

By: Simmons, Gonzales

H.B. No. 2703

Substitute the following for H.B. No. 2703:

By: Crownover

C.S.H.B. No. 2703

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the establishment of the Texas Board of Behavior
3 Analyst Examiners and the requirement to obtain a license to
4 practice as a behavior analyst or assistant behavior analyst;
5 imposing fees; providing an administrative penalty; creating a
6 criminal offense.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

8 SECTION 1. Subtitle I, Title 3, Occupations Code, is
9 amended by adding Chapter 506 to read as follows:

10 CHAPTER 506. BEHAVIOR ANALYSTS

11 SUBCHAPTER A. GENERAL PROVISIONS

12 Sec. 506.001. SHORT TITLE. This chapter may be cited as
13 the Behavior Analyst Licensing Act.

14 Sec. 506.002. DEFINITIONS. In this chapter:

15 (1) "Behavior analyst board" means the Texas Board of
16 Behavior Analyst Examiners.

17 (2) "Certifying entity" means the nationally
18 accredited Behavior Analyst Certification Board or another entity
19 that is accredited by the National Commission for Certifying
20 Agencies or the American National Standards Institute to issue
21 credentials in the professional practice of applied behavior
22 analysis and approved by the behavior analyst board.

23 (3) "Executive director" means the executive director
24 of the medical board.

1 (4) "License holder" means a person licensed under
2 this chapter.

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

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

13 (7) "Medical board" means the Texas Medical Board.

14 (8) "Physician" means a person licensed to practice
15 medicine by the medical board.

16 Sec. 506.003. PRACTICE OF APPLIED BEHAVIOR ANALYSIS. (a)
17 The practice of applied behavior analysis is the design,
18 implementation, and evaluation of instructional and environmental
19 modifications to produce socially significant improvements in
20 human behavior.

21 (b) The practice of applied behavior analysis includes the
22 empirical identification of functional relations between behavior
23 and environmental factors, known as functional assessment or
24 functional analysis.

25 (c) Applied behavior analysis interventions:

26 (1) are based on scientific research and the direct
27 observation and measurement of behavior and environment; and

1 (2) use contextual factors, motivating operations,
2 antecedent stimuli, positive reinforcement, and other procedures
3 to help individuals develop new behaviors, increase or decrease
4 existing behaviors, and elicit or evoke behaviors under specific
5 environmental conditions.

6 (d) The practice of applied behavior analysis does not
7 include:

8 (1) psychological testing, psychotherapy, cognitive
9 therapy, psychoanalysis, hypnotherapy, or counseling as treatment
10 modalities; or

11 (2) the diagnosis of disorders.

12 SUBCHAPTER B. APPLICATION OF CHAPTER; USE OF TITLE

13 Sec. 506.051. LICENSED PSYCHOLOGISTS. This chapter does
14 not apply to a person licensed to practice psychology in this state
15 if the applied behavior analysis services provided are within the
16 scope of the licensed psychologist's education, training, and
17 competence.

18 Sec. 506.052. OTHER LICENSED PROFESSIONALS. This chapter
19 does not apply to a person licensed to practice another profession
20 in this state if the applied behavior analysis services provided
21 are within:

22 (1) the scope of practice of the person's license under
23 state law; and

24 (2) the scope of the person's education, training, and
25 competence.

26 Sec. 506.053. FAMILY MEMBERS AND GUARDIANS. This chapter
27 does not apply to a family member or guardian of a recipient of

1 applied behavior analysis services who is implementing a behavior
2 analysis treatment plan for the recipient under the extended
3 authority and direction of a licensed behavior analyst or licensed
4 assistant behavior analyst.

5 Sec. 506.054. PARAPROFESSIONALS. This chapter does not
6 apply to a paraprofessional technician who delivers applied
7 behavior analysis services if:

8 (1) the applied behavior analysis services are
9 provided under the extended authority and direction of a licensed
10 behavior analyst or licensed assistant behavior analyst; and

11 (2) the person is designated as an "applied behavior
12 analysis technician," "behavior technician," "tutor," or
13 "front-line therapist."

14 Sec. 506.055. STUDENTS, INTERNS, AND FELLOWS. This chapter
15 does not apply to an applied behavior analysis activity or service
16 of a college or university student, intern, or fellow if:

17 (1) the activity or service is part of a defined
18 behavior analysis program of study, course, practicum, internship,
19 or postdoctoral fellowship;

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

23 (3) the person is designated as a "student," "intern,"
24 "fellow," or "trainee."

25 Sec. 506.056. SUPERVISED EXPERIENCE. This chapter does
26 not apply to an unlicensed person pursuing supervised experience in
27 applied behavior analysis if the supervised experience is

1 consistent with the requirements of the certifying entity and
2 behavior analyst board rules.

