SENATE BILL 694

J2 4lr2175
CF HB 150

By: **Senators Klausmeier, Colburn, Currie, Feldman, King, Kittleman, Mathias, Middleton, Robey, and Young**

Introduced and read first time: January 31, 2014
Assigned to: Education, Health, and Environmental Affairs

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: March 12, 2014

CHAPTER _____

AN ACT concerning

Health Occupations – Maryland Behavior Analysts Act

FOR the purpose of establishing the Behavior Analyst Advisory Committee within the State Board of Professional Counselors and Therapists; requiring the Board to adopt certain regulations and a certain code of ethics; requiring the Board to set certain fees for services provided by the Board to behavior analysts; requiring the Board to pay the fees to the Comptroller; requiring the Comptroller to distribute the fees to the Board; requiring the fees to be used to cover certain costs; providing for the composition, appointment, and terms of the Committee members; establishing certain powers and duties of the Committee; requiring certain persons to be licensed by the Board as behavior analysts before performing certain work in the State except under certain circumstances; establishing certain education and experience requirements to qualify for a license; establishing certain application fees and requirements for obtaining a license; establishing certain terms and procedures for the renewal and reinstatement of a license; requiring the Board to issue a license to certain applicants; specifying the contents of a license; prohibiting the Board from issuing a license if certain information has not been received; ~~requiring the Board to maintain a certain roster;~~ requiring the Board to place a licensee on inactive status under certain circumstances; prohibiting a licensee from surrendering a license under certain circumstances; requiring a licensee to notify the Board of a change of name or address in a certain manner and within a certain time period; authorizing the Board to deny a license to an applicant, reprimand a licensee, place a licensee on probation, or suspend or revoke a

EXPLANATION: **CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.**
[Brackets**]** indicate matter deleted from existing law.
Underlining indicates amendments to bill.
~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

license under certain circumstances; establishing certain requirements for reinstatement of a revoked license; providing for certain criminal, civil, and administrative penalties; establishing certain hearing and appeal procedures for behavior analysts; authorizing the Board to issue a cease and desist order under certain circumstances; authorizing a certain action to be maintained to enjoin the unauthorized practice of behavior analysis or certain conduct; providing for a certain behavior analyst rehabilitation ~~committee~~ subcommittee; specifying the functions of the behavior analyst rehabilitation ~~committee~~ subcommittee; providing that the proceedings, records, and files of the behavior analyst rehabilitation ~~committee~~ subcommittee are not discoverable or admissible in evidence in certain actions under certain circumstances; providing that a certain person is not civilly liable for certain action as a member of a behavior analyst rehabilitation ~~committee~~ subcommittee; prohibiting a person from practicing, attempting to practice, or offering to practice behavior analysis in the State unless licensed by the Board except under certain circumstances; prohibiting a person from representing to the public that the person is a licensed behavior analyst or using certain titles, abbreviations, signs, cards, or other representations except under certain circumstances; requiring the Board to pay certain penalties into the State Board of Professional Counselors and Therapists Fund; establishing a certain short title; providing that the Committee is subject to the provisions of the Maryland Program Evaluation Act; requiring that an evaluation of the Committee and statutes and regulations that relate to the Committee be performed on or before a certain date; defining certain terms; specifying the terms of the initial members of the Board; providing for the termination of certain provisions of this Act; and generally relating to the licensing and regulation of behavior analysts and the Behavior Analyst Advisory Committee.

BY renumbering
Article – State Government
Section 8–403(b)(8) through (56), respectively
to be Section 8–403(b)(9) through (57), respectively
Annotated Code of Maryland
(2009 Replacement Volume and 2013 Supplement)

BY adding to
Article – Health Occupations
Section 17–6A–01 through ~~17–6A–33~~ 17–6A–31 to be under the new subtitle "Subtitle 6A. Behavior Analysts"
Annotated Code of Maryland
(2009 Replacement Volume and 2013 Supplement)

BY repealing and reenacting, without amendments,
Article – State Government
Section 8–403(a)
Annotated Code of Maryland
(2009 Replacement Volume and 2013 Supplement)

BY adding to
Article – State Government
Section 8–403(b)(8)
Annotated Code of Maryland
(2009 Replacement Volume and 2013 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section(s) 8–403(b)(8) through (56), respectively, of Article – State Government of the Annotated Code of Maryland be renumbered to be Section(s) 8–403(b)(9) through (57), respectively.

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Health Occupations

SUBTITLE 6A. BEHAVIOR ANALYSTS.

17–6A–01.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) "COMMITTEE" MEANS THE BEHAVIOR ANALYST ADVISORY COMMITTEE ESTABLISHED UNDER § 17–6A–05 OF THIS SUBTITLE.

(C) "LICENSE" MEANS A LICENSE ISSUED BY THE BOARD TO PRACTICE BEHAVIOR ANALYSIS.

(D) "LICENSED BEHAVIOR ANALYST" MEANS AN INDIVIDUAL WHO IS LICENSED BY THE BOARD TO PRACTICE BEHAVIOR ANALYSIS.

(E) "LICENSEE" MEANS A LICENSED BEHAVIOR ANALYST.

(F) (1) "PRACTICE OF BEHAVIOR ANALYSIS" MEANS THE DESIGN, IMPLEMENTATION, AND EVALUATION OF SYSTEMATIC INSTRUCTIONAL AND ENVIRONMENTAL MODIFICATIONS TO PRODUCE SOCIALLY SIGNIFICANT IMPROVEMENTS IN HUMAN BEHAVIOR.

(2) "PRACTICE OF BEHAVIOR ANALYSIS" INCLUDES:

(I) THE EMPIRICAL IDENTIFICATION OF FUNCTIONAL RELATIONS BETWEEN BEHAVIOR AND ENVIRONMENTAL FACTORS, KNOWN AS FUNCTIONAL ASSESSMENT AND ANALYSIS; AND

(II) INTERVENTIONS BASED ON SCIENTIFIC RESEARCH AND THE DIRECT OBSERVATION AND MEASUREMENT OF BEHAVIOR AND ENVIRONMENT.

