AN ACT

RELATING TO PROFESSIONAL LICENSURE; ENACTING THE LACTATION CARE PROVIDER ACT; PROVIDING FOR LICENSURE OF LACTATION CARE PROVIDERS; ESTABLISHING A SCOPE OF PRACTICE FOR LICENSED LACTATION CARE PROVIDERS; AMENDING A SECTION OF THE NURSING PRACTICE ACT TO PROVIDE FOR BOARD OF NURSING ADMINISTRATION OF FUNDS DEPOSITED IN THE BOARD OF NURSING FUND PURSUANT TO THE LACTATION CARE PROVIDER ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. SHORT TITLE.--Sections 1 through 6 of this act may be cited as the "Lactation Care Provider Act".

SECTION 2. DEFINITIONS.--As used in the Lactation Care Provider Act:

A. "applicant" means an individual seeking a license to provide lactation care and services as a licensee pursuant to the Lactation Care Provider Act;

B. "approved certification" means certification as a lactation care provider conferred by a certification program accredited by any nationally or internationally recognized accrediting agency that is approved by the board and that establishes continuing education requirements;

C. "board" means the board of nursing;

D. "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
for the provision of lactation care and services to families,
including:

(1) clinical lactation assessment through
the systematic collection of subjective and objective data;

(2) analysis of data and creation of a plan
of care;

(3) implementation of a lactation care plan
with demonstration and instruction to parents and
communication to primary health care providers;

(4) evaluation of outcomes;

(5) provision of lactation education to
parents and health care providers; and

(6) recommendation and use of assistive
devices;

E. "license" means a license to practice as a
lactation care provider that the board issues pursuant to the
Lactation Care Provider Act;

F. "licensee" means a lactation care provider
licensed as a licensed lactation care provider pursuant to
the Lactation Care Provider Act;

G. "member" means a member of the board; and

H. "practice" means a course of business in which
lactation care and services are rendered or offered to any
individual, family or group of two or more individuals.

SECTION 3. BOARD POWERS.--The board may:

A. enforce the provisions of the Lactation Care Provider Act and adopt and promulgate rules to execute the provisions of that act;

B. license qualified applicants;

C. discipline licensees;

D. enforce qualification for licensure;

E. establish standards for licensee competence for continuing in or returning to practice based on approved certification;

F. issue orders relating to the practice of lactation care and services in accordance with the Uniform Licensing Act;

G. regulate licensee advertising and prohibit false, misleading or deceptive practices;

H. establish a code of conduct for licensees;

I. prepare information for the public that describes the regulatory functions of the board and the procedures by which complaints are filed with and resolved by the board; and

J. appoint a lactation care provider advisory committee consisting of at least one member who is a board member and at least two members who are experts in lactation to assist in the performance of the board's duties.
SECTION 4. LICENSURE REQUIREMENT--QUALIFICATIONS--
EXEMPTIONS FROM LICENSURE.--

A. An individual shall not use the title "licensed lactation care provider" unless that individual is a licensee.

B. An applicant for a license as a licensee shall:
   (1) be at least eighteen years of age;
   (2) submit an application completed upon a form that the board prescribes and in accordance with board rules, accompanied by fees required by board rules;
   (3) possess current approved certification; and
   (4) assist the board in obtaining the applicant's criminal history background check by:
      (a) providing fingerprints on two fingerprint cards or other biometric data for the purpose of obtaining criminal history record information from the federal bureau of investigation or the department of public safety; and
      (b) paying the cost of obtaining the fingerprints and criminal history background checks. An applicant shall have the right to inspect or challenge the validity of the record development by the background check if the applicant is denied licensure as established by board rule.
C. Nothing in the Lactation Care Provider Act shall be construed to affect or prevent the practice of lactation care and services by licensed care providers or other persons; provided that a person who is not a licensee shall not hold that person out or represent that person's self to be a licensed lactation care provider.

SECTION 5. LICENSE FEES--TERM--RENEWAL.--

A. The board shall require each applicant for initial licensure or renewal of a license to pay a nonrefundable licensure fee that shall not exceed one hundred dollars ($100).

B. A license shall expire biennially from the date of initial licensure.

C. The board shall renew licenses only upon receipt of renewal of licensure fees and evidence of compliance with continuing education requirements.

