Sixty-second Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 4, 2011

SENATE BILL NO. 2155
(Senator J. Lee)

AN ACT to create and enact two new sections to chapter 43-32 of the North Dakota Century Code, relating to regulation of applied behavior analysts; and to amend and reenact sections 43-32-01, 43-32-08, 43-32-08.1, 43-32-08.2, 43-32-09, 43-32-12, 43-32-13, and 43-32-14, subsection 1 of section 43-32-16, and sections 43-32-19.1 and 43-32-30 of the North Dakota Century Code, relating to the regulation of applied behavior analysis by the state board of psychologist examiners.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-32-01 of the North Dakota Century Code is amended and reenacted as follows:

43-32-01. Definitions.

1. "Applied behavior analyst" means an individual licensed under this chapter as an applied behavior analyst. The term does not include a registered applied behavior analyst.

2. "Autism spectrum disorder" means a neurobiological medical condition that includes autistic disorder, Asperger's disorder, pervasive development disorder not otherwise specified, Rett's disorder, and childhood disintegrative disorder.

3. "Board" means the North Dakota state board of psychologist examiners.

~~2.~~4. "Industrial-organizational psychologist" means an individual who is licensed under this chapter to engage in the practice of industrial-organizational psychology.

~~3.~~5. "Industrial-organizational psychology" means the provision of psychological research services or consultation services to a group or an organization. The term does not include the delivery or supervision of services to individuals who are themselves, rather than the group or organization, the intended beneficiaries of the services, regardless of the source or extent of payment for services rendered.

~~4.~~6. "Industrial-organizational psychology resident" means an individual who has met the requirement of subdivision b of subsection 2 of section 43-32-20, is involved in supervised employment in industrial-organizational psychology, and has registered with the board.

~~5.~~7. "Licensee" means an industrial-organizational psychologist, an applied behavior analyst, or a psychologist.

~~6.~~8. "Practice of applied behavior analysis":

a. Means the application of the principles, methods, and procedures of the experimental analysis of behavior and applied behavior analysis, including principles of operant and respondent learning. The term includes applications of those principles, methods, and procedures to:

(1) Design, supervise, evaluate, and modify treatment programs to change the behavior of individuals diagnosed with an autism spectrum disorder;

(2) Design, supervise, evaluate, and modify treatment programs to change the behavior of individuals;

(3) Design, supervise, evaluate, and modify treatment programs to change the behavior of groups; and

(4) Consult with individuals and organizations.

b. The term does not include diagnosis, counseling, psychological testing, personality assessment, intellectual assessment, neuropsychological assessment, psychotherapy, cognitive therapy, sex therapy, family therapy, coordination of care, psychoanalysis, hypnotherapy, and long-term counseling as treatment modalities.

9. "Practice of psychology" means the observation, description, evaluation, interpretation, or modification of human behavior by the application of psychological principles, methods, and procedures for the purpose of preventing or eliminating symptomatic, maladaptive, or undesired behavior and enhancing interpersonal relationships, work and life adjustment, personal effectiveness, behavioral health, and mental health. The term includes psychological testing and the evaluation or assessment of personal characteristics, such as intelligence, personality, abilities, interests, aptitudes, and neuropsychological functioning; counseling, psychotherapy, biofeedback, behavior analysis and therapy, clinical applications of hypnosis, and other therapeutic techniques based on psychological principles; diagnosis and treatment of mental and emotional disorder or disability, compulsive disorders, disorders of habit or conduct as well as of the psychological aspects of physical illness, accident, injury, or disability; and psychoeducational evaluation, therapy, remediation, and consultation. The term includes providing psychological services to individuals, families, groups, organizations, institutions, and the public regardless of whether payment is received for services rendered. The term includes supervising others who are engaged in the practice of psychology.

~~7.~~10. "Psychologist" means an individual who is licensed under this chapter in the practice of psychology.

~~8.~~11. "Psychology resident" means an individual who has met the requirement of subdivision b of subsection 1 of section 43-32-20, is involved in supervised psychological employment, and has registered with the board.

