A bill to be entitled
An act relating to behavior analysts; creating chapter 470, F.S.; entitling the chapter; creating s. 470.40, F.S.; providing a purpose; creating s. 470.41, F.S.; defining terms; creating s. 470.415, F.S.; creating the Board of Applied Behavior Analysis; creating s. 470.42, F.S.; specifying the authority and duties of the board; creating s. 470.43, F.S.; providing requirements for licensure and renewal; creating s. 470.44, F.S.; establishing maximum fees for applications, initial licenses, and license renewals; creating s. 470.45, F.S.; providing grounds for disciplinary action by the board; providing for reinstatement of a license; creating s. 470.47, F.S.; providing penalties for practicing applied behavior analysis without a license or wrongfully identifying oneself as a licensed behavior analyst; creating s. 470.48, F.S.; providing exceptions to the chapter; amending s. 20.43, F.S.; establishing The Board of Applied Behavior Analysis within the Division of Medical Quality Assurance; amending s. 456.001, F.S.; including licensed behavior analysts and licensed assistant behavior analysts in the definition of "health care practitioner"; amending s. 456.0135, F.S.; requiring an applicant for licensure under chapter 470, F.S., to submit to certain fingerprinting
requirements; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Chapter 470, Florida Statutes, is created and entitled "Behavior Analysts."

Section 2. Section 470.40, Florida Statutes, is created to read:

470.40 Purpose.—The practice of applied behavior analysis in this state affects the public health, safety, and welfare of its residents, and this act is intended to protect the public from any harmful conduct of unqualified, unprofessional, or unethical applied behavior analysts.

Section 3. Section 470.41, Florida Statutes, is created to read:

470.41 Definitions.—As used in this chapter, the term:

(1) "Applied behavior analysis" means the design, implementation, and evaluation of instructional and environmental modifications to produce socially significant improvements in human behavior and includes functional assessment and analysis. The term does not include psychological testing, the diagnosis of a mental or physical disorder, neuropsychology, psychotherapy, cognitive therapy, sex therapy, psychoanalysis, hypnotherapy, or long-term counseling.

(2) "Board" means the Board of Applied Behavior Analysis established in s. 470.415, except when the term is used in the
context of board certification.

(3) "Board-certified behavior analyst" means a practitioner who is certified as a board-certified behavior analyst, or is recognized as a Florida-certified behavior analyst, by the national Behavior Analyst Certification Board (BACB), or its successor pursuant to s. 470.42.

(4) "Board-certified assistant behavior analyst" means a practitioner who is certified by the national Behavior Analyst Certification Board, or its successor pursuant to s. 470.42, as a Board Certified Assistant Behavior Analyst.

(5) "Department" means the Department of Health.

(6) "Licensed behavior analyst" means an individual who is licensed by the board and meets the requirements of this chapter.

(7) "Licensed assistant behavior analyst" means an individual who:

(a) Is licensed by the board as an assistant behavior analyst and meets the requirements of this chapter; and

(b) Works under the supervision of a licensed behavior analyst.

(8) "Supervised experience" means an individual has completed the training necessary to satisfy the eligibility requirements for BACB certification.

Section 4. Section 470.415, Florida Statutes, is created to read:

470.415 Board of Applied Behavior Analysis.—
(1) The Board of Applied Behavior Analysis is created within the department. The board consists of seven members who must be appointed by the Governor and confirmed by the Senate.

(2) The initial board members, who are not required to be licensed as a condition of appointment, shall be appointed as follows:

(a) Three board-certified behavior analysts, which may include board-certified behavior analysts who are at the doctoral level, two of whom shall be selected from a list of six nominations submitted by the Florida Association for Behavior Analysis. One shall be appointed to a 1-year term, and two shall be appointed to 3-year terms;

(b) One board-certified assistant behavior analyst, who shall be appointed to a 1-year term;

(c) One health care practitioner licensed in this state, who shall be appointed to a 2-year term. The majority of the appointed health care practitioner's practice must be related to the treatment of behavior disorders, including, but not limited to, autism spectrum disorders; and

(d) Two laypersons, who may include a parent or guardian of an individual who is a recipient of applied behavior analysis services, one of whom shall serve a 1-year term, and one of whom shall serve a 2-year term.

