

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 803
96TH GENERAL ASSEMBLY

Reported from the Committee on Financial and Governmental Organizations and Elections, April 12, 2012, with recommendation that the Senate Committee Substitute do pass.

5876S.03C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 337.300, 337.305, 337.310, 337.315, 337.325, and 337.345, RSMo, and to enact in lieu thereof six new sections relating to behavior analysis.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 337.300, 337.305, 337.310, 337.315, 337.325, and 337.345, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 337.300, 337.305, 337.310, 337.315, 337.325, and 337.347, to read as follows:

337.300. As used in sections 337.300 to 337.345, the following terms shall mean:

(1) "Applied behavior analysis", the design, implementation, and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in human behavior, including the use of direct observation, measurement, and functional analysis of the relationships between environment and behavior. **Applied behavior analysis does not include cognitive therapies or psychological testing, personality assessment, intellectual assessment, neuropsychological assessment, psychotherapy, cognitive therapy, sex therapy, psychoanalysis, hypnotherapy, family therapy, and long-term counseling as treatment modalities;**

(2) "Board", the behavior analyst advisory board within the state committee of psychologists;

(3) "Certifying entity", the nationally accredited Behavior Analyst Certification Board, or other equivalent nationally accredited nongovernmental

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

17 agency approved by the committee which certifies individuals who have completed
18 academic, examination, training, and supervision requirements in applied
19 behavior analysis;

20 (4) "Committee", the state committee of psychologists;

21 (5) "Division", the division of professional registration within the
22 department of insurance, financial institutions and professional registration;

23 (6) "Licensed assistant behavior analyst" or "LaBA", an individual who is
24 certified by the certifying entity as a certified assistant behavior analyst and
25 meets the criteria in section 337.315 and as established by committee rule;

26 (7) "Licensed behavior analyst" or "LBA", an individual who is certified
27 by the certifying entity as a certified behavior analyst and meets the criteria in
28 section 337.315 and as established by committee rule;

29 (8) "Practice of applied behavior analysis", the application of the
30 principles, methods, and procedures of the experimental analysis of behavior and
31 applied behavior analysis (including principles of operant and respondent
32 learning) to assess and improve socially important human behaviors. It includes,
33 but is not limited to, applications of those principles, methods, and procedures to:

34 (a) The design, implementation, evaluation, and modification of treatment
35 programs to change behavior of individuals;

36 (b) The design, implementation, evaluation, and modification of treatment
37 programs to change behavior of groups; and

38 (c) Consultation to individuals and organizations[. Applied behavior
39 analysis does not include cognitive therapies or psychological testing, personality
40 assessment, intellectual assessment, neuropsychological assessment,
41 psychotherapy, cognitive therapy, sex therapy, psychoanalysis, hypnotherapy,
42 family therapy, and long-term counseling as treatment modalities];

43 **(9) "Provisionally licensed assistant behavior analyst" or**
44 **"PLABA", an individual who meets the criteria in subsection 5 of section**
45 **337.315 and as established by the committee by rule;**

46 **(10) "Provisionally licensed behavior analyst" or "PLBA", an**
47 **individual who meets the criteria in subsection 5 of section 337.315 and**
48 **as established by the committee by rule;**

49 **(11) "Temporary licensed assistant behavior analyst" or "TLaBA",**
50 **an individual who meets the criteria of subsection 4 of section 337.315**
51 **and as established by the committee by rule;**

52 **(12) "Temporary licensed behavior analyst" or "TLBA", an**

53 **individual who meets the criteria in subsection 4 of section 337.315 and**
54 **as established by the committee by rule.**

337.305. 1. There is hereby created under the state committee of
2 psychologists within the division of professional registration the "Behavior
3 Analyst Advisory Board". The behavior analyst advisory board shall consist of
4 the following seven members: three licensed behavior analysts, one licensed
5 behavior analyst holding a doctoral degree, one licensed assistant behavior
6 analyst, one professional member of the committee, and one public member.

