

By Senator Silver

38-1008-98

1 A bill to be entitled
2 An act relating to regulation of professions;
3 transferring, renumbering, and amending ss.
4 501.057, 501.0571, 501.0573, 501.0575,
5 501.0577, 501.0581, F.S.; transferring the
6 Florida Commercial Weight-Loss Practices Act
7 from ch. 501, F.S., relating to consumer
8 protection, to ch. 468, F.S., relating to
9 professions and occupations; redefining the
10 activity that constitutes a weight-loss
11 program; revising notice requirements;
12 transferring authority from the Department of
13 Agriculture and Consumer Services to the
14 Department of Health; creating s. 468.826,
15 F.S.; describing what constitutes an unlawful
16 practice; creating s. 468.828, F.S.; requiring
17 weight-loss providers to obtain permits;
18 prescribing procedures for applying for
19 permits; providing for fees; creating s.
20 468.829, F.S.; requiring display of permits;
21 creating s. 468.519, F.S.; describing the
22 offense of sexual misconduct in the practice of
23 dietetics and nutrition; amending s. 455.604,
24 F.S.; requiring instruction in HIV and AIDS for
25 persons licensed as dietitians and
26 nutritionists; repealing s. 468.505(1)(k),
27 F.S., relating to exemption of certain persons
28 from dietitian/nutritionist licensure;
29 providing penalties; providing an effective
30 date.
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1 Be It Enacted by the Legislature of the State of Florida:

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3 Section 1. Section 501.057, Florida Statutes, is
4 transferred, renumbered as section 468.821, Florida Statutes,
5 and amended to read:

6 468.821 ~~501.057~~ Commercial Weight-Loss Practices Act;
7 short title.--Sections 468.821-468.829 ~~501.057-501.058~~ may be
8 cited as the "Florida Commercial Weight-Loss Practices Act."

9 Section 2. Section 501.0571, Florida Statutes, is
10 transferred, renumbered as section 468.822, Florida Statutes,
11 and amended to read:

12 468.822 ~~501.0571~~ Commercial Weight-Loss Practices Act;
13 definitions.--As used in ss. 468.821-468.827, the term
14 ~~501.057-501.058~~:

15 (1) "Examination" means any type of medical,
16 psychological, or nutritional review of a consumer.

17 (2) "Department" means the Department of Health.

18 (3)(2) "Supplement" means any type of vitamin,
19 mineral, or other dietary additive which is recommended to be
20 taken by a weight-loss provider.

21 (4)(3) "Weight-loss location" means any place where a
22 weight-loss program is provided by a weight-loss provider.

23 (5)(4) "Weight-loss program" means a general program
24 of instruction with food, supplements, food products, or a
25 food plan designed for one or more healthy population groups
26 in order to achieve or maintain a healthy weight. A
27 weight-loss program is not based on an individual nutrition
28 assessment and is not individualized to provide nutrition care
29 services to manage, treat, or rehabilitate a medical
30 condition, illness, or injury for a specific person or group.
31 ~~any plan or procedure offered to encourage weight loss.~~

1 ~~(6)~~⁽⁵⁾ "Weight-loss provider" means any person engaged
2 in the business of offering services to consumers to assist
3 them in losing weight and making oral or written statements,
4 visual descriptions, advertisements, or other representations
5 that have the capacity, tendency, or effect of leading
6 consumers to believe that participation in a weight-loss
7 program will result in weight loss.

8 Section 3. Section 501.0573, Florida Statutes, is
9 transferred, renumbered as section 468.823, Florida Statutes,
10 and amended to read:

11 468.823 ~~501.0573~~ Weight-loss provider
12 requirements.--Each weight-loss provider shall:

13 (1) Provide to a consumer a written itemized statement
14 of the fixed or estimated cost of the weight-loss program that
15 is being recommended, including all additional products,
16 services, supplements, examinations, or laboratory tests the
17 consumer may have to purchase from the weight-loss provider as
18 part of such program.

19 (2) Disclose the actual or estimated duration of the
20 recommended weight-loss program.

21 (3) Provide a copy of the educational and professional
22 experience of the weight-loss provider's staff ~~upon request~~.