SECTION 6. DISCIPLINARY PROCEEDINGS.--

A. In accordance with the procedures contained in the Uniform Licensing Act, the board may deny, revoke or suspend any license held or applied for pursuant to the Lactation Care Provider Act, reprimand or place a licensee on probation or deny, limit or revoke a privilege of a licensee desiring to practice or practicing lactation care and services upon grounds that the licensee or applicant:

(1) is guilty of fraud or deceit in
procuring or attempting to procure a license;

(2) is convicted of a felony;

(3) is unfit or incompetent;

(4) is intemperate or is addicted to the use of habit-forming drugs;

(5) is guilty of unprofessional conduct as defined by board rules;

(6) has willfully or repeatedly violated any provisions of the Lactation Care Provider Act, including any board rule adopted pursuant to that act; or

(7) was certified or licensed to provide lactation care and services in any jurisdiction, territory or possession of the United States or another country and was the subject of disciplinary action for acts similar to acts described in this subsection. A certified copy of the record of the certification or licensure board disciplinary action taken by another jurisdiction, territory or possession of the United States or another country is conclusive evidence of the action.

B. The board may summarily suspend or restrict a license issued by the board without a hearing, simultaneously with or at any time after the initiation of proceedings for a hearing provided under the Uniform Licensing Act, if the board finds that evidence in its possession indicates that
(1) poses a clear and immediate danger to the public health and safety if the licensee continues to practice;

(2) has been adjudged mentally incompetent by a final order or adjudication by a court of competent jurisdiction; or

(3) has pled guilty to or been found guilty of any offense related to the practice of medicine or for any violent criminal offense in this state or a substantially equivalent criminal offense in another jurisdiction.

C. A licensee is not required to comply with a summary action taken pursuant to Subsection B of this section until service has been made or the licensee has actual knowledge of the order, whichever occurs first.

D. A person whose license is suspended or restricted under this section is entitled to a hearing by the board pursuant to the Uniform Licensing Act within fifteen days from the date that the licensee requests a hearing.

E. Disciplinary proceedings may be instituted by any person, shall be by complaint and shall conform with the provisions of the Uniform Licensing Act. Any party to a hearing may obtain a copy of the hearing record upon payment of costs for the copy.

F. Any person filing a complaint shall be immune from liability arising out of civil action if the complaint
is filed in good faith and without actual malice.

G. All written and oral communication made by any person to the board relating to actual or potential disciplinary action, including complaints made to the board, shall be confidential communications and are not public records for the purposes of the Inspection of Public Records Act. All data, communications and information acquired, prepared or disseminated by the board relating to actual or potential disciplinary action or its investigation of complaints shall not be disclosed, except to the extent necessary to carry out the purposes of the board or in a judicial appeal from the actions of the board or in a referral of cases made to law enforcement agencies, national database clearinghouses or other licensing boards.

H. The board shall not initiate a disciplinary action more than two years after the date that it receives a complaint.

I. The time limitation contained in Subsection D of this section shall not be tolled by any civil or criminal litigation in which the licensee or applicant is a party, arising substantially from the same facts, conduct, transactions or occurrences that would be the basis for the board's disciplinary action.

J. The board may recover the costs associated with the investigation and disposition of a disciplinary
proceeding from the person who is the subject of the proceeding.

SECTION 7. Section 61-3-27 NMSA 1978 (being Laws 1968, Chapter 44, Section 23, as amended) is amended to read:

"61-3-27. FUND ESTABLISHED--DISPOSITION--METHOD OF PAYMENT.--

A. There is created a "board of nursing fund".
B. Except as provided in Sections 61-3-10.5 and 61-3-10.6 NMSA 1978, all funds received by the board and money collected under the Nursing Practice Act and the Lactation Care Provider Act shall be deposited with the state treasurer. The state treasurer shall place the money to the credit of the board of nursing fund. Any income earned on investment of the fund shall remain in the fund.
C. Payments out of the board of nursing fund shall be on vouchers issued and signed by the person designated by the board upon warrants drawn by the department of finance and administration in accordance with the budget approved by the department.
D. All amounts paid into the board of nursing fund shall be subject to the order of the board and shall only be used for the purpose of meeting necessary expenses incurred in the enforcement of the purposes of the Nursing Practice Act and the Lactation Care Provider Act, the duties imposed by those acts and the promotion of nursing and lactation care.
provider education and standards in this state. All money
unused at the end of the fiscal year shall remain in the
board of nursing fund for use in accordance with the
provisions of the Nursing Practice Act and the Lactation Care
Provider Act to further the purposes of those acts.

E. All funds that may have accumulated to the
credit of the board under any previous act shall be continued
for use by the board in administration of the Nursing
Practice Act and the Lactation Care Provider Act.

F. As used in this section, "lactation care
provider" means a person licensed by the board pursuant to the
Lactation Care Provider Act to provide lactation care and
services."