7 2. Appointments to the board, **except for the one professional**
8 **member of the committee**, shall be made by the governor upon the
9 recommendations of the director of the division, upon the advice and consent of
10 the senate. The division, prior to submitting nominations, shall solicit nominees
11 from professional associations and licensed behavior analysts or licensed
12 assistant behavior analysts in the state. **Appointment to the board of the**
13 **one professional member of the committee shall be made by nomination**
14 **and majority vote of the committee.**

15 3. The term of office for board members shall be five years. In making
16 initial appointments to the board, the governor shall stagger the terms of the
17 appointees so that one member serves an initial term of two years, three members
18 shall serve an initial term of three years, and three members serve initial terms
19 of four years. Each member of the board shall hold office until his or her
20 successor has been qualified. A vacancy in the membership of the board shall be
21 filled for the unexpired term in the manner provided for the original appointment.
22 A member appointed for less than a full term may serve two full terms in
23 addition to such part of a full term.

24 4. Each board member shall be a resident of this state for a period of one
25 year and a registered voter, shall be a United States citizen, and shall, other than
26 the public member, have been a licensed behavior analyst or licensed assistant
27 behavior analyst in this state for at least three years prior to appointment except
28 for the original members of the board who shall have experience in the practice
29 of applied behavior analysis.

30 5. The public member shall be a person who is not and never was a
31 member of any profession licensed or regulated under sections 337.300 to 337.345
32 or the spouse of such person; and a person who does not have and never has had
33 a material financial interest in either the providing of the professional services
34 regulated by sections 337.300 to 337.345, or an activity or organization directly

35 related to any profession licensed or regulated under sections 337.300 to 337.345.

36 6. The board shall meet at least quarterly. At one of its regular meetings,
37 the board shall select from among its members a chairperson and a vice
38 chairperson. A quorum of the committee shall consist of a majority of its
39 members. In the absence of the chairperson, the vice chairperson shall conduct
40 the office of the chairperson.

41 7. Each member of the board shall receive as compensation an amount set
42 by the division not to exceed fifty dollars for each day devoted to the affairs of the
43 board and shall be entitled to reimbursement for necessary and actual expenses
44 incurred in the performance of the member's official duties.

45 8. Staff for the board shall be provided by the director of the division of
46 professional registration.

47 9. The governor may remove any member of the board for misconduct,
48 inefficiency, incompetency, or neglect of office. All vacancies shall be filled by
49 appointment of the governor with the advice and consent of the senate, and the
50 member so appointed shall serve for the unexpired term.

337.310. 1. The behavior analyst advisory board is authorized to:

2 (1) Review all applications for licensure, **provisional licensure**, and
3 temporary licensure for behavior analysts and assistant behavior analysts and
4 any supporting documentation submitted with the application to the committee
5 and make recommendations to the committee regarding the resolution of the
6 application;

7 (2) Review all complaints made relating to the practice of behavior
8 analysis and make recommendations to the committee regarding investigation of
9 the complaint, referral for discipline or other resolution of the complaint; and

10 (3) Review any entities responsible for certifying behavior analysts and
11 make recommendations to the committee as to approval or disapproval of the
12 certifying entity based on qualifications established by the committee.

13 2. The board shall recommend to the committee rules to be promulgated
14 pertaining to:

15 (1) The form and content of license applications required and the
16 procedures for filing an application for an initial, provisional temporary or
17 renewal license in this state;

18 (2) The establishment of fees;

19 (3) The educational and training requirements for licensed behavior
20 analysts and licensed assistant behavior analysts;

21 (4) The roles, responsibilities, and duties of licensed behavior analysts
22 [and], licensed assistant behavior analysts, **provisionally licensed behavior**
23 **analysts, provisionally licensed assistant behavior analysts, temporary**
24 **licensed behavior analysts, and temporary licensed assistant behavior**
25 **analysts;**

26 (5) The characteristics of supervision and supervised clinical practicum
27 experience for [the] licensed behavior analyst [and the], licensed assistant
28 behavior analyst, **provisionally licensed behavior analysts, provisionally**
29 **licensed assistant behavior analysts, temporary licensed behavior**
30 **analysts, and temporary licensed assistant behavior analysts;**

31 (6) The supervision of licensed assistant behavior analysts,
32 **provisionally licensed behavior analysts, provisionally licensed**
33 **assistant behavior analysts, temporary licensed behavior analysts, and**
34 **temporary licensed assistant behavior analysts;**

35 (7) The requirements for continuing education for licensed behavior
36 analysts and licensed assistant behavior analysts;

37 (8) A code of conduct; and

38 (9) Any other policies or procedures necessary to the fulfillment of the
39 requirements of sections 337.300 to 337.345.

