

By the Committees on Governmental Reform and Oversight; Health Care; and Senator Silver

302-2207-98

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  
18          register; 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  
25          registration; creating s. 468.519, F.S.;  
26          prohibiting sexual misconduct in the practice  
27          of dietetics and nutrition; amending s.  
28          455.604, F.S.; requiring instruction in HIV and  
29          AIDS for persons licensed as dietitians and  
30          nutritionists; creating the Task Force on  
31          Regulation of the Weight-Loss Industry;

1 providing for its membership and duties;  
2 providing an effective date.

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4 Be It Enacted by the Legislature of the State of Florida:

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6 Section 1. Section 501.057, Florida Statutes, is  
7 renumbered as section 468.821, Florida Statutes, and amended  
8 to read:

9 468.821 ~~501.057~~ Commercial Weight-Loss Practices Act;  
10 short title.--Sections 468.821-468.829 ~~501.057-501.058~~ may be  
11 cited as the "Florida Commercial Weight-Loss Practices Act."

12 Section 2. Section 501.0571, Florida Statutes, is  
13 renumbered as section 468.822, Florida Statutes, and amended  
14 to read:

15 468.822 ~~501.0571~~ Commercial Weight-Loss Practices Act;  
16 definitions.--As used in ss. 468.821-468.829, the term  
17 ~~501.057-501.058~~:

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

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

21 (3)~~(2)~~ "Supplement" means any type of vitamin,  
22 mineral, or other dietary additive which is recommended to be  
23 taken by a weight-loss provider.

24 (4)~~(3)~~ "Weight-loss location" means any place where a  
25 weight-loss program is provided by a weight-loss provider.

26 (5)~~(4)~~ "Weight-loss program" means a general program  
27 of instruction, with food, supplements, food products, or a  
28 food plan designed for clients from one or more healthy  
29 population groups, in order that such clients may achieve or  
30 maintain a healthy weight. A weight-loss program is not based  
31 on an individual nutrition assessment and is not

1 individualized to provide nutrition care services to manage,  
2 treat, or rehabilitate a medical condition, illness, or injury  
3 for a specific person or group.~~any plan or procedure offered~~  
4 ~~to encourage weight loss.~~

5 (6)(5) "Weight-loss provider" means the owner of any  
6 ~~person engaged in the business~~ engaged in of offering services  
7 to consumers to assist them in losing weight and making oral  
8 or written statements, visual descriptions, advertisements, or  
9 other representations that have the capacity, tendency, or  
10 effect of leading consumers to believe that participation in a  
11 weight-loss program will result in weight loss. A weight-loss  
12 provider does not include a person described in s.  
13 468.505(1)(g).

14 Section 3. Section 501.0573, Florida Statutes, is  
15 renumbered as section 468.823, Florida Statutes, and amended  
16 to read:

17 468.823 ~~501.0573~~ Weight-loss provider  
18 requirements.--Each weight-loss provider shall:

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

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

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

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

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

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

11 Section 4. Section 501.0575, Florida Statutes, is  
12 renumbered as section 468.824, Florida Statutes, and amended  
13 to read:

14 468.824 ~~501.0575~~ Weight-Loss Consumer Bill of  
15 Rights.--

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

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

23 (B) CONSULT YOUR PERSONAL PHYSICIAN BEFORE STARTING  
24 ANY WEIGHT-LOSS PROGRAM.

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

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

31 (E) YOU HAVE A RIGHT TO:

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

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

8           3. KNOW THE ACTUAL OR ESTIMATED DURATION OF THE  
9 PROGRAM.

10          4. KNOW THE NAME, ADDRESS, AND QUALIFICATIONS OF THE  
11 LICENSED DIETITIAN OR NUTRITIONIST WHO HAS REVIEWED AND  
12 APPROVED THE WEIGHT-LOSS PROGRAM PURSUANT ~~ACCORDING~~ TO s.  
13 468.505(1)(j), FLORIDA STATUTES.