~~9.~~12. "Registered applied behavior analyst" or "registrant" means an individual who is registered under this chapter as a registered applied behavior analyst and is supervised by a licensed psychologist or applied behavior analyst. The term does not include an applied behavior analyst.

13. "School or college" means any university or other institution of higher learning which is accredited by a regional accrediting association, offering a full-time graduate course of study in industrial-organizational psychology ~~or~~, psychology, or applied behavior analysis, as appropriate.

SECTION 2. AMENDMENT. Section 43-32-08 of the North Dakota Century Code is amended and reenacted as follows:

43-32-08. Rules.

The board may adopt rules as necessary to enable the board to carry into effect the provisions of this chapter. The rules may include a code of ethics for licensees and registrants. The board shall adopt rules defining what programs of study are substantially psychological in nature; what educational programs are acceptable for the licensing of psychologists and applied behavior analysts and for registering registered applied behavior analysts; and what educational programs are acceptable for the licensing of industrial-organizational psychologists. The educational program rules for industrial-organizational psychologists must take into account the availability of professionally accredited programs in the field of industrial-organizational psychology.

SECTION 3. AMENDMENT. Section 43-32-08.1 of the North Dakota Century Code is amended and reenacted as follows:

43-32-08.1. Continuing education requirements.

The board shall adopt rules establishing requirements for the continuing education of licensees, psychology residents, registrants, and industrial-organizational psychology residents. The board may refuse to renew, suspend, revoke, or place on probationary status any license or registration issued under this chapter if the licensee or registrant fails to meet applicable continuing education requirements. Applicants for accreditation of continuing education courses, classes, or activities may be charged a reasonable fee determined by the board.

SECTION 4. AMENDMENT. Section 43-32-08.2 of the North Dakota Century Code is amended and reenacted as follows:

43-32-08.2. Continuing education requirements - Renewal.

Absent a showing of good cause, the board may not renew a license or registration issued under this chapter without proof the continuing education requirements under section 43-32-08.1 have been met. An individual whose license or registration is not renewed because of failure to meet the continuing education requirements must be reinstated and the license or registration renewed if, within one year from the date of nonrenewal, the individual demonstrates to the secretary of the board the continuing education requirements have been satisfied, pays the renewal fee, and pays a late fee to be determined by rule of the board.

SECTION 5. AMENDMENT. Section 43-32-09 of the North Dakota Century Code is amended and reenacted as follows:

43-32-09. Examination of qualifications of applicants.

The board shall examine for, deny, approve, revoke, suspend, and renew the licensing and registration of applicants as provided under this chapter.

SECTION 6. AMENDMENT. Section 43-32-12 of the North Dakota Century Code is amended and reenacted as follows:

43-32-12. Application and ~~license~~ fee for licensure and registration.

The board shall adopt rules establishing the amount of the application fee for licensure and registration by written and oral examination and by reciprocity. A fee is not refundable, in whole or in part, except for failure of the board to hold examinations at the time originally announced, in which event the entire fee must be refunded upon demand by the applicant.

SECTION 7. AMENDMENT. Section 43-32-13 of the North Dakota Century Code is amended and reenacted as follows:

43-32-13. Annual license and registration fee.

Before January first of each year, every licensee and registrant shall pay to the secretary of the board an annual ~~license~~ fee determined by the board not to exceed one hundred fifty dollars. The secretary of the board, upon receipt of payment of the annual ~~license~~ fee, shall issue the licensee or registrant a certificate of annual ~~license~~renewal. An individual may not hold out as an industrial-organizational psychologist, an applied behavior analyst, a registered applied behavior analyst, or a psychologist until the annual ~~license~~ fee is paid. The board may deny renewal of the license or registration of an individual who violates this section. Annually, the board shall mail a renewal notice to each licensee and registrant at the address on file with the board.

SECTION 8. AMENDMENT. Section 43-32-14 of the North Dakota Century Code is amended and reenacted as follows:

43-32-14. Payment of delinquent ~~license fees~~annual fee - Reinstatement.

