

HF 3741 - SF 3523 Behavior analysis licensing requirement modifications provision and appropriation

1. 1 CONFERENCE COMMITTEE REPORT ON H. F. No. 4247

1. 2 A bill for an act

1. 3 relating to health; establishing registration for transfer care specialists; establishing

1. 4 licensure for behavior analysts

13. 4 **ARTICLE 2**

13. 5 **BEHAVIOR ANALYST LICENSURE**

13. 6 Section 1. **[148. 9981] DEFINITIONS.**

13. 7 Subdivision 1. **Scope.** For the purposes of sections 148. 9981 to 148. 9995, the terms in
13. 8 this section have the meanings given.

13. 9 Subd. 2. **Accredited school or educational program.** "Accredited school or educational
13. 10 program" means a school, university, college, or other postsecondary education program
13. 11 that, at the time the student completes the program, is accredited by a regional accrediting
13. 12 association whose standards are substantially equivalent to those of the North Central
13. 13 Association of Colleges and Postsecondary Education Institutions or an accrediting
13. 14 association that evaluates schools of behavior analysis, psychology, or education for inclusion
13. 15 of the education, practicum, and core function standards.

13. 16 Subd. 3. **Advisory council.** "Advisory council" means the Behavior Analyst Advisory
13. 17 Council established in section 148. 9994.

13. 18 Subd. 4. **Board.** "Board" means the Board of Psychology established in section 148. 90.

13. 19 Subd. 5. **Certifying entity.** "Certifying entity" means the Behavior Analyst Certification
13. 20 Board, Inc. , or a successor organization or other organization approved by the board in
13. 21 consultation with the advisory council.

13. 22 Subd. 6. **Client.** "Client" means an individual who is the recipient of behavior analysis
13. 23 services. Client also means "patient" as defined in section 144. 291, subdivision 2, paragraph
13. 24 (g).

13. 25 Subd. 7. **Licensed behavior analyst.** "Licensed behavior analyst" or "behavior analyst"
13. 26 means an individual who holds a valid license issued under sections 148. 9981 to 148. 9995
13. 27 to engage in the practice of applied behavior analysis.

13. 28 Subd. 8. **Licensee.** "Licensee" means an individual who holds a valid license issued
13. 29 under sections 148. 9981 to 148. 9995.

13. 30 Subd. 9. **Practice of applied behavior analysis.** (a) "Practice of applied behavior
13. 31 analysis" means the design, implementation, and evaluation of social, instructional, and
13. 32 environmental modifications to produce socially significant improvements in human behavior.

14. 1 The practice of applied behavior analysis includes the empirical identification of functional
14. 2 relations between behavior and environmental factors, known as functional behavioral
14. 3 assessment and analysis. Applied behavior analysis interventions are based on scientific
14. 4 research, direct and indirect observation, and measurement of behavior and environment
14. 5 and utilize contextual factors, motivating operations, antecedent stimuli, positive
14. 6 reinforcement, and other procedures to help individuals develop new behaviors, increase
14. 7 or decrease existing behaviors, and emit behaviors under specific social, instructional, and
14. 8 environmental conditions.

14. 9 (b) The practice of applied behavior analysis does not include the diagnosis of psychiatric
14. 10 or mental health disorders, psychological testing, neuropsychology, psychotherapy, cognitive
14. 11 therapy, sex therapy, hypnotherapy, psychoanalysis, or psychological counseling.

14. 12 **EFFECTIVE DATE.** This section is effective July 1, 2024.

