

# **HOUSE . . . . . No. 4355**

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## The Commonwealth of Massachusetts

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HOUSE OF REPRESENTATIVES, July 31, 2012.

The committee on Ways and Means, to whom was referred the Senate Bill relative to the licensure of behavior analysts (Senate, No. 2379, amended), reports recommending that the same ought to pass with an amendment striking all after the enacting clause and inserting in place thereof the text contained in House document numbered 4355.

For the committee,

BRIAN S. DEMPSEY.

**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Twelve**  
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By striking out all after the enacting clause and inserting in place thereof the following:—

1 SECTION 1. Chapter 13 of the General Laws is hereby amended by adding the following 3  
2 sections:-  
3  
4 Section 109. (a) There shall be within the division of professional licensure a board of  
5 registration of applied behavior analysts. The board shall consist of 9 members who shall be  
6 residents of the commonwealth and who shall be appointed by the governor for terms of 3 years.  
7 Five members of the board shall be applied behavior analysts licensed under sections 264 to 268,  
8 inclusive, of chapter 112 who shall have been actively engaged in the practice of applied  
9 behavior analysis for the 5 years preceding their appointments, 2 members shall be assistant  
10 applied behavior analysts licensed under said sections 264 to 268, inclusive, of said chapter 112  
11 who shall have been actively engaged in the practice as an assistant in applied behavior analysis  
12 for the 5 years preceding their appointments and 2 members shall be selected from and shall  
13 represent the public.  
14  
15 (b) Each member of the board shall hold office until a successor has been appointed and

16 qualified. A vacancy in the membership of the board shall be filled for the unexpired term in the  
17 manner provided for the original appointment. No member shall serve more than 2 full  
18 consecutive terms. A member appointed for less than a full term may serve 2 full terms in  
19 addition to that part of a full term.

20  
21 (c) The governor may remove a member of the board for cause, but no board member shall be  
22 removed without first being informed in writing at least 30 days in advance of the reasons for  
23 such removal and of the member's right to a public or private hearing and to have counsel  
24 present at the hearing.

25  
26 Section 110. At its first meeting and annually thereafter, the board of registration of applied  
27 behavior analysts shall organize by electing from among its members, by majority vote, a chair, a  
28 vice chair and a secretary. Such officers shall serve until their successors are elected and  
29 qualified. The board shall hold at least 2 meetings annually and may hold additional meetings  
30 upon the call of the chair or the secretary or at the written request of any 3 members of the board.  
31 A majority of the board shall constitute a quorum. The members of the board shall serve without  
32 compensation but shall be reimbursed for actual expenses reasonably incurred in the  
33 performance of their board duties. The board may hire such staff as it deems necessary to carry  
34 out its activities.

35  
36 Section 111. (a) The board of registration of applied behavior analysts may: (i) pass upon the  
37 qualifications of an application for a license under sections 264 to 270, inclusive, of chapter 112  
38 and shall issue a license to an applicant who is determined to be qualified to practice as a

39 licensed applied behavior analyst or licensed assistant applied behavior analyst; (ii) adopt rules  
40 and regulations governing the licensure of applied behavior analysts; (iii) establish eligibility and  
41 renewal requirements; (iv) establish specifications for the licensing examination that are  
42 consistent and fair; (v) define, by regulation, the appropriate standards for education and  
43 experience necessary to qualify for licensing including, but not limited to, continuing  
44 professional education requirements for licensed applied behavior analysts; (vi) define, by  
45 regulation, the appropriate standards for conduct and ethics which shall govern the practice of  
46 applied behavior analysis; (vii) receive, review and approve or disapprove an application for a  
47 reciprocal license for an applicant who is licensed or certified as an applied behavior analyst in  
48 another state and who has demonstrated qualifications which equal or exceed those required  
49 under sections 264 to 270, inclusive, of chapter 112; (viii) adopt rules and regulations necessary  
50 to regulate the practice of applied behavior analysts in their facilities and in its discretion, require  
51 licensure of such business facilities not regulated or licensed by the department of public health,  
52 so long as management or ownership of such facilities is not limited to licensees; (ix) fine,  
53 censure, revoke, suspend or deny a license and place on probation, reprimand or otherwise  
54 discipline a licensee for a violation of the code of ethics or the rules and regulations of the board  
55 under said sections 264 to 277, inclusive, of said chapter 112; (x) summarily suspend the license  
56 of a licensee who poses an imminent danger to the public; provided, however, that a hearing  
57 shall be afforded to the licensee within 10 days after any such action by the board to determine  
58 whether such summary action is warranted; and (xi) perform any other functions and duties as  
59 may be required to carry out this section.

