

LEGISLATIVE BILL 831

Approved by the Governor March 14, 2012

Introduced by Howard, 9.

FOR AN ACT relating to the Uniform Credentialing Act; to amend section 38-186, Reissue Revised Statutes of Nebraska, and sections 38-101 and 38-121, Revised Statutes Cumulative Supplement, 2010; to adopt the Genetic Counseling Practice Act; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 25 of this act shall be known and may be cited as the Genetic Counseling Practice Act.

Sec. 2. For purposes of the Genetic Counseling Practice Act, the definitions found in sections 3 to 14 of this act shall apply.

Sec. 3. Active candidate means an individual who has (1) met the requirements established by the national genetic counseling board to take the national certification examination in general genetics or genetic counseling and (2) been granted active candidate status by the national genetic counseling board.

Sec. 4. Certification examination means the examination offered by either the national genetic counseling board or the national medical genetics board.

Sec. 5. Genetic counseling means the provision of services described in section 15 of this act.

Sec. 6. Genetic counseling intern means a student enrolled in a genetic counseling program accredited by the national genetic counseling board.

Sec. 7. Genetic counselor means an individual licensed under the Genetic Counseling Practice Act.

Sec. 8. National genetic counseling board means the American Board of Genetic Counseling or its successor or equivalent.

Sec. 9. National medical genetics board means the American Board of Medical Genetics or its successor or equivalent.

Sec. 10. Physician means an individual licensed under the Medicine and Surgery Practice Act to practice medicine and surgery or osteopathic medicine and surgery.

Sec. 11. Qualified supervisor means a genetic counselor or a physician.

Sec. 12. State board means the Board of Medicine and Surgery.

Sec. 13. Supervisee means an individual holding a provisional license issued under section 20 of this act.

Sec. 14. Supervision means the overall responsibility to assess the work of a supervisee, including regular meetings and chart review by a qualified supervisor pursuant to an annual supervision contract signed by the qualified supervisor and the supervisee which is on file with both parties. The presence of a qualified supervisor is not required during the performance of services by the supervisee.

Sec. 15. The scope of practice of a genetic counselor is:

(1) Obtaining and evaluating individual, family, and medical histories to determine genetic risk for genetic or medical conditions and diseases in a patient, his or her offspring, and other family members;

(2) Discussing features, natural history, means of diagnosis, genetic and environmental factors, and management of risk for genetic or medical conditions and diseases;

(3) Identifying and coordinating of genetic laboratory tests and other diagnostic studies as appropriate for the genetic assessment;

(4) Integrating genetic laboratory test results and other diagnostic studies with personal and family medical history to assess and communicate risk factors for genetic or medical conditions and diseases;

(5) Explaining the clinical implications of genetic laboratory tests and other diagnostic studies and their results;

(6) Evaluating the client's or family's responses to genetic or medical conditions identified by the genetic assessment or risk of recurrence and providing client-centered counseling and anticipatory guidance;

(7) Identifying and utilizing community resources that provide medical, educational, financial, and psychosocial support and advocacy; and

(8) Providing written documentation of medical, genetic, and counseling information for families and health care professionals.

Sec. 16. Except as provided in the Genetic Counseling Practice Act,

on and after January 1, 2013, no individual shall engage in the practice of genetic counseling unless he or she is licensed under the act.

Sec. 17. The Genetic Counseling Practice Act does not apply to:

(1) An individual licensed under the Uniform Credentialing Act to practice a profession other than genetic counseling when acting within the scope of his or her profession and doing work of a nature consistent with his or her training, except that such individual shall not hold himself or herself out to the public as a genetic counselor;

(2) An individual employed by the United States Government or an agency thereof to provide genetic counseling if he or she provides genetic counseling solely under the direction and control of the organization by which he or she is employed;

(3) A genetic counseling intern if genetic counseling performed by the genetic counseling intern is an integral part of the course of study and is performed under the direct supervision of a genetic counselor who is on duty and available in the assigned patient care area and if the genetic counseling intern is designated by the title genetic counseling intern; or

(4) An individual certified by the national genetic counseling board or the national medical genetics board to provide genetic counseling who permanently resides outside the state and is providing consulting services within the state for a period of two months or less.

Sec. 18. Except as provided in section 20 of this act, an applicant for licensure as a genetic counselor shall provide satisfactory evidence that he or she is certified as a genetic counselor by either the national genetic counseling board or the national medical genetics board.

Sec. 19. (1) The department, with the recommendation of the state board, may issue a license under the Genetic Counseling Practice Act based on licensure in another jurisdiction to an individual who meets the requirements of the Genetic Counseling Practice Act or substantially equivalent requirements as determined by the department, with the recommendation of the state board.

