



937594

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/17/2015	.	
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	.	
	.	

The Committee on Health Policy (Bean) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. 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



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12 responsible for the following boards and professions established
13 within the division:

- 14 1. The Board of Acupuncture, created under chapter 457.
- 15 2. The Board of Medicine, created under chapter 458.
- 16 3. The Board of Osteopathic Medicine, created under chapter
17 459.
- 18 4. The Board of Chiropractic Medicine, created under
19 chapter 460.
- 20 5. The Board of Podiatric Medicine, created under chapter
21 461.
- 22 6. Naturopathy, as provided under chapter 462.
- 23 7. The Board of Optometry, created under chapter 463.
- 24 8. The Board of Nursing, created under part I of chapter
25 464.
- 26 9. Nursing assistants, as provided under part II of chapter
27 464.
- 28 10. The Board of Pharmacy, created under chapter 465.
- 29 11. The Board of Dentistry, created under chapter 466.
- 30 12. Midwifery, as provided under chapter 467.
- 31 13. The Board of Speech-Language Pathology and Audiology,
32 created under part I of chapter 468.
- 33 14. The Board of Nursing Home Administrators, created under
34 part II of chapter 468.
- 35 15. The Board of Occupational Therapy, created under part
36 III of chapter 468.
- 37 16. Respiratory therapy, as provided under part V of
38 chapter 468.
- 39 17. Dietetics and nutrition practice, as provided under
40 part X of chapter 468.



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41 18. The Board of Athletic Training, created under part XIII
42 of chapter 468.

43 19. The Board of Orthotists and Prosthetists, created under
44 part XIV of chapter 468.

45 20. The Board of Applied Behavior Analysis, created under
46 chapter 470.

47 ~~21.20.~~ Electrolysis, as provided under chapter 478.

48 ~~22.21.~~ The Board of Massage Therapy, created under chapter
49 480.

50 ~~23.22.~~ The Board of Clinical Laboratory Personnel, created
51 under part III of chapter 483.

52 ~~24.23.~~ Medical physicists, as provided under part IV of
53 chapter 483.

54 ~~25.24.~~ The Board of Opticianry, created under part I of
55 chapter 484.

56 ~~26.25.~~ The Board of Hearing Aid Specialists, created under
57 part II of chapter 484.

58 ~~27.26.~~ The Board of Physical Therapy Practice, created
59 under chapter 486.

60 ~~28.27.~~ The Board of Psychology, created under chapter 490.

61 ~~29.28.~~ School psychologists, as provided under chapter 490.

62 ~~30.29.~~ The Board of Clinical Social Work, Marriage and
63 Family Therapy, and Mental Health Counseling, created under
64 chapter 491.

65 ~~31.30.~~ Emergency medical technicians and paramedics, as
66 provided under part III of chapter 401.

67 Section 2. Subsection (4) of section 456.001, Florida
68 Statutes, is amended to read:

69 456.001 Definitions.—As used in this chapter, the term:



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

77 Section 3. Subsection (1) of section 456.0135, Florida
78 Statutes, is amended to read:

79 456.0135 General background screening provisions.—

80 (1) An application for initial licensure received on or
81 after January 1, 2013, under chapter 458, chapter 459, chapter
82 460, chapter 461, chapter 464, s. 465.022, chapter 470, or
83 chapter 480 shall include fingerprints pursuant to procedures
84 established by the department through a vendor approved by the
85 Department of Law Enforcement and fees imposed for the initial
86 screening and retention of fingerprints. Fingerprints must be
87 submitted electronically to the Department of Law Enforcement
88 for state processing, and the Department of Law Enforcement
89 shall forward the fingerprints to the Federal Bureau of
90 Investigation for national processing. Each board, or the
91 department if there is no board, shall screen the results to
92 determine if an applicant meets licensure requirements. For any
93 subsequent renewal of the applicant's license that requires a
94 national criminal history check, the department shall request
95 the Department of Law Enforcement to forward the retained
96 fingerprints of the applicant to the Federal Bureau of
97 Investigation unless the fingerprints are enrolled in the
98 national retained print arrest notification program.



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99 Section 4. The Division of Law Revision and Information is
100 directed to create chapter 470, Florida Statutes, consisting of
101 ss. 470.40-470.46, Florida Statutes, to be entitled "Behavior
102 Analysts."

