

3310

2009-2010 Regular Sessions

I N A S S E M B L Y

January 26, 2009

Introduced by M. of A. ROSENTHAL, CARROZZA, MARKEY, DINOWITZ, MAISEL, GUNTHER, JAFFEE, FIELDS, REILLY, STIRPE, CLARK, SCHROEDER -- Multi-Sponsored by -- M. of A. BOYLAND, COLTON, GALEF, GREENE, JEFFRIES, JOHN, PAULIN, PHEFFER, ROBINSON, WEISENBERG -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, the general business law and the public health law, in relation to prohibiting the sale of over-the-counter weight loss supplements to minors and requiring educational outreach to minors of the risks of weight loss supplements

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivision 3 and the first closing paragraph of section
2 260.21 of the penal law, as added by chapter 362 of the laws of 1992,
3 are amended and a new subdivision 4 is added to read as follows:
4 3. He sells or causes to be sold tobacco in any form to a child less
5 than eighteen years old[.]; OR
6 4. HE SELLS OR CAUSES TO BE SOLD OVER-THE-COUNTER WEIGHT LOSS SUPPLE-
7 MENTS IN ANY FORM TO A CHILD LESS THAN EIGHTEEN YEARS OLD.
8 It is no defense to a prosecution pursuant to subdivision three OR
9 FOUR of this section that the child acted as the agent or representative
10 of another person or that the defendant dealt with the child as such.
11 S 2. The general business law is amended by adding a new section 391-
12 oo to read as follows:
13 S 391-OO. REGULATION OF OVER-THE-COUNTER WEIGHT LOSS SUPPLEMENTS;
14 DISTRIBUTION TO MINORS PROHIBITED. 1. ANY PERSON OPERATING A PLACE OF
15 BUSINESS WHEREIN OVER-THE-COUNTER WEIGHT LOSS SUPPLEMENTS ARE SOLD OR
16 OFFERED FOR SALE IS PROHIBITED FROM SELLING SUCH PRODUCTS TO INDIVIDUALS
17 UNDER EIGHTEEN YEARS OF AGE, AND SHALL POST IN A CONSPICUOUS PLACE A
18 SIGN UPON WHICH THERE SHALL BE IMPRINTED THE FOLLOWING STATEMENT, "SALE
19 OF OVER-THE-COUNTER WEIGHT LOSS SUPPLEMENTS TO PERSONS UNDER EIGHTEEN
20 YEARS OF AGE IS PROHIBITED BY LAW." SUCH SIGN SHALL BE PRINTED ON A

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

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1 WHITE CARD IN RED LETTERS AT LEAST ONE-HALF INCH IN HEIGHT. SALE OF
2 OVER-THE-COUNTER WEIGHT LOSS PRODUCTS IN SUCH PLACES, SHALL BE MADE ONLY
3 TO AN INDIVIDUAL WHO DEMONSTRATES, THROUGH A DRIVER'S LICENSE OR OTHER
4 PHOTOGRAPHIC IDENTIFICATION CARD ISSUED BY A GOVERNMENT ENTITY OR EDUCA-
5 TIONAL INSTITUTION, THAT THE INDIVIDUAL IS AT LEAST EIGHTEEN YEARS OF
6 AGE. SUCH IDENTIFICATION NEED NOT BE REQUIRED OF ANY INDIVIDUAL WHO
7 REASONABLY APPEARS TO BE AT LEAST TWENTY-FIVE YEARS OF AGE, PROVIDED,
8 HOWEVER, THAT SUCH APPEARANCE SHALL NOT CONSTITUTE A DEFENSE IN ANY
9 PROCEEDING ALLEGING THE SALE OF AN OVER-THE-COUNTER WEIGHT LOSS SUPPLE-
10 MENT TO AN INDIVIDUAL UNDER EIGHTEEN YEARS OF AGE.

11 2. OVER-THE-COUNTER WEIGHT LOSS SUPPLEMENTS MEANS ANY PRODUCT INTENDED
12 FOR THE PURPOSE OF WEIGHT LOSS THAT ARE SOLD WITHOUT THE NEED OF A
13 PRESCRIPTION.

14 S 3. The public health law is amended by adding a new article 13-I to
15 read as follows:

16 ARTICLE 13-I

17 REGULATION OF OVER-THE-COUNTER WEIGHT LOSS SUPPLEMENTS;

18 DISTRIBUTION TO MINORS PROHIBITED

19 SECTION 1399-XX. REGULATION OF OVER-THE-COUNTER WEIGHT LOSS SUPPLEMENTS;
20 DISTRIBUTION TO MINORS PROHIBITED.

21 1399-YY. WEIGHT LOSS SUPPLEMENT PUBLIC AWARENESS PROGRAM.

