

By: Farrar

H.B. No. 3976

A BILL TO BE ENTITLED

AN ACT

relating to the licensing and regulation of lactation consultants;
requiring an occupational license; providing penalties.

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

SECTION 1. 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 Texas Lactation Consultant Act.

Sec. 703.002. DEFINITIONS. In this chapter:

(1) "Board" means the lactation consultant board.

(2) "Commissioner" means the commissioner of state health services.

(3) "Department" means the Department of State Health Services.

(4) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(5) "Lactation consultant" or "registered lactation consultant" means a health care professional licensed under this chapter who specializes in the clinical management of breastfeeding and works in a variety of settings.

Sec. 703.003. FINDINGS.

(a) The legislature finds that breastfeeding a baby is an

1 important and basic act of nurture that must be encouraged in the
2 interests of maternal and child health and family values. The
3 legislature recognizes breastfeeding as the best method of infant
4 nutrition.

5 (b) Current levels of breastfeeding initiation and duration
6 in Texas fall significantly below public health targets.
7 Approximately 30% of women need professional help to breastfeed
8 successfully. Sources of professional support are limited and
9 difficult to locate. Qualified lactation consultants facilitate
10 better breastfeeding outcomes. The profession of lactation
11 consulting requires specialized skills. Licensing lactation
12 consultants will protect consumers and reduce health care costs.

13 Sec. 703.004. APPLICABILITY. As long as the person does not
14 use the titles "lactation consultant" or "registered lactation
15 consultant" to describe the person's activities, this chapter does
16 not apply to:

- 17 (1) a person licensed in this state as a physician or nurse;
18 (2) a health care professional licensed by the state and
19 operating within the scope of the person's license;
20 (3) a person acting as a paid or volunteer peer counselor,
21 La Leche League Leader, doula, or childbirth educator; or
22 (4) a licensed midwife.

23 Sec. 703.005. APPLICATION OF SUNSET ACT. The lactation
24 consultant board is subject to Chapter 325, Government Code (Texas
25 Sunset Act). Unless continued in existence as provided by that
26 chapter, the lactation consultant board is abolished and this
27 chapter expires September 1, 2025.

1 [Sections 703.007-703.051 reserved for expansion]

2 SUBCHAPTER B. LACTATION CONSULTANT BOARD

3 Sec. 703.051. LACTATION CONSULTANT BOARD. The commissioner
4 shall appoint a lactation consultant board that reports directly to
5 the commissioner.

6 Sec. 703.052. APPOINTMENT OF LACTATION CONSULTANT BOARD.

7 (a) The lactation consultant board consists of nine members
8 appointed as follows:

9 (1) five lactation consultant members each of whom has at
10 least three years' experience in the practice of lactation
11 consulting;

12 (2) one physician member who is either certified by a
13 national professional organization of physicians that certifies
14 obstetricians and gynecologists, or who is certified by a national
15 professional organization of physicians that certifies family
16 practitioners or pediatricians;

17 (3) one member who is a registered nurse and who practices
18 in obstetrics or in pediatrics or in family practice; and

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

22 (b) Appointments to the lactation consultant board shall be
23 made without regard to the race, color, disability, sex, religion,
24 age, or national origin of the appointee.

25 Sec. 703.053. PUBLIC MEMBER ELIGIBILITY. A person is not
26 eligible for appointment as a public member of the lactation
27 consultant board if the person or the person's spouse:

1 (1) is registered, certified, or licensed by an
2 occupational regulatory agency in the field of lactation
3 consulting;

4 (2) is employed by or participates in the management of a
5 business entity or other organization regulated by the lactation
6 consultant board or receiving funds from the lactation consultant
7 board;

8 (3) owns or controls, directly or indirectly, more than a 10
9 percent interest in a business entity or other organization
10 regulated by or receiving funds from the lactation consultant
11 board; or

12 (4) uses or receives a substantial amount of tangible goods,
13 services, or funds from the lactation consultant board, other than
14 compensation or reimbursement authorized by law for lactation
15 consultant board membership, attendance, or expenses; or

16 (5) has any other interest, financial or otherwise, that is
17 adverse to the profession of lactation consulting.

18 Sec. 703.054. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a)
19 In this section, "Texas trade association" means a cooperative and
20 voluntarily joined statewide association of business or
21 professional competitors in this state designed to assist its
22 members and its industry or profession in dealing with mutual
23 business or professional problems and in promoting their common
24 interest.

25 (b) A person may not be a lactation consultant board member,
26 an employee of the lactation consultant board, or a department
27 employee employed in a "bona fide executive, administrative, or

1 professional capacity," as that phrase is used for purposes of
2 establishing an exemption to the overtime provisions of the federal
3 Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) if:

4 (1) the person is an officer, employee, or paid consultant
5 of a Texas trade association in the field of health care; or

6 (2) the person's spouse is an officer, manager, or paid
7 consultant of a Texas trade association in the field of health care.

8 (c) A person may not be a lactation consultant board member
9 or act as the general counsel to the lactation consultant board or
10 the department if the person is required to register as a lobbyist
11 under Chapter 305, Government Code, because of the person's
12 activities for compensation on behalf of a profession related to
13 the operation of the lactation consultant board.