(3) As the terms of the initial members expire, the Governor shall appoint successors for 4-year terms. Each successor, except for the laypersons, must be licensed. A member
may not serve more than two consecutive terms.

Section 5. Section 470.42, Florida Statutes, is created to read:

470.42 Authority of the board; board duties; authority of the department.—

(1) The board may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter conferring duties upon it. Such rules must include, but are not limited to, rules relating to all of the following:

(a) Standards of practice for licensed behavior analysts and licensed assistant behavior analysts.

(b) The competency of a person to receive or renew his or her license.

(c) The physical and mental examination of licensed behavior analysts and licensed assistant behavior analysts who may be impaired by reason of a mental, physical, or other condition that impedes their ability to practice competently.

(d) Supervision of licensed assistant behavior analysts or students in training to be licensed behavior analysts, including the number of persons that a licensed behavior analyst or licensed assistant behavior analyst may supervise at one time.

(2) If the Behavior Analyst Certification Board stops certifying practitioners of applied behavior analysis in this state, the board shall approve a successor certification board that is accredited by the National Commission for Certifying Agencies or the American National Standards Institute to certify
applied behavior analysts.

(3) The department may adopt rules to implement the provisions of this chapter conferring duties upon it. Such rules shall include, but are not limited to, rules relating to the following:

(a) Licensure and license renewal applications and processes, including licensure fees.

(b) Educational qualifications for licensure.

(c) Continuing education requirements, which shall not exceed 30 hours every 2 years as a condition for biennial license renewal.

Section 6. Section 470.43, Florida Statutes, is created to read:

470.43 Licensure and renewal.—

(1) A person applying for an initial or renewal license as a licensed behavior analyst or licensed assistant behavior analyst shall apply to the department on such form and in such manner as the department prescribes. The person shall furnish evidence to the department that he or she:

(a) Is a board-certified behavior analyst;

(b) Conducts his or her professional activities in accordance with accepted standards as required by rule;

(c) Complies with all applicable rules adopted by the board;

(d) Has paid the licensure fee or the biennial renewal fee; and
(e) Has passed a criminal background check after submitting fingerprints and a fee pursuant to s. 456.0135.

(2) A person applying for an initial or renewal license as an assistant behavior analyst shall apply to the department upon such form and in such manner as the department prescribes and shall furnish evidence to the department that such person:

(a) Is a board-certified assistant behavior analyst;
(b) Conducts his or her professional activities in accordance with accepted standards, as required by rule;
(c) Complies with all applicable rules promulgated by the board;
(d) Is supervised by a licensed behavior analyst in a manner consistent with BACB requirements and this chapter;
(e) Has paid the licensure fee or the biennial renewal fee; and
(f) Has passed a criminal background check after submitting fingerprints and a fee pursuant to s. 456.0135.

(3) The board may issue a license to a person who holds an active license as a behavior analyst or assistant behavior analyst in another state and:

(a) Submits proof of licensure and board certification.
(b) Passes a criminal background check after submitting fingerprints and a fee pursuant to s. 456.0135.
(c) Pays the licensure fee.

Section 7. Section 470.44, Florida Statutes, is created to read:
470.44 Fees.—
(1) The board shall establish by rule a fee not to exceed $100 for an application and a fee not to exceed $300 for an initial license or license renewal.

(2) In establishing fees pursuant to subsection (1), the board shall consider the actual costs incurred in carrying out its duties under this chapter.

(3) All moneys collected by the department under this chapter shall be deposited as provided under s. 456.025.

Section 8. Section 470.45, Florida Statutes, is created to read:

470.45 Disciplinary grounds and actions; reinstatement.—
The board may enter an order imposing any of the penalties provided under s. 456.072(2) against a licensee who violates any provision of s. 456.072(1), except that the board may not do any of the following:

(1) Place a licensee on probation for more than 5 years.
(2) Impose a fine that exceeds $2,500.
(3) Suspend a license for more than 5 years.
(4) Limit or restrict a license for an indefinite period.

