



State of Wisconsin
2009 - 2010 LEGISLATURE

LRBa1864/1
CTS:kjf:md

**ASSEMBLY AMENDMENT 1,
TO 2009 ASSEMBLY BILL 789**

March 24, 2010 – Offered by Representative HINTZ.

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 1, line 2: before “insurance” insert “licensure and regulation of
behavior analysts.”

3 **2.** Page 1, line 3: after “treatment” insert “, providing an exemption from
emergency rule procedures, granting rule-making authority, and providing a
penalty”.

4 **3.** Page 2, line 1: before that line insert:

5 “SECTION 1a. 157.055 (2) (intro.) of the statutes, as affected by 2009 Wisconsin
6 Act 42, is amended to read:

7 157.055 (2) (intro.) Notwithstanding ss. 69.18 (4), 445.04 (2), 445.14, 979.01 (3),
8 (3m), and (4), 979.02, and 979.10, and subch. VI VII of ch. 440, during a period of a
9 state of emergency related to public health declared by the governor under s. 323.10,
10 a public health authority may do all of the following:

1 **440.311 Use of title; penalty.** (1) No person may use the title “behavior
2 analyst” or represent or imply that he or she is a behavior analyst unless the person
3 is licensed under this subchapter. This section may not be construed to restrict the
4 practice of behavior analysis by a licensed professional who is not a behavior analyst,
5 if the services performed are within the scope of the professional’s practice and are
6 performed commensurate with the professional’s training and experience, and the
7 professional does not represent that he or she is a behavior analyst.

8 (2) Any person who violates sub. (1) may be fined not more than \$250,
9 imprisoned not more than 3 months in the county jail, or both.

10 **440.312 Licensure.** (1) Except as provided in sub. (2), the department shall
11 grant a license as a behavior analyst to a person under this subchapter if all of the
12 following apply:

13 (a) The person submits an application to the department on a form provided
14 by the department.

15 (b) The person pays the initial credential fee determined by the department
16 under s. 440.03 (9) (a).

17 (c) The person submits evidence satisfactory to the department that the person
18 is certified by the Behavior Analyst Certification Board, Inc., or its successor
19 organization.

20 (2) The department may not grant a license under this subchapter to any
21 person who has been convicted of an offense under s. 940.22, 940.225, 944.06, 944.15,
22 944.17, 944.30, 944.31, 944.32, 944.33, 944.34, 948.02, 948.025, 948.051, 948.06,
23 948.07, 948.075, 948.08, 948.09, 948.095, 948.10, 948.11, 948.12, or 940.302 (2) (a)
24 1. b.

1 **440.313 Renewal.** (1) The renewal date for licenses granted under this
2 subchapter is specified in s. 440.08 (2) (a). Renewal applications shall be submitted
3 to the department on a form provided by the department and shall include the
4 renewal fee determined by the department under s. 440.03 (9) (a).

5 (2) A behavior analyst shall, at the time that he or she applies for renewal of
6 a license under sub. (1), submit proof satisfactory to the department that he or she
7 is, at the time he or she applies for renewal, certified by the Behavior Analyst
8 Certification Board, Inc., or its successor organization.

9 **440.314 Rules.** (1) The department may promulgate rules necessary to
10 administer this subchapter, including rules of conduct by behavior analysts and by
11 holders of temporary permits under sub. (2). Except as provided in subs. (2), (3), and
12 (4), any rules regarding the practice of behavior analysis shall be consistent with
13 standards established by the Behavior Analyst Certification Board, Inc., or its
14 successor organization.

15 (2) (a) The department may promulgate rules authorizing the department to
16 issue a temporary permit to a person who is certified by the Behavior Analyst
17 Certification Board, Inc., or its successor organization authorizing the practice of
18 behavior analysis by the person under the supervision of a behavior analyst licensed
19 under s. 440.312 (1).

20 (3) The rules may not do any of the following:

21 (a) Require an applicant for a license under this subchapter to have education
22 in addition to the education required by the Behavior Analyst Certification Board,
23 Inc., or its successor organization.

24 (b) Require a behavior analyst to practice behavior analysis under the
25 supervision of, or in collaboration with, another health care provider.

1 (c) Require a behavior analyst to enter into an agreement, written or otherwise,
2 with another health care provider.

3 (d) Limit the location where a behavior analyst may practice behavior analysis.

4 **440.315 Informed consent.** A behavior analyst shall, at an initial
5 consultation with a client, provide a copy of the rules promulgated by the department
6 under this subchapter and shall disclose to the client orally and in writing all of the
7 following:

8 (1) A summary of the behavior analyst's experience and training.