14 Sec. 703.055. TERMS. Members of the lactation consultant
15 board serve for staggered terms of six years. The terms of three
16 members expire on January 31 of each odd-numbered year.

17 Sec. 703.056. OFFICERS. The commissioner shall designate a
18 public member of the lactation consultant board as the presiding
19 officer of the lactation consultant board to serve in that capacity
20 at the pleasure of the commissioner. The lactation consultant
21 board shall elect one of the other members of the lactation
22 consultant board as vice presiding officer.

23 Sec. 703.057. GROUNDS FOR REMOVAL. (a) It is a ground for
24 removal from the lactation consultant board that a member:

25 (1) does not have at the time of taking office the
26 qualifications required by Section 703.052;

27 (2) does not maintain during service on the lactation

1 consultant board the qualifications required by Section 703.052;

2 (3) is ineligible for membership under Section 703.053 or
3 703.054;

4 (4) cannot, because of illness or disability, discharge the
5 member's duties for a substantial part of the member's term; or

6 (5) is absent from more than half of the regularly scheduled
7 lactation consultant board meetings that the member is eligible to
8 attend during a calendar year without an excuse approved by a
9 majority vote of the lactation consultant board.

10 (b) The validity of an action of the lactation consultant
11 board is not affected by the fact that it is taken when a ground for
12 removal of a lactation consultant board member exists.

13 (c) If the program coordinator has knowledge that a
14 potential ground for removal exists, the program coordinator shall
15 notify the presiding officer of the lactation consultant board of
16 the potential ground. The presiding officer shall then notify the
17 commissioner that a potential ground for removal exists. If the
18 potential ground for removal involves the presiding officer, the
19 program coordinator shall notify the next highest ranking member of
20 the lactation consultant board, who shall then notify the
21 commissioner that a potential ground for removal exists.

22 Sec. 703.058. REIMBURSEMENT. A lactation consultant board
23 member may receive reimbursement for travel expenses as provided by
24 the General Appropriations Act.

25 Sec. 703.059. MEETINGS. (a) The lactation consultant
26 board shall meet at least semiannually.

27 (b) The lactation consultant board shall meet at other times

1 at the call of the lactation consultant board or the commissioner.

2 Sec. 703.060. TRAINING. (a) A person who is appointed to
3 and qualifies for office as a member of the lactation consultant
4 board may not vote, deliberate, or be counted as a member in
5 attendance at a meeting of the lactation consultant board until the
6 person completes a training program that complies with this
7 section.

8 (b) The training program must provide the person with
9 information regarding:

10 (1) this chapter and the programs, functions, rules, and
11 budget of the lactation consultant board;

12 (2) the results of the most recent formal audit of the
13 lactation consultant board;

14 (3) the requirements of laws relating to open meetings,
15 public information, administrative procedure, and conflicts of
16 interest; and

17 (4) any applicable ethics policies adopted by the lactation
18 consultant board or the Texas Ethics Commission.

19 (c) A person appointed to the lactation consultant board is
20 entitled to reimbursement, as provided by the General
21 Appropriations Act, for the travel expenses incurred in attending
22 the training program regardless of whether the attendance at the
23 program occurs before or after the person qualifies for office.

24 SUBCHAPTER C. PROGRAM COORDINATOR AND PERSONNEL

25 Sec. 703.101. PROGRAM COORDINATOR. The department shall,
26 after consultation with the lactation consultant board, employ a
27 coordinator for the lactation consulting program and the staff

1 necessary to administer the program.

2 Sec. 703.102. DUTIES OF PROGRAM COORDINATOR. The program
3 coordinator shall supervise the staff in the performance of
4 administrative duties, including:

5 (1) keeping the minutes of lactation consultant board
6 meetings; and

7 (2) maintaining:

8 (a) records about basic lactation consulting education
9 courses and continuing lactation consulting education courses;

10 (b) a roster of lactation consultants licensed under
11 Section 703.251; and

12 (c) a record of each person who is licensed under this
13 chapter.

14 Sec. 703.103. DIVISION OF RESPONSIBILITIES. The lactation
15 consultant board shall develop and implement policies that clearly
16 define the respective responsibilities of the lactation consultant
17 board and the staff of the lactation consultant board.

18 Sec. 703.104. EQUAL EMPLOYMENT OPPORTUNITY POLICY; REPORT.

19 (a) The program coordinator or the program coordinator's designee
20 shall prepare and maintain a written policy statement to ensure
21 implementation of an equal employment opportunity program under
22 which all personnel transactions are made without regard to race,
23 color, disability, sex, religion, age, or national origin. The
24 policy statement must include:

25 (1) personnel policies, including policies related to
26 recruitment, evaluation, selection, application, training, and
27 promotion of personnel that comply with Chapter 21, Labor Code;

1 (2) a comprehensive analysis of the lactation consultant
2 board workforce that meets federal and state guidelines;

3 (3) procedures by which a determination can be made of
4 significant underuse in the lactation consultant board workforce of
5 all persons for whom federal or state guidelines encourage a more
6 equitable balance; and

7 (4) reasonable methods to appropriately address those areas
8 of underuse.

9 (b) A policy statement prepared under Subsection (a) must:

10 (1) cover an annual period;

11 (2) be updated annually;

12 (3) be reviewed by the Commission on Human Rights for
13 compliance with Subsection (a)(1); and

14 (4) be filed with the governor.

