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ASSOCIATION

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February 27, 2023

Delegate C.T. Wilson, Chair
Delegate Brian M. Crosby, Vice Chair
Economic Matters Committee
House Office Building, Room 231
Annapolis, MD 21401

Re: HB 634 - Sale of Diet Pills to Minors - Oppose

Dear Chairman Wilson:

On behalf of the Consumer Healthcare Products Association (CHPA), the national trade association representing the leading manufacturers of over-the-counter (OTC) medicines, dietary supplements, and consumer medical devices, I'm writing to express strong opposition to HB 634. As currently drafted, the bill seeks to prohibit sales of many dietary supplements to individuals under the age of 18 and it places impractical sales restrictions on retailers offering these products for sale to the public. The bill threatens the ability of Marylanders to supplement their diet with beneficial vitamins, minerals, and other dietary supplements. We, therefore, cannot support the legislation as currently written.

A Federal Framework Ensuring Dietary Supplement Safety Is Already in Place

Dietary supplements are regulated by the Food and Drug Administration (FDA) via the Dietary Supplement Health and Education Act (DSHEA). DSHEA explicitly defines dietary supplements as a category of food, and they are intended to "supplement" an individual's diet to fill nutrition gaps and support general health and wellness.

FDA has established good manufacturing practices (GMPs) regulations that supplement manufacturers must follow to ensure the production of safe, high-quality products. GMP regulations cover the identity, purity, quality, strength, and composition of dietary supplements and their ingredients. Additionally, the FDA periodically inspects facilities that manufacture supplements to ensure that companies are adhering to the GMP standards.

Dietary supplement manufacturers are responsible for having evidence that their products are safe, and that label claims are truthful and not misleading. If the FDA finds a dietary supplement to be unsafe, it may remove the product from the marketplace or ask the manufacturer to voluntarily recall the product.

Additionally, the Federal Trade Commission (FTC) monitors dietary supplement advertising, requiring that information about supplement products is truthful and not misleading. The FTC may work with the FDA and act against companies that market supplement products that claim to treat diseases or otherwise misrepresent the product. Enforcement of violations may include warnings and fines.

Despite this oversight, the federal government has not identified teen abuse of weight loss supplements as a significant problem.

Industry Enhances Federal Regulations with Additional Measures

In addition to existing federal government regulation, certain retailers have quality assurance programs that include additional standards to help ensure supplement products are safe and accurately labeled. These programs provide consumers with an additional layer of protection from fraudulent labeling claims and/or inclusion of illegal and/or undeclared ingredients. These programs may require product testing by a third-party certification program with requirements such as certifying that a product was manufactured according to GMPs, contains only ingredients that are lawful and safe and that the concentration of ingredient(s) listed on the label is accurate and safe.

The Advertising Self-Regulatory Council under the Better Business Bureau has a very active advertising review program to help set standards for truth and accuracy in advertising. It includes a dispute resolution program in which competitors, the council staff, or consumers themselves can bring complaints about advertisements, including dietary supplements.

Unintended Consequences of Supplement State Regulation

The list of specific ingredients for the Department of Health to consider for sales restrictions, beginning on page 4, line 26, could impact the availability of many health promoting products. For example, creatine is not only used for weight loss or muscle gain, but also utilized for additional health benefits. Creatine is used by some individuals to support heart and bone health amongst other reasons. Similarly, green tea extract is a common ingredient used as an antioxidant in dietary supplements. Antioxidants protect cells and tissues from damaging free radicals and found in many dietary supplements that support general health.

Furthermore, the inclusion of the term “or process by which nutrients are metabolized” in the list of restricted labeling or marketing terms on page 4, beginning on line 28, is vague and applies to many nutrients not related to weight loss. For example, consuming Vitamin D and Vitamin K helps the body metabolize calcium to support strong bones. Additionally, digestive enzymes are used after a meal to help break down lactose in lactose sensitive individuals. Listing specific ingredients for the Department to consider for sales restrictions could result in the unintended consequence of restricting access to a wide range of legitimate health promoting products not used for weight loss or muscle building.

Enforceability

The FDA does not keep a comprehensive list of dietary supplements sold in the U.S. and no such list exists. Without a definitive list of dietary supplement products defined as “diet pills”, it would be impossible for retailers to comply with this proposed regulation. In fact, no state has passed a law age restricting dietary supplements. Bills passed in 2022 by legislatures in California and New York, were ultimately vetoed as both state governors determined enforcement by the state and compliance by retailers were unattainable.

Conclusion

Dietary supplements and other readily available over-the-counter medications play a critical role in the wellness regimen of millions of Americans. Instituting an age restriction for dietary supplements and mandating a “behind-the-counter” policy for retailers, will have a negative

impact on public health. Dietary supplements play a critical role in supporting the health and development of children and young adults. Restricting their sale will prevent parents, guardians, and adults from readily and affordably accessing products that help maintain general health, support mental and sports-related performance, and immune system support.

We welcome the opportunity to work with Delegate Vogel and the Maryland legislature to address any lingering concerns with the safety of dietary supplements. Thank you for taking the time to consider our concerns and feel free to contact me directly with any follow up questions you may have.

Respectfully submitted,



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Cc: Members of the House Economic Matter Committee