



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



1 United States Lactation Consultant Association
2 MODEL LEGISLATION FOR THE LICENSURE OF LACTATION CONSULTANTS
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4
5

6 HOUSE / SENATE BILL

7
8
9 No. _____

SESSION OF 201_

10
11 Introduced By: _____

12 INTRODUCTION

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

15 AN ACT

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

28 Title _____ of the Official Code of (state name), relating
29 to professions and businesses, is amended by adding a new
30 chapter to read as follows:
31

1 **TITLE**

2 This Chapter shall be known and may be cited as the "(state
3 name) Lactation Consultant Practice Act."

4
5 **PURPOSE OF CHAPTER**

6 The General Assembly (or name of legislative body)
7 acknowledges that the application of specific knowledge and
8 skills relating to breastfeeding is important to the health
9 of mothers and babies, and acknowledges further that the
10 rendering of lactation care and services in hospitals,
11 physician practices, private homes, and other settings
12 requires trained and competent professionals. It is declared,
13 therefore, to be the purpose of this chapter to protect the
14 health, safety, and welfare of the public by providing for
15 the licensure and regulation of the activities of persons
16 engaged in lactation care and services.

17
18 **DEFINITIONS**

19 As used in this chapter, the term:

20 **Applicant** means any person seeking a license under this
21 chapter.

22 **Board** means the (state name) Lactation Consultant Licensing
23 Board.

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

29 **International Board Certified Lactation Consultant (IBCLC)**
30 means a person who holds current certification from the

1 International Board of Lactation Consultant Examiners (IBLCE)
2 after demonstrating the appropriate education, knowledge, and
3 experience necessary for independent clinical practice.

4 **International Board of Lactation Consultant Examiners (IBLCE)**

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

11 **Lactation care and services** means the clinical application of
12 scientific principles and a multidisciplinary body of
13 evidence for the evaluation, problem identification,
14 treatment, education, and consultation for the provision of
15 lactation care and services to families. Lactation care and
16 services includes, but is not limited to:

- 17 (1) clinical lactation assessment through the systematic
- 18 collection of subjective and objective data;
- 19 (2) analysis of data and creation of a plan of care;
- 20 (3) implementation of lactation care plan with
- 21 demonstration and instruction to parents, and
- 22 communication to primary health care providers;
- 23 (4) evaluation of outcomes;
- 24 (5) provision of lactation education to parents and
- 25 health care providers; and
- 26 (6) recommendation and use of assistive devices.

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

29 **License** means a license to practice as a lactation consultant
30 pursuant to this chapter.

1 **Practice** means rendering or offering to render any lactation
2 care and services to any individual, family, or group of
3 individuals.

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

8

9 **CREATION OF THE BOARD**

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

12 (b) The board shall:

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

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

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

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

26

27 **APPOINTMENT, REMOVAL AND POWERS OF BOARD MEMBERS**

1 (a) A term of service for a board member is four
2 years except the initial board members shall have
3 staggered terms, as determined by the Governor.

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

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

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

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

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

28 (3) Licensing duly qualified applicants;

29 (4) Implementing the disciplinary process;

- 1 (5) Enforcing qualifications for licensure;
- 2 (6) Setting standards for competency of licensees
- 3 continuing in or returning to practice;
- 4 (7) Issuing orders pertaining to the practice of
- 5 lactation care and services subject to the
- 6 Administrative Procedure Act;
- 7 (8) Adopting, revising, and enforcing rules regarding
- 8 the advertising by licensees, including, but not limited
- 9 to, rules to prohibit false, misleading, or deceptive
- 10 practices;
- 11 (9) Adopting, publishing in print or electronically, and
- 12 enforcing a code of conduct;
- 13 (10) Establishing licensing fees;
- 14 (11) Requesting and receiving the assistance of state
- 15 educational institutions or other state agencies;
- 16 (12) Preparing information of consumer interest
- 17 describing the regulatory functions of the board and
- 18 describing the procedures by which consumer complaints
- 19 are filed with and resolved by the board; and
- 20 (13) Establishing continuing education requirements.

