

HOUSE BILL REPORT

SSB 5488

As Passed House:
April 13, 2015

Title: An act relating to applied behavior analysis.

Brief Description: Concerning applied behavior analysis.

Sponsors: Senate Committee on Health Care (originally sponsored by Senators Keiser, Jayapal, Parlette and Cleveland).

Brief History:

Committee Activity:

Health Care & Wellness: 3/17/15, 3/26/15 [DP];

Appropriations: 4/6/15, 4/7/15 [DP].

Floor Activity:

Passed House: 4/13/15, 92-5.

Brief Summary of Substitute Bill

- Creates three new professions: licensed behavior analysts, licensed assistant behavior analysts, and certified behavior technicians.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: Do pass. Signed by 14 members: Representatives Cody, Chair; Riccelli, Vice Chair; Schmick, Ranking Minority Member; Harris, Assistant Ranking Minority Member; Caldier, Clibborn, Jinkins, Johnson, Moeller, Robinson, Rodne, Short, Tharinger and Van De Wege.

Staff: Alexa Silver (786-7190).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass. Signed by 30 members: Representatives Hunter, Chair; Ormsby, Vice Chair; Chandler, Ranking Minority Member; Parker, Assistant Ranking Minority Member; Wilcox, Assistant Ranking Minority Member; Buys, Carlyle, Cody, Condotta, Dent, Dunshee, Fagan, Haler, Hansen, Hudgins, S. Hunt, Jinkins, Kagi, Lytton,

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

MacEwen, Magendanz, Pettigrew, Sawyer, Senn, Springer, Stokesbary, Sullivan, Tharinger, Van Werven and Walkinshaw.

Minority Report: Do not pass. Signed by 2 members: Representatives G. Hunt and Taylor.

Staff: Mary Mulholland (786-7391).

Background:

Applied behavior analysis involves the design, implementation, and evaluation of environmental modifications to produce socially significant improvements in behavior. The national Behavior Analyst Certification Board issues three credentials for behavior analysts: board certified behavior analysts-doctoral, board certified behavior analysts, and board certified assistant behavior analysts. Applicants must meet degree, training, and experience requirements and must pass an examination.

In December 2014, the Department of Health (Department) completed a sunrise review of a proposal to license behavior analysts and assistant behavior analysts. The Department found that the proposal met the sunrise review criteria for a new profession, but recommended several changes to the legislation. For example, it suggested regulating technicians who provide hands-on services to clients and designating the Secretary of Health as the disciplining authority.

Summary of Bill:

Behavior Analysis Professionals.

No person may practice applied behavior analysis (ABA) unless he or she is a licensed behavior analyst or a licensed assistant behavior analyst, and an unlicensed person may not use those titles. No person may practice as a certified behavior technician without holding a certification, and a person who is not certified may not use that title. A licensed behavior analyst is a person licensed to engage in the practice of ABA. A licensed assistant behavior analyst is a person licensed to engage in the practice of ABA under the supervision of a licensed behavior analyst. A certified behavior technician is a paraprofessional who implements a 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 implementation of a treatment plan.

The "practice of ABA" means: (1) 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; (2) empirical identification of functional relations between behavior and environmental factors, known as functional assessment and analysis; and (3) 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. It does not include psychological testing, diagnosis of a mental or physical disorder, neuropsychology, psychotherapy, cognitive therapy, sex therapy,

psychoanalysis, hypnotherapy, counseling, or the use of the techniques described in (3) above alone as treatment modalities.

Exemptions.

The following are exempt from licensure:

- individuals who hold a credential issued in Washington to practice another profession;
- U.S. government employees who provide behavior analysis services under the direction and supervision of their employing agency;
- school employees in the performance of their duties, so long as they do not provide behavior analytic services other than to the school employer and do not accept remuneration other than their salary;
- college students participating in a course, internship, practicum, or program of study, so long as they are supervised by a faculty member or a licensed behavior analyst and use a title that indicates trainee status;
- individuals pursuing supervised experiential training to meet licensure requirements, so long as they are supervised by a licensed behavior analyst who meets requirements established by the Secretary of Health (Secretary) or a professional who meets supervisor requirements determined by a national certifying entity;
- implementation of a behavior analysis treatment plan by a family member or legal guardian, as defined in rule, so long as he or she is under the supervision of a licensed behavior analyst or a licensed assistant behavior analyst;
- the activities of a behavior analyst who practices with nonhumans; and
- the activities of a behavior analyst who provides services to organizations, so long as the services are for the benefit of the organization and do not involve direct services to individuals.

Qualifications and Applications.

An applicant for licensure as a behavior analyst must have:

- graduated from a master's or doctoral program in behavior analysis or a related field approved by the Secretary;
- completed at least 225 classroom hours of graduate-level instruction in behavior analysis topics, as determined in rule;
- successfully completed a supervised experience requirement of at least 1,500 hours or an alternative approved by the Secretary; and
- successfully completed an examination.

