

**Enrolled**  
**House Bill 2503**

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

CHAPTER .....

AN ACT

Relating to lactation professionals; creating new provisions; amending ORS 676.185, 676.308, 676.583, 676.586, 676.608, 676.610, 676.612, 676.613, 676.615, 676.622, 676.625, 676.850 and 676.992; and declaring an emergency.

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

**SECTION 1. As used in sections 1 to 7 of this 2017 Act:**

- (1) **“Lactation consultant” means a person licensed to practice lactation consultation.**
- (2) **“Lactation consultation” means the clinical application of scientific principles and evidence to provide care related to lactation to childbearing families. Lactation consultation includes, but is not limited to:**
  - (a) **Client assessment through systematic collection of data;**
  - (b) **Data analysis;**
  - (c) **Creation of a care plan;**
  - (d) **Implementation of the care plan, including demonstration and instructions to clients and communication with the clients’ primary care provider;**
  - (e) **Evaluation of client outcomes;**
  - (f) **Problem identification and treatment;**
  - (g) **Recommendation and use of assistive devices; and**
  - (h) **Lactation education to childbearing families and to health care providers.**

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

- (1) **Is at least 18 years old;**
- (2) **Submits sufficient proof, as determined by the office, that the applicant is:**
  - (a) **Certified by the International Board of Lactation Consultant Examiners, or its successor organization, as approved by the office by rule, as an International Board Certified Lactation Consultant; and**
  - (b) **In good standing in any other states where the applicant is authorized as a lactation consultant;**
- (3) **Pays a licensure fee; and**
- (4) **Meets other qualifications required by the office by rule.**

**SECTION 3. (1) A lactation consultant shall complete continuing education courses related to:**

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

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

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

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

(b) Requirements that lactation consultants:

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

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

**SECTION 4.** A lactation consultant shall comply with the standards of practice and professional responsibility for lactation consultants that are adopted by rule by the Health Licensing Office under section 7 of this 2017 Act.

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

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

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

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

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

(3) Sections 1 to 7 of this 2017 Act do not apply to a person who is:

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

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

(4) Sections 1 to 7 of this 2017 Act do not require a person who is a certified lactation counselor to obtain a license issued under section 2 of this 2017 Act in order to perform any of the services described in section 1 (2) of this 2017 Act.

**SECTION 6.** In the manner prescribed in ORS chapter 183 for contested cases, the Health Licensing Office may impose a form of discipline listed in ORS 676.612 against a person licensed under section 2 of this 2017 Act for any of the prohibited acts listed in section 5 of this 2017 Act and for any violation of a rule adopted under sections 1 to 7 of this 2017 Act.

**SECTION 7.** (1) The Health Licensing Office shall adopt rules to:

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

(b) Establish licensure fees;

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

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

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

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

(C) A process for recertification or reauthorization;

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

**(f) Establish standards of practice and professional responsibility for lactation consultants that reflect the standards established by the International Board of Lactation Consultant Examiners.**

**(2) The office may adopt other rules as necessary to carry out the provisions of sections 1 to 7 of this 2017 Act.**

**SECTION 8.** ORS 676.185 is amended to read:

676.185. As used in ORS 676.185 to 676.200:

(1) "Direct supervisor" means the individual who is responsible for:

(a) Supervising a licensee enrolled in the impaired health professional program;

(b) Monitoring the licensee's compliance with the requirements of the program; and

(c) Periodically reporting to the program on the licensee's compliance with the requirements of the program.

(2) "Health profession licensing board" means:

(a) A health professional regulatory board as defined in ORS 676.160; or

(b) The Health Licensing Office for a board [or], council **or program** listed in ORS 676.583.

(3) "Impaired professional" means a licensee who is unable to practice with professional skill and safety by reason of habitual or excessive use or abuse of drugs, alcohol or other substances that impair ability or by reason of a mental health disorder.

(4) "Licensee" means a health professional licensed or certified by or registered with a health profession licensing board.