Section 9. Section 470.47, Florida Statutes, is created to read:

470.47 Violations and penalties.—
(1) Unless licensed or authorized under this chapter, a person who engages in the practice of applied behavior analysis, assists in the practice of applied behavior analysis, renders
services designated as applied behavior analysis, or represents
himself or herself as a practitioner of applied behavior
analysis in this state commits a felony of the third degree,
punishable as provided under s. 775.082, s. 775.083, or s.
775.084.

(2) Unless licensed or authorized under this chapter, a
person who uses the title "licensed behavior analyst," "licensed
assistant behavior analyst," or any other title that is
substantially similar commits a misdemeanor of the second
degree, punishable as provided in s. 775.082 or s. 775.083.

Section 10. Section 470.48, Florida Statutes, is created
to read:

470.48 Exceptions to applicability.—This chapter does not
prohibit or restrict the practice of the following:

(1) An individual licensed under chapter 490 to practice
psychology.

(2) A certified teacher authorized to practice in this
state who is not a behavior analyst if he or she does not
represent himself or herself as a behavior analyst. The services
provided by a certified teacher must be within his or her
authorized scope of practice and within the scope of his or her
education, training, and experience and must be provided in the
course of his or her employment in a program approved by the
Department of Education. Teaching assistants, other than those
engaged in pupil personnel services, and student support
professionals are exempt from the requirements of this chapter
if they provide applied behavior analysis services under the supervision of a certified teacher who meets the requirements of this paragraph.

(3) A behavior analyst who practices with nonhuman clients, including, but not limited to, applied animal behaviorists and animal trainers.

(4) An individual who teaches applied behavior analysis or who conducts behavior analytic research if such teaching or research does not involve the delivery of applied behavior analysis.

(5) A matriculated college or university student or postdoctoral fellow whose activities are part of a defined behavior analysis program of study, practicum, or intensive practicum if his or her practice under this subsection is directly supervised by a licensed behavior analyst or an instructor of an accredited course sequence approved by the Behavior Analyst Certification Board (BACB). A student or intern may not represent himself or herself as a professional behavior analyst but may use a title indicating his or her trainee status, such as "behavior analyst student," "behavior analyst intern," or "behavior analyst trainee."

(6) An unlicensed individual pursuing supervised experiential training to meet eligibility requirements for BACB certification if such training is supervised by an individual who is licensed to practice applied behavior analysis and who meets BACB supervisor requirements and if the supervised
experience is conducted in accordance with other BACB standards and requirements.

(7) A board-certified behavior analyst, a doctoral level board-certified behavior analyst, or an individual licensed to practice applied behavior analysis in another state who resides in another state and provides applied behavior analysis in this state or to a resident of this state for less than 12 days per year.

(8) A family member of a recipient of applied behavior analysis services who implements certain procedures with the recipient. Such a family member may not represent himself or herself as a professional behavior analyst.

(9) A behavior analyst who provides general behavior analysis services to organizations if the services are for the benefit of the organizations and do not involve direct services to individuals.

(10) A physician licensed pursuant to chapter 458 or chapter 459.

(11) An individual licensed pursuant to chapter 491 as a clinical social worker, marriage and family therapist, or mental health counselor.

(12) A salaried employee of a private, nonprofit organization providing behavior analysis services to children, youth, and families if the services are provided for no charge, the employee is performing duties for which he or she was trained and hired, and the employee does not represent himself
or herself as a professional behavior analyst.

(13) A school psychologist certified in school psychology by the Department of Education who performs behavior analysis services as an employee of a public or private educational institution. Such exemption does not authorize unlicensed practice that is not performed directly as an employee of an educational institution.

(14) A rabbi, priest, minister, or member of the clergy of a religious denomination or sect if engaging in activities that are within the scope of the performance of his or her regular or specialized ministerial duties and for which no separate fee is charged, or if such activities are performed, with or without a fee, for or under the auspices or sponsorship, individually or in conjunction with others, of an established and legally cognizable church, denomination, or sect; and if the person rendering service remains accountable to the established authority thereof.

