

Assembly Bill No. 1341

Passed the Assembly August 24, 2022

Chief Clerk of the Assembly

Passed the Senate August 23, 2022

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2022, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Section 110423.7 to the Health and Safety Code, relating to public health.

LEGISLATIVE COUNSEL'S DIGEST

AB 1341, Cristina Garcia. Dietary supplements for weight loss and over-the-counter diet pills.

Existing law, the Sherman Food, Drug, and Cosmetic Law, provides for the regulation of various subjects relating to the processing, labeling, advertising, and sale of food, drugs, and cosmetics, including dietary supplements, under the administration and enforcement of the State Department of Public Health. A violation of those provisions is a crime. Under existing law, it is a misdemeanor for any manufacturer, wholesaler, retailer, or other person to sell, transfer, or otherwise furnish a dietary supplement containing ephedrine group alkaloids or other specified substances to a person under 18 years of age, and a seller is required to request a valid identification of prospective purchasers who reasonably appear to be under 18 years of age.

This bill would prohibit a retail establishment from selling, transferring, or otherwise furnishing dietary supplements for weight loss or over-the-counter (OTC) diet pills, as defined, to any person under 18 years of age without a prescription, by requiring the retail establishment to follow a specified identification check. The bill would, to the extent not in conflict with federal law, require the department to develop a notice stating that certain dietary supplements for weight loss or OTC diet pills may contribute to specified health conditions or death. The bill would require a retail establishment that sells those products to post that notice.

The bill would require the department, in consultation with certain entities, to determine which dietary supplements for weight loss and OTC diet pills would be subject to these provisions, in a manner consistent with specified criteria.

The bill would make a person who violates these provisions liable for a civil penalty of no more than \$1,000 for each violation, as specified. The bill would exempt a retail clerk from any civil penalties, or disciplinary action or discharge by the retail

establishment, for a violation of these provisions, except as specified. Under the bill, the above-described criminal penalty would not apply to a violation of these provisions.

The bill would make these provisions operative on July 1, 2023, and would make the provisions severable.

The people of the State of California do enact as follows:

SECTION 1. Section 110423.7 is added to the Health and Safety Code, to read:

110423.7. (a) For purposes of this section, the following definitions apply:

(1) “Dietary supplements for weight loss” means a class of dietary supplements that are labeled, marketed, or otherwise represented for the purpose of achieving weight loss and that are under the regulation of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.), and regulations adopted thereunder. “Dietary supplements for weight loss” includes products marketed with a Supplement Facts panel, pursuant to federal regulations, that contain either lawful dietary ingredients or ingredients deemed adulterated under Section 342 of Title 21 of the United States Code, or both. “Dietary supplements for weight loss” does not include dietary fiber products.

(2) “Over-the-counter diet pills” means a class of drugs that are labeled, marketed, or otherwise represented for the purpose of achieving weight loss and that are lawfully sold, transferred, or otherwise furnished without a prescription, under the regulation of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.), and regulations adopted thereunder. “Over-the-counter diet pills” includes products marketed with a Drug Facts panel, pursuant to federal regulations, that contain either approved drug ingredients or ingredients deemed adulterated under Section 342 of Title 21 of the United States Code, or both.

(3) “Retail establishment” means any vendor that, in the regular course of business, sells dietary supplements for weight loss or over-the-counter diet pills at retail directly to the public, including, but not limited to, pharmacies, grocery stores, other retail stores, and vendors that accept orders placed by mail, telephone, electronic mail, internet website, online catalog, or software application.

(b) (1) A retail establishment shall not sell, transfer, or otherwise furnish dietary supplements for weight loss or over-the-counter diet pills to any person under 18 years of age without a prescription.

(2) For purposes of paragraph (1), a retail establishment shall request valid identification from any person who attempts to purchase a dietary supplement for weight loss or over-the-counter diet pill if that person reasonably appears to the retail establishment to be under 18 years of age.

(c) (1) A retail establishment shall post the notice described in paragraph (2) for purposes of dietary supplements for weight loss and over-the-counter diet pills.

(2) The State Department of Public Health shall develop a notice, for distribution to retail establishments to post pursuant to paragraph (1), stating that certain dietary supplements for weight loss or over-the-counter diet pills may contribute to gastrointestinal impairment, tachycardia, hypertension, myocardial infarction, stroke, organ failure, other serious injury, death, or severe liver injury sometimes requiring transplant or leading to death.

(d) The State Department of Public Health, in consultation with the United States Food and Drug Administration and stakeholders, including, but not limited to, representatives from the eating disorders community, shall determine which dietary supplements for weight loss and over-the-counter diet pills shall be subject to this section, in a manner consistent with the definitions in subdivision (a) and with a finding that the supplement or pill may contribute to any of the health conditions described in paragraph (2) of subdivision (c).

(e) (1) Section 111825 does not apply to a violation of this section.

(2) Subject to paragraph (3), a person who violates this section shall be liable for a civil penalty of no more than one thousand dollars (\$1,000) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney, county counsel, or city attorney in any court of competent jurisdiction.

(3) A retail clerk shall not be subject to any civil penalty, or to any disciplinary action or discharge by the retail establishment, for a violation of this section. This paragraph does not apply to a

retail clerk who is a willful participant in an ongoing conspiracy to violate this section.

(f) The notice requirements described in this section shall be implemented only to the extent not in conflict with federal law.

(g) This section shall become operative on July 1, 2023.

(h) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

Approved _____, 2022

Governor