103 Section 5. Section 470.40, Florida Statutes, is created to
104 read:

105 470.40 Purpose.—The Legislature finds that the practice of
106 applied behavior analysis in this state by unskilled and
107 incompetent practitioners presents a danger to the health and
108 safety of the public. The Legislature further finds that it is
109 difficult for the public to make informed choices about behavior
110 analysts and that the consequences of a wrong choice could
111 endanger public health. This act is intended to protect the
112 public from the harmful conduct of unqualified, unprofessional,
113 or unethical behavior analysts.

114 Section 6. Section 470.41, Florida Statutes, is created to
115 read:

116 470.41 Definitions.—As used in this chapter, the term:

117 (1) "Applied behavior analysis" means the design,
118 implementation, and evaluation of environmental modifications,
119 using behavioral stimuli and consequences, to produce socially
120 significant improvement in human behavior, including, but not
121 limited to, the use of direct observation, measurement, and
122 functional analysis of the relations between environment and
123 behavior. The term does not include psychological testing, the
124 diagnosis of a mental or physical disorder, neuropsychology,
125 psychotherapy, cognitive therapy, sex therapy, psychoanalysis,
126 hypnotherapy, or long-term counseling.

127 (2) "Board" means the Board of Applied Behavior Analysis



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128 established in s. 470.415, except when the term is used in the
129 context of board certification.

130 (3) "Board-certified assistant behavior analyst" means a
131 practitioner who is certified by the national Behavior Analyst
132 Certification Board as an assistant behavior analyst.

133 (4) "Board-certified behavior analyst" means a practitioner
134 who is certified as a behavior analyst, or is recognized as a
135 Florida-certified behavior analyst, by the national Behavior
136 Analyst Certification Board.

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

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

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

144 Section 7. Section 470.415, Florida Statutes, is created to
145 read:

146 470.415 Board of Applied Behavior Analysis.-

147 (1) The Board of Applied Behavior Analysis is created
148 within the department. The board consists of seven members
149 appointed by the Governor and confirmed by the Senate.

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

153 (a) Three board-certified behavior analysts, two of whom
154 must hold a doctoral level degree. One shall be appointed to a
155 4-year term, one shall be appointed to a 2-year term, and one
156 shall be appointed to a 1-year term;



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157 (b) One board-certified assistant behavior analyst, who
158 shall be appointed to a 3-year term;

159 (c) One psychologist licensed pursuant to chapter 490 or
160 one clinical social worker, marriage and family therapist, or
161 mental health counselor licensed pursuant to chapter 491, who
162 shall be appointed to a 3-year term. The majority of the
163 appointee's professional practice must be related to the
164 treatment of behavior disorders, including, but not limited to,
165 autism spectrum disorders; and

166 (d) Two laypersons, who may include a parent or guardian of
167 an individual who is a recipient of applied behavior analysis
168 services, one of whom shall serve a 4-year term, and one of whom
169 shall serve a 2-year term.

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

174 Section 8. Section 470.42, Florida Statutes, is created to
175 read:

176 470.42 Rulemaking authority.—

177 (1) The board has authority to adopt rules pursuant to ss.
178 120.536(1) and 120.54 to implement the provisions of this
179 chapter conferring duties upon it. Such rules must include, but
180 are not limited to, rules relating to:

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

183 (b) Supervision of licensed assistant behavior analysts, or
184 students in training to be licensed behavior analysts or
185 licensed assistant behavior analysts, including the number of



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186 persons that a licensed behavior analyst or licensed assistant
187 behavior analyst may supervise at one time.

188 (2) The department may adopt rules to implement the
189 provisions of this chapter conferring duties upon it. Such rules
190 shall include, but are not limited to, rules relating to
191 licensure and license renewal applications, processes, and fees.

192 Section 9. Section 470.43, Florida Statutes, is created to
193 read:

194 470.43 Licensure.—

195 (1) The department shall license an applicant as a behavior
196 analyst if the applicant:

197 (a) Submits a completed application to the department using
198 a form approved by the board;

199 (b) Remits the appropriate fees;

200 (c) Has passed a criminal background check after submitting
201 fingerprints and a fee pursuant to s. 456.0135; and

202 (d) Submits proof that the applicant is a board-certified
203 behavior analyst.

