Dear USLCA members,

Your Board of Directors is grateful for the work on IBCLC licensure in which so many of you are engaged. The development of Lactation Consultant Practice Acts within your own states is a challenging endeavor. We know that our licensure teams work with integrity and have the best interest of families and their IBCLC colleagues at the center of their licensure policy agenda. As your Licensure Committee Chair, Judy Gutowski, so appropriately articulates, "Licensure is vital to expand access to IBCLC care for families. Licensure also provides the framework for job opportunities and reimbursement for those achieving the IBCLC designation." Our goal is licensure of the IBCLC in every state and territory of the United States!

It is with this goal at the forefront that we are releasing the USLCA Model IBCLC Licensure Bill. We recognize that each state's legislative process is unique and therefore each specific state bill will vary. This model bill has been reviewed by several attorneys and is intended to provide guidance to each of the state licensure committees engaged in the legislative process to enact Lactation Consultant Practice Acts. IBCLC licensure bills should be designed so as not to restrain the practice of other types of lactation care providers working within their certification or license. Use of exemptions within the bills should protect the valuable work of the entire landscape of breastfeeding support. We recognize that each lactation care provider brings unique skills to the arena of lactation care. Our document entitled, Efficacy of the IBCLC, provides evidence of the effectiveness of the IBCLC professional’s care. A Lactation Consultant Practice Act should protect the title of “Lactation Consultant” so that it can only be used by an IBCLC, and clarify for the public and third party payers the services and care that the IBCLC provides.

After much review, it is with pleasure that we release this model bill. We hope that it will facilitate your work and help to bring clarity to the legislative process. Please contact us with any questions that arise as you utilize this document. We look forward to having you join us at USLCA's second national conference, New Horizons in Clinical Lactation, in San Antonio, Texas May 3-6, 2017 where we will have sessions on licensure in our pre-conference, as well as breakout sessions during the full conference. Come and learn from the experts who will be our presenters!

Your USLCA Board of Directors
HOUSE/SENATE BILL

No. ______________  SESSION OF 201_

Introduced By: ____________________

INTRODUCTION

A BILL TO BE ENTITLED THE (STATE NAME) LACTATION CONSULTANT PRACTICE ACT

AN ACT

To amend Title ____ of the Official Code of ________, relating to professions and businesses, so as to require licensure of lactation consultants; to provide for a short title; to provide for legislative findings; to provide for definitions; to provide for the establishment of the (state name) Lactation Consultant Licensing Board; to provide for licensure application and qualifications; to provide for license renewal and revocation; to provide for sanctions; to provide for statutory construction; to provide for related matters including the making of conforming changes to other laws so legislative intent may be realized; to repeal conflicting laws; and for other purposes.

Title ______ of the Official Code of (state name), relating to professions and businesses, is amended by adding a new chapter to read as follows:
TITLE

This Chapter shall be known and may be cited as the “(state name) Lactation Consultant Practice Act.”

PURPOSE OF CHAPTER

The General Assembly (or name of legislative body) acknowledges that the application of specific knowledge and skills relating to breastfeeding is important to the health of mothers and babies, and acknowledges further that the rendering of 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 persons engaged in lactation care and services.

DEFINITIONS

As used in this chapter, the term:

Applicant means any person seeking a license under this chapter.

Board means the (state name) Lactation Consultant Licensing Board.

Breastfeeding education and counseling services means activities whose purpose is to educate, counsel and support mothers and children in meeting their breastfeeding goals including providing general breastfeeding education, sharing personal experiences, and giving encouragement.

International Board Certified Lactation Consultant (IBCLC) means a person 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.

International Board of Lactation Consultant Examiners (IBLCE) means the independent, international certification body conferring the International Board Certified Lactation Consultant (IBCLC) credential. IBLCE confers the IBCLC certification and verifies educational programs that purport to meet the requirements for offering Continuing Education Recognition Points (CERPs) towards IBCLC recertification.

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 for the provision of lactation care and services to families. Lactation care and services includes, but is not limited to:

1. clinical lactation assessment through the systematic collection of subjective and objective data;
2. analysis of data and creation of a plan of care;
3. implementation of lactation care plan with demonstration and instruction to parents, and communication to primary health care providers;
4. evaluation of outcomes;
5. provision of lactation education to parents and health care providers; and
6. recommendation and use of assistive devices.

