

BILL ANALYSIS

C.S.S.B. 589
By: Lucio
Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that the profession of applied behavior analysis needs to be regulated in order 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. C.S.S.B. 589 intends to establish a regulatory framework for behavior analysts and assistant behavior analysts.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation in SECTION 2 of this bill.

ANALYSIS

C.S.S.B. 589 amends the Occupations Code to enact the Behavior Analyst Licensing Act and to create the Behavior Analyst Advisory Board. The bill establishes the activity that constitutes the practice of applied behavior analysis and provides for the inapplicability of its provisions, under specified circumstances, to certain individuals.

C.S.S.B. 589 requires the advisory board to provide advice and recommendations to the Texas Department of Licensing and Regulation (TDLR) on technical matters relevant to the administration of the bill's provisions governing behavior analysts and sets out provisions relating to the composition and operation of the advisory board. The bill requires the Texas Commission of Licensing and Regulation to adopt rules consistent with the bill's provisions governing behavior analysts for the administration and enforcement of those provisions and requires TDLR to administer and enforce those provisions; evaluate the qualifications of license applicants; provide for the examination of license applicants; issue licenses; issue subpoenas, examine witnesses, and administer oaths under state law in connection with a hearing under the bill's provisions; and investigate persons engaging in practices that violate the bill's provisions. The bill authorizes the commission or executive director of TDLR to deny, revoke, or suspend a license or otherwise discipline a license holder in accordance with state law. The bill requires the commission to adopt rules under the bill's provisions governing behavior analysts that establish standards of ethical practice and requires TDLR to provide reasonable assistance to a person who wishes to file a complaint with TDLR regarding a person or activity regulated under the bill's provisions. The bill requires the commission by rule to set fees in amounts reasonable and necessary to cover the costs of administering the bill's provisions. The bill 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 and provides for the

confidentiality of certain complaint and investigation information.

C.S.S.B. 589, effective September 1, 2018, prohibits a person, except as otherwise provided by the bill, from engaging in the practice of applied behavior analysis, using the titles "licensed behavior analyst" or "licensed assistant behavior analyst," as appropriate, or using the title "behavior analyst" unless the person holds a license under the bill's provisions. The bill requires each applicant for such a license to submit an application and the required fees to TDLR and requires the application to include sufficient evidence, as defined by commission rules, that the applicant has successfully completed a state-approved criminal background check. The bill sets out the eligibility requirements for a person to be licensed as a behavior analyst or an assistant behavior analyst and provides for the issuance of such licenses by TDLR. The bill sets out provisions relating to reciprocity for persons licensed as a behavior analyst or as an assistant behavior analyst from another state or jurisdiction and authorizes the commission by rule to adopt a system for placing a person licensed under the bill on retirement status. The bill establishes that a license issued under the bill's provisions expires on the second anniversary of the date of issuance and establishes the method for renewing a license. The bill sets out provisions relating to the grounds for the denial of a license and disciplinary action against a license holder.

C.S.S.B. 589 authorizes the commission, TDLR, or the executive director of TDLR to enforce the bill's provisions, a rule adopted under those provisions, or an order of the commission or executive director as provided by statutory provisions relating to administrative penalties and relating to other penalties and enforcement provisions applicable to licenses and license holders. The bill's provisions relating to enforcement procedures take effect September 1, 2018.

C.S.S.B. 589 includes behavior analysts among the health-related professions with respect to which the commission's regulatory rulemaking authority is subject to certain requirements relating to the role of the profession's advisory board. The bill provides for the initial appointment of nine members to the behavior analyst advisory board by the commission's presiding officer and for initial board member term lengths. The bill requires the commission, not later than April 1, 2018, to adopt the rules, procedures, and fees necessary to administer the bill's provisions governing behavior analysts. The bill establishes that a behavior analyst or assistant behavior analyst is not required to hold a license to practice as a licensed behavior analyst or licensed assistant behavior analyst in Texas before September 1, 2018.

EFFECTIVE DATE

Except as otherwise provided, September 1, 2017.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 589 may differ from the engrossed in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

SENATE ENGROSSED	HOUSE COMMITTEE SUBSTITUTE
SECTION 1. Section 51.2031(a), Occupations Code, is amended.	SECTION 1. Same as engrossed version.
SECTION 2. Subtitle I, Title 3, Occupations Code, is amended by adding Chapter 506 to read as follows: <u>CHAPTER 506. BEHAVIOR ANALYSTS</u>	SECTION 2. Subtitle I, Title 3, Occupations Code, is amended by adding Chapter 506 to read as follows: <u>CHAPTER 506. BEHAVIOR ANALYSTS</u>

SUBCHAPTER A. GENERAL PROVISIONS

SUBCHAPTER B. APPLICATION OF CHAPTER; USE OF TITLE

SUBCHAPTER C. BEHAVIOR ANALYST ADVISORY BOARD

Sec. 506.101. ADVISORY BOARD MEMBERSHIP.

Sec. 506.102. DUTIES OF ADVISORY BOARD.

Sec. 506.103. TERMS; VACANCY

Sec. 506.104. PRESIDING OFFICER.

Sec. 506.105. MEETINGS.

SUBCHAPTER D. POWERS AND DUTIES

Sec. 506.151. GENERAL POWERS AND DUTIES. (a) The executive director shall administer and enforce this chapter.

(b) The department shall:

(1) evaluate the qualifications of license applicants;

(2) provide for the examination of license applicants;

(3) in connection with a hearing under this

SUBCHAPTER A. GENERAL PROVISIONS

SUBCHAPTER B. Substantially the same as engrossed version.

SUBCHAPTER C. BEHAVIOR ANALYST ADVISORY BOARD

Sec. 506.101. ADVISORY BOARD MEMBERSHIP.

