

LEGISLATURE OF NEBRASKA  
ONE HUNDRED EIGHTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 123**

Introduced by Fredrickson, 20.

Read first time January 06, 2023

Committee: Health and Human Services

1 A BILL FOR AN ACT relating to public health and welfare; to amend  
2 sections 38-101, 38-121, 38-129.02, 38-131, 38-167, and 38-186,  
3 Revised Statutes Cumulative Supplement, 2022; to adopt the Behavior  
4 Analyst Practice Act; to harmonize provisions; and to repeal the  
5 original sections.  
6 Be it enacted by the people of the State of Nebraska,

1           Section 1. Sections 1 to 14 of this act shall be known and may be  
2 cited as the Behavior Analyst Practice Act.

3           Sec. 2. For purposes of the Behavior Analyst Practice Act, the  
4 definitions found in sections 3 to 8 apply.

5           Sec. 3. Assistant behavior analyst means an individual who is  
6 approved by the certifying entity as a board-certified assistant behavior  
7 analyst and practices under the close, ongoing supervision of a licensed  
8 behavior analyst.

9           Sec. 4. Behavior technician means a paraprofessional who practices  
10 under the close, ongoing supervision of a licensed behavior analyst.

11           Sec. 5. Board means the Board of Behavior Analysts.

12           Sec. 6. Certifying entity means the Behavior Analyst Certification  
13 Board or another entity designated by the Board of Behavior Analysts  
14 which has programs to credential practitioners of applied behavior  
15 analysis that are accredited by the National Commission on Certifying  
16 Agencies or the American National Standards Institute as determined by  
17 the Board of Behavior Analysts.

18           Sec. 7. Licensed behavior analyst means an individual who meets the  
19 requirements specified in section 10 of this act and who is issued a  
20 license under the Behavior Analyst Practice Act by the department.

21           Sec. 8. (1) Practice of applied behavior analysis means the design,  
22 implementation, and evaluation of instructional and environmental  
23 modifications to produce socially significant improvements in human  
24 behavior.

25           (2) The practice of applied behavior analysis includes the empirical  
26 identification of functional relations between behavior and environmental  
27 factors, known as functional assessment and analysis.

28           (3) Applied behavior analysis interventions (a) are based on  
29 scientific research and direct and indirect observation and measurement  
30 of behavior and environment and (b) utilize contextual factors,  
31 motivating operations, antecedent stimuli, positive reinforcement, and

1 other procedures to help individuals develop new behaviors, increase or  
2 decrease existing behaviors, and emit behaviors under specific  
3 environmental conditions.

4 (4) The practice of applied behavior analysis excludes diagnosis of  
5 disorders, psychological testing, psychotherapy, cognitive therapy,  
6 psychoanalysis, and counseling.

7 Sec. 9. The Behavior Analysis Practice Act shall not be construed  
8 as prohibiting the practice of any of the following:

9 (1) A licensed psychologist in the State of Nebraska and any person  
10 who delivers psychological services under the supervision of a licensed  
11 psychologist, if the applied behavior analysis services are provided  
12 within the scope of the licensed psychologist's education, training, and  
13 competence and the licensed psychologist does not represent that the  
14 psychologist is a licensed behavior analyst unless the psychologist is  
15 licensed as a behavior analyst under the act;

16 (2) An individual licensed to practice any other profession in the  
17 State of Nebraska and any person who delivers services under the  
18 supervision of the licensed professional, if (a) applied behavior  
19 analysis is stated in the Uniform Credentialing Act as being in the scope  
20 of practice of the profession, (b) the applied behavior analysis services  
21 provided are within the scope of the licensed professional's education,  
22 training, and competence, and (c) the licensed professional does not  
23 represent that the professional is a licensed behavior analyst unless the  
24 professional is licensed as a behavior analyst under the act;

