

HOUSE BILL 622

By Favors

AN ACT to amend Tennessee Code Annotated, Title 4;
Title 63 and Title 68, relative to professions of the
healing arts.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 4-29-241(a), is amended by inserting the following as a new subdivision:

() Board of lactation consultants, created by § 63-32-104;

SECTION 2. Tennessee Code Annotated, Title 63, is amended by adding the following as a new chapter:

63-32-101. This chapter shall be known and may be cited as the "Tennessee Lactation Consultant Practice Act".

63-32-102. The general assembly acknowledges that the application of specific knowledge and skill relating to breastfeeding is important to the health of mothers and babies, and acknowledges further that the rendering of sound lactation care and services in hospitals, physician practices, private homes, and other settings requires trained and competent professionals. It is declared, therefore, to be the purpose of this chapter to protect the health, safety, and welfare of the public by providing for the licensure and regulation of the activities of specific persons engaged in lactation care and services.

63-32-103. As used in this chapter, the term:

(1) "Applicant" means any person seeking a license under this chapter;

(2) "Board" means the lactation consultant licensing board established pursuant to this chapter;

(3) "International board certified lactation consultant" or "IBCLC" means an individual who holds current certification from the International Board of Lactation Consultant Examiners (IBLCE) after demonstrating the appropriate education, knowledge, and experience necessary for independent clinical practice;

(4) "International board of lactation consultant examiners" or "IBLCE" means the international organization that certifies IBCLCs and is independently accredited by the National Commission of Certifying Agencies;

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

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

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

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

(D) Evaluation of outcomes;

(E) Provision of lactation education to parents and healthcare providers;

and

(F) The recommendation and use of assistive devices;

(6) "Licensed lactation consultant" means a person duly licensed under this chapter to practice lactation care and services; and

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

63-32-104.

(a) There is created the board of lactation consultants. The board shall consist of five (5) members to be appointed by the governor as follows:

(1) Four (4) members shall be lactation consultants; and

(2) One (1) member shall represent the public at large.

(b) In order to stagger the terms of the board members, the governor shall make initial appointments as follows:

(1) Two (2) persons appointed under subdivision (a)(1) shall be appointed for a term of one (1) year, which shall expire on June 30, 2018;

(2) Two (2) persons appointed under subdivision (a)(1) shall be appointed for a term of two (2) years, which shall expire on June 30, 2019; and

(3) The person appointed under subdivision (a)(2) shall be appointed for a term of three (3) years, which shall expire on June 30, 2020.

(c)

(1) Following the expiration of members' initial terms as prescribed in subsection (b), all terms shall begin on July 1 and terminate on June 30, three (3) years thereafter.

(2) All members shall serve until the expiration of the term to which they were appointed and until their successors are appointed and qualified.

(3) A vacancy occurring other than by expiration of a term shall be filled in the same manner as the original appointment but only for the remaining duration of the unexpired term.

(4) Following the expiration of their initial terms, members shall serve no more than two (2) consecutive terms on the board.

(d) The board members shall serve without compensation but shall be entitled to reimbursement of any travel expenses incurred. All reimbursement for travel shall be in

accordance with the comprehensive travel regulations promulgated by the department of finance and administration and approved by the attorney general and reporter.

63-32-105.

(a) The lactation consultant members of the board shall:

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

(2) Have engaged in the practice of lactation care and services for at least three (3) years.

(b) The public member of the board shall be a citizen of the United States and resident of this state and shall have no connection whatsoever with lactation practice.

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

63-32-106. The governor shall call the first meeting of the board, at which time the board shall elect from its members a chairperson, vice chairperson, and any other officers as deemed necessary who shall hold office according to the policies and procedures adopted by the board. The board shall meet annually, and may hold additional meetings each year as provided by the policies and procedures adopted by the board.

63-32-107.

(a) The board shall perform such duties and possess and exercise such powers relative to the protection of the public health and the control and regulation of lactation consultants as prescribed in this chapter.

