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SENATE BILL 5488

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State of Washington                      64th Legislature                      2015 Regular Session

By Senators Keiser, Jayapal, Parlette, and Cleveland

Read first time 01/22/15. Referred to Committee on Health Care.

1            AN ACT Relating to applied behavior analysis; reenacting and  
2 amending RCW 18.120.020 and 18.130.040; adding a new chapter to Title  
3 18 RCW; creating a new section; and providing an effective date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5            NEW SECTION.    **Sec. 1.**    The definitions in this section apply  
6 throughout this chapter unless the context clearly requires  
7 otherwise.

8            (1) "Certified behavior technician" means a paraprofessional who  
9 implements a behavior analysis treatment plan under the close,  
10 ongoing supervision of a licensed behavior analyst or a licensed  
11 assistant behavior analyst, but who does not design or supervise the  
12 implementation of a behavior analysis treatment plan.

13            (2) "Committee" means the Washington state applied behavior  
14 analysis advisory committee.

15            (3) "Department" means the department of health.

16            (4) "Licensed assistant behavior analyst" means an individual who  
17 is licensed under this chapter to engage in the practice of applied  
18 behavior analysis under the supervision of a licensed behavior  
19 analyst.

1 (5) "Licensed behavior analyst" means an individual who is  
2 licensed under this chapter to engage in the practice of applied  
3 behavior analysis.

4 (6)(a) "Practice of applied behavior analysis" means:

5 (i) The design, implementation, and evaluation of instructional  
6 and environmental modifications based on scientific research and the  
7 direct observation and measurement of behavior and the environment to  
8 produce socially significant improvements in human behavior;

9 (ii) Empirical identification of functional relations between  
10 behavior and environmental factors, known as functional assessment  
11 and analysis; and

12 (iii) Utilization of contextual factors, motivating operations,  
13 antecedent stimuli, positive reinforcement, and other consequences to  
14 assist individuals in developing new behaviors, increasing or  
15 decreasing existing behaviors, and emitting behaviors under specific  
16 environmental conditions.

17 (b) "Practice of applied behavior analysis" does not include  
18 psychological testing, diagnosis of a mental or physical disorder,  
19 neuropsychology, psychotherapy, cognitive therapy, sex therapy,  
20 psychoanalysis, hypnotherapy, or counseling as treatment modalities.  
21 It also does not include the use of behavioral techniques described  
22 in (a)(iii) of this subsection alone as treatment modalities.

23 (7) "Secretary" means the secretary of the department of health.

24 NEW SECTION. **Sec. 2.** (1)(a) Except as provided in section 3 of  
25 this act, no person may engage in the practice of applied behavior  
26 analysis unless he or she holds a license or a temporary license  
27 under this chapter. The use of behavioral techniques described in  
28 section 1(6)(a)(iii) of this act alone does not constitute the  
29 practice of applied behavior analysis.

30 (b) A person not licensed under this chapter may not represent  
31 himself or herself as a "licensed behavior analyst" or a "licensed  
32 assistant behavior analyst."

33 (2) Except as provided in section 3 of this act, no person may  
34 practice as a certified behavior technician in this state without  
35 having a certification issued by the secretary. A person not  
36 certified under this chapter may not represent himself or herself as  
37 a "certified behavior technician."

1        NEW SECTION.    **Sec. 3.**    Nothing in this chapter may be construed  
2 to prohibit or restrict:

3        (1) An individual who holds a credential issued by this state,  
4 other than as a licensed behavior analyst, a licensed assistant  
5 behavior analyst, or a certified behavior technician, to engage in  
6 the practice of that occupation or profession without obtaining an  
7 additional credential from the state, so long as the practice is  
8 within that profession's or occupation's scope of practice;

9        (2) A person employed as a behavior analyst, assistant behavior  
10 analyst, or behavior technician by the government of the United  
11 States if the person provides behavior analysis services solely under  
12 the direction or control of the agency by which the person is  
13 employed;

