

Chapter 1156

S.B. No. 589

1 AN ACT  
2 relating to the licensing and regulation of behavior analysts and  
3 assistant behavior analysts; requiring an occupational license;  
4 imposing fees.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:  
6 SECTION 1. Section 51.2031(a), Occupations Code, is amended  
7 to read as follows:

8 (a) This section applies only to the regulation of the  
9 following professions by the department:

- 10 (1) athletic trainers;
- 11 (2) behavior analysts;
- 12 (3) dietitians;
- 13 (4) [~~3~~] hearing instrument fitters and dispensers;
- 14 (5) [~~4~~] midwives;
- 15 (6) [~~5~~] orthotists and prosthetists; and
- 16 (7) [~~6~~] speech-language pathologists and
- 17 audiologists.

18 SECTION 2. Subtitle I, Title 3, Occupations Code, is  
19 amended by adding Chapter 506 to read as follows:

20 CHAPTER 506. BEHAVIOR ANALYSTS

21 SUBCHAPTER A. GENERAL PROVISIONS

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

24 Sec. 506.002. DEFINITIONS. In this chapter:

1           (1) "Advisory board" means the Behavior Analyst  
2 Advisory Board.

3           (2) "Certifying entity" means the nationally  
4 accredited Behavior Analyst Certification Board or another entity  
5 that is accredited by the National Commission for Certifying  
6 Agencies or the American National Standards Institute to issue  
7 credentials in the professional practice of applied behavior  
8 analysis and approved by the department.

9           (3) "Commission" means the Texas Commission of  
10 Licensing and Regulation.

11           (4) "Department" means the Texas Department of  
12 Licensing and Regulation.

13           (5) "Executive director" means the executive director  
14 of the department.

15           (6) "License holder" means a person licensed under  
16 this chapter.

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

22           (8) "Licensed behavior analyst" means a person who is  
23 certified by the certifying entity as a Board Certified Behavior  
24 Analyst or a Board Certified Behavior Analyst--Doctoral or who has  
25 an equivalent certification issued by the certifying entity and who  
26 meets the requirements specified by Sections 506.252 and 506.253.

27           (9) "Physician" means a person licensed to practice

1 medicine by the Texas Medical Board.

2 Sec. 506.003. PRACTICE OF APPLIED BEHAVIOR ANALYSIS.

3 (a) The practice of applied behavior analysis is the design,  
4 implementation, and evaluation of instructional and environmental  
5 modifications to produce socially significant improvements in  
6 human behavior.

7 (b) The practice of applied behavior analysis includes the  
8 empirical identification of functional relations between behavior  
9 and environmental factors, known as functional assessment or  
10 functional analysis.

11 (c) Applied behavior analysis interventions:

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

14 (2) use contextual factors, motivating operations,  
15 antecedent stimuli, positive reinforcement, and other procedures  
16 to help individuals develop new behaviors, increase or decrease  
17 existing behaviors, and elicit or evoke behaviors under specific  
18 environmental conditions.

19 (d) The practice of applied behavior analysis does not  
20 include:

21 (1) psychological testing, psychotherapy, cognitive  
22 therapy, psychoanalysis, hypnotherapy, or counseling as treatment  
23 modalities; or

24 (2) the diagnosis of disorders.

25 SUBCHAPTER B. APPLICATION OF CHAPTER; USE OF TITLE

26 Sec. 506.051. LICENSED PSYCHOLOGISTS. This chapter does  
27 not apply to a person licensed to practice psychology in this state

1 if the applied behavior analysis services provided are within the  
2 scope of the licensed psychologist's education, training, and  
3 competence.

4 Sec. 506.052. OTHER LICENSED PROFESSIONALS. This chapter  
5 does not apply to a person licensed to practice another profession  
6 in this state if the applied behavior analysis services provided  
7 are within:

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

10 (2) the scope of the person's education, training, and  
11 competence.

12 Sec. 506.053. FAMILY MEMBERS AND GUARDIANS. This chapter  
13 does not apply to a family member or guardian of a recipient of  
14 applied behavior analysis services who is implementing a behavior  
15 analysis treatment plan for the recipient under the extended  
16 authority and direction of a licensed behavior analyst or licensed  
17 assistant behavior analyst.

18 Sec. 506.054. PARAPROFESSIONALS. This chapter does not  
19 apply to a paraprofessional technician who delivers applied  
20 behavior analysis services if:

21 (1) the applied behavior analysis services are  
22 provided under the extended authority and direction of a licensed  
23 behavior analyst or licensed assistant behavior analyst; and

24 (2) the person is designated as an "applied behavior  
25 analysis technician," "behavior technician," "tutor," or  
26 "front-line therapist."

27 Sec. 506.055. STUDENTS, INTERNS, AND FELLOWS. This chapter

1 does not apply to an applied behavior analysis activity or service  
2 of a college or university student, intern, or fellow if:

3 (1) the activity or service is part of a defined  
4 behavior analysis program of study, course, practicum, internship,  
5 or postdoctoral fellowship;

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

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

11 Sec. 506.056. SUPERVISED EXPERIENCE. This chapter does not  
12 apply to an unlicensed person pursuing supervised experience in  
13 applied behavior analysis if the supervised experience is  
14 consistent with the requirements of the certifying entity and  
15 commission rules.

