
A BILL FOR AN ACT

RELATING TO HEALTH.

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

1 SECTION 1. Chapter 328, Hawaii Revised Statutes, is
2 amended by adding a new section to part I to be appropriately
3 designated and to read as follows:

4 "§328- Nonprescription diet pills; dietary supplements;
5 weight loss; muscle building; minors; prohibition. (a) No
6 person shall sell, offer to sell, or give away, as either a
7 retail or wholesale promotion, a nonprescription diet pill or a
8 dietary supplement for weight loss or muscle building to any
9 person under eighteen years of age.

10 (b) Any retail establishment that sells nonprescription
11 diet pills or dietary supplements for weight loss or muscle
12 building shall:

13 (1) Limit access to these products in a manner that
14 ensures only employees of the retail establishment
15 have direct access to the products; and

16 (2) Request a valid form of government-issued,
17 photographic identification from any person who



1 attempts to purchase these products if the retail
2 establishment cannot reasonably determine that the
3 person is at least eighteen years of age.

4 (c) No delivery seller shall sell, deliver, or cause to be
5 delivered any nonprescription diet pill or dietary supplement
6 for weight loss or muscle building to any person under eighteen
7 years of age. Any delivery seller that sells nonprescription
8 diet pills or dietary supplements for weight loss or muscle
9 building shall use a method of mailing or shipping these
10 products that requires:

11 (1) The purchaser placing the order or an adult who is at
12 least eighteen years of age to sign for acceptance of
13 delivery of the shipping container at the delivery
14 address; and

15 (2) The person who signs to accept delivery of the
16 shipping container at the delivery address to provide
17 a valid form of government-issued, photographic
18 identification to verify the person is at least
19 eighteen years of age.

20 (d) When determining whether a nonprescription diet pill
21 or dietary supplement for weight loss or muscle building is



1 labeled or otherwise represented for the purpose of achieving
2 weight loss or muscle building, the following factors shall be
3 considered, at a minimum:

4 (1) Whether the product contains:

5 (A) An ingredient approved by the United States Food
6 and Drug Administration for weight loss or muscle
7 building;

8 (B) A steroid; or

9 (C) Creatine, green tea extract, raspberry ketone,
10 garcinia cambogia, or green coffee bean extract;

11 (2) Whether the product's labeling bears statements or
12 images that express or imply that the product will
13 help:

14 (A) Modify, maintain, or reduce body weight, fat,
15 appetite, overall metabolism, or the process by
16 which nutrients are metabolized; or

17 (B) Maintain or increase muscle or strength;

18 (3) Whether the product or its ingredients are otherwise
19 represented for the purpose of achieving weight loss
20 or building muscle; and



1 (4) Whether the retail establishment or delivery seller
2 has:

3 (A) Placed signs, or categorized or tagged the
4 product, with statements described in paragraph
5 (2);

6 (B) Grouped the product with other weight loss or
7 muscle building products in a display,
8 advertisement, webpage, or area of the retail
9 establishment; or

10 (C) Otherwise represented that the product is for
11 weight loss or muscle building.

12 (e) For the purposes of this section:

13 "Delivery sale" means the sale of nonprescription diet
14 pills or dietary supplements for weight loss or muscle building
15 to a consumer if:

16 (1) The consumer submits the order for the sale by means
17 of a telephone or other method of voice transaction,
18 deposit in the mails, or the Internet or other online
19 service, or the seller is otherwise not in the
20 physical presence of the consumer when the request for
21 purchase or order is made; or



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

8 "Delivery seller" means a person, including an online
9 retailer, who makes delivery sales of nonprescription diet pills
10 or dietary supplements for weight loss or muscle building.

11 "Dietary supplement for weight loss or muscle building"
12 means a dietary supplement as defined in title 21 United States
13 Code Section 321(ff) that is labeled or otherwise represented
14 for the purpose of achieving weight loss or building muscle.

15 "Nonprescription diet pill" means a nonprescription drug
16 that is labeled or otherwise represented for the purpose of
17 achieving weight loss.