21

22 **QUALIFICATIONS FOR LICENSE**

23 (a) Subject to the exemptions set forth in subsection

24 ___ of this chapter, on or after (put a date which is

25 two years after the effective date of the law)

26 individuals shall not: (1) practice lactation care and

27 services nor use the title "licensed lactation

28 consultant" unless licensed under this chapter; nor (2)

29 use the title "lactation consultant" unless said person

30 is an IBCLC.

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(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 IBCLC;

(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.

EXEMPTIONS

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

2 (a) the practice of lactation care and services by members of
3 other licensed healthcare professions when such practice is
4 consistent with the accepted standards and scope of their
5 respective professions, provided however, such persons shall not:
6 (1) use the title "licensed lactation consultant" unless licensed
7 under this chapter; nor (2) use the title "lactation consultant"
8 unless said person is an IBCLC;

9 (b) the practice of lactation care and services by
10 students, interns, or persons preparing for the practice
11 of lactation care and services under the supervision of
12 a supervisor or any licensed professional as listed in
13 subsection(a), provided however, such persons shall not:
14 (1) use the title "licensed lactation consultant" unless
15 licensed under this chapter; nor (2) use the title
16 "lactation consultant" unless said person is an IBCLC;

17 (c) employees of the United States government or any
18 bureau, division, or agency thereof from engaging in the
19 practice of lactation care and services while in the
20 discharge of the employees' official duties so long as
21 such employees are performing their duties within the
22 recognized confines of a federal installation regardless
23 of whether jurisdiction is solely federal or concurrent;

24 (d) employees of a department, agency, or division of state,
25 county, or local government from engaging in the practice of
26 lactation care and services within the discharge of the employees'
27 official duties, including, but not limited to, peer counselors
28 working within the Special Supplemental Nutrition Program for
29 Women, Infants, and Children, provided however, such persons shall
30 not: (1) use the title "licensed lactation consultant" unless

1 licensed under this chapter; nor (2) use the title "lactation
2 consultant" unless said person is an IBCLC;

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

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

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

27

28 **LICENSURE TERM AND RENEWAL**

29 (a) Licenses issued under this chapter shall expire
30 biennially on a schedule determined by the board.

1 (b) Persons licensed under this chapter shall be issued a
2 renewal license only upon satisfactory completion of the
3 eligibility requirements set forth in subsection ___ above.

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

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9 **REFUSAL, SUSPENSION OR REVOCATION OF LICENSE; OTHER**
10 **DISCIPLINARY ACTION**

11 (a) The board may refuse to grant or renew a license to an
12 applicant; suspend any licensee for a definite period or for
13 an indefinite period in connection with any condition which
14 may be attached to the restoration of said license; limit or
15 restrict any licensee as the board deems necessary for the
16 protection of the public; revoke any license; condition the
17 penalty upon, or withhold formal disposition, pending the
18 applicant's or licensee's submission to such care,
19 counseling, or treatment as the board may direct; seek orders
20 enjoining unlicensed practice and the obtaining of a
21 restraining order or other order as may be appropriate; or
22 impose a penalty or fee up to \$_____ for each violation of a
23 law, rule, or regulation relating to the profession regulated
24 by this chapter upon a finding by a majority of the board
25 that the person has:

26 (1) failed to demonstrate the qualifications or
27 standards for a license contained in this section; it
28 being incumbent upon the applicant to demonstrate to the
29 satisfaction of the board that said applicant meets all
30 the requirements for the issuance of a license as set

1 forth in subsection ____ above, and, if the board is not
2 satisfied as to the applicant's qualifications, it may
3 deny a license without a prior hearing;

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

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

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

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

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

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

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

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

30 (10) violated any ethical standard which the board

1 determines to be of such a nature as to render such
2 person unfit to practice as a lactation consultant, such
3 as negligence in the course of professional practice.
4

5 (b) Nothing in this section shall be deemed a limitation on
6 the board's authority to impose sanctions by consent
7 agreement as are deemed reasonable and appropriate by the
8 board. The provisions of this section shall not affect, but
9 shall be in addition to, any other penalty or remedy provided
10 by law. The board may make application to the appropriate
11 court for an order enjoining unlicensed practice, or ordering
12 payment of any assessed administrative penalty or fee, or
13 both. Any person aggrieved by any disciplinary action taken
14 by the board may file a petition for judicial review of such
15 disciplinary action.
16

17 **SEVERABILITY**

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