

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 589
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The clinical practice of applied behavior analysis (ABA) requires extensive training and ongoing professional development as it incorporates knowledge drawn from the scientific literature and utilizes scientific methods. ABA comprises many evidence-based techniques or procedures that are effective for building useful skills and reducing problematic behaviors. ABA involves the design, implementation, and evaluation of instructional and environmental modifications to improve socially significant behavior to a meaningful degree. Behavior analysts must be highly skilled since they primarily treat diverse and vulnerable populations and their treatments target severe and complex behavior disorders. Treatments employed by behavior analysts require systematic evaluation between behavior and environmental events, an approach called functional assessment. A misapplication of functional assessment often leads to worsening of behavior disorders, such as aggression and self-injury.

Currently, there is no regulatory entity in Texas for practitioners of ABA. Since no mechanism exists to protect consumers, employers, and state agencies from individuals who are not adequately trained, or whose practice is not consistent with the profession's ethical and disciplinary standards, the unregulated practice of ABA may thus significantly harm or endanger the public health, safety, and welfare. Under the status quo, citizens who are harmed by unregulated practitioners have little or no protection or legal recourse.

S.B. 589 intends to establish a regulatory framework under the licensing and regulation of the practice of ABA in order to protect consumers and practitioners of these services. (Original Author's / Sponsor's Statement of Intent)

C.S.S.B. 589 amends current law relating to the licensing and regulation of behavior analysts and assistant behavior analysts, requires an occupational license, imposes fees, provides a civil penalty, and creates a criminal offense.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation in SECTION 2 (Section 506.152 and 506.257, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 51.2031(a), Occupations Code, to provide that this section (Rules Regarding Health-Related Programs; Provision of Information) applies only to the regulation of certain professions, including behavior analysts, by the Texas Department of Licensing and Regulation (TDLR).

SECTION 2. Amends Subtitle I, Title 3, Occupations Code, by adding Chapter 506, as follows:

CHAPTER 506. BEHAVIOR ANALYSTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 506.001. SHORT TITLE. Authorizes this chapter to be cited as the Behavior Analyst Licensing Act.

Sec. 506.002. DEFINITIONS. Defines "advisory board," "certifying entity," "commission," "department," "executive director," "license holder," "licensed assistant behavior analyst," "licensed behavior analyst," and "physician."

Sec. 506.003. PRACTICE OF APPLIED BEHAVIOR ANALYSIS. (a) Provides that the practice of applied behavior analysis (ABA) is the design, implementation, and evaluation of instructional and environmental modifications to produce socially significant improvements in human behavior.

(b) Provides that the practice of ABA includes the empirical identification of functional relations between behavior and environmental factors, known as functional assessment or functional analysis.

(c) Provides that ABA interventions are based on scientific research and the direct observation and measurement of behavior and environment and use contextual factors, motivating operations, antecedent stimuli, positive reinforcement, and other procedures to help individuals develop new behaviors, increase or decrease existing behaviors, and elicit or evoke behaviors under specific environmental conditions.

(d) Provides that the practice of ABA does not include psychological testing, psychotherapy, cognitive therapy, psychoanalysis, hypnotherapy, or counseling as treatment modalities, or the diagnosis of disorders.

SUBCHAPTER B. APPLICATION OF CHAPTER; USE OF TITLE

Sec. 506.051. LICENSED PSYCHOLOGISTS. Provides that this chapter does not apply to a person licensed to practice psychology in this state if the ABA services provided are within the scope of the licensed psychologist's education, training, and competence.

Sec. 506.052. OTHER LICENSED PROFESSIONALS. Provides that this chapter does not apply to a person licensed to practice another profession in this state if the ABA services provided are within a certain scope.

Sec. 506.053. FAMILY MEMBERS AND GUARDIANS. Provides that this chapter does not apply to a family member or guardian of a recipient of ABA services who is implementing a behavior analysis treatment plan for the recipient under the extended authority and direction of a licensed behavior analyst or licensed assistant behavior analyst.

Sec. 506.054. PARAPROFESSIONALS. Provides that this chapter does not apply to a paraprofessional technician who delivers ABA services if certain conditions are met.

Sec. 506.055. STUDENTS, INTERNS, AND FELLOWS. Provides that this chapter does not apply to an ABA activity or service of a college or university student, intern, or fellow if certain conditions are met.

