

July 7, 2020
Representative Daniel R. Cullinane
Joint Committee on Health Care Financing
House Vice Chair
State House
24 Beacon Street, Room 236
Boston MA, 02133

Re: H4783, An Act Protecting children from harmful diet pills and muscle-building supplements

Representative Cullinane,

The Natural Products Association (NPA) is the leading and largest trade association representing the entire natural products industry. We advocate for our members who supply, manufacture, and sell natural ingredients or finished products for consumers. NPA is the voice of responsible industry stakeholders before federal, state and local governments. Founded in 1936, NPA represents approximately 650 members accounting for more than 10,000 locations of retailers, manufacturers, wholesalers, and distributors of natural products including foods, dietary supplements, and health/beauty aids.

Thank you for the opportunity to address you about the important issue of keeping consumers safe in Massachusetts. Prior to joining NPA I was the top enforcement official at the Food and Drug Administration's Division of Dietary Supplements during the Obama Administration. My time at the FDA is considered one of the most productive enforcement time periods in FDA's modern history. While I was there, my division averaged approximately 15 legal actions annually and more than 200 administrative actions per year. Protecting the American people was my job while at the FDA and I believe that it is still my job in my current role at the Natural Products Association.

Targets Products that Contain Proven Natural Ingredients

While we understand the intent of the legislation, the committee must understand the steps our members take to ensure their products are not only compliant but safe. NPA members and other industry stakeholders invest significant manpower and capital to ensure their products are safe. These include good manufacturing processes, random product testing, adhering to appropriate marketing guidelines and following every other rule and regulation that the FDA and the FTC have made for the past 25 years.

As we understand it, the premise for this legislation was a suggestion that there may be a prevalence of protein and muscle-building supplements being used by teenagers and that their use was leading to eating disorders.

As one of the leading experts in the natural products industry who is still called on by the federal government on a regular basis to testify, I must say that I have never heard such a claim and do not know what it is based on or if there is any science or research behind it. If there is, I would welcome the opportunity for our professional regulatory staff to review it. For the record, NPA is unaware of any association between eating disorders and consumption of these types of products

But when we heard this claim, our association filed a Freedom of Information Act (FOIA) inquiry to the U.S. Food and Drug Administration to explore whether there were any adverse events for any cases involving eating disorders and muscle building products.

The Adverse Event Reporting System is a database that contains information on adverse event and product complaint reports submitted to FDA for foods, dietary supplements, and cosmetics. The database is designed to support FDA's safety surveillance program. Adverse Events can include minor to major medical events, but also complaints about off-taste or color of a product, defective packaging, and other non-medical issues.

Doctors, health care professionals and even consumers may submit a report of an adverse event with any dietary supplement. Thankfully, that overall number is quite low compared to foods and pharmaceuticals, but we were specifically interested with whether there were any cases involving eating disorders and muscle building supplements. The answer from FDA was zero. So as experts in this field and former regulators ourselves and after a professional review of governmental data, we would say that unless there is new information we don't know about, there is no basis to suggest that those with eating disorders have an association with consuming muscle building products. It's important to note that these are free to file and can be submitted by anyone.

One must also consider that this would be the first time in America's history that we are banning a food product for use by a certain category of people. As written, the bill would ban ingredients found in commonly found foods. Lipotropics may sound unnatural to some, but they are found in the healthy and recommended foods we want our children to eat. This includes lean cuts of beef, chicken, turkey, bison, dairy, eggs, milk, and even as a bit of a treat, some chocolate. Lipotropics are also found in Massachusetts's own world famous cod. I doubt whether the authors of bill believe that eating cod is a health threat to minors, but if so it might be time to remove the Sacred Cod from the House Chamber, because cod is chock full of lipotropics, which is one of the natural ingredients listed as a suggested target of this legislation.

Thermogens are another natural ingredient targeted in this legislation, but like lipotropics, thermogens are also found in healthy foods and products we use every day, like caffeine in a Dunkin Donuts cup of coffee, or beans in Boston Bean soup. Should young people in Massachusetts need to get the consent of a parent or guardian or prove they are 18 to buy these products?

Dunkin Donuts doesn't just sell coffee and donuts, they also sell vitamin D fortified milk, which many young people use to build muscle. I can't imagine the authors believe that Dunkin Donuts is selling harmful products to minors, but that's essentially what this legislation is suggesting.

Solution in Search of a Problem Undermines Public Health

The truth is, prohibiting the sale of healthy, safe and legal products to minors will do nothing to promote public health, and may actually do more to undermine it. I've seen it happen, and it is not the outcome we all share.

Because if minors cannot purchase safe and natural nutrition supplements from a legal retailer, they will get them elsewhere, and most of the time that means going online. And this is the most dangerous unintended consequence of this legislation as written, because the real villains and public health threats are the shady, fly-by-night retailers that sell illegal drugs masquerading as supplements to unsuspecting buyers. These are the crooks and con artists we should be going after.

As the country's former chief enforcement officer overseeing the dietary supplement industry, I put criminals that sold dangerous products in jail. I know first-hand that the industry is very well regulated and has the proper enforcement authority to prevent and punish bad actors. I continue to call out criminals and companies that break the law at my current position as head of the leading trade association for the natural products industry, working with the FDA and FTC to ensure they are punished.

Harm State's Economy

So, while we understand that this bill is well-intentioned, we do not see how it will help further the goals stated. There is the broader economic impact to consider. The natural products industry contributes 5.75 billion in state and local taxes each year and supports over 750,000 jobs. The state's economic engine, main street, includes retailers who supply their communities with nutritional products. As we have seen, main street has been devastated by the COVID-19 pandemic. Unfortunately, this legislation will certainly have an impact and it won't be positive for jobs and growth, hitting brick and mortar stores the hardest.

This legislation would lower sales tax revenue for the State of Massachusetts. Lower consumer sales in this state mean higher sales tax revenue for surrounding states and on the internet. In fact, we would recommend that the Treasurer's Office or the relevant budget and revenue committees in the legislature conduct a more formal analysis of the lost revenue that would result from this legislation.

Conclusion

In conclusion, the proposal under consideration today would place onerous restrictions, most notably on small businesses such as your local pharmacy, convenience or health food store, by prohibiting the sale of popular products that are found in: Commonly used foods including fish, meat and dairy products and the Sacred Cod; and something as simple as a cup of coffee.

Restricting access to them is unfair to Massachusetts consumers, hurts responsible retailers and drains the state budget through lost sales taxes. Nobody wins.

We support efforts to stop illegal drugs masquerading as natural products from being sold to consumers and especially to minors. The federal government has vast enforcement powers and has a long track record of punishing criminals who break the law. We support strong

enforcement of the law to protect consumers, but this legislation will not accomplish that and will actually work against existing law that is well-designed to protect consumers. For these reasons, we respectfully urge the committee to refer H. 4783 to study.

Thank you,

A handwritten signature in black ink, appearing to read "Dan Fab".

Daniel Fabricant, Ph.D.
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Cc:
Representative John Mahoney
House Chairman of the Joint Committee on Public Health