14. 13 Sec. 2. **[148. 9982] DUTIES OF THE BOARD OF PSYCHOLOGY.**

14. 14 Subdivision 1. **General.** The board, in consultation with the advisory council, must:

14. 15 (1) adopt and enforce standards for licensure, licensure renewal, and the regulation of
14. 16 behavior analysts;

14. 17 (2) issue licenses to qualified individuals under sections 148. 9981 to 148. 9995;

14. 18 (3) carry out disciplinary actions against licensed behavior analysts;

14. 19 (4) educate the public about the existence and content of the regulations for behavior
14. 20 analyst licensing to enable consumers to file complaints against licensees who may have
14. 21 violated laws or rules the board is empowered to enforce; and
14. 22 (5) collect license fees for behavior analysts as specified under section 148. 9995.
14. 23 Subd. 2. **Rulemaking.** The board, in consultation with the advisory council, may adopt
14. 24 rules necessary to carry out the provisions of sections 148. 9981 to 148. 9995.

14. 25 **EFFECTIVE DATE.** This section is effective July 1, 2024.

14. 26 Sec. 3. **[148. 9983] REQUIREMENTS FOR LICENSURE.**

14. 27 Subdivision 1. **General.** An individual seeking licensure as a behavior analyst must
14. 28 complete and submit a written application on forms provided by the board together with
14. 29 the appropriate fee as specified under section 148. 9995.

15. 1 Subd. 2. **Requirements for licensure.** An applicant for licensure as a behavior analyst
15. 2 must submit evidence satisfactory to the board that the applicant:

15. 3 (1) has a current and active national certification as a board-certified behavior analyst
15. 4 issued by the certifying entity; or

15. 5 (2) has completed the equivalent requirements for certification by the certifying entity,
15. 6 including satisfactorily passing a psychometrically valid examination administered by a
15. 7 nationally accredited credentialing organization.

15. 8 Subd. 3. **Background investigation.** The applicant must complete a background check
15. 9 pursuant to section 214. 075.

15. 10 **EFFECTIVE DATE.** This section is effective July 1, 2024.

15. 11 Sec. 4. **[148. 9984] LICENSE RENEWAL REQUIREMENTS.**

15. 12 Subdivision 1. **Biennial renewal.** A license must be renewed every two years.

15. 13 Subd. 2. **License renewal notice.** At least 60 calendar days before the renewal deadline
15. 14 date, the board must mail a renewal notice to the licensee's last known address on file with
15. 15 the board. The notice must include instructions for accessing an online application for license
15. 16 renewal, the renewal deadline, and notice of fees required for renewal. The licensee's failure
15. 17 to receive notice does not relieve the licensee of the obligation to meet the renewal deadline
15. 18 and other requirements for license renewal.

15. 19 Subd. 3. **Renewal requirements.** (a) To renew a license, a licensee must submit to the
15. 20 board:

15. 21 (1) a completed and signed application for license renewal;

15. 22 (2) the license renewal fee as specified under section 148. 9995; and

15. 23 (3) evidence satisfactory to the board that the licensee holds a current and active national
15. 24 certification as a behavior analyst from the certifying entity or otherwise meets renewal
15. 25 requirements as established by the board, in consultation with the advisory council.

15. 26 (b) The application for license renewal and fee must be postmarked or received by the
15. 27 board by the end of the day on which the license expires or the following business day if
15. 28 the expiration date falls on a Saturday, Sunday, or holiday. A renewal application that is
15. 29 not completed and signed, or that is not accompanied by the correct fee, is void and must
15. 30 be returned to the licensee.

16. 1 Subd. 4. **Pending renewal.** If a licensee's application for license renewal is postmarked
16. 2 or received by the board by the end of the business day on the expiration date of the license
16. 3 or the following business day if the expiration date falls on a Saturday, Sunday, or holiday,
16. 4 the licensee may continue to practice after the expiration date while the application for
16. 5 license renewal is pending with the board.

16. 6 Subd. 5. **Late renewal fee.** If the application for license renewal is postmarked or
16. 7 received after the expiration date of the license or the following business day if the expiration
16. 8 date falls on a Saturday, Sunday, or holiday, the licensee must pay a biennial renewal late
16. 9 fee as specified by section 148. 9995, in addition to the renewal fee, before the licensee's
16. 10 application for license renewal will be considered by the board.

