

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1288/P2dn

TKK:kjf:nwn

July 19, 2007

Senator Carpenter:

Please review this draft carefully to ensure that I have made all of the changes requested in Joan Pleuss' May 24 e-mail correspondence. Per Ms. Pleuss' recommendation, I did move those portions of s. 448.72 governing use of titles to s. 448.76. However, please note that I did not follow Ms. Pleuss' recommendations on the following changes to s. 448.78 (3) (a) and (b) for the following reasons:

1. Ms. Pleuss requested that I replace "bachelor's, masters or doctoral degree" with "at minimum a baccalaureate degree."

a. The language, "at minimum," may be interpreted to grant the affiliated credentialing board with the power to impose additional requirements upon a candidate for licensure. Was that your intent?

b. Because "baccalaureate" is synonymous with "bachelor's," I chose to retain "bachelor's," which is a more familiar, user-friendly term. Please let me know if this is a problem.

2. Ms. Pleuss requested that I use the phrase, "didactic program in dietetics." I substituted the term, "educational," for "didactic." The term, "didactic," is not used anywhere else in the statutes; "educational" is a more familiar, user-friendly term. Please let me know if this is a problem.

I have three follow-up questions regarding this second draft:

1. Herbs. At the bottom of page two of Joan Pleuss' May 24 e-mail correspondence and attachment, there is a note indicating that "We also want to clarify that this wording is found in 448.72 (1) (e)." I'm confused by this clarification. The statutory cite Ms. Pleuss refers to makes a dietitian serving in the U.S. armed forces exempt from the licensing requirements of this subchapter. Please advise.

2. Exemption from licensing for persons who furnish certain information. The e-mail correspondence and attachment from Joan Pleuss, dated May 24, proposes replacing current s. 448.72 (1) (f) with language applicable to "retailers" and "persons." I have some concerns about the proposed alternative language. Please let me know if you would like to retain the proposed language, return to the language from the /P1, or find some middle ground.

a. The proposed language exempts from licensure retailers that furnish free oral or written general nutrition information to a customer about food, food materials, or dietary supplements sold at that retailer's establishment.

i. Do you wish to define retailer? Would a restaurant or concession stand that furnishes nutrition information about its menu items be included?

ii. What is "general nutrition information"? Would it include how to prepare a recipe?

iii. May the retailer furnish free oral or written information about items not sold at the establishment?

iv. Why must the information be free? What if a person pays for a cooking class at a restaurant or a kitchen goods store where general nutrition information about food and food materials is necessarily part of the discussion?

v. Conversely, must there be a purchase in order for the exemption to apply? The use of the word, customer, may suggest that a purchase must be made, but the person may not actually buy anything at the retail establishment after receiving the information.

b. The proposed language exempts from licensure a person that furnishes free oral or written information about food, food materials, or dietary supplements.

i. I am concerned that there may be confusion between the furnishing of this information and the furnishing of information in a nutritional assessment, which is a regulated activity.

ii. Was it your intent that information about general nutrition be included in this information about food, food materials, or dietary supplements? If so, the concern under b. i., above, becomes more of a concern.

iii. In order to be subject to the exemption, must the information be free? What about a person that charges a fee for meal preparation (a personal chef or a caterer, for example) who also furnishes information about food with the meal?

3. Trade regulation. The May 24 e-mail correspondence and attachment also asks about including broad language governing false, misleading, or deceptive advertising. The proposed language regulates marketing and trade practices, which are addressed in Chapter 100 of the statutes and are enforced by the Department of Agriculture, Trade and Consumer Protection. See, in particular, ss. 100.18 and 100.183.

Do you wish to supplement current law? If you have additional questions about trade regulation, Chris Sundberg in our office, who drafts in trade regulation, can answer those questions for you. His direct line is 266-9739.

If you are comfortable with the changes in this draft, I will prepare an analysis for an introducible draft. I look forward to hearing from you after you have had an opportunity to review this draft.

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