

An Act to License Behavior Analysts – Draft

Preamble

An Act to license professional practitioners of applied behavior analysis; to establish the Behavior Analyst Licensing Board; to authorize the Board to regulate the practice of behavior analyst professionals; to provide for the membership, terms of office, powers, and duties of the Board; to establish requirements for licensure; and to provide exemptions from licensure.

Section 1. Declaration of Policy

The practice of applied behavior analysis in State of Nebraska is hereby declared to affect the health, safety, and welfare of citizens of State of Nebraska and to be subject to regulation to protect the public from (i) the practice of applied behavior analysis by unqualified persons, and (ii) unprofessional, unethical, and/or harmful conduct by behavior analysis practitioners.

Section 2. Prohibitions and Penalties

- A. The practice of applied behavior analysis by unlicensed individuals is prohibited unless they are exempted in Section 7 of this Act.
- B. No person shall hold himself or herself out to be a Licensed Behavior Analyst unless they are licensed under this Act.
- C. The Behavior Analyst Certification Board's [Ethics Code for Behavior Analysts](#) is incorporated herein as the code of conduct for individuals licensed under this Act.
- D. Any person found to be in violation of any provision(s) of this Act shall be subject to a fine of no less than [X] dollars. Violators who are licensed under this Act shall be subject to other sanctions and penalties, up to and including revocation of licenses.

Section 3. Definitions

For the purposes of this Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definition in the following sections apply:

- A. BOARD. The State of Nebraska Behavior Analyst Licensing Board, which is authorized to implement and enforce this Act and oversee the practice of applied behavior analysis.
- B. CERTIFYING ENTITY. The Behavior Analyst Certification Board (BACB) or another entity whose programs to credential practitioners of applied behavior analysis are accredited by the National Commission on Certifying Agencies (NCCA) or the American National Standards Institute (ANSI).
- C. LICENSED BEHAVIOR ANALYST. An individual who is certified by the certifying entity as a Board Certified Behavior Analyst® (BCBA®) or Board Certified Behavior Analyst -Doctoral™ (BCBA-D™) and who meets the other requirements specified in Section 5 of this Act.

- D. ASSISTANT BEHAVIOR ANALYST. An individual who is approved by the certifying entity as a Board Certified Assistant Behavior Analyst® (BCaBA®) and practices under the close, ongoing supervision of a Licensed Behavior Analyst.
- E. BEHAVIOR TECHNICIAN. A paraprofessional who practices under the close, ongoing supervision of a Licensed Behavior Analyst. The behavior technician does not design assessment or intervention plans or procedures but delivers services as assigned by the supervisor responsible for his or her work.
- F. PRACTICE OF APPLIED BEHAVIOR ANALYSIS. The design, implementation, and evaluation of instructional and environmental modifications to produce socially significant improvements in human behavior. The practice of applied behavior analysis includes the empirical identification of functional relations between behavior and environmental factors, known as functional assessment and analysis. Applied behavior analysis interventions are based on scientific research and direct and indirect observation and measurement of behavior and environment. They utilize contextual factors, motivating operations, antecedent stimuli, positive reinforcement, and other procedures to help individuals develop new behaviors, increase or decrease existing behaviors, and emit behaviors under specific environmental conditions. The practice of applied behavior analysis excludes diagnosis of disorders, psychological testing, psychotherapy, cognitive therapy, psychoanalysis, and counseling.
- G. DIRECTOR. The Director of Public Health of the State of Nebraska Division of Public Health or their designee.

Section 4. Behavior Analyst Licensing Board

- A. The State of Nebraska Behavior Analyst Licensing Board is hereby established. The Board shall issue licenses to individuals who meet the requirements specified in this Act, promulgate rules and establish fees necessary to implement this Act, and investigate all complaints relating to the practice of applied behavior analysis by any Licensed Behavior Analyst or any other person alleged to be violating any of the provisions of this Act.
- B. The initial Board shall consist of four members, including three Board Certified Behavior Analysts or Board Certified Behavior Analysts-Doctoral who are eligible for licensure under this Act and one public member who is not a professional behavior analyst. The Board Certified Behavior Analyst and Board Certified Behavior Analyst-Doctoral members shall apply for licensure as soon as feasible. Subsequently the Board shall consist of three Licensed Behavior Analysts and one public member.
- C. The membership of the Board shall be inclusive and reflect the racial, gender, geographic, urban/rural, and economic diversity of the State of Nebraska. Each member shall serve a three-year term, with initial terms being staggered so that one member serves an initial term of one year, one member serves an initial term of two years, and two members serve initial terms of three years, as provided by the director. The public member shall be a person who is not and never was a member of the profession licensed or regulated under this Act or the spouse of such a person, and who does not have and never has had a material interest in the

practice of applied behavior analysis.

