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SYNOPSIS:

Under existing law, termination dates are established for enumerated state agencies. The agencies are periodically reviewed by the Alabama Sunset Committee. After the review process is completed, the committee prepares its recommendation for the agencies to the Legislature in the form of sunset bills which either continue, terminate, or continue with modification each agency reviewed.

This bill would provide for the continuance of the Alabama Behavior Analyst Licensing Board operating within the Department of Mental Health with the following changes: To rename the board as the Alabama Behavior Analyst Advisory Council; to provide the Department of Mental Health with regulatory authority over licensed behavior analysts and licensed assistant behavior analysts practicing behavior analysis under the former board; to require the advisory council to advise the department on matters relating to the practice of behavior analysis; to provide for the duties of the department and the Mental Health Commissioner relating to the advisory council; to require the department to provide all necessary administrative services for the advisory council; to transfer all property of the advisory council to the



29                   department; and to remove the former board from Sunset  
30                   review.

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A BILL

TO BE ENTITLED

## AN ACT

Relating to the Alabama Sunset Law; to continue the existence and functioning of the Alabama Behavior Analyst Board operating within the Department of Mental Health with certain modifications; to amend Sections 34-5A-1, -2, 34-5A-3, 34-5A-4, 34-5A-5, 34-5A-6, and 34-5A-7, Code of Alabama 1975, to rename the board as the Alabama Behavior Analyst Advisory Council; to provide the Department of Mental Health with regulatory authority over licensed behavior analysts and licensed assistant behavior analysts practicing behavior analysis under the former board; to require the advisory council to advise the department on matters relating to the practice of behavior analysis; to provide for the functions of the department and the Mental Health Commissioner relating to the advisory council; to require the department to provide all necessary administrative services for the advisory council; to transfer all property of the advisory council to the department; and to repeal Section 34-5A-8, Code of Alabama 1975, to remove the former board from review by the Sunset Committee.

56 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:



57                   Section 1. Pursuant to the Alabama Sunset Law, the  
58                   Sunset Committee recommends the continuance of the Alabama  
59                   Behavior Analyst Licensing Board operating within the  
60                   Department of Mental Health with the additional  
61                   recommendations for statutory change as set out in Sections 3  
62                   and 4.

63                   Section 2. The existence and functioning of the Alabama  
64                   Behavior Analyst Licensing Board, created and functioning  
65                   pursuant to Sections 34-5A-1 to 34-5A-7, inclusive, Code of  
66                   Alabama 1975, is continued, and those code sections are  
67                   expressly preserved.

68                   Section 3. Sections 34-5A-1, 34-5A-2, 34-5A-3, 34-5A-4,  
69                   34-5A-5, 34-5A-6, and 34-5A-7 of the Code of Alabama 1975, are  
70                   amended to read as follows:

71                   "§34-5A-1

72                   For the purposes of this chapter, the following terms  
73                   shall have the following meanings:

74                   (1) ADVISORY COUNCIL. The Alabama Behavior Analyst  
75                   Advisory Council created by this chapter.

76                   (1) APPLIED BEHAVIOR ANALYSIS DIRECT CONTACT  
77                   TECHNICIAN. An individual who directly implements applied  
78                   behavior analysis services.

79                   (2) BOARD. The Alabama Behavior Analyst Licensing Board  
80                   charged with overseeing the regulation of behavior analyst  
81                   professionals.

82                   (3) CERTIFYING ENTITY. The nationally accredited  
83                   Behavior Analyst Certification Board, Incorporated.

84                   (4) DEPARTMENT. The Department of Mental Health.



85           ~~(4)~~(5) LICENSED ASSISTANT BEHAVIOR ANALYST. An  
86 individual who is certified by the certifying entity as a  
87 national board certified assistant behavior analyst and who  
88 satisfies the criteria identified in Section 34-5A-4.

89           ~~(5)~~(6) LICENSED BEHAVIOR ANALYST. An individual who is  
90 certified by the certifying entity as a national board  
91 certified behavior analyst and who satisfies the criteria  
92 identified in Section 34-5A-4.

