



GOV. MSG. NO. 1300

EXECUTIVE CHAMBERS  
HONOLULU

DAVID Y. IGE  
GOVERNOR

July 2, 2015

The Honorable Ronald D. Kouchi,  
President  
and Members of the Senate  
Twenty-Eighth State Legislature  
State Capitol, Room 409  
Honolulu, Hawai'i 96813

The Honorable Joseph M. Souki,  
Speaker and Members of the  
House of Representatives  
Twenty-Eighth State Legislature  
State Capitol, Room 431  
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Souki, and Members of the Legislature:

This is to inform you that on July 2, 2015, the following bill was signed into law:

SB40 SD3 HD2 CD1

RELATING TO LICENSING  
**ACT 199 (15)**

Sincerely,

A handwritten signature in black ink that reads "David Y. Ige".

DAVID Y. IGE  
Governor, State of Hawai'i

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SENATE  
OFFICE OF THE PRESIDENT

'15 JUL -2 P3:51

RECEIVED  
THE SENATE  
CLERK'S OFFICE  
STATE OF HAWAII

'15 JUL -2 P4:22

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# A BILL FOR AN ACT

RELATING TO LICENSING.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1 SECTION 1. The legislature finds that the practice of  
2 behavior analysis in Hawaii affects the public's health, safety,  
3 and welfare. The legislature further finds that behavior  
4 analysts and the practice of behavior analysis should be subject  
5 to regulation and control to protect the public from the  
6 unqualified practice of behavior analysis and from  
7 unprofessional conduct by persons licensed to practice behavior  
8 analysis.

9 The legislature additionally finds that certain measures  
10 introduced during the regular session of 2015 provide mandated  
11 insurance coverage for the diagnosis and treatment of autism.  
12 If such legislation is ultimately enacted, it is critical that  
13 behavior analysts, who engage in the practice of behavior  
14 analysis with individuals with autism, be fully licensed.  
15 Furthermore, health insurance plans in Hawaii will not provide  
16 reimbursement for services provided by behavior analysts unless  
17 those individuals are licensed in the State.



1           The legislature notes that it is imperative that the  
2   licensing of behavior analysts begin concurrently with any  
3   mandated insurance coverage for the diagnosis and treatment of  
4   autism. Thus, in light of the unique and proven need to  
5   establish a licensing program for behavior analysts in the State  
6   concurrently with mandated insurance coverage for diagnosis and  
7   treatment related to autism disorders, the legislature further  
8   finds that it is in the best interest of the State to exempt  
9   licensing of the behavior analyst profession from Hawaii's  
10   sunrise analysis requirements.

11           Accordingly, the purpose of this Act is to address the  
12   urgent need for a licensing process for behavior analysts by  
13   establishing the behavior analyst program within the department  
14   of commerce and consumer affairs and establishing licensing  
15   requirements for the practice of behavior analysis by behavior  
16   analysts.

17           SECTION 2. The Hawaii Revised Statutes is amended by  
18   adding a new chapter to be appropriately designated and to read  
19   as follows:



1 "CHAPTER

2 BEHAVIOR ANALYSTS

3 § -1 Findings and declaration of necessity. It is the  
4 intent of the legislature to establish standards for the  
5 licensing of behavior analysts to address the present and  
6 critical need for ensuring that those in the community requiring  
7 diagnosis and treatment for autism receive the care needed along  
8 with other healthcare needs. The special state interest for  
9 creating this chapter is recognized, notwithstanding the  
10 requirements of section 26H-6.

11 § -2 Definitions. For the purposes of this chapter:

12 "Applied behavior analysis" means interventions that are  
13 based on scientific research and the direct observation and  
14 measurement of behavior and the environment.

15 "Behavior Analyst Certification Board" means the  
16 international accredited Behavior Analyst Certification Board or  
17 its successor.

18 "Department" means the department of commerce and consumer  
19 affairs.

20 "Director" means the director of commerce and consumer  
21 affairs.



1 "Licensed behavior analyst" means a person:

2 (1) Who engages in the practice of behavior analysis and  
3 uses the title of licensed behavior analyst;

4 (2) Who has been issued a license under this chapter; and

5 (3) Whose license is in effect and not revoked, suspended,  
6 or encumbered.