25 (3) A board-certified assistant behavior analyst practicing under  
26 the extended authority and direction of a licensed behavior analyst who  
27 is approved by the certifying entity to supervise board-certified  
28 assistant behavior analysts;

29 (4) A behavior technician who delivers applied behavior analysis  
30 services under the extended authority and direction of a licensed  
31 behavior analyst or a board-certified assistant behavior analyst;

1       (5) A caregiver of a recipient of applied behavior analysis services  
2 who delivers those services to the recipient under the extended authority  
3 and direction of a licensed behavior analyst. A caregiver shall not  
4 represent that the caregiver is a professional behavior analyst;

5       (6) A behavior analyst who practices with animals, including applied  
6 animal behaviorists and animal trainers. Such a behavior analyst may use  
7 the title "behavior analyst" but may not represent that the behavior  
8 analyst is a licensed behavior analyst unless the behavior analyst is  
9 licensed under the act;

10       (7) A professional who provides general applied behavior analysis  
11 services to organizations, so long as those services are for the benefit  
12 of the organizations and do not involve direct services to individuals.  
13 Such a professional may use the title "behavior analyst" but may not  
14 represent that the professional is a licensed behavior analyst unless the  
15 professional is licensed under the act;

16       (8) A matriculated college or university student or postdoctoral  
17 fellow whose applied behavior analysis activity is part of a defined  
18 program of study, course, practicum, internship, or fellowship and is  
19 directly supervised by a licensed behavior analyst licensed in Nebraska  
20 or a qualified faculty member of a college or university offering a  
21 program of study, course, practicum, internship or fellowship in applied  
22 behavior analysis. Such student or fellow shall not represent that the  
23 student or fellow is a professional behavior analyst and shall use a  
24 title that clearly indicates the trainee status, such as "student,"  
25 "intern," or "trainee;"

26       (9) An unlicensed individual pursuing experience in applied behavior  
27 analysis consistent with the experience requirements of the certifying  
28 entity, if such experience is supervised in accordance with the  
29 requirements of the certifying entity;

30       (10) An individual who teaches behavior analysis or conducts  
31 behavior-analytic research, if such activities do not involve the direct

1 delivery of applied behavior analysis services beyond the typical  
2 parameters of applied research. Such an individual may use the title  
3 "behavior analyst" but shall not represent that the individual is a  
4 licensed behavior analyst unless the individual is licensed under the  
5 act; and

6 (11) An individual employed by a school district performing the  
7 duties for which employed. Such an individual shall not represent that  
8 the individual is a licensed behavior analyst unless the individual is  
9 licensed under the act, shall not offer applied behavior analysis  
10 services to any person or entity other than the school which employs the  
11 individual, and shall not accept remuneration for providing applied  
12 behavior analysis services other than the remuneration received for the  
13 duties for which employed by the school employer.

14 Sec. 10. (1) Beginning one year after the effective date of this  
15 act, each applicant for licensure as a licensed behavior analyst shall  
16 submit an application that includes evidence that the applicant meets the  
17 requirements of the Uniform Credentialing Act for a license as a behavior  
18 analyst.

19 (2) The board shall adopt rules and regulations to specify minimum  
20 standards required for a license as a behavior analyst as provided in  
21 section 38-126. The board may include certification by the certifying  
22 entity as a board-certified behavior analyst or a board-certified  
23 behavior analyst-doctoral as part of the minimum standards.

24 Sec. 11. (1) A behavior analyst who is licensed in another  
25 jurisdiction or certified by the certifying entity to practice  
26 independently and who provides applied behavior analysis services in the  
27 State of Nebraska on a short-term basis may apply for a temporary  
28 license. An applicant for a temporary license shall submit evidence that  
29 the practice in Nebraska will be temporary as determined by the board  
30 according to rules and regulations adopted and promulgated pursuant to  
31 section 38-126. The department shall issue a temporary license under this

1 subsection only if the department verifies the applicant's licensure or  
2 certification status with the relevant entity.