(5) "Substantial noncompliance" includes the following:

(a) Criminal behavior;

(b) Conduct that causes injury, death or harm to the public, or a patient, including sexual impropriety with a patient;

(c) Impairment in a health care setting in the course of employment;

(d) A positive toxicology test result as determined by federal regulations pertaining to drug testing;

(e) Violation of a restriction on a licensee's practice imposed by the impaired health professional program established under ORS 676.190 or the licensee's health profession licensing board;

(f) Civil commitment for mental illness;

(g) Failure to participate in the program after entering into a diversion agreement under ORS 676.190; or

(h) Failure to enroll in the program after being referred to the program.

**SECTION 9.** ORS 676.308 is amended to read:

676.308. (1) As used in this section:

(a) "Authorization" means a license, registration, certificate or other authorization to engage in a profession.

(b) "Board" means a health professional regulatory board, as defined in ORS 676.160, or a board [or], council **or program** listed in ORS 676.583.

(c) "Military spouse or domestic partner" means a spouse or domestic partner of an active member of the Armed Forces of the United States who is the subject of a military transfer to Oregon.

(2) A board shall issue an authorization to a military spouse or domestic partner if the military spouse or domestic partner provides the board with:

(a) Evidence that the applicant is married to, or in a domestic partnership with, an active member of the Armed Forces of the United States who is assigned to a duty station located in Oregon by official active duty military order;

(b) Evidence that the military spouse or domestic partner is authorized by another state or territory of the United States to provide services regulated by the board; and

(c) Evidence that the military spouse or domestic partner:

(A) Has provided services or taught the subject matter regulated by the board for at least one year during the three years immediately preceding the date on which the military spouse or domestic partner submits an application for an authorization; and

(B) Has demonstrated competency, as determined by the board by rule, over services regulated by the board.

(3) A board may issue a temporary authorization to an applicant who applies for an authorization under subsection (2) of this section before the board receives the evidence required by subsection (2) of this section if the military spouse or domestic partner affirms on the application that the military spouse or domestic partner:

(a) Has requested evidence of authorization from the state or territory in which the military spouse or domestic partner is authorized; and

(b) Is not subject to disciplinary action in that state or territory for a matter related to services regulated by the board.

**SECTION 10.** ORS 676.583 is amended to read:

676.583. Pursuant to ORS 676.586, the Health Licensing Office shall provide administrative and regulatory oversight and centralized service for the following boards [*and*], councils **and programs**:

(1) Board of Athletic Trainers, as provided in ORS 688.701 to 688.734;  
(2) Board of Cosmetology, as provided in ORS 690.005 to 690.225;  
(3) State Board of Denture Technology, as provided in ORS 680.500 to 680.565;  
(4) State Board of Direct Entry Midwifery, as provided in ORS 687.405 to 687.495;  
(5) Respiratory Therapist and Polysomnographic Technologist Licensing Board, as provided in ORS 688.800 to 688.840;

(6) Environmental Health Registration Board, as provided in ORS chapter 700;

(7) Board of Electrologists and Body Art Practitioners, as provided in ORS 690.350 to 690.410;

(8) Advisory Council on Hearing Aids, as provided in ORS 694.015 to 694.170;

(9) Sex Offender Treatment Board, as provided in ORS 675.360 to 675.410;

(10) Nursing Home Administrators Board, as provided in ORS 678.710 to 678.820;

(11) Board of Licensed Dietitians, as provided in ORS 691.405 to 691.485;

(12) Behavior Analysis Regulatory Board, as provided in ORS 676.806; [*and*]

(13) Board of Certified Advanced Estheticians, as provided in ORS 676.630 to 676.660; **and**

**(14) Lactation consultation, as provided in sections 1 to 7 of this 2017 Act.**

**SECTION 11.** ORS 676.586 is amended to read:

676.586. (1) The Health Licensing Office is responsible for the administration and regulatory oversight of the boards [*and*], councils **and programs** listed in ORS 676.583. The responsibilities of the office include, but are not limited to:

(a) Budgeting;

(b) Record keeping;

(c) Staffing;

(d) Contracting;

(e) Consumer protection and investigating complaints;

(f) Establishing and collecting fees;

