

HOUSE BILL No. 4430

March 5, 1991, Introduced by Reps. Leland, DeBeaussaert, Dolan, Hertel, Wozniak, Dobronski, DeMars, Profit, Bobier, Middleton, McBryde, Clarke, Wallace, Hunter, Murphy, Jondahl, Perry Bullard, Joe Young, Jr., Pitoniak, DeLange, Kosteva, Gubow, Gire, Weeks, Barns and Berman and referred to the Committee on Consumers.

A bill to regulate certain weight loss contracts; to require a consumer notice; to prescribe the rights and duties of individuals who enter into weight loss contracts; to prescribe the powers and duties of certain state and local agencies and departments; and to prescribe penalties and remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "weight loss consumer protection act".

3 Sec. 3. As used in this act:

4 (a) "Client" or "patient" means an individual who has
5 entered into a weight loss contract.

6 (b) "Health supervision" means monitoring the weight of a
7 patient and exercising judgment as to the patient's need for
8 medical intervention.

1 (c) "Medical supervision" means that a physician does all of
2 the following for a patient:

3 (i) Before the initiation of weight loss, completes a medi-
4 cal history and physical assessment.

5 (ii) Orders and interprets clinical laboratory and other
6 tests.

7 (iii) Gives a written order for the course of treatment for
8 weight loss that includes, but is not limited to, the frequency
9 with which the patient is to be seen by the physician.

10 (d) "Person" means an individual, partnership, corporation,
11 association, or other legal entity.

12 (e) "Physician" means that term as defined in section 17001
13 or 17501 of the public health code, Act No. 368 of the Public
14 Acts of 1978, being sections 333.17001 and 333.17501 of the
15 Michigan Compiled Laws.

16 (f) "Program" means a service offered to the public for a
17 fee by a person that includes a plan or procedure to facilitate
18 human weight loss through instruction, counseling, supervision,
19 dietary manipulation, medication, or any combination thereof.
20 Program does not include either of the following:

21 (i) A book that sets forth a plan or procedure to facilitate
22 human weight loss and is not intended for use in conjunction with
23 a service to implement or assist in implementing the plan or
24 procedure.

25 (ii) A product that is offered to the public by a manufac-
26 turer or retailer that includes written directions that
27 specifically direct the user to use the product in a weight loss

1 regimen and that is not intended for use in conjunction with a
2 service to assist in the use of the product.

3 (g) "Weight loss contract" means a contract with a program
4 that offers 1 or more of the following:

5 (i) Use of the services or facilities of a program.

6 (ii) Membership in a group, club, or organization formed by
7 the program.

8 (iii) Prepackaged or premeasured diet foods or formulas pro-
9 vided by the program.

10 Sec. 5. (1) A person who owns, operates, offers to the
11 public, or markets a program in this state shall do all of the
12 following with respect to the consumer notice set forth in
13 subsection (3):

14 (a) Include the notice in each advertisement for the
15 program.

16 (b) Post the notice in a conspicuous place at each business
17 location of the program in an area frequented by customers.

18 (c) Distribute the notice to each client and request each
19 client to read the notice before the client enters into a weight
20 loss contract.

21 (2) The consumer notice included in an advertisement as
22 required under subsection (1)(a) shall be conspicuous and printed
23 in type that is larger than and otherwise in contrast with sur-
24 rounding printed material. The consumer notice posted as
25 required under subsection (1)(b) shall be printed in at least
26 32-point boldfaced type and on paper not less than 22 inches by
27 34 inches in size. The consumer notice distributed as required

1 under subsection (1)(c) shall be on a separate sheet that is not
2 attached to a weight loss contract.

3 (3) The consumer notice required under subsection (1) shall
4 be in substantially the following form:

5 "Consumers should be aware that weight reduction programs
6 often vary widely. Very low calorie diets that promote rapid
7 weight loss and reliance on formula diets or special dietary
8 products can result in a poor outcome or in limited success. The
9 Michigan department of public health recommends that all of the
10 following be part of a weight reduction program: (1) Health
11 supervision and/or medical supervision; (2) Appropriate and ade-
12 quate exercise; (3) Appropriate and adequate nutrition; (4)
13 Appropriate and adequate counseling. The guidelines set forth in
14 this notice are not intended to take the place of sound medical
15 judgment."

