

AN ACT PROTECTING CHILDREN FROM HARMFUL DIET PILLS AND MUSCLE-BUILDING SUPPLEMENTS.

Model Legislation to prohibit the sale of over-the-counter diet pills or dietary supplements for weight loss or muscle building to minors

Referred to Committee on: _____

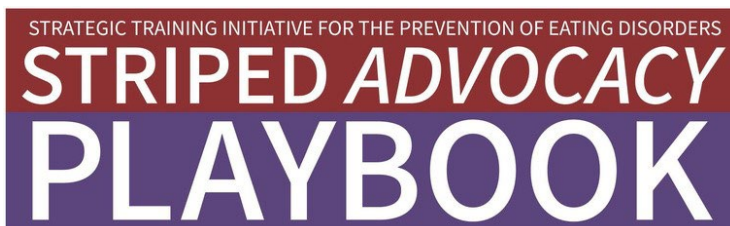
Introduced by: _____

Section 1. Section [110423.7] is added to the [Health and Safety Code], to read:

§ [110423.7]. SALE OF OVER-THE-COUNTER DIET PILLS AND DIETARY SUPPLEMENTS FOR WEIGHT LOSS OR MUSCLE BUILDING.

(a) Definitions: For purposes of this section the following terms shall have the following meanings:

- (1) “Dietary supplement for weight loss or muscle building” means a dietary supplement as defined in [21 U.S.C. 321\(ff\)](#) that is labeled, marketed, or otherwise represented for the purpose of achieving weight loss or building muscle.
- (2) “Over-the-counter diet pill” means a drug as defined in [21 U.S.C. 321\(g\)\(1\)](#) labeled, marketed, or otherwise represented for the purpose of achieving weight loss for which a prescription is not required under the federal Food, Drug and Cosmetic Act.
- (3) “Retail establishment” means any vendor that, in the regular course of business, sells dietary supplements for weight loss or muscle building or over-the-counter diet pills at retail directly to the public, including, but not limited to, pharmacies, grocery stores, other retail stores, and vendors that accept orders placed by mail, telephone, electronic mail, internet website, online catalog, or software application.
- (4) “Delivery sale” means any sale of over-the-counter diet pills or dietary supplements for weight loss or muscle building to a consumer if—
 - (i) The consumer submits the order for the sale by means of a telephone or other method of voice transmission, the mails, or the Internet or other online service, or the seller is otherwise not in the physical presence of the buyer when the request for purchase or order is made; or
 - (ii) The over-the-counter diet pills or dietary supplements for weight loss or muscle building are delivered to the buyer by common carrier, private delivery service, or other method of remote delivery, or the seller is not in the physical presence of the buyer when the buyer obtains possession of the over-the-counter diet pills or dietary supplements for weight loss or muscle building.
- (5) “Delivery Seller” means a person, including online retailers, who makes delivery sales of over-the-counter diet pills or dietary supplements for weight loss or muscle building.



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- (b) Prohibitions: No person shall sell or offer to sell or give away, as either a retail or whole-sale promotion, an over-the-counter diet pill or dietary supplement for weight loss or muscle building to any person under eighteen years of age.
- (c) Responsibilities of retail establishments:
- (1) Any retail establishment that sells over-the-counter diet pills or dietary supplements for weight loss or muscle building shall limit access to such products in a manner designed to prevent unauthorized access to such products. Such products shall not be directly accessible by customers, and may be accessed only by employees of the establishment at such location such as behind retail counter or in a locked case.
 - (2) For purposes of paragraph (1), and subject to paragraph (d), a retail establishment shall request valid identification from any person who attempts to purchase a dietary supplement for weight loss or over-the-counter diet pill if the retail establishment cannot reasonably determine that the person appears to be under 18 years of age.
- (d) Responsibilities of delivery sellers:
- (1) Notwithstanding paragraph (c)(2), a delivery seller, including online retailers, who mails or ships over-the-counter diet pills or dietary supplements for weight loss or muscle building to consumers:
 - (i) Shall not sell, deliver, or cause to be delivered any over-the-counter diet pills or dietary supplements for weight loss or muscle building to a person under eighteen years of age.
 - (ii) Shall use a method of mailing or shipping that requires—
 - (A) The purchaser placing the delivery sale order, or an adult who is at least 18 years of age to sign to accept delivery of the shipping container at the delivery address; and
 - (B) The person who signs to accept delivery of the shipping container to provide proof, in the form of a valid, government-issued identification bearing a photograph of the individual, that the person is at least 18 years of age and
 - (iii) Shall not accept a delivery sale order from a person without—
 - (A) Obtaining the full name, birth date, and residential address of that person; and
 - (B) Verifying the information provided in subclause (A), through the use of a commercially available database or aggregate of databases, consisting primarily of data from government sources, that are regularly used by government and businesses for the purpose of age and identity verification and authentication, to ensure that the purchaser is at least 18 years of age.
 - (2) Limitation: No database being used for age and identity verification under subparagraph (d)(iii) shall be in the possession or under the control of the delivery seller, or be subject to any changes or supplementation by the delivery seller.



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(e) Remedies:

- (1) Whenever there shall be a violation of this section, an application may be made by the attorney general in the name of the people of the state of [insert state name], to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violation; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this section, an injunction may be issued by the court or justice, enjoining and restraining any further violations, without requiring proof that any person has, in fact, been injured or damaged thereby.
- (2) Whenever the court shall determine that a violation of this section has occurred, the court may impose a civil penalty of not more than one thousand dollars (\$1,000).

(f) When determining whether supplement is “labeled, marketed, or otherwise represented for the purpose of achieving weight loss or muscle building” the Attorney General shall consider, but is not limited to, the following factors:

- (1) Whether the product contains:
 - (i) An ingredient approved by the federal Food and Drug Administration for weight loss or muscle building;
 - (ii) A steroid; or
 - (iii) Creatine, green tea extract, raspberry ketone, garcinia cambogia, green coffee bean extract;
- (2) Whether the product’s labeling or marketing bears statements or images that express or imply that the product will help:
 - (i) Modify, maintain, or reduce body weight, fat, appetite, overall metabolism, or the process by which nutrients are metabolized, or
 - (ii) Maintain or increase muscle or strength;
- (3) Whether the product or its ingredients are otherwise represented for the purpose of achieving weight loss or building muscle; and
- (4) Whether the retail establishment or delivery seller has:
 - (i) Placed signs, categorized, or tagged the product with statements described in paragraph (f)(2)
 - (ii) Grouped the product with other weight-loss or muscle building products in a display, advertisement, webpage, or area of the store, or
 - (iii) Otherwise representing that the product is for weight loss or muscle building.

