

- SUBJECT:** Establishing the Texas Board of Behavior Analyst Examiners
- COMMITTEE:** Public Health — committee substitute recommended
- VOTE:** 11 ayes — Crossover, Naishtat, Blanco, Coleman, Collier, S. Davis, Guerra, R. Miller, Sheffield, Zedler, Zerwas
- 0 nays
- WITNESSES:** For — Duy Le, Child Study Center; Gordon Bourland, Jennifer Fritz, Richard Smith, and Russell Lang, Texas Association for Behavior Analysis; Shylo Bundy; (*Registered, but did not testify*: Suzanne Potts, Autism Society of Central Texas; Pati McCandless, Blue Cross and Blue Shield of Texas; Shannon Struble, Bluebonnet Trails Community Services; Morgan Chapple, Ben Seifert, and Aarti Thakore, Central Texas Autism Center; Kelle Rich, Central Texas Autism Society; Chris Masey, Coalition of Texans with Disabilities; Tanya Lavelle, Easter Seals Central Texas; Jennifer Haggar, Haggar Behavioral Consulting, LLC; Emily Ferris, University of North Texas; and five individuals)
- Against — Michael Ratheal, Texas Psychological Association; (*Registered, but did not testify*: David White, Texas Psychological Association; Shannon Noble, Texas Counseling Association)
- On — Kate Johnson-Patagoc, Texana Center; (*Registered, but did not testify*: Darrel Spinks, Texas State Board of Examiners of Psychologists)
- BACKGROUND:** A regulatory board that specifically oversees behavior analysts does not exist in statute. Some have called for the creation of a board to provide licensing for these professionals as well as legal recourse and remedies for individuals who might be harmed by someone practicing as a behavior analyst.
- DIGEST:** CSHB 2703 would create the Behavior Analyst Licensing Act. This would include the establishment of a board to oversee behavior analysts, including licensing requirements for these individuals, and related

policies, sanctions, and statutory definitions of the profession.

Boards. CSHB 2703 would establish the Texas Board of Behavior Analyst Examiners, also known as the behavior analyst board. The bill would specify the composition of the board, membership requirements, terms, meetings, election of officers, training requirements for members, and grounds for removal. Board members could not receive compensation for their services but could receive a per diem and travel allowance for behavior analyst board business. A member of the board would not be liable in a civil action for an act performed in good faith while performing duties as a member.

Subject to the advice of the Texas Medical Board, the behavior analyst board would:

- establish standards of conduct and adopt a code of professional ethics for license holders;
- adopt rules to carry out the behavior analyst board's duties in administering the provisions of the bill;
- set fees that were reasonable and necessary to cover the costs of administering the provisions of the bill;
- implement a policy requiring the behavior analyst board to use appropriate technological solutions to improve the board's ability to perform its functions;
- develop and implement policies for rulemaking procedures; and
- develop policies to encourage the use of appropriate alternative dispute resolution procedures to assist in the resolution of internal and external disputes under the behavior analyst board's jurisdiction.

The behavior analyst board's procedures for alternative dispute resolution would conform, to the extent possible, to model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

The Texas Medical Board would provide administrative and clerical

employees as necessary to allow the behavior analyst board to administer the provisions of the bill.

By itself, the behavior analyst board would:

- administer and enforce the provisions of the bill;
- issue and enforce licenses of behavior analysts;
- by rule adopt a standardized form for filing complaints with the board;
- provide reasonable assistance to a person who wished to file a complaint with the board;
- designate a person to coordinate the board's alternative dispute resolution policy, serve as a resource for training related to that policy, and to collect data about the effectiveness of procedures;
- prepare information for the public describing the functions of the board and make that information available;
- establish notification methods for a person to direct complaints to the board;
- list a toll-free number established under other state law to call to present a complaint about a health professional;
- maintain a system to promptly and efficiently act on complaints filed with the board;
- adopt rules concerning the investigation of a complaint filed with the board; and
- adopt a schedule of sanctions for violations under the provisions of the bill.