16 (4) A program shall not include in an advertisement a state-
17 ment that weight loss accomplished through participation in the
18 program is permanent or any other statement to that effect.

19 Sec. 7. (1) In addition to any other right to revoke an
20 offer or cancel a contract, an individual who enters into or
21 offers to enter into a weight loss contract may cancel the offer
22 or weight loss contract until midnight on the third business day
23 after the day that the individual signs the weight loss contract
24 or offer to enter into a weight loss contract or under the cir-
25 cumstances described in section 11. An individual desiring to
26 revoke an offer or cancel a contract under this subsection shall
27 give signed, written notice to the program. An individual giving

1 notice under this subsection shall deliver the written notice to
2 the program personally or by first-class mail.

3 (2) A notice of cancellation under subsection (1) is effec-
4 tive as follows:

5 (a) If the notice is personally delivered, when delivered at
6 the program facility to an individual employed by or under con-
7 tract to the program.

8 (b) If the notice is delivered by first-class mail, when
9 deposited in the mail properly addressed with postage prepaid.

10 (3) A notice of cancellation under subsection (1) need not
11 take the particular form as provided in the weight loss contract
12 or offer and is effective if it indicates the intention of the
13 individual not to be bound by the weight loss contract or offer.

14 (4) If a weight loss contract or offer is canceled under
15 this section, the program shall refund all money paid under the
16 weight loss contract or offer, except money paid for services
17 rendered before the cancellation, within 10 days after receipt of
18 the written notice of cancellation.

19 (5) An individual who enters into a weight loss contract or
20 offer to enter into a weight loss contract may notify the program
21 verbally of his or her intent to cancel within the 3-day period
22 specified in subsection (1) and his or her intent to stop the
23 processing of a credit card voucher or check. However, in order
24 for a cancellation to be effective, the individual shall also
25 give the program written notice as required under
26 subsection (1).

1 Sec. 9. (1) A program shall not enter into a weight loss
2 contract unless the weight loss contract is in writing. A
3 program shall provide a copy of a weight loss contract to the
4 buyer at the time he or she signs the contract.

5 (2) A program shall include on the face of each weight loss
6 contract, in close proximity to the space reserved for signature
7 of the buyer, the following statement in not less than 10-point
8 boldfaced type and not less than 4 points larger than the type
9 size of the text of the contract:

10 "You, the buyer, may cancel this contract at any time before
11 midnight of the original contract seller's third business day
12 after the date of this contract, excluding Sundays and holidays.
13 To cancel this contract, deliver or mail by first-class mail a
14 written notice, signed and dated, that states that you, the
15 buyer, are canceling this contract, or words of similar effect.
16 Send the notice to:

17 (NAME OF BUSINESS THAT SOLD YOU THE CONTRACT)

18 (ADDRESS OF BUSINESS THAT SOLD YOU THE CONTRACT)"

19 (3) A program shall include on the first page of a weight
20 loss contract, in a type size no smaller than that generally used
21 in the document, the name and address to which the cancellation
22 is to be mailed, the date the buyer signed the contract, and the
23 last date the weight loss contract can be canceled.

24 (4) A program shall not offer financing for a weight loss
25 contract or offer or enter into a weight loss contract that
26 requires payments for longer than 2 years after the date the
27 contract is executed.

1 Sec. 11. (1) If an individual has entered into a weight
2 loss contract and if, at any time during the term of the weight
3 loss contract, the individual is advised by a physician to dis-
4 continue participation in the program, or if the individual dies,
5 the individual or the individual's estate may cancel the contract
6 pursuant to section 7 and the program shall refund the money paid
7 for the unused services remaining on the weight loss contract
8 within 10 days after receipt of the written notice of
9 cancellation.

