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**SUBSTITUTE SENATE BILL 5488**

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**State of Washington**

**64th Legislature**

**2015 Regular Session**

**By** Senate Health Care (originally sponsored by Senators Keiser, Jayapal, Parlette, and Cleveland)

READ FIRST TIME 02/20/15.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (4) It is recommended that one of the three licensed behavior  
30 analysts appointed to the committee also has an additional mental  
31 health license, such as a psychologist.

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

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

1 (7) Committee members must be compensated in accordance with RCW  
2 43.03.240. Members must be reimbursed for travel expenses incurred in  
3 the actual performance of their duties, as provided in RCW 43.03.050  
4 and 43.03.060.

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

8 (a) For a licensed behavior analyst:

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

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

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

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

21 (b) For a licensed assistant behavior analyst:

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

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

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

30 (c) For a certified behavior technician:

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

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

34 (d) Demonstrates good moral character;

35 (e) Has not engaged in unprofessional conduct as defined in RCW  
36 18.130.180;

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

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

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

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

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

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

18 NEW SECTION. **Sec. 7.** (1) The secretary shall establish by rule  
19 the requirements for renewal of a license or certification, but may  
20 not increase the licensure or certification requirements provided in  
21 this chapter. The secretary shall establish administrative  
22 procedures, administrative requirements, and fees for license and  
23 certification periods and renewals as provided in RCW 43.70.250 and  
24 43.70.280.

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

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

1        NEW SECTION.    **Sec. 9.**    An applicant holding a license in another  
2 state or a province of Canada may be licensed to practice in this  
3 state if the secretary determines that the licensing standards of the  
4 other state or province are substantially equivalent to the licensing  
5 standards in this chapter.

6        NEW SECTION.    **Sec. 10.**    The uniform disciplinary act, chapter  
7 18.130 RCW, governs unlicensed practice, the issuance and denial of a  
8 license or certification, and the discipline of persons licensed or  
9 certified under this chapter.

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

- 13        (1) Establishing continuing competency as a condition of license  
14 or certification renewal;
- 15        (2) Establishing standards for delegation and supervision of  
16 licensed assistant behavior analysts and certified behavior  
17 technicians; and
- 18        (3) Defining the tasks that a certified behavior technician may  
19 perform.

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

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

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

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

35        (3) "Grandfather clause" means a provision in a regulatory  
36 statute applicable to practitioners actively engaged in the regulated  
37 health profession prior to the effective date of the regulatory

1 statute which exempts the practitioners from meeting the prerequisite  
2 qualifications set forth in the regulatory statute to perform  
3 prescribed occupational tasks.

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

38 (5) "Inspection" means the periodic examination of practitioners  
39 by a state agency in order to ascertain whether the practitioners'



1 occupation is being carried out in a fashion consistent with the  
2 public health, safety, and welfare.

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

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

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

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

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

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

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

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

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

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

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

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

12       (ii) Midwives licensed under chapter 18.50 RCW;

13       (iii) Ocularists licensed under chapter 18.55 RCW;

14       (iv) Massage practitioners and businesses licensed under chapter  
15 18.108 RCW;

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

17       (vi) East Asian medicine practitioners licensed under chapter  
18 18.06 RCW;

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

21       (viii) Respiratory care practitioners licensed under chapter  
22 18.89 RCW;

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

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

30       (xi) Persons registered as nursing pool operators under chapter  
31 18.52C RCW;

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

34       (xiii) Dietitians and nutritionists certified under chapter  
35 18.138 RCW;

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

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

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

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

5 (xviii) Surgical technologists registered under chapter 18.215  
6 RCW;

7 (xix) Recreational therapists under chapter 18.230 RCW;

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

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

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

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

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

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

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

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

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

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

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

31 (iv) The board of hearing and speech as established in chapter  
32 18.35 RCW;

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

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

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

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

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

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

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

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

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

16 (xiv) The veterinary board of governors as established in chapter  
17 18.92 RCW;

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

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

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

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

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

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

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

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