

SENATE BILL REPORT

SB 5622

As of February 14, 2025

Title: An act relating to establishing restrictions on the sale of over-the-counter diet pills and dietary supplements for weight loss or muscle building to individuals under 18 years of age.

Brief Description: Establishing age restrictions on diet pills and dietary supplements.

Sponsors: Senators Lovick, Dhingra and Liias.

Brief History:

Committee Activity: Business, Financial Services & Trade: 2/19/25.

Brief Summary of Bill

- Prohibits the offer, sale, or promotional giveaway of over-the-counter diet pills and dietary supplements for weight loss or muscle building to a person under 18 years of age.
- Defines terms and specifies factors in determining the represented purpose of an over-the-counter diet pill or dietary supplement.
- Specifies requirements for proof of legal age and provides requirements and restrictions regarding the use of transaction scan devices and information use and retention.
- Provides requirements and restrictions on delivery sellers.
- Authorizes the Office of the Attorney General to enforce provisions and specifies penalties.

SENATE COMMITTEE ON BUSINESS, FINANCIAL SERVICES & TRADE

Staff: John Kim (786-7453)

Background: New York Law and Legal Challenges. In October 2023, the state of New

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York enacted Assembly Bill A5610D (A5610D), which prohibited the sale of over-the-counter diet pills and dietary supplements marketed for weight loss or muscle building to consumers under the age of 18, effective in April 2024.

The provisions in the current bill are substantially similar to those in A5610D. According to the authors of the model legislation, the legislation has also been introduced in California, Massachusetts, New Jersey, and Virginia.

A5610D has been challenged in two separate actions, one filed by the Natural Products Association against the New York attorney general in the United States District Court for the Eastern District of New York, and another filed by the Council for Responsible Nutrition against the attorney general of New York in the United States District Court for the Southern District of New York.

Claims raised by the Natural Products Association included that A5610D was preempted by the Federal Food, Drug, and Cosmetic Act (FDCA) and that it violated the Dormant Commerce Clause by regulating interstate commerce. In June 2024, the district court denied Natural Products Association's motion for a preliminary injunction and dismissed the action for a lack of subject matter jurisdiction.

Claims raised by the Council for Responsible Nutrition included that the law violated the First Amendment relating to commercial speech; that the law is void-for-vagueness under due process under the Fourteenth Amendment; that the law constitutes an excessive use of police powers; and that it is preempted under the FDCA. Following the district court's dismissal of all claims but the First Amendment claim, the Council for Responsible Nutrition appealed to the United States Court of Appeals for the Second Circuit, where the case is currently pending.

Summary of Bill: Prohibition Against the Offer or Sale of Over-the-Counter Diet Pills or Dietary Supplements for Weight Loss or Muscle Building to Persons Under the Age of 18.

The bill prohibits a person from selling, offering to sell, or giving away, as either a retail or wholesale promotion, an over-the-counter diet pill or dietary supplement for weight loss or muscle building within this state to any person under 18 years of age.

Over-the-counter diet pills are defined as a class of drugs labeled, marketed, or otherwise represented for the purpose of achieving weight loss that can be obtained without a prescription and is not restricted to use by prescribing practitioners.

A dietary supplement is defined as any product, other than tobacco, intended to supplement the diet that contains one or more of the following dietary ingredients:

- a vitamin;
- a mineral;
- an 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 specified food and food ingredients.

In addition to meeting the above, a dietary supplement must also be:

- intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and
- required to be labeled as a dietary supplement, identifiable by the supplement facts box found on the label as required pursuant to a federal nutrition labeling regulation.

A dietary supplement for weight loss or muscle building is defined as a dietary supplement that is labeled, marketed, or otherwise represented for the purpose of achieving weight loss or muscle building. It does not include protein powders, protein drinks, or 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.

A person includes any individual, firm, corporation, partnership, association, limited liability company, or other entity.

Factors in Considering the Represented Purpose of Over-the-Counter Diet Pill or Dietary Supplements. The bill provides that when a court is determining whether an over-the-counter diet pill or dietary supplement is labeled, marketed, or otherwise represented for the purpose of achieving weight loss or muscle building, the court must consider at least the following factors:

- whether the product contains an ingredient approved by the United States Food and Drug Administration for weight loss or muscle building or whether the product contains a steroid, creatine, green tea extract, raspberry ketone, *Garcinia cambogia*, or green coffee bean extract;
- whether the product's labeling or marketing bears statements or images that express or imply that the product will help modify, maintain, or reduce body weight, fat, appetite, overall metabolism, or the process by which nutrients are metabolized; or maintain or increase muscle or strength;
- whether the product or its ingredients are otherwise represented for the purpose of achieving weight loss or building muscle; or
- whether the retailer has categorized the dietary supplement for weight loss or muscle building by placing signs, categorizing, or tagging the supplement with statements described above; grouping the supplements with other weight loss or muscle building products in a display, advertisement, web page, or area of the store; or otherwise representing that the product is for weight loss or muscle building.

