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

1266--C

2015-2016 Regular Sessions

I N A S S E M B L Y

January 8, 2015

Introduced by M. of A. LAVINE, GRAF, ZEBROWSKI, WALTER, MONTESANO, LIFTON, SKOUFIS, BARRETT, SKARTADOS, SOLAGES, STIRPE, OTIS, RAIA, BRABENEC, MURRAY -- Multi-Sponsored by -- M. of A. FITZPATRICK, GALEF, KEARNS, LUPARDO, LUPINACCI, McDONOUGH, PAULIN, RA, SALADINO, SCHIMEL, WOERNER -- read once and referred to the Committee on Higher Education -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Higher Education in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the education law, in relation to the licensure of athletic trainers; and to repeal certain provisions of such law relating thereto

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

Section 1. Section 8351 of the education law, as amended by chapter 658 of the laws of 1993, is amended to read as follows:

S 8351. Definition. As used in this article "athletic trainer" means any person who is duly [certified] LICENSED in accordance with this article to perform athletic training under the supervision of a physician [and limits his or her practice to secondary schools, institutions of postsecondary education, professional athletic organizations, or a person who, under the supervision of a physician, carries out comparable functions on orthopedic athletic injuries, excluding spinal cord injuries, in a health care organization. Supervision of an athletic trainer by a physician shall be continuous but shall not be construed as requiring the physical presence of the supervising physician at the time and place where such services are performed.

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

LBD03316-14-6

The scope of work described herein shall not be construed as authorizing the reconditioning of neurologic injuries, conditions or disease]. THE PRACTICE OF THE PROFESSION OF ATHLETIC TRAINING IS PERFORMED BY ATHLETIC TRAINERS WHO ARE DEFINED AS HEALTH CARE PROFESSIONALS WHO ENGAGE IN THE PREVENTION, RECOGNITION, EXAMINATION, EVALUATION, ASSESSMENT, MANAGEMENT, TREATMENT AND REHABILITATION OF NEUROMUSCULOSKELETAL INJURIES THAT OCCUR IN ACTIVE INDIVIDUALS WITH TREATMENT IN ACCORDANCE WITH THE SUPERVISING PHYSICIAN. THESE ACTIVE INDIVIDUALS ENGAGE IN ACTIVITIES THAT REQUIRE A HIGH DEGREE OF PHYSICAL EXERTION, THAT INVOLVES TRAINING AND WHERE INJURY OCCURS DURING SUCH TRAINING OR ATHLETIC ENDEAVOR, INCLUDING BUT NOT LIMITED TO ATHLETIC INDIVIDUALS, PERFORMING ARTISTS AND INDIVIDUALS INVOLVED IN PUBLIC PROTECTION OR EMERGENCY SERVICES OR INDIVIDUALS INVOLVED IN ADAPTIVE ATHLETICS. ATHLETIC TRAINERS RECOGNIZE, EVALUATE, AND ASSIST IN THE MANAGEMENT OF SPORT-RELATED ILLNESSES AND MEDICAL CONDITIONS. THE PRACTICE OF ATHLETIC TRAINING MAY INCLUDE USE OF VARIOUS THERAPEUTIC MODALITIES AND TECHNIQUES. SUPERVISION BY A PHYSICIAN SHALL BE CONTINUOUS BUT SHALL NOT BE CONSTRUED AS REQUIRING THE PHYSICAL PRESENCE OF THE SUPERVISING PHYSICIAN AT THE TIME AND PLACE WHERE SUCH SERVICES ARE PERFORMED.

THE SCOPE OF WORK DESCRIBED IN THIS SECTION SHALL NOT BE CONSTRUED AS AUTHORIZING THE MANAGEMENT AND TREATMENT OF ACUTE, SUBACUTE, OR CHRONIC NEUROLOGICAL PATHOLOGIES AND COMORBIDITIES OR NEUROLOGICAL DISEASE PROCESSES WITH THE EXCEPTIONS OF MANAGEMENT AND TREATMENT OF EMERGENT NEUROLOGICAL CONDITIONS SUCH AS POTENTIAL CONCUSSIONS, SPINAL CORD INJURIES OR NERVE INJURIES RESULTING FROM PARTICIPATION IN AN ATHLETIC ENDEAVOR, WHILE TRAINING, OR IN INDIVIDUALS INVOLVED IN ADAPTIVE ATHLETICS.