Lactation consultant means a person who is in good standing with the IBLCE, or its successor organization, as an IBCLC.

License means a license to practice as a lactation consultant pursuant to this chapter.
Practice means rendering or offering to render any lactation care and services to any individual, family, or group of individuals.

Supervisor means an IBCLC with authority to oversee, guide, advise and serve as the referral source for IBCLC students or interns, and other breastfeeding counselors and peer counselors.

CREATION OF THE BOARD

(a) There is created a (state name) Lactation Consultant Licensing Board.

(b) The board shall:

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

(2) Consist of four (4) members who are lactation consultants, licensed pursuant to this chapter, and each with at least one year of experience and one (1) member who is a consumer.

(c) Members shall receive no compensation for service on the board. Members shall be reimbursed for travel expenses. (Note: You will cross-reference your state’s laws respecting expense reimbursement or payment for board service).

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

APPOINTMENT, REMOVAL AND POWERS OF BOARD MEMBERS
(a) A term of service for a board member is four years except the initial board members shall have staggered terms, as determined by the Governor.

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

(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.

(d) The board shall have powers and responsibilities relating to the provision of lactation care and services, including but not limited to:

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

(2) Drafting, adopting, amending, repealing, and enforcing such rules as it deems necessary for the administration and enforcement of this article in the protection of public health, safety, and welfare;

(3) Licensing duly qualified applicants;

(4) Implementing the disciplinary process;
(5) Enforcing qualifications for licensure;
(6) Setting standards for competency of licensees continuing in or returning to practice;
(7) Issuing orders pertaining to the practice of lactation care and services subject to the Administrative Procedure Act;
(8) Adopting, revising, and enforcing rules regarding the advertising by licensees, including, but not limited to, rules to prohibit false, misleading, or deceptive practices;
(9) Adopting, publishing in print or electronically, and enforcing a code of conduct;
(10) Establishing licensing fees;
(11) Requesting and receiving the assistance of state educational institutions or other state agencies;
(12) Preparing 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; and
(13) Establishing continuing education requirements.

QUALIFICATIONS FOR LICENSE

(a) Subject to the exemptions set forth in subsection ___ of this chapter, on or after (put a date which is two years after the effective date of the law) individuals shall not: (1) practice lactation care and services nor use the title "licensed lactation consultant" unless licensed under this chapter; nor (2) use the title "lactation consultant" unless said person is an IBCLC.
(b) Each applicant for a license as a lactation consultant shall be at least 18 years of age, shall have submitted a completed application upon a form and in such manner as prescribed by this chapter, accompanied by applicable fees, and shall be in compliance with the following qualifications requirements:

(1) The applicant is an IBCLC in good standing with the IBCLE;

(2) The applicant has satisfactory results as required by the state for healthcare professionals and persons providing care for minors, including, but not limited to: satisfactory results from a criminal background check report, conducted by the (insert state name) Crime Information Center and the Federal Bureau of Investigation, as determined by the board. Application for a license under this Code 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 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 such background check.

(3) The applicant has completed such other requirements as may be prescribed by the board.
Nothing in this chapter shall be construed to affect or prevent:

(a) the practice of lactation care and services by members of other licensed healthcare professions when such practice is consistent with the accepted standards and scope of their respective professions, provided however, such persons shall not:
   (1) use the title “licensed lactation consultant” unless licensed under this chapter; nor (2) use the title “lactation consultant” unless said person is an IBCLC;
(b) the practice of lactation care and services by students, interns, or persons preparing for the practice of lactation care and services under the supervision of a supervisor or any licensed professional as listed in subsection(a), provided however, such persons shall not:
   (1) use the title “licensed lactation consultant” unless licensed under this chapter; nor (2) use the title “lactation consultant” unless said person is an IBCLC;
(c) employees of the United States government or any bureau, division, or agency thereof from engaging in the practice of lactation care and services while in the discharge of the employees’ official duties so long as such employees are performing their duties within the recognized confines of a federal installation regardless of whether jurisdiction is solely federal or concurrent;
(d) 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 the employees’ official duties, including, but not limited to, peer counselors working within the Special Supplemental Nutrition Program for Women, Infants, and Children, provided however, such persons shall not: (1) use the title “licensed lactation consultant” unless
licensed under this chapter; nor (2) use the title “lactation consultant” unless said person is an IBCLC;