(3) "PRACTICE OF BEHAVIOR ANALYSIS" DOES NOT INCLUDE PSYCHOLOGICAL TESTING, DIAGNOSIS OF A MENTAL OR PHYSICAL DISORDER, NEUROPSYCHOLOGY, PSYCHOTHERAPY, COGNITIVE THERAPY, SEX THERAPY, PSYCHOANALYSIS ~~OR~~, HYPNOTHERAPY, ~~OR LONG–TERM~~ COUNSELING, OR ANY SUBDISCIPLINE OF PSYCHOLOGY AS TREATMENT MODALITIES.

17–6A–02.

~~UNLESS THE INDIVIDUAL USES AS A TITLE OR DESCRIBES THE SERVICES THE INDIVIDUAL PROVIDES BY USE OF THE WORDS "BEHAVIOR ANALYSIS" OR "BEHAVIOR ANALYST", THIS~~

(A) THIS SUBTITLE DOES NOT LIMIT THE USE OF THE TERMS "BEHAVIOR ANALYSIS" OR "BEHAVIORAL ANALYSIS" BY AN INDIVIDUAL AUTHORIZED TO PRACTICE UNDER THIS ARTICLE WHO IS PRACTICING WITHIN THE INDIVIDUAL'S SCOPE OF PRACTICE.

(B) THIS SUBTITLE DOES NOT LIMIT THE RIGHT OF AN INDIVIDUAL TO PRACTICE A HEALTH OCCUPATION THAT THE INDIVIDUAL IS LICENSED, CERTIFIED, OR OTHERWISE AUTHORIZED TO PRACTICE UNDER THIS ARTICLE.

17–6A–03.

THE BOARD SHALL ADOPT:

(1) REGULATIONS FOR THE LICENSURE AND PRACTICE OF BEHAVIOR ANALYSIS; AND

(2) A CODE OF ETHICS FOR THE PRACTICE OF BEHAVIOR ANALYSIS.

17–6A–04.

(A) (1) THE BOARD SHALL SET REASONABLE FEES FOR THE ISSUANCE AND RENEWAL OF LICENSES AND THE OTHER SERVICES IT PROVIDES TO BEHAVIOR ANALYSTS.

(2) THE FEES CHARGED SHALL BE SET SO AS TO PRODUCE FUNDS TO APPROXIMATE THE COST OF MAINTAINING THE LICENSURE PROGRAM AND THE OTHER SERVICES PROVIDED TO BEHAVIOR ANALYSTS.

(B) (1) THE BOARD SHALL PAY ALL FEES COLLECTED UNDER THE PROVISIONS OF THIS SUBTITLE TO THE COMPTROLLER.

(2) THE COMPTROLLER SHALL DISTRIBUTE ALL FEES TO THE BOARD.

(C) THE FEES SHALL BE USED TO COVER THE ACTUAL DOCUMENTED DIRECT AND INDIRECT COSTS OF FULFILLING THE STATUTORY AND REGULATORY DUTIES OF THE BOARD AS PROVIDED BY THE PROVISIONS OF THIS SUBTITLE.

17–6A–05.

THERE IS A BEHAVIOR ANALYST ADVISORY COMMITTEE WITHIN THE BOARD.

17–6A–06.

(A) THE COMMITTEE CONSISTS OF FIVE MEMBERS APPOINTED BY THE BOARD AS FOLLOWS:

(1) (I) ON OR BEFORE SEPTEMBER 30, 2014, FOUR BEHAVIOR ANALYSTS WHO:

1. ARE CERTIFIED BY THE BEHAVIOR ANALYST CERTIFICATION BOARD; AND

2. HAVE A MINIMUM OF 5 YEARS OF CLINICAL EXPERIENCE; AND

(II) ON OR AFTER OCTOBER 1, 2014, FOUR LICENSED BEHAVIOR ANALYSTS WHO:

1. ARE CERTIFIED BY THE BEHAVIOR ANALYST CERTIFICATION BOARD; AND

2. HAVE A MINIMUM OF 5 YEARS OF CLINICAL EXPERIENCE; AND

(2) ONE CONSUMER MEMBER WHO IS RECEIVING SERVICES, HAS RECEIVED SERVICES, OR HAS A CHILD WHO IS RECEIVING SERVICES FOR A BEHAVIORAL DISORDER, INCLUDING AN AUTISM SPECTRUM DISORDER.

(B) THE CONSUMER MEMBER OF THE COMMITTEE:

(1) SHALL BE A MEMBER OF THE GENERAL PUBLIC;

(2) MAY NOT BE OR EVER HAVE BEEN A BEHAVIOR ANALYST OR IN TRAINING TO BECOME A BEHAVIOR ANALYST;

(3) MAY NOT HAVE A HOUSEHOLD MEMBER WHO IS A BEHAVIOR ANALYST OR IN TRAINING TO BECOME A BEHAVIOR ANALYST;

(4) MAY NOT PARTICIPATE OR EVER HAVE PARTICIPATED IN A COMMERCIAL OR PROFESSIONAL FIELD RELATED TO BEHAVIOR ANALYSIS;

(5) MAY NOT HAVE A HOUSEHOLD MEMBER WHO PARTICIPATES IN A COMMERCIAL OR PROFESSIONAL FIELD RELATED TO BEHAVIOR ANALYSIS; AND

(6) MAY NOT HAVE HAD WITHIN 2 YEARS BEFORE APPOINTMENT A SUBSTANTIAL FINANCIAL INTEREST IN A PERSON REGULATED BY THE BOARD.

(C) (1) THE TERM OF A MEMBER IS 4 YEARS.

(2) THE TERMS OF MEMBERS ARE STAGGERED AS REQUIRED BY THE TERMS PROVIDED FOR MEMBERS OF THE COMMITTEE ON OCTOBER 1, 2014.

(3) AT THE END OF A TERM, A MEMBER CONTINUES TO SERVE UNTIL A SUCCESSOR IS APPOINTED AND QUALIFIES.

(4) A MEMBER WHO IS APPOINTED AFTER A TERM HAS BEGUN SERVES ONLY FOR THE REST OF THE TERM AND UNTIL A SUCCESSOR IS APPOINTED AND QUALIFIES.

(5) A MEMBER MAY NOT SERVE MORE THAN 2 CONSECUTIVE FULL TERMS.