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

21 (1) are within the behavior analyst's customary area  
22 of practice;

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

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

26 (b) A behavior analyst described by Subsection (a) shall  
27 inform the recipient of applied behavior analysis services, or a

1 parent or guardian of the recipient if the recipient is under 18  
2 years of age, that:

3 (1) the behavior analyst is not licensed in this  
4 state; and

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

7 Sec. 506.058. TEACHER OR EMPLOYEE OF SCHOOL DISTRICT.

8 (a) This chapter does not apply to a teacher or employee of a  
9 private or public school who provides applied behavior analysis  
10 services if the teacher or employee is performing duties within the  
11 scope of the teacher's or employee's employment.

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

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

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

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

22 Sec. 506.059. PERSONS WHO DO NOT PROVIDE DIRECT SERVICES.

23 (a) This chapter does not apply to a person who:

24 (1) is a behavior analyst who practices with  
25 nonhumans, including an applied animal behaviorist or an animal  
26 trainer;

27 (2) teaches behavior analysis or conducts behavior

1 analytic research if the teaching or research activities do not  
2 involve the delivery or supervision of applied behavior analysis  
3 services; or

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

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

7 (B) do not involve direct services to  
8 individuals.

9 (b) A person described by Subsection (a) may use the title  
10 "behavior analyst."

11 SUBCHAPTER C. BEHAVIOR ANALYST ADVISORY BOARD

12 Sec. 506.101. ADVISORY BOARD MEMBERSHIP. (a) The advisory  
13 board is composed of nine members appointed by the presiding  
14 officer of the commission with the approval of the commission as  
15 follows:

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

20 (2) one licensed assistant behavior analyst;

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

23 (4) three members who represent the public and who are  
24 either former recipients of applied behavior analysis services or  
25 the parent or guardian of a current or former recipient of applied  
26 behavior analysis services.

27 (b) To be qualified for appointment under Subsection

1 (a)(1), a person must have at least five years of experience as a  
2 licensed behavior analyst after being certified by the certifying  
3 entity.

4 (c) Appointments to the advisory board shall be made without  
5 regard to the race, color, disability, sex, religion, age, or  
6 national origin of the appointee.

7 Sec. 506.102. DUTIES OF ADVISORY BOARD. The advisory board  
8 shall provide advice and recommendations to the department on  
9 technical matters relevant to the administration of this chapter.

10 Sec. 506.103. TERMS; VACANCY. (a) Members of the advisory  
11 board serve staggered six-year terms, with the terms of three  
12 members expiring February 1 of each odd-numbered year.

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

15 (c) If a vacancy occurs during a member's term, the  
16 presiding officer of the commission, with the commission's  
17 approval, shall appoint a replacement who meets the qualifications  
18 for the vacant position to serve for the remainder of the term.

19 Sec. 506.104. PRESIDING OFFICER. The presiding officer of  
20 the commission shall designate a member of the advisory board to  
21 serve as the presiding officer of the advisory board for a term of  
22 one year. The presiding officer of the advisory board may vote on  
23 any matter before the advisory board.

24 Sec. 506.105. MEETINGS. The advisory board shall meet at  
25 least twice each year and at the call of the presiding officer of  
26 the commission or the executive director.

27 Sec. 506.106. GROUNDS FOR REMOVAL. A member of the advisory



1 board may be removed as provided by Section 51.209.

2 Sec. 506.107. COMPENSATION; REIMBURSEMENT. (a) A member  
3 of the advisory board may not receive compensation for service on  
4 the advisory board.

5 (b) A member of the advisory board is entitled to  
6 reimbursement for actual and necessary expenses incurred in  
7 performing functions as a member of the advisory board, subject to  
8 any applicable limitation on reimbursement provided by the General  
9 Appropriations Act.

10 SUBCHAPTER D. POWERS AND DUTIES

11 Sec. 506.151. GENERAL POWERS AND DUTIES. (a) The  
12 commission shall adopt rules consistent with this chapter for the  
13 administration and enforcement of this chapter.

14 (b) The department shall:

15 (1) administer and enforce this chapter;

16 (2) evaluate the qualifications of license  
17 applicants;

18 (3) provide for the examination of license applicants;

19 (4) issue licenses;

20 (5) in connection with a hearing under this chapter,  
21 issue subpoenas, examine witnesses, and administer oaths under the  
22 laws of this state; and

23 (6) investigate persons engaging in practices that  
24 violate this chapter.

25 (c) The commission or executive director may deny, revoke,  
26 or suspend a license or may otherwise discipline a license holder in  
27 accordance with Section 51.353.

1        Sec. 506.152. STANDARDS OF ETHICAL PRACTICE. The  
2 commission shall adopt rules under this chapter that establish  
3 standards of ethical practice.

4        Sec. 506.153. ASSISTANCE FILING COMPLAINT. The department,  
5 in accordance with Section 51.252, shall provide reasonable  
6 assistance to a person who wishes to file a complaint with the  
7 department regarding a person or activity regulated under this  
8 chapter.