15 (c) The governor shall deliver a biennial report to the
16 legislature based on the information received under Subsection (b).
17 The report may be made separately or as a part of another biennial
18 report made to the legislature.

19 SUBCHAPTER D. POWERS AND DUTIES OF LACTATION CONSULTANT BOARD,

20 EXECUTIVE COMMISSIONER, AND DEPARTMENT

21 Sec. 703.151. RULEMAKING AUTHORITY OF LACTATION CONSULTANT
22 BOARD. (a) Subject to the approval of the executive commissioner,
23 the lactation consultant board shall:

24 (1) adopt substantive and procedural rules necessary for
25 the licensing of lactation consultants;

26 (2) adopt rules prescribing the standards for the practice
27 of lactation consulting in this state. The standards must be

1 equivalent to established national standards such as those set by
2 the International Board of Lactation Consultant Examiners (IBCLE)
3 for an International Board Certified Lactation Consultant (IBCLC).
4 The standards must include ethical requirements.

5 (3) The rules must prescribe:

6 (a) the type of courses and number of hours required to meet
7 the basic lactation consulting education course and continuing
8 lactation consulting education course requirements; and

9 (b) minimum standards for the approval and revocation of
10 approval of:

11 (i) basic lactation consulting education courses and
12 continuing lactation consulting education courses; and

13 (ii) instructors or facilities used in basic lactation
14 consulting education courses and continuing lactation consulting
15 education courses;

16 (4) adopt rules requiring lactation consultants to require
17 patients to sign a release advising the patient that lactation
18 consultation is not a substitute for conventional medical care by a
19 physician, which includes diagnosis, treatment, and well child
20 care;

21 (5) adopt rules prescribing a procedure for reporting and
22 processing complaints relating to the practice of lactation
23 consulting in this state;

24 (6) adopt and implement substantive and procedural rules as
25 necessary to discipline lactation consultants determined to be in
26 violation of this chapter or otherwise a threat to the public health
27 and safety;

1 (7) adopt rules as necessary to establish eligibility for
2 reciprocity for initial licensing under this chapter; and

3 (8) adopt other rules necessary to implement a duty imposed
4 on the executive commissioner or the department under this chapter.

5 (b) The rules adopted under Subsection (a)(5) must include
6 rules relating to:

7 (1) warnings provided to lactation consultants for a
8 violation of this chapter or rules adopted under this chapter;

9 (2) agreed orders for additional education by lactation
10 consultants;

11 (3) recommendations or requirements for medical or
12 psychological treatment, including treatment related to substance
13 abuse by a lactation consultant; and

14 (4) restrictions on the practice of a lactation consultant,
15 including practice limitations and the suspension and revocation of
16 a license, and placement of a lactation consultant on probation.

17 Sec. 703.152. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION.

18 (a) Subject to the approval of the executive commissioner, the
19 lactation consultant board shall adopt rules necessary to comply
20 with Chapter 53.

21 (b) In its proposed rules under this section, the lactation
22 consultant board shall list the specific offenses for which a
23 conviction would constitute grounds for the lactation consultant
24 board to take action under Section 53.021.

25 Sec. 703.153. FEES. Subject to the approval of the
26 executive commissioner, the lactation consultant board by rule
27 shall establish reasonable and necessary fees that, in the

1 aggregate, produce sufficient revenue to cover the costs of
2 administering this chapter.

3 Sec. 703.154. ANNUAL REPORT; REPORTS ON LACTATION
4 CONSULTING. (a) The lactation consultant board shall prepare and
5 publish reports on the practice of lactation consulting in this
6 state, including statistical reporting of breastfeeding initiation
7 and continuation rates.

8 Sec. 703.155. COMPLAINT PROCEDURE AND INVESTIGATION. (a)
9 The lactation consultant board shall adopt rules concerning the
10 investigation of a complaint filed with the lactation consultant
11 board.

12 (b) The rules adopted under Subsection (a) must:

13 (1) distinguish among categories of complaints;

14 (2) ensure that a person who files a complaint has an
15 opportunity to explain the allegations made in the complaint; and

16 (3) provide for the release of any relevant lactation
17 consulting or medical record to the lactation consultant board,
18 without the necessity of consent by the lactation consultant's
19 patient, as necessary to conduct an investigation of a complaint.

20 (c) The lactation consultant board by rule shall:

21 (1) adopt a form to standardize information concerning
22 complaints made to the lactation consultant board; and

23 (2) prescribe information to be provided to a person when
24 the person files a complaint with the lactation consultant board.

25 (d) The lactation consultant board shall provide reasonable
26 assistance to a person who wishes to file a complaint with the
27 lactation consultant board.

1 Sec. 703.156. DUTIES OF LACTATION CONSULTANT BOARD AND
2 DEPARTMENT. (a) The department, with the recommendation of the
3 lactation consultant board, shall:

4 (1) implement rules governing:

5 (a) basic lactation consulting education courses and
6 continuing lactation consulting education courses; and

7 (b) approval of instructors or facilities used in offering
8 basic lactation consulting education courses and continuing
9 lactation consulting education courses;

10 (2) adopt and provide information about basic lactation
11 consulting resources and instructor manuals; and

12 (3) enter into agreements necessary to carry out this
13 chapter.

