

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 630**

Introduced by McGill, 26.

Read first time January 19, 2011

Committee: Health and Human Services

A BILL

1 FOR AN ACT relating to applied behavior analysis; to amend sections  
2 38-186 and 38-3101, Reissue Revised Statutes of Nebraska,  
3 and sections 38-101 and 38-121, Revised Statutes  
4 Cumulative Supplement, 2010; to adopt the Applied  
5 Behavior Analysis Practice Act; to harmonize provisions;  
6 and to repeal the original sections.

7 Be it enacted by the people of the State of Nebraska,

1                   Section 1. Section 38-101, Revised Statutes Cumulative  
2 Supplement, 2010, is amended to read:

3                   38-101 Sections 38-101 to 38-1,140 and the following  
4 practice acts shall be known and may be cited as the Uniform  
5 Credentialing Act:

6                   (1) The Advanced Practice Registered Nurse Practice Act;

7                   (2) The Alcohol and Drug Counseling Practice Act;

8                   (3) The Applied Behavior Analysis Practice Act;

9                   ~~(3)-(4) The Athletic Training Practice Act;~~

10                  ~~(4)-(5) The Audiology and Speech-Language Pathology~~  
11 Practice Act;

12                  ~~(5)-(6) The Certified Nurse Midwifery Practice Act;~~

13                  ~~(6)-(7) The Certified Registered Nurse Anesthetist~~  
14 Practice Act;

15                  ~~(7)-(8) The Chiropractic Practice Act;~~

16                  ~~(8)-(9) The Clinical Nurse Specialist Practice Act;~~

17                  ~~(9)-(10) The Cosmetology, Electrology, Esthetics, Nail~~  
18 Technology, and Body Art Practice Act;

19                  ~~(10)-(11) The Dentistry Practice Act;~~

20                  ~~(11)-(12) The Emergency Medical Services Practice Act;~~

21                  ~~(12)-(13) The Environmental Health Specialists Practice~~  
22 Act;

23                  ~~(13)-(14) The Funeral Directing and Embalming Practice~~  
24 Act;

25                  ~~(14)-(15) The Hearing Instrument Specialists Practice~~

1 Act;  
2 ~~(15)~~(16) The Licensed Practical Nurse-Certified Practice  
3 Act;  
4 ~~(16)~~(17) The Massage Therapy Practice Act;  
5 ~~(17)~~(18) The Medical Nutrition Therapy Practice Act;  
6 ~~(18)~~(19) The Medical Radiography Practice Act;  
7 ~~(19)~~(20) The Medicine and Surgery Practice Act;  
8 ~~(20)~~(21) The Mental Health Practice Act;  
9 ~~(21)~~(22) The Nurse Practice Act;  
10 ~~(22)~~(23) The Nurse Practitioner Practice Act;  
11 ~~(23)~~(24) The Nursing Home Administrator Practice Act;  
12 ~~(24)~~(25) The Occupational Therapy Practice Act;  
13 ~~(25)~~(26) The Optometry Practice Act;  
14 ~~(26)~~(27) The Perfusion Practice Act;  
15 ~~(27)~~(28) The Pharmacy Practice Act;  
16 ~~(28)~~(29) The Physical Therapy Practice Act;  
17 ~~(29)~~(30) The Podiatry Practice Act;  
18 ~~(30)~~(31) The Psychology Practice Act;  
19 ~~(31)~~(32) The Respiratory Care Practice Act;  
20 ~~(32)~~(33) The Veterinary Medicine and Surgery Practice  
21 Act; and  
22 ~~(33)~~(34) The Water Well Standards and Contractors'  
23 Practice Act.

24 If there is any conflict between any provision of  
25 sections 38-101 to 38-1,139 and any provision of a practice act, the

1 provision of the practice act shall prevail.

2           The Revisor of Statutes shall assign the Uniform  
3 Credentialing Act, including the practice acts enumerated in  
4 subdivisions (1) through ~~(32)~~(33) of this section, to consecutive  
5 articles within Chapter 38.

