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

8359

I N A S S E M B L Y

January 9, 2014

Introduced by M. of A. ROSENTHAL, PAULIN -- read once and referred to the Committee on Higher Education

AN ACT to amend the education law, in relation to the licensure of lactation consultants and providing for establishment of a lactation consultant licensing board

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

Section 1. Short title. This act shall be known and may be cited as the "lactation consultant practice act".

S 2. The education law is amended by adding a new article 167 to read as follows:

ARTICLE 167
LACTATION CONSULTANTS

SECTION 8750. LEGISLATIVE INTENT.
8751. DEFINITIONS.
8752. LACTATION CONSULTANT LICENSING BOARD.
8753. VIOLATIONS.
8754. HEARINGS AND PROCEEDINGS.
8755. APPLICABILITY.
8756. SEVERABILITY.

S 8750. LEGISLATIVE INTENT. THE LEGISLATURE ACKNOWLEDGES THAT THE APPLICATION OF SPECIFIC KNOWLEDGE AND SKILL RELATING TO BREASTFEEDING IS IMPORTANT TO THE HEALTH OF MOTHERS AND BABIES, AND ACKNOWLEDGES FURTHER THAT THE RENDERING OF SOUND LACTATION CARE AND SERVICES IN HOSPITALS, PHYSICIAN PRACTICES, PRIVATE HOMES AND OTHER SETTINGS REQUIRES TRAINED AND COMPETENT PROFESSIONALS. FURTHER, THE LEGISLATURE DECLARES IT TO BE THE PURPOSE OF THIS ARTICLE TO PROTECT THE HEALTH, SAFETY AND WELFARE OF THE PUBLIC BY PROVIDING FOR THE LICENSURE AND REGULATION OF THE ACTIVITIES OF PERSONS ENGAGED IN LACTATION CARE AND SERVICES.

S 8751. DEFINITIONS. AS USED IN THIS ARTICLE, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

1. "APPLICANT" MEANS ANY PERSON SEEKING A LICENSE UNDER THIS ARTICLE.

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

2. "BOARD" MEANS THE LACTATION CONSULTANT LICENSING BOARD ESTABLISHED PURSUANT TO SECTION EIGHTY-SEVEN HUNDRED FIFTY-TWO OF THIS ARTICLE.

3. "INTERNATIONAL BOARD CERTIFIED LACTATION CONSULTANT (IBCLC)" MEANS AN INDIVIDUAL WHO HOLDS CURRENT CERTIFICATION FROM THE INTERNATIONAL BOARD OF LACTATION CONSULTANT EXAMINERS (IBLCE) AFTER DEMONSTRATING THE APPROPRIATE EDUCATION, KNOWLEDGE AND EXPERIENCE NECESSARY FOR INDEPENDENT CLINICAL PRACTICE.

4. "INTERNATIONAL BOARD OF LACTATION CONSULTANT EXAMINERS (IBLCE)" MEANS THE INTERNATIONAL ORGANIZATION THAT CERTIFIES IBCLCS AND IS INDEPENDENTLY ACCREDITED BY THE NATIONAL COMMISSION OF CERTIFYING AGENCIES.

5. "LACTATION CARE AND SERVICES" MEANS THE CLINICAL APPLICATION OF SCIENTIFIC PRINCIPLES AND A MULTIDISCIPLINARY BODY OF EVIDENCE FOR THE EVALUATION, PROBLEM IDENTIFICATION, TREATMENT, EDUCATION AND CONSULTATION TO PROVIDE LACTATION CARE AND SERVICES TO CHILDBEARING FAMILIES. LACTATION CARE AND SERVICES SHALL INCLUDE, BUT NOT BE LIMITED TO:

(A) LACTATION ASSESSMENT THROUGH THE SYSTEMATIC COLLECTION OF SUBJECTIVE AND OBJECTIVE DATA;

(B) ANALYSIS OF DATA AND CREATION OF A PLAN OF CARE;

(C) IMPLEMENTATION OF A LACTATION CARE PLAN WITH DEMONSTRATION AND INSTRUCTION TO PARENTS AND COMMUNICATION TO THE PRIMARY HEALTH CARE PROVIDER;

(D) EVALUATION OF OUTCOMES;

(E) PROVISION OF LACTATION EDUCATION TO PARENTS AND HEALTH CARE PROVIDERS; AND

(F) THE RECOMMENDATION AND USE OF ASSISTIVE DEVICES.

