

By: Ortega

H.B. No. 2057

A BILL TO BE ENTITLED

AN ACT

relating to the licensing and regulation of lactation consultants and the creation of the Lactation Consultant Advisory Board; requiring an occupational license; imposing fees; providing penalties; creating a criminal offense.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 51.2031(a), Occupations Code, is amended to read as follows:

(a) This section applies only to the regulation of the following professions by the department:

- (1) athletic trainers;
 - (2) behavior analysts;
 - (3) dietitians;
 - (4) hearing instrument fitters and dispensers;
 - (5) midwives;
 - (6) orthotists and prosthetists; ~~and~~
 - (7) speech-language pathologists and audiologists;
- and
- (8) lactation consultants.

SECTION 2. Subtitle M, Title 3, Occupations Code, is amended by adding Chapter 703 to read as follows:

CHAPTER 703. LACTATION CONSULTANTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 703.001. SHORT TITLE. This chapter may be cited as the

1 Texas Lactation Consultant Practice Act.

2 Sec. 703.002. DEFINITIONS. In this chapter:

3 (1) "Advisory board" means the Lactation Consultant
4 Advisory Board.

5 (2) "Commission" means the Texas Commission of
6 Licensing and Regulation.

7 (3) "Department" means the Texas Department of
8 Licensing and Regulation.

9 (4) "Executive director" means the executive director
10 of the department.

11 (5) "International Board of Lactation Consultant
12 Examiners" means the international certification body that confers
13 the International Board Certified Lactation Consultant credential
14 and is independently accredited by the National Commission of
15 Certifying Agencies.

16 (6) "Lactation consultant" means a health care
17 professional licensed under this chapter who performs services
18 related to the clinical management of breastfeeding and lactation
19 in a variety of settings for compensation.

20 Sec. 703.003. APPLICABILITY. Unless the person uses the
21 title "lactation consultant" or "licensed lactation consultant" to
22 describe the person's activities, this chapter does not apply to:

23 (1) a person licensed in this state as a physician or
24 nurse;

25 (2) a health care professional licensed by this state
26 and operating within the scope of the person's license;

27 (3) a person acting as a paid or volunteer peer

1 counselor, La Leche League Leader, doula, childbirth educator,
2 breastfeeding and lactation educator or counselor, or community
3 health worker providing educational services; or

4 (4) a licensed midwife.

5 Sec. 703.004. APPLICATION OF SUNSET ACT. The Lactation
6 Consultant Advisory Board is subject to Chapter 325, Government
7 Code (Texas Sunset Act). Unless continued in existence as provided
8 by that chapter, the Lactation Consultant Advisory Board is
9 abolished and this chapter expires September 1, 2035.

10 SUBCHAPTER B. LACTATION CONSULTANT ADVISORY BOARD

11 Sec. 703.051. ADVISORY BOARD MEMBERSHIP. (a) The advisory
12 board consists of nine members appointed by the presiding officer
13 of the commission with the approval of the commission as follows:

14 (1) five lactation consultant members, each of whom
15 has at least three years' experience in the practice of lactation
16 consulting;

17 (2) one physician member who is certified by a
18 national professional organization of physicians that certifies:

19 (A) obstetricians and gynecologists;

20 (B) family practitioners; or

21 (C) pediatricians;

22 (3) one member who is an advanced practice registered
23 nurse practicing in obstetrics, pediatrics, or family practice; and

24 (4) two members who represent the public and are not
25 practicing or trained in a health care profession, at least one of
26 whom is a parent who has been assisted by a lactation consultant.

27 (b) Appointments to the advisory board shall be made without

1 regard to the race, color, disability, sex, religion, age, or
2 national origin of the appointee.

3 Sec. 703.052. DUTIES OF ADVISORY BOARD. The advisory board
4 shall provide advice and recommendations to the department on
5 technical matters relevant to the administration of this chapter.

6 Sec. 703.053. TERMS; VACANCIES. (a) Members of the
7 advisory board serve staggered six-year terms. The terms of three
8 members expire on January 31 of each odd-numbered year.

