

SECOND REGULAR SESSION

# SENATE BILL NO. 1030

95TH GENERAL ASSEMBLY

---

---

INTRODUCED BY SENATOR RUPP.

Read 1st time March 1, 2010, and ordered printed.

TERRY L. SPIELER, Secretary.

5268S.011

---

---

## AN ACT

To amend chapter 337, RSMo, by adding thereto ten new sections relating to the licensure of the profession of applied behavior analysis, with penalty provisions.

---

---

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

Section A. Chapter 337, RSMo, is amended by adding thereto ten new sections, to be known as sections 337.300, 337.305, 337.310, 337.315, 337.320, 337.325, 337.330, 337.335, 337.340, and 337.345, to read as follows:

**337.300. As used in sections 337.300 to 337.340, 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;

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

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

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

19 registration;

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

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

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

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

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

38 (c) Consultation to individuals and organizations.

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

8 2. Appointments to the board shall be made by the governor  
9 upon the recommendations of the director of the division, upon the  
10 advice and consent of the senate. The division, prior to submitting  
11 nominations, shall solicit nominees from professional associations and  
12 licensed behavior analysts or licensed assistant behavior analysts in  
13 the state.

14 3. The term of office for board members shall be five years. In  
15 making initial appointments to the board, the governor shall stagger  
16 the terms of the appointees so that one member serves an initial term  
17 of two years, three members shall serve an initial term of three years,

18 and three members serve initial terms of four years. Each member of  
19 the board shall hold office until his or her successor has been qualified.  
20 A vacancy in the membership of the board shall be filled for the  
21 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  
23 in addition to such part of a full term.

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

31 5. The public member shall be a person who is not and never was  
32 a member of any profession licensed or regulated under sections  
33 337.300 to 337.340 or the spouse of such person; and a person who does  
34 not have and never has had a material financial interest in either the  
35 providing of the professional services regulated by sections 337.300 to  
36 337.340, or an activity or organization directly related to any profession  
37 licensed or regulated under sections 337.300 to 337.340.

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

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

48 8. Staff for the board shall be provided by the director of the  
49 division of professional registration.

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

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

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

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

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

15           **2. The board may recommend to the committee rules to be**  
16 **promulgated pertaining to:**

17           **(1) The form and content of license and registration applications**  
18 **required and the procedures for filing an application for an initial,**  
19 **temporary or renewal license and registration in this state;**

20           **(2) The establishment of fees;**

21           **(3) The educational and training requirements for licensed**  
22 **behavior analysts and licensed assistant behavior analysts;**

23           **(4) The roles, responsibilities and duties of licensed behavior**  
24 **analysts and licensed assistant behavior analysts;**

25           **(5) The characteristics of supervision and supervised clinical**  
26 **practicum experience for the licensed behavior analyst and the licensed**  
27 **assistant behavior analyst;**

28           **(6) The supervision of licensed assistant behavior analysts;**

29           **(7) The requirements for continuing education for licensed**  
30 **behavior analysts and licensed assistant behavior analysts;**

31           **(8) Establishment and promulgation of procedures for**  
32 **investigating, hearing and determining grievances and violations**  
33 **occurring under sections 337.300 to 337.340;**

34           **(9) Development of an appeal procedure for the review of**  
35 **decisions and rules of administrative agencies existing pursuant to the**  
36 **constitution or laws of this state;**

37           **(10) A code of conduct; and**

38           **(11) Any other policies or procedures necessary to the fulfillment**  
39 **of the requirements of sections 337.300 to 337.340.**

40           **3. The committee shall make all final decisions, and only upon**  
41 **the board's recommendation, related to licensing, registration,**  
42 **complaint resolution, approval of certifying entities, and rules unless**  
43 **otherwise authorized by sections 337.300 to 337.340.**

44           **4. Notwithstanding the provisions of subsection 3 of this section,**  
45 **until such time as the governor appoints the board and the board has**  
46 **a quorum, the committee shall review and resolve all applications for**  
47 **licensure as a licensed behavior analyst or licensed assistant behavior**  
48 **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**  
51 **shall become effective only if it complies with and is subject to all of**  
52 **the provisions of chapter 536 and, if applicable, section 536.028. This**  
53 **section and chapter 536 are nonseverable and if any of the powers**  
54 **vested with the general assembly pursuant to chapter 536 to review, to**  
55 **delay the effective date, or to disapprove and annul a rule are**  
56 **subsequently held unconstitutional, then the grant of rulemaking**  
57 **authority and any rule proposed or adopted after August 28, 2010, shall**  
58 **be invalid and void.**