6. "LACTATION CONSULTANT" MEANS A PERSON DULY LICENSED UNDER THIS ARTICLE TO PRACTICE LACTATION CARE AND SERVICES.

7. "PRACTICE" MEANS RENDERING OR OFFERING TO RENDER ANY LACTATION CARE AND SERVICES TO ANY INDIVIDUAL, FAMILY OR GROUP OF INDIVIDUALS.

S 8752. LACTATION CONSULTANT LICENSING BOARD. 1. THERE IS HEREBY CREATED THE LACTATION CONSULTANT LICENSING BOARD. THE BOARD SHALL CONSIST OF FIVE MEMBERS APPOINTED BY THE GOVERNOR WITH THE ADVICE AND CONSENT OF THE SENATE AS FOLLOWS:

(A) FOUR MEMBERS SHALL BE LACTATION CONSULTANTS; AND

(B) ONE MEMBER SHALL REPRESENT THE PUBLIC AT LARGE AND HAVE NO CONNECTION WITH THE PRACTICE OF LACTATION.

2. BOARD MEMBERS SHALL SERVE FOR TERMS OF FOUR YEARS AND VACANCIES SHALL BE APPOINTED IN THE SAME MANNER AS PROVIDED FOR ORIGINAL APPOINTMENTS.

3. MEMBERS OF THE BOARD SHALL RECEIVE NO COMPENSATION BUT SHALL BE ENTITLED TO BE REIMBURSED FOR ACTUAL AND NECESSARY EXPENSES INCURRED IN THE PERFORMANCE OF THEIR OFFICIAL DUTIES.

4. THE MEMBERS OF THE BOARD SHALL BE CITIZENS OF THE UNITED STATES AND RESIDENTS OF THIS STATE; PROVIDED, HOWEVER, THAT THE MEMBERS APPOINTED PURSUANT TO PARAGRAPH (A) OF SUBDIVISION ONE OF THIS SECTION SHALL HAVE ENGAGED IN THE PRACTICE OF LACTATION CARE AND SERVICES FOR AT LEAST ONE YEAR AND BE LICENSED PURSUANT TO THIS ARTICLE.

5. THE GOVERNOR MAY REMOVE MEMBERS OF THE BOARD, AFTER NOTICE AND OPPORTUNITY FOR A HEARING, FOR INCOMPETENCE, NEGLECT OF DUTY, MALFEASANCE, UNPROFESSIONAL CONDUCT, CONVICTION OF ANY FELONY, FAILURE TO MEET THE QUALIFICATIONS OF THIS ARTICLE, OR COMMITTING ANY ACT PROHIBITED BY THIS ARTICLE.

6. THE BOARD SHALL MEET ANNUALLY AND SHALL ELECT FROM ITS MEMBERS A CHAIRPERSON, VICE-CHAIRPERSON, AND ANY OTHER OFFICERS AS DEEMED NECESSARY WHO SHALL HOLD OFFICE ACCORDING TO THE RULES ADOPTED BY THE BOARD.

IN ADDITION TO ITS ANNUAL MEETING, THE BOARD MAY HOLD ADDITIONAL MEETINGS EACH YEAR AS PROVIDED BY THE RULES ADOPTED BY THE BOARD.

7. THE BOARD SHALL PERFORM SUCH DUTIES AND POSSESS AND EXERCISE SUCH POWERS RELATIVE TO THE PROTECTION OF THE PUBLIC HEALTH AND THE CONTROL AND REGULATION OF LACTATION CONSULTANTS AS THIS ARTICLE PRESCRIBES AND CONFERS UPON IT.

