

1 A bill to be entitled

2 An act relating to behavior analysts; creating chapter
3 470, F.S.; entitling the chapter; creating s. 470.40,
4 F.S.; providing a purpose; creating s. 470.41, F.S.;
5 defining terms; creating s. 470.415, F.S.; creating
6 the Board of Applied Behavior Analysis; creating s.
7 470.42, F.S.; specifying the authority and duties of
8 the board; creating s. 470.43, F.S.; providing
9 requirements for licensure and renewal; creating s.
10 470.44, F.S.; establishing maximum fees for
11 applications, initial licenses, and license renewals;
12 creating s. 470.45, F.S.; providing grounds for
13 disciplinary action by the board; providing for
14 reinstatement of a license; creating s. 470.47, F.S.;
15 providing penalties for practicing applied behavior
16 analysis without a license or wrongfully identifying
17 oneself as a licensed behavior analyst; creating s.
18 470.48, F.S.; providing exceptions to the chapter;
19 amending s. 20.43, F.S.; establishing the Board of
20 Applied Behavior Analysis within the Division of
21 Medical Quality Assurance; amending s. 456.001, F.S.;
22 including licensed behavior analysts and licensed
23 assistant behavior analysts in the definition of
24 "health care practitioner"; amending s. 456.0135,
25 F.S.; requiring an applicant for licensure under
26 chapter 470, F.S., to submit to certain fingerprinting

27 requirements; providing an effective date.

28
29 Be It Enacted by the Legislature of the State of Florida:

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

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

35 470.40 Purpose.—The practice of applied behavior analysis
36 in this state affects the public health, safety, and welfare of
37 its residents, and this act is intended to protect the public
38 from any harmful conduct of unqualified, unprofessional, or
39 unethical applied behavior analysts.

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

42 470.41 Definitions.—As used in this chapter, the term:

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

51 (2) "Board" means the Board of Applied Behavior Analysis
52 established in s. 470.415, or its successor, except when the

53 term is used in the context of board certification.

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

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

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

64 (6) "Licensed assistant behavior analyst" means a person
65 who:

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

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

70 (7) "Licensed behavior analyst" means a person who is
71 licensed by the board and meets the requirements of this
72 chapter.

73 (8) "Supervised experience" means a person has completed
74 the training necessary to satisfy the eligibility requirements
75 for board certification.

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

78 470.415 Board of Applied Behavior Analysis.—

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

82 (2) The initial board members are not required to be
83 licensed as a condition of appointment. Members shall be
84 appointed as follows:

85 (a) Three board-certified behavior analysts, who may
86 include board-certified behavior analysts who are at the
87 doctoral level, two of whom shall be selected from a list of six
88 nominations submitted by the Florida Association for Behavior
89 Analysis, or its successor. One member shall be appointed to a
90 1-year term and two members shall be appointed to 3-year terms.

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

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

98 (d) Two laypersons, who may include a parent or guardian
99 of a person who is a recipient of applied behavior analysis
100 services, one of whom shall be appointed to a 1-year term and
101 one of whom shall be appointed to a 2-year term.

102 (3) As the terms of the initial members expire, the
103 Governor shall appoint successors for 4-year terms. Each
104 successor, except for the laypersons, must be licensed. A member

105 may not serve more than two consecutive terms.

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

108 470.42 Authority of the board; board duties; authority of
109 the department.-

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

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

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

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

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

126 (2) If the Behavior Analyst Certification Board no longer
127 certifies practitioners of applied behavior analysis in this
128 state, the board shall approve a successor certification board
129 that is accredited by the National Commission for Certifying
130 Agencies or the American National Standards Institute to certify

131 applied behavior analysts.

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

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

137 (b) Educational qualifications for licensure.

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

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

143 470.43 Licensure and renewal.—

144 (1) A person applying for an initial or renewal license as
145 a behavior analyst shall apply to the department on such form
146 and in such manner as the department prescribes and shall
147 furnish evidence to the department that such person:

148 (a) Is a board-certified behavior analyst.

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

151 (c) Complies with all applicable rules adopted by the
152 board.

153 (d) Has paid the licensure fee or the biennial renewal
154 fee.

155 (e) Has passed a criminal background check after
156 submitting fingerprints and a fee pursuant to s. 456.0135.

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

161 (a) Is a board-certified assistant behavior analyst.

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

164 (c) Complies with all applicable rules adopted by the
 165 board.

166 (d) Is supervised by a licensed behavior analyst in a
 167 manner consistent with board requirements and this chapter.