An individual whose license or registration issued under this chapter was revoked for failure to pay the annual ~~license~~ fee must be reinstated and the license or registration renewed if, within one year from the date of revocation, the individual pays to the secretary of the board the amount of the annual ~~license~~ fees in default and a late fee in the amount of twenty dollars.

SECTION 9. AMENDMENT. Subsection 1 of section 43-32-16 of the North Dakota Century Code is amended and reenacted as follows:

1. The board shall keep a record of its proceedings and a register of all applicants for licensing or registration which must show:

   a. The name, age, and residence of each applicant.

   b. The date of each applicant's application.

   c. The place of business of each applicant.

   d. A summary of the educational and other qualifications of each applicant.

   e. Whether an examination was required of an applicant.

   f. Whether a license or registration was granted to an applicant.

   g. The date of the action of the board.

   h. Any information the board determines necessary or advisable in aid of the requirements of this subsection.

SECTION 10. AMENDMENT. Section 43-32-19.1 of the North Dakota Century Code is amended and reenacted as follows:

43-32-19.1. Licensing applicant licensed in other jurisdictions.

1. The board may grant a license to an applicant, licensed in good standing in another jurisdiction, who passes the oral examination on the law and rules regulating the practice of psychology ~~and~~, industrial-organizational psychology, or applied behavior analysis and meets one of the following requirements:

   ~~1.~~a. The applicant is licensed in a jurisdiction that imposes requirements for licensure which are at least as stringent as the requirements imposed in this state.

   ~~2.~~b. The applicant holds a certificate of professional qualification in psychology issued by the association of state and provincial psychology boards or its successor.

2. The board shall grant a provisional license or registration to an applicant to be an applied behavior analyst or registered applied behavior analyst while the application is pending, provided the applicant is:

   a. Licensed or registered and is in good standing in another jurisdiction; or

   b. Certified in good standing with the national behavior analyst certification board.

SECTION 11. AMENDMENT. Section 43-32-30 of the North Dakota Century Code is amended and reenacted as follows:

43-32-30. Persons exempt from this chapter.

This chapter does not apply to:

1. A student or intern pursuing a course of study in psychology ~~or,~~ industrial-organizational psychology, or applied behavior analysis at a school or college, if the activities and services are a part of the individual's supervised course of study and are under the supervision of a licensed psychologist ~~or,~~ industrial-organizational psychologist, or applied behavior analyst. The student or intern ~~shall~~may not use the title "psychologist" ~~or,~~ "industrial-organizational psychologist", "licensed behavior analyst", or "registered applied behavior analyst" and the student or intern status ~~shall~~must be clearly stated.

2. A nonresident licensed, registered, or certified in the state of the individual's residence who does not practice psychology ~~or,~~ industrial-organizational psychology, or applied behavior analysis in this state for a period of more than thirty days in any calendar year.

3. A lecturer, from any school or college, who uses an academic or research title when lecturing to institutions or organizations. However, the lecturer may not engage in the practice of psychology, applied behavior analysis, or industrial-organizational psychology unless the lecturer is licensed or registered under this chapter.

4. An individual employed by a public school if that individual's activities and services are restricted to the practice of psychology in the district or service unit of employment. This exemption applies only if the individual has received a master's degree in school psychology from an accredited graduate training program. Standards must be established by mutual consent of the board and the superintendent of public instruction.

5. A person certified, licensed, or registered in this state in another health care profession, or as a member of the clergy functioning in a ministerial capacity, whose scope of practice is consistent with the accepted standards of that person's profession. A person claiming an exemption under this subsection may not represent to be rendering psychological or applied behavior analysis services.

6. An applicant licensed to practice psychology or industrial-organizational psychology in another jurisdiction, pending disposition of the applicant's application in this state, if the applicant notifies the board on a form provided by the board of the applicant's intent to practice pending disposition of the application and the applicant adheres to the requirements of this chapter and the rules adopted by the board.

7. A person employed by an agency, a nonprofit corporation, or an institution if that person is currently exempt from licensure. A person exempt under this subsection continues to be exempt if the person continues employment in the same position with the agency, nonprofit corporation, or institution that applied for and received the exemption.