(D) THE BOARD MAY REMOVE A MEMBER FOR INCOMPETENCE OR MISCONDUCT.

17–6A–07.

(A) FROM AMONG ITS MEMBERS, THE COMMITTEE ANNUALLY SHALL ELECT A CHAIR AND A VICE CHAIR.

(B) THE COMMITTEE SHALL DETERMINE:

(1) THE MANNER OF ELECTION OF OFFICERS; AND

(2) THE DUTIES OF EACH OFFICER.

17–6A–08.

(A) A MAJORITY OF THE MEMBERS THEN SERVING ON THE COMMITTEE IS A QUORUM.

(B) (1) THE COMMITTEE SHALL MEET AT LEAST ONCE A YEAR, AT THE TIMES AND PLACES THAT IT DETERMINES.

(2) THE COMMITTEE MAY HOLD SPECIAL MEETINGS IF:

(I) REQUESTED BY THE BOARD; OR

(II) THE CHAIR OR A MAJORITY OF THE MEMBERS THEN SERVING ON THE COMMITTEE CONSIDER A MEETING TO BE NECESSARY OR ADVISABLE.

(3) REASONABLE NOTICE OF ALL COMMITTEE MEETINGS SHALL BE GIVEN IN THE MANNER DETERMINED BY THE COMMITTEE.

(C) A MEMBER OF THE COMMITTEE:

(1) MAY NOT RECEIVE COMPENSATION AS A MEMBER OF THE COMMITTEE; BUT

(2) IS ENTITLED TO REIMBURSEMENT FOR EXPENSES UNDER THE STANDARD STATE TRAVEL REGULATIONS, AS PROVIDED IN THE STATE BUDGET.

17–6A–09.

IN ADDITION TO THE POWERS AND DUTIES SET FORTH ELSEWHERE IN THIS SUBTITLE, THE COMMITTEE SHALL:

(1) DEVELOP AND RECOMMEND TO THE BOARD REGULATIONS TO CARRY OUT THIS SUBTITLE;

(2) DEVELOP AND RECOMMEND TO THE BOARD A CODE OF ETHICS FOR THE PRACTICE OF BEHAVIOR ANALYSIS;

(3) DEVELOP AND RECOMMEND TO THE BOARD THE REQUIREMENTS FOR LICENSURE AS A BEHAVIOR ANALYST, INCLUDING:

(I) CRITERIA FOR THE EDUCATIONAL AND CLINICAL TRAINING OF LICENSED BEHAVIOR ANALYSTS; AND

(II) CRITERIA FOR A PROFESSIONAL COMPETENCY EXAMINATION AND TESTING OF APPLICANTS FOR A LICENSE TO PRACTICE BEHAVIOR ANALYSIS;

(4) DEVELOP AND RECOMMEND TO THE BOARD CONTINUING EDUCATION REQUIREMENTS FOR LICENSE RENEWAL;

(5) PROVIDE THE BOARD WITH RECOMMENDATIONS CONCERNING THE PRACTICE OF BEHAVIOR ANALYSIS;

(6) KEEP A RECORD OF ITS PROCEEDINGS; AND

(7) ~~SUBMIT AN ANNUAL REPORT~~ REPORT TO THE BOARD AS REQUIRED IN REGULATIONS ADOPTED BY THE BOARD.

17–6A–10.

(A) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBTITLE, BEGINNING ~~OCTOBER 1, 2014~~ JANUARY 1, 2015, AN INDIVIDUAL SHALL BE LICENSED BY THE BOARD BEFORE THE INDIVIDUAL MAY PRACTICE BEHAVIOR ANALYSIS IN THE STATE.

(B) THIS SECTION DOES NOT APPLY TO A STUDENT ENROLLED IN AN EDUCATIONAL PROGRAM THAT MEETS THE CRITERIA OF § 17–6A–11(C)(2) OF THIS SUBTITLE WHILE ENGAGED IN AN UNPAID, CLINICAL EDUCATIONAL EXPERIENCE OF BEHAVIOR ANALYSIS.

17–6A–11.

(A) TO QUALIFY FOR A LICENSE, AN APPLICANT SHALL BE AN INDIVIDUAL WHO MEETS THE REQUIREMENTS OF THIS SECTION.

(B) THE APPLICANT SHALL:

(1) BE OF GOOD MORAL CHARACTER; AND

(2) BE AT LEAST 18 YEARS OLD.

(C) THE APPLICANT SHALL:

(1) HAVE A CURRENT CERTIFICATION BY THE BEHAVIOR ANALYST CERTIFICATION BOARD OR ITS SUCCESSOR ORGANIZATION;

(2) HAVE RECEIVED A ~~BACHELOR'S OR~~ MASTER'S DEGREE OR HIGHER FROM A BEHAVIOR ANALYSIS EDUCATIONAL PROGRAM THAT IS ACCREDITED BY THE BEHAVIOR ANALYST CERTIFICATION BOARD OR ITS SUCCESSOR ORGANIZATION;

(3) DEMONSTRATE ORAL AND WRITTEN COMPETENCY IN ENGLISH AS REQUIRED BY THE BOARD; AND

(4) MEET ANY OTHER REQUIREMENTS ESTABLISHED BY THE BOARD.

(D) THE BOARD SHALL WAIVE THE EDUCATION REQUIREMENTS UNDER SUBSECTION (C)(2) OF THIS SECTION IF AN INDIVIDUAL WAS CERTIFIED BY THE BEHAVIOR ANALYST CERTIFICATION BOARD ON OR BEFORE ~~SEPTEMBER 30~~ DECEMBER 31, 2014, AND IS CURRENTLY IN GOOD STANDING.

17–6A–12.

TO APPLY FOR A LICENSE, AN APPLICANT SHALL:

(1) SUBMIT AN APPLICATION TO THE BOARD ON THE FORM THAT THE BOARD REQUIRES;

(2) PAY TO THE BOARD THE APPLICATION FEE SET BY THE BOARD; AND

(3) SUBMIT TO A CRIMINAL HISTORY RECORDS CHECK IN ACCORDANCE WITH § 17–501.1 OF THIS TITLE.

17–6A–13.

(A) THE BOARD SHALL ISSUE A LICENSE TO ANY APPLICANT WHO MEETS THE REQUIREMENTS OF THIS SUBTITLE.

