

By the Committee on Health Policy; and 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 the
8 term "health care practitioner"; amending s. 456.0135,
9 F.S.; requiring an application for licensure under ch.
10 470, F.S., to include certain fingerprinting
11 requirements; providing a directive to the Division of
12 Law Revision and Information to create ch. 470, F.S.,
13 entitled "Behavior Analysts"; creating s. 470.40,
14 F.S.; providing a purpose; creating s. 470.41, F.S.;
15 defining terms; creating s. 470.415, F.S.; creating
16 the Board of Applied Behavior Analysis; providing for
17 membership and terms of members; creating s. 470.42,
18 F.S.; creating rulemaking authority for the board and
19 the Department of Health; creating s. 470.43, F.S.;
20 providing requirements for licensure as a behavior
21 analyst or assistant behavior analyst; creating s.
22 470.44, F.S.; providing requirements for renewal of
23 license; creating s. 470.45, F.S.; establishing
24 maximum fees for applications, initial licenses, and
25 license renewals; requiring fees collected by the
26 department to be deposited into a specified trust
27 fund; creating s. 470.46, F.S.; providing grounds for
28 denial of license or disciplinary action; creating s.
29 470.47, F.S.; providing penalties for practicing

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30 applied behavior analysis without a license or
31 wrongfully identifying oneself as a licensed behavior
32 analyst or licensed assistant behavior analyst;
33 creating s. 470.48, F.S.; providing exceptions to
34 applicability of ch. 470, F.S.; providing an effective
35 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 further finds 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 using behavioral stimuli and consequences, to produce socially
154 significant improvement in human behavior, including, but not
155 limited to, the use of direct observation, measurement, and
156 functional analysis of the relations between environment and
157 behavior. The term does not include psychological testing, the
158 diagnosis of a mental or physical disorder, neuropsychology,
159 psychotherapy, cognitive therapy, sex therapy, psychoanalysis,
160 hypnotherapy, or long-term 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 by the national Behavior Analyst
166 Certification Board as an assistant behavior analyst.

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

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

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

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

178 Section 7. Section 470.415, Florida Statutes, is created to
179 read:

180 470.415 Board of Applied Behavior Analysis.—

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

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

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

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

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

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

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

208 Section 8. Section 470.42, Florida Statutes, is created to
209 read:

210 470.42 Rulemaking authority.-

211 (1) The board has authority to adopt rules pursuant to ss.
212 120.536(1) and 120.54 to implement the provisions of this
213 chapter conferring duties upon it. Such rules must include, but
214 are not limited to, rules relating to:

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

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

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

226 Section 9. Section 470.43, Florida Statutes, is created to
227 read:

228 470.43 Licensure.-

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

231 (a) Submits a completed application to the department using
232 a form approved by the board;

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- 233 (b) Remits the appropriate fees;
234 (c) Has passed a criminal background check after submitting
235 fingerprints and a fee pursuant to s. 456.0135; and
236 (d) Submits proof that the applicant is a board-certified
237 behavior analyst.
- 238 (2) The department shall license an applicant as an
239 assistant behavior analyst if the applicant:
- 240 (a) Submits a completed application to the department using
241 a form approved by the board;
242 (b) Remits the appropriate fees;
243 (c) Has passed a criminal background check after submitting
244 fingerprints and a fee pursuant to s. 456.0135;
245 (d) Submits proof to the department that the applicant is a
246 board-certified assistant behavior analyst; and
247 (e) Identifies a supervising licensed behavior analyst who
248 is qualified to supervise the applicant under Behavior Analyst
249 Certification Board requirements and this chapter.
- 250 Section 10. Section 470.44, Florida Statutes, is created to
251 read:
- 252 470.44 Renewal of license.—
- 253 (1) The department shall renew a license upon receipt of
254 proof that the applicant is certified by the Behavior Analyst
255 Certification Board and a completed renewal application and
256 remitted the fee.
- 257 (2) The department shall adopt rules establishing a
258 procedure for the biennial renewal of licenses.
- 259 (3) The board shall prescribe by rule continuing education
260 not to exceed 32 hours required biennially as a condition for
261 renewal of a license as a behavior analyst, or not to exceed 20

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262 hours required biennially as a condition for renewal of a
263 license as an assistant behavior analyst. The criteria for
264 continuing education programs shall be approved by the board.
265 The board may authorize by rule continuing education earned for
266 Behavior Analyst Certification Board certification to be used to
267 meet the continuing education requirements of this subsection.