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

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

(2) Promulgate, repeal, and enforce such rules as it deems necessary for the administration and enforcement of this chapter in the protection of public health, safety, and welfare;

(3) License duly qualified applicants;

(4) Implement a disciplinary process;

(5) Enforce qualifications for licensure;

(6) Set standards for competency of licensees continuing in or returning to practice;

(7) Issue orders when a license is surrendered to the board while a complaint, investigation, or disciplinary action against the licensee is pending;

(8) Adopt, revise, and enforce rules regarding advertising by licensees including, but not limited to, rules to prohibit false, misleading, or deceptive practices;

(9) Adopt, publish in print or electronically, and enforce a code of ethics;

(10) Establish licensing fees;

(11) Request and receive the assistance of state educational institutions or other state agencies;

(12) Prepare information of consumer interest describing the regulatory functions of the board and describing the procedures by which consumer complaints are filed with and resolved by the board;

(13) Establish continuing education requirements; and

(14) Adopt a seal which shall be affixed only in such manner as prescribed by the board.

63-32-108. The board may grant, upon application and payment of proper fees, a license to a person who, at the time of application, either:

(1) Holds a valid license as a licensed lactation consultant issued by another state, political territory, or jurisdiction acceptable to the board if, in the board's opinion, the requirements for that license are substantially equal to or greater than the requirements of this chapter; or

(2) Presents evidence satisfactory to the board that the applicant is an IBCLC in good standing with the IBLCE, or its successor organization.

63-32-109. Each applicant for a license as a lactation consultant shall be at least eighteen (18) years of age, shall have submitted a completed application upon a form and in such manner as the board prescribes, accompanied by applicable fees, and shall:

(1) Meet the international education and clinical standards established for IBCLCs by the IBLCE or other national testing service as approved by the board;

(2) Provide proof of successful completion of the IBLCE examination or other examination as approved by the board;

(3) Have satisfactory results from a fingerprint record check report conducted by the Tennessee bureau of investigation and the federal bureau of investigation, as determined by the board. Application for a license under this section shall constitute express consent and authorization for the board to perform a criminal background check.

Each applicant who submits an application to the board for licensure by examination agrees to provide the board with any and all information necessary to run a criminal background check, including, but not limited to, classifiable sets of fingerprints. The applicant shall be responsible for all fees associated with the performance of the background check; and

(4) Complete of other requirements as may be prescribed by the board.

63-32-110.

(a) The board may require that all applications be made under oath.

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

63-32-111.

(a) A license issued by the board is the property of the board and must be surrendered on demand.

(b) The licensee shall display the license certificate in an appropriate and public manner.

(c) The licensee shall inform the board of any change of address.

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

(e) Each person licensed under this chapter is responsible for renewing the license before the expiration date.

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

63-32-112. The board may:

(1) Refuse to grant or renew a license to an applicant;

(2) Administer a public or private reprimand, but a private reprimand shall not be disclosed to any person except the licensee;

(3) Suspend any licensee for a definite period or for an indefinite period in connection with any condition which may be attached to the restoration of such license;

(4) Limit or restrict any licensee as the board deems necessary for the protection of the public;

(5) Revoke any license;

(6) Condition any penalty imposed upon, or withhold formal disposition pending, the applicant's or licensee's submission to such care, counseling, or treatment as the board may direct;

(7) Impose a fine not to exceed five hundred dollars (\$500) for each violation of a law or rule promulgated by the board relating to the profession regulated by this chapter upon a finding by a majority of the entire board that the licensee or applicant has:

(A) Failed to demonstrate the qualifications or standards for a license contained in this chapter or under the laws or rules under which licensure is sought or held. It shall be incumbent upon the applicant to demonstrate to the satisfaction of the board that such applicant meets all the requirements for the issuance of a license. If the board is not satisfied as to the applicant's qualifications, it may deny a license without a prior hearing; provided, however, that the applicant shall be allowed to appear before the board if the applicant so desires;

(B) Knowingly made misleading, deceptive, untrue, or fraudulent representations in the practice of a business or profession licensed under this chapter or on any document connected therewith; practiced fraud or deceit or intentionally made a false statement in obtaining a license to practice the

licensed business or profession; or made a false statement or deceptive registration with the board;

