

hbd-27

Bill No. HB 4763, 1st Eng.

Amendment No. \_\_\_\_ (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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ORIGINAL STAMP BELOW

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Representative(s) Jones offered the following:

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**Amendment (with title amendment)**

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remove from the bill: Everything after the enacting clause

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and insert in lieu thereof:

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

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468.821 ~~501.057~~ Commercial Weight-Loss Practices Act;  
short title.--Sections 468.821-468.829 ~~501.057-501.0581~~ may be  
cited as the "Florida Commercial Weight-Loss Practices Act."

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

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468.822 ~~501.0571~~ Commercial Weight-Loss Practices Act;  
definitions.--As used in ss. 468.821-468.829, the term  
~~501.057-501.0581~~:

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

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

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1           ~~(3)(2)~~ "Supplement" means any type of vitamin,  
 2 mineral, or other dietary additive which is recommended to be  
 3 taken by a weight-loss provider.

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

6           ~~(5)(4)~~ "Weight-loss program" means a general program  
 7 of instruction, with food, supplements, food products, or a  
 8 food plan designed for clients from one or more healthy  
 9 population groups, in order that such clients may achieve or  
 10 maintain a healthy weight. A weight-loss program is not based  
 11 on an individual nutrition assessment and is not  
 12 individualized to provide nutrition care services to manage,  
 13 treat, or rehabilitate a medical condition, illness, or injury  
 14 for a specific person or group. A weight-loss program does not  
 15 include persons who only sell or distribute food, supplements,  
 16 or food products.~~any plan or procedure offered to encourage~~  
 17 ~~weight loss.~~

18           ~~(6)(5)~~ "Weight-loss provider" means the owner of any  
 19 ~~person engaged in the business~~ engaged in ~~of~~ offering services  
 20 to consumers to assist them in losing weight and making oral  
 21 or written statements, visual descriptions, advertisements, or  
 22 other representations that have the capacity, tendency, or  
 23 effect of leading consumers to believe that participation in a  
 24 weight-loss program will result in weight loss. A weight-loss  
 25 provider does not include a person who markets or distributes  
 26 food, food materials, or dietary supplements, or any person  
 27 who engages in the explanation of the use and benefits of  
 28 those products or the preparation of those products, if that  
 29 person does not engage for a fee in dietetics and nutrition  
 30 practice or nutrition counseling, and who is not offering a  
 31 weight-loss program to the public.

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

4 468.823 ~~501.0573~~ Weight-loss provider  
5 requirements.--Each weight-loss provider shall:

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

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

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

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

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

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

29 Section 4. Section 501.0575, Florida Statutes, is  
30 renumbered as section 468.824, Florida Statutes, and amended  
31 to read:

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1           468.824 ~~501.0575~~ Weight-Loss Consumer Bill of  
2 Rights.--

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

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

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

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

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

18           (E) YOU HAVE A RIGHT TO:

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

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

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

28           4. KNOW THE NAME, ADDRESS, AND QUALIFICATIONS OF THE  
29 LICENSED DIETITIAN OR NUTRITIONIST OR REGISTERED DIETITIAN WHO  
30 HAS REVIEWED AND APPROVED THE WEIGHT-LOSS PROGRAM PURSUANT  
31 ~~ACCORDING~~ TO s. 468.505(1)(j), FLORIDA STATUTES.

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

9           Section 5. Section 501.0577, Florida Statutes, is  
 10 renumbered as section 468.825, Florida Statutes, and amended  
 11 to read:

12           468.825 ~~501.0577~~ Commercial Weight-Loss Practices Act;  
 13 exemptions.--The provisions of this act do not apply to  
 14 persons licensed under chapter 458, chapter 459, chapter 460,  
 15 chapter 461, chapter 462, chapter 463, chapter 464, chapter  
 16 465, parts III, V, and X of chapter 468, or chapter 486 who  
 17 may give weight-loss advice or provide any weight-loss service  
 18 which is within the scope of practice of the respective  
 19 profession incidental to the performance of their profession  
 20 ~~and which is not the primary activity of the person's~~  
 21 ~~practice.~~

22           Section 6. Section 501.0579, Florida Statutes, is  
 23 renumbered as section 468.826, Florida Statutes, and amended  
 24 to read:

25           468.826 ~~501.0579~~ Commercial Weight-Loss Practices Act;  
 26 unlawful practices.--It is unlawful and an unfair and  
 27 deceptive trade practice under part II of ~~this~~ chapter 501 to  
 28 fail to comply with the provisions of ss. 468.821-468.829 ~~this~~  
 29 ~~act.~~

30           Section 7. Section 501.0581, Florida Statutes, is  
 31 renumbered as section 468.827, Florida Statutes, and amended

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1 to read:

2 468.827 ~~501.0581~~ Commercial Weight-Loss Practices Act;  
3 civil remedies.--

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

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

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

19 Section 8. Section 468.828, Florida Statutes, is  
20 created to read:

21 468.828 Weight-loss provider registration.--

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

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

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

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

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

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

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

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

24           (b) A registered dietitian; or

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

29  
30 A weight-loss program may not be changed without consultation  
31 and approval by one of the individuals listed in this

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1 subsection.