14        (3) An employee of a school district, charter school, or private  
15 school approved under chapter 28A.195 RCW in the performance of his  
16 or her regular duties of employment, so long as the employee does not  
17 offer behavior analytic services to any person or entity other than  
18 the school employer and does not accept remuneration for providing  
19 behavior analytic services other than the remuneration he or she  
20 receives from the school employer;

21        (4) The practice of applied behavior analysis by a matriculated  
22 college or university student if he or she: (a) Participates in a  
23 defined course, internship, practicum, or program of study; (b) is  
24 supervised by college or university faculty or a licensed behavior  
25 analyst; and (c) uses a title that clearly indicates trainee status,  
26 such as "behavior analysis student," "behavior analysis intern," or  
27 "behavior analysis trainee";

28        (5) The practice of applied behavior analysis by an individual  
29 pursuing supervised experiential training to meet eligibility  
30 requirements for licensure under this chapter or national  
31 certification in behavior analysis, so long as the training is  
32 supervised by a licensed behavior analyst who meets any additional  
33 requirements established by the secretary or by a professional who  
34 meets supervisor requirements determined by a national certifying  
35 entity;

36        (6) Implementation of a behavior analysis treatment plan by a  
37 family member or legal guardian of a recipient of behavior analysis  
38 services, as defined in rule, so long as the family member or legal  
39 guardian is under the supervision of a licensed behavior analyst or a  
40 licensed assistant behavior analyst;

1 (7) The activities of a behavior analyst who practices with  
2 nonhumans including, but not limited to, animal trainers and applied  
3 animal behaviorists; or

4 (8) The activities of a behavior analyst who provides general  
5 behavior analysis services to organizations so long as those services  
6 are for the benefit of the organization and do not involve direct  
7 services to individuals.

8 NEW SECTION. **Sec. 4.** (1) The Washington state applied behavior  
9 analysis advisory committee is established.

10 (2) The committee consists of the following five members:

11 (a) Three members who are licensed behavior analysts or, for the  
12 initial members of the committee, certified by the national behavior  
13 analyst certification board as either a board certified behavior  
14 analyst or a board certified behavior analyst - doctoral;

15 (b) One member who is a licensed assistant behavior analyst or,  
16 for the initial members of the committee, certified by the national  
17 behavior analyst certification board as a board certified assistant  
18 behavior analyst; and

19 (c) One member of the public who is not a member of any other  
20 health care licensing board or commission and does not have a  
21 material or financial interest in the rendering of services regulated  
22 under this chapter. The public member may be the parent or guardian  
23 of a recipient of behavior analysis services.

24 (3) The secretary shall appoint the committee members. Committee  
25 members serve at the pleasure of the secretary. The secretary may  
26 appoint members of the initial committee to staggered terms of one to  
27 four years, and thereafter all terms are for four years. No member  
28 may serve more than two consecutive terms.

29 (4) The committee shall elect officers each year. The committee  
30 shall meet at least twice each year and may hold additional meetings  
31 as called by the chair. A majority of the committee appointed and  
32 serving constitutes a quorum.

33 (5) The secretary shall consult with the committee in determining  
34 the qualifications for licensure or certification under section 5 of  
35 this act.

36 (6) Committee members must be compensated in accordance with RCW  
37 43.03.240. Members must be reimbursed for travel expenses incurred in  
38 the actual performance of their duties, as provided in RCW 43.03.050  
39 and 43.03.060.

1        NEW SECTION.    **Sec. 5.**    (1) The secretary shall issue a license to  
2 an applicant who submits a completed application, pays the  
3 appropriate fees, and meets the following requirements:

4        (a) For a licensed behavior analyst:

5            (i) Graduation from a master's or doctorate degree program in  
6 behavior analysis or other natural science, education, human  
7 services, engineering, medicine, or field related to behavior  
8 analysis approved by the secretary;

9            (ii) Completion of a minimum of two hundred twenty-five classroom  
10 hours at graduate level instruction in specific behavior analysis  
11 topics, as determined in rule;