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

22           Section 5. Section 501.0577, Florida Statutes, is  
23 renumbered as section 468.825, Florida Statutes, and amended  
24 to read:

25           468.825 ~~501.0577~~ Commercial Weight-Loss Practices Act;  
26 exemptions.--The provisions of this act do not apply to  
27 persons licensed under chapter 458, chapter 459, chapter 460,  
28 chapter 461, chapter 462, chapter 463, chapter 465, parts III,  
29 V, and X of chapter 468, or chapter 486 who may give  
30 weight-loss advice or provide any weight-loss service which is  
31 within the scope of practice of the respective profession

1 ~~incidental to the performance of their profession and which is~~  
2 ~~not the primary activity of the person's practice.~~

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

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

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

14 468.827 ~~501.0581~~ Commercial Weight-Loss Practices Act;  
15 civil remedies.--

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

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

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

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1           Section 8. Section 468.828, Florida Statutes, is  
2 created to read:

3           468.828 Weight-loss provider registration.--

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

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

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

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

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

28           (b) A weight-loss provider shall notify the department  
29 within 30 days after a change in ownership of the business and  
30 at the same time return the registration to the department for  
31 cancellation. Upon a change in ownership of a weight-loss

1 provider's business, the new owner shall file an application  
2 for a new registration and shall pay the prescribed fee.

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

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

6 (b) A registered dietitian; or

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

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

15 (4) The person selected pursuant to subsection (3)  
16 shall consider the following minimum standards in reviewing a  
17 provider's weight-loss program, to determine whether the  
18 weight-loss program being advocated is safe and in compliance  
19 with the provisions of ss. 468.821-468.829:

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

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

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

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

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

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

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

13       (6) Violation of subsection (5), in addition to other  
14 remedies provided by law, shall result in suspension of the  
15 weight-loss provider's registration under chapter 455.  
16 Reinstatement shall require demonstration of full compliance  
17 with the applicable laws and payment of a reinstatement fee  
18 not to exceed the initial application and registration fee.

19       (7) Nothing in ss. 468.821-468.829 may be construed to  
20 mean that a practitioner licensed under chapter 458, chapter  
21 459, or part X of chapter 468 is required to secure a  
22 weight-loss provider registration under ss. 468.821-468.829.

23       (8) The department shall by rule set a biennial  
24 weight-loss registration renewal fee in an amount not to  
25 exceed \$300. The weight-loss program or programs being offered  
26 to the public shall be reviewed and approved at least  
27 biennially by one of the individuals listed in subsection (3).  
28 Each applicant shall submit to the department with his or her  
29 biennial renewal fee the name, address, and phone number of  
30 the person who reviewed and approved the weight-loss program.  
31 Biennial review shall not be required for those providers who

1 have a licensed or registered dietitian/nutritionist meeting  
2 the requirements of ss. 468.821-468.829 available for  
3 consultation on a regular basis.

4 (9) Any weight-loss provider in business in this state  
5 on October 1, 1998, shall be held harmless for any claim that  
6 such provider has not obtained a weight-loss provider  
7 registration as required under this section, until October 1,  
8 1999.

9 (10) The department has all authority set forth in  
10 part II of chapter 455 to enforce this act. Section 468.828(4)  
11 is declared to be self-executing.

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

14 468.8281 Availability of disciplinary records and  
15 proceedings.--Notwithstanding s. 455.621, any complaint or  
16 record maintained by the Department of Health pursuant to the  
17 discipline of a registered weight-loss provider and, after  
18 final action, any proceeding held by the department to  
19 discipline a registered weight-loss provider shall remain open  
20 and available to the public.

21 Section 10. Section 468.829, Florida Statutes, is  
22 created to read:

23 468.829 Registration to be displayed;  
24 advertisement.--Each weight-loss provider to whom a  
25 weight-loss registration is issued shall keep such  
26 registration conspicuously displayed in the provider's office,  
27 place of business, or place of employment and, when required,  
28 shall exhibit such registration to any member or authorized  
29 representative of the department. In addition, each  
30 weight-loss provider holding a registration under this act  
31 must include the number of the registration and license number

1 of the dietitian or nutritionist who has reviewed and approved  
2 the weight-loss program in any advertisement of weight-loss  
3 services which appears in any newspaper, airwave transmission,  
4 telephone directory, direct-mail advertisement, or other  
5 advertising medium. Each weight-loss provider shall  
6 conspicuously display in the provider's office, place of  
7 business, or place of employment the following statement that  
8 must appear in capital letters clearly distinguishable from  
9 the rest of the text: THE STATE OF FLORIDA DEPARTMENT OF  
10 HEALTH HAS REGISTERED THIS WEIGHT-LOSS PROVIDER TO OPERATE IN  
11 FLORIDA. HOWEVER, THE REGISTRATION DOES NOT INDICATE THAT THE  
12 DEPARTMENT OF HEALTH ENDORSES OR APPROVES THE CONTENT OF THIS  
13 WEIGHT-LOSS PROGRAM.