9 (2) Any other information required by the department by rule.

10 **440.316 Disciplinary proceedings and actions.** (1) Subject to the rules
11 promulgated under s. 440.03 (1), the department may conduct investigations and
12 hearings to determine whether a violation of this subchapter or any rule
13 promulgated under this subchapter has occurred.

14 (2) Subject to the rules promulgated under s. 440.03 (1), the department may
15 reprimand a behavior analyst or deny, limit, suspend, or revoke a license granted
16 under this subchapter if the department finds that the applicant or the behavior
17 analyst has done any of the following:

18 (a) Intentionally made a material misstatement in an application for a license
19 or for renewal of a license.

20 (b) Subject to ss. 111.321, 111.322, and 111.34, practiced behavior analysis
21 while his or her ability to engage in the practice was impaired by alcohol or other
22 drugs.

23 (c) Advertised in a manner that is false or misleading.

24 (d) In the course of the practice of behavior analysis, made a substantial
25 misrepresentation that was relied upon by a client.

1 (e) In the course of the practice of behavior analysis, engaged in conduct that
2 evidences an inability to apply the principles or skills of behavior analysis.

3 (f) Obtained or attempted to obtain compensation through fraud or deceit.

4 (g) Allowed another person to use a license granted under this subchapter.

5 (h) Violated any law of this state or federal law that substantially relates to the
6 practice of behavior analysis, violated this subchapter, or violated any rule
7 promulgated under this subchapter.

8 (i) Engaged in unprofessional conduct.

9 (3) Subject to the rules promulgated under s. 440.03 (1), the department shall
10 revoke a license granted under this subchapter if the behavior analyst is convicted
11 of any of the offenses specified in 440.312 (2).

12 **440.317 Advisory committee.** The department may appoint an advisory
13 committee under s. 440.042 to advise the department on matters relating to the
14 regulation of behavior analysts.

15 **SECTION 1c.** Subchapter III of chapter 440 [precedes 440.41] of the statutes is
16 renumbered subch. IV of ch. 440.

17 **SECTION 1d.** Subchapter IV of chapter 440 [precedes 440.51] of the statutes is
18 renumbered subch. V of ch. 440.

19 **SECTION 1e.** Subchapter V of chapter 440 [precedes 440.60] of the statutes is
20 renumbered subch. VI of ch. 440.

21 **SECTION 1f.** Subchapter VI of chapter 440 [precedes 440.70] of the statutes is
22 renumbered subch. VII of ch. 440.

23 **SECTION 1g.** Subchapter VII of chapter 440 [precedes 440.88] of the statutes
24 is renumbered subch. VIII of ch. 440.

1 **SECTION 1h.** Subchapter VIII of chapter 440 [precedes 440.90] of the statutes
2 is renumbered subch. IX of ch. 440.

3 **SECTION 1i.** Subchapter IX of chapter 440 [precedes 440.96] of the statutes is
4 renumbered subch. X of ch. 440.

5 **SECTION 1j.** Subchapter X of chapter 440 [precedes 440.97] of the statutes is
6 renumbered subch. XI of ch. 440.

7 **SECTION 1k.** Subchapter XI of chapter 440 [precedes 440.98] of the statutes is
8 renumbered subch. XII of ch. 440.

9 **SECTION 1L.** Subchapter XII of chapter 440 [precedes 440.9805] of the statutes
10 is renumbered subch. XIII of ch. 440.

11 **SECTION 1m.** Subchapter XIII of chapter 440 [precedes 440.99] of the statutes
12 is renumbered subch. XIV of ch. 440.

13 **SECTION 1n.** 441.15 (2m) of the statutes is amended to read:

14 441.15 **(2m)** Subsection (2) does not apply to a person granted a license to
15 practice midwifery under subch. ~~XII~~ XIII of ch. 440.

16 **SECTION 1p.** 448.03 (2) (a) of the statutes is amended to read:

17 448.03 **(2)** (a) Any person lawfully practicing within the scope of a license,
18 permit, registration, certificate or certification granted to practice midwifery under
19 subch. ~~XII~~ XIII of ch. 440, to practice professional or practical nursing or
20 nurse-midwifery under ch. 441, to practice chiropractic under ch. 446, to practice
21 dentistry or dental hygiene under ch. 447, to practice optometry under ch. 449, to
22 practice acupuncture under ch. 451 or under any other statutory provision, or as
23 otherwise provided by statute.”.

24 **4.** Page 2, line 1: delete “**SECTION 1**” and substitute “**SECTION 1r**”.