Sec. 506.056. SUPERVISED EXPERIENCE. Provides that this chapter does not apply to an unlicensed person pursuing supervised experience in ABA if the supervised experience is consistent with the requirements of the certifying entity and the Texas Commission of Licensing and Regulation (TCLR) rules.

Sec. 506.057. TEMPORARY SERVICES OF BEHAVIOR ANALYST FROM ANOTHER STATE. (a) Provides that this chapter does not apply to a behavior analyst licensed in another jurisdiction or certified by the certifying entity if the activities and services conducted in this state meet certain requirements.

(b) Requires that a behavior analyst described by Subsection (a) inform the recipient of ABA services, or a parent or guardian of the recipient if the recipient is under 18 years of age, of certain information.

Sec. 506.058. TEACHER OR EMPLOYEE OF SCHOOL DISTRICT. (a) Provides that this chapter does not apply to a teacher or employee of a private or public school who provides ABA services if the teacher or employee is performing duties within the scope of the teacher's or employee's employment.

(b) Prohibits a person described by Subsection (a) from taking certain actions.

Sec. 506.059. USE OF TITLE "BEHAVIOR ANALYST." (a) Provides that this chapter does not apply to a person described by Subsection (b).

(b) Authorizes a person to use the title "behavior analyst" if the person meets certain criteria.

SUBCHAPTER C. BEHAVIOR ANALYST ADVISORY BOARD

Sec. 506.101. ADVISORY BOARD MEMBERSHIP. (a) Provides that the Behavior Analyst Advisory Board (BAAB) is composed of nine certain members appointed by the presiding officer of TCLR with the approval of TCLR. Sets forth the composition of BAAB.

(b) Requires a person, to be qualified for appointment under Subsection (a)(1) (relating to BAAB member composition, including four licensed behavior analysts, at least one of whom must be certified as a Board Certified Behavior Analyst—Doctoral or hold an equivalent certification issued by the certifying entity), to have at least five years of experience as a licensed behavior analyst after being certified by the certifying entity.

(c) Requires that appointments to BAAB be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Sec. 506.102. DUTIES OF ADVISORY BOARD. Requires BAAB to provide advice and recommendations to TDLR on technical matters relevant to the administration of this chapter.

Sec. 506.103. TERMS; VACANCY. (a) Provides that BAAB members serve staggered six-year terms, with the terms of three members expiring February 1 of each odd-numbered year.

(b) Prohibits a member from serving more than two consecutive six-year terms.

(c) Requires the presiding officer of TCLR, if a vacancy occurs during a member's term, with TCLR's approval, to appoint a replacement who meets the qualifications for the vacant position to serve the remainder of the term.

Sec. 506.104. PRESIDING OFFICER. Requires the presiding officer of TCLR to designate a member of BAAB to serve as the presiding officer of BAAB for a term of one year. Authorizes the presiding officer of BAAB to vote on any matter before BAAB.

Sec. 506.105. MEETINGS. Requires BAAB to meet at least twice each year and at the call of the presiding officer of TCLR or the executive director of TDLR (executive director).

SUBCHAPTER D. POWERS AND DUTIES

Sec. 506.151. GENERAL POWERS AND DUTIES (a) Requires the executive director to administer and enforce this chapter.

(b) Requires TDLR to take certain actions relating to license applicants.

Sec. 506.152. STANDARDS OF ETHICAL PRACTICE. Requires TDLR to adopt rules under this chapter that establish standards of ethical practice.

Sec. 506.153. ASSISTANCE FILING COMPLAINT. Requires TDLR to provide reasonable assistance to a person who wishes to file a complaint with TDLR regarding a person or activity regulated under this chapter.

SUBCHAPTER E. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES

Sec. 506.201. TELEPHONE NUMBER FOR COMPLAINTS. Requires TDLR to list with its regular telephone number any toll-free telephone number established under other state law that may be called to present a complaint about a health professional.

Sec. 506.202. CONFIDENTIALITY OF COMPLAINT INFORMATION. (a) Provides that except as provided by Subsection (b), a complaint and investigation concerning a license holder and all information and materials compiled by TDLR in connection with the complaint and investigation are not subject to certain disclosures.

(b) Authorizes a complaint or investigation subject to Subsection (a) and all information and materials compiled by TDLR in connection with the complaint, in accordance with Chapter 611 (Mental Health Records), Health and Safety Code, to be disclosed to certain parties.

(c) Requires TDLR to protect the identity of any patient, except certain patients, whose records are examined in connection with a disciplinary investigation or proceeding against a license holder.

