

HOUSE HEALTH AND HUMAN SERVICES COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 138

**53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

AN ACT

RELATING TO PROFESSIONAL LICENSURE; ENACTING THE LACTATION  
CONSULTANT PRACTICE ACT; PROVIDING FOR LICENSURE OF LACTATION  
CONSULTANTS; ESTABLISHING A SCOPE OF PRACTICE FOR LICENSED  
LACTATION CONSULTANTS; 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 CONSULTANT PRACTICE ACT.

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

**SECTION 1.** [NEW MATERIAL] SHORT TITLE.--Sections 1  
through 6 of this act may be cited as the "Lactation Consultant  
Practice Act".

**SECTION 2.** [NEW MATERIAL] DEFINITIONS.--As used in the  
Lactation Consultant Practice Act:

A. "applicant" means an individual seeking a

.206584.1

underscored material = new  
[bracketed material] = delete

1 license to provide lactation care and services as a licensee  
2 pursuant to the Lactation Consultant Practice Act;

3 B. "board" means the board of nursing;

4 C. "breastfeeding education and counseling  
5 services" means activities intended to educate, counsel and  
6 support mothers and children in meeting their breastfeeding  
7 goals, including providing general breastfeeding education,  
8 sharing personal experiences and giving encouragement;

9 D. "international board" means the international  
10 board of lactation consultant examiners, which is an  
11 independent, international certification body that:

12 (1) confers an international board-certified  
13 lactation consultant credential; and

14 (2) certifies and verifies educational  
15 programs that purport to meet the requirements for offering  
16 continuing education recognition that points toward  
17 international board recertification;

18 E. "international board-certified lactation  
19 consultant" means a person who holds current certification from  
20 the international board after demonstrating the appropriate  
21 education, knowledge and experience necessary for independent  
22 clinical practice;

23 F. "lactation care and services" means the clinical  
24 application of scientific principles and a multidisciplinary  
25 body of evidence for the evaluation, problem identification,

1 treatment, education and consultation for the provision of  
2 lactation care and services to families, including:

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

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

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

10 (4) evaluation of outcomes;

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

13 (6) recommendation and use of assistive  
14 devices;

15 G. "license" means a license to practice as a  
16 lactation consultant that the board issues pursuant to the  
17 Lactation Consultant Practice Act;

18 H. "licensee" means a lactation consultant licensed  
19 as a licensed lactation consultant pursuant to the Lactation  
20 Consultant Practice Act;

21 I. "member" means a member of the board;

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

25 K. "supervisor" means an international board-

.206584.1

1 certified lactation consultant with authority to oversee,  
2 guide, advise and serve as the referral source for  
3 international board-certified lactation consultant students or  
4 interns, other breastfeeding counselors and peer counselors.

5 SECTION 3. [NEW MATERIAL] BOARD POWERS.--The board may:

- 6 A. enforce the provisions of the Lactation  
7 Consultant Practice Act and adopt and promulgate rules to  
8 execute the provisions of that act;
- 9 B. license qualified applicants;
- 10 C. discipline licensees;
- 11 D. enforce qualification for licensure;
- 12 E. establish standards for licensee competence for  
13 continuing in or returning to practice;
- 14 F. issue orders relating to the practice of  
15 lactation care and services in accordance with the  
16 Administrative Procedures Act;
- 17 G. regulate licensee advertising and prohibit  
18 false, misleading or deceptive practices;
- 19 H. establish a code of conduct for licensees;
- 20 I. prepare information for the public that  
21 describes the regulatory functions of the board and the  
22 procedures by which complaints are filed with and resolved by  
23 the board;
- 24 J. establish continuing education requirements for  
25 licensees; and

.206584.1

1           K. appoint a lactation consultant advisory  
2 committee consisting of at least one member who is a board  
3 member and at least two members who are experts in lactation to  
4 assist in the performance of the board's duties.

5           SECTION 4. [NEW MATERIAL] LICENSURE REQUIREMENT--  
6 QUALIFICATIONS--EXEMPTIONS FROM LICENSURE.--

7           A. An individual shall not use the title "licensed  
8 lactation consultant" unless that individual is a licensee.

