S T A T E O F N E W Y O R K

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S E N A T E - A S S E M B L Y

February 25, 2011

IN SENATE -- Introduced by Sen. LAVALLE -- read twice and ordered printed, and when printed to be committed to the Committee on Higher Education

IN ASSEMBLY -- Introduced by M. of A. CANESTRARI, GUNTHER, ENGLEBRIGHT, N. RIVERA, REILLY, MARKEY, SPANO, BURLING, LUPARDO, LAVINE, MAISEL, MONTESANO, MURRAY, SIMOTAS -- Multi-Sponsored by -- M. of A. ABBATE, CONTE, GABRYSZAK, GIBSON, MAYERSOHN, McENENY, McLAUGHLIN, NOLAN, PHEFFER, P. RIVERA, TITONE, TOWNS, WEISENBERG -- read once and referred to the Committee on Higher Education

AN ACT to amend the education law, in relation to the licensure of dietitians and nutritionists

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Legislative findings and declaration of purpose. The legislature finds that the application of scientific knowledge relating to nutrition is important in effective care, treatment and prevention of disease or trauma and in the attainment and maintenance of health, and acknowledges that the rendering and communication of sound dietetic and nutrition services in hospitals, nursing homes, extended care and ambulatory care settings, school districts, health departments, private practice and consultation, and in other settings requires trained and competent professionals. The legislature further finds that it is necessary in the provision of medical nutrition therapy for such professionals to be licensed under article 157 of the education law to ensure quality care through a standardized nutrition care process, consisting of a nutrition assessment, nutrition diagnosis, nutrition intervention and the monitoring and evaluation of outcomes directly related to the nutrition care process. Therefore, it is hereby declared to be the purpose of this act to protect the health, safety, and welfare of the

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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public by providing for the licensure and regulation of the activities of persons engaged in the practice of dietetics and nutrition.

S 2. Section 8000 of the education law, as added by chapter 635 of the laws of 1991, is amended to read as follows:

S 8000. Introduction. This article applies to the use of the titles ["certified dietitian" and "certified nutritionist"] "LICENSED DIETITIAN/NUTRITIONIST" OR "LDN". The general provision for all professions contained in article one hundred thirty of this title shall apply to this article.

S 3. Section 8001 of the education law, as added by chapter 635 of the laws of 1991, is amended to read as follows:

S 8001. [Definitions] DEFINITION OF THE PRACTICE OF DIETETICS AND NUTRITION. [1. Dietetics and nutrition are herein each defined as the integration and application of principles derived from the sciences of nutrition, biochemistry, physiology, food management and behavioral and social sciences to achieve and maintain people's health.

2. Where the title "certified dietitian" or "certified nutritionist" is used in this article it shall mean "certified dietitian", "certified dietician", or "certified nutritionist".

3. A certified dietitian or certified nutritionist is one who engages in the integration and application of principles derived from the sciences of nutrition, biochemistry, physiology, food management and behavioral and social sciences to achieve and maintain people's health, and who is certified as such by the department pursuant to section eight thousand four of this article. The primary function of a certified dietitian or certified nutritionist is the provision of nutrition care services that shall include:

(a) Assessing nutrition needs and food patterns;

(b) Planning for and directing the provision of food appropriate for physical and nutrition needs; and

(c) Providing nutrition counseling.] THE PRACTICE OF DIETETICS AND NUTRITION IS THE APPLICATION OF MEDICAL NUTRITION THERAPY AND A STANDARDIZED NUTRITION CARE PROCESS, INCLUDING NUTRITION ASSESSMENT, NUTRITION DIAGNOSIS, NUTRITION INTERVENTION, AND NUTRITION EVALUATION AND MONITORING FOR THE PREVENTION OR TREATMENT OF NUTRITION RELATED ILLNESSES, NOURISHMENT, AND EDUCATION OF INDIVIDUALS AND GROUPS THROUGHOUT THE LIFECYCLE. 1. "MEDICAL NUTRITION THERAPY" IS AN EVIDENCE BASED APPLICATION OF THE NUTRITION CARE PROCESS FOCUSED ON PREVENTION, DELAY OR MANAGEMENT OF DISEASES AND CONDITIONS, AND INVOLVES AN IN-DEPTH ASSESSMENT, PERIODIC REASSESSMENT AND INTERVENTION.

