



STATE OF HAWAII
DEPARTMENT OF EDUCATION
P.O. BOX 2360
HONOLULU, HAWAII 96804

Date: 02/04/2019
Time: 02:55 PM
Location: 229
Committee: Senate Education

Department: Education

Person Testifying: Dr. Christina M. Kishimoto, Superintendent of Education

Title of Bill: SB 0391 RELATING TO BEHAVIOR ANALYSIS.

Purpose of Bill: Appropriates funds to the Department of Education for behavior analysis services performed by licensed behavior analysts for public school students.

Department's Position:

The Department of Education (Department) supports the intent of SB 391 which requests appropriation out of the general revenues of the State of Hawaii in the sum of \$20,000,000 or so much thereof to provide behavior analysis services. As currently written, however, these monies can only be used to pay for services performed by a Licensed Behavior Analyst (LBA) and does not cover other professionals licensed to provide behavioral analysis services pursuant to Section 465D-7, HRS, including: Board Certified Assistant Behavior Analyst (BCaBA) under LBA supervision, students pursuing a graduate level certificate in behavior analysis under LBA supervision; licensed psychologist; and master's level practitioners and postdoctoral fellows under a the supervision of a licensed psychologist.

Nor does the bill include the following professionals who are also permitted to implement behavior analysis programs pursuant to Section 465D-7, HRS, including: Registered Behavior Technicians (RBTs) under LBA or BCaBA supervision, direct support worker (paraprofessional) under licensed psychologist or their Master's level or postdoctoral fellow supervisees, direct support worker (paraprofessional) under the supervision of a LBA or licensed psychologist on or before January 1, 2020, licensed teachers and teachers enrolled in a teacher preparation program in collaboration with a LBA or a licensed psychologist on or before July 1, 2019.

Recommended amendments. As a result of the foregoing, the Department respectfully offers the following amendments to page 2, Section 2, lines 14 and 15:

...behavior analysis services performed by ~~licensed behavior analysts~~ the following individuals for public school students:

- Licensed Behavior Analyst (LBA);
- Board Certified Assistant Behavior Analyst (BCaBA) under LBA supervision;

- Students pursuing a graduate level certificate in behavior analysis under LBA supervision;
- Licensed Psychologist; and
- Master's level practitioners and postdoctoral fellows under a licensed psychologist's supervision.

In addition, monies to be used to fund the implementation of behavior analysis programs performed by the following individuals for public school students:

- Registered Behavior Technicians (RBTs);
- Paraprofessionals under Licensed Psychologist or their Master's level or postdoctoral fellow supervisees; and
- Paraprofessionals under LBA supervision on or before January 1, 2020.

Thank you for the opportunity to provide testimony on this measure.

The Hawaii State Department of Education seeks to advance the goals of the Strategic Plan which is focused on student success, staff success, and successful systems of support. This is achieved through targeted work around three impact strategies: school design, student voice, and teacher collaboration. Detailed information is available at www.hawaiipublicschools.org.

SB-391

Submitted on: 2/1/2019 4:22:38 PM

Testimony for EDU on 2/4/2019 2:55:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Louis Erteschik	Testifying for Hawaii Disability Rights Center	Support	No

Comments:

To: Senator Michelle N. Kidani, Chair, Committee on Education
Senator Donna Mercado Kim, Vice Chair, Committee on Education

From: Linda Hufano, Ph.D., Licensed Psychologist
(808)258-2250

Date: Monday, February 4, 2019

Time; 2:55 PM

Place: Conference Room 229

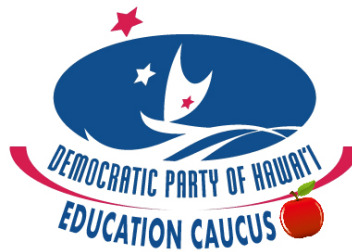
Re: Testimony in Support of 391, Relating to Behavior Analysis Services as
amended by the Hawaii Psychological Association

I am a behaviorally-trained psychologist and have been licensed within the state for over 30 years. My experience has included working in the DOE, CAMHD, independent practice and overseeing contracts to provide evidence-based services, including applied behavior analysis (ABA) for toddlers ages 1-3, elementary age and high school age youth in the DOE, CAMHD youth and their families, individuals receiving services through the DD Division, and children with autism under contracts with HMSA and other third-party payors.

I strongly support any funding needed to provide ABA services for students with autism needing these services. Unfortunately, as currently written SB391, only provides funding for behavioral analysis services performed by licensed behavior analysts. As stated in testimony provided by the Hawai'i Psychological Association (HPA, "The need for evidence-based treatments for students cannot be filled by Licensed Behavior Analysts alone. This is true for Hawai'i as well as the nation generally."

The amendments proposed by the Hawai'i Psychological Association (APA) to include licensed psychologists and other licensed behavioral health professionals having the education, training and competence to provide ABA services, including licensed clinical social workers, advance practice registered nurses with a specialization in psychiatry, licensed marriage family therapists, and licensed mental health counselors, will help to ensure that the department of education has a qualified network of providers to address the needs of students with autism and other special needs students needing ABA services, without delays in services to these students. Additionally, requiring the department of education to seek any approvals that may be necessary from the Centers for Medicare and Medicaid services to amend the state Medicaid plan to provide reimbursement for necessary ABA services provided to Medical-eligible students with autism to all qualified professionals, including but not limited to licensed psychologists, clinical social workers, advance practice registered nurses with specialization in psychiatry, marriage family therapists, mental health counselors and their supervisees will reduce costs to the state for the array of ABA services that our students with autism need, which includes training in the mental health issues (e.g., anxiety, depression) that frequently co-exist for individuals with autism.

Thank you for the opportunity to provide testimony on this important issue.