8. THE BOARD SHALL HAVE THE POWER AND AUTHORITY TO:

(A) ENFORCE THE PROVISIONS OF THIS ARTICLE, AND IT SHALL BE GRANTED ALL OF THE NECESSARY DUTIES, POWERS AND AUTHORITY TO CARRY OUT THIS RESPONSIBILITY;

(B) DRAFT, ADOPT, AMEND, REPEAL AND ENFORCE SUCH RULES AS IT DEEMS NECESSARY FOR THE ADMINISTRATION AND ENFORCEMENT OF THIS ARTICLE IN THE PROTECTION OF PUBLIC HEALTH, SAFETY AND WELFARE;

(C) LICENSE DULY QUALIFIED APPLICANTS BY EXAMINATION OR REINSTATEMENT;

(D) IMPLEMENT THE DISCIPLINARY PROCESS;

(E) ENFORCE QUALIFICATIONS FOR LICENSURE;

(F) SET STANDARDS FOR COMPETENCY OF LICENSEES CONTINUING IN OR RETURNING TO PRACTICE;

(G) ISSUE ORDERS WHEN A LICENSE IS SURRENDERED TO THE BOARD WHILE A COMPLAINT, INVESTIGATION OR DISCIPLINARY ACTION AGAINST SUCH LICENSE IS PENDING;

(H) ADOPT, REVISE AND ENFORCE RULES REGARDING THE ADVERTISING BY LICENSEES INCLUDING, BUT NOT LIMITED TO, RULES TO PROHIBIT FALSE, MISLEADING OR DECEPTIVE PRACTICES;

(I) ADOPT, PUBLISH IN PRINT OR ELECTRONICALLY, AND ENFORCE A CODE OF ETHICS;

(J) ESTABLISH EXAMINATION AND LICENSING FEES;

(K) REQUEST AND RECEIVE THE ASSISTANCE OF STATE EDUCATIONAL INSTITUTIONS OR OTHER STATE AGENCIES;

(L) PREPARE INFORMATION OF CONSUMER INTEREST DESCRIBING THE REGULATORY FUNCTIONS OF THE BOARD AND DESCRIBING THE PROCEDURES BY WHICH CONSUMER COMPLAINTS ARE FILED WITH AND RESOLVED BY THE BOARD;

(M) ESTABLISH CONTINUING EDUCATION REQUIREMENTS; AND

(N) ADOPT A SEAL WHICH SHALL BE AFFIXED ONLY IN SUCH MANNER AS PRESCRIBED BY THE BOARD.

9. THE BOARD MAY GRANT, UPON APPLICATION AND PAYMENT OF PROPER FEES, A LICENSE WITHOUT EXAMINATION TO A PERSON WHO, AT THE TIME OF APPLICATION, EITHER:

(A) HOLDS A VALID LICENSE AS A LICENSED LACTATION CONSULTANT ISSUED BY ANOTHER STATE, POLITICAL TERRITORY OR JURISDICTION ACCEPTABLE TO THE BOARD IF, IN THE BOARD'S OPINION, THE REQUIREMENTS FOR THAT LICENSE ARE SUBSTANTIALLY EQUAL TO OR GREATER THAN THE REQUIREMENTS OF THIS ARTICLE; OR

(B) PRESENTS EVIDENCE SATISFACTORY TO THE BOARD THAT THE APPLICANT IS AN IBCLC IN GOOD STANDING WITH THE IBLCE, OR ITS SUCCESSOR ORGANIZATION.

10. EACH APPLICANT FOR A LICENSE AS A LACTATION CONSULTANT SHALL BE AT LEAST EIGHTEEN YEARS OF AGE, SHALL HAVE SUBMITTED A COMPLETED APPLICATION UPON A FORM AND IN SUCH MANNER AS THE BOARD PRESCRIBES, ACCOMPANIED BY APPLICABLE FEES, AND SHALL BE IN COMPLIANCE WITH THE FOLLOWING REQUIREMENTS:

(A) MEETING THE INTERNATIONAL EDUCATION AND CLINICAL STANDARDS ESTABLISHED FOR IBCLCS BY THE IBLCE OR OTHER NATIONAL TESTING SERVICE AS APPROVED BY THE BOARD;

(B) PROVIDING PROOF OF SUCCESSFUL COMPLETION OF THE IBLCE EXAMINATION OR OTHER EXAMINATION AS APPROVED BY THE BOARD;

