S T A T E O F N E W Y O R K

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I N A S S E M B L Y

January 12, 2011

Introduced by M. of A. ROSENTHAL, MARKEY, DINOWITZ, MAISEL, GUNTHER, JAFFEE, REILLY, CLARK, SCHROEDER -- Multi-Sponsored by -- M. of A. BOYLAND, COLTON, GALEF, 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:

Section 1. Subdivision 3 and the first closing paragraph of section 260.21 of the penal law, as added by chapter 362 of the laws of 1992, are amended and a new subdivision 4 is added to read as follows:

3. He sells or causes to be sold tobacco in any form to a child less than eighteen years old[.]; OR

4. HE SELLS OR CAUSES TO BE SOLD OVER-THE-COUNTER WEIGHT LOSS SUPPLEMENTS IN ANY FORM TO A CHILD LESS THAN EIGHTEEN YEARS OLD.

It is no defense to a prosecution pursuant to subdivision three OR FOUR of this section that the child acted as the agent or representative of another person or that the defendant dealt with the child as such.

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

S 391-OO. REGULATION OF OVER-THE-COUNTER WEIGHT LOSS SUPPLEMENTS; DISTRIBUTION TO MINORS PROHIBITED. 1. ANY PERSON OPERATING A PLACE OF BUSINESS WHEREIN OVER-THE-COUNTER WEIGHT LOSS SUPPLEMENTS ARE SOLD OR OFFERED FOR SALE IS PROHIBITED FROM SELLING SUCH PRODUCTS TO INDIVIDUALS UNDER EIGHTEEN YEARS OF AGE, AND SHALL POST IN A CONSPICUOUS PLACE A SIGN UPON WHICH THERE SHALL BE IMPRINTED THE FOLLOWING STATEMENT, "SALE OF OVER-THE-COUNTER WEIGHT LOSS SUPPLEMENTS TO PERSONS UNDER EIGHTEEN YEARS OF AGE IS PROHIBITED BY LAW." SUCH SIGN SHALL BE PRINTED ON A WHITE CARD IN RED LETTERS AT LEAST ONE-HALF INCH IN HEIGHT. SALE OF

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

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OVER-THE-COUNTER WEIGHT LOSS PRODUCTS IN SUCH PLACES, SHALL BE MADE ONLY TO AN INDIVIDUAL WHO DEMONSTRATES, THROUGH A DRIVER'S LICENSE OR OTHER PHOTOGRAPHIC IDENTIFICATION CARD ISSUED BY A GOVERNMENT ENTITY OR EDUCATIONAL INSTITUTION, THAT THE INDIVIDUAL IS AT LEAST EIGHTEEN YEARS OF AGE. SUCH IDENTIFICATION NEED NOT BE REQUIRED OF ANY INDIVIDUAL WHO REASONABLY APPEARS TO BE AT LEAST TWENTY-FIVE YEARS OF AGE, PROVIDED, HOWEVER, THAT SUCH APPEARANCE SHALL NOT CONSTITUTE A DEFENSE IN ANY PROCEEDING ALLEGING THE SALE OF AN OVER-THE-COUNTER WEIGHT LOSS SUPPLEMENT TO AN INDIVIDUAL UNDER EIGHTEEN YEARS OF AGE.

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

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

ARTICLE 13-I

REGULATION OF OVER-THE-COUNTER WEIGHT LOSS SUPPLEMENTS; DISTRIBUTION TO MINORS PROHIBITED

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

1399-YY. WEIGHT LOSS SUPPLEMENT PUBLIC AWARENESS PROGRAM.

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

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

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

2. THE COMMISSIONER, IN CONSULTATION WITH THE COMMISSIONER OF EDUCATION, SHALL PROMULGATE RULES AND REGULATIONS NECESSARY FOR THE IMPLEMENTATION OF SUCH OUTREACH PROGRAM, AND SHALL BE DESIGNED TO PROMOTE:

(A) INCREASED AWARENESS OF THE RISKS ASSOCIATED WITH WEIGHT LOSS SUPPLEMENTS BY PERSONS UNDER THE AGE OF EIGHTEEN WITHOUT THE CONSULTATION OF A LICENSED PHYSICIAN; AND

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

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

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

(B) COMMUNITY FORUMS; AND

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

4. THE DEPARTMENT OF EDUCATION SHALL ASSIST THE DEPARTMENT IN THE DISTRIBUTION OF INFORMATION FOR THE WEIGHT LOSS SUPPLEMENT PUBLIC AWARENESS PROGRAM AS ESTABLISHED BY THIS SECTION.

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