(e) other lactation support providers, including, but not limited to: doulas; prenatal, childbirth, and perinatal educators; breastfeeding and lactation educators; and breastfeeding and lactation counselors, from performing breastfeeding education and counseling services consistent with the accepted standards of their respective occupations, provided however, such persons shall not: (1) use the title “licensed lactation consultant” unless licensed under this chapter; nor (2) use the title “lactation consultant” unless said person is an IBCLC.

(f) Individual volunteers from providing lactation care and services provided that such person’s services are performed without fee or other form of compensation, monetary or otherwise, from the individuals or groups served except for administrative expenses such as mileage; but such persons shall not: (1) use the title “licensed lactation consultant” unless licensed under this chapter; nor (2) use the title “lactation consultant” unless said person is an IBCLC.

(g) 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.

LICENSURE TERM AND RENEWAL

(a) Licenses issued under this chapter shall expire biennially on a schedule determined by the board.
(b) Persons licensed under this chapter shall be issued a renewal license only upon satisfactory completion of the eligibility requirements set forth in subsection ___ above.

(c) If at any time a licensee is no longer in good standing with the IBLCE and does not hold the IBCLC credential, the state license issued by the board is immediately suspended pending review by the board.

REFUSAL, SUSPENSION OR REVOCATION OF LICENSE; OTHER DISCIPLINARY ACTION

(a) The board may refuse to grant or renew a license to an applicant; 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 said license; limit or restrict any licensee as the board deems necessary for the protection of the public; revoke any license; condition the penalty upon, or withhold formal disposition, pending the applicant's or licensee's submission to such care, counseling, or treatment as the board may direct; seek orders enjoining unlicensed practice and the obtaining of a restraining order or other order as may be appropriate; or impose a penalty or fee up to $______ for each violation of a law, rule, or regulation relating to the profession regulated by this chapter upon a finding by a majority of the board that the person has:

(1) failed to demonstrate the qualifications or standards for a license contained in this section; it being incumbent upon the applicant to demonstrate to the satisfaction of the board that said applicant meets all the requirements for the issuance of a license as set
forth in subsection ___ above, and, if the board is not satisfied as to the applicant's qualifications, it may deny a license without a prior hearing;

(2) engaged in conduct which places into question the licensee's competence to practice the profession including, but not limited to, gross misconduct or misconduct in the practice of the profession;

(3) committed fraud or misrepresentation in obtaining a license;

(4) practiced the profession while impaired by alcohol, drugs, physical disability, or mental instability;

(5) violated any law, rule, or regulation of the board;

(6) been convicted of a criminal offense which reasonably calls into question the licensee's ability to practice the profession;

(7) engaged in dishonesty, fraud, or deceit which is reasonably related to the practice of the profession;

(8) knowingly permitted, aided, or abetted an unlicensed person to perform activities requiring a license, registration, or authority;

(9) had a license, certificate, registration, or authority issued by another state or territory of the United States, the District of Columbia, or foreign state or nation with authority to issue such a license, certificate, registration, or authority revoked, canceled, or suspended, not renewed or otherwise acted against, or the licensee has been disciplined, if the basis for the action would constitute a basis for disciplinary action in the State;

(10) violated any ethical standard which the board
determines to be of such a nature as to render such
person unfit to practice as a lactation consultant, such
as negligence in the course of professional practice.

(b) Nothing in this section shall be deemed a limitation on
the board’s authority to impose sanctions by consent
agreement as are deemed reasonable and appropriate by the
board. The provisions of this section shall not affect, but
shall be in addition to, any other penalty or remedy provided
by law. The board may make application to the appropriate
court for an order enjoining unlicensed practice, or ordering
payment of any assessed administrative penalty or fee, or
both. Any person aggrieved by any disciplinary action taken
by the board may file a petition for judicial review of such
disciplinary action.

SEVERABILITY

The provisions of this Act are severable. If any part of this
shall be declared invalid or unconstitutional, such
declaration shall not affect the parts which remain.