

**Department of Legislative Services**  
 Maryland General Assembly  
 2014 Session

**FISCAL AND POLICY NOTE**  
**Revised**

Senate Bill 694 (Senator Klausmeier, *et al.*)  
 Education, Health, and Environmental Affairs Health and Government Operations

**Health Occupations - Maryland Behavior Analysts Act**

This bill requires the State Board of Professional Counselors and Therapists to regulate the practice of behavior analysis and establishes a Behavior Analyst Advisory Committee and a Behavior Analyst Rehabilitation Subcommittee within the board. By January 1, 2015, an individual must be licensed by the board to practice behavior analysis in the State.

The bill takes effect July 1, 2014.

**Fiscal Summary**

**State Effect:** Special fund expenditures for the State Board of Professional Counselors and Therapists increase by approximately \$22,300 in FY 2015 to hire one part-time contractual administrative specialist for nine months to develop and implement a behavior analyst licensing program. Special fund revenues increase by approximately \$23,100 in FY 2015. Future years assume growth in the number of licensees, biennial renewal, and limited ongoing costs. General fund revenues may increase minimally due to the bill’s civil penalties. The bill’s criminal penalty provisions are not expected to materially impact general fund revenues or expenditures.

(in dollars)	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
SF Revenue	\$23,100	\$1,300	\$14,200	\$2,000	\$14,900
SF Expenditure	\$22,300	\$200	\$12,700	\$200	\$13,600
Net Effect	\$900	\$1,100	\$1,500	\$1,800	\$1,300

*Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect*

**Local Effect:** The bill’s criminal penalty provisions are not expected to materially affect local government finances or operations.

**Small Business Effect:** Meaningful impact for behavior analysts who must obtain State licensure, as discussed below.

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## **Analysis**

**Bill Summary:** “Practice of behavior analysis” means the design, implementation, and evaluation of systematic instructional and environmental modifications to produce socially significant improvements in human behavior. “Practice of behavior analysis” does not include psychological testing, diagnosis of a mental or physical disorder, neuropsychology, psychotherapy, cognitive therapy, sex therapy, psychoanalysis, hypnotherapy, counseling, or any subdiscipline of psychology as treatment modalities.

To qualify for a license, an individual must be of good moral character and be at least age 18. An individual must (1) have a current certification by the Behavior Analyst Certification Board (BACB); (2) have received a master’s degree or higher from a behavior analysis educational program accredited by BACB; (3) demonstrate oral and written competency in English; and (4) meet any other requirements established by the board. The board must waive the education requirements if an individual was certified by BACB by December 31, 2014, and is in good standing.

To apply for a license, an applicant must (1) submit an application to the board; (2) pay a fee; and (3) submit to a criminal history records check (CHRC). The board may not issue a license if the criminal history records information has not been received.

The bill requires the board to issue licenses and set fees to issue and renew such licenses. Fees charged must be set so that the funds generated approximate the costs of maintaining the program. The bill also specifies requirements for inactive status, reinstatement, and license renewal, and it authorizes the board to implement continuing education requirements. The bill does not specify the terms of a license.

The Behavior Analyst Advisory Committee is charged with developing and recommending to the board regulations, a code of ethics, requirements for licensure as a behavior analyst, and continuing education requirements for license renewal as well as providing the board with recommendations concerning the practice of behavior analysis. The advisory committee must meet at least once a year and keep a record of its proceedings and submit a report to the board as required in regulations adopted by the board.

The bill sets specific grounds and procedures for disciplinary action against a licensee or applicant, which include an opportunity for a hearing. Individuals aggrieved by a decision of the board may seek a direct judicial appeal. A decision of the board to deny a

license, enforce a suspension of a license for more than one year, or revoke a license may not be stayed pending judicial review. If, after a hearing, the board finds that there are grounds to discipline a licensee, the board may impose a monetary penalty of up to \$10,000 instead of suspending the license or in addition to suspending or revoking the license. Any such penalty is payable to the general fund.

A licensed behavior analyst must notify the board in writing of a change in name or address within 60 days after the change. A licensee who fails to comply is subject to an administrative penalty of \$100.

A person who violates any provision of the newly established Maryland Behavior Analysts Act is guilty of a misdemeanor and on conviction is subject to a fine of up to \$10,000 and/or imprisonment for up to one year. In addition, an individual who practices behavior analysis without a license is subject to a civil fine of up to \$50,000.

