

8359

I N   A S S E M B L Y

January 9, 2014

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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:

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

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

5                             ARTICLE 167  
6                             LACTATION CONSULTANTS

7     SECTION 8750. LEGISLATIVE INTENT.

8             8751. DEFINITIONS.

9             8752. LACTATION CONSULTANT LICENSING BOARD.

10            8753. VIOLATIONS.

11            8754. HEARINGS AND PROCEEDINGS.

12            8755. APPLICABILITY.

13            8756. SEVERABILITY.

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

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

25     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.

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

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

8 4. "INTERNATIONAL BOARD OF LACTATION CONSULTANT EXAMINERS (IBLCE)"  
9 MEANS THE INTERNATIONAL ORGANIZATION THAT CERTIFIES IBCLCS AND IS INDE-  
10 PENDENTLY ACCREDITED BY THE NATIONAL COMMISSION OF CERTIFYING AGENCIES.

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

16 (A) LACTATION ASSESSMENT THROUGH THE SYSTEMATIC COLLECTION OF SUBJEC-  
17 TIVE AND OBJECTIVE DATA;

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

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

22 (D) EVALUATION OF OUTCOMES;

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

25 (F) THE RECOMMENDATION AND USE OF ASSISTIVE DEVICES.

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

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

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

34 (A) FOUR MEMBERS SHALL BE LACTATION CONSULTANTS; AND

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

37 2. BOARD MEMBERS SHALL SERVE FOR TERMS OF FOUR YEARS AND VACANCIES  
38 SHALL BE APPOINTED IN THE SAME MANNER AS PROVIDED FOR ORIGINAL APPOINT-  
39 MENTS.

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

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

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

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

1 IN ADDITION TO ITS ANNUAL MEETING, THE BOARD MAY HOLD ADDITIONAL MEET-  
2 INGS EACH YEAR AS PROVIDED BY THE RULES ADOPTED BY THE BOARD.

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

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

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

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

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

15 (D) IMPLEMENT THE DISCIPLINARY PROCESS;

16 (E) ENFORCE QUALIFICATIONS FOR LICENSURE;

17 (F) SET STANDARDS FOR COMPETENCY OF LICENSEES CONTINUING IN OR RETURN-  
18 ING TO PRACTICE;

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

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

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

27 (J) ESTABLISH EXAMINATION AND LICENSING FEES;

28 (K) REQUEST AND RECEIVE THE ASSISTANCE OF STATE EDUCATIONAL INSTI-  
29 TUTIONS OR OTHER STATE AGENCIES;

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

33 (M) ESTABLISH CONTINUING EDUCATION REQUIREMENTS; AND

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

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

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

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

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

51 (A) MEETING THE INTERNATIONAL EDUCATION AND CLINICAL STANDARDS ESTAB-  
52 LISHED FOR IBCLCS BY THE IBLCE OR OTHER NATIONAL TESTING SERVICE AS  
53 APPROVED BY THE BOARD;

54 (B) PROVIDING PROOF OF SUCCESSFUL COMPLETION OF THE IBLCE EXAMINATION  
55 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,

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

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

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

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

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

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

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

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

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

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

1 SHOULD KNOW THAT SUCH ACTION VIOLATES SUCH STATUTE, LAW OR RULE OR REGU-  
2 LATION; OR VIOLATED A LAWFUL ORDER OF THE BOARD PREVIOUSLY ENTERED BY  
3 THE BOARD IN A DISCIPLINARY HEARING, CONSENT DECREE, OR LICENSE REIN-  
4 STATEMENT;

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

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

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

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

26 S 8754. HEARINGS AND PROCEEDINGS. HEARINGS AND PROCEEDINGS AUTHORIZED  
27 UNDER THIS ARTICLE SHALL BE GOVERNED BY PROVISIONS OF THE STATE ADMINIS-  
28 TRATIVE PROCEDURE ACT.

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

31 1. PERSONS LICENSED TO PRACTICE THE PROFESSIONS OF DENTISTRY, MEDI-  
32 CINE, OSTEOPATHY, CHIROPRACTIC, NURSING, PHYSICIAN, PHYSICIAN ASSISTANT,  
33 SPECIAL ASSISTANT, DIETETICS AND NUTRITION OR MIDWIFERY FROM ENGAGING IN  
34 THE PRACTICE OF LACTATION CARE AND SERVICES WHEN INCIDENTAL TO THE PRAC-  
35 TICE OF THEIR PROFESSION, EXCEPT SUCH PERSONS SHALL NOT USE THE TITLE  
36 "LACTATION CONSULTANT," "LACTATION SPECIALIST," "BREASTFEEDING CONSULT-  
37 ANT," OR "BREASTFEEDING SPECIALIST";

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

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

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

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

4 6. INDIVIDUAL VOLUNTEERS PROVIDING LACTATION CARE AND SERVICES  
5 PROVIDED:

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

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

15 (C) THE INDIVIDUAL VOLUNTEER RECEIVES NO FORM OF COMPENSATION, MONE-  
16 TARY OR OTHERWISE, EXCEPT FOR ADMINISTRATIVE EXPENSES SUCH AS MILEAGE;  
17 AND

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

23 S 8756. SEVERABILITY. THE PROVISIONS OF THIS ARTICLE SHALL BE SEVERA-  
24 BLE, AND IF ANY COURT OF COMPETENT JURISDICTION DECLARES ANY PHRASE,  
25 CLAUSE, SENTENCE OR PROVISION OF THIS ARTICLE TO BE INVALID, OR ITS  
26 APPLICABILITY TO ANY GOVERNMENT AGENCY, PERSON OR CIRCUMSTANCE IS  
27 DECLARED INVALID, THE REMAINDER OF THIS ARTICLE AND ITS RELEVANT APPLI-  
28 CABILITY SHALL NOT BE AFFECTED. THE PROVISIONS OF THIS ARTICLE SHALL BE  
29 LIBERALLY CONSTRUED TO GIVE EFFECT TO THE PURPOSES THEREOF.

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