

1.1 A bill for an act
1.2 relating to health; establishing licensing requirements for behavior analysts and
1.3 assistant behavior analysts; proposing coding for new law in Minnesota Statutes,
1.4 chapter 148.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. **[148.9981] DEFINITIONS.**

1.7 Subdivision 1. **Scope.** For the purposes of sections 148.9981 to 148.9995, the terms in
1.8 this section have the meanings given.

1.9 Subd. 2. **Accredited school or educational program.** "Accredited school or educational
1.10 program" means a school, university, college, or other postsecondary education program
1.11 that, at the time the student completes the program, is accredited by a regional accrediting
1.12 association whose standards are substantially equivalent to those of the North Central
1.13 Association of Colleges and Postsecondary Education Institutions or an accrediting
1.14 association that evaluates schools of behavior analysis, psychology, or education for inclusion
1.15 of the education, practicum, and core function standards.

1.16 Subd. 3. **Advisory council.** "Advisory council" means the Behavior Analyst Advisory
1.17 Council established in section 148.9994.

1.18 Subd. 4. **Behavior technician.** "Behavior technician" means a paraprofessional who
1.19 implements behavior analysis services under the authority and direction of a licensed behavior
1.20 analyst or a licensed assistant behavior analyst.

1.21 Subd. 5. **Board.** "Board" means the Board of Psychology established in section 148.90.

2.1 Subd. 6. **Certifying entity.** "Certifying entity" means the Behavior Analyst Certification
2.2 Board, Incorporated, or a successor organization or other organization approved by the
2.3 board in consultation with the advisory council.

2.4 Subd. 7. **Client.** "Client" means an individual who is the recipient of behavior analysis
2.5 services. Client also means "patient" as defined in section 144.291, subdivision 2, paragraph
2.6 (g).

2.7 Subd. 8. **Licensed assistant behavior analyst.** "Licensed assistant behavior analyst"
2.8 or "assistant behavior analyst" means an individual who holds a valid license issued under
2.9 sections 148.9981 to 148.9995 to assist in the practice of applied behavior analysis.

2.10 Subd. 9. **Licensed behavior analyst.** "Licensed behavior analyst" or "behavior analyst"
2.11 means an individual who holds a valid license issued under sections 148.9981 to 148.9995
2.12 to engage in the practice of applied behavior analysis.

2.13 Subd. 10. **Licensee.** "Licensee" means an individual who holds a valid license issued
2.14 under sections 148.9981 to 148.9995.

2.15 Subd. 11. **Practice of applied behavior analysis.** (a) "Practice of applied behavior
2.16 analysis" means the design, implementation, and evaluation of social, instructional, and
2.17 environmental modifications to produce socially significant improvements in human behavior.
2.18 The practice of applied behavior analysis includes the empirical identification of functional
2.19 relations between behavior and environmental factors, known as functional behavioral
2.20 assessment and analysis. Applied behavior analysis interventions are based on scientific
2.21 research and direct and indirect observation and measurement of behavior and environment,
2.22 and utilize contextual factors, motivating operations, antecedent stimuli, positive
2.23 reinforcement, and other procedures to help individuals develop new behaviors, increase
2.24 or decrease existing behaviors, and emit behaviors under specific social, instructional, and
2.25 environmental conditions.

2.26 (b) The practice of applied behavior analysis does not include the diagnosis of psychiatric
2.27 or mental health disorders, psychological testing, neuropsychology, psychotherapy, cognitive
2.28 therapy, sex therapy, hypnotherapy, psychoanalysis, or psychological counseling.

2.29 Sec. 2. **[148.9982] DUTIES OF THE BOARD.**

2.30 Subdivision 1. **General.** The board, in consultation with the advisory council, shall:

2.31 (1) adopt and enforce standards for licensure, licensure renewal, and the regulation of
2.32 behavior analysts and assistant behavior analysts;

(2) issue licenses to qualified individuals under sections 148.9981 to 148.9995;

(3) carry out disciplinary actions against licensed behavior analysts and assistant behavior analysts;

(4) educate the public about the existence and content of the regulations for behavior analyst licensing to enable consumers to file complaints against licensees who may have violated the state statutes or rules in which the board is empowered to enforce; and

(5) collect license fees for behavior analysts and assistant behavior analysts as specified under section 148.9995.

Subd. 2. **Rulemaking.** (a) The board, in consultation with the advisory council, may adopt rules necessary to carry out the provisions of sections 148.9981 to 148.9995.

