



Providing nonpartisan legal, research, and fiscal analysis services to the Minnesota Senate

S.F. No. 3523 - Behavior analysis licensing requirement modifications provision and appropriation

Author: Senator Robert J. Kupec

Prepared by: Nolan Hudalla, Senate Counsel (651/296-6401)

Date: February 19, 2024

Bill Overview

S.F. 3523 establishes a new category of licensure for behavior analysts and assistant behavior analysts, and defines the “practice of applied behavior analysis” as “the design, implementation, and evaluation of social, instructional, and environmental modifications to produce socially significant improvements in human behavior.” The bill creates a Behavior Analyst Advisory Council to assist the Board of Psychology with oversight of the profession. S.F. 3523 further establishes duties of behavior analysts and assistant behavior analysts, including but not limited to, obtaining informed consent, practicing within their scope of practice (and informing clients of available resources outside of their scope of practice), and fee payments. The bill additionally clarifies behavioral analysts’ duty to warn. It appropriates money in fiscal year 2025 from the state government special revenue fund to the Board of Psychology to implement the bill’s provisions.

Section Summaries

Section 1 (adds Minn. Stat. § 148.9981) This section defines terms relating to the practice of applied behavior analysis. Such terms include, but are not limited to, the following: advisory council, board, certifying entity, client, and practice of applied behavior analysis.

Section 2 (adds Minn. Stat. § 148.9982) This section establishes the duties of the Board of Psychology (the “board”) with respect to the practice of applied behavior analysis. Such duties must be conducted in consultation with the Behavior Analyst Advisory Council (the “advisory council”). The duties established in this section include, but are not limited to, the following: adopt licensure standards; carry out disciplinary actions; educate the public; and collect license fees. This section further authorizes the board to adopt necessary rules in consultation with the advisory council.

Section 3 (adds Minn. Stat. § 148.9983) This section establishes requirements to be licensed as a behavior analyst or an assistant behavior analyst. Licensure as a behavior analyst requires either: (i) having a current national certification as a board-certified behavior analyst, or (ii) having completed equivalent requirements for certification, including passing a psychometrically valid exam administered by a nationally accredited credentialing organization. Licensure as an assistant behavior analyst requires either: (i) having a current national certification as an assistant behavior analyst, or (ii) having completed equivalent requirements for certification, including passing a psychometrically valid exam administered by a nationally accredited credentialing organization. Licensure also includes authorization for a background investigation by the board.

Section 4 (adds Minn. Stat. § 148.9984) This section establishes requirements for renewal of a behavioral analyst license or assistant behavioral analyst license, including but not limited to, the following: application, renewal fee, and evidence of current qualification. This section further provides that these licenses must be renewed every two years.

Section 5 (adds Minn. Stat. § 148.9985) This section requires the board to notify licensees who have not renewed their license within 30 days after the renewal date. It further requires the board to terminate the license of a licensee whose license renewal is at least 60 days overdue and to whom notification has been sent.

Section 6 (adds Minn. Stat. § 148.9986) This section prohibits an individual from engaging in the practice of applied behavior analysis, or using related professional titles, without a license. It provides that licensed psychologists are permitted to practice applied behavior analysis and use the title “behavior analyst.” Subdivision 3 establishes a misdemeanor penalty for a violation of the section.

Section 7 (adds Minn. Stat. § 148.9987) This section establishes exceptions whereby an individual may practice applied behavior analysis without a license. Such exceptions include, but are not limited, the following: practice by a licensed psychologist; practice by an individual employed by a school district as part of their employment; family members of the recipient of behavior analysis services performing under the authority and direction of a licensee; and certain supervised students and interns.

Section 8 (adds Minn. Stat. § 148.9988) This section provides that a behavior analyst license or an assistant behavior analyst license is not transferable.

Section 9 (adds Minn. Stat. § 148.9989) This section requires all licensees and applicants for licensure to notify the board within 30 days of the occurrence of a change of contact information or a change in any other application information.

Section 10 (adds Minn. Stat. § 148.999) This section subjects behavior analysts and assistant behavior analysts to the provisions of certain sections relating to licensed psychologists. These sections include 148.941 (relating to “Disciplinary action; investigation; penalty for violation”), 148.952 (relating to “Immunity”), 148.96 (relating to “Presentation to public”), 148.965 (relating to “Test security”), and 148.98 (relating to “Rules of conduct”).

Section 11 (adds Minn. Stat. § 148.9991) This section requires behavior analysts to limit their practice to those populations and services for which the analysts are competent or developing competence. It further requires a behavior analyst to obtain professional assistance when developing competence, and to inform the client of other professional resources available when the needs of a client appear to be outside the analyst’s scope of practice.

Section 12 (adds Minn. Stat. § 148.9992) This section clarifies that a duty to predict, warn of, or take reasonable precautions to provide protection from violent behavior arises only when a client or other person has communicated to the licensee a specific, serious threat of physical violence against a specific, clearly identified or identifiable potential victim. It provides that a licensee discharges the duty to warn if reasonable efforts are made to communicate the threat. This section further provides that good faith compliance with the duty to warn is not a breach of confidence, and that a licensee cannot be subject to disciplinary action or monetary liability for disclosure of confidences to third parties, for failure to disclose confidences to third parties, or for erroneous disclosure of confidences to third parties in a good faith effort to warn against or take precautions against a client's violent behavior or threat of suicide for which a duty to warn does not arise. Subdivision 6 provides for an exception from the section where there is a threat to commit suicide or other threats by a client to harm the client, or to a threat by a client who is adjudicated as a person who has a mental illness and is dangerous to the public under chapter 253B.

Section 13 (adds Minn. Stat. § 148.9993) This section requires a behavior analyst to obtain written informed consent before initiating services. It establishes requirements for the informed consent, including but not limited to, the following: goals for the services; applicable fee schedule for the services; significant risks and benefits of the services; and the behavior analyst's responsibilities upon termination of the services. This section further requires updates to the informed consent upon a change in the nature or purpose of a service, and exempts emergency and crisis services from the informed consent requirements.

Section 14 (adds Minn. Stat. § 148.9994) This section creates the Behavior Analyst Advisory Council. The advisory council is composed of seven members appointed by the board as follows: one public member as defined in section 214.02; three members who are licensed behavior analysts; two members who are licensed assistant behavior analysts; and one member who is a licensed psychologist and, to the extent practicable, who practices applied behavior analysis. This section establishes the advisory council's duties, which include, but are not limited to, the following: advising the board regarding standards for licensees; assisting with the distribution of related information; reviewing license applications; and reviewing complaints and investigation reports.

Section 15 (adds Minn. Stat. § 148.9995) Establishes a fee schedule for licensees.

Section 16 (uncodified law; Initial Applied Behavior Analyst Advisory Council) This section establishes requirements for the initial advisory council's composition and first meeting. It provides that the advisory council's first meeting must convene by September 1, 2024, and that the council must elect a chair from its members by the third meeting.

Section 17 (appropriation) This section appropriates money in fiscal year 2025 from the state government special revenue fund to the Board of Psychology to implement the provisions of this bill.