S 2. Section 8352 of the education law is REPEALED.

S 3. Section 8353 of the education law, as added by chapter 798 of the laws of 1992, is amended to read as follows:

S 8353. Use of the title "[certified] athletic trainer". Only a person [certified] LICENSED or otherwise authorized under this article shall PRACTICE ATHLETIC TRAINING OR use the title "[certified] athletic trainer" OR THE ABBREVIATION "AT".

S 4. Section 8354 of the education law, as added by chapter 798 of the laws of 1992, is amended to read as follows:

S 8354. State committee for athletic trainers. A state committee for athletic trainers shall be appointed by the board of regents, upon the recommendation of the commissioner and shall assist on matters of [certification] PROFESSIONAL LICENSING and professional conduct in accordance with section six thousand five hundred eight of this title. The committee shall consist of [five] SIX members who are athletic trainers [certified] LICENSED in this state AND ONE PUBLIC MEMBER THAT IS A CONSUMER OF THE PROFESSION. The committee shall assist the state board for medicine in athletic training matters. Nominations and terms of office of the members of the state committee for athletic trainers shall conform to the corresponding provisions relating thereto for state boards under article one hundred thirty of this chapter. [Notwithstanding the foregoing, the members of the first committee need not be certified prior to their appointment to the committee.]

S 5. Section 8355 of the education law, as added by chapter 798 of the laws of 1992, is amended to read as follows:

S 8355. Requirements and procedure for professional [certification] LICENSURE. [For certification as a certified] TO QUALIFY FOR A LICENSE AS AN athletic trainer under this article, an applicant shall fulfill the following requirements:

1. Application: file an application with the department;

2. Education: have received an education including a bachelor's, its equivalent or higher degree in accordance with the commissioner's regulations, PROVIDED HOWEVER, AS OF TWO THOUSAND TWENTY-FIVE, APPLICANTS MUST HAVE RECEIVED A MASTER'S DEGREE, ITS EQUIVALENT OR HIGHER IN ACCORDANCE WITH THE COMMISSIONER'S REGULATIONS;

3. Experience: have experience in accordance with the commissioner's regulations;

4. Examination: pass an examination in accordance with the commissioner's regulations;

5. Age: be at least twenty-one years of age; and

6. Fees: pay a fee for an initial [certificate] LICENSE of one hundred dollars to the department; and a fee of fifty dollars for each triennial registration period.

S 6. Section 8356 of the education law, as amended by chapter 658 of the laws of 1993, is amended to read as follows:

S 8356. [Special provisions. A person shall be certified without examination provided that, within three years from the effective date of regulations implementing the provisions of this article, the individual:

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

2. meets the requirements of subdivisions two and five of section eight thousand three hundred fifty-five of this article and who in addition:

(a) has been actively engaged in the profession of athletic training for a minimum of four years during the seven years immediately preceding the effective date of this article; or

(b) is certified by a United States certifying body acceptable to the department.] EXEMPT PERSONS. 1. NOTHING CONTAINED IN THIS ARTICLE SHALL PROHIBIT:

(A) THE PRACTICE OF ATHLETIC TRAINING THAT IS AN INTEGRAL PART OF A PROGRAM OF STUDY BY STUDENTS ENROLLED IN AN ATHLETIC TRAINING PROGRAM APPROVED BY THE DEPARTMENT. STUDENTS ENROLLED IN AN APPROVED ATHLETIC TRAINING PROGRAM SHALL BE IDENTIFIED AS "ATHLETIC TRAINING STUDENTS" AND SHALL ONLY PRACTICE ATHLETIC TRAINING UNDER THE DIRECTION AND IMMEDIATE SUPERVISION OF AN ATHLETIC TRAINER CURRENTLY LICENSED UNDER THIS ARTICLE. AN ATHLETIC TRAINING STUDENT SHALL NOT HOLD HIMSELF OR HERSELF OUT AS A LICENSED ATHLETIC TRAINER; OR