40 3. Only after the board's recommendation and approval by majority vote
41 may the committee make any final decisions related to licensing, rules and
42 regulations, complaint resolution, approval of certifying entities or any actions
43 bearing upon the practice of applied behavior analysis unless otherwise
44 authorized by sections 337.300 to 337.345.

45 4. [Notwithstanding the provisions of subsection 3 of this section, until
46 such time as the governor appoints the board and the board has a quorum, the
47 committee shall review and resolve all applications for licensure as a licensed
48 behavior analyst or licensed assistant behavior analyst.

49 5.] Any rule or portion of a rule, as that term is defined in section
50 536.010, that is created under the authority delegated in this section shall
51 become effective only if it complies with and is subject to all of the provisions of
52 chapter 536 and, if applicable, section 536.028. This section and chapter 536 are
53 nonseverable and if any of the powers vested with the general assembly pursuant
54 to chapter 536 to review, to delay the effective date, or to disapprove and annul
55 a rule are subsequently held unconstitutional, then the grant of rulemaking
56 authority and any rule proposed or adopted after August 28, 2010, shall be

57 invalid and void.

337.315. 1. An applied behavior analysis intervention shall produce
2 socially significant improvements in human behavior through skill acquisition,
3 increase or decrease in behaviors under specific environmental conditions and the
4 reduction of problematic behavior. An applied behavior analysis intervention
5 shall:

6 (1) Be based on empirical research and the identification of functional
7 relations between behavior and environment, contextual factors, antecedent
8 stimuli and reinforcement operations through the direct observation and
9 measurement of behavior, arrangement of events and observation of effects on
10 behavior, as well as other information gathering methods such as record review
11 and interviews; and

12 (2) Utilize changes and arrangements of contextual factors, antecedent
13 stimuli, positive reinforcement, and other consequences to produce behavior
14 change.

15 2. Each person wishing to practice as a licensed behavior analyst shall:

16 (1) Submit a complete application on a form approved by the committee;

17 (2) Pay all necessary fees as set by the committee;

18 (3) Submit a two-inch or three-inch photograph or passport photograph
19 taken no more than six months prior to the application date;

20 (4) Provide two classified sets of fingerprints for processing by the
21 Missouri state highway patrol under section 43.543. One set of fingerprints shall
22 be used by the highway patrol to search the criminal history repository and the
23 second set shall be forwarded to the Federal Bureau of Investigation for searching
24 the federal criminal history files;

25 (5) Have passed an examination and been certified as a board-certified
26 behavior analyst by a certifying entity, as defined in section 337.300;

27 (6) Provide evidence of active status as a board-certified behavior analyst;
28 and

29 (7) If the applicant holds a license as a behavior analyst in another state,
30 a statement from all issuing states verifying licensure and identifying any
31 disciplinary action taken against the license holder by that state.

32 3. Each person wishing to practice as a licensed assistant behavior
33 analyst shall:

34 (1) Submit a complete application on a form approved by the committee;

35 (2) Pay all necessary fees as set by the committee;

36 (3) Submit a two-inch or three-inch photograph or passport photograph
37 taken no more than six months prior to the application date;

38 (4) Provide two classified sets of fingerprints for processing by the
39 Missouri state highway patrol under section 43.543. One set of fingerprints shall
40 be used by the highway patrol to search the criminal history repository and the
41 second set shall be forwarded to the Federal Bureau of Investigation for searching
42 the federal criminal history files;

43 (5) Have passed an examination and been certified as a board-certified
44 assistant behavior analyst by a certifying entity, as defined in section 337.300;

45 (6) Provide evidence of active status as a board-certified assistant
46 behavior analyst;

47 (7) If the applicant holds a license as an assistant behavior analyst in
48 another state, a statement from all issuing states verifying licensure and
49 identifying any disciplinary action taken against the license holder by that state;
50 and

51 (8) Submit documentation satisfactory to the committee that the applicant
52 will be directly supervised by a licensed behavior analyst in a manner consistent
53 with the certifying entity.