3 (2) An applicant for licensure under the Behavior Analyst Practice  
4 Act who is a military spouse may apply for a temporary license as  
5 provided in section 38-129.01.

6 Sec. 12. A behavior technician shall not represent that the  
7 technician is a professional behavior analyst and shall use a title that  
8 indicates the nonprofessional status, such as ABA technician, behavior  
9 technician, or tutor.

10 A behavior technician shall not design assessment or intervention  
11 plans or procedures but may deliver services as assigned by the  
12 supervisor responsible for the technician's work as designated by the  
13 licensed behavior analyst.

14 Sec. 13. The board shall adopt a code of conduct. The code of  
15 conduct shall be based on the Ethics Code for Behavior Analysts adopted  
16 by the certifying entity.

17 Sec. 14. The department shall establish and collect fees for  
18 initial licensure and renewal under the Behavior Analyst Practice Act as  
19 provided in sections 38-151 to 38-157.

20 Sec. 15. Section 38-101, Revised Statutes Cumulative Supplement,  
21 2022, is amended to read:

22 38-101 Sections 38-101 to 38-1,147 and the following practice acts  
23 shall be known and may be cited as the Uniform Credentialing Act:

24 (1) The Advanced Practice Registered Nurse Practice Act;

25 (2) The Alcohol and Drug Counseling Practice Act;

26 (3) The Athletic Training Practice Act;

27 (4) The Audiology and Speech-Language Pathology Practice Act;

28 (5) The Behavior Analyst Practice Act;

29 (6) ~~(5)~~ The Certified Nurse Midwifery Practice Act;

30 (7) ~~(6)~~ The Certified Registered Nurse Anesthetist Practice Act;

31 (8) ~~(7)~~ The Chiropractic Practice Act;

- 1           ~~(9)~~ ~~(8)~~ The Clinical Nurse Specialist Practice Act;
- 2           ~~(10)~~ ~~(9)~~ The Cosmetology, Electrology, Esthetics, Nail Technology,
- 3 and Body Art Practice Act;
- 4           ~~(11)~~ ~~(10)~~ The Dentistry Practice Act;
- 5           ~~(12)~~ ~~(11)~~ The Dialysis Patient Care Technician Registration Act;
- 6           ~~(13)~~ ~~(12)~~ The Emergency Medical Services Practice Act;
- 7           ~~(14)~~ ~~(13)~~ The Environmental Health Specialists Practice Act;
- 8           ~~(15)~~ ~~(14)~~ The Funeral Directing and Embalming Practice Act;
- 9           ~~(16)~~ ~~(15)~~ The Genetic Counseling Practice Act;
- 10          ~~(17)~~ ~~(16)~~ The Hearing Instrument Specialists Practice Act;
- 11          ~~(18)~~ ~~(17)~~ The Licensed Practical Nurse-Certified Practice Act until
- 12 November 1, 2017;
- 13          ~~(19)~~ ~~(18)~~ The Massage Therapy Practice Act;
- 14          ~~(20)~~ ~~(19)~~ The Medical Nutrition Therapy Practice Act;
- 15          ~~(21)~~ ~~(20)~~ The Medical Radiography Practice Act;
- 16          ~~(22)~~ ~~(21)~~ The Medicine and Surgery Practice Act;
- 17          ~~(23)~~ ~~(22)~~ The Mental Health Practice Act;
- 18          ~~(24)~~ ~~(23)~~ The Nurse Practice Act;
- 19          ~~(25)~~ ~~(24)~~ The Nurse Practitioner Practice Act;
- 20          ~~(26)~~ ~~(25)~~ The Nursing Home Administrator Practice Act;
- 21          ~~(27)~~ ~~(26)~~ The Occupational Therapy Practice Act;
- 22          ~~(28)~~ ~~(27)~~ The Optometry Practice Act;
- 23          ~~(29)~~ ~~(28)~~ The Perfusion Practice Act;
- 24          ~~(30)~~ ~~(29)~~ The Pharmacy Practice Act;
- 25          ~~(31)~~ ~~(30)~~ The Physical Therapy Practice Act;
- 26          ~~(32)~~ ~~(31)~~ The Podiatry Practice Act;
- 27          ~~(33)~~ ~~(32)~~ The Psychology Practice Act;
- 28          ~~(34)~~ ~~(33)~~ The Respiratory Care Practice Act;
- 29          ~~(35)~~ ~~(34)~~ The Surgical First Assistant Practice Act; and
- 30          ~~(36)~~ ~~(35)~~ The Veterinary Medicine and Surgery Practice Act.
- 31          If there is any conflict between any provision of sections 38-101 to

