

1-1 By: Lucio, et al. S.B. No. 589
 1-2 (In the Senate - Filed January 24, 2017; February 8, 2017,
 1-3 read first time and referred to Committee on Business & Commerce;
 1-4 April 24, 2017, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 8, Nays 0; April 24, 2017,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16			X	
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 589 By: Creighton

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to the licensing and regulation of behavior analysts and
 1-22 assistant behavior analysts; requiring an occupational license;
 1-23 imposing fees; providing a civil penalty; creating a criminal
 1-24 offense.

1-25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-26 SECTION 1. Section 51.2031(a), Occupations Code, is amended
 1-27 to read as follows:

1-28 (a) This section applies only to the regulation of the
 1-29 following professions by the department:

- 1-30 (1) athletic trainers;
- 1-31 (2) behavior analysts;
- 1-32 (3) dietitians;
- 1-33 ~~(4) [3]~~ hearing instrument fitters and dispensers;
- 1-34 ~~(5) [4]~~ midwives;
- 1-35 ~~(6) [5]~~ orthotists and prosthetists; and
- 1-36 ~~(7) [6]~~ speech-language pathologists and
 1-37 audiologists.

1-38 SECTION 2. Subtitle I, Title 3, Occupations Code, is
 1-39 amended by adding Chapter 506 to read as follows:

1-40 CHAPTER 506. BEHAVIOR ANALYSTS
 1-41 SUBCHAPTER A. GENERAL PROVISIONS

1-42 Sec. 506.001. SHORT TITLE. This chapter may be cited as the
 1-43 Behavior Analyst Licensing Act.

1-44 Sec. 506.002. DEFINITIONS. In this chapter:

- 1-45 (1) "Advisory board" means the Behavior Analyst
 1-46 Advisory Board.
- 1-47 (2) "Certifying entity" means the nationally
 1-48 accredited Behavior Analyst Certification Board or another entity
 1-49 that is accredited by the National Commission for Certifying
 1-50 Agencies or the American National Standards Institute to issue
 1-51 credentials in the professional practice of applied behavior
 1-52 analysis and approved by the department.
- 1-53 (3) "Commission" means the Texas Commission of
 1-54 Licensing and Regulation.
- 1-55 (4) "Department" means the Texas Department of
 1-56 Licensing and Regulation.
- 1-57 (5) "Executive director" means the executive director
 1-58 of the department.
- 1-59 (6) "License holder" means a person licensed under
 1-60 this chapter.

2-1 (7) "Licensed assistant behavior analyst" means a
2-2 person who is certified by the certifying entity as a Board
2-3 Certified Assistant Behavior Analyst or who has an equivalent
2-4 certification issued by the certifying entity and who meets the
2-5 requirements specified by Sections 506.252 and 506.254.

2-6 (8) "Licensed behavior analyst" means a person who is
2-7 certified by the certifying entity as a Board Certified Behavior
2-8 Analyst or a Board Certified Behavior Analyst--Doctoral or who has
2-9 an equivalent certification issued by the certifying entity and who
2-10 meets the requirements specified by Sections 506.252 and 506.253.

2-11 (9) "Physician" means a person licensed to practice
2-12 medicine by the Texas Medical Board.

2-13 Sec. 506.003. PRACTICE OF APPLIED BEHAVIOR ANALYSIS.

2-14 (a) The practice of applied behavior analysis is the design,
2-15 implementation, and evaluation of instructional and environmental
2-16 modifications to produce socially significant improvements in
2-17 human behavior.

2-18 (b) The practice of applied behavior analysis includes the
2-19 empirical identification of functional relations between behavior
2-20 and environmental factors, known as functional assessment or
2-21 functional analysis.

