

A BILL FOR AN ACT

RELATING TO HEALTH.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

"CHAPTER

5 SALES OF CERTAIN DIET AND MUSCLE-BUILDING PRODUCTS TO MINORS

6 § -1 **Definitions.** For purposes of this chapter, unless
7 the context requires otherwise:

8 "Delivery sale" means any sale to a consumer of
9 over-the-counter diet pills or dietary supplements for weight
10 loss or muscle building if:

11 (1) The consumer submits the order for the sale by means
12 of a telephone or other method of voice transmission,
13 mail, or the internet or other online service, or the
14 seller is otherwise not in the physical presence of
15 the buyer when the request for purchase or order is
16 made; or



1 (2) The over-the-counter diet pills or dietary supplements
2 for weight loss or muscle building are delivered to
3 the buyer by common carrier, private delivery service,
4 or other method of remote delivery, or the seller is
5 not in the physical presence of the buyer when the
6 buyer obtains possession of the over-the-counter diet
7 pills or dietary supplements for weight loss or muscle
8 building.

9 "Delivery seller" means a vendor, including any online
10 retailer, that makes delivery sales of over-the-counter diet
11 pills or dietary supplements for weight loss or muscle building.

12 "Delivery seller" includes any person that accepts orders placed
13 by mail, telephone, electronic mail, internet website, online
14 catalog, or software application.

15 "Dietary supplement" shall have the same meaning as in
16 title 21 United States Code section 321.

17 "Dietary supplement for weight loss or muscle building"
18 means a class of dietary supplement that is labeled, marketed,
19 or otherwise represented for the purpose of achieving weight
20 loss or muscle building.



1 "Over-the-counter diet pill" means a class of drugs that
2 are labeled, marketed, or otherwise represented for the purpose
3 of achieving weight loss and sold, transferred, or furnished
4 over the counter, with or without a prescription, pursuant to
5 the Federal Food, Drug, and Cosmetic Act, title 21 United States
6 Code chapter 9, or regulations adopted pursuant to that Act.

7 "Retail establishment" means any vendor that, in the
8 regular course of business, sells dietary supplements for weight
9 loss or muscle building or over-the-counter diet pills at retail
10 directly to the public, including, but not limited to,
11 pharmacies, grocery stores, other retail stores, and vendors
12 that accept orders placed by mail, telephone, electronic mail,
13 internet website, online catalog, or software application.

14 **§ -2 General prohibition regarding minors; proof of**
15 **legal age.** (a) Except as provided by this chapter, no person
16 shall sell, offer to sell, or give away, as either a retail or
17 wholesale promotion, any over-the-counter diet pill or dietary
18 supplement for weight loss or muscle building to any person
19 within the State who is under eighteen years of age. Each
20 retail establishment shall require proof of legal age for the
21 purchase of the aforementioned products.



§ -3 Scans; identification cards; driver's licenses.

17 (a) Any person operating a retail establishment may scan the
18 machine-readable zone of an individual's identification card or
19 driver's license pursuant to section 487J-6 as a precondition
20 for the purchase of over-the-counter diet pills or dietary
21 supplements for weight loss or muscle building.



1 (b) In any instance in which the information deciphered by
2 the scan fails to match the information printed on the driver's
3 license or identification card, or any instance in which the
4 transaction scan indicates that the information is false or
5 fraudulent, the attempted transaction shall be denied.

6 (c) In any proceeding pursuant to section -5, it shall
7 be an affirmative defense that the person produced a driver's
8 license or identification card apparently issued by a
9 governmental entity; that the machine-readable scan appeared to
10 verify the person's age; and that over-the-counter diet pills or
11 dietary supplements for weight loss or muscle building were
12 sold, delivered, or given to the person in reasonable reliance
13 upon the presentation of the identification and completion of
14 the scan. In evaluating the applicability of this affirmative
15 defense, the court shall take into consideration any written
16 policy adopted and implemented by the seller to comply with this
17 chapter. The practice of scanning of machine-readable zones of
18 driver's licenses and identification cards shall not excuse any
19 person operating a retail establishment from the exercise of
20 reasonable diligence otherwise required by this chapter.



1 **§ -4 Delivery sellers.** Notwithstanding section -2, a
2 delivery seller, including an online retailer, that mails or
3 ships over-the-counter diet pills or dietary supplements for
4 weight loss or muscle building to consumers:

5 (1) Shall not sell, deliver, or cause to be delivered any
6 over-the-counter diet pill or dietary supplement for
7 weight loss or muscle building to a person under
8 eighteen years of age; and
9 (2) Shall use a method of mailing or shipping that
10 requires:

11 (A) The purchaser placing the delivery sale order, or
12 an adult who is at least eighteen years of age,
13 to sign to accept delivery of the shipping
14 container at the delivery address; and
15 (B) The individual who signs to accept delivery of
16 the shipping container to provide proof, in the
17 form of a valid, government-issued identification
18 bearing a photograph of the individual, that the
19 person is at least eighteen years of age.

20 **§ -5 Violations; special proceedings.** Whenever there
21 shall be a violation of this chapter, an application may be made



1 by the attorney general in the name of the State, to a court
2 having jurisdiction by a special proceeding to issue an
3 injunction, and upon notice to the defendant of not less than
4 five days, to enjoin and restrain the continuance of the
5 violation; and if it shall appear to the satisfaction of the
6 court that the defendant has, in fact, violated this chapter, an
7 injunction may be issued by the court or justice, enjoining and
8 restraining any further violations, without requiring proof that
9 any person has, in fact, been injured or damaged thereby.
10 Whenever a court shall determine that a violation of this
11 chapter has occurred, the court may impose a civil penalty of no
12 more than \$500.

§ -6 Courts; factors to consider. When 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 shall consider factors including whether:

18 (1) The product contains:

19 (A) An ingredient approved by the United Food and
20 Drug Administration for weight loss or muscle
21 building;



1 (B) A steroid; or

2 (C) Creatine, green tea extract, raspberry ketone,

3 garcinia cambogia, or green coffee bean extract;

4 (2) The product's labeling or marketing bears statements

5 or images that express or imply that the product will

6 help:

7 (A) Modify, maintain, or reduce body weight, fat,

8 appetite, overall metabolism, or the process by

9 which nutrients are metabolized; or

10 (B) Maintain or increase muscle or strength;

11 (3) The product or its ingredients are otherwise

12 represented for the purpose of achieving weight loss

13 or muscle building; or

14 (4) The retailer has categorized the product as being for

15 weight loss or muscle building by:

16 (A) Placing signs, categorizing, or tagging the

17 supplement with statements described in paragraph

18 (2):

19 (B) Grouping the product with other weight loss or

20 muscle building products in a display,

21 advertisement, webpage, or area of the store; or



1 (C) Otherwise representing that the product is for
2 weight loss or muscle building.

3 § -7 **Exceptions; vitamins; protein.** This chapter shall
4 not apply to the sale of:

5 (1) Vitamins;

6 (2) Protein powder or protein drinks; or

7 (3) Food; marketed as containing vitamins or protein;

8 unless the product also contains an ingredient other than a

9 vitamin or protein that would, considered alone, constitute a
10 dietary supplement for weight loss or muscle building."

11 SECTION 2. This Act does not affect rights and duties that
12 matured, penalties that were incurred, and proceedings that were
13 begun before its effective date.

14 SECTION 3. This Act shall take effect upon its approval.

15

INTRODUCED BY:



S.B. NO. 2284

Report Title:

Health; Diet Pills; Muscle Building; Dietary Supplements; Minors

Description:

Generally prohibits the sale of over-the-counter diet pills and dietary supplements for weight loss or muscle building to minors. Provides certain exceptions for vitamins and protein products.

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