7 "Practice of behavior analysis" means the design,  
8 implementation, and evaluation of instructional and  
9 environmental modifications to produce socially significant  
10 improvements in human behavior. Practice of behavior analysis  
11 includes the empirical identification of functional relations  
12 between behavior and environmental factors, known as functional  
13 assessment and analysis. Practice of behavior analysis also  
14 includes the use of contextual factors, motivating operations,  
15 antecedent stimuli, positive reinforcement, and other  
16 consequences to help people develop new behaviors, increase or  
17 decrease existing behaviors, and emit behaviors under specific  
18 environmental conditions. Practice of behavior analysis  
19 expressly excludes psychological testing, diagnosis of a mental  
20 or physical disorder, neuropsychology, psychotherapy, cognitive



1 therapy, sex therapy, psychoanalysis, hypnotherapy, and long-  
2 term counseling as treatment modalities.

3 **§ -3 Behavior analyst program; established; personnel.**

4 (a) Notwithstanding any other law, there is established a  
5 behavior analyst program within the department to be  
6 administered by the director.

7 (b) The department may employ necessary personnel without  
8 regard to chapter 76 to assist with the implementation and  
9 continuing functions of this chapter.

10 **§ -4 License required.** (a) Beginning on January 1,  
11 2016, except as specifically provided in this chapter, no person  
12 shall engage in the practice of behavior analysis or use the  
13 title "licensed behavior analyst" or "behavior analyst" without  
14 a valid license issued pursuant to this chapter.

15 (b) Any person who violates this section shall be subject  
16 to a fine of not more than \$1,000 for each separate offense.  
17 Each day of each violation shall constitute a separate offense.

18 **§ -5 Powers and duties of the director.** In addition to  
19 any other powers and duties authorized by law, the director  
20 shall have the powers and duties to:



- 1 (1) Grant, deny, renew, refuse to renew, restore,  
2 terminate, reinstate, condition, restrict, suspend, or  
3 revoke a license issued pursuant to this chapter;
- 4 (2) Grant permission to a person to engage in the practice  
5 of behavior analysis and to use the title of "licensed  
6 behavior analyst" or a description indicating that the  
7 person is a licensed behavior analyst in this State;
- 8 (3) Adopt, amend, or repeal rules pursuant to chapter 91  
9 as the director finds necessary to carry out this  
10 chapter;
- 11 (4) Administer, coordinate, and enforce this chapter;
- 12 (5) Discipline a licensed behavior analyst on grounds  
13 specified by this chapter or chapter 436B or for any  
14 violation of rules adopted by the director pursuant to  
15 this chapter; and
- 16 (6) Refuse to license a person for failure to meet the  
17 licensing requirements in this chapter or for any  
18 reason specified by this chapter as grounds to  
19 discipline a behavior analyst including but not  
20 limited to violations of the Behavior Analyst





1 Certification Board's ethical guidelines for  
2 responsible conduct.

3 § -6 Fees; disposition. (a) Upon issuance of a new  
4 license and at each license renewal period, each behavior  
5 analyst shall pay, in addition to a license fee or renewal fee,  
6 a surcharge of \$100, which shall be maintained in a separate  
7 account within the compliance resolution fund established  
8 pursuant to section 26-9(o). At the end of each quarter, the  
9 moneys contained in the separate account established pursuant to  
10 this section shall be transferred to the compliance resolution  
11 fund until such time that the total transferred amounts equal  
12 the amount appropriated in section 5 of Act , Session Laws of  
13 Hawaii 2015. Thereafter, no surcharge shall be assessed, and  
14 any funds in excess of the amount appropriated in section 5 of  
15 Act , Session Laws of Hawaii 2015, shall be deposited into  
16 the compliance resolution fund.

17 (b) Application fees paid pursuant to this chapter shall  
18 not be refundable. Pursuant to section 26-9(1), the director  
19 shall establish examination, reexamination, license, renewal,  
20 restoration, enforcement, and other fees relating to the  
21 administration of this chapter by rule.



1 (c) Fees assessed pursuant to this chapter shall be used  
2 to defray costs incurred by the department in implementing this  
3 chapter.

