S T A T E O F N E W Y O R K

4862

2013-2014 Regular Sessions

I N S E N A T E

April 26, 2013

Introduced by Sens. FUSCHILLO, LAVALLE, FLANAGAN -- read twice and ordered printed, and when printed to be committed to the Committee on Higher Education

AN ACT to amend the education law, in relation to applied behavior analysis

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The education law is amended by adding a new article 167 to read as follows:

ARTICLE 167
APPLIED BEHAVIOR ANALYSIS

SECTION 8800. INTRODUCTION.
8801. DEFINITIONS.
8802. DEFINITION OF THE PRACTICE OF "APPLIED BEHAVIOR ANALYSIS".
8803. THE PRACTICE OF AND USE OF THE TITLE "LICENSED APPLIED BEHAVIOR ANALYST" OR "CERTIFIED APPLIED BEHAVIOR ANALYSIS ASSISTANT".
8804. REQUIREMENTS AND PROCEDURES FOR PROFESSIONAL LICENSURE.
8805. SPECIAL PROVISIONS.
8806. LIMITED PERMITS.
8807. EXEMPTIONS.
8808. STATE COMMITTEE FOR APPLIED BEHAVIOR ANALYSIS.

S 8800. INTRODUCTION. THIS ARTICLE APPLIES TO THE PROFESSION AND PRACTICE OF APPLIED BEHAVIOR ANALYSIS AND TO THE USE OF THE TITLES "LICENSED APPLIED BEHAVIOR ANALYST" AND "CERTIFIED APPLIED BEHAVIOR ANALYSIS ASSISTANT." THE GENERAL PROVISIONS FOR ALL PROFESSIONS CONTAINED IN ARTICLE ONE HUNDRED THIRTY OF THIS TITLE APPLY TO THIS ARTICLE.

S 8801. DEFINITIONS. AS USED IN THIS ARTICLE, THE FOLLOWING TERM SHALL HAVE THE FOLLOWING MEANING:

"APPLIED BEHAVIOR ANALYSIS" OR "ABA" MEANS THE DESIGN, IMPLEMENTATION, AND EVALUATION OF ENVIRONMENTAL MODIFICATIONS, USING BEHAVIORAL STIMULI

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD08806-06-3

AND CONSEQUENCES, TO PRODUCE SOCIALLY SIGNIFICANT IMPROVEMENT IN HUMAN BEHAVIOR, INCLUDING THE USE OF DIRECT OBSERVATION, MEASUREMENT, AND FUNCTIONAL ANALYSIS OF THE RELATIONSHIP BETWEEN ENVIRONMENT AND BEHAVIOR.

S 8802. DEFINITION OF THE PRACTICE OF "APPLIED BEHAVIOR ANALYSIS". 1. THE PRACTICE OF "LICENSED APPLIED BEHAVIOR ANALYST" SHALL MEAN THE DESIGN, IMPLEMENTATION AND EVALUATION OF ENVIRONMENTAL MODIFICATIONS, USING BEHAVIORAL STIMULI AND CONSEQUENCES, TO PRODUCE SOCIALLY SIGNIFICANT IMPROVEMENT IN HUMAN BEHAVIOR, INCLUDING THE USE OF DIRECT OBSERVATION, MEASUREMENT, AND FUNCTIONAL ANALYSIS OF THE RELATIONSHIP BETWEEN ENVIRONMENT AND BEHAVIOR, PURSUANT TO A DIAGNOSIS AND PRESCRIPTION OR ORDER FROM A PERSON WHO IS LICENSED OR OTHERWISE AUTHORIZED TO PROVIDE SUCH DIAGNOSTIC AND PRESCRIPTION OR ORDERING SERVICES PURSUANT TO A PROFESSION ENUMERATED IN THIS TITLE, FOR THE PURPOSE OF PROVIDING BEHAVIORAL HEALTH SERVICES FOR PERSONS WITH AUTISM AND AUTISM SPECTRUM DISORDERS; AND INCLUDES THE SUPERVISION OF CERTIFIED APPLIED BEHAVIOR ANALYSIS ASSISTANTS IN THE PROVISION OF ABA SERVICES TO INDIVIDUALS.