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

5 **An applied behavior analysis intervention shall:**

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

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

16           **2. Each person wishing to practice as a licensed behavior analyst**

17 shall:

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

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

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

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

29 (5) Have passed an examination and been certified as a board  
30 certified behavior analyst by a certifying entity, as defined in section  
31 337.300;

32 (6) Provide evidence of active status as a board certified  
33 behavior analyst; and

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

38 3. Each person wishing to practice as a licensed assistant  
39 behavior analyst shall:

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

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

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

46 (4) Submit to a background check and provide fingerprints;

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

50 (6) Provide evidence of active status as a board certified  
51 assistant behavior analyst;

52 (7) If the applicant holds a license as an assistant behavior  
53 analyst in another state, a statement from all issuing states verifying

54 licensure and identifying any disciplinary action taken against the  
55 license holder by that state; and

56 (8) Submit documentation satisfactory to the committee that the  
57 applicant will be directly supervised by a licensed behavior analyst in  
58 a manner consistent with the requirements of the certifying entity.

59 4. The committee shall be authorized to issue a temporary  
60 license to an applicant for a behavior analyst license or assistant  
61 behavior analyst license upon receipt of a complete application for  
62 behavior analyst or assistant behavior analyst or a showing of valid  
63 licensure as a behavior analyst in another state, only if the applicant  
64 has submitted fingerprints and no disqualifying criminal history  
65 appears on the family care safety registry. The temporary license shall  
66 expire upon issuance of a license or denial of the application but no  
67 later than ninety days from issuance of the temporary license. Upon  
68 written request to the committee, the holder of a temporary license  
69 shall be entitled to one extension of ninety days of the temporary  
70 license.

71 5. No person shall hold himself or herself out to be licensed  
72 behavior analysts, or LBA, or licensed assistant behavior analysts, or  
73 LaBA, in the state of Missouri unless he or she meets the applicable  
74 requirements.

75 6. No person shall practice applied behavior analysis unless he  
76 or she is:

77 (1) A licensed behavior analyst;

78 (2) A licensed assistant behavior analyst working under the  
79 supervision of a licensed behavior analyst;

80 (3) An individual who has a bachelor's or graduate degree and  
81 has completed course work for licensure as a behavior analyst and is  
82 obtaining supervised field experience under a licensed behavior analyst  
83 pursuant to required supervised work experience for licensure at the  
84 behavior analyst or assistant behavior analyst level; or

85 (4) A licensed psychologist practicing within the rules and  
86 standards of practice for psychologists in the state of Missouri and  
87 whose practice is commensurate with his or her level of training and  
88 experience.

89 7. Any person who provides services under the Individuals with  
90 Disabilities Education Act (IDEA), 20 U.S.C. Section 1400 et seq., or is

91 enrolled in a course of study at a recognized educational institution  
92 through which the person provides applied behavior analysis as part  
93 of supervised clinical experience shall be exempt from the  
94 requirements of this section.

95 8. A violation of this section shall be punishable by probation,  
96 suspension, or loss of any license or registration held by the violator.

337.320. 1. The division shall mail a renewal notice to the last  
2 known address of each licensee or registrant prior to the renewal date.

3 2. Each person wishing to renew the behavior analyst license or  
4 the assistant behavior analyst license shall:

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

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

8 (3) Submit proof of active certification and fulfillment of all  
9 requirements for renewal and recertification with the certifying entity.

10 3. Failure to provide the division with documentation required  
11 by subsection 2 of this section or other information required for  
12 renewal shall effect a revocation of the license or registration after a  
13 period of sixty days from the renewal date.

14 4. Each person wishing to restore the license, within two years  
15 of the renewal date, shall:

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

18 (2) Pay the renewal fee and a delinquency fee as set by the  
19 committee; and

20 (3) Submit proof of current certification from a certifying body  
21 approved by the committee.

22 5. Each person wishing to restore the registration, within two  
23 years of the renewal date, shall:

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

26 (2) Pay the renewal fee and a delinquency fee as set by the  
27 committee; and

28 (3) Submit documentation satisfactory to the committee that the  
29 applicant has no disqualifying information on the Missouri family care  
30 safety registry.

31 6. A new license or registration to replace any certificate lost,



32 destroyed, or mutilated may be issued subject to the rules of the  
33 committee, upon payment of a fee established by the committee.

