

House Bill 363

By: Representatives Cooper of the 43rd, Knight of the 130th, and Clark of the 101st

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 43 of the Official Code of Georgia Annotated, relating to professions and
2 businesses, so as to require licensure of lactation consultants; to provide for definitions; to
3 provide for establishment of the Georgia Lactation Consultant Licensing Board; to provide
4 for appointment, powers, and membership; to provide for licensure application and
5 qualifications; to provide for license renewal; to provide for disciplinary actions; to provide
6 for applicability of the Georgia Administrative Procedure Act; to provide for exemptions
7 from licensure; to provide for related matters; to repeal conflicting laws; and for other
8 purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 style="text-align:center">**SECTION 1.**

11 Title 43 of the Official Code of Georgia Annotated, relating to professions and businesses,
12 is amended by adding a new chapter to read as follows:

13 style="text-align:center">"CHAPTER 22A

14 43-22A-1.

15 This chapter shall be known and may be cited as the 'Georgia Lactation Consultant Practice
16 Act.'

17 43-22A-2.

18 The General Assembly acknowledges that the application of specific knowledge and skill
19 relating to breastfeeding is important to the health of mothers and babies, and
20 acknowledges further that the rendering of sound lactation care and services in hospitals,
21 physician practices, private homes, and other settings requires trained and competent
22 professionals. It is declared, therefore, to be the purpose of this chapter to protect the

23 health, safety, and welfare of the public by providing for the licensure and regulation of the
 24 activities of persons engaged in lactation care and services.

25 43-22A-3.

26 As used in this chapter, the term:

27 (1) 'Applicant' means any person seeking a license under this chapter.

28 (2) 'Board' means the Georgia Lactation Consultant Licensing Board established
 29 pursuant to this chapter.

30 (3) 'International Board Certified Lactation Consultant (IBCLC)' means an individual
 31 who holds current certification from the International Board of Lactation Consultant
 32 Examiners (IBLCE) after demonstrating the appropriate education, knowledge, and
 33 experience necessary for independent clinical practice.

34 (4) 'International Board of Lactation Consultant Examiners (IBLCE)' means the
 35 international organization that certifies IBCLCs and is independently accredited by the
 36 National Commission of Certifying Agencies.

37 (5) 'Lactation care and services' means the clinical application of scientific principles and
 38 a multidisciplinary body of evidence for the evaluation, problem identification, treatment,
 39 education, and consultation to provide lactation care and services to childbearing
 40 families. Lactation care and services includes but is not limited to:

41 (A) Lactation assessment through the systematic collection of subjective and objective
 42 data;

43 (B) Analysis of data and creation of a plan of care;

44 (C) Implementation of a lactation care plan with demonstration and instruction to
 45 parents and communication to the primary health care provider;

46 (D) Evaluation of outcomes;

47 (E) Provision of lactation education to parents and health care providers; and

48 (F) The recommendation and use of assistive devices.

49 (6) 'Lactation consultant' means a person duly licensed under this chapter to practice
 50 lactation care and services.

51 (7) 'Practice' means rendering or offering to render any lactation care and services to any
 52 individual, family, or group of individuals.

53 43-22A-4.

54 (a) There is created the Georgia Lactation Consultant Licensing Board. The board shall
 55 consist of five members as follows:

56 (1) Four members shall be lactation consultants; and

57 (2) One member shall represent the public at large.

58 (b) The members shall be appointed by the Governor with confirmation by the Senate.
 59 Any person appointed to the board when the Senate is not in session may serve on the
 60 board without Senate confirmation until the Senate acts on that appointment. No member
 61 shall serve on the board for more than two consecutive terms. Any vacancy shall be filled
 62 by the Governor subject to confirmation of the Senate.

63 (c) All members of the board shall be reimbursed as provided for in subsection (f) of Code
 64 Section 43-1-2.

65 (d) All members of the board shall take the constitutional oath of office.

66 43-22A-5.

67 (a) The members of the board referenced in paragraph (1) of subsection (a) of Code
 68 Section 43-22A-4 shall:

69 (1) Be citizens of the United States and residents of this state;

70 (2) Have engaged in the practice of lactation care and services for at least one year; and

71 (3) Be licensed under this chapter.

72 (b) The member of the board referenced in paragraph (2) of subsection (a) of Code Section
 73 43-22A-4 shall be a citizen of the United States and resident of this state and shall have no
 74 connection whatsoever with lactation practice.

75 (c) The Governor may remove members of the board, after notice and opportunity for
 76 hearing, for incompetence, neglect of duty, unprofessional conduct, conviction of any
 77 felony, failure to meet the qualifications of this chapter, or committing any act prohibited
 78 by this chapter.

79 43-22A-6.

80 The board shall meet annually and shall elect from its members a chairperson, vice
 81 chairperson, and any other officers as deemed necessary who shall hold office according
 82 to the rules adopted by the board. In addition to its annual meeting, the board may hold
 83 additional meetings each year as provided by the rules adopted by the board.

84 43-22A-7.

85 (a) The board shall perform such duties and possess and exercise such powers relative to
 86 the protection of the public health and the control and regulation of lactation consultants
 87 as this chapter prescribes and confers upon it.

88 (b) The board shall have the power and authority to:

89 (1) Enforce the provisions of this chapter, and it shall be granted all of the necessary
 90 duties, powers, and authority to carry out this responsibility;

- 91 (2) Draft, adopt, amend, repeal, and enforce such rules as it deems necessary for the
 92 administration and enforcement of this chapter in the protection of public health, safety,
 93 and welfare;
- 94 (3) License duly qualified applicants by examination or reinstatement;
- 95 (4) Implement the disciplinary process;
- 96 (5) Enforce qualifications for licensure;
- 97 (6) Set standards for competency of licensees continuing in or returning to practice;
- 98 (7) Issue orders when a license is surrendered to the board while a complaint,
 99 investigation, or disciplinary action against such license is pending;
- 100 (8) Adopt, revise, and enforce rules regarding the advertising by licensees including, but
 101 not limited to, rules to prohibit false, misleading, or deceptive practices;
- 102 (9) Adopt, publish in print or electronically, and enforce a code of ethics;
- 103 (10) Establish examination and licensing fees;
- 104 (11) Request and receive the assistance of state educational institutions or other state
 105 agencies;
- 106 (12) Prepare information of consumer interest describing the regulatory functions of the
 107 board and describing the procedures by which consumer complaints are filed with and
 108 resolved by the board;
- 109 (13) Establish continuing education requirements; and
- 110 (14) Adopt a seal which shall be affixed only in such manner as prescribed by the board.

111 43-22A-8.

112 The board may grant, upon application and payment of proper fees, a license without
 113 examination to a person who, at the time of application, either:

- 114 (1) Holds a valid license as a licensed lactation consultant issued by another state,
 115 political territory, or jurisdiction acceptable to the board if, in the board's opinion, the
 116 requirements for that license are substantially equal to or greater than the requirements
 117 of this chapter; or
- 118 (2) Presents evidence satisfactory to the board that the applicant is an IBCLC in good
 119 standing with the IBLCE, or its successor organization.

120 43-22A-9.

121 Each applicant for a license as a lactation consultant shall be at least 18 years of age, shall
 122 have submitted a completed application upon a form and in such manner as the board
 123 prescribes, accompanied by applicable fees, and shall be in compliance with the following
 124 requirements:

- 125 (1) Meeting the international education and clinical standards established for IBCLCs
126 by the IBLCE or other national testing service as approved by the board;
127 (2) Providing proof of successful completion of the IBLCE examination or other
128 examination as approved by the board;
129 (3) Having satisfactory results from a fingerprint record check report conducted by the
130 Georgia Crime Information Center and the Federal Bureau of Investigation, as
131 determined by the board. Application for a license under this Code section shall constitute
132 express consent and authorization for the board to perform a criminal background check.
133 Each applicant who submits an application to the board for licensure by examination
134 agrees to provide the board with any and all information necessary to run a criminal
135 background check, including, but not limited to, classifiable sets of fingerprints. The
136 applicant shall be responsible for all fees associated with the performance of such
137 background check; and
138 (4) Completion of such other requirements as may be prescribed by the board.

139 43-22A-10.

140 The board may require that all applications be made under oath.

141 43-22A-11.

142 After evaluation of an application and other evidence submitted, the board shall notify each
143 applicant that the application and evidence submitted are satisfactory and accepted or
144 unsatisfactory and rejected. If rejected, the notice shall state the reasons for the rejection.

145 43-22A-12.

146 Examinations to determine competence shall be administered to qualified applicants at least
147 once each calendar year. The examinations may be administered by a national testing
148 service. The board shall prescribe or develop the examinations which may include an
149 examination given by the International Board of Lactation Consultant Examiners or any
150 other examination approved by two-thirds' vote of the board.

151 43-22A-13.

- 152 (a) A license issued by the board is the property of the board and must be surrendered on
153 demand.
154 (b) The licensee shall display the license certificate in an appropriate and public manner.
155 (c) The licensee shall inform the board of any change of address.

