

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 effective dates.

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 OR REGISTERED DIETITIAN WHO  
19 HAS REVIEWED AND APPROVED THE WEIGHT-LOSS PROGRAM PURSUANT  
20 ~~ACCORDING TO~~ s. 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 464, chapter  
5 465, parts III, V, and X of chapter 468, or chapter 486 who  
6 may give weight-loss advice or provide any weight-loss service  
7 which is within the scope of practice of the respective  
8 profession incidental to the performance of their profession  
9 ~~and which is not the primary activity of the person's~~  
10 ~~practice.~~

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

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

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

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

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

31

1           (2) The department ~~of Agriculture and Consumer~~  
2 ~~Services~~ may terminate any investigation or action upon  
3 agreement by the offender to pay a stipulated civil penalty,  
4 make restitution or pay damages to customers, or satisfy any  
5 other relief authorized herein and requested by the  
6 department.

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

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

11           468.828 Weight-loss provider registration.--

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

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

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

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

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

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

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

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

14           (b) A registered dietitian; or

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

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

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

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



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

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

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

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

13           (f) Providing participants with materials  
14 demonstrating the weight-loss program provider's compliance  
15 with ss. 468.821-468.829.

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

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

27           (7) The department shall by rule set a biennial  
28 weight-loss registration renewal fee in an amount not to  
29 exceed \$300. The weight-loss program or programs being offered  
30 to the public shall be reviewed and approved at least  
31 biennially by one of the individuals listed in subsection (3).

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

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

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

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

18 468.8281 Availability of disciplinary records and  
19 proceedings.--Notwithstanding s. 455.621, any complaint or  
20 record maintained by the Department of Health pursuant to the  
21 discipline of a registered weight-loss provider and any  
22 proceeding held by the department to discipline a registered  
23 weight-loss provider shall remain open and available to the  
24 public.

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

27 468.829 Registration to be displayed;  
28 advertisement.--Each weight-loss provider to whom a  
29 weight-loss registration is issued shall keep such  
30 registration conspicuously displayed in the provider's office,  
31 place of business, or place of employment and, when required,

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

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

18 468.519 Sexual misconduct in the practice of dietetics  
19 and nutrition.--The dietitian/nutritionist and nutrition  
20 counselor-client relationship is founded on mutual trust.  
21 "Sexual misconduct in the practice of dietetics and nutrition"  
22 means violation of the dietitian/nutritionist and nutrition  
23 counselor-client relationship through which the  
24 dietitian/nutritionist or nutrition counselor uses that  
25 relationship to induce or attempt to induce the client to  
26 engage, or to engage or attempt to engage the client, in  
27 sexual activity outside the scope of practice or the scope of  
28 generally accepted examination or treatment of the client.  
29 Sexual misconduct in the practice of dietetics and nutrition  
30 is prohibited.

31

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 20 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 4. The Florida Chiropractic Association.
- 9 5. The Florida Podiatric Medical Association.
- 10 6. The Florida Pharmacy Association.
- 11 7. The Florida Society of Health System Pharmacists.

12 (b) Three representatives from commercial weight-loss  
13 programs.

14 (c) One representative from each of the following  
15 entities:

- 16 1. The Department of Health.
- 17 2. The Dietetics and Nutrition Practice Council.
- 18 3. The Board of Medicine, which representative must be  
19 a member of the board who is licensed under chapter 458,  
20 Florida Statutes.
- 21 4. The Board of Osteopathic Medicine, which  
22 representative must be a member of the board who is licensed  
23 under chapter 459, Florida Statutes.
- 24 5. The Board of Chiropractic Medicine, which  
25 representative must be a member of the board who is licensed  
26 under chapter 460, Florida Statutes.
- 27 6. The Board of Podiatric Medicine, which  
28 representative must be a member of the board who is licensed  
29 under chapter 461, Florida Statutes.

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

4           8. The Agency for Health Care Administration.

5           (d) Two representatives from the dietary supplement  
6 industry.

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

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

20           (4) The task force is dissolved effective January 1,  
21 1999.

22           (5) This section shall take effect upon this act  
23 becoming a law.

24           Section 14. Except as otherwise provided herein, this  
25 act shall take effect July 1, 1999.  
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