



**House  
Legislative  
Analysis  
Section**

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**REGULATE WEIGHT LOSS PGMS.**

**House Bill 4430**  
**Sponsor: Rep. Burton Leland**  
**Committee: Consumers**

**Complete to 3-18-91**

**A SUMMARY OF HOUSE BILL 4430 AS INTRODUCED 3-5-91**

The bill would create the Weight Loss Consumer Protection Act to regulate weight loss contracts and programs, and require certain notices to consumers. Generally, violations of the bill would be subject to civil fines and remedies. A more detailed description follows.

**Scope.** The bill would apply to a weight loss service offered to the public for a fee and that included a plan to lose weight through instruction, counseling, supervision, dietary manipulation, medication, or any combination thereof. Products sold with written direction but not in conjunction with a service would be exempted from the bill, as would be books. Also exempted would be programs operated by hospitals or health maintenance organizations, and those provided in physicians' offices (however, the bill would apply if the physician publicly specialized in weight loss and his or her practice was conducted out of more than one office or setting).

**Notice.** A notice to consumers would have to be included in each advertisement for a weight loss program; it would also have to be posted in each business location and given to each client to read before signing a weight loss contract. The notice would be in a form prescribed by the bill and would include a warning against very low calorie diets and a recommendation that all of the following be a part of a weight reduction program: health and/or medical supervision, exercise, good nutrition, and counseling. An advertisement could not claim that weight loss accomplished through the program would be permanent.

**Qualification of clients.** Before entering into a contract with a client, a program would have to attempt to identify any physical condition that could be adversely affected by the person's participation in the program. If such a condition is identified, no contract could be made until the person obtained written clearance from his or her physician. When a person was participating under medical clearance, the program would periodically contact the physician regarding the client's participation.

**Contract requirements.** A copy of a weight loss contract would have to be provided to the consumer at the time he or she signed it. A contract would have to explain the consumer's cancellation rights, and could not be for a period of longer than two years.

**Contract cancellation.** In addition to any other right to revoke or cancel a contract, a person who offered or entered into a weight loss contract would have three days to cancel the contract or revoke the offer under procedures specified by the bill. When a contract or offer was canceled within the three day period, the program would within ten days refund all money paid, except money paid for services rendered before the cancellation. An

individual also could cancel a contract and receive a refund for unused services if a physician advised the individual to discontinue participation in the program, or if the individual moved more than 35 miles away and was unable to transfer participation to a comparable facility. An individual's estate could cancel upon the death of the individual.

Use of medical professionals. A health professional employed by a weight loss program would have to have documentation of specialized training in obesity treatment, as well as be qualified to provide the services he or she was providing. A program could not use in its name the words "physician" or "doctor", or refer to its clients as "patients", or indicate that "medical personnel" or "medical teams" were available in its facility unless at least one of the following conditions were met: a registered professional nurse or a licensed physician's assistant was employed full-time to be available on the business premises during regular business hours, plus a physician was hired to provide services or consultation; the program was under the full-time medical supervision of a physician who was available on the premises during regular business hours; or, the program was owned and operated by a health facility or agency licensed under the Public Health Code.

Remedies and penalties. A repeated and knowing violation of the act would be subject to a civil penalty of up to \$25,000. Violation of an injunction, order, decree, or judgment issued under the bill would be subject to a civil fine of up to \$5,000 per violation. The attorney general could seek an injunction against a violation of the act, but generally would first have to give the program involved the opportunity to cease and desist from the alleged violation. The attorney general could accept an assurance of discontinuance of an activity; that assurance would not constitute an admission of guilt and would not be admissible in any other proceeding. The assurance could include an agreement for the person to pay the costs of investigation, for an amount to be held in escrow pending the outcome of an action, or for restitution to an aggrieved person.

The attorney general could ask the court to subpoena a program's records in connection with an investigation under the bill. That information could not be disclosed to the public; failure to keep the information confidential would be a misdemeanor punishable by a fine of up to \$2,500 and up to one year in jail. Falsification of documents or failure to comply with a subpoena would be subject to a civil fine of up to \$5,000.

The attorney general or another person could bring a class action suit for the actual damages caused by a violation of the bill. The court could order a program to reimburse people who suffered damages, carry out a transaction in accordance with clients' reasonable expectations, strike or limit an unacceptable clause in a contract, or grant other appropriate relief. The court could appoint a receiver or order sequestration of a defendant's assets if it appeared that the defendant was about to dispose of those assets. A class action suit could not be brought more than six years after the occurrence of the violation or more than one year after the last payment in a transaction involving the violation, whichever was later.

A person could sue for injunctive relief or a declaratory judgment, as well as sue for damages of up to the amount of actual damages or \$250, whichever was greater, together with reasonable attorneys' fees.

A prosecutor could conduct investigations and institute actions under the bill in the same manner as the attorney general.

Local ordinances. A city, village, township, or county could not enact an ordinance or other regulation inconsistent with the bill.

Copies of documents. The attorney general would publish, make available for public inspection and copying, and distribute by subscription all of the following: copies of final judgments rendered under the bill, any other matter required by the Administrative Procedures Act, and assurances of discontinuance entered into under the bill. The attorney general could charge reasonable fees to cover the costs of copying or distribution.