

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.

3
4 Be It Enacted by the Legislature of the State of Florida:

5
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. A weight-loss program does not
4 include persons who only sell or distribute food, supplements,
5 or food products. ~~any plan or procedure offered to encourage~~
6 ~~weight loss.~~

7 ~~(6)(5)~~ "Weight-loss provider" means the owner of any
8 ~~person engaged in the business engaged in~~ of offering services
9 to consumers to assist them in losing weight and making oral
10 or written statements, visual descriptions, advertisements, or
11 other representations that have the capacity, tendency, or
12 effect of leading consumers to believe that participation in a
13 weight-loss program will result in weight loss. A weight-loss
14 provider does not include a person who markets or distributes
15 food, food materials, or dietary supplements, or any person
16 who engages in the explanation of the use and benefits of
17 those products or the preparation of those products, if that
18 person does not engage for a fee in dietetics and nutrition
19 practice or nutrition counseling, and who is not offering a
20 weight-loss program to the public.

21 Section 3. Section 501.0573, Florida Statutes, is
22 renumbered as section 468.823, Florida Statutes, and amended
23 to read:

24 468.823 ~~501.0573~~ Weight-loss provider
25 requirements.--Each weight-loss provider shall:

26 (1) Provide to a consumer a written itemized statement
27 of the fixed or estimated cost of the weight-loss program that
28 is being recommended, including all additional products,
29 services, supplements, examinations, or laboratory tests the
30 consumer may have to purchase from the weight-loss provider as
31 part of such program.

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

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

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

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

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

18 Section 4. Section 501.0575, Florida Statutes, is
19 renumbered as section 468.824, Florida Statutes, and amended
20 to read:

21 468.824 ~~501.0575~~ Weight-Loss Consumer Bill of
22 Rights.--

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

25 (A) WARNING: RAPID WEIGHT LOSS MAY CAUSE SERIOUS
26 HEALTH PROBLEMS. RAPID WEIGHT LOSS IS WEIGHT LOSS OF MORE
27 THAN 1 1/2 POUNDS TO 2 POUNDS PER WEEK OR WEIGHT LOSS OF MORE
28 THAN 1 PERCENT OF BODY WEIGHT PER WEEK AFTER THE SECOND WEEK
29 OF PARTICIPATION IN A WEIGHT-LOSS PROGRAM.

30 (B) CONSULT YOUR PERSONAL PHYSICIAN BEFORE STARTING
31 ANY WEIGHT-LOSS PROGRAM.

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

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

7 (E) YOU HAVE A RIGHT TO:

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

11 2. RECEIVE AN ITEMIZED STATEMENT OF THE ACTUAL OR
12 ESTIMATED PRICE OF THE WEIGHT-LOSS PROGRAM, INCLUDING EXTRA
13 PRODUCTS, SERVICES, SUPPLEMENTS, EXAMINATIONS, AND LABORATORY
14 TESTS.

15 3. KNOW THE ACTUAL OR ESTIMATED DURATION OF THE
16 PROGRAM.

17 4. KNOW THE NAME, ADDRESS, AND QUALIFICATIONS OF THE
18 LICENSED DIETITIAN OR NUTRITIONIST WHO HAS REVIEWED AND
19 APPROVED THE WEIGHT-LOSS PROGRAM PURSUANT ~~ACCORDING~~ TO s.
20 468.505(1)(j), FLORIDA STATUTES.

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

29 Section 5. Section 501.0577, Florida Statutes, is
30 renumbered as section 468.825, Florida Statutes, and amended
31 to read:

1 468.825 ~~501.0577~~ Commercial Weight-Loss Practices Act;
2 exemptions.--The provisions of this act do not apply to
3 persons licensed under chapter 458, chapter 459, chapter 460,
4 chapter 461, chapter 462, chapter 463, chapter 465, parts III,
5 V, and X of chapter 468, or chapter 486 who may give
6 weight-loss advice or provide any weight-loss service which is
7 within the scope of practice of the respective profession
8 ~~incidental to the performance of their profession and which is~~
9 ~~not the primary activity of the person's practice.~~

10 Section 6. Section 501.0579, Florida Statutes, is
11 renumbered as section 468.826, Florida Statutes, and amended
12 to read:

13 468.826 ~~501.0579~~ Commercial Weight-Loss Practices Act;
14 unlawful practices.--It is unlawful and an unfair and
15 deceptive trade practice under part II of ~~this~~ chapter 501 to
16 fail to comply with the provisions of ss. 468.821-468.829 ~~this~~
17 ~~act.~~

18 Section 7. Section 501.0581, Florida Statutes, is
19 renumbered as section 468.827, Florida Statutes, and amended
20 to read:

21 468.827 ~~501.0581~~ Commercial Weight-Loss Practices Act;
22 civil remedies.--

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

30 (2) The department ~~of Agriculture and Consumer~~
31 ~~Services~~ may terminate any investigation or action upon

1 agreement by the offender to pay a stipulated civil penalty,
2 make restitution or pay damages to customers, or satisfy any
3 other relief authorized herein and requested by the
4 department.

