

1 A bill to be entitled

2 An act relating to behavior analysts; creating ch.
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. 470.46, F.S.;
15 requiring a licensee or his or her employer to report
16 to the board certain felony convictions on the part of
17 a licensee or suspicions that a licensee has committed
18 fraud or deceit; creating s. 470.47, F.S.; providing
19 penalties for practicing applied behavior analysis
20 without a license or wrongfully identifying oneself as
21 a licensed behavior analyst; creating s. 470.48, F.S.;
22 providing exceptions to the chapter; amending s.
23 456.001, F.S.; including licensed behavior analysts
24 and licensed assistant behavior analysts in the
25 definition of "health care practitioner"; providing an
26 effective date.

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

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

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

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

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

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

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

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

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

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

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

62 (6) "Licensed behavior analyst" means an individual who is
 63 licensed by the board and meets the requirements of this
 64 chapter.

65 (7) "Licensed assistant behavior analyst" means an
 66 individual who:

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

69 (b) Works under the supervision of a licensed behavior
 70 analyst.

71 (8) "Supervised experience" means an individual has
 72 completed the training necessary to satisfy the eligibility
 73 requirements for BACB certification.

74 Section 4. Section 470.415, Florida Statutes, is created
 75 to read:

76 470.415 Board of Applied Behavior Analysis.—

77 (1) The Board of Applied Behavior Analysis is created
 78 within the department. The board consists of seven members who

79 must be appointed by the Governor and confirmed by the Senate.

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

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

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

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

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

100 (3) As the terms of the initial members expire, the
101 Governor shall appoint successors for 3-year terms. Each
102 successor, except for the laypersons, must be licensed. A member
103 may not serve more than two consecutive terms.

104 (4) All provisions of chapter 456 relating to the board

105 apply.

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

108 470.42 Authority of the board; duties.-

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

113 (a) Standards of practice.

114 (b) Licensure, including the suspension and revocation of
 115 a license and the refusal to issue or renew a license.

116 (c) Limitations of activities.

117 (d) Supervision.

118 (e) Educational qualifications and continuing education
 119 requirements.

120 (f) The number of persons that a licensed behavior analyst
 121 or licensed assistant behavior analyst may supervise at one
 122 time.

123 (g) The competency of a person to receive or renew his or
 124 her license.

125 (h) The physical and mental examination of licensed
 126 behavior analysts and licensed assistant behavior analysts who
 127 may be impaired by reason of a mental, physical, or other
 128 condition that impedes their ability to practice competently.

129 (2) The board shall perform all of the following:

130 (a) Adopt a code of ethical standards and standards of

131 practice for licensed behavior analysts and licensed assistant
 132 behavior analysts.

133 (b) Keep a minute book containing a record of all meetings
 134 of the board.

135 (c) Maintain a registry of all persons licensed under this
 136 chapter. This registry must show the name of every licensee in
 137 this state, his or her current business and residence address
 138 and telephone number, and his or her licensure date and license
 139 number. A licensee shall notify the board of a change of name,
 140 address, or telephone number within 30 days after the change.

141 (d) Update its records annually.

142 (e) Publish annually and make available a current
 143 directory of all licensed behavior analysts and licensed
 144 assistant behavior analysts in this state.

145 (f) Adopt a seal and affix it to every license granted by
 146 the board.

147 (g) Maintain its official headquarters in Tallahassee.

148 (3) If the Behavior Analyst Certification Board stops
 149 certifying practitioners of applied behavior analysis in this
 150 state, the board shall approve a successor certification board
 151 that is accredited by the National Commission for Certifying
 152 Agencies or the American National Standards Institute to certify
 153 applied behavior analysts.

154 Section 6. Section 470.43, Florida Statutes, is created to
 155 read:

156 470.43 Licensure and renewal.—

157 (1) A person applying for an initial or renewal license as
158 a licensed behavior analyst or licensed assistant behavior
159 analyst shall apply to the board on such form and in such manner
160 as the board prescribes. The person shall furnish evidence to
161 the board that he or she:

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

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

165 (c) Complies with all applicable rules adopted by the
166 board;

167 (d) Has paid the licensure fee or the biennial renewal
168 fee; and

169 (e) Has passed a criminal background check, as determined
170 by the board.