18 "Retail establishment" means a vendor that sells
19 nonprescription diet pills or dietary supplements for weight
20 loss or muscle building directly to the public, including but
21 not limited to pharmacies, grocery stores, other retail stores,



1 and vendors that accept orders placed by mail, telephone,
2 electronic mail, internet website, online catalog, or software
3 application."

4 SECTION 2. Section 328-6, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "**§328-6 Prohibited acts.** The following acts and the
7 causing thereof within the State by any person are prohibited:

- 8 (1) The manufacture, sale, delivery, holding, or offering
9 for sale of any food, drug, device, or cosmetic that
10 is adulterated or misbranded;
- 11 (2) The adulteration or misbranding of any food, drug,
12 device, or cosmetic;
- 13 (3) The receipt in commerce of any food, drug, device, or
14 cosmetic that is adulterated or misbranded, and the
15 delivery or proffered delivery thereof for pay or
16 otherwise;
- 17 (4) The sale, delivery for sale, holding for sale, or
18 offering for sale of any article in violation of
19 section 328-11, 328-12, or 328-17;
- 20 (5) The dissemination of any false advertisement;



- 1 (6) The refusal to permit entry or inspection, or to
2 permit the taking of a sample, as authorized by
3 sections 328-22 and 328-23 to 328-27, or to permit
4 access to or copying of any record as authorized by
5 section 328-23;
- 6 (7) The giving of a guaranty or undertaking which guaranty
7 or undertaking is false, except by a person who relied
8 on a guaranty or undertaking to the same effect signed
9 by, and containing the name and address of the person
10 residing in the State from whom the person received in
11 good faith the food, drug, device, or cosmetic;
- 12 (8) The removal or disposal of a detained or embargoed
13 article in violation of sections 328-25 to 328-27;
- 14 (9) The alteration, mutilation, destruction, obliteration,
15 or removal of the whole or any part of the labeling
16 of, or the doing of any other act with respect to a
17 food, drug, device, or cosmetic, if the act is done
18 while the article is held for sale and results in the
19 article being adulterated or misbranded;
- 20 (10) Forging, counterfeiting, simulating, or falsely
21 representing, or without proper authority using any



1 mark, stamp, tag, label, or other identification
2 device authorized or required by rules adopted under
3 this part or regulations adopted under the Federal
4 Act;

5 (11) The use, on the labeling of any drug or in any
6 advertisement relating to the drug, of any
7 representation or suggestion that an application with
8 respect to the drug is effective under section 328-17,
9 or that the drug complies with that section;

10 (12) The use by any person to the person's own advantage,
11 or revealing other than to the department of health or
12 to the courts when relevant in any judicial proceeding
13 under this part, any information acquired under
14 authority of section 328-11, 328-12, 328-17, or
15 328-23, concerning any method or process which as a
16 trade secret is entitled to protection;

17 (13) In the case of a prescription drug distributed or
18 offered for sale in this State, the failure of the
19 manufacturer, packer, or distributor thereof to
20 maintain for transmittal, or to transmit, to any
21 practitioner who makes written request for information



1 as to the drug, true and correct copies of all printed
2 matter [~~which~~] that is required to be included in any
3 package in which that drug is distributed or sold, or
4 [~~such~~] other printed matter as is approved under the
5 Federal Act. Nothing in this paragraph shall be
6 construed to exempt any person from any labeling
7 requirement imposed by or under other provisions of
8 this part;

- 9 (14) (A) Placing or causing to be placed upon any drug or
10 device or container thereof, with intent to
11 defraud, the trade name or other identifying
12 mark, or imprint of another or any likeness of
13 any of the foregoing; or
- 14 (B) Selling, dispensing, disposing of, or causing to
15 be sold, dispensed, or disposed of, or concealing
16 or keeping in possession, control, or custody,
17 with intent to sell, dispense, or dispose of, any
18 drug, device, or any container thereof, with
19 knowledge that the trade name or other
20 identifying mark or imprint of another or any
21 likeness of any of the foregoing has been placed