9        Sec. 506.154. FEES. The commission by rule shall set fees  
10 in amounts reasonable and necessary to cover the costs of  
11 administering this chapter.

12                    SUBCHAPTER E. PUBLIC INTEREST INFORMATION  
13                    AND COMPLAINT PROCEDURES

14        Sec. 506.201. TELEPHONE NUMBER FOR COMPLAINTS. The  
15 department shall list with its regular telephone number any  
16 toll-free telephone number established under other state law that  
17 may be called to present a complaint about a health professional.

18        Sec. 506.202. CONFIDENTIALITY OF COMPLAINT INFORMATION.  
19 (a) Except as provided by Subsection (b), a complaint and  
20 investigation concerning a license holder and all information and  
21 materials compiled by the department in connection with the  
22 complaint and investigation are not subject to:

- 23                    (1) disclosure under Chapter 552, Government Code; or  
24                    (2) disclosure, discovery, subpoena, or other means of  
25 legal compulsion for release of information to any person.

26        (b) A complaint or investigation subject to Subsection (a)  
27 and all information and materials compiled by the department in

1 connection with the complaint, in accordance with Chapter 611,  
2 Health and Safety Code, may be disclosed to:

3 (1) the department and its employees or agents  
4 involved in license holder discipline;

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

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

8 (4) a governmental agency if:

9 (A) the disclosure is required or permitted by  
10 law; and

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

13 (5) the legislature.

14 (c) The department shall protect the identity of any patient  
15 whose records are examined in connection with a disciplinary  
16 investigation or proceeding against a license holder, except:

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

18 or

19 (2) a patient who has submitted a written consent to  
20 release the records.

21 SUBCHAPTER F. LICENSE REQUIREMENTS

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

26 (b) A person may not use the title "licensed behavior  
27 analyst" or "licensed assistant behavior analyst," as appropriate,

1 unless the person is licensed under this chapter.

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

5 Sec. 506.252. LICENSE APPLICATION. Each applicant for a  
6 license under this chapter must submit an application and the  
7 required fees to the department. The application must include  
8 sufficient evidence, as defined by commission rules, that the  
9 applicant has successfully completed a state-approved criminal  
10 background check.

11 Sec. 506.253. REQUIREMENTS FOR LICENSED BEHAVIOR ANALYST.  
12 An applicant for a license as a licensed behavior analyst must  
13 present evidence to the department that the applicant:

14 (1) is currently certified by the certifying entity as  
15 a Board Certified Behavior Analyst or a Board Certified Behavior  
16 Analyst--Doctoral or an equivalent certification issued by the  
17 certifying entity;

18 (2) has met the educational requirements of the Board  
19 Certified Behavior Analyst standard or the Board Certified Behavior  
20 Analyst--Doctoral standard or an equivalent standard adopted by the  
21 certifying entity;

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

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

1           (5) is not subject to any disciplinary action by the  
2 certifying entity.

3           Sec. 506.254. REQUIREMENTS FOR LICENSED ASSISTANT BEHAVIOR  
4 ANALYST. An applicant for a license as a licensed assistant  
5 behavior analyst must present evidence to the department that the  
6 applicant:

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

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

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

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

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

20           (6) is currently supervised by a licensed behavior  
21 analyst in accordance with the requirements of the certifying  
22 entity.

23           Sec. 506.255. ISSUANCE OF LICENSE. The department shall  
24 issue a license as a licensed behavior analyst or a licensed  
25 assistant behavior analyst, as appropriate, to an applicant who:

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

27           (2) meets any additional requirements the commission

1 establishes by rule; and

2 (3) pays the required fees.

3 Sec. 506.256. RECIPROCITY. (a) The department shall issue  
4 a license to a person who is currently licensed as a behavior  
5 analyst or as an assistant behavior analyst from another state or  
6 jurisdiction that imposes licensure requirements similar to those  
7 specified in this chapter.

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

9 (1) submit evidence to the department that the  
10 applicant:

11 (A) is in good standing as determined by the  
12 department;

13 (B) holds a valid license from another state or  
14 jurisdiction; and

15 (C) is in compliance with other requirements  
16 established by Section 506.252, 506.253, 506.254, or 506.255, as  
17 appropriate; and

18 (2) pay the required fees.

19 Sec. 506.257. RETIREMENT STATUS. The commission by rule  
20 may adopt a system for placing a person licensed under this chapter  
21 on retirement status.

22 SUBCHAPTER G. LICENSE RENEWAL

23 Sec. 506.301. LICENSE EXPIRATION. A license issued under  
24 this chapter expires on the second anniversary of the date of  
25 issuance.

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

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

8           SUBCHAPTER H. LICENSE DENIAL AND DISCIPLINARY PROCEDURES

9           Sec. 506.351. GROUNDS FOR LICENSE DENIAL AND DISCIPLINARY  
10 ACTION. After a hearing, the commission or executive director may  
11 deny a license to an applicant, suspend or revoke a person's  
12 license, or place on probation a license holder if the applicant or  
13 license holder:

14           (1) violates this chapter, a commission rule, or an  
15 order of the commission or the executive director;

16           (2) obtains a license by means of fraud,  
17 misrepresentation, or concealment of a material fact;

18           (3) sells, barter, or offers to sell or barter a  
19 license; or

20           (4) engages in unprofessional conduct that:

21           (A) endangers or is likely to endanger the  
22 health, welfare, or safety of the public as defined by commission  
23 rule; or

24           (B) violates the code of ethics adopted and  
25 published by the commission.