(b) The board, in consultation with the advisory council, may adopt rules related to the supervision requirements for licensed assistant behavior analysts.

Sec. 3. [148.9983] REQUIREMENTS FOR LICENSURE.

Subdivision 1. **General.** An individual seeking licensure as a behavior analyst or as an assistant behavior analyst shall complete and submit a written application on forms provided by the board together with the appropriate fee as specified under section 148.9995.

Subd. 2. **Requirements for licensure.** (a) An applicant for licensure as a behavior analyst must submit evidence satisfactory to the board that the applicant:

(1) has a current certification as a board certified behavior analyst issued by the certifying entity; or

(2) has completed the equivalent requirements that are required for certification by the certifying entity that includes satisfactorily passing a psychometrically valid examination administered by a nationally accredited credentialing organization.

(b) An applicant for licensure as an assistant behavior analyst must submit evidence satisfactory to the board that the applicant:

(1) has a current certification as an assistant behavior analyst issued by the certifying entity; or

(2) has completed the equivalent requirements that are required for certification by the certifying entity, including satisfactorily passing a psychometrically valid examination administered by a nationally accredited credentialing organization.

4.1 Subd. 3. **Background investigation.** (a) The applicant must sign a release authorizing
4.2 the board to obtain information from the Bureau of Criminal Apprehension, the Department
4.3 of Human Services, the Office of Health Facilities Complaints, and other agencies specified
4.4 by the board. After the board has given written notice to an individual who is the subject
4.5 of a background investigation, the agencies shall assist the board with the investigation by
4.6 giving the board criminal conviction data, reports about substantiated maltreatment of minors
4.7 and vulnerable adults, and other information. The board may contract with the commissioner
4.8 of human services to obtain criminal history data from the Bureau of Criminal Apprehension.

4.9 (b) Information obtained under this subdivision is private data on individuals as defined
4.10 in section 13.02, subdivision 12.

4.11 **Sec. 4. [148.9984] LICENSE RENEWAL REQUIREMENTS.**

4.12 Subdivision 1. **Biennial renewal.** A license must be renewed every two years.

4.13 Subd. 2. **License renewal notice.** At least 60 calendar days before the renewal deadline
4.14 date, the board shall mail a renewal notice to the licensee's last known address on file with
4.15 the board. The notice must include instructions for accessing an online application for license
4.16 renewal, the renewal deadline, and notice of fees required for renewal. The licensee's failure
4.17 to receive notice does not relieve the licensee of the obligation to meet the renewal deadline
4.18 and other requirements for license renewal.

4.19 Subd. 3. **Renewal requirements.** (a) To renew a license, a licensee must submit to the
4.20 board:

4.21 (1) a completed and signed application for license renewal;

4.22 (2) the license renewal fee as specified under section 148.9995; and

4.23 (3) evidence satisfactory to the board that the licensee holds a current and active national
4.24 certification as a behavior analyst or assistant behavior analyst from the certifying entity or
4.25 otherwise meets renewal requirements as established by the board, in consultation with the
4.26 advisory board.

4.27 (b) The application for license renewal and fee must be postmarked or received by the
4.28 board by the end of the day on which the license expires or the following business day if
4.29 the expiration date falls on a Saturday, Sunday, or holiday. A renewal application that is
4.30 not completed and signed, or that is not accompanied by the correct fee, is void and must
4.31 be returned to the licensee.

5.1 Subd. 4. **Pending renewal.** If a licensee's application for license renewal is postmarked
5.2 or received by the board by the end of the business day on the expiration date of the license,
5.3 the licensee may continue to practice after the expiration date while the application for
5.4 license renewal is pending with the board.

5.5 Subd. 5. **Late renewal fee.** If the application for license renewal is postmarked or
5.6 received after the expiration date, the licensee shall pay a biennial renewal late fee as
5.7 specified by section 148.9994, in addition to the renewal fee, before the application for
5.8 license renewal will be considered by the board.

5.9 **Sec. 5. [148.9985] EXPIRED LICENSE.**

5.10 (a) Within 30 days after the renewal date, a licensee who has not renewed the license
5.11 shall be notified by letter sent to the last known address of the licensee in the board's file
5.12 that the renewal is overdue and that failure to pay the current fee and current biennial renewal
5.13 late fee within 60 days after the renewal date will result in termination of the license.

