

By: Lucio

S.B. No. 1871

A BILL TO BE ENTITLED

AN ACT

1
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) "Board" means the Texas Board of Behavior Analyst
16 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 board.

23 (3) "License holder" means a person licensed under
24 this chapter.

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

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

11 Sec. 506.003. PRACTICE OF APPLIED BEHAVIOR ANALYSIS. (a)
12 The practice of applied behavior analysis is the design,
13 implementation, and evaluation of instructional and environmental
14 modifications to produce socially significant improvements in
15 human behavior.

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

20 (c) Applied behavior analysis interventions:

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

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

1 (d) The practice of applied behavior analysis does not
2 include psychological testing, psychotherapy, cognitive therapy,
3 psychoanalysis, hypnotherapy, or counseling as treatment
4 modalities.

5 Sec. 506.004. APPLICATION OF SUNSET ACT. The Texas Board
6 of Behavior Analyst Examiners is subject to Chapter 325, Government
7 Code (Texas Sunset Act). Unless continued in existence as provided
8 by that chapter, the board is abolished and this chapter expires
9 September 1, 2027.

10 SUBCHAPTER B. APPLICATION OF CHAPTER; USE OF TITLE

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

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

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

22 (2) the scope of the person's education, training, and
23 competence.

24 Sec. 506.053. FAMILY MEMBERS AND GUARDIANS. This chapter
25 does not apply to a family member or guardian of a recipient of
26 applied behavior analysis services who is implementing a behavior
27 analysis treatment plan for the recipient under the extended

1 authority and direction of a licensed behavior analyst or licensed
2 assistant behavior analyst.

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

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

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

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

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

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

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

23 Sec. 506.056. SUPERVISED EXPERIENCE. This chapter does
24 not apply to an unlicensed person pursuing supervised experience in
25 applied behavior analysis if the supervised experience is
26 consistent with the requirements of the certifying entity and board
27 rules.

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

6 (1) are within the behavior analyst's customary area
7 of practice;

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

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

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

15 (1) the behavior analyst is not licensed in this
16 state; and

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

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

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

25 (1) represent that the person is a behavior analyst,
26 unless the applied behavior analysis services provided are within
27 the person's education, training, and competence;

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

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

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

9 (b) A person may use the title "behavior analyst" if the
10 person:

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

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

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

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

21 (B) do not involve direct services to
22 individuals.

23 SUBCHAPTER C. TEXAS BOARD OF BEHAVIOR ANALYST EXAMINERS

24 Sec. 506.101. BOARD MEMBERSHIP. (a) The board is composed
25 of nine members appointed by the governor with the advice and
26 consent of the senate as follows:

27 (1) four licensed behavior analysts, at least one of

1 whom must be certified as a Board Certified Behavior
2 Analyst--Doctoral, or hold an equivalent certification issued by
3 the certifying entity;

4 (2) two licensed assistant behavior analysts; and

5 (3) three members who represent the public and who are
6 either former recipients of applied behavior analysis services or
7 the parent or guardian of a current or former recipient of applied
8 behavior analysis services.

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

13 (c) Appointments to the board shall be made without regard
14 to the race, color, disability, sex, religion, age, or national
15 origin of the appointee.

16 Sec. 506.102. ELIGIBILITY OF PUBLIC MEMBERS. A person is
17 not eligible for appointment as a public member of the board if:

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

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

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

24 (A) is employed by or participates in the
25 management of a business entity or other organization receiving
26 funds from the board;

27 (B) owns or controls, directly or indirectly,

1 more than a 10 percent interest in a business entity or other
2 organization receiving funds from the board; or

3 (C) uses or receives a substantial amount of
4 funds from the board, other than compensation or reimbursement
5 authorized by law for board membership, attendance, or expenses.

6 Sec. 506.103. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a)
7 In this section, "Texas trade association" means a cooperative and
8 voluntarily joined statewide association of business or
9 professional competitors in this state designed to assist its
10 members and its industry or profession in dealing with mutual
11 business or professional problems and in promoting their common
12 interest.

13 (b) A person may not be a member of the board and may not be
14 an employee of the board employed in a "bona fide executive,
15 administrative, or professional capacity," as that phrase is used
16 for purposes of establishing an exemption to the overtime
17 provisions of the federal Fair Labor Standards Act of 1938 (29
18 U.S.C. Section 201 et seq.) if:

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

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

25 (c) A person may not be a member of the board or act as
26 general counsel to the board if the person is required to register
27 as a lobbyist under Chapter 305, Government Code, because of the

1 person's activities for compensation on behalf of a profession
2 related to the operation of the board.

