



NATIONAL HEALTH FREEDOM ACTION

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New York January 2012 Line-by-Line Opposition Comments On S3556/A5666 Dietitian/Nutritionist Licensing bill

National Health Freedom Action opposes New York S3556/A5666 for the following reasons:

1. **Unconstitutional:** There is no constitutional endangerment rationale or need for licensing in New York bills S3556/A5666 that attempt to license dietitian nutritionists. The current New York title protection of “certified dietitians” and “certified nutritionist” is adequate for the citizens of New York. There is no constitutional rationale for state government to criminalize the practice of nutrition assessments, nutrition evaluations, nutrition therapy or nutrition counseling, by those persons not holding themselves out as certified dietitians and nutritionists. The bill would increase regulation from title certification to licensure regulation. Licensure has the potential of criminal charges, not just for the use of a certified title, but for the actual “practice” of anything within the definitions of the bill including the practice of nutrition assessments, nutrition evaluations, nutrition therapy or nutrition counseling. There is no endangerment justification for this increase in regulation.
2. **Common Practices Prohibited - Page 2, Line 52:** There is no constitutional rationale for adding “nutrition therapy” and “nutrition counseling”, (a very broad sweep of vocations currently practiced by many people in the public domain), to the breadth of definitions for dietitians/nutritionists, (a much more narrow group of people with an industry based skill set). This point alone has created a cultural uprising in resistance to a monopolistic move by a small special interest group.
3. **Dietitians and Nutritionists are Different Professions - Page 3, Line 6:** Creating a combined title of “Dietitian/nutritionist” causes great confusion because the profession of nutrition, and the title “nutritionist”, is a completely different profession than that of dietitians is practiced in a completely different manner and in completely different settings;and they each have different

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academic locations and options. In addition, thousands of citizens practice varying forms of nutrition services.

4. **Subsuming the Entire Field of Nutrition - Page 2, Line 32 - 52:** The bill attempts to subsume the entire field of nutrition by including all of the following terms in the broad licensed scope of practice definitions, making these actions potentially criminal in the future if licensure is mandated: medical nutrition therapy, nutrition care process, nutrition assessment, nutrition diagnosis, nutrition intervention, nutrition evaluation and monitoring, nutrition therapy or nutrition counseling. These actions and practices are actions that any common sense person would do when helping another person increase their wellness.
5. **Misuse of Medical Definitions - Page 2, Line 32:** The bill creates confusion because it begins by defining dietetics and nutrition by using a medical term of “medical nutrition therapy” and then links all other general non-medical nutrition terms to that definition, including: nutrition care process, nutrition assessment, nutrition diagnosis, nutrition intervention, nutrition evaluation and monitoring , nutrition therapy and nutrition counseling.
6. **Freedom of Speech Gag by Special Interest Group - Page 6, Line 5-11: It is unconstitutional for any professional group to define and restrict a subset of free speech to their unclassified constitutional group with sanctions for those who should speak the coveted words.** Section 8007 introduces much confusion to the bill. In Section 8002 the bill spells out prohibitions to the use of titles but makes *no* mention of prohibitions to practice or free speech. Then, in Section 8007, the bill gives the impression that there *are* prohibitions to practice and speech because it provides a list of behaviors and speech that would be exempt from the bill’s requirements. This suggests, for example in clause 2. of 8007, that there would be consequences if anyone spoke anything beyond “furnishing general nutrition information”. And, for example in Page 6, Line 9 and 10, when the bill exempts people “provided that nothing in this subdivision shall be deemed to authorize the provision of medical nutrition therapy” this would suggest that there is a prohibition to all those practices included in the definitions linked to medical nutrition therapy. There is no outright prohibition language in the act for behaviors or speech like there is for the use of title, but, by reference, if you don’t fit under an exemption, you would be non-compliant. If the real reason for the exemptions in this bill is to establish a prohibition to practice, instead of only a prohibition to use of title, then this bill will prohibit all free speech regarding nutrition unless it is “general nutrition information” (undefined). This is entirely unconstitutional. There are select examples of laws that restrict speech having to do with fraud, danger, criminal intent, discrimination, etc., and commercial laws on labeling of products, however, to blatantly carve out a section of speech for a particular group of people, speech that is regularly used in the culture for the sustenance of the people, is so onerous as to have created a justified uprising from New York citizens and consumers.
7. **Promoting a Monoculture:** Giving a small group of people a massive gatekeeping power on health practices and free speech is intolerable. The largest impact to consumers that this would have is to eliminate a large percentage of their current options for information and support in their healing journeys, and would thereby create a monoculture in approaches to health and nutrition.

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8. **Restricting Retailer's Freedom of Speech - Page 6, Line 7-11:** Section 8007 (3.) offends retailers who are currently regulated in their speech about their products by the FDA. New York retailers should not have to worry about the state of New York being more stringent than the federal government on commercial speech. It is already legal for them to sell food, food materials, dietary supplements, or other goods to consumers so it is not the business of New York dietitians to tell them what they can or cannot say when engaged in selling with their customers. New York S3556 attempts to put a broad speech restriction on people who sell products because it links their freedom of speech to an exception, i.e., they have freedom of speech as long as they are not practicing under the definitions of this bill as follows: *"Exemptions. This article shall not be construed to affect or prevent: [...] 3. Any person who does not hold himself or herself out to be licensed pursuant to this article from...; engaging in the explanation to customers about food or food products in connection with the marketing and distribution of those products; provided that nothing in this subdivision shall be deemed to authorize the provision of medical nutrition therapy (underline added)."*
9. **Need for Proper Licensure Exemption - Page 11, Line 15:** S8007 (3.) should be replaced with a proper exemption to protect all unlicensed persons practicing anything that could remotely be construed to be within the definition of medical nutrition therapy, nutrition care process, nutrition assessment, nutrition diagnosis, nutrition intervention, nutrition evaluation and monitoring, nutrition therapy or nutrition counseling. The following is the suggested exemption:

SUGGESTED AMENDMENT:

This article shall not be construed to affect or prevent:

(3.) A person who furnishes nutrition information provides recommendations, counseling or advice concerning nutrition, or markets food, food materials or dietary supplements and provides nutrition information, recommendations or advice related to that marketing, if the person does not represent that he or she is a licensed dietitian or registered dietitian or Licensed Dietitian Nutritionist. While performing acts described in this Article, a person shall be deemed not to be engaged in the practice of dietetics or nutrition.

10. **Weight Loss Programs Need to Be in Public Domain - Page 6, Line 14-16:** This section should be amended by deleting the requirement that weight loss programs be *"approved in writing by a licensed dietitian, a dietitian registered by the commission of dietetic registration of the American Dietetic Association or a licensed physician"*. Dietitians have not been successful at weight control programs in this country and the ADA has strong alliances with large sugar based corporations and conventional food outlets. Allowing a monopolistic group to manage nutrition information can negatively impact the country. Weight control should be in the purview of the public domain where approaches of all kinds can be evaluated and experienced by all consumers.

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11. **Absence of religious exemption:** Licensing laws generally include an exemption for persons practicing according to their religious and philosophical beliefs and this bill contains no such exemption.

Respectfully Submitted,

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