AHPA
AMERICAN HERBAL PRODUCTS ASSOCIATION

Testimony regarding
Maryland Bill HB 634
Public Health – Sale of Diet Pills to Minors – Prohibition
(Protecting Teenagers From Unregulated Diet Pills)

While the American Herbal Products Association (AHPA)[1] supports actions that would effectively address the serious public health problem of eating disorders, we must respectfully oppose HB 634. Although this bill is well-intentioned, it would restrict access to lawful and beneficial dietary supplement products and create major expenses for public health regulators and retailers, all without addressing the social forces that are the root cause of eating disorders.

Dietary supplements are already regulated

Dietary supplements are subject to well-established regulation and enforcement systems. The U.S. Federal Food and Drug Administration (FDA) has clear authority over dietary supplements through the Federal Food, Drug and Cosmetic Act and related laws and regulations. FDA is charged with inspecting manufacturing facilities, reviewing labeling and monitoring products for safety. Under federal law, products labeled as dietary supplements that contain drug substances not considered valid dietary ingredients are already classified as unlawfully marketed drugs and should not be sold to anyone under any circumstances. Dietary supplement products adulterated with contaminants that can cause serious adverse events are similarly already prohibited under federal law. This bill does not address these already unlawful products or the harms they cause. Crucially, the bill also does not address the underlying social and psychological pressures surrounding body image and weight stigma that drive eating disorders.

HB 634 will not be consistently enforceable

AHPA has addressed legislation similar to HB 634 in several states, including New York and California, where it has consistently failed to pass into law. A common issue preventing the passage of such bills is that enforcement is impracticable. State departments of health are not well-equipped to determine what products are "sold for or used with the intent to" accomplish a particular purpose. In practice, the rulemaking and associated enforcement of HB 634 described at paragraph (G)(2) of the bill would require the Maryland Department of Health to evaluate both the composition and marketing of OTC and dietary supplement products sold in or into the state to determine whether they are subject to restriction. The use of suggested considerations at paragraph (G)(2)(I) would not replace the need for this evaluation. Such a regulatory process will be highly resource-intensive, continuous and necessarily non-

[1] The American Herbal Products Association (AHPA) is the national trade association and voice of the herbal products industry. AHPA members include domestic and foreign companies doing business as growers, importers, processors, manufacturers, and marketers of herbs and herbal products, as well as other groups in the dietary supplement industry, including, on this matter, on behalf of its members producing and marketing herbal and nonherbal products in the sports nutrition sector.

exhaustive, resulting in inconsistent enforcement and greater uncertainty among consumers, retailers and manufacturers.

HB 634 will limit consumer access to beneficial products

Retail establishments that sell dietary supplements, whether directly or by delivery sale, would face the same insurmountable task of evaluating products for potential coverage under HB 634. In practice, they are likely to respond in one of two ways: First, retailers will simply not carry a wide range of lawful dietary supplements in Maryland, rather than face potential liability and increased cost. The other probable response will be to move any remaining products potentially subject to the restriction "behind the counter," and subject them to the same direct or delivery sale restrictions, making them less accessible to all consumers and increasing costs to all involved. Both responses will have the effect of limiting consumer access to a wider variety of lawful and safe dietary supplements. Consumers seeking such products, including individuals under 18, will be more likely to pursue unlawful and potentially hazardous products sold through internet fora where the proposed delivery sale restriction would be less enforceable.

AHPA appreciates the opportunity to comment on HB 634, and are happy to provide additional resources and evidence regarding the inefficacy of this sort of category-specific restriction. We invite members of the Committee to contact our Director of Regulatory Affairs, Robert Marriott, at rmarriott@ahpa.org if they have any further questions regarding this matter.