

# STATE OF NEW YORK

431--C

2021-2022 Regular Sessions

## IN ASSEMBLY

(Prefiled)

January 6, 2021

Introduced by M. of A. ROZIC, SEAWRIGHT, EPSTEIN, OTIS, SIMON, JACOBSON, McDONALD -- Multi-Sponsored by -- M. of A. ENGLEBRIGHT -- read once and referred to the Committee on Consumer Affairs and Protection -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Rules -- Rules Committee discharged, bill amended, ordered reprinted as amended and recommitted to the Committee on Rules

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

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-oo to read as follows:

3 § 391-oo. 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

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

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1 loss or build muscle, but shall not include protein powders, protein  
2 drinks and foods marketed as containing protein unless the protein  
3 powder, protein drink or food marketed as containing protein contains an  
4 ingredient other than protein which would, considered alone, constitute  
5 a dietary supplement for weight loss or muscle building;

6 (b) "over-the-counter diet pills" means a class of drugs, sold for or  
7 used with the intent to achieve weight loss or build muscle that are  
8 lawfully sold, transferred, or furnished over-the-counter with or with-  
9 out a prescription pursuant to the federal food, drug, and cosmetic act,  
10 21 U.S.C. section 301 et. seq., or regulations adopted thereunder; and

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

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

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

39 § 3. This act shall take effect one year after it shall have become a  
40 law.