

Bill No. HB 4439, 1st Eng.

Amendment No.

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Senator Silver moved the following substitute for amendment (623732):

Senate Amendment (with title amendment)

On page 106, lines 10 and 11, delete those lines

and insert:

Section 59. Section 501.057, Florida Statutes, is renumbered as section 468.821, Florida Statutes, and amended to read:

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

Section 60. Section 501.0571, Florida Statutes, is renumbered as section 468.822, Florida Statutes, and amended to read:

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

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

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

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

5 (4)(3) "Weight-loss location" means any place where a
6 weight-loss program is provided by a weight-loss provider.

7 (5)(4) "Weight-loss program" means a general program
8 of instruction, with food, supplements, food products, or a
9 food plan designed for clients from one or more healthy
10 population groups, in order that such clients may achieve or
11 maintain a healthy weight. A weight-loss program is not based
12 on an individual nutrition assessment and is not
13 individualized to provide nutrition care services to manage,
14 treat, or rehabilitate a medical condition, illness, or injury
15 for a specific person or group. A weight-loss program does not
16 include persons who only sell or distribute food, supplements,
17 or food products. any plan or procedure offered to encourage
18 weight loss.

19 (6)(5) "Weight-loss provider" means the owner of any
20 person engaged in the business engaged in of offering services
21 to consumers to assist them in losing weight and making oral
22 or written statements, visual descriptions, advertisements, or
23 other representations that have the capacity, tendency, or
24 effect of leading consumers to believe that participation in a
25 weight-loss program will result in weight loss. A weight-loss
26 provider does not include a person who markets or distributes
27 food, food materials, or dietary supplements, or any person
28 who engages in the explanation of the use and benefits of
29 those products or the preparation of those products, if that
30 person does not engage for a fee in dietetics and nutrition
31 practice or nutrition counseling, and who is not offering a

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1 weight-loss program to the public.

2 Section 61. Section 501.0573, Florida Statutes, is
3 renumbered as section 468.823, Florida Statutes, and amended
4 to read:

5 468.823 ~~501.0573~~ Weight-loss provider
6 requirements.--Each weight-loss provider shall:

7 (1) Provide to a consumer a written itemized statement
8 of the fixed or estimated cost of the weight-loss program that
9 is being recommended, including all additional products,
10 services, supplements, examinations, or laboratory tests the
11 consumer may have to purchase from the weight-loss provider as
12 part of such program.

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

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

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

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

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

30 Section 62. Section 501.0575, Florida Statutes, is
31 renumbered as section 468.824, Florida Statutes, and amended

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1 to read:

2 468.824 ~~501.0575~~ Weight-Loss Consumer Bill of
3 Rights.--

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

6 (A) WARNING: RAPID WEIGHT LOSS MAY CAUSE SERIOUS
7 HEALTH PROBLEMS. RAPID WEIGHT LOSS IS WEIGHT LOSS OF MORE
8 THAN 1 1/2 POUNDS TO 2 POUNDS PER WEEK OR WEIGHT LOSS OF MORE
9 THAN 1 PERCENT OF BODY WEIGHT PER WEEK AFTER THE SECOND WEEK
10 OF PARTICIPATION IN A WEIGHT-LOSS PROGRAM.

11 (B) CONSULT YOUR PERSONAL PHYSICIAN BEFORE STARTING
12 ANY WEIGHT-LOSS PROGRAM.

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

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

19 (E) YOU HAVE A RIGHT TO:

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

23 2. RECEIVE AN ITEMIZED STATEMENT OF THE ACTUAL OR
24 ESTIMATED PRICE OF THE WEIGHT-LOSS PROGRAM, INCLUDING EXTRA
25 PRODUCTS, SERVICES, SUPPLEMENTS, EXAMINATIONS, AND LABORATORY
26 TESTS.

27 3. KNOW THE ACTUAL OR ESTIMATED DURATION OF THE
28 PROGRAM.

29 4. KNOW THE NAME, ADDRESS, AND QUALIFICATIONS OF THE
30 LICENSED DIETITIAN OR NUTRITIONIST OR REGISTERED DIETITIAN WHO
31 HAS REVIEWED AND APPROVED THE WEIGHT-LOSS PROGRAM PURSUANT

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1 ACCORDING TO s. 468.505(1)(j), FLORIDA STATUTES.