SENATE BILL 391, RELATING TO BEHAVIOR ANALYSIS

FEBRUARY 4, 2019 · SENATE EDUCATION
COMMITTEE · CHAIR SEN. MICHELLE N. KIDANI

POSITION: Support.

RATIONALE: The Democratic Party of Hawai'i Education Caucus supports SB 391, relating to behavior analysis, which appropriates funds to the Department of Education for behavior analysis services performed by licensed behavior analysts for public school students.

Hawai'i's special needs students deserve our help. For the 2017-2018 school year, the statewide achievement gap between high needs students—which includes SPED children, English language learners, and economically disadvantaged students—and non-high needs students was 32 percent for language arts and 28 percent for math. While State Superintendent Christina Kishimoto and the Hawai'i Board of Education have prioritized closing the achievement gap, doing so requires providing additional resources, including for behavior analysis services.

Behavior analysis involves the design, implementation, and evaluation of instructional and environmental modifications to produce socially significant improvements in human behavior. The practice of behavior analysis includes the empirical identification of functional relations between behavior and environmental factors, known as functional assessment and analysis, as well as the use of contextual factors, motivating operations, antecedent stimuli, positive reinforcement, and other consequences to help people develop positive behaviors.

Act 199, Session Laws of Hawaii 2015, established the behavior analyst program within the Department of Commerce and Consumer Affairs and created licensing requirements for behavior analysts. Licensing of behavior analysis services was made concurrent with mandated insurance coverage for diagnosis and treatment related to autism disorders, with which nearly 1,500 public school students are currently diagnosed.

Yet, the DOE is experiencing a shortage of licensed behavior analysts. To rectify this problem, the department originally sought to allow teachers to perform behavior analysis and prescribe services. Teachers are not trained or qualified to make behavioral diagnoses, however, and being compelled to do so would reduce time to prepare for and perform the professional tasks that comprise the practice of teaching, like innovative lesson planning, professional development and collaboration, and delivery of individualized and personalized learning.

According to *Report on Behavior Analyst and Certification Requirements Implementation*, released by the DOE in 2018, the department was, at that time, supporting efforts for 39 DOE personnel to become BCBAs in an approved program and assisting another 145 departmental personnel in becoming Registered Behavior Technicians by 2019. Our state should continue funding the training of BCBAs and RBTs, as well as the provision of their services, to ensure that all students requiring behavioral support receive the care they need to fulfill their individualized education program requirements and achieve their fullest potential.

COMMITTEE ON EDUCATION

Senator Michelle N. Kidani, Chair

Senator Donna Mercado Kim, Vice Chair

Conference Room 229, Hawai'i State Capitol

Monday February 4, 2019, 2:55 pm

SB391: STRONG SUPPORT

Honorable Chair Kidani an Vice Chair Kim,

I appreciate the opportunity to submit written testimony on this measure. I am a mother with two young sons with autism spectrum disorder currently attending Hawai'i DOE. Your continued support to fund applied behavior analysis in all settings to include the DOE would greatly impact and improve the lives of our keiki and families statewide. We have a chance to give hope to the future and break barriers our keiki with disabilities face. In regard to SB391, I stand in **STRONG SUPPORT** of this measure.

I am so very grateful for your continue support, vigilance, and advocacy of ABA specifically in the public schools.

Mahalo nui loa,

Naomi Tachera, M.A Exceptional Student Education/Applied Behavior Analysis



COMMITTEE ON EDUCATION
Senator Michelle N. Kidani, Chair
Senator Donna Mercado Kim, Vice Chair
Conference Room 229, Hawai‘i State Capitol
Monday, February 4, 2019, 2:55 pm

SB391: STRONG SUPPORT

Honorable Chair Kidani and Vice Chair Kim,

We appreciate the opportunity to submit written testimony on this measure. Together For Our Keiki (T.F.O.K.) is a non-profit advocacy group whose mission is to advocate and create an inclusive community for our keiki by empowering parents and educating local stakeholders. In regard to SB391, we stand in **STRONG SUPPORT** of this measure.

We are grateful for your continued support and for your advocacy of ABA specifically in our public schools.

Mahalo nui loa,

Lara Bollinger

Lara Bollinger, M.S.Ed, BCBA, LBA
Behavior Analyst and Law Student
President and Founding Member
Together For Our Keiki
fourkeiki@gmail.com

To: Senator Michelle N. Kidani, Chair, Committee on Education
Senator Donna Mercado Kim, Vice Chair, Committee on Education

From: Richard J. Kravetz, Ph.D.,
Hawai'i Licensed Psychologist, Clinical Director, and CEO
Alaka'i Na Keiki
1100 Alakea, 9th Floor
Honolulu, HI 96813
(808)258-2598

Date: Monday, February 4, 2019

Time: 2:55 PM

Place: Conference Room 229

Re: Testimony in Support of 391, Relating to Behavior Analysis Services as amended by the Hawaii Psychological Association

I have worked in Hawaii as a psychologist for over thirty years. Since 1996, my work has included training and supervising paraprofessionals, practicum students, interns, postdoctoral residents and master's level clinicians in providing applied behavior analysis (ABA) through contracts with the Hawaii Department of Health Developmental Disabilities Division and Early Intervention Section as well as the Hawaii Department of Education.

Last year, the legislature clarified that the law licensing behavior analysts expressly exempts licensed psychologists whose are trained and competent in applied behavior analysis (ABA) from needing to be licensed as behavior analyst in order to continue providing ABA services and supervising their assistants (e.g., postdoctoral fellows, unlicensed master's level practitioners who in turn may supervise paraprofessionals, direct support workers, behavior technicians, family members, etc.) to provide ABA.

I support SB391 as amended by the HPA because it would include funding for licensed psychologists as well as other licensed mental health professionals who may have ABA training and competence who have provided ABA services to students requiring ABA in the department of education and should continue to be exempt from the LBA licensing statute.

