

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.

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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, except when the term is used in the

53 context of board certification.

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

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 behavior analyst" means an individual who is
 65 licensed by the board and meets the requirements of this
 66 chapter.

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

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

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

73 (8) "Supervised experience" means an individual has
 74 completed the training necessary to satisfy the eligibility
 75 requirements for BACB 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, who are not required to be
83 licensed as a condition of appointment, shall be appointed as
84 follows:

85 (a) Three board-certified behavior analysts, which 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. One shall be appointed to a 1-year term, and two shall
90 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 appointed health care practitioner's practice must be related to
96 the treatment of behavior disorders, including, but not limited
97 to, autism spectrum disorders; and

98 (d) Two laypersons, who may include a parent or guardian
99 of an individual who is a recipient of applied behavior analysis
100 services, one of whom shall serve a 1-year term, and one of whom
101 shall serve 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 all of the following:

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 stops
127 certifying 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 the
135 following:

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

138 (b) Educational qualifications for licensure.

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

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

144 470.43 Licensure and renewal.—

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

150 (a) Is a board-certified behavior analyst;

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

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

155 (d) Has paid the licensure fee or the biennial renewal
156 fee; and

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

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

163 (a) Is a board-certified assistant behavior analyst;

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

166 (c) Complies with all applicable rules promulgated by the
 167 board;

168 (d) Is supervised by a licensed behavior analyst in a
 169 manner consistent with BACB requirements and this chapter;

170 (e) Has paid the licensure fee or the biennial renewal
 171 fee; and

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

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

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

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

180 (c) Pays the licensure fee.

181 Section 7. Section 470.44, Florida Statutes, is created to
 182 read:

183 470.44 Fees.—

184 (1) The board shall establish by rule a fee not to exceed
 185 \$100 for an application and a fee not to exceed \$300 for an
 186 initial license or license renewal.

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

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

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

194 470.45 Disciplinary grounds and actions; reinstatement.—

195 The board may enter an order imposing any of the penalties
 196 provided under s. 456.072(2) against a licensee who violates any
 197 provision of s. 456.072(1), except that the board may not do any
 198 of the following:

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

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

205 470.47 Violations and penalties.—

206 (1) Unless licensed or authorized under this chapter, a
 207 person who engages in the practice of applied behavior analysis,
 208 assists in the practice of applied behavior analysis, renders

209 services designated as applied behavior analysis, or represents
210 himself or herself as a practitioner of applied behavior
211 analysis in this state commits a felony of the third degree,
212 punishable as provided under s. 775.082, s. 775.083, or s.
213 775.084.

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

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

221 470.48 Exceptions to applicability.—This chapter does not
222 prohibit or restrict the practice of the following:

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

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

235 if they provide applied behavior analysis services under the
236 supervision of a certified teacher who meets the requirements of
237 this paragraph.

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

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

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

256 (6) An unlicensed individual pursuing supervised
257 experiential training to meet eligibility requirements for BACB
258 certification if such training is supervised by an individual
259 who is licensed to practice applied behavior analysis and who
260 meets BACB supervisor requirements and if the supervised

261 experience is conducted in accordance with other BACB standards
262 and requirements.

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

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

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

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

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

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

287 or herself as a professional behavior analyst.

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

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

304 Section 11. Paragraph (g) of subsection (3) of section
 305 20.43, Florida Statutes, is amended to read:

306 20.43 Department of Health.—There is created a Department
 307 of Health.

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

310 (g) Division of Medical Quality Assurance, which is
 311 responsible for the following boards and professions established
 312 within the division:

- 313 1. The Board of Acupuncture, created under chapter 457.
- 314 2. The Board of Medicine, created under chapter 458.
- 315 3. The Board of Osteopathic Medicine, created under
- 316 chapter 459.
- 317 4. The Board of Chiropractic Medicine, created under
- 318 chapter 460.
- 319 5. The Board of Podiatric Medicine, created under chapter
- 320 461.
- 321 6. Naturopathy, as provided under chapter 462.
- 322 7. The Board of Optometry, created under chapter 463.
- 323 8. The Board of Nursing, created under part I of chapter
- 324 464.
- 325 9. Nursing assistants, as provided under part II of
- 326 chapter 464.
- 327 10. The Board of Pharmacy, created under chapter 465.
- 328 11. The Board of Dentistry, created under chapter 466.
- 329 12. Midwifery, as provided under chapter 467.
- 330 13. The Board of Speech-Language Pathology and Audiology,
- 331 created under part I of chapter 468.
- 332 14. The Board of Nursing Home Administrators, created
- 333 under part II of chapter 468.
- 334 15. The Board of Occupational Therapy, created under part
- 335 III of chapter 468.
- 336 16. Respiratory therapy, as provided under part V of
- 337 chapter 468.
- 338 17. Dietetics and nutrition practice, as provided under

339 part X of chapter 468.

340 18. The Board of Athletic Training, created under part
341 XIII of chapter 468.

342 19. The Board of Orthotists and Prosthetists, created
343 under part XIV of chapter 468.

344 20. The Board of Applied Behavior Analysis, created under
345 chapter 470.

346 ~~21.20.~~ Electrolysis, as provided under chapter 478.

347 ~~22.21.~~ The Board of Massage Therapy, created under chapter
348 480.

349 ~~23.22.~~ The Board of Clinical Laboratory Personnel, created
350 under part III of chapter 483.

351 ~~24.23.~~ Medical physicists, as provided under part IV of
352 chapter 483.

353 ~~25.24.~~ The Board of Opticianry, created under part I of
354 chapter 484.

355 ~~26.25.~~ The Board of Hearing Aid Specialists, created under
356 part II of chapter 484.

357 ~~27.26.~~ The Board of Physical Therapy Practice, created
358 under chapter 486.

359 ~~28.27.~~ The Board of Psychology, created under chapter 490.

360 ~~29.28.~~ School psychologists, as provided under chapter
361 490.

362 ~~30.29.~~ The Board of Clinical Social Work, Marriage and
363 Family Therapy, and Mental Health Counseling, created under
364 chapter 491.

365 ~~31.30.~~ Emergency medical technicians and paramedics, as
 366 provided under part III of chapter 401.

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

369 456.001 Definitions.—As used in this chapter, the term:

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

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

379 456.0135 General background screening provisions.—

380 (1) An application for initial licensure received on or
 381 after January 1, 2013, under chapter 458, chapter 459, chapter
 382 460, chapter 461, chapter 464, ~~or~~ s. 465.022, or chapter 470
 383 shall include fingerprints pursuant to procedures established by
 384 the department through a vendor approved by the Department of
 385 Law Enforcement and fees imposed for the initial screening and
 386 retention of fingerprints. Fingerprints must be submitted
 387 electronically to the Department of Law Enforcement for state
 388 processing, and the Department of Law Enforcement shall forward
 389 the fingerprints to the Federal Bureau of Investigation for
 390 national processing. Each board, or the department if there is

391 no board, shall screen the results to determine if an applicant
392 meets licensure requirements. For any subsequent renewal of the
393 applicant's license that requires a national criminal history
394 check, the department shall request the Department of Law
395 Enforcement to forward the retained fingerprints of the
396 applicant to the Federal Bureau of Investigation.

397 (2) All fingerprints submitted to the Department of Law
398 Enforcement as required under subsection (1) shall be retained
399 by the Department of Law Enforcement as provided under s.
400 943.05(2)(g) and (h) and (3). The department shall notify the
401 Department of Law Enforcement regarding any person whose
402 fingerprints have been retained but who is no longer licensed.

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

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