(B) THE BOARD SHALL INCLUDE ON EACH LICENSE THAT THE BOARD ISSUES:

(1) THE FULL NAME OF THE LICENSED BEHAVIOR ANALYST;

(2) THE DATES OF ISSUANCE AND EXPIRATION;

(3) A SERIAL NUMBER;

(4) THE SIGNATURES OF THE CHAIR AND THE VICE CHAIR OF THE BOARD; AND

(5) THE SEAL OF THE BOARD.

(C) (1) ON RECEIPT OF THE CRIMINAL HISTORY RECORD INFORMATION OF AN APPLICANT FOR LICENSURE FORWARDED TO THE BOARD IN ACCORDANCE WITH § 17–501.1 OF THIS TITLE, IN DETERMINING WHETHER TO GRANT A LICENSE, THE BOARD SHALL CONSIDER:

(I) THE AGE AT WHICH THE CRIME WAS COMMITTED;

(II) THE CIRCUMSTANCES SURROUNDING THE CRIME;

(III) THE LENGTH OF TIME THAT HAS PASSED SINCE THE CRIME;

(IV) SUBSEQUENT WORK HISTORY;

(V) EMPLOYMENT AND CHARACTER REFERENCES; AND

(VI) OTHER EVIDENCE THAT DEMONSTRATES WHETHER THE APPLICANT POSES A THREAT TO THE PUBLIC HEALTH OR SAFETY.

(2) THE BOARD MAY NOT ISSUE A LICENSE IF THE CRIMINAL HISTORY RECORD INFORMATION REQUIRED UNDER § 17–501.1 OF THIS TITLE HAS NOT BEEN RECEIVED.

17–6A–14.

A BEHAVIOR ANALYST LICENSE AUTHORIZES THE LICENSEE TO PRACTICE BEHAVIOR ANALYSIS WHILE THE LICENSE IS EFFECTIVE.

~~**17–6A–15.**~~

~~(A) THE BOARD SHALL MAINTAIN A ROSTER THAT CONTAINS THE NAME AND ADDRESS OF EACH BEHAVIOR ANALYST CURRENTLY LICENSED, LISTED ALPHABETICALLY BY NAME AND GEOGRAPHICALLY BY ADDRESS.~~

~~(B) THE BOARD SHALL:~~

~~(1) RESPOND TO INQUIRIES FROM THE PUBLIC REGARDING INFORMATION CONTAINED IN THE ROSTER; AND~~

~~(2) ON REQUEST, PROVIDE COPIES OF THE ROSTER BY MAIL TO THE PUBLIC.~~

~~17–6A–16.~~ **17–6A–15.**

(A) A LICENSE EXPIRES ON A DATE SET BY THE BOARD UNLESS THE LICENSE IS RENEWED FOR AN ADDITIONAL TERM AS PROVIDED IN THIS SECTION.

(B) AT LEAST 1 MONTH BEFORE A LICENSE EXPIRES, THE BOARD SHALL SEND TO THE LICENSEE, BY FIRST–CLASS MAIL OR ELECTRONIC MAIL TO THE LAST KNOWN ADDRESS OF THE LICENSEE, A RENEWAL NOTICE THAT STATES:

(1) THE DATE ON WHICH THE CURRENT LICENSE EXPIRES;

(2) THE DATE BY WHICH THE RENEWAL APPLICATION MUST BE RECEIVED BY THE BOARD FOR THE RENEWAL TO BE ISSUED AND MAILED BEFORE THE LICENSE EXPIRES; AND

(3) THE AMOUNT OF THE RENEWAL FEE.

(C) BEFORE A LICENSE EXPIRES, THE LICENSEE PERIODICALLY MAY RENEW THE LICENSE FOR AN ADDITIONAL TERM IF THE LICENSEE:

(1) OTHERWISE IS ENTITLED TO BE LICENSED;

(2) PAYS TO THE BOARD A RENEWAL FEE SET BY THE BOARD; AND

(3) SUBMITS TO THE BOARD:

(I) A RENEWAL APPLICATION ON THE FORM THAT THE BOARD REQUIRES; AND

(II) SATISFACTORY EVIDENCE OF COMPLIANCE WITH ANY CONTINUING EDUCATION REQUIREMENTS ESTABLISHED BY THE BOARD UNDER SUBSECTION (D) OF THIS SECTION.

(D) THE BOARD MAY ESTABLISH CONTINUING EDUCATION REQUIREMENTS AS A CONDITION OF THE RENEWAL OF LICENSES UNDER THIS SECTION.

(E) THE BOARD SHALL RENEW THE LICENSE OF EACH LICENSEE WHO MEETS THE REQUIREMENTS OF THIS SECTION.

~~17–6A–17.~~ 17–6A–16.

(A) (1) THE BOARD SHALL PLACE A LICENSEE ON INACTIVE STATUS IF THE LICENSEE SUBMITS TO THE BOARD:

(I) AN APPLICATION FOR INACTIVE STATUS ON THE FORM REQUIRED BY THE BOARD; AND

(II) THE INACTIVE STATUS FEE SET BY THE BOARD.

(2) (I) THE BOARD SHALL LICENSE AN INDIVIDUAL ON INACTIVE STATUS WHO APPLIES FOR A LICENSE IF THE INDIVIDUAL:

1. COMPLIES WITH THE RENEWAL REQUIREMENTS THAT EXIST AT THE TIME THE INDIVIDUAL CHANGES FROM INACTIVE STATUS TO ACTIVE STATUS; AND

2. MEETS ANY CONTINUING EDUCATION REQUIREMENTS ESTABLISHED BY THE BOARD.

(II) THE BOARD MAY NOT REQUIRE PAYMENT OF A LATE FEE BY AN INDIVIDUAL AS A CONDITION TO LICENSING UNDER THIS PARAGRAPH.