26           SUBCHAPTER I. ENFORCEMENT PROCEDURES

27           Sec. 506.401. ENFORCEMENT PROCEEDINGS. The commission,

1 department, or executive director may enforce this chapter, a rule  
2 adopted under this chapter, or an order of the commission or  
3 executive director as provided by Subchapters F and G, Chapter 51.

4 SECTION 3. (a) As soon as practicable after the effective  
5 date of this Act, the presiding officer of the Texas Commission of  
6 Licensing and Regulation shall appoint nine members to the Behavior  
7 Analyst Advisory Board in accordance with Chapter 506, Occupations  
8 Code, as added by this Act. In making the initial appointments, the  
9 presiding officer of the commission shall designate three members  
10 for terms expiring February 1, 2019, three members for terms  
11 expiring February 1, 2021, and three members for terms expiring  
12 February 1, 2023.

13 (b) Notwithstanding Section 506.101, Occupations Code, as  
14 added by this Act, a person who meets the requirements of Section  
15 506.253 or 506.254, Occupations Code, as added by this Act, may be  
16 appointed as an initial behavior analyst or assistant behavior  
17 analyst member of the Behavior Analyst Advisory Board, as  
18 applicable, regardless of whether the person holds a license issued  
19 under Chapter 506, Occupations Code, as added by this Act.

20 SECTION 4. Not later than April 1, 2018, the Texas  
21 Commission of Licensing and Regulation shall adopt the rules,  
22 procedures, and fees necessary to administer Chapter 506,  
23 Occupations Code, as added by this Act.

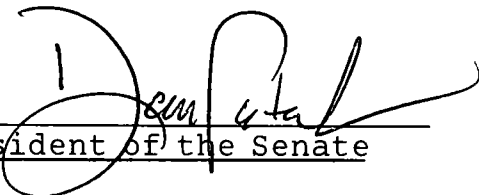
24 SECTION 5. Notwithstanding Chapter 506, Occupations Code,  
25 as added by this Act, a behavior analyst or assistant behavior  
26 analyst is not required to hold a license under that chapter to  
27 practice as a licensed behavior analyst or licensed assistant

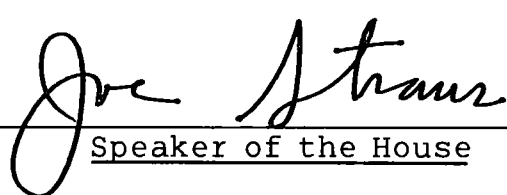


1 behavior analyst in this state before September 1, 2018.

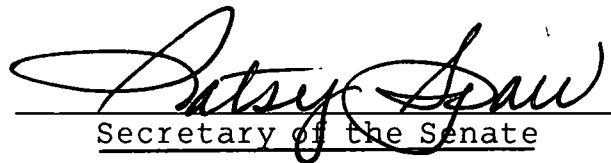
2 SECTION 6. (a) Except as provided by Subsection (b) of  
3 this section, this Act takes effect September 1, 2017.

4 (b) Section 506.251, Occupations Code, and Subchapter I,  
5 Chapter 506, Occupations Code, as added by this Act, take effect  
6 September 1, 2018. \_\_\_\_\_

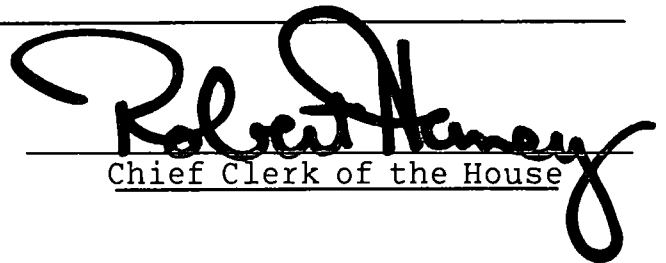
  
\_\_\_\_\_  
President of the Senate

  
\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 589 passed the Senate on  
May 1, 2017, by the following vote: Yeas 25, Nays 6; and that the  
Senate concurred in House amendment on May 25, 2017, by the  
following vote: Yeas 25, Nays 6. \_\_\_\_\_

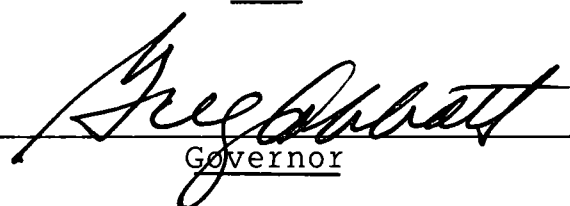
  
\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 589 passed the House, with  
amendment, on May 23, 2017, by the following vote: Yeas 121,  
Nays 25, one present not voting. \_\_\_\_\_

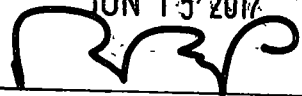
  
\_\_\_\_\_  
Chief Clerk of the House

Approved:

6-14-2017  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Governor

FILED IN THE OFFICE OF THE  
SECRETARY OF STATE  
3 PM O'CLOCK

JUN 15 2017  
  
\_\_\_\_\_  
Secretary of State

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION**

**May 17, 2017**

**TO:** Honorable Four Price, Chair, House Committee on Public Health

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE:** SB589 by Lucio (Relating to the licensing and regulation of behavior analysts and assistant behavior analysts; requiring an occupational license; imposing fees.),  
**Committee Report 2nd House, Substituted**

**Estimated Two-year Net Impact to General Revenue Related Funds** for SB589, Committee Report 2nd House, Substituted: a positive impact of \$12,142 through the biennium ending August 31, 2019.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**General Revenue-Related Funds, Five-Year Impact:**

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2018	(\$111,420)
2019	\$123,562
2020	\$752
2021	\$752
2022	\$752

**All Funds, Five-Year Impact:**

Fiscal Year	Probable Revenue Gain from <i>General Revenue Fund</i> 1	Probable (Cost) from <i>General Revenue Fund</i> 1	Change in Number of State Employees from FY 2017
2018	\$0	(\$111,420)	1.2
2019	\$370,350	(\$246,788)	3.5
2020	\$246,900	(\$246,148)	3.5
2021	\$246,900	(\$246,148)	3.5
2022	\$246,900	(\$246,148)	3.5

## **Fiscal Analysis**

The bill would amend the Occupations Code relating to the licensing and regulation of behavior analysts and assistant behavior analysts; requiring an occupational license; imposing fees.

The bill would add Chapter 506 of the Occupations Code, which would regulate Behavioral Analysts at the Texas Department of Licensing and Regulation (TDLR). The bill would establish a nine member advisory board and outlines its powers and duties. The bill would establish the license requirement for a licensed behavior analyst and a licensed assistant behavior analyst.

The bill adds behavior analysts to the list of programs for which the commission can only adopt a rule regarding scope of practice or a health-related standard of care proposed by that program's advisory board or return the rule proposal to the board for revision.

The bill requires applicant for a license to submit an application and the required fees to the department. The application must include sufficient evidence, as defined by commission rules, that the applicant has successfully completed a state-approved criminal background check. The bill establishes that a license issued under the statute expires on the second anniversary of the date of issuance.

The bill requires the department to issue a license to a person who is currently licensed as a behavior analyst or as an assistant behavior analyst from another state or jurisdiction that imposes licensure requirements similar to those specified in the statute. The bill establishes criteria an applicant for a reciprocal license must meet.

The bill requires the commission to adopt rules that establish standard of ethical practice. The bill requires the department to provide reasonable assistance to a person who wishes to file a complaint regarding a person or activity regulated under the statute.

The bill requires the commission to adopt the rules, procedures, and fees necessary to administer the statute not later than April 1, 2018.

The requirement to hold a license and the penalties and enforcement procedures would not take effect until September 1, 2018.

The bill would take effect September 1, 2017.

## **Methodology**

According to analysis by TDLR, there are 1,109 behavior analysts, 81 behavior analysts-doctoral, and 90 assistant behavior analysts in Texas currently certified by the certifying entity.

The license fee would be \$390 for behavior analysts and behavior analysts-doctoral for a two-year license, and \$330 for assistant behavior analysts for a two-year license. The licenses in this program have a two-year license term. In order to get 50% of the license population renewing in alternate years, half the license population would need to pay fees for a two-year license in the first year and half would need to pay fees for a one-year license. For fiscal year 2019, this would yield a General Revenue gain of \$370,350, which would decrease to \$246,900 in fiscal year 2020 and beyond as the staggered renewal schedule took effect.

TDLR estimates name-based background check fee costs would be \$1,280 in fiscal year

2019 and \$640 per year in 2020 and beyond.

TDLR estimates it would require 3.5 FTEs to regulate this new licensee population. TDLR estimates the employees would be required to start in the last quarter of fiscal year 2018, to be ready to begin licensing September 1, 2018. For the last quarter of fiscal year 2018, these employees would cost approximately \$59,129 in salary and payroll costs, \$20,459 in employee benefits, and \$5,540 in travel, rent and other operating expenses. According to LBB analysis, start-up costs for furniture and equipment would be \$26,292 in 2018. Beginning in fiscal year 2019, TDLR estimates the salary cost each full fiscal year would be \$167,478, and associated employee benefits would be \$61,330 per fiscal year. Costs for travel, rent, and operating expenses for each year would be \$16,700.

This analysis assumes that any increased cost to TDLR, which is statutorily required to raise revenue to cover its costs of operation, would be offset by an increase in fee generated revenue over the 2018-19 biennium.