268 Section 11. Section 470.45, Florida Statutes, is created to
269 read:

270 470.45 Fees.—

271 (1) The board shall establish by rule a fee not to exceed
272 \$100 for an application, \$300 for an initial license, or \$300
273 for license renewal.

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

277 Section 12. Section 470.46, Florida Statutes, is created to
278 read:

279 470.46 Disciplinary actions.—

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

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

285 (b) Having a license to practice a comparable profession
286 revoked, suspended, or otherwise acted against, including the
287 denial of certification or licensure by another state,
288 territory, or country.

289 (c) Being convicted or found guilty of, regardless of
290 adjudication, or having entered a plea of nolo contendere to, a

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291 crime in any jurisdiction which directly relates to the practice
292 of his or her profession or the ability to practice his or her
293 profession. However, in the case of a plea of nolo contendere,
294 the board shall allow the person who is the subject of the
295 disciplinary proceeding to present evidence in mitigation
296 relevant to the underlying charges and circumstances surrounding
297 the plea.

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

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

303 (f) Maintaining a professional association with any person
304 who the applicant or licensee knows, or has reason to believe,
305 is in violation of this chapter or of a rule of the department
306 or the board.

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

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

312 (i) Willfully making or filing a false report or record;
313 failing to file a report or record required by state or federal
314 law; willfully impeding or obstructing the filing of a report or
315 record; or inducing another person to make or file a false
316 report or record or to impede or obstruct the filing of a report
317 or record. Such report or record includes only a report or
318 record which requires the signature of a person licensed under
319 this chapter.

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320 (j) Paying a kickback, rebate, bonus, or other remuneration
321 for receiving a patient or client, or receiving a kickback,
322 rebate, bonus, or other remuneration for referring a patient or
323 client to another provider of applied behavior analysis services
324 or to a provider of health care services or goods; referring a
325 patient or client to oneself for services on a fee-paid basis
326 when those services are already being paid for by some other
327 public or private entity; or entering into a reciprocal referral
328 agreement.

329 (k) Committing any act upon a patient or client which would
330 constitute sexual battery, as defined in s. 794.011, or which
331 would constitute sexual misconduct. Sexual misconduct shall be
332 defined by rule by the board.

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

335 (m) Soliciting patients or clients personally, or through
336 an agent, through the use of fraud, intimidation, undue
337 influence, or a form of overreaching or vexatious conduct.

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

342 (o) Failing to respond within 30 days to a written
343 communication from the department concerning any investigation
344 by the department, or failing to make available any relevant
345 records with respect to any investigation about the licensee's
346 conduct or background.

347 (p) Being unable to practice the profession for which he or
348 she is licensed under this chapter with reasonable skill or

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349 competence as a result of any mental or physical condition or by
350 reason of illness; drunkenness; or excessive use of drugs,
351 narcotics, chemicals, or any other substance. In enforcing this
352 paragraph, upon a finding by the State Surgeon General, the
353 State Surgeon General's designee, or the board that probable
354 cause exists to believe that the licensee is unable to practice
355 the profession because of the reasons stated in this paragraph,
356 the department shall have the authority to compel a licensee to
357 submit to a mental or physical examination by a physician
358 designated by the department or board. If the licensee refuses
359 to comply with such order, the department's order directing the
360 examination may be enforced by filing a petition for enforcement
361 in the circuit court in the circuit in which the licensee
362 resides or does business. The licensee against whom the petition
363 is filed may not be named or identified by initials in any
364 public court records or documents, and the proceedings shall be
365 closed to the public. The department shall be entitled to the
366 summary procedure provided in s. 51.011. A licensee affected
367 under this paragraph shall at reasonable intervals, as
368 determined by the department, be afforded an opportunity to
369 demonstrate that he or she can resume the competent practice for
370 which he or she is licensed with reasonable skill and safety to
371 patients.