Requirement of Proof of Legal Age for Retail Establishments. Retail establishments must

require proof of legal age for the purchase of over-the-counter diet pills and dietary supplements for weight loss or muscle building.

A retail establishment is defined as any vendor that, in the regular course of business, sells dietary supplements for weight loss or muscle building or over-the-counter diet pills at retail directly to the public, including pharmacies, grocery stores, other retail stores, and vendors that accept orders placed by mail, telephone, email, a website, online catalog, or software application.

Identification Requirements. The bill provides that proof of legal age includes any of the following officially issued identification that shows the purchaser's age and bears the purchaser's signature and photograph:

- driver's license, instruction permit, or identification card of a state or province of Canada;
- IDenticard issued by the Washington State Department of Licensing;
- United States military identification;
- passport;
- enrollment card issued by the governing authority of a federally recognized Indian tribe located in Washington; or
- Merchant Marine identification card issued by the United States Coast Guard.

Identification is not required of any individual who reasonably appears to be at least 25 years of age. The bill provides that the appearance of the purchaser does not constitute a defense in any proceeding alleging the sale of any over-the-counter diet pills and dietary supplements for weight loss or muscle building to an individual under 18 years of age.

Use of Transaction Scan Devices. The bill provides that any person operating a retail establishment may perform a transaction scan as a precondition for the purchase of over-the-counter diet pills or dietary supplements for weight loss or muscle building.

If the information deciphered by the transaction scan fails to match the information printed on the driver's license or nondriver identification card or if the transaction scan indicates that the information is false or fraudulent, the attempted transaction must be denied.

Affirmative Defense. In any proceeding brought by the attorney general to enforce the provisions created by the bill, it is an affirmative defense that the purchaser produced one of the above listed identification, successfully completed that transaction scan, and that over-the-counter diet pills or dietary supplements for weight loss or muscle building were sold, delivered, or given to the purchaser in reasonable reliance on the identification and transaction scan.

The bill requires the court to take into consideration any written policy adopted and implemented by the seller to carry out the provisions created by the bill. Use of a transaction scan may not excuse any person operating a retail establishment from the

exercise of reasonable diligence otherwise required by the provisions created by the bill.

Restriction on the Use and Retention of Information from Transaction Scan Devices. The bill requires that a retail establishment or its employees may use only a transaction scan device capable of deciphering any electronically readable format and may use the information recorded and maintained using such devices only for the purposes contained in provisions created by the bill.

Retail establishments and their employees are prohibited from reselling or disseminating the information recorded during use of a transaction scan device to any third person, including any advertising, marketing, or promotional activities. Transaction information may be released under a court-ordered subpoena or a statute that specifically authorizes the release of the information.

A retail establishment or its employees may electronically or mechanically record and maintain only the following information from a transaction scan:

- name;
- date of birth;
- identification number; and
- expiration date of the identification.

Requirements and Restrictions on Delivery Sellers. A delivery seller is defined as a vendor, including an online retailer, who makes delivery sales of over-the-counter diet pills or dietary supplements for weight loss or muscle building. It includes persons who accept orders placed by mail, telephone, email, a website, online catalog, or software application.

A delivery sale is defined as any sale of over-the-counter diet pills or dietary supplements for weight loss or muscle building to a consumer if:

- the consumer submits the order for the sale by means of a telephone or other method of voice transmission, mail, or the Internet or other online service, or the seller is otherwise not in the physical presence of the buyer when the request for purchase or order is made; or
- the over-the-counter diet pills or dietary supplements for weight loss or muscle building are delivered to the buyer by common carrier, private delivery service, or other method of remote delivery, or the seller is not in the physical presence of the buyer when the buyer obtains possession of the over-the-counter diet pills or dietary supplements for weight loss or muscle building.

A delivery seller, including an online retailer, who mails or ships over-the-counter diet pills or dietary supplements for weight loss or muscle building to consumers:

- may not sell, deliver, or cause to be delivered any over-the-counter diet pills or dietary supplements for weight loss or muscle building to a person under 18 years of age; and
- must use a method of mailing or shipping that requires the purchaser placing the

delivery sale order, or an adult who is at least 18 years of age to sign to accept delivery of the shipping container at the delivery address; and that requires the person who signs to accept delivery of the shipping container to provide proof, in the form of a valid, government-issued identification bearing a photograph of the individual, that the person is at least 18 years of age.

Enforcement by the Office of the Attorney General and Penalties. The Office of the Attorney General may investigate violations of provisions created by the bill and may bring actions to enforce compliance and enjoin further violations.

For violations of the restriction against reselling or disseminating transaction scan device information, a court may impose of penalty of up to \$1,000 per violation. For all other violations of provisions created by the bill, the court may impose a penalty of up to \$500 per violation.

Appropriation: None.

Fiscal Note: Requested on February 13, 2025.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.