



Legislation Details (With Text)

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Int. No. 450

By Council Members Oddo, Quinn and the Public Advocate (Ms. Gotbaum), and Council Members Brewer, Comrie, Felder, Fidler, Gennaro, Jackson, Koppell, Lopez, Nelson, Sanders, Sears, Serrano, Vallone, Weprin, Gallagher and Lanza

A Local Law to amend the administrative code of the city of New York, in relation to banning the sale of dietary supplements containing herbal ephedrine

Be it enacted by the Council as follows:

Section 1. Legislative findings and intent. Dietary supplements containing herbal ephedrine (also known as ephedra) have become popular as diet aids, energy boosters and athletic performance enhancers, and are widely sold for those purposes by herbal and homeopathic remedy outlets and health food stores. Herbal ephedrine is an amphetamine-like substance that stimulates the cardiovascular and central nervous systems. In its synthetic form, ephedrine is used as a drug and is strictly regulated by the federal Food, Drug and Cosmetic Act. Herbal ephedrine, on the other hand, is currently regulated only with respect to labeling requirements.

According to the National Institutes of Health and the *Nutrition Business Journal*, an estimated 3 billion servings of herbal ephedrine are consumed for weight-loss purposes alone each year, with consumers spending \$1.3 billion on herbal ephedrine products in 2002. Despite its popularity, however, herbal ephedrine has been associated with a number of side-effects, such as high blood pressure, heart palpitations, psychiatric disturbances, upper-gastrointestinal effects and hyperactivity, and may be linked to heart attack, stroke, seizure and even death. A number of medical and consumer organizations, including the American Medical Association and Consumers Union, support banning herbal ephedrine, as it poses significant health risks. The National Football League, the National Collegiate Athletic Association and the Olympics have already banned the use of herbal ephedrine within their organizations. The Council hereby finds that herbal ephedrine is a dangerous product, and that existing federal, state and local laws do not adequately protect the public from the dangers of products containing herbal ephedrine in non-prescription dietary supplements. Therefore, it is the intention of the Council to ban the sale of dietary supplements containing herbal ephedrine in New York City.

§2. Chapter one of title seventeen of the administrative code of the city of New York is amended by adding a new section 17-185 to read as follows:

§ 17-185 Sale of dietary supplements. a. For purposes of this section only, the following terms shall have the following meanings:

1) “Dietary supplement” shall mean any product regulated pursuant to section 321 et seq. of title 21 of the United States code.

2) “Herbal ephedrine” shall mean any herb or herbal product which contains ephedrine alkaloids, including, but not limited to, ma huang, Chinese ephedra, ephehdra sinica, ephedra herb powder, epitonin or any extract thereof; provided, however, that this definition shall not include any product which has been explicitly approved for use by the United States food and drug administration.

3) “Person” shall mean any natural person, individual, corporation, unincorporated association, proprietorship, firm, partnership, joint venture, joint stock association or other entity or business organization.

b. Sale of herbal ephedrine prohibited. No person shall sell or offer for sale any dietary supplement containing any quantity of herbal ephedrine to any person. Nothing in this section shall be construed to apply to any products which are lawfully sold, transferred, or furnished over the counter without a prescription pursuant to section 301 et seq. of title 21 of the United States code.

c. Exceptions. This section shall not apply to herbal ephedrine sold or dispensed by any practitioner of alternative medicine, whose qualification to use herbal ephedrine and other herbs is explicitly established by evidence of an active certification issued to such individual from an entity accredited by the national commission of certifying agencies; provided, however, herbal ephedrine may not be prescribed by such a practitioner for weight loss or for use in enhancing energy or athletic performance.

d. Violations and penalties. Any person who violates any provisions of this section shall be guilty of a misdemeanor punishable by a fine of not more than one thousand dollars for each violation. In addition, any person who violates any provisions of this section shall be liable for a civil penalty of not more than one thousand dollars for each violation.

e. Enforcement. The department and designated enforcement employees of the department of consumer affairs shall enforce the provisions of this section. A proceeding to recover any civil penalty authorized by this subdivision shall be commenced by the service of a notice of violation which shall be returnable to the administrative tribunal established by the board of health, which shall have the power to impose the civil penalties prescribed by this subdivision.

f. Rules. The commissioner may promulgate any rules as may be necessary for the purposes of carrying out the provisions of this section.

g. Severability. If any subsection, sentence, clause, phrase or other portion of the local law that added this section is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of the local law that added this section, which remaining

portions shall remain in full force and effect.

§3. This local law shall take effect ninety days after its enactment into law.

JM
April 18, 2003
LS# 2105