SUBCHAPTER F. LICENSE REQUIREMENTS

Sec. 506.251. LICENSE REQUIRED. (a) Prohibits a person, except as provided by Subchapter B, from engaging in the practice of ABA unless the person holds a license under this chapter.

(b) Prohibits a person from using the title "licensed behavior analyst" or "licensed assistant behavior analyst," as appropriate, unless the person is licensed under this chapter.

(c) Prohibits a person, except as provided by Subchapter B, from using the title "behavior analyst" unless the person is licensed under this chapter.

Sec. 506.252. LICENSE APPLICATION. Requires that each applicant for a license under this chapter submit an application and the required fees to TDLR. Requires that the application include sufficient evidence, as defined by TDLR rules, that the applicant has successfully completed a state-approved criminal background check..

Sec. 506.253. REQUIREMENTS FOR LICENSED BEHAVIOR ANALYST. Requires that an applicant for a license as a licensed behavior analyst present evidence to TDLR that the applicant meets certain education and certification criteria.

Sec. 506.254. REQUIREMENTS FOR LICENSED ASSISTANT BEHAVIOR ANALYST. Requires that an applicant for a license as a licensed assistant behavior analyst present evidence to TDLR that the applicant meets certain criteria.

Sec. 506.255. ISSUANCE OF LICENSE. Requires TDLR to issue a license as a licensed behavior analyst or a licensed assistant behavior analyst, as appropriate, to an applicant who meets certain requirements.

Sec. 506.256. RECIPROCITY. (a) Requires TDLR to issue a license to a person who is currently licensed as a behavior analyst or as an assistant behavior analyst from another state or jurisdiction that imposes licensure requirements similar to those specified in this chapter.

(b) Requires that an applicant for a reciprocal license meet certain requirements.

Sec. 506.257. RETIREMENT STATUS. Authorizes TDLR, by rule, to adopt a system for placing a person licensed under this chapter on retirement status.

SUBCHAPTER G. LICENSE RENEWAL

Sec. 506.301. LICENSE EXPIRATION. Provides that a license issued under this chapter expires on the second anniversary of the date of issuance.

Sec. 506.302. LICENSE RENEWAL. Authorizes a license, before the expiration of a license, to be renewed by certain methods.

SUBCHAPTER H. LICENSE DENIAL AND DISCIPLINARY PROCEDURES

Sec. 506.351. GROUNDS FOR LICENSE DENIAL AND DISCIPLINARY ACTION. Authorizes TDLR or the executive director, after a hearing, to deny a license to an applicant, to suspend or revoke a person's license, or place on probation a license holder if the applicant or license holder takes certain inappropriate actions.

SUBCHAPTER I. PENALTIES AND ENFORCEMENT PROCEDURES

Sec. 506.401. AMOUNT OF ADMINISTRATIVE PENALTY. Prohibits the amount of an administrative penalty imposed against a person licensed under this chapter who violates this chapter or a rule or order adopted under this chapter from exceeding \$200. Provides that each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

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

(b) Authorizes a civil penalty to be recovered in a suit brought by the attorney general, a district attorney, or a county attorney.

Sec. 506.403. CRIMINAL OFFENSE. (a) Provides that a person commits an offense if the person knowingly violates this chapter.

(b) Provides that an offense under this section is a Class A misdemeanor.

SECTION 3. Requires the presiding officer of TDLR, as soon as practicable after the effective date of this Act, to appoint nine members to BAAB in accordance with Chapter 506, Occupations Code, as added by this Act. Requires the presiding officer of TDLR, in making the initial appointments, to designate three members for terms expiring February 1, 2019, three members for terms expiring February 1, 2021, and three members for terms expiring February 1, 2023.

SECTION 4. Requires that TDLR, not later than January 1, 2018, adopt the rules, procedures, and fees necessary to administer Chapter 506, Occupations Code, as added by this Act.

SECTION 5. Provides that, notwithstanding Chapter 506, Occupations Code, as added by this Act, a behavior analyst or assistant behavior analyst is not required to hold a license under that chapter to practice as a licensed behavior analyst or licensed assistant behavior analyst in this state before June 1, 2018.

SECTION 6. (a) Effective date, except as provided by Subsection (b) of this section: September 1, 2017.

(b) Effective date, Section 506.251, Occupations Code, and Subchapter I, Chapter 506, Occupations Code, as added by this Act: June 1, 2018.