34 7. The committee shall set the amount of the fees authorized by  
35 sections 337.300 to 337.340 and required by rules promulgated under  
36 section 536.021. The fees shall be set at a level to produce revenue  
37 which shall not substantially exceed the cost and expense of  
38 administering sections 337.300 to 337.340.

39 8. The committee is authorized to issue an inactive license to any  
40 licensee who makes written application for such license on a form  
41 provided by the committee and remits the fee for an inactive license  
42 established by the committee. An inactive license may be issued only  
43 to a person who has previously been issued a license to practice as a  
44 licensed behavior analyst, or licensed assistant behavior analyst, who  
45 is no longer regularly engaged in such practice and who does not hold  
46 himself or herself out to the public as being professionally engaged in  
47 such practice in this state. Each inactive license shall be subject to all  
48 provisions of this chapter, except as otherwise specifically  
49 provided. Each inactive license may be renewed by the committee  
50 subject to all provisions of this section and all other provisions of this  
51 chapter. The inactive licensee shall not be required to submit evidence  
52 of completion of continuing education as required by this chapter.

53 9. An inactive licensee may apply for a license to regularly  
54 engage in the practice of behavioral analysis by:

55 (1) Submitting a complete application on a form approved by the  
56 committee;

57 (2) Paying the reactivation fee as set by the committee; and

58 (3) Submitting proof of current certification from a certifying  
59 body approved by the committee.

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

337.330. 1. The committee may refuse to issue any license or  
2 registration required under this chapter for one or any combination of

3 causes stated in subsection 2 of this section. The committee shall notify  
4 the applicant in writing of the reasons for the refusal and shall advise  
5 the applicant of the applicant's right to file a complaint with the  
6 administrative hearing commission as provided by chapter 621.

7       2. The committee may cause a complaint to be filed with the  
8 administrative hearing commission, as provided by chapter 621, against  
9 any holder of any license or registration required by this chapter or  
10 any person who has failed to renew or has surrendered the person's  
11 license or registration for any one or any combination of the following  
12 causes:

13       (1) The person has been finally adjudicated and found guilty, or  
14 entered a plea of guilty or nolo contendere, in a criminal prosecution  
15 under the laws of any state or of the United States, for any offense  
16 reasonably related to the qualifications, functions, or duties of any  
17 profession licensed or regulated under this chapter, for any offense an  
18 essential element of which is fraud, dishonesty or an act of violence, or  
19 for any offense involving moral turpitude, whether or not sentence is  
20 imposed;

21       (2) Use of fraud, deception, misrepresentation or bribery in  
22 securing any certificate of registration or authority, permit or license  
23 issued under this chapter or in obtaining permission to take any  
24 examination given or required under sections 337.300 to 337.340;

25       (3) Obtaining or attempting to obtain any fee, charge, tuition, or  
26 other compensation by fraud, deception or misrepresentation;

27       (4) Incompetency, misconduct, gross negligence, fraud,  
28 misrepresentation, or dishonesty in the performance of the functions  
29 or duties of any profession licensed or regulated by sections 337.300 to  
30 337.340;

31       (5) Violation of, or assisting or enabling any person to violate,  
32 any provision of sections 337.300 to 337.340, or of any lawful rule  
33 adopted thereunder;

34       (6) Impersonation of any person holding a certificate of  
35 registration or authority, permit or license or allowing any person to  
36 use his or her certificate of registration or authority, permit, license,  
37 or diploma from any school;

38       (7) Disciplinary action against the holder of a license or other  
39 right to practice any profession regulated by sections 337.300 to 337.340

40 granted by another state, territory, federal agency, or country upon  
41 grounds for which revocation or suspension is authorized in this state;

42 (8) The person is finally adjudged insane or incapacitated by a  
43 court of competent jurisdiction;

44 (9) Assisting or enabling any person to practice or offer to  
45 practice any profession licensed or regulated by sections 337.300 to  
46 337.340 who is not registered and currently eligible to practice as  
47 provided in sections 337.300 to 337.340;

48 (10) Issuance of a certificate of registration or authority, permit,  
49 or license based upon a material mistake of fact;

50 (11) Failure to display a valid certificate or license if so required  
51 by sections 337.300 to 337.340 or any rule promulgated thereunder;

52 (12) Violation of any professional trust or confidence;

53 (13) Use of any advertisement or solicitation which is false,  
54 misleading, or deceptive to the general public or persons to whom the  
55 advertisement or solicitation is primarily directed;

56 (14) Being guilty of unethical conduct as defined in "Ethical  
57 Rules of Conduct" as adopted by the committee and filed with the  
58 secretary of state.