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

8 (1) are within the behavior analyst's customary area
9 of practice;

10 (2) are conducted not more than 20 days in a calendar
11 year; and

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

13 (b) A behavior analyst described by Subsection (a) shall
14 inform the recipient of applied behavior analysis services, or a
15 parent or guardian of the recipient if the recipient is under 18
16 years of age, that:

17 (1) the behavior analyst is not licensed in this
18 state; and

19 (2) the activities and services provided by the
20 behavior analyst are time-limited.

21 Sec. 506.058. TEACHER OR EMPLOYEE OF SCHOOL DISTRICT. (a)
22 This chapter does not apply to a teacher or employee of a private or
23 public school who provides applied behavior analysis services if
24 the teacher or employee is performing duties within the scope of the
25 teacher's or employee's employment.

26 (b) A person described by Subsection (a) may not:

27 (1) represent that the person is a behavior analyst,

1 unless the applied behavior analysis services provided are within
2 the person's education, training, and competence;

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

6 (3) receive compensation for providing applied
7 behavior analysis services, other than the compensation that the
8 person receives from the person's school employer.

9 Sec. 506.059. USE OF TITLE "BEHAVIOR ANALYST." (a) This
10 chapter does not apply to a person described by Subsection (b).

11 (b) A person may use the title "behavior analyst" if the
12 person:

13 (1) is a behavior analyst who practices with
14 nonhumans, including an applied animal behaviorist or an animal
15 trainer;

16 (2) teaches behavior analysis or conducts behavior
17 analytic research if the teaching or research activities do not
18 involve the delivery or supervision of applied behavior analysis
19 services; or

20 (3) is a professional who provides general applied
21 behavior analysis services to organizations if those services:

22 (A) are for the benefit of the organization; and

23 (B) do not involve direct services to
24 individuals.

25 SUBCHAPTER C. TEXAS BOARD OF BEHAVIOR ANALYST EXAMINERS

26 Sec. 506.101. BOARD MEMBERSHIP. (a) The behavior analyst
27 board is composed of nine members appointed by the governor with the

1 advice and consent of the senate as follows:

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

6 (2) one licensed assistant behavior analyst;

7 (3) one physician who has experience providing mental
8 health or behavioral health services; and

9 (4) three members who represent the public and who are
10 either former recipients of applied behavior analysis services or
11 the parent or guardian of a current or former recipient of applied
12 behavior analysis services.

13 (b) To be qualified for appointment under Subsection
14 (a)(1), a person must have at least five years of experience as a
15 licensed behavior analyst after being certified by the certifying
16 entity.

17 (c) Appointments to the behavior analyst board shall be made
18 without regard to the race, color, disability, sex, religion, age,
19 or national origin of the appointee.

20 Sec. 506.102. ELIGIBILITY OF PUBLIC MEMBERS. A person is
21 not eligible for appointment as a public member of the behavior
22 analyst board if:

23 (1) the person is registered, certified, or licensed
24 by an occupational regulatory agency in the field of mental health;

25 (2) the person's spouse is registered, certified, or
26 licensed by an occupational regulatory agency in the field of
27 mental health; or

1 (3) the person or the person's spouse:

2 (A) is employed by or participates in the
3 management of a business entity or other organization receiving
4 funds from the medical board or the behavior analyst board;

5 (B) owns or controls, directly or indirectly,
6 more than a 10 percent interest in a business entity or other
7 organization receiving funds from the medical board or the behavior
8 analyst board; or

9 (C) uses or receives a substantial amount of
10 funds from the medical board or the behavior analyst board, other
11 than compensation or reimbursement authorized by law for medical
12 board or behavior analyst board membership, attendance, or
13 expenses.

14 Sec. 506.103. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a)

15 In this section, "Texas trade association" means a cooperative and
16 voluntarily joined statewide association of business or
17 professional competitors in this state designed to assist its
18 members and its industry or profession in dealing with mutual
19 business or professional problems and in promoting their common
20 interest.

21 (b) A person may not be a member of the behavior analyst
22 board and may not be an employee of the medical board or the
23 behavior analyst board employed in a "bona fide executive,
24 administrative, or professional capacity," as that phrase is used
25 for purposes of establishing an exemption to the overtime
26 provisions of the federal Fair Labor Standards Act of 1938 (29
27 U.S.C. Section 201 et seq.) if:

1 (1) the person is an officer, employee, manager, or
2 paid consultant of a Texas trade association in the field of mental
3 health; or

4 (2) the person's spouse is an officer, employee,
5 manager, or paid consultant of a Texas trade association in the
6 field of mental health.

7 (c) A person may not be a member of the behavior analyst
8 board or act as general counsel to the medical board or the behavior
9 analyst board if the person is required to register as a lobbyist
10 under Chapter 305, Government Code, because of the person's
11 activities for compensation on behalf of a profession related to
12 the operation of the behavior analyst board.