2. "NUTRITION DIAGNOSIS" IN THE CONTEXT OF THE PRACTICE OF DIETETICS AND NUTRITION MEANS THE IDENTIFICATION AND LABELING OF EXISTING NUTRITION PROBLEMS EXPRESSED IN TERMS OF ETIOLOGY, SIGNS AND SYMPTOMS. NUTRITION DIAGNOSIS IS DISTINCT FROM A MEDICAL DIAGNOSIS.

3. "NUTRITION ASSESSMENT" IS A SYSTEMATIC APPROACH TO COLLECT, RECORD, AND INTERPRET RELEVANT DATA FROM PATIENTS, CLIENTS, FAMILY MEMBERS, CAREGIVERS, AND OTHER INDIVIDUALS AND GROUPS. NUTRITION ASSESSMENT IS AN ONGOING, DYNAMIC PROCESS THAT INVOLVES INITIAL DATA COLLECTION AS WELL AS CONTINUAL REASSESSMENT AND ANALYSIS OF THE PATIENT'S/CLIENT'S STATUS COMPARED TO SPECIFIED CRITERIA.

4. "NUTRITION INTERVENTION" IS A PURPOSEFULLY PLANNED ACTION, SUCH AS, BUT NOT LIMITED TO, NUTRITION THERAPY OR NUTRITION COUNSELING, DESIGNED TO CHANGE NUTRITION RELATED BEHAVIORS, RISK FACTORS, ENVIRONMENTAL CONDITIONS OR ASPECTS OF HEALTH STATUS FOR INDIVIDUALS, GROUPS, OR THE COMMUNITY.

S 4. Section 8002 of the education law, as added by chapter 635 of the laws of 1991, is amended to read as follows:

S 8002. Use of titles. Only a person [certified] LICENSED under this article shall be authorized to use the title ["certified dietitian", "certified dietician", or "certified nutritionist"] "LICENSED DIETITIAN/NUTRITIONIST" OR "LDN". NO PERSON, FIRM, PARTNERSHIP OR CORPORATION CLAIMING TO BE ENGAGED IN THE PRACTICE OF DIETETICS AND NUTRITION SHALL IN ANY MANNER ADVERTISE, OR PLACE ANY ADVERTISEMENT FOR SERVICES AS DEFINED IN SECTION EIGHT THOUSAND ONE OF THIS ARTICLE UNLESS SUCH SERVICES ARE PERFORMED BY A PERSON LICENSED OR AUTHORIZED PURSUANT TO THIS ARTICLE.

S 5. Section 8003 of the education law, as amended by chapter 282 of the laws of 1992, is amended to read as follows:

S 8003. State board for dietetics and nutrition. A state board for dietetics and nutrition shall be appointed by the board of regents, on recommendation of the commissioner, for the purpose of assisting the board of regents and the department on matters of [certification] LICENSURE, PRACTICE and professional conduct in accordance with section sixty-five hundred eight of this chapter.

The board shall consist of not less than [thirteen] NINE members, [ten] SEVEN of whom shall be [certified dietitians or certified nutritionists, except that the members of the first board need not be certified but shall be persons who are eligible for certification under the provisions of this article prior to their appointment to the board] LICENSED PURSUANT TO THIS ARTICLE. The [first] board, with respect to members representing the profession, shall consist of [five] FOUR members registered by a national dietetic association having registration standards acceptable to the department and [five] THREE members who are [members of or] registered by a national nutritional association having [membership and/or] registration standards acceptable to the department. [Thereafter, members of the profession appointed to such board shall be certified pursuant to this article.] To the extent reasonable, the board of regents should insure the state board is broadly representative of various [professional interests] PRACTICE AREAS within the dietetic and [nutritional] NUTRITION community. [Three members] ONE MEMBER shall be [representatives] REPRESENTATIVE of the general public AND ONE MEMBER SHALL BE A PHYSICIAN LICENSED UNDER ARTICLE ONE HUNDRED THIRTY-ONE OF THIS TITLE. MEMBERS OF THE FIRST BOARD NEED NOT BE LICENSED PRIOR TO THEIR APPOINTMENT TO THE BOARD. THE TERMS OF THE FIRST APPOINTED MEMBERS SHALL BE STAGGERED SO THAT FOUR ARE APPOINTED FOR THREE YEARS, THREE ARE APPOINTED FOR FOUR YEARS, AND TWO ARE APPOINTED FOR FIVE YEARS. An executive secretary to the board shall be appointed by the board of regents on the recommendation of the commissioner.

