

By Senator Bean

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1 A bill to be entitled
2 An act relating to behavior analysts; amending s.
3 20.43, F.S.; establishing the Board of Applied
4 Behavior Analysis within the Division of Medical
5 Quality Assurance; amending s. 456.001, F.S.;
6 including licensed behavior analysts and licensed
7 assistant behavior analysts in the definition of
8 "health care practitioner"; amending s. 456.0135,
9 F.S.; requiring an applicant for initial licensure as
10 a licensed behavior analyst or licensed assistant
11 behavior analyst to include fingerprints pursuant to
12 certain procedures; providing a directive to the
13 Division of Law Revision and Information; creating s.
14 470.40, F.S.; providing a purpose; creating s. 470.41,
15 F.S.; defining terms; creating s. 470.415, F.S.;
16 creating the Board of Applied Behavior Analysis;
17 providing membership and terms for the board; creating
18 s. 470.42, F.S.; providing requirements for initial
19 licensure as a behavior analyst or assistant behavior
20 analyst; providing requirements for renewal of
21 license; requiring fees collected by the Department of
22 Health to be deposited into a specified trust fund;
23 creating s. 470.43, F.S.; providing grounds for
24 disciplinary action or the denial of a license;
25 authorizing the board to enter an order denying
26 licensure to or imposing penalties against an
27 applicant under certain circumstances; creating s.
28 470.44, F.S.; providing penalties for practicing
29 applied behavior analysis or for identifying oneself

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30 as a licensed behavior analyst or licensed assistant
31 behavior analyst without a license; creating s.
32 470.45, F.S.; providing exceptions to applicability;
33 creating s. 470.46, F.S.; requiring the department to
34 adopt rules; requiring the board to adopt rules;
35 providing an effective date.

36
37 Be It Enacted by the Legislature of the State of Florida:

38
39 Section 1. Paragraph (g) of subsection (3) of section
40 20.43, Florida Statutes, is amended to read:

41 20.43 Department of Health.—There is created a Department
42 of Health.

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

45 (g) Division of Medical Quality Assurance, which is
46 responsible for the following boards and professions established
47 within the division:

- 48 1. The Board of Acupuncture, created under chapter 457.
- 49 2. The Board of Medicine, created under chapter 458.
- 50 3. The Board of Osteopathic Medicine, created under chapter
51 459.
- 52 4. The Board of Chiropractic Medicine, created under
53 chapter 460.
- 54 5. The Board of Podiatric Medicine, created under chapter
55 461.
- 56 6. Naturopathy, as provided under chapter 462.
- 57 7. The Board of Optometry, created under chapter 463.
- 58 8. The Board of Nursing, created under part I of chapter

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- 59 464.
- 60 9. Nursing assistants, as provided under part II of chapter
- 61 464.
- 62 10. The Board of Pharmacy, created under chapter 465.
- 63 11. The Board of Dentistry, created under chapter 466.
- 64 12. Midwifery, as provided under chapter 467.
- 65 13. The Board of Speech-Language Pathology and Audiology,
- 66 created under part I of chapter 468.
- 67 14. The Board of Nursing Home Administrators, created under
- 68 part II of chapter 468.
- 69 15. The Board of Occupational Therapy, created under part
- 70 III of chapter 468.
- 71 16. Respiratory therapy, as provided under part V of
- 72 chapter 468.
- 73 17. Dietetics and nutrition practice, as provided under
- 74 part X of chapter 468.
- 75 18. The Board of Athletic Training, created under part XIII
- 76 of chapter 468.
- 77 19. The Board of Orthotists and Prosthetists, created under
- 78 part XIV of chapter 468.
- 79 20. The Board of Applied Behavior Analysis, created under
- 80 chapter 470.
- 81 21.20. Electrolysis, as provided under chapter 478.
- 82 22.21. The Board of Massage Therapy, created under chapter
- 83 480.
- 84 23.22. The Board of Clinical Laboratory Personnel, created
- 85 under part III of chapter 483.
- 86 24.23. Medical physicists, as provided under part IV of
- 87 chapter 483.