4 § -7 Exemptions. (a) This chapter is not intended to  
5 restrict the practice of other licensed or credentialed  
6 healthcare practitioners practicing within their own recognized  
7 scopes of practice and shall not apply to:

8 (1) An individual working within the scope of practice or  
9 duties of another licensed profession that overlaps  
10 with the practice of behavior analysis; provided that  
11 the person does not purport to be a behavior analyst;

12 (2) An individual who implements or designs applied  
13 behavior analysis services and possesses board  
14 certification as an assistant behavior analyst by the  
15 Behavior Analyst Certification Board and who practices  
16 in accordance with the most recent supervisory and  
17 ethical requirements adopted by the Behavior Analyst  
18 Certification Board under the direction of a behavior  
19 analyst licensed in this State;

20 (3) An individual who directly implements applied behavior  
21 analysis services, is credentialed as a registered



1 behavior technician by the Behavior Analyst  
2 Certification Board, and is under the direction of a  
3 behavior analyst licensed in this State;

4 (4) A family member implementing an applied behavior  
5 analysis plan within the home who acts under the  
6 direction of a behavior analyst licensed in this  
7 State;

8 (5) An individual who engages in the practice of behavior  
9 analysis with nonhuman or nonpatient clients or  
10 consumers including but not limited to applied animal  
11 behaviorists and practitioners of organizational  
12 behavior management;

13 (6) A matriculated graduate student or postdoctoral fellow  
14 whose activities are part of a defined behavior  
15 analysis program of study, practicum, or intensive  
16 practicum; provided that the student's or fellow's  
17 activities or practice is directly supervised by a  
18 behavior analyst licensed in this State or an  
19 instructor in a Behavior Analyst Certification Board-  
20 approved course sequence; or



1           (7) An individual pursuing experience in behavior analysis  
2           consistent with the Behavior Analyst Certification  
3           Board's experience requirements; provided that the  
4           experience is supervised by a behavior analyst  
5           licensed in this State.

6           (b) Nothing in this chapter shall be construed to prevent  
7           any licensed psychologist from engaging in the practice of  
8           behavior analysis in this State as long as the person is not in  
9           any manner held out to the public as a "licensed behavior  
10          analyst" or "behavior analyst" and the behavior analysis  
11          services provided by the licensed psychologist are within the  
12          licensed psychologist's recognized scope of practice.

13          §   -8   **Application for licensure.** The department shall  
14          issue a license under this chapter to an applicant for behavior  
15          analyst if the applicant provides satisfactory evidence to the  
16          department that the applicant meets the requirements for  
17          licensure contained in this chapter and rules adopted by the  
18          director and if the applicant for behavior analyst:

19           (1) Successfully passed the Board Certified Behavior  
20           Analyst examination;



1 (2) Maintains active status with the Behavior Analyst  
2 Certification Board as a board certified behavior  
3 analyst or board certified behavior analyst-doctoral;  
4 and

5 (3) Pays all fees for licensure established by the  
6 director.

7 § -9 Licensure by endorsement. The director may issue a  
8 license by endorsement to an applicant who holds a current and  
9 unencumbered license as a behavior analyst in another state;  
10 provided that the requirements for a license in that state are  
11 deemed by the director to be equivalent to or higher than the  
12 current requirements for licensure in this State.

13 § -10 Renewal of license. Licenses issued pursuant to  
14 this chapter shall be valid for two years and shall be renewed  
15 upon the payment of a renewal fee within sixty days before the  
16 expiration of the license. Failure to renew a license shall  
17 result in forfeiture of that license. Licenses that have been  
18 forfeited may be restored within one year of the forfeiture date  
19 upon payment of renewal and restoration fees. Failure to  
20 restore a forfeited license within one year shall result in the  
21 automatic termination of the license. A person whose license



1 has been terminated pursuant to this section shall be required  
2 to reapply for a new license as a new applicant.