(B) THE PRACTICE OF ATHLETIC TRAINING BY ANY PERSON WHO IS LICENSED AND IN GOOD STANDING TO PRACTICE ATHLETIC TRAINING IN ANOTHER STATE FROM ACTING AS AN ATHLETIC TRAINER WITHOUT A NEW YORK STATE LICENSE SOLELY FOR THE FOLLOWING PURPOSES: (I) CLINICAL EDUCATION, PRACTICE DEMONSTRATIONS OR CLINICAL RESEARCH THAT IS WITHIN THE PRACTICE OF ATHLETIC TRAINING IN CONNECTION WITH A PROGRAM OF BASIC CLINICAL EDUCATION, GRADUATE EDUCATION, OR POST-GRADUATE EDUCATION IN AN APPROVED SCHOOL OF ATHLETIC TRAINING, OR IN A CLINICAL FACILITY, OR A HEALTH CARE AGENCY, OR CONTINUING EDUCATION; OR (II) PERFORMING DUTIES WITH HIS OR HER TEAM OR ORGANIZATION, SO LONG AS DUTIES ARE RESTRICTED TO THAT TEAM OR ORGANIZATION DURING THE COURSE OF THAT TEAM'S OR ORGANIZATION'S STAY IN NEW YORK STATE FOR NO MORE THAN SIXTY DAYS IN A CALENDAR YEAR; OR (III) ASSISTING IN THE CARE OF ATHLETES IN A SPECIFIC SANCTIONED ATHLETIC EVENT; OR (IV) ASSISTING A NEW YORK STATE LICENSED ATHLETIC TRAINER IN THE CASE OF AN EMERGENCY SITUATION TO ANOTHER TEAM'S PLAYER. ANY PERSON PRACTICING ATHLETIC TRAINING IN NEW YORK STATE PURSUANT TO THIS SUBDIVISION SHALL BE SUBJECT TO PERSONAL AND SUBJECT MATTER JURISDICTION AND THE DISCIPLINARY AND REGULATORY AUTHORITY OF THE BOARD OF REGENTS AS IF HE OR SHE IS A LICENSEE AND AS IF THE EXEMPTION PURSUANT TO THIS SUBDI-

VISION IS A LICENSE. SUCH INDIVIDUALS SHALL CONSENT TO THE APPOINTMENT OF THE SECRETARY OF STATE OR OTHER PUBLIC OFFICIAL ACCEPTABLE TO THE DEPARTMENT, IN SUCH ATHLETIC TRAINERS' STATES OF LICENSURE AS THE ATHLETIC TRAINERS' AGENTS UPON WHOM PROCESS MAY BE SERVED IN ANY ACTIONS OR PROCEEDINGS BY THE DEPARTMENT AGAINST SUCH ATHLETIC TRAINERS. SUCH INDIVIDUALS SHALL COMPLY WITH THE PROVISIONS OF THIS ARTICLE, THE RULES OF THE BOARD OF REGENTS AND THE REGULATIONS OF THE COMMISSIONER RELATING TO PROFESSIONAL MISCONDUCT, DISCIPLINARY PROCEEDINGS AND PENALTIES FOR PROFESSIONAL MISCONDUCT; OR