### **Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 304 Comptroller of Public Accounts, 452 Department of Licensing and Regulation

**LBB Staff:** UP, JQ, KCA, CL, EH

**LEGISLATIVE BUDGET BOARD  
Austin, Texas**

**FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION**

**May 4, 2017**

**TO:** Honorable Four Price, Chair, House Committee on Public Health

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: SB589** by Lucio (Relating to the licensing and regulation of behavior analysts and assistant behavior analysts; requiring an occupational license; imposing fees; providing a civil penalty; creating a criminal offense.), **As Engrossed**

**Estimated Two-year Net Impact to General Revenue Related Funds** for SB589, As Engrossed: a positive impact of \$98,202 through the biennium ending August 31, 2019.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**General Revenue-Related Funds, Five-Year Impact:**

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2018	\$97,450
2019	\$752
2020	\$752
2021	\$752
2022	\$752

**All Funds, Five-Year Impact:**

Fiscal Year	Probable Revenue Gain from <i>General Revenue Fund</i> 1	Probable (Cost) from <i>General Revenue Fund</i> 1	Change in Number of State Employees from FY 2017
2018	\$370,530	(\$273,080)	3.5
2019	\$246,900	(\$246,148)	3.5
2020	\$246,900	(\$246,148)	3.5
2021	\$246,900	(\$246,148)	3.5
2022	\$246,900	(\$246,148)	3.5

**Fiscal Analysis**

The bill would amend the Occupations Code relating to the licensing and regulation of behavior analysts and assistant behavior analysts; requiring an occupational license; imposing fees;

providing a civil penalty; creating a criminal offense.

The bill would add Chapter 506 of the Occupations Code, which would regulate Behavioral Analysts at the Texas Department of Licensing and Regulation (TDLR). The bill would establish a nine member advisory board and outlines its powers and duties. The bill would establish the license requirement for a licensed behavior analyst and a licensed assistant behavior analyst.

The bill adds behavior analysts to the list of programs for which the commission can only adopt a rule regarding scope of practice or a health-related standard of care proposed by that program's advisory board or return the rule proposal to the board for revision.

The bill requires applicant for a license to submit an application and the required fees to the department. The application must include sufficient evidence, as defined by commission rules, that the applicant has successfully completed a state-approved criminal background check. The bill establishes that a license issued under the statute expires on the second anniversary of the date of issuance.

The bill requires the department to issue a license to a person who is currently licensed as a behavior analyst or as an assistant behavior analyst from another state or jurisdiction that imposes licensure requirements similar to those specified in the statute. The bill establishes criteria an applicant for a reciprocal license must meet.

The bill requires the commission to adopt rules that establish standard of ethical practice. The bill requires the department to provide reasonable assistance to a person who wishes to file a complaint regarding a person or activity regulated under the statute.

The bill lists the grounds for license denial and disciplinary action. The bill establishes the amount of an administrative penalty imposed against a licensed person who violates the statute or a rule or order adopted under the statute may not exceed \$200, and that each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty. The bill establishes civil penalties and criminal offenses under the statute.

The bill requires the commission to adopt the rules, procedures, and fees necessary to administer the statute not later than January 1, 2018.

The requirement to hold a license and the penalties and enforcement procedures would not take effect until June 1, 2018.

The bill would take effect September 1, 2017.

### **Methodology**

According to analysis by TDLR, there are 1,109 behavior analysts, 81 behavior analysts-doctoral, and 90 assistant behavior analysts in Texas currently certified by the certifying entity.

The license fee would be \$390 for behavior analysts and behavior analysts-doctoral for a two-year license, and \$330 for assistant behavior analysts for a two-year license. The licenses in this program have a two-year license term. In order to get 50% of the license population renewing in alternate years, half the license population would need to pay fees for a two-year license in the first year and half would need to pay fees for a one-year license. For fiscal year 2018, this would yield a General Revenue gain of \$370,350, which would decrease to \$246,900 in fiscal year 2019 and beyond as the staggered renewal schedule took effect.

TDLR estimates name-based background check fee costs would be \$1,280 in fiscal year 2018 and \$640 per year in 2019 and beyond.

TDLR estimates it would require 3.5 FTEs to regulate this new licensee population. The salary cost each fiscal year would be \$167,478, and associated employee benefits would be \$61,330 per fiscal year. Costs for travel, rent, and operating expenses for each year would be \$16,700. According to LBB analysis, start-up costs for furniture and equipment would be \$26,292 in the first year.

This analysis assumes that any increased cost to TDLR, which is statutorily required to raise revenue to cover its costs of operation, would be offset by an increase in fee generated revenue.

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 304 Comptroller of Public Accounts, 452 Department of Licensing and Regulation

**LBB Staff:** UP, KCA, CL, EH, JQ

**LEGISLATIVE BUDGET BOARD  
Austin, Texas**

**FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION**

**April 22, 2017**

**TO:** Honorable Kelly Hancock, Chair, Senate Committee on Business & Commerce

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE:** SB589 by Lucio (Relating to the licensing and regulation of behavior analysts and assistant behavior analysts; requiring an occupational license; imposing fees; providing a civil penalty; creating a criminal offense.), **Committee Report 1st House, Substituted**

**Estimated Two-year Net Impact to General Revenue Related Funds** for SB589, Committee Report 1st House, Substituted: a positive impact of \$98,202 through the biennium ending August 31, 2019.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**General Revenue-Related Funds, Five-Year Impact:**

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2018	\$97,450
2019	\$752
2020	\$752
2021	\$752
2022	\$752

**All Funds, Five-Year Impact:**

Fiscal Year	Probable Revenue Gain from <i>General Revenue Fund</i> 1	Probable (Cost) from <i>General Revenue Fund</i> 1	Change in Number of State Employees from FY 2017
2018	\$370,530	(\$273,080)	3.5
2019	\$246,900	(\$246,148)	3.5
2020	\$246,900	(\$246,148)	3.5
2021	\$246,900	(\$246,148)	3.5
2022	\$246,900	(\$246,148)	3.5

**Fiscal Analysis**

The bill would amend the Occupations Code relating to the licensing and regulation of behavior



analysts and assistant behavior analysts; requiring an occupational license; imposing fees; providing a civil penalty; creating a criminal offense.