93           (7) MENTAL HEALTH COMMISSIONER. The executive officer  
94 of the Department of Mental Health.

95           ~~(6)~~(8) PRACTICE OF BEHAVIOR ANALYSIS. The design,  
96 implementation, and evaluation of instructional and  
97 environmental modifications to produce socially significant  
98 improvements in human behavior.

99           a. The practice of behavior analysis includes all of  
100 the following:

101           1. The empirical identification of functional relations  
102 between behavior and environmental factors, known as  
103 functional assessment and analysis.

104           2. Interventions based on scientific research and the  
105 direct observation and measurement of behavior and  
106 environment, which utilize contextual factors, establishing  
107 operations, antecedent stimuli, positive reinforcement, and  
108 other consequences to help individuals develop new behaviors,  
109 increase or decrease existing behaviors, and elicit behaviors  
110 under specific environmental conditions.

111           b. The practice of behavior analysis does not include  
112 psychological testing, psychotherapy, cognitive therapy, sex



113 therapy, psychoanalysis or hypnotherapy, or long-term  
114 counseling as treatment modalities.

115 c. The practice of behavior analysis does not include  
116 preventing or alleviating or curing of diseases or injuries.

117 d. Nothing in this chapter shall be construed as  
118 permitting or allowing a licensed behavior analyst to  
119 prescribe or administer any drug, make a medical diagnosis,  
120 provide medical treatment, or manage a medical condition. A  
121 licensed behavior analyst may not attempt to diagnose,  
122 prescribe for, treat, or advise a client with reference to any  
123 problem, complaint, or condition falling outside the  
124 boundaries of behavior analysis."

125 "§34-5A-2

126 (a) The unlicensed practice of behavior analysis is  
127 prohibited in this state, unless exempted in subsection (c).

128 (b) ~~No~~person individual shall hold himself or herself  
129 out to be a licensed behavior analyst or licensed assistant  
130 behavior analyst unless he or she satisfies the applicable  
131 requirements of this chapter.

132 (c) This chapter may not be construed as prohibiting or  
133 restricting the practice of any of the following:

134 (1) An individual authorized to practice psychology  
135 within the state.

136 (2) An applied behavior analysis direct contact  
137 technician, or family member implementing a behavior analysis  
138 plan within the home or other environment in which the ~~person~~  
139 individual is located, who acts under the extended authority  
140 and direction of a licensed behavior analyst or a licensed



141 assistant behavior analyst.

142 (3) A behavior analyst who practices with nonhuman or  
143 nonpatient clients or consumers including, but not limited to,  
144 applied animal behaviorists and practitioners of  
145 organizational behavior management.

146 (4) A licensed physician who is practicing medicine.

147 (5) A licensed professional authorized to practice in  
148 the state who is not a behavior analyst, so long as the  
149 licensed professional does not represent that he or she is a  
150 behavior analyst, and so long as the services of the licensed  
151 professional are within the scope of practice of the licensing  
152 law governing the licensed professional and the services  
153 performed are commensurate with the education, training, and  
154 experience of the licensed professional.

155 (6) A matriculated graduate student or postdoctoral  
156 fellow whose activities are part of a defined behavior  
157 analysis program of study, practicum, or intensive practicum,  
158 provided that the practice under this exemption is directly  
159 supervised by a licensed behavior analyst in this state or an  
160 instructor in a course sequence approved by the certifying  
161 entity.

162 (7) An unlicensed individual pursuing experience in  
163 behavior analysis consistent with the experience requirements  
164 of the certifying entity, provided ~~such the~~ experience is  
165 supervised by a licensed behavior analyst in this state.

166 (d) A violation of this section shall be punishable by  
167 a fine of not more than one thousand dollars (\$1,000) or the  
168 suspension or revocation of a license issued pursuant to this



169 chapter, or both fine and loss of ~~licensure~~ licensing."

