prevent
157 qualified members of other professions or occupations including, but not limited to, physicians,
158 psychologists, teachers, members of the clergy, authorized Christian Science practitioners,
159 attorneys-at-law, social workers, guidance counselors, clinical counselors, adjustment
160 counselors, speech pathologists, audiologists or rehabilitation counselors from practicing applied
161 behavior analysis if it is consistent with the legislated scope of practice and accepted ethical
162 standards of their respective professions and the individual professional’s training and
163 competence; provided, however, that no such Christian Science practitioner, attorneys-at-law,
164 social worker, guidance counselor, clinical counselor, adjustment counselor, speech pathologist,
165 audiologist or rehabilitation counselor shall use any title or description stating or implying that
166 such person is a licensed behavior analyst or licensed assistant behavior analyst without holding
167 said license.

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

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

174 Section 285. The penalties set forth in section 284 shall not apply to matriculated college
175 or university students or postdoctoral fellows whose applied behavior analysis activities are part
176 of a defined program of study, course, practice, internship, or fellowship and are directly
177 supervised by a licensed behavior analyst in the Commonwealth or a qualified faculty member.

178 Such individuals must not represent themselves as professional behavior analysts and must use
179 titles that clearly indicate their trainee status, such as “student,” “intern,” or trainee.”

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

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

185 (i) fraudulently procured the license;

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

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

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

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

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

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

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

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

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

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

212 Written notice of a contemplated revocation or suspension of a license or the cause
213 therefor, in sufficient particularity, and the date of a hearing thereon, shall be sent by registered
214 or certified mail to the licensee at the licensee's last known address at least 15 days before the
215 date of the hearing. The licensee against whom a charge is filed shall have a right to appear
216 before the board in person or by counsel, or both, may produce witnesses, introduce evidence
217 and question witnesses. No license shall be revoked or suspended without such hearing, but the
218 nonappearance of the licensee, after notice, shall not prevent such revocation or suspension. All

219 matters upon which a contemplated revocation or suspension is based shall be introduced in
220 evidence at the proceeding. The licensee shall be notified in writing of the board's decision. The
221 board may make such rules and regulations as it deems proper for the filing of charges and the
222 conduct of hearings.

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

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

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

232 SECTION 8. Notwithstanding section 110 of chapter 13 of the General Laws, the initial
233 members of the board of registration of behavior analysts shall consist of 9 members to be
234 appointed by the governor, 2 of whom shall be Licensed Behavior Analysts licensed under this
235 section who hold doctoral degrees, 4 of whom shall be Licensed Behavior Analysts who hold
236 master's degrees, 1 of whom shall be a Licensed Assistant Behavior Analyst designated as such
237 by the who holds a bachelor's degree, and 2 members of the general public, subject to section 9B
238 of chapter 13. Of the said initial members appointed to the board, 3 shall serve for terms of 3
239 years, 3 shall serve for terms of 2 years and 3 shall serve for a term of 1 year.

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