(C) HAVING SATISFACTORY RESULTS FROM A FINGERPRINT RECORD CHECK REPORT CONDUCTED BY THE DEPARTMENT OR THE BUREAU OF STATE POLICE, AS DETERMINED BY THE BOARD. APPLICATION FOR A LICENSE UNDER THIS SECTION SHALL CONSTITUTE EXPRESS CONSENT AND AUTHORIZATION FOR THE BOARD TO PERFORM A CRIMINAL BACKGROUND CHECK. EACH APPLICANT WHO SUBMITS AN APPLICATION TO THE BOARD FOR LICENSURE BY EXAMINATION AGREES TO PROVIDE THE BOARD WITH ANY AND ALL INFORMATION NECESSARY TO RUN A CRIMINAL BACKGROUND CHECK, INCLUDING, BUT NOT LIMITED TO, CLASSIFIABLE SETS OF FINGERPRINTS. THE APPLICANT SHALL BE RESPONSIBLE FOR ALL FEES ASSOCIATED WITH THE PERFORMANCE OF SUCH BACKGROUND CHECK; AND

(D) COMPLETION OF SUCH OTHER REQUIREMENTS AS MAY BE PRESCRIBED BY THE BOARD.

11. THE BOARD MAY REQUIRE THAT ALL APPLICATIONS BE MADE UNDER OATH.

12. AFTER EVALUATION OF AN APPLICATION AND OTHER EVIDENCE SUBMITTED, THE BOARD SHALL NOTIFY EACH APPLICANT THAT THE APPLICATION AND EVIDENCE SUBMITTED ARE SATISFACTORY AND ACCEPTED OR UNSATISFACTORY AND REJECTED. IF REJECTED, THE NOTICE SHALL STATE THE REASONS FOR THE REJECTION.

13. EXAMINATIONS TO DETERMINE COMPETENCE SHALL BE ADMINISTERED TO QUALIFIED APPLICANTS AT LEAST ONCE EACH CALENDAR YEAR. THE EXAMINATIONS MAY BE ADMINISTERED BY A NATIONAL TESTING SERVICE. THE BOARD SHALL PRESCRIBE OR DEVELOP THE EXAMINATIONS WHICH MAY INCLUDE AN EXAMINATION GIVEN BY THE IBLCE OR ANY OTHER EXAMINATION APPROVED BY TWO-THIRDS VOTE OF THE BOARD.

14. (A) A LICENSE ISSUED BY THE BOARD IS THE PROPERTY OF THE BOARD AND SHALL BE SURRENDERED UPON DEMAND.

(B) THE LICENSEE SHALL DISPLAY THE LICENSE CERTIFICATE IN AN APPROPRIATE AND PUBLIC MANNER.

(C) THE LICENSEE SHALL INFORM THE BOARD OF ANY CHANGE OF ADDRESS.

(D) THE LICENSE SHALL BE RENEWED BIENNIALLY IF THE LICENSEE IS NOT IN VIOLATION OF THIS ARTICLE AT THE TIME OF APPLICATION FOR RENEWAL AND IF THE APPLICANT FULFILLS CURRENT REQUIREMENTS OF CONTINUING EDUCATION AS ESTABLISHED BY THE BOARD.

(E) EACH PERSON LICENSED UNDER THIS ARTICLE IS RESPONSIBLE FOR RENEWING HIS OR HER LICENSE BEFORE THE EXPIRATION DATE.

(F) UNDER PROCEDURES AND CONDITIONS ESTABLISHED BY THE BOARD, A LICENSEE MAY REQUEST THAT HIS OR HER LICENSE BE DECLARED INACTIVE. THE LICENSEE MAY APPLY FOR ACTIVE STATUS AT ANY TIME AND UPON MEETING THE CONDITIONS SET BY THE BOARD SHALL BE DECLARED ACTIVE.

