

CONCURRENCE IN SENATE AMENDMENTS

AB 1341 (Cristina Garcia and Aguiar-Curry)

As Amended June 8, 2022

Majority vote

SUMMARY

Prohibits a retail establishment from selling, transferring, or furnishing dietary supplements for weight loss or over-the-counter (OTC) diet pills to anyone under 18 years of age without a prescription. Requires a retail establishment to request a valid identification from any person who attempts to purchase a dietary supplement for weight loss and OTC diet pill if that person reasonably appears to the retail establishment to be under 18 years of age. Requires the Department of Public Health (DPH), in consultation with stakeholders, to determine which dietary supplements are subject to this bill, and to develop a notice for distribution to retail establishments to post that certain dietary supplements for weight loss or OTC diet pills may contribute to specified health problems. Makes this bill operative on July 1, 2023 and establishes specific penalty for violations.

Senate Amendments

Delete and recast the provisions of this bill and revise the definition of dietary supplements for weight loss and OTC diet pills. Require a retail establishment to request a valid identification from any person who attempts to purchase a dietary supplement for weight loss and OTC diet pill if that person reasonably appears to the retail establishment to be under 18 years of age; and, make this bill operative on July 1, 2023.

COMMENTS

California regulations define dietary supplements as an article (other than tobacco) intended to supplement the diet that bears or contains one or more of the following dietary ingredients: a vitamin, mineral, herb or other botanical, an amino acid, a dietary substance for use by humans to supplement the diet by increasing the total dietary intake, or a concentrate, metabolite, constituent, extract, or combination of any ingredient described in above. A dietary supplement may be food or drug or both. Unlike drugs, dietary supplements are not subject to approval or rigorous regulation by the federal Food and Drug Administration (FDA) because they are treated more like food. Specifically, manufacturers and distributors of dietary supplements and dietary ingredients are prohibited from marketing products that are adulterated or misbranded. Essentially, manufacturers of dietary supplements are responsible for evaluating the safety and labeling of their *own* products before marketing to ensure that they meet all the requirements of the federal Dietary Supplement Health and Education Act of 1994 and FDA regulations. Estimates on the revenue from vitamin and nutritional supplement production reached nearly \$31 billion in the United States in 2018 and the industry is set to add over a billion more in revenue in 2019. By 2024 the value of the United States dietary supplement market is expected to reach \$56.7 billion. According to 2015 data, Americans spent \$2 billion on dietary supplements for weight loss, and another \$2.6 billion on muscle-building products.

Current restriction on the sale of dietary supplements to persons under 18 years of age. Existing law makes it a misdemeanor for any manufacturer, wholesaler, retailer or other person to sell, transfer or furnish any of the following to anyone under 18 years of age:

- 1) A dietary supplement containing an ephedrine group alkaloid;

- 2) A dietary supplement containing any of the following (forms or classes of steroids):
 - a) Androstenediol.
 - b) Androstenedione.
 - c) Androstenedione
 - d) Norandrostenediol.
 - e) Norandrostenedione.
 - f) Dehydroepiandrosterone.

A seller must request valid identification from any individual who attempts to purchase a dietary supplement specified in 1) and 2) above if that individual reasonably appears to the seller to be under 18 years of age. A violation of the above provisions carries a penalty of \$1,000 for the first violation, \$2,000 for the second violation and \$5,000 for the third and each subsequent violation. It should be noted that a retail clerk who fails to request identification is not guilty of a misdemeanor nor is subject to any civil penalties, or any disciplinary action or discharge by his or her employer unless the retail clerk is a willful participant in a criminal conspiracy, as specified. Moreover, a retail establishment that sells, transfers, or otherwise furnishes a dietary supplement product in violation of a) and b) is not guilty of a misdemeanor if certain conditions are met including that the checkout clerks have fulfilled specified standardized training and checkout scanner or computer used to check out customers with purchases is programmed to identify dietary supplement products; or if every checkout clerk has received a written list of dietary supplement products subject to this article that are sold by the retail establishment that may be posted at the checkout station for easy access.

According to the Author

Teens use dietary supplements for weight loss and muscle building even though doctors say they shouldn't. With limited regulatory oversight, some dietary supplements are laced with banned pharmaceuticals, steroids, and other toxic ingredients. Dangerous stimulants are also often found in widely available supplements for weight loss. Accordingly, research shows that health inequities exist across race/ethnicity, gender, and socioeconomic status:

- 1) Women are two times more likely to use weight loss supplements and OTC diet pills than men;
- 2) African American and Latinx adults are at a higher risk of using weight loss supplements than white adults;
- 3) People in households with annual income less than \$40,000 are more likely to use dietary supplements for weight loss than those with higher incomes; and,
- 4) Latinx teens are 40% more likely to use OTC diet pills than white teens.