1 38-1,147 and any provision of a practice act, the provision of the  
2 practice act shall prevail except as otherwise specifically provided in  
3 section 38-129.02.

4 Sec. 16. Section 38-121, Revised Statutes Cumulative Supplement,  
5 2022, is amended to read:

6 38-121 (1) No individual shall engage in the following practices  
7 unless such individual has obtained a credential under the Uniform  
8 Credentialing Act:

9 (a) Acupuncture;

10 (b) Advanced practice nursing;

11 (c) Alcohol and drug counseling;

12 (d) Asbestos abatement, inspection, project design, and training;

13 (e) Athletic training;

14 (f) Audiology;

15 (g) Speech-language pathology;

16 (h) Beginning one year after the effective date of this act,  
17 behavior analysis;

18 (i) ~~(h)~~ Body art;

19 (j) ~~(i)~~ Chiropractic;

20 (k) ~~(j)~~ Cosmetology;

21 (l) ~~(k)~~ Dentistry;

22 (m) ~~(l)~~ Dental hygiene;

23 (n) ~~(m)~~ Electrology;

24 (o) ~~(n)~~ Emergency medical services;

25 (p) ~~(o)~~ Esthetics;

26 (q) ~~(p)~~ Funeral directing and embalming;

27 (r) ~~(q)~~ Genetic counseling;

28 (s) ~~(r)~~ Hearing instrument dispensing and fitting;

29 (t) ~~(s)~~ Lead-based paint abatement, inspection, project design, and  
30 training;

31 (u) ~~(t)~~ Licensed practical nurse-certified until November 1, 2017;

- 1            (v) ~~(u)~~ Massage therapy;
- 2            (w) ~~(v)~~ Medical nutrition therapy;
- 3            (x) ~~(w)~~ Medical radiography;
- 4            (y) ~~(x)~~ Medicine and surgery;
- 5            (z) ~~(y)~~ Mental health practice;
- 6            (aa) ~~(z)~~ Nail technology;
- 7            (bb) ~~(aa)~~ Nursing;
- 8            (cc) ~~(bb)~~ Nursing home administration;
- 9            (dd) ~~(cc)~~ Occupational therapy;
- 10           (ee) ~~(dd)~~ Optometry;
- 11           (ff) ~~(ee)~~ Osteopathy;
- 12           (gg) ~~(ff)~~ Perfusion;
- 13           (hh) ~~(gg)~~ Pharmacy;
- 14           (ii) ~~(hh)~~ Physical therapy;
- 15           (jj) ~~(ii)~~ Podiatry;
- 16           (kk) ~~(jj)~~ Psychology;
- 17           (ll) ~~(kk)~~ Radon detection, measurement, and mitigation;
- 18           (mm) ~~(ll)~~ Respiratory care;
- 19           (nn) ~~(mm)~~ Surgical assisting; and
- 20           (oo) ~~(nn)~~ Veterinary medicine and surgery.