6           Sec. 2. Section 38-121, Revised Statutes Cumulative  
7 Supplement, 2010, is amended to read:

8           38-121 (1) No individual shall engage in the following  
9 practices unless such individual has obtained a credential under the  
10 Uniform Credentialing Act:

11           (a) Acupuncture;

12           (b) Advanced practice nursing;

13           (c) Alcohol and drug counseling;

14           (d) Applied behavior analysis;

15           ~~(d)~~(e) Asbestos abatement, inspection, project design,  
16 and training;

17           ~~(e)~~(f) Athletic training;

18           ~~(f)~~(g) Audiology;

19           ~~(g)~~(h) Speech-language pathology;

20           ~~(h)~~(i) Body art;

21           ~~(i)~~(j) Chiropractic;

22           ~~(j)~~(k) Cosmetology;

23           ~~(k)~~(l) Dentistry;

24           ~~(l)~~(m) Dental hygiene;

25           ~~(m)~~(n) Electrology;

1           ~~(n)~~(o) Emergency medical services;  
2           ~~(o)~~(p) Esthetics;  
3           ~~(p)~~(q) Funeral directing and embalming;  
4           ~~(q)~~(r) Hearing instrument dispensing and fitting;  
5           ~~(r)~~(s) Lead-based paint abatement, inspection, project  
6 design, and training;  
7           ~~(s)~~(t) Licensed practical nurse-certified;  
8           ~~(t)~~(u) Massage therapy;  
9           ~~(u)~~(v) Medical nutrition therapy;  
10          ~~(v)~~(w) Medical radiography;  
11          ~~(w)~~(x) Medicine and surgery;  
12          ~~(x)~~(y) Mental health practice;  
13          ~~(y)~~(z) Nail technology;  
14          ~~(z)~~(aa) Nursing;  
15          ~~(aa)~~(bb) Nursing home administration;  
16          ~~(bb)~~(cc) Occupational therapy;  
17          ~~(cc)~~(dd) Optometry;  
18          ~~(dd)~~(ee) Osteopathy;  
19          ~~(ee)~~(ff) Perfusion;  
20          ~~(ff)~~(gg) Pharmacy;  
21          ~~(gg)~~(hh) Physical therapy;  
22          ~~(hh)~~(ii) Podiatry;  
23          ~~(ii)~~(jj) Psychology;  
24          ~~(jj)~~(kk) Radon detection, measurement, and mitigation;  
25          ~~(kk)~~(ll) Respiratory care;

1           ~~(ll)~~(mm) Veterinary medicine and surgery;  
2           ~~(mm)~~(nn) Public water system operation; and  
3           ~~(nn)~~(oo) Constructing or decommissioning water wells and  
4 installing water well pumps and pumping equipment.

5           (2) No individual shall hold himself or herself out as  
6 any of the following until such individual has obtained a credential  
7 under the Uniform Credentialing Act for that purpose:

- 8           (a) Registered environmental health specialist;  
9           (b) Certified marriage and family therapist;  
10           (c) Certified professional counselor; or  
11           (d) Social worker.

12           (3) No business shall operate for the provision of any of  
13 the following services unless such business has obtained a credential  
14 under the Uniform Credentialing Act:

- 15           (a) Body art;  
16           (b) Cosmetology;  
17           (c) Emergency medical services;  
18           (d) Esthetics;  
19           (e) Funeral directing and embalming;  
20           (f) Massage therapy; or  
21           (g) Nail technology.

22           Sec. 3. Section 38-186, Reissue Revised Statutes of  
23 Nebraska, is amended to read:

24           38-186 (1) A petition shall be filed by the Attorney  
25 General in order for the director to discipline a credential obtained

1 under the Uniform Credentialing Act to:

2 (a) Practice or represent oneself as being certified  
3 under any of the practice acts enumerated in subdivisions (1) through  
4 ~~(17)-(18)~~ and ~~(19)-(20)~~ through ~~(31)-(33)~~ of section 38-101; or

5 (b) Operate as a business for the provision of services  
6 in body art; cosmetology; emergency medical services; esthetics;  
7 funeral directing and embalming; massage therapy; and nail technology  
8 in accordance with subsection (3) of section 38-121.

9 (2) The petition shall be filed in the office of the  
10 director. The department may withhold a petition for discipline or a  
11 final decision from public access for a period of five days from the  
12 date of filing the petition or the date the decision is entered or  
13 until service is made, whichever is earliest.

14 (3) The proceeding shall be summary in its nature and  
15 triable as an equity action and shall be heard by the director or by  
16 a hearing officer designated by the director under rules and  
17 regulations of the department. Affidavits may be received in evidence  
18 in the discretion of the director or hearing officer. The department  
19 shall have the power to administer oaths, to subpoena witnesses and  
20 compel their attendance, and to issue subpoenas duces tecum and  
21 require the production of books, accounts, and documents in the same  
22 manner and to the same extent as the district courts of the state.  
23 Depositions may be used by either party.