5.14 (b) The board shall terminate the license of a licensee whose license renewal is at least
5.15 60 days overdue and to whom notification has been sent as provided in paragraph (a). Failure
5.16 of a licensee to receive notification is not grounds for later challenge of the termination.
5.17 The former licensee shall be notified of the termination by letter within seven days after the
5.18 board action, in the same manner as provided in paragraph (a).

5.19 (c) Notwithstanding paragraph (b), the board retains jurisdiction over a former licensee
5.20 for complaints received after termination of a license regarding conduct that occurred during
5.21 licensure.

5.22 **Sec. 6. [148.9986] PROHIBITED PRACTICE OR USE OF TITLES; PENALTY.**

5.23 Subdivision 1. **Practice.** Effective January 1, 2021, no individual shall engage in the
5.24 practice of applied behavior analysis unless the individual is licensed under sections 148.9981
5.25 to 148.9995 as a behavior analyst or assistant behavior analyst, or is exempt under section
5.26 148.9987. A psychologist licensed under sections 148.88 to 148.98 who practices behavior
5.27 analysis is not required to obtain a license as a behavior analyst under sections 148.9981 to
5.28 148.9995.

5.29 Subd. 2. **Use of titles.** (a) No individual shall hold themselves out to the public by any
5.30 title incorporating the words "licensed behavior analyst," "behavior analyst," "licensed
5.31 assistant behavior analyst," "assistant behavior analyst," or use any other title or description

stating or implying that they are licensed or otherwise qualified to practice applied behavior analysis, unless that person holds a valid license under sections 148.9981 to 148.9995.

(b) Notwithstanding paragraph (a), a licensed psychologist who practices applied behavior analysis within the psychologist's scope of practice may use the title of "behavior analyst" but must not use the title of "licensed behavior analyst" unless the licensed psychologist holds a valid license as a behavior analyst issued under sections 148.9981 to 148.9995.

Subd. 3. **Penalty.** An individual who violates this section is guilty of a misdemeanor.

Sec. 7. [148.9987] EXCEPTIONS TO LICENSE REQUIREMENT.

(a) Nothing in sections 148.9981 to 148.9995 shall be construed to prohibit or restrict:

(1) the practice of an individual who is licensed to practice psychology in the state or any individual who is providing psychological services under the supervision of a licensed psychologist in accordance with section 148.925;

(2) the practice of any other profession or occupation licensed, certified, or registered by the state by an individual duly licensed, certified, or registered to practice the profession or occupation or to perform any act that falls within the scope of practice of the profession or occupation;

(3) an individual who is employed by a school district to provide behavior analysis services as part of their employment with the school district, so long as the individual does not provide behavior analysis services to any person or entity other than as an employee of the school district or accept remuneration for the provision of behavior analysis services outside of their employment with the school district;

(4) an employee of a program licensed under chapter 245D from providing the services described in section 245D.091, subdivision 1;

(5) teaching behavior analysis or conducting behavior analysis research provided that the teaching or research does not involve the direct delivery of behavior analysis services;

(6) providing behavior analysis services by an unlicensed supervisee or trainee under the authority and direction of a licensed behavior analyst or licensed assistant behavior analyst, and in compliance with the licensure and supervision standards required by statute or rule;

(7) a family member or guardian of the recipient of behavior analysis services who is performing certain behavior analysis services under the authority and direction of a licensed behavior analyst or a licensed assistant behavior analyst;

(8) a behavior technician who implements behavior analysis services under the authority and direction of a licensed behavior analyst or licensed assistant behavior analyst; or

(9) students or interns enrolled in an accredited school or educational program or participating in a behavior analysis practicum from engaging in the practice of applied behavior analysis while supervised by a licensed behavior analyst, licensed assistant behavior analyst, or instructor of an accredited school or educational program. These individuals must be designated as a behavior analyst student or intern.

(b) Notwithstanding paragraph (a), a licensed psychologist may supervise an unlicensed supervisee, trainee, student, or intern who is engaged in the practice of behavior analysis if the supervision is authorized under the Minnesota Psychology Practice Act.

Sec. 8. [148.9988] NONTRANSFERABILITY OF LICENSES.

A behavior analyst license or an assistant behavior analyst license is not transferable.

Sec. 9. [148.9989] DUTY TO MAINTAIN CURRENT INFORMATION.

All licensees and all applicants for licensure must notify the board within 30 days of the occurrence of any of the following:

(1) a change of name, address, place of employment, and home or business telephone number; and

(2) a change in any other application information.