156 (d) The license shall be renewed biennially if the licensee is not in violation of this chapter
 157 at the time of application for renewal and if the applicant fulfills current requirements of
 158 continuing education as established by the board.

159 (e) Each person licensed under this chapter is responsible for renewing his or her license
 160 before the expiration date.

161 (f) Under procedures and conditions established by the board, a licensee may request that
 162 his or her license be declared inactive. The licensee may apply for active status at any time
 163 and upon meeting the conditions set by the board shall be declared active.

164 43-22A-14.

165 The board may refuse to grant or renew a license to an applicant; administer a public or
 166 private reprimand, but a private reprimand shall not be disclosed to any person except the
 167 licensee; suspend any licensee for a definite period or for an indefinite period in connection
 168 with any condition which may be attached to the restoration of such license; limit or restrict
 169 any licensee as the board deems necessary for the protection of the public; revoke any
 170 license; condition the penalty upon, or withhold formal disposition pending, the applicant's
 171 or licensee's submission to such care, counseling, or treatment as the board may direct; or
 172 impose a fine not to exceed \$500.00 for each violation of a law, rule, or regulation relating
 173 to the profession regulated by this chapter upon a finding by a majority of the entire board
 174 that the licensee or applicant has:

175 (1) Failed to demonstrate the qualifications or standards for a license contained in this
 176 Code section or under the laws, rules, or regulations under which licensure is sought or
 177 held; it shall be incumbent upon the applicant to demonstrate to the satisfaction of the
 178 board that such applicant meets all the requirements for the issuance of a license, and, if
 179 the board is not satisfied as to the applicant's qualifications, it may deny a license without
 180 a prior hearing; provided, however, that the applicant shall be allowed to appear before
 181 the board if he or she so desires;

182 (2) Knowingly made misleading, deceptive, untrue, or fraudulent representations in the
 183 practice of a business or profession licensed under this title or on any document
 184 connected therewith; practiced fraud or deceit or intentionally made a false statement in
 185 obtaining a license to practice the licensed business or profession; or made a false
 186 statement or deceptive registration with the board;

187 (3) Been convicted of any felony or of any crime involving moral turpitude in the courts
 188 of this state or any other state, territory, or country or in the courts of the United States;
 189 as used in this paragraph and paragraph (4) of this Code section, the term 'felony' shall
 190 include any offense which, if committed in this state, would be deemed a felony, without
 191 regard to its designation elsewhere; and, as used in this paragraph, the term 'conviction'

192 shall include a finding or verdict of guilty or a plea of guilty, regardless of whether an
 193 appeal of the conviction has been sought;

194 (4) Been arrested, charged, and sentenced for the commission of any felony, or any crime
 195 involving moral turpitude, where:

196 (A) A plea of nolo contendere was entered to the charge;

197 (B) First offender treatment without adjudication of guilt pursuant to the charge was
 198 granted; or

199 (C) An adjudication or sentence was otherwise withheld or not entered on the charge.

200 The plea of nolo contendere or the order entered pursuant to the provisions of Article 3
 201 of Chapter 8 of Title 42, relating to probation of first offenders, or other first offender
 202 treatment shall be conclusive evidence of arrest and sentencing for such crime;

203 (5) Had his or her license to practice a business or profession licensed under this title
 204 revoked, suspended, or annulled by any lawful licensing authority other than the board;
 205 had other disciplinary action taken against him or her by any such lawful licensing
 206 authority other than the board; was denied a license by any such lawful licensing
 207 authority other than the board, pursuant to disciplinary proceedings; or was refused the
 208 renewal of a license by any such lawful licensing authority other than the board, pursuant
 209 to disciplinary proceedings;

210 (6) Engaged in any unprofessional, immoral, unethical, deceptive, or deleterious conduct
 211 or practice harmful to the public that materially affects the fitness of the licensee or
 212 applicant to practice a business or profession licensed under this title, or is of a nature
 213 likely to jeopardize the interest of the public; such conduct or practice need not have
 214 resulted in actual injury to any person or be directly related to the practice of the licensed
 215 business or profession but shows that the licensee or applicant has committed any act or
 216 omission which is indicative of bad moral character or untrustworthiness. Unprofessional
 217 conduct shall also include any departure from, or the failure to conform to, the minimal
 218 standards of acceptable and prevailing practice of the business or profession licensed
 219 under this title;

220 (7) Knowingly performed any act which in any way aids, assists, procures, advises, or
 221 encourages any unlicensed person or any licensee whose license has been suspended or
 222 revoked by a professional licensing board to practice a business or profession licensed
 223 under this title or to practice outside the scope of any disciplinary limitation placed upon
 224 the licensee by the board;

