
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 disciplinary 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 disciplinary decision issued against the licensee or
11 applicant in another jurisdiction within thirty days
12 of the disciplinary 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



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
beginning on January 1, 2016, and ending on June 30, 2021.
Appropriates funds to implement the Behavior Analyst Program.
(CD1)

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not legislation or evidence of legislative intent.*