(B) THE BOARD SHALL REINSTATE THE LICENSE OF A BEHAVIOR ANALYST WHO HAS NOT BEEN PUT ON INACTIVE STATUS AND WHO HAS FAILED TO RENEW THE LICENSE FOR ANY REASON IF THE BEHAVIOR ANALYST:

(1) MEETS THE RENEWAL REQUIREMENTS OF ~~§ 17–6A–16~~ § 17–6A–15 OF THIS SUBTITLE;

(2) PAYS TO THE BOARD A REINSTATEMENT FEE SET BY THE BOARD; AND

(3) APPLIES TO THE BOARD FOR REINSTATEMENT OF THE LICENSE WITHIN 5 YEARS AFTER THE LICENSE EXPIRES.

(C) (1) THE BOARD MAY NOT REINSTATE THE LICENSE OF A BEHAVIOR ANALYST WHO FAILS TO APPLY FOR REINSTATEMENT OF THE LICENSE WITHIN 5 YEARS AFTER THE LICENSE EXPIRES.

(2) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (1) OF THIS SUBSECTION, A BEHAVIOR ANALYST MAY BECOME LICENSED BY MEETING THE CURRENT REQUIREMENTS FOR OBTAINING A NEW LICENSE UNDER THIS SUBTITLE.

~~17–6A–18.~~ 17–6A–17.

(A) A LICENSEE SHALL NOTIFY THE BOARD IN WRITING OF A CHANGE IN NAME OR ADDRESS WITHIN 60 DAYS AFTER THE CHANGE.

(B) A LICENSEE WHO FAILS TO COMPLY WITH SUBSECTION (A) OF THIS SECTION IS SUBJECT TO AN ADMINISTRATIVE PENALTY OF $100.

~~17–6A–19.~~ 17–6A–18.

UNLESS THE BOARD ACCEPTS THE SURRENDER OF A LICENSE, THE LICENSE MAY NOT LAPSE BY OPERATION OF LAW WHILE THE LICENSEE IS UNDER INVESTIGATION OR WHILE CHARGES ARE PENDING AGAINST THE LICENSEE.

~~17–6A–20.~~ 17–6A–19.

SUBJECT TO THE HEARING PROVISIONS OF § ~~17–6A–23~~ 17–6A–21 OF THIS SUBTITLE, THE BOARD, ON THE AFFIRMATIVE VOTE OF A MAJORITY OF ITS MEMBERS THEN SERVING, MAY DENY A LICENSE TO ANY APPLICANT, REPRIMAND ANY LICENSEE, PLACE ANY LICENSEE ON PROBATION, OR SUSPEND OR REVOKE A LICENSE OF ANY LICENSEE IF THE APPLICANT OR LICENSEE:

(1) FRAUDULENTLY OR DECEPTIVELY OBTAINS OR ATTEMPTS TO OBTAIN A LICENSE FOR THE APPLICANT OR LICENSEE OR FOR ANOTHER;

(2) FRAUDULENTLY OR DECEPTIVELY USES A LICENSE;

(3) IS CONVICTED OF OR PLEADS GUILTY OR NOLO CONTENDERE TO A FELONY OR A CRIME INVOLVING MORAL TURPITUDE, WHETHER OR NOT

ANY APPEAL OR OTHER PROCEEDING IS PENDING TO HAVE THE CONVICTION OR PLEA SET ASIDE;

~~(4) IS OR HAS BEEN ADDICTED TO ANY NARCOTIC OR HABITUALLY INTOXICATED;~~

~~(5)~~ (4) AIDS OR ABETS AN UNAUTHORIZED PERSON IN PRACTICING BEHAVIOR ANALYSIS OR REPRESENTING ONESELF TO BE A BEHAVIOR ANALYST;

~~(6)~~ (5) PRACTICES BEHAVIOR ANALYSIS FRAUDULENTLY OR DECEITFULLY;

~~(7)~~ (6) VIOLATES THE CODE OF ETHICS ADOPTED BY THE BOARD UNDER § 17–6A–03 OF THIS SUBTITLE;

~~(8)~~ (7) WILLFULLY FAILS TO FILE OR RECORD ANY REPORT AS REQUIRED UNDER LAW, WILLFULLY IMPEDES OR OBSTRUCTS THE FILING OR RECORDING OF THE REPORT, OR INDUCES ANOTHER TO FAIL TO FILE OR RECORD THE REPORT;

~~(9)~~ (8) SUBMITS A FALSE STATEMENT TO COLLECT A FEE;

~~(10)~~ (9) WILLFULLY MAKES OR FILES A FALSE REPORT OR RECORD IN THE PRACTICE OF BEHAVIOR ANALYSIS;

~~(11)~~ (10) IS DISCIPLINED BY A LICENSING OR DISCIPLINARY AUTHORITY OF ANY STATE OR COUNTRY OR CONVICTED OR DISCIPLINED BY A COURT OF ANY STATE OR COUNTRY OR DISCIPLINED BY ANY BRANCH OF THE UNITED STATES UNIFORMED SERVICES OR THE UNITED STATES VETERANS ADMINISTRATION FOR AN ACT THAT WOULD BE GROUNDS FOR DISCIPLINARY ACTION UNDER THE BOARD'S DISCIPLINARY STATUTES;

~~(12)~~ (11) VIOLATES ANY PROVISION OF THIS SUBTITLE OR ANY REGULATION ADOPTED BY THE BOARD;

~~(13)~~ (12) USES OR PROMOTES OR CAUSES THE USE OF ANY MISLEADING, DECEIVING, OR UNTRUTHFUL ADVERTISING MATTER, PROMOTIONAL LITERATURE, OR TESTIMONIAL;

~~(14)~~ (13) IS PROFESSIONALLY, PHYSICALLY, OR MENTALLY INCOMPETENT;

~~(15)~~ (14) PROMOTES THE SALE OF DEVICES, APPLIANCES, OR GOODS TO A PATIENT SO AS TO EXPLOIT THE PATIENT FOR FINANCIAL GAIN;

~~(16)~~ (15) BEHAVES IMMORALLY IN THE PRACTICE OF BEHAVIOR ANALYSIS;

~~(17)~~ (16) COMMITS AN ACT OF UNPROFESSIONAL CONDUCT IN THE PRACTICE OF BEHAVIOR ANALYSIS;

~~(18)~~ (17) REFUSES, WITHHOLDS FROM, DENIES, OR DISCRIMINATES AGAINST AN INDIVIDUAL WITH REGARD TO THE PROVISION OF PROFESSIONAL SERVICES FOR WHICH THE LICENSEE IS LICENSED AND QUALIFIED TO RENDER BECAUSE THE INDIVIDUAL IS HIV POSITIVE;