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

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

9 468.828 Weight-loss provider registration.--

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

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

20 (b) Has identified the weight-loss provider by name,
21 street and mailing addresses, and telephone number and, in the
22 case of a partnership, corporation, association, or entity,
23 has identified a registered agent or other person to receive
24 service of papers or other documents or perform other duties
25 as specified by the department.

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

30 (2)(a) A weight-loss provider registration is not
31 transferable to another weight-loss provider by any means,

1 including, but not limited to, any sale of a corporation,
2 partnership, sole proprietorship, or other business entity.

3 (b) A weight-loss provider shall notify the department
4 within 30 days after a change in ownership of the business and
5 at the same time return the registration to the department for
6 cancellation. Upon a change in ownership of a weight-loss
7 provider's business, the new owner shall file an application
8 for a new registration and shall pay the prescribed fee.

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

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

12 (b) A registered dietitian; or

13 (c) A dietitian/nutritionist licensed in another
14 state, provided the requirements for licensure in that state
15 are substantially equivalent to or more stringent than those
16 existing in this state.

17
18 A weight-loss program may not be changed without consultation
19 and approval by one of the individuals listed in this
20 subsection.

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

26 (a) Nutritional adequacy, measured by consumption of a
27 wide variety of foods based on government recommendations for
28 healthy eating;

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

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

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

6 (e) Providing a weight maintenance component designed
7 to help weight-loss program participants sustain their weight
8 losses, consistent with government standards for healthy
9 eating; and

10 (f) Providing participants with materials
11 demonstrating the weight-loss program provider's compliance
12 with ss. 468.821-468.829.

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

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

24 (7) Nothing in ss. 468.821-468.829 may be construed to
25 mean that a practitioner licensed under chapter 458, chapter
26 459, or part X of chapter 468 is required to secure a
27 weight-loss provider registration under ss. 468.821-468.829.

28 (8) The department shall by rule set a biennial
29 weight-loss registration renewal fee in an amount not to
30 exceed \$300. The weight-loss program or programs being offered
31 to the public shall be reviewed and approved at least

1 biennially by one of the individuals listed in subsection (3).
2 Each applicant shall submit to the department with his or her
3 biennial renewal fee the name, address, and phone number of
4 the person who reviewed and approved the weight-loss program.
5 Biennial review shall not be required for those providers who
6 have a licensed or registered dietitian/nutritionist meeting
7 the requirements of ss. 468.821-468.829 available for
8 consultation on a regular basis.

9 (9) Any weight-loss provider in business in this state
10 on October 1, 1998, shall be held harmless for any claim that
11 such provider has not obtained a weight-loss provider
12 registration as required under this section, until October 1,
13 1999.

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

17 Section 9. Section 468.8281, Florida Statutes, is
18 created to read:

19 468.8281 Availability of disciplinary records and
20 proceedings.--Notwithstanding s. 455.621, any complaint or
21 record maintained by the Department of Health pursuant to the
22 discipline of a registered weight-loss provider and any
23 proceeding held by the department to discipline a registered
24 weight-loss provider shall remain open and available to the
25 public.

26 Section 10. Section 468.829, Florida Statutes, is
27 created to read:

28 468.829 Registration to be displayed;
29 advertisement.--Each weight-loss provider to whom a
30 weight-loss registration is issued shall keep such
31 registration conspicuously displayed in the provider's office,

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

17 Section 11. Section 468.519, Florida Statutes, is
18 created to read:

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

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

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

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

21 Section 13. (1) There is created within the
22 Department of Health a Task Force on Regulation of the
23 Weight-Loss Industry. The Department of Health shall provide
24 staff support for the task force. The task force shall consist
25 of not more than 9 members nominated by the associations and
26 entities named in this section and appointed by the Secretary
27 of Health. Members of the task force shall not receive
28 compensation, per diem, or reimbursement for travel expenses
29 for service on the task force. Participation in the task force
30 is optional and at the discretion of each identified group or
31

1 entity. If all identified groups and entities participate, the
2 task force shall include:

3 (a) One representative from each of the following
4 associations:

5 1. The Florida Dietetic Association.

6 2. The Florida Medical Association.

7 3. The Florida Osteopathic Medical Association.

8 (b) Three representatives from commercial weight-loss
9 programs.

10 (c) One representative from each of the following
11 entities:

12 1. The Department of Health.

13 2. The Dietetics and Nutrition Practice Council.

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

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

20 5. The Agency for Health Care Administration.

21 (d) One representative from the dietary supplement
22 industry.

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

30 (3) The task force shall study and make
31 recommendations to the Legislature regarding the appropriate

1 level of regulation needed to enforce the Florida Commercial
2 Weight-Loss Practices Act as set forth in sections
3 468.821-468.829, Florida Statutes.

4 (4) The task force is dissolved effective January 1,
5 1999.

6 Section 14. This act shall take effect October 1,
7 1998.

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