(g) Establishing and administering uniform application processes for the issuance of authorizations;

(h) Issuing and renewing authorizations;

(i) Subject to ORS 676.616 and 687.445, conditioning, limiting, suspending, revoking or refusing to issue or renew an authorization or otherwise disciplining applicants and authorization holders;

(j) Sanctioning any examination service provider, interpreter or proctor who is under contract or agreement with the office and who compromises the security, confidentiality or integrity of examinations developed or conducted pursuant to the statutory authority of the boards [*and*], councils **and programs** listed in ORS 676.583;

(k) Enforcing all administrative rules adopted under any statute the office is charged with enforcing, including board [*and*], council **and program** administrative rules establishing professional code of conduct and practice standards, the scope of professional practice and requirements for obtaining informed consent before providing certain services or performing any procedure on clients;

(L) Preparing, tracking and reporting office performance measures;

(m) Implementing regulatory streamlining initiatives to reduce regulatory burdens without compromising regulatory standards;

(n) Preparing and circulating printed and electronic materials for educating or otherwise assisting applicants, authorization holders and the public;

(o) Adopting rules for the issuance of waivers or provisional authorizations to practice, and establishing special conditions of practice, during a state of emergency declared by the Governor under ORS 401.165;

(p) Referring impaired practitioners to a diversion program approved or recognized by the office and establishing criteria by rule for monitoring the impaired practitioner's progress and successful completion of the program;

(q) Establishing requirements for additional education, training or supervised experience to achieve compliance with the laws and rules governing professional practice;

(r) Establishing by rule continuing education requirements for renewal of an authorization if the office determines that continuing education is appropriate for renewal of the authorization;

(s) Exempting from authorization requirements a person who provides services at charitable or fund raising events, after the office has considered and evaluated the written request for an exemption on an individual basis; and

(t) Establishing requirements by rule for the issuance of a provisional authorization for purposes related to education or training.

(2) The enumeration of duties, functions and powers in subsection (1) of this section is not intended to be exclusive or to limit the duties, functions and powers imposed on or vested in the office by other statutes.

**SECTION 12.** ORS 676.608 is amended to read:

676.608. (1) As used in this section, "public entity" has the meaning given that term in ORS 676.177.

(2)(a) The Health Licensing Office shall carry out the investigatory duties necessary to enforce the provisions of ORS 676.575 to 676.625 and 676.992.

(b) Subject to subsection (12) of this section, the office, upon its own motion, may initiate and conduct investigations of matters relating to the practice of occupations or professions subject to the authority of the boards [*and*], councils **and programs** listed in ORS 676.583.

(c) Subject to subsection (12) of this section, when the office receives a complaint against an authorization holder, the office shall investigate the complaint as provided in ORS 676.165.

(3) While conducting an investigation authorized under subsection (2) of this section or a hearing related to an investigation, the office may:

(a) Take evidence;

(b) Administer oaths;

(c) Take the depositions of witnesses, including the person charged;

(d) Compel the appearance of witnesses, including the person charged;

(e) Require answers to interrogatories;

(f) Compel the production of books, papers, accounts, documents and testimony pertaining to the matter under investigation; and

(g) Conduct criminal and civil background checks to determine conviction of a crime that bears a demonstrable relationship to the field of practice.

(4) In exercising its authority under this section, the office may issue subpoenas over the signature of the Director of the Health Licensing Office or designated employee of the director and in the name of the State of Oregon.

(5) If a person fails to comply with a subpoena issued under this section, the judge of the Circuit Court for Marion County may compel obedience by initiating proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from the court.

(6) If necessary, the director, or an employee designated by the director, may appear before a magistrate empowered to issue warrants in criminal cases to request that the magistrate issue a warrant. The magistrate shall issue a warrant, directing it to any sheriff or deputy or police officer, to enter the described property, to remove any person or obstacle, to defend any threatened violence to the director or a designee of the director or an officer, upon entering private property, or to assist the director in enforcing the office's authority in any way.

(7) In all investigations and hearings, the office and any person affected by the investigation or hearing may have the benefit of counsel.

