

AMENDED IN ASSEMBLY MAY 4, 2020

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

**ASSEMBLY BILL**

**No. 3042**

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**Introduced by Assembly Member Limón**

February 21, 2020

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~~An act to amend Section 25500 of the Health and Safety Code, relating to hazardous materials. An act to add Section 110423.7 to the Health and Safety Code, relating to public health.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 3042, as amended, Limón. ~~Hazardous materials.~~ *Dietary supplements for weight loss and over-the-counter diet pills.*

*Existing law, the Sherman Food, Drug, and Cosmetic Law, provides for the regulation of various subjects relating to the processing, labeling, advertising, and sale of food, drugs, and cosmetics, including dietary supplements, under the administration and enforcement of the State Department of Public Health. Under existing law, it is a misdemeanor for any manufacturer, wholesaler, retailer, or other person to sell, transfer, or otherwise furnish a dietary supplement containing ephedrine group alkaloids or other specified substances to a person under 18 years of age, and a seller is required to request a valid identification of prospective purchasers who reasonably appear to be under 18 years of age.*

*Existing law, the Unfair Practices Act, prohibits certain acts of unfair competition and a violation of the act is subject to civil liability and constitutes a crime subject to specified fines and penalties.*

*This bill, commencing July 1, 2021, would prohibit a retail establishment from selling dietary supplements for weight loss and over-the-counter diet pills, as defined, to any person under 18 years of*

age. The bill would require a retail establishment, among other things, to limit access to those products, as specified, and would require the department to determine which products will be subject to those access limitations. The bill would also require the department to develop a health-related notice regarding those products, and would require a retail establishment to conspicuously post that notice at each purchase counter. The bill would make a violation of these provisions by a retail establishment subject to a civil penalty of no more than \$1,000 and subject to the Unfair Practices Act as an unfair practice. By expanding the scope of an existing crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law declares the Legislature's intent that, in order to protect the public health and safety and the environment, it is necessary to establish business and area plans relating to the handling and release or threatened release of hazardous materials.~~

~~This bill would make nonsubstantive changes to that provision.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.  
State-mandated local program: ~~no~~ yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 110423.7 is added to the Health and  
2     Safety Code, to read:  
3     110423.7. (a) As used in this section, the following terms have  
4     the following meanings:  
5     (1) "Dietary supplements for weight loss" means a class of  
6     dietary supplements sold for or used with the intent to achieve  
7     weight loss that are lawfully sold, transferred, or furnished over  
8     the counter, with or without a prescription, under the regulation  
9     of the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301  
10    et seq.), and regulations adopted thereunder. "Dietary supplements  
11    for weight loss" may include, but are not limited to, thermogens,  
12    lipotropics, hormones, including hormone modulators and hormone  
13    mimetics, appetite suppressants, and ingredients deemed

1 *adulterated under Section 342 of Title 21 of the United States*  
2 *Code.*

3 (2) *“Lipotropics” means compounds that help break down fat*  
4 *during body metabolism.*

5 (3) *“Over-the-counter diet pills” means a class of drugs sold*  
6 *for or used with the intent to achieve weight loss that are lawfully*  
7 *sold, transferred, or furnished without a prescription, under the*  
8 *regulation of the federal Food, Drug, and Cosmetic Act (21 U.S.C.*  
9 *Sec. 301 et seq.), and regulations adopted thereunder.*  
10 *“Over-the-counter diet pills” may include, but are not limited to,*  
11 *thermogens, lipotropics, hormones, including hormone modulators*  
12 *and hormone mimetics, appetite suppressants, and ingredients*  
13 *deemed adulterated under Section 342 of Title 21 of the United*  
14 *States Code.*

15 (4) *“Retail establishment” means any vendor that, in the regular*  
16 *course of business, sells dietary supplements for weight loss or*  
17 *over-the-counter diet pills at retail directly to the public, including,*  
18 *but not limited to, pharmacies, grocery stores, mail-order or*  
19 *internet sale, and other retail stores.*

20 (5) *“Thermogens” means substances that produce heat in the*  
21 *body and promote more calorie burning.*

22 (b) *A retail establishment shall not sell, transfer, or otherwise*  
23 *furnish dietary supplements for weight loss or over-the-counter*  
24 *diet pills to any person under 18 years of age.*