24 Sec. 4. Sections 4 to 23 of this act shall be known and  
25 may be cited as the Applied Behavior Analysis Practice Act.

1           Sec. 5. For purposes of the Applied Behavior Analysis  
2 Practice Act, the definitions found in sections 6 to 10 of this act  
3 apply.

4           Sec. 6. Board means the Board of Psychology.

5           Sec. 7. Code of conduct means that set of regulatory  
6 rules of professional conduct which has been adopted by the board to  
7 protect the public welfare by providing rules that govern a  
8 professional's behavior in the professional relationship.

9           Sec. 8. Licensed behavior analysis practitioner means a  
10 person who is licensed by the board to engage in the practice of  
11 applied behavior analysis under the supervision of a licensed  
12 behavior analyst or a licensed psychologist that the board has  
13 determined to have expertise in behavior analysis.

14           Sec. 9. Licensed behavior analyst means a person who is  
15 licensed by the board as a behavior analyst to engage in the  
16 independent practice of applied behavior analysis.

17           Sec. 10. (1) Practice of applied behavior analysis means  
18 the design, implementation, and evaluation of systematic  
19 instructional and environmental modifications to produce socially  
20 significant improvements in human behavior, including the empirical  
21 identification of functional relations between behavior and  
22 environmental factors, known as function assessment and analysis, and  
23 including interventions based on scientific research and the direct  
24 observation and measurement of behavior and environment.

25           (2) The scope of practice for the practice of applied

1 behavior analysis includes:

2 (a) The conduct of systematic behavioral assessments,  
3 including functional behavior intervention plans for individuals or  
4 groups of clients that emphasize identifying and altering  
5 environmental events functionally relevant to establishing and  
6 shaping new responses, increasing appropriate responses, and reducing  
7 inappropriate behaviors;

8 (b) The design, implementation, evaluation, and  
9 modification of treatment programs to change the behavior of  
10 individuals or groups; and

11 (c) Consultation with individuals and organizations  
12 regarding behavioral issues and problems.

13 (3) Practice of applied behavior analysis does not  
14 include psychological testing, neuropsychology, psychotherapy,  
15 cognitive therapy, sex therapy, marriage counseling, psychoanalysis,  
16 hypnotherapy, long-term counseling, diagnosing major mental illness  
17 or disorder except in consultation with a qualified physician or  
18 licensed psychologist, or treating major mental illness or disorder  
19 except in consultation with a qualified physician or licensed  
20 psychologist.

21 Sec. 11. No person may engage in the practice of applied  
22 behavior analysis unless the person is licensed as a behavior  
23 analysis practitioner or a behavior analyst. This section shall not  
24 apply to the following:

25 (1) Individuals in recognized professions that are

1 credentialed under the Uniform Credentialing Act rendering services  
2 consistent with their professional training and code of ethics and  
3 within the scope of practice if they do not represent themselves to  
4 be licensed behavior analysis practitioners or licensed behavior  
5 analysts;

6 (2) A teacher of applied behavior analysis, a person  
7 engaged in the conduct of behavior-analytic research, or a provider  
8 of applied behavior analysis services or consultation to  
9 organizations or institutions if such teaching, research, or service  
10 does not involve the delivery or supervision of direct applied  
11 behavior analysis services to individuals or groups of individuals  
12 who are themselves, rather than a third party, the intended  
13 beneficiaries of such services, without regard to the source or  
14 extent of payment for services rendered;

15 (3) Educational staff and related service providers  
16 providing applied behavior analysis services under contract with a  
17 school district as approved by the State Board of Education under  
18 certification and licensure requirements if such practice is  
19 restricted to regular employment within a setting under the  
20 jurisdiction of the State Board of Education;

21 (4) Persons engaging in activities defined as the  
22 practice of applied behavior analysis if they do not represent  
23 themselves by the title applied behavior analyst, if they do not use  
24 terms other than behavior analysis trainee, behavior analysis intern,  
25 behavior analysis resident, or behavior analysis assistant, and if

1 they perform their activities under the supervision and  
2 responsibility of a licensed behavior analyst in accordance with  
3 rules and regulations adopted and promulgated by the department; and

4 (5) Parents, guardians, teachers, teacher's aides,  
5 behavioral aides, and other authorized individuals executing a  
6 therapeutic plan created by recognized professionals that are  
7 credentialed under the Uniform Credentialing Act who are working  
8 within their defined scope of practice.