(2) An individual practicing genetic counseling in Nebraska before January 1, 2013, may apply for licensure under the act if, on or before July 1, 2013, he or she:

(a) Provides satisfactory evidence to the state board that he or she (i) has practiced genetic counseling for a minimum of ten years preceding January 1, 2013, (ii) has a postbaccalaureate degree at the master's level or higher in genetics or a related field of study, and (iii) has never failed the certification examination;

(b) Submits three letters of recommendation from at least one individual practicing genetic counseling who qualifies for licensure under the Genetic Counseling Practice Act and either a clinical geneticist or medical geneticist certified by the national medical genetics board. An individual submitting a letter of recommendation shall have worked with the applicant in an employment setting during at least five of the ten years preceding submission of the letter and be able to attest to the applicant's competency in providing genetic counseling; and

(c) Provides documentation of attending approved continuing education programs within the five years preceding application.

Sec. 20. (1) The department, on the recommendation of the state board, may issue a provisional license to practice genetic counseling to an individual who meets all of the requirements for licensure under the Genetic Counseling Practice Act except for certification and who has been granted active candidate status. Such license shall be valid for one year from the date of issuance and may be renewed for one additional year if the applicant fails the certification examination one time. The provisional license shall expire automatically upon the earliest of the following:

(a) Issuance of a license as a genetic counselor under the Genetic Counseling Practice Act;

(b) Thirty days after the applicant fails to pass the complete certification examination; or

(c) The date printed on the provisional license.

(2) An application for extension of a provisional license shall be signed by a qualified supervisor. A provisional licensee shall work at all times under the supervision of a qualified supervisor.

Sec. 21. On and after January 1, 2013, no individual shall hold himself or herself out as a genetic counselor unless he or she is licensed in accordance with the Genetic Counseling Practice Act. An individual who is not so licensed may not use, in connection with his or her name or place of business, the title genetic counselor, licensed genetic counselor, gene counselor, genetic consultant, or genetic associate, or any words, letters, abbreviations, or insignia indicating or implying that he or she holds a

license under the act.

Sec. 22. The department shall adopt and promulgate rules and regulations as it may deem necessary with reference to the conditions under which the practice of genetic counseling shall be carried on. The department shall have the power to enforce the Genetic Counseling Practice Act.

Sec. 23. The department shall establish and collect fees for credentialing under the Genetic Counseling Practice Act as provided in sections 38-151 to 38-157.

Sec. 24. The Genetic Counseling Practice Act shall not be construed to require any genetic counselor to counsel or refer for abortion, and licensing of a genetic counselor shall not be contingent upon his or her participation in counseling or referral with respect to abortion. The refusal of a genetic counselor to participate in counseling or referral with respect to abortion shall not form the basis for any claim of damages on account of the refusal or for any disciplinary or recriminatory action against the genetic counselor if the genetic counselor informs the patient that the genetic counselor will not participate in counseling or referral with respect to abortion and offers to direct the patient to the online directory of licensed genetic counselors maintained by the department.

Sec. 25. The department shall maintain an online directory of all genetic counselors licensed by the department.

Sec. 26. Section 38-101, Revised Statutes Cumulative Supplement, 2010, is amended to read:

38-101 Sections 38-101 to 38-1,140 and the following practice acts shall be known and may be cited as the Uniform Credentialing Act:

- (1) The Advanced Practice Registered Nurse Practice Act;
- (2) The Alcohol and Drug Counseling Practice Act;
- (3) The Athletic Training Practice Act;
- (4) The Audiology and Speech-Language Pathology Practice Act;
- (5) The Certified Nurse Midwifery Practice Act;
- (6) The Certified Registered Nurse Anesthetist Practice Act;
- (7) The Chiropractic Practice Act;
- (8) The Clinical Nurse Specialist Practice Act;
- (9) The Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act;
- (10) The Dentistry Practice Act;
- (11) The Emergency Medical Services Practice Act;
- (12) The Environmental Health Specialists Practice Act;
- (13) The Funeral Directing and Embalming Practice Act;
- (14) The Genetic Counseling Practice Act;
- ~~(14)~~ (15) The Hearing Instrument Specialists Practice Act;
- ~~(15)~~ (16) The Licensed Practical Nurse-Certified Practice Act;
- ~~(16)~~ (17) The Massage Therapy Practice Act;
- ~~(17)~~ (18) The Medical Nutrition Therapy Practice Act;
- ~~(18)~~ (19) The Medical Radiography Practice Act;
- ~~(19)~~ (20) The Medicine and Surgery Practice Act;
- ~~(20)~~ (21) The Mental Health Practice Act;
- ~~(21)~~ (22) The Nurse Practice Act;
- ~~(22)~~ (23) The Nurse Practitioner Practice Act;
- ~~(23)~~ (24) The Nursing Home Administrator Practice Act;
- ~~(24)~~ (25) The Occupational Therapy Practice Act;
- ~~(25)~~ (26) The Optometry Practice Act;
- ~~(26)~~ (27) The Perfusion Practice Act;
- ~~(27)~~ (28) The Pharmacy Practice Act;
- ~~(28)~~ (29) The Physical Therapy Practice Act;
- ~~(29)~~ (30) The Podiatry Practice Act;
- ~~(30)~~ (31) The Psychology Practice Act;
- ~~(31)~~ (32) The Respiratory Care Practice Act;
- ~~(32)~~ (33) The Veterinary Medicine and Surgery Practice Act; and
- ~~(33)~~ (34) The Water Well Standards and Contractors' Practice Act.