10 (2) If an individual who has entered into a weight loss con-
11 tract relocates his or her residence more than 35 miles from the
12 program and is unable to transfer the weight loss contract to a
13 comparable facility, the individual may cancel the contract pur-
14 suant to section 7 and the program shall refund the money paid
15 for the unused services remaining on the weight loss contract
16 within 10 days after receipt of the written notice of
17 cancellation.

18 Sec. 13. Before entering into a weight loss contract, a
19 program shall attempt to identify in each client any physical
20 condition that may be adversely affected by the client's partici-
21 pation in the program. If a program identifies such a physical
22 condition in a client, the program shall not enter into a weight
23 loss contract with the client until the client obtains in writing
24 medical clearance to participate in the program from his or her
25 physician. If the client does obtain medical clearance and
26 enters into a weight loss contract with the program, the program

1 shall periodically contact the client's physician regarding the
2 client's participation in the program.

3 Sec. 15. (1) A health professional employed by or under
4 contract to a program shall be qualified to provide services
5 under the program by education, training, and experience, and
6 shall have documentation of specialized training in obesity
7 treatment.

8 (2) A program shall not use in its name or in advertisements
9 the word "physician" or "doctor", refer to its clients as
10 "patients", or indicate that "medical personnel" or "medical
11 teams" are available in its facility unless 1 or more of the fol-
12 lowing conditions are met:

13 (a) The program employs at least 1 registered professional
14 nurse or a licensed physician's assistant full-time to be avail-
15 able on the premises during regular business hours at each busi-
16 ness location and employs or contracts with at least 1 physician
17 for services or consultation in connection with the program's
18 activities.

19 (b) The program is under the full-time medical supervision
20 of a physician employed by or under contract to the program who
21 is available on the premises during regular business hours.

22 (c) The program is owned or operated by a health facility or
23 agency licensed under article 17 of the public health code, Act
24 No. 368 of the Public Acts of 1978, being sections 333.20101 to
25 333.22260 of the Michigan Compiled Laws.

26 (3) If a program employs or contracts with a physician as
27 described in subsection (2)(a), the program shall make the

1 physician primarily responsible for decisions made within the
2 scope of the employment or contract relating to the provision of
3 medical services to clients of the program and for decisions per-
4 taining to the appropriateness of admission of individuals to the
5 program.

6 Sec. 17. This act does not apply to either of the
7 following:

8 (a) A program that is operated by a hospital or health main-
9 tenance organization licensed under article 17 of the public
10 health code, Act No. 368 of the Public Acts of 1978, being sec-
11 tions 333.20101 to 333.22260 of the Michigan Compiled Laws.

12 (b) A program that is provided in a physician's office,
13 unless both of the following apply:

14 (i) The physician holds himself or herself or his or her
15 practice out or advertises that his or her practice is limited
16 to, or specializes in, weight loss or the treatment of obesity,
17 or both.

18 (ii) The physician's practice is conducted out of more than
19 1 office or practice setting.

20 Sec. 19. (1) If the attorney general has probable cause to
21 believe that a person has engaged, is engaging, or is about to
22 engage in a violation of this act, the attorney general, upon
23 notice given in accordance with this section, may bring an action
24 to restrain the defendant by temporary or permanent injunction
25 from engaging in the violation. The attorney general may bring
26 the action in the circuit court of the county where the defendant
27 is established or conducts business or, if the defendant is not

1 established in this state, in the circuit court of Ingham
2 county. The court may award costs to the prevailing party. For
3 repeated and knowing violation of this act, the court may assess
4 the defendant a civil penalty of not more than \$25,000.00.

5 (2) Unless the notice requirement of this subsection is
6 waived by the court on good cause shown not less than 10 days
7 before the commencement of an action under this section, the
8 attorney general shall notify the person of his intended action
9 and give the person an opportunity to cease and desist from the
10 alleged violation of this act or to confer with the attorney gen-
11 eral in person, by counsel, or by other representative as to the
12 proposed action before the proposed filing date of the
13 complaint. The attorney general may give the notice by mail,
14 postage prepaid, to the person's usual place of business or, if
15 the person does not have a usual place of business, to the
16 person's last known address, or, with respect to a corporation,
17 only to a resident agent who is designated to receive service of
18 process or to an officer of the corporation.