Sec. 10. [148.999] DISCIPLINE; REPORTING.

For purposes of sections 148.9981 to 148.9995, behavior analysts and assistant behavior analysts are subject to the provisions of sections 148.941, 148.952 to 148.965, and 148.98.

Sec. 11. [148.9991] COMPETENT PROVISION OF SERVICES.

Subdivision 1. **Limits on practice.** Behavior analysts shall limit their practice to the client populations and services for which they have competence or for which they are developing competence.

Subd. 2. **Developing competence.** When a behavior analyst is developing competence in a service, method, procedure, or to treat a specific client population, the behavior analyst shall obtain professional education, training, continuing education, consultation, supervision or experience, or a combination thereof, necessary to demonstrate competence.

8.1 Subd. 3. **Limitations.** A behavior analyst shall recognize the limitations to the scope of
8.2 practice of applied behavior analysis. When the needs of a client appear to be outside the
8.3 behavior analyst's scope of practice, the behavior analyst shall inform the client that there
8.4 may be other professional, technical, community, and administrative resources available to
8.5 the client. A behavior analyst shall assist with identifying resources when it is in the best
8.6 interest of a client to be provided with alternative or complementary services.

8.7 Sec. 12. **[148.9992] DUTY TO WARN; LIMITATION ON LIABILITY; VIOLENT**
8.8 **BEHAVIOR OF PATIENT.**

8.9 Subdivision 1. **Definitions.** (a) The definitions in this subdivision apply to this section.

8.10 (b) "Other person" means an immediate family member or someone who personally
8.11 knows the client and has reason to believe the client is capable of and will carry out the
8.12 serious, specific threat of harm to a specific, clearly identified or identifiable victim.

8.13 (c) "Reasonable efforts" means communicating the serious, specific threat to the potential
8.14 victim and if unable to make contact with the potential victim, communicating the serious,
8.15 specific threat to the law enforcement agency closest to the potential victim or the client.

8.16 (d) For purposes of this section, "licensee" includes behavior analysis students, interns,
8.17 and unlicensed supervisees who are participating in a behavior analysis practicum or enrolled
8.18 in an accredited school or educational program.

8.19 Subd. 2. **Duty to warn.** The duty to predict, warn of, or take reasonable precautions to
8.20 provide protection from violent behavior arises only when a client or other person has
8.21 communicated to the licensee a specific, serious threat of physical violence against a specific,
8.22 clearly identified or identifiable potential victim. If a duty to warn arises, the duty is
8.23 discharged by the licensee if reasonable efforts are made to communicate the threat.

8.24 Subd. 3. **Liability standard.** If no duty to warn exists under subdivision 2, then no
8.25 monetary liability and no cause of action may arise against a licensee for failure to predict,
8.26 warn of, or take reasonable precautions to provide protection from, a client's violent behavior.

8.27 Subd. 4. **Disclosure of confidences.** Good faith compliance with the duty to warn shall
8.28 not constitute a breach of confidence and shall not result in monetary liability or a cause of
8.29 action against the licensee.

8.30 Subd. 5. **Continuity of care.** Nothing in subdivision 2 shall be construed to authorize
8.31 a licensee to terminate treatment of a client as a direct result of a client's violent behavior
8.32 or threat of physical violence unless the client is referred to another practitioner or appropriate
8.33 health care facility.

9.1 Subd. 6. **Exception.** This section does not apply to a threat to commit suicide or other
9.2 threats by a client to harm the client, or to a threat by a client who is adjudicated mentally
9.3 ill and dangerous under chapter 253B.

9.4 Subd. 7. **Optional disclosure.** Nothing in this section shall be construed to prohibit a
9.5 licensee from disclosing confidences to third parties in a good faith effort to warn against
9.6 or take precautions against a client's violent behavior or threat to commit suicide for which
9.7 a duty to warn does not arise.

9.8 Subd. 8. **Limitation on liability.** No monetary liability and no cause of action, or
9.9 disciplinary action by the board may arise against a licensee for disclosure of confidences
9.10 to third parties, for failure to disclose confidences to third parties, or for erroneous disclosure
9.11 of confidences to third parties in a good faith effort to warn against or take precautions
9.12 against a client's violent behavior or threat of suicide for which a duty to warn does not
9.13 arise.

