



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



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

A BILL  
TO BE ENTITLED  
AN ACT

Relating to the Alabama Sunset Law; to continue the existence and functioning of the Alabama Behavior Analyst Licensing Board operating within the Department of Mental Health with certain modifications; to amend Sections 34-5A-1, 34-5A-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 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 department; and to repeal Section 34-5A-8, Code of Alabama 1975, to remove the former board from review by the Sunset Committee.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:



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

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

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

"§34-5A-1

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

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

~~(1)~~ (2) APPLIED BEHAVIOR ANALYSIS DIRECT CONTACT TECHNICIAN. An individual who directly implements applied behavior analysis services.

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

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

(4) DEPARTMENT. The Department of Mental Health.



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

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

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

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

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

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

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

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



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

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

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

"§34-5A-2

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

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

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

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

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



assistant behavior analyst.

(3) 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.

(4) A licensed physician who is practicing medicine.

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

(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 the practice under this exemption is directly supervised by a licensed behavior analyst in this state or an instructor in a course sequence approved by the certifying entity.

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

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



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

"§34-5A-3

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

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



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

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

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

- a. Financial services.
- b. Legal services.
- c. Dedicated office space within the office of the State Autism Coordinator.
- d. An administrative assistant who is shared or dedicated to the ~~board~~ advisory council, and other personnel as necessary for the efficient operation of the ~~board~~ advisory council.
- e. Information technology services that shall include one or more dedicated phone lines, dedicated email addresses for ~~board~~ advisory council members and staff, and website maintenance.

f. Necessary office furniture and supplies.

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





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

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



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

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

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

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

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

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

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



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

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

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

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

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

c. Fraud or misrepresentation in obtaining a license.

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

(3) No license may be denied, suspended, or revoked or an individual otherwise disciplined without prior notice and opportunity for hearing, except that the ~~board~~ Mental Health 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.



(j) Upon finding that an individual governed by this chapter has practiced as a behavior analyst, advertised that he or she performs as a behavior analyst, or utilized a title or description denoting that he or she is a behavior analyst without first having obtained a license, the ~~board~~ Mental Health Commissioner may do any of the following:

(1) Impose an administrative fine.

(2) Issue a cease and desist order.

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

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

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

(m) ~~There is established a~~ Commencing on the effective date of the act adding this amendatory language, the name of the separate special revenue fund in the State Treasury known as the Alabama Behavior Analyst Licensing Board Fund shall be renamed and then known as the Alabama Behavior Analyst Advisory Council Fund. All receipts collected by the ~~board~~ department pursuant to this chapter shall be deposited into this fund and used ~~to the credit of the board for its operation and~~ by the department to carry out this chapter. Receipts shall be disbursed only by warrant of the Comptroller ~~drawn upon the State Treasury upon itemized vouchers approved by the chair.~~ No funds shall be withdrawn except as budgeted and allotted according to Article 4 of Chapter 4 of Title 41



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

"§34-5A-4

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

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

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

b. Completion of a criminal background check pursuant to ~~rule of the board~~ rules adopted pursuant to this chapter. The cost of the criminal background check shall be paid by the applicant. An applicant shall submit to the ~~board~~ Mental Health Commissioner two complete sets of fingerprints and a form, sworn to by the applicant, containing his or her name, date of birth, and Social Security number for completion of the criminal background check. The ~~board~~ Mental Health Commissioner shall submit the fingerprints and form to the State Bureau of Investigations, or any entity contracted with for the purposes of furnishing criminal background checks, for a state criminal history record check. The ~~board~~ Mental Health Commissioner shall keep information received pursuant to this



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

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

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

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

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

"§34-5A-5

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



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

"§34-5A-6

The ~~board~~ department shall issue a license to ~~a person~~ an individual who is actively licensed as a behavior analyst in another state that currently imposes comparable ~~license~~ licensing requirements as those imposed in this state and that offers reciprocity to individuals licensed under this chapter. An applicant for reciprocity shall submit proof of ethical compliance, including proof of current ~~license~~ licensing and current certification by the certifying entity, along with any other eligibility requirements, such as satisfactory passage of a criminal background check."

"§34-5A-7

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

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





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

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

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

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

Section 6. This act shall become effective immediately.