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88 ~~25.24.~~ The Board of Opticianry, created under part I of
89 chapter 484.

90 ~~26.25.~~ The Board of Hearing Aid Specialists, created under
91 part II of chapter 484.

92 ~~27.26.~~ The Board of Physical Therapy Practice, created
93 under chapter 486.

94 ~~28.27.~~ The Board of Psychology, created under chapter 490.

95 ~~29.28.~~ School psychologists, as provided under chapter 490.

96 ~~30.29.~~ The Board of Clinical Social Work, Marriage and
97 Family Therapy, and Mental Health Counseling, created under
98 chapter 491.

99 ~~31. 30.~~ Emergency medical technicians and paramedics, as
100 provided under part III of chapter 401.

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

103 456.001 Definitions.—As used in this chapter, the term:

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

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

113 456.0135 General background screening provisions.—

114 (1) An application for initial licensure received on or
115 after January 1, 2013, under chapter 458, chapter 459, chapter
116 460, chapter 461, chapter 464, s. 465.022, chapter 470, or

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117 chapter 480 shall include fingerprints pursuant to procedures
118 established by the department through a vendor approved by the
119 Department of Law Enforcement and fees imposed for the initial
120 screening and retention of fingerprints. Fingerprints must be
121 submitted electronically to the Department of Law Enforcement
122 for state processing, and the Department of Law Enforcement
123 shall forward the fingerprints to the Federal Bureau of
124 Investigation for national processing. Each board, or the
125 department if there is no board, shall screen the results to
126 determine if an applicant meets licensure requirements. For any
127 subsequent renewal of the applicant's license that requires a
128 national criminal history check, the department shall request
129 the Department of Law Enforcement to forward the retained
130 fingerprints of the applicant to the Federal Bureau of
131 Investigation unless the fingerprints are enrolled in the
132 national retained print arrest notification program.

133 Section 4. The Division of Law Revision and Information is
134 directed to create chapter 470, Florida Statutes, consisting of
135 ss. 470.40-470.46, Florida Statutes, to be entitled "Behavior
136 Analysts."

137 Section 5. Section 470.40, Florida Statutes, is created to
138 read:

139 470.40 Purpose.—The Legislature finds that the practice of
140 applied behavior analysis in this state by unskilled and
141 incompetent practitioners presents a danger to the health and
142 safety of the public. The Legislature finds further that it is
143 difficult for the public to make informed choices about behavior
144 analysts and that the consequences of a wrong choice could
145 endanger public health. This act is intended to protect the

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146 public from the harmful conduct of unqualified, unprofessional,
147 or unethical behavior analysts.

148 Section 6. Section 470.41, Florida Statutes, is created to
149 read:

150 470.41 Definitions.—As used in this chapter, the term:

151 (1) "Applied behavior analysis" means the design,
152 implementation, and evaluation of environmental modifications
153 that are used to produce socially significant improvements in
154 human behavior, including, but not limited to, the use of direct
155 observation, measurement, and functional analysis of the
156 relations between environment and behavior. The term does not
157 include psychological testing, the diagnosis of a mental or
158 physical disorder, neuropsychology, psychotherapy, cognitive
159 therapy, sex therapy, psychoanalysis, hypnotherapy, or long-term
160 counseling.

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

164 (3) "Board-certified assistant behavior analyst" means a
165 practitioner who is certified as an assistant behavior analyst
166 or is recognized as a Florida-certified behavior analyst by the
167 national Behavior Analyst Certification Board.

168 (4) "Board-certified behavior analyst" means a practitioner
169 who is certified as a behavior analyst or is recognized as a
170 Florida-certified behavior analyst by the national Behavior
171 Analyst Certification Board.

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

173 (6) "Licensed assistant behavior analyst" means a
174 practitioner who is licensed by the board as an assistant

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175 behavior analyst and otherwise meets the requirements of this
176 chapter.