- D. Members of the Board shall be appointed by the director upon recommendations submitted by the Nebraska Association for Behavior Analysis and any other group deemed appropriate by the director. Terms and vacancies shall be filled as follows:
- (i) Any vacancy occurring other than by expiration of terms shall be filled for the remainder of the unexpired term by appointment by the director upon recommendation of the Board.
 - (ii) No member shall serve more than two successive three-year terms.
 - (iii) A member shall serve until a successor is appointed and assumes office.
 - (iv) Members shall not be remunerated, but shall be paid out of the funds of the Board the same per diem as prescribed by law for State of Nebraska employees for each day of attendance at Board meetings.
- E. 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, to complete the business required.
- (i) Three members of the Board shall constitute a quorum.
 - (ii) The Board shall elect a chair from among its membership on an annual basis.

Section 5. Eligibility Requirements for Initial Licensure

Each applicant for licensure as a Licensed Behavior Analyst shall submit an application and specified fees to the Board. The application must include evidence that the applicant meets all of the following requirements:

- (i) Is of good moral character.
- (ii) Has successfully completed a criminal background check.
- (iii) Each applicant shall also have their current certification as a Board Certified Behavior Analyst or Board Certified Behavior Analyst-Doctoral verified with the certifying entity by the Board.

Section 6. Expiration and Renewal

A license shall be granted for a period of 2 years. Prior to expiration of a license, the license may be renewed upon submission of an application for renewal, Board verification of current certification by the certifying entity, and payment of any renewal fee established by the Board.

Section 7. Exemptions

The provisions of this Act shall not be construed as prohibiting or restricting the practice of any of the following:

- A. Individuals licensed to practice psychology in State of Nebraska and those who deliver psychological services under their supervision, provided that (a) applied behavior analysis is in the scope of practice section of the State of Nebraska psychology licensure law; (b) the applied behavior analysis services provided are within the boundaries of the Licensed Psychologist's education, training, and competence; and (c) the Licensed Psychologist does not represent that they are a Licensed Behavior Analyst unless also licensed under this Act.
- B. Individuals licensed to practice other professions in State of Nebraska and those who deliver services under their supervision, provided that (a) applied behavior analysis is in the scope of practice section of the profession's licensure law; (b) the applied behavior analysis services provided are within the boundaries of the licensed professional's education, training, and competence; and (c) the licensed professional does not represent that they are a Licensed Behavior Analyst unless also licensed under this Act.
- C. Board Certified Assistant Behavior Analysts (BCaBAs) who practice under the extended authority and direction of a Licensed Behavior Analyst who is approved by the certifying entity to supervise BCaBAs.
- D. Behavior technicians who deliver applied behavior analysis services under the extended authority and direction of a Licensed Behavior Analyst or an assistant behavior analyst. Such individuals must not represent themselves as professional behavior analysts, and must use titles that indicate their nonprofessional status, such as "ABA technician," "behavior technician," or "tutor."
- E. Caregivers of recipients of applied behavior analysis services who deliver those services to the recipients under the extended authority and direction of a Licensed Behavior Analyst. Such individuals must not represent themselves as professional behavior analysts.
- F. Behavior analysts who practice with nonhumans, including applied animal behaviorists and animal trainers. Such individuals may use the title "behavior analyst" but may not represent themselves as Licensed Behavior Analysts unless licensed under this Act.
- G. 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 professionals may use the title "behavior analyst" but may not represent themselves as Licensed Behavior Analysts unless licensed under this Act.
- H. Matriculated college or university students or postdoctoral fellows whose applied behavior analysis activities are part of a defined program of study, course, practicum, internship, or fellowship and are directly supervised by a Licensed Behavior Analyst in this jurisdiction or a qualified faculty member. Such individuals must not represent themselves as professional behavior analysts and must use titles that clearly indicate their trainee status, such as "student," "intern," or "trainee."
- I. Unlicensed individuals pursuing experience in applied behavior analysis consistent with the experience requirements of the certifying entity, provided such experience is supervised in accordance with the requirements of the certifying entity.

- J. Individuals who teach behavior analysis or conduct behavior-analytic research, provided that such activities do not involve the direct delivery of applied behavior analysis services beyond the typical parameters of applied research. Such individuals may use the title “behavior analyst” but may not represent themselves as Licensed Behavior Analysts unless licensed under this Act.
- K. Individuals employed by a school district performing the duties of their positions. Such individuals shall not represent themselves as Licensed Behavior Analysts unless licensed under this Act, and shall not offer applied behavior analysis services to any persons or entities other than their school employer or accept remuneration for providing applied behavior analysis services other than the remuneration they receive from their school employer.

Section 8. Temporary License

Behavior analysts licensed in another jurisdiction or certified by the certifying entity to practice independently who provide applied behavior analysis services in State of Nebraska on a short-term basis may apply for a temporary license. Applicants for temporary licenses shall submit an application and fee established by the Board, and evidence that their practice in the jurisdiction will be temporary as defined by the Board in rules. A temporary license will be granted only if the Board verifies the applicant’s licensure or certification status with the relevant entity.

Section 9. Reciprocity

The Board shall issue a license to a person who is currently licensed as a behavior analyst in good standing in another jurisdiction that imposes licensure requirements comparable to those specified in this Act. Applicants for reciprocal licensure shall have current licensure verified by the Board and comply with other requirements set forth in Section 5 of this Act.