

A Bill for an Act Relating to Licensing.

Be It Enacted by the Legislature of the State of Hawaii:

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

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

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

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

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

**“CHAPTER
BEHAVIOR ANALYSTS**

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

§ -2 **Definitions.** For the purposes of this chapter:
“Applied behavior analysis” means interventions that are based on scientific research and the direct observation and measurement of behavior and the environment.

“Behavior Analyst Certification Board” means the international accredited Behavior Analyst Certification Board or its successor.

“Department” means the department of commerce and consumer affairs.

“Director” means the director of commerce and consumer affairs.

“Licensed behavior analyst” means a person:

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

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

§ -3 Behavior analyst program; established; personnel. (a) Notwithstanding any other law, there is established a behavior analyst program within the department to be administered by the director.

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

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

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

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

- (1) Grant, deny, renew, refuse to renew, restore, terminate, reinstate, condition, restrict, suspend, or revoke a license issued pursuant to this chapter;
- (2) Grant permission to a person to engage in the practice of behavior analysis and to use the title of “licensed behavior analyst” or a description indicating that the person is a licensed behavior analyst in this State;
- (3) Adopt, amend, or repeal rules pursuant to chapter 91 as the director finds necessary to carry out this chapter;
- (4) Administer, coordinate, and enforce this chapter;
- (5) Discipline a licensed behavior analyst on grounds specified by this chapter or chapter 436B or for any violation of rules adopted by the director pursuant to this chapter; and
- (6) Refuse to license a person for failure to meet the licensing requirements in this chapter or for any reason specified by this chapter as grounds to discipline a behavior analyst including but not limited to violations of the Behavior Analyst Certification Board’s ethical guidelines for responsible conduct.

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

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

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

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

- (1) An individual working within the scope of practice or duties of another licensed profession that overlaps with the practice of behavior analysis; provided that the person does not purport to be a behavior analyst;
- (2) An individual who implements or designs applied behavior analysis services and possesses board certification as an assistant behavior analyst by the Behavior Analyst Certification Board and who practices in accordance with the most recent supervisory and ethical requirements adopted by the Behavior Analyst Certification Board under the direction of a behavior analyst licensed in this State;
- (3) An individual who directly implements applied behavior analysis services, is credentialed as a registered behavior technician by the Behavior Analyst Certification Board, and is under the direction of a behavior analyst licensed in this State;
- (4) A family member implementing an applied behavior analysis plan within the home who acts under the direction of a behavior analyst licensed in this State;
- (5) An individual who engages in the practice of behavior analysis with nonhuman or nonpatient clients or consumers including but not limited to applied animal behaviorists and practitioners of organizational behavior management;
- (6) A matriculated graduate student or postdoctoral fellow whose activities are part of a defined behavior analysis program of study, practicum, or intensive practicum; provided that the student's or fellow's activities or practice is directly supervised by a behavior analyst licensed in this State or an instructor in a Behavior Analyst Certification Board-approved course sequence; or
- (7) An individual pursuing experience in behavior analysis consistent with the Behavior Analyst Certification Board's experience requirements; provided that the experience is supervised by a behavior analyst licensed in this State.

(b) Nothing in this chapter shall be construed to prevent any licensed psychologist from engaging in the practice of behavior analysis in this State as

long as the person is not in any manner held out to the public as a “licensed behavior analyst” or “behavior analyst” and the behavior analysis services provided by the licensed psychologist are within the licensed psychologist’s recognized scope of practice.

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

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

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

§ **-10 Renewal of license.** Licenses issued pursuant to this chapter shall be valid for two years and shall be renewed upon the payment of a renewal fee within sixty days before the expiration of the license. Failure to renew a license shall result in forfeiture of that license. Licenses that have been forfeited may be restored within one year of the forfeiture date upon payment of renewal and restoration fees. Failure to restore a forfeited license within one year shall result in the automatic termination of the license. A person whose license has been terminated pursuant to this section shall be required to reapply for a new license as a new applicant.

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

- (1) Failure to meet or to maintain the conditions and requirements necessary to qualify for the granting of a license;
- (2) Engaging in false, fraudulent, or deceptive advertising, or making untruthful or improbable statements in advertising;
- (3) Engaging in the practice of behavior analysis while impaired by alcohol, drugs, physical disability, or mental instability;
- (4) Procuring through fraud, misrepresentation, or deceit a license to engage in the practice of behavior analysis;
- (5) Aiding and abetting an unlicensed person to directly or indirectly perform activities requiring a license for the practice of behavior analysis;
- (6) Engaging in professional misconduct, incompetence, gross negligence, or manifest incapacity in the practice of behavior analysis;

- (7) Engaging in conduct or a practice contrary to recognized standards of the most recent ethical guidelines for the practice of behavior analysis as adopted by the Behavior Analyst Certification Board;
 - (8) Violating any condition or limitation imposed by the director on a license to practice behavior analysis;
 - (9) Engaging in the practice of behavior analysis in a manner that causes injury to one or more members of the public;
 - (10) Failing to comply with, observe, or adhere to any law in a manner that causes the director to determine that the applicant or holder is unfit to hold a license;
 - (11) Having a license revoked or suspended or other disciplinary action by any state or federal agency for any reason that is provided by the applicable licensing laws or by this section;
 - (12) Having been convicted or pleaded nolo contendere to a crime directly related to the qualifications, functions, or duties of the practice of behavior analysis;
 - (13) Failing to report in writing to the director any disciplinary decision issued against the licensee or applicant in another jurisdiction within thirty days of the disciplinary decision;
 - (14) Failing to report in writing to the director the Behavior Analyst Certification Board's revocation of the certification of a licensee or applicant within fifteen days of the revocation;
 - (15) Employing, whether gratuitously or for pay, any person not licensed pursuant to this chapter to perform the functions or duties of the practice of behavior analysis; or
 - (16) Violating this chapter, chapter 436B, or any rule or order of the director.
- (b) Any licensee or applicant who violates this section may also be fined not more than \$1,000 per violation."

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

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

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

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

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

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

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

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

SECTION 6. New statutory material is underscored.

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

(Approved July 2, 2015.)