8. An individual providing applied behavior analysis services to an individual in a public school setting.

9. An individual providing applied behavior analysis services to an individual served by a public or private service agency licensed by the state to provide residential, habilitative, vocational, or social support services as defined by the board when performed as part of an individual support plan supervised by a professional employee meeting the requirements of that agency's licensure standards, provided the professional employee does not represent to the public as a registrant or an applied behavior analyst.

10. An individual who is implementing applied behavior analysis services to an immediate family member or as a paid or volunteer caregiver implementing procedures established by the family or by the individual served in any setting, if the individual or caregiver does not represent as a registrant or an applied behavior analyst.

11. An individual licensed as an occupational therapist or an occupational therapy assistant pursuant to chapter 43-30 within the body of knowledge and scope of professional practice of occupational therapy.

SECTION 12. A new section to chapter 43-32 of the North Dakota Century Code is created and enacted as follows:

Applied behavior analysis - Licensure or registration required - Titles.

Unless a registrant, an applied behavior analyst, or a psychologist, a person may not:

1. Engage in the practice of applied behavior analysis or render services designated as applied behavior analysis or hold out as a practitioner of applied behavior analysis in this state; or

2. Use the title "licensed applied behavior analyst" or "registered applied behavior analyst" or any title that is substantially the same unless licensed or registered by the board under this chapter.

SECTION 13. A new section to chapter 43-32 of the North Dakota Century Code is created and enacted as follows:

Applied behavior analysis - Renewal - Fees.

1. The board shall issue a license or registration to each applicant who files an application for registration as a registered applied behavior analyst or for licensure as an applied behavior analyst upon a form and in a manner the board prescribes; submits the required fee established by the board; and demonstrates the applicant meets the requirements of subsection 2.

2. An applicant under this section shall demonstrate the applicant:

   a. Has met board-approved education requirements, such as the education requirements of the board-certified behavior analyst standards;

   b. Has passed a board-approved demonstration of professional competence, such as a standardized examination specific to the profession such as the board-certified behavior analyst examination;

   c. Is credentialed as a behavior analyst by a board-approved credentialing entity, such as the behavior analyst certification board; and

   d. Has established supervision requirements as determined by the board for practice when applying as a registered applied behavior analyst.

3. The board may withhold, deny, revoke, or suspend a license or registration for applied behavior analyst applied for or issued under this chapter and otherwise may discipline a license or registration holder or applicant in the same manner provided under section 43-32-27.

4. A complaint regarding or board investigation of a licensed or registered applied behavior analyst is filed or conducted in the same manner as provided under section 43-32-27.1.

5. If an individual employed in the state on August 1, 2011, in the practice of applied behavior analysis submits to the board a written request before January 1, 2013, the required license or registration application fee, and a written statement from the applicant's employer that the applicant's employment remains satisfactory, the board shall issue to that applicant:

   a. A license as an applied behavior analyst if the applicant is employed in a position granted license exemption by the board and submits a letter of endorsement from the licensed psychologist supervisor.

   b. A license as an applied behavior analyst if the applicant has a master's degree in psychology and is employed as a behavior analyst as verified in writing by the applicant's

employer. Acceptable work titles for an applicant under this subdivision include behavior analyst, behavior interventionist, and behavior modification specialist.

c. Registration as an applied behavior analyst if the applicant has a bachelor's degree; provides a board-approved plan of supervision from a licensed psychologist or applied behavior analyst; and is employed as a behavior analyst as verified in writing by the applicant's employer. Acceptable work titles for an applicant under this subdivision include behavior analyst, behavior interventionist, and behavior modification specialist.

President of the Senate	Speaker of the House
Secretary of the Senate	Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-second Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2155.

Senate Vote:	Yeas 47	Nays 0	Absent 0
House Vote:	Yeas 92	Nays 0	Absent 2

Secretary of the Senate

Received by the Governor at _____M. on _____, 2011.

Approved at _____M. on _____, 2011.

Governor

Filed in this office this _____day of _____, 2011,

at _____ o'clock _____M.

Secretary of State