16. 11 **EFFECTIVE DATE.** This section is effective July 1, 2024.

16. 12 **Sec. 5. [148. 9985] EXPIRED LICENSE.**

16. 13 (a) Within 30 days after the renewal date, a licensee who has not renewed their license
16. 14 must be notified by letter, sent to the last known address of the licensee in the board's file,
16. 15 that the renewal is overdue and that failure to pay the current fee and current biennial renewal
16. 16 late fee within 60 days after the renewal date will result in termination of the license.

16. 17 (b) The board must terminate the license of a licensee whose license renewal is at least
16. 18 60 days overdue and to whom notification has been sent as provided in paragraph (a). Failure
16. 19 of a licensee to receive notification is not grounds for later challenge of the termination.
16. 20 The former licensee must be notified of the termination by letter within seven days after
16. 21 board action, in the same manner as provided in paragraph (a).

16. 22 (c) Notwithstanding paragraph (b), the board retains jurisdiction over a former licensee
16. 23 for complaints received after termination of a license regarding conduct that occurred during
16. 24 licensure.

16. 25 **EFFECTIVE DATE.** This section is effective July 1, 2024.

16. 26 **Sec. 6. [148. 9986] PROHIBITED PRACTICE OR USE OF TITLES; PENALTY.**

16. 27 Subdivision 1. **Practice.** Effective January 1, 2025, an individual must not engage in
16. 28 the practice of applied behavior analysis unless the individual is licensed under sections
16. 29 148. 9981 to 148. 9995 as a behavior analyst or is exempt under section 148. 9987. A
16. 30 psychologist licensed under sections 148. 88 to 148. 981 who practices behavior analysis is
16. 31 not required to obtain a license as a behavior analyst under sections 148. 9981 to 148. 9995.

17. 1 Subd. 2. **Use of titles.** (a) An individual must not use a title incorporating the words
17. 2 "licensed behavior analyst," or "behavior analyst," or use any other title or description stating
17. 3 or implying that they are licensed or otherwise qualified to practice applied behavior analysis,
17. 4 unless that person holds a valid license under sections 148. 9981 to 148. 9995.

17. 5 (b) Notwithstanding paragraph (a), a licensed psychologist who practices applied behavior
17. 6 analysis within the psychologist's scope of practice may use the title "behavior analyst," but
17. 7 must not use the title "licensed behavior analyst" unless the licensed psychologist holds a
17. 8 valid license as a behavior analyst issued under sections 148. 9981 to 148. 9995.

17. 9 Subd. 3. **Penalty.** An individual who violates this section is guilty of a misdemeanor.

17. 10 **EFFECTIVE DATE.** This section is effective July 1, 2024.

17. 11 **Sec. 7. [148. 9987] EXCEPTIONS TO LICENSE REQUIREMENT.**

17. 12 (a) Sections 148. 9981 to 148. 9995 must not be construed to prohibit or restrict:

17. 13 (1) the practice of an individual who is licensed to practice psychology in the state or
17. 14 an individual who is providing psychological services under the supervision of a licensed
17. 15 psychologist in accordance with section 148. 925;

17. 16 (2) the practice of any other profession or occupation licensed, certified, or registered
17. 17 by the state by an individual duly licensed, certified, or registered to practice the profession
17. 18 or occupation or to perform any act that falls within the scope of practice of the profession
17. 19 or occupation;

17. 20 (3) an individual who is employed by a school district from providing behavior analysis
17. 21 services as part of the individual's employment with the school district, so long as the
17. 22 individual does not provide behavior analysis services to any person or entity other than as
17. 23 an employee of the school district or accept remuneration for the provision of behavior
17. 24 analysis services outside of the individual's employment with the school district;

17. 25 (4) an employee of a program licensed under chapter 245D from providing the services
17. 26 described in section 245D. 091, subdivision 1;

17. 27 (5) teaching behavior analysis or conducting behavior analysis research if the teaching
17. 28 or research does not involve the direct delivery of behavior analysis services;

