

The House Committee on Regulated Industries offers the following substitute to HB 412:

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 43 of the Official Code of Georgia Annotated, relating to professions and
2 businesses, so as to provide for the licensure of individuals in the practice of applied behavior
3 analysis; to provide legislative findings; to provide for definitions; to create the Georgia
4 Behavior Analyst Licensing Board; to provide for its membership and duties; to provide for
5 licensing requirements; to provide for penalties; to provide for statutory construction; to
6 provide for temporary licenses; to provide for reciprocity; to provide for related matters; to
7 repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Title 43 of the Official Code of Georgia Annotated, relating to professions and businesses,
11 is amended by adding a new chapter to read as follows:

H. B. 412 (SUB)

"CHAPTER 7A

43-7A-1.

The General Assembly finds that the practice of applied behavior analysis in Georgia is hereby declared to affect the public health, safety, and welfare of citizens of Georgia and should be subject to regulation to protect the public from: (i) the practice of applied behavior analysis by unqualified persons; and (ii) unprofessional, unethical, and harmful conduct by behavior analysis practitioners.

43-7A-2.

As used in this chapter, the term:

(1) 'Applied behavior analysis' means the design, implementation, and evaluation of systematic instructional and environmental modifications by a behavior analyst, to produce socially significant improvements in behavior.

(2) 'Behavior technician' means a paraprofessional who practices under the extended authority, close and ongoing supervision, and responsibility of a licensed behavior analyst or licensed assistant behavior analyst and delivers services as assigned by such licensee but does not design assessment or intervention plans or procedures.

(3) 'Board' means the Georgia Behavior Analyst Licensing Board created pursuant to this chapter.

(4) 'Board certified' means a certification issued by a certifying entity to a practitioner of applied behavior analysis demonstrating that such practitioner meets specific requirements.

(5) 'Certifying entity' means the Behavior Analyst Certification Board, Inc., or its successor, or another entity that conducts programs to certify professional practitioners of behavior analysis that are accredited by the National Commission on Certifying Agencies or the American National Standards Institute as identified by the board.

(6) 'Licensed assistant behavior analyst' means an individual who is licensed pursuant to this chapter to practice as an assistant behavior analyst.

(7) 'Licensed behavior analyst' means an individual who is licensed pursuant to this chapter to practice as a behavior analyst.

(8) 'Practice of applied behavior analysis' means the design, implementation, and evaluation of instructional and environmental modifications to produce socially significant improvements in human behavior. Such term includes the empirical identification of functional relations between behavior and environmental factors, known as functional assessment and analysis; interventions based on scientific research and direct and indirect observation and measurement of behavior and the environment; and the utilization of contextual factors, motivating operations, antecedent stimuli, positive reinforcement, and other consequences to help people develop new behaviors, increase or decrease existing behaviors, and emit behaviors under specific environmental conditions. Such term expressly excludes psychological testing, diagnosis of a mental or physical disorder, psychotherapy, cognitive therapy, psychoanalysis, and counseling.

43-7A-3.

(a) The Georgia Behavior Analyst Licensing Board is hereby established. The board shall be composed of five members appointed by the Governor.

(b)(1) The initial board members shall include:

(A) Three members each of whom are either a board certified behavior analyst or a board certified behavior analyst-doctoral and who are eligible for licensure under this chapter. Such members shall apply for licensure as soon as feasible after appointment;

(B) One member who is a board certified assistant behavior analyst who is eligible for licensure under this chapter. Such member shall apply for licensure as soon as feasible after appointment; and

(C) One public member who:

(i) Is not a licensed behavior analyst or a licensed assistant behavior analyst or the spouse of such person;

(ii) Has never been in the practice of applied behavior analysis or the spouse of such person; and

(iii) Does not have and has never had a material interest in the practice of applied behavior analysis.