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

10 Section 63. Section 501.0577, Florida Statutes, is
11 renumbered as section 468.825, Florida Statutes, and amended
12 to read:

13 468.825 ~~501.0577~~ Commercial Weight-Loss Practices Act;
14 exemptions.--The provisions of this act do not apply to
15 persons licensed under chapter 458, chapter 459, chapter 460,
16 chapter 461, chapter 462, chapter 463, chapter 464, chapter
17 465, parts III, V, and X of chapter 468, or chapter 486 who
18 may give weight-loss advice or provide any weight-loss service
19 which is within the scope of practice of the respective
20 profession incidental to the performance of their profession
21 ~~and which is not the primary activity of the person's~~
22 ~~practice.~~

23 Section 64. Section 501.0579, Florida Statutes, is
24 renumbered as section 468.826, Florida Statutes, and amended
25 to read:

26 468.826 ~~501.0579~~ Commercial Weight-Loss Practices Act;
27 unlawful practices.--It is unlawful and an unfair and
28 deceptive trade practice under part II of ~~this~~ chapter 501 to
29 fail to comply with the provisions of ss. 468.821-468.829 ~~this~~
30 ~~act.~~

31 Section 65. Section 501.0581, Florida Statutes, is

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1 renumbered as section 468.827, Florida Statutes, and amended
2 to read:

3 468.827 ~~501.0581~~ Commercial Weight-Loss Practices Act;
4 civil remedies.--

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

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

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

20 Section 66. Section 468.828, Florida Statutes, is
21 created to read:

22 468.828 Weight-loss provider registration.--

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

30 (a) Has completed the application form and remitted a
31 nonrefundable application fee set by the department in an

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1 amount not to exceed \$300.

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

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

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

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

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

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

25 (b) A registered dietitian; or

26 (c) A dietitian/nutritionist licensed in another
27 state, provided the requirements for licensure in that state
28 are substantially equivalent to or more stringent than those
29 existing in this state.

30

31 A weight-loss program may not be changed without consultation

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1 and approval by one of the individuals listed in this
2 subsection.

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

8 (a) Nutritional adequacy, measured by consumption of a
9 wide variety of foods based on government recommendations for
10 healthy eating;

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

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

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

19 (e) Providing a weight maintenance component designed
20 to help weight-loss program participants sustain their weight
21 losses, consistent with government standards for healthy
22 eating; and

23 (f) Providing participants with materials
24 demonstrating the weight-loss program provider's compliance
25 with ss. 468.821-468.829.

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

31 (6) Violation of subsection (5), in addition to other

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1 remedies provided by law, shall result in suspension of the
2 weight-loss provider's registration under chapter 455.

3 Reinstatement shall require demonstration of full compliance
4 with the applicable laws and payment of a reinstatement fee
5 not to exceed the initial application and registration fee.

6 (7) The department shall by rule set a biennial
7 weight-loss registration renewal fee in an amount not to
8 exceed \$300. The weight-loss program or programs being offered
9 to the public shall be reviewed and approved at least
10 biennially by one of the individuals listed in subsection (3).
11 Each applicant shall submit to the department with his or her
12 biennial renewal fee the name, address, and phone number of
13 the person who reviewed and approved the weight-loss program.
14 Biennial review shall not be required for those providers who
15 have a licensed or registered dietitian/nutritionist meeting
16 the requirements of ss. 468.821-468.829 available for
17 consultation on a regular basis.

18 (8) Any weight-loss provider in business in this state
19 on October 1, 1998, shall be held harmless for any claim that
20 such provider has not obtained a weight-loss provider
21 registration as required under this section, until October 1,
22 1999.

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

26 Section 67. Section 468.8281, Florida Statutes, is
27 created to read:

28 468.8281 Availability of disciplinary records and
29 proceedings.--Notwithstanding s. 455.621, any complaint or
30 record maintained by the Department of Health pursuant to the
31 discipline of a registered weight-loss provider and any

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1 proceeding held by the department to discipline a registered
2 weight-loss provider shall remain open and available to the
3 public.

4 Section 68. Section 468.829, Florida Statutes, is
5 created to read:

6 468.829 Registration to be displayed;
7 advertisement.--Each weight-loss provider to whom a
8 weight-loss registration is issued shall keep such
9 registration conspicuously displayed in the provider's office,
10 place of business, or place of employment and, when required,
11 shall exhibit such registration to any member or authorized
12 representative of the department. In addition, each
13 weight-loss provider holding a registration under this act
14 must include the number of the registration in any
15 advertisement of weight-loss services which appears in any
16 newspaper, airwave transmission, telephone directory,
17 direct-mail advertisement, or other advertising medium. Each
18 weight-loss provider shall conspicuously display in the
19 provider's office, place of business, or place of employment
20 the following statement that must appear in capital letters
21 clearly distinguishable from the rest of the text: THE STATE
22 OF FLORIDA DEPARTMENT OF HEALTH HAS REGISTERED THIS
23 WEIGHT-LOSS PROVIDER TO OPERATE IN FLORIDA. HOWEVER, THE
24 REGISTRATION DOES NOT INDICATE THAT THE DEPARTMENT OF HEALTH
25 ENDORSES OR APPROVES THE CONTENT OF THIS WEIGHT-LOSS PROGRAM.