Section 11. Paragraph (g) of subsection (3) of section 20.43, Florida Statutes, is amended to read:

20.43 Department of Health.—There is created a Department of Health.

(3) The following divisions of the Department of Health are established:

(g) Division of Medical Quality Assurance, which is responsible for the following boards and professions established within the division:
1. The Board of Acupuncture, created under chapter 457.
2. The Board of Medicine, created under chapter 458.
3. The Board of Osteopathic Medicine, created under chapter 459.
4. The Board of Chiropractic Medicine, created under chapter 460.
5. The Board of Podiatric Medicine, created under chapter 461.
6. Naturopathy, as provided under chapter 462.
7. The Board of Optometry, created under chapter 463.
8. The Board of Nursing, created under part I of chapter 464.
9. Nursing assistants, as provided under part II of chapter 464.
10. The Board of Pharmacy, created under chapter 465.
11. The Board of Dentistry, created under chapter 466.
12. Midwifery, as provided under chapter 467.
13. The Board of Speech-Language Pathology and Audiology, created under part I of chapter 468.
14. The Board of Nursing Home Administrators, created under part II of chapter 468.
15. The Board of Occupational Therapy, created under part III of chapter 468.
16. Respiratory therapy, as provided under part V of chapter 468.
17. Dietetics and nutrition practice, as provided under chapter 468.
18. The Board of Athletic Training, created under part XIII of chapter 468.
19. The Board of Orthotists and Prosthetists, created under part XIV of chapter 468.
20. The Board of Applied Behavior Analysis, created under chapter 470.
21. Electrolysis, as provided under chapter 478.
22. The Board of Massage Therapy, created under chapter 480.
23. The Board of Clinical Laboratory Personnel, created under part III of chapter 483.
24. Medical physicists, as provided under part IV of chapter 483.
25. The Board of Opticianry, created under part I of chapter 484.
26. The Board of Hearing Aid Specialists, created under part II of chapter 484.
27. The Board of Physical Therapy Practice, created under chapter 486.
28. The Board of Psychology, created under chapter 490.
29. School psychologists, as provided under chapter 490.
30. The Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling, created under chapter 491.
Emergency medical technicians and paramedics, as provided under part III of chapter 401.

Section 12. Subsection (4) of section 456.001, Florida Statutes, is amended to read:

456.001 Definitions.—As used in this chapter, the term:

(4) "Health care practitioner" means any person licensed under chapter 457; chapter 458; chapter 459; chapter 460; chapter 461; chapter 462; chapter 463; chapter 464; chapter 465; chapter 466; chapter 467; part I, part II, part III, part V, part X, part XIII, or part XIV of chapter 468; chapter 470; chapter 478; chapter 480; part III or part IV of chapter 483; chapter 484; chapter 486; chapter 490; or chapter 491.

Section 13. Section 456.0135, Florida Statutes, is amended to read:

456.0135 General background screening provisions.—

(1) An application for initial licensure received on or after January 1, 2013, under chapter 458, chapter 459, chapter 460, chapter 461, chapter 464, or s. 465.022, or chapter 470 shall include fingerprints pursuant to procedures established by the department through a vendor approved by the Department of Law Enforcement and fees imposed for the initial screening and retention of fingerprints. Fingerprints must be submitted electronically to the Department of Law Enforcement for state processing, and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for national processing. Each board, or the department if there is
no board, shall screen the results to determine if an applicant meets licensure requirements. For any subsequent renewal of the applicant's license that requires a national criminal history check, the department shall request the Department of Law Enforcement to forward the retained fingerprints of the applicant to the Federal Bureau of Investigation.

(2) All fingerprints submitted to the Department of Law Enforcement as required under subsection (1) shall be retained by the Department of Law Enforcement as provided under s. 943.05(2)(g) and (h) and (3). The department shall notify the Department of Law Enforcement regarding any person whose fingerprints have been retained but who is no longer licensed.

(3) The costs of fingerprint processing, including the cost for retaining fingerprints, shall be borne by the applicant subject to the background screening.

Section 14. This act shall take effect January 1, 2015.