54 4. The committee shall be authorized to issue a temporary license to an
55 applicant for a behavior analyst license or assistant behavior analyst license upon
56 receipt of a complete application, **submission of a fee as set by the**
57 **committee by rule** for behavior analyst or assistant behavior analyst [or], **and**
58 a showing of valid licensure as a behavior analyst **or assistant behavior**
59 **analyst** in another state, only if the applicant has submitted fingerprints and no
60 disqualifying criminal history appears on the family care safety registry. The
61 temporary license shall expire upon issuance of a license or denial of the
62 application but no later than ninety days from issuance of the temporary
63 license. Upon written request to the committee, the holder of a temporary license
64 shall be entitled to one extension of ninety days of the temporary license.

65 5. **(1) The committee shall, in accordance with rules promulgated**
66 **by the committee, issue a provisional behavior analyst license or a**
67 **provisional assistant behavior analyst license upon receipt by the**
68 **committee of a complete application, appropriate fee as set by the**
69 **committee by rule, and proof of satisfaction of requirements under**
70 **subsections 2 and 3 of this section, respectively, and other**
71 **requirements established by the committee by rule, except that**

72 **applicants for a provisional license as either a behavior analyst or**
73 **assistant behavior analyst need not have passed an examination and**
74 **been certified as a board certified behavior analyst or a board certified**
75 **assistant behavior analyst to obtain a provisional behavior analyst or**
76 **provisional assistant behavior analyst license.**

77 **(2) A provisional license issued under this subsection shall only**
78 **authorize and permit the licensee to render behavior analysis under**
79 **the supervision and the full professional responsibility and control of**
80 **such licensee's licensed supervisor.**

81 **(3) A provisional license shall automatically terminate upon**
82 **issuance of a permanent license, upon a finding of cause to discipline**
83 **after notice and hearing under section 337.330, upon termination of**
84 **supervision by a licensed supervisor, or upon the expiration of one year**
85 **from the date of issuance of the provisional license, whichever first**
86 **occurs. The provisional license may be renewed after one year, with a**
87 **maximum issuance of two years. Upon a showing of good cause, the**
88 **committee by rule shall provide procedures for exceptions and**
89 **variances from the requirement of a maximum issuance of two years.**

90 **6. No person shall hold himself or herself out to be licensed behavior**
91 **analysts or LBA, provisionally licensed behavior analyst or PLBA,**
92 **provisionally licensed assistant behavior analyst or PLABA, temporary**
93 **licensed behavior analyst or TLBA, or temporary licensed assistant**
94 **behavior analyst or TLaBA, licensed assistant behavior analysts or LaBA in**
95 **the state of Missouri unless they meet the applicable requirements.**

96 **[6.] 7. No persons shall practice applied behavior analysis unless they**
97 **are:**

98 **(1) Licensed behavior analysts;**

99 **(2) Licensed assistant behavior analysts working under the supervision**
100 **of a licensed behavior analyst;**

101 **(3) An individual who has a bachelor's or graduate degree and completed**
102 **course work for licensure as a behavior analyst and is obtaining supervised field**
103 **experience under a licensed behavior analyst pursuant to required supervised**
104 **work experience for licensure at the behavior analyst or assistant behavior**
105 **analyst level; [or]**

106 **(4) Licensed psychologists practicing within the rules and standards of**
107 **practice for psychologists in the state of Missouri and whose practice is**

108 commensurate with their level of training and experience;

109 **(5) Provisionally licensed behavior analysts;**

110 **(6) Provisionally licensed assistant behavior analysts;**

111 **(7) Temporary licensed behavior analysts; or**

112 **(8) Temporary licensed assistant behavior analysts.**

113 [7.] **8.** Notwithstanding the provisions in subsection 6 of this section, any
114 licensed or certified professional may practice components of applied behavior
115 analysis, as defined in section 337.300 if he or she is acting within his or her
116 applicable scope of practice and ethical guidelines.