Sec. 506.102. DUTIES OF ADVISORY BOARD.

Sec. 506.103. TERMS; VACANCY

Sec. 506.104. PRESIDING OFFICER.

Sec. 506.105. MEETINGS.

Sec. 506.106. GROUNDS FOR REMOVAL. A member of the advisory board may be removed as provided by Section 51.209.

Sec. 506.107. COMPENSATION; REIMBURSEMENT. (a) A member of the advisory board may not receive compensation for service on the advisory board.

(b) A member of the advisory board is entitled to reimbursement for actual and necessary expenses incurred in performing functions as a member of the advisory board, subject to any applicable limitation on reimbursement provided by the General Appropriations Act.

SUBCHAPTER D. POWERS AND DUTIES

Sec. 506.151. GENERAL POWERS AND DUTIES. (a) The commission shall adopt rules consistent with this chapter for the administration and enforcement of this chapter.

(b) The department shall:

(1) administer and enforce this chapter;

(2) evaluate the qualifications of license applicants;

(3) provide for the examination of license applicants;

(4) issue licenses;

(5) in connection with a hearing under this

chapter, issue subpoenas, examine witnesses, and administer oaths under the laws of this state; and
(4) investigate persons engaging in practices that violate this chapter.

Sec. 506.152. STANDARDS OF ETHICAL PRACTICE.

Sec. 506.153. ASSISTANCE FILING COMPLAINT. The department shall

provide reasonable assistance to a person who wishes to file a complaint with the department regarding a person or activity regulated under this chapter.

SUBCHAPTER E. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES

SUBCHAPTER F. LICENSE REQUIREMENTS

SUBCHAPTER G. LICENSE RENEWAL

SUBCHAPTER H. LICENSE DENIAL AND DISCIPLINARY PROCEDURES

Sec. 506.351. GROUNDS FOR LICENSE DENIAL AND DISCIPLINARY ACTION.

After a hearing, the commission or executive director may deny a license to an applicant, suspend or revoke a person's license, or place on probation a license holder if the applicant or license holder:

- (1) violates this chapter or a commission order or rule;
- (2) obtains a license by means of fraud, misrepresentation, or concealment of a material fact;
- (3) sells, barter, or offers to sell or barter a license; or
- (4) engages in unprofessional conduct that:
 - (A) endangers or is likely to endanger the health, welfare, or safety of the public as

chapter, issue subpoenas, examine witnesses, and administer oaths under the laws of this state; and
(6) investigate persons engaging in practices that violate this chapter.

(c) The commission or executive director may deny, revoke, or suspend a license or may otherwise discipline a license holder in accordance with Section 51.353.

Sec. 506.152. STANDARDS OF ETHICAL PRACTICE.

Sec. 506.153. ASSISTANCE FILING COMPLAINT. The department, in

accordance with Section 51.252, shall provide reasonable assistance to a person who wishes to file a complaint with the department regarding a person or activity regulated under this chapter.

Sec. 506.154. FEES. The commission by rule shall set fees in amounts reasonable and necessary to cover the costs of administering this chapter.

SUBCHAPTER E. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES

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After a hearing, the commission or executive director may deny a license to an applicant, suspend or revoke a person's license, or place on probation a license holder if the applicant or license holder:

- (1) violates this chapter, a commission rule, or an order of the commission or the executive director;
- (2) obtains a license by means of fraud, misrepresentation, or concealment of a material fact;
- (3) sells, barter, or offers to sell or barter a license; or
- (4) engages in unprofessional conduct that:
 - (A) endangers or is likely to endanger the health, welfare, or safety of the public as

defined by commission rule; or
(B) violates the code of ethics adopted and published by the commission.

SUBCHAPTER I. PENALTIES AND ENFORCEMENT PROCEDURES

Sec. 506.401. AMOUNT OF ADMINISTRATIVE PENALTY. 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 may not exceed \$200. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

Sec. 506.402. CIVIL PENALTY. (a) 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) A civil penalty may be recovered in a suit brought by the attorney general, a district attorney, or a county attorney.

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

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

SECTION 3. As soon as practicable after the effective date of this Act, the presiding officer of the Texas Commission of Licensing and Regulation shall appoint nine members to the Behavior Analyst Advisory Board in accordance with Chapter 506, Occupations Code, as added by this Act. In making the initial appointments, the presiding officer of the commission shall 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.

defined by commission rule; or
(B) violates the code of ethics adopted and published by the commission.

SUBCHAPTER I. ENFORCEMENT PROCEDURES

Sec. 506.401. ENFORCEMENT PROCEEDINGS.

The commission, department, or executive director may enforce this chapter, a rule adopted under this chapter, or an order of the commission or executive director as provided by Subchapters F and G, Chapter 51.

SECTION 3. (a) As soon as practicable after the effective date of this Act, the presiding officer of the Texas Commission of Licensing and Regulation shall appoint nine members to the Behavior Analyst Advisory Board in accordance with Chapter 506, Occupations Code, as added by this Act. In making the initial appointments, the presiding officer of the commission shall 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.

(b) Notwithstanding Section 506.101, Occupations Code, as added by this Act, a person who meets the requirements of Section 506.253 or 506.254, Occupations Code, as added by this Act, may be appointed as an initial behavior analyst or assistant behavior analyst member of the Behavior Analyst Advisory Board, as applicable, regardless of whether the person holds a license issued under Chapter 506, Occupations Code, as added by this Act.

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

SECTION 5. 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) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2017.

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

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

SECTION 5. 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 September 1, 2018.

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

(b) Section 506.251, Occupations Code, and Subchapter I, Chapter 506, Occupations Code, as added by this Act, take effect September 1, 2018.