~~(19)~~ (18) FAILS TO COOPERATE WITH A LAWFUL INVESTIGATION CONDUCTED BY THE BOARD;

~~(20)~~ (19) COMMITS AN ACT THAT IS INCONSISTENT WITH GENERALLY ACCEPTED PROFESSIONAL STANDARDS IN THE PRACTICE OF BEHAVIOR ANALYSIS; ~~OR~~

~~(21)~~ (20) FAILS TO SUBMIT TO A CRIMINAL HISTORY RECORDS CHECK IN ACCORDANCE WITH § 17–501.1 OF THIS TITLE;

(21) HABITUALLY IS INTOXICATED;

(22) PROVIDES PROFESSIONAL SERVICES WHILE UNDER THE INFLUENCE OF ALCOHOL OR WHILE USING ANY NARCOTIC OR CONTROLLED DANGEROUS SUBSTANCE, AS DEFINED IN § 5–101 OF THE CRIMINAL LAW ARTICLE, OR OTHER DRUG THAT IS IN EXCESS OF THERAPEUTIC AMOUNTS OR WITHOUT VALID MEDICAL INDICATION; OR

(23) KNOWINGLY FAILS TO REPORT SUSPECTED CHILD ABUSE IN VIOLATION OF § 5–704 OF THE FAMILY LAW ARTICLE.

~~17–6A–21.~~ 17–6A–20.

(A) IF, AFTER A HEARING UNDER ~~§ 17–6A–23~~ § 17–6A–21 OF THIS SUBTITLE, THE BOARD FINDS THAT THERE ARE GROUNDS UNDER ~~§ 17–6A–20~~ § 17–6A–19 OF THIS SUBTITLE TO SUSPEND OR REVOKE A LICENSE OR TO REPRIMAND A LICENSEE, THE BOARD MAY IMPOSE A MONETARY PENALTY NOT EXCEEDING $10,000:

(1) INSTEAD OF SUSPENDING THE LICENSE; OR

(2) IN ADDITION TO SUSPENDING OR REVOKING THE LICENSE.

(B) THE BOARD SHALL ADOPT REGULATIONS TO SET STANDARDS FOR THE IMPOSITION OF MONETARY PENALTIES UNDER THIS SECTION.

(C) THE BOARD SHALL PAY ANY PENALTY COLLECTED UNDER THIS SECTION INTO THE GENERAL FUND OF THE STATE.

~~**17–6A–22.**~~

~~**(A) IF, IN INVESTIGATING AN ALLEGATION BROUGHT AGAINST A LICENSEE UNDER THIS SUBTITLE, THE BOARD HAS REASON TO BELIEVE THAT THE LICENSEE MAY CAUSE HARM TO PERSONS AFFECTED BY THE LICENSEE'S PRACTICE OF BEHAVIOR ANALYSIS, THE BOARD, ON ITS OWN INITIATIVE, MAY DIRECT THE LICENSEE TO SUBMIT TO AN APPROPRIATE EXAMINATION BY A PSYCHOLOGIST OR PHYSICIAN DESIGNATED BY THE BOARD.**~~

~~**(B) IN RETURN FOR THE PRIVILEGE GIVEN TO A LICENSEE TO PRACTICE BEHAVIOR ANALYSIS IN THE STATE, THE LICENSEE IS DEEMED TO HAVE:**~~

~~**(1) CONSENTED TO SUBMIT TO AN EXAMINATION UNDER THIS SECTION IF REQUESTED BY THE BOARD IN WRITING; AND**~~

~~**(2) WAIVED ANY CLAIM OF PRIVILEGE AS TO THE TESTIMONY OR EXAMINATION REPORTS OF THE EXAMINING PSYCHOLOGIST OR PHYSICIAN.**~~

~~**(C) THE FAILURE OR REFUSAL OF THE LICENSEE TO SUBMIT TO AN EXAMINATION REQUIRED UNDER SUBSECTION (B) OF THIS SECTION IS PRIMA FACIE EVIDENCE OF THE LICENSEE'S INABILITY TO PRACTICE BEHAVIOR ANALYSIS COMPETENTLY UNLESS THE BOARD FINDS THAT THE FAILURE OR REFUSAL WAS BEYOND THE CONTROL OF THE LICENSEE.**~~

~~**(D) THE BOARD SHALL PAY THE COST OF ANY EXAMINATION MADE UNDER THIS SECTION.**~~

~~**17–6A–23.**~~ **17–6A–21.**

(A) EXCEPT AS OTHERWISE PROVIDED IN THE ADMINISTRATIVE PROCEDURE ACT, BEFORE THE BOARD TAKES ANY ACTION UNDER ~~§ 17–6A–20~~ § 17–6A–19 OF THIS SUBTITLE, IT SHALL GIVE THE INDIVIDUAL AGAINST WHOM THE ACTION IS CONTEMPLATED AN OPPORTUNITY FOR A HEARING BEFORE THE BOARD.

(B) THE BOARD SHALL GIVE NOTICE AND HOLD THE HEARING IN ACCORDANCE WITH THE ADMINISTRATIVE PROCEDURE ACT.

(C) THE HEARING NOTICE TO BE GIVEN TO THE INDIVIDUAL SHALL BE SERVED PERSONALLY OR BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, BEARING A POSTMARK FROM THE UNITED STATES POSTAL SERVICE, TO THE LAST KNOWN ADDRESS OF THE INDIVIDUAL AT LEAST ~~10~~ 30 DAYS BEFORE THE HEARING.

(D) THE INDIVIDUAL MAY BE REPRESENTED AT THE HEARING BY COUNSEL.

(E) (1) OVER THE SIGNATURE OF AN OFFICER OR THE ADMINISTRATOR OF THE BOARD, THE BOARD MAY ISSUE SUBPOENAS AND ADMINISTER OATHS IN CONNECTION WITH ANY INVESTIGATION UNDER THIS SUBTITLE AND ANY HEARINGS OR PROCEEDINGS BEFORE THE BOARD.