117 [8.] **9.** All licensed behavior analysts and licensed assistant behavior
118 analysts shall be bound by the code of conduct adopted by the committee by rule.

119 [9.] **10.** Licensed assistant behavior analysts shall work under the direct
120 supervision of a licensed behavior analyst as established by committee rule.

121 [10.] **11.** Persons who provide services under the Individuals with
122 Disabilities Education Act (IDEA), 20 U.S.C. Section 1400, et seq., or Section 504
123 of the federal Rehabilitation Act of 1973, 29 U.S.C. Section 794, or are enrolled
124 in a course of study at a recognized educational institution through which the
125 person provides applied behavior analysis as part of supervised clinical
126 experience shall be exempt from the requirements of this section.

127 [11.] **12.** A violation of this section shall be punishable by probation,
128 suspension, or loss of any license held by the violator.

337.325. A licensed behavior analyst [and], licensed assistant behavior
2 analyst, **provisionally licensed behavior analyst, provisionally licensed**
3 **assistant behavior analyst, temporary licensed behavior analyst and**
4 **temporary licensed assistant behavior analyst** shall limit his or her
5 practice to demonstrated areas of competence as documented by relevant
6 professional education, training, or experience. A licensed behavior analyst
7 [and], licensed assistant behavior analyst, **provisionally licensed behavior**
8 **analyst, provisionally licensed assistant behavior analyst, temporary**
9 **licensed behavior analyst and temporary licensed assistant behavior**
10 **analyst** trained in one area shall not practice in another area without obtaining
11 additional relevant professional education, training, and experience.

337.347. For reimbursement and billing purposes of section
2 **376.1224, a provisionally licensed assistant behavior analyst, a**
3 **provisionally licensed behavior analyst, or a temporary licensed**
4 **behavior analyst shall each be considered an assistant board-certified**

5 behavior analyst.

1 [337.345. 1. Prior to August 28, 2012, each person desiring
2 to obtain a provisional license shall make application to the
3 committee upon such forms and in such manner as may be
4 prescribed by the committee and shall pay the required application
5 fee. The application fee shall not be refundable. Each application
6 shall contain a statement that it is made under oath or affirmation
7 and that its representations are true and correct to the best
8 knowledge and belief of the person signing the application, subject
9 to the penalties of making a false affidavit or declaration.

10 2. For a provisional behavior analyst license, the applicant
11 shall:

12 (1) Submit a two-inch or three-inch photograph or passport
13 photograph taken no more than six months prior to the application
14 date, and only if the applicant has submitted fingerprints and no
15 disqualifying criminal history appears on the family care safety
16 registry;

17 (2) Have passed an examination and been certified as a
18 board-certified behavior analyst by the Behavior Analyst
19 Certification Board or a certifying entity listed in subdivision (3)
20 of section 337.300; and

21 (3) Provide evidence of active status as a board-certified
22 behavior analyst.

23 3. For a provisional assistant behavior analyst license, the
24 applicant shall:

25 (1) Submit a two-inch or three-inch photograph or passport
26 photograph taken no more than six months prior to the application
27 date, and only if the applicant has submitted fingerprints and no
28 disqualifying criminal history appears on the family care safety
29 registry;

30 (2) Have passed an examination and been certified as a
31 board-certified assistant behavior analyst by a certifying entity
32 listed in subdivision (3) of section 337.300;

33 (3) Provide evidence of active status as a board-certified
34 assistant behavior analyst; and

35 (4) Submit documentation satisfactory to the board that the

36 applicant will be directly supervised by a licensed behavior analyst
37 in a manner consistent with the certifying entity.

38 4. Each applicant for provisional licensure shall meet the
39 applicable requirements of section 337.315 within three months of
40 the date of issuance of the provisional license.

41 5. The provisional license shall be effective only until the
42 later to occur of:

43 (1) Grant or rejection of a license pursuant to section
44 337.315; or

45 (2) August 28, 2012. The holder of a provisional license
46 which has not expired, been suspended, or revoked shall be deemed
47 to be the holder of a license issued under section 337.315 until such
48 provisional license expires, is suspended, or revoked.]

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Bill

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