I also support HPA's proposed amendment requiring the department of education to seek any approvals that may be necessary from the Centers for Medicare and Medicaid services to amend the state Medicaid plan to provide reimbursement for necessary ABA services provided to Medical-eligible students with autism to all qualified professionals and their supervisees as has

been done in other jurisdictions (e.g., California) as this will reduce costs to the state for the array of ABA services needed by our students with autism.

ABA is firmly established as part of psychology. It is based on psychological principles, founded by psychologists including my mentor O. Ivar Lovaas, and was broadly disseminated to professionals in other fields, including special educators, school psychologists and school counselors because it has been so powerful in changing behavior. ABA continues to be developed by the research efforts of several psychologists today and disseminated to behavioral health professionals and educators across several disciplines.

Hawaii needs all ABA-trained professionals and those they supervise in order to maintain and continue to develop an adequate and workforce. The restriction of ABA services to LBAs and the RBT paraprofessionals will be excessively costly given the lack of workforce available to meet the needs and likely result in services delays, insufficient services, or possibly no services.

We need a multidisciplinary team of professionals and those they supervise to meet the complex needs of children with autism. Thank you for the opportunity to share my concerns.



COMMITTEE ON EDUCATION
Senator Michelle N. Kidani, Chair
Senator Donna Mercado Kim, Vice Chair
Monday, February 4, 2019, 2:55 pm
Conference Room 229, Hawaii State Capitol
SB391: STRONG SUPPORT

Honorable Chairs Kidani and Kim,

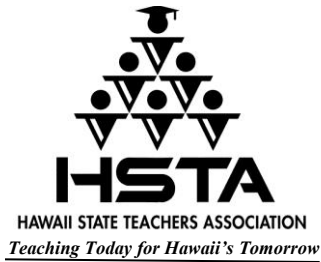
On behalf of the Hawai'i Association for Behavior Analysis (HABA), we would like to thank the Chair, Vice Chair, and Education Committee for your continued support *for our keiki* and our teachers. We appreciate the opportunity to testify on this measure. HABA stands in **STRONG SUPPORT** of SB391.

We are available to answer questions, should any arise.

Mahalo,

Kathleen Penland

Kathleen Penland, M.Ed, BCBA, LBA
HABA Past President



1200 Ala Kapuna Street ♦ Honolulu, Hawaii 96819
Tel: (808) 833-2711 ♦ Fax: (808) 839-7106 ♦ Web: www.hsta.org



Corey Rosenlee
President
Osa Tui Jr.
Vice President
Logan Okita
Secretary-Treasurer
Wilbert Holck
Executive Director

TESTIMONY BEFORE THE SENATE COMMITTEE ON
EDUCATION

RE: SB 391 - RELATING TO BEHAVIOR ANALYSIS

MONDAY, FEBRUARY 4, 2019

COREY ROSENLEE, PRESIDENT
HAWAII STATE TEACHERS ASSOCIATION

Chair Kidani, and Members of the Committee:

The Hawaii State Teachers Association **strongly supports SB 391**, that will appropriate funds to the Department of Education for behavior analysis services performed by licensed behavior analysts and licensed psychologists' right to practice applied behavior analysis (ABA), who have ABA in their "education, training, and competence" for public school students.

Behavior analysis means the design, implementation, and evaluation of instructional and environmental modifications to produce socially significant improvements in human behavior. The practice of behavior analysis includes the empirical identification of functional relations between behavior and environmental factors, known as functional assessment and analysis, as well as the use of contextual factors, motivating operations, antecedent stimuli, positive reinforcement, and other consequences to help people develop positive behaviors.

Act 199, Session Laws of Hawaii 2015, established the behavior analyst program within the Department of Commerce and Consumer Affairs and created licensing requirements for behavior analysts. Licensing of behavior analysis services was made concurrent with mandated insurance coverage for diagnosis and treatment related to autism disorders, with which nearly 1,500 public school students are currently diagnosed. Act 205 further clarified the licensing qualifications for those who conduct Functional Behavior Assessments (FBAs), and design and monitor Applied Behavior Analysis (ABA) Plans in our state.

This bill will provide the HDOE with funding to hire licensed behavior analysts, or psychologists with the licensed psychologists' right to practice applied behavior analysis (ABA), who have ABA in their "education, training, and competence, either

as employees of the department or by contracting with the many private providers, until the HIDOE has built their capacity for these professionals within the department.

According to *Report on Behavior Analyst and Certification Requirements Implementation*, released by the DOE on January 5th, 2018, the department has been supporting efforts for 39 DOE personnel to become BCBA's in an approved program, and assisting another 145 departmental personnel in becoming Registered Behavior Technicians (RBTs) by 2019. HSTA has not received an update as to the progress of these DOE personnel and if they have become BCBA's or RBTs, thus the HIDOE will need more funds to ensure this not only the direction they are heading, but to hire outside experts as necessary until they have built capacity within the HIDOE. Our teachers sometimes need the support of other professionals with other areas of expertise; this area is one of them.

To improve the learning experiences of our most vulnerable keiki, the Hawaii State Teachers Association asks your committee to **support** this bill.

LATE

SB-391

Submitted on: 2/3/2019 3:36:53 PM

Testimony for EDU on 2/4/2019 2:55:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Maureen mcomas	Individual	Support	No

Comments:

Honorable Chair Kidani and Vice Chair Kim,

We stand in STRONG SUPPORT of SB391.

Mahalo nui for your support of our keiki and teachers.