(2) THE BOARD SHALL ISSUE SUBPOENAS ON BEHALF OF THE INDIVIDUAL IF THE INDIVIDUAL:

(I) REQUESTS THAT THE BOARD DO SO; AND

(II) STATES UNDER OATH THAT THE TESTIMONY OR EVIDENCE SOUGHT IS NECESSARY TO THE INDIVIDUAL'S DEFENSE.

(3) IF, WITHOUT LAWFUL EXCUSE, AN INDIVIDUAL DISOBEYS A SUBPOENA FROM THE BOARD OR AN ORDER BY THE BOARD TO TAKE AN OATH, TESTIFY, OR ANSWER A QUESTION, ON PETITION OF THE BOARD, A COURT OF COMPETENT JURISDICTION MAY COMPEL COMPLIANCE WITH THE SUBPOENA.

(F) IF, AFTER DUE NOTICE, THE INDIVIDUAL AGAINST WHOM THE ACTION IS CONTEMPLATED FAILS OR REFUSES TO APPEAR, NEVERTHELESS THE BOARD MAY HEAR AND DETERMINE THE MATTER.

(G) THE HEARING OF CHARGES MAY NOT BE STAYED OR CHALLENGED BY ANY PROCEDURAL DEFECTS ALLEGED TO HAVE OCCURRED BEFORE THE FILING OF CHARGES.

~~17–6A–24.~~ 17–6A–22.

(A) EXCEPT AS PROVIDED IN THIS SECTION FOR AN ACTION UNDER ~~§ 17–6A–20~~ § 17–6A–19 OF THIS SUBTITLE, ANY PERSON AGGRIEVED BY A FINAL DECISION OF THE BOARD IN A CONTESTED CASE, AS DEFINED IN THE ADMINISTRATIVE PROCEDURE ACT, MAY:

(1) APPEAL THAT DECISION TO THE BOARD OF REVIEW; AND

(2) THEN TAKE ANY FURTHER APPEAL ALLOWED BY THE ADMINISTRATIVE PROCEDURE ACT.

(B) (1) ANY PERSON AGGRIEVED BY A FINAL DECISION OF THE BOARD UNDER ~~§ 17–6A–20~~ § 17–6A–19 OF THIS SUBTITLE MAY NOT APPEAL TO THE SECRETARY OR THE BOARD OF REVIEW BUT MAY TAKE A DIRECT JUDICIAL APPEAL.

(2) THE APPEAL SHALL BE MADE AS PROVIDED FOR JUDICIAL REVIEW OF FINAL DECISIONS IN THE ADMINISTRATIVE PROCEDURE ACT.

(C) A DECISION OF THE BOARD TO DENY A LICENSE, ENFORCE A SUSPENSION OF A LICENSE FOR MORE THAN 1 YEAR, OR REVOKE A LICENSE MAY NOT BE STAYED PENDING JUDICIAL REVIEW.

~~17–6A–25.~~ 17–6A–23.

FOR REASONS THE BOARD CONSIDERS SUFFICIENT, AND ON THE AFFIRMATIVE VOTE OF A MAJORITY OF ITS MEMBERS THEN SERVING, THE BOARD MAY:

(1) REINSTATE A LICENSE THAT HAS BEEN REVOKED;

(2) REDUCE THE PERIOD OF A SUSPENSION; OR

(3) WITHDRAW A REPRIMAND.

~~17–6A–26.~~ 17–6A–24.

THE BOARD MAY ISSUE A CEASE AND DESIST ORDER FOR A VIOLATION OF THIS SUBTITLE.

~~17–6A–27.~~ 17–6A–25.

(A) AN ACTION MAY BE MAINTAINED IN THE NAME OF THE STATE OR THE BOARD TO ENJOIN:

(1) THE UNAUTHORIZED PRACTICE OF BEHAVIOR ANALYSIS; OR

(2) CONDUCT THAT IS A GROUND FOR DISCIPLINARY ACTION UNDER ~~§ 17–6A–20~~ § 17–6A–19 OF THIS SUBTITLE.

(B) AN ACTION UNDER THIS SECTION MAY BE BROUGHT BY:

(1) THE BOARD, IN ITS OWN NAME;

(2) THE ATTORNEY GENERAL, IN THE NAME OF THE STATE; OR

(3) A STATE'S ATTORNEY, IN THE NAME OF THE STATE.

(C) AN ACTION UNDER THIS SECTION SHALL BE BROUGHT IN THE COUNTY WHERE THE DEFENDANT:

(1) RESIDES; OR

(2) ENGAGES IN THE ACTS SOUGHT TO BE ENJOINED.

(D) PROOF OF ACTUAL DAMAGE OR THAT ANY PERSON WILL SUSTAIN ANY DAMAGE IF AN INJUNCTION IS NOT GRANTED IS NOT REQUIRED FOR AN ACTION UNDER THIS SECTION.

(E) AN ACTION UNDER THIS SECTION IS IN ADDITION TO AND NOT INSTEAD OF CRIMINAL PROSECUTION FOR THE UNAUTHORIZED PRACTICE OF BEHAVIOR ANALYSIS UNDER ~~§ 17–6A–29~~ § 17–6A–27 OF THIS SUBTITLE OR DISCIPLINARY ACTION UNDER ~~§ 17–6A–20~~ § 17–6A–19 OF THIS SUBTITLE.

~~17–6A–28.~~ 17–6A–26.

(A) IN THIS SECTION, "BEHAVIOR ANALYST REHABILITATION ~~COMMITTEE~~ SUBCOMMITTEE" MEANS A ~~COMMITTEE~~ SUBCOMMITTEE THAT:

(1) IS DEFINED IN SUBSECTION (B) OF THIS SECTION; AND

(2) PERFORMS ANY OF THE FUNCTIONS LISTED IN SUBSECTION (D) OF THIS SECTION.

(B) FOR PURPOSES OF THIS SECTION, A BEHAVIOR ANALYST REHABILITATION ~~COMMITTEE~~ SUBCOMMITTEE IS A ~~COMMITTEE~~ SUBCOMMITTEE OF THE ~~BOARD~~ COMMITTEE THAT:

(1) IS RECOGNIZED BY THE BOARD; AND

(2) INCLUDES BUT IS NOT LIMITED TO BEHAVIOR ANALYSTS.

