

1 HB535
2 176876-1
3 By Representatives McCutcheon, Pringle, Sanderford, Ball,
4 Williams (P) and Patterson
5 RFD: Boards, Agencies and Commissions
6 First Read: 12-APR-16

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8 SYNOPSIS: Under existing law, the Alabama Behavior
9 Analyst Licensing Board was created to oversee the
10 regulation of behavior analyst professionals in the
11 state.

12 This bill would provide that the board be
13 established within the Department of Mental Health,
14 would provide further for the qualifications of the
15 initial board members, would provide that a
16 majority of the membership of the board constitutes
17 a quorum; and would establish the Alabama Behavior
18 Analyst Licensing Board Fund in the State Treasury.

19 This bill would require that criminal
20 background checks on applicants for licensure be
21 performed pursuant to board rule.

22 This bill would make technical corrections
23 to reference certification by certifying entities.

24 This bill would also provide further for the
25 expiration, renewal, revocation, and reinstatement
26 of licenses.
27

1 A BILL
2 TO BE ENTITLED
3 AN ACT
4

5 To amend Sections 34-5A-3, 34-5A-4, 34-5A-6, and
6 34-5A-7, Code of Alabama 1975, relating to the Alabama
7 Behavior Analyst Licensing Board; to establish the board
8 within the Department of Mental Health; to provide further for
9 the qualifications of the initial board members; to provide
10 further for a quorum; to establish the Alabama Behavior
11 Analyst Licensing Board Fund in the State Treasury; to require
12 criminal background checks on applicants for licensure to be
13 performed pursuant to board rule; to make technical
14 corrections to reference certification by certifying entities;
15 and to provide further for the expiration, renewal,
16 revocation, and reinstatement of licenses.

17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

18 Section 1. Sections 34-5A-3, 34-5A-4, 34-5A-6, and
19 34-5A-7 of the Code of Alabama 1975, are amended to read as
20 follows:

21 "§34-5A-3.

22 "(a) The Alabama Behavior Analyst Licensing Board is
23 established within the Department of Mental Health, Division
24 of Developmental Disabilities. The board shall consist of
25 seven members, including four licensed behavior analysts, one
26 licensed psychologist in the state, one parent or legal
27 guardian of a person being treated for a behavior disorder, or

1 a person who has received services from a licensed behavior
2 analyst, and one public member, who, except for the initial
3 members, shall be appointed by the Governor, as provided in
4 subsection (b). The membership of the board shall be inclusive
5 and reflect the racial, gender, geographic, urban/rural, and
6 economic diversity of the state. Each member shall serve a
7 three-year term, with initial terms being staggered so that
8 one member serves an initial term of one year, three members
9 serve initial terms of two years, and three members serve
10 initial terms of three years, as provided by the Commissioner
11 of the Department of Mental Health. The public member shall be
12 a person who is not and never was a member of any profession
13 licensed or regulated under this chapter, or the spouse of
14 such person, and a person who does not have and never has had
15 a material interest in the practice of behavior analysis.

16 "(b) The initial members of the board shall be board
17 certified behavior analysts, as recognized by the certifying
18 entity, and shall each become licensed as a behavior analyst
19 or assistant behavior analyst, pursuant to this chapter,
20 during his or her initial term serving on the board. These
21 initial board members shall be appointed by the Commissioner
22 of the Department of Mental Health upon recommendations
23 submitted by the Alabama Association for Behavior Analysis,
24 the Alabama Interagency Autism Coordinating Council, the
25 Department of Mental Health, and any other group determined
26 appropriate by the commissioner. Subsequent appointments shall

1 be appointed by the Governor upon recommendations submitted by
2 the board.

3 "(c) Any vacancy occurring other than by expiration
4 of terms shall be filled for the remainder of the unexpired
5 term by appointment by the Governor, upon recommendation of
6 the board.

7 "(d) No member shall serve more than two successive
8 three-year terms.

9 "(e) A member shall serve until a successor is
10 appointed and assumes office.

