

Statement of Ingrid Lebert
Senior Director, Government Affairs
Council for Responsible Nutrition

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I'm Ingrid Lebert, with the Council for Responsible Nutrition (CRN), a national trade association representing manufacturers and ingredient suppliers of dietary supplements and functional food. We thank the Committee for the opportunity to testify today, as our association and its 190 member companies are concerned about legislation currently in committee: HB 1195, a bill that would restrict access to two broad categories of dietary supplements—muscle building and weight loss products. This legislation would not only restricts access for those 18 years and younger, but would also restrict access for adults.

While we recognize the potential concern about misuse and abuse of such products, CRN is alarmed with this legislation because the bill attempts to restrict safe, legal and *regulated* products—ultimately limiting access to responsible consumers who may find benefit in these products.

In addition, if this bill is passed, it will hