

STORAGE NAME: h4763.brc

DATE: April 8, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
BUSINESS REGULATION AND CONSUMER AFFAIRS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 4763 (PCB BRCA 98-11)

RELATING TO: Commercial Weight-Loss Practices Act

SPONSOR(S): Committee on Business Regulation and Consumer Affairs and Rep. Ogles and others

COMPANION BILL(S): SB 2188(s) and HB 4677(s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) BUSINESS REGULATION AND CONSUMER AFFAIRS YEAS 4 NAYS 1
 - (2)
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I. SUMMARY:

This bill transfers the Commercial Weight-Loss Practices disclosure program from the Department of Agriculture and Consumer Services to the Department of Health and creates a new regulatory program for these businesses. The bill requires them to be permitted by the Department of Health and pay up to \$300 for the biennial permit. It provides an effective date of October 1 of the year in which enacted.

The Department of Health estimates biennial fee collections of 300,000, and estimates expenditures of \$41,846 for one FTE and one OPS in FY 1998-99 and \$41,457 in FY 1999-00. No appropriation is included in the bill, or in the House or Senate Appropriations Acts.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

The Commercial Weight-Loss Practices Act, ss. 501.057 - 501.0581, Florida Statutes, became effective October 1, 1993. It was enacted to help educate consumers and protect them from unsafe commercial weight-loss programs.

The law promotes the education of consumers to weight-loss practices by establishing the Weight-Loss Consumer Bill of Rights. It requires that certain disclosures must be made to potential purchasers of weight-loss programs. The disclosure includes several key concepts that consumers should be aware of when considering purchasing from a weight-loss provider, such as: knowing the adverse effects of rapid weight-loss; consulting a physician prior to starting a program; understanding that only permanent lifestyle changes will foster long-term weight-loss; and requesting the provider's qualifications. The law also gives consumers the right to: know the risks of the program; receive an itemized estimate of the total program cost; know the expected duration of the program; and know the name of the nutritionist or dietitian who approved the weight-loss program.

The law requires this information be posted in bold type on a sign, and be made available on palm-size cards. The enforcement responsibility is placed with the Department of Agriculture and Consumer Services (DACCS) and the Department of Legal Affairs (under the Unfair and Deceptive Trade Practices Act, part II, ch. 501, F.S.)

B. EFFECT OF PROPOSED CHANGES:

This bill converts the current weight-loss disclosure provisions to a regulatory program and moves it to the Department of Health. Please refer to Section II. E., Section-by-Section Research, for a description of the specific requirements in the bill.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes. The Department of Health is given authority to set fees, up to a maximum of \$300 biennially, by rule.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. The Department of Health must implement and enforce the new regulatory program.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

The disclosure program is moved from the Department of Agriculture and Consumer Services to the Department of Health where it is converted to a regulatory program.

(2) what is the cost of such responsibility at the new level/agency?

\$41,846 in FY 1998-99 and \$41,457 in FY 1999-00.

(3) how is the new agency accountable to the people governed?

The program is a traditional, regulatory function within state government.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

Yes. Up to \$300 biennially may be charged by the Department of Health to commercial weight-loss businesses.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No. Commercial weight-loss companies will begin to be regulated by the state.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Yes. Commercial weight-loss companies will begin to be regulated by the state.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Sections 501.057- 501.0581, 468.828, 468.829, 468.519, and 455.604, Florida Statutes.

E. SECTION-BY-SECTION RESEARCH:

Section 1. Transfers and renumbers s. 501.057, F.S., as s. 468.821, F.S., and creates ss. 468.821 - 469.-829, F.S., as the "Florida Commercial Weight-Loss Practices Act."

Section 2. Transfers, renumbers and amends s. 501.0571, F.S., as s. 468.822, F.S., relating to definitions. The Department of Health replaces the Department of Agriculture and Consumer Services for purposes of the new program. The definition of a weight-loss program is narrowed to restrict it to certain products or to a limited population group.