204 (2) The department shall license an applicant as an
205 assistant behavior analyst if the applicant:

206 (a) Submits a completed application to the department using
207 a form approved by the board;

208 (b) Remits the appropriate fees;

209 (c) Has passed a criminal background check after submitting
210 fingerprints and a fee pursuant to s. 456.0135;

211 (d) Submits proof to the department that the applicant is a
212 board-certified assistant behavior analyst; and

213 (e) Identifies a supervising licensed behavior analyst who
214 is qualified to supervise the applicant under Behavior Analyst



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215 Certification Board requirements and this chapter.

216 Section 10. Section 470.44, Florida Statutes, is created to
217 read:

218 470.44 Renewal of license.—

219 (1) The department shall renew a license upon receipt of
220 proof that the applicant is certified by the Behavior Analyst
221 Certification Board and a completed renewal application and
222 remitted the fee.

223 (2) The department shall adopt rules establishing a
224 procedure for the biennial renewal of licenses.

225 (3) The board shall prescribe by rule continuing education
226 not to exceed 32 hours required biennially as a condition for
227 renewal of a license as a behavior analyst, or not to exceed 20
228 hours required biennially as a condition for renewal of a
229 license as an assistant behavior analyst. The criteria for
230 continuing education programs shall be approved by the board.
231 The board may authorize by rule continuing education earned for
232 Behavior Analyst Certification Board certification to be used to
233 meet the continuing education requirements of this subsection.

234 Section 11. Section 470.45, Florida Statutes, is created to
235 read:

236 470.45 Fees.—

237 (1) The board shall establish by rule a fee not to exceed
238 \$100 for an application, \$300 for an initial license, or \$300
239 for license renewal.

240 (2) All moneys collected by the department under this
241 chapter shall be deposited in the Medical Quality Assurance
242 Trust Fund as provided under s. 456.025.

243 Section 12. Section 470.46, Florida Statutes, is created to



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244 read:

245 470.46 Disciplinary actions.—

246 (1) The following acts constitute grounds for denial of a
247 license or disciplinary action, as specified in s. 456.072(2):

248 (a) Attempting to obtain, obtaining, or renewing a license
249 under this chapter by bribery or fraudulent misrepresentation or
250 through an error of the board or the department.

251 (b) Having a license to practice a comparable profession
252 revoked, suspended, or otherwise acted against, including the
253 denial of certification or licensure by another state,
254 territory, or country.

255 (c) Being convicted or found guilty of, regardless of
256 adjudication, or having entered a plea of nolo contendere to, a
257 crime in any jurisdiction which directly relates to the practice
258 of his or her profession or the ability to practice his or her
259 profession. However, in the case of a plea of nolo contendere,
260 the board shall allow the person who is the subject of the
261 disciplinary proceeding to present evidence in mitigation
262 relevant to the underlying charges and circumstances surrounding
263 the plea.

264 (d) Making false, deceptive, or misleading advertising or
265 obtaining a fee or other thing of value on the representation
266 that beneficial results from any treatment will be guaranteed.

267 (e) Advertising, practicing, or attempting to practice
268 under a name other than one's own.

269 (f) Maintaining a professional association with any person
270 who the applicant or licensee knows, or has reason to believe,
271 is in violation of this chapter or of a rule of the department
272 or the board.



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273 (g) Knowingly aiding, assisting, procuring, or advising any
274 nonlicensed person to hold himself or herself out as licensed
275 under this chapter.

276 (h) Failing to perform any statutory or legal obligation
277 placed upon a person licensed under this chapter.

278 (i) Willfully making or filing a false report or record;
279 failing to file a report or record required by state or federal
280 law; willfully impeding or obstructing the filing of a report or
281 record; or inducing another person to make or file a false
282 report or record or to impede or obstruct the filing of a report
283 or record. Such report or record includes only a report or
284 record which requires the signature of a person licensed under
285 this chapter.

286 (j) Paying a kickback, rebate, bonus, or other remuneration
287 for receiving a patient or client, or receiving a kickback,
288 rebate, bonus, or other remuneration for referring a patient or
289 client to another provider of applied behavior analysis services
290 or to a provider of health care services or goods; referring a
291 patient or client to oneself for services on a fee-paid basis
292 when those services are already being paid for by some other
293 public or private entity; or entering into a reciprocal referral
294 agreement.