17. 29 (6) providing behavior analysis services by an unlicensed supervisee or trainee under
17. 30 the authority and direction of a licensed behavior analyst and in compliance with the licensure

17. 31 and supervision standards required by law or rule;
18. 1 (7) a family member or guardian of the recipient of behavior analysis services from
18. 2 performing behavior analysis services under the authority and direction of a licensed behavior
18. 3 analyst; or
18. 4 (8) students or interns enrolled in an accredited school or educational program, or
18. 5 participating in a behavior analysis practicum, from engaging in the practice of applied
18. 6 behavior analysis while supervised by a licensed behavior analyst or instructor of an
18. 7 accredited school or educational program. These individuals must be designated as a behavior
18. 8 analyst student or intern.
18. 9 (b) Notwithstanding paragraph (a), a licensed psychologist may supervise an unlicensed
18. 10 supervisee, trainee, student, or intern who is engaged in the practice of behavior analysis if
18. 11 the supervision is authorized under the Minnesota Psychology Practice Act.
18. 12 **EFFECTIVE DATE.** This section is effective July 1, 2024.
18. 13 Sec. 8. **[148. 9988] NONTRANSFERABILITY OF LICENSES.**
18. 14 A behavior analyst license is not transferable.
18. 15 **EFFECTIVE DATE.** This section is effective July 1, 2024.
18. 16 Sec. 9. **[148. 9989] DUTY TO MAINTAIN CURRENT INFORMATION.**
18. 17 All licensees and applicants for licensure must notify the board within 30 days of the
18. 18 occurrence of:
18. 19 (1) a change of name, address, place of employment, or home or business telephone
18. 20 number; or
18. 21 (2) a change in any other application information.
18. 22 **EFFECTIVE DATE.** This section is effective July 1, 2024.
18. 23 Sec. 10. **[148. 999] DISCIPLINE; REPORTING.**
18. 24 For purposes of sections 148. 9981 to 148. 9995, behavior analysts are subject to the
18. 25 provisions of sections 148. 941, 148. 952 to 148. 965, and 148. 98.
18. 26 **EFFECTIVE DATE.** This section is effective July 1, 2024.
19. 1 Sec. 11. **[148. 9991] COMPETENT PROVISION OF SERVICES.**
19. 2 Subdivision 1. **Limits on practice.** Behavior analysts must limit practice to the client
19. 3 populations and services for which the behavior analysts have competence or for which the
19. 4 behavior analysts are developing competence.
19. 5 Subd. 2. **Developing competence.** When a behavior analyst is developing competence
19. 6 in a service, method, or procedure, or is developing competence to treat a specific client
19. 7 population, the behavior analyst must obtain professional education, training, continuing
19. 8 education, consultation, supervision or experience, or a combination thereof, necessary to
19. 9 demonstrate competence.
19. 10 Subd. 3. **Limitations.** A behavior analyst must recognize the limitations to the scope of
19. 11 practice of applied behavior analysis. When the needs of a client appear to be outside the
19. 12 behavior analyst's scope of practice, the behavior analyst must inform the client that there
19. 13 may be other professional, technical, community, and administrative resources available to
19. 14 the client. A behavior analyst must assist with identifying resources when it is in the best
19. 15 interest of a client to be provided with alternative or complementary services.
19. 16 Subd. 4. **Burden of proof.** Whenever a complaint is submitted to the board involving
19. 17 a violation of this section, the burden of proof is on the behavior analyst to demonstrate that
19. 18 the elements of competence have been reasonably met.
19. 19 **EFFECTIVE DATE.** This section is effective July 1, 2024.

19. 20 Sec. 12. **[148. 9992] DUTY TO WARN; LIMITATION ON LIABILITY; VIOLENT**
19. 21 **BEHAVIOR OF PATIENT.**

19. 22 Subdivision 1. **Definitions.** (a) For the purposes of this section, the terms in this
19. 23 subdivision have the meanings given.