15. THE BOARD MAY REFUSE TO GRANT OR RENEW A LICENSE TO AN APPLICANT; ADMINISTER A PUBLIC OR PRIVATE REPRIMAND, BUT A PRIVATE REPRIMAND SHALL NOT BE DISCLOSED TO ANY PERSON EXCEPT THE LICENSEE; SUSPEND ANY LICENSEE FOR A DEFINITE PERIOD OR FOR AN INDEFINITE PERIOD IN CONNECTION WITH ANY CONDITION WHICH MAY BE ATTACHED TO THE RESTORATION OF SUCH LICENSE; LIMIT OR RESTRICT ANY LICENSEE AS THE BOARD DEEMS NECESSARY FOR THE PROTECTION OF THE PUBLIC; REVOKE ANY LICENSE; CONDITION THE PENALTY UPON, OR WITHHOLD FORMAL DISPOSITION PENDING, THE APPLICANT'S OR LICENSEE'S SUBMISSION TO SUCH CARE, COUNSELING, OR TREATMENT AS THE BOARD MAY DIRECT; OR IMPOSE A FINE NOT TO EXCEED FIVE HUNDRED DOLLARS FOR EACH VIOLATION OF A LAW, RULE OR REGULATION RELATING TO THE PROFESSION REGULATED BY THIS ARTICLE UPON A FINDING BY A MAJORITY OF THE ENTIRE BOARD THAT THE LICENSEE OR APPLICANT HAS:

(A) FAILED TO DEMONSTRATE THE QUALIFICATIONS OR STANDARDS FOR A LICENSE CONTAINED IN THIS SECTION OR UNDER THE LAWS, RULES OR REGULATIONS UNDER WHICH LICENSURE IS SOUGHT OR HELD; IT SHALL BE INCUMBENT UPON THE APPLICANT TO DEMONSTRATE TO THE SATISFACTION OF THE BOARD THAT SUCH APPLICANT MEETS ALL THE REQUIREMENTS FOR THE ISSUANCE OF A LICENSE,

AND, IF THE BOARD IS NOT SATISFIED AS TO THE APPLICANT'S QUALIFICATIONS, IT MAY DENY A LICENSE WITHOUT A PRIOR HEARING; PROVIDED, HOWEVER, THAT THE APPLICANT SHALL BE ALLOWED TO APPEAR BEFORE THE BOARD IF HE OR SHE SO DESIRES;

(B) KNOWINGLY MADE MISLEADING, DECEPTIVE, UNTRUE OR FRAUDULENT REPRESENTATIONS IN THE PRACTICE OF A BUSINESS OR PROFESSION LICENSED UNDER THIS TITLE OR ON ANY DOCUMENT CONNECTED THEREWITH; PRACTICED FRAUD OR DECEIT OR INTENTIONALLY MADE A FALSE STATEMENT IN OBTAINING A LICENSE TO PRACTICE SUCH LICENSED BUSINESS OR PROFESSION; OR MADE A FALSE STATEMENT OR DECEPTIVE REGISTRATION WITH THE BOARD;

(C) BEEN CONVICTED OF ANY FELONY OR OF ANY CRIME INVOLVING MORAL TURPITUDE IN THE COURTS OF THIS STATE OR ANY OTHER STATE, TERRITORY OR COUNTRY OR IN THE COURTS OF THE UNITED STATES; AS USED IN THIS SUBDIVISION THE TERM "FELONY" SHALL INCLUDE ANY OFFENSE WHICH, IF COMMITTED IN THIS STATE, WOULD BE DEEMED A FELONY, WITHOUT REGARD TO ITS DESIGNATION ELSEWHERE; AND, AS USED IN THIS SUBDIVISION, THE TERM "CONVICTION" SHALL INCLUDE A FINDING OR VERDICT OF GUILTY OR A PLEA OF GUILTY, REGARDLESS OF WHETHER AN APPEAL OF THE CONVICTION HAS BEEN SOUGHT;

(D) BEEN ARRESTED, CHARGED AND SENTENCED FOR THE COMMISSION OF ANY FELONY, OR ANY CRIME INVOLVING MORAL TURPITUDE, WHERE:

(I) A PLEA OF NOLO CONTENDERE WAS ENTERED TO THE CHARGE; OR

(II) AN ADJUDICATION OR SENTENCE WAS OTHERWISE WITHHELD OR NOT ENTERED ON THE CHARGE.