14 (c) The department shall:

15 (1) establish a program for licensure as a lactation
16 consultant as prescribed by lactation consultant board rules;

17 (2) pay the salaries of the program coordinator and any
18 additional staff the department determines to be necessary; and

19 (3) provide office space and supplies for the program
20 coordinator and other staff.

21 Sec. 703.157. ROSTER; NOTICE TO COUNTY OFFICIALS. (a) The
22 department shall maintain a roster of each person licensed as a
23 lactation consultant in this state.

24 (b) The roster shall contain for each person the information
25 required on the licensure form under this chapter and other
26 information the department determines necessary to accurately
27 identify each licensed lactation consultant. The information is

1 public information as defined by Chapter 552, Government Code.

2 Sec. 703.158. RULES RESTRICTING ADVERTISING OR COMPETITIVE
3 BIDDING. (a) The lactation consultant board may not propose rules
4 restricting advertising or competitive bidding by a licensed
5 lactation consultant except to prohibit false, misleading, or
6 deceptive practices.

7 (b) The lactation consultant board may not include in its
8 proposed rules to prohibit false, misleading, or deceptive
9 practices by a licensed lactation consultant a rule that:

10 (1) restricts the lactation consultant's use of any
11 advertising medium;

12 (2) restricts the lactation consultant's personal
13 appearance or use of the lactation consultant's voice in an
14 advertisement;

15 (3) relates to the size or duration of an advertisement by
16 the lactation consultant; or

17 (4) restricts the lactation consultant's advertisement
18 under a trade name.

19 Sec. 703.159. BOARD COMMITTEES. (a) The lactation
20 consultant board may appoint committees to assist the lactation
21 consultant board with its functions under this chapter.

22 (b) Only a member of the lactation consultant board may
23 serve as a member of a lactation consultant board committee.

24 Sec. 703.160. USE OF TECHNOLOGY. Subject to the approval of
25 the executive commissioner, the lactation consultant board shall
26 implement a policy requiring the lactation consultant board to use
27 appropriate technological solutions to improve the lactation

1 consultant board's ability to perform its functions. The policy
2 must ensure that the public is able to interact with the lactation
3 consultant board on the Internet.

4 Sec. 703.161. NEGOTIATED RULEMAKING AND ALTERNATIVE
5 DISPUTE RESOLUTION POLICY. (a) Subject to the approval of the
6 executive commissioner, the lactation consultant board shall
7 develop and implement a policy to encourage the use of:

8 (1) negotiated rulemaking procedures under Chapter 2008,
9 Government Code, for the adoption of lactation consultant board
10 rules; and

11 (2) appropriate alternative dispute resolution procedures
12 under Chapter 2009, Government Code, to assist in the resolution of
13 internal and external disputes under the lactation consultant
14 board's jurisdiction.

15 (b) The lactation consultant board's procedures relating to
16 alternative dispute resolution must conform, to the extent
17 possible, to any model guidelines issued by the State Office of
18 Administrative Hearings for the use of alternative dispute
19 resolution by state agencies.

20 (c) The department shall designate a trained person to:

21 (1) coordinate the implementation of the policy adopted
22 under Subsection (a);

23 (2) serve as a resource for any training needed to implement
24 the procedures for negotiated rulemaking or alternative dispute
25 resolution; and

26 (3) collect data concerning the effectiveness of those
27 procedures, as implemented by the lactation consultant board.

1 SUBCHAPTER E. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES

2 Sec. 703.201. PUBLIC INTEREST INFORMATION. (a) The
3 lactation consultant board shall prepare information of public
4 interest describing the functions of the lactation consultant board
5 and the procedures by which complaints are filed with and resolved
6 by the lactation consultant board.

7 (b) The lactation consultant board shall make the
8 information available to the public and appropriate state agencies.

9 Sec. 703.202. COMPLAINTS. (a) The lactation consultant
10 board by rule shall establish methods by which consumers and
11 service recipients are notified of the name, mailing address, and
12 telephone number of the lactation consultant board for the purpose
13 of directing complaints to the lactation consultant board. The
14 lactation consultant board may provide for that notice:

15 (1) on each registration form, application, or disclosure
16 and informed consent form of a person regulated by the lactation
17 consultant board;

18 (2) on a sign prominently displayed in the place of business
19 of each person regulated by the lactation consultant board; or

20 (3) in a bill for service provided by a person regulated by
21 the lactation consultant board.

22 (b) The lactation consultant board shall list with its
23 regular telephone number the toll-free telephone number
24 established under other state law that may be called to present a
25 complaint about a health professional.

26 (c) The lactation consultant board shall maintain a system
27 to promptly and efficiently act on complaints filed with the

1 lactation consultant board. The lactation consultant board shall
2 maintain:

3 (1) information about the parties to the complaint and the
4 subject matter of the complaint;

5 (2) a summary of the results of the review or investigation
6 of the complaint; and

7 (3) information about the disposition of the complaint.

8 (d) The lactation consultant board shall make information
9 available describing its procedures for complaint investigation
10 and resolution.

11 (e) The lactation consultant board shall periodically
12 notify the parties of the status of the complaint until final
13 disposition of the complaint.