9 (b) If a vacancy occurs during a member's term, the
10 presiding officer of the commission, with the commission's
11 approval, shall appoint a replacement who meets the qualifications
12 for the vacant position to serve for the remainder of the term.

13 Sec. 703.054. PRESIDING OFFICER. The presiding officer of
14 the commission shall designate a public member of the advisory
15 board to serve as the presiding officer of the advisory board for a
16 one-year term. The presiding officer of the advisory board may vote
17 on any matter before the advisory board.

18 Sec. 703.055. MEETINGS. The advisory board shall meet at
19 the call of the presiding officer of the commission or the executive
20 director.

21 Sec. 703.056. APPLICABILITY OF OTHER LAW. Chapter 2110,
22 Government Code, does not apply to the composition or duration of
23 the advisory board or to the appointment of the advisory board's
24 presiding officer.

25 SUBCHAPTER C. POWERS AND DUTIES

26 Sec. 703.101. GENERAL POWERS AND DUTIES. (a) The executive
27 director shall administer and enforce this chapter.

1 (b) The commission shall adopt rules:

2 (1) prescribing the standards for the practice of
3 lactation consulting in this state;

4 (2) prescribing the type of courses and number of
5 hours required to meet the basic lactation consulting education
6 course and continuing lactation consulting education course
7 requirements;

8 (3) prescribing minimum standards for the approval and
9 revocation of approval of:

10 (A) basic lactation consulting education courses
11 and continuing lactation consulting education courses; and

12 (B) instructors or facilities offering basic
13 lactation consulting education courses and continuing lactation
14 consulting education courses;

15 (4) requiring lactation consultants to obtain each
16 patient's signature on a release advising the patient that
17 lactation consultation is not a substitute for conventional medical
18 care by a physician, including diagnosis, treatment, and well-child
19 care; and

20 (5) establishing requirements necessary to establish
21 eligibility for reciprocity for initial licensing under this
22 chapter.

23 (c) The standards prescribed under Subsection (b)(1) must
24 include ethical requirements and be equivalent to national
25 standards prescribed by the International Board of Lactation
26 Consultant Examiners.

27 (d) The department shall:

1 (1) implement rules governing:

2 (A) basic lactation consulting education courses
3 and continuing lactation consulting education courses; and

4 (B) approval of instructors or facilities
5 offering basic lactation consulting education courses and
6 continuing lactation consulting education courses;

7 (2) adopt and provide information about basic
8 lactation consulting resources and instructor manuals;

9 (3) enter into agreements necessary to administer this
10 chapter; and

11 (4) establish a program to license lactation
12 consultants as prescribed by commission rules.

13 Sec. 703.102. REPORTS ON LACTATION CONSULTING. (a) The
14 department shall prepare and publish reports on the practice of
15 lactation consulting in this state.

16 (b) The Department of State Health Services shall publish a
17 statistical report of breastfeeding initiation and continuation
18 rates.

19 Sec. 703.103. COMPLAINTS. (a) For purposes of Section
20 51.252, the commission shall adopt rules to provide for the release
21 of any relevant lactation consulting or medical record to the
22 department, without the consent of the lactation consultant's
23 patient, as necessary to conduct an investigation of a complaint.

24 (b) The department shall provide reasonable assistance to a
25 person who wishes to file a complaint with the department regarding
26 a person or activity regulated by this chapter.

27 Sec. 703.104. ROSTER. (a) The department shall maintain a

1 roster of each person licensed as a lactation consultant in this
2 state.

3 (b) The roster must contain for each person the information
4 required on the license form under this chapter and other
5 information the department determines necessary to accurately
6 identify each licensed lactation consultant. The information is
7 public information for purposes of Chapter 552, Government Code.

