Published on *The National Law Review* https://natlawreview.com

New Jersey General Assembly Passes Legislation Prohibiting Sale of Diet Pills, Weight Loss/Muscle Building Supplements to Minors

Article By:

Elena M. Quattrone

Zachary S. Taylor

As the dietary supplement industry continues to draw attention from Congress, state attorneys general, and class action lawyers, now comes another state law prohibiting the sale of over-the-counter ("OTC") dietary supplements that target weight loss and muscle building to minors – this time, in New Jersey.

On October 28, 2024, by a majority vote of 56 to 17, with four abstentions, the New Jersey General Assembly passed Assembly Bill No. 1848, which, if it goes into effect, will prohibit the sale or delivery of OTC diet pills, weight loss, and muscle building supplements to minors, unless the minor is accompanied by a parent or guardian. Bill No 1848 is an exemplar of efforts intended to combat the misuse and abuse of these products and the potential causal relationship between these dietary supplements and eating disorders. Violators, including employees of retail establishments, may face a civil penalty of not more than $750.

The legislation sets forth that:

"no person, firm, corporation, partnership, association, limited liability company, or other entity shall sell, offer to sell, or offer for promotional purposes, either directly or indirectly by an agent or an employee, any over-the-counter diet pull or dietary supplement for weight loss or muscle building to a minor under 18 years of age, unless the minor is accompanied by a parent or guardian."

Additionally,

"[n]o person shall complete a delivery [of such pill or supplement] to a residence in this State without first obtaining…the signature of an individual who is at least 18 years of age and who resides in that residence."

The prohibition does not apply to products prescribed by a licensed health care professional. Other exceptions relate to postal service employees; those who were presented with false identification upon sale or delivery; or news media accepting or publishing advertising for an OTC diet pill or

dietary supplement for weight loss or muscle building. Factors to be considered when assessing which OTC dietary supplements fall with the purview of the law include whether the pill or supplement contains: an ingredient approved by the federal Food and Drug Administration ("FDA") for weight loss and muscle building; a steroid or various extracts; or whether the label, advertisements, or other representations indicate that the product will help for those purposes.

Despite the overwhelming support for the legislation at the Assembly level, Bill No. 1848 drew criticism from groups including the Council for Responsible Nutrition ("CRN") and the Natural Products Association ("NPA"), which have blocked similar proposals in California, Colorado, Massachusetts, Rhode Island, Missouri, and Illinois, as discussed in a press release issued by the NPA on September 23. Meanwhile, the CRN sought to enjoin similar NY law in the Spring of 2024. While the application for an injunction was denied, CRN has appealed the denial and the lawsuit remains pending. Opponents contend that legislation focused on these bans ignore science, and effectively, harms public health, limits access for consumers, and places a significant burden on retailers. Further, opponents contend that the FDA has no data linking weight management and muscle-building dietary supplements to eating disorders, as proponents have claimed.

Bill No. 1848 targets the same products listed in a recent New York bill A.5610/S.5823 which was signed into law by Governor Kathy Hochul in October 2023. By redefining a dietary supplement based on how the product is labeled, marketed or otherwise represented, both the recently enacted NY Law and the pending NJ Law conflict with how the Federal Food, Drug and Cosmetic Act ("FDCA") defines a "dietary supplement." This makes it very difficult for companies selling supplements to determine which products are subject to the law and which are not.

Though Bill No. 1848 is now in the New Jersey State Senate for continued consideration, analytics of the bill give it a "much more likely to pass" rating, given its overwhelming support at the Assembly level.

Commentary surrounding Assembly Bill No. 1848 illustrates the continued confusion regarding dietary supplement safety. The use of dietary supplements is common in the United States, but the notion that dietary supplements are unsafe due to lack of screening by the FDA before being marketed permeates society. On the contrary, as the trade associations have continued to advocate, the industry is well regulated by the FDA, and there is substantial evidence that dietary supplements provide benefits to consumers.

The NPA points out that the FDCA, in particular, requires manufacturers and distributors to notify the FDA about ingredients and the basis on which the manufacturer or distributor has concluded that the dietary supplement is expected to be safe under the conditions of use suggested in the labelling; and that the FDA has the power to remove products from the market that could potentially be hazardous to public health. The FDA also has an adverse event reporting system for dietary supplements.

Despite these regulations, States are exercising their powers to do what legislators deem to be prudent to protect their minor constituents. It remains to be seen, however, exactly how the potential confirmation of Robert F. Kennedy Jr., to lead the Department of Health and Human Services may affect regulation in this area. RFK reportedly opposes FDA suppression of various products and therapies, leading some in the dietary supplement industry to champion his nomination.

Ann W. Parks contributed to this article

National Law Review, Volume XIV, Number 331