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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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) For a licensed behavior analyst:

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

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

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

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

(b) For a licensed assistant behavior analyst:

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

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

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

(c) For a certified behavior technician:

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

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

(d) Demonstrates good moral character;

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

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

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

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

(3) The secretary may accept certification by a national accredited professional credentialing entity in lieu of the specific requirements identified in subsection (1)(a) through (c) of this section.

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

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

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

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

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

NEW SECTION. **Sec.**  An applicant holding a license in another state or a province of Canada may be licensed to practice in this state if the secretary determines that the licensing standards of the other state or province are substantially equivalent to the licensing standards in this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

(6) "Legislative committees of reference" means the standing legislative committees designated by the respective rules committees of the senate and house of representatives to consider proposed legislation to regulate health professions not previously regulated.

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

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

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

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

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

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

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

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

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

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

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

(ii) Midwives licensed under chapter 18.50 RCW;

(iii) Ocularists licensed under chapter 18.55 RCW;

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

(v) Dental hygienists licensed under chapter 18.29 RCW;

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

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

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

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

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

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

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

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

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

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

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

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

(xviii) Surgical technologists registered under chapter 18.215 RCW;

(xix) Recreational therapists under chapter 18.230 RCW;

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

(xxi) Athletic trainers licensed under chapter 18.250 RCW;

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

(xxiii) Genetic counselors licensed under chapter 18.290 RCW;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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