2-22 (c) Applied behavior analysis interventions:

2-23 (1) are based on scientific research and the direct
2-24 observation and measurement of behavior and environment; and

2-25 (2) use contextual factors, motivating operations,
2-26 antecedent stimuli, positive reinforcement, and other procedures
2-27 to help individuals develop new behaviors, increase or decrease
2-28 existing behaviors, and elicit or evoke behaviors under specific
2-29 environmental conditions.

2-30 (d) The practice of applied behavior analysis does not
2-31 include:

2-32 (1) psychological testing, psychotherapy, cognitive
2-33 therapy, psychoanalysis, hypnotherapy, or counseling as treatment
2-34 modalities; or

2-35 (2) the diagnosis of disorders.

2-36 SUBCHAPTER B. APPLICATION OF CHAPTER; USE OF TITLE

2-37 Sec. 506.051. LICENSED PSYCHOLOGISTS. This chapter does
2-38 not apply to a person licensed to practice psychology in this state
2-39 if the applied behavior analysis services provided are within the
2-40 scope of the licensed psychologist's education, training, and
2-41 competence.

2-42 Sec. 506.052. OTHER LICENSED PROFESSIONALS. This chapter
2-43 does not apply to a person licensed to practice another profession
2-44 in this state if the applied behavior analysis services provided
2-45 are within:

2-46 (1) the scope of practice of the person's license under
2-47 state law; and

2-48 (2) the scope of the person's education, training, and
2-49 competence.

2-50 Sec. 506.053. FAMILY MEMBERS AND GUARDIANS. This chapter
2-51 does not apply to a family member or guardian of a recipient of
2-52 applied behavior analysis services who is implementing a behavior
2-53 analysis treatment plan for the recipient under the extended
2-54 authority and direction of a licensed behavior analyst or licensed
2-55 assistant behavior analyst.

2-56 Sec. 506.054. PARAPROFESSIONALS. This chapter does not
2-57 apply to a paraprofessional technician who delivers applied
2-58 behavior analysis services if:

2-59 (1) the applied behavior analysis services are
2-60 provided under the extended authority and direction of a licensed
2-61 behavior analyst or licensed assistant behavior analyst; and

2-62 (2) the person is designated as an "applied behavior
2-63 analysis technician," "behavior technician," "tutor," or
2-64 "front-line therapist."

2-65 Sec. 506.055. STUDENTS, INTERNS, AND FELLOWS. This chapter
2-66 does not apply to an applied behavior analysis activity or service
2-67 of a college or university student, intern, or fellow if:

2-68 (1) the activity or service is part of a defined
2-69 behavior analysis program of study, course, practicum, internship,

3-1 or postdoctoral fellowship;

3-2 (2) the activity or service is directly supervised by
 3-3 a licensed behavior analyst or an instructor in a course sequence
 3-4 approved by the certifying entity; and

3-5 (3) the person is designated as a "student," "intern,"
 3-6 "fellow," or "trainee."

3-7 Sec. 506.056. SUPERVISED EXPERIENCE. This chapter does not
 3-8 apply to an unlicensed person pursuing supervised experience in
 3-9 applied behavior analysis if the supervised experience is
 3-10 consistent with the requirements of the certifying entity and
 3-11 commission rules.

3-12 Sec. 506.057. TEMPORARY SERVICES OF BEHAVIOR ANALYST FROM
 3-13 ANOTHER STATE. (a) This chapter does not apply to a behavior
 3-14 analyst licensed in another jurisdiction or certified by the
 3-15 certifying entity if the activities and services conducted in this
 3-16 state:

3-17 (1) are within the behavior analyst's customary area
 3-18 of practice;

3-19 (2) are conducted not more than 20 days in a calendar
 3-20 year; and

3-21 (3) are not otherwise in violation of this chapter.

3-22 (b) A behavior analyst described by Subsection (a) shall
 3-23 inform the recipient of applied behavior analysis services, or a
 3-24 parent or guardian of the recipient if the recipient is under 18
 3-25 years of age, that:

3-26 (1) the behavior analyst is not licensed in this
 3-27 state; and

3-28 (2) the activities and services provided by the
 3-29 behavior analyst are time-limited.