(8) If an authorization holder who is the subject of a complaint or an investigation is to appear before the office, the office shall provide the authorization holder with a current summary of the complaint or the matter being investigated not less than 10 days before the date that the authorization holder is to appear. At the time the summary of the complaint or the matter being investigated is provided, the office shall provide the authorization holder with a current summary of documents or alleged facts that the office has acquired as a result of the investigation. The name of the complainant may be withheld from the authorization holder.

(9) An authorization holder who is the subject of an investigation, and any person acting on behalf of the authorization holder, may not contact the complainant until the authorization holder has requested a contested case hearing and the office has authorized the taking of the complainant's deposition pursuant to ORS 183.425.

(10) Except in an investigation or proceeding conducted by the office or another public entity, or in an action, suit or proceeding in which a public entity is a party, an authorization holder may not be questioned or examined regarding any communication with the office made in an appearance before the office as part of an investigation.

(11) This section does not prohibit examination or questioning of an authorization holder regarding records about the authorization holder's care and treatment of a patient or affect the admissibility of those records.

(12) In conducting an investigation related to the practice of direct entry midwifery, as defined in ORS 687.405, the office shall:

(a) Allow the State Board of Direct Entry Midwifery to review the motion or complaint before beginning the investigation;

(b) Allow the board to prioritize the investigation with respect to other investigations related to the practice of direct entry midwifery; and

(c) Consult with the board during and after the investigation for the purpose of determining whether to pursue disciplinary action.

**SECTION 13.** ORS 676.610 is amended to read:

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

(b) The Director of the Oregon Health Authority shall establish the qualifications for and appoint the Director of the Health Licensing Office, who holds office at the pleasure of the Director of the Oregon Health Authority.

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

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

(2) The Director of the Health Licensing Office shall provide the boards, [and] councils **and programs** administered by the office with [such] **any** services and employees as the office requires to carry out the office's duties. Subject to any applicable provisions of the State Personnel Relations Law, the Director of the Health Licensing Office shall appoint all subordinate officers and employees of the office, prescribe their duties and fix their compensation.

(3) The Director of the Health Licensing Office is responsible for carrying out the duties, functions and powers under ORS 675.360 to 675.410, 676.575 to 676.625, 676.810, 676.815, 676.825, 676.992, 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 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 chapter 700 **and sections 1 to 7 of this 2017 Act**.

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

**SECTION 14.** ORS 676.612 is amended to read:

676.612. (1) Subject to ORS 676.616 and 687.445, and in the manner prescribed in ORS chapter 183 for contested cases and as specified in ORS 675.385, 676.825, 678.780, 680.535, 687.445, 688.734, 688.836, 690.167, 690.407, 691.477, 694.147 and 700.111 **and section 6 of this 2017 Act**, the Health Licensing Office may refuse to issue or renew, may suspend or revoke or may otherwise condition or limit an authorization or may discipline or place on probation an authorization holder for commission of the prohibited acts listed in subsection (2) of this section.

(2) A person subject to the authority of a board [*or*], council **or program** listed in ORS 676.583 commits a prohibited act if the person engages in:

(a) Fraud, misrepresentation, concealment of material facts or deception in applying for or obtaining an authorization to practice in this state, or in any written or oral communication to the office concerning the issuance or retention of the authorization.

(b) Using, causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, insignia or any other representation, however disseminated or published, that is false, misleading or deceptive.

(c) Making a representation that the authorization holder knew or should have known is false or misleading regarding skill or the efficacy or value of treatment or remedy administered by the authorization holder.

(d) Practicing under a false, misleading or deceptive name, or impersonating another authorization holder.

(e) Permitting a person other than the authorization holder to use the authorization.

(f) Practicing with a physical or mental condition that presents an unreasonable risk of harm to the authorization holder or to the person or property of others in the course of performing the authorization holder's duties.

(g) Practicing while under the influence of alcohol, controlled substances or other skill-impairing substances, or engaging in the illegal use of controlled substances or other skill-impairing substances so as to create a risk of harm to the person or property of others in the course of performing the duties of an authorization holder.