13 Sec. 506.104. TERMS; VACANCY. (a) Members of the behavior
14 analyst board serve staggered six-year terms, with the terms of
15 three members expiring February 1 of each odd-numbered year.

16 (b) A member may not serve more than two consecutive
17 six-year terms.

18 (c) If a vacancy occurs during a member's term, the governor
19 shall appoint a member to fill the unexpired term.

20 (d) A member shall serve until a successor is appointed and
21 assumes office.

22 Sec. 506.105. OFFICERS. At the meeting of the behavior
23 analyst board held on the date closest to August 31 of each year,
24 the behavior analyst board shall elect from its members a presiding
25 officer, a secretary, and any other officers required to conduct
26 the business of the behavior analyst board.

27 Sec. 506.106. GROUNDS FOR REMOVAL. (a) It is a ground for

1 removal from the behavior analyst board that a member:

2 (1) does not have at the time of taking office the
3 qualifications required by Section 506.101;

4 (2) does not maintain during service on the behavior
5 analyst board the qualifications required by Section 506.101;

6 (3) is ineligible for membership under Sections
7 506.102 or 506.103;

8 (4) cannot, because of illness or disability, complete
9 the member's duties for a substantial part of the member's term; or

10 (5) is absent from more than half of the regularly
11 scheduled behavior analyst board meetings that the member is
12 eligible to attend during a calendar year without an excuse
13 approved by a majority vote of the behavior analyst board.

14 (b) The validity of an action of the behavior analyst board
15 is not affected by the fact that the action is taken when a ground
16 for removal of a member exists.

17 (c) If the executive director has knowledge that a potential
18 ground for removal exists, the executive director shall notify the
19 presiding officer of the behavior analyst board of the potential
20 ground. The presiding officer shall then notify the governor and
21 the attorney general that a potential ground for removal exists. If
22 the potential ground for removal involves the presiding officer,
23 the executive director shall notify the next highest ranking
24 officer of the behavior analyst board, who shall then notify the
25 governor and the attorney general that a potential ground for
26 removal exists.

27 Sec. 506.107. COMPENSATION; REIMBURSEMENT. (a) A

1 behavior analyst board member may not receive compensation for the
2 member's services. A member is entitled to a per diem and travel
3 allowance for each day the member engages in behavior analyst board
4 business at the rate set for state employees in the General
5 Appropriations Act.

6 (b) The per diem and travel allowance authorized by this
7 section may be paid only from fees collected under this chapter.

8 Sec. 506.108. MEETINGS. (a) The behavior analyst board
9 shall meet at least twice each year.

10 (b) The behavior analyst board may meet at other times at
11 the call of the presiding officer or a majority of the members.

12 Sec. 506.109. TRAINING PROGRAM FOR MEMBERS. (a) A person
13 who is appointed to and qualifies for office as a member of the
14 behavior analyst board may not vote, deliberate, or be counted as a
15 member in attendance at a meeting of the behavior analyst board
16 until the person completes a training program that complies with
17 this section.

18 (b) The training program must provide the person with
19 information regarding:

20 (1) this chapter and the programs, functions, rules,
21 and budget of the behavior analyst board;

22 (2) the results of the most recent formal audit of the
23 behavior analyst board;

24 (3) the requirements of laws relating to open
25 meetings, public information, administrative procedure, and
26 conflicts of interest; and

27 (4) any applicable ethics policies adopted by the

1 behavior analyst board or the Texas Ethics Commission.

2 (c) A person appointed to the behavior analyst board is
3 entitled to reimbursement, as provided by the General
4 Appropriations Act, for the travel expenses incurred in attending
5 the training program regardless of whether the attendance at the
6 program occurs before or after the person qualifies for office.

7 Sec. 506.110. CIVIL LIABILITY. A member of the behavior
8 analyst board is not liable in a civil action for an act performed
9 in good faith while performing duties as a member.

10 SUBCHAPTER D. POWERS AND DUTIES OF BEHAVIOR ANALYST BOARD AND
11 MEDICAL BOARD

12 Sec. 506.151. GENERAL POWERS AND DUTIES OF BEHAVIOR ANALYST
13 BOARD. (a) Subject to the advice and approval of the medical
14 board, the behavior analyst board shall:

15 (1) adopt rules consistent with this chapter to carry
16 out the behavior analyst board's duties in administering this
17 chapter; and

18 (2) establish standards of conduct and adopt a code of
19 professional ethics for license holders.

20 (b) The behavior analyst board shall:

21 (1) administer and enforce this chapter;

22 (2) determine the qualifications and fitness of each
23 applicant for a license, license renewal, or temporary license and
24 review and approve or reject each application for the issuance or
25 renewal of a license;

26 (3) issue each license;

27 (4) deny, suspend, or revoke a license or otherwise

1 discipline a license holder; and

2 (5) ensure strict compliance with and enforcement of
3 this chapter.