3-30 Sec. 506.058. TEACHER OR EMPLOYEE OF SCHOOL DISTRICT.

3-31 (a) This chapter does not apply to a teacher or employee of a
 3-32 private or public school who provides applied behavior analysis
 3-33 services if the teacher or employee is performing duties within the
 3-34 scope of the teacher's or employee's employment.

3-35 (b) A person described by Subsection (a) may not:

3-36 (1) represent that the person is a behavior analyst,
 3-37 unless the applied behavior analysis services provided are within
 3-38 the person's education, training, and competence;

3-39 (2) offer applied behavior analysis services to any
 3-40 person, other than within the scope of the person's employment
 3-41 duties for the school; or

3-42 (3) receive compensation for providing applied
 3-43 behavior analysis services, other than the compensation that the
 3-44 person receives from the person's school employer.

3-45 Sec. 506.059. USE OF TITLE "BEHAVIOR ANALYST." (a) This
 3-46 chapter does not apply to a person described by Subsection (b).

3-47 (b) A person may use the title "behavior analyst" if the
 3-48 person:

3-49 (1) is a behavior analyst who practices with
 3-50 nonhumans, including an applied animal behaviorist or an animal
 3-51 trainer;

3-52 (2) teaches behavior analysis or conducts behavior
 3-53 analytic research if the teaching or research activities do not
 3-54 involve the delivery or supervision of applied behavior analysis
 3-55 services; or

3-56 (3) is a professional who provides general applied
 3-57 behavior analysis services to organizations if those services:

3-58 (A) are for the benefit of the organization; and

3-59 (B) do not involve direct services to
 3-60 individuals.

3-61 SUBCHAPTER C. BEHAVIOR ANALYST ADVISORY BOARD

3-62 Sec. 506.101. ADVISORY BOARD MEMBERSHIP. (a) The advisory
 3-63 board is composed of nine members appointed by the presiding
 3-64 officer of the commission with the approval of the commission as
 3-65 follows:

3-66 (1) four licensed behavior analysts, at least one of
 3-67 whom must be certified as a Board Certified Behavior
 3-68 Analyst--Doctoral or hold an equivalent certification issued by the
 3-69 certifying entity;