S 6. Section 8004 of the education law, as added by chapter 635 of the laws of 1991, subparagraph 2 of paragraph (a) of subdivision 2 and subparagraph 2 of paragraph (b) of subdivision 2 and subdivision 3 as amended by chapter 282 of the laws of 1992, is amended to read as follows:

S 8004. Requirements for [certification] PROFESSIONAL LICENSE. To qualify for [certification] A LICENSE, an applicant shall fulfill the following requirements:

1. File an application with the department;

2. [(a)(1) Have received an education including a bachelor's degree, or its equivalent as determined by the department, in dietetics/nutrition or an equivalent major course of study which shall

include appropriate core curriculum courses in dietetics/nutrition from an accredited college or university as approved by the department, in accordance with the commissioner's regulations; and

(2) Have completed a planned, continuous, experience component, in accordance with the commissioner's regulations, in dietetic or nutrition practice under the supervision of a certified dietitian or certified nutritionist or a dietitian or nutritionist who is registered by or is a member of a national dietetic association or national nutrition association having registration or membership standards acceptable to the department; such experience shall be satisfactory to the board and in accordance with the commissioner's regulations; or

(b)(1) Have received an education including an associates degree in dietetics or nutrition acceptable to the department,

(2) In the last fifteen years have completed ten years of experience and education in the field of dietetics or nutrition satisfactory to the board in accordance with the commissioner's regulations. These ten years must be the full time equivalent of any combination of post secondary dietetic or nutrition education and dietetic or nutrition work experience satisfactory to the board in accordance with the commissioner's regulations, and

(3) Have obtained the endorsement of three dietitians or nutritionists acceptable to the department] HAVE RECEIVED A BACHELOR'S DEGREE OR HIGHER IN DIETETICS AND NUTRITION, OR A BACHELOR'S DEGREE OR HIGHER WHICH INCLUDES APPROPRIATE MAJOR COURSE OF STUDY IN DIETETICS AND NUTRITION, OR A BACHELOR'S DEGREE OR HIGHER AND POST GRADUATE COMPLETION OF A MAJOR COURSE OF STUDY IN DIETETICS AND NUTRITION; FROM A PROGRAM REGISTERED BY THE DEPARTMENT OR DETERMINED BY THE DEPARTMENT TO BE THE SUBSTANTIAL EQUIVALENT, IN ACCORDANCE WITH THE COMMISSIONER'S REGULATIONS. MAJOR COURSE OF STUDY IN DIETETICS AND NUTRITION SHALL INCLUDE BUT NOT BE LIMITED TO SUCH AREAS AS HUMAN NUTRITION, NUTRITION EDUCATION, FOOD AND NUTRITION, DIETETIC OR FOOD SYSTEMS AND MANAGEMENT WHICH ADDRESSES THE PRACTICE OF DIETETICS AND NUTRITION UNDER VARYING CONDITIONS OF HEALTH AND DISEASE, SOCIAL, PHYSICAL, PSYCHOLOGICAL AND ECONOMIC STATUS FOR APPROPRIATE NUTRITION CARE;

3. THROUGH DECEMBER THIRTY-FIRST, TWO THOUSAND FIFTEEN, COMPLETE AT A MINIMUM NINE HUNDRED HOURS IN THE PRACTICE OF DIETETICS AND NUTRITION IN A PLANNED, CONTINUOUS, EXPERIENCE COMPONENT UNDER THE SUPERVISION OF AN INDIVIDUAL LICENSED PURSUANT TO THIS ARTICLE, IN ACCORDANCE WITH THE COMMISSIONER'S REGULATIONS; EFFECTIVE JANUARY FIRST, TWO THOUSAND SIXTEEN AND THEREAFTER, SUCH EXPERIENCE SHALL INCLUDE AT A MINIMUM TWELVE HUNDRED HOURS;