4 Sec. 506.152. ASSISTANCE BY MEDICAL BOARD. (a) The medical
5 board shall provide administrative and clerical employees as
6 necessary to enable the behavior analyst board to administer this
7 chapter.

8 (b) Subject to the advice and approval of the medical board,
9 the behavior analyst board shall develop and implement policies
10 that clearly separate the policy-making responsibilities of the
11 behavior analyst board and the management responsibilities of the
12 executive director and the staff of the medical board.

13 Sec. 506.153. FEES. (a) The behavior analyst board, with
14 the advice and approval of the medical board, by rule shall set fees
15 in amounts reasonable and necessary to cover the costs of
16 administering this chapter.

17 (b) Funds to administer this chapter may be appropriated
18 only from fees collected under this chapter.

19 Sec. 506.154. RULES RESTRICTING ADVERTISING OR COMPETITIVE
20 BIDDING. (a) The medical board or behavior analyst board may not
21 adopt rules restricting advertising or competitive bidding by a
22 license holder except to prohibit false, misleading, or deceptive
23 practices.

24 (b) The medical board or behavior analyst board may not
25 include in rules to prohibit false, misleading, or deceptive
26 practices by a license holder a rule that:

27 (1) restricts the license holder's use of any

1 advertising medium;

2 (2) restricts the license holder's personal appearance
3 or use of the license holder's voice in an advertisement;

4 (3) relates to the size or duration of an
5 advertisement by the license holder; or

6 (4) restricts the license holder's advertisement under
7 a trade name.

8 Sec. 506.155. RULES ON CONSEQUENCES OF CRIMINAL
9 CONVICTION. (a) The behavior analyst board shall adopt rules
10 necessary to comply with Chapter 53.

11 (b) In the behavior analyst board's rules under this
12 section, the behavior analyst board shall list the specific
13 offenses for which a conviction would constitute grounds for the
14 behavior analyst board to take action under Section 53.021.

15 Sec. 506.156. ANNUAL REGISTRY. (a) The behavior analyst
16 board shall annually prepare a registry of all license holders.

17 (b) The behavior analyst board shall make the registry
18 available to the public, license holders, and other state agencies.

19 Sec. 506.157. BEHAVIOR ANALYST BOARD DUTIES REGARDING
20 COMPLAINTS. (a) The behavior analyst board by rule shall:

21 (1) adopt a standardized form for filing complaints
22 with the behavior analyst board; and

23 (2) prescribe information to be provided when a person
24 files a complaint with the behavior analyst board.

25 (b) The behavior analyst board shall provide reasonable
26 assistance to a person who wishes to file a complaint with the
27 behavior analyst board.

1 Sec. 506.158. USE OF TECHNOLOGY. Subject to the advice and
2 approval of the medical board, the behavior analyst board shall
3 implement a policy requiring the behavior analyst board to use
4 appropriate technological solutions to improve the behavior
5 analyst board's ability to perform the behavior analyst board's
6 functions. The policy must ensure that the public is able to
7 interact with the behavior analyst board on the Internet.

8 Sec. 506.159. NEGOTIATED RULEMAKING AND ALTERNATIVE
9 DISPUTE RESOLUTION POLICY. (a) Subject to the advice and approval
10 of the medical board, the behavior analyst board shall develop and
11 implement a policy to encourage the use of:

12 (1) negotiated rulemaking procedures under Chapter
13 2008, Government Code, for the adoption of behavior analyst board
14 rules; and

15 (2) appropriate alternative dispute resolution
16 procedures under Chapter 2009, Government Code, to assist in the
17 resolution of internal and external disputes under the behavior
18 analyst board's jurisdiction.

19 (b) The behavior analyst board's procedures relating to
20 alternative dispute resolution must conform, to the extent
21 possible, to any model guidelines issued by the State Office of
22 Administrative Hearings for the use of alternative dispute
23 resolution by state agencies.

24 (c) The behavior analyst board shall designate a trained
25 person to:

26 (1) coordinate the implementation of the policy
27 adopted under Subsection (a);

1 (2) serve as a resource for any training needed to
2 implement the procedures for negotiated rulemaking or alternative
3 dispute resolution; and

4 (3) collect data concerning the effectiveness of those
5 procedures, as implemented by the behavior analyst board.

6 SUBCHAPTER E. PUBLIC INTEREST INFORMATION

7 AND COMPLAINT PROCEDURES

8 Sec. 506.201. PUBLIC INTEREST INFORMATION. (a) The
9 behavior analyst board shall prepare information of public interest
10 describing the functions of the behavior analyst board.