12           (iii) Successful completion of a supervised experience  
13 requirement, consisting of a minimum of one thousand five hundred  
14 hours, or an alternative approved by the secretary by rule; and

15           (iv) Successful completion of an examination approved by the  
16 secretary;

17        (b) For a licensed assistant behavior analyst:

18           (i) Graduation from a bachelor's degree program approved by the  
19 secretary;

20           (ii) Completion of one hundred thirty-five classroom hours of  
21 instruction in specific behavior analysis topics, as determined by  
22 the secretary in rule; and

23           (iii) Successful completion of a supervised experience  
24 requirement, consisting of a minimum of one thousand hours, or an  
25 alternative approved by the secretary by rule;

26        (c) For a certified behavior technician:

27           (i) Successful completion of a training program of at least forty  
28 hours that is approved by the secretary; and

29           (ii) Any other requirements determined by the secretary in rule;

30        (d) Demonstrates good moral character;

31        (e) Has not engaged in unprofessional conduct as defined in RCW  
32 18.130.180;

33        (f) Is not currently subject to any disciplinary proceedings; and

34        (g) Is not unable to practice with reasonable skill and safety as  
35 defined in RCW 18.130.170.

36        (2) In addition, an applicant for an assistant behavior analyst  
37 license or a behavior technician certification must provide proof of  
38 ongoing supervision by a licensed behavior analyst.

39        (3) The secretary may accept certification by a national  
40 accredited professional credentialing entity in lieu of the specific

1 requirements identified in subsection (1)(a) through (c) of this  
2 section.

3 (4) A license or certification issued under this section is valid  
4 for a period of two years.

5 NEW SECTION. **Sec. 6.** Applications for licensing or  
6 certification must be submitted on forms provided by the secretary.  
7 The secretary may require any information and documentation that  
8 reasonably relates to the need to determine whether the applicant  
9 meets the criteria for licensing or certification provided for in  
10 this chapter and chapter 18.130 RCW. Each applicant shall pay a fee  
11 determined by the secretary under RCW 43.70.250. The fee must  
12 accompany the application.

13 NEW SECTION. **Sec. 7.** (1) The secretary shall establish by rule  
14 the requirements for renewal of a license or certification, but may  
15 not increase the licensure or certification requirements provided in  
16 this chapter. The secretary shall establish administrative  
17 procedures, administrative requirements, and fees for license and  
18 certification periods and renewals as provided in RCW 43.70.250 and  
19 43.70.280.

20 (2) Failure to renew the license or certification invalidates the  
21 license or certification and all privileges granted by the license or  
22 certification. If a license or certification has lapsed for a period  
23 longer than three years, the person shall demonstrate competence to  
24 the satisfaction of the secretary by completing continuing competency  
25 requirements or meeting other standards determined by the secretary.

26 NEW SECTION. **Sec. 8.** The secretary may grant a temporary  
27 license to a person who does not reside in this state if he or she:  
28 (1) Is licensed to practice applied behavior analysis in another  
29 state or province of Canada; or (2) meets other qualifications  
30 established by the secretary. A temporary license holder may only  
31 practice applied behavior analysis for a limited period of time, as  
32 defined by the secretary.

33 NEW SECTION. **Sec. 9.** An applicant holding a license in another  
34 state or a province of Canada may be licensed to practice in this  
35 state if the secretary determines that the licensing standards of the

1 other state or province are substantially equivalent to the licensing  
2 standards in this chapter.

3 NEW SECTION. **Sec. 10.** The uniform disciplinary act, chapter  
4 18.130 RCW, governs unlicensed practice, the issuance and denial of a  
5 license or certification, and the discipline of persons licensed or  
6 certified under this chapter.

7 NEW SECTION. **Sec. 11.** The secretary, in consultation with the  
8 committee, may adopt rules under chapter 34.05 RCW as necessary to  
9 implement this chapter, including rules:

10 (1) Establishing continuing competency as a condition of license  
11 or certification renewal;

12 (2) Establishing standards for delegation and supervision of  
13 licensed assistant behavior analysts and certified behavior  
14 technicians; and

15 (3) Defining the tasks that a certified behavior technician may  
16 perform.