170 "§34-5A-3

171 (a) (1) ~~The~~ Commencing on the effective date of the act  
172 adding this amendatory language, the Alabama Behavior Analyst  
173 Licensing Board ~~is~~ established within the Department of Mental  
174 Health, ~~Division of Developmental Disabilities~~ is renamed the  
175 Alabama Behavior Analyst Advisory Council. The purpose of the  
176 advisory council is to advise the department on all matters  
177 pertaining to the protection of the health, safety, and  
178 welfare of the public relating to licensed behavior analysts,  
179 licensed assistant behavior analysts, and the practice of  
180 behavior analysis. All members serving on the Alabama Behavior  
181 Analyst Licensing Board on the effective date of the act  
182 adding this amendatory language shall continue to serve as  
183 members of the Alabama Behavior Analyst Advisory Council until  
184 the expiration of their terms.

185 (2) Commencing on the effective date of the act adding  
186 this amendatory language, all rights, duties, records,  
187 property, real or personal, and all other effects existing in  
188 the name of the Alabama Behavior Analyst Licensing Board, or  
189 in any other name by which that board has been known, shall  
190 transfer to the department. Any reference to the former  
191 Alabama Behavior Analyst Licensing Board, or any other name by  
192 which that board has been known, in any existing law,  
193 contract, or other instrument shall constitute a reference to  
194 the Alabama Behavior Analyst Advisory Council as created in  
195 this chapter. All actions of the former Alabama Behavior  
196 Analyst Licensing Board or the executive director of the



197 former board taken before the effective date of the act adding  
198 this amendatory language, are approved, ratified, and  
199 confirmed.

200 (3) The status of any individual or entity properly  
201 licensed, accredited, or registered by the former Alabama  
202 Behavior Analyst Licensing Board on the effective date of the  
203 act adding this amendatory language, shall continue under the  
204 jurisdiction of the department.

205 (4) The department shall provide all of the following  
206 for the performance of the duties of the~~board~~ advisory  
207 council:

208 a. Financial services.

209 b. Legal services.

210 c. Dedicated office space within the office of the  
211 State Autism Coordinator.

212 d. An administrative assistant who is shared or  
213 dedicated to the~~board~~ advisory council, and other personnel  
214 as necessary for the efficient operation of the~~board~~ advisory  
215 council.

216 e. Information technology services that shall include  
217 one or more dedicated phone lines, dedicated email addresses  
218 for~~board~~ advisory council members and staff, and website  
219 maintenance.

220 f. Necessary office furniture and supplies.

221 ~~(2)~~ (b) The~~board~~ advisory council shall consist of  
222 seven members, including four licensed behavior analysts, one  
223 licensed psychologist in the state, one parent or legal  
224 guardian of an individual being treated for a behavior



225 disorder, or an individual who has received services from a  
226 licensed behavior analyst, and one public member, who, ~~except~~  
227 ~~for the initial members,~~ shall be appointed by the ~~Governor,~~  
228 ~~as provided in subsection (b)~~ Mental Health Commissioner. The  
229 ~~appointing authority~~ Mental Health Commissioner shall  
230 coordinate his or her appointments to assure the ~~board~~  
231 advisory council membership is inclusive and reflects the  
232 racial, gender, geographic, urban, rural, and economic  
233 diversity of the state. Each member of the advisory council  
234 shall serve a three-year term, with initial terms being  
235 staggered so that one member serves an initial term of one  
236 year, three members serve initial terms of two years, and  
237 three members serve initial terms of three years, as provided  
238 by the Mental Health Commissioner ~~of the Department of Mental~~  
239 ~~Health~~. The public member shall be an individual who is not  
240 and never was a member of any profession licensed or regulated  
241 under this chapter, or the spouse of the individual, and who  
242 does not have and never has had a material interest in the  
243 practice of behavior analysis.