168 (e) Has paid the licensure fee or the biennial renewal
 169 fee.

170 (f) Has passed a criminal background check after
 171 submitting fingerprints and a fee pursuant to s. 456.0135.

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

175 (a) Submits proof of licensure and board certification.

176 (b) Passes a criminal background check after submitting
 177 fingerprints and a fee pursuant to s. 456.0135.

178 (c) Pays the licensure fee.

179 Section 7. Section 470.44, Florida Statutes, is created to
 180 read:

181 470.44 Fees.—

182 (1) The board shall establish by rule a fee not to exceed

183 \$100 for an application and a fee not to exceed \$300 for an
 184 initial license or license renewal.

185 (2) In establishing fees pursuant to subsection (1), the
 186 board shall consider the actual costs incurred in the
 187 administration of this chapter.

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

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

192 470.45 Disciplinary grounds and actions; reinstatement.—
 193 The board may enter an order imposing any of the penalties
 194 provided under s. 456.072(2) against a licensee who violates a
 195 provision of s. 456.072(1), except that the board may not:

196 (1) Place a licensee on probation for more than 5 years.

197 (2) Impose a fine that exceeds \$2,500.

198 (3) Suspend a license for more than 5 years.

199 (4) Limit or restrict a license for an indefinite period.

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

202 470.47 Violations and penalties.—

203 (1) Unless licensed or authorized under this chapter, a
 204 person who engages in the practice of applied behavior analysis,
 205 assists in the practice of applied behavior analysis, renders
 206 services designated as applied behavior analysis, or represents
 207 himself or herself as a practitioner of applied behavior
 208 analysis in this state commits a felony of the third degree,

209 punishable as provided under s. 775.082, s. 775.083, or s.
 210 775.084.

211 (2) Unless licensed or authorized under this chapter, a
 212 person who uses the title "licensed behavior analyst," "licensed
 213 assistant behavior analyst," or any other title that is
 214 substantially similar, except as provided in s. 470.48(5),
 215 commits a misdemeanor of the second degree, punishable as
 216 provided in s. 775.082 or s. 775.083.

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

219 470.48 Exceptions to applicability.—This chapter does not
 220 prohibit or restrict the practice of the following:

221 (1) A person licensed under chapter 490 to practice
 222 psychology.

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

235 this paragraph.

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

239 (4) A person who teaches applied behavior analysis or who
240 conducts behavior analytic research if such teaching or research
241 does not involve the delivery of applied behavior analysis.

242 (5) An enrolled college or university student or
243 postdoctoral fellow whose activities are part of a defined
244 behavior analysis program of study, practicum, or intensive
245 practicum if his or her practice under this subsection is
246 directly supervised by a licensed behavior analyst or an
247 instructor of an accredited course sequence approved by the
248 board. A student or intern may not represent himself or herself
249 as a professional behavior analyst but may use a title
250 indicating his or her trainee status, such as "behavior analyst
251 student," "behavior analyst intern," or "behavior analyst
252 trainee."

253 (6) An unlicensed person pursuing supervised experiential
254 training to meet eligibility requirements for board
255 certification, if such training is supervised by a person who is
256 licensed to practice applied behavior analysis and who meets
257 board supervisor requirements, and if the supervised experience
258 is conducted in accordance with other board standards and
259 requirements.

260 (7) A board-certified behavior analyst, a doctoral level

261 board-certified behavior analyst, or a person licensed to
262 practice applied behavior analysis in another state who resides
263 in another state and provides applied behavior analysis in this
264 state or to a resident of this state for less than 12 days per
265 year.

266 (8) A family member of a recipient of applied behavior
267 analysis services who implements certain procedures for the
268 recipient, as long as such family member does not represent
269 himself or herself as a professional behavior analyst.

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

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

276 (11) A person licensed pursuant to chapter 491 as a
277 clinical social worker, marriage and family therapist, or mental
278 health counselor.

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

285 (13) A school psychologist certified in school psychology
286 by the Department of Education who performs behavior analysis

287 services as an employee of a public or private educational
 288 institution. Such exemption does not authorize unlicensed
 289 practice that is not performed directly as an employee of an
 290 educational institution.

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

301 Section 11. Paragraph (g) of subsection (3) of section
 302 20.43, Florida Statutes, is amended to read:

303 20.43 Department of Health.—There is created a Department
 304 of Health.

