

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 appropriations and authorizing  
 28 positions; providing an effective date.

29

30 Be It Enacted by the Legislature of the State of Florida:

31

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

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

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

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

43 470.41 Definitions.—As used in this chapter, the term:

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

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

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

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

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

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

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

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

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

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

74 (8) "Supervised experience" means an individual has  
75 completed the training necessary to satisfy the eligibility  
76 requirements for BACB certification.

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

470.415 Board of Applied Behavior Analysis.-

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

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

(a) Three board-certified behavior analysts, which may include board-certified behavior analysts who are at the doctoral level, two of whom shall be selected from a list of six nominations submitted by the Florida Association for Behavior Analysis. One shall be appointed to a 1-year term, and two shall be appointed to 3-year terms;

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

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

(d) Two laypersons, who may include a parent or guardian of an individual who is a recipient of applied behavior analysis services, one of whom shall serve a 1-year term, and one of whom shall serve a 2-year term.

(3) As the terms of the initial members expire, the Governor shall appoint successors for 4-year terms. Each

105 successor, except for the laypersons, must be licensed. A member  
 106 may not serve more than two consecutive terms.

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

109 470.42 Authority of the board; board duties; authority of  
 110 the department.—

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

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

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

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

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

127 (2) If the Behavior Analyst Certification Board stops  
 128 certifying practitioners of applied behavior analysis in this  
 129 state, the board shall approve a successor certification board  
 130 that is accredited by the National Commission for Certifying

131 Agencies or the American National Standards Institute to certify  
132 applied behavior analysts.

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

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

139 (b) Educational qualifications for licensure.

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

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

145 470.43 Licensure and renewal.—

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

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

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

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

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

157 fee; and

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

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

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

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

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

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

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

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

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

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

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

181 (c) Pays the licensure fee.

182 Section 7. Section 470.44, Florida Statutes, is created to

183 read:

184 470.44 Fees.—

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

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

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

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

195 470.45 Disciplinary grounds and actions; reinstatement.—

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

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

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

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

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

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

206 470.47 Violations and penalties.—

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



209 assists in the practice of applied behavior analysis, renders  
 210 services designated as applied behavior analysis, or represents  
 211 himself or herself as a practitioner of applied behavior  
 212 analysis in this state commits a felony of the third degree,  
 213 punishable as provided under s. 775.082, s. 775.083, or s.  
 214 775.084.

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

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

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

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

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

235 professionals are exempt from the requirements of this chapter  
236 if they provide applied behavior analysis services under the  
237 supervision of a certified teacher who meets the requirements of  
238 this paragraph.

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

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

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

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

261 meets BACB supervisor requirements and if the supervised  
262 experience is conducted in accordance with other BACB standards  
263 and requirements.

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

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

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

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

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

283 (12) A salaried employee of a private, nonprofit  
284 organization providing behavior analysis services to children,  
285 youth, and families if the services are provided for no charge,  
286 the employee is performing duties for which he or she was

287 trained and hired, and the employee does not represent himself  
288 or herself as a professional behavior analyst.

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

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

305 Section 11. Paragraph (g) of subsection (3) of section  
306 20.43, Florida Statutes, is amended to read:

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

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

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

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

- 339 17. Dietetics and nutrition practice, as provided under  
 340 part X of chapter 468.
- 341 18. The Board of Athletic Training, created under part  
 342 XIII of chapter 468.
- 343 19. The Board of Orthotists and Prosthetists, created  
 344 under part XIV of chapter 468.
- 345 20. The Board of Applied Behavior Analysis, created under  
 346 chapter 470.
- 347 ~~21.20.~~ Electrolysis, as provided under chapter 478.
- 348 ~~22.21.~~ The Board of Massage Therapy, created under chapter  
 349 480.
- 350 ~~23.22.~~ The Board of Clinical Laboratory Personnel, created  
 351 under part III of chapter 483.
- 352 ~~24.23.~~ Medical physicists, as provided under part IV of  
 353 chapter 483.
- 354 ~~25.24.~~ The Board of Opticianry, created under part I of  
 355 chapter 484.
- 356 ~~26.25.~~ The Board of Hearing Aid Specialists, created under  
 357 part II of chapter 484.
- 358 ~~27.26.~~ The Board of Physical Therapy Practice, created  
 359 under chapter 486.
- 360 ~~28.27.~~ The Board of Psychology, created under chapter 490.
- 361 ~~29.28.~~ School psychologists, as provided under chapter  
 362 490.
- 363 ~~30.29.~~ The Board of Clinical Social Work, Marriage and  
 364 Family Therapy, and Mental Health Counseling, created under

365 chapter 491.

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

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

370 456.001 Definitions.—As used in this chapter, the term:

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

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

380 456.0135 General background screening provisions.—

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

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

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

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

407 Section 14. (1) For the 2014-2015 fiscal year, the sums  
 408 of \$113,541 in recurring funds and \$37,911 in nonrecurring funds  
 409 from the Medical Quality Assurance Trust Fund are appropriated  
 410 to the Department of Health, and two full-time equivalent  
 411 positions with associated salary rate of 70,359 are authorized,  
 412 for the purpose of implementing the regulatory provisions of  
 413 this act.

414 (2) For the 2015-2016 fiscal year, the sums of \$77,266 in  
 415 recurring funds and \$26,592 in nonrecurring funds from the  
 416 Medical Quality Assurance Trust Fund are appropriated to the



CS/CS/HB 1085

2014

417 | Department of Health for the purpose of implementing the  
418 | regulatory provisions of this act.

419 | Section 15. This act shall take effect January 1, 2015.