11 (b) The behavior analyst board shall make the information
12 available to the public and appropriate state agencies.

13 Sec. 506.202. COMPLAINTS. (a) The behavior analyst board
14 by rule shall establish methods by which service recipients are
15 notified of the name, mailing address, and telephone number of the
16 behavior analyst board for the purpose of directing complaints to
17 the behavior analyst board. The behavior analyst board may provide
18 for that notice:

19 (1) on each registration form, application, or written
20 contract for services of a person regulated under this chapter;

21 (2) on a sign prominently displayed in the place of
22 business of each person regulated under this chapter; or

23 (3) in a bill for services provided by a person
24 regulated under this chapter.

25 (b) The behavior analyst board shall list with its regular
26 telephone number any toll-free telephone number established under
27 other state law that may be called to present a complaint about a

1 health professional.

2 Sec. 506.203. INFORMATION ABOUT COMPLAINT ACTIONS. (a)
3 The behavior analyst board shall maintain a system to promptly and
4 efficiently act on complaints filed with the behavior analyst
5 board. The behavior analyst board shall maintain information about
6 parties to a complaint, the subject matter of the complaint, a
7 summary of the results of the review or investigation of the
8 complaint, and the disposition of the complaint.

9 (b) The behavior analyst board shall make information
10 available describing its procedures for complaint investigation
11 and resolution.

12 (c) The behavior analyst board shall periodically notify
13 the complaint parties of the status of the complaint until final
14 disposition.

15 (d) The behavior analyst board shall analyze complaints
16 filed with the behavior analyst board to identify any trends or
17 issues related to certain violations, including:

- 18 (1) the reason for each complaint;
19 (2) how each complaint was resolved; and
20 (3) the subject matter of each complaint that was not
21 within the jurisdiction of the behavior analyst board and how the
22 behavior analyst board responded to the complaint.

23 Sec. 506.204. GENERAL RULES REGARDING COMPLAINT
24 INVESTIGATION AND DISPOSITION. The behavior analyst board shall
25 adopt rules concerning the investigation of a complaint filed with
26 the behavior analyst board. The rules must:

- 27 (1) distinguish between categories of complaints;

1 (2) ensure that a complaint is not dismissed without
2 appropriate consideration;

3 (3) require that the behavior analyst board be advised
4 of a complaint that is dismissed and that a letter or electronic
5 communication be sent to the person who filed the complaint
6 explaining the action taken on the dismissed complaint;

7 (4) ensure that the person who filed the complaint has
8 an opportunity to explain the allegations made in the complaint;
9 and

10 (5) prescribe guidelines concerning the categories of
11 complaints that require the use of a private investigator and the
12 procedures for the behavior analyst board to obtain the services of
13 a private investigator.

14 Sec. 506.205. CONFIDENTIALITY OF COMPLAINT INFORMATION.

15 (a) Except as provided by Subsection (b), a complaint and
16 investigation concerning a license holder and all information and
17 materials compiled by the behavior analyst board in connection with
18 the complaint and investigation are not subject to:

19 (1) disclosure under Chapter 552, Government Code; or
20 (2) disclosure, discovery, subpoena, or other means of
21 legal compulsion for release of information to any person.

22 (b) A complaint or investigation subject to Subsection (a)
23 and all information and materials compiled by the behavior analyst
24 board in connection with the complaint, in accordance with Chapter
25 611, Health and Safety Code, may be disclosed to:

26 (1) the behavior analyst board and behavior analyst
27 board employees or agents involved in license holder discipline;

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

3 (3) a law enforcement agency if required by law;

4 (4) a governmental agency if:

5 (A) the disclosure is required or permitted by
6 law; and

7 (B) the agency obtaining the disclosure protects
8 the identity of any patient whose records are examined; or

9 (5) the legislature.

10 (c) Unless good cause for delay is shown to the presiding
11 officer at the hearing, the behavior analyst board shall provide
12 the license holder with access to all information that the behavior
13 analyst board intends to offer into evidence at the hearing not
14 later than the 30th day after the date the behavior analyst board
15 receives a written request from a license holder who is entitled to
16 a hearing under this chapter or from the license holder's attorney
17 of record.

18 (d) The behavior analyst board shall protect the identity of
19 any patient whose records are examined in connection with a
20 disciplinary investigation or proceeding against a license holder,
21 except:

22 (1) a patient who initiates the disciplinary action;

23 or

24 (2) a patient who has submitted a written consent to
25 release the records.

26 Sec. 506.206. PUBLIC PARTICIPATION. (a) The behavior
27 analyst board shall develop and implement policies that provide the

1 public with a reasonable opportunity to appear before the behavior
2 analyst board and to speak on any issue under the behavior analyst
3 board's jurisdiction.

