STATE OF NEW YORK

16--D

2021-2022 Regular Sessions

IN SENATE

(Prefiled)

January 6, 2021

Introduced by Sens. MAYER, BIAGGI, BRISPORT, BROOKS, BROUK, HARCKHAM, MYRIE, RIVERA, SANDERS, SEPULVEDA, THOMAS -- 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 -- 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

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

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

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

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

(a) "dietary supplements for weight loss or muscle building" means a class of dietary supplement as defined in section three hundred ninety-

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

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one-o of this article sold for or used with the intent to achieve weight loss or build muscle, but shall not include protein powders, protein drinks and foods marketed as containing protein unless the protein powder, protein drink or food marketed as containing protein contains an ingredient other than protein which would, considered alone, constitute a dietary supplement for weight loss or muscle building;

(b) "over-the-counter diet pills" means a class of drugs, sold for or used with the intent to achieve weight loss or build muscle that are lawfully sold, transferred, or furnished over-the-counter with or without a prescription pursuant to the federal food, drug, and cosmetic act, 21 U.S.C. section 301 et. seq., or regulations adopted thereunder; and

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

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

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

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