(h) Failing to properly and reasonably accept responsibility for the actions of employees.

(i) Employing, directly or indirectly, any suspended, uncertified, unlicensed or unregistered person to practice a regulated occupation or profession subject to the authority of the boards [*and*], councils **and programs** listed in ORS 676.583.

(j) Unprofessional conduct, negligence, incompetence, repeated violations or any departure from or failure to conform to standards of practice in performing services or practicing in a regulated occupation or profession subject to the authority of the boards [*and*], councils **and programs** listed under ORS 676.583.

(k) Conviction of any criminal offense, subject to ORS 670.280. A copy of the record of conviction, certified by the clerk of the court entering the conviction, is conclusive evidence of the conviction. A plea of no contest or an admission of guilt is a conviction for purposes of this paragraph.

(L) Failing to report any adverse action, as required by statute or rule, taken against the authorization holder by another regulatory jurisdiction or any peer review body, health care institution, professional association, governmental agency, law enforcement agency or court for acts or

conduct similar to acts or conduct that would constitute grounds for disciplinary action as described in this section.

(m) Violation of a statute regulating an occupation or profession subject to the authority of the boards *[and]*, councils **and programs** listed in ORS 676.583.

(n) Violation of any rule regulating an occupation or profession subject to the authority of the boards *[and]*, councils **and programs** listed in ORS 676.583.

(o) Failing to cooperate with the office in any investigation, inspection or request for information.

(p) Selling or fraudulently obtaining or furnishing an authorization to practice in a regulated occupation or profession subject to the authority of the boards *[and]*, councils **and programs** listed in ORS 676.583, or aiding or abetting such an act.

(q) Selling or fraudulently obtaining or furnishing any record related to practice in a regulated occupation or profession subject to the authority of the boards *[and]*, councils **and programs** listed in ORS 676.583, or aiding or abetting such an act.

(r) Failing to pay an outstanding civil penalty or fee that is due or failing to meet the terms of any order issued by the office that has become final.

(3) For the purpose of requesting a state or nationwide criminal records check under ORS 181A.195, the office may require the fingerprints of a person who is:

- (a) Applying for an authorization;
- (b) Applying for renewal of an authorization; or
- (c) Under investigation by the office.

(4) If the office places an authorization holder on probation under subsection (1) of this section, the office, in consultation with the appropriate board *[or]*, council **or program**, may determine and at any time modify the conditions of the probation.

(5) If an authorization is suspended, the authorization holder may not practice during the term of suspension. Upon the expiration of the term of suspension, the authorization may be reinstated by the office if the conditions of suspension no longer exist and the authorization holder has satisfied all requirements in the relevant statutes or administrative rules for issuance, renewal or reinstatement.

**SECTION 15.** ORS 676.613 is amended to read:

676.613. (1) In addition to all other remedies, when it appears to the Health Licensing Office that a person is engaged in, has engaged in or is about to engage in any act, practice or transaction that violates any provision of ORS 675.360 to 675.410, 676.810, 676.815, 678.710 to 678.820, 680.500 to 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 690.410, 691.405 to 691.485 or 694.015 to 694.170 or ORS chapter 700 **or sections 1 to 7 of this 2017 Act**, the office may, through the Attorney General or the district attorney of the county in which the act, practice or transaction occurs or will occur, apply to the court for an injunction restraining the person from the act, practice or transaction.

(2) A court may issue an injunction under this section without proof of actual damages. An injunction issued under this section does not relieve a person from any other prosecution or enforcement action taken for violation of statutes listed in subsection (1) of this section.

**SECTION 16.** ORS 676.615 is amended to read:

676.615. (1) In accordance with applicable provisions of ORS chapter 183, the Director of the Health Licensing Office may adopt rules necessary for the administration of the laws that the Health Licensing Office is charged with administering.

(2) In accordance with applicable provisions of ORS chapter 183, the director may adopt rules necessary for the administration of ORS 676.575 to 676.625 and 676.992.

(3) The office may adopt rules establishing requirements for placement of an authorization issued by the office in a dormant status upon application by the authorization holder and establishing conditions for reactivation of the authorization.