[3.] 4. Pass an examination satisfactory to the board and in accordance with the commissioner's regulations; provided that such examination shall test a level of knowledge and experience equivalent to that obtained by an individual satisfactorily meeting the requirements of [paragraph (a) of subdivision] SUBDIVISIONS two AND THREE of this section;

[4.] 5. Pay a fee of one hundred seventy-five dollars to the department for admission to a department conducted examination and for initial certification, a fee of eighty-five dollars for each reexamination, a fee of one hundred fifteen dollars for an initial certification for persons not requiring admission to a department conducted examination, a fee of one hundred [fifty-five] SEVENTY-FIVE dollars for each triennial registration period;

[5.] 6. Be at least eighteen years of age;

7. BE OF GOOD MORAL CHARACTER AS DETERMINED BY THE DEPARTMENT.

S 7. Section 8005 of the education law, as added by chapter 635 of the laws of 1991, is amended to read as follows:

S 8005. Special provisions. Nothing [contained in this article shall be deemed to alter, modify or impair any conditions of employment relating to service in the federal government, the state of New York, its political subdivisions, including school districts, or special districts and authorities or any facilities or institutions under the jurisdiction of or subject to the certification of any agency of the state of New York or its political subdivisions] IN THIS ARTICLE SHALL PROHIBIT OR LIMIT ANY STATE, COUNTY OR MUNICIPAL EMPLOYEE ENGAGED IN THE PRACTICE OF DIETETICS AND NUTRITION ON THE DATE THE CHAPTER OF THE LAWS OF TWO THOUSAND ELEVEN WHICH AMENDED THIS SECTION TAKES EFFECT FOR THE PERIOD DURING WHICH THEY MAINTAIN SUCH EMPLOYMENT WITH SUCH GOVERNMENTAL UNIT WITHIN THE CONTEXT OF SUCH EMPLOYMENT AND SHALL BE LIMITED TO THE SERVICES PROVIDED UPON SUCH EFFECTIVE DATE, HOWEVER, THIS SECTION SHALL NOT AUTHORIZE THE USE OF ANY TITLE AUTHORIZED PURSUANT TO THIS ARTICLE. PROVIDED HOWEVER, THAT EMPLOYEES ENGAGED IN THE PRACTICE OF DIETETICS AND NUTRITION HIRED TWO YEARS AFTER SUCH EFFECTIVE DATE SHALL BE SUBJECT TO ALL THE REQUIREMENTS OF THIS ARTICLE.

S 8. Section 8006 of the education law, as added by chapter 635 of the laws of 1991 and subdivision 2 as amended by chapter 282 of the laws of 1992, is amended to read as follows:

S 8006. Special conditions. A person shall be [certified] LICENSED without examination provided that, within [three years of the effective date of this article] ONE YEAR OF THE EFFECTIVE DATE OF THE CHAPTER OF THE LAWS OF TWO THOUSAND ELEVEN WHICH AMENDED THIS SECTION, the individual:

1. files an application and pays the appropriate fees to the department; and

[2.] (a) IS CURRENTLY CERTIFIED UNDER THIS ARTICLE PRIOR TO THE EFFECTIVE DATE OF THE CHAPTER OF THE LAW OF TWO THOUSAND ELEVEN WHICH AMENDED THIS SECTION; OR

(B) is registered as a dietitian or nutritionist by a national dietetic or national nutrition association having registration standards acceptable to the department; AND

[(b)] 2. meets the requirements of [subparagraph one of paragraph (a) of] subdivision two [and subdivision five] of section eight thousand four of this article [and has been actively engaged in the provision of nutrition care services for a minimum of three years during the five years immediately preceding the effective date of this article; or

(c) meets all the requirements of paragraph (b) of subdivision two and subdivision five of section eight thousand four of this article].