4-1 (2) one licensed assistant behavior analyst;
4-2 (3) one physician who has experience providing mental
4-3 health or behavioral health services; and
4-4 (4) three members who represent the public and who are
4-5 either former recipients of applied behavior analysis services or
4-6 the parent or guardian of a current or former recipient of applied
4-7 behavior analysis services.
4-8 (b) To be qualified for appointment under Subsection
4-9 (a)(1), a person must have at least five years of experience as a
4-10 licensed behavior analyst after being certified by the certifying
4-11 entity.
4-12 (c) Appointments to the advisory board shall be made without
4-13 regard to the race, color, disability, sex, religion, age, or
4-14 national origin of the appointee.
4-15 Sec. 506.102. DUTIES OF ADVISORY BOARD. The advisory board
4-16 shall provide advice and recommendations to the department on
4-17 technical matters relevant to the administration of this chapter.
4-18 Sec. 506.103. TERMS; VACANCY. (a) Members of the advisory
4-19 board serve staggered six-year terms, with the terms of three
4-20 members expiring February 1 of each odd-numbered year.
4-21 (b) A member may not serve more than two consecutive
4-22 six-year terms.
4-23 (c) If a vacancy occurs during a member's term, the
4-24 presiding officer of the commission, with the commission's
4-25 approval, shall appoint a replacement who meets the qualifications
4-26 for the vacant position to serve for the remainder of the term.
4-27 Sec. 506.104. PRESIDING OFFICER. The presiding officer of
4-28 the commission shall designate a member of the advisory board to
4-29 serve as the presiding officer of the advisory board for a term of
4-30 one year. The presiding officer of the advisory board may vote on
4-31 any matter before the advisory board.
4-32 Sec. 506.105. MEETINGS. The advisory board shall meet at
4-33 least twice each year and at the call of the presiding officer of
4-34 the commission or the executive director.
4-35 SUBCHAPTER D. POWERS AND DUTIES
4-36 Sec. 506.151. GENERAL POWERS AND DUTIES. (a) The
4-37 executive director shall administer and enforce this chapter.
4-38 (b) The department shall:
4-39 (1) evaluate the qualifications of license
4-40 applicants;
4-41 (2) provide for the examination of license applicants;
4-42 (3) in connection with a hearing under this chapter,
4-43 issue subpoenas, examine witnesses, and administer oaths under the
4-44 laws of this state; and
4-45 (4) investigate persons engaging in practices that
4-46 violate this chapter.
4-47 Sec. 506.152. STANDARDS OF ETHICAL PRACTICE. The
4-48 commission shall adopt rules under this chapter that establish
4-49 standards of ethical practice.
4-50 Sec. 506.153. ASSISTANCE FILING COMPLAINT. The department
4-51 shall provide reasonable assistance to a person who wishes to file a
4-52 complaint with the department regarding a person or activity
4-53 regulated under this chapter.
4-54 SUBCHAPTER E. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES
4-55 Sec. 506.201. TELEPHONE NUMBER FOR COMPLAINTS. The
4-56 department shall list with its regular telephone number any
4-57 toll-free telephone number established under other state law that
4-58 may be called to present a complaint about a health professional.
4-59 Sec. 506.202. CONFIDENTIALITY OF COMPLAINT INFORMATION.
4-60 (a) Except as provided by Subsection (b), a complaint and
4-61 investigation concerning a license holder and all information and
4-62 materials compiled by the department in connection with the
4-63 complaint and investigation are not subject to:
4-64 (1) disclosure under Chapter 552, Government Code; or
4-65 (2) disclosure, discovery, subpoena, or other means of
4-66 legal compulsion for release of information to any person.
4-67 (b) A complaint or investigation subject to Subsection (a)
4-68 and all information and materials compiled by the department in
4-69 connection with the complaint, in accordance with Chapter 611,

5-1 Health and Safety Code, may be disclosed to:

5-2 (1) the department and its employees or agents
 5-3 involved in license holder discipline;

5-4 (2) a party to a disciplinary action against the
 5-5 license holder or that party's designated representative;

5-6 (3) a law enforcement agency if required by law;

5-7 (4) a governmental agency if:

5-8 (A) the disclosure is required or permitted by
 5-9 law; and

5-10 (B) the agency obtaining the disclosure protects
 5-11 the identity of any patient whose records are examined; or

5-12 (5) the legislature.

5-13 (c) The department shall protect the identity of any patient
 5-14 whose records are examined in connection with a disciplinary
 5-15 investigation or proceeding against a license holder, except:

5-16 (1) a patient who initiates the disciplinary action;
 5-17 or

5-18 (2) a patient who has submitted a written consent to
 5-19 release the records.

5-20 SUBCHAPTER F. LICENSE REQUIREMENTS

5-21 Sec. 506.251. LICENSE REQUIRED. (a) Except as provided by
 5-22 Subchapter B, a person may not engage in the practice of applied
 5-23 behavior analysis unless the person holds a license under this
 5-24 chapter.

5-25 (b) A person may not use the title "licensed behavior
 5-26 analyst" or "licensed assistant behavior analyst," as appropriate,
 5-27 unless the person is licensed under this chapter.

5-28 (c) Except as provided by Subchapter B, a person may not use
 5-29 the title "behavior analyst" unless the person is licensed under
 5-30 this chapter.