19. 24 (b) "Other person" means an immediate family member or someone who personally
19. 25 knows the client and has reason to believe the client is capable of and will carry out a serious,
19. 26 specific threat of harm to a specific, clearly identified or identifiable victim.

19. 27 (c) "Reasonable efforts" means communicating a serious, specific threat to the potential
19. 28 victim and, if unable to make contact with the potential victim, communicating the serious,
19. 29 specific threat to the law enforcement agency closest to the potential victim or the client.

19. 30 (d) "Licensee" has the meaning given in section 148. 9981 and includes behavior analysis
19. 31 students, interns, and unlicensed supervisees who are participating in a behavior analysis
19. 32 practicum or enrolled in an accredited school or educational program.

20. 1 Subd. 2. **Duty to warn.** The duty to predict, warn of, or take reasonable precautions to
20. 2 provide protection from violent behavior arises only when a client or other person has
20. 3 communicated to the licensee a specific, serious threat of physical violence against a specific,
20. 4 clearly identified or identifiable potential victim. If a duty to warn arises, the duty is
20. 5 discharged by the licensee if reasonable efforts are made to communicate the threat.

20. 6 Subd. 3. **Liability standard.** If no duty to warn exists under subdivision 2, then no
20. 7 monetary liability and no cause of action may arise against a licensee for failure to predict,
20. 8 warn of, or take reasonable precautions to provide protection from a client's violent behavior.

20. 9 Subd. 4. **Disclosure of confidences.** Good faith compliance with the duty to warn must
20. 10 not constitute a breach of confidence and must not result in monetary liability or a cause of
20. 11 action against the licensee.

20. 12 Subd. 5. **Continuity of care.** Subdivision 2 must not be construed to authorize a licensee
20. 13 to terminate treatment of a client as a direct result of a client's violent behavior or threat of
20. 14 physical violence unless the client is referred to another practitioner or appropriate health
20. 15 care facility.

20. 16 Subd. 6. **Exception.** This section does not apply to a threat to commit suicide or other
20. 17 threats by a client to harm the client, or to a threat by a client who is adjudicated as a person
20. 18 who has a mental illness and is dangerous to the public under chapter 253B.

20. 19 Subd. 7. **Optional disclosure.** This section must not be construed to prohibit a licensee
20. 20 from disclosing confidences to third parties in a good faith effort to warn or take precautions
20. 21 against a client's violent behavior or threat to commit suicide for which a duty to warn does
20. 22 not arise.

20. 23 Subd. 8. **Limitation on liability.** No monetary liability and no cause of action or
20. 24 disciplinary action by the board may arise against a licensee for disclosure of confidences
20. 25 to third parties, for failure to disclose confidences to third parties, or for erroneous disclosure
20. 26 of confidences to third parties in a good faith effort to warn against or take precautions
20. 27 against a client's violent behavior or threat of suicide for which a duty to warn does not
20. 28 arise.

20. 29 **EFFECTIVE DATE.** This section is effective July 1, 2024.

20. 30 Sec. 13. **[148. 9993] INFORMED CONSENT.**

20. 31 Subdivision 1. **Obtaining informed consent for services.** A behavior analyst must
20. 32 obtain informed consent from the client or the client's legal guardian before initiating
21. 1 services. The informed consent must be in writing, signed by the client, and include, at a
21. 2 minimum, the following:

21. 3 (1) consent for the behavior analyst to engage in activities that directly affect the client;

21. 4 (2) the goals, purposes, and procedures of the proposed services;

21. 5 (3) the factors that may impact the duration of the proposed services;

21. 6 (4) the applicable fee schedule for the proposed services;

21. 7 (5) the significant risks and benefits of the proposed services;

21. 8 (6) the behavior analyst's limits under section 148. 9991, including, if applicable,

21. 9 information that the behavior analyst is developing competence in the proposed service,

21. 10 method, or procedure, and alternatives to the proposed service, if any; and
21. 11 (7) the behavior analyst's responsibilities if the client terminates the service.
21. 12 Subd. 2. **Updating informed consent.** If there is a substantial change in the nature or
21. 13 purpose of a service, the behavior analyst must obtain a new informed consent from the
21. 14 client.
21. 15 Subd. 3. **Emergency or crisis services.** Informed consent is not required when a behavior
21. 16 analyst is providing emergency or crisis services. If services continue after the emergency
21. 17 or crisis has abated, informed consent must be obtained.

