

By: Ortega

H.B. No. 1072

A BILL TO BE ENTITLED

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

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

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

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

- 11 (1) athletic trainers;
- 12 (2) behavior analysts;
- 13 (3) dietitians;
- 14 (4) hearing instrument fitters and dispensers;
- 15 (5) midwives;
- 16 (6) orthotists and prosthetists; ~~and~~
- 17 (7) speech-language pathologists and audiologists;
- 18 and
- 19 (8) lactation consultants.

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

22 CHAPTER 703. LACTATION CONSULTANTS

23 SUBCHAPTER A. GENERAL PROVISIONS

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

1 Texas Lactation Consultant 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) "Lactation consultant" means a health care
12 professional licensed under this chapter who specializes in the
13 clinical management of breastfeeding and works in a variety of
14 settings.

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

18 (1) a person licensed in this state as a physician or
19 nurse;

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

22 (3) a person acting as a paid or volunteer peer
23 counselor, La Leche League Leader, doula, or childbirth educator;
24 or

25 (4) a licensed midwife.

26 Sec. 703.004. APPLICATION OF SUNSET ACT. The Lactation
27 Consultant Advisory Board is subject to Chapter 325, Government

1 Code (Texas Sunset Act). Unless continued in existence as provided
2 by that chapter, the Lactation Consultant Advisory Board is
3 abolished and this chapter expires September 1, 2023.

4 SUBCHAPTER B. LACTATION CONSULTANT ADVISORY BOARD

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

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

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

13 (A) obstetricians and gynecologists;

14 (B) family practitioners; or

15 (C) pediatricians;

16 (3) one member who:

17 (A) is an advanced practice registered nurse; and

18 (B) practices in obstetrics, pediatrics, or
19 family practice; and

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

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

26 Sec. 703.052. DUTIES OF ADVISORY BOARD. The advisory board
27 shall provide advice and recommendations to the department on

1 technical matters relevant to the administration of this chapter.

2 Sec. 703.053. TERMS; VACANCIES. (a) Members of the
3 advisory board serve for staggered terms of six years. The terms
4 of three members expire on January 31 of each odd-numbered year.

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

9 Sec. 703.054. PRESIDING OFFICER. The presiding officer of
10 the commission shall designate a public member of the advisory
11 board to serve as the presiding officer of the advisory board to
12 serve for a term of one year. The presiding officer of the advisory
13 board may vote on any matter before the advisory board.

14 Sec. 703.055. MEETINGS. The advisory board shall meet at
15 the call of the presiding officer of the commission or the executive
16 director.

17 Sec. 703.056. APPLICABILITY OF OTHER LAW. Chapter 2110,
18 Government Code, does not apply to the composition or duration of
19 the advisory board or to the appointment of the advisory board's
20 presiding officer.

21 SUBCHAPTER C. POWERS AND DUTIES

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

24 (b) The commission shall adopt rules:

25 (1) prescribing the standards for the practice of
26 lactation consulting in this state;

27 (2) prescribing the type of courses and number of

1 hours required to meet the basic lactation consulting education
2 course and continuing lactation consulting education course
3 requirements;

4 (3) prescribing minimum standards for the approval and
5 revocation of approval of:

6 (A) basic lactation consulting education courses
7 and continuing lactation consulting education courses; and

8 (B) instructors or facilities offering basic
9 lactation consulting education courses and continuing lactation
10 consulting education courses;

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

16 (5) establishing requirements necessary to establish
17 eligibility for reciprocity for initial licensing under this
18 chapter.

19 (c) The standards prescribed under Subsection (b)(1) must
20 be equivalent to national standards prescribed by the International
21 Board of Lactation Consultant Examiners for an International Board
22 Certified Lactation Consultant. The standards must include ethical
23 requirements.

