

4151

2013-2014 Regular Sessions

I N S E N A T E

March 12, 2013

Introduced by Sen. KLEIN -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law, in relation to regulating the sale of sports dietary supplements

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

1 Section 1. The public health law is amended by adding a new article
2 2-B to read as follows:

3 ARTICLE 2-B

4 SPORTS DIETARY SUPPLEMENTS

5 SECTION 290. DEFINITIONS.

6 291. DISCLOSURE; SPORTS DIETARY SUPPLEMENTS.

7 292. SALE OR DISTRIBUTION TO MINORS; PROHIBITION.

8 293. PENALTIES.

9 S 290. DEFINITIONS. AS USED IN THIS ARTICLE, THE FOLLOWING TERMS SHALL
10 HAVE THE FOLLOWING MEANINGS:

11 1. "DIETARY SUPPLEMENT" MEANS A PRODUCT (OTHER THAN TOBACCO) THAT IS
12 (A) INTENDED TO SUPPLEMENT THE DIET AND THAT BEARS OR CONTAINS ONE OR
13 MORE OF THE FOLLOWING DIETARY INGREDIENTS: A VITAMIN, A MINERAL, AN HERB
14 OR OTHER BOTANICAL, AN AMINO ACID, A DIETARY SUBSTANCE FOR THE USE BY A
15 PERSON TO SUPPLEMENT THE DIET BY INCREASING THE TOTAL DAILY INTAKE, OR A
16 CONCENTRATE, METABOLITE, CONSTITUENT, EXTRACT OR COMBINATIONS OF THESE
17 INGREDIENTS; (B) INTENDED FOR INGESTION IN PILL, CAPSULE, TABLET OR
18 LIQUID FORM; AND (C) LABELED AS A "DIETARY SUPPLEMENT" PURSUANT TO THE
19 FEDERAL DIETARY SUPPLEMENT HEALTH AND EDUCATION ACT, 21 U.S.C. 321, AS
20 AMENDED.

21 2. "SPORTS DIETARY SUPPLEMENT" MEANS A DIETARY SUPPLEMENT, HAVING MORE
22 THAN ONE INGREDIENT, WHICH IS SOLD, MARKETING OR DISTRIBUTED TO ENHANCE A
23 PERSON'S PHYSICAL PERFORMANCE OR TO INCREASE A PERSON'S METABOLISM;
24 PROVIDED, HOWEVER, THAT SUCH TERM SHALL NOT INCLUDE ANY DIETARY SUPPLE-
25 MENT IN LIQUID FORM AND CONTAINING CAFFEINE.

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

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1 3. "SYNTHETIC BOTANICAL" MEANS AN INGREDIENT THAT IS A BOTANICAL
2 INGREDIENT THAT IS SYNTHESIZED THROUGH HUMAN MANUFACTURING PRACTICES AND
3 THAT IS NOT EXTRACTED FROM A PLANT OR HERB.

4 S 291. DISCLOSURE; SPORTS DIETARY SUPPLEMENTS. 1. EVERY PERSON, FIRM,
5 CORPORATION, PARTNERSHIP, ASSOCIATION, LIMITED LIABILITY COMPANY OR
6 OTHER ENTITY WHICH SELLS, OFFERS FOR SALE OR GIVES AWAY, AS EITHER A
7 RETAIL OR WHOLESALE PROMOTION, ANY SPORTS DIETARY SUPPLEMENT, SHALL
8 PROVIDE TO EACH INDIVIDUAL, TO WHOM A DIETARY SUPPLEMENT IS SOLD OR
9 GIVEN AWAY, A PAMPHLET PRODUCED BY THE MANUFACTURER OR DISTRIBUTOR OF
10 SUCH SUPPLEMENT, WHICH SHALL INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOW-
11 ING INFORMATION:

12 (A) WHETHER THE SPORTS DIETARY SUPPLEMENT CONTAINS ANY SYNTHETIC
13 BOTANICAL INGREDIENT, AND IDENTIFY EACH SUCH INGREDIENT;

14 (B) WHETHER ANY INGREDIENT IN THE SPORTS DIETARY SUPPLEMENT HAS BEEN
15 BANNED FROM USE BY ANY OF THE FOLLOWING ORGANIZATIONS:

16 (I) THE UNITED STATES ANTI-DOPING AGENCY (USADA),

17 (II) THE WORLD ANTI-DOPING AGENCY (WADA),

18 (III) MAJOR LEAGUE BASEBALL (MLB),

19 (IV) THE NATIONAL FOOTBALL LEAGUE (NFL),

20 (V) THE NATIONAL HOCKEY LEAGUE (NHL),

21 (VI) THE NATIONAL BASKETBALL ASSOCIATION (NBA),

22 (VII) THE NATIONAL ASSOCIATION FOR STOCK CAR AUTO RACING (NASCAR), AND

23 (VIII) THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION (NCAA);

24 (C) ANY KNOWN NEGATIVE ADVERSE EFFECTS AND ANY KNOWN HERB-DRUG INTER-
25 ACTIONS THAT COULD RESULT FROM THE USE OF SUCH SPORTS DIETARY SUPPLE-
26 MENT; AND

27 (D) SUCH ADDITIONAL INFORMATION AS THE COMMISSIONER SHALL DEEM NECES-
28 SARY.

29 2. THE COMMISSIONER SHALL PROMULGATE SUCH RULES AND REGULATIONS AS
30 SHALL BE NECESSARY TO IMPLEMENT THE PROVISIONS OF THIS SECTION, INCLUD-
31 ING THE FORM, CONTENT, SIZE AND CLARITY OF THE LANGUAGE OF THE PAMPHLETS
32 REQUIRED BY SUBDIVISION ONE OF THIS SECTION.

33 S 292. SALE OR DISTRIBUTION TO MINORS; PROHIBITION. NO PERSON, FIRM,
34 CORPORATION, PARTNERSHIP, ASSOCIATION, LIMITED LIABILITY COMPANY OR
35 OTHER ENTITY SHALL SELL, OFFER FOR SALE OR GIVE AWAY, AS EITHER A RETAIL
36 OR WHOLESALE PROMOTION, ANY SPORTS DIETARY SUPPLEMENT TO A CHILD UNDER
37 EIGHTEEN YEARS OF AGE.

38 S 293. PENALTIES. A VIOLATION OF THIS ARTICLE SHALL CONSTITUTE A
39 VIOLATION AS DEFINED IN THE PENAL LAW.

40 S 2. This act shall take effect on the one hundred eightieth day after
41 it shall have become a law; provided, that, effective immediately, any
42 rules and regulations necessary to implement the provisions of this act
43 on its effective date are authorized to be completed on or before such
44 date.