5-31 Sec. 506.252. LICENSE APPLICATION. Each applicant for a
 5-32 license under this chapter must submit an application and the
 5-33 required fees to the department. The application must include
 5-34 sufficient evidence, as defined by commission rules, that the
 5-35 applicant has successfully completed a state-approved criminal
 5-36 background check.

5-37 Sec. 506.253. REQUIREMENTS FOR LICENSED BEHAVIOR ANALYST.
 5-38 An applicant for a license as a licensed behavior analyst must
 5-39 present evidence to the department that the applicant:

5-40 (1) is currently certified by the certifying entity as
 5-41 a Board Certified Behavior Analyst or a Board Certified Behavior
 5-42 Analyst--Doctoral or an equivalent certification issued by the
 5-43 certifying entity;

5-44 (2) has met the educational requirements of the Board
 5-45 Certified Behavior Analyst standard or the Board Certified Behavior
 5-46 Analyst--Doctoral standard or an equivalent standard adopted by the
 5-47 certifying entity;

5-48 (3) has passed the Board Certified Behavior Analyst
 5-49 examination, or an equivalent examination offered by the certifying
 5-50 entity, in applied behavior analysis;

5-51 (4) is in compliance with all professional, ethical,
 5-52 and disciplinary standards established by the certifying entity;
 5-53 and

5-54 (5) is not subject to any disciplinary action by the
 5-55 certifying entity.

5-56 Sec. 506.254. REQUIREMENTS FOR LICENSED ASSISTANT BEHAVIOR
 5-57 ANALYST. An applicant for a license as a licensed assistant
 5-58 behavior analyst must present evidence to the department that the
 5-59 applicant:

5-60 (1) is currently certified by the certifying entity as
 5-61 a Board Certified Assistant Behavior Analyst or an equivalent
 5-62 certification issued by the certifying entity;

5-63 (2) has met the educational requirements of the Board
 5-64 Certified Assistant Behavior Analyst standard or an equivalent
 5-65 standard adopted by the certifying entity;

5-66 (3) has passed the Board Certified Assistant Behavior
 5-67 Analyst examination, or an equivalent examination offered by the
 5-68 certifying entity, in applied behavior analysis;

5-69 (4) is in compliance with all professional, ethical,

6-1 and disciplinary standards established by the certifying entity;
6-2 (5) is not subject to any disciplinary action by the
6-3 certifying entity; and

6-4 (6) is currently supervised by a licensed behavior
6-5 analyst in accordance with the requirements of the certifying
6-6 entity.

6-7 Sec. 506.255. ISSUANCE OF LICENSE. The department shall
6-8 issue a license as a licensed behavior analyst or a licensed
6-9 assistant behavior analyst, as appropriate, to an applicant who:

6-10 (1) complies with the requirements of this chapter;

6-11 (2) meets any additional requirements the commission
6-12 establishes by rule; and

6-13 (3) pays the required fees.

6-14 Sec. 506.256. RECIPROCITY. (a) The department shall issue
6-15 a license to a person who is currently licensed as a behavior
6-16 analyst or as an assistant behavior analyst from another state or
6-17 jurisdiction that imposes licensure requirements similar to those
6-18 specified in this chapter.

6-19 (b) An applicant for a reciprocal license shall:

6-20 (1) submit evidence to the department that the
6-21 applicant:

6-22 (A) is in good standing as determined by the
6-23 department;

6-24 (B) holds a valid license from another state or
6-25 jurisdiction; and

6-26 (C) is in compliance with other requirements
6-27 established by Section 506.252, 506.253, 506.254, or 506.255, as
6-28 appropriate; and

6-29 (2) pay the required fees.

6-30 Sec. 506.257. RETIREMENT STATUS. The commission by rule
6-31 may adopt a system for placing a person licensed under this chapter
6-32 on retirement status.

6-33 SUBCHAPTER G. LICENSE RENEWAL

6-34 Sec. 506.301. LICENSE EXPIRATION. A license issued under
6-35 this chapter expires on the second anniversary of the date of
6-36 issuance.