3 § -11 Grounds for refusal to renew, reinstate, or  
4 restore a license and for denial, revocation, suspension, or  
5 condition of a license. (a) In addition to any other acts or  
6 conditions provided by law, the director may refuse to renew,  
7 reinstate, or restore and may deny, revoke, suspend, or  
8 condition in any manner any license for any one or more of the  
9 following acts or conditions on the part of a licensee or  
10 license applicant:

- 11 (1) Failure to meet or to maintain the conditions and  
12 requirements necessary to qualify for the granting of  
13 a license;
- 14 (2) Engaging in false, fraudulent, or deceptive  
15 advertising, or making untruthful or improbable  
16 statements in advertising;
- 17 (3) Engaging in the practice of behavior analysis while  
18 impaired by alcohol, drugs, physical disability, or  
19 mental instability;



- 1           (4) Procuring through fraud, misrepresentation, or deceit  
2           a license to engage in the practice of behavior  
3           analysis;
- 4           (5) Aiding and abetting an unlicensed person to directly  
5           or indirectly perform activities requiring a license  
6           for the practice of behavior analysis;
- 7           (6) Engaging in professional misconduct, incompetence,  
8           gross negligence, or manifest incapacity in the  
9           practice of behavior analysis;
- 10          (7) Engaging in conduct or a practice contrary to  
11          recognized standards of the most recent ethical  
12          guidelines for the practice of behavior analysis as  
13          adopted by the Behavior Analyst Certification Board;
- 14          (8) Violating any condition or limitation imposed by the  
15          director on a license to practice behavior analysis;
- 16          (9) Engaging in the practice of behavior analysis in a  
17          manner that causes injury to one or more members of  
18          the public;
- 19          (10) Failing to comply with, observe, or adhere to any law  
20          in a manner that causes the director to determine that  
21          the applicant or holder is unfit to hold a license;



- 1           (11) Having a license revoked or suspended or other  
2           disciplinatory action by any state or federal agency for  
3           any reason that is provided by the applicable  
4           licensing laws or by this section;
- 5           (12) Having been convicted or pleaded nolo contendere to a  
6           crime directly related to the qualifications,  
7           functions, or duties of the practice of behavior  
8           analysis;
- 9           (13) Failing to report in writing to the director any  
10          disciplinatory decision issued against the licensee or  
11          applicant in another jurisdiction within thirty days  
12          of the disciplinatory decision;
- 13          (14) Failing to report in writing to the director the  
14          Behavior Analyst Certification Board's revocation of  
15          the certification of a licensee or applicant within  
16          fifteen days of the revocation;
- 17          (15) Employing, whether gratuitously or for pay, any person  
18          not licensed pursuant to this chapter to perform the  
19          functions or duties of the practice of behavior  
20          analysis; or





1 (16) Violating this chapter, chapter 436B, or any rule or  
2 order of the director.

3 (b) Any licensee or applicant who violates this section  
4 may also be fined not more than \$1,000 per violation."

5 SECTION 3. Section 26H-4, Hawaii Revised Statutes, is  
6 amended to read as follows:

7 "§26H-4 Repeal dates for newly enacted professional and  
8 vocational regulatory programs. (a) Any professional or  
9 vocational regulatory program enacted after January 1, 1994, and  
10 listed in this section shall be repealed as specified in this  
11 section. The auditor shall perform an evaluation of the  
12 program, pursuant to section 26H-5, prior to its repeal date.

13 (b) Chapter 466D (respiratory therapists) shall be  
14 repealed on June 30, 2016.

15 (c) Chapter 436H (athletic trainers) shall be repealed on  
16 June 30, 2018.

17 (d) Chapter (behavior analysts) shall be repealed on  
18 June 30, 2021."

19 SECTION 4. Section 26H-6, Hawaii Revised Statutes, shall  
20 not apply to this Act.



1 SECTION 5. There is appropriated out of the compliance  
2 resolution fund established pursuant to section 26-9(o), Hawaii  
3 Revised Statutes, the sum of \$40,000 or so much thereof as may  
4 be necessary for fiscal year 2015-2016 and the same sum or so  
5 much thereof as may be necessary for fiscal year 2016-2017 to  
6 implement the behavior analyst program established pursuant to  
7 section 2 of this Act.

8 The sums appropriated shall be expended by the department  
9 of commerce and consumer affairs for the purposes of this Act.

10 SECTION 6. New statutory material is underscored.

11 SECTION 7. This Act shall take effect on July 1, 2015.

12

APPROVED this 2 day of JUL, 2015



GOVERNOR OF THE STATE OF HAWAII