177 (7) "Licensed behavior analyst" means a practitioner who is
178 licensed by the board as a behavior analyst and otherwise meets
179 the requirements of this chapter.

180 Section 7. Section 470.415, Florida Statutes, is created to
181 read:

182 470.415 Board of Applied Behavior Analysis.-

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

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

189 (a) Three board-certified behavior analysts, two of whom
190 must hold a doctoral-level degree. One shall be appointed to a
191 4-year term, one shall be appointed to a 2-year term, and one
192 shall be appointed to a 1-year term.

193 (b) One board-certified assistant behavior analyst, who
194 shall be appointed to a 3-year term.

195 (c) One psychologist licensed pursuant to chapter 490, or
196 one clinical social worker, marriage and family therapist, or
197 mental health counselor licensed pursuant to chapter 491, who
198 shall be appointed to a 3-year term. The majority of the
199 appointee's professional practice must be related to the
200 treatment of behavior disorders, including, but not limited to,
201 autism spectrum disorders.

202 (d) Two laypersons, one of whom shall be appointed to a 4-
203 year term, and the other shall be appointed to a 2-year term.

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204 The two laypersons may include a parent or guardian of an
205 individual who is a recipient of applied behavior analysis
206 services.

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

211 Section 8. Section 470.42, Florida Statutes, is created to
212 read:

213 470.42 Licensure; licensure renewal; fees.-

214 (1) The board shall issue an initial license to an
215 applicant as a behavior analyst if the applicant does all of the
216 following:

217 (a) Submits a completed application to the department using
218 a form approved by the board.

219 (b) Pays the appropriate fees.

220 (c) Has passed a criminal background check after submitting
221 fingerprints and a fee pursuant to s. 456.0135.

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

224 (2) The department shall issue an initial license to an
225 applicant as an assistant behavior analyst if the applicant does
226 all of the following:

227 (a) Submits a completed application to the department using
228 a form approved by the board.

229 (b) Pays the appropriate fees.

230 (c) Has passed a criminal background check after submitting
231 fingerprints and a fee pursuant to s. 456.0135.

232 (d) Submits proof that the applicant is a board-certified

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233 assistant behavior analyst.

234 (e) Identifies a supervising licensed behavior analyst who
235 is qualified to supervise the applicant under the national
236 Behavior Analyst Certification Board requirements and this
237 chapter.

238 (3) The department shall renew a license as a behavior
239 analyst or assistant behavior analyst upon receipt of a
240 completed renewal application, fee, and proof that the applicant
241 is certified by the national Behavior Analyst Certification
242 Board.

243 (4) All licensure fees and other fees collected by the
244 board under this section shall be deposited into the Medical
245 Quality Assurance Trust Fund as provided under s. 456.025.

246 Section 9. Section 470.43, Florida Statutes, is created to
247 read:

248 470.43 Disciplinary actions by the board.—

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

251 (a) Attempting to obtain, obtaining, or renewing a license
252 under this chapter by bribery or fraudulent misrepresentation or
253 through an error of the board or the department which is
254 intentionally caused or furthered by the applicant or licensee.

255 (b) Having a license to practice a comparable profession
256 revoked, suspended, or otherwise acted against, including the
257 denial of certification or licensure by another state,
258 territory, or country.

259 (c) Being convicted or found guilty of, regardless of
260 adjudication, or having entered a plea of nolo contendere to, a
261 crime in any jurisdiction which directly relates to the practice

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262 of his or her profession or the ability to practice his or her
263 profession. However, in the case of a plea of nolo contendere,
264 the board shall allow the applicant or licensee to present
265 evidence in mitigation of the underlying charges and
266 circumstances surrounding the plea.

267 (d) Making false, deceptive, or misleading representations
268 or obtaining a fee or other thing of value on the representation
269 that beneficial results from a treatment will be guaranteed.