244 (b) ~~The initial members of the board shall be board~~  
245 ~~certified behavior analysts, as recognized by the certifying~~  
246 ~~entity, and shall each become licensed as a behavior analyst~~  
247 ~~or assistant behavior analyst, pursuant to this chapter,~~  
248 ~~during his or her initial term serving on the board. These~~  
249 ~~initial board members shall be appointed by the Commissioner~~  
250 ~~of the Department of Mental Health upon recommendations~~  
251 ~~submitted by the Alabama Association for Behavior Analysis,~~  
252 ~~the Alabama Interagency Autism Coordinating Council, the~~



253 ~~Department of Mental Health, and any other group determined~~  
254 ~~appropriate by the commissioner. Subsequent appointments shall~~  
255 ~~be appointed by the Governor upon recommendations submitted by~~  
256 ~~the board.~~

257 (c) Any vacancy occurring other than by expiration of  
258 terms shall be filled for the remainder of the unexpired term  
259 by appointment by the ~~Governor~~ Mental Health Commissioner,  
260 upon recommendation of the ~~board~~ advisory council.

261 (d) No member shall serve more than two successive  
262 three-year terms.

263 (e) A member shall serve until a successor is appointed  
264 and assumes office.

265 (f) Members shall be paid out of the funds of the ~~board~~  
266 department the same per diem as prescribed by law for state  
267 employees for each day of attendance of ~~board~~ advisory council  
268 business.

269 (g) The ~~board~~ advisory council shall meet at least  
270 twice annually and may meet at other times as necessary, at  
271 the call of the chair or by a majority of the members of the  
272 advisory council, to complete the business required.

273 (h) ~~The board shall adopt and enforce rules and~~  
274 ~~establish fees necessary to implement this chapter. The~~  
275 department shall adopt and revise rules pursuant to the  
276 Administrative Procedure Act as necessary for the department  
277 to implement this chapter. All administrative rules of the  
278 former Alabama Behavior Analyst Licensing Board existing on  
279 the effective date of the act adding this amendatory language,  
280 which reference this chapter, unless in conflict with existing



281 law, shall remain in effect as rules of the Alabama Behavior  
282 Analyst Advisory Council until amended or repealed by the  
283 department.

284 (i) The ~~board~~ department shall investigate all  
285 complaints relating to the practice of behavior analysis by  
286 any licensed behavior analyst, licensed assistant behavior  
287 analyst, or any individual alleged to be practicing or  
288 providing supervision without a state license.

289 (1) The ~~board~~ department may fine, censure, revoke or  
290 deny a license, place on probation, reprimand, or otherwise  
291 discipline a licensee on any of the following grounds:

292 a. Conviction of a crime that the ~~board~~ department, by  
293 rule, determines to be of a nature as to render the individual  
294 convicted unfit to practice as a behavior analyst.

295 b. Violation of the professional and ethical compliance  
296 code or the rules ~~of the board~~ adopted pursuant to this  
297 chapter.

298 c. Fraud or misrepresentation in obtaining a license.

299 (2) The ~~board~~ Mental Health Commissioner may summarily  
300 suspend the license of a licensee who the ~~board~~ Mental Health  
301 Commissioner determines poses an imminent danger to the  
302 public. A hearing shall be held within 10 days after the  
303 suspension to determine whether the summary action was  
304 warranted.

305 (3) No license may be denied, suspended, or revoked or  
306 an individual otherwise disciplined without prior notice and  
307 opportunity for hearing, except that the ~~board~~ Mental Health  
308 Commissioner, without prior notice of hearing, may take action



309 against any individual convicted of a crime listed in  
310 paragraph (1)a. No license may be denied, suspended, or  
311 revoked or an individual otherwise disciplined by the Mental  
312 Health Commissioner pursuant to this section ~~except by vote of~~  
313 ~~a majority of the membership of the board without a~~  
314 recommendation from the advisory council.