(E) HAD HIS OR HER LICENSE TO PRACTICE A BUSINESS OR PROFESSION LICENSED UNDER THIS TITLE REVOKED, SUSPENDED OR ANNULLED BY ANY LAWFUL LICENSING AUTHORITY OTHER THAN THE BOARD; HAD OTHER DISCIPLINARY ACTION TAKEN AGAINST HIM OR HER BY ANY SUCH LAWFUL LICENSING AUTHORITY OTHER THAN THE BOARD; WAS DENIED A LICENSE BY ANY SUCH LAWFUL LICENSING AUTHORITY OTHER THAN THE BOARD, PURSUANT TO DISCIPLINARY PROCEEDINGS; OR WAS REFUSED THE RENEWAL OF A LICENSE BY ANY SUCH LAWFUL LICENSING AUTHORITY OTHER THAN THE BOARD, PURSUANT TO DISCIPLINARY PROCEEDINGS;

(F) ENGAGED IN ANY UNPROFESSIONAL, IMMORAL, UNETHICAL, DECEPTIVE OR DELETERIOUS CONDUCT OR PRACTICE HARMFUL TO THE PUBLIC THAT MATERIALLY AFFECTS THE FITNESS OF THE LICENSEE OR APPLICANT TO PRACTICE A BUSINESS OR PROFESSION LICENSED UNDER THIS TITLE, OR IS OF A NATURE LIKELY TO JEOPARDIZE THE INTEREST OF THE PUBLIC; SUCH CONDUCT OR PRACTICE NEED NOT HAVE RESULTED IN ACTUAL INJURY TO ANY PERSON OR BE DIRECTLY RELATED TO THE PRACTICE OF SUCH LICENSED BUSINESS OR PROFESSION BUT SHOWS THAT THE LICENSEE OR APPLICANT HAS COMMITTED ANY ACT OR OMISSION WHICH IS INDICATIVE OF BAD MORAL CHARACTER OR UNTRUSTWORTHINESS. UNPROFESSIONAL CONDUCT SHALL ALSO INCLUDE ANY DEPARTURE FROM, OR THE FAILURE TO CONFORM TO, THE MINIMAL STANDARDS OF ACCEPTABLE AND PREVAILING PRACTICE OF THE BUSINESS OR PROFESSION LICENSED UNDER THIS TITLE;

(G) KNOWINGLY PERFORMED ANY ACT WHICH IN ANY WAY AIDS, ASSISTS, PROCURES, ADVISES OR ENCOURAGES ANY UNLICENSED PERSON OR ANY LICENSEE WHOSE LICENSE HAS BEEN SUSPENDED OR REVOKED BY A PROFESSIONAL LICENSING BOARD TO PRACTICE A BUSINESS OR PROFESSION LICENSED UNDER THIS TITLE OR TO PRACTICE OUTSIDE THE SCOPE OF ANY DISCIPLINARY LIMITATION PLACED UPON THE LICENSEE BY THE BOARD;

(H) VIOLATED A STATUTE, LAW OR ANY RULE OR REGULATION OF THIS STATE, ANY OTHER STATE, THE PROFESSIONAL LICENSING BOARD REGULATING THE BUSINESS OR PROFESSION LICENSED UNDER THIS TITLE, THE UNITED STATES, OR ANY OTHER LAWFUL AUTHORITY, WITHOUT REGARD TO WHETHER THE VIOLATION IS CRIMINALLY PUNISHABLE, WHEN SUCH STATUTE, LAW OR RULE OR REGULATION RELATES TO OR IN PART REGULATES THE PRACTICE OF A BUSINESS OR PROFESSION LICENSED UNDER THIS TITLE AND WHEN THE LICENSEE OR APPLICANT KNOWS OR

SHOULD KNOW THAT SUCH ACTION VIOLATES SUCH STATUTE, LAW OR RULE OR REGULATION; OR VIOLATED A LAWFUL ORDER OF THE BOARD PREVIOUSLY ENTERED BY THE BOARD IN A DISCIPLINARY HEARING, CONSENT DECREE, OR LICENSE REINSTATEMENT;