25 (c) *A retail establishment shall do all of the following with*  
26 *respect to the dietary supplements for weight loss and*  
27 *over-the-counter diet pills determined by the State Department of*  
28 *Public Health to be subject to this subdivision:*

29 (1) *Limit access to those products in a manner designed to*  
30 *prevent the misuse or abuse of those products.*

31 (2) *Prohibit direct access to those products by customers, and*  
32 *limit direct access only to managers, assistant managers, acting*  
33 *managers, or any other supervisory personnel at the retail*  
34 *establishment.*

35 (3) *Require a customer to request a purchase, transfer, or*  
36 *furnishing of those products directly to the manager, assistant*  
37 *manager, acting manager, or other supervisory personnel at the*  
38 *retail establishment.*

1 (d) A retail establishment shall conspicuously post at each  
2 purchase counter the notice developed by the State Department  
3 of Public Health pursuant to subdivision (e).

4 (e) (1) The State Department of Public Health, in consultation  
5 with the United States Food and Drug Administration and  
6 stakeholders, including, but not limited to, representatives from  
7 the eating disorders community, shall determine which dietary  
8 supplements for weight loss and over-the-counter diet pills shall  
9 be subject to the access limitations described in subdivision (c).

10 (2) The State Department of Public Health shall develop a notice  
11 for distribution to retail establishments to post that certain dietary  
12 supplements for weight loss or over-the-counter diet pills are  
13 known to cause gastrointestinal impairment, tachycardia,  
14 hypertension, myocardial infarction, stroke, organ failure, other  
15 serious injury, death, and severe liver injury sometimes requiring  
16 transplant or leading to death.

17 (f) Notwithstanding Section 111825, a violation of subdivision  
18 (b), (c), or (d) shall be punishable by a civil penalty of no more  
19 than one thousand dollars (\$1,000).

20 (g) A violation of this section shall constitute an unfair practice  
21 subject to the Unfair Practices Act (Chapter 4 (commencing with  
22 Section 17000) of Part 2 of Division 7 of the Business and  
23 Professions Code).

24 (h) This section shall become operative July 1, 2021.

25 SEC. 2. No reimbursement is required by this act pursuant to  
26 Section 6 of Article XIII B of the California Constitution because  
27 the only costs that may be incurred by a local agency or school  
28 district will be incurred because this act creates a new crime or  
29 infraction, eliminates a crime or infraction, or changes the penalty  
30 for a crime or infraction, within the meaning of Section 17556 of  
31 the Government Code, or changes the definition of a crime within  
32 the meaning of Section 6 of Article XIII B of the California  
33 Constitution.

34 SECTION 1. ~~Section 25500 of the Health and Safety Code is~~  
35 ~~amended to read:~~

36 ~~25500. (a) The Legislature declares that, in order to protect~~  
37 ~~the public health and safety and the environment, it is necessary~~  
38 ~~to establish business and area plans relating to the handling and~~  
39 ~~release or threatened release of hazardous materials. The~~  
40 ~~establishment of a statewide environmental reporting system for~~

1 ~~these plans is a statewide requirement. Basic information on the~~  
2 ~~location, type, quantity, and health risks of hazardous materials~~  
3 ~~handled, used, stored, or disposed of in the state, which could be~~  
4 ~~accidentally released into the environment, is required to be~~  
5 ~~submitted to firefighters, health officials, planners, public safety~~  
6 ~~officers, health care providers, regulatory agencies, and other~~  
7 ~~interested persons. The information provided by business and area~~  
8 ~~plans is necessary in order to prevent or mitigate the damage to~~  
9 ~~the health and safety of persons and the environment from the~~  
10 ~~release or threatened release of hazardous materials into the~~  
11 ~~workplace and environment.~~

12 ~~(b) The Legislature further finds and declares that this article~~  
13 ~~and Article 2 (commencing with Section 25531) do not occupy~~  
14 ~~the whole area of regulating the inventorying of hazardous~~  
15 ~~materials and the preparation of hazardous materials response plans~~  
16 ~~by businesses. The Legislature does not intend to preempt local~~  
17 ~~actions, ordinances, or regulations that impose additional or more~~  
18 ~~stringent requirements on businesses that handle hazardous~~  
19 ~~materials. Thus, in enacting this article and Article 2 (commencing~~  
20 ~~with Section 25531), the Legislature does not intend to preempt~~  
21 ~~or otherwise nullify any other statute or local ordinance containing~~  
22 ~~the same or greater standards and protections.~~