59 3. After the filing of such complaint, the proceedings shall be  
60 conducted in accordance with the provisions of chapter 621. Upon a  
61 finding by the administrative hearing commission that the grounds,  
62 provided in subsection 2 of this section, for disciplinary action are met,  
63 the committee may, singly or in combination, censure or place the  
64 person named in the complaint on probation on such terms and  
65 conditions as the department deems appropriate for a period not to  
66 exceed five years, or may suspend, for a period not to exceed three  
67 years, or revoke the license, certificate, or permit.

337.335. 1. Any person found guilty of violating any provision of  
2 sections 337.300 to 337.340 is guilty of a class A misdemeanor and upon  
3 conviction thereof shall be punished as provided by law.

4 2. All fees or other compensation received for services rendered  
5 in violation of sections 337.300 to 337.340 shall be refunded.

6 3. The committee shall inquire as to any violation of any  
7 provision of sections 337.300 to 337.340 and may institute actions for  
8 penalties herein prescribed, and shall enforce generally the provisions  
9 of sections 337.300 to 337.340.

10           4. Any person, organization, association, or corporation who  
11 reports or provides information to the committee or the division under  
12 sections 337.300 to 337.380 and who does so in good faith shall not be  
13 subject to an action for civil damages as a result thereof.

14           5. Upon application by the committee the attorney general may  
15 on behalf of the committee request that a court of competent  
16 jurisdiction grant an injunction, restraining order, or other order as  
17 may be appropriate to enjoin a person from:

18           (1) Offering to engage or engaging in the performance of any acts  
19 or practices for which a certificate of registration or authority, permit,  
20 or license is required upon a showing that such acts or practices were  
21 performed or offered to be performed without a certificate of  
22 registration or authority, permit, or license; or

23           (2) Engaging in any practice or business authorized by a  
24 certificate of registration or authority, permit, or license issued under  
25 sections 337.300 to 337.340 upon a showing that the holder presents a  
26 substantial probability of serious harm to the health, safety, or welfare  
27 of any resident of this state or client or patient of the licensee.

28           6. Any action brought under the provisions of this section shall  
29 be commenced either in the county in which such conduct occurred or  
30 in the county in which the defendant resides.

31           7. Any action brought under this section may be in addition to  
32 or in lieu of any penalty provided by sections 337.300 to 337.380 and  
33 may be brought concurrently with other actions to enforce sections  
34 337.300 to 337.340.

          337.340. All fees authorized under sections 337.300 to 337.340  
2 shall be collected by the director of the division of professional  
3 registration and shall be transmitted to the department of revenue for  
4 deposit in the state treasury to the credit of the state committee of  
5 psychologists fund.

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

8 signing the application, subject to the penalties of making a false  
9 affidavit or declaration.

10 2. For a provisional behavioral 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 board  
18 certified behavior analyst by the certifying entity; and

19 (3) Provide evidence of active status as a board certified  
20 behavior analyst.

21 3. For a provisional assistant behavioral analyst license, the  
22 applicant shall:

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

28 (2) Have passed an examination and been certified as a board  
29 certified assistant behavior analyst by a certifying entity;

30 (3) Provide evidence of active status as a board certified  
31 assistant behavior analyst; and

32 (4) Submit documentation satisfactory to the board that the  
33 applicant will be directly supervised by a licensed behavior analyst in  
34 a manner consistent with the certifying entity.

35 4. Each applicant for provisional licensure shall meet the  
36 applicable requirements of section 337.315 within three months of the  
37 date of issuance of the provisional license.

38 5. The provisional license shall be effective only until the board  
39 shall have had the opportunity to investigate the qualifications for  
40 licensure under section 337.315 and to notify the applicant that his or  
41 her application for a license has been either granted or rejected. In no  
42 event shall such provisional license be in effect for more than three  
43 months after the date of its issuance nor shall a provisional license be  
44 reissued to the same applicant. The holder of a provisional license

45 **which has not expired, been suspended, or revoked, shall be deemed to**  
46 **be the holder of a license issued under section 337.315 until such**  
47 **provisional license expires, is suspended, or revoked.**

✓

Unofficial

Bill

Copy