

# STATE OF NEW YORK

5823

2023-2024 Regular Sessions

## IN SENATE

March 17, 2023

Introduced by Sen. MAYER -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

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

6 (a) "Dietary supplements for weight loss or muscle building" means a  
7 class of dietary supplement as defined in section three hundred ninety-  
8 one-o of this article that is labeled, marketed, or otherwise repres-  
9 ented for the purpose of achieving weight loss or muscle building, but  
10 shall not include protein powders, protein drinks and foods marketed as  
11 containing protein unless the protein powder, protein drink or food  
12 marketed as containing protein contains an ingredient other than protein  
13 which would, considered alone, constitute a dietary supplement for  
14 weight loss or muscle building.

15 (b) "Over-the-counter diet pills" means a class of drugs labeled,  
16 marketed, or otherwise represented for the purpose of achieving weight  
17 loss that are lawfully sold, transferred, or furnished over-the-counter  
18 with or without a prescription pursuant to the federal food, drug, and  
19 cosmetic act, 21 U.S.C. section 301 et seq., or regulations adopted  
20 thereunder.

21 (c) "Retail establishment" means any vendor that, in the regular  
22 course of business, sells dietary supplements for weight loss or muscle  
23 building or over-the-counter diet pills at retail directly to the  
24 public, including, but not limited to, pharmacies, grocery stores, other

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

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1 retail stores, and vendors that accept orders placed by mail, telephone,  
2 electronic mail, internet website, online catalog, or software applica-  
3 tion.

4 (d) "Delivery sale" means any sale of over-the-counter diet pills or  
5 dietary supplements for weight loss or muscle building to a consumer if:

6 (i) the consumer submits the order for the sale by means of a tele-  
7 phone or other method of voice transmission, mail, or the internet or  
8 other online service, or the seller is otherwise not in the physical  
9 presence of the buyer when the request for purchase or order is made; or

10 (ii) the over-the-counter diet pills or dietary supplements for weight  
11 loss or muscle building are delivered to the buyer by common carrier,  
12 private delivery service, or other method of remote delivery, or the  
13 seller is not in the physical presence of the buyer when the buyer  
14 obtains possession of the over-the-counter diet pills or dietary supple-  
15 ments for weight loss or muscle building.

16 (e) "Delivery seller" means a vendor, including online retailers, who  
17 makes delivery sales of over-the-counter diet pills or dietary supple-  
18 ments for weight loss or muscle building. Such vendors shall include  
19 persons who accept orders placed by mail, telephone, electronic mail,  
20 internet website, online catalog, or software application.

21 2. No person, firm, corporation, partnership, association, limited  
22 liability company, or other entity shall sell or offer to sell or give  
23 away, as either a retail or wholesale promotion, an over-the-counter  
24 diet pill or dietary supplement for weight loss or muscle building with-  
25 in this state to any person under eighteen years of age unless  
26 prescribed or ordered by a health care provider legally authorized to  
27 prescribe such pills or supplements under title eight of the education  
28 law. Retail establishments shall require proof of legal age for purchase  
29 of such products. Such identification need not be required of any indi-  
30 vidual who reasonably appears to be at least twenty-five years of age;  
31 provided, however, that such appearance shall not constitute a defense  
32 in any proceeding alleging the sale of any over-the-counter diet pills  
33 and dietary supplements for weight loss or muscle building to an indi-  
34 vidual under eighteen years of age. Any retail establishment which  
35 violates the provisions of this section shall be subject to a fine of  
36 not more than five hundred dollars for each such violation.

37 3. Notwithstanding subdivision two of this section, a delivery seller,  
38 including an online retailer, who mails or ships over-the-counter diet  
39 pills or dietary supplements for weight loss or muscle building to  
40 consumers:

41 (a) shall not sell, deliver, or cause to be delivered any over-the-  
42 counter diet pills or dietary supplements for weight loss or muscle  
43 building to a person under eighteen years of age; and

44 (b) shall use a method of mailing or shipping:

45 (i) that requires the purchaser placing the delivery sale order, or an  
46 adult who is at least eighteen years of age to sign to accept delivery  
47 of the shipping container at the delivery address; and

48 (ii) that requires the person who signs to accept delivery of the  
49 shipping container to provide proof, in the form of a valid, govern-  
50 ment-issued identification bearing a photograph of the individual, that  
51 the person is at least eighteen years of age.

52 4. Whenever there shall be a violation of this section, an application  
53 may be made by the attorney general in the name of the people of the  
54 state of New York, to a court or justice having jurisdiction by a  
55 special proceeding to issue an injunction, and upon notice to the  
56 defendant of not less than five days, to enjoin and restrain the contin-

1 uance of such violation; and if it shall appear to the satisfaction of  
2 the court or justice that the defendant has, in fact, violated this  
3 section, an injunction may be issued by the court or justice, enjoining  
4 and restraining any further violations, without requiring proof that any  
5 person has, in fact, been injured or damaged thereby. Whenever a court  
6 shall determine that a violation of this section has occurred, the court  
7 may impose a civil penalty of not more than five hundred dollars.

8 5. When determining whether an over-the-counter diet pill or dietary  
9 supplement is labeled, marketed, or otherwise represented for the  
10 purpose of achieving weight loss or muscle building, the court shall  
11 consider, but is not limited to, the following factors:

12 (a) whether the product contains:

13 (i) an ingredient approved by the federal Food and Drug Administration  
14 for weight loss or muscle building;

15 (ii) a steroid; or

16 (iii) creatine, green tea extract, raspberry ketone, garcinia cambo-  
17 gia, green coffee bean extract;

18 (b) whether the product's labeling or marketing bears statements or  
19 images that express or imply that the product will help:

20 (i) modify, maintain, or reduce body weight, fat, appetite, overall  
21 metabolism, or the process by which nutrients are metabolized, and

22 (ii) maintain or increase muscle or strength; and

23 (c) whether the product or its ingredients are otherwise represented  
24 for the purpose of achieving weight loss or building muscle.

25 § 2. This act shall take effect on the one hundred eightieth day  
26 after it shall have become a law.