

A-Engrossed
House Bill 2503

Ordered by the House April 20
Including House Amendments dated April 20

Sponsored by Representative NATHANSON; Representatives BARNHART, MALSTROM, NOSSE (at the request of Jaclyn Mahoney and Jennie Hawthorn-Mayes, co-founders of Daisy Chain) (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Directs Health Licensing Office to issue lactation consultant [*and lactation educator*] licenses to qualified applicants. Requires lactation consultants [*and lactation educators*] to complete cultural competency and trauma-informed care continuing education courses. Prohibits unlicensed use of "lactation consultant" title and practice of lactation consultation. Provides exceptions to prohibition. Imposes civil penalty for violation of licensure requirements.

Becomes operative January 1, 2018.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to lactation professionals; creating new provisions; amending ORS 676.610, 676.622, 676.850
3 and 676.992; and declaring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. As used in sections 1 to 6 of this 2017 Act:**

6 (1) "Lactation consultant" means a person licensed to practice lactation consultation.

7 (2) "Lactation consultation" means the clinical application of scientific principles and
8 evidence to provide care related to lactation to childbearing families. Lactation consultation
9 includes, but is not limited to:

10 (a) Client assessment through systematic collection of data;

11 (b) Data analysis;

12 (c) Creation of a care plan;

13 (d) Implementation of the care plan, including demonstration and instructions to clients
14 and communication with the clients' primary care provider;

15 (e) Evaluation of client outcomes;

16 (f) Problem identification and treatment;

17 (g) Recommendation and use of assistive devices; and

18 (h) Lactation education to childbearing families and to health care providers.

19 **SECTION 2. The Health Licensing Office shall issue a lactation consultant license to an
20 applicant who:**

21 (1) Is at least 18 years old;

22 (2) Submits sufficient proof, as determined by the office, that the applicant is:

23 (a) Certified by the International Board of Lactation Consultant Examiners, or its suc-
24 cessor organization, approved by the office by rule, as an International Board Certified
25 Lactation Consultant; and

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 (b) In good standing in any other states where the applicant is authorized as a lactation
2 consultant;

3 (3) Pays a licensure fee; and

4 (4) Meets other qualifications required by the office by rule.

5 **SECTION 3.** (1) A lactation consultant shall complete continuing education courses re-
6 lated to:

7 (a) Cultural competency, approved by the Oregon Health Authority under ORS 413.450;
8 and

9 (b) Trauma-informed care, through programs approved by the Health Licensing Office
10 by rule.

11 (2) The office shall adopt rules related to the continuing education described in sub-
12 section (1) of this section. The rules must include:

13 (a) Approval of continuing education programs related to trauma-informed care; and

14 (b) Requirements that lactation consultants:

15 (A) Complete initial cultural competency and trauma-informed care continuing education
16 courses within one year of the date of initial licensure; and

17 (B) Complete additional cultural competency and trauma-informed care continuing edu-
18 cation courses once every five years thereafter.

19 **SECTION 4.** A lactation consultant shall comply with the standards of practice and pro-
20 fessional responsibility for lactation consultants that are adopted by rule by the Health Li-
21 censing Office under section 6 of this 2017 Act.

22 **SECTION 5.** (1) A person may not practice lactation consultation or assume or use any
23 title, words or abbreviations, including but not limited to the title or designation "lactation
24 consultant," that indicate that the person is authorized to practice lactation consultation
25 unless the person is licensed under section 2 of this 2017 Act.

26 (2) Subsection (1) of this section does not prohibit:

27 (a) A person licensed under the laws of this state in a profession or occupation other
28 than lactation consultation from practicing lactation consultation as a part of the person's
29 practice;

30 (b) The use of lactation consultation as an integral part of an education program; or

31 (c) A person whose training and national certification attest to the person's preparation
32 and ability to practice their profession or occupation from practicing the profession or oc-
33 cupation in which the person is certified, if the person does not represent that the person
34 is a lactation consultant.

35 (3) Sections 1 to 6 of this 2017 Act do not apply to a person who is:

36 (a) Employed by or who contracts with the Oregon Health Authority or an entity that
37 contracts with the authority, to promote or support breastfeeding through the Women, In-
38 fants and Children Program under ORS 413.500; or

39 (b) A licensed health care practitioner in this state and who provides services similar to
40 lactation consultation.

41 **SECTION 6.** (1) The Health Licensing Office shall adopt rules to:

42 (a) Establish a process for issuing lactation consultant licenses;

43 (b) Establish licensure fees;

44 (c) Determine qualifications for applicants for initial licensure and licensure by
45 reciprocity;

1 (d) Approve the certification issued by the International Board of Lactation Consultant
2 Examiners or its successor organization, so long as the organization offers:

3 (A) A process to evaluate candidates for certification or education;

4 (B) A grievance process for applicants or individuals authorized by the organization; and

5 (C) A process for recertification or reauthorization;

6 (e) Develop and maintain a publicly available record of lactation consultants; and

7 (f) Establish standards of practice and professional responsibility for lactation consult-
8 ants that reflect the standards established by the International Board of Lactation Consult-
9 ant Examiners.

