AHPA
AMERICAN HERBAL PRODUCTS ASSOCIATION

**Testimony regarding**
**Maryland Bill SB 602**
**Public Health – Sale of Diet Pills to Minors – Prohibition**

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 SB 602. Although this bill is well-intentioned, it would restrict access to lawful and beneficial dietary supplement products and create major challenges 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 product labeling, and monitoring products for safety. Dietary supplement manufacturers are required to report serious adverse events involving their products to FDA. 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. Similarly, products adulterated with contaminants that can cause serious adverse events are already prohibited under federal law. This bill does not address these already unlawful products or the harms they cause.

**SB 602 will not be consistently enforceable**

AHPA has addressed legislation similar to SB 602 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 or resourced to determine what products are "labeled, marketed, or otherwise represented for" a particular purpose. In practice, the rulemaking and associated enforcement of SB 602 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. Such a regulatory process will be highly resource-intensive, continuous, and necessarily non-exhaustive, resulting in inconsistent enforcement and greater uncertainty among consumers, retailers, and manufacturers. The suggested considerations at paragraph (G)(2)(I) would not substantively reduce these burdens.

[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.

**SB 602 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 SB 602. 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 associated costs. Both responses will have the effect of limiting consumer access to a variety of lawful and safe dietary supplements, including those not intended for coverage by the bill. 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 at paragraph (C) would be less enforceable.

**SB 602 does not address eating disorders**

At root, eating disorders are mental and behavioral health conditions. There is no plausible mechanism by which such conditions are induced by the consumption of dietary supplements. SB 602 does nothing to address the forces of weight stigmatization and social pressure present in the school hallway, the locker room, and on social media that can lead to, or even normalize, disordered eating behaviors.

AHPA appreciates the opportunity to comment on SB 602, 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.