Mr. and Mrs. John McComas, Honolulu

LATE

SB-391

Submitted on: 2/3/2019 4:49:11 PM

Testimony for EDU on 2/4/2019 2:55:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Jeanette White	Individual	Support	No

Comments:



Hawai'i Psychological Association

For a Healthy Hawai'i

P.O. Box 833
Honolulu, HI 96808

www.hawaiipsychology.org

Phone: (808) 521-8995

LATE

COMMITTEE ON EDUCATION
Senator Michelle N. Kidani, Chair
Senator Donna Mercado Kim, Vice Chair

DATE: Monday, February 4, 2019
TIME: 2:55pm
PLACE: Conference Room 229

Testimony in Support of SB391, with Amendments
RELATING TO BEHAVIOR ANALYSIS

In 2018, through Act 205, the legislature recognized that Licensed Psychologists may include the provision of Applied Behavior Analysis (ABA) within their licensed scope of practice. The legislature further recognizes that other professions such as Psychiatrists, Clinical Social Workers, and Advanced Practice Registered Nurses with a specialization in psychiatry are also qualified to diagnose autism spectrum disorders and to prescribe medically necessary interventions. In addition, these other licensed professionals may be more qualified than Licensed Behavior Analysts (LBAs) to provide diagnosis and treatment for other behavioral issues that individuals with autism frequently experience, such as anxiety, depression and ADHD.

The need for evidence-based treatments for students with autism spectrum disorders cannot be filled by LBAs alone. This is true for Hawai'i as well as the nation generally. The attached document "Model Behavior Analyst Licensure Act" adopted by the *Association of Professional Behavioral Analysts* in August 2018, recognizes this fact and addresses exemptions for individuals licensed to practice psychology and those who deliver services under their supervision in addition to individuals licensed to practice other professions and those who deliver under their services, provided that (a) ABA is in the scope of practice section of the psychology licensure law; (b) the ABA services are provided within the boundaries of the licensed psychologist's or other licensed professional's education, training, and competence; and (c) the licensed professional does not represent that he or she is a "Licensed Behavior Analyst" unless also licensed as a Behavior Analyst. In addition to other exemptions, the Act adopted by the Association of Professional Behavioral Analysts mentions individuals employed

by a school performing the duties of their position, and comments that this exemption may be necessary to comply with education laws, and that a similar exemption for specified employees or vendors of the developmental disabilities of a jurisdiction may also be necessary or desirable.

HPA is concerned that Act 199 unintentionally restricted well-qualified professionals and those they supervise from providing services to individuals with autism and other behavioral challenges, and unintentionally provided a monopoly for one certifying agency, the Behavior Analyst Certification Board (BACB).

We ask that this bill be amended on Section 2, page 2, line 17-19 be amended as follows:

“The department of education may contract with any licensed behavior analyst, licensed psychologists, licensed clinical social worker, advance practice registered nurse with a specialization in psychiatry, licensed marriage family therapist, and licensed mental health counselor, provided that (a) applied behavior analysis is in the scope of practice section of the profession’s licensure law; (b) the applied behavior analysis services are provided within the boundaries of the licensed professional’s education, training, and competence; (c) the licensed professional does not represent that he or she is a Licensed Behavior Analyst unless he or she is also licensed as an behavioral analyst, and (d) the licensed professional has training and experience in providing applied behavior analysis services to students with autism for the purposes of this Act.”

HPA further supports amending SB391 to seek any approvals that may be necessary for the department of education to bill for necessary services provided for Medicaid-eligible students diagnosed with autism by an array of qualified licensed behavioral professionals and their supervisees such as other states have done. The amendment we are suggesting on Section 2, page 3, insert new paragraph, line 1 is as follows:

“The department of education will seek any approvals that may be necessary from the Centers for Medicare and Medicaid services to amend the state Medicaid plan to provide reimbursement for necessary applied behavior analysis services provided to Medicaid-eligible students diagnosed with autism provided by licensed behavior analysts, licensed psychologists, licensed clinical social workers, advance practice registered nurses with a specialization in psychiatry, licensed marriage family therapists, licensed mental health counselors and those they supervise.”

Thank you for the opportunity to provide input into this important bill.

Sincerely,

Julie Takishima-Lacasa, Ph.D.
Chair, HPA Legislative Action Committee

Association of



*Professional
Behavior Analysts*

Model Behavior Analyst Licensure Act

ADOPTED AUGUST 2018

WWW.APBAHOME.NET

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Model Behavior Analyst Licensure Act

This model act for licensing behavior analysts is provided for general information purposes and is designed to cover the primary areas and approaches that commonly appear in laws (statutes) adopted by governments to regulate professions. If your jurisdiction¹ is considering licensure or another form of regulation of individuals practicing applied behavior analysis, please first contact the Association of Professional Behavior Analysts (APBA; info@apbahome.net). Although each jurisdiction has some unique processes and structures for regulating professionals, there are commonalities. In working on dozens of behavior analyst licensure laws and other public policies over the past decade, APBA has garnered a great deal of information about typical processes and structures as well as issues that often arise when governmental regulation of behavior analysts is proposed. Contacting APBA early in the process will help you prepare to avoid or minimize problems and ensure that your jurisdiction's proposed licensure law is consistent with the profession's standards and similar laws.

Some laws to regulate professions specify requirements for obtaining and renewing the government-issued credential (license, certificate, or registration), the composition and operations of the board or other entity that is to manage the credentialing program, fees, ethical and disciplinary standards, complaint and investigatory procedures, and sanctions that can be imposed on credentialed individuals as well as those who practice without holding the required credential. Other laws include only some basic requirements, leaving details to be spelled out in rules or regulations. Some of the language that appears in this model act could be used in regulations or rules instead of, or in addition to, the licensure law.

Each section and some subsections of the proposed model act are accompanied by comments that explain the rationale for the preceding or following section or describe options to be considered. To differentiate them from the proposed statutory language, the comments are italicized.

¹ In this model act, "jurisdiction" means a state, province, country, or other area organized under one government.