3 Sec. 506.104. TERMS; VACANCY. (a) Members of the board
4 serve staggered six-year terms, with the terms of three members
5 expiring February 1 of each odd-numbered year.

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

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

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

12 Sec. 506.105. OFFICERS. At the meeting of the board held
13 on the date closest to August 31 of each year, the board shall elect
14 from its members a presiding officer, a secretary, and any other
15 officers required to conduct the business of the board.

16 Sec. 506.106. GROUNDS FOR REMOVAL. (a) It is a ground for
17 removal from the board that a member:

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

20 (2) does not maintain during service on the board the
21 qualifications required by Section 506.101;

22 (3) is ineligible for membership under Sections
23 506.102 or 506.103;

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

26 (5) is absent from more than half of the regularly
27 scheduled board meetings that the member is eligible to attend

1 during a calendar year without an excuse approved by a majority vote
2 of the board.

3 (b) The validity of an action of the board is not affected by
4 the fact that the action is taken when a ground for removal of a
5 member exists.

6 (c) If the executive director of the board or a board member
7 has knowledge that a potential ground for removal exists, the
8 executive director or board member shall notify the presiding
9 officer of the board of the potential ground. The presiding officer
10 shall then notify the governor and the attorney general that a
11 potential ground for removal exists. If the potential ground for
12 removal involves the presiding officer, the executive director or
13 board member shall notify the next highest ranking officer of the
14 board, who shall then notify the governor and the attorney general
15 that a potential ground for removal exists.

16 Sec. 506.107. COMPENSATION; REIMBURSEMENT. (a) A board
17 member may not receive compensation for the member's services. A
18 member is entitled to a per diem and travel allowance for each day
19 the member engages in board business at the rate set for state
20 employees in the General Appropriations Act.

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

23 Sec. 506.108. MEETINGS. (a) The board shall meet at least
24 twice each year.

25 (b) The board may meet at other times at the call of the
26 presiding officer or a majority of the members.

27 Sec. 506.109. TRAINING PROGRAM FOR MEMBERS. (a) A person

1 who is appointed to and qualifies for office as a member of the
2 board may not vote, deliberate, or be counted as a member in
3 attendance at a meeting of the board until the person completes a
4 training program that complies with this section.

5 (b) The training program must provide the person with
6 information regarding:

7 (1) this chapter and the programs, functions, rules,
8 and budget of the board;

9 (2) the results of the most recent formal audit of the
10 board;

11 (3) the requirements of laws relating to open
12 meetings, public information, administrative procedure, and
13 conflicts of interest; and

14 (4) any applicable ethics policies adopted by the
15 board or the Texas Ethics Commission.

16 (c) A person appointed to the board is entitled to
17 reimbursement, as provided by the General Appropriations Act, for
18 the travel expenses incurred in attending the training program
19 regardless of whether the attendance at the program occurs before
20 or after the person qualifies for office.

21 Sec. 506.110. CIVIL LIABILITY. A member of the board is
22 not liable in a civil action for an act performed in good faith
23 while performing duties as a member.

24 SUBCHAPTER D. POWERS AND DUTIES OF THE BOARD

25 Sec. 506.151. GENERAL POWERS AND DUTIES. The board shall:

26 (1) administer and enforce this chapter;

27 (2) determine the qualifications and fitness of an

1 applicant for a license, license renewal, or temporary license;

2 (3) establish standards of conduct and adopt a code of
3 professional ethics for license holders;

4 (4) hire staff as necessary and as the budget allows;
5 and

6 (5) ensure strict compliance with and enforcement of
7 this chapter.

8 Sec. 506.152. RULES. The board shall adopt rules
9 consistent with this chapter to carry out the board's duties in
10 administering this chapter.

11 Sec. 506.153. FEES. (a) The board by rule shall set fees
12 in amounts reasonable and necessary to cover the costs of
13 administering this chapter.

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

16 Sec. 506.154. RULES RESTRICTING ADVERTISING OR COMPETITIVE
17 BIDDING. (a) The board may not adopt rules restricting
18 advertising or competitive bidding by a license holder except to
19 prohibit false, misleading, or deceptive practices.

20 (b) The board may not include in rules to prohibit false,
21 misleading, or deceptive practices by a license holder a rule that:

22 (1) restricts the license holder's use of any
23 advertising medium;

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

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

1 (4) restricts the license holder's advertisement under
2 a trade name.

3 Sec. 506.155. RULES ON CONSEQUENCES OF CRIMINAL
4 CONVICTION. (a) The board shall adopt rules necessary to comply
5 with Chapter 53.

