

SENATE No. 1465

The Commonwealth of Massachusetts

PRESENTED BY:

Michael F. Rush

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act protecting children from harmful diet pills and muscle-building supplements.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Michael F. Rush</i>	<i>Norfolk and Suffolk</i>	
<i>Paul McMurtry</i>	<i>11th Norfolk</i>	<i>2/2/2023</i>

SENATE No. 1465

By Mr. Rush, a petition (accompanied by bill, Senate, No. 1465) of Michael F. Rush and Paul
McMurtry for legislation to protect children from harmful diet pills and muscle-building
supplements. Public Health.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 1525 OF 2021-2022.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act protecting children from harmful diet pills and muscle-building supplements.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority
of the same, as follows:*

1 SECTION 1. Chapter 111 of the General Laws is hereby amended by adding the
2 following section:-

3 Section 243. Sale of over-the-counter diet pills and dietary supplements for weight loss or
4 muscle building

5 (a) Definitions: For purposes of this section the following terms shall have the
6 following meanings:

7 (1) “Dietary supplement for weight loss or muscle building” means a dietary
8 supplement as defined in 21 U.S.C. 321(ff) that is labeled, marketed, or otherwise represented
9 for the purpose of achieving weight loss or building muscle.

10 (2) “Over-the-counter diet pill” means a drug as defined in 21 U.S.C. 321(g)(1)
11 labeled marketed, or otherwise represented for the purpose of achieving weight loss for which a
12 prescription is not required under the federal Food, Drug and Cosmetic Act.

13 (3) “Retail establishment” means any vendor that, in the regular course of business,
14 sells dietary supplements for weight loss or muscle building or over-the-counter diet pills at retail
15 directly to the public, including, but not limited to, pharmacies, grocery stores, other retail stores,
16 and vendors that accept orders placed by mail, telephone, electronic mail, internet website,
17 online catalog, or software application.

18 (4) “Delivery sale ” means any sale of over-the-counter diet pills or dietary
19 supplements for weight loss or muscle building to a consumer if—

20 (i) The consumer submits the order for the sale by means of a telephone or other
21 method of voice transmission, the mails, or the Internet or other online service, or the seller is
22 otherwise not in the physical presence of the buyer when the request for purchase or order is
23 made; or

24 (ii) The over-the-counter diet pills or dietary supplements for weight loss or muscle
25 building are delivered to the buyer by common carrier, private delivery service, or other method
26 of remote delivery, or the seller is not in the physical presence of the buyer when the buyer
27 obtains possession of the over-the-counter diet pills or dietary supplements for weight loss or
28 muscle building.

29 (5) “Delivery Seller ” means a person, including online retailers, who makes delivery
30 sales of over-the-counter diet pills or dietary supplements for weight loss or muscle building.

31 (b) Prohibitions: No person shall sell or offer to sell or give away, as either a retail or
32 whole-sale promotion, an over-the-counter diet pill or dietary supplement for weight loss or
33 muscle building to any person under eighteen years of age.

34 (c) Responsibilities of retail establishments:

35 (1) Any retail establishment that sells over-the-counter diet pills or dietary
36 supplements for weight loss or muscle building shall limit access to such products in a manner
37 designed to prevent unauthorized access to such products. Such products shall not be directly
38 accessible by customers, and may be accessed only by employees of the establishment at such
39 location such as behind retail counter or in a locked case.

40 (2) For purposes of paragraph (1), and subject to paragraph (d), a retail establishment
41 shall request valid identification from any person who attempts to purchase a dietary supplement
42 for weight loss or over-the-counter diet pill if the retail establishment cannot reasonably
43 determine that the person appears to be under 18 years of age.

44 (d) Responsibilities of delivery sellers :

45 (1) Notwithstanding paragraph (c)(2), a delivery seller, including online retailers,
46 who mails or ships over-the-counter diet pills or dietary supplements for weight loss or muscle
47 building to consumers:

48 (i) Shall not sell, deliver, or cause to be delivered any over-the-counter diet pills or
49 dietary supplements for weight loss or muscle building to a person under eighteen years of age.

50 (ii) Shall use a method of mailing or shipping that requires—

51 (A) The purchaser placing the delivery sale order, or an adult who is at least 18 years
52 of age to sign to accept delivery of the shipping container at the delivery address; and

53 (B) The person who signs to accept delivery of the shipping container to provide
54 proof, in the form of a valid, government-issued identification bearing a photograph of the
55 individual, that the person is at least eighteen years of age and

56 (iii) Shall not accept a delivery sale order from a person without—

57 (A) Obtaining the full name, birth date, and residential address of that person; and

58 (B) Verifying the information provided in subclause (A), through the use of a
59 commercially available database or aggregate of databases, consisting primarily of data from
60 government sources, that are regularly used by government and businesses for the purpose of age
61 and identity verification and authentication, to ensure that the purchaser is at least eighteen years
62 of age.

63 (2) Limitation: No database being used for age and identity verification under
64 subparagraph (d)(iii) shall be in the possession or under the control of the delivery seller, or be
65 subject to any changes or supplementation by the delivery seller.

66 (e) Remedies:

67 (1) Whenever there shall be a violation of this section, an application may be made
68 by the attorney general in the name of the people of the Commonwealth of Massachusetts, to a
69 court or justice having jurisdiction by a special proceeding to issue an injunction, and upon
70 notice to the defendant of not less than five days, to enjoin and restrain the continuance of such
71 violation; and if it shall appear to the satisfaction of the court or justice that the defendant has, in

72 fact, violated this section, an injunction may be issued by the court or justice, enjoining and
73 restraining any further violations, without requiring proof that any person has, in fact, been
74 injured or damaged thereby.

75 (2) Whenever the court shall determine that a violation of this section has occurred,
76 the court may impose a civil penalty of not more than one thousand dollars (\$1,000).

77 (f) When determining whether supplement is “labeled marketed, or otherwise
78 represented for the purpose of achieving weight loss or muscle building” the Attorney General
79 shall consider, but is not limited to, the following factors:

80 (1) Whether the product contains:

81 (i) An ingredient approved by the federal Food and Drug Administration for weight
82 loss or muscle building;

83 (ii) A steroid; or

84 (iii) Creatine, green tea extract, raspberry ketone, garcinia cambogia, green coffee
85 bean extract; or

86 (2) Whether the product’s labeling or marketing bears statements or images that
87 express or imply that the product will help:

88 (i) Modify, maintain, or reduce body weight, fat, appetite, overall metabolism, or the
89 process by which nutrients are metabolized, and

90 (ii) Maintain or increase muscle or strength; and

91 (3) Whether the product or its ingredients are otherwise represented for the purpose
92 of achieving weight loss or building muscle.