(2) Subsequent board members shall include:

(A) Three licensed behavior analysts;

(B) One licensed assistant behavior analyst; and

(C) One public member who:

(i) Is not a licensed behavior analyst or a licensed assistant behavior analyst or the spouse of such person;

(ii) Has never been in the practice of applied behavior analysis or the spouse of such person; and

(iii) Does not have and has never had a material interest in the practice of applied behavior analysis.

(c) The membership of the board shall reflect the racial, gender, geographic, urban/rural, and economic diversity of the state.

(d) Members shall serve three-year terms and until their successors are duly appointed and qualified; provided, however, that initial terms shall be staggered so that one member serves an initial term of one year, two members serve initial terms of two years, and two members serve initial terms of three years, as designated by the Governor. No member shall be appointed to more than two consecutive three-year terms.

(e) A vacancy on the board for any reason other than expiration of the term shall be filled for the remainder of the unexpired term by appointment of the Governor.

(f) Members of the board shall receive the expense allowance as provided by subsection (b) of Code Section 45-7-21 and the same mileage allowance for the use of a

personal car as that received by other state officials and employees or a travel allowance of actual transportation cost if traveling by public carrier within this state for attendance at board meetings.

(g) The board shall meet at least twice annually and may meet at such other times as necessary, at the call of the chair or by a majority of the members, as necessary to transact its business. Such meetings may be conducted in-person, by telephone, by virtual means, or any combination thereof.

(h) Three members of the board shall constitute a quorum.

(i) The board shall annually elect a chairperson from among its membership and such other officers as deemed necessary.

43-7A-4.

The board shall be authorized to:

(1) Adopt, amend, and repeal such rules and regulations as shall be reasonably necessary for the administration, enforcement, and implementation of the provisions and purposes of this chapter;

(2) Issue, renew, and reinstate the licenses of duly qualified applicants for licensure;

(3) Deny, suspend, revoke, or otherwise sanction licensees;

(4) Initiate investigations for the purpose of discovering violations of this chapter;

(5) Conduct hearings upon charges calling for the discipline of a licensee or on violations of this chapter;

(6) Conduct national background checks by the submission of fingerprints to the Federal Bureau of Investigation through the Georgia Crime Information Center;

(7) Adopt a seal; and

(8) Do all other things necessary to administer and enforce this chapter and all rules and regulations adopted by the board pursuant to this chapter.

43-7A-5.

(a) Each person desiring to obtain a license pursuant to this chapter shall submit an application and applicable fees to the board. An application shall furnish satisfactory evidence demonstrating that the applicant:

(1) Is of good moral character;

(2) Conducts his or her professional activities in accordance with accepted professional and ethical standards and guidelines for responsible conduct for behavior analysts established by a certifying entity; and

(3) Has received satisfactory results from a fingerprint record check report conducted by the Georgia Crime Information Center and the Federal Bureau of Investigation, as determined by the board. Application for the issuance of a license under this chapter shall constitute express consent and authorization for the board or its representative to perform a criminal background check. Each applicant who submits an application to the board for licensure agrees to provide the board with any and all information necessary to run a criminal background check, including, but not limited to, classifiable sets of fingerprints. Such applicant shall be responsible for all fees associated with the performance of such background check.

(b) An applicant to be a licensed behavior analyst shall furnish satisfactory evidence demonstrating that the applicant:

(1) Has successfully passed a behavior analyst examination conducted by a certifying entity;

(2) Holds a master's degree based on applied behavior analysis coursework in an approved sequence; and

(3) Maintains active status as a board certified behavior analyst.

(c) An applicant to be a licensed assistant behavior analyst shall furnish satisfactory evidence demonstrating that the applicant:

(1) Has successfully passed an assistant behavior analyst examination conducted by a certifying entity;

(2) Holds a bachelor's degree based on applied behavior analysis coursework in an approved sequence;

(3) Maintains active status as a board certified assistant behavior analyst; and

(4) Will have ongoing supervision by a licensed behavior analyst in a manner consistent with the certifying entity's requirements for supervision of board certified assistant behavior analysts.

(d) The board shall issue and renew licenses to qualified applicants no later than 90 days after receipt of a complete application or renewal application.

