

By Representative Wasserman Schultz

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, and
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. 468.829, F.S.; requiring
22 display of permits; creating s. 468.519, F.S.;
23 prohibiting sexual misconduct in the practice
24 of dietetics and nutrition; amending s.
25 455.604, F.S.; requiring instruction in HIV and
26 AIDS for persons licensed as dietitians and
27 nutritionists; repealing s. 468.505(1)(k),
28 F.S., relating to exemption of certain persons
29 employed by a hospital, nursing home, assisted
30 living facility, or continuing care facility
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1 from dietitian/nutritionist licensure;
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 any person engaged
6 in the business of offering services to consumers to assist
7 them in losing weight and making oral or written statements,
8 visual descriptions, advertisements, or other representations
9 that have the capacity, tendency, or effect of leading
10 consumers to believe that participation in a weight-loss
11 program will result in weight loss.

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

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

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

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

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

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

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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, chapter
29 468, or chapter 486 who may give weight-loss advice or provide
30 any weight-loss service which is incidental to the performance
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1 of their profession and which is not the primary activity of
2 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 permit.--

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 permit. The department shall
7 prescribe an application form to be used by all persons
8 applying to obtain a weight-loss provider permit. The
9 department shall issue a weight-loss provider permit for each
10 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 permit 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 permit 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 permit and shall pay the prescribed permit 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.

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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 review the provider's weight-loss program to determine
17 compliance with the law and rules and adherence to the minimum
18 safety standards for weight-loss programs and shall consider
19 the following points:

20 (a) Appropriateness of the screening process;

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

23 (c) Assurance of nutritional adequacy;

24 (d) Appropriateness of materials, which include, but
25 are not limited to, written nutrition education handouts,
26 recorded education materials, lesson or instructional plans,
27 food plans, and screening tools;

28 (e) Appropriateness of the rate of weight change
29 promoted; and

30 (f) Provision and appropriateness of any maintenance
31 or followup program.

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

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

11 (7) Nothing in ss. 468.821-468.829 may be construed to
12 mean that a practitioner licensed under chapter 458, chapter
13 459, or part X of chapter 468 is required to secure a
14 weight-loss provider permit under ss. 468.821-468.829.

15 (8) The department shall by rule set a biennial
16 weight-loss permit renewal fee in an amount not to exceed
17 \$300. The weight-loss program or programs being offered to the
18 public shall be reviewed and approved by one of the
19 individuals listed in subsection (3). Each applicant shall
20 submit to the department with his or her biennial renewal fee
21 the name, address, and phone number of the person who reviewed
22 and approved the weight-loss program.

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

27 Section 9. Section 468.829, Florida Statutes, is
28 created to read:

29 468.829 Permit to be displayed.--Each weight-loss
30 provider to whom a weight-loss permit is issued shall keep
31 such permit conspicuously displayed in the provider's office,

1 place of business, or place of employment and, when required,
2 shall exhibit such permit to any member or authorized
3 representative of the department.

4 Section 10. Section 468.519, Florida Statutes, is
5 created to read:

6 468.519 Sexual misconduct in the practice of dietetics
7 and nutrition.--The dietitian/nutritionist and nutrition
8 counselor-client relationship is founded on mutual trust.

9 "Sexual misconduct in the practice of dietetics and nutrition"
10 means violation of the dietitian/nutritionist and nutrition
11 counselor-client relationship through which the
12 dietitian/nutritionist or nutrition counselor uses that
13 relationship to induce or attempt to induce the client to
14 engage, or to engage or attempt to engage the client, in
15 sexual activity outside the scope of practice or the scope of
16 generally accepted examination or treatment of the client.
17 Sexual misconduct in the practice of dietetics and nutrition
18 is prohibited.

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

21 455.604 Requirement for instruction for certain
22 licensees on human immunodeficiency virus and acquired immune
23 deficiency syndrome.--

24 (1) The appropriate board shall require each person
25 licensed or certified under chapter 457; chapter 458; chapter
26 459; chapter 460; chapter 461; chapter 463; chapter 464;
27 chapter 465; chapter 466; part II, part III, ~~or~~ part V, or
28 part X of chapter 468; or chapter 486 to complete a continuing
29 educational course, approved by the board, on human
30 immunodeficiency virus and acquired immune deficiency syndrome
31 as part of biennial relicensure or recertification. The course

1 shall consist of education on the modes of transmission,
2 infection control procedures, clinical management, and
3 prevention of human immunodeficiency virus and acquired immune
4 deficiency syndrome. Such course shall include information on
5 current Florida law on acquired immune deficiency syndrome and
6 its impact on testing, confidentiality of test results, and
7 treatment of patients.

8 Section 12. Paragraph (k) of subsection (1) of section
9 468.505, Florida Statutes, is repealed.

10 Section 13. This act shall take effect October 1 of
11 the year in which enacted.

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HOUSE SUMMARY

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16 Transfers regulation of commercial weight-loss programs
17 from ch. 501, F.S., relating to consumer protection, to
18 ch. 468, F.S., relating to professions and occupations,
19 and from the Department of Agriculture and Consumer
Services to the Department of Health. Redefines the term
"weight-loss program." Requires persons operating
weight-loss programs to obtain a permit and provides
procedures and requirements therefor.

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21 Prohibits sexual misconduct in the practice of dietetics
22 and nutrition. Requires dietitians, nutritionists, and
23 nutrition counselors to complete courses in human
24 immunodeficiency virus and acquired immune deficiency
syndrome. Repeals an exemption from
dietitian/nutritionist licensure requirements for certain
persons employed by a hospital, nursing home, assisted
living facility, or continuing care facility.

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