11 "(f) Members shall be paid out of the funds of the
12 board the same per diem as prescribed by law for state
13 employees for each day of attendance of board business.

14 "(g) The board shall meet at least twice annually
15 and may meet at such other times as necessary, at the call of
16 the chair or by a majority of the members, to complete the
17 business required.

18 "(h) The board shall promulgate and enforce rules
19 and establish fees necessary to implement this chapter.

20 "(i) The board shall investigate all complaints
21 relating to the practice of behavior analysis by any licensed
22 behavior analyst, licensed assistant behavior analyst, or any
23 person alleged to be practicing or providing supervision
24 without a state license.

25 "(1) The board may fine, censure, revoke, or deny a
26 license, place on probation, reprimand, or otherwise
27 discipline a licensee on any of the following grounds:

1 "a. Conviction of a crime which the board determines
2 to be of a nature as to render the person convicted unfit to
3 practice as a behavior analyst.

4 "b. Violation of the professional and ethical
5 compliance code or the rules of the board.

6 "c. Fraud or misrepresentation in obtaining a
7 license.

8 "(2) The board may summarily suspend the license of
9 a licensee who the board determines poses an imminent danger
10 to the public. A hearing shall be held within 10 days after
11 the suspension to determine whether the summary action was
12 warranted.

13 "(3) No license may be denied, suspended, or revoked
14 or a person otherwise disciplined without prior notice and
15 opportunity for hearing, except that the board, without prior
16 notice of hearing, may take action against any person
17 convicted of a crime listed in paragraph a. of subdivision
18 (1). No license may be denied, suspended, or revoked or a
19 person otherwise disciplined pursuant to this section except
20 by vote of a majority of the membership of the board.

21 "(4) Any person may file a complaint with the board
22 seeking the denial, suspension, or revocation of a license
23 issued or pending issuance by the board, or seeking to
24 otherwise discipline a person for any violation of this
25 chapter or rules adopted by the board. Complaints shall be in
26 a form prescribed by the board. If the board determines that a
27 complaint alleges facts which, if true, would require

1 disciplinary action or denial, revocation, or suspension of a
2 license, the board shall promptly institute a hearing. If the
3 board determines that a complaint does not allege facts which
4 warrant a hearing, the complaint may be dismissed by the
5 board. The board, on its own motion, may institute a hearing
6 for disciplinary action or for the denial, suspension, or
7 revocation of a license.

8 "(5) Any person whose license has been suspended or
9 revoked may apply to the board for vacation of the suspension
10 or reinstatement of his or her license.

11 "(j) Upon finding that a person governed by this
12 chapter has practiced as a behavior analyst, advertised that
13 he or she performs as a behavior analyst, or utilized a title
14 or description denoting that he or she is a behavior analyst
15 without first having obtained a license, the board may do any
16 of the following:

17 "(1) Impose an administrative fine.

18 "(2) Issue a cease and desist order.

19 "(3) Petition the circuit court of the county where
20 the act occurred to enforce the cease and desist order and
21 collect the assessed fine.

22 ~~"(j) Four members~~ (k) A majority of the membership
23 of the board shall constitute a quorum.

24 ~~"(k)(1)~~ The board shall elect a chair from among its
25 membership on an annual basis.

26 "(m) There is established a separate special revenue
27 fund in the State Treasury known as the Alabama Behavior

1 Analyst Licensing Board Fund. All receipts collected by the
2 board pursuant to this chapter shall be deposited into this
3 fund and used to the credit of the board for its operation and
4 to carry out this chapter. Receipts shall be disbursed only by
5 warrant of the Comptroller drawn upon the State Treasury upon
6 itemized vouchers approved by the chair.

7 "§34-5A-4.

8 "Each person desiring to obtain a license shall
9 submit an application and authorized fees to the board. The
10 application shall include evidence demonstrating that the
11 applicant satisfies all of the following requirements:

12 "(1) Is of good moral character and conducts his or
13 her professional activities in accordance with accepted
14 professional and ethical standards, including:

15 "a. Compliance with the professional ~~disciplinary~~
16 and ethical ~~standards and the guidelines for responsible~~
17 ~~conduct~~ compliance code for behavior analysts of the
18 certifying ~~agency~~ entity.

