

## HOUSE BILL No. 2139

By Representative Vickrey

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AN ACT concerning consumer protection; relating to diet programs.

*Be it enacted by the Legislature of the State of Kansas:*

Section 1. As used in sections 1 through 4, and amendments thereto:

(a) "Diet company" means any person, except a hospital as defined in K.S.A. 65-425, and amendments thereto, engaged in the business of selling a product or service, the primary purpose of which is to cause weight loss in the person who uses the product or service, but does not include:

(1) Any retailer whose sales of the diet product or service is less than 50% of the total sales of the establishment; or

(2) any health club or other business whose primary focus is on fitness;

(b) "consumer" means a person who uses a diet company to cause weight loss; and

(c) "diet program" means any service offered by a diet company to a consumer, the purpose of which is to reduce the weight of the consumer primarily through a restricted diet.

Sec. 2. A diet company shall not:

(a) Make any written representation regarding the safety of any diet program providing less than 1,000 calories per day unless the diet company provides conspicuous disclosure that a physician is monitoring the program for health risks;

(b) misrepresent the likelihood that the consumer will regain all or a significant portion of the initial weight loss;

(c) represent the success of consumers in achieving weight loss or maintaining weight control unless the diet company possesses and relies upon competent and reliable scientific evidence substantiating the representation and the diet company uses a representative sampling of consumers who have properly used the product or service for more than two weeks, but not including consumers who were unable to use the product or service for the period of time recommended by the diet company due to illness, pregnancy or change of residence;

(d) represent that weight loss will be maintained for an extended period of time unless the diet company has evidence from a representa-

1 tive sampling of consumers who have properly used the diet company's  
2 product or service for more than two weeks, but not including consumers  
3 who were unable to use the product or service for the period of time  
4 recommended by the diet company due to illness, pregnancy or change  
5 of residence, that weight loss was maintained by at least  $\frac{2}{3}$  of such con-  
6 sumers of such diet company's product or service for at least two years  
7 after such time period; or

8 (e) represent that weight loss will be maintained permanently unless  
9 the diet company has evidence from a representative sampling of con-  
10 sumers who have properly used the diet company's product or service for  
11 more than two weeks, but not including consumers who were unable to  
12 use the product or service for the period of time recommended by the  
13 diet company due to illness, pregnancy or change of residence, that  
14 weight loss was maintained by a majority of the consumers for a period  
15 of time which is either:

16 (1) Recognized by experts in the field of obesity; or  
17 (2) demonstrated by competent and reliable survey evidence, as be-  
18 ing of sufficient length to constitute a reasonable basis for predicting  
19 permanent weight loss.

20 Sec. 3. (a) Any written representation by a diet company that con-  
21 sumers have successfully maintained weight loss must include in clear  
22 and conspicuous type and in close proximity to such representation:

23 (1) The average percentage of weight loss maintained by a represen-  
24 tative sample of consumers who have properly used the diet company's  
25 product or service for more than two weeks, but not including consumers  
26 who were unable to use the product or service for the period of time  
27 recommended by the diet company due to illness, pregnancy or change  
28 of residence;

29 (2) the average length of time weight loss was maintained after such  
30 consumers completed use of the product or service, including any main-  
31 tenance program;

32 (3) if the sample consumer population is not representative of the  
33 entire consumer population, the percentage of the entire consumer pop-  
34 ulation which constitutes the sample consumer population or a statement  
35 substantially similar to the following: "These results are not representative  
36 of the entire population which properly used the product or service"; and

37 (4) the statement "For Many Dieters, Weight Loss is Temporary,"  
38 provided, the diet company shall not represent that the statement does  
39 not apply to consumers of their product or service.

40 (b) Each diet program contract shall provide the consumer with:

41 (1) The right to cancel such contract, without liability, within three  
42 business days after the date of receipt by the consumer of a copy of the  
43 signed contract;

1 (2) the estimated duration of the diet program necessary to achieve  
2 the desired weight loss and all estimated costs of the contract, including,  
3 but not limited to, the contract price and the estimated monthly cost of  
4 any goods or services required to be purchased under the contract;

5 (3) a list of dieticians, advanced registered nurse practitioners, reg-  
6 istered nurses, physicians or physician assistants employed by or under  
7 contract with the diet company who are licensed or certified by the de-  
8 partment of health and environment and who monitor the consumer dur-  
9 ing the diet program; and

10 (4) the right to cancel the contract if:

11 (A) The consumer provides a letter from a physician indicating that  
12 continuation of the diet program is adverse to the health of the consumer;  
13 or

14 (B) the consumer relocates such consumer's residence further than  
15 25 miles from any facility which the consumer is required to attend under  
16 the diet program. If a diet program contract is cancelled by the consumer  
17 pursuant to paragraph (4) of this subsection, the consumer shall be re-  
18 imbursement on a pro-rata basis for the portion of the contract price paid by  
19 the consumer that is attributable to the unused contract period.

20 Sec. 4. Sections 1 through 4, and amendments thereto, shall be part  
21 of and supplemental to the Kansas consumer protection act and violation  
22 of any portion of sections 1 through 3, and amendments thereto, shall be  
23 considered an unconscionable act or practice pursuant to K.S.A. 50-627,  
24 and amendments thereto.

25 Sec. 5. This act shall take effect and be in force from and after its  
26 publication in the statute book.

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