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

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

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

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

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

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

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

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

30 (6) Violation of subsection (5), in addition to other  
31 remedies provided by law, shall result in suspension of the



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1 weight-loss provider's registration under chapter 455.  
 2 Reinstatement shall require demonstration of full compliance  
 3 with the applicable laws and payment of a reinstatement fee  
 4 not to exceed the initial application and registration fee.

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

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

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

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

27 468.8281 Availability of disciplinary records and  
 28 proceedings.--Notwithstanding s. 455.621, any complaint or  
 29 record maintained by the Department of Health pursuant to the  
 30 discipline of a registered weight-loss provider and any  
 31 proceeding held by the department to discipline a registered

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1 weight-loss provider shall remain open and available to the  
2 public.

3 Section 10. Section 468.829, Florida Statutes, is  
4 created to read:

5 468.829 Registration to be displayed;  
6 advertisement.--Each weight-loss provider to whom a  
7 weight-loss registration is issued shall keep such  
8 registration conspicuously displayed in the provider's office,  
9 place of business, or place of employment and, when required,  
10 shall exhibit such registration to any member or authorized  
11 representative of the department. In addition, each  
12 weight-loss provider holding a registration under this act  
13 must include the number of the registration in any  
14 advertisement of weight-loss services which appears in any  
15 newspaper, airwave transmission, telephone directory,  
16 direct-mail advertisement, or other advertising medium. Each  
17 weight-loss provider shall conspicuously display in the  
18 provider's office, place of business, or place of employment  
19 the following statement that must appear in capital letters  
20 clearly distinguishable from the rest of the text: THE STATE  
21 OF FLORIDA DEPARTMENT OF HEALTH HAS REGISTERED THIS  
22 WEIGHT-LOSS PROVIDER TO OPERATE IN FLORIDA. HOWEVER, THE  
23 REGISTRATION DOES NOT INDICATE THAT THE DEPARTMENT OF HEALTH  
24 ENDORSES OR APPROVES THE CONTENT OF THIS WEIGHT-LOSS PROGRAM.

25 Section 11. Section 468.519, Florida Statutes, is  
26 created to read:

27 468.519 Sexual misconduct in the practice of dietetics  
28 and nutrition.--The dietitian/nutritionist and nutrition  
29 counselor-client relationship is founded on mutual trust.  
30 "Sexual misconduct in the practice of dietetics and nutrition"  
31 means violation of the dietitian/nutritionist and nutrition

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

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

11           455.604 Requirement for instruction for certain  
 12 licensees on human immunodeficiency virus and acquired immune  
 13 deficiency syndrome.--

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

29           Section 13. (1) There is created within the  
 30 Department of Health a Task Force on Regulation of the  
 31 Weight-Loss Industry. The Department of Health shall provide

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

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

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

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

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

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

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1 representative must be a member of the board who is licensed  
2 under chapter 460, Florida Statutes.

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

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

9 8. The Agency for Health Care Administration.

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

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

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

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

27 (5) This section shall take effect upon this act  
28 becoming a law.

29 Section 14. Except as otherwise provided herein, this  
30 act shall take effect 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 remove from the title of the bill: the entire title

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5 and insert in lieu thereof:

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A bill to be entitled

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An act relating to regulation of professions;

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renumbering and amending ss. 501.057, 501.0571,

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501.0573, 501.0575, 501.0577, 501.0579,

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501.0581, F.S.; transferring the Florida

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Commercial Weight-Loss Practices Act from ch.

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501, F.S., relating to consumer protection, to

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ch. 468, F.S., relating to professions and

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occupations; redefining the activity that

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constitutes a weight-loss program; revising

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certain notice requirements; providing an

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exemption from regulation; conforming

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references and cross-references; transferring

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regulatory authority from the Department of

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Agriculture and Consumer Services to the

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Department of Health; creating s. 468.828,

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F.S.; requiring weight-loss providers to

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register; prescribing procedures and

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requirements; providing a penalty; providing

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for fees; providing a grace period for certain

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providers; creating s. 468.8281, F.S.;

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providing requirements for records and meetings

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held for disciplinary actions; creating s.

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468.829, F.S.; requiring display of

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registration; creating s. 468.519, F.S.;

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prohibiting sexual misconduct in the practice

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1 of dietetics and nutrition; amending s.  
2 455.604, F.S.; requiring instruction in HIV and  
3 AIDS for persons licensed as dietitians and  
4 nutritionists; creating the Task Force on  
5 Regulation of the Weight-Loss Industry;  
6 providing for its membership and duties;  
7 providing effective dates.  
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