270 (e) Advertising, practicing, or attempting to practice
271 under a false name.

272 (f) Maintaining a professional association with any person
273 who the applicant or licensee knows, or has reason to believe,
274 violates this chapter or of a rule of the department or the
275 board.

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

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

281 (i) Willfully making or filing a false report or record,
282 failing to file a report or record required by state or federal
283 law, willfully impeding or obstructing the filing of a report or
284 record, or inducing another person to make or file a false
285 report or record or to impede or obstruct the filing of a report
286 or record. Such reports or records include only reports or
287 records that require the signature of a person licensed under
288 this chapter.

289 (j) Paying a kickback, rebate, bonus, or other remuneration
290 for receiving a patient or client, or receiving a kickback,

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291 rebate, bonus, or other remuneration for referring a patient or
292 client to another provider of applied behavior analysis services
293 or to a provider of health care services or goods; referring a
294 patient or client to oneself for services on a fee-paid basis
295 when those services are already being paid for by some other
296 public or private entity; or entering into a reciprocal referral
297 agreement.

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

302 (l) Making misleading, deceptive, untrue, or fraudulent
303 misrepresentations in the practice of applied behavior analysis.

304 (m) Soliciting patients or clients personally, or through
305 an agent, by fraud, intimidation, undue influence, or a form of
306 overreaching or vexatious conduct.

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

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

316 (p) Being unable to practice the profession for which he or
317 she is licensed under this chapter with reasonable skill or
318 competence as a result of any mental or physical condition or by
319 reason of illness, drunkenness, excessive use of drugs,

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320 narcotics, chemicals, or any other substance that is being
321 abused. In enforcing this paragraph, upon a finding by the State
322 Surgeon General, the State Surgeon General's designee, or the
323 board that probable cause exists to believe that the licensee is
324 unable to practice the profession because of the reasons stated
325 in this paragraph, the department shall have the authority to
326 compel a licensee to submit to a mental or physical examination
327 by a physician designated by the department or board. If the
328 licensee refuses to comply with such order, the department may
329 file a petition for enforcement in the circuit court in the
330 circuit in which the licensee resides or does business. The
331 licensee against whom the petition is filed may not be named or
332 identified by initials in any public court records or documents,
333 and the proceedings shall be closed to the public. The
334 department shall be entitled to the summary procedure provided
335 in s. 51.011. A licensee affected under this paragraph shall, at
336 reasonable intervals as determined by the department, be
337 afforded an opportunity to demonstrate that he or she can resume
338 the competent practice for which he or she is licensed with
339 reasonable skill and safety to patients.

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

345 (r) Failing to meet the minimum standards of performance in
346 professional activities, as determined by the board, when
347 measured against generally prevailing peer performance,
348 including the undertaking of activities for which the licensee

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349 is not qualified by training or experience.

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

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

356 (u) Failing to maintain in confidence a communication made
357 by a patient or client in the context of applied behavior
358 analysis services.

359 (v) Making public statements that are derived from test
360 data, client contacts, or behavioral research and that identify
361 or otherwise damage research subjects or clients.

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

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

368 Section 10. Section 470.44, Florida Statutes, is created to
369 read:

370 470.44 Violations and penalties.-

371 (1) An individual may not engage in the practice of applied
372 behavior analysis, assist in the practice of applied behavior
373 analysis, render services designated as applied behavior
374 analysis, or represent himself or herself as a practitioner of
375 applied behavior analysis in this state unless he or she holds
376 an active license as a behavior analyst or assistant behavior
377 analyst pursuant to this chapter or is excepted from the

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378 licensing requirements under s. 470.45. An individual who
379 violates this subsection commits a felony of the third degree,
380 punishable as provided under s. 775.082, s. 775.083, or s.
381 775.084.

382 (2) Unless an individual holds an active license as a
383 behavior analyst or assistant behavior analyst pursuant to this
384 chapter, he or she may not use the title of licensed behavior
385 analyst or licensed assistant behavior analyst, respectively, or
386 any combination thereof.