An applicant for licensure as an assistant behavior analyst must:

- have graduated from a bachelor's degree program approved by the Secretary;
- have completed 135 classroom hours of instruction in behavior analysis topics, as determined by the Secretary;
- have successfully completed a supervised experience requirement of at least 1,000 hours or an alternative approved by the Secretary; and
- provide proof of ongoing supervision.

An applicant for certification as a behavior technician must have successfully completed a training program of at least 40 hours that is approved by the Secretary, provide proof of ongoing supervision, and meet any other requirements determined by the Secretary.

The Secretary must issue a license to an applicant who submits a completed application, pays the appropriate fees, demonstrates good moral character, has not engaged in unprofessional conduct, is not subject to disciplinary proceedings, and is not unable to practice with reasonable skill and safety. The Secretary may accept certification by a national accredited professional credentialing entity in lieu of the requirements related to education, instruction, experience, and examination.

An applicant who holds a license in another state or Canadian province may be licensed if the Secretary determines the licensing jurisdiction's standards are substantially equivalent to Washington's. The Secretary may grant a temporary license to a non-resident if he or she is licensed to practice ABA in another state or Canadian province and meets any requirements set by the Secretary.

A license or certification is valid for two years, and the Secretary must establish requirements for renewals by rule. The Uniform Disciplinary Act governs unlicensed practice, issuance and denial of licenses, and discipline.

Advisory Committee.

The Applied Behavior Analysis Advisory Committee (Committee) is established, and the Secretary must consult with the Committee in determining qualifications for licensure and certification. The Committee consists of the following five members:

- three licensed behavior analysts, or, for the initial Committee, persons certified by the national Behavior Analyst Certification Board (BACB) as either a board certified behavior analyst or a board certified behavior analyst-doctoral. It is recommended that one of the licensed behavior analysts hold an additional mental health license;
- one licensed assistant behavior analyst, or, for the initial Committee, a person certified by the BACB as a board certified assistant behavior analyst; and
- one member of the public.

Members are appointed by and serve at the pleasure of the Secretary. Terms for the initial members may be staggered, but are otherwise four years, and no member may serve more than two consecutive terms. The Committee must meet at least twice each year. Members must be reimbursed for travel expenses and compensated up to \$50 per day for attending official meetings or performing other required duties.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect on July 1, 2017, except for section 4, relating to creating the Applied Behavior Analysis Advisory Committee, and section 16, relating to authorizing the Secretary of Health to adopt rules to ensure that the bill is implemented on its

effective date, which take effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony (Health Care & Wellness):

(In support) Applied behavior analysis (ABA) is an effective and evidence-based therapy that can assist people of all ages and abilities, but is commonly used with children with autism. Licensure is intended to create transparency, protect consumers, and help families. It will ensure that practitioners who work with vulnerable children and adults have the appropriate education, training, and background checks and are subject to the Uniform Disciplinary Act. This is especially important for technicians, who spend up to 30 hours a week in the client's home, often unsupervised. It is dangerous when well-meaning but untrained and unsupervised people attempt to implement this science.

The Department of Health (Department) conducted a sunrise review and concluded that the new professions meet the criteria in law that are used to evaluate whether a profession should be regulated. This bill incorporates the changes that the Department recommended.

There is broad support for this bill. Issues with the original proposal related to overlapping scopes of practice and inclusion of communication disorders have been addressed. The bill does not limit the ability of other professionals to practice. Other practitioners must determine if ABA falls within their scope of practice. One amendment was adopted to encourage the ABA Advisory Committee to include a person with a psychology degree. Occupational therapists originally suggested that clients be required to get a referral before getting service from behavior analysts, but that was not recommended by the Department.

(Opposed) None.

Staff Summary of Public Testimony (Appropriations):

(In support) The bill will help families understand that the person serving them through applied behavior analysis (ABA) is a professional trained to do so. The practice of ABA is used to treat autism, a condition of which much remains unknown. People who may not be qualified can hang a sign and say that they provide ABA to treat autism, and families grasp at this. The bill will save the state money by avoiding crises that may occur when families receive ABA services from individuals who are not qualified to provide ABA. The Washington Association for Behavior Analysis (WABA) applied for a Department of Health (DOH) sunrise review regarding licensure for behavior analysts. The DOH conducted the sunrise review and recommended licensure for the new professions. The WABA agrees with the bill as it stands. The providers will pay fees to cover the cost of the program and agree that it should be supported through fees.

(Opposed) None.

Persons Testifying (Health Care & Wellness): Senator Keiser, prime sponsor; Martin Mueller, Washington Department of Health; Charlie Brown and Charna Mintz, Washington Association for Behavior Analysis; Melissa Johnson, Washington Speech Language Hearing Association; and Diana Stadden, The Arc of Washington State.

Persons Testifying (Appropriations): Diana Stadden, The Arc of Washington State; and Charlie Brown, Washington Association for Behavior Analysis.

Persons Signed In To Testify But Not Testifying (Health Care & Wellness): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.