9           B. An applicant for a license as a licensee shall:

10                   (1) be at least eighteen years of age;

11                   (2) submit an application completed upon a  
12 form that the board prescribes and in accordance with board  
13 rules, accompanied by fees required by board rules;

14                   (3) have the following qualifications:

15                           (a) be an international board-certified  
16 lactation consultant; and

17                           (b) assist the board in obtaining the  
18 applicant's criminal history background check by: 1) providing  
19 fingerprints on two fingerprint cards or other biometric data  
20 for the purpose of obtaining criminal history record  
21 information from the federal bureau of investigation or  
22 the department of public safety; and 2) paying the cost of  
23 obtaining the fingerprints and criminal history background  
24 checks. An applicant shall have the right to inspect or  
25 challenge the validity of the record development by the

.206584.1

1 background check if the applicant is denied certification as  
2 established by board rule; and

3 (4) complete any other requirements the board  
4 has established by rule.

5 C. Nothing in the Lactation Consultant Practice Act  
6 shall be construed to affect or prevent the practice of  
7 lactation care and services by other persons; provided that a  
8 person who is not licensee shall not hold that person out or  
9 represent that person's self to be a licensed lactation  
10 consultant.

11 SECTION 5. [NEW MATERIAL] LICENSE TERM--RENEWAL.--

12 A. A license shall expire biennially in accordance  
13 with a schedule determined in board rules.

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

17 SECTION 6. [NEW MATERIAL] DISCIPLINARY PROCEEDINGS.--

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

25 (1) is guilty of fraud or deceit in procuring

1 or attempting to procure a license;

2 (2) is convicted of a felony;

3 (3) is unfit or incompetent;

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

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

8 (6) has willfully or repeatedly violated any  
9 provisions of the Lactation Consultant Practice Act, including  
10 any board rule adopted pursuant to that act; or

11 (7) was authorized to provide lactation care  
12 and services by the international board or in any jurisdiction,  
13 territory or possession of the United States or another country  
14 and was the subject of disciplinary action for acts similar to  
15 acts described in this subsection. A certified copy of the  
16 record of the international board's disciplinary action or  
17 disciplinary action taken by another jurisdiction, territory or  
18 possession of the United States or another country is  
19 conclusive evidence of the action.

20 B. The board may summarily suspend or restrict a  
21 license issued by the board without a hearing, simultaneously  
22 with or at any time after the initiation of proceedings for a  
23 hearing provided under the Uniform Licensing Act, if the board  
24 finds that evidence in its possession indicates that the  
25 licensee:

.206584.1

1 (1) poses a clear and immediate danger to the  
2 public health and safety if the licensee continues to practice;

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

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

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

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

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

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

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

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

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

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

.206584.1

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

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

5           A. There is created a "board of nursing fund".

6           B. Except as provided in Sections [~~2 and 3 of this~~  
7 ~~2003 act~~] 61-3-10.5 and 61-3-10.6 NMSA 1978, all funds received  
8 by the board and money collected under the Nursing Practice Act  
9 and the Lactation Consultant Practice Act shall be deposited  
10 with the state treasurer. The state treasurer shall place the  
11 money to the credit of the board of nursing fund. Any income  
12 earned on investment of the fund shall remain in the fund.

13           C. Payments out of the board of nursing fund shall  
14 be on vouchers issued and signed by the person designated by  
15 the board upon warrants drawn by the department of finance and  
16 administration in accordance with the budget approved by the  
17 department.

18           D. All amounts paid into the board of nursing fund  
19 shall be subject to the order of the board and shall only be  
20 used for the purpose of meeting necessary expenses incurred in  
21 the enforcement of the purposes of the Nursing Practice Act and  
22 the Lactation Consultant Practice Act, the duties imposed by  
23 [~~that act~~] those acts and the promotion of nursing and  
24 lactation consultant education and standards in this state.

25 All money unused at the end of the fiscal year shall remain in

.206584.1

1 the board of nursing fund for use in accordance with the  
2 provisions of the Nursing Practice Act and the Lactation  
3 Consultant Practice Act to further the purposes of [~~that act~~]  
4 those acts.

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

9 F. As used in this section, "lactation consultant"  
10 means a person licensed by the board pursuant to the Lactation  
11 Consultant Practice Act to provide lactation care and  
12 services."

13 - 11 -  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

underscoring material = new  
[bracketed material] = delete