9 Sec. 12. (1) Except as otherwise provided in subsection  
10 (2) of this section, an applicant for licensure as a behavior analyst  
11 shall:

12 (a) Possess a doctoral degree from a program of graduate  
13 study in applied behavior analysis from a regionally accredited  
14 institution of higher education as determined by the board. The  
15 degree shall be obtained from a program of graduate study in applied  
16 behavior analysis that meets the standards of accreditation adopted  
17 by the Association for Behavior Analysis International, the Behavior  
18 Analyst Certification Board, Inc., or an equivalent accrediting  
19 agency as determined by the Board of Psychology, including coursework  
20 in (i) therapeutic techniques and strategies for human behavioral  
21 intervention based on the principles of applied behavior analysis,  
22 (ii) professional ethics, (iii) assessment techniques and strategies  
23 for human behavioral intervention based on the principles of applied  
24 behavior analysis, (iv) human growth and development, and (v)  
25 research and evaluation techniques in such areas as single-case

1 research design and development of research and demonstration  
2 proposals. The doctoral degree shall have been conferred no more than  
3 four years prior to the date when the program first met the standards  
4 of accreditation. The board shall determine the date when the program  
5 first met the standards of accreditation;

6 (b) Demonstrate that he or she has completed three  
7 thousand hours of supervised professional experience, with at least  
8 one thousand five hundred hours being at the postdoctoral level and  
9 at least one thousand five hundred hours being with clients outside  
10 the autism and developmental disabilities populations, obtained in a  
11 period of not less than two nor more than five years and supervised  
12 by a licensed psychologist that the board has determined to have  
13 expertise in applied behavior analysis; and

14 (c) Pass an examination approved by the board that is  
15 given by a nationally recognized organization that certifies behavior  
16 analysis professionals at the doctoral level.

17 (2) The requirements of subdivisions (1)(a) and (b) of  
18 this section shall be waived if the applicant is credentialed as a  
19 board-certified behavior analyst at the doctoral level by the  
20 Behavior Analyst Certification Board, Inc., or an equivalent  
21 certification agency as determined by the Board of Psychology.

22 Sec. 13. (1) Except as otherwise provided in subsection  
23 (2) of this section, an applicant for licensure as a behavior  
24 analysis practitioner shall:

25 (a) Possess a master's degree from a program of graduate

1 study in applied behavior analysis from a regionally accredited  
2 institution of higher education as determined by the board. The  
3 degree shall be obtained from a program of graduate study in applied  
4 behavior analysis that meets the standards of accreditation adopted  
5 by the Association for Behavior Analysis International, the Behavior  
6 Analyst Certification Board, Inc., or an equivalent accrediting  
7 agency as determined by the Board of Psychology, including coursework  
8 in (i) therapeutic techniques and strategies for human behavioral  
9 intervention based on the principles of applied behavior analysis,  
10 (ii) professional ethics, (iii) assessment techniques and strategies  
11 for human behavioral intervention based on the principles of applied  
12 behavior analysis, (iv) human growth and development, and (v)  
13 research and evaluation techniques in such areas as single-case  
14 research design and development of research and demonstration  
15 proposals. The master's degree shall have been conferred no more than  
16 four years prior to the date when the program first met the standards  
17 of accreditation. The board shall determine the date when the program  
18 first met the standards of accreditation;

19           (b) Complete an internship of at least one thousand five  
20 hundred hours of supervised practical training in applied behavior  
21 analysis. The supervisor shall be a licensed psychologist that the  
22 board has determined to have expertise in applied behavior analysis  
23 or a licensed behavior analyst. The internship shall include a  
24 minimum of one hour of face-to-face supervision for every twenty  
25 hours of internship experience; and

1           (c) Pass an examination approved by the board that is  
2 given by a nationally recognized organization that certifies behavior  
3 analysis professionals at the master's level.

4           (2) The requirements of subdivisions (1)(a) and (b) of  
5 this section shall be waived if the applicant is credentialed as a  
6 board-certified behavior analyst by the Behavior Analyst  
7 Certification Board, Inc., or an equivalent certification agency as  
8 determined by the Board of Psychology.