(C) THE PRACTICE OF ATHLETIC TRAINING BY ANY PERSON WHO IS OTHERWISE AUTHORIZED AND IN GOOD STANDING TO PRACTICE ATHLETIC TRAINING OR ATHLETIC THERAPY IN ANOTHER COUNTRY, STATE, OR TERRITORY THAT IMPOSES THE SAME REQUIREMENTS SET FORTH IN SECTION EIGHTY-THREE HUNDRED FIFTY-FIVE OF THIS ARTICLE. ANY PERSON PRACTICING ATHLETIC TRAINING IN NEW YORK STATE PURSUANT TO THIS SUBDIVISION SHALL BE SUBJECT TO PERSONAL AND SUBJECT MATTER JURISDICTION AND THE DISCIPLINARY AND REGULATORY AUTHORITY OF THE BOARD OF REGENTS AS IF HE OR SHE IS A LICENSEE AND AS IF THE EXEMPTION PURSUANT TO THIS SUBDIVISION IS A LICENSE. SUCH INDIVIDUALS SHALL CONSENT TO THE APPOINTMENT OF THE SECRETARY OF STATE OR OTHER PUBLIC OFFICIAL ACCEPTABLE TO THE DEPARTMENT, IN SUCH ATHLETIC TRAINERS' STATES OF LICENSURE AS THE ATHLETIC TRAINERS' AGENTS UPON WHOM PROCESS MAY BE SERVED IN ANY ACTIONS OR PROCEEDINGS BY THE DEPARTMENT AGAINST SUCH ATHLETIC TRAINERS. SUCH INDIVIDUALS SHALL COMPLY WITH THE PROVISIONS OF THIS ARTICLE, THE RULES OF THE BOARD OF REGENTS AND THE REGULATIONS OF THE COMMISSIONER RELATING TO PROFESSIONAL MISCONDUCT, DISCIPLINARY PROCEEDINGS AND PENALTIES FOR PROFESSIONAL MISCONDUCT.

2. THIS ARTICLE SHALL NOT BE CONSTRUED TO PROHIBIT QUALIFIED MEMBERS OF OTHER LICENSED OR LEGALLY RECOGNIZED PROFESSIONS FROM PERFORMING WORK INCIDENTAL TO THE PRACTICE OF THEIR PROFESSION, EXCEPT THAT SUCH PERSONS MAY NOT HOLD THEMSELVES OUT UNDER THE TITLE ATHLETIC TRAINER OR AS PERFORMING ATHLETIC TRAINING.

S 7. The education law is amended by adding two new sections 8356-a and 8356-b to read as follows:

S 8356-A. MANDATORY CONTINUING EDUCATION. 1. (A) EACH LICENSED ATHLETIC TRAINER REQUIRED UNDER THIS ARTICLE TO REGISTER TRIENNIALLY WITH THE DEPARTMENT TO PRACTICE IN THE STATE SHALL COMPLY WITH THE PROVISIONS OF THE MANDATORY CONTINUING EDUCATION REQUIREMENTS PRESCRIBED IN SUBDIVISION TWO OF THIS SECTION EXCEPT AS SET FORTH IN PARAGRAPHS (B) AND (C) OF THIS SUBDIVISION. LICENSED ATHLETIC TRAINERS WHO DO NOT SATISFY THE MANDATORY CONTINUING EDUCATION REQUIREMENTS SHALL NOT PRACTICE UNTIL THEY HAVE MET SUCH REQUIREMENTS, AND THEY HAVE BEEN ISSUED A REGISTRATION CERTIFICATE, EXCEPT THAT A LICENSED ATHLETIC TRAINER MAY PRACTICE WITHOUT HAVING MET SUCH REQUIREMENTS IF HE OR SHE IS ISSUED A CONDITIONAL REGISTRATION CERTIFICATE PURSUANT TO SUBDIVISION THREE OF THIS SECTION.

(B) EACH LICENSED ATHLETIC TRAINER SHALL BE EXEMPT FROM THE MANDATORY CONTINUING EDUCATION REQUIREMENT FOR THE TRIENNIAL REGISTRATION PERIOD DURING WHICH HE OR SHE IS FIRST LICENSED. IN ACCORDANCE WITH THE INTENT OF THIS SECTION, ADJUSTMENT TO THE MANDATORY CONTINUING EDUCATION REQUIREMENT MAY BE GRANTED BY THE DEPARTMENT FOR REASONS OF HEALTH CERTIFIED BY AN APPROPRIATE HEALTH CARE PROFESSIONAL, FOR EXTENDED ACTIVE DUTY WITH THE ARMED FORCES OF THE UNITED STATES, OR FOR OTHER GOOD CAUSE ACCEPTABLE TO THE DEPARTMENT WHICH MAY PREVENT COMPLIANCE.