14 Section 11. Section 468.519, Florida Statutes, is  
15 created to read:

16 468.519 Sexual misconduct in the practice of dietetics  
17 and nutrition.--The dietitian/nutritionist and nutrition  
18 counselor-client relationship is founded on mutual trust.  
19 "Sexual misconduct in the practice of dietetics and nutrition"  
20 means violation of the dietitian/nutritionist and nutrition  
21 counselor-client relationship through which the  
22 dietitian/nutritionist or nutrition counselor uses that  
23 relationship to induce or attempt to induce the client to  
24 engage, or to engage or attempt to engage the client, in  
25 sexual activity outside the scope of practice or the scope of  
26 generally accepted examination or treatment of the client.  
27 Sexual misconduct in the practice of dietetics and nutrition  
28 is prohibited.

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

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1           455.604 Requirement for instruction for certain  
2 licensees on human immunodeficiency virus and acquired immune  
3 deficiency syndrome.--

4           (1) The appropriate board shall require each person  
5 licensed or certified under chapter 457; chapter 458; chapter  
6 459; chapter 460; chapter 461; chapter 463; chapter 464;  
7 chapter 465; chapter 466; part II, part III, ~~or~~ part V, or  
8 part X of chapter 468; or chapter 486 to complete a continuing  
9 educational course, approved by the board, on human  
10 immunodeficiency virus and acquired immune deficiency syndrome  
11 as part of biennial relicensure or recertification. The course  
12 shall consist of education on the modes of transmission,  
13 infection control procedures, clinical management, and  
14 prevention of human immunodeficiency virus and acquired immune  
15 deficiency syndrome. Such course shall include information on  
16 current Florida law on acquired immune deficiency syndrome and  
17 its impact on testing, confidentiality of test results, and  
18 treatment of patients.

19           Section 13. (1) There is created within the  
20 Department of Health a Task Force on Regulation of the  
21 Weight-Loss Industry. The Department of Health shall provide  
22 staff support for the task force. The task force shall consist  
23 of not more than 9 members nominated by the associations and  
24 entities named in this section and appointed by the Secretary  
25 of Health. Members of the task force shall not receive  
26 compensation, per diem, or reimbursement for travel expenses  
27 for service on the task force. Participation in the task force  
28 is optional and at the discretion of each identified group or  
29 entity. If all identified groups and entities participate, the  
30 task force shall include:

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1           (a) One representative from each of the following  
2 associations:

3           1. The Florida Dietetic Association.

4           2. The Florida Medical Association.

5           3. The Florida Osteopathic Medical Association.

6           (b) Two representatives from commercial weight-loss  
7 programs.

8           (c) One representative from each of the following  
9 entities:

10           1. The Department of Health.

11           2. The Dietetics and Nutrition Practice Council.

12           3. The Board of Medicine, which representative must be  
13 a member of the board who is licensed under chapter 458,  
14 Florida Statutes.

15           4. The Board of Osteopathic Medicine, which  
16 representative must be a member of the board who is licensed  
17 under chapter 459, Florida Statutes.

18           5. The Agency for Health Care Administration.

19           (2) The task force shall hold its first meeting no  
20 later than August 1, 1998, and shall report its findings to  
21 the President of the Senate, the Speaker of the House of  
22 Representatives, and the chairs of the applicable legislative  
23 committees of substance not later than December 31, 1998. All  
24 task force meetings must be held in Tallahassee at the  
25 Department of Health in order to minimize costs to the state.

26           (3) The task force shall study and make  
27 recommendations to the Legislature regarding the appropriate  
28 level of regulation needed to enforce the Florida Commercial  
29 Weight-Loss Practices Act as set forth in sections  
30 468.821-468.829, Florida Statutes.

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1           (4) The task force is dissolved effective January 1,  
2 1999.

3           Section 14. 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   CS/SB 2188

9 Deletes requirement that weight-loss providers be permitted by  
10 the Department of Health and provides instead that weight-loss  
providers be registered with the department.

11 Changes definitions of "weight-loss program" and "weight-loss  
12 provider" in the bill.

13 Provides that any complaint or record maintained by the  
14 department pursuant to the discipline of a registered  
weight-loss provider and, after final action, any proceeding  
15 held by the department to discipline a registered weight-loss  
provider shall remain open and available to the public.

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