17 **Sec. 12.** RCW 18.120.020 and 2012 c 153 s 15, 2012 c 137 s 18,  
18 and 2012 c 23 s 8 are each reenacted and amended to read as follows:

19 The definitions in this section apply throughout this chapter  
20 unless the context clearly requires otherwise.

21 (1) "Applicant group" includes any health professional group or  
22 organization, any individual, or any other interested party which  
23 proposes that any health professional group not presently regulated  
24 be regulated or which proposes to substantially increase the scope of  
25 practice of the profession.

26 (2) "Certificate" and "certification" mean a voluntary process by  
27 which a statutory regulatory entity grants recognition to an  
28 individual who (a) has met certain prerequisite qualifications  
29 specified by that regulatory entity, and (b) may assume or use  
30 "certified" in the title or designation to perform prescribed health  
31 professional tasks.

32 (3) "Grandfather clause" means a provision in a regulatory  
33 statute applicable to practitioners actively engaged in the regulated  
34 health profession prior to the effective date of the regulatory  
35 statute which exempts the practitioners from meeting the prerequisite  
36 qualifications set forth in the regulatory statute to perform  
37 prescribed occupational tasks.

1 (4) "Health professions" means and includes the following health  
2 and health-related licensed or regulated professions and occupations:  
3 Podiatric medicine and surgery under chapter 18.22 RCW; chiropractic  
4 under chapter 18.25 RCW; dental hygiene under chapter 18.29 RCW;  
5 dentistry under chapter 18.32 RCW; denturism under chapter 18.30 RCW;  
6 dental anesthesia assistants under chapter 18.350 RCW; dispensing  
7 opticians under chapter 18.34 RCW; hearing instruments under chapter  
8 18.35 RCW; naturopaths under chapter 18.36A RCW; embalming and  
9 funeral directing under chapter 18.39 RCW; midwifery under chapter  
10 18.50 RCW; nursing home administration under chapter 18.52 RCW;  
11 optometry under chapters 18.53 and 18.54 RCW; ocularists under  
12 chapter 18.55 RCW; osteopathic medicine and surgery under chapters  
13 18.57 and 18.57A RCW; pharmacy under chapters 18.64 and 18.64A RCW;  
14 medicine under chapters 18.71 and 18.71A RCW; emergency medicine  
15 under chapter 18.73 RCW; physical therapy under chapter 18.74 RCW;  
16 practical nurses under chapter 18.79 RCW; psychologists under chapter  
17 18.83 RCW; registered nurses under chapter 18.79 RCW; occupational  
18 therapists licensed under chapter 18.59 RCW; respiratory care  
19 practitioners licensed under chapter 18.89 RCW; veterinarians and  
20 veterinary technicians under chapter 18.92 RCW; massage practitioners  
21 under chapter 18.108 RCW; East Asian medicine practitioners licensed  
22 under chapter 18.06 RCW; persons registered under chapter 18.19 RCW;  
23 persons licensed as mental health counselors, marriage and family  
24 therapists, and social workers under chapter 18.225 RCW; dietitians  
25 and nutritionists certified by chapter 18.138 RCW; radiologic  
26 technicians under chapter 18.84 RCW; nursing assistants registered or  
27 certified under chapter 18.88A RCW; (~~and~~) reflexologists certified  
28 under chapter 18.108 RCW; (~~and~~) medical assistants-certified,  
29 medical assistants-hemodialysis technician, medical assistants-  
30 phlebotomist, and medical assistants-registered certified and  
31 registered under chapter 18.360 RCW; and licensed behavior analysts,  
32 licensed assistant behavior analysts, and certified behavior  
33 technicians under chapter 18.--- RCW (the new chapter created in  
34 section 14 of this act).

35 (5) "Inspection" means the periodic examination of practitioners  
36 by a state agency in order to ascertain whether the practitioners'  
37 occupation is being carried out in a fashion consistent with the  
38 public health, safety, and welfare.