(I) BEEN ADJUDGED MENTALLY INCOMPETENT BY A COURT OF COMPETENT JURISDICTION WITHIN OR OUTSIDE OF THIS STATE; ANY SUCH ADJUDICATION SHALL AUTOMATICALLY SUSPEND THE LICENSE OF ANY SUCH PERSON AND SHALL PREVENT THE REISSUANCE OR RENEWAL OF ANY LICENSE SO SUSPENDED FOR SO LONG AS THE ADJUDICATION OF INCOMPETENCE IS IN EFFECT; OR

(J) DISPLAYED AN INABILITY TO PRACTICE A BUSINESS OR PROFESSION LICENSED UNDER THIS TITLE WITH REASONABLE SKILL AND SAFETY TO THE PUBLIC OR HAS BECOME UNABLE TO PRACTICE SUCH LICENSED BUSINESS OR PROFESSION WITH REASONABLE SKILL AND SAFETY TO THE PUBLIC BY REASON OF ILLNESS OR THE USE OF ALCOHOL, DRUGS, NARCOTICS, CHEMICALS OR ANY OTHER TYPE OF MATERIAL.

S 8753. VIOLATIONS. 1. ON AND AFTER TWELVE MONTHS FOLLOWING THE EFFECTIVE DATE OF THIS ARTICLE, NO PERSON WITHOUT A LICENSE AS A LACTATION CONSULTANT ISSUED PURSUANT TO THIS ARTICLE SHALL USE THE TITLE "LACTATION CONSULTANT," "LACTATION SPECIALIST," "BREASTFEEDING CONSULTANT," OR "BREASTFEEDING SPECIALIST" OR PRACTICE LACTATION CARE AND SERVICES, PROVIDED THAT THIS ARTICLE SHALL NOT PROHIBIT ANY PRACTICE OF LACTATION CARE AND SERVICES THAT IS EXEMPT PURSUANT TO THE PROVISIONS SET FORTH IN SECTION EIGHTY-SEVEN HUNDRED FIFTY-FIVE OF THIS ARTICLE.

2. ANY PERSON VIOLATING THE PROVISIONS OF SUBDIVISION ONE OF THIS SECTION SHALL BE GUILTY OF A MISDEMEANOR.

S 8754. HEARINGS AND PROCEEDINGS. HEARINGS AND PROCEEDINGS AUTHORIZED UNDER THIS ARTICLE SHALL BE GOVERNED BY PROVISIONS OF THE STATE ADMINISTRATIVE PROCEDURE ACT.

S 8755. APPLICABILITY. NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO AFFECT OR PREVENT:

1. PERSONS LICENSED TO PRACTICE THE PROFESSIONS OF DENTISTRY, MEDICINE, OSTEOPATHY, CHIROPRACTIC, NURSING, PHYSICIAN, PHYSICIAN ASSISTANT, SPECIAL ASSISTANT, DIETETICS AND NUTRITION OR MIDWIFERY FROM ENGAGING IN THE PRACTICE OF LACTATION CARE AND SERVICES WHEN INCIDENTAL TO THE PRACTICE OF THEIR PROFESSION, EXCEPT SUCH PERSONS SHALL NOT USE THE TITLE "LACTATION CONSULTANT," "LACTATION SPECIALIST," "BREASTFEEDING CONSULTANT," OR "BREASTFEEDING SPECIALIST";

2. PRENATAL AND CHILDBIRTH EDUCATORS FROM PERFORMING NONCLINICAL EDUCATION FUNCTIONS CONSISTENT WITH THE ACCEPTED STANDARDS OF THEIR RESPECTIVE OCCUPATIONS, EXCEPT SUCH PERSONS SHALL NOT USE THE TITLE "LACTATION CONSULTANT," "LACTATION SPECIALIST," "BREASTFEEDING CONSULTANT," OR "BREASTFEEDING SPECIALIST," OR DESIGNATE THEMSELVES BY ANY OTHER TERM OR TITLE WHICH IMPLIES THAT SUCH PERSON HAS THE CLINICAL SKILLS AND ABILITIES ASSOCIATED WITH LICENSURE AS A LACTATION CONSULTANT;