19 (3) A prosecuting attorney or law enforcement officer
20 receiving notice of an alleged violation of this act, or of a
21 violation of an injunction, order, decree, or judgment issued in
22 an action brought pursuant to this section, or of an assurance
23 made under section 21, shall immediately forward written notice
24 of the violation together with any other relevant information to
25 the office of the attorney general.

26 (4) A person who knowingly violates the terms of an
27 injunction, order, decree, or judgment issued pursuant to this

1 section is subject to a civil fine of not more than \$5,000.00 for
2 each violation. For the purposes of this section, the court
3 issuing an injunction, order, decree, or judgment shall retain
4 jurisdiction, the cause shall be continued, and the attorney gen-
5 eral may petition for recovery of a civil fine as provided by
6 this section.

7 Sec. 21. (1) If the attorney general has authority to
8 institute an action or proceeding pursuant to section 19, the
9 attorney general may accept an assurance of discontinuance of a
10 method, act, or practice that is alleged to be a violation of
11 this act from the person who is alleged to have engaged, be
12 engaging, or be about to engage in the violation. An assurance
13 given under this subsection does not constitute an admission of
14 guilt and is not admissible in any other proceeding. The assur-
15 ance may include a stipulation for 1 or more of the following:

16 (a) The voluntary payment by the person for the costs of
17 investigation.

18 (b) An amount to be held in escrow pending the outcome of an
19 action.

20 (c) An amount for restitution to an aggrieved person.

21 (2) An assurance of discontinuance shall be in writing and
22 the attorney general may file it with the circuit court of Ingham
23 county. The clerk of the court shall maintain a record of the
24 filings. Unless rescinded by the parties or voided by a court
25 for good cause, the parties to the assurance may enforce the
26 assurance in the circuit court. The parties may modify the
27 assurance or a court may modify the assurance for good cause.

1 Sec. 23. (1) Upon the ex parte application of the attorney
2 general to the circuit court for the county where the defendant
3 is established or conducts business or, if the defendant is not
4 established in this state, in the circuit court for Ingham
5 county, if the circuit court finds probable cause to believe a
6 person has engaged, is engaging, or is about to engage in a vio-
7 lation of this act, the circuit court may, after an ex parte
8 hearing, issue a subpoena compelling a person to appear before
9 the attorney general and answer under oath questions relating to
10 an alleged violation of this act. A person served with a sub-
11 poena may be accompanied by counsel when the person appears
12 before the attorney general. In the subpoena, the court may
13 compel a person to produce books, records, papers, documents, or
14 things relating to an alleged violation of this act. During the
15 examination of documentary material under the subpoena, the court
16 may require a person having knowledge of the documentary material
17 or the matters contained in the documentary material to attend
18 and give testimony under oath or acknowledgment with respect to
19 the documentary material.

20 (2) The court shall include in the subpoena notice of the
21 time, place, and cause of the taking of testimony or the examina-
22 tion and shall allow not less than 10 days before the date of the
23 taking of testimony or examination, unless for good cause shown
24 the court shortens that period of time.

25 (3) Service of the notice required under subsection (2)
26 shall be in the manner provided and subject to the provisions

1 that apply to service of process upon a defendant in a civil
2 action commenced in the circuit court.

3 (4) The notice required under subsection (2) shall meet all
4 of the following requirements:

5 (a) State the time and place for the taking of testimony or
6 the examination and the name and address of the person to be
7 examined. If the name is not known, the notice shall give a gen-
8 eral description sufficient to identify the person or the partic-
9 ular class or group to which the person belongs.

10 (b) State a reference to this section and the general
11 subject matter under investigation.

12 (c) Describe the documentary material to be produced with
13 reasonable specificity so as to indicate fairly the material
14 demanded.

15 (d) Prescribe a return date within which the documentary
16 material shall be produced.

17 (e) Identify the members of the attorney general's staff to
18 whom the documentary material shall be made available for inspec-
19 tion and copying.