21           (2) No individual shall hold himself or herself out as any of the  
22 following until such individual has obtained a credential under the  
23 Uniform Credentialing Act for that purpose:

- 24           (a) Registered environmental health specialist;
- 25           (b) Certified marriage and family therapist;
- 26           (c) Certified professional counselor;
- 27           (d) Social worker; or
- 28           (e) Dialysis patient care technician.

29           (3) No business shall operate for the provision of any of the  
30 following services unless such business has obtained a credential under  
31 the Uniform Credentialing Act:

- 1 (a) Body art;
- 2 (b) Cosmetology;
- 3 (c) Emergency medical services;
- 4 (d) Esthetics;
- 5 (e) Funeral directing and embalming;
- 6 (f) Massage therapy; or
- 7 (g) Nail technology.

8 Sec. 17. Section 38-129.02, Revised Statutes Cumulative Supplement,  
9 2022, is amended to read:

10 38-129.02 (1) This section provides an additional method of issuing  
11 a credential based on reciprocity and is supplemental to the methods of  
12 credentialing found in the various practice acts within the Uniform  
13 Credentialing Act. Any person required to be credentialed under any of  
14 the various practice acts who meets the requirements of this section  
15 shall be issued a credential subject to the provisions of this section.

16 (2) A person who has a credential that is current and valid in  
17 another state, a territory of the United States, or the District of  
18 Columbia may apply to the department for the equivalent credential under  
19 the Uniform Credentialing Act. The department, with the recommendation of  
20 the board with jurisdiction over the equivalent credential, shall  
21 determine the appropriate level of credential for which the applicant  
22 qualifies under this section. The department shall determine the  
23 documentation required to comply with subsection (3) of this section. The  
24 department shall issue the credential if the applicant meets the  
25 requirements of subsections (3) and (4) of this section and section  
26 38-129 and submits the appropriate fees for issuance of the credential,  
27 including fees for a criminal background check if required for the  
28 profession. A credential issued under this section shall not be valid for  
29 purposes of an interstate compact or for reciprocity provisions of any  
30 practice act under the Uniform Credentialing Act.

31 (3) The applicant shall provide documentation of the following:

1 (a) The credential held in the other state, territory, or District  
2 of Columbia, the level of such credential, and the profession for which  
3 credentialed;

4 (b) Such credential is valid and current and has been valid for at  
5 least one year;

6 (c) Educational requirements;

7 (d) The minimum work experience and clinical supervision  
8 requirements, if any, required for such credential and verification of  
9 the applicant's completion of such requirements;

10 (e) The passage of an examination for such credential if such  
11 passage is required to obtain the credential in the other jurisdiction;

12 (f) Such credential is not and has not been subject to revocation or  
13 any other disciplinary action or voluntarily surrendered while the  
14 applicant was under investigation for unprofessional conduct or any other  
15 conduct which would be subject to section 38-178 if the conduct occurred  
16 in Nebraska;

17 (g) Such credential has not been subject to disciplinary action. If  
18 another jurisdiction has taken disciplinary action against the applicant  
19 on any credential the applicant has held, the appropriate board under the  
20 Uniform Credentialing Act shall determine if the cause for the  
21 disciplinary action was corrected and the matter resolved. If the matter  
22 has not been resolved, the applicant is not eligible for a credential  
23 under this section until the matter is resolved; and

24 (h) Receipt of a passing score on a credentialing examination  
25 specific to the laws of Nebraska if required by the appropriate board  
26 under the Uniform Credentialing Act.

27 (4) An applicant who obtains a credential upon compliance with  
28 subsections (2) and (3) of this section shall establish residency in  
29 Nebraska within one hundred eighty days after the issuance of the  
30 credential and shall provide proof of residency in a manner and within  
31 the time period required by the department. The department shall

1 automatically revoke the credential of any credential holder who fails to  
2 comply with this subsection.