295 (k) Committing any act upon a patient or client which would
296 constitute sexual battery, as defined in s. 794.011, or which
297 would constitute sexual misconduct. Sexual misconduct shall be
298 defined by rule by the board.

299 (l) Making misleading, deceptive, untrue, or fraudulent
300 representations in the practice of applied behavior analysis.

301 (m) Soliciting patients or clients personally, or through



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302 an agent, through the use of fraud, intimidation, undue
303 influence, or a form of overreaching or vexatious conduct.

304 (n) Failing to make available to a patient or client, upon
305 written request, copies of test results, reports, or documents
306 in the possession or under the control of the licensee which
307 have been prepared for and paid for by the patient or client.

308 (o) Failing to respond within 30 days to a written
309 communication from the department concerning any investigation
310 by the department, or failing to make available any relevant
311 records with respect to any investigation about the licensee's
312 conduct or background.

313 (p) Being unable to practice the profession for which he or
314 she is licensed under this chapter with reasonable skill or
315 competence as a result of any mental or physical condition or by
316 reason of illness; drunkenness; or excessive use of drugs,
317 narcotics, chemicals, or any other substance. In enforcing this
318 paragraph, upon a finding by the State Surgeon General, the
319 State Surgeon General's designee, or the board that probable
320 cause exists to believe that the licensee is unable to practice
321 the profession because of the reasons stated in this paragraph,
322 the department shall have the authority to compel a licensee to
323 submit to a mental or physical examination by a physician
324 designated by the department or board. If the licensee refuses
325 to comply with such order, the department's order directing the
326 examination may be enforced by filing a petition for enforcement
327 in the circuit court in the circuit in which the licensee
328 resides or does business. The licensee against whom the petition
329 is filed may not be named or identified by initials in any
330 public court records or documents, and the proceedings shall be



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331 closed to the public. The department shall be entitled to the
332 summary procedure provided in s. 51.011. A licensee affected
333 under this paragraph shall at reasonable intervals, as
334 determined by the department, be afforded an opportunity to
335 demonstrate that he or she can resume the competent practice for
336 which he or she is licensed with reasonable skill and safety to
337 patients.

338 (q) Performing any treatment or prescribing any therapy
339 which, by the prevailing standards of the behavior analysts in
340 the community, would constitute experimentation on human
341 subjects, without first obtaining full, informed, and written
342 consent.

343 (r) Failing to meet the minimum standards of performance in
344 professional activities when measured against generally
345 prevailing peer performance, including the undertaking of
346 activities for which the licensee is not qualified by training
347 or experience.

348 (s) Delegating professional responsibilities to a person
349 whom the licensee knows or has reason to know is not qualified
350 by training or experience to perform such responsibilities.

351 (t) Violating a rule relating to the regulation of the
352 profession or a lawful order of the department or the board
353 previously entered in a disciplinary hearing.

354 (u) Failure of the licensee to maintain in confidence a
355 communication made by a patient or client in the context of such
356 services.

357 (v) Making public statements which are derived from test
358 data, client contacts, or behavioral research and which identify
359 or damage research subjects or clients.



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360 (w) Violating any provision of this chapter or chapter 456,
361 or any rules adopted pursuant thereto.

362 (2) The board may enter an order denying licensure or
363 imposing any of the penalties in s. 456.072(2) against any
364 applicant for licensure or licensee who is found guilty of
365 violating subsection (1) or who is found guilty of violating s.
366 456.072(1).

367 Section 13. Section 470.47, Florida Statutes, is created to
368 read:

369 470.47 Violations and penalties.-

370 (1) Effective January 1, 2016, a person may not engage in
371 the practice of applied behavior analysis, assist in the
372 practice of applied behavior analysis, render services
373 designated as applied behavior analysis, or represent himself or
374 herself as a practitioner of applied behavior analysis in this
375 state unless he or she holds an active license as a behavior
376 analyst or assistant behavior analyst pursuant to this chapter
377 or meets an exception under s. 470.48. A person who violates
378 this subsection commits a felony of the third degree, punishable
379 as provided under s. 775.082, s. 775.083, or s. 775.084.

380 (2) Effective January 1, 2016, a person may not use the
381 following titles or any combination thereof, unless he or she
382 holds an active license as a behavior analyst or assistant
383 behavior analyst, as applicable, pursuant to this chapter:

384 (a) "Licensed assistant behavior analyst."

