

By the Committee on Business Regulation & Consumer Affairs
and Representatives Ogles, Lynn and Dawson-White

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; providing an effective date.
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29 Be It Enacted by the Legislature of the State of Florida:
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1 Section 1. Section 501.057, Florida Statutes, is
2 renumbered as section 468.821, Florida Statutes, and amended
3 to read:

4 468.821 ~~501.057~~ Commercial Weight-Loss Practices Act;
5 short title.--Sections 468.821-468.829 ~~501.057-501.058~~ may be
6 cited as the "Florida Commercial Weight-Loss Practices Act."

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

10 468.822 ~~501.0571~~ Commercial Weight-Loss Practices Act;
11 definitions.--As used in ss. 468.821-468.829, the term
12 ~~501.057-501.058~~:

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

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

16 (3)~~(2)~~ "Supplement" means any type of vitamin,
17 mineral, or other dietary additive which is recommended to be
18 taken by a weight-loss provider.

19 (4)~~(3)~~ "Weight-loss location" means any place where a
20 weight-loss program is provided by a weight-loss provider.

21 (5)~~(4)~~ "Weight-loss program" means a general program
22 of instruction, with food, supplements, food products, or a
23 food plan designed for clients from one or more healthy
24 population groups, in order that such clients may achieve or
25 maintain a healthy weight. A weight-loss program is not based
26 on an individual nutrition assessment and is not
27 individualized to provide nutrition care services to manage,
28 treat, or rehabilitate a medical condition, illness, or injury
29 for a specific person or group.~~any plan or procedure offered~~
30 ~~to encourage weight loss.~~

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1 (6)~~(5)~~ "Weight-loss provider" means any person engaged
2 in the business of offering services to consumers to assist
3 them in losing weight and making oral or written statements,
4 visual descriptions, advertisements, or other representations
5 that have the capacity, tendency, or effect of leading
6 consumers to believe that participation in a weight-loss
7 program will result in weight loss.

8 Section 3. Section 501.0573, Florida Statutes, is
9 renumbered as section 468.823, Florida Statutes, and amended
10 to read:

11 468.823 ~~501.0573~~ Weight-loss provider
12 requirements.--Each weight-loss provider shall:

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

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

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

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

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

29 (6) Conspicuously post the Weight-Loss Consumer Bill
30 of Rights at the front registration desk or area in each
31 weight-loss location and require every agent, representative,

1 franchisee, or independent contractor to post such a bill of
2 rights in a prominent place in every room in which a
3 presentation or sale of a weight-loss program is made or in
4 which a product or treatment is offered for sale.

5 Section 4. Section 501.0575, Florida Statutes, is
6 renumbered as section 468.824, Florida Statutes, and amended
7 to read:

8 468.824 ~~501.0575~~ Weight-Loss Consumer Bill of
9 Rights.--

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

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

17 (B) CONSULT YOUR PERSONAL PHYSICIAN BEFORE STARTING
18 ANY WEIGHT-LOSS PROGRAM.

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

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

25 (E) YOU HAVE A RIGHT TO:

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

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

3 3. KNOW THE ACTUAL OR ESTIMATED DURATION OF THE
4 PROGRAM.

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

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

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

20 468.825 ~~501.0577~~ Commercial Weight-Loss Practices Act;
21 exemptions.--The provisions of this act do not apply to
22 persons licensed under chapter 458, chapter 459, chapter 460,
23 chapter 461, chapter 462, chapter 463, chapter 465, chapter
24 468, or chapter 486 who may give weight-loss advice or provide
25 any weight-loss service which is incidental to the performance
26 of their profession and which is not the primary activity of
27 the person's practice.

28 Section 6. Section 501.0579, Florida Statutes, is
29 renumbered as section 468.826, Florida Statutes, and amended
30 to read:

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1 468.826 ~~501.0579~~ Commercial Weight-Loss Practices Act;
2 unlawful practices.--It is unlawful and an unfair and
3 deceptive trade practice under part II of ~~this~~ chapter 501 to
4 fail to comply with the provisions of ss. 468.821-468.829 ~~this~~
5 ~~act~~.

6 Section 7. Section 501.0581, Florida Statutes, is
7 renumbered as section 468.827, Florida Statutes, and amended
8 to read:

9 468.827 ~~501.0581~~ Commercial Weight-Loss Practices Act;
10 civil remedies.--

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

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

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

26 Section 8. Section 468.828, Florida Statutes, is
27 created to read:

28 468.828 Weight-loss provider permit.--

29 (1) A weight-loss provider may not operate in this
30 state until such person has applied for and received from the
31 department a weight-loss provider permit. The department shall

