

By the Committee on Health Care and Senator Silver

317-2009A-98

1 A bill to be entitled
2 An act relating to regulation of professions;
3 renumbering and amending ss. 501.057, 501.0571,
4 501.0573, 501.0575, 501.0577, 501.0579,
5 501.0581, F.S.; transferring the Florida
6 Commercial Weight-Loss Practices Act from ch.
7 501, F.S., relating to consumer protection, to
8 ch. 468, F.S., relating to professions and
9 occupations; redefining the activity that
10 constitutes a weight-loss program; revising
11 certain notice requirements; providing an
12 exemption from regulation; conforming
13 references and cross-references; transferring
14 regulatory authority from the Department of
15 Agriculture and Consumer Services to the
16 Department of Health; creating s. 468.828,
17 F.S.; requiring weight-loss providers to obtain
18 permits; prescribing procedures and
19 requirements; providing a penalty; providing
20 for fees; providing a grace period for certain
21 providers; creating s. 468.8281, F.S.;
22 providing requirements for records and meetings
23 held for disciplinary actions; creating s.
24 468.829, F.S.; requiring display of permits;
25 creating s. 468.519, F.S.; prohibiting sexual
26 misconduct in the practice of dietetics and
27 nutrition; amending s. 455.604, F.S.; requiring
28 instruction in HIV and AIDS for persons
29 licensed as dietitians and nutritionists;
30 providing an effective 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 renumbered as section 468.821, Florida Statutes, and amended
5 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 renumbered as section 468.822, Florida Statutes, and amended
11 to read:

12 468.822 ~~501.0571~~ Commercial Weight-Loss Practices Act;
13 definitions.--As used in ss. 468.821-468.829, 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 clients from one or more healthy
26 population groups, in order that such clients may achieve or
27 maintain a healthy weight. A weight-loss program is not based
28 on an individual nutrition assessment and is not
29 individualized to provide nutrition care services to manage,
30 treat, or rehabilitate a medical condition, illness, or injury

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1 for a specific person or group.~~any plan or procedure offered~~
2 ~~to encourage weight loss.~~

3 (6)~~(5)~~ "Weight-loss provider" means any person engaged
4 in the business of offering services to consumers to assist
5 them in losing weight and making oral or written statements,
6 visual descriptions, advertisements, or other representations
7 that have the capacity, tendency, or effect of leading
8 consumers to believe that participation in a weight-loss
9 program will result in weight loss. A weight-loss provider
10 does not include a person described in s. 468.505(1)(g).

11 Section 3. Section 501.0573, Florida Statutes, is
12 renumbered as section 468.823, Florida Statutes, and amended
13 to read:

14 468.823 ~~501.0573~~ Weight-loss provider
15 requirements.--Each weight-loss provider shall:

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

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

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

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

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

1 (6) Conspicuously post the Weight-Loss Consumer Bill
2 of Rights at the front registration desk or area in each
3 weight-loss location and require every agent, representative,
4 franchisee, or independent contractor to post such a bill of
5 rights in a prominent place in every room in which a
6 presentation or sale of a weight-loss program is made or in
7 which a product or treatment is offered for sale.

8 Section 4. Section 501.0575, Florida Statutes, is
9 renumbered as section 468.824, Florida Statutes, and amended
10 to read:

11 468.824 ~~501.0575~~ Weight-Loss Consumer Bill of
12 Rights.--

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

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

20 (B) CONSULT YOUR PERSONAL PHYSICIAN BEFORE STARTING
21 ANY WEIGHT-LOSS PROGRAM.

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

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

28 (E) YOU HAVE A RIGHT TO:

29 1. ASK QUESTIONS ABOUT THE POTENTIAL HEALTH RISKS OF
30 THIS PROGRAM AND ITS NUTRITIONAL CONTENT, PSYCHOLOGICAL
31 SUPPORT, AND EDUCATIONAL COMPONENTS.

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

5 3. KNOW THE ACTUAL OR ESTIMATED DURATION OF THE
6 PROGRAM.

7 4. KNOW THE NAME, ADDRESS, AND QUALIFICATIONS OF THE
8 LICENSED DIETITIAN OR NUTRITIONIST WHO HAS REVIEWED AND
9 APPROVED THE WEIGHT-LOSS PROGRAM PURSUANT ~~ACCORDING~~ TO s.
10 468.505(1)(j), FLORIDA STATUTES.