385 (b) "Licensed behavior analyst."

386 (3) A person who violates subsection (2) commits a
387 misdemeanor of the second degree, punishable as provided in s.
388 775.082 or s. 775.083.



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389 Section 14. Section 470.48, Florida Statutes, is created to
390 read:

391 470.48 Exceptions to applicability.—This chapter does not
392 prohibit or restrict the practice of the following:

393 (1) An individual licensed pursuant to chapter 458 or
394 chapter 459.

395 (2) An individual licensed pursuant to part III of chapter
396 468 if the occupational therapist does not represent himself or
397 herself as a behavior analyst.

398 (3) An individual licensed under chapter 490 to practice
399 psychology.

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

403 (5) A certified teacher authorized to practice in this
404 state; or a teaching assistant, other than a teaching assistant
405 engaged in pupil personnel services, or student support
406 professional who provides applied behavior analysis services
407 under the supervision of a certified teacher. The services
408 provided by or under the supervision of a certified teacher must
409 be within his or her authorized scope of practice and within the
410 scope of his or her education, training, and experience and must
411 be provided in the course of his or her employment in a program
412 approved by the Department of Education.

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

416 (7) An individual who teaches applied behavior analysis or
417 who conducts behavior analytic research if such teaching or



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418 research does not involve the delivery of applied behavior
419 analysis.

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

431 (9) An unlicensed individual pursuing supervised experience
432 or training to meet eligibility requirements for Behavior
433 Analyst Certification Board certification if such experience or
434 training is supervised by a licensed behavior analyst or a
435 licensed assistant behavior analyst who meets Behavior Analyst
436 Certification Board supervisor requirements and if the
437 supervised experience is conducted in accordance with other
438 Behavior Analyst Certification Board standards and requirements.

439 (10) A family member of a recipient of applied behavior
440 analysis services who implements certain procedures with the
441 recipient. Such a family member may not represent himself or
442 herself as a licensed behavior analyst or a licensed assistant
443 behavior analyst.

444 (11) A behavior analyst who provides general applied
445 behavior analysis services to organizations if the services are
446 for the benefit of the organizations and do not involve direct



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447 services to individuals.

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

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

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

471 Section 15. This act shall take effect July 1, 2016.

472

473 ===== T I T L E A M E N D M E N T =====

474 And the title is amended as follows:

475 Delete everything before the enacting clause



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476 and insert:

477 A bill to be entitled
478 An act relating to behavior analysts; amending s.
479 20.43, F.S.; establishing the Board of Applied
480 Behavior Analysis within the Division of Medical
481 Quality Assurance; amending s. 456.001, F.S.;
482 including licensed behavior analysts and licensed
483 assistant behavior analysts in the definition of the
484 term "health care practitioner"; amending s. 456.0135,
485 F.S.; requiring an application for licensure under ch.
486 470, F.S., to include certain fingerprinting
487 requirements; providing a directive to the Division of
488 Law Revision and Information to create ch. 470, F.S.,
489 entitled "Behavior Analysts"; creating s. 470.40,
490 F.S.; providing a purpose; creating s. 470.41, F.S.;
491 defining terms; creating s. 470.415, F.S.; creating
492 the Board of Applied Behavior Analysis; providing for
493 membership and terms of members; creating s. 470.42,
494 F.S.; creating rulemaking authority for the board and
495 the Department of Health; creating s. 470.43, F.S.;
496 providing requirements for licensure as a behavior
497 analyst or assistant behavior analyst; creating s.
498 470.44, F.S.; providing requirements for renewal of
499 license; creating s. 470.45, F.S.; establishing
500 maximum fees for applications, initial licenses, and
501 license renewals; requiring fees collected by the
502 department to be deposited into a specified trust
503 fund; creating s. 470.46, F.S.; providing grounds for
504 denial of license or disciplinary action; creating s.



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505 470.47, F.S.; providing penalties for practicing
506 applied behavior analysis without a license or
507 wrongfully identifying oneself as a licensed behavior
508 analyst or licensed assistant behavior analyst;
509 creating s. 470.48, F.S.; providing exceptions to
510 applicability of ch. 470, F.S.; providing an effective
511 date.