2. THE PRACTICE OF "CERTIFIED APPLIED BEHAVIOR ANALYSIS ASSISTANT" MEANS THE SERVICES AND ACTIVITIES PROVIDED BY A PERSON CERTIFIED IN ACCORDANCE WITH THIS ARTICLE WHO WORKS UNDER THE SUPERVISION OF A LICENSED APPLIED BEHAVIOR ANALYST TO PERFORM SUCH PATIENT RELATED APPLIED BEHAVIOR ANALYSIS TASKS AS ARE ASSIGNED BY THE SUPERVISING LICENSED APPLIED BEHAVIOR ANALYST. SUPERVISION OF A CERTIFIED APPLIED BEHAVIOR ANALYSIS ASSISTANT BY A LICENSED APPLIED BEHAVIOR ANALYST SHALL BE IN ACCORDANCE WITH REGULATIONS OF THE COMMISSIONER.

3. THE PRACTICE OF APPLIED BEHAVIOR ANALYSIS SHALL NOT INCLUDE DIAGNOSIS OF A DISORDER OR CONDITION FOR WHICH ABA MAY BE APPROPRIATE, OR PRESCRIBING OR ORDERING ABA FOR A PARTICULAR INDIVIDUAL.

4. ANY INDIVIDUAL WHOSE LICENSE OR AUTHORITY TO PRACTICE DERIVES FROM THE PROVISIONS OF THIS ARTICLE SHALL BE PROHIBITED FROM:

(A) PRESCRIBING OR ADMINISTERING DRUGS AS DEFINED IN THIS CHAPTER OR AS A TREATMENT, THERAPY, OR PROFESSIONAL SERVICE IN THE PRACTICE OF HIS OR HER PROFESSION; OR

(B) USING INVASIVE PROCEDURES AS A TREATMENT, THERAPY, OR PROFESSIONAL SERVICE IN THE PRACTICE OF HIS OR HER PROFESSION. FOR PURPOSES OF THIS SUBDIVISION, "INVASIVE PROCEDURE" MEANS ANY PROCEDURE IN WHICH HUMAN TISSUE IS CUT, ALTERED, OR OTHERWISE INFILTRATED BY MECHANICAL OR OTHER MEANS. INVASIVE PROCEDURE INCLUDES, BUT IS NOT LIMITED TO, SURGERY, LASERS, IONIZING RADIATION, THERAPEUTIC ULTRASOUND, OR ELECTROCONVULSIVE THERAPY.

S 8803. THE PRACTICE OF AND USE OF THE TITLE "LICENSED APPLIED BEHAVIOR ANALYST" OR "CERTIFIED APPLIED BEHAVIOR ANALYSIS ASSISTANT". ONLY A PERSON LICENSED, CERTIFIED OR EXEMPT UNDER THIS ARTICLE SHALL PRACTICE APPLIED BEHAVIOR ANALYSIS. ONLY A PERSON LICENSED OR CERTIFIED UNDER THIS ARTICLE SHALL USE THE TITLES "LICENSED APPLIED BEHAVIOR ANALYST" OR "CERTIFIED APPLIED BEHAVIOR ANALYSIS ASSISTANT" OR ANY OTHER DESIGNATION TENDING TO IMPLY THAT THE PERSON IS LICENSED OR CERTIFIED TO PRACTICE APPLIED BEHAVIOR ANALYSIS.