39 (6) "Legislative committees of reference" means the standing  
40 legislative committees designated by the respective rules committees



1 of the senate and house of representatives to consider proposed  
2 legislation to regulate health professions not previously regulated.

3 (7) "License," "licensing," and "licensure" mean permission to  
4 engage in a health profession which would otherwise be unlawful in  
5 the state in the absence of the permission. A license is granted to  
6 those individuals who meet prerequisite qualifications to perform  
7 prescribed health professional tasks and for the use of a particular  
8 title.

9 (8) "Professional license" means an individual, nontransferable  
10 authorization to carry on a health activity based on qualifications  
11 which include: (a) Graduation from an accredited or approved program,  
12 and (b) acceptable performance on a qualifying examination or series  
13 of examinations.

14 (9) "Practitioner" means an individual who (a) has achieved  
15 knowledge and skill by practice, and (b) is actively engaged in a  
16 specified health profession.

17 (10) "Public member" means an individual who is not, and never  
18 was, a member of the health profession being regulated or the spouse  
19 of a member, or an individual who does not have and never has had a  
20 material financial interest in either the rendering of the health  
21 professional service being regulated or an activity directly related  
22 to the profession being regulated.

23 (11) "Registration" means the formal notification which, prior to  
24 rendering services, a practitioner shall submit to a state agency  
25 setting forth the name and address of the practitioner; the location,  
26 nature and operation of the health activity to be practiced; and, if  
27 required by the regulatory entity, a description of the service to be  
28 provided.

29 (12) "Regulatory entity" means any board, commission, agency,  
30 division, or other unit or subunit of state government which  
31 regulates one or more professions, occupations, industries,  
32 businesses, or other endeavors in this state.

33 (13) "State agency" includes every state office, department,  
34 board, commission, regulatory entity, and agency of the state, and,  
35 where provided by law, programs and activities involving less than  
36 the full responsibility of a state agency.

37 **Sec. 13.** RCW 18.130.040 and 2013 c 171 s 8 and 2013 c 19 s 45  
38 are each reenacted and amended to read as follows:

1 (1) This chapter applies only to the secretary and the boards and  
2 commissions having jurisdiction in relation to the professions  
3 licensed under the chapters specified in this section. This chapter  
4 does not apply to any business or profession not licensed under the  
5 chapters specified in this section.

6 (2)(a) The secretary has authority under this chapter in relation  
7 to the following professions:

8 (i) Dispensing opticians licensed and designated apprentices  
9 under chapter 18.34 RCW;

10 (ii) Midwives licensed under chapter 18.50 RCW;

11 (iii) Ocularists licensed under chapter 18.55 RCW;

12 (iv) Massage practitioners and businesses licensed under chapter  
13 18.108 RCW;

14 (v) Dental hygienists licensed under chapter 18.29 RCW;

15 (vi) East Asian medicine practitioners licensed under chapter  
16 18.06 RCW;

17 (vii) Radiologic technologists certified and X-ray technicians  
18 registered under chapter 18.84 RCW;

19 (viii) Respiratory care practitioners licensed under chapter  
20 18.89 RCW;

21 (ix) Hypnotherapists and agency affiliated counselors registered  
22 and advisors and counselors certified under chapter 18.19 RCW;

23 (x) Persons licensed as mental health counselors, mental health  
24 counselor associates, marriage and family therapists, marriage and  
25 family therapist associates, social workers, social work associates—  
26 advanced, and social work associates—independent clinical under  
27 chapter 18.225 RCW;

28 (xi) Persons registered as nursing pool operators under chapter  
29 18.52C RCW;

30 (xii) Nursing assistants registered or certified or medication  
31 assistants endorsed under chapter 18.88A RCW;

32 (xiii) Dietitians and nutritionists certified under chapter  
33 18.138 RCW;

34 (xiv) Chemical dependency professionals and chemical dependency  
35 professional trainees certified under chapter 18.205 RCW;

36 (xv) Sex offender treatment providers and certified affiliate sex  
37 offender treatment providers certified under chapter 18.155 RCW;

