

STATE OF NEW YORK

16--B

2021-2022 Regular Sessions

IN SENATE

(Prefiled)

January 6, 2021

Introduced by Sens. MAYER, BIAGGI, BRISPORT, BROOKS, BROUK, HARCKHAM, MYRIE, SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law, in relation to establishing restrictions on the sale of over-the-counter diet pills and dietary supplements for weight loss or muscle building and increasing civil penalties for the sale or promotional distribution of dietary supplements containing ephedra

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The general business law is amended by adding a new section
2 391-00 to read as follows:

3 § 391-00. Sale of over-the-counter diet pills and dietary supplements
4 for weight loss or muscle building. 1. No person, firm, corporation,
5 partnership, association, limited liability company, or other entity
6 shall sell or offer to sell or give away, as either a retail or whole-
7 sale promotion, an over-the-counter diet pill or dietary supplement for
8 weight loss or muscle building within New York state to any person under
9 eighteen years of age unless prescribed or ordered by a health care
10 provider legally authorized to prescribe such pills or supplements under
11 title eight of the education law.

12 2. For purposes of this section the following terms shall have the
13 following meanings:

14 (a) "dietary supplements for weight loss or muscle building" means a
15 class of dietary supplement as defined in section three hundred ninety-
16 one-o of this article sold for or used with the intent to achieve weight
17 loss or build muscle;

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

LBD02670-06-1

1 (b) "over-the-counter diet pills" means a class of drugs, sold for or
2 used with the intent to achieve weight loss or build muscle that are
3 lawfully sold, transferred, or furnished over-the-counter with or with-
4 out a prescription pursuant to the federal food, drug, and cosmetic act,
5 21 U.S.C. section 301 et. seq., or regulations adopted thereunder; and

6 (c) "dietary supplements for weight loss or muscle building" and
7 "over-the-counter diet pills" may include, but are not limited to, ther-
8 mogens, which are substances that produce heat in the body and promote
9 more calorie burning, lipotropics, which are compounds that help break
10 down fat during body metabolism, hormones, including hormone modulators
11 and hormone mimetics, appetite suppressants, or ingredients deemed adul-
12 terated under 21 U.S.C.A § 342.

13 3. Whenever there shall be a violation of this section, an application
14 may be made by the attorney general in the name of the people of the
15 state of New York, to a court or justice having jurisdiction by a
16 special proceeding to issue an injunction, and upon notice to the
17 defendant of not less than five days, to enjoin and restrain the contin-
18 uance of such violation; and if it shall appear to the satisfaction of
19 the court or justice that the defendant has, in fact, violated this
20 section, an injunction may be issued by the court or justice, enjoining
21 and restraining any further violations, without requiring proof that any
22 person has, in fact, been injured or damaged thereby. In any such
23 proceeding, the court may make allowances to the attorney general as
24 provided in paragraph six of subdivision (a) of section eighty-three
25 hundred three of the civil practice law and rules, and direct restitu-
26 tion. Whenever the court shall determine that a violation of this
27 section has occurred, the court may impose a civil penalty of not more
28 than two thousand dollars.

29 § 2. Subdivision 4 of section 391-o of the general business law, as
30 added by chapter 385 of the laws of 2003, is amended to read as follows:

31 4. Any person, firm, corporation, partnership, association, limited
32 liability company, or other entity that violates the provisions of this
33 section by selling, offering to sell, or giving away as either a retail
34 or wholesale promotion, a dietary supplement containing any quantity of
35 ephedrine alkaloids shall be subject to a civil penalty of not more than
36 [~~five hundred~~] two thousand dollars per violation, recoverable in an
37 action by any enforcement authority designated by any municipality or
38 political subdivision.

39 § 3. The department of health, in consultation with other state and
40 federal agencies, as appropriate, and relevant stakeholders including,
41 but not limited to, the eating disorders community, shall determine what
42 products constitute over-the-counter diet pills, or dietary supplements
43 for weight loss or muscle building shall have limited accessibility.

44 § 4. This act shall take effect on the one hundred eightieth day after
45 it shall have become a law.