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

19 Section 5. Section 501.0577, Florida Statutes, is
20 renumbered as section 468.825, Florida Statutes, and amended
21 to read:

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

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1 Section 6. Section 501.0579, Florida Statutes, is
2 renumbered as section 468.826, Florida Statutes, and amended
3 to read:

4 468.826 ~~501.0579~~ Commercial Weight-Loss Practices Act;
5 unlawful practices.--It is unlawful and an unfair and
6 deceptive trade practice under part II of ~~this~~ chapter 501 to
7 fail to comply with the provisions of ss. 468.821-468.829 ~~this~~
8 ~~act~~.

9 Section 7. Section 501.0581, Florida Statutes, is
10 renumbered as section 468.827, Florida Statutes, and amended
11 to read:

12 468.827 ~~501.0581~~ Commercial Weight-Loss Practices Act;
13 civil remedies.--

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

21 (2) The department ~~of Agriculture and Consumer~~
22 ~~Services~~ may terminate any investigation or action upon
23 agreement by the offender to pay a stipulated civil penalty,
24 make restitution or pay damages to customers, or satisfy any
25 other relief authorized herein and requested by the
26 department.

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

29 Section 8. Section 468.828, Florida Statutes, is
30 created to read:

31 468.828 Weight-loss provider permit.--

1 (1) A weight-loss provider may not operate in this
2 state until such person has applied for and received from the
3 department a weight-loss provider permit. The department shall
4 prescribe an application form to be used by all persons
5 applying to obtain a weight-loss provider permit. The
6 department shall issue a weight-loss provider permit for each
7 applicant who:

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

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

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

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

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

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

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

4 (b) A registered dietitian; or

5 (c) A dietitian/nutritionist licensed in another
6 state, provided the requirements for licensure in that state
7 are substantially equivalent to or more stringent than those
8 existing in this state.

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10 A weight-loss program may not be changed without consultation
11 and approval by one of the individuals listed in this
12 subsection.

13 (4) The person selected pursuant to subsection (3)
14 shall consider the following minimum standards in reviewing a
15 provider's weight-loss program, to determine whether the
16 weight-loss program being advocated is safe and in compliance
17 with the provisions of ss. 468.821-465.829:

18 (a) Nutritional adequacy, measured by consumption of a
19 wide variety of foods based on government recommendations for
20 healthy eating;

21 (b) Mechanisms for screening out those persons for
22 whom there is a scientific consensus that weight loss is
23 inappropriate, such as pregnant women;

24 (c) Requiring medical permission for children under 10
25 years of age and recognizing that physician consultation is
26 appropriate for anyone starting a weight-loss program;

27 (d) Promoting a rate of weight loss consistent with
28 the provisions of ss. 468.821-468.829;

29 (e) Providing a weight maintenance component designed
30 to help weight-loss program participants sustain their weight
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1 losses, consistent with government standards for healthy
2 eating; and

3 (f) Providing participants with materials
4 demonstrating the weight-loss program provider's compliance
5 with ss. 468.821-468.829.

6 (5) Each weight-loss provider shall comply with all
7 requirements of the Florida Drug and Cosmetic Act, part I of
8 chapter 499; the Florida Commercial Weight-Loss Practices Act,
9 ss. 468.821-468.829; and the Deceptive and Unfair Trade
10 Practices Act, part II of chapter 501.

11 (6) Violation of subsection (5), in addition to other
12 remedies provided by law, shall result in suspension of the
13 weight-loss provider's permit. Reinstatement shall require
14 demonstration of full compliance with the applicable laws and
15 payment of a new permit fee.

16 (7) Nothing in ss. 468.821-468.829 may be construed to
17 mean that a practitioner licensed under chapter 458, chapter
18 459, or part X of chapter 468 is required to secure a
19 weight-loss provider permit under ss. 468.821-468.829.

20 (8) The department shall by rule set a biennial
21 weight-loss permit renewal fee in an amount not to exceed
22 \$300. The weight-loss program or programs being offered to the
23 public shall be reviewed and approved at least biennially by
24 one of the individuals listed in subsection (3). Each
25 applicant shall submit to the department with his or her
26 biennial renewal fee the name, address, and phone number of
27 the person who reviewed and approved the weight-loss program.
28 Biennial review shall not be required for those providers who
29 have a licensed or registered dietitian/nutritionist meeting
30 the requirements of ss. 468.821-468.829 available for
31 consultation on a regular basis.

