

New York Forbids Muscle Building and Weight Loss Supplements for Minors

Naturally Informed Stress and Mental Wellness Conference

Setting the Record Straight on Dietary Supplements, Eating Disorders, and Mental Wellness

Rick Collins, Esq.
founding partner



DISCLAIMER: These materials are information, not legal advice. Laws, regulations and guidances are often open to interpretation. Materials represent the author's personal views and opinions at the time of authorship. © Rick Collins 2024. All rights reserved.

The Basics of New York's Law



- Last year the NY Legislature proposed a bill: Sale of “**over-the-counter diet pills**” (drugs) and **dietary supplements for weight loss or muscle building** *prohibited* to New York consumers under age 18
- Purpose: Purportedly to address **teen eating disorders**
- Gov. Kathy Hochul signed A.5610/S.5823 in October 2023
- Took effect on April 22, 2024 (GBL 391-oo)
<https://www.nysenate.gov/legislation/laws/GBS/391-00>

The Who and What

- Applies to both **brick and mortar** and **e-commerce** sellers.
- **Age verification** (appears < 25 in retail store) must be by driver's license, state/military ID, student ID, or passport.
- Point of sale at a retail store
- Online: Point of sale **or** at delivery? (Law is silent)
- Does **NOT** directly apply to **manufacturers** who don't sell directly to the public. However, they may feel the impact...
 - An action against a retailer will adversely affect the manufacturer.
 - Some retailers may seek a product **list** and/or **indemnification**.

Enforcement

- Enforced by the New York State **Attorney General**
- Can impose civil penalties of up to **\$500** **for each violation**
- Can file **injunctions** in court to shut down further violations
- In response to public complaints?
- Will regulations be promulgated?



What Products are Covered



- Focuses both on **ingredients** and **marketing**
- A few ingredients named but no encompassing list of ingredients
- Suggested **“factors”** to consider whether a product is for weight loss or muscle building

What Specific Ingredients are Covered?



- Explicitly **included**: **creatine**, green tea extract, raspberry ketone, garcinia cambogia, green coffee bean extract, **“steroids”**
- **Excluded**: **protein** powders, drinks and foods ... unless combined with qualifying ingredients

What Marketing is Covered

- “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 retailer has “**categorized**” the supplement for weight loss or muscle building, e.g., “**placing signs**” or “tagging” with statements
- “**Grouping**” with other weight/muscle products “in a **display, advertisement, webpage, or area of the store**” or “otherwise” representing it to build muscle or reduce weight

What's NOT So Clear in the Law



- What ingredients/products trigger the law?
- What “claims” trigger the law (e.g., “metabolism”)?
(Digestive enzymes??)
- What “grouping” or “displays” trigger the law?
- *End caps? Company names? Fitness celebrities? Etc.*
- Is age verification in online sales at delivery sufficient?
 - Problems of delivery (carriers don’t have ability to age-gate at 18 / added costs)

The Slippery Slope...

- **Age-Gate Creep:** Why 18, not 21?
- **Categories:** What's stopping advocates from targeting categories deemed inappropriate for teens or others? Energy drinks, for example
 - Connecticut lawmakers have introduced a bill banning energy drink sales to under 16 (but not coffee?)
- **Other States:** What's stopping other states from passing their own laws?
 - (50 different state laws inconsistent with each other)
- **Erosion of public confidence** in the industry
- **Undermining the purpose of FDA**

Challenges in Court

- In **New York?** **Two lawsuits** filed by trade groups.
 - **Free speech** and void for vagueness grounds
 - **Lack of scientific basis**
 - Overly **burdensome**
 - AG litigating but not enforcing ... yet?



Advocacy Elsewhere



- **Elsewhere?**
 - California and Maryland bills **died**
 - Colorado bill passed, but exempts supplements
 - But we have also seen efforts in Massachusetts, Michigan, and New Jersey (it ain't over...)
 - Need **State level advocacy**
 - **Coalition building**
 - Support for **trade associations**

Thank you!

Rick Collins

founding partner

516-294-0300

Rcollins@supplementcounsel.com

© Rick Collins 2024