315 (4) Any person may file a complaint with the ~~board~~  
316 Mental Health Commissioner seeking the denial, suspension, or  
317 revocation of a license issued or pending issuance by the  
318 ~~board~~ department, or seeking to otherwise discipline an  
319 individual for any violation of this chapter or rules adopted  
320 ~~by the board~~ pursuant to this chapter. Complaints shall be in  
321 a form prescribed by the ~~board~~ Mental Health Commissioner. If  
322 the ~~board~~ Mental Health Commissioner determines that a  
323 complaint alleges facts that, if true, would require  
324 disciplinary action or denial, revocation, or suspension of a  
325 license, the ~~board~~ Mental Health Commissioner shall promptly  
326 institute a hearing. If the ~~board~~ advisory council determines  
327 that a complaint does not allege facts that warrant a hearing,  
328 the complaint may be dismissed by the ~~board~~ Mental Health  
329 Commissioner. The ~~board~~ Mental Health Commissioner, on ~~its~~ his  
330 or her own motion, may institute a hearing for disciplinary  
331 action or for the denial, suspension, or revocation of a  
332 license.

333 (5) Any individual whose license has been suspended or  
334 revoked may apply to the ~~board~~ Mental Health Commissioner for  
335 vacation of the suspension or reinstatement of his or her  
336 license.



343 (1) Impose an administrative fine.

344 (2) Issue a cease and desist order.

345 (3) Petition the circuit court of the county where the  
346 act occurred to enforce the cease and desist order and collect  
347 the assessed fine.

348 (k) A majority of the membership of the ~~board~~ advisory  
349 council shall constitute a quorum.

350 (1) The ~~board~~ advisory council shall elect a chair from  
351 among its membership on an annual basis.

352 (m) ~~There is established a~~ Commencing on the effective  
353 date of the act adding this amendatory language, the name of  
354 the separate special revenue fund in the State Treasury known  
355 as the Alabama Behavior Analyst Licensing Board Fund shall be  
356 renamed and then known as the Alabama Behavior Analyst  
357 Advisory Council Fund. All receipts collected by the ~~board~~  
358 department pursuant to this chapter shall be deposited into  
359 this fund and used ~~to the credit of the board for its~~  
360 ~~operation and by the department~~ to carry out this chapter.

361 Receipts shall be disbursed only by warrant of the Comptroller  
362 ~~drawn upon the State Treasury upon itemized vouchers approved~~  
363 ~~by the chair.~~ No funds shall be withdrawn except as budgeted  
364 and allotted according to Article 4 of Chapter 4 of Title 41



365 and Chapter 19 of Title 41, and only in amounts as stipulated  
366 in the general appropriations bill or other appropriations  
367 bills."

368 "§34-5A-4

369 Each ~~person~~ individual desiring to obtain a license  
370 shall submit an application and authorized fees to the ~~board~~  
371 Mental Health Commissioner. The application shall include  
372 evidence demonstrating that the applicant satisfies all of the  
373 following requirements:

374 (1) Is of good moral character and conducts his or her  
375 professional activities in accordance with accepted  
376 professional and ethical standards, including:

377 a. Compliance with the professional and ethical  
378 compliance code for behavior analysts of the certifying  
379 entity.

380 b. Completion of a criminal background check pursuant  
381 to ~~rule of the board~~ rules adopted pursuant to this chapter.

382 The cost of the criminal background check shall be paid by the  
383 applicant. An applicant shall submit to the ~~board~~ Mental  
384 Health Commissioner two complete sets of fingerprints and a  
385 form, sworn to by the applicant, containing his or her name,  
386 date of birth, and Social Security number for completion of  
387 the criminal background check. The ~~board~~ Mental Health  
388 Commissioner shall submit the fingerprints and form to the  
389 State Bureau of Investigations, or any entity contracted with  
390 for the purposes of furnishing criminal background checks, for  
391 a state criminal history record check. The ~~board~~ Mental Health  
392 Commissioner shall keep information received pursuant to this



393 section confidential, except that any information received and  
394 relied upon in denying the issuance of a license in this state  
395 may be disclosed if necessary to support the denial.

396 (2) In addition to satisfying the requirements of  
397 subdivision (1), a licensed behavior analyst applicant shall  
398 also maintain active status as a national board certified  
399 behavior analyst, as recognized by the certifying entity,  
400 following passage of the national board certified behavior  
401 analyst examination.