4 (b) The behavior analyst board shall prepare and maintain a
5 written plan that describes how a person who does not speak English
6 may be provided reasonable access to the behavior analyst board's
7 programs.

8 Sec. 506.207. SUBPOENAS. (a) In an investigation of a
9 complaint filed with the behavior analyst board, the presiding
10 officer of the behavior analyst board may issue a subpoena to compel
11 the attendance of a relevant witness or the production, for
12 inspection or copying, of relevant evidence that is in this state.

13 (b) A subpoena may be served personally or by certified
14 mail.

15 (c) If a person fails to comply with a subpoena, the
16 behavior analyst board, acting through the attorney general, may
17 file suit to enforce the subpoena in a district court in Travis
18 County or in the county in which a hearing conducted by the behavior
19 analyst board may be held.

20 (d) On finding that good cause exists for issuing the
21 subpoena, the court shall order the person to comply with the
22 subpoena. The court may punish a person who fails to obey the court
23 order.

24 (e) The behavior analyst board shall pay for photocopies
25 subpoenaed under this section a reasonable fee in an amount not to
26 exceed the amount the behavior analyst board may charge for copies
27 of its records.

1 (f) The reimbursement of the expenses of a witness whose
2 attendance is compelled under this section is governed by Section
3 2001.103, Government Code.

4 (g) Information and materials subpoenaed or compiled by the
5 behavior analyst board in connection with the investigation of a
6 complaint may be disclosed only as provided by Section 506.205.

7 SUBCHAPTER F. LICENSE REQUIREMENTS

8 Sec. 506.251. LICENSE REQUIRED. (a) Except as provided by
9 Subchapter B, a person may not engage in the practice of applied
10 behavior analysis unless the person holds a license under this
11 chapter.

12 (b) A person may not use the title "licensed behavior
13 analyst" or "licensed assistant behavior analyst," as appropriate,
14 unless the person is licensed under this chapter.

15 (c) Except as provided by Subchapter B, a person may not use
16 the title "behavior analyst" unless the person is licensed under
17 this chapter.

18 Sec. 506.252. LICENSE APPLICATION. Each applicant for a
19 license under this chapter must submit an application and the
20 required fees to the behavior analyst board. The application must
21 include sufficient evidence, as defined by behavior analyst board
22 rules, that the applicant:

23 (1) is of good moral character; and

24 (2) has successfully completed a state-approved
25 criminal background check.

26 Sec. 506.253. REQUIREMENTS FOR LICENSED BEHAVIOR
27 ANALYST. An applicant for a license as a licensed behavior analyst

1 must present evidence to the behavior analyst board that the
2 applicant:

3 (1) is currently certified by the certifying entity as
4 a Board Certified Behavior Analyst or a Board Certified Behavior
5 Analyst--Doctoral or an equivalent certification issued by the
6 certifying entity;

7 (2) has met the educational requirements of the Board
8 Certified Behavior Analyst standard or the Board Certified Behavior
9 Analyst--Doctoral standard or an equivalent standard adopted by the
10 certifying entity;

11 (3) has passed the Board Certified Behavior Analyst
12 examination, or an equivalent examination offered by the certifying
13 entity, in applied behavior analysis;

14 (4) is in compliance with all professional, ethical,
15 and disciplinary standards established by the certifying entity;
16 and

17 (5) is not subject to any disciplinary action by the
18 certifying entity.

19 Sec. 506.254. REQUIREMENTS FOR LICENSED ASSISTANT BEHAVIOR
20 ANALYST. An applicant for a license as a licensed assistant
21 behavior analyst must present evidence to the behavior analyst
22 board that the applicant:

23 (1) is currently certified by the certifying entity as
24 a Board Certified Assistant Behavior Analyst or an equivalent
25 certification issued by the certifying entity;

26 (2) has met the educational requirements of the Board
27 Certified Assistant Behavior Analyst standard or an equivalent

1 standard adopted by the certifying entity;

2 (3) has passed the Board Certified Assistant Behavior
3 Analyst examination, or an equivalent examination offered by the
4 certifying entity, in applied behavior analysis;

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

7 (5) is not subject to any disciplinary action by the
8 certifying entity; and

9 (6) is currently supervised by a licensed behavior
10 analyst in accordance with the requirements of the certifying
11 entity.

12 Sec. 506.255. ISSUANCE OF LICENSE. The behavior analyst
13 board shall issue a license as a licensed behavior analyst or a
14 licensed assistant behavior analyst, as appropriate, to an
15 applicant who:

16 (1) complies with the requirements of this chapter;

17 (2) meets any additional requirements the behavior
18 analyst board establishes by rule; and

19 (3) pays the required fees.

20 Sec. 506.256. TEMPORARY LICENSE. (a) The behavior analyst
21 board by rule may provide for the issuance of a temporary license.