14 Sec. 703.203. COMPLAINT COMMITTEE. The lactation
15 consultant board shall appoint at least one public member of the
16 lactation consultant board to any lactation consultant board
17 committee established to review a complaint filed with the
18 lactation consultant board or review an enforcement action against
19 a lactation consultant related to a complaint filed with the
20 lactation consultant board.

21 Sec. 703.204. PUBLIC PARTICIPATION. (a) The lactation
22 consultant board shall develop and implement policies that provide
23 the public with a reasonable opportunity to appear before the
24 lactation consultant board and to speak on any issue under the
25 lactation consultant board's jurisdiction.

26 (b) The lactation consultant board shall prepare and
27 maintain a written plan that describes how a person who does not

1 speak English can be provided reasonable access to the lactation
2 consultant board's programs.

3 SUBCHAPTER F. LICENSURE REQUIREMENTS

4 Sec. 703.251. LICENSE REQUIRED. (a) A person may not
5 practice lactation consulting unless the person holds a license
6 issued under this chapter.

7 (b) The department shall provide a license to each person
8 who fulfills the licensing requirements.

9 (c) Unless the person is licensed under this chapter, a
10 person may not use:

- 11 (1) the title lactation consultant;
12 (2) the title registered lactation consultant;
13 (3) the letters LC;
14 (4) the letters RLC; or
15 (5) any other words, letters, abbreviations, or insignia
16 indicating or implying, by any means or in any way, that the person
17 is a licensed lactation consultant.

18 Sec. 703.252. QUALIFICATIONS FOR INITIAL LICENSE. (a) A
19 person qualifies to become a licensed lactation consultant under
20 this chapter if the person provides the program coordinator with
21 documentary evidence that the person has:

- 22 (1) satisfied each requirement for basic lactation
23 consulting education; and
24 (2) passed the comprehensive lactation consulting
25 examination and jurisprudence examination required by this
26 chapter.

27 (b) The initial license must be issued before the lactation

1 consultant begins to practice lactation consulting and may be
2 issued at any time during the year.

3 (c) The term of the initial license begins on the date the
4 requirements are met and extends through December 31 of the year in
5 which the initial license is issued.

6 Sec. 703.253. LICENSE APPLICATION. A person who practices
7 lactation consulting must apply to the department to be licensed as
8 a lactation consultant. The application must:

- 9 (1) be accompanied by a nonrefundable application fee; and
10 (2) include information required by lactation consultant
11 board rules.

12 Sec. 703.254. BASIC LACTATION CONSULTING EDUCATION.
13 Subject to the approval of the executive commissioner, the
14 lactation consultant board shall establish requirements for basic
15 lactation consulting education.

16 Sec. 703.255. EXAMINATION. (a) The lactation consultant
17 board, with the approval of the executive commissioner, shall:

- 18 (1) adopt standards for a comprehensive lactation
19 consulting examination for persons regulated under this chapter
20 that must be passed before the initial license may be issued; and

- 21 (2) establish eligibility requirements for persons taking a
22 comprehensive lactation consulting examination.

23 (b) The board may employ and cooperate with an organization
24 or consultant in preparing an appropriate examination.

25 (c) An independent testing professional must validate any
26 written examination prepared or offered by the board, including a
27 standardized national examination.

1 (d) Instead of creating its own examination, the board may
2 accept the results of a criterion-referenced, standardized
3 national examination by an independent lactation consultant
4 organization--such as the IBCLE--that meets the standards set by
5 the board.

6 Sec. 703.256. JURISPRUDENCE EXAMINATION. (a) The
7 lactation consultant board shall develop a jurisprudence
8 examination to determine an applicant's knowledge of this chapter,
9 lactation consultant board rules, and any other applicable laws of
10 this state affecting the applicant's lactation consulting
11 practice. A person applying for an initial or renewal license must
12 take the examination. The lactation consultant board shall
13 administer the examination at least twice each calendar year.

14 (b) Subject to the approval of the executive commissioner,
15 the lactation consultant board shall adopt rules to implement this
16 section, including rules related to the development and
17 administration of the examination, examination fees, guidelines
18 for reexamination, grading the examination, and providing notice of
19 examination results.

20 Sec. 703.257. EXAMINATION RESULTS. (a) The lactation
21 consultant board shall notify each examinee of the examination
22 results not later than the 30th day after the date on which the
23 examination is administered. If an examination is conducted,
24 graded or reviewed by a national testing service or independent
25 lactation consultant organization, the lactation consultant board
26 must notify each examinee of the examination results not later than
27 the 14th day after the date the lactation consultant board receives

1 the results from the testing service.

2 (b) If the notice of the examination results graded or
3 reviewed by a national testing service or independent lactation
4 consultant organization will be delayed for more than 90 days after
5 the examination date, the lactation consultant board must notify
6 the examinee of the reason for the delay before the 90th day.

7 (c) The lactation consultant board may require a testing
8 service to notify an examinee of the examination results.

9 SUBCHAPTER G. LICENSE RENEWAL

10 Sec. 703.301. APPLICATION FOR LICENSE RENEWAL. An
11 applicant for renewal of a license under this chapter must apply
12 biennially as provided in Section 703.253.

13 Sec. 703.302. PROCEDURE FOR RENEWAL. (a) A licensed
14 lactation consultant is responsible for renewing a license before
15 the expiration date of the license. A person whose license has
16 expired may not engage in activities that require a license until
17 the license has been renewed.