6-37 Sec. 506.302. LICENSE RENEWAL. Before the expiration of a
6-38 license, a license may be renewed by:

6-39 (1) submitting an application for renewal;

6-40 (2) paying the renewal fee imposed by the commission;
6-41 and

6-42 (3) providing verification to the department of
6-43 continued certification by the certifying entity, which signifies
6-44 that the applicant for renewal has met any continuing education
6-45 requirements established by the certifying entity.

6-46 SUBCHAPTER H. LICENSE DENIAL AND DISCIPLINARY PROCEDURES

6-47 Sec. 506.351. GROUNDS FOR LICENSE DENIAL AND DISCIPLINARY
6-48 ACTION. After a hearing, the commission or executive director may
6-49 deny a license to an applicant, suspend or revoke a person's
6-50 license, or place on probation a license holder if the applicant or
6-51 license holder:

6-52 (1) violates this chapter or a commission order or
6-53 rule;

6-54 (2) obtains a license by means of fraud,
6-55 misrepresentation, or concealment of a material fact;

6-56 (3) sells, barter, or offers to sell or barter a
6-57 license; or

6-58 (4) engages in unprofessional conduct that:

6-59 (A) endangers or is likely to endanger the
6-60 health, welfare, or safety of the public as defined by commission
6-61 rule; or

6-62 (B) violates the code of ethics adopted and
6-63 published by the commission.

6-64 SUBCHAPTER I. PENALTIES AND ENFORCEMENT PROCEDURES

6-65 Sec. 506.401. AMOUNT OF ADMINISTRATIVE PENALTY. The amount
6-66 of an administrative penalty imposed against a person licensed
6-67 under this chapter who violates this chapter or a rule or order
6-68 adopted under this chapter may not exceed \$200. Each day a
6-69 violation continues or occurs is a separate violation for the

7-1 purpose of imposing a penalty.

7-2 Sec. 506.402. CIVIL PENALTY. (a) A person found by a court
7-3 to have violated this chapter is liable to this state for a civil
7-4 penalty of \$200 for each day the violation continues.

7-5 (b) A civil penalty may be recovered in a suit brought by the
7-6 attorney general, a district attorney, or a county attorney.

7-7 Sec. 506.403. CRIMINAL OFFENSE. (a) A person commits an
7-8 offense if the person knowingly violates this chapter.

7-9 (b) An offense under this section is a Class A misdemeanor.

7-10 SECTION 3. As soon as practicable after the effective date
7-11 of this Act, the presiding officer of the Texas Commission of
7-12 Licensing and Regulation shall appoint nine members to the Behavior
7-13 Analyst Advisory Board in accordance with Chapter 506, Occupations
7-14 Code, as added by this Act. In making the initial appointments, the
7-15 presiding officer of the commission shall designate three members
7-16 for terms expiring February 1, 2019, three members for terms
7-17 expiring February 1, 2021, and three members for terms expiring
7-18 February 1, 2023.

7-19 SECTION 4. Not later than January 1, 2018, the Texas
7-20 Commission of Licensing and Regulation shall adopt the rules,
7-21 procedures, and fees necessary to administer Chapter 506,
7-22 Occupations Code, as added by this Act.

7-23 SECTION 5. Notwithstanding Chapter 506, Occupations Code,
7-24 as added by this Act, a behavior analyst or assistant behavior
7-25 analyst is not required to hold a license under that chapter to
7-26 practice as a licensed behavior analyst or licensed assistant
7-27 behavior analyst in this state before June 1, 2018.

7-28 SECTION 6. (a) Except as provided by Subsection (b) of
7-29 this section, this Act takes effect September 1, 2017.

7-30 (b) Section 506.251, Occupations Code, and Subchapter I,
7-31 Chapter 506, Occupations Code, as added by this Act, take effect
7-32 June 1, 2018.

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