(C) A REHABILITATION ~~COMMITTEE~~ SUBCOMMITTEE OF THE ~~BOARD~~ COMMITTEE OR RECOGNIZED BY THE ~~BOARD~~ COMMITTEE MAY FUNCTION:

(1) SOLELY FOR THE ~~BOARD~~ COMMITTEE; OR

(2) JOINTLY WITH A REHABILITATION COMMITTEE REPRESENTING ANOTHER BOARD OR BOARDS.

(D) FOR PURPOSES OF THIS SECTION, A BEHAVIOR ANALYST REHABILITATION ~~COMMITTEE~~ SUBCOMMITTEE EVALUATES AND PROVIDES ASSISTANCE TO ANY BEHAVIOR ANALYST IN NEED OF TREATMENT AND REHABILITATION FOR ALCOHOLISM, DRUG ABUSE, CHEMICAL DEPENDENCY, OR OTHER PHYSICAL, EMOTIONAL, OR MENTAL CONDITION.

(E) (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, THE PROCEEDINGS, RECORDS, AND FILES OF THE BEHAVIOR ANALYST REHABILITATION ~~COMMITTEE~~ SUBCOMMITTEE ARE NOT DISCOVERABLE AND ARE NOT ADMISSIBLE IN EVIDENCE IN ANY CIVIL ACTION ARISING OUT OF THE MATTERS THAT ARE BEING OR HAVE BEEN REVIEWED AND EVALUATED BY THE BEHAVIOR ANALYST REHABILITATION ~~COMMITTEE~~ SUBCOMMITTEE.

(2) PARAGRAPH (1) OF THIS SUBSECTION DOES NOT APPLY TO ANY RECORD OR DOCUMENT THAT IS CONSIDERED BY THE BEHAVIOR ANALYST REHABILITATION ~~COMMITTEE~~ SUBCOMMITTEE AND THAT OTHERWISE WOULD BE SUBJECT TO DISCOVERY OR INTRODUCTION INTO EVIDENCE IN A CIVIL ACTION.

(3) FOR PURPOSES OF THIS SUBSECTION, CIVIL ACTION DOES NOT INCLUDE A PROCEEDING BEFORE THE BOARD OR JUDICIAL REVIEW OF A PROCEEDING BEFORE THE BOARD.

(F) A PERSON WHO ACTS IN GOOD FAITH AND WITHIN THE SCOPE OF JURISDICTION OF THE BEHAVIOR ANALYST REHABILITATION ~~COMMITTEE~~ SUBCOMMITTEE IS NOT CIVILLY LIABLE FOR ANY ACTION AS A MEMBER OF THE BEHAVIOR ANALYST REHABILITATION ~~COMMITTEE~~ SUBCOMMITTEE OR FOR GIVING INFORMATION TO, PARTICIPATING IN, OR CONTRIBUTING TO THE FUNCTION OF THE BEHAVIOR ANALYST REHABILITATION ~~COMMITTEE~~ SUBCOMMITTEE.

~~17–6A–29.~~ 17–6A–27.

(A) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBTITLE, A PERSON MAY NOT PRACTICE, ATTEMPT TO PRACTICE, OR OFFER TO PRACTICE BEHAVIOR ANALYSIS IN THIS STATE UNLESS LICENSED BY THE BOARD.

(B) EACH VIOLATION OF THIS SECTION IS A SEPARATE OFFENSE.

~~17–6A–30.~~ **17–6A–28.**

UNLESS AUTHORIZED TO PRACTICE BEHAVIOR ANALYSIS UNDER THIS SUBTITLE, A PERSON MAY NOT:

(1) REPRESENT TO THE PUBLIC THAT THE PERSON IS A LICENSED BEHAVIOR ANALYST; OR

(2) USE ANY TITLE, ABBREVIATION, SIGN, CARD, OR OTHER REPRESENTATION THAT THE PERSON IS A LICENSED BEHAVIOR ANALYST.

~~17–6A–31.~~ **17–6A–29.**

(A) A PERSON WHO VIOLATES ANY PROVISION OF THIS SUBTITLE IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING $10,000 OR IMPRISONMENT NOT EXCEEDING 1 YEAR OR BOTH.

(B) (1) A PERSON WHO VIOLATES ~~§ 17–6A–29~~ § 17–6A–27 OF THIS SUBTITLE IS SUBJECT TO A CIVIL FINE OF NOT MORE THAN $50,000 TO BE ASSESSED BY THE BOARD IN ACCORDANCE WITH REGULATIONS ADOPTED BY THE BOARD.

(2) THE BOARD SHALL PAY ANY PENALTY COLLECTED UNDER THIS SUBSECTION INTO THE STATE BOARD OF PROFESSIONAL COUNSELORS AND THERAPISTS FUND.

~~17–6A–32.~~ **17–6A–30.**

THIS SUBTITLE MAY BE CITED AS THE MARYLAND BEHAVIOR ANALYSTS ACT.

~~17–6A–33.~~ **17–6A–31.**

SUBJECT TO THE EVALUATION AND REESTABLISHMENT PROVISIONS OF THE PROGRAM EVALUATION ACT, THIS SUBTITLE AND ALL RULES AND REGULATIONS ADOPTED UNDER THIS SUBTITLE SHALL TERMINATE AND BE OF NO EFFECT AFTER JULY 1, 2024.

Article – State Government

8–403.

(a) On or before December 15 of the evaluation year specified, the Department shall:

(1) conduct a preliminary evaluation of each governmental activity or unit to be evaluated under this section; and

(2) prepare a report on each preliminary evaluation conducted.

(b) Each of the following governmental activities or units and the statutes and regulations that relate to the governmental activities or units are subject to preliminary evaluation in the evaluation year specified:

(8) BEHAVIOR ANALYST ADVISORY COMMITTEE (§ 17–6A–05 OF THE HEALTH OCCUPATIONS ARTICLE: 2021);

SECTION 3. AND BE IT FURTHER ENACTED, That the terms of the initial members of the Behavior Analyst Advisory Committee shall expire as follows:

(1) two behavior analyst members in 2015;

(2) one behavior analyst member and the consumer member in 2016; and

(3) one behavior analyst member in 2017.

SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2014.

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.