Section 3. Transfers and renumbers s. 501.0573, F.S., as s. 468.823, F.S., requiring that a copy of the educational and professional experience of the weight-loss provider's staff be provided in the application to the department. It also provides that the Weight-Loss Consumer Bill of Rights may be posted at either the front registration desk or an area within each weight-loss program location, as opposed to the present requirement that it be placed at the front desk.

Section 4. Transfers, renumbers, and amends s. 501.0575, F.S., as s. 468.824, F.S., to require that the qualifications of the weight-loss provider be given to the consumer prior to the consumer starting the program. Presently, the qualifications are available upon request.

Section 5. Transfers, renumbers, and amends s. 501.0577, F.S., as s. 468.825, F.S., to exempt licensees under ch. 468, F.S., from the Commercial Weight-Loss Practices Act. Chapter 468, F.S., regulates miscellaneous professions including employee leasing companies, talent agencies, speech/language pathologists, and auctioneers, as well as dietitians/nutritionists.

Section 6. Creates s. 468.826, F.S., to make it unlawful and a deceptive and unfair trade practice under Part II, Chapter 501, F.S., for weight-loss providers to fail to comply with the act.

Section 7. Transfers, renumbers and amends s. 501.0581, F.S., as s. 468.827, F.S., to make the Department of Health the enforcing agency instead of the Department of Agriculture and Consumer Services. Authority to bring civil action for violations is transferred, without authority to investigate potential violations.

Section 8. Creates s. 468.828, F.S., to require weight-loss providers to obtain a permit from the Department of Health and pay a biennial permit fee set by the department at no more than \$300. The permit application must include certain identifying information including the name of the licensed or registered dietitian or nutritionist who approved the weight-loss program. Minimum safety standards are established for weight-loss programs. A permit shall be suspended for violations of the act, the Florida Drug and Cosmetics Act and the Deceptive and Unfair Trade Practices Act. Existing weight-loss providers are not required to obtain a permit until October 1, 1999.

Section 9. Creates s. 486.829, F.S., to require providers to conspicuously display their weight-loss permit.

Section 10. Creates s. 468.519, F.S., to specify that sexual misconduct is prohibited in the practice of dietetics and nutrition.

Section 11. Amends s. 455.604, F.S., to place a new requirement on dietitians, nutritionists, and nutrition counselors to take a board-approved continuing education course on HIV and AIDS.

Section 12. Makes the bill take effect October 1 of the year in which enacted.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects: 1998-99 1999-00

Expenditures:

Department of Health		
Expense (1 FTE)	\$2,387	
Non-recurring (1 OPS)	\$7,267	\$4,845
OCO	<u>\$4,177</u>	
Total	\$13,831	\$4,845

2. Recurring Effects:

Expenditures:

Department of Health		
Expense (1 FTE; 9 mo.)		
Salary	\$23,027	\$31,624
Expense	<u>4,988</u>	<u>\$ 4,988</u>
Total recurring	\$28,015	\$36,612

3. Long Run Effects Other Than Normal Growth:

None

4. Total Revenues and Expenditures: 1998-99 1999-00

Expenditures:

Department of Health	\$41,846	\$41,457
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Revenues:

Department of Health	\$300,000
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B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

The estimated 783 weight-loss establishments in Florida will have to pay biennially up to \$300 in permit fees.

2. Direct Private Sector Benefits:

Consumers will receive the protections afforded through regulation of commercial weight-loss businesses.

3. Effects on Competition, Private Enterprise and Employment Markets:

Indeterminate.

D. FISCAL COMMENTS:

Though the bill authorizes the Department of Health to collect a permit fee, the bill does not designate the trust fund into which the fees are to be deposited. No appropriation is included in the bill, or in the House or Senate Appropriations Acts. The estimated revenue is based on a review of the GTE Yellow Pages shown on the Internet. That review showed 783 weight-loss establishments in Florida.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This act does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This act does not reduce the authority that counties or municipalities have to raise revenue in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This act does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

None.

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The proposed committee bill repealed the Commercial Weight-Loss Practices Act within the Department of Agriculture and Consumer Services. The strike-everything amendment adopted by the Committee on Business Regulation and Consumer Affairs replaces that repeal with the provisions discussed above.

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION AND CONSUMER AFFAIRS:

Prepared by:

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