Model Behavior Analyst Licensure Act

An Act to License Behavior Analysts

Preamble

An Act to license professional practitioners of applied behavior analysis; to establish the Behavior Analyst Licensing Board; to authorize the Board to regulate the practice of behavior analyst professionals; to provide for the membership, terms of office, powers, and duties of the Board; to establish requirements for licensure; and to provide exemptions from licensure.

Section 1. Declaration of Policy

The practice of applied behavior analysis in [jurisdiction] is hereby declared to affect the health, safety, and welfare of citizens of [jurisdiction] and to be subject to regulation to protect the public from (i) the practice of applied behavior analysis by unqualified persons, and (ii) unprofessional, unethical, and/or harmful conduct by behavior analysis practitioners.

***Comment:** A preamble and Declaration of Policy may not be required in all jurisdictions.*

Section 2. Prohibitions and Penalties

- A. The practice of applied behavior analysis by unlicensed individuals is prohibited unless they are exempted in Section 7 of this Act.

***Comment:** See Section 7 for information on how this model act addresses other regulated professionals, such as licensed psychologists, and individuals in other specified categories.*

- B. No person shall hold himself or herself out to be a Licensed Behavior Analyst or Licensed Assistant Behavior Analyst unless he or she is licensed under this Act.

***Comment:** APBA recommends that behavior analyst licensure laws include both practice and title protections, as in A and B above. In some jurisdictions, restricting the use of professional titles without also restricting who can practice the profession has been held to be unconstitutional. Advice should be sought from an attorney employed by the jurisdiction before proposing a licensure act that would restrict title use without also restricting who can practice.*

- C. The Behavior Analyst Certification Board's [Professional and Ethical Compliance Code for Behavior Analysts](#) is incorporated herein as the code of conduct for individuals licensed under this Act.

Model Behavior Analyst Licensure Act

Comment: *In this model act, current certification by the Behavior Analyst Certification Board® (BACB®) is the principal requirement for obtaining and maintaining licenses (see Section 5). Since all certificants are required to adhere to the BACB Compliance Code, it follows that the Code should serve as the code of conduct for licensees. Some jurisdictions, however, have laws specifying conduct standards for all professionals who are licensed in that jurisdiction. In that case this provision may need to be written so as to integrate those standards with the BACB Compliance Code standards. In other jurisdictions, the licensure law may state that the licensing board will promulgate conduct rules.*

- D. Any person found to be in violation of any provision(s) of this Act shall be subject to a fine of no less than [X] dollars. Violators who are licensed under this Act shall be subject to other sanctions and penalties, up to and including revocation of licenses.

Comment: *Many jurisdictions have laws and processes in place for investigating alleged violations of licensure laws and rules or regulations and for sanctioning individuals who are found to have committed violations. In that case, this provision should be revised accordingly.*

Section 3. Definitions

For the purposes of this Act, the following terms shall have the following meanings:

- A. BOARD. The [jurisdiction] Behavior Analyst Licensing Board, which is authorized to implement and enforce this Act and oversee the practice of applied behavior analysis.
- B. CERTIFYING ENTITY. The Behavior Analyst Certification Board (BACB) or another entity whose programs to credential practitioners of applied behavior analysis are accredited by the National Commission on Certifying Agencies (NCCA) or the American National Standards Institute (ANSI).

Comment: *If the laws of a jurisdiction prohibit naming the certifying entity in the licensure law, an alternative is to authorize the licensing board or other regulatory authority to approve the certifying entity by rule, as long as the certifying entity is a professional behavior analyst certifying organization. In that case, APBA strongly recommends that the law specify that the certifying entity must hold NCCA or ANSI accreditation for its behavior analyst credentialing program(s).*

- C. LICENSED BEHAVIOR ANALYST. An individual who is certified by the certifying entity as a Board Certified Behavior Analyst® (BCBA®) or Board Certified Behavior Analyst -Doctoral™ (BCBA-D™) and who meets the other requirements specified in Section 5 of this Act.

Model Behavior Analyst Licensure Act

Comment: See the BACB's Terms of Use (<https://www.bacb.com/terms-of-use/>) for information on how to avoid unlawful infringement of the BACB's registered trademarks. When titles of credentials issued by the BACB are included in laws, regulations, or rules, they should always be identical to the BACB titles, including first letters capitalized and the use of lower case for the first "a" in BCaBA. If non-BACB certified individuals will or may also be licensed (which is not recommended by APBA), it is important to use an alternative title to distinguish licensees who have met the BACB's standards from those who qualify for licensure based on other standards (e.g., requirements set by the licensing board or another regulatory authority in the jurisdiction). For example, an individual licensed as a behavior analyst should not be permitted to use the title BCBA or Board Certified Behavior Analyst unless the individual is certified by the BACB.

- D. LICENSED ASSISTANT BEHAVIOR ANALYST. An individual who is certified by the certifying entity as a Board Certified Assistant Behavior Analyst® (BCaBA®) and who meets the other requirements specified in Section 5 of this Act.

Comment: Please see the comment following Section 3(C) above.

- E. BEHAVIOR TECHNICIAN. A paraprofessional who practices under the close, ongoing supervision of a Licensed Behavior Analyst or Licensed Assistant Behavior Analyst. The behavior technician does not design assessment or intervention plans or procedures but delivers services as assigned by the supervisor responsible for his or her work.

Comment: APBA recommends making behavior technicians exempt from licensure (see Section 7) rather than licensed or otherwise regulated directly by the licensing board or other regulatory authority. The work of behavior technicians must be supervised closely by appropriately credentialed professional behavior analysts.