60

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

62 licensed assistant applied behavior analysts.

63

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

66

67 SECTION 2. Chapter 112 of the General Laws is hereby amended by adding the following 14  
68 sections:-

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70 Section 264. As used in this section and sections 265 to 277, inclusive, the following words shall,  
71 unless the context clearly requires otherwise, have the following meanings:

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

76

77 "Assistant applied behavior analyst”, an individual who, by training, experience and examination  
78 meets the requirements for licensing by the board and is duly licensed to engage in the practice  
79 of applied behavior analysis under the supervision of a licensed applied behavior analyst or a  
80 physician or psychologist qualified to practice applied behavior analysis if it is consistent with  
81 the accepted standards of their respective professions.

82

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

84

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

87  
88 “Scope of practice of applied behavior analysis”, the design, implementation and evaluation of  
89 systematic instructional and environmental modifications, using behavioral stimuli and  
90 consequences, to produce socially significant improvements in human behavior, including the  
91 direct observation and measurement of behavior and the environment, the empirical  
92 identification of functional relations between behavior and environmental factors, known as  
93 functional assessment and analysis, and the introduction of interventions based on scientific  
94 research and which utilize contextual factors, antecedent stimuli, positive reinforcement and  
95 other consequences to develop new behaviors, increase or decrease existing behaviors and elicit  
96 behaviors under specific environmental conditions that are delivered to individuals and groups of  
97 individuals; provided, that ”scope of practice of applied behavior analysis” shall not include  
98 psychological testing, neuropsychology, diagnosis of mental health or developmental conditions,  
99 psychotherapy, cognitive therapy, sex therapy, psychoanalysis, psychopharmacological  
100 recommendations, hypnotherapy or academic teaching by college or university faculty.

101  
102 Section 265. The standards to qualify for the designation of applied behavior analyst shall  
103 include:

104  
105 (1) a doctoral degree from a recognized educational institution in which the doctoral program  
106 included a minimum of 60 graduate credit hours in courses related to the study of behavior  
107 analysis or a master’s degree from a recognized educational institution wherein the master’s

108 program included a minimum of 30 graduate credit hours in courses related to the study of  
109 behavior analysis combined with the successful completion of an approved course sequence  
110 formally approved by the board;

111

112 (2) the successful completion of a practicum or supervised experience in the practice of behavior  
113 analysis that meets the standards established by the board; and

114

115 (3) the successful completion of a board-approved examination related to the principles and  
116 independent practice of applied behavior analysis.

117

118 Section 266. The standards to qualify for the designation of assistant applied behavior analyst  
119 shall include:

120

121 (1) a bachelor's degree from a recognized educational institution wherein a minimum of 45  
122 credit hours specifically in behavior analysis or a bachelor's degree combined with successful  
123 completion of a board-approved course sequence or course work which otherwise meets  
124 professional standards, as determined by the board;

125

126 (2) the successful completion of a practicum or supervised experience in the practice of behavior  
127 analysis that meets board established eligibility requirements; and

128

129 (3) the successful completion of a board-approved examination related to the principles and  
130 practice of applied behavior analysis.

131

132 Section 267. Each person desiring to obtain a license as an applied behavior analyst or as an  
133 assistant applied behavior analyst shall make application to the board upon such form and in  
134 such manner as the board shall prescribe and shall furnish evidence satisfactory to the board that  
135 the person is of good moral character including, but not limited to, the fact that such applicant  
136 has not been convicted of a felony; provided, however, that for the purposes of this section, a  
137 conviction shall include a judgment, an admission of guilt or a plea of nolo contendere to any  
138 such felony charges or a conviction of an offense under the laws of another jurisdiction which, if  
139 committed in the commonwealth, would be a felony unless:

140

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

142

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

147

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

150

151 Section 268. Notwithstanding sections 265 and 266, the board may issue a license without  
152 examination to an applicant who presents evidence that such applicant has been licensed or  
153 certified as an applied behavior analyst by a similar board of another jurisdiction the standards of

154 which are at least the same as those required in the commonwealth.