6 (b) In the board's rules under this section, the board shall
7 list the specific offenses for which a conviction would constitute
8 grounds for the board to take action under Section 53.021.

9 Sec. 506.156. ANNUAL REGISTRY. (a) The board shall
10 annually prepare a registry of all license holders.

11 (b) The board shall make the registry available to the
12 public, license holders, and other state agencies.

13 Sec. 506.157. BOARD DUTIES REGARDING COMPLAINTS. (a) The
14 board by rule shall:

15 (1) adopt a standardized form for filing complaints
16 with the board; and

17 (2) prescribe information to be provided when a person
18 files a complaint with the board.

19 (b) The board shall provide reasonable assistance to a
20 person who wishes to file a complaint with the board.

21 Sec. 506.158. USE OF TECHNOLOGY. The board shall implement
22 a policy requiring the board to use appropriate technological
23 solutions to improve the board's ability to perform the board's
24 functions. The policy must ensure that the public is able to
25 interact with the board on the Internet.

26 Sec. 506.159. NEGOTIATED RULEMAKING AND ALTERNATIVE
27 DISPUTE RESOLUTION POLICY. (a) The board shall develop and

1 implement a policy to encourage the use of:

2 (1) negotiated rulemaking procedures under Chapter
3 2008, Government Code, for the adoption of board rules; and

4 (2) appropriate alternative dispute resolution
5 procedures under Chapter 2009, Government Code, to assist in the
6 resolution of internal and external disputes under the board's
7 jurisdiction.

8 (b) The board's procedures relating to alternative dispute
9 resolution must conform, to the extent possible, to any model
10 guidelines issued by the State Office of Administrative Hearings
11 for the use of alternative dispute resolution by state agencies.

12 (c) The board shall designate a trained person to:

13 (1) coordinate the implementation of the policy
14 adopted under Subsection (a);

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

18 (3) collect data concerning the effectiveness of those
19 procedures, as implemented by the board.

20 SUBCHAPTER E. PUBLIC INTEREST INFORMATION

21 AND COMPLAINT PROCEDURES

22 Sec. 506.201. PUBLIC INTEREST INFORMATION. (a) The board
23 shall prepare information of public interest describing the
24 functions of the board.

25 (b) The board shall make the information available to the
26 public and appropriate state agencies.

27 Sec. 506.202. COMPLAINTS. (a) The board by rule shall

1 establish methods by which service recipients are notified of the
2 name, mailing address, and telephone number of the board for the
3 purpose of directing complaints to the board. The board may provide
4 for that notice:

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

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

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

11 (b) The board shall list with its regular telephone number
12 any toll-free telephone number established under other state law
13 that may be called to present a complaint about a health
14 professional.

15 Sec. 506.203. INFORMATION ABOUT COMPLAINT ACTIONS. (a)
16 The board shall maintain a system to promptly and efficiently act on
17 complaints filed with the board. The board shall maintain
18 information about parties to a complaint, the subject matter of the
19 complaint, a summary of the results of the review or investigation
20 of the complaint, and the disposition of the complaint.

21 (b) The board shall make information available describing
22 its procedures for complaint investigation and resolution.

23 (c) The board shall periodically notify the complaint
24 parties of the status of the complaint until final disposition.

25 (d) The board shall analyze complaints filed with the board
26 to identify any trends or issues related to certain violations,
27 including:

- 1 (1) the reason for each complaint;
2 (2) how each complaint was resolved; and
3 (3) the subject matter of each complaint that was not
4 within the jurisdiction of the board and how the board responded to
5 the complaint.

6 Sec. 506.204. GENERAL RULES REGARDING COMPLAINT
7 INVESTIGATION AND DISPOSITION. The board shall adopt rules
8 concerning the investigation of a complaint filed with the board.

9 The rules must:

- 10 (1) distinguish between categories of complaints;
11 (2) ensure that a complaint is not dismissed without
12 appropriate consideration;
13 (3) require that the board be advised of a complaint
14 that is dismissed and that a letter or electronic communication be
15 sent to the person who filed the complaint explaining the action
16 taken on the dismissed complaint;
17 (4) ensure that the person who filed the complaint has
18 an opportunity to explain the allegations made in the complaint;
19 and
20 (5) prescribe guidelines concerning the categories of
21 complaints that require the use of a private investigator and the
22 procedures for the board to obtain the services of a private
23 investigator.

24 Sec. 506.205. CONFIDENTIALITY OF COMPLAINT INFORMATION.

- 25 (a) Except as provided by Subsection (b), a complaint and
26 investigation concerning a license holder and all information and
27 materials compiled by the board in connection with the complaint

1 and investigation are not subject to:

2 (1) disclosure under Chapter 552, Government Code; or

3 (2) disclosure, discovery, subpoena, or other means of

4 legal compulsion for release of information to any person.