- F. PRACTICE OF APPLIED BEHAVIOR ANALYSIS. The design, implementation, and evaluation of instructional and environmental modifications to produce socially significant improvements in human behavior. The practice of applied behavior analysis includes the empirical identification of functional relations between behavior and environmental factors, known as functional assessment and analysis. Applied behavior analysis interventions are based on scientific research and direct and indirect observation and measurement of behavior and environment. They utilize contextual factors, motivating operations, antecedent stimuli, positive reinforcement, and other procedures to help individuals develop new behaviors, increase or decrease existing behaviors, and emit behaviors under specific environmental conditions. The practice of applied behavior analysis excludes

Model Behavior Analyst Licensure Act

diagnosis of disorders, psychological testing, psychotherapy, cognitive therapy, psychoanalysis, and counseling.

***Comment:** The definition of practice (often referred to as the “scope of practice”) should not refer to any particular consumers, client populations, or settings. Rather, it should describe the practice of the profession generally. This model act presumes that the practice of applied behavior analysis involves delivering services directly to human clients and consumers. Please see Section 7 for exemptions from licensure for behavior analysts who practice in other contexts.*

Section 4. Behavior Analyst Licensing Board

- A. The [jurisdiction] Behavior Analyst Licensing Board is hereby established. The Board shall issue licenses to individuals who meet the requirements specified in this Act, promulgate rules and establish fees necessary to implement this Act, and investigate all complaints relating to the practice of applied behavior analysis by any Licensed Behavior Analyst, Licensed Assistant Behavior Analyst, or any other person alleged to be violating any of the provisions of this Act.
- B. The initial Board shall consist of five members, including three Board Certified Behavior Analysts or Board Certified Behavior Analysts-Doctoral who are eligible for licensure under this Act, one Board Certified Assistant Behavior Analyst who is eligible for licensure under this Act, and one public member who is not a professional behavior analyst. The Board Certified Behavior Analyst, Board Certified Behavior Analyst–Doctoral, and Board Certified Assistant Behavior Analyst members shall apply for licensure as soon as feasible. Subsequently the Board shall consist of three Licensed Behavior Analysts, one Licensed Assistant Behavior Analyst, and one public member.
- C. The membership of the Board shall be inclusive and reflect the racial, gender, geographic, urban/rural, and economic diversity of [jurisdiction]. Each member shall serve a three-year term, with initial terms being staggered so that one member serves an initial term of one year, three members serve initial terms of two years, and three members serve initial terms of three years, as provided by the [jurisdiction official]. The public member shall be a person who is not and never was a member of the profession licensed or regulated under this Act or the spouse of such a person, and who does not have and never has had a material interest in the practice of applied behavior analysis.
- D. Members of the Board shall be appointed by the [jurisdiction official] upon recommendations submitted by the [behavior analysis professional organization in the jurisdiction] and any other group deemed appropriate by the [jurisdiction official]. Terms and vacancies shall be filled as follows:

Model Behavior Analyst Licensure Act

- (i) Any vacancy occurring other than by expiration of terms shall be filled for the remainder of the unexpired term by appointment by the [jurisdiction official] upon recommendation of the Board.
 - (ii) No member shall serve more than two successive three-year terms.
 - (iii) A member shall serve until a successor is appointed and assumes office.
 - (iv) Members shall not be remunerated, but shall be paid out of the funds of the Board the same per diem as prescribed by law for [jurisdiction] employees for each day of attendance at Board meetings.
- E. The Board shall meet at least twice annually and may meet at such other times as necessary, at the call of the chair or by a majority of the members, to complete the business required.
- (i) Three members of the Board shall constitute a quorum.
 - (ii) The Board shall elect a chair from among its membership on an annual basis.

Comment: *It is preferable for the behavior analyst licensing program to be managed by a separate, independent behavior analyst board, as described above. Where that is not possible, the licensing program may be housed within another regulatory body, such as a behavioral sciences, human services, or healthcare professions licensing board. In that instance it is wise to work to ensure that regulation and decision-making regarding the practice of applied behavior analysis are carried out by professional behavior analysts independently of other professions whose members may not be knowledgeable about applied behavior analysis or who may have competing interests. One mechanism for accomplishing that, if allowed by the jurisdiction's laws, is to establish a behavior analyst committee within the regulatory body and grant it the authority to regulate the practice of applied behavior analysis.*

Many jurisdictions have overarching laws or regulations that specify processes for constituting licensing boards, their operating procedures, etc. If so, the foregoing section should be revised accordingly. To the extent allowed by extant laws and regulations, a large majority of the members of the behavior analyst licensing board or committee should be Licensed Behavior Analysts with additional membership of at least one Licensed Assistant Behavior Analyst (if those individuals are licensed by the jurisdiction) and at least one public member. Some jurisdictions may require more than one of the latter.

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Section 5. Eligibility Requirements for Initial Licensure

A. Each applicant for licensure as a Licensed Behavior Analyst shall submit an application and specified fees to the Board. The application must include evidence that the applicant meets all of the following requirements:

- (i) Is of good moral character.
- (ii) Has successfully completed a criminal background check.

Comment: *Many jurisdictions in the U.S. require all applicants for licensure to complete a specific background check/clearance. If that is not required, (ii) above should be omitted. The jurisdiction may also require all applicants to pass an examination on the jurisdiction's laws relevant to the practice of applied behavior analysis (often called a jurisprudence examination). If so, the requisite language should be included in this section.*

- (iii) Each applicant shall also have his/her current certification as a Board Certified Behavior Analyst or Board Certified Behavior Analyst-Doctoral verified with the certifying entity by the Board.