21. 18 **EFFECTIVE DATE.** This section is effective July 1, 2024.

21. 19 Sec. 14. **[148. 9994] BEHAVIOR ANALYST ADVISORY COUNCIL.**

21. 20 Subdivision 1. **Membership.** The Behavior Analyst Advisory Council is created and
21. 21 composed of five members appointed by the board. The advisory council consists of:

- 21. 22 (1) one public member as defined in section 214. 02;
- 21. 23 (2) three members who are licensed behavior analysts; and
- 21. 24 (3) one member who is a licensed psychologist and, to the extent practicable, who
21. 25 practices applied behavior analysis.

21. 26 Subd. 2. **Administration.** The advisory council is established and administered under
21. 27 section 15. 059, except that the advisory council does not expire.

21. 28 Subd. 3. **Duties.** The advisory council must:

- 21. 29 (1) advise the board regarding standards for behavior analysts;
- 22. 1 (2) assist with the distribution of information regarding behavior analyst standards;
- 22. 2 (3) advise the board on enforcement of sections 148. 9981 to 148. 9995;
- 22. 3 (4) review license applications and license renewal applications and make
22. 4 recommendations to the board;
- 22. 5 (5) review complaints and complaint investigation reports and make recommendations
22. 6 to the board on whether disciplinary action should be taken and, if applicable, what type;
- 22. 7 (6) advise the board regarding evaluation and treatment protocols; and
- 22. 8 (7) perform other duties authorized for advisory councils under chapter 214 as directed
22. 9 by the board to ensure effective oversight of behavior analysts.

22. 10 **EFFECTIVE DATE.** This section is effective July 1, 2024.

22. 11 Sec. 15. **[148. 9995] FEES.**

22. 12 Subdivision 1. **Fees.** All applicants and licensees must pay fees as follows:

- 22. 13 (1) application fee, \$225;
- 22. 14 (2) license renewal fee, \$225;
- 22. 15 (3) inactive license renewal fee, \$125;
- 22. 16 (4) biennial renewal late fee, \$100;
- 22. 17 (5) inactive license renewal late fee, \$100; and
- 22. 18 (6) supervisor application processing fee, \$225.

22. 19 Subd. 2. **Nonrefundable fees.** All fees in this section are nonrefundable.

22. 20 Subd. 3. **Deposit of fees.** Fees collected by the board under this section must be deposited
22. 21 in the state government special revenue fund.

22. 22 **EFFECTIVE DATE.** This section is effective July 1, 2024.

22. 23 Sec. 16. **INITIAL BEHAVIOR ANALYST ADVISORY COUNCIL.**

22. 24 The Board of Psychology must make the first appointments to the Behavior Analyst
22. 25 Advisory Council authorized under Minnesota Statutes, section 148. 9994, by September 1,
22. 26 2024. The initial behavior analysts appointed to the advisory council need not be licensed
22. 27 under Minnesota Statutes, sections 148. 9981 to 148. 9995, but must hold a current and active
22. 28 national certification as a board certified behavior analyst. The chair of the Board of
22. 29 Psychology must convene the first meeting of the council by September 1, 2024, and must
23. 1 convene subsequent meetings of the council until an advisory chair is elected. The council

23.2 must elect a chair from its members by the third meeting of the council.

23.3 **EFFECTIVE DATE.** This section is effective July 1, 2024.