18 (b) A person may renew an unexpired license by paying the
19 required renewal fee to the lactation consultant board before the
20 expiration date of the license.

21 (c) A person whose license has been expired for 90 days or
22 less may renew the license by paying to the lactation consultant
23 board a fee that is equal to 1-1/4 times the amount of the renewal
24 fee.

25 (d) If a person's license has been expired for more than 90
26 days but less than one year, the person may renew the license by
27 paying to the lactation consultant board a fee that is equal to

1 1-1/2 times the amount of the renewal fee.

2 (e) A person whose license has been expired for one year or
3 more may not renew the license. The person may obtain a new license
4 by submitting to reexamination and complying with the requirements
5 and procedures for obtaining an initial license.

6 (f) Not later than the 30th day before the date a person's
7 license is scheduled to expire, the lactation consultant board
8 shall send written notice of the impending expiration to the person
9 at the person's last known address according to the records of the
10 lactation consultant board.

11 Sec. 703.303. STAGGERED RENEWAL DATES. (a) The lactation
12 consultant board by rule may adopt a system under which licenses
13 expire on various dates during the year.

14 (b) For the year in which the license expiration date is
15 changed, license fees payable on the original expiration date shall
16 be prorated on a monthly basis so that each licensed lactation
17 consultant pays only that portion of the license fee that is
18 allocable to the number of months during which the license is valid.

19 (c) On renewal of the license on the new expiration date,
20 the total license renewal fee is payable.

21 Sec. 703.304. CONTINUING LACTATION CONSULTING EDUCATION.

22 (a) Subject to the approval of the executive commissioner, the
23 lactation consultant board shall establish requirements for
24 continuing lactation consulting education, including a minimum
25 number of hours of continuing education required to renew a license
26 under this chapter.

27 (b) On renewal of the license, a lactation consultant must

1 provide the program coordinator with evidence, acceptable under
2 lactation consultant board rules, of completion of continuing
3 lactation consulting education as prescribed by the lactation
4 consultant board.

5 (c) The lactation consultant board by rule shall develop a
6 process to evaluate and approve continuing education courses.

7 Sec. 703.305. REQUIRED ATTENDANCE AT SPECIFIC LACTATION
8 CONSULTING EDUCATION COURSES. The lactation consultant board may
9 assess the continuing education needs of licensed lactation
10 consultants and may require licensed lactation consultants to
11 attend continuing lactation consulting education courses specified
12 by the lactation consultant board.

13 Sec. 703.306. GROUNDS FOR REFUSING RENEWAL. The lactation
14 consultant board may refuse to renew the license of a person who
15 fails to pay an administrative penalty imposed under Subchapter J,
16 unless enforcement of the penalty is stayed or a court has ordered
17 that the administrative penalty is not owed.

18 SUBCHAPTER H. PROHIBITED PRACTICES AND GROUNDS FOR DISCIPLINARY
19 ACTION

20 Sec. 703.351. GROUNDS FOR DISCIPLINARY ACTION. (a) The
21 lactation consultant board may discipline a licensed lactation
22 consultant, refuse to renew a lactation consultant's license, or
23 refuse to issue a license to an applicant if the person:

24 (1) violates this chapter or a rule adopted under this
25 chapter;

26 (2) submits false or misleading information to the
27 lactation consultant board or the department;

1 (3) is convicted of a misdemeanor involving moral turpitude
2 or a felony;

3 (4) uses alcohol or drugs intemperately;

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

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

9 (7) is determined by a court judgment to be mentally
10 impaired; or

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

13 (b) The lactation consultant board may discipline a
14 licensed lactation consultant and may refuse to issue a license to
15 an applicant for a disciplinary action taken by another
16 jurisdiction that affects the person's authority to practice
17 lactation consulting, including a suspension, a revocation, or
18 another action.

19 Sec. 703.352. EMERGENCY SUSPENSION. (a) The lactation
20 consultant board or a three-member committee of lactation
21 consultant board members designated by the lactation consultant
22 board shall temporarily suspend the license of a licensed lactation
23 consultant if the lactation consultant board or committee
24 determines from the evidence or information presented to it that
25 continued practice by the licensed lactation consultant would
26 constitute a continuing and imminent threat to the public welfare.

27 (b) A license may be suspended under this section without

1 notice or hearing on the complaint if:

2 (1) action is taken to initiate proceedings for a hearing
3 before the State Office of Administrative Hearings simultaneously
4 with the temporary suspension; and

5 (2) a hearing is held as soon as practicable under this
6 chapter and Chapter 2001, Government Code.

7 (c) The State Office of Administrative Hearings shall hold a
8 preliminary hearing not later than the 14th day after the date of
9 the temporary suspension to determine if there is probable cause to
10 believe that a continuing and imminent threat to the public welfare
11 still exists. A final hearing on the matter shall be held not later
12 than the 61st day after the date of the temporary suspension.

13 Sec. 703.353. REFUND. (a) Subject to Subsection (b), the
14 lactation consultant board may order a licensed lactation
15 consultant to pay a refund to a consumer as provided in an agreement
16 resulting from an informal settlement conference instead of or in
17 addition to imposing an administrative penalty under this chapter.