26 Section 69. Section 468.519, Florida Statutes, is
27 created to read:

28 468.519 Sexual misconduct in the practice of dietetics
29 and nutrition.--The dietitian/nutritionist and nutrition
30 counselor-client relationship is founded on mutual trust.
31 "Sexual misconduct in the practice of dietetics and nutrition"

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

10 Section 70. Subsection (1) of section 455.604, Florida
11 Statutes, is amended to read:

12 455.604 Requirement for instruction for certain
13 licensees on human immunodeficiency virus and acquired immune
14 deficiency syndrome.--

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

30 Section 71. (1) There is created within the
31 Department of Health a Task Force on Regulation of the

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1 Weight-Loss Industry. The Department of Health shall provide
2 staff support for the task force. The task force shall consist
3 of not more than 20 members nominated by the associations and
4 entities named in this section and appointed by the Secretary
5 of Health. Members of the task force shall not receive
6 compensation, per diem, or reimbursement for travel expenses
7 for service on the task force. Participation in the task force
8 is optional and at the discretion of each identified group or
9 entity. If all identified groups and entities participate, the
10 task force shall include:

11 (a) One representative from each of the following
12 associations:

- 13 1. The Florida Dietetic Association.
- 14 2. The Florida Medical Association.
- 15 3. The Florida Osteopathic Medical Association.
- 16 4. The Florida Chiropractic Association.
- 17 5. The Florida Podiatric Medical Association.
- 18 6. The Florida Pharmacy Association.
- 19 7. The Florida Society of Health System Pharmacists.

20 (b) Three representatives from commercial weight-loss
21 programs.

22 (c) One representative from each of the following
23 entities:

- 24 1. The Department of Health.
- 25 2. The Dietetics and Nutrition Practice Council.
- 26 3. The Board of Medicine, which representative must be
27 a member of the board who is licensed under chapter 458,
28 Florida Statutes.
- 29 4. The Board of Osteopathic Medicine, which
30 representative must be a member of the board who is licensed
31 under chapter 459, Florida Statutes.

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1 5. The Board of Chiropractic Medicine, which
2 representative must be a member of the board who is licensed
3 under chapter 460, Florida Statutes.

4 6. The Board of Podiatric Medicine, which
5 representative must be a member of the board who is licensed
6 under chapter 461, Florida Statutes.

7 7. The Board of Pharmacy, which representative must be
8 a member of the board who is licensed under chapter 465,
9 Florida Statutes.

10 8. The Agency for Health Care Administration.

11 (d) Two representatives from the dietary supplement
12 industry.

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

20 (3) The task force shall study and make
21 recommendations to the Legislature regarding the appropriate
22 level of regulation and placement needed to enforce the
23 Florida Commercial Weight-Loss Practices Act as set forth in
24 sections 468.821-468.829, Florida Statutes, and other
25 weight-loss services.

26 (4) The task force is dissolved effective January 1,
27 1999.

28 Section 72. This act shall take effect upon becoming a
29 law, except that sections 59 through 70 of this act shall take
30 effect on July 1, 1999.

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1 ===== T I T L E A M E N D M E N T =====

2 And the title is amended as follows:

3 On page 114, line 12, after the semicolon

4

5 insert:

6 renumbering and amending ss. 501.057, 501.0571,
7 501.0573, 501.0575, 501.0577, 501.0579,
8 501.0581, F.S.; transferring the Florida
9 Commercial Weight-Loss Practices Act from ch.
10 501, F.S., relating to consumer protection, to
11 ch. 468, F.S., relating to professions and
12 occupations; redefining the activity that
13 constitutes a weight-loss program; revising
14 certain notice requirements; providing an
15 exemption from regulation; conforming
16 references and cross-references; transferring
17 regulatory authority from the Department of
18 Agriculture and Consumer Services to the
19 Department of Health; creating s. 468.828,
20 F.S.; requiring weight-loss providers to
21 register; prescribing procedures and
22 requirements; providing a penalty; providing
23 for fees; providing a grace period for certain
24 providers; creating s. 468.8281, F.S.;
25 providing requirements for records and meetings
26 held for disciplinary actions; creating s.
27 468.829, F.S.; requiring display of
28 registration; creating s. 468.519, F.S.;
29 prohibiting sexual misconduct in the practice
30 of dietetics and nutrition; amending s.
31 455.604, F.S.; requiring instruction in HIV and

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AIDS for persons licensed as dietitians and
nutritionists; creating the Task Force on
Regulation of the Weight-Loss Industry;
providing for its membership and duties;