

Department of Legislative Services
 Maryland General Assembly
 2013 Session

FISCAL AND POLICY NOTE

Senate Bill 611 (Senator Klausmeier)
 Education, Health, and Environmental Affairs

Health Occupations - Maryland Behavior Analysts Act

This bill requires the State Board of Examiners of Psychologists to regulate the practice of behavior analysis and establishes a Behavior Analyst Advisory Committee and a Behavior Analyst Rehabilitation Committee within the board. By October 1, 2013, an individual must be licensed by the board to practice behavior analysis in the State.

The bill takes effect July 1, 2013.

Fiscal Summary

State Effect: Special fund expenditures for the State Board of Psychologists increase by \$35,700 in FY 2014 to hire one part-time administrative specialist to develop and implement a behavior analyst licensing program. Future year expenditures reflect inflation. Special fund revenues increase by \$15,300 in FY 2014 and \$23,000 in FY 2016 and 2018 to assume biennial licensure and renewal fees. Special 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 2014	FY 2015	FY 2016	FY 2017	FY 2018
SF Revenue	\$15,300	\$0	\$23,000	\$0	\$23,000
SF Expenditure	\$35,700	\$33,200	\$34,600	\$36,100	\$37,700
Net Effect	(\$20,400)	(\$33,200)	(\$11,700)	(\$36,100)	(\$14,800)

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: Potential significant impact for behavior analysts who must obtain State licensure.

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 or hypnotherapy, or long-term counseling 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 bachelor’s or master’s degree 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 September 30, 2013, 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), as is currently required of all licensed psychologists regulated by the board. 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, including authorizing the board to require continuing education. The bill does not specify the term of a license.

The board must maintain a roster with the name and address of each behavior analyst currently licensed, listed alphabetically by name and geographically by address. The board must respond to inquiries from the public regarding information contained in the roster and, on request, provide copies of the roster by mail to the public.

The Behavior Analyst Advisory Committee, consisting of seven members appointed by the board, is charged with developing and recommending to the board regulations, a code of ethics, requirements for licensure as a behavior analyst, continuing education requirements for license renewal, and recommendations concerning the practice of behavior analysis. The advisory committee must keep a record of its proceedings and submit an annual report to the board. Advisory committee members serve staggered four-year terms.

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.

The board is authorized to require a licensee to submit to a competency examination if, in investigating an allegation against a licensee, 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 must pay the cost of any competency examination.

The bill establishes a Behavior Analyst Rehabilitation 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 committee is not civilly liable for any action as a member of the committee or for giving information to, participating in, or contributing to the function of the committee.

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, payable to the State Board of Examiners of Psychologists Fund.

The bill subjects the new licensure program to periodic review under the Maryland Program Evaluation Act, as with other health occupations boards, establishing an evaluation date of July 1, 2016, and a termination date of July 1, 2017.

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

Background: The State Board of Examiners of Psychologists licenses psychologists and approves psychology associates. In fiscal 2012, the board regulated 4,906 licensed psychologists. According to the board, there are currently 450 psychology associates.

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® and Board Certified Assistant Behavior Analyst®. 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**.

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

	<u>Board Certified</u> <u>Behavior Analyst®</u>	<u>Board Certified</u> <u>Assistant Behavior Analyst®</u>
Minimum Education	Master’s degree in behavioral analysis or other related field	Bachelor’s degree in behavioral analysis or other related field
Training & Experience	Must meet one of the following: (1) 225 classroom hours of graduate level instruction in specified areas; (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 Experience requirements vary
Examination	Required for initial certification	Required for initial certification
Renewal	Every three years; 36 hours of continuing education required	Every three years; 24 hours of continuing education required
Fees	\$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

According to BACB, which maintains an online certificant registry, there are 153 individuals certified by the board in Maryland. 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 Revenues: Special fund revenues for the State Board of Psychology increase by approximately \$15,300 in fiscal 2014 from application fees paid by behavior analysts. This estimate assumes that all 153 behavior analysts certified by BACB will seek State licensure. According to the board, behavior analysts will pay a \$100 application fee for initial licensure. Though not specified under the bill, the board indicates that the license will be valid for a two-year period and the renewal fee will be \$150. Thus, special fund revenues for the board increase by \$22,950 in fiscal 2016 and 2018 from renewal fees. This estimate assumes that all 153 behavior analysts will renew their licenses and does not account for any new licensees as the board is unable to project the expected number of new licensees at this time.

The bill requires that revenues approximate the cost of maintaining the new program. However, it is the experience of the board that new allied health programs do not generate enough revenue to cover costs for a number of years; thus, any revenue gap is borne from other board revenues or fund balance.

State Expenditures: Special fund expenditures for the board increase by \$35,682 in fiscal 2014 to hire one part-time administrative specialist to develop regulations, establish a Behavior Analyst Advisory Committee and staff that committee, issue behavior analyst licenses, and respond to inquiries. This estimate includes a salary for one part-time (50%) administrative specialist, fringe benefits, one-time start-up costs, and ongoing operating expenses and reflects ongoing responsibilities. Future years reflect inflation.

Full-time Equivalent Position	0.5
Salaries and Fringe Benefits	\$27,774
One-time Start-up Costs	3,750
Ongoing Operating Expenses	<u>4,158</u>
Total FY 2014 State Expenditures	\$35,682

The Department of Legislative Services notes that the anticipated revenues from licensed behavior analysts will not be sufficient to cover these projected costs and the board may need to cross subsidize. If, however, the volume of licenses remains low, future year expenditures may be curtailed by reducing the amount of staff support.

Additional Comments: Each behavior analyst applying for licensure will be 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.

The Department of Legislative Services notes that the evaluation and termination dates proposed in the bill would require a preliminary evaluation to be conducted in 2014, with less than one year of experience under the licensure requirement. The Board of Psychologists' evaluation and termination dates are July 1, 2022, and July 1, 2023, respectively.

Additional Information

Prior Introductions: None.

Cross File: HB 474 (Delegate Reznik, *et al.*) - Health and Government Operations.

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

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