(4) Pursuant to ORS 676.575 and 676.586, the office may adopt rules to recognize specialties within a regulated field of practice subject to the authority of the boards *[and]*, councils **and pro-**

**grams** listed in ORS 676.583 and may establish requirements for education, experience, examinations and supervision as necessary to ensure public safety and competency within the specialty.

**SECTION 17.** ORS 676.622 is amended to read:

676.622. (1) A transaction conducted through a state or local system or network that provides electronic access to the Health Licensing Office information and services is exempt from any requirement under ORS 675.360 to 675.410, 676.575 to 676.625, 676.810, 676.815, 676.992, 680.500 to 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 690.410, 691.405 to 691.485 and 694.015 to 694.170 and ORS chapter 700 **and sections 1 to 7 of this 2017 Act**, and rules adopted thereunder, requiring an original signature or the submission of handwritten materials.

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

**SECTION 18.** ORS 676.625, as amended by section 7, chapter 240, Oregon Laws 2013, is amended to read:

676.625. (1) The Health Licensing Office shall establish by rule and shall collect fees and charges to carry out the office's responsibilities under ORS 676.575 to 676.625, 676.850 and 676.992 and any responsibility imposed on the office pertaining to the boards [*and*], councils **and programs** administered and regulated by the office pursuant to ORS 676.583.

(2) The Health Licensing Office Account is established separate and distinct from the General Fund. The account shall consist of the moneys credited to the account by the Legislative Assembly. All moneys in the account are continuously appropriated to and shall be used by the office for payment of expenses of the office in carrying out the duties, functions and obligations of the office, and for payment of the expenses of the boards [*and*], councils **and programs** administered and regulated by the office pursuant to ORS 676.583. The office shall keep a record of all moneys credited to the account and report the source from which the moneys are derived and the activity of each board [*or*], council **or program** that generated the moneys.

(3) Subject to prior approval of the Oregon Department of Administrative Services and a report to the Emergency Board prior to establishing fees and charges credited to the account, the fees and charges may not exceed the cost of administering the office and the boards [*and*], councils **and programs** within the office, as authorized by the Legislative Assembly within the office's budget, as the budget may be modified by the Emergency Board.

(4) All moneys credited to the account pursuant to ORS 676.592 and 676.806, and moneys credited to the account from other office and program fees established by the office by rule, are continuously appropriated to the office for carrying out the duties, functions and powers of the office under ORS 676.575 to 676.625, 676.806, 676.850 and 676.992.

(5) The moneys received from civil penalties assessed under ORS 676.992 shall be deposited and accounted for as are other moneys received by the office and shall be for the administration and enforcement of the statutes governing the boards [*and*], councils **and programs** administered by the office.

**SECTION 19.** ORS 676.850 is amended to read:

676.850. (1) As used in this section, "board" means the:

- (a) State Board of Examiners for Speech-Language Pathology and Audiology;
- (b) State Board of Chiropractic Examiners;
- (c) State Board of Licensed Social Workers;
- (d) Oregon Board of Licensed Professional Counselors and Therapists;
- (e) Oregon Board of Dentistry;
- (f) Board of Licensed Dietitians;
- (g) State Board of Massage Therapists;
- (h) Oregon Board of Naturopathic Medicine;
- (i) Oregon State Board of Nursing;
- (j) Nursing Home Administrators Board;
- (k) Oregon Board of Optometry;

- (L) State Board of Pharmacy;
- (m) Oregon Medical Board;
- (n) Occupational Therapy Licensing Board;
- (o) Physical Therapist Licensing Board;
- (p) State Board of Psychologist Examiners;
- (q) Board of Medical Imaging;
- (r) State Board of Direct Entry Midwifery;
- (s) State Board of Denture Technology;
- (t) Respiratory Therapist and Polysomnographic Technologist Licensing Board;
- (u) Home Care Commission; [*and*]
- (v) Oregon Health Authority, to the extent that the authority licenses emergency medical service providers; **and**

**(w) Health Licensing Office, to the extent that the office licenses lactation consultants.**

(2)(a) In collaboration with the Oregon Health Authority, a board may adopt rules under which the board may require a person authorized to practice the profession regulated by the board to receive cultural competency continuing education approved by the authority under ORS 413.450.