The bill specifies the membership of the advisory committee as five members appointed by the board, four of whom must be behavior analysts certified by BACB and have at least five years of clinical experience. The fifth must be a consumer. Advisory committee members serve staggered four-year terms and may not serve more than two consecutive full terms. The duration of all initial terms ranges from one to three years. Members may not receive compensation but are entitled to reimbursement under standard State travel regulations.

The bill establishes a Behavior Analyst Rehabilitation Subcommittee within the advisory committee to evaluate and provide assistance to any behavior analyst in need of treatment and rehabilitation for alcoholism; drug abuse; chemical dependency; or other physical, emotional, or mental condition. A person who acts in good faith and within the scope of jurisdiction of the subcommittee is not civilly liable for any action as a member of the subcommittee or for giving information to, participating in, or contributing to the function of the subcommittee.

The bill subjects the new licensure program to periodic review under the Maryland Program Evaluation Act, as with other health occupations boards, establishing a termination date of July 1, 2024, with a preliminary evaluation in 2021.

**Current Law/Background:** Maryland law does not specifically address behavior analysts. Individual health care providers are regulated under their respective health occupations boards.

Under the Office of the Secretary of Health and Mental Hygiene, 18 health occupations boards regulate and discipline nearly 400,000 individual health care professionals. The boards seek to protect the public by ensuring that practicing health professionals are

properly credentialed and licensed to provide high-quality services to the citizens of Maryland. Each board also receives, investigates, and resolves complaints about regulated professionals and assists in establishing parameters for the practice of each regulated health profession. Also under the umbrella of the health occupations boards is the Maryland Commission on Kidney Disease.

Each of the health occupations boards has its own statutes and associated regulations establishing the scope of practice for the professionals regulated by that board. At times, the scope of practice of one profession may intersect, overlap, or even conflict with the scope of practice of other professions – creating a scope of practice dispute within professions regulated by the same board, among one or more boards, or at times between professional associations.

Currently, the following six advisory committees assist the State Board of Physicians in its oversight role: the Physician Assistant Advisory Committee; the Radiation Therapy, Radiography, Nuclear Medicine Technology Advisory, and Radiology Assistance Committee; the Respiratory Care Professional Standards Committee; the Polysomnography Professional Standards Committee; the Athletic Trainer Advisory Committee; and the Perfusion Advisory Committee. Likewise, the Electrology Practice Committee in the State Board of Nursing functions as an advisory committee. Although these advisory committees often help develop regulations and provide suggestions regarding policy and procedure, none of these advisory committees has regulatory or disciplinary authority and none collects fee revenue. The bill's Behavior Analyst Advisory Committee provisions are consistent with the typical authority and responsibility generally granted to an advisory committee.

The State Board of Professional Counselors and Therapists licenses and certifies professional counselors, alcohol and drug counselors, marriage and family therapists, and art therapists. The board is also subject to periodic review under the Maryland Program Evaluation Act. The board's termination date is July 1, 2019, with a preliminary evaluation in 2018, which is not the same termination date the bill sets for the new licensure program.

Professionals in behavior analysis engage in the specific and comprehensive use of principles of learning to address the behavioral needs of widely varying individuals in diverse settings such as building the skills and achievements of children in school settings; enhancing the development, abilities, and choices of children and adults with different kinds of disabilities; and augmenting the performance and satisfaction of employees in organizations and businesses.

Nationally, the primary credential for behavior analysts is certification by BACB. Certification is offered at two levels: Board Certified Behavior Analyst<sup>®</sup> (BCBA) and

Board Certified Assistant Behavior Analyst® (BCaBA). An additional doctoral-level designation (BCBA-D) is also available. A summary of these certifications and the associated requirements and fees is shown in **Exhibit 1**.

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**Exhibit 1**  
**Summary of Behavior Analyst Certifications Issued by the**  
**Behavior Analyst Certification Board**

	<u>Board Certified Behavior Analyst®</u>	<u>Board Certified Assistant Behavior Analyst®</u>
<b>Minimum Education</b>	Master's degree in behavioral analysis or other related field	Bachelor's degree in behavioral analysis or other related field
<b>Training &amp; Experience</b>	Must meet one of the following: (1) 225 classroom hours of graduate level instruction in specified areas (increases to 270 classroom hours with first examination of 2015); (2) a one academic-year, full-time faculty appointment at a college or university teaching and conducting research; or (3) doctorate review  Experience requirements vary	Coursework must include at least 135 hours of classroom instruction in specified areas (increases to 180 classroom hours with first examination of 2015)  Experience requirements vary
<b>Examination</b>	Required for initial certification	Required for initial certification
<b>Renewal</b>	Yearly; fee required	Yearly; fee required
<b>Recertification</b>	Every three years; either 36 hours of approved continuing education required or take examination again	Every three years; either 24 hours of approved continuing education required or take examination again
<b>Fees</b>	\$230 application/examination \$135/\$185 renewal (online/paper) BCBA-D \$100/\$150 renewal (online/paper) BCBA	\$165 application/examination \$65/\$115 renewal (online/paper)