The author points out that to limit the harmful impact OTC diet pills have on our youth, this bill would ban retail establishments from selling these products to minors under the age of 18. Additionally, this bill would require stores to keep these products behind the counter or in a

locked case, requiring consumers to request them directly from a pharmacist, manager, or other supervisory personnel.

Arguments in Support

The Strategic Training Initiative for the Prevention of Eating Disorders, the sponsor of this bill states that while these dietary supplements deceptively claim to promote healthy weight loss – some using celebrity endorsers – these products are not required to demonstrate rigorous testing for safety or efficacy before entering the market, are not medically recommended, and are inadequately regulated by the FDA. Alarming, there are no age restrictions on the sale of these products, leaving young people, who are particularly vulnerable to deceptive marketing claims, with no protection from purchasing these dangerous products.

Arguments in Opposition

The Department of Finance is opposed to this measure because the additional workload associated with this bill creates new General Fund costs for DPH that were not included in the 2022 Budget Act.

The Council for Responsible Nutrition and the American Herbal Products Association state in opposition that they are concerned that seeking to ban these products when there is no credible scientific connection that weight management products either lead to or otherwise cause body dysmorphia or eating disorders, is an unjustifiable overreach and will not achieve the stated intent of the bill. The Natural Products Association (NPA) indicates in its opposition that its members and stakeholders invest significant human resources and capital to ensure their products are safe, including good manufacturing processes, random product testing, adhering to appropriate marketing guidelines. NPA opines that there is no basis to suggest that those with eating disorders have an association with consuming muscle building products. Additionally, if minors cannot purchase safe and natural nutrition supplements from a legal retailer, they will get them elsewhere, possibly from crooks who undermine the integrity of the industry. The National Association of Chain Drug Stores state that by requiring retailers and pharmacies to move OTC dietary supplements from stock on the floor to behind the counter, this bill will cause substantial workflow issues for our members and take time away from patient care when pharmacies can least afford it. Adding a new burdensome requirement will only distract from these critical services our members are providing, while limiting access to supplements that are critical to the health and wellness of many Californians.

FISCAL COMMENTS

According to the Senate Appropriations Committee analysis, DPH estimates annual ongoing costs of approximately \$800,000 (General Fund) for activities related to product evaluation, promulgating regulations, and investigating complaints.

VOTES:

ASM HEALTH: 11-1-3

YES: Wood, Aguiar-Curry, Bonta, Burke, Carrillo, Maienschein, McCarty, Nazarian, Chiu, Rodriguez, Santiago

NO: Waldron

ABS, ABST OR NV: Mayes, Bigelow, Flora

ASM JUDICIARY: 8-3-0

YES: Stone, Chau, Chiu, Lorena Gonzalez, Holden, Kalra, Maienschein, Reyes

NO: Gallagher, Davies, Kiley

ASM APPROPRIATIONS: 12-2-2

YES: Holden, Bryan, Calderon, Luz Rivas, Gabriel, McCarty, Levine, Quirk, Robert Rivas, Akilah Weber, Stone, Mullin

NO: Davies, Fong

ABS, ABST OR NV: Bigelow, Megan Dahle

ASSEMBLY FLOOR: 53-13-10

YES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bloom, Boerner Horvath, Bryan, Burke, Calderon, Cervantes, Cooley, Cunningham, Daly, Friedman, Gabriel, Cristina Garcia, Gipson, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Lee, Levine, Low, Maienschein, McCarty, Medina, Mullin, Muratsuchi, Nazarian, O'Donnell, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Stone, Ting, Villapudua, Ward, Akilah Weber, Wicks, Wood, Rendon

NO: Bigelow, Choi, Davies, Fong, Gallagher, Kiley, Lackey, Mathis, Nguyen, Patterson, Seyarto, Smith, Voepel

ABS, ABST OR NV: Mia Bonta, Carrillo, Chen, Cooper, Megan Dahle, Flora, Eduardo Garcia, Mayes, Valladares, Waldron

SENATE FLOOR: 32-6-2

YES: Allen, Archuleta, Atkins, Becker, Bradford, Caballero, Cortese, Dodd, Durazo, Eggman, Glazer, Gonzalez, Hertzberg, Hueso, Hurtado, Kamlager, Laird, Leyva, Limón, McGuire, Min, Newman, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener, Wilk

NO: Borgeas, Dahle, Grove, Jones, Melendez, Nielsen

ABS, ABST OR NV: Bates, Ochoa Bogh

UPDATED

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