

SENATE No. 2373

The Commonwealth of Massachusetts

PRESENTED BY:

Susan C. Fargo

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act regulating the practice and licensure of lactation consultants.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Susan C. Fargo</i>	
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>

SENATE No. 2373

By Ms. Fargo, a petition (subject to Joint Rule 12) of Susan C. Fargo, Jennifer E. Benson and Denise Provost for legislation to regulate the practice and licensure of lactation consultants. Public Health.

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

An Act regulating the practice and licensure of lactation consultants.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. This Act may be cited as the “Lactation Consultant Practice Act”.

2 SECTION 2. Chapter 13, Section 11D of the General Laws, as appearing in the 2010
3 Official Edition, is hereby amended by striking “nine members” in line 5 and inserting in place
4 thereof with “eleven members” and is further amended by adding after the word “public.” in line
5 12, the following words:-two such members shall be lactation consultants who have been
6 certified by the International Board of Lactation Consultant Examiners (IBLCE).

7 SECTION 3. Section 201 of chapter 112 of the General Laws, as appearing in the 2010
8 Official Edition, is hereby amended by inserting after line 33, the following words:-

9 “Employee”, an individual who is subject to the direction and control of an organization
10 or unrelated individual with respect to the nature of the work to be performed and the manner in
11 which such work is to be done, including but not limited to, such matters as work hours, method
12 and amount of compensation, decisions about what services will be provided, decisions about

13 who will receive such services, and other terms and conditions of employment. The question of
14 whether an individual is or is not an "employee" does not depend upon remuneration for
15 services.

16 “International Board Certified Lactation Consultant (IBCLC)”, an individual certified by
17 the International Board of Lactation Consultant Examiners (IBLCE), also known as a Lactation
18 Consultant, and licensed by the board after demonstrating the appropriate education, knowledge,
19 and experience necessary for independent clinical practice. Board standards for licensure shall
20 be equivalent to established national standards such as those set for an International Board of
21 Lactation Consultant Examiners (IBLCE).

22 “Lactation Consultant services”, the clinical application of scientific principles and a
23 multidisciplinary body of evidence for the evaluation, problem identification, treatment,
24 education, and consultation to provide lactation care and services to childbearing families.
25 Lactation care and services provided by licensed IBCLCs includes but is not limited to: (1)
26 lactation assessment through the systematic collection of subjective and objective data, (2)
27 analysis of data and creation of a plan of care, (3) implementation of lactation care plan with
28 demonstration and instruction to parents, and communication to primary health care provider, (4)
29 evaluation of outcomes, (5) provision of lactation education to parents and health care providers,
30 (6) recommendation and use of assistive devices.

31 “Practice”, rendering or offering to render any clinical lactation care and services to any
32 individual, family, or group of individuals.

33 “Supervisor”- A supervisor shall be an IBCLC with authority to oversee, guide, advise
34 and serve as the referral source for IBCLC students or interns, and other breastfeeding and peer
35 counselors.

36 SECTION 4. Said chapter 112 of the General Laws is hereby amended by striking
37 section 203 in its entirety and inserting the following section:-

38 Section 203. Application for original license, renewal or examination; educational and
39 professional experience requirements

40 Section 203. Forms approved by the board and accompanied by the appropriate fee shall
41 be used for application for original license, license renewal, to sit for the licensing examination,
42 or to establish successful completion of an examination offered by an independently accredited
43 entity such as IBLCE.

44 The fee for original license and renewal shall be determined by the commissioner of
45 administration and finance pursuant to the provisions of section 3B of chapter 7 which shall be
46 established at a level sufficient to and dedicated to offsetting the cost to the division of
47 registration for the operations of the board.

48 Applications for original license shall be sworn and furnish satisfactory proof that the
49 applicant is at least 18 years old, of good moral character, and has met the educational and
50 professional experience requirements prerequisite to sitting for the licensing examination or has
51 passed such examination.

52 Educational requirements for licensure shall include:

53 (1) a bachelor's degree or higher with a major course of study in dietetics and
54 nutrition, human nutrition, nutrition education, or public health nutrition; or

55 (2) a bachelor's degree or higher with a reasonable threshold of undergraduate level
56 academic credit hours in nutrition and nutrition sciences as determined by the board, from a
57 college or university regionally accredited by the New England Association of Colleges and
58 Schools, Inc./ Commission on Institutions of Higher Education or equivalent; or

59 (3) completion of post-secondary education in general health-related topics including
60 at least biology, human anatomy, human physiology, infant/child growth and development,
61 psychology or counseling or communication skills, introduction to research, sociology or cultural
62 sensitivity or cultural anthropology and completion of education in basic life support (e.g., cardio
63 pulmonary resuscitation, or CPR), medical documentation, medical terminology, occupational
64 safety and security for health professionals, professional ethics for health professionals, universal
65 safety precautions, and infection control.

66 Professional experience requirements for licensure shall include:

67 (4) a formal post baccalaureate internship approved by the board of not less than 900
68 hours in the field of dietetics and nutrition supervised by a licensed dietitian/nutritionist; or

69 (5) a minimum of 900 hours of clinical practice experience in lactation and
70 breastfeeding care or 500 hours of directly supervised clinical practice experience in lactation
71 and breastfeeding care; or

72 (6) three years of post baccalaureate paid professional experience in the field of
73 dietetics and nutrition; or

74 (7) two years of post master's degree paid professional experience in the field of
75 dietetics and nutrition; or

76 (8) one year of post doctorate paid professional experience in the field of dietetics
77 and nutrition; or

78 (9) such comparable experience which satisfies the board that the licensee is
79 competent to practice as a licensed dietitian/nutritionist, and or lactation consultant.