1 prescribe an application form to be used by all persons
2 applying to obtain a weight-loss provider permit. The
3 department shall issue a weight-loss provider permit for each
4 applicant who:
5 (a) Has completed the application form and remitted a
6 nonrefundable application fee set by the department in an
7 amount not to exceed \$300.
8 (b) Has identified the weight-loss provider by name,
9 street and mailing addresses, and telephone number and, in the
10 case of a partnership, corporation, association, or entity,
11 has identified a registered agent or other person to receive
12 service of papers or other documents or perform other duties
13 as specified by the department.
14 (c) Has identified the licensed or registered
15 dietitian/nutritionist who approved the weight-loss program
16 pursuant to subsection (3) by name, street and mailing
17 addresses, and telephone number.
18 (2)(a) A weight-loss provider permit is not
19 transferable to another weight-loss provider by any means,
20 including, but not limited to, any sale of a corporation,
21 partnership, sole proprietorship, or other business entity.
22 (b) A weight-loss provider shall notify the department
23 within 30 days after a change in ownership of the business and
24 at the same time return the permit to the department for
25 cancellation. Upon a change in ownership of a weight-loss
26 provider's business, the new owner shall file an application
27 for a new permit and shall pay the prescribed permit fee.
28 (3) Any weight-loss program offered by a weight-loss
29 provider shall be reviewed and approved by:
30 (a) A dietitian/nutritionist licensed in this state;
31 (b) A registered dietitian; or

1 (c) A dietitian/nutritionist licensed in another
2 state, provided the requirements for licensure in that state
3 are substantially equivalent to or more stringent than those
4 existing in this state.

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6 A weight-loss program may not be changed without consultation
7 and approval by one of the individuals listed in this
8 subsection.

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

14 (a) Nutritional adequacy, measured by consumption of a
15 wide variety of foods based on government recommendations for
16 healthy eating;

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

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

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

25 (e) Providing a weight maintenance component designed
26 to help weight-loss program participants sustain their weight
27 losses, consistent with government standards for healthy
28 eating; and

29 (f) Providing participants with materials
30 demonstrating the weight-loss program provider's compliance
31 with ss. 468.821-468.829.

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 at least biennially by
19 one of the individuals listed in subsection (3). Each
20 applicant shall submit to the department with his or her
21 biennial renewal fee the name, address, and phone number of
22 the person who reviewed and approved the weight-loss program.
23 Biennial review shall not be required for those providers who
24 have a licensed or registered dietitian/nutritionist meeting
25 the requirements of ss. 468.821-468.829 available for
26 consultation on a regular basis.

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

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1 Section 9. Section 468.829, Florida Statutes, is
2 created to read:

3 468.829 Permit to be displayed.--Each weight-loss
4 provider to whom a weight-loss permit is issued shall keep
5 such permit conspicuously displayed in the provider's office,
6 place of business, or place of employment and, when required,
7 shall exhibit such permit to any member or authorized
8 representative of the department.

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

11 468.519 Sexual misconduct in the practice of dietetics
12 and nutrition.--The dietitian/nutritionist and nutrition
13 counselor-client relationship is founded on mutual trust.
14 "Sexual misconduct in the practice of dietetics and nutrition"
15 means violation of the dietitian/nutritionist and nutrition
16 counselor-client relationship through which the
17 dietitian/nutritionist or nutrition counselor uses that
18 relationship to induce or attempt to induce the client to
19 engage, or to engage or attempt to engage the client, in
20 sexual activity outside the scope of practice or the scope of
21 generally accepted examination or treatment of the client.
22 Sexual misconduct in the practice of dietetics and nutrition
23 is prohibited.

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

26 455.604 Requirement for instruction for certain
27 licensees on human immunodeficiency virus and acquired immune
28 deficiency syndrome.--

29 (1) The appropriate board shall require each person
30 licensed or certified under chapter 457; chapter 458; chapter
31 459; chapter 460; chapter 461; chapter 463; chapter 464;

1 chapter 465; chapter 466; part II, part III, ~~or~~ part V, or
2 part X of chapter 468; or chapter 486 to complete a continuing
3 educational course, approved by the board, on human
4 immunodeficiency virus and acquired immune deficiency syndrome
5 as part of biennial relicensure or recertification. The course
6 shall consist of education on the modes of transmission,
7 infection control procedures, clinical management, and
8 prevention of human immunodeficiency virus and acquired immune
9 deficiency syndrome. Such course shall include information on
10 current Florida law on acquired immune deficiency syndrome and
11 its impact on testing, confidentiality of test results, and
12 treatment of patients.

13 Section 12. This act shall take effect October 1 of
14 the year in which enacted.

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17 HOUSE SUMMARY

18 Transfers the Florida Commercial Weight-Loss Practices
19 Act from ch. 501, F.S., relating to consumer protection,
20 to ch. 468, F.S., relating to professions and
21 occupations. Redefines the activity that constitutes a
22 weight-loss program. Revises certain notice requirements.
23 Provides an exemption from regulation. Conforms
24 references and cross references. Transfers regulatory
25 authority from the Department of Agriculture and Consumer
26 Services to the Department of Health. Requires
27 weight-loss providers to obtain permits. Prescribes
28 procedures and requirements. Provides a penalty. Provides
29 for fees. Provides a grace period for certain providers.
30 Requires display of permits.

31 Prohibits sexual misconduct in the practice of dietetics
and nutrition. Requires instruction in HIV and AIDS for
persons licensed as dietitians and nutritionists.