10 (2) The office may adopt other rules as necessary to carry out the provisions of sections
11 1 to 6 of this 2017 Act.

12 **SECTION 7.** ORS 676.610 is amended to read:

13 676.610. (1)(a) The Health Licensing Office is under the supervision and control of a director,
14 who is responsible for the performance of the duties, functions and powers and for the organization
15 of the office.

16 (b) The Director of the Oregon Health Authority shall establish the qualifications for and ap-
17 point the Director of the Health Licensing Office, who holds office at the pleasure of the Director
18 of the Oregon Health Authority.

19 (c) The Director of the Health Licensing Office shall receive a salary as provided by law or, if
20 not so provided, as prescribed by the Director of the Oregon Health Authority.

21 (d) The Director of the Health Licensing Office is in the unclassified service.

22 (2) The Director of the Health Licensing Office shall provide the boards and councils adminis-
23 tered by the office with such services and employees as the office requires to carry out the office's
24 duties. Subject to any applicable provisions of the State Personnel Relations Law, the Director of
25 the Health Licensing Office shall appoint all subordinate officers and employees of the office, pre-
26 scribe their duties and fix their compensation.

27 (3) The Director of the Health Licensing Office is responsible for carrying out the duties, func-
28 tions and powers under ORS 675.360 to 675.410, 676.575 to 676.625, 676.810, 676.815, 676.825, 676.992,
29 678.710 to 678.820, 680.500 to 680.565, 687.405 to 687.495, 687.895, 688.701 to 688.734, 688.800 to
30 688.840, 690.005 to 690.225, 690.350 to 690.410, 691.405 to 691.485 and 694.015 to 694.170 and ORS
31 chapter 700 **and sections 1 to 6 of this 2017 Act.**

32 (4) The enumeration of duties, functions and powers in subsection (3) of this section is not in-
33 tended to be exclusive or to limit the duties, functions and powers imposed on or vested in the office
34 by other statutes.

35 **SECTION 8.** ORS 676.622 is amended to read:

36 676.622. (1) A transaction conducted through a state or local system or network that provides
37 electronic access to the Health Licensing Office information and services is exempt from any re-
38 quirement under ORS 675.360 to 675.410, 676.575 to 676.625, 676.810, 676.815, 676.992, 680.500 to
39 680.565, 687.405 to 687.495, 688.701 to 688.734, 688.800 to 688.840, 690.005 to 690.225, 690.350 to
40 690.410, 691.405 to 691.485 and 694.015 to 694.170 and ORS chapter 700 **and sections 1 to 6 of this**
41 **2017 Act**, and rules adopted thereunder, requiring an original signature or the submission of hand-
42 written materials.

43 (2) Electronic signatures subject to ORS 84.001 to 84.061 and facsimile signatures are acceptable
44 and have the same force as original signatures.

45 **SECTION 9.** ORS 676.850 is amended to read:

- 1 676.850. (1) As used in this section, “board” means the:
- 2 (a) State Board of Examiners for Speech-Language Pathology and Audiology;
- 3 (b) State Board of Chiropractic Examiners;
- 4 (c) State Board of Licensed Social Workers;
- 5 (d) Oregon Board of Licensed Professional Counselors and Therapists;
- 6 (e) Oregon Board of Dentistry;
- 7 (f) Board of Licensed Dietitians;
- 8 (g) State Board of Massage Therapists;
- 9 (h) Oregon Board of Naturopathic Medicine;
- 10 (i) Oregon State Board of Nursing;
- 11 (j) Nursing Home Administrators Board;
- 12 (k) Oregon Board of Optometry;
- 13 (L) State Board of Pharmacy;
- 14 (m) Oregon Medical Board;
- 15 (n) Occupational Therapy Licensing Board;
- 16 (o) Physical Therapist Licensing Board;
- 17 (p) State Board of Psychologist Examiners;
- 18 (q) Board of Medical Imaging;
- 19 (r) State Board of Direct Entry Midwifery;
- 20 (s) State Board of Denture Technology;
- 21 (t) Respiratory Therapist and Polysomnographic Technologist Licensing Board;
- 22 (u) Home Care Commission; *[and]*
- 23 (v) Oregon Health Authority, to the extent that the authority licenses emergency medical ser-
- 24 vice providers; **and**
- 25 **(w) Health Licensing Office, to the extent that the office licenses lactation consultants.**
- 26 (2)(a) In collaboration with the Oregon Health Authority, a board may adopt rules under which
- 27 the board may require a person authorized to practice the profession regulated by the board to re-
- 28 ceive cultural competency continuing education approved by the authority under ORS 413.450.
- 29 (b) Cultural competency continuing education courses may be taken in addition to or, if a board
- 30 determines that the cultural competency continuing education fulfills existing continuing education
- 31 requirements, instead of any other continuing education requirement imposed by the board.
- 32 (3)(a) A board, or the Health Licensing Office for those boards for which the office issues and
- 33 renews authorizations to practice the profession regulated by the board, shall document partic-
- 34 ipation in cultural competency continuing education by persons authorized to practice a profession
- 35 regulated by the board.
- 36 (b) For purposes of documenting participation under this subsection, a board may adopt rules
- 37 requiring persons authorized to practice the profession regulated by the board to submit documen-
- 38 tation to the board, or to the office for those boards for which the office issues and renews author-
- 39 izations to practice the profession regulated by the board, of participation in cultural competency
- 40 continuing education.
- 41 (4) A board shall report biennially to the authority on the participation documented under sub-
- 42 section (3) of this section.
- 43 (5) The authority, on or before August 1 of each even-numbered year, shall report to the interim
- 44 committees of the Legislative Assembly related to health care on the information submitted to the
- 45 authority under subsection (4) of this section.