The bill would add Chapter 506 of the Occupations Code, which would regulate Behavioral Analysts at the Texas Department of Licensing and Regulation (TDLR). The bill would establish a nine member advisory board and outlines its powers and duties. The bill would establish the license requirement for a licensed behavior analyst and a licensed assistant behavior analyst.

The bill adds behavior analysts to the list of programs for which the commission can only adopt a rule regarding scope of practice or a health-related standard of care proposed by that program's advisory board or return the rule proposal to the board for revision.

The bill requires applicant for a license to submit an application and the required fees to the department. The application must include sufficient evidence, as defined by commission rules, that the applicant has successfully completed a state-approved criminal background check. The bill establishes that a license issued under the statute expires on the second anniversary of the date of issuance.

The bill requires the department to issue a license to a person who is currently licensed as a behavior analyst or as an assistant behavior analyst from another state or jurisdiction that imposes licensure requirements similar to those specified in the statute. The bill establishes criteria an applicant for a reciprocal license must meet.

The bill requires the commission to adopt rules that establish standard of ethical practice. The bill requires the department to provide reasonable assistance to a person who wishes to file a complaint regarding a person or activity regulated under the statute. The bill lists the grounds for license denial and disciplinary action. The bill establishes the amount of an administrative penalty imposed against a licensed person who violates the statute or a rule or order adopted under the statute may not exceed \$200, and that each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty. The bill establishes civil penalties and criminal offenses under the statute.

The bill requires the commission to adopt the rules, procedures, and fees necessary to administer the statute not later than January 1, 2018.

The requirement to hold a license and the penalties and enforcement procedures would not take effect until June 1, 2018.

The bill would take effect September 1, 2017.

## **Methodology**

According to analysis by TDLR, there are 1,109 behavior analysts, 81 behavior analysts-doctoral, and 90 assistant behavior analysts in Texas currently certified by the certifying entity.

The license fee would be \$390 for behavior analysts and behavior analysts-doctoral for a two-year license, and \$330 for assistant behavior analysts for a two-year license. The licenses in this program have a two-year license term. In order to get 50% of the license population renewing in alternate years, half the license population would need to pay fees for a two-year license in the first year and half would need to pay fees for a one-year license. For fiscal year 2018, this would yield a General Revenue gain of \$370,350, which would decrease to \$246,900 in fiscal year 2019 and beyond as the staggered renewal schedule took effect.

TDLR estimates name-based background check fee costs would be \$1,280 in fiscal year 2018 and \$640 per year in 2019 and beyond.

TDLR estimates it would require 3.5 FTEs to regulate this new licensee population. The salary cost each fiscal year would be \$167,478, and associated employee benefits would be \$61,330 per fiscal year. Costs for travel, rent, and operating expenses for each year would be \$16,700. According to LBB analysis, start-up costs for furniture and equipment would be \$26,292 in the first year.

This analysis assumes that any increased cost to TDLR, which is statutorily required to raise revenue to cover its costs of operation, would be offset by an increase in fee generated revenue.

#### **Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 304 Comptroller of Public Accounts, 452 Department of Licensing and Regulation

**LBB Staff:** UP, CL, EH, JQ

**LEGISLATIVE BUDGET BOARD  
Austin, Texas**

**FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION**

**April 10, 2017**

**TO:** Honorable Kelly Hancock, Chair, Senate Committee on Business & Commerce

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: SB589** by Lucio (Relating to the establishment of the Texas Board of Behavior Analyst Examiners and the requirement to obtain a license to practice as a behavior analyst or assistant behavior analyst; imposing fees; providing an administrative penalty.), **As Introduced**

**Estimated Two-year Net Impact to General Revenue Related Funds** for SB589, As Introduced: a positive impact of \$556,129 through the biennium ending August 31, 2019.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**General Revenue-Related Funds, Five-Year Impact:**

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2018	\$479,628
2019	\$76,501
2020	\$79,228
2021	\$81,955
2022	\$84,682

**All Funds, Five-Year Impact:**

Fiscal Year	Probable (Cost) from <i>General Revenue Fund</i> 1	Probable Revenue Gain from <i>General Revenue Fund</i> 1	Probable Savings/(Cost) from <i>Appropriated Receipts</i> 666	Probable Revenue Gain/(Loss) from <i>Appropriated Receipts</i> 666
2018	(\$166,095)	\$645,723	(\$35,100)	\$35,100
2019	(\$110,695)	\$187,196	(\$540)	\$540
2020	(\$110,695)	\$189,923	(\$540)	\$540
2021	(\$110,695)	\$192,650	(\$540)	\$540
2022	(\$110,695)	\$195,377	(\$540)	\$540

<b>Fiscal Year</b>	<b>Change in Number of State Employees from FY 2015</b>
2018	2.0
2019	2.0
2020	2.0
2021	2.0
2022	2.0

### **Fiscal Analysis**

This bill would amend the Occupations Code relating to the establishment of the Texas Board of Behavior Analyst Examiners and the requirement to obtain a license to practice as a behavior analyst or assistant behavior analyst; imposing fees; providing an administrative penalty. The bill would add Chapter 506 to the Occupations Code, relating to the establishment of the Texas Board of Behavior Analyst Examiners (Board).