8 SUBCHAPTER D. LICENSE REQUIREMENTS

9 Sec. 703.151. LICENSE REQUIRED. (a) Unless the person
10 holds a license issued under this chapter, a person may not use:

11 (1) the title "lactation consultant" or "registered
12 lactation consultant";

13 (2) the letters "LC" or "RLC"; or

14 (3) any other words, letters, abbreviations, or
15 insignia indicating or implying that the person is licensed under
16 this chapter.

17 (b) The department shall issue a license to each person who
18 fulfills the licensing requirements.

19 Sec. 703.152. QUALIFICATIONS FOR INITIAL LICENSE. A person
20 is qualified to become a licensed lactation consultant under this
21 chapter if the person provides the department with documentary
22 evidence that the person:

23 (1) has satisfied each requirement for basic lactation
24 consulting education, including clinical and hands-on training;

25 (2) is credentialed as a lactation consultant by the
26 International Board of Lactation Consultant Examiners; and

27 (3) has passed the comprehensive lactation consulting

1 examination and jurisprudence examination required by this
2 chapter.

3 Sec. 703.153. LICENSE APPLICATION. A person may apply to
4 the department for a lactation consultant license in the manner and
5 on a form prescribed by the executive director. The application
6 must:

7 (1) be accompanied by a nonrefundable application fee;

8 and

9 (2) include the information required by commission
10 rules.

11 Sec. 703.154. INITIAL LICENSE TERM. An initial lactation
12 consultant license is valid for one year.

13 Sec. 703.155. EXAMINATION. (a) The department shall:

14 (1) adopt standards for a comprehensive lactation
15 consulting examination that an applicant must pass before an
16 initial license may be issued; and

17 (2) establish eligibility requirements for persons
18 taking a comprehensive lactation consulting examination.

19 (b) The department shall recognize, prepare, administer, or
20 arrange for the administration of an examination under this
21 chapter, which may include accepting the results of a
22 criterion-referenced, standardized national examination by the
23 International Board of Lactation Consultant Examiners.

24 Sec. 703.156. JURISPRUDENCE EXAMINATION. (a) The
25 department shall develop a jurisprudence examination to determine
26 an applicant's knowledge of this chapter, commission rules under
27 this chapter, and any other applicable laws of this state affecting

1 the applicant's lactation consulting practice. The department
2 shall administer the examination at least twice each calendar year.

3 (b) The commission shall adopt rules to implement this
4 section, including rules related to the development and
5 administration of the examination, examination fees, guidelines
6 for reexamination, grading the examination, and providing notice of
7 examination results.

8 SUBCHAPTER E. LICENSE RENEWAL

9 Sec. 703.201. APPLICATION FOR LICENSE RENEWAL. An
10 applicant for renewal of a license under this chapter shall apply in
11 the manner provided by Section 703.153.

12 Sec. 703.202. RENEWAL LICENSE TERM. A renewal license is
13 valid for two years.

14 Sec. 703.203. REQUIRED ATTENDANCE AT SPECIFIC LACTATION
15 CONSULTING EDUCATION COURSES. The department may assess the
16 continuing education needs of lactation consultants and in
17 accordance with commission rules may require lactation consultants
18 to attend continuing lactation consulting education courses
19 specified by the department.

20 Sec. 703.204. EVIDENCE OF CERTAIN CREDENTIALS. An
21 applicant for the renewal of a license under this chapter must
22 provide evidence that the applicant is credentialed as a lactation
23 consultant by the International Board of Lactation Consultant
24 Examiners.

25 Sec. 703.205. REFUSING RENEWAL FOR FAILURE TO PAY
26 ADMINISTRATIVE PENALTY. The department may refuse to renew the
27 license of a person who fails to pay an administrative penalty

1 unless enforcement of the penalty is stayed or a court has ordered
2 that the administrative penalty is not owed.