1 thereon in a manner prohibited by subparagraph
2 (A); or
3 (C) Making, selling, disposing of, or causing to be
4 made, sold, or disposed of, or keeping in
5 possession, control, or custody, or concealing,
6 with intent to defraud, any punch, die, plate, or
7 other thing designed to print, imprint, or
8 reproduce that trade name or other identifying
9 mark or imprint of another or any likeness of any
10 of the foregoing upon any drug, device, or
11 container thereof;

12 (15) Except as provided in part VI and section 461-1,
13 dispensing or causing to be dispensed a different drug
14 or brand of drug in place of the drug or brand of drug
15 ordered or prescribed without express permission in
16 each case of the person ordering or prescribing;

17 (16) The distribution in commerce of a consumer commodity
18 as defined in this part, if [~~such~~] the commodity is
19 contained in a package, or if there is affixed to that
20 commodity a label, which does not conform to this part
21 and of rules adopted under authority of this part;



1 provided that this prohibition shall not apply to
2 persons engaged in business as wholesale or retail
3 distributors of consumer commodities except to the
4 extent that [~~such~~] the persons:

5 (A) Are engaged in the packaging or labeling of
6 [~~such~~] the commodities; or

7 (B) Prescribe or specify by any means the manner in
8 which [~~such~~] the commodities are packaged or
9 labeled;

10 (17) The selling or dispensing in restaurants, soda
11 fountains, drive-ins, lunch wagons, or similar public
12 eating establishments of imitation milk and imitation
13 milk products in place of fresh milk and fresh milk
14 products respectively; of liquid or dry products which
15 simulate cream but do not comply with content
16 requirements for cream in place of cream; of non-dairy
17 frozen desserts [~~which~~] that do not comply with
18 content requirements for dairy frozen desserts in
19 place of dairy frozen desserts; and of any other
20 imitation food or one made in semblance of a genuine
21 food in place of such genuine food, unless the



1 consumer is notified by either proper labeling or
2 conspicuous posted signs or conspicuous notices on
3 menu cards and advertisements informing of [~~such~~] the
4 substitution, to include but not limited to the
5 substitution of imitation milk in milk shake and
6 malted milk drinks;

7 (18) Wilfully and falsely representing or using any
8 devices, substances, methods, or treatment as
9 effective in the diagnosis, cure, mitigation,
10 treatment, or alleviation of cancer. This paragraph
11 shall not apply to any person who depends exclusively
12 upon prayer for healing in accordance with teachings
13 of a bona fide religious sect, denomination, or
14 organization, nor to a person who practices such
15 teachings;

16 (19) The selling or offering for sale at any food facility
17 [~~which~~] that serves or sells over the counter directly
18 to the consumer an unlabeled or unpackaged food that
19 is a confectionery [~~which~~] that contains alcohol in
20 excess of [~~one-half of one~~] 0.5 per cent by weight
21 unless the consumer is notified of that fact by either



1 proper labeling or conspicuous posted signs or
2 conspicuous notices on menu cards and advertisements;
3 (20) The sale to a person [~~below the age of~~] under
4 twenty-one years of age of any food [~~which~~] that is a
5 confectionery [~~which~~] that contains alcohol in excess
6 of [~~one-half of one~~] 0.5 per cent by weight[~~-~~]; and
7 (21) The sale to a person under eighteen years of age of a
8 nonprescription diet pill or a dietary supplement for
9 weight loss or muscle building pursuant to section
10 328- ."

11 SECTION 3. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 4. This Act shall take effect on January 30, 2050.



S.B. NO. 2106
S.D. 1

Report Title:

Retail Establishments; Delivery Sellers; Nonprescription Diet Pills; Dietary Supplements; Weight Loss; Muscle Building; Sale or Delivery to Minors; Prohibition

Description:

Prohibits the sale of nonprescription diet pills and dietary supplements for weight loss or muscle building to any person under eighteen years of age. Requires retail establishments and delivery sellers to follow certain protocols regarding certain products to prevent access by minors to the restricted products. Effective 1/30/2050. (SD1)

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