24 (d) The department shall:

25 (1) implement rules governing:

26 (A) basic lactation consulting education courses
27 and continuing lactation consulting education courses; and

1 (B) approval of instructors or facilities
2 offering basic lactation consulting education courses and
3 continuing lactation consulting education courses;

4 (2) adopt and provide information about basic
5 lactation consulting resources and instructor manuals;

6 (3) enter into agreements necessary to administer this
7 chapter; and

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

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

13 (b) The Department of State Health Services shall publish a
14 statistical report of breastfeeding initiation and continuation
15 rates.

16 Sec. 703.103. COMPLAINTS. (a) For purposes of Section
17 51.252, the commission shall adopt rules to provide for the release
18 of any relevant lactation consulting or medical record to the
19 department, without the consent of the lactation consultant's
20 client, as necessary to conduct an investigation of a complaint.

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

24 Sec. 703.104. ROSTER. (a) The department shall maintain a
25 roster of each person licensed as a lactation consultant in this
26 state.

27 (b) The roster must contain for each person the information

1 required on the license form under this chapter and other
2 information the department determines necessary to accurately
3 identify each licensed lactation consultant. The information is
4 public information as defined by Chapter 552, Government Code.

5 SUBCHAPTER D. LICENSE REQUIREMENTS

6 Sec. 703.151. LICENSE REQUIRED. (a) A person may not
7 practice lactation consulting unless the person holds a license
8 issued under this chapter.

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

11 (c) Unless the person holds a license issued under this
12 chapter, a person may not use:

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

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

24 (1) satisfied each requirement for basic lactation
25 consulting education; and

26 (2) passed the comprehensive lactation consulting
27 examination and jurisprudence examination required by this

1 chapter.

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

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

8 (2) include information required by commission rules.

9 Sec. 703.154. INITIAL LICENSE TERM. An initial license is
10 valid for one year.

11 Sec. 703.155. BASIC LACTATION CONSULTING EDUCATION. The
12 commission by rule shall establish requirements for basic lactation
13 consulting education.

14 Sec. 703.156. EXAMINATION. (a) The department shall:

15 (1) adopt standards for a comprehensive lactation
16 consulting examination for persons regulated under this chapter
17 that an applicant must pass before an initial license may be issued;
18 and

19 (2) establish eligibility requirements for persons
20 taking a comprehensive lactation consulting examination.

21 (b) The department may employ and cooperate with an
22 organization or consultant in preparing an appropriate
23 examination.

24 (c) Instead of preparing a department examination, the
25 department may accept the results of a criterion-referenced,
26 standardized national examination by an independent lactation
27 consultant organization that meets the standards set by the

1 department.

2 Sec. 703.157. JURISPRUDENCE EXAMINATION. (a) The
3 department shall develop a jurisprudence examination to determine
4 an applicant's knowledge of this chapter, commission rules under
5 this chapter, and any other applicable laws of this state affecting
6 the applicant's lactation consulting practice. The department
7 shall administer the examination at least twice each calendar year.

8 (b) The commission shall adopt rules to implement this
9 section, including rules related to the development and
10 administration of the examination, examination fees, guidelines
11 for reexamination, grading the examination, and providing notice of
12 examination results.

13 SUBCHAPTER E. LICENSE RENEWAL

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

17 Sec. 703.202. RENEWAL LICENSE TERM. A renewal license is
18 valid for two years.

19 Sec. 703.203. CONTINUING LACTATION CONSULTING EDUCATION.

20 (a) The commission by rule shall establish requirements for
21 continuing lactation consulting education, including a minimum
22 number of hours of continuing education required to renew a license
23 under this chapter.

24 (b) On renewal of the license, a lactation consultant shall
25 provide the department with evidence of successful completion of
26 continuing lactation consulting education as prescribed by
27 commission rule.

1 (c) The commission by rule shall develop a process to
2 evaluate and approve continuing education courses.

3 Sec. 703.204. REQUIRED ATTENDANCE AT SPECIFIC LACTATION
4 CONSULTING EDUCATION COURSES. The department may assess the
5 continuing education needs of lactation consultants and may require
6 lactation consultants to attend continuing lactation consulting
7 education courses specified by the department.