3 SUBCHAPTER F. DISCIPLINARY ACTIONS

4 Sec. 703.251. GROUNDS FOR DISCIPLINARY ACTION. (a) The
5 commission or executive director may take disciplinary action
6 against or refuse to issue or renew a license of an applicant or
7 license holder who:

8 (1) violates this chapter or a rule adopted under this
9 chapter;

10 (2) submits false or misleading information to the
11 department;

12 (3) is convicted of a misdemeanor involving moral
13 turpitude or a felony;

14 (4) uses alcohol or drugs intemperately;

15 (5) engages in unprofessional or dishonorable conduct
16 that may reasonably be determined to deceive or defraud the public;

17 (6) is unable to practice lactation consulting with
18 reasonable skill and safety because of illness, disability, or
19 psychological impairment;

20 (7) is determined by a court judgment to be mentally
21 impaired; or

22 (8) fails to practice lactation consulting in a manner
23 consistent with the public health and safety.

24 (b) The commission or executive director may take
25 disciplinary action against or refuse to issue or renew a license of
26 an applicant or license holder if disciplinary action is taken by
27 another jurisdiction that affects the applicant's or license

1 holder's authority to practice lactation consulting, including a
2 suspension, revocation, or other action.

3 SUBCHAPTER G. PENALTIES AND ENFORCEMENT PROVISIONS

4 Sec. 703.301. CIVIL PENALTY. (a) A person is liable to
5 this state for a civil penalty if the person knowingly or
6 intentionally practices lactation consulting in violation of this
7 chapter or a commission order.

8 (b) A civil penalty under this section may not exceed \$250
9 for each violation. Each day of violation constitutes a separate
10 violation for purposes of penalty assessment. In determining the
11 amount of the penalty, the court shall consider:

- 12 (1) the person's history of previous violations;
13 (2) the seriousness of the violation;
14 (3) any hazard to the health and safety of the public;
15 and
16 (4) the demonstrated good faith of the person charged.

17 Sec. 703.302. INJUNCTIONS. (a) In this section, "health
18 authority" means a physician who administers state and local laws
19 regulating public health under Chapter 121, Health and Safety Code.

20 (b) If the executive director or a health authority
21 determines that a person has violated this chapter, the executive
22 director may institute an action for injunctive relief as described
23 by Section 51.352.

24 Sec. 703.303. CRIMINAL PENALTY. (a) A person commits an
25 offense if the person knowingly practices lactation consulting in
26 violation of this chapter.

27 (b) An offense under this section is a Class C misdemeanor.

1 Sec. 703.304. CEASE AND DESIST ORDER. A violation of a
2 cease and desist order issued by the executive director constitutes
3 grounds for imposing an administrative penalty under Subchapter F,
4 Chapter 51.

5 SECTION 3. (a) As soon as practicable after the effective
6 date of this Act, the presiding officer of the Texas Commission of
7 Licensing and Regulation shall appoint the initial members to the
8 Lactation Consultant Advisory Board as required by Section 703.051,
9 Occupations Code, as added by this Act. In appointing the members,
10 the presiding officer shall appoint three members to terms expiring
11 January 31, 2025, three members to terms expiring January 31, 2027,
12 and three members to terms expiring January 31, 2029.

13 (b) Notwithstanding Section 703.051(a)(1), Occupations
14 Code, as added by this Act, a person who has practiced as a
15 lactation consultant for the period required by that subdivision is
16 eligible for appointment as an initial member of the Lactation
17 Consultant Advisory Board regardless of whether the person holds a
18 lactation consultant license issued under Chapter 703, Occupations
19 Code, as added by this Act.

20 SECTION 4. Not later than June 1, 2024, the Texas Commission
21 of Licensing and Regulation shall adopt the rules, procedures, and
22 fees necessary to implement Chapter 703, Occupations Code, as added
23 by this Act.

24 SECTION 5. Subchapters F and G, Chapter 51, Occupations
25 Code, do not apply to conduct described by Section 703.151,
26 Occupations Code, as added by this Act, before September 1, 2024.

27 SECTION 6. (a) Except as provided by Subsection (b) of

1 this section, this Act takes effect September 1, 2023.

2 (b) Section 703.151, Occupations Code, and Subchapters F
3 and G, Chapter 703, Occupations Code, as added by this Act, take
4 effect September 1, 2024.