S 9. The education law is amended by adding two new sections 8007 and 8008 to read as follows:

S 8007. EXEMPTIONS. THIS ARTICLE SHALL NOT BE CONSTRUED TO AFFECT OR PREVENT:

1. A LICENSED PHYSICIAN FROM PRACTICING HIS OR HER PROFESSION AS DEFINED UNDER ARTICLES ONE HUNDRED THIRTY-ONE AND ONE HUNDRED THIRTY-ONE-B OF THIS TITLE; A REGISTERED PROFESSIONAL NURSE OR A CERTIFIED NURSE PRACTITIONER PRACTICING HIS OR HER PROFESSION AS DEFINED UNDER ARTICLE ONE HUNDRED THIRTY-NINE OF THIS TITLE; OR QUALIFIED MEMBERS OF OTHER PROFESSIONS LICENSED UNDER THIS TITLE FROM PERFORMING WORK INCIDENTAL TO THE PRACTICE OF THEIR PROFESSIONS, EXCEPT THAT SUCH PERSONS MAY NOT HOLD THEMSELVES OUT UNDER THE TITLE AUTHORIZED BY THIS ARTICLE;

2. AN INDIVIDUAL FROM ENGAGING IN THE PRACTICE OF DIETETICS OR NUTRITION WHILE PARTICIPATING IN THE EDUCATION OR EXPERIENCE REQUIREMENTS DEFINED IN SUBDIVISIONS TWO AND THREE OF SECTION EIGHT THOUSAND FOUR OF THIS ARTICLE;

3. ANY PERSON WHO DOES NOT HOLD HIMSELF OR HERSELF OUT TO BE LICENSED PURSUANT TO THIS ARTICLE FROM FURNISHING GENERAL NUTRITION INFORMATION ON FOOD OR DIETARY SUPPLEMENTS; ENGAGING IN THE EXPLANATION TO CUSTOMERS ABOUT FOOD OR FOOD PRODUCTS IN CONNECTION WITH THE MARKETING AND DISTRIBUTION OF THOSE PRODUCTS; PROVIDED THAT NOTHING IN THIS SUBDIVISION SHALL BE DEEMED TO AUTHORIZE THE PROVISION OF MEDICAL NUTRITION THERAPY; AND

4. A PERSON FROM PRESENTING A GENERAL PROGRAM OF INSTRUCTION FOR WEIGHT CONTROL PROVIDED THE GENERAL PROGRAM IS APPROVED IN WRITING BY A LICENSED DIETITIAN, A DIETITIAN REGISTERED BY THE COMMISSION OF DIETETIC REGISTRATION OF THE AMERICAN DIETETIC ASSOCIATION OR A LICENSED PHYSICIAN.

PROVIDED THAT, NO TITLE, SIGN, CARD OR DEVICE SHALL BE USED IN SUCH MANNER AS TO TEND TO CONVEY THE IMPRESSION THAT THE PERSON RENDERING SUCH SERVICE IS LICENSED PURSUANT TO THIS ARTICLE.

S 8008. LIMITED PERMIT. THE DEPARTMENT SHALL ISSUE A LIMITED PERMIT TO AN APPLICANT FOR LICENSURE WHO HAS MET ALL THE REQUIREMENTS OF SECTION EIGHT THOUSAND FOUR OF THIS ARTICLE, BUT HAS NOT YET PASSED THE EXAMINATION. 1. THE DURATION OF A LIMITED PERMIT SHALL NOT EXCEED ONE YEAR FROM THE TIME OF ITS FIRST ISSUE AND THE DEPARTMENT MAY FOR GOOD CAUSE RENEW A LIMITED PERMIT PROVIDED THAT NO APPLICANT SHALL PRACTICE UNDER ANY LIMITED PERMIT FOR MORE THAN A TOTAL OF TWO YEARS.

2. ALL PRACTICE UNDER A LIMITED PERMIT SHALL BE UNDER THE SUPERVISION OF AN INDIVIDUAL LICENSED PURSUANT TO THIS ARTICLE EXCEPT THAT PRIOR TO THE EFFECTIVE DATE OF THIS SECTION, AND FOR A PERIOD OF THREE YEARS FOLLOWING SUCH EFFECTIVE DATE, IN ORDER TO QUALIFY AS A SUPERVISOR SUCH INDIVIDUAL NEED ONLY BE ELIGIBLE FOR LICENSURE.

3. THE FEE FOR EACH LIMITED PERMIT SHALL BE SEVENTY-FIVE DOLLARS.

S 10. This act shall take effect one year after it shall have become a law; provided however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date is authorized and directed to be made and completed by the department of education on or before such effective date.