9           Sec. 14. The department, with the recommendation of the  
10 board, may issue a license based on licensure in another jurisdiction  
11 to practice as a behavior analyst or behavior analysis practitioner  
12 to a person who meets the requirements of the Applied Behavior  
13 Analyst Practice Act or substantially equivalent requirements as  
14 determined by the department, with the recommendation of the board.

15           Sec. 15. A person who needs to obtain the required  
16 supervised postdoctoral experience in applied behavior analysis  
17 pursuant to section 12 of this act shall obtain a provisional license  
18 to practice applied behavior analysis. An applicant for a provisional  
19 license to practice applied behavior analysis shall:

20           (1) Have a doctoral degree from a regionally accredited  
21 institution of higher education in a program of graduate study in  
22 applied behavior analysis that meets the standards for licensure;

23           (2) Apply prior to the beginning of the year of  
24 registered supervised postdoctoral experience; and

25           (3) Submit to the department:

1           (a) An official transcript showing proof of a doctoral  
2 degree in applied behavior analysis from a regionally accredited  
3 institution of higher education;

4           (b) A certified copy of the applicant's birth certificate  
5 or other evidence of having attained the age of nineteen years; and

6           (c) A registration of supervisory relationship  
7 containing:

8           (i) A general description of the supervisee's practice  
9 and the plan of supervision;

10           (ii) A statement by the supervisor that he or she has the  
11 necessary experience and training to supervise this area of practice;  
12 and

13           (iii) A statement by the supervisor that he or she  
14 accepts the legal and professional responsibility for the  
15 supervisee's practice with individuals having behavior disorders.

16           Sec. 16. The department shall approve or deny a complete  
17 application for a provisional license to practice applied behavior  
18 analysis within one hundred fifty days after receipt of the  
19 application.

20           Sec. 17. Behavior analysts practicing with a provisional  
21 license shall use the title Provisionally Licensed Behavior Analyst.  
22 A provisionally licensed behavior analyst shall disclose supervisory  
23 relationships to clients or patients for whom supervision is required  
24 and to third parties when relevant.

25           Sec. 18. A provisional license to practice as a behavior

1 analyst expires upon receipt of a license to practice as a behavior  
2 analyst or two years after the date of issuance, whichever comes  
3 first.

4           Sec. 19. The department shall establish and collect fees  
5 for credentialing under the Applied Behavior Analysis Practice Act as  
6 provided in sections 38-151 to 38-157.

7           Sec. 20. In addition to the grounds for disciplinary  
8 action found in sections 38-178 and 38-179, a credential subject to  
9 the Applied Behavior Analysis Practice Act may be denied, refused  
10 renewal, limited, revoked, or suspended or have other disciplinary  
11 measures taken against it in accordance with section 38-196 when the  
12 applicant or licensee fails to disclose the information required by  
13 section 17 of this act.

14           Sec. 21. The board shall ensure through rules and  
15 regulations and enforcement that licensed behavior analysis  
16 practitioners limit their practice to demonstrated areas of  
17 competence as documented by relevant professional education,  
18 training, and experience.

19           Sec. 22. A licensed behavior analyst, a licensed behavior  
20 analysis practitioner, and anyone under his or her supervision shall  
21 conduct his or her professional activities in conformity with the  
22 code of conduct.

23           Sec. 23. It shall be a violation of the Applied Behavior  
24 Analysis Practice Act for any person not licensed in accordance with  
25 the act to represent himself or herself as a licensed behavior

1 analyst or a licensed behavior analysis practitioner. Any person who  
2 represents himself or herself as a licensed behavior analyst or a  
3 licensed behavior analysis practitioner or who engages in the  
4 practice of applied behavior analysis in violation of the act shall  
5 be guilty of a Class II misdemeanor. Each day of violation shall  
6 constitute a separate offense.

7           Sec. 24. Section 38-3101, Reissue Revised Statutes of  
8 Nebraska, is amended to read:

9           38-3101 Sections 38-3101 to 38-3132 and section 25 of  
10 this act shall be known and may be cited as the Psychology Practice  
11 Act.

12           Sec. 25. A state agency or third-party payor regulated by  
13 the state shall not exclude licensed psychologists from payments for  
14 authorized or mandated applied behavior analysis services provided  
15 within their scope of practice.

16           Sec. 26. Original sections 38-186 and 38-3101, Reissue  
17 Revised Statutes of Nebraska, and sections 38-101 and 38-121, Revised  
18 Statutes Cumulative Supplement, 2010, are repealed.