18 (b) The amount of a refund ordered as provided in an
19 agreement resulting from an informal settlement conference may not
20 exceed the amount the consumer paid to the licensed lactation
21 consultant for a service regulated by this chapter. The lactation
22 consultant board may not require payment of other damages or
23 estimate harm in a refund order.

24 SUBCHAPTER I. ADMINISTRATIVE PENALTY

25 Sec. 703.401. IMPOSITION OF ADMINISTRATIVE PENALTY. The
26 lactation consultant board may impose an administrative penalty on
27 a person who violates this chapter or a rule adopted under this

1 chapter.

2 Sec. 703.402. AMOUNT OF ADMINISTRATIVE PENALTY. (a) The
3 amount of the administrative penalty may not exceed \$1,000 for each
4 violation. Each day a violation continues is a separate violation.

5 (b) The amount shall be based on:

6 (1) the seriousness of the violation;

7 (2) the history of previous violations;

8 (3) the amount necessary to deter a future violation;

9 (4) efforts made to correct the violation; and

10 (5) any other matter that justice may require.

11 Sec. 703.403. NOTICE OF VIOLATION AND PENALTY. (a) If,
12 after investigation of a possible violation and the facts
13 surrounding that possible violation, the lactation consultant
14 board or its designee determines that a violation has occurred, the
15 lactation consultant board or its designee shall give written
16 notice of the violation to the person alleged to have committed the
17 violation.

18 (b) The notice must:

19 (1) include a brief summary of the alleged violation;

20 (2) state the amount of the proposed administrative
21 penalty; and

22 (3) inform the person of the person's right to a hearing on
23 the occurrence of the violation, the amount of the penalty, or both.

24 Sec. 703.404. PENALTY TO BE PAID OR HEARING REQUESTED. (a)
25 Not later than the 20th day after the date the person receives the
26 notice under Section 703.453, the person may:

27 (1) accept the lactation consultant board or its designee's

1 determination and the proposed administrative penalty; or

2 (2) make a written request for a hearing on that
3 determination.

4 (b) If the person accepts the lactation consultant board or
5 its designee's determination, the lactation consultant board by
6 order shall approve the determination and require the person to pay
7 the proposed penalty.

8 Sec. 703.405. HEARING. (a) If the person timely requests a
9 hearing, the lactation consultant board or its designee shall set a
10 hearing and give written notice of the hearing to the person. The
11 lactation consultant board or its designee may employ a hearings
12 examiner for this purpose.

13 (b) The hearings examiner shall make findings of fact and
14 conclusions of law and promptly issue to the lactation consultant
15 board a proposal for decision as to the occurrence of the violation
16 and the amount of the proposed administrative penalty.

17 Sec. 703.406. DECISION BY LACTATION CONSULTANT BOARD. (a)
18 Based on the findings of fact, conclusions of law, and proposal for
19 decision, the lactation consultant board by order may determine
20 that:

21 (1) a violation has occurred and impose an administrative
22 penalty; or

23 (2) a violation did not occur.

24 (b) The lactation consultant board shall give notice of the
25 lactation consultant board's order to the person. The notice must
26 include:

27 (1) separate statements of the findings of fact and

1 conclusions of law;

2 (2) the amount of any penalty assessed; and

3 (3) a statement of the right of the person to judicial
4 review of the lactation consultant board's order.

5 Sec. 703.407. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.

6 (a) Not later than the 30th day after the date the lactation
7 consultant board's order becomes final, the person shall:

8 (1) pay the administrative penalty;

9 (2) pay the penalty and file a petition for judicial review
10 contesting the fact of the violation, the amount of the penalty, or
11 both; or

12 (3) without paying the penalty, file a petition for judicial
13 review contesting the fact of the violation, the amount of the
14 penalty, or both.

15 (b) Within the 30-day period, a person who acts under
16 Subsection (a)(3) may:

17 (1) stay enforcement of the penalty by:

18 (a) paying the penalty to the court for placement in an
19 escrow account; or

20 (b) giving to the court a supersedeas bond that is approved
21 by the court and that:

22 (i) is for the amount of the penalty; and

23 (ii) is effective until judicial review of the order is
24 final; or

25 (2) request the court to stay enforcement of the penalty by:

26 (a) filing with the court a sworn affidavit of the person
27 stating that the person is financially unable to pay the amount of

1 the penalty and is financially unable to give the supersedeas bond;
2 and

3 (b) giving a copy of the affidavit to the lactation
4 consultant board by certified mail.

5 (c) If the lactation consultant board receives a copy of an
6 affidavit under Subsection (b)(2), the lactation consultant board
7 may file with the court a contest to the affidavit not later than
8 the fifth day after the date the copy is received.

9 (d) The court shall hold a hearing on the facts alleged in
10 the affidavit as soon as practicable and shall stay the enforcement
11 of the penalty on finding that the alleged facts are true. The
12 person who files an affidavit has the burden of proving that the
13 person is financially unable to pay the penalty and to give a
14 supersedeas bond.

15 Sec. 703.408. COLLECTION OF PENALTY. (a) If the person on
16 whom the administrative penalty is imposed does not comply with
17 Section 703.457, the penalty may be collected.