5 (b) A complaint or investigation subject to Subsection (a)

6 and all information and materials compiled by the board in

7 connection with the complaint, in accordance with Chapter 611,

8 Health and Safety Code, may be disclosed to:

9 (1) the board and board employees or agents involved

10 in license holder discipline;

11 (2) a party to a disciplinary action against the

12 license holder or that party's designated representative;

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

14 (4) a governmental agency if:

15 (A) the disclosure is required or permitted by

16 law; and

17 (B) the agency obtaining the disclosure protects

18 the identity of any patient whose records are examined; or

19 (5) the legislature.

20 (c) Unless good cause for delay is shown to the presiding

21 officer at the hearing, the board shall provide the license holder

22 with access to all information that the board intends to offer into

23 evidence at the hearing not later than the 30th day after the date

24 the board receives a written request from a license holder who is

25 entitled to a hearing under this chapter or from the license

26 holder's attorney of record.

27 (d) The board shall protect the identity of any patient

1 whose records are examined in connection with a disciplinary
2 investigation or proceeding against a license holder, except:

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

4 or

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

7 Sec. 506.206. PUBLIC PARTICIPATION. (a) The board shall
8 develop and implement policies that provide the public with a
9 reasonable opportunity to appear before the board and to speak on
10 any issue under the board's jurisdiction.

11 (b) The board shall prepare and maintain a written plan that
12 describes how a person who does not speak English may be provided
13 reasonable access to the board's programs.

14 Sec. 506.207. SUBPOENAS. (a) In an investigation of a
15 complaint filed with the board, the presiding officer of the board
16 may issue a subpoena to compel the attendance of a relevant witness
17 or the production, for inspection or copying, of relevant evidence
18 that is in this state.

19 (b) A subpoena may be served personally or by certified
20 mail.

21 (c) If a person fails to comply with a subpoena, the board,
22 acting through the attorney general, may file suit to enforce the
23 subpoena in a district court in Travis County or in the county in
24 which a hearing conducted by the board may be held.

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

1 order.

2 (e) The board shall pay for photocopies subpoenaed under
3 this section a reasonable fee in an amount not to exceed the amount
4 the board may charge for copies of its records.

5 (f) The reimbursement of the expenses of a witness whose
6 attendance is compelled under this section is governed by Section
7 2001.103, Government Code.

8 (g) Information and materials subpoenaed or compiled by the
9 board in connection with the investigation of a complaint may be
10 disclosed only as provided by Section 506.205.

11 SUBCHAPTER F. LICENSE REQUIREMENTS

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

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

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

22 Sec. 506.252. LICENSE APPLICATION. Each applicant for a
23 license under this chapter must submit an application and the
24 required fees to the board. The application must include
25 sufficient evidence, as defined by board rules, that the applicant:

26 (1) is of good moral character; and

27 (2) has successfully completed a state-approved

1 criminal background check.

2 Sec. 506.253. REQUIREMENTS FOR LICENSED BEHAVIOR

3 ANALYST. An applicant for a license as a licensed behavior analyst

4 must present evidence to the board that the applicant:

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

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

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

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

19 (5) is not subject to any disciplinary action by the
20 certifying entity.

21 Sec. 506.254. REQUIREMENTS FOR LICENSED ASSISTANT BEHAVIOR

22 ANALYST. An applicant for a license as a licensed assistant

23 behavior analyst must present evidence to the board that the

24 applicant:

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

1 (2) has met the educational requirements of the Board
2 Certified Assistant Behavior Analyst standard or an equivalent
3 standard adopted by the certifying entity;

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

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

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

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

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

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

18 (2) meets any additional requirements the board
19 establishes by rule; and

20 (3) pays the required fees.

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

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

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

1 jurisdiction that imposes licensure requirements similar to those
2 specified in this chapter.

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

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

5 (A) is in good standing as determined by the
6 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 board by rule may
14 provide for a person licensed under this chapter to be placed on
15 inactive status.

16 Sec. 506.259. RETIREMENT STATUS. The board by rule may
17 adopt a system for placing a person licensed under this chapter on
18 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 board by rule may adopt a system under which
24 licenses expire on various dates during the year. For a year in
25 which the expiration date is changed, the board shall prorate the
26 licensing fee so that each license holder pays only the portion of
27 the fee that is allocable to the number of months during which the

1 license is valid. On renewal of the license on the new expiration
2 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 board; and
7 (3) providing verification to the board of continued
8 certification by the certifying entity, which signifies that the
9 applicant for renewal has met any continuing education requirements
10 established by the certifying entity.

