

AN ACT PROMULGATING AN EXCISE TAX ON THE SALE OF DIETARY SUPPLEMENTS SOLD FOR WEIGHT LOSS.

Referred to Committee on: _____
 Introduced by: _____

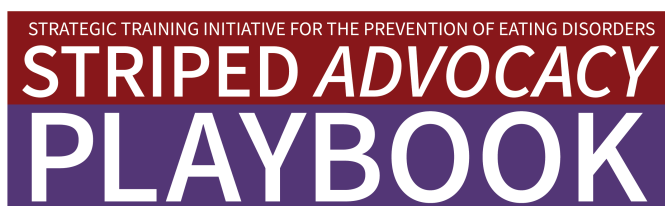
Be it enacted by the Senate and House of Representatives in _____:






Section 1: Findings.

- (a) Weight-loss dietary supplements are highly appealing to persons seeking to lose weight to treat or prevent obesity.
- (b) People who have high body mass index are more likely to use dietary supplements for weight loss than people who do not have high body mass index.
- (c) Many dietary supplements for weight loss use misleading, unsubstantiated, and implied disease claims about the product's ability to lead to effortless and rapid weight loss.
- (d) Consumers are victimized by fraudulent, adulterated, and toxic dietary supplements for weight-loss.
- (e) Evidence suggests that excise tax can be an effective mechanism for deterring consumer use of dietary supplements for weight loss, especially adolescents.

Section 2. (Effective January 1, 20XX) the [Insert in Tax Law title] is amended as follows:

- (a) There is hereby imposed and shall be paid a tax on all dietary supplements for weight loss possessed in the state by any person for sale to the ultimate consumer. Such tax on dietary supplements shall be at the rate of 20% for each sales unit of dietary supplement for weight loss.
- (b) It shall be presumed that all dietary supplements for weight loss within the state are subject to tax until the contrary is established, and the burden of proof that any dietary supplements for weight loss are not taxable hereunder shall be upon the seller.
- (c) It is intended that the ultimate incidence of and liability for the tax shall be upon the consumer, and that any person who shall be responsible for, and pay, the tax to [insert appropriate state tax authority] shall collect the tax from the purchaser or consumer.
 - (1) Except as otherwise provided, the tax shall be advanced and paid by the person. The person shall be liable for the collection and payment of the tax on dietary supplements for weight loss imposed by this article and shall pay the tax to the [insert appropriate state tax authority].
- (d) The amount of taxes advanced and paid by the person as hereinabove provided shall be added to and collected as part of the sales price of the dietary supplements for weight loss.



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(e) Penalty

- (1) Any person who or which fails to file a return or pay any tax within the time required by or pursuant to this section shall be subject to a penalty of ten percent of the amount of tax determined to be due as provided in this section plus one percent of such amount for each month or fraction thereof during which such failure continues after the expiration of the first month after such return was required to be filed or such tax became due, not exceeding 30 percent in the aggregate.

(f) Truth in Marketing

- (1) Any person who purchases unmarked dietary supplements for weight loss from any other person, which are intended for resale in or into the state, shall provide [insert state agency/department or state tax commission] with a certification under penalty of perjury that such dietary supplements will not be resold in violation of the terms of this article. Such certifications shall be provided prior to the first sale of such dietary supplements following the effective date of this subdivision, and annually thereafter, on such form as shall be prescribed by the [state tax commission].
- (2) Any person who or which fails to comply with paragraph (f)(1) and sells unmarked dietary supplements for weight loss to an ultimate consumer into the state, shall be subject to the penalties set forth in subparagraph 2(e).

Section 3. Definitions

(a) For the purposes of this section, the following phrases are defined as:

- (1) “Dietary supplement for weight loss” means a class of dietary supplements sold for or used with the intent to achieve weight loss or prevent weight gain that are lawfully sold, transferred, or furnished over-the-counter with or without a prescription pursuant to the federal Food, Drug, and Cosmetic Act, 21 U.S.C. section 301 et. seq., or regulations adopted thereunder. “Dietary supplements for weight loss” may include, but are not limited to, thermogens, which are substances that produce heat in the body and promote more calorie burning, lipotropic, which are compounds that help break down fat during body metabolism, hormones, including hormone modulators and hormone mimetics, appetite suppressants, or ingredients deemed adulterated under 21 U.S.C.A § 342.
- (2) “Person” means an individual, corporation, partnership, or other business entity selling dietary supplements for the purpose of weight loss to a consumer.
- (3) “Unmarked” means a product packaging without a description of the product’s intended purpose.

Statement of Purpose:

To promulgate an excise tax on dietary supplements for weight loss in an effort to reduce the consumption of the misleading, unsubstantiated, and potentially dangerous products.