22 (b) Rules adopted under this section must include a time
23 limit for a temporary license.

24 Sec. 506.257. RECIPROCITY. (a) The behavior analyst board
25 shall issue a license to a person who is currently licensed as a
26 behavior analyst or as an assistant behavior analyst from another
27 state or jurisdiction that imposes licensure requirements similar

1 to those specified in this chapter.

2 (b) An applicant for a reciprocal license shall:

3 (1) submit evidence to the behavior analyst board that
4 the applicant:

5 (A) is in good standing as determined by the
6 behavior analyst board;

7 (B) holds a valid license from another state or
8 jurisdiction; and

9 (C) is in compliance with other requirements
10 established by Sections 506.252, 506.253, 506.254, or 506.255, as
11 appropriate; and

12 (2) pay the required fees.

13 Sec. 506.258. INACTIVE STATUS. The behavior analyst board
14 by rule may provide for a person licensed under this chapter to be
15 placed on inactive status.

16 Sec. 506.259. RETIREMENT STATUS. The behavior analyst
17 board by rule may adopt a system for placing a person licensed under
18 this chapter on retirement status.

19 SUBCHAPTER G. LICENSE RENEWAL

20 Sec. 506.301. LICENSE EXPIRATION. (a) A license issued
21 under this chapter expires on the second anniversary of the date of
22 issuance.

23 (b) The behavior analyst board by rule may adopt a system
24 under which licenses expire on various dates during the year. For a
25 year in which the expiration date is changed, the behavior analyst
26 board shall prorate the licensing fee so that each license holder
27 pays only the portion of the fee that is allocable to the number of

1 months during which the license is valid. On renewal of the license
2 on the new expiration date, the entire licensing fee is payable.

3 Sec. 506.302. LICENSE RENEWAL. Before the expiration of a
4 license, a license may be renewed by:

- 5 (1) submitting an application for renewal;
6 (2) paying the renewal fee imposed by the behavior
7 analyst board; and
8 (3) providing verification to the behavior analyst
9 board of continued certification by the certifying entity, which
10 signifies that the applicant for renewal has met any continuing
11 education requirements established by the certifying entity.

12 SUBCHAPTER H. LICENSE DENIAL AND DISCIPLINARY PROCEDURES

13 Sec. 506.351. GROUNDS FOR LICENSE DENIAL AND DISCIPLINARY
14 ACTION. After a hearing, the behavior analyst board may deny a
15 license to an applicant, suspend or revoke a person's license, or
16 place on probation a license holder if the applicant or license
17 holder:

- 18 (1) violates this chapter or a behavior analyst board
19 order or rule;
20 (2) obtains a license by means of fraud,
21 misrepresentation, or concealment of a material fact;
22 (3) sells, barter, or offers to sell or barter a
23 license; or
24 (4) engages in unprofessional conduct that:
25 (A) endangers or is likely to endanger the
26 health, welfare, or safety of the public as defined by behavior
27 analyst board rule; or

1 (B) violates the code of ethics adopted and
2 published by the behavior analyst board.

3 Sec. 506.352. PROBATION. If a license suspension is
4 probated, the behavior analyst board may require the license holder
5 to:

6 (1) report regularly to the behavior analyst board on
7 matters that are the basis of the probation;

8 (2) limit the license holder's practice to the areas
9 prescribed by the behavior analyst board; or

10 (3) continue or review continuing professional
11 education until the license holder attains a degree of skill
12 satisfactory to the behavior analyst board in those areas that are
13 the basis of the probation.

14 Sec. 506.353. INFORMAL PROCEEDINGS. (a) The behavior
15 analyst board by rule shall adopt procedures governing:

16 (1) informal disposition of a contested case under
17 Section 2001.056, Government Code; and

18 (2) an informal proceeding held in compliance with
19 Section 2001.054, Government Code.

20 (b) Rules adopted under this section must:

21 (1) provide the complainant and the license holder
22 with an opportunity to be heard; and

23 (2) require the presence of a member of the behavior
24 analyst board's or medical board's legal staff to advise the
25 behavior analyst board or medical board or the behavior analyst
26 board's or medical board's employees.

27 Sec. 506.354. HEARING. A license holder is entitled to a

1 hearing before the State Office of Administrative Hearings before a
2 sanction is imposed under this subchapter.

3 Sec. 506.355. SCHEDULE OF SANCTIONS. (a) The behavior
4 analyst board by rule shall adopt a broad schedule of sanctions for
5 violations under this chapter.

6 (b) The State Office of Administrative Hearings shall use
7 the schedule for any sanction imposed under this chapter as the
8 result of a hearing conducted by that office.