Comment: *Licensure requirements in many professions include completion of specified degrees, coursework, and supervised experiential training as well as passage of a valid and reliable professional examination in the subject matter. Those requirements are typically set by the profession, and are often derived from job analysis studies involving many members of the profession as well as input from experts in the subject matter, psychometrics, and applicable laws. The BACB's certification programs have all of those features and are accredited by the National Commission on Certifying Agencies, which means that the programs meet rigorous standards that are grounded in case law and best practices in professional credentialing. Making current BACB certification the principal requirement for licensure therefore has multiple benefits. It ensures that*

- *all licensees have been verified to have met the education and training standards set by the profession and have passed a psychometrically and legally validated professional examination in behavior analysis;*
- *licensees are required to comply with the BACB's Professional and Ethical Compliance Code for Behavior Analysts and are not subject to any disciplinary action by the BACB;*
- *the jurisdiction and Board have sound legal and empirical bases for determining who does and does not qualify for licensure; and*

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- *the licensure program is cost-effective for the jurisdiction because the Board does not have to check every applicant's degrees, coursework, and supervised training; it need only search for the applicant's name at <https://www.bacb.com/verify-certification/>*

Licensure laws, regulations, or rules that allow individuals other than current BACB certificants to qualify for licensure lack the foregoing safeguards and run the risk of failing to reflect the standards set by the profession. Therefore, APBA does not recommend including such provisions.

Direct verification of BACB certification by the licensing board is preferable to having applicants for licensure submit evidence of certification because it avoids the risk that such evidence might be counterfeit or outdated.

It may seem efficient to copy and paste the current BACB certification standards into a proposed licensure law or rules. That is not recommended, because the BACB's standards are updated regularly to reflect the results of recent job analysis studies and developments in research, laws, social norms, and other variables that affect the professional practice of applied behavior analysis. If a licensure law specifies the BACB education and training requirements that are in place at the time the law or rules are adopted, the law or rules will have to be amended every time BACB requirements change. It is impossible to predict how difficult or easy that will be. The safer approach is to require verification that each applicant for licensure has met current BACB certification requirements.

- B. Each applicant for licensure as a Licensed Assistant Behavior Analyst shall submit an application and specified fees to the Board. The application must include evidence that the applicant meets all of the following requirements:
- (i) Is of good moral character.
 - (ii) Has successfully completed a criminal background check.
 - (iii) Is supervised by a Licensed Behavior Analyst who is approved as a supervisor by the certifying entity, in accordance with the certifying entity's current supervision standards.

Comment: *APBA recommends that jurisdictions license assistant behavior analysts. If the jurisdiction opts not to do that, then Board Certified Assistant Behavior Analysts (BCaBAs) should be identified in Section 7 as exempt from licensure as long as they maintain current BACB certification as BCaBAs and have their work supervised by Licensed Behavior Analysts in accordance with current BACB supervision standards (see <https://www.bacb.com/bcaba/>). If the law provides for licensure of individuals who are not BACB certified and allows*

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those individuals to supervise the work of BCaBAs, it is imperative to specify that each BCaBA will still need to satisfy BACB supervision requirements. That is, a licensed professional who is not BACB certified may supervise the work of a BCaBA, but such supervision will not fulfill the requirements for the BCaBA to maintain his/her BACB certification. S/he will also have to obtain the necessary supervision from a Licensed Behavior Analyst who is approved as a supervisor by the BACB (see <https://www.bacb.com/requirements-for-supervisors/>).

(iv) Each applicant shall also have his/her current certification as a Board Certified Assistant Behavior Analyst verified with the certifying entity by the Board.

Comment: See rationale in the comment following Section 5(A)(iii).

Section 6. Expiration and Renewal

A license shall be granted for a period of [X] years. Prior to expiration of a license, the license may be renewed upon submission of an application for renewal, Board verification of current certification by the certifying entity, and payment of any renewal fee established by the Board.

Comment: *Requiring that all applicants for renewal have their BACB certification verified ensures that all licensees meet the current standards of the profession even as those standards change over time. That includes continuing education standards, supervision standards, and adherence to the BACB's Professional and Ethical Compliance Code for Behavior Analysts, all of which are required to maintain BACB certification. Passage of a BACB certification exam at some point in the past without current certification is not an adequate requirement for licensure renewal, because that would permit individuals who have not kept up with developments in the profession to be licensed to practice behavior analysis.*

Section 7. Exemptions

Comment: *Exemptions are commonly included in licensure laws. They typically describe categories of individuals who are allowed to engage in specified aspects of the practice under specified conditions without being licensed. Some exemptions are suggested here. It is essential, however, to discuss with APBA and carefully consider the likely effects of each and every potential exemption on behavior analyst practitioners and consumers in your jurisdiction.*

The provisions of this Act shall not be construed as prohibiting or restricting the practice of any of the following:

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- A. Individuals licensed to practice psychology in [jurisdiction] and those who deliver psychological services under their supervision, provided that (a) applied behavior analysis is in the scope of practice section of the [jurisdiction] psychology licensure law; (b) the applied behavior analysis services provided are within the boundaries of the Licensed Psychologist's education, training, and competence; and (c) the Licensed Psychologist does not represent that s/he is a Licensed Behavior Analyst unless also licensed under this Act.

- B. Individuals licensed to practice other professions in [jurisdiction] and those who deliver services under their supervision, provided that (a) applied behavior analysis is in the scope of practice section of the profession's licensure law; (b) the applied behavior analysis services provided are within the boundaries of the licensed professional's education, training, and competence; and (c) the licensed professional does not represent that he or she is a Licensed Behavior Analyst unless also licensed under this Act.

Comment: *Including exemptions like A and/or B above may be necessary or desirable to allow certain qualified and licensed members of other professions to practice behavior analysis in the jurisdiction without holding a license in behavior analysis.*

- C. Behavior technicians who deliver applied behavior analysis services under the extended authority and direction of a Licensed Behavior Analyst or a Licensed Assistant Behavior Analyst. Such individuals must not represent themselves as professional behavior analysts, and must use titles that indicate their nonprofessional status, such as "ABA technician," "behavior technician," or "tutor."