20 (5) At any time before the date specified in the notice,
21 upon motion for good cause shown, the court may extend the
22 reporting date or modify or set aside the notice and subpoena.

23 (6) The documentary material or other information obtained
24 by the attorney general pursuant to an investigation under this
25 section are confidential records of the office of the attorney
26 general and are not available for public inspection or copying or
27 to be divulged to any person except as provided in this section.

1 The attorney general may disclose documentary material or other
2 information as follows:

3 (a) To other law enforcement officials.

4 (b) In connection with an enforcement action brought pursu-
5 ant to this act.

6 (c) Upon order of the court, to a party in a private action
7 brought pursuant to this act.

8 (7) A person who discloses information designated confiden-
9 tial by this section, except as permitted by subsection (6) or
10 under court order, is guilty of a misdemeanor, punishable by a
11 fine of not more than \$2,500.00, or by imprisonment for not more
12 than 1 year, or both.

13 Sec. 25. (1) A person upon whom a notice is served pursuant
14 to section 23 shall comply with the terms of the notice unless
15 otherwise provided by the order of the circuit court.

16 (2) A person who does any of the following is subject to a
17 civil fine of not more than \$5,000.00.

18 (a) Knowingly without good cause fails to appear when served
19 with a notice.

20 (b) Knowingly avoids, evades, or prevents compliance, in
21 whole or in part, with an investigation, including the removal
22 from any place, concealment, destruction, mutilation, alteration,
23 or falsification of documentary material in the possession, cus-
24 tody, or control of a person subject to the notice.

25 (c) Knowingly conceals relevant information.

26 (3) The attorney general may file a petition in the circuit
27 court for the county in which the person is established or

1 conducts business or, if the person is not established in this
2 state, in the circuit court for Ingham county for an order to
3 enforce compliance with a subpoena or this section. The court
4 may punish as civil contempt a violation of a final order entered
5 pursuant to this section.

6 (4) Upon the petition of the attorney general, the circuit
7 court may enjoin a person from doing business in this state if
8 the person repeatedly and knowingly evades or prevents compliance
9 with an injunction issued pursuant to this act.

10 Sec. 27. (1) The attorney general shall publish, make
11 available for public inspection and copying during business
12 hours, and distribute by subscription upon the request of any
13 person all of the following:

14 (a) Copies of final judgments rendered under this act pro-
15 vided to the attorney general by clerks of the courts pursuant to
16 section 33(1).

17 (b) Any other matter as required by the administrative pro-
18 cedures act of 1969, Act No. 306 of the Public Acts of 1969,
19 being sections 24.201 to 24.328 of the Michigan Compiled Laws.

20 (c) An assurance of discontinuance entered into pursuant to
21 section 21.

22 (2) The attorney general may charge a reasonable fee to
23 cover the expense of copying or distribution.

24 Sec. 29. (1) The attorney general may bring a class action
25 on behalf of persons residing in or injured in this state for the
26 actual damages caused by a violation of this act.

1 (2) On motion of the attorney general and without bond in an
2 action under this section, the court may make an appropriate
3 order for a program to do 1 or more of the following:

4 (a) Reimburse persons who have suffered damages.

5 (b) Carry out a transaction in accordance with the aggrieved
6 persons' reasonable expectations.

7 (c) Strike or limit the application of an unconscionable
8 clause in a weight loss contract to avoid an unconscionable
9 result.

10 (d) Grant other appropriate relief.

11 (3) The court after a hearing may appoint a receiver or
12 order sequestration of the defendant's assets if it appears to
13 the satisfaction of the court that the defendant threatens or is
14 about to remove, conceal, or dispose of assets to the detriment
15 of members of the class.

16 (4) If at any stage of the proceedings the court requires
17 that notice be sent to the class, the attorney general may peti-
18 tion the court to require the defendant to bear the cost of the
19 notice. In determining whether to impose the cost on the
20 defendant or the state, the court shall consider the probability
21 that the attorney general will succeed on the merits of the
22 action.

23 (5) If the defendant shows by a preponderance of the evi-
24 dence that a violation of this act resulted from a bona fide
25 error notwithstanding the maintenance of procedures reasonably
26 adapted to avoid the error, the amount of recovery is limited to
27 actual damages.

