

AMENDED IN SENATE JUNE 17, 2024

AMENDED IN SENATE MAY 28, 2024

CALIFORNIA LEGISLATURE—2023–24 REGULAR SESSION

ASSEMBLY BILL

No. 82

Introduced by Assembly Member Weber
(Principal coauthor: Assembly Member Pellerin)
(Coauthors: Assembly Members Aguiar-Curry and Schiavo)
(Coauthor: Senator Rubio)

December 15, 2022

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

LEGISLATIVE COUNSEL'S DIGEST

AB 82, as amended, Weber. 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 \$250 for each violation, as specified. The bill would exempt a retail clerk from any civil penalties 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 January 1, 2026, and would make the provisions severable.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

1 SECTION 1. Section 110423.7 is added to the Health and
 2 Safety Code, to read:
 3 110423.7. (a) For purposes of this section, the following
 4 definitions apply:
 5 (1) “Dietary supplements for weight loss” means a class of
 6 dietary supplements that are labeled, marketed, or otherwise
 7 represented for the purpose of achieving weight loss and that are
 8 under the regulation of the Federal Food, Drug, and Cosmetic Act
 9 (21 U.S.C. Sec. 301 et seq.), and regulations adopted thereunder.
 10 “Dietary supplements for weight loss” includes products marketed
 11 with a Supplement Facts panel, pursuant to federal regulations,
 12 that contain either lawful dietary ingredients or ingredients deemed
 13 adulterated under Section 342 of Title 21 of the United States
 14 Code, or both. “Dietary supplements for weight loss” does not
 15 include dietary fiber products.

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

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

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

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

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

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

36 ~~(d)~~

37 (c) The State Department of Public Health, in consultation with
38 the United States Food and Drug Administration and stakeholders,
39 including, but not limited to, representatives from the eating
40 disorders community, shall determine which dietary supplements

1 for weight loss and over-the-counter diet pills shall be subject to
 2 this section, in a manner consistent with the definitions in
 3 subdivision (a) and with a finding that the supplement or pill may
 4 contribute to any of the health conditions described in paragraph
 5 (2) of subdivision (e): (a).

6 (e)

7 (d) (1) Section 111825 does not apply to a violation of this
 8 section.

9 (2) Subject to paragraph (3), a person who violates this section
 10 shall be liable for a civil penalty of no more than two hundred fifty
 11 dollars (\$250) for each violation, which may be assessed and
 12 recovered in a civil action brought in the name of the people of
 13 the State of California by the Attorney General or by any district
 14 attorney, county counsel, or city attorney in any court of competent
 15 jurisdiction.

16 (3) A retail clerk shall not be subject to any civil penalty for a
 17 violation of this section. This paragraph does not apply to a retail
 18 clerk who is a willful participant in an ongoing conspiracy to
 19 violate this section.

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

22 (g)

23 (e) This section shall become operative on January 1, 2026.

24 (h)

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