(b) Cultural competency continuing education courses may be taken in addition to or, if a board determines that the cultural competency continuing education fulfills existing continuing education requirements, instead of any other continuing education requirement imposed by the board.

(3)(a) A board, or the Health Licensing Office for those boards for which the office issues and renews authorizations to practice the profession regulated by the board, shall document participation in cultural competency continuing education by persons authorized to practice a profession regulated by the board.

(b) For purposes of documenting participation under this subsection, a board may adopt rules requiring persons authorized to practice the profession regulated by the board to submit documentation to the board, or to the office for those boards for which the office issues and renews authorizations to practice the profession regulated by the board, of participation in cultural competency continuing education.

(4) A board shall report biennially to the authority on the participation documented under subsection (3) of this section.

(5) The authority, on or before August 1 of each even-numbered year, shall report to the interim committees of the Legislative Assembly related to health care on the information submitted to the authority under subsection (4) of this section.

**SECTION 20.** ORS 676.992 is amended to read:

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

- (a) ORS 688.701 to 688.734 (athletic training);
- (b) ORS 690.005 to 690.225 (cosmetology);
- (c) ORS 680.500 to 680.565 (denture technology);
- (d) Subject to ORS 676.616 and 687.445, ORS 687.405 to 687.495 (direct entry midwifery);
- (e) ORS 690.350 to 690.410 (tattooing, electrolysis, body piercing, earlobe piercing, dermal implanting and scarification);
- (f) ORS 694.015 to 694.170 (dealing in hearing aids);
- (g) ORS 688.800 to 688.840 (respiratory therapy and polysomnography);
- (h) ORS chapter 700 (environmental sanitation);
- (i) ORS 675.360 to 675.410 (sex offender treatment);
- (j) ORS 678.710 to 678.820 (nursing home administrators);
- (k) ORS 691.405 to 691.485 (dietitians);
- (L) ORS 676.612 (prohibited acts);
- (m) ORS 676.810 and 676.815 (applied behavior analysis);

- (n) ORS 681.700 to 681.730 (music therapy); [*and*]
- (o) ORS 676.630 to 676.660 (advanced nonablative esthetics procedure); **and**
- (p) Sections 1 to 7 of this 2017 Act (lactation consultation).**

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

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

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

- (a) The immediacy and extent to which the violation threatens the public health or safety;
- (b) Any prior violations of statutes, rules or orders;
- (c) The history of the person incurring a penalty in taking all feasible steps to correct any violation; and

(d) Any other aggravating or mitigating factors.

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

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

**SECTION 21.** (1) **Sections 1 to 7 of this 2017 Act and the amendments to ORS 676.185, 676.308, 676.583, 676.586, 676.608, 676.610, 676.612, 676.613, 676.615, 676.622, 676.625, 676.850 and 676.992 by sections 8 to 20 of this 2017 Act become operative on January 1, 2018.**

(2) **The Health Licensing Office may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the office to exercise, on and after the operative date specified in subsection (1) of this section, all of the duties, functions and powers conferred on the office by sections 1 to 7 of this 2017 Act and the amendments to ORS 676.185, 676.308, 676.583, 676.586, 676.608, 676.610, 676.612, 676.613, 676.615, 676.622, 676.625, 676.850 and 676.992 by sections 8 to 20 of this 2017 Act.**

**SECTION 22.** **This 2017 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect on its passage.**

**Passed by House June 7, 2017**

.....  
Timothy G. Sekerak, Chief Clerk of House

.....  
Tina Kotek, Speaker of House

**Passed by Senate June 15, 2017**

.....  
Peter Courtney, President of Senate

**Received by Governor:**

.....M,....., 2017

**Approved:**

.....M,....., 2017

.....  
Kate Brown, Governor

**Filed in Office of Secretary of State:**

.....M,....., 2017

.....  
Dennis Richardson, Secretary of State