8 Sec. 703.205. REFUSING RENEWAL FOR FAILURE TO PAY
9 ADMINISTRATIVE PENALTY. The department may refuse to renew the
10 license of a person who fails to pay an administrative penalty
11 unless enforcement of the penalty is stayed or a court has ordered
12 that the administrative penalty is not owed.

13 SUBCHAPTER F. DISCIPLINARY ACTIONS

14 Sec. 703.251. GROUNDS FOR DISCIPLINARY ACTION. (a) The
15 commission or executive director may take disciplinary action
16 against or refuse to issue or renew a license of an applicant or
17 license holder who:

18 (1) violates this chapter or a rule adopted under this
19 chapter;

20 (2) submits false or misleading information to the
21 department;

22 (3) is convicted of a misdemeanor involving moral
23 turpitude or a felony;

24 (4) uses alcohol or drugs intemperately;

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

27 (6) is unable to practice lactation consulting with

1 reasonable skill and safety because of illness, disability, or
2 psychological impairment;

3 (7) is determined by a court judgment to be mentally
4 impaired; or

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

7 (b) The commission or executive director may take
8 disciplinary action against or refuse to issue or renew a license of
9 an applicant or license holder if disciplinary action is taken by
10 another jurisdiction that affects the applicant's or license
11 holder's authority to practice lactation consulting, including a
12 suspension, revocation, or other action.

13 Sec. 703.252. REFUND. (a) Subject to Subsection (b), the
14 commission or executive director may order a license holder to pay a
15 refund to a consumer as provided in an agreed settlement, default
16 order, or commission order instead of or in addition to imposing an
17 administrative penalty against the license holder.

18 (b) The amount of a refund ordered may not exceed the amount
19 the consumer paid to the license holder for a service regulated by
20 this chapter. The commission or executive director may not require
21 payment of other damages or estimate harm in a refund order.

22 SUBCHAPTER G. PENALTIES AND ENFORCEMENT PROVISIONS

23 Sec. 703.301. CIVIL PENALTY. (a) A person is liable for a
24 civil penalty if the person is required to be licensed under this
25 chapter and the person knowingly or intentionally practices
26 lactation consulting:

27 (1) without a license or while the person's license is

1 suspended or revoked; or

2 (2) in violation of a commission order.

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

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

8 (2) the seriousness of the violation;

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

10 and

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

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

15 (b) If the executive director or a health authority
16 determines that a person has violated this chapter, the executive
17 director may institute an action described by Section 51.352.

18 Sec. 703.303. VENUE. (a) Venue for a civil action arising
19 out of the imposition of an administrative penalty is in the county
20 in which the defendant resides or the violation occurred.

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

24 Sec. 703.304. CRIMINAL PENALTY. (a) A person commits an
25 offense if the person is required to be licensed under this chapter
26 and the person knowingly practices lactation consulting without a
27 license.

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

2 Sec. 703.305. CEASE AND DESIST ORDER. A violation of a
3 cease and desist order issued by the executive director constitutes
4 grounds for imposing an administrative penalty.

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, 2023, three members to terms expiring January 31, 2025,
12 and three members to terms expiring January 31, 2027.

13 (b) Not later than June 1, 2022, the Texas Department of
14 Licensing and Regulation shall prescribe the forms and procedures
15 and the Lactation Consultant Advisory Board shall propose to the
16 Texas Commission of Licensing and Regulation the rules necessary to
17 implement Chapter 703, Occupations Code, as added by this Act.

18 (c) Notwithstanding Chapter 703, Occupations Code, as added
19 by this Act, a person is not required to hold a license under that
20 chapter before September 1, 2022.

21 (d) Subchapters F and G, Chapter 51, Occupations Code, do
22 not apply to conduct described by Section 703.151, Occupations
23 Code, as added by this Act, before September 1, 2022.

24 SECTION 4. (a) Except as provided by Subsection (b) of
25 this section, this Act takes effect September 1, 2021.

26 (b) Section 703.151, Occupations Code, and Subchapters F
27 and G, Chapter 703, Occupations Code, as added by this Act, take

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1 effect September 1, 2022.