43-7A-6.

(a) The unlicensed practice of applied behavior analysis is prohibited in this state, except as otherwise provided in Code Section 43-7A-7.

(b) No person shall hold himself or herself out to be a licensed behavior analyst or licensed assistant behavior analyst unless he or she is licensed pursuant to this chapter.

(c) Any person in violation of subsection (a) or (b) of this Code section shall be subject to a fine of \$1,000.00 for each violation.

43-7A-7.

The provisions of this chapter shall not be construed to prohibit or restrict the practice of any of the following:

(1) An individual licensed to practice psychology in this state, so long as the applied behavior analysis services provided by the licensed psychologist are within his or her education, training, and experience or an individual acting under the extended authority and direction of a licensed psychologist;

(2) A behavior technician who delivers applied behavior analysis services under the extended authority, close and ongoing supervision, and responsibility of a licensed behavior analyst or a licensed assistant behavior analyst. Such individuals shall not represent themselves as professional behavior analysts and shall use titles that indicate their nonprofessional status, such as 'ABA technician,' 'behavior technician,' or 'tutor';

(3) A caregiver of a recipient of applied behavior analysis services who delivers such services to the recipient under the extended authority and direction of a licensed behavior analyst or a licensed assistant behavior analyst. Such individuals shall not represent themselves as professional behavior analysts;

(4) A behavior analyst who practices with nonhuman or nonpatient clients or consumers, including, but not limited to, applied animal behaviorists and practitioners of organizational behavior management. Such individuals may use the title 'behavior analyst' but shall not represent themselves as licensed behavior analysts or licensed assistant behavior analysts unless they are licensed pursuant to this chapter;

(5) A licensed professional authorized to practice in this state who is not a behavior analyst, so long as the licensed professional does not represent that he or she is a licensed behavior analyst or licensed assistant behavior analyst and so long as any applied behavior analysis services performed are within the scope of practice of his or her profession and are commensurate with the licensed professional's education, training, and experience;

(6) A matriculated graduate student or postdoctoral fellow whose activities are part of a defined behavior analysis program of study, practicum, or intensive practicum, provided that such program of study, practicum, or intensive practicum is directly supervised by a licensed behavior analyst or an instructor in a course sequence approved by a certifying entity. Such individuals shall not represent themselves as licensed behavior analysts or licensed assistant behavior analysts unless they are licensed pursuant to this chapter and

shall only use titles that clearly indicate their trainee status, such as 'student,' 'intern,' or 'trainee';

(7) Unlicensed individuals pursuing experience in applied behavior analysis consistent with the experience requirements of a certifying entity, provided that such experience is supervised in accordance with the requirements of a certifying entity and that such experience is supervised by a licensed behavior analyst;

(8) Professionals who provide general applied behavior analysis services to organizations, so long as those services are for the benefit of the organizations and do not involve direct services to individuals. Such individuals may use the title 'behavior analyst' but shall not represent themselves as licensed behavior analysts or licensed assistant behavior analysts unless they are licensed pursuant to this chapter;

(9) Individuals who teach behavior analysis or conduct behavior analysis research, provided that such teaching or research does not involve the direct delivery of applied behavior analysis services. Such individuals may use the title 'behavior analyst' but shall not represent themselves as licensed behavior analysts or licensed assistant behavior analysts unless they are licensed pursuant to this chapter;

(10) Behavior analysts licensed in another jurisdiction or certified by the certifying entity to practice independently and who work in Georgia no more than a total of 30 days within a calendar year and have received a temporary behavior analyst license pursuant to this chapter;

(11) An individual employed by a local board of education performing the duties of their positions; provided, however, that such individuals shall not represent themselves as licensed behavior analysts or licensed assistant behavior analysts or offer or provide applied behavior analysis services to any persons or entities other than their employing local board of education or accept remuneration for providing applied behavior analysis services other than the remuneration they receive from their employing local board of education unless he or she is licensed pursuant to this chapter; or

