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

9           **§ -2 Definitions.** For the purposes of this chapter:

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

13           "Behavior Analyst Certification Board" means the  
14 international accredited Behavior Analyst Certification Board or  
15 its successor.

16           "Department" means the department of commerce and consumer  
17 affairs.

18           "Director" means the director of commerce and consumer  
19 affairs.

20           "Licensed behavior analyst" means a person:



- 1 (1) Who engages in the practice of behavior analysis and
- 2 uses the title of licensed behavior analyst;
- 3 (2) Who has been issued a license under this chapter; and
- 4 (3) Whose license is in effect and not revoked, suspended,
- 5 or encumbered.

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

1           **§ -3 Behavior analyst program; established; personnel.**

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

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

8           **§ -4 License required.** (a) Beginning on January 1,  
9 2016, except as specifically provided in this chapter, no person  
10 shall engage in the practice of behavior analysis or use the  
11 title "licensed behavior analyst", "behavior analyst", "licensed  
12 assistant behavior analyst", or "assistant behavior analyst"  
13 without a valid license issued pursuant to this chapter.

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

17           **§ -5 Powers and duties of the director.** In addition to  
18 any other powers and duties authorized by law, the director  
19 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 \$ , which shall be maintained in a  
7 separate account within the compliance resolution fund  
8 established pursuant to section 26-9(o). At the end of each  
9 quarter, the moneys contained in the separate account  
10 established pursuant to this section shall be transferred to the  
11 compliance resolution fund until such time that the total  
12 transferred amounts equal the amount appropriated in section 5  
13 of Act , Session Laws of Hawaii 2015. Thereafter, no  
14 surcharge shall be assessed, and any funds in excess of the  
15 amount appropriated in section 5 of Act , Session Laws of  
16 Hawaii 2015, shall be deposited into the compliance resolution  
17 fund.

18 (b) Application fees paid pursuant to this chapter shall  
19 not be refundable. Pursuant to section 26-9(1), the director  
20 shall establish examination, reexamination, license, renewal,



1 restoration, enforcement, and other fees relating to the  
2 administration of this chapter by rule.

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

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

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

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





- 1           (3) An individual who directly implements applied behavior  
2           analysis services, is credentialed as a registered  
3           behavior technician by the Behavior Analyst  
4           Certification Board, and is under the direction of a  
5           behavior analyst licensed in this State;
- 6           (4) A family member implementing an applied behavior  
7           analysis plan within the home who acts under the  
8           direction of a behavior analyst licensed in this  
9           State;
- 10          (5) An individual who engages in the practice of behavior  
11          analysis with nonhuman or nonpatient clients or  
12          consumers including but not limited to applied animal  
13          behaviorists and practitioners of organizational  
14          behavior management;
- 15          (6) A matriculated graduate student or postdoctoral fellow  
16          whose activities are part of a defined behavior  
17          analysis program of study, practicum, or intensive  
18          practicum; provided that the student's or fellow's  
19          activities or practice is directly supervised by a  
20          behavior analyst licensed in this State or an



1 instructor in a Behavior Analyst Certification Board-  
2 approved course sequence; or

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

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

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



- 1 (1) Successfully passed the Board Certified Behavior
- 2 Analyst examination;
- 3 (2) Maintains active status with the Behavior Analyst
- 4 Certification Board as a board certified behavior
- 5 analyst or board certified behavior analyst-doctoral;
- 6 and
- 7 (3) Pays all fees for licensure established by the
- 8 director.

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

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



1 restore a forfeited license within one year shall result in the  
2 automatic termination of the license. A person whose license  
3 has been terminated pursuant to this section shall be required  
4 to reapply for a new license as a new applicant.

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

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

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 \$ 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, 2112.





**Report Title:**

Licensing; Practice of Behavior Analysis; Behavior Analysts; Behavior Analyst Program; Department of Commerce and Consumer Affairs; Appropriation

**Description:**

Establishes the Behavior Analyst Program within the Department of Commerce and Consumer Affairs. Requires the licensing of behavior analysts for the practice of behavior analysis. Appropriates funds to implement the Behavior Analyst Program. (SB40 HD1)

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