3 (5) In addition to failure to submit the required documentation in  
4 subsection (3) of this section, an applicant shall not be eligible for a  
5 credential under this section if:

6 (a) The applicant had a credential revoked, subject to any other  
7 disciplinary action, or voluntarily surrendered due to an investigation  
8 in any jurisdiction for unprofessional conduct or any other conduct which  
9 would be subject to section 38-178 if the conduct occurred in Nebraska;

10 (b) The applicant has a complaint, allegation, or investigation  
11 pending before any jurisdiction that relates to unprofessional conduct or  
12 any other conduct which would be subject to section 38-178 if the conduct  
13 occurred in Nebraska. If the matter has not been resolved, the applicant  
14 is not eligible for a credential under this section until the matter is  
15 resolved; or

16 (c) The person has a disqualifying criminal history as determined by  
17 the appropriate board pursuant to the Uniform Credentialing Act and rules  
18 and regulations adopted and promulgated under the act.

19 (6) A person who holds a credential under this section shall be  
20 subject to the Uniform Credentialing Act and other laws of this state  
21 relating to the person's practice under the credential and shall be  
22 subject to the jurisdiction of the appropriate board.

23 (7) This section applies to credentials for:

24 (a) Professions governed by the Advanced Practice Registered Nurse  
25 Practice Act, the Behavior Analysis Practice Act, the Certified Nurse  
26 Midwifery Practice Act, the Certified Registered Nurse Anesthetist  
27 Practice Act, the Clinical Nurse Specialist Practice Act, the Dentistry  
28 Practice Act, the Dialysis Patient Care Technician Registration Act, the  
29 Emergency Medical Services Practice Act, the Medical Nutrition Therapy  
30 Practice Act, the Medical Radiography Practice Act, the Nurse  
31 Practitioner Practice Act, the Optometry Practice Act, the Perfusion

1 Practice Act, the Pharmacy Practice Act, the Psychology Practice Act, and  
2 the Surgical First Assistant Practice Act; and

3 (b) Physician assistants and acupuncturists credentialed pursuant to  
4 the Medicine and Surgery Practice Act.

5 Sec. 18. Section 38-131, Revised Statutes Cumulative Supplement,  
6 2022, is amended to read:

7 38-131 (1) An applicant for an initial license to practice as a  
8 registered nurse, a licensed practical nurse, a physical therapist, a  
9 physical therapy assistant, a psychologist, an advanced emergency medical  
10 technician, an emergency medical technician, an audiologist, a speech-  
11 language pathologist, a licensed behavior analyst, a licensed independent  
12 mental health practitioner, an occupational therapist, an occupational  
13 therapy assistant, or a paramedic or to practice a profession which is  
14 authorized to prescribe controlled substances shall be subject to a  
15 criminal background check. A criminal background check may also be  
16 required for initial licensure or reinstatement of a license governed by  
17 the Uniform Credentialing Act if a criminal background check is required  
18 by an interstate licensure compact. Except as provided in subsection (3)  
19 of this section, the applicant shall submit with the application a full  
20 set of fingerprints which shall be forwarded to the Nebraska State Patrol  
21 to be submitted to the Federal Bureau of Investigation for a national  
22 criminal history record information check. The applicant shall authorize  
23 release of the results of the national criminal history record  
24 information check to the department. The applicant shall pay the actual  
25 cost of the fingerprinting and criminal background check.

26 (2) This section shall not apply to a dentist who is an applicant  
27 for a dental locum tenens under section 38-1122, to a physician or  
28 osteopathic physician who is an applicant for a physician locum tenens  
29 under section 38-2036, or to a veterinarian who is an applicant for a  
30 veterinarian locum tenens under section 38-3335.

31 (3) An applicant for a temporary educational permit as defined in

1 section 38-2019 shall have ninety days from the issuance of the permit to  
2 comply with subsection (1) of this section and shall have his or her  
3 permit suspended after such ninety-day period if the criminal background  
4 check is not complete or revoked if the criminal background check reveals  
5 that the applicant was not qualified for the permit.

