

1 HOUSE BILL 138

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO PROFESSIONAL LICENSURE; ENACTING THE LACTATION  
12 CONSULTANT PRACTICE ACT; PROVIDING FOR LICENSURE OF LACTATION  
13 CONSULTANTS; ESTABLISHING A SCOPE OF PRACTICE FOR LICENSED  
14 LACTATION CONSULTANTS; AMENDING A SECTION OF THE NURSING  
15 PRACTICE ACT TO PROVIDE FOR BOARD OF NURSING ADMINISTRATION OF  
16 FUNDS DEPOSITED IN THE BOARD OF NURSING FUND PURSUANT TO THE  
17 LACTATION CONSULTANT PRACTICE ACT.

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

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

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

25 A. "applicant" means an individual seeking a

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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. "consumer" means a mother who is breastfeeding;

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

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

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

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

24 G. "lactation care and services" means the clinical  
25 application of scientific principles and a multidisciplinary

1 body of evidence for the evaluation, problem identification,  
2 treatment, education and consultation for the provision of  
3 lactation care and services to families, including:

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

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

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

11 (4) evaluation of outcomes;

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

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

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

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

22 J. "member" means a member of the board;

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

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

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

7           A. enforce the provisions of the Lactation  
8 Consultant Practice Act and adopt and promulgate rules to  
9 execute the provisions of that act;

10           B. license qualified applicants;

11           C. discipline licensees;

12           D. enforce qualification for licensure;

13           E. establish standards for licensee competence for  
14 continuing in or returning to practice;

15           F. issue orders relating to the practice of  
16 lactation care and services in accordance with the  
17 Administrative Procedures Act;

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

20           H. establish a code of conduct for licensees;

21           I. request and receive the assistance of state  
22 educational institutions or other state agencies;

23           J. prepare information for consumers that describes  
24 the regulatory functions of the board and the procedures by  
25 which consumer complaints are filed with and resolved by the

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1 board; and

2 K. establish continuing education requirements for  
3 licensees.

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

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

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

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

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

13 (3) have the following qualifications:

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

16 (b) be of good moral character; and

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

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1 the background check if the applicant is denied certification  
2 as 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 annual 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

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

25 C. Any person filing a complaint shall be immune

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1 from liability arising out of civil action if the complaint is  
2 filed in good faith and without actual malice.

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

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

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

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

17 "61-3-27. FUND ESTABLISHED--DISPOSITION--METHOD OF  
18 PAYMENT.--

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

20 B. Except as provided in Sections [~~2 and 3 of this~~  
21 ~~2003 act~~] 61-3-10.5 and 61-3-10.6 NMSA 1978, all funds received  
22 by the board and money collected under the Nursing Practice Act  
23 and the Lactation Consultant Practice Act shall be deposited  
24 with the state treasurer. The state treasurer shall place the  
25 money to the credit of the board of nursing fund. Any income

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1 earned on investment of the fund shall remain in the fund.

2 C. Payments out of the board of nursing fund shall  
3 be on vouchers issued and signed by the person designated by  
4 the board upon warrants drawn by the department of finance and  
5 administration in accordance with the budget approved by the  
6 department.

7 D. All amounts paid into the board of nursing fund  
8 shall be subject to the order of the board and shall only be  
9 used for the purpose of meeting necessary expenses incurred in  
10 the enforcement of the purposes of the Nursing Practice Act and  
11 the Lactation Consultant Practice Act, the duties imposed by  
12 [~~that act~~] those acts and the promotion of nursing and  
13 lactation consultant education and standards in this state.

14 All money unused at the end of the fiscal year shall remain in  
15 the board of nursing fund for use in accordance with the  
16 provisions of the Nursing Practice Act and the Lactation  
17 Consultant Practice Act to further the purposes of [~~that act~~]  
18 those acts.

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

23 F. As used in this section, "lactation consultant"  
24 means a person licensed by the board pursuant to the Lactation  
25 Consultant Practice Act to provide lactation care and

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