1 (9) Any weight-loss provider in business in this state
2 on October 1, 1998, shall be held harmless for any claim that
3 such provider has not obtained a weight-loss provider permit
4 as required under this section, until October 1, 1999.

5 (10) The department has all authority set forth in ss.
6 455.627 and 455.621 to enforce this act. Section 468.828(4) is
7 declared to be self-executing.

8 Section 9. Section 468.8281, Florida Statutes, is
9 created to read:

10 468.8281 Availability of disciplinary records and
11 proceedings.--Notwithstanding s. 455.621, any complaint or
12 record maintained by the Department of Health pursuant to the
13 discipline of a permitted weight-loss provider and any
14 proceeding held by the department to discipline a permitted
15 weight-loss provider shall remain open and available to the
16 public.

17 Section 10. Section 468.829, Florida Statutes, is
18 created to read:

19 468.829 Permit to be displayed; advertisement.--Each
20 weight-loss provider to whom a weight-loss permit is issued
21 shall keep such permit conspicuously displayed in the
22 provider's office, place of business, or place of employment
23 and, when required, shall exhibit such permit to any member or
24 authorized representative of the department. In addition, each
25 weight-loss provider holding a permit under this act must
26 include the number of the permit in any advertisement of
27 weight-loss services which appears in any newspaper, airwave
28 transmission, telephone directory, direct-mail advertisement,
29 or other advertising medium.

30 Section 11. Section 468.519, Florida Statutes, is
31 created to read:

1 468.519 Sexual misconduct in the practice of dietetics
2 and nutrition.--The dietitian/nutritionist and nutrition
3 counselor-client relationship is founded on mutual trust.
4 "Sexual misconduct in the practice of dietetics and nutrition"
5 means violation of the dietitian/nutritionist and nutrition
6 counselor-client relationship through which the
7 dietitian/nutritionist or nutrition counselor uses that
8 relationship to induce or attempt to induce the client to
9 engage, or to engage or attempt to engage the client, in
10 sexual activity outside the scope of practice or the scope of
11 generally accepted examination or treatment of the client.
12 Sexual misconduct in the practice of dietetics and nutrition
13 is prohibited.

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

16 455.604 Requirement for instruction for certain
17 licensees on human immunodeficiency virus and acquired immune
18 deficiency syndrome.--

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

1 its impact on testing, confidentiality of test results, and
2 treatment of patients.

3 Section 13. This act shall take effect October 1,
4 1998.

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6 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
7 COMMITTEE SUBSTITUTE FOR
8 Senate Bill 2188

9 Under the committee substitute, a weight-loss provider does
10 not include persons who market or distribute food, food
11 materials, or dietary supplements. The committee substitute
12 revises the criteria that a dietitian/nutritionist must use to
13 determine a weight-loss program's compliance with minimum
14 safety standards for weight-loss programs. The committee
15 substitute grants to the department the authority to implement
16 and enforce the provisions of the Commercial Weight-Loss
17 Practices Act as it would regulate a health care professional.
18 The criteria that dietitian/nutritionists must use to
19 determine a weight-loss program's compliance with minimum
20 safety standards for weight-loss programs specified in s.
21 468.828(4), F.S., are self-executing; therefore, the
22 Department of Health may not adopt any additional
23 administrative rules to enforce s. 468.828(4), F.S. Each
24 weight-loss provider holding a permit must include the number
25 of the permit in advertisement of weight-loss services. The
26 committee substitute no longer repeals s. 468.505(1)(k), F.S.,
27 which provides an exemption to the dietitian/nutritionist
28 licensing requirements for persons employed by a licensed
29 hospital, nursing home, assisted living facility, or
30 continuing care facility, if the person employed is in
31 compliance with the laws and rules adopted for the operation
of the facility's dietetic department. The committee
substitute provides that any disciplinary complaints and
records maintained by the Department of Health pursuant to the
discipline of a permitted weight-loss provider and any
proceeding held by the department to discipline a permitted
weight-loss provider shall remain open and available to the
public.