171 (2) A person applying for an initial or renewal license as
172 an assistant behavior analyst shall apply to the board upon such
173 form and in such manner as the board prescribes and shall
174 furnish evidence to the board that such person:

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

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

178 (c) Complies with all applicable rules promulgated by the
179 board;

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

182 (e) Has paid the licensure fee or the biennial renewal

183 fee; and

184 (f) Has passed a criminal background check, as determined
 185 by the board.

186 (3) The board may issue a license to a person who holds an
 187 active license as a behavior analyst or assistant behavior
 188 analyst in another state that imposes comparable licensure
 189 requirements to those imposed by this state and that offers
 190 reciprocity to individuals licensed under this chapter.

191 Applicants for reciprocity must:

192 (a) Submit proof of licensure and board certification;

193 (b) Pass a criminal background check, as determined by the
 194 board; and

195 (c) Pay the licensure fee.

196 Section 7. Section 470.44, Florida Statutes, is created to
 197 read:

198 470.44 Fees.—

199 (1) The board shall establish by rule a fee not to exceed
 200 \$100 for an application and a fee not to exceed \$300 for an
 201 initial license or license renewal.

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

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

207 Section 8. Section 470.45, Florida Statutes, is created to
 208 read:

209 470.45 Disciplinary grounds and actions; reinstatement.-

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

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

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

216 (c) Suspend a license for more than 5 years.

217 (d) Limit or restrict a license for an indefinite period.

218 (2) The board may reinstate a license that has been
 219 suspended or revoked if, after a hearing conducted pursuant to
 220 s. 120.54, the board determines that the applicant is able to
 221 practice his or her profession with reasonable competency and in
 222 accordance with the code of ethics and standards of practice
 223 established by rule under s. 470.42. As a condition of
 224 reinstatement, the board may impose reasonable restrictions on
 225 the licensee's license to practice.

226 Section 9. Section 470.46, Florida Statutes, is created to
 227 read:

228 470.46 Duty to report felony or suspicion of fraud or
 229 deceit.-A licensee or employer of a licensee having actual or
 230 direct knowledge of facts shall report to the board a behavior
 231 analyst or assistant behavior analyst who:

232 (1) Has been charged or convicted of a felony that
 233 involved any act that bears directly on his or her
 234 qualifications or ability to practice applied behavior analysis

235 or any act that bears directly on the public health, safety, or
 236 welfare;

237 (2) Is suspected of fraud or deceit in procuring or
 238 attempting to procure a license to practice applied behavior
 239 analysis or of negligently performing actions that justify
 240 action against the license of the behavior analyst or assistant
 241 behavior analyst;

242 (3) Has had a board certification or a license to practice
 243 as a behavior analyst or assistant behavior analyst denied,
 244 limited, suspended, placed on probation, or revoked in another
 245 jurisdiction on grounds sufficient to cause a license or
 246 certificate to be denied, limited, suspended, placed on
 247 probation, or revoked in this state; or

248 (4) Is practicing applied behavior analysis without a
 249 license issued by the board unless specifically exempted in this
 250 chapter.

251 Section 10. Section 470.47, Florida Statutes, is created
 252 to read:

253 470.47 Violations and penalties.-

254 (1) Unless licensed or authorized under this chapter, a
 255 person who engages in the practice of applied behavior analysis,
 256 assists in the practice of applied behavior analysis, renders
 257 services designated as applied behavior analysis, or represents
 258 himself or herself as a practitioner of applied behavior
 259 analysis in this state commits a felony of the third degree,
 260 punishable as provided under s. 775.082, s. 775.083, or s.

261 775.084.

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

267 Section 11. Section 470.48, Florida Statutes, is created
268 to read:

269 470.48 Exceptions to applicability.—This chapter does not
270 prohibit or restrict the practice of the following:

271 (1) An individual licensed under chapter 490 to practice
272 psychology if the applied behavior analysis services he or she
273 provides are within the scope of chapter 490 and his or her
274 education, training, and experience.

275 (2) A certified teacher authorized to practice in this
276 state who is not a behavior analyst if he or she does not
277 represent himself or herself as a behavior analyst. The services
278 provided by a certified teacher must be within his or her
279 authorized scope of practice and within the scope of his or her
280 education, training, and experience and must be provided in the
281 course of his or her employment in a program approved by the
282 Department of Education. Teaching assistants, other than those
283 engaged in pupil personnel services, and student support
284 professionals are exempt from the requirements of this chapter
285 if they provide behavior analysis services under the supervision
286 of a certified teacher who meets the requirements of this

287 paragraph.