80 Waiver of Requirements

81 The board may promulgate regulations providing procedures for full or partial waiver of
82 the requirements under Section 203 for applicants who hold a valid dietitian/nutrition or lactation
83 consultant license or its equivalent issued by another jurisdiction.

84 Exemptions

85 Individuals who are members of board-recognized volunteer organizations shall be
86 exempt from licensure requirements if:

87 (1) they do not hold themselves out as being licensed or having clinical skills and
88 abilities associated with licensure; and

89 (2) their volunteer service is performed without fee or other form of compensation,
90 monetary or otherwise, from the individuals or groups served; and

91 (3) the individual volunteer receives no form of compensation, monetary or
92 otherwise, except for administrative expenses such as mileage.

93 SECTION 5. Said chapter 112 of the General Laws is hereby amended by striking
94 section 206 in its entirety and inserting the following section:-

95 Section 206. Authorized activities for non-licensed dietitians/nutritionists and lactation
96 consultants

97 Section 206. No person shall hold themselves out to be a licensed dietitian/ nutritionist,
98 and or a lactation consultant unless so licensed under the applicable provisions of this chapter.
99 This section shall not restrict any person who does not hold themselves out to be a licensed
100 dietitian/ nutritionist, and or lactation consultant from the following:

101 (a) pursuing a degree in dietetics or nutrition at an accredited college or university
102 and engaging in the practice of dietetics or nutrition under the supervision of a licensed
103 dietitian/nutritionist and in accordance with professional standards of practice, provided that the
104 person is designated by a title clearly indicating their status as a student;

105 (b) fulfilling the professional experience requirement in dietetic or nutrition necessary
106 for licensure who is engaging in the practice of dietetics or nutrition under the supervision of a
107 licensed dietitian/nutritionist and in accordance with professional standards of practice, provided
108 that the person is designated by a title clearly indicating their status as a trainee;

109 (c) furnishing information regarding food, food material, or dietary supplements;

110 (d) furnishing information about food, food products, or dietary supplements to
111 customers in connection with the marketing and distribution of such items;

112 (e) practicing a health profession that they are otherwise authorized to practice under
113 chapter 112 of the General Laws;

114 (f) practicing a health profession that includes a dietetic or nutritional practice
115 component, including, but not limited to, holistic medicine, naturopathic medicine, homopathic
116 medicine, macrobiotics, ayurvedic therapy, polarity therapy, shitsu therapy, massage therapy,
117 and herbal therapy; or

118 (g) practicing of lactation care and services by students, interns or person preparing
119 for practice under the qualified supervision of a licensee.

120 SECTION 6. Said chapter 112 of the General Laws is hereby amended by striking section
121 207 in its entirety and inserting the following section:-

122 Section 207. License renewal biennially; continuing education; proof of compliance

123 Section 207. Every person licensed in accordance with this chapter shall apply to the
124 board for renewal of license on or before the anniversary of the date of birth of the licensee next
125 occurring more than 24 months after the date of issuance of the license and every two years
126 thereafter. Initial licenses shall be issued for a period of time from one to two years, so as to
127 establish a birthday renewal cycle. An application for renewal of license shall be approved for
128 those applicants who provide evidence of successful completion of at least 30 hours biannually
129 of continuing education for licensed dietitian/nutritionists and lactation consultants as approved
130 by the board, and provide evidence of compliance with such other requirements or equivalent
131 requirements as approved by the board. Upon satisfactory proof of compliance with the
132 licensing requirements for dietitians/nutritionists and lactation consultants, and successful
133 completion of said continuing education requirement the board shall issue a renewal license
134 showing that the holder is entitled to be licensed for two years. The board may provide for the
135 late renewal of a license which has lapsed and may require the payment of a late fee.

136 SECTION 7. Section 208 of said chapter 112 of the General Laws, as appearing in the
137 2010 Official Edition, is hereby amended by inserting after the word “dietitians/nutritionists” in
138 line 2, the following words:-, and lactation consultants.

139 SECTION 8. Said chapter 112 of the General Laws is hereby amended by striking section
140 209 in its entirety and inserting the following section:-

141 Section 209. Unlicensed practice as dietitian/nutritionist, lactation consultant; criminal
142 liability; punishment; restriction of civil actions

143 Section 209. (1) Any person acting or purporting to act as a licensed dietitian/nutritionist,
144 and or lactation consultant without first obtaining a license to practice under this chapter shall be
145 guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$5,000
146 or by imprisonment for a term not to exceed one year or both.

147 Upon conviction of a subsequent violation, such person shall be punished by a fine of not
148 more than \$10,000 or two years imprisonment or both.

149 (2) A person who receives any money or the equivalent thereof as a fee, commission,
150 compensation or profit by, or in the consequence of a violation of any provision of this chapter;
151 shall, in addition to any other penalty, be liable for a fine of not less than the sum of the money
152 so received and not more than three times the sum so received as may be determined by the
153 board.

154 (3) No action or suit shall be instituted nor recovery had, in any court of the
155 commonwealth by any person for compensation for any act done or service rendered as a

156 licensed dietitian/nutritionist, and or a lactation consultant unless such person held a valid current
157 license under this chapter at the time of offering to person such act or service.

158 SECTION 9. Section 210 of said chapter 112 of the General Laws, as appearing in the
159 2010 Official Edition, is hereby amended by inserting after the word “dietitian/nutritionist” in
160 line 1, the following words:-, and lactation consultants.