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

307 (g) Division of Medical Quality Assurance, which is
 308 responsible for the following boards and professions established
 309 within the division:

- 310 1. The Board of Acupuncture, created under chapter 457.
- 311 2. The Board of Medicine, created under chapter 458.
- 312 3. The Board of Osteopathic Medicine, created under

- 313 chapter 459.
- 314 4. The Board of Chiropractic Medicine, created under
315 chapter 460.
- 316 5. The Board of Podiatric Medicine, created under chapter
317 461.
- 318 6. Naturopathy, as provided under chapter 462.
- 319 7. The Board of Optometry, created under chapter 463.
- 320 8. The Board of Nursing, created under part I of chapter
321 464.
- 322 9. Nursing assistants, as provided under part II of
323 chapter 464.
- 324 10. The Board of Pharmacy, created under chapter 465.
- 325 11. The Board of Dentistry, created under chapter 466.
- 326 12. Midwifery, as provided under chapter 467.
- 327 13. The Board of Speech-Language Pathology and Audiology,
328 created under part I of chapter 468.
- 329 14. The Board of Nursing Home Administrators, created
330 under part II of chapter 468.
- 331 15. The Board of Occupational Therapy, created under part
332 III of chapter 468.
- 333 16. Respiratory therapy, as provided under part V of
334 chapter 468.
- 335 17. Dietetics and nutrition practice, as provided under
336 part X of chapter 468.
- 337 18. The Board of Athletic Training, created under part
338 XIII of chapter 468.

339 19. The Board of Orthotists and Prosthetists, created
 340 under part XIV of chapter 468.

341 20. The Board of Applied Behavior Analysis, created under
 342 chapter 470.

343 ~~21.20.~~ Electrolysis, as provided under chapter 478.

344 ~~22.21.~~ The Board of Massage Therapy, created under chapter
 345 480.

346 ~~23.22.~~ The Board of Clinical Laboratory Personnel, created
 347 under part III of chapter 483.

348 ~~24.23.~~ Medical physicists, as provided under part IV of
 349 chapter 483.

350 ~~25.24.~~ The Board of Opticianry, created under part I of
 351 chapter 484.

352 ~~26.25.~~ The Board of Hearing Aid Specialists, created under
 353 part II of chapter 484.

354 ~~27.26.~~ The Board of Physical Therapy Practice, created
 355 under chapter 486.

356 ~~28.27.~~ The Board of Psychology, created under chapter 490.

357 ~~29.28.~~ School psychologists, as provided under chapter
 358 490.

359 ~~30.29.~~ The Board of Clinical Social Work, Marriage and
 360 Family Therapy, and Mental Health Counseling, created under
 361 chapter 491.

362 ~~31.30.~~ Emergency medical technicians and paramedics, as
 363 provided under part III of chapter 401.

364 Section 12. Subsection (4) of section 456.001, Florida

365 Statutes, is amended to read:

366 456.001 Definitions.—As used in this chapter, the term:

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

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

376 456.0135 General background screening provisions.—

377 (1) An application for initial licensure received on or
 378 after January 1, 2013, under chapter 458, chapter 459, chapter
 379 460, chapter 461, chapter 464, s. 465.022, chapter 470, or
 380 chapter 480 shall include fingerprints pursuant to procedures
 381 established by the department through a vendor approved by the
 382 Department of Law Enforcement and fees imposed for the initial
 383 screening and retention of fingerprints. Fingerprints must be
 384 submitted electronically to the Department of Law Enforcement
 385 for state processing, and the Department of Law Enforcement
 386 shall forward the fingerprints to the Federal Bureau of
 387 Investigation for national processing. Each board, or the
 388 department if there is no board, shall screen the results to
 389 determine if an applicant meets licensure requirements. For any
 390 subsequent renewal of the applicant's license that requires a

391 national criminal history check, the department shall request
392 the Department of Law Enforcement to forward the retained
393 fingerprints of the applicant to the Federal Bureau of
394 Investigation unless the fingerprints are enrolled in the
395 national retained print arrest notification program.

396 (2) All fingerprints submitted to the Department of Law
397 Enforcement as required under subsection (1) shall be retained
398 by the Department of Law Enforcement as provided under s.
399 943.05(2)(g) and (h) and (3) and enrolled in the national
400 retained print arrest notification program at the Federal Bureau
401 of Investigation when the Department of Law Enforcement begins
402 participation in the program. The department shall notify the
403 Department of Law Enforcement regarding any person whose
404 fingerprints have been retained but who is no longer licensed.

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

408 Section 14. This act shall take effect January 1, 2016.