23 (4) Provide the name, address, and qualifications of
24 the person who has reviewed and approved the weight-loss
25 program according to s. 468.505(1)(j).

26 (5) Produce and distribute to all consumers who
27 inquire about their weight-loss program a palm-sized card with
28 the Weight-Loss Consumer Bill of Rights printed on it.

29 (6) Conspicuously post the Weight-Loss Consumer Bill
30 of Rights at the front registration desk or area in each
31 weight-loss location and require every agent, representative,

1 franchisee, or independent contractor to post such a bill of
2 rights in a prominent place in every room in which a
3 presentation or sale of a weight-loss program is made or in
4 which a product or treatment is offered for sale.

5 Section 4. Section 501.0575, Florida Statutes, is
6 transferred, renumbered as section 468.824, Florida Statutes,
7 and amended to read:

8 468.824 ~~501.0575~~ Weight-Loss Consumer Bill of
9 Rights.--

10 (1) The Weight-Loss Consumer Bill of Rights shall
11 consist of the following provisions:

12 (A) WARNING: RAPID WEIGHT LOSS MAY CAUSE SERIOUS
13 HEALTH PROBLEMS. RAPID WEIGHT LOSS IS WEIGHT LOSS OF MORE
14 THAN 1 1/2 POUNDS TO 2 POUNDS PER WEEK OR WEIGHT LOSS OF MORE
15 THAN 1 PERCENT OF BODY WEIGHT PER WEEK AFTER THE SECOND WEEK
16 OF PARTICIPATION IN A WEIGHT-LOSS PROGRAM.

17 (B) CONSULT YOUR PERSONAL PHYSICIAN BEFORE STARTING
18 ANY WEIGHT-LOSS PROGRAM.

19 (C) ONLY PERMANENT LIFESTYLE CHANGES, SUCH AS MAKING
20 HEALTHFUL FOOD CHOICES AND INCREASING PHYSICAL ACTIVITY,
21 PROMOTE LONG-TERM WEIGHT LOSS.

22 (D) QUALIFICATIONS OF THIS PROVIDER SHALL BE PROVIDED
23 TO YOU BY THE PROVIDER PRIOR TO YOUR STARTING THE PROGRAM ~~ARE~~
24 ~~AVAILABLE UPON REQUEST.~~

25 (E) YOU HAVE A RIGHT TO:

26 1. ASK QUESTIONS ABOUT THE POTENTIAL HEALTH RISKS OF
27 THIS PROGRAM AND ITS NUTRITIONAL CONTENT, PSYCHOLOGICAL
28 SUPPORT, AND EDUCATIONAL COMPONENTS.

29 2. RECEIVE AN ITEMIZED STATEMENT OF THE ACTUAL OR
30 ESTIMATED PRICE OF THE WEIGHT-LOSS PROGRAM, INCLUDING EXTRA
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1 PRODUCTS, SERVICES, SUPPLEMENTS, EXAMINATIONS, AND LABORATORY
2 TESTS.

3 3. KNOW THE ACTUAL OR ESTIMATED DURATION OF THE
4 PROGRAM.

5 4. KNOW THE NAME, ADDRESS, AND QUALIFICATIONS OF THE
6 LICENSED DIETITIAN OR NUTRITIONIST WHO HAS REVIEWED AND
7 APPROVED THE WEIGHT-LOSS PROGRAM PURSUANT ~~ACCORDING~~ TO s.
8 468.505(1)(j), FLORIDA STATUTES.

9 (2) The copies of the Weight-Loss Consumer Bill of
10 Rights to be posted according to s. 468.823(6)~~s. 501.0573(6)~~
11 shall be printed in at least 24-point boldfaced type on one
12 side of a sign. The palm-sized copies to be distributed
13 according to s. 501.0573(5) shall be in boldfaced type and
14 legible. Each weight-loss provider shall be responsible for
15 producing and printing appropriate copies of the Weight-Loss
16 Consumer Bill of Rights.