1 **SECTION 10.** ORS 676.992 is amended to read:

2 676.992. (1) Except as provided in subsection (3) of this section, and in addition to any other
3 penalty or remedy provided by law, the Health Licensing Office may impose a civil penalty not to
4 exceed \$5,000 for each violation of the following statutes and any rule adopted under the following
5 statutes:

6 (a) ORS 688.701 to 688.734 (athletic training);

7 (b) ORS 690.005 to 690.225 (cosmetology);

8 (c) ORS 680.500 to 680.565 (denture technology);

9 (d) Subject to ORS 676.616 and 687.445, ORS 687.405 to 687.495 (direct entry midwifery);

10 (e) ORS 690.350 to 690.410 (tattooing, electrolysis, body piercing, earlobe piercing, dermal im-
11 planting and scarification);

12 (f) ORS 694.015 to 694.170 (dealing in hearing aids);

13 (g) ORS 688.800 to 688.840 (respiratory therapy and polysomnography);

14 (h) ORS chapter 700 (environmental sanitation);

15 (i) ORS 675.360 to 675.410 (sex offender treatment);

16 (j) ORS 678.710 to 678.820 (nursing home administrators);

17 (k) ORS 691.405 to 691.485 (dietitians);

18 (L) ORS 676.612 (prohibited acts);

19 (m) ORS 676.810 and 676.815 (applied behavior analysis);

20 (n) ORS 681.700 to 681.730 (music therapy); [and]

21 (o) ORS 676.630 to 676.660 (advanced nonablative esthetics procedure); **and**

22 **(p) Sections 1 to 6 of this 2017 Act (lactation consultation).**

23 (2) The office may take any other disciplinary action that it finds proper, including but not
24 limited to assessment of costs of disciplinary proceedings, not to exceed \$5,000, for violation of any
25 statute listed in subsection (1) of this section or any rule adopted under any statute listed in sub-
26 section (1) of this section.

27 (3) Subsection (1) of this section does not limit the amount of the civil penalty resulting from a
28 violation of ORS 694.042.

29 (4) In imposing a civil penalty under this section, the office shall consider the following factors:

30 (a) The immediacy and extent to which the violation threatens the public health or safety;

31 (b) Any prior violations of statutes, rules or orders;

32 (c) The history of the person incurring a penalty in taking all feasible steps to correct any vio-
33 lation; and

34 (d) Any other aggravating or mitigating factors.

35 (5) Civil penalties under this section shall be imposed as provided in ORS 183.745.

36 (6) The moneys received by the office from civil penalties under this section shall be deposited
37 in the Health Licensing Office Account and are continuously appropriated to the office for the ad-
38 ministration and enforcement of the laws the office is charged with administering and enforcing that
39 govern the person against whom the penalty was imposed.

40 **SECTION 11. (1) Sections 1 to 6 of this 2017 Act and the amendments to ORS 676.610,**
41 **676.622, 676.850 and 676.992 by sections 7 to 10 of this 2017 Act become operative on January**
42 **1, 2018.**

43 **(2) The Health Licensing Office may take any action before the operative date specified**
44 **in subsection (1) of this section that is necessary to enable the office to exercise, on and**
45 **after the operative date specified in subsection (1) of this section, all of the duties, functions**

1 and powers conferred on the office by sections 1 to 6 of this 2017 Act and the amendments
2 to ORS 676.610, 676.622, 676.850 and 676.992 by sections 7 to 10 of this 2017 Act.

3 SECTION 12. This 2017 Act being necessary for the immediate preservation of the public
4 peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect
5 on its passage.
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