



SENATE BILL 103: Reduce Reg. To Help Children with Autism.

2021-2022 General Assembly

Committee:		Date:	December 8, 2021
Introduced by:		Prepared by:	Jason Moran-Bates Staff Attorney
Analysis of:	S.L. 2021-22		

OVERVIEW: *S.L. 2021-22 establishes a licensure process for behavior analysts and creates criminal penalties for practicing without a license.*

The portion of the act creating a criminal penalty for unlicensed practice of behavioral analysis became effective January 1, 2022, and applies to acts committed on or after that date. The remainder of the act became effective May 17, 2021.

BILL ANALYSIS: The act creates Article 43, Behavior Analyst Licensure, in Chapter 90, which sets out the following:

- **Definitions** (90-726.2). Definitions are created for "behavior analysis," "behavior technician," "Board," "certifying entity," "institution of higher education," "licensed assistant behavior analyst," "licensed behavior analyst," and "practice of behavior analysis."
- **Board** (90-726.3). The North Carolina Behavior Analysis Board (Board) is established with five members serving staggered terms.
 - The General Assembly, on the recommendation of the Speaker of the House, would appoint one member who is certified as a Board Certified Behavior Analyst.
 - The General Assembly, on the recommendation of the President Pro Tempore of the Senate, would appoint one member who is certified as a Board Certified Behavior Analyst.
 - The Governor would appoint three members, one of whom would be certified as a Board Certified Behavior Analyst, one of whom would be certified as a Board Certified Assistant Behavior Analyst, and one of whom would be a member of the public.

This section also establishes the qualifications for Board members, sets out the process for filling vacant seats on the Board, establishes rules for removing members of the Board, and provides for per diem and travel expense reimbursement for Board members.

- **Board Powers** (90-726.4). The Board has the power to administer the Article, adopt rules, evaluate applicants for licensure, issue licenses, establish fees, discipline licensees, adopt a seal, and conduct investigations.
- **Annual Report** (90-726.5). The Board is required to submit a report to the Governor on June 30 of each year.
- **License Application** (90-726.6). Individuals seeking licensure are required to meet the following criteria: (i) be of good moral character, (ii) not engage in conduct that would be grounds for license revocation, (iii) submit a criminal history record, and (iv) qualify for licensure under the Article.

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- **Behavior Analyst License Requirements (90-726.7).** Individuals seeking licensure as a behavior analyst must be at least 18, pass an exam, and be actively certified as a behavioral analyst.
- **Assistant Behavior Analyst License Requirements (90-726.8).** Individuals seeking licensure as an assistant behavior analyst must be at least 18, pass an exam, be actively certified as an assistant behavioral analyst, and have a supervisory arrangement with a certified behavior analyst.
- **License Renewal (90-726.9).** Licenses are valid for two years. They could be renewed after providing proof of completion of continuing education requirements, payment of a renewal fee, and evidence of current certification.
- **Temporary Licenses (90-276.10).** Behavior analysts licensed in other states are able to receive licenses to temporarily practice in North Carolina. The temporary license are only valid for a defined and limited time period.
- **Reciprocity (90-276.11).** Licensure by reciprocity is permitted when the other state has comparable licensure requirements and upon the applicant's submission of specified documents.
- **Denial, Suspension, and Revocation of Licenses (90-726.12).** The Board is allowed to take disciplinary action against licensees and applicants who violate a provision of the Code of Conduct. Costs of the disciplinary process may be assessed against the licensee or applicant. Confidential client information may be withheld from the public record.
- **Fees (90-726.13).** Fees collected by the Board will established pursuant to rules but must not exceed the following: Application: \$250; Renewal: \$200; Late Renewal: \$50; Reciprocal application: \$250; Temporary License: \$100.
- **Criminal History Record Checks (90-726.14).** All applicants for licensure are required to consent to a criminal record background check and pay for the costs of the background check. Convictions would not automatically bar an applicant from licensure.
- **Exemptions from Licensure (90-726.15).** Psychologists, social workers, family members of patients, and individuals who provide behavior analysis services to nonhuman subjects are exempt from the licensing requirements of the Article.
- **Prohibited Acts (90-726.16).** Unlicensed individuals are prohibited from practicing behavior analysis. Violation would be a Class 2 misdemeanor.
- **Injunction (90-726.17).** The Board is able to seek injunctions to prevent violations of the Article.

Section 3 adds a new section to Chapter 8 clarifying that behavior analysts are not required to disclose information about their patients in court unless compelled to do so by a judge.

EFFECTIVE DATE: The criminal penalty will be effective January 1, 2022, and apply to acts committed on or after that date. The remainder of the act became effective May 17, 2021.

BACKGROUND: The Behavior Analyst Certification Board <http://www.bacb.com/> provides credentialing for the Board Certified Behavior Analyst (BCBA) and the Board Certified Assistant Behavior Analyst (BCaBA). [Section 22.3 of S.L. 2017-57](#), the Appropriations Act of 2017, requires insurers to provide coverage for adaptive behavior treatment supervised or provided by a board-certified behavior analyst.

**Trina Griffin, Staff Attorney, substantially contributed to this summary.*