If there is any conflict between any provision of sections 38-101 to 38-1,139 and any provision of a practice act, the provision of the practice act shall prevail.

The Revisor of Statutes shall assign the Uniform Credentialing Act, including the practice acts enumerated in subdivisions (1) through ~~(32)~~ (33) of this section, to consecutive articles within Chapter 38.

Sec. 27. Section 38-121, Revised Statutes Cumulative Supplement, 2010, is amended to read:

38-121 (1) No individual shall engage in the following practices unless such individual has obtained a credential under the Uniform Credentialing Act:

- (a) Acupuncture;

(b) Advanced practice nursing;
 (c) Alcohol and drug counseling;
 (d) Asbestos abatement, inspection, project design, and training;
 (e) Athletic training;
 (f) Audiology;
 (g) Speech-language pathology;
 (h) Body art;
 (i) Chiropractic;
 (j) Cosmetology;
 (k) Dentistry;
 (l) Dental hygiene;
 (m) Electrology;
 (n) Emergency medical services;
 (o) Esthetics;
 (p) Funeral directing and embalming;
 (q) Genetic counseling;
~~(q)~~ (r) Hearing instrument dispensing and fitting;
~~(r)~~ (s) Lead-based paint abatement, inspection, project design, and training;
~~(s)~~ (t) Licensed practical nurse-certified;
~~(t)~~ (u) Massage therapy;
~~(u)~~ (v) Medical nutrition therapy;
~~(v)~~ (w) Medical radiography;
~~(w)~~ (x) Medicine and surgery;
~~(x)~~ (y) Mental health practice;
~~(y)~~ (z) Nail technology;
~~(z)~~ (aa) Nursing;
~~(aa)~~ (bb) Nursing home administration;
~~(bb)~~ (cc) Occupational therapy;
~~(cc)~~ (dd) Optometry;
~~(dd)~~ (ee) Osteopathy;
~~(ee)~~ (ff) Perfusion;
~~(ff)~~ (gg) Pharmacy;
~~(gg)~~ (hh) Physical therapy;
~~(hh)~~ (ii) Podiatry;
~~(ii)~~ (jj) Psychology;
~~(jj)~~ (kk) Radon detection, measurement, and mitigation;
~~(kk)~~ (ll) Respiratory care;
~~(ll)~~ (mm) Veterinary medicine and surgery;
~~(mm)~~ (nn) Public water system operation; and
~~(nn)~~ (oo) Constructing or decommissioning water wells and installing water well pumps and pumping equipment.

(2) No individual shall hold himself or herself out as any of the following until such individual has obtained a credential under the Uniform Credentialing Act for that purpose:

- (a) Registered environmental health specialist;
- (b) Certified marriage and family therapist;
- (c) Certified professional counselor; or
- (d) Social worker.

(3) No business shall operate for the provision of any of the following services unless such business has obtained a credential under the Uniform Credentialing Act:

- (a) Body art;
- (b) Cosmetology;
- (c) Emergency medical services;
- (d) Esthetics;
- (e) Funeral directing and embalming;
- (f) Massage therapy; or
- (g) Nail technology.

Sec. 28. Section 38-186, Reissue Revised Statutes of Nebraska, is amended to read:

38-186 (1) A petition shall be filed by the Attorney General in order for the director to discipline a credential obtained under the Uniform Credentialing Act to:

(a) Practice or represent oneself as being certified under any of the practice acts enumerated in subdivisions (1) through ~~(17)~~ (18) and ~~(19)~~ (20) through ~~(31)~~ (32) of section 38-101; or

(b) Operate as a business for the provision of services in body art; cosmetology; emergency medical services; esthetics; funeral directing and embalming; massage therapy; and nail technology in accordance with subsection (3) of section 38-121.

(2) The petition shall be filed in the office of the director. The

department may withhold a petition for discipline or a final decision from public access for a period of five days from the date of filing the petition or the date the decision is entered or until service is made, whichever is earliest.

(3) The proceeding shall be summary in its nature and triable as an equity action and shall be heard by the director or by a hearing officer designated by the director under rules and regulations of the department. Affidavits may be received in evidence in the discretion of the director or hearing officer. The department shall have the power to administer oaths, to subpoena witnesses and compel their attendance, and to issue subpoenas duces tecum and require the production of books, accounts, and documents in the same manner and to the same extent as the district courts of the state. Depositions may be used by either party.

Sec. 29. Original section 38-186, Reissue Revised Statutes of Nebraska, and sections 38-101 and 38-121, Revised Statutes Cumulative Supplement, 2010, are repealed.