(C) Been convicted of any felony or of any crime involving moral turpitude in the courts of this state or any other state, territory, or country or in the courts of the United States. As used in this subdivision (7)(C) and (D), "felony" includes any offense which, if committed in this state, is deemed a felony, without regard to its designation elsewhere; and, as used in this subdivision (7)(C), "conviction" includes a finding or verdict of guilty or a plea of guilty, regardless of whether an appeal of the conviction has been sought;

(D)

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

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

(b) The charge or warrant was dismissed in any court as a result of the successful completion of a pretrial diversion program pursuant to §§ 40-15-102 – 40-15-107; or

(c) The charge or warrant was dismissed in any court as a result of the successful completion of a judicial diversion program pursuant to § 40-35-313;

(ii) The plea of nolo contendere or the order entered, relating to probation of first offenders, or other first offender treatment shall be conclusive evidence of arrest and sentencing for such crime;

(E) Had the applicant's license to practice a business or profession licensed under this chapter revoked, suspended, or annulled by any licensing authority other than the board; had other disciplinary action taken against the

applicant or licensee by any licensing authority other than the board; was denied a license by any licensing authority other than the board, pursuant to disciplinary proceedings; or was refused the renewal of a license by any licensing authority other than the board, pursuant to disciplinary proceedings;

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

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

(H) Violated a statute, law, or any rule of this state, any other state, the professional licensing board regulating the business or profession licensed under this chapter, the United States, or any other lawful authority, without regard to whether the violation is criminally punishable, when such statute, law, or rule relates to or in part regulates the practice of a business or profession licensed

under this chapter and when the licensee or applicant knows or should know that such action violates such statute, law, or rule; or violated an order that the board previously entered in a disciplinary hearing, consent decree, or license reinstatement;

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

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

63-32-113.

(a) On and after twelve (12) months following the effective date of this chapter, no person without a license as a lactation consultant issued pursuant to this chapter shall use the title "licensed lactation consultant" or practice lactation care and services; provided, that this chapter shall not prohibit any practice of lactation care and services that is exempt under § 63-32-115.

(b) Violation of subsection (a) is a Class B misdemeanor.

63-32-114. Proceedings under this chapter shall be governed by the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

63-32-115. Nothing in this chapter shall be construed to affect or prevent:

(1) Persons licensed to practice the professions of dentistry, medicine, osteopathy, chiropractic, nursing, physician assistant, or dietetics from engaging in the practice of lactation care and services when incidental to the practice of their profession, except such persons shall not use the title "licensed lactation consultant";

(2) Doulas and prenatal and childbirth educators from performing nonclinical education functions consistent with the accepted standards of their respective occupations, except such persons shall not use the title "licensed lactation consultant" or designate themselves by any other term or title that implies that such person has the clinical skills and abilities associated with licensure as a lactation consultant;

(3) Certified lactation counselors and certified lactation educators from performing functions consistent with the accepted standards and scope of their respective accrediting organizations, except such persons shall not use the title "licensed lactation consultant" or designate themselves by any other term that implies that such person has the clinical skills and abilities associated with licensure as a lactation consultant;

(4) The practice of lactation care and services by students, interns, or persons preparing for the practice of lactation care and services under the qualified supervision of a licensed lactation consultant or any licensed professional listed in subdivision (1);

(5) Employees of the United States government or any bureau, division, or agency thereof from engaging in the practice of lactation care and services within the discharge of the employee's official duties so long as the employees are performing their duties within the recognized confines of a federal installation regardless of whether jurisdiction is solely federal or concurrent;

(6) Employees of a department, agency, or division of state, county, or local government from engaging in the practice of lactation care and services within the

discharge of official duties, including, but not limited to, peer counselors working within the special supplemental nutrition program for women, infants, and children;

(7) Individual volunteers providing lactation care and services; provided:

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

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

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

(D) A nonresident IBCLC from practicing lactation care and services in this state for five (5) days without licensure or up to thirty (30) days with licensure from another state if the requirements for licensure in such other state are substantially equal to the requirements contained in this chapter.

SECTION 3. Tennessee Code Annotated, Section 68-1-101(a)(8), is amended by inserting the following as a new subdivision:

() Board of lactation consultants;

SECTION 4. For the purpose of promulgating rules, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect July 1, 2018, the public welfare requiring it.