17 Section 5. Section 501.0577, Florida Statutes, is
18 transferred, renumbered as section 468.825, Florida Statutes,
19 and amended to read:

20 468.825 ~~501.0577~~ Commercial Weight-Loss Practices Act;
21 exemptions.--The provisions of this act do not apply to
22 persons licensed under chapter 458, chapter 459, chapter 460,
23 chapter 461, chapter 462, chapter 463, chapter 465, chapter
24 468, or chapter 486 who may give weight-loss advice or provide
25 any weight-loss service which is incidental to the performance
26 of their profession and which is not the primary activity of
27 the person's practice.

28 Section 6. Section 468.826, Florida Statutes, is
29 created to read:

30 468.826 Commercial Weight-Loss Practice Act; unlawful
31 practices.--It is unlawful and an unfair and deceptive trade

1 practice under part II of chapter 501 to fail to comply with
2 the provisions of ss. 468.821-468.829.

3 Section 7. Section 501.0581, Florida Statutes, is
4 transferred, renumbered as section 468.827, Florida Statutes,
5 and amended to read:

6 468.827 ~~501.0581~~ Commercial Weight-Loss Practices Act;
7 civil remedies.--

8 (1) The department ~~of Agriculture and Consumer~~
9 ~~Services~~ may bring a civil action in circuit court for
10 temporary or permanent injunctive relief to enforce the
11 provisions of this act and may seek other appropriate civil
12 relief, including a civil penalty not to exceed \$5,000 for
13 each violation, for restitution and damages for injured
14 customers, court costs, and reasonable attorney's fees.

15 (2) The department ~~of Agriculture and Consumer~~
16 ~~Services~~ may terminate any investigation or action upon
17 agreement by the offender to pay a stipulated civil penalty,
18 make restitution or pay damages to customers, or satisfy any
19 other relief authorized herein and requested by the
20 department.

21 (3) Remedies provided in this section shall be in
22 addition to any other remedies provided by law.

23 Section 8. Section 468.828, Florida Statutes, is
24 created to read:

25 468.828 Weight-loss provider permit.--

26 (1) A weight-loss provider may not operate in this
27 state until such person has applied for and received from the
28 department a weight-loss provider permit. The department shall
29 prescribe an application form to be used by all persons
30 applying to obtain a weight-loss provider permit. The

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1 department shall issue a weight-loss provider permit for each
2 applicant who:

3 (a) Has completed the application form and remitted a
4 nonrefundable application fee set by the department in an
5 amount not to exceed \$300.

6 (b) Has identified the weight-loss provider by name,
7 street and mailing addresses, and telephone number and, in the
8 case of a partnership, corporation, association, or entity,
9 has identified a registered agent or other person to receive
10 service of papers or other documents or perform other duties
11 as specified by the department.

12 (c) Has identified the licensed or registered
13 dietitian/nutritionist who approved the weight-loss program
14 pursuant to subsection (3) by name, street and mailing
15 addresses, and telephone number.

16 (2)(a) A weight-loss provider permit is not
17 transferable to another weight-loss provider by any means,
18 including, but not limited to, any sale of a corporation,
19 partnership, sole proprietorship, or other business entity.

20 (b) A weight-loss provider shall notify the department
21 within 30 days after a change in ownership of the business and
22 at the same time return the permit to the department for
23 cancellation. Upon a change in ownership of a weight-loss
24 provider's business, the new owner shall file an application
25 for a new permit and shall pay the prescribed permit fee.

26 (3) Any weight-loss program offered by a weight-loss
27 provider shall be reviewed and approved by:

28 (a) A dietitian/nutritionist licensed in this state;

29 (b) A registered dietitian; or

30 (c) A dietitian/nutritionist licensed in another
31 state, provided the requirements for licensure in that state

1 are substantially equivalent to or more stringent than those
2 existing in this state.

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4 A weight-loss program may not be changed without consultation
5 and approval by one of the individuals listed in this
6 subsection.