155

156 Section 269. The board may grant a temporary license to practice applied behavior analysis for a  
157 period not to exceed 1 year to an applied behavior analyst with prior legal residence outside the  
158 commonwealth to practice; provided, however, that such applied behavior analyst shall register  
159 with the board and shall practice in consultation with or under the supervision of a licensed  
160 applied behavior analyst or possesses qualifications acceptable to the board.

161

162 Section 270. A license to practice applied behavior analysis or to practice as an assistant applied  
163 behavioral analyst shall be valid for 2 years and shall be renewed on or before the anniversary of  
164 the date of birth of the licensee next occurring more than 24 months after the date of issuance of  
165 the license and every 2 years thereafter. Under the renewal, the applicant shall attest to the  
166 completion of and, if requested, present to the board documented evidence of the completion of a  
167 minimum number of hours of continuing education programs as specified by the board and  
168 which are designed to improve the professional competence of the licensee. Such programs shall  
169 be completed during the licensed period immediately prior to renewal. Such continuing  
170 education programs shall meet the standards specified by the board. The board may provide for  
171 the late renewal of a license which has lapsed and may require the payment of a late fee.

172

173 Section 271. All fees required by sections 265 to 277, inclusive, shall be determined annually by  
174 the secretary of administration and finance under section 3B of chapter 7. All licensing and  
175 application fees and civil administrative penalties collected under said sections 265 to 277,  
176 inclusive, shall be deposited into the Division of Professional Licensure Trust Fund established

177 in section 35V of chapter 10.

178

179 Section 272. Nothing in sections 264 to 277, inclusive, shall be construed to prevent qualified  
180 members of other professions or occupations including, but not limited to, physicians,  
181 psychologists, teachers, occupational therapists, members of the clergy, authorized Christian  
182 Science practitioners, attorneys-at-law, social workers, guidance counselors, clinical counselors,  
183 adjustment counselors, speech pathologists, audiologists or rehabilitation counselors from  
184 practicing applied behavior analysis if it is consistent with the accepted standards of their  
185 respective professions; provided, however, that no such physician, psychologist, teacher,  
186 occupational therapist, member of the clergy, Christian Science practitioner, attorneys-at-law,  
187 social worker, guidance counselor, clinical counselor, adjustment counselor, speech pathologist,  
188 audiologist, rehabilitation counselor or other person shall use any title or description stating or  
189 implying that such person is a licensed applied behavior analyst without holding said license.

190

191 Section 273. A person licensed under sections 264 to 270, inclusive, shall comply with the  
192 standards of ethical practice as adopted by the board.

193

194 Section 274. A person not licensed to practice applied behavior analysis who holds himself out to  
195 be an applied behavior analyst or who uses the title “applied behavior analyst” or engages in the  
196 practice of applied behavior analysis shall be subject to the penalties set forth in section 65A of  
197 chapter 112.

198

199 Section 275. The penalties in section 274 shall not apply to faculty or students of applied

200 behavior analysis currently enrolled in a recognized educational institution which meets  
201 educational standards determined by the board or to interns or persons preparing for the practice  
202 of applied behavior analysis under qualified supervision in any such program; provided, that they  
203 are designated by such titles as “applied behavior analyst intern”, “applied behavior analyst  
204 trainee” or other title clearly indicating such training status.

205

206 Section 276. The board shall investigate all complaints relating to the proper practice of applied  
207 behavior analysis by a person licensed under sections 264 to 277, inclusive.