9.14 Sec. 13. **[148.9993] INFORMED CONSENT.**

9.15 Subdivision 1. **Obtaining informed consent for services.** A behavior analyst shall
9.16 obtain informed consent from the client or legal guardian before initiating services. The
9.17 informed consent must be in writing, signed by the client, and include the following, at a
9.18 minimum:

9.19 (1) consent for the behavior analyst to engage in any activity that directly affects the
9.20 client;

9.21 (2) the goals, purposes, and procedures of the proposed services;

9.22 (3) the factors that may impact the duration of the proposed service;

9.23 (4) the applicable fee schedule for the proposed service;

9.24 (5) the significant risks and benefits of the proposed service;

9.25 (6) the behavior analyst's limits under section 148.9991, including, if applicable,
9.26 information that the behavior analyst is developing competence in the proposed service,
9.27 method, or procedure, and alternatives to the proposed service, if any; and

9.28 (7) the behavior analyst's responsibilities if the client terminates the service.

9.29 Subd. 2. **Updating informed consent.** If there is a substantial change in the nature or
9.30 purpose of a service, the behavior analyst must obtain a new informed consent from the
9.31 client.

Subd. 3. **Emergency or crisis services.** Informed consent is not required when a behavior analyst is providing emergency or crisis services. If services continue after the emergency or crisis has abated, informed consent must be obtained.

Sec. 14. **[148.9994] BEHAVIOR ANALYST ADVISORY COUNCIL.**

Subdivision 1. **Membership.** The Behavior Analyst Advisory Council is created and is composed of seven members appointed by the board. The advisory council consists of:

(1) one public member as defined in section 214.02;

(2) three members who are licensed behavior analysts;

(3) two members who are licensed assistant behavior analysts; and

(4) one member who is a licensed psychologist who practices applied behavior analysis.

Subd. 2. **Administration.** The advisory council is established and administered under section 15.059, except that the advisory council does not expire.

Subd. 3. **Duties.** The advisory council shall:

(1) advise the board regarding standards for behavior analysts and assistant behavior analysts;

(2) assist with the distribution of information regarding behavior analyst standards;

(3) advise the board on enforcement of sections 148.9981 to 148.9995;

(4) review license applications and license renewal applications and make recommendations to the board;

(5) review complaints and complaint investigation reports and make recommendations to the board on whether and, if applicable, what type of disciplinary action should be taken;

(6) advise the board regarding evaluation and treatment protocols; and

(7) perform other duties authorized for advisory councils under chapter 214, as directed by the board to ensure effective oversight of behavior analysts and assistant behavior analysts.

Sec. 15. **[148.9995] FEES.**

Subdivision 1. **Fees.** All applicants and licensees shall pay fees as follows:

(1) application fee, \$.....;

(2) license renewal fee, \$.....;

11.1 (3) inactive license renewal fee, \$.....;

11.2 (4) biennial renewal late fee, \$.....;

11.3 (5) inactive license renewal late fee, \$.....; and

11.4 (6) supervisor application processing fee, \$.....

11.5 Subd. 2. **Nonrefundable fees.** All fees in this section are nonrefundable.

11.6 Subd. 3. **Deposit of fees.** Fees collected by the board under this section shall be deposited
11.7 in the state government special revenue fund.

11.8 Sec. 16. **INITIAL APPLIED BEHAVIOR ANALYST ADVISORY COUNCIL.**

11.9 The Board of Psychology shall make the first appointments authorized under Minnesota
11.10 Statutes, section 148.9994, to the Behavior Analyst Advisory Council by September 1,
11.11 2020. The initial behavior analysts and assistant behavior analysts members appointed to
11.12 the advisory council need not be licensed under Minnesota Statutes, sections 148.9981 to
11.13 148.9995, but must hold a current certification as a board certified behavior analyst (BCBA)
11.14 or a board certified assistant behavior analyst (BCaBA) issued by the Behavior Analyst
11.15 Certification Board. The chair of the Board of Psychology shall convene the first meeting
11.16 of the council by September 1, 2020, and shall convene subsequent meetings of the council
11.17 until an advisory chair is elected. The council must elect a chair from its members by the
11.18 third meeting of the council.

11.19 Sec. 17. **APPROPRIATION.**

11.20 \$..... in fiscal year 2020 is appropriated from the state government special revenue fund
11.21 to the Board of Psychology to implement Minnesota Statutes, sections 148.9981 to 148.9995.

11.22 Sec. 18. **EFFECTIVE DATE.**

11.23 Sections 1 to 16 are effective July 1, 2020.