22 S 1399-XX. REGULATION OF OVER-THE-COUNTER WEIGHT LOSS SUPPLEMENTS;
23 DISTRIBUTION TO MINORS PROHIBITED. 1. ANY PERSON OPERATING A PLACE OF
24 BUSINESS WHEREIN OVER-THE-COUNTER WEIGHT LOSS SUPPLEMENTS ARE SOLD OR
25 OFFERED FOR SALE IS PROHIBITED FROM SELLING SUCH PRODUCTS TO INDIVIDUALS
26 UNDER EIGHTEEN YEARS OF AGE, AND SHALL POST IN A CONSPICUOUS PLACE A
27 SIGN UPON WHICH THERE SHALL BE IMPRINTED THE FOLLOWING STATEMENT, "SALE
28 OF OVER-THE-COUNTER WEIGHT LOSS SUPPLEMENTS TO PERSONS UNDER EIGHTEEN
29 YEARS OF AGE IS PROHIBITED BY LAW." SUCH SIGN SHALL BE PRINTED ON A
30 WHITE CARD IN RED LETTERS AT LEAST ONE-HALF INCH IN HEIGHT. SALE OF
31 OVER-THE-COUNTER WEIGHT LOSS PRODUCTS IN SUCH PLACES, SHALL BE MADE ONLY
32 TO AN INDIVIDUAL WHO DEMONSTRATES, THROUGH A DRIVER'S LICENSE OR OTHER
33 PHOTOGRAPHIC IDENTIFICATION CARD ISSUED BY A GOVERNMENT ENTITY OR EDUCA-
34 TIONAL INSTITUTION, THAT THE INDIVIDUAL IS AT LEAST EIGHTEEN YEARS OF
35 AGE. SUCH IDENTIFICATION NEED NOT BE REQUIRED OF ANY INDIVIDUAL WHO
36 REASONABLY APPEARS TO BE AT LEAST TWENTY-FIVE YEARS OF AGE, PROVIDED,
37 HOWEVER, THAT SUCH APPEARANCE SHALL NOT CONSTITUTE A DEFENSE IN ANY
38 PROCEEDING ALLEGING THE SALE OF AN OVER-THE-COUNTER WEIGHT LOSS SUPPLE-
39 MENT TO AN INDIVIDUAL UNDER EIGHTEEN YEARS OF AGE.

40 2. OVER-THE-COUNTER WEIGHT LOSS SUPPLEMENTS MEANS ANY PRODUCT INTENDED
41 FOR THE PURPOSE OF WEIGHT LOSS THAT ARE SOLD WITHOUT THE NEED OF A
42 PRESCRIPTION.

43 S 1399-YY. WEIGHT LOSS SUPPLEMENT PUBLIC AWARENESS PROGRAM. THE
44 COMMISSIONER SHALL ESTABLISH A WEIGHT LOSS SUPPLEMENT PUBLIC AWARENESS
45 PROGRAM. 1. THE COMMISSIONER SHALL ESTABLISH AN EDUCATIONAL OUTREACH
46 PROGRAM FOR WEIGHT LOSS SUPPLEMENT AWARENESS BY PROVIDING FOR EDUCA-
47 TIONAL OUTREACH SERVICES TO TEENAGERS, PRE-TEENAGERS, PARENTS, SIBLINGS,
48 TEACHERS, GUIDANCE COUNSELORS, PRINCIPALS AND SUPERINTENDENTS.

49 2. THE COMMISSIONER, IN CONSULTATION WITH THE COMMISSIONER OF EDUCA-
50 TION, SHALL PROMULGATE RULES AND REGULATIONS NECESSARY FOR THE IMPLEMEN-
51 TATION OF SUCH OUTREACH PROGRAM, AND SHALL BE DESIGNED TO PROMOTE:

52 (A) INCREASED AWARENESS OF THE RISKS ASSOCIATED WITH WEIGHT LOSS
53 SUPPLEMENTS BY PERSONS UNDER THE AGE OF EIGHTEEN WITHOUT THE CONSULTA-
54 TION OF A LICENSED PHYSICIAN; AND

55 (B) COORDINATION OF PUBLIC AND PRIVATE EFFORTS TO PROVIDE EDUCATIONAL
56 OUTREACH PROGRAMS TO MINORS, PARENTS AND EDUCATORS.

1 3. THE FOLLOWING STRATEGIES MAY BE USED TO RAISE PUBLIC AWARENESS OF
2 THE RISKS ASSOCIATED WITH THE USE OF OVER-THE-COUNTER WEIGHT LOSS
3 SUPPLEMENTS BY PERSONS UNDER THE AGE OF EIGHTEEN:

4 (A) OUTREACH CAMPAIGN UTILIZING PRINT, RADIO AND TELEVISION PUBLIC
5 SERVICE ANNOUNCEMENTS, ADVERTISEMENTS, POSTERS AND OTHER MATERIALS;

6 (B) COMMUNITY FORUMS; AND

7 (C) HEALTH INFORMATION AND RISK-FACTOR ASSESSMENTS AT PUBLIC EVENTS.

8 4. THE DEPARTMENT OF EDUCATION SHALL ASSIST THE DEPARTMENT IN THE
9 DISTRIBUTION OF INFORMATION FOR THE WEIGHT LOSS SUPPLEMENT PUBLIC AWARE-
10 NESS PROGRAM AS ESTABLISHED BY THIS SECTION.

11 S 4. This act shall take effect on the first of November next succeed-
12 ing the date on which it shall have become a law; provided, however,
13 that section three of this act shall take effect on the ninetieth day
14 after it shall have become a law. Effective immediately, the addition,
15 amendment and/or repeal of any rule or regulation necessary for the
16 implementation of this act on its effective date are authorized to be
17 made and completed.