Source: Behavior Analyst Certification Board

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According to BACB, which maintains an online certificant registry, 194 individuals certified by the board practice in Maryland. There are 25 BCBA-D certificants, 160 BCBA certificants, and 9 BCaBA certificants. At least 10 states, including Pennsylvania and Virginia, require behavior analysts to be licensed. Other states, such as Connecticut and Indiana, prohibit use of the credentials unless certified by BACB.

**State Fiscal Effect:** The board currently regulates 5,341 professional counselors and therapists. Assessment of eligibility for current licensees is significantly more cumbersome and in-depth than the requirements for licensure under this bill for behavior analysts – which primarily relies on proof of BACB certification (which, at certain levels, already encompasses the educational attainment requirement), demonstration of competency in English, and completion of a CHRC. Only 185 known behavior analysts in Maryland likely meet requirements for licensure based on their current level of certification.

The bill sets an aggressive licensing timetable that requires all practicing behavior analysts to be licensed by January 1, 2015, which is six months after the bill's effective date of July 1, 2014. Nevertheless, this analysis assumes it is possible to do so. However, the board must quickly select and appoint members to the advisory committee, establish regulations, and begin licensing behavior analysts. When developing a test to demonstrate oral and written competency in English, the board can likely model the test on similar tests used for other health occupations. Further, this analysis assumes the board can rely on the assistant Attorney General and other staff members available to the health occupations boards for assistance with drafting regulations and establishing the code of ethics. Regulations are assumed to be promulgated on an emergency basis. The board must collect and analyze applicants' CHRCs and process applications, which can be time consuming.

The board advises it has no capacity to absorb the impacts of the bill at current staffing levels of seven regular full-time employees and a part-time contractual employee. However, the board has one full-time vacancy, and the fiscal 2015 State budget adds 1.4 contractual employees. (The board anticipates hiring an additional full-time contractual health investigator and an additional part-time staff attorney.)

Based on the current resources available to the board, the duties required under the bill, the relatively straightforward licensing requirements, and general costs to license other similar occupations, the Department of Legislative Services (DLS) advises that the board likely needs one contractual part-time staff member for nine months to staff initial meetings of the advisory committee, assist in promulgating regulations, and initially process applications and license behavior analysts. Since all other professionals regulated by the board renew on a biennial basis, DLS assumes biennial renewal for behavior analysts as well. In renewal years, the board likely requires additional part-time contractual assistance to process renewal applications. In off-years, the board can likely train an existing staff member to handle minimal licensing and renewal requirements and support the advisory committee.

Under the bill, the board is authorized to set reasonable fees for licensure sufficient to produce funds to approximate the cost of maintaining the licensure program and the other

services provided to behavior analysts. The board advises that it must charge behavior analysts \$1,000 for licensure, in order to cover its expected costs of hiring one full-time administrative specialist, which was based on only 150 applicants. However, DLS disagrees, given the relative ease of licensure in comparison to other professionals regulated by the board. The bill requires behavior analysts to have a master's degree or higher from an accredited behavior analysis education program. Thus, this analysis assumes that only the 25 BCBA-D and 160 BCBA certificants are eligible to apply for licensure. Assuming all 185 do so in order to continue to be able to practice in Maryland and the growth trend of an additional 10 analysts per fiscal year, as demonstrated by the recent growth of BACB certificants in Maryland, the board must charge at least \$125 for initial licensure and \$70 for biennial renewal to cover staffing costs. This pattern of initial and renewal licensure as well as the associated revenues are shown in **Exhibit 2**.

Thus, special fund revenues increase by \$23,125 in fiscal 2015, by \$1,250 in fiscal 2016, by \$14,200 in fiscal 2017, by \$1,950 in fiscal 2018, and by \$14,900 in fiscal 2019.