3. THE PRACTICE OF LACTATION CARE AND SERVICES BY STUDENTS, INTERNS, OR PERSONS PREPARING FOR THE PRACTICE OF LACTATION CARE AND SERVICES UNDER THE QUALIFIED SUPERVISION OF A LICENSED LACTATION CONSULTANT OR ANY LICENSED PROFESSIONAL LISTED IN SUBDIVISION ONE OF THIS SECTION;

4. EMPLOYEES OF THE UNITED STATES GOVERNMENT OR ANY BUREAU, DIVISION, OR AGENCY THEREOF WHILE IN THE DISCHARGE OF THE EMPLOYEE'S OFFICIAL DUTIES SO LONG AS SUCH EMPLOYEES ARE PERFORMING THEIR DUTIES WITHIN THE RECOGNIZED CONFINES OF A FEDERAL INSTALLATION REGARDLESS OF WHETHER JURISDICTION IS SOLELY FEDERAL OR CONCURRENT;

5. EMPLOYEES OF A DEPARTMENT, AGENCY OR DIVISION OF STATE, COUNTY, OR LOCAL GOVERNMENT FROM ENGAGING IN THE PRACTICE OF LACTATION CARE AND SERVICES WITHIN THE DISCHARGE OF OFFICIAL DUTIES;

6. INDIVIDUAL VOLUNTEERS PROVIDING LACTATION CARE AND SERVICES PROVIDED:

(A) SUCH PERSONS SHALL NOT USE THE TITLE "LACTATION CONSULTANT," "LACTATION SPECIALIST," "BREASTFEEDING CONSULTANT," OR "BREASTFEEDING SPECIALIST," OR STATE THAT THEY ARE LICENSED TO PRACTICE LACTATION CARE OR DESIGNATE THEMSELVES BY ANY OTHER TERM OR TITLE WHICH IMPLIES THAT SUCH PERSONS HAVE THE CLINICAL SKILLS AND ABILITIES ASSOCIATED WITH LICENSURE;

(B) THEIR VOLUNTEER SERVICE IS PERFORMED WITHOUT FEE OR OTHER FORM OF COMPENSATION, MONETARY OR OTHERWISE, FROM THE INDIVIDUALS OR GROUPS SERVED; AND

(C) THE INDIVIDUAL VOLUNTEER RECEIVES NO FORM OF COMPENSATION, MONETARY OR OTHERWISE, EXCEPT FOR ADMINISTRATIVE EXPENSES SUCH AS MILEAGE; AND

7. A NONRESIDENT IBCLC FROM PRACTICING LACTATION CARE AND SERVICES IN THIS STATE FOR FIVE DAYS WITHOUT LICENSURE OR UP TO THIRTY DAYS WITH LICENSURE FROM ANOTHER STATE IF THE REQUIREMENTS FOR LICENSURE IN SUCH OTHER STATE ARE SUBSTANTIALLY EQUAL TO THE REQUIREMENTS CONTAINED IN THIS ARTICLE.

S 8756. SEVERABILITY. THE PROVISIONS OF THIS ARTICLE SHALL BE SEVERABLE, AND IF ANY COURT OF COMPETENT JURISDICTION DECLARES ANY PHRASE, CLAUSE, SENTENCE OR PROVISION OF THIS ARTICLE TO BE INVALID, OR ITS APPLICABILITY TO ANY GOVERNMENT AGENCY, PERSON OR CIRCUMSTANCE IS DECLARED INVALID, THE REMAINDER OF THIS ARTICLE AND ITS RELEVANT APPLICABILITY SHALL NOT BE AFFECTED. THE PROVISIONS OF THIS ARTICLE SHALL BE LIBERALLY CONSTRUED TO GIVE EFFECT TO THE PURPOSES THEREOF.

S 3. This act shall take effect on the one hundred twentieth day after it shall have become a law; provided, however, that any actions necessary for the implementation of the provisions of this act on its effective date are authorized and directed to be completed on or before such effective date.