11 SUBCHAPTER H. LICENSE DENIAL AND DISCIPLINARY PROCEDURES

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

- 16 (1) violates this chapter or a board order or rule;
17 (2) obtains a license by means of fraud,
18 misrepresentation, or concealment of a material fact;
19 (3) sells, barter, or offers to sell or barter a
20 license; or

- 21 (4) engages in unprofessional conduct that:
22 (A) endangers or is likely to endanger the
23 health, welfare, or safety of the public as defined by board rule;
24 or
25 (B) violates the code of ethics adopted and
26 published by the board.

27 Sec. 506.352. PROBATION. If a license suspension is

1 probated, the board may require the license holder to:

2 (1) report regularly to the board on matters that are
3 the basis of the probation;

4 (2) limit the license holder's practice to the areas
5 prescribed by the board; or

6 (3) continue or review continuing professional
7 education until the license holder attains a degree of skill
8 satisfactory to the board in those areas that are the basis of the
9 probation.

10 Sec. 506.353. INFORMAL PROCEEDINGS. (a) The board by rule
11 shall adopt procedures governing:

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

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

16 (b) Rules adopted under this section must:

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

19 (2) require the presence of a member of the board's
20 legal staff, if the board has a legal staff, or, if the board does
21 not have a legal staff, an attorney employed by the attorney general
22 to advise the board or the board's employees.

23 Sec. 506.354. HEARING. A license holder is entitled to a
24 hearing before the State Office of Administrative Hearings before a
25 sanction is imposed under this subchapter.

26 Sec. 506.355. SCHEDULE OF SANCTIONS. (a) The board by
27 rule shall adopt a broad schedule of sanctions for violations under

1 this chapter.

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

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

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

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

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

19 (c) The State Office of Administrative Hearings shall hold a
20 preliminary hearing not later than the 14th day after the date of
21 the temporary suspension to determine if there is probable cause to
22 believe that a continuing and imminent threat to the public welfare
23 still exists. A final hearing on the matter shall be held not later
24 than the 61st day after the date of the temporary suspension.

25 SUBCHAPTER I. PENALTIES AND ENFORCEMENT PROCEDURES

26 Sec. 506.401. INJUNCTIVE RELIEF. The board or the attorney
27 general may institute a proceeding to enforce this chapter,

1 including a suit to enjoin a person from practicing applied
2 behavior analysis without complying with this chapter.

3 Sec. 506.402. MONITORING OF LICENSE HOLDER. The board by
4 rule shall develop a system for monitoring a license holder's
5 compliance with this chapter. The rules must include procedures
6 for:

7 (1) monitoring for compliance a license holder who is
8 ordered by the board to perform a certain act; and

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

11 Sec. 506.403. ADMINISTRATIVE PENALTY. (a) The board may
12 impose an administrative penalty against a person licensed under
13 this chapter who violates this chapter or a rule or order adopted
14 under this chapter.

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

19 (1) the seriousness of the violation, including the
20 nature, circumstances, extent, and gravity of any prohibited acts,
21 and the hazard or potential hazard created to the health, safety, or
22 economic welfare of the public;

23 (2) the history of previous violations;

24 (3) the amount necessary to deter a future violation;

25 (4) efforts to correct the violation; and

26 (5) any other matter that justice requires.

27 (c) The person may stay enforcement during the time the

1 order is under judicial review if the person pays the penalty to the
2 court clerk or files a supersedeas bond with the court in the amount
3 of the penalty. A person who cannot afford to pay the penalty or
4 file the bond may stay enforcement by filing an affidavit like that
5 required by the Texas Rules of Civil Procedure for a party who
6 cannot afford to file security for costs, except that the board may
7 contest the affidavit as provided by those rules.

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

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

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

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

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

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

19 SECTION 2. As soon as practicable after the effective date
20 of this Act, the governor shall appoint nine members to the Texas
21 Board of Behavior Analyst Examiners in accordance with Chapter 506,
22 Occupations Code, as added by this Act. In making the initial
23 appointments, the governor shall designate three members for terms
24 expiring February 1, 2017, three members for terms expiring
25 February 1, 2019, and three members for terms expiring February 1,
26 2021.

27 SECTION 3. Not later than January 1, 2016, the Texas Board

1 of Behavior Analyst Examiners shall adopt the rules, procedures,
2 and fees necessary to administer Chapter 506, Occupations Code, as
3 added by this Act.

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

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

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