7 (4) The person selected pursuant to subsection (3)
8 shall review the provider's weight-loss program in order to
9 determine compliance with the law and rules and adherence to
10 the minimum safety standards for weight-loss programs and
11 shall consider the following points:

12 (a) Appropriateness of the screening process;

13 (b) Appropriateness of the weight-loss food plan,
14 supplements, food, or food products for the program's clients;

15 (c) Assurance of nutritional adequacy;

16 (d) Appropriateness of materials, which include, but
17 are not limited to, written nutrition education handouts,
18 recorded education materials, lesson or instructional plans,
19 food plans, and screening tools;

20 (e) Appropriateness of rate of weight change promoted;
21 and

22 (f) Provision and appropriateness of any maintenance
23 or followup program.

24 (5) Each weight-loss provider shall comply with all
25 requirements of the Florida Drug and Cosmetic Act, part I of
26 chapter 499; the Florida Commercial Weight-Loss Practices Act,
27 ss. 468.821-468.829; and the Deceptive and Unfair Trade
28 Practices Act, part II of chapter 501.

29 (6) Violation of subsection (5), in addition to other
30 remedies provided by law, shall result in suspension of the
31 weight-loss provider's permit. Reinstatement shall require

1 demonstration of full compliance with the applicable laws and
2 payment of a new permit fee.

3 (7) Nothing in ss. 468.821-468.829 may be construed to
4 mean that a practitioner licensed under chapter 458, chapter
5 459, or part X of chapter 468 is required to secure a
6 weight-loss provider permit under ss. 468.821-468.829.

7 (8) The department shall by rule set a biennial
8 weight-loss permit renewal fee in an amount not to exceed
9 \$300. The weight-loss program or programs being offered to the
10 public shall be reviewed and approved by one of the
11 individuals listed in subsection (3). Each applicant shall
12 submit to the department with his or her biennial renewal fee
13 the name, address, and phone number of the person who reviewed
14 and approved the weight-loss program.

15 (9) Any weight-loss provider in business in this state
16 on October 1, 1998, shall be held harmless for any claim that
17 such provider has not obtained a weight-loss provider permit
18 as required herein until October 1, 1999.

19 Section 9. Section 468.829, Florida Statutes, is
20 created to read:

21 468.829 Permit to be displayed.--Each weight-loss
22 provider to whom a weight-loss permit is issued shall keep
23 such permit conspicuously displayed in his office, place of
24 business, or place of employment and, when required, shall
25 exhibit such permit to any member or authorized representative
26 of the department.

27 Section 10. Section 468.519, Florida Statutes, is
28 created to read:

29 468.519 Sexual misconduct in the practice of dietetics
30 and nutrition.--The dietitian/nutritionist and nutrition
31 counselor-client relationship is founded on mutual trust.

1 "Sexual misconduct in the practice of dietetics and nutrition
2 counseling" means violation of the dietitian/nutritionist and
3 nutrition counselor-client relationship through which the
4 dietitian/nutritionist or nutrition counselor uses that
5 relationship to induce or attempt to induce the patient to
6 engage, or to engage or attempt to engage the patient, in
7 sexual activity outside the scope of practice or the scope of
8 generally accepted examination or treatment of the patient.
9 Sexual misconduct in the practice of dietetics and nutrition
10 is prohibited.

11 Section 11. Subsection (1) of section 455.604, Florida
12 Statutes, is amended to read:

13 455.604 Requirement for instruction for certain
14 licensees on human immunodeficiency virus and acquired immune
15 deficiency syndrome.--

16 (1) The appropriate board shall require each person
17 licensed or certified under chapter 457; chapter 458; chapter
18 459; chapter 460; chapter 461; chapter 463; chapter 464;
19 chapter 465; chapter 466; part II, part III, ~~or~~ part V, or
20 part X of chapter 468; or chapter 486 to complete a continuing
21 educational course, approved by the board, on human
22 immunodeficiency virus and acquired immune deficiency syndrome
23 as part of biennial relicensure or recertification. The course
24 shall consist of education on the modes of transmission,
25 infection control procedures, clinical management, and
26 prevention of human immunodeficiency virus and acquired immune
27 deficiency syndrome. Such course shall include information on
28 current Florida law on acquired immune deficiency syndrome and
29 its impact on testing, confidentiality of test results, and
30 treatment of patients.

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