19 "b. Completion of a ~~state-approved~~ criminal
20 background check pursuant to rule of the board. The cost of
21 the criminal background check shall be paid by the applicant.
22 An applicant shall submit to the board two complete sets of
23 fingerprints and a form, sworn to by the applicant, containing
24 his or her name, date of birth, and Social Security number for
25 completion of the criminal background check. The board shall
26 submit the fingerprints and form to the State Bureau of
27 Investigations, or any entity contracted with for the purposes

1 of furnishing criminal background checks, for a state criminal
2 history record check. The board shall keep information
3 received pursuant to this section confidential, except that
4 any information received and relied upon in denying the
5 issuance of a license in this state may be disclosed if
6 necessary to support the denial.

7 "(2) In addition to satisfying the requirements of
8 subdivision (1), a licensed behavior analyst applicant shall
9 also maintain active status as a board certified behavior
10 analyst, as ~~required~~ recognized by the certifying entity,
11 following passage of the board certified behavior analyst
12 examination.

13 "(3) In addition to satisfying the requirements of
14 subdivision (1), a licensed assistant behavior analyst
15 applicant shall also do all of the following:

16 "a. Maintain active status as a board certified
17 assistant behavior analyst, as ~~required~~ recognized by the
18 certifying entity, following passage of the board certified
19 assistant behavior analyst examination.

20 "b. Provide proof of ongoing supervision by a
21 licensed behavior analyst who is a current board certified
22 behavior analyst in a manner consistent with the requirements
23 of the certifying entity for supervision of board certified
24 assistant behavior analysts.

25 "§34-5A-6.

26 "The board shall issue a license to a person who is
27 actively licensed as a behavior analyst in another state that

1 currently imposes comparable licensure requirements as those
2 imposed in this state and that offers reciprocity to
3 individuals licensed under this chapter. An applicant for
4 reciprocity shall submit proof of ethical compliance,
5 including proof of current licensure and current ~~certifying~~
6 ~~board~~ certification by the certifying entity, along with any
7 other eligibility requirements, such as satisfactory passage
8 of a criminal background check.

9 "§34-5A-7.

10 "(a) A license shall be granted for a period of two
11 years and shall expire on December 31 in the second year.

12 Before the expiration of a license, the license may be renewed
13 upon submission of an application for renewal, including proof
14 of continued certification by the certifying entity and
15 payment of the renewal fee imposed by the board.

16 "(b) All licenses issued pursuant to this chapter
17 shall be subject to renewal and shall expire unless renewed in
18 the manner prescribed by the rules of the board upon the
19 payment of a renewal fee. The board may provide for a late
20 renewal of a license upon payment of a late renewal fee if all
21 conditions for renewal have been satisfied and upon payment of
22 a late renewal fee. Any license which has not been renewed
23 within two years following its expiration may not be renewed,
24 restored, or reissued thereafter. The holder of an expired
25 license may apply for and obtain a valid license only upon
26 compliance with all relevant requirements for issuance of a
27 new license.

1 (c) A suspended license is subject to expiration and
2 may be renewed as provided in this section. Renewal of a
3 suspended license does not entitle the applicant, while the
4 license remains suspended and until it is reinstated, to
5 engage in licensed activity or in other conduct or activity in
6 violation of a license revoked on disciplinary grounds. Except
7 as otherwise provided in this chapter, a licensed behavior
8 analyst or licensed assistant behavior analyst who desires to
9 return to the active practice of applied behavior analysis
10 shall submit an application for reinstatement and shall pay
11 the nonrefundable reinstatement fee, and any late fee or
12 penalty fees that may be applicable. The amount of the
13 reinstatement fee and penalty shall be established by the rule
14 of the board. The applicant shall meet the same requirements
15 as were necessary for initial licensure."

16 Section 2. This act shall become effective on the
17 first day of the third month following its passage and
18 approval by the Governor, or its otherwise becoming law.