402 (3) In addition to satisfying the requirements of  
403 subdivision (1), a licensed assistant behavior analyst  
404 applicant shall also do all of the following:

405 a. Maintain active status as a national board certified  
406 assistant behavior analyst, as recognized by the certifying  
407 entity, following passage of the national board certified  
408 assistant behavior analyst examination.

409 b. Provide proof of ongoing supervision by a licensed  
410 behavior analyst who is a current national board certified  
411 behavior analyst in a manner consistent with the requirements  
412 of the certifying entity for supervision of national board  
413 certified assistant behavior analysts."

414 "§34-5A-5

415 A licensed or unlicensed national board certified  
416 behavior analyst or national board certified assistant  
417 behavior analyst residing and practicing in another state who  
418 temporarily provides behavior analysis services in this state  
419 or to a resident of this state, or both, may apply for a  
420 temporary license to practice behavior analysis in this state.



421 A temporary license is available only if the behavior analysis  
422 services are to be delivered during a limited and defined  
423 period, as defined by ~~board~~ rule."

424 "§34-5A-6

425 The ~~board~~ department shall issue a license to ~~a person~~  
426 an individual who is actively licensed as a behavior analyst  
427 in another state that currently imposes comparable ~~licensure~~  
428 licensing requirements as those imposed in this state and that  
429 offers reciprocity to individuals licensed under this chapter.

430 An applicant for reciprocity shall submit proof of ethical  
431 compliance, including proof of current ~~licensure~~ licensing and  
432 current certification by the certifying entity, along with any  
433 other eligibility requirements, such as satisfactory passage  
434 of a criminal background check."

435 "§34-5A-7

436 (a) A license shall be granted for a period of two  
437 years and shall expire on December 31 in the second year.  
438 Before the expiration of a license, the license may be renewed  
439 upon submission of an application for renewal, including proof  
440 of continued certification by the certifying entity and  
441 payment of the renewal fee imposed by the ~~board~~ department.

442 (b) All licenses issued pursuant to this chapter shall  
443 be subject to renewal and shall expire unless renewed in the  
444 manner prescribed by the rules ~~of the board~~ adopted pursuant  
445 to this chapter and upon the payment of a renewal fee. The  
446 ~~board~~ department may provide for a late renewal of a license  
447 upon payment of a late renewal fee if all conditions for  
448 renewal have been satisfied and upon payment of a late renewal



449 fee. Any license which has not been renewed within two years  
450 following its expiration may not be renewed, restored, or  
451 reissued thereafter. The holder of an expired license may  
452 apply for and obtain a valid license only upon compliance with  
453 all relevant requirements for issuance of a new license.

454 (c) A suspended license is subject to expiration and  
455 may be renewed as provided in this section. Renewal of a  
456 suspended license does not entitle the applicant, while the  
457 license remains suspended and until it is reinstated, to  
458 engage in licensed activity or in other conduct or activity in  
459 violation of a license revoked on disciplinary grounds. Except  
460 as otherwise provided in this chapter, a licensed behavior  
461 analyst or licensed assistant behavior analyst who desires to  
462 return to the active practice of applied behavior analysis  
463 shall submit an application for reinstatement and shall pay  
464 the nonrefundable reinstatement fee~~7~~ and any late fee or  
465 penalty fees that may be applicable. The amount of the  
466 reinstatement fee and penalty shall be established by~~the~~ rule  
467 ~~of the board~~. The applicant shall meet the same requirements  
468 as~~were~~ are necessary for initial licensure."

469 Section 4. Section 34-5A-8, Code of Alabama 1975,  
470 subjecting the Alabama Behavior Analyst Licensing Board to the  
471 Alabama Sunset Law of 1981, is repealed.

472 Section 5. The Legislature concurs in the  
473 recommendations of the Sunset Committee as provided in  
474 Sections 1, 2, 3, and 4.

475 Section 6. This act shall become effective immediately.