288 (3) A behavior analyst who practices with nonhuman
289 clients, including, but not limited to, applied animal
290 behaviorists and animal trainers.

291 (4) An unlicensed individual who provides applied behavior
292 analysis services under the extended authority and direction of
293 a licensed behavior analyst or licensed assistant behavior
294 analyst.

295 (5) An individual who teaches applied behavior analysis or
296 who conducts behavior analytic research if such teaching or
297 research does not involve the delivery of direct behavior
298 analysis interventions to individuals.

299 (6) A matriculated college or university student or
300 postdoctoral fellow whose activities are part of a defined
301 behavior analysis program of study, practicum, or intensive
302 practicum if his or her practice under this subsection is
303 directly supervised by a licensed behavior analyst or an
304 instructor of an accredited course sequence approved by the
305 Behavior Analyst Certification Board (BACB). A student or intern
306 may not represent himself or herself as a professional behavior
307 analyst but may use a title indicating his or her trainee
308 status, such as "behavior analyst student," "behavior analyst
309 intern," or "behavior analyst trainee."

310 (7) An unlicensed individual pursuing supervised
311 experiential training to meet eligibility requirements for BACB
312 certification if such training is supervised by an individual

313 who is licensed to practice applied behavior analysis and who
314 meets BACB supervisor requirements and if the supervised
315 experience is conducted in accordance with other BACB standards
316 and requirements.

317 (8) A board-certified behavior analyst, a doctoral level
318 board-certified behavior analyst, or an individual licensed to
319 practice applied behavior analysis in another state who resides
320 in another state and provides applied behavior analysis in this
321 state or to a resident of this state for less than 12 days per
322 year.

323 (9) A Florida-certified behavior analyst who is in good
324 standing with the Behavior Analyst Certification Board and who
325 is not a board-certified behavior analyst.

326 (10) A family member of a recipient of applied behavior
327 analysis services who implements certain procedures with the
328 recipient under the extended authority and direction of a
329 licensed behavior analyst or licensed assistant behavior
330 analyst. Such a family member may not represent himself or
331 herself as a professional behavior analyst.

332 (11) A behavior analyst who provides general behavior
333 analysis services to organizations if the services are for the
334 benefit of the organizations and do not involve direct services
335 to individuals.

336 (12) A physician licensed pursuant to chapter 458 or
337 chapter 459 if he or she does not represent himself or herself
338 as a professional behavior analyst.

339 (13) An individual licensed pursuant to chapter 491 as a
340 clinical social worker, marriage and family therapist, or mental
341 health counselor if he or she does not represent himself or
342 herself as a professional behavior analyst.

343 (14) A salaried employee of a private, nonprofit
344 organization providing behavior analysis services to children,
345 youth, and families if the services are provided for no charge,
346 the employee is performing duties for which he or she was
347 trained and hired, and the employee does not represent himself
348 or herself as a professional behavior analyst.

349 (15) A school psychologist certified in school psychology
350 by the Department of Education who performs behavior analysis
351 services as an employee of a public or private educational
352 institution. Such exemption does not authorize unlicensed
353 practice that is not performed directly as an employee of an
354 educational institution.

355 (16) A rabbi, priest, minister, or member of the clergy of
356 a religious denomination or sect if engaging in activities that
357 are within the scope of the performance of his or her regular or
358 specialized ministerial duties and for which no separate fee is
359 charged, or if such activities are performed, with or without a
360 fee, for or under the auspices or sponsorship, individually or
361 in conjunction with others, of an established and legally
362 cognizable church, denomination, or sect; and if the person
363 rendering service remains accountable to the established
364 authority thereof.

HB 1085

2014

365 Section 12. Subsection (4) of section 456.001, Florida
366 Statutes, is amended to read:
367 456.001 Definitions.—As used in this chapter, the term:
368 (4) "Health care practitioner" means any person licensed
369 under chapter 457; chapter 458; chapter 459; chapter 460;
370 chapter 461; chapter 462; chapter 463; chapter 464; chapter 465;
371 chapter 466; chapter 467; part I, part II, part III, part V,
372 part X, part XIII, or part XIV of chapter 468; chapter 470;
373 chapter 478; chapter 480; part III or part IV of chapter 483;
374 chapter 484; chapter 486; chapter 490; or chapter 491.
375 Section 13. This act shall take effect October 1, 2014.