225 (8) Violated a statute, law, or any rule or regulation of this state, any other state, the
 226 professional licensing board regulating the business or profession licensed under this title,
 227 the United States, or any other lawful authority, without regard to whether the violation
 228 is criminally punishable, when such statute, law, or rule or regulation relates to or in part

229 regulates the practice of a business or profession licensed under this title and when the
 230 licensee or applicant knows or should know that such action violates such statute, law,
 231 or rule or regulation; or violated a lawful order of the board previously entered by the
 232 board in a disciplinary hearing, consent decree, or license reinstatement;

233 (9) Been adjudged mentally incompetent by a court of competent jurisdiction within or
 234 outside of this state; any such adjudication shall automatically suspend the license of any
 235 such person and shall prevent the reissuance or renewal of any license so suspended for
 236 so long as the adjudication of incompetence is in effect; or

237 (10) Displayed an inability to practice a business or profession licensed under this title
 238 with reasonable skill and safety to the public or has become unable to practice the
 239 licensed business or profession with reasonable skill and safety to the public by reason
 240 of illness or the use of alcohol, drugs, narcotics, chemicals, or any other type of material.

241 43-22A-15.

242 (a) On and after 12 months following the effective date of this chapter, no person without
 243 a license as a lactation consultant issued pursuant to this chapter shall use the title 'lactation
 244 consultant,' 'lactation specialist,' 'breastfeeding consultant,' or 'breastfeeding specialist' or
 245 practice lactation care and services, provided that this chapter shall not prohibit any
 246 practice of lactation care and services that is exempt pursuant to the provisions set forth in
 247 Code Section 43-22A-17.

248 (b) Any person violating the provisions of subsection (a) of this Code section shall be
 249 guilty of a misdemeanor.

250 43-22A-16.

251 Proceedings under this chapter shall be governed by Chapter 13 of Title 50, the 'Georgia
 252 Administrative Procedure Act.'

253 43-22A-17.

254 Nothing in this chapter shall be construed to affect or prevent:

255 (1) Persons licensed to practice the professions of dentistry, medicine, osteopathy,
 256 chiropractic, nursing, physician assistant, or dietetics from engaging in the practice of
 257 lactation care and services when incidental to the practice of their profession, except such
 258 persons shall not use the title 'lactation consultant,' 'lactation specialist,' 'breastfeeding
 259 consultant,' or 'breastfeeding specialist':

260 (2) Doulas and prenatal and childbirth educators from performing nonclinical education
 261 functions consistent with the accepted standards of their respective occupations, except
 262 such persons shall not use the title 'lactation consultant,' 'lactation specialist,'

263 'breastfeeding consultant,' or 'breastfeeding specialist,' or designate themselves by any
 264 other term or title which implies that such person has the clinical skills and abilities
 265 associated with licensure as a lactation consultant;

266 (3) The practice of lactation care and services by students, interns, or persons preparing
 267 for the practice of lactation care and services under the qualified supervision of a licensed
 268 lactation consultant or any licensed professional listed in paragraph (1) of this Code
 269 section;

270 (4) Employees of the United States government or any bureau, division, or agency
 271 thereof while in the discharge of the employee's official duties so long as such employees
 272 are performing their duties within the recognized confines of a federal installation
 273 regardless of whether jurisdiction is solely federal or concurrent;

274 (5) Employees of a department, agency, or division of state, county, or local government
 275 from engaging in the practice of lactation care and services within the discharge of
 276 official duties, including, but not limited to, peer counselors working within the Special
 277 Supplemental Nutrition Program for Women, Infants, and Children;

278 (6) Individual volunteers providing lactation care and services provided:

279 (A) Such persons shall not use the title 'lactation consultant,' 'lactation specialist,'
 280 'breastfeeding consultant,' or 'breastfeeding specialist,' or state that they are licensed to
 281 practice lactation care or designate themselves by any other term or title which implies
 282 that such persons have the clinical skills and abilities associated with licensure;

283 (B) Their volunteer service is performed without fee or other form of compensation,
 284 monetary or otherwise, from the individuals or groups served; and

285 (C) The individual volunteer receives no form of compensation, monetary or
 286 otherwise, except for administrative expenses such as mileage; and

287 (7) A nonresident IBCLC from practicing lactation care and services in this state for five
 288 days without licensure or up to 30 days with licensure from another state if the
 289 requirements for licensure in such other state are substantially equal to the requirements
 290 contained in this chapter."

291 **SECTION 2.**

292 All laws and parts of laws in conflict with this Act are repealed.