18 (b) The lactation consultant board may assess reasonable
19 expenses and costs against a person in an administrative hearing
20 if, as a result of the hearing, an administrative penalty is
21 assessed against the person. The person shall pay expenses and
22 costs assessed under this subsection not later than the 30th day
23 after the date the order of the lactation consultant board
24 requiring the payment of expenses and costs is final. The lactation
25 consultant board may refer the matter to the attorney general for
26 collection of the expenses and costs.

27 (c) If the attorney general brings an action against a

1 person to enforce an administrative penalty assessed under this
2 chapter and the person is found liable for an administrative
3 penalty, the attorney general may recover, on behalf of the
4 attorney general, the lactation consultant board, and the
5 department, reasonable expenses and costs.

6 (d) In this section, reasonable expenses and costs includes
7 expenses incurred by the department, the lactation consultant
8 board, and the attorney general in the investigation, initiation,
9 or prosecution of an action, including reasonable investigative
10 costs, court costs, attorney's fees, witness fees, and deposition
11 expenses.

12 (e) Costs and expenses collected under this section shall be
13 deposited in the state treasury to the credit of a special account
14 that may be appropriated only to the department. Section 403.095,
15 Government Code, does not apply to the account.

16 Sec. 703.409. DETERMINATION BY COURT. (a) If a court
17 sustains the determination that a violation occurred, the court may
18 uphold or reduce the amount of the administrative penalty and order
19 the person to pay the full or reduced penalty.

20 (b) If the court does not sustain the determination that a
21 violation occurred, the court shall order that a penalty is not
22 owed.

23 Sec. 703.410. REMITTANCE OF PENALTY AND INTEREST. (a) If,
24 after judicial review, the administrative penalty is reduced or not
25 imposed by the court, the court shall:

26 (1) order the lactation consultant board to remit to the
27 person the appropriate amount, plus accrued interest, if the person

1 paid the penalty; or

2 (2) order the release of the bond in full if the penalty is
3 not imposed or order the release of the bond after the person pays
4 the penalty imposed if the person posted a supersedeas bond.

5 (b) The interest paid under Subsection (a)(1) is accrued at
6 the rate charged on loans to depository institutions by the New York
7 Federal Reserve Bank. The interest shall be paid for the period
8 beginning on the date the penalty is paid and ending on the date the
9 penalty is remitted.

10 Sec. 703.411. ADMINISTRATIVE PROCEDURE. A proceeding under
11 this subchapter to impose an administrative penalty is subject to
12 Chapter 2001, Government Code.

13 SUBCHAPTER J. OTHER PENALTIES AND ENFORCEMENT PROVISIONS

14 Sec. 703.451. CIVIL PENALTY. (a) A person is liable for a
15 civil penalty if the person is required to be licensed under this
16 chapter and the person knowingly or intentionally practices
17 lactation consulting:

18 (1) without a license or while the license is suspended or
19 revoked; or

20 (2) in violation of a lactation consultant board order.

21 (b) A civil penalty under this section may not exceed \$250
22 for each violation. Each day of violation may constitute a separate
23 violation for purposes of penalty assessment. In determining the
24 amount of the penalty, the court shall consider:

25 (1) the person's history of previous violations;

26 (2) the seriousness of the violation;

27 (3) any hazard to the health and safety of the public; and

1 (4) the demonstrated good faith of the person charged.

2 Sec. 703.452. INJUNCTIONS. (a) In this section, "health
3 authority" means a physician who administers state and local laws
4 regulating public health under Chapter 121, Health and Safety Code.

5 (b) If the commissioner or a health authority determines
6 that a person has violated this chapter and that the violation
7 creates an immediate threat to the health and safety of the public,
8 the commissioner or the health authority, with the concurrence of
9 the commissioner, may request the attorney general or a district,
10 county, or city attorney to bring an action in a district court for
11 a restraining order to restrain the violation.

12 (c) If a person has violated this chapter, the commissioner
13 or a health authority, with the concurrence of the commissioner,
14 may bring an action in a district court for an injunction to
15 prohibit the person from continuing the violation.

16 Sec. 703.453. VENUE. (a) Venue for a civil action brought
17 under Section 703.451 or 703.452 is in the county in which the
18 defendant resides or in the county in which the violation occurred.

19 (b) Venue for the civil action may be changed only after a
20 good faith effort has been made to address the violation in the
21 county in which venue is proper.

22 Sec. 703.454. CRIMINAL PENALTY. (a) A person commits an
23 offense if the person is required to be licensed under this chapter
24 and the person knowingly practices lactation consulting without a
25 license.

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

27 Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

1 Amended by:

2 Sec. 703.455. CEASE AND DESIST ORDER. (a) If it appears to
3 the lactation consultant board that a person who is not licensed
4 under this chapter is violating this chapter, a rule adopted under
5 this chapter, or another state statute or rule relating to the
6 practice of lactation consulting, the lactation consultant board
7 after notice and opportunity for a hearing may issue a cease and
8 desist order prohibiting the person from engaging in the activity.

9 (b) A violation of an order under this section constitutes
10 grounds for imposing an administrative penalty under Subchapter J.

11 SECTION 2. (a) Except as provided by Subsection (b) of this
12 section, this Act takes effect September 1, 2015.

13 (b) Subsection 703.251(a) and (c)(License Required) take
14 effect September 1, 2016.