(C) A LICENSED ATHLETIC TRAINER NOT ENGAGED IN PRACTICE, AS DETERMINED BY THE DEPARTMENT, SHALL BE EXEMPT FROM THE MANDATORY CONTINUING EDUCATION REQUIREMENT UPON THE FILING OF A STATEMENT WITH THE DEPARTMENT

DECLARING SUCH STATUS. ANY LICENSEE WHO RETURNS TO THE PRACTICE OF ATHLETIC TRAINING DURING THE TRIENNIAL REGISTRATION PERIOD SHALL NOTIFY THE DEPARTMENT PRIOR TO REENTERING THE PROFESSION AND SHALL MEET SUCH MANDATORY EDUCATION REQUIREMENTS AS SHALL BE PRESCRIBED BY REGULATIONS OF THE COMMISSIONER.

2. DURING EACH TRIENNIAL REGISTRATION PERIOD, AN APPLICANT FOR REGISTRATION AS A LICENSED ATHLETIC TRAINER SHALL COMPLETE A MINIMUM OF FORTY-FIVE HOURS OF ACCEPTABLE FORMAL CONTINUING EDUCATION, AS SPECIFIED IN SUBDIVISION FOUR OF THIS SECTION. ANY LICENSED ATHLETIC TRAINER WHOSE FIRST REGISTRATION DATE FOLLOWING THE EFFECTIVE DATE OF THIS SECTION OCCURS LESS THAN THREE YEARS FROM SUCH EFFECTIVE DATE, BUT ON OR AFTER JANUARY FIRST, TWO THOUSAND EIGHTEEN, SHALL COMPLETE CONTINUING EDUCATION HOURS ON A PRORATED BASIS AT THE RATE OF ONE HOUR PER MONTH FOR THE PERIOD BEGINNING JANUARY FIRST, TWO THOUSAND EIGHTEEN AND THEN FIFTEEN HOURS PER YEAR UNTIL HIS OR HER FIRST REGISTRATION DATE THEREAFTER. A LICENSEE WHO HAS NOT SATISFIED THE MANDATORY CONTINUING EDUCATION REQUIREMENTS SHALL NOT BE ISSUED A TRIENNIAL REGISTRATION CERTIFICATE BY THE DEPARTMENT AND SHALL NOT PRACTICE UNLESS AND UNTIL A CONDITIONAL REGISTRATION CERTIFICATE IS ISSUED AS PROVIDED FOR IN SUBDIVISION THREE OF THIS SECTION. CONTINUING EDUCATION HOURS TAKEN DURING ONE TRIENNIUM MAY NOT BE TRANSFERRED TO A SUBSEQUENT TRIENNIUM.

3. THE DEPARTMENT, IN ITS DISCRETION, MAY ISSUE A CONDITIONAL REGISTRATION TO A LICENSEE WHO FAILS TO MEET THE CONTINUING EDUCATION REQUIREMENTS ESTABLISHED IN SUBDIVISION TWO OF THIS SECTION BUT WHO AGREES TO MAKE UP ANY DEFICIENCIES AND COMPLETE ANY ADDITIONAL EDUCATION WHICH THE DEPARTMENT MAY REQUIRE. THE FEE FOR SUCH A CONDITIONAL REGISTRATION SHALL BE THE SAME AS, AND IN ADDITION TO, THE FEE FOR THE TRIENNIAL REGISTRATION. THE DURATION OF SUCH CONDITIONAL REGISTRATION SHALL BE DETERMINED BY THE DEPARTMENT BUT SHALL NOT EXCEED ONE YEAR. ANY LICENSEE WHO IS NOTIFIED OF THE DENIAL OF REGISTRATION FOR FAILURE TO SUBMIT EVIDENCE, SATISFACTORY TO THE DEPARTMENT, OF REQUIRED CONTINUING EDUCATION AND WHO PRACTICES WITHOUT SUCH REGISTRATION MAY BE SUBJECT TO DISCIPLINARY PROCEEDINGS PURSUANT TO SECTION SIXTY-FIVE HUNDRED TEN OF THIS TITLE.