372 (q) Performing any treatment or prescribing any therapy
373 which, by the prevailing standards of the behavior analysts in
374 the community, would constitute experimentation on human
375 subjects, without first obtaining full, informed, and written
376 consent.

377 (r) Failing to meet the minimum standards of performance in

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378 professional activities when measured against generally
379 prevailing peer performance, including the undertaking of
380 activities for which the licensee is not qualified by training
381 or experience.

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

385 (t) Violating a rule relating to the regulation of the
386 profession or a lawful order of the department or the board
387 previously entered in a disciplinary hearing.

388 (u) Failure of the licensee to maintain in confidence a
389 communication made by a patient or client in the context of such
390 services.

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

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

396 (2) The board may enter an order denying licensure or
397 imposing any of the penalties in s. 456.072(2) against any
398 applicant for licensure or licensee who is found guilty of
399 violating subsection (1) or who is found guilty of violating s.
400 456.072(1).

401 Section 13. Section 470.47, Florida Statutes, is created to
402 read:

403 470.47 Violations and penalties.-

404 (1) Effective January 1, 2016, a person may not engage in
405 the practice of applied behavior analysis, assist in the
406 practice of applied behavior analysis, render services

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407 designated as applied behavior analysis, or represent himself or
408 herself as a practitioner of applied behavior analysis in this
409 state unless he or she holds an active license as a behavior
410 analyst or assistant behavior analyst pursuant to this chapter
411 or meets an exception under s. 470.48. A person who violates
412 this subsection commits a felony of the third degree, punishable
413 as provided under s. 775.082, s. 775.083, or s. 775.084.

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

418 (a) "Licensed assistant behavior analyst."

419 (b) "Licensed behavior analyst."

420 (3) A person who violates subsection (2) commits a
421 misdemeanor of the second degree, punishable as provided in s.
422 775.082 or s. 775.083.

423 Section 14. Section 470.48, Florida Statutes, is created to
424 read:

425 470.48 Exceptions to applicability.—This chapter does not
426 prohibit or restrict the practice of the following:

427 (1) An individual licensed pursuant to chapter 458 or
428 chapter 459.

429 (2) An individual licensed pursuant to part III of chapter
430 468 if the occupational therapist does not represent himself or
431 herself as a behavior analyst.

432 (3) An individual licensed under chapter 490 to practice
433 psychology.

434 (4) An individual licensed pursuant to chapter 491 as a
435 clinical social worker, marriage and family therapist, or mental

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436 health counselor.

437 (5) A certified teacher authorized to practice in this
438 state; or a teaching assistant, other than a teaching assistant
439 engaged in pupil personnel services, or student support
440 professional who provides applied behavior analysis services
441 under the supervision of a certified teacher. The services
442 provided by or under the supervision of a certified teacher must
443 be within his or her authorized scope of practice and within the
444 scope of his or her education, training, and experience and must
445 be provided in the course of his or her employment in a program
446 approved by the Department of Education.

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

450 (7) An individual who teaches applied behavior analysis or
451 who conducts behavior analytic research if such teaching or
452 research does not involve the delivery of applied behavior
453 analysis.

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

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465 (9) An unlicensed individual pursuing supervised experience
466 or training to meet eligibility requirements for Behavior
467 Analyst Certification Board certification if such experience or
468 training is supervised by a licensed behavior analyst or a
469 licensed assistant behavior analyst who meets Behavior Analyst
470 Certification Board supervisor requirements and if the
471 supervised experience is conducted in accordance with other
472 Behavior Analyst Certification Board standards and requirements.

473 (10) A family member of a recipient of applied behavior
474 analysis services who implements certain procedures with the
475 recipient. Such a family member may not represent himself or
476 herself as a licensed behavior analyst or a licensed assistant
477 behavior analyst.

478 (11) A behavior analyst who provides general applied
479 behavior analysis services to organizations if the services are
480 for the benefit of the organizations and do not involve direct
481 services to individuals.

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

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

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494 employee of an educational institution.

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

505 Section 15. This act shall take effect July 1, 2015.