1 (6) The attorney general shall not bring an action under
2 this section more than 6 years after the occurrence of the viola-
3 tion of this act that is the subject of the action nor more than
4 1 year after the last payment in a transaction involving the vio-
5 lation, whichever period of time ends on a later date.

6 Sec. 31. (1) Whether or not the person seeks damages or has
7 an adequate remedy at law, a person may bring an action to do
8 either or both of the following:

9 (a) Obtain a declaratory judgment that a method, act, or
10 practice is a violation of this act.

11 (b) Enjoin a person who is engaging or is about to engage in
12 a violation of this act.

13 (2) Except in a class action, a person who suffers loss as a
14 result of a violation of this act may bring an action to recover
15 actual damages or \$250.00, whichever is greater, together with
16 reasonable attorneys' fees.

17 (3) A person who suffers loss as a result of a violation of
18 this act may bring a class action on behalf of persons residing
19 or injured in this state for the actual damages caused by a vio-
20 lation of this act.

21 (4) On motion of a person and without bond in an action
22 brought under subsection (3), the court may make an appropriate
23 order for 1 or more of the following:

24 (a) A program to reimburse persons who have suffered
25 damages.

26 (b) A program to carry out a transaction in accordance with
27 the aggrieved persons' reasonable expectations.

1 (c) A program to strike or limit the application of an
2 unconscionable clause of a weight loss contract to avoid an
3 unconscionable result.

4 (d) A program to grant other appropriate relief.

5 (5) The court after a hearing may appoint a receiver or
6 order sequestration of the defendant's assets if it appears to
7 the satisfaction of the court that the defendant threatens or is
8 about to remove, conceal, or dispose of assets to the detriment
9 of the plaintiff.

10 (6) If at any stage of proceedings brought under subsection
11 (3) the court requires that notice be sent to the class, a person
12 may petition the court to require the defendant to bear the cost
13 of notice. In determining whether to impose the cost on the
14 defendant or the plaintiff, the court shall consider the proba-
15 bility that the person will succeed on the merits of the action.

16 (7) If the defendant shows by a preponderance of the evi-
17 dence that a violation of this act resulted from a bona fide
18 error notwithstanding the maintenance of procedures reasonably
19 adapted to avoid the error, the court shall limit the amount of
20 recovery to actual damages.

21 (8) A person shall not bring an action under this section
22 more than 6 years after the occurrence of the violation of this
23 act that is the subject of the action nor more than 1 year after
24 the last payment in a transaction involving the violation, which-
25 ever period of time ends at a later date. However, when a person
26 commences an action against another person, the defendant may

1 assert, as a defense or counterclaim, any claim under this act
2 arising out of the transaction on which the action is brought.

3 Sec. 33. (1) Upon commencement of an action brought pursu-
4 ant to section 31 or section 39, the clerk of the court shall
5 mail a copy of the complaint to the attorney general, and upon
6 entry of a judgment or decree in the action, the clerk of the
7 court shall mail a copy of the judgment, decree, or order to the
8 attorney general.

9 (2) In a subsequent action by the attorney general brought
10 pursuant to section 29, proof of a violation of a permanent
11 injunction issued pursuant to section 19 is conclusive evidence
12 that the defendant engaged in a violation of this act.

13 Sec. 35. When the attorney general or prosecuting attorney
14 commences an action or files a voluntary assurance pursuant to
15 this act, the clerk of the court shall not require the payment of
16 filing fees.

17 Sec. 37. A law enforcement officer in the state, if
18 requested by the attorney general or a prosecuting attorney,
19 shall aid and assist in an investigation of an alleged or actual
20 violation of this act.

21 Sec. 39. A prosecuting attorney may conduct an investiga-
22 tion pursuant to this act and may institute and prosecute an
23 action under this act in the same manner as the attorney
24 general.

25 Sec. 41. This act does not affect any other cause of action
26 that is available. A city, village, township, or county shall

1 not enact an ordinance or other regulation inconsistent with this
2 act.