387 (3) A person who violates subsection (2) commits a
388 misdemeanor of the second degree, punishable as provided in s.
389 775.082 or s. 775.083.

390 Section 11. Section 470.45, Florida Statutes, is created to
391 read:

392 470.45 Exceptions to applicability.—This chapter does not
393 prohibit or restrict the practice of the following:

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

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

399 (3) An individual licensed pursuant to chapter 490 to
400 practice psychology.

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

404 (5) A certified teacher authorized to practice in this
405 state; or a teaching assistant, other than a teaching assistant
406 engaged in pupil personnel services, or student support

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407 professional who provides applied behavior analysis services
408 under the supervision of a certified teacher authorized to
409 practice in this state. The services provided by or under the
410 supervision of a certified teacher must be within the certified
411 teacher's authorized scope of practice and within the scope of
412 his or her education, training, and experience and must be
413 provided in the course of his or her employment in a program
414 approved by the Department of Education.

415 (6) A behavior analyst who practices with nonhuman animals,
416 including, but not limited to, applied animal behaviorists and
417 animal trainers.

418 (7) An individual who teaches applied behavior analysis or
419 who conducts research on applied behavior analysis if such
420 teaching or research does not involve the practice of applied
421 behavior analysis.

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

433 (9) An unlicensed individual pursuing supervised training
434 to meet eligibility requirements for the national Behavior
435 Analyst Certification Board certification if such training is

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436 supervised by a licensed behavior analyst, or a licensed
437 assistant behavior analyst, who meets the national Behavior
438 Analyst Certification Board supervisor requirements and if the
439 supervised experience is conducted in accordance with other
440 national Behavior Analyst Certification Board standards and
441 requirements.

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

447 (11) A behavior analyst who provides general applied
448 behavior analysis services to organizations if the services are
449 for the benefit of the organizations and do not involve direct
450 services to individuals.

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

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

464 (14) A rabbi, priest, minister, or member of the clergy of

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465 a religious denomination or sect if the individual rendering the
466 service remains accountable to the establish authority and:

467 (a) If engaging in activities that are within the scope of
468 his or her ministerial duties and for which no separate fee is
469 charged; or

470 (b) If such activities are performed, with or without a
471 fee, for or under the auspices or sponsorship, individually or
472 in conjunction with others, of an established and legally
473 cognizable church, denomination, or sect.

474 Section 12. Section 470.46, Florida Statutes, is created to
475 read:

476 470.46 Rulemaking authority.—

477 (1) The board shall adopt rules to administer the
478 provisions of this chapter conferring duties upon it. Such rules
479 must include, but are not limited to:

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

482 (b) Supervision of licensed assistant behavior analysts, or
483 students in training to be licensed behavior analysts or
484 licensed assistant behavior analysts, including the number of
485 individuals that a licensed behavior analyst or licensed
486 assistant behavior analyst may supervise at one time.

487 (2) The department shall adopt rules to administer the
488 provisions of this chapter conferring duties upon it. Such rules
489 must include, but are not limited to, rules relating to
490 licensure and license renewal applications, processes, and fees.

491 (3) The department shall adopt rules establishing a
492 procedure for the renewal of licenses every 2 years.

493 (4) The board shall by rule prescribe a continuing

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494 education requirement not to exceed 32 hours every 2 years as a
495 condition for renewal of a license as a behavior analyst, or not
496 to exceed 20 hours every 2 years as a condition for renewal of a
497 license as an assistant behavior analyst. The criteria for
498 continuing education programs shall be approved by the board.
499 The board may authorize by rule an applicant to use continuing
500 education credits earned for the national Behavior Analyst
501 Certification Board certification to meet the continuing
502 education requirements of this chapter.

503 (5) The board shall establish by rule a fee not to exceed
504 \$100 for an application, \$300 for an initial license, and \$300
505 for a license renewal.

506 Section 13. This act shall take effect January 1, 2016.