208

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

213

214 (i) fraudulently procured the license;

215

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

218

219 (iii) engaged in conduct that calls into question the applied behavior analyst’s competence to  
220 practice applied behavior analysis including, but not limited to, gross misconduct in the practice  
221 of applied behavior analysis or of practicing applied behavior analysis fraudulently, or beyond its  
222 authorized scope, or with gross incompetence, or with gross negligence on a particular occasion

223 or negligence on repeated occasions;

224

225 (iv) practiced applied behavior analysis while the ability to practice was impaired by alcohol,

226 drugs, physical disability or mental instability;

227

228 (v) has been habitually drunk or being or having been within a reasonable period of time

229 addicted to, dependent on or a habitual user of narcotics, barbiturates, amphetamines,

230 hallucinogens or other drugs having similar effects;

231

232 (vi) knowingly permitted, aided or abetted an unlicensed individual to perform activities

233 requiring a license for purposes of fraud, deception or personal gain;

234

235 (vii) has been convicted of a criminal offense which reasonably calls into question the licensee's

236 ability to practice applied behavior analysis;

237

238 (viii) violated any rule or regulation of the board governing the practice of applied behavior

239 analysis; or

240

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

242

243 No person who files a complaint or who reports or provides information under this section or

244 assists the board at its request in any manner in discharging its duties and functions shall be

245 liable in a cause of action arising out of the receiving of such information or assistance if the

246 person making the complaint or reporting or providing the information or assistance does so in  
247 good faith and without malice.

248

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

251

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

263

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

268

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

271  
272 Section 277. After three years from the date of revocation, an application for reinstatement may  
273 be made to the board and the board may, upon the affirmative vote of a majority of its members,  
274 grant such reinstatement.

275  
276 SECTION 3. Notwithstanding section 109 of chapter 13 of the General Laws, the initial  
277 members of the board of registration of applied behavior analysts shall consist of 9 members to  
278 be appointed by the governor, 2 of whom shall be doctoral-level, board-certified behavior  
279 analysts designated as such by the Behavior Analyst Certification Board, 4 of whom shall be  
280 board-certified behavior analysts designated as such by the Behavior Analyst Certification  
281 Board, 1 of whom shall be a board-certified assistant behavior analyst designated as such by the  
282 Behavior Analyst Certification Board and 2 of whom shall be selected from and shall represent  
283 the public, subject to section 9B of said chapter 13. Of the initial members appointed to the  
284 board, 3 shall serve for terms of 3 years, 3 shall serve for terms of 2 years and 3 shall serve for a  
285 term of 1 year.

286  
287 SECTION 4. Notwithstanding section 265 of chapter 112 of the General Laws, an applicant who  
288 applies to be licensed as an applied behavior analyst before January 1, 2014, may be granted  
289 status as a licensed applied behavior analyst, subject to the approval of the board of registration  
290 of applied behavior analysts, if: (i) the applicant is a board-certified behavior analyst certificant  
291 of the Behavior Analysis Certification Board; or (ii) the applicant has graduated with a doctoral

292 degree from a recognized educational institution as defined in section 264 of said chapter 112  
293 and the doctoral program included a minimum of 60 graduate credit hours in courses related to  
294 the study of applied behavior analysis; or (iii) the applicant has graduated with a master's degree  
295 from a recognized educational institution as defined in said section 264 of said chapter 112 and  
296 the master's program included a minimum of 30 graduate credit hours in courses related to the  
297 study of behavior analysis and can demonstrate that the applicant has practiced as an applied  
298 behavior analyst full-time or equivalent part-time for a minimum of 5 years. An applicant who is  
299 granted a license under this section may renew the license biennially if the applicant completes  
300 and, when requested, provides evidence to the board of registration of applied behavior analysts  
301 the prescribed minimum number of hours of continuing education as provided in section 270 of  
302 said chapter 112. On or after January 1, 2014, an applicant for a license as an applied behavior  
303 analyst or assistant applied behavior analyst shall meet the requirements of said section 265 of  
304 said chapter 112.

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306 SECTION 5. Notwithstanding section 266 of chapter 112 of the General Laws, an applicant who  
307 applies for a license as an assistant applied behavior analyst before January 1, 2014 may be  
308 granted status as a licensed assistant applied behavior analyst, subject to approval by the board of  
309 registration of applied behavior analysts, if the applicant is a board-certified assistant behavior  
310 analyst certificant of the Behavior Analyst Certification Board. On or after January 1, 2014, an  
311 applicant for a license as an assistant applied behavior analyst shall meet the requirements of said  
312 section 266 of said chapter 112.