Comment: *Failure to include this exemption may result in behavior technicians being charged with practicing applied behavior analysis without a license. It may also have the unintended effect of making it difficult to obtain funding for services delivered by technicians.*

- D. Caregivers of recipients of applied behavior analysis services who deliver those services to the recipients under the extended authority and direction of a Licensed Behavior Analyst or a Licensed Assistant Behavior Analyst. Such individuals must not represent themselves as professional behavior analysts.

Comment: *This exemption is consistent with BACB Professional and Ethical Compliance Code for Behavior Analysts standards and best practices in applied behavior analysis for training caregivers to deliver certain applied behavior analysis services.*

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- E. Behavior analysts who practice with nonhumans, including applied animal behaviorists and animal trainers. Such individuals may use the title “behavior analyst” but may not represent themselves as Licensed Behavior Analysts or Licensed Assistant Behavior Analysts unless licensed under this Act.
- F. Professionals who provide general applied behavior analysis services to organizations, so long as those services are for the benefit of the organizations and do not involve direct services to individuals. Such professionals may use the title “behavior analyst” but may not represent themselves as Licensed Behavior Analysts or Licensed Assistant Behavior Analysts unless licensed under this Act.

Comment: *This exemption is meant to cover practitioners of organizational behavior management (OBM); however, some jurisdictions may require such individuals to be licensed.*

- G. Matriculated college or university students or postdoctoral fellows whose applied behavior analysis activities are part of a defined program of study, course, practicum, internship, or fellowship and are directly supervised by a Licensed Behavior Analyst in this jurisdiction or a qualified faculty member. Such individuals must not represent themselves as professional behavior analysts and must use titles that clearly indicate their trainee status, such as “student,” “intern,” or “trainee.”
- H. Unlicensed individuals pursuing experience in applied behavior analysis consistent with the experience requirements of the certifying entity, provided such experience is supervised in accordance with the requirements of the certifying entity.

Comment: *Exemptions G and H and any accompanying rules or regulations must be constructed carefully to ensure that the supervision provided will qualify individuals for both BACB certification and licensure.*

- I. Individuals who teach behavior analysis or conduct behavior-analytic research, provided that such activities do not involve the direct delivery of applied behavior analysis services beyond the typical parameters of applied research. Such individuals may use the title “behavior analyst” but may not represent themselves as Licensed Behavior Analysts or Licensed Assistant Behavior Analysts unless licensed under this Act.
- J. Behavior analysts licensed in another jurisdiction or certified by the certifying entity to practice independently and who practice in [jurisdiction] no more than [X hours/days/weeks] within a calendar year.

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Comment: *This provision allows for appropriately credentialed behavior analysts from other jurisdictions to practice in this jurisdiction on a time-limited basis without being licensed by this jurisdiction. An alternative is to include in the law a requirement for all such individuals to obtain a temporary license to practice in this jurisdiction and specifying the qualifications and conditions for the temporary license (see Section 8).*

- K. Individuals employed by a school [board, district] performing the duties of their positions. Such individuals shall not represent themselves as Licensed Behavior Analysts or Licensed Assistant Behavior Analysts unless licensed under this Act, and shall not offer applied behavior analysis services to any persons or entities other than their school employer or accept remuneration for providing applied behavior analysis services other than the remuneration they receive from their school employer.

Comment: *This exemption may be necessary to comply with education laws. A similar exemption for specified employees or vendors of the jurisdiction's developmental disabilities services system may also be necessary or desirable. As with all exemptions, those possibilities should be researched and their ramifications considered carefully.*

Section 8. Temporary License

Behavior analysts licensed in another jurisdiction or certified by the certifying entity to practice independently who provide applied behavior analysis services in [jurisdiction] on a short-term basis may apply for a temporary license. Applicants for temporary licenses shall submit an application and fee established by the Board, and evidence that their practice in the jurisdiction will be temporary as defined by the Board in rules. A temporary license will be granted only if the Board verifies the applicant's licensure or certification status with the relevant entity.

Comment: *If this provision is included in lieu of exemption 7(J), it and any accompanying rules or regulations should be constructed carefully to ensure that the individual's practice in the jurisdiction is temporary. If that practice involves supervision of candidates for BACB certification/licensure, then the licensure law or the accompanying rules or regulations should clearly specify that such supervision must be provided in accordance with the BACB's supervision standards. Note that requiring professionals who practice in the jurisdiction for short periods of time to obtain temporary licenses will add to the work of the licensing board and therefore to the costs of operating the licensure program.*

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Section 9. Reciprocity

The Board shall issue a license to a person who is currently licensed as a behavior analyst or assistant behavior analyst in good standing in another jurisdiction that imposes licensure requirements comparable to those specified in this Act. Applicants for reciprocal licensure shall have current licensure verified by the Board and comply with other requirements set forth in Section 5 of this Act.

Comment: *If the jurisdiction requires passage of a criminal background check by all applicants for licensure, then the reciprocity provision will need to address whether a background check completed in another jurisdiction will be accepted. Not all background checks are the same. Factors to consider in comparing background checks include determining whether they captured certain felonies, misdemeanors, and expunged charges, and how they treated pleas of nolo contendere and passage of time since an offense. An attorney employed by the jurisdiction should be able to provide input regarding the extant laws and necessary language.*

Some jurisdictions offer reciprocal licenses only to individuals who are licensed in jurisdictions that also offer reciprocity.

LATE

SB-391

Submitted on: 2/3/2019 7:05:24 PM

Testimony for EDU on 2/4/2019 2:55:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
maile rogers	Individual	Support	No

Comments:

I support SB341 with the amendments proposed by HABA. I am a parent of four minor children, two of which have been diagnosed with Autism and receive ABA therapy through our private insurance. I am in strong support of this bill. Thank you for your time!