License. A person could not engage in the practice of applied behavior analysis, use the title "licensed behavior analyst" or "licensed assistant behavior analyst" unless the person held a license. A person could not use the title "behavior analyst" unless the person held a license or met certain requirements in the bill for an exception. An applicant for a license would submit an application and required fees to the behavior analyst board for approval. A license would expire on the second anniversary of the date it was issued unless the board specified otherwise.

CSHB 2703 would specify the requirements for a person to be licensed under the bill, including requirements for certification, education, examination, and compliance with certain professional, ethical, and disciplinary standards. The bill also would specify grounds for the behavior analyst board to deny a license to applicants or to suspend, temporarily suspend, emergency suspend, or revoke their license, or place a person on probation following a hearing.

The bill would require the behavior analyst board to issue a license to a person who was currently licensed as a behavior analyst or as an assistant behavior analyst from another state or jurisdiction that imposed similar licensure requirements as those in CSHB 2703.

Excepted individuals. The bill would not apply to a person licensed to practice psychology or another profession if the applied behavior analysis services provided were within the scope of the licensed person's education, training, and competence and the scope of the person's license, if the person was not licensed to practice psychology.

The bill also would not apply to a family member or a guardian of applied behavior analysis services who was implementing a behavior treatment plan for the recipient under the authority of a licensed behavior analyst or assistant. The bill would specify the conditions under which the bill's provisions would not apply to paraprofessional technicians; a college or university student, intern, or fellow; an unlicensed person pursuing supervised experience in applied behavior analysis; a behavior analyst licensed in another jurisdiction; or a teacher or employee of a private or public school.

The bill would allow a person to be exempt from the provisions of the bill but still use the title "behavior analyst" if the person practiced with nonhumans and met other requirements.

Definition. The bill would define the practice of applied behavior analysis and applied behavior analysis interventions. The definition of the practice

of behavior analysis would not include:

- psychological testing, psychotherapy, cognitive therapy, psychoanalysis, hypnotherapy, or counseling as treatment modalities; or
- the diagnosis of disorders.

Advertising or competitive bidding. The Texas Medical Board or behavior analyst board could not adopt rules restricting advertising or competitive bidding by a license holder except to prohibit false, misleading, or deceptive practices.

Complaint confidentiality and subpoena. A complaint and investigation concerning a license holder under the bill and all information and materials compiled by the behavior analyst board in connection with the complaint and investigation would not be subject to disclosure under Government Code, ch. 552, which governs public information, or disclosure, discovery, subpoena, or other means of legal compulsion for release of other information to any person. These materials could be disclosed to the behavior analyst board and the board's employees or agents involved in license holder discipline and certain other parties specified in the bill.

The presiding officer of the behavior analyst board could issue a subpoena to compel the attendance of a relevant witness or the production of evidence for an investigation of a complaint filed with the board.

Sanctions, penalties, and offenses. The State Office of Administrative Hearings (SOAH) would use the broad schedule of sanctions adopted by the behavior analyst board for sanctions as the result of a SOAH hearing. The board could impose an administrative penalty of up to \$200 against licensed person who violated the provisions of the bill or a rule or order adopted under the provisions of the bill.

A person found by a court to have violated the provisions of the bill would be liable for a civil penalty of \$200 for each day the violation continued.

The penalty could be recovered in a suit brought by the attorney general, the district attorney, or a county attorney. A person who knowingly violated the provisions of the bill would commit a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000). Each day of violation would be a separate criminal offense.

Effective dates. By January 1, 2016, the Texas Board of Behavior Analyst Examiners would adopt the rules, procedures, and fees necessary to administer the provisions of the bill. A behavior analyst or assistant behavior analyst would not be required to hold a license under the bill to practice until June 1, 2016.

As soon as practicable after September 1, 2015, the governor would appoint nine members to the Texas Board of Behavior Analyst Examiners. In making the initial appointments, the governor would designate three members to have terms expiring February 1, 2017, and three members to have terms expiring February 1, 2021.

The rest of the bill would take effect September 1, 2015, except for provisions in the bill related to license denial and disciplinary procedures and a required license under subch. H and sec. 506.251 of the bill, which would take effect June 1, 2016.