The bill would establish a nine-member board appointed by the Governor. Under provisions of the bill, the Board rules and fees would be subject to approval by the Texas Medical Board (TMB) and would authorize the Board to license and discipline behavior analysts and assistant behavior analysts.

The bill would require that applicants for licensure successfully complete a state-approved criminal background check. The bill requires the Board to meet at least twice per year. The bill also requires that a training program be provided to the Board members and that TMB provide administrative and clerical support. The bill authorizes the collection of fees to cover the administration and enforcement of this act.

The Board would have authority to impose an administrative penalty against a licensee violating this chapter's provisions.

This bill takes effect September 1, 2017, except for the license requirement and the criminal penalty provision which take effect June 1, 2018.

### **Methodology**

Based on information provided by the TMB, the agency anticipates a cost of \$50,000 in General Revenue for one-time computer programming for updates to the agency licensing database (400 hours of programming at \$125 per hour for fiscal year 2018 only). TMB also estimates a cost of \$10,125 in General Revenue each year for advisory board member travel reimbursement and per diem (\$375 per board member per meeting for 9 board members holding three meetings annually). Based on information provided by TMB, the agency anticipates an ongoing cost of \$1,350 in General Revenue each fiscal year for software licenses for nine board members (\$150 per board member per year for 9 board members).

TMB estimates increased workload would require the authority and funding for two full-time equivalents (FTEs) as a License & Permit Specialist III. TMB estimates annual costs of \$72,624 in salaries and wages for two Licensing and Permit Specialist FTEs (\$36,312 per FTE), \$1,090 in insurance and retirement costs (\$545 per FTE), and \$25,506 (\$12,753 per FTE) in other benefits costs. One-time startup costs related to the FTE including equipment and information technology purchase are estimated to be \$5,400 in fiscal year 2018 only.

TMB reports that the initial licensing fee for this program would be approximately \$496, and biennial renewal fees would be approximately \$273. TMB estimates 1,300 initial licensing applications in fiscal year 2018 (1,300 initial applications at approximately \$496 totaling \$645,723 in General Revenue in fiscal year 2018 only) and 20 initial applications each year thereafter (20 initial applications at approximately \$496 totaling \$9,934 in General Revenue each year). TMB estimates 650 renewal applications at approximately \$273 totaling \$177,262 in General Revenue in fiscal year 2019; 660 renewal applications at approximately \$273 totaling \$179,989 in General Revenue in fiscal year 2020; 670 renewal applications at approximately \$273 totaling \$182,716 in General Revenue in fiscal year 2021; 680 renewal applications at approximately \$273 totaling \$185,443 in General Revenue in fiscal year 2022.

This analysis assumes that TMB, which is statutorily required to raise revenue to cover the amounts appropriated to the agency, will raise fees sufficient to cover the costs of implementing the provisions of this bill.

This analysis assumes that initial licensees would be required to submit finger-print based background checks to the Department of Public Safety (DPS) for a state-approved criminal background check as required by the provisions of the bill. Based on information provided by the TMB, initial applicants for background checks would total 1,300 in fiscal year 2018 and 20 initial applicants in each fiscal year thereafter. DPS charges applicants \$27 to perform a finger print based background check to cover the cost to DPS to obtain state and national criminal history record information, which results in both a gain and an offsetting cost to Appropriated receipts at DPS. Based on the number of estimated applicants, it is estimated that there will be a total gain and offsetting cost to Appropriated Receipts at DPS of \$35,100 in fiscal year 2018. Each fiscal year beginning with fiscal year 2019 would have a gain and offsetting cost to Appropriated Receipts at DPS of \$540.

Based on information provided by the State Office of Administrative Hearings, the Office of the Governor, Office of Attorney General, Office of Court Administration and the Comptroller of Public Accounts, it is assumed that duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

### **Technology**

TMB estimates a cost of \$50,000 in General Revenue for one-time computer programming for updates to the agency licensing database, \$5,400 in General Revenue for one-time IT equipment for the additional FTEs, and \$1,350 in General Revenue per fiscal year in ongoing costs related to software licenses for nine board members.

### **Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council, 300 Trusteed Programs Within the Office of the Governor, 360 State Office of Administrative Hearings, 405 Department of Public Safety, 301 Office of the Governor, 304 Comptroller of Public Accounts, 503 Texas Medical Board, 116 Sunset Advisory Commission, 302 Office of the Attorney General

**LBB Staff:** UP, CL, EH, EK, JGA, NV