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**Exhibit 2**  
**Anticipated Licensure Pattern**  
**And Associated Revenues and Expenditures**

	<u>FY 2015</u>	<u>FY 2016</u>	<u>FY 2017</u>	<u>FY 2018</u>	<u>FY 2019</u>
<b>Licenses</b>					
New Licenses	185	10	10	10	10
Renewal Licenses			185	10	195
Total Issued	185	10	195	20	205
<b>Revenues</b>					
New Licenses	\$23,125	\$1,250	\$1,250	\$1,250	\$1,250
Renewal Licenses	\$0	\$0	\$12,950	\$700	\$13,650
<b>Total Revenues</b>	<b>\$23,125</b>	<b>\$1,250</b>	<b>\$14,200</b>	<b>\$1,950</b>	<b>\$14,900</b>
Total Expenditures	\$22,252	\$171	\$12,720	\$175	\$13,644
<b>Net Effect</b>	<b>\$873</b>	<b>\$1,079</b>	<b>\$1,480</b>	<b>\$1,775</b>	<b>\$1,256</b>

Source: Department of Legislative Services

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Also shown in Exhibit 2, special fund expenditures are expected to increase by \$22,252 in fiscal 2015. This estimate includes a salary for one part-time contractual (50%) administrative specialist for nine months, fringe benefits, and one-time start-up costs. The fiscal 2015 estimate also includes travel reimbursement expenses for advisory committee members. Future years reflect ongoing (but limited) travel reimbursement

expenses for advisory committee members, communication with licensees, and absorption of limited duties in off-cycle years by regular staff. Additionally, fiscal 2017 and 2019 special fund expenditures reflect the cost of hiring one part-time contractual employee for six months during renewal periods. As Exhibit 2 illustrates, under this scenario, the board's costs associated with licensure of behavior analysts are fully covered by fees.

Although the advisory committee is only required to meet once a year, this analysis estimates that the advisory committee must meet at least six times during fiscal 2015 to develop and recommend regulations and a code of ethics and to provide other necessary advice to the board. Future years reflect the bill's requirement that the committee meet once a year.

**Small Business Effect:** Nine behavior analysts certified by BACB at the assistant level (BCaBA) likely do not qualify to continue to practice in Maryland unless they pursue a master's degree. Costs for other certified behavior analysts (at the BCBA-D and BCBA levels) who must obtain licensure in order to *continue* to practice in Maryland also increase. To achieve certification and licensure under the bill, behavior analysts must earn a master's degree or higher in behavior analysis or other related field, take an examination for initial certification, and then pay application and renewal fees for their certification yearly. Additionally, every three years, to maintain their certification, analysts must complete continuing education requirements or take the examination again. Application fees for certification range from \$165 to \$230, and renewal fees range from \$65 to \$185, depending on an analyst's level of certification and whether he or she pays online or through a paper form.

Under the bill, these certificants must also pay approximately \$125 for initial licensure and \$70 for biennial renewal and be subjected to regulatory oversight and disciplinary action by the State Board of Professional Counselors and Therapists.

Also, each behavior analyst applying for licensure is subject to a CHRC at a cost of \$54.50 for a State and national CHRC including a \$20 fingerprinting fee, a \$16.50 FBI fee, and an \$18 fee to the Criminal Justice Information System (CJIS) Central Repository in the Department of Public Safety and Correctional Services. CJIS collects, manages, and disseminates Maryland Criminal History Record Information for criminal justice and noncriminal justice (*e.g.*, employment and licensing) purposes.

**Additional Comments:** Although behavior analysts do not have to be licensed until January 1, 2015, by October 1, 2014, the advisory committee membership must include four *licensed* behavior analysts. Given this timing, it may be infeasible for the advisory committee membership to fulfill all the bill's requirements in a timely manner.

The Department of Legislative Services notes that, because the Behavior Analyst Rehabilitation Subcommittee is a subcommittee of the *advisory committee*, not the board, membership is extremely limited. The bill does not specify the number of members for the subcommittee, but the advisory committee itself only has five members, four of whom are behavior analysts (which are favored in terms of subcommittee membership). Thus, there are only five possible members of the subcommittee – the four behavior analysts and one consumer member of the committee.

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### **Additional Information**

**Prior Introductions:** Similar legislation considered at the 2013 legislative session would have required licensure of behavior analysts through an advisory committee within the State Board of Examiners of Psychologists. HB 474 of 2013 received a hearing in the House Health and Government Operations Committee but was subsequently withdrawn. Its cross file, SB 611, received a hearing in the Senate Education, Health, and Environmental Affairs Committee and was subsequently withdrawn.

**Cross File:** Although designated as a cross file, HB 150 (Delegate Reznik – Health and Government Operations) is not identical.

**Information Source(s):** Behavior Analyst Certification Board, Department of Health and Mental Hygiene, Department of Legislative Services

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