4. AS USED IN SUBDIVISION TWO OF THIS SECTION, "ACCEPTABLE FORMAL EDUCATION" SHALL MEAN FORMAL COURSES OF LEARNING WHICH CONTRIBUTE TO PROFESSIONAL PRACTICE IN ATHLETIC TRAINING AND WHICH MEET THE STANDARDS PRESCRIBED BY REGULATIONS OF THE COMMISSIONER. SUCH FORMAL COURSES OF LEARNING SHALL INCLUDE, BUT NOT BE LIMITED TO, COLLEGIATE LEVEL CREDIT AND NON-CREDIT COURSES, PROFESSIONAL DEVELOPMENT PROGRAMS AND TECHNICAL SESSIONS OFFERED BY NATIONAL, STATE AND LOCAL PROFESSIONAL ASSOCIATIONS, AND ANY OTHER ORGANIZED EDUCATIONAL AND TECHNICAL PROGRAMS ACCEPTABLE TO THE DEPARTMENT. THE DEPARTMENT MAY, IN ITS DISCRETION AND AS NEEDED TO CONTRIBUTE TO THE HEALTH AND WELFARE OF THE PUBLIC, REQUIRE THE COMPLETION OF CONTINUING EDUCATION COURSES IN SPECIFIC SUBJECTS TO FULFILL THIS MANDATORY CONTINUING EDUCATION REQUIREMENT. CONTINUING EDUCATION COURSES MUST BE TAKEN FROM A PROVIDER APPROVED BY THE DEPARTMENT, BASED UPON AN APPLICATION AND FEE PURSUANT TO THE REGULATIONS OF THE COMMISSIONER.

5. A LICENSED ATHLETIC TRAINER SHALL MAINTAIN ADEQUATE DOCUMENTATION OF COMPLETION OF ACCEPTABLE FORMAL CONTINUING EDUCATION AND SHALL PROVIDE SUCH DOCUMENTATION AT THE REQUEST OF THE DEPARTMENT. FAILURE TO PROVIDE SUCH DOCUMENTATION UPON THE REQUEST OF THE DEPARTMENT SHALL BE AN ACT OF MISCONDUCT SUBJECT TO DISCIPLINARY PROCEEDINGS PURSUANT TO SECTION SIXTY-FIVE HUNDRED TEN OF THIS TITLE.

6. THE MANDATORY CONTINUING EDUCATION FEE SHALL BE PAYABLE ON OR BEFORE THE FIRST DAY OF EACH TRIENNIAL REGISTRATION PERIOD, AND SHALL BE PAID IN ADDITION TO THE TRIENNIAL REGISTRATION FEE REQUIRED BY SECTION EIGHTY-THREE HUNDRED FIFTY-FIVE OF THIS ARTICLE.

S 8356-B. SPECIAL PROVISIONS. ANY PERSON WHO IS LICENSED AS A CERTIFIED ATHLETIC TRAINER BY THE DEPARTMENT ON THE EFFECTIVE DATE OF THIS SECTION SHALL BE LICENSED AS AN ATHLETIC TRAINER WITHOUT MEETING ANY ADDITIONAL REQUIREMENTS.

S 8. Section 8357 of the education law, as added by chapter 798 of the laws of 1992, is amended to read as follows:

S 8357. Non-liability of [certified] LICENSED athletic trainers for first aid or emergency treatment. Notwithstanding any inconsistent provision of any general, special or local law, any [certified] LICENSED athletic trainer who voluntarily and without the expectation of monetary compensation renders first aid or emergency treatment at the scene of an accident or other emergency, outside a hospital, doctor's office or any other place having proper and necessary athletic training equipment, to a person who is unconscious, ill or injured, shall not be liable for damages for injuries alleged to have been sustained by such person or for damages for the death of such person alleged to have occurred by reason of an act or omission in the rendering of such first aid or emergency treatment unless it is established that such injuries were or such death was caused by gross negligence on the part of such LICENSED athletic trainer. Nothing in this section shall be deemed or construed to relieve a [certified] LICENSED athletic trainer from liability for damages for injuries or death caused by an act or omission on the part of an athletic trainer while rendering professional services in the normal and ordinary course of his or her practice.

S 9. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.