38 (xvi) Persons licensed and certified under chapter 18.73 RCW or  
39 RCW 18.71.205;

1 (xvii) Orthotists and prosthetists licensed under chapter 18.200  
2 RCW;

3 (xviii) Surgical technologists registered under chapter 18.215  
4 RCW;

5 (xix) Recreational therapists under chapter 18.230 RCW;

6 (xx) Animal massage practitioners certified under chapter 18.240  
7 RCW;

8 (xxi) Athletic trainers licensed under chapter 18.250 RCW;

9 (xxii) Home care aides certified under chapter 18.88B RCW;

10 (xxiii) Genetic counselors licensed under chapter 18.290 RCW;

11 (xxiv) Reflexologists certified under chapter 18.108 RCW; (~~and~~)

12 (xxv) Medical assistants-certified, medical assistants-  
13 hemodialysis technician, medical assistants-phlebotomist, and medical  
14 assistants-registered certified and registered under chapter 18.360  
15 RCW; and

16 (xxvi) Behavior analysts, assistant behavior analysts, and  
17 behavior technicians under chapter 18.--- RCW (the new chapter  
18 created in section 14 of this act).

19 (b) The boards and commissions having authority under this  
20 chapter are as follows:

21 (i) The podiatric medical board as established in chapter 18.22  
22 RCW;

23 (ii) The chiropractic quality assurance commission as established  
24 in chapter 18.25 RCW;

25 (iii) The dental quality assurance commission as established in  
26 chapter 18.32 RCW governing licenses issued under chapter 18.32 RCW,  
27 licenses and registrations issued under chapter 18.260 RCW, and  
28 certifications issued under chapter 18.350 RCW;

29 (iv) The board of hearing and speech as established in chapter  
30 18.35 RCW;

31 (v) The board of examiners for nursing home administrators as  
32 established in chapter 18.52 RCW;

33 (vi) The optometry board as established in chapter 18.54 RCW  
34 governing licenses issued under chapter 18.53 RCW;

35 (vii) The board of osteopathic medicine and surgery as  
36 established in chapter 18.57 RCW governing licenses issued under  
37 chapters 18.57 and 18.57A RCW;

38 (viii) The pharmacy quality assurance commission as established  
39 in chapter 18.64 RCW governing licenses issued under chapters 18.64  
40 and 18.64A RCW;

1 (ix) The medical quality assurance commission as established in  
2 chapter 18.71 RCW governing licenses and registrations issued under  
3 chapters 18.71 and 18.71A RCW;

4 (x) The board of physical therapy as established in chapter 18.74  
5 RCW;

6 (xi) The board of occupational therapy practice as established in  
7 chapter 18.59 RCW;

8 (xii) The nursing care quality assurance commission as  
9 established in chapter 18.79 RCW governing licenses and registrations  
10 issued under that chapter;

11 (xiii) The examining board of psychology and its disciplinary  
12 committee as established in chapter 18.83 RCW;

13 (xiv) The veterinary board of governors as established in chapter  
14 18.92 RCW;

15 (xv) The board of naturopathy established in chapter 18.36A RCW;  
16 and

17 (xvi) The board of denturists established in chapter 18.30 RCW.

18 (3) In addition to the authority to discipline license holders,  
19 the disciplining authority has the authority to grant or deny  
20 licenses. The disciplining authority may also grant a license subject  
21 to conditions.

22 (4) All disciplining authorities shall adopt procedures to ensure  
23 substantially consistent application of this chapter, the uniform  
24 disciplinary act, among the disciplining authorities listed in  
25 subsection (2) of this section.

26 NEW SECTION. **Sec. 14.** Sections 1 through 11 of this act  
27 constitute a new chapter in Title 18 RCW.

28 NEW SECTION. **Sec. 15.** Except for sections 4 and 16 of this act,  
29 this act takes effect July 1, 2017.

30 NEW SECTION. **Sec. 16.** The secretary of health may adopt such  
31 rules as authorized by this act to ensure that the sections in this  
32 act are implemented on their effective dates.

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