6 Sec. 19. Section 38-167, Revised Statutes Cumulative Supplement,  
7 2022, is amended to read:

8 38-167 (1) Boards shall be designated as follows:

- 9 (a) Board of Advanced Practice Registered Nurses;
- 10 (b) Board of Alcohol and Drug Counseling;
- 11 (c) Board of Athletic Training;
- 12 (d) Board of Audiology and Speech-Language Pathology;
- 13 (e) Board of Behavior Analysts;
- 14 (f) (e) Board of Chiropractic;
- 15 (g) (f) Board of Cosmetology, Electrology, Esthetics, Nail  
16 Technology, and Body Art;
- 17 (h) (g) Board of Dentistry;
- 18 (i) (h) Board of Emergency Medical Services;
- 19 (j) (i) Board of Registered Environmental Health Specialists;
- 20 (k) (j) Board of Funeral Directing and Embalming;
- 21 (l) (k) Board of Hearing Instrument Specialists;
- 22 (m) (l) Board of Massage Therapy;
- 23 (n) (m) Board of Medical Nutrition Therapy;
- 24 (o) (n) Board of Medical Radiography;
- 25 (p) (o) Board of Medicine and Surgery;
- 26 (q) (p) Board of Mental Health Practice;
- 27 (r) (q) Board of Nursing;
- 28 (s) (r) Board of Nursing Home Administration;
- 29 (t) (s) Board of Occupational Therapy Practice;
- 30 (u) (t) Board of Optometry;
- 31 (v) (u) Board of Pharmacy;

- 1            (w) ~~(v)~~ Board of Physical Therapy;
- 2            (x) ~~(w)~~ Board of Podiatry;
- 3            (y) ~~(x)~~ Board of Psychology;
- 4            (z) ~~(y)~~ Board of Respiratory Care Practice; and
- 5            (aa) ~~(z)~~ Board of Veterinary Medicine and Surgery.

6            (2) Any change made by the Legislature of the names of boards listed  
7 in this section shall not change the membership of such boards or affect  
8 the validity of any action taken by or the status of any action pending  
9 before any of such boards. Any such board newly named by the Legislature  
10 shall be the direct and only successor to the board as previously named.

11            Sec. 20. Section 38-186, Revised Statutes Cumulative Supplement,  
12 2022, is amended to read:

13            38-186 (1) A petition shall be filed by the Attorney General in  
14 order for the director to discipline a credential obtained under the  
15 Uniform Credentialing Act to:

16            (a) Practice or represent oneself as being certified under any of  
17 the practice acts enumerated in section 38-101 other than subdivision  
18 (21) ~~subdivisions (1) through (19) and (21) through (35)~~ of section  
19 38-101; or

20            (b) Operate as a business for the provision of services in body art;  
21 cosmetology; emergency medical services; esthetics; funeral directing and  
22 embalming; massage therapy; and nail technology in accordance with  
23 subsection (3) of section 38-121.

24            (2) The petition shall be filed in the office of the director. The  
25 department may withhold a petition for discipline or a final decision  
26 from public access for a period of five days from the date of filing the  
27 petition or the date the decision is entered or until service is made,  
28 whichever is earliest.

29            (3) The proceeding shall be summary in its nature and triable as an  
30 equity action and shall be heard by the director or by a hearing officer  
31 designated by the director under rules and regulations of the department.

1 Affidavits may be received in evidence in the discretion of the director  
2 or hearing officer. The department shall have the power to administer  
3 oaths, to subpoena witnesses and compel their attendance, and to issue  
4 subpoenas duces tecum and require the production of books, accounts, and  
5 documents in the same manner and to the same extent as the district  
6 courts of the state. Depositions may be used by either party.

7       Sec. 21.   Original sections 38-101, 38-121, 38-129.02, 38-131,  
8 38-167, and 38-186, Revised Statutes Cumulative Supplement, 2022, are  
9 repealed.