9 Sec. 506.356. EMERGENCY SUSPENSION. (a) The behavior
10 analyst board, or a three-member committee of behavior analyst
11 board members designated by the behavior analyst board, shall
12 temporarily suspend the license of a license holder if the behavior
13 analyst board or committee determines from the evidence or
14 information presented to the behavior analyst board or committee
15 that continued practice by the license holder would constitute a
16 continuing and imminent threat to the public welfare.

17 (b) A license may be suspended under this section without
18 notice or hearing on the complaint if:

19 (1) action is taken to initiate proceedings for a
20 hearing before the State Office of Administrative Hearings
21 simultaneously with the temporary suspension; and

22 (2) a hearing is held as soon as practicable under this
23 chapter and Chapter 2001, Government Code.

24 (c) The State Office of Administrative Hearings shall hold a
25 preliminary hearing not later than the 14th day after the date of
26 the temporary suspension to determine if there is probable cause to
27 believe that a continuing and imminent threat to the public welfare

1 still exists. A final hearing on the matter shall be held not later
2 than the 61st day after the date of the temporary suspension.

3 SUBCHAPTER I. PENALTIES AND ENFORCEMENT PROCEDURES

4 Sec. 506.401. INJUNCTIVE RELIEF. The behavior analyst
5 board or the attorney general may institute a proceeding to enforce
6 this chapter, including a suit to enjoin a person from practicing
7 applied behavior analysis without complying with this chapter.

8 Sec. 506.402. MONITORING OF LICENSE HOLDER. The behavior
9 analyst board by rule shall develop a system for monitoring a
10 license holder's compliance with this chapter. The rules must
11 include procedures for:

12 (1) monitoring for compliance a license holder who is
13 ordered by the behavior analyst board to perform a certain act; and

14 (2) identifying and monitoring each license holder who
15 represents a risk to the public.

16 Sec. 506.403. ADMINISTRATIVE PENALTY. (a) The behavior
17 analyst board may impose an administrative penalty against a person
18 licensed under this chapter who violates this chapter or a rule or
19 order adopted under this chapter.

20 (b) An administrative penalty may not exceed \$200. Each day
21 a violation continues or occurs is a separate violation for the
22 purpose of imposing a penalty. The amount of the penalty shall be
23 based on:

24 (1) the seriousness of the violation, including the
25 nature, circumstances, extent, and gravity of any prohibited acts,
26 and the hazard or potential hazard created to the health, safety, or
27 economic welfare of the public;

- 1 (2) the history of previous violations;
- 2 (3) the amount necessary to deter a future violation;
- 3 (4) efforts to correct the violation; and
- 4 (5) any other matter that justice requires.

5 (c) The person may stay enforcement during the time the
6 order is under judicial review if the person pays the penalty to the
7 court clerk or files a supersedeas bond with the court in the amount
8 of the penalty. A person who cannot afford to pay the penalty or
9 file the bond may stay enforcement by filing an affidavit like that
10 required by the Texas Rules of Civil Procedure for a party who
11 cannot afford to file security for costs, except that the behavior
12 analyst board may contest the affidavit as provided by those rules.

13 (d) A proceeding to impose an administrative penalty is
14 subject to Chapter 2001, Government Code.

15 Sec. 506.404. CIVIL PENALTY. (a) A person found by a court
16 to have violated this chapter is liable to this state for a civil
17 penalty of \$200 for each day the violation continues.

18 (b) A civil penalty may be recovered in a suit brought by the
19 attorney general, a district attorney, or a county attorney.

20 Sec. 506.405. CRIMINAL OFFENSE. (a) A person commits an
21 offense if the person knowingly violates this chapter.

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

23 (c) Each day of violation constitutes a separate offense.

24 SECTION 2. As soon as practicable after the effective date
25 of this Act, the governor shall appoint nine members to the Texas
26 Board of Behavior Analyst Examiners in accordance with Chapter 506,
27 Occupations Code, as added by this Act. In making the initial

1 appointments, the governor shall designate three members for terms
2 expiring February 1, 2017, three members for terms expiring
3 February 1, 2019, and three members for terms expiring February 1,
4 2021.

5 SECTION 3. Not later than January 1, 2016, the Texas Board
6 of Behavior Analyst Examiners shall adopt the rules, procedures,
7 and fees necessary to administer Chapter 506, Occupations Code, as
8 added by this Act.

9 SECTION 4. Notwithstanding Chapter 506, Occupations Code,
10 as added by this Act, a behavior analyst or assistant behavior
11 analyst is not required to hold a license under that chapter to
12 practice as a licensed behavior analyst or licensed assistant
13 behavior analyst in this state before June 1, 2016.

14 SECTION 5. (a) Except as provided by Subsection (b) of this
15 section, this Act takes effect September 1, 2015.

16 (b) Section 506.251, Occupations Code, and Subchapter H,
17 Chapter 506, Occupations Code, as added by this Act, take effect
18 June 1, 2016.