S 8804. REQUIREMENTS AND PROCEDURES FOR PROFESSIONAL LICENSURE. 1. TO QUALIFY FOR CERTIFICATION AS A CERTIFIED APPLIED BEHAVIOR ANALYSIS ASSISTANT, AN APPLICANT SHALL FULFILL THE FOLLOWING REQUIREMENTS:

(A) APPLICATION: FILE AN APPLICATION WITH THE DEPARTMENT;

(B) EDUCATION: HAVE RECEIVED AN EDUCATION, INCLUDING A BACHELOR'S OR HIGHER DEGREE FROM A PROGRAM REGISTERED BY THE DEPARTMENT OR DETERMINED BY THE DEPARTMENT TO BE THE SUBSTANTIAL EQUIVALENT THEREOF, IN ACCORDANCE WITH THE COMMISSIONER'S REGULATIONS.

(C) EXPERIENCE: HAVE EXPERIENCE IN THE PRACTICE OF APPLIED BEHAVIOR ANALYSIS SATISFACTORY TO THE BOARD AND THE DEPARTMENT IN ACCORDANCE WITH THE COMMISSIONER'S REGULATIONS.

(D) EXAMINATION: PASS AN EXAMINATION ACCEPTABLE TO THE BOARD AND THE DEPARTMENT IN ACCORDANCE WITH THE COMMISSIONER'S REGULATIONS.

(E) AGE: BE AT LEAST TWENTY-ONE YEARS OF AGE;

(F) CHARACTER: BE OF GOOD MORAL CHARACTER AS DETERMINED BY THE DEPARTMENT AND SUBMIT AN ATTESTATION OF MORAL CHARACTER; AND

(G) FEE: PAY A FEE OF ONE HUNDRED FIFTY DOLLARS FOR AN INITIAL LICENSE AND A FEE OF SEVENTY-FIVE DOLLARS FOR EACH TRIENNIAL REGISTRATION PERIOD.

2. TO QUALIFY FOR A LICENSE AS A LICENSED APPLIED BEHAVIOR ANALYST, AN APPLICANT SHALL FULFILL THE FOLLOWING REQUIREMENTS:

(A) APPLICATION: FILE AN APPLICATION WITH THE DEPARTMENT;

(B) EDUCATION: HAVE RECEIVED AN EDUCATION, INCLUDING A MASTER'S OR HIGHER DEGREE FROM A PROGRAM REGISTERED BY THE DEPARTMENT OR DETERMINED BY THE DEPARTMENT TO BE THE SUBSTANTIAL EQUIVALENT, THEREOF, IN ACCORDANCE WITH THE COMMISSIONER'S REGULATIONS.

(C) EXPERIENCE: HAVE EXPERIENCE IN THE PRACTICE OF APPLIED BEHAVIOR ANALYSIS SATISFACTORY TO THE BOARD AND THE DEPARTMENT IN ACCORDANCE WITH THE COMMISSIONER'S REGULATIONS.

(D) EXAMINATION: PASS AN EXAMINATION ACCEPTABLE TO THE BOARD AND THE DEPARTMENT IN ACCORDANCE WITH THE COMMISSIONER'S REGULATIONS.

(E) AGE: BE AT LEAST TWENTY-ONE YEARS OF AGE;

(F) CHARACTER: BE OF GOOD MORAL CHARACTER AS DETERMINED BY THE DEPARTMENT AND SUBMIT AN ATTESTATION OF MORAL CHARACTER; AND

(G) FEE: PAY A FEE OF TWO HUNDRED DOLLARS FOR AN INITIAL LICENSE AND A FEE OF ONE HUNDRED DOLLARS FOR EACH TRIENNIAL REGISTRATION PERIOD.

S 8805. SPECIAL PROVISIONS. AN INDIVIDUAL WHO MEETS THE REQUIREMENTS FOR A LICENSE OR CERTIFICATION AS A LICENSED APPLIED BEHAVIOR ANALYST OR A CERTIFIED APPLIED BEHAVIOR ANALYSIS ASSISTANT, EXCEPT FOR EXAMINATION, EXPERIENCE AND EDUCATION, AND WHO IS CERTIFIED OR REGISTERED BY A NATIONAL CERTIFYING BODY HAVING CERTIFICATION OR REGISTRATION STANDARDS ACCEPTABLE TO THE COMMISSIONER, MAY BE LICENSED OR CERTIFIED, WITHOUT MEETING ADDITIONAL REQUIREMENTS AS TO EXAMINATION, EXPERIENCE AND EDUCATION, PROVIDED THAT SUCH INDIVIDUAL SUBMITS AN APPLICATION TO THE DEPARTMENT WITHIN TWO YEARS OF THE EFFECTIVE DATE OF THIS SECTION.

S 8806. LIMITED PERMITS. THE FOLLOWING REQUIREMENTS FOR A LIMITED PERMIT SHALL APPLY TO ALL PROFESSIONS LICENSED OR CERTIFIED PURSUANT TO THIS ARTICLE:

1. THE DEPARTMENT MAY ISSUE A LIMITED PERMIT TO AN APPLICANT WHO MEETS ALL QUALIFICATIONS FOR LICENSURE, EXCEPT THE EXAMINATION AND/OR EXPERIENCE REQUIREMENTS, IN ACCORDANCE WITH REGULATIONS PROMULGATED THEREFOR.

2. LIMITED PERMITS SHALL BE FOR ONE YEAR; SUCH LIMITED PERMITS MAY BE RENEWED, AT THE DISCRETION OF THE DEPARTMENT, FOR ONE ADDITIONAL YEAR.

3. THE FEE FOR EACH LIMITED PERMIT AND FOR EACH RENEWAL SHALL BE SEVENTY DOLLARS.

4. A LIMITED PERMIT HOLDER SHALL PRACTICE ONLY UNDER SUPERVISION AS DETERMINED IN ACCORDANCE WITH THE COMMISSIONER'S REGULATIONS.

S 8807. EXEMPTIONS. 1. NOTHING CONTAINED IN THIS ARTICLE SHALL BE CONSTRUED TO LIMIT THE SCOPES OF PRACTICE OF ANY OTHER PROFESSION LICENSED UNDER THIS TITLE.

2. NOTHING IN THIS ARTICLE SHALL BE CONSTRUED AS PROHIBITING A PERSON EMPLOYED BY A FEDERAL, STATE, COUNTY OR MUNICIPAL AGENCY, OR OTHER POLITICAL SUBDIVISION, OR A CHARTERED ELEMENTARY OR SECONDARY SCHOOL OR DEGREE-GRANTING INSTITUTION, OR AS A CERTIFIED TEACHER OR TEACHING

ASSISTANT, OTHER THAN A PUPIL PERSONNEL SERVICES PROFESSIONAL, IN AN APPROVED PROGRAM AS DEFINED IN PARAGRAPH B OF SUBDIVISION ONE OF SECTION FORTY-FOUR HUNDRED TEN OF THIS CHAPTER, OR OTHER SETTING TO THE EXTENT THAT THE EXEMPTION IN PARAGRAPH D OF SUBDIVISION SIX OF SECTION FORTY-FOUR HUNDRED TEN OF THIS CHAPTER APPLIES, FROM PERFORMING THE DUTIES OF A LICENSED APPLIED BEHAVIOR ANALYST OR A CERTIFIED APPLIED BEHAVIOR ANALYSIS ASSISTANT, IN THE COURSE OF SUCH EMPLOYMENT.

3. NOTHING IN THE ARTICLE SHALL BE CONSTRUED AS PROHIBITING THE ACTIVITIES AND SERVICES REQUIRED OF A STUDENT, INTERN, OR RESIDENT IN AN EDUCATIONAL PROGRAM ACCEPTABLE TO THE DEPARTMENT PURSUANT TO THE COMMISSIONER'S REGULATIONS, PURSUING A COURSE OF STUDY LEADING TO A BACHELOR OR HIGHER DEGREE IN AN EDUCATIONAL PROGRAM ACCEPTABLE TO THE DEPARTMENT PURSUANT TO THE COMMISSIONER'S REGULATIONS IN AN INSTITUTION APPROVED BY THE DEPARTMENT, PROVIDED THAT SUCH ACTIVITIES AND SERVICES CONSTITUTE A PART OF HIS OR HER SUPERVISED COURSE OF STUDY IN AN EDUCATIONAL PROGRAM ACCEPTABLE TO THE DEPARTMENT PURSUANT TO THE COMMISSIONER'S REGULATIONS. SUCH PERSON SHALL BE DESIGNED BY TITLE WHICH CLEARLY INDICATES HIS OR HER TRAINING STATUS.

S 8808. STATE COMMITTEE FOR APPLIED BEHAVIOR ANALYSIS. 1. A STATE COMMITTEE FOR APPLIED BEHAVIOR ANALYSIS SHALL BE APPOINTED BY THE BOARD OF REGENTS UPON THE RECOMMENDATION OF THE COMMISSIONER AND SHALL ASSIST ON MATTERS OF LICENSURE AND PROFESSIONAL CONDUCT IN ACCORDANCE WITH SECTION SIXTY-FIVE HUNDRED EIGHT OF THIS TITLE. NOTWITHSTANDING THE PROVISIONS OF SECTION SIXTY-FIVE HUNDRED EIGHT OF THIS TITLE, THE COMMITTEE SHALL ASSIST THE BOARD FOR MENTAL HEALTH PRACTITIONERS SOLELY IN APPLIED BEHAVIOR ANALYSIS MATTERS, WHICH BOARD SHALL ALSO SERVE AS THE STATE BOARD FOR APPLIED BEHAVIOR ANALYSIS. MEMBERS OF THE FIRST COMMITTEE PURSUANT TO PARAGRAPH (A) OF SUBDIVISION TWO OF THIS SECTION NEED NOT BE LICENSED PRIOR TO THEIR APPOINTMENT TO THE COMMITTEE.

2. THE COMMITTEE SHALL CONSIST OF FIVE INDIVIDUALS, TO BE COMPOSED OF THE FOLLOWING:

(A) THREE LICENSED APPLIED BEHAVIOR ANALYSTS, OR TWO LICENSED APPLIED BEHAVIOR ANALYSTS AND ONE CERTIFIED APPLIED BEHAVIOR ANALYSIS ASSISTANT;

(B) ONE LICENSED PSYCHOLOGIST, WHO CURRENTLY PRESCRIBES TREATMENT INVOLVING APPLIED BEHAVIOR ANALYSIS IN HIS OR HER PROFESSIONAL PRACTICE;

(C) ONE MENTAL HEALTH PRACTITIONER LICENCED UNDER ARTICLE ONE HUNDRED SIXTY-THREE OF THIS TITLE; AND

(D) A PUBLIC REPRESENTATIVE, AS DEFINED IN PARAGRAPH B OF SUBDIVISION ONE OF SECTION SIXTY-FIVE HUNDRED EIGHT OF THIS TITLE.

S 2. Subparagraph (i) of paragraph a of subdivision 1 of section 6503-a of the education law, as added by chapter 130 of the laws of 2010, is amended to read as follows:

(i) services provided under article one hundred fifty-four [or], one hundred sixty-three OR ONE HUNDRED SIXTY-SEVEN of this title for which licensure would be required, or

S 3. Subdivision 4 of section 7605 of the education law, as amended by chapter 210 of the laws of 2004, is amended to read as follows:

4. The practice, conduct, activities, or services by any person licensed or otherwise authorized to practice nursing as a registered professional nurse or nurse practitioner within the state pursuant to article one hundred thirty-nine of this title or by any person licensed or otherwise authorized to practice social work within the state pursuant to article one hundred fifty-four of this title, or by any person licensed or otherwise authorized to practice mental health counseling, marriage and family therapy, creative arts therapy, or psychoanalysis within the state pursuant to article one hundred sixty-three of this

title, OR ANY PERSON LICENSED OR OTHERWISE AUTHORIZED TO PRACTICE APPLIED BEHAVIOR ANALYSIS WITHIN THE STATE PURSUANT TO ARTICLE ONE HUNDRED SIXTY-SEVEN OF THIS TITLE or any individual who is credentialed under any law, including attorneys, rape crisis counselors, certified alcoholism counselors, and certified substance abuse counselors from providing mental health services within their respective established authorities.

S 4. Subdivision 1 of section 7706 of the education law, as amended by chapter 230 of the laws of 2004, is amended to read as follows:

1. Apply to the practice, conduct, activities, services or use of any title by any person licensed or otherwise authorized to practice medicine within the state pursuant to article one hundred thirty-one of this title or by any person registered to perform services as a physician assistant within the state pursuant to article one hundred thirty-one-B of this title or by any person licensed or otherwise authorized to practice psychology within this state pursuant to article one hundred fifty-three of this title or by any person licensed or otherwise authorized to practice nursing as a registered professional nurse or nurse practitioner within this state pursuant to article one hundred thirty-nine of this title or by any person licensed or otherwise authorized to practice occupational therapy within this state pursuant to article one hundred fifty-six of this title or by any person licensed or otherwise authorized to practice mental health counseling, marriage and family therapy, creative arts therapy, or psychoanalysis within the state pursuant to article one hundred sixty-three of this title OR BY ANY PERSON LICENSED OR OTHERWISE AUTHORIZED TO PRACTICE APPLIED BEHAVIOR ANALYSIS WITHIN THE STATE PURSUANT TO ARTICLE ONE HUNDRED SIXTY-SEVEN OF THIS TITLE; provided, however, that no physician, physician assistant, registered professional nurse, nurse practitioner, psychologist, occupational therapist, licensed mental health counselor, licensed marriage and family therapist, licensed creative arts therapist, [or] licensed psychoanalyst, LICENSED APPLIED BEHAVIOR ANALYST OR CERTIFIED APPLIED BEHAVIOR ANALYSIS ASSISTANT may use the titles "licensed clinical social worker" or "licensed master social worker", unless licensed under this article.

S 5. Subdivision 1 of section 8410 of the education law, as amended by chapter 210 of the laws of 2004, is amended to read as follows:

1. Apply to the practice, conduct, activities, services or use of any title by any person licensed or otherwise authorized to practice medicine within the state pursuant to article one hundred thirty-one of this title or by any person registered to perform services as a physician assistant within the state pursuant to article one hundred thirty-one-B of this title or by any person licensed or otherwise authorized to practice psychology within this state pursuant to article one hundred fifty-three of this title or by any person licensed or otherwise authorized to practice social work within this state pursuant to article one hundred fifty-four of this title, or by any person licensed or otherwise authorized to practice nursing as a registered professional nurse or nurse practitioner within this state pursuant to article one hundred thirty-nine of this title OR BY ANY PERSON LICENSED OR OTHERWISE AUTHORIZED TO PRACTICE APPLIED BEHAVIOR ANALYSIS WITHIN THE STATE PURSUANT TO ARTICLE ONE HUNDRED SIXTY-SEVEN OF THIS TITLE; provided, however, that no physician, physician's assistant, registered professional nurse, nurse practitioner, psychologist, licensed master social worker, [or] licensed clinical social worker, LICENSED APPLIED BEHAVIOR ANALYST OR CERTIFIED APPLIED BEHAVIOR ANALYSIS ASSISTANT may use the titles

"licensed mental health counselor", "licensed marriage and family therapist", "licensed creative arts therapist", or "licensed psychoanalyst", unless licensed under this article.

S 6. If any section of article 167 of the education law, as added by section one of this act, or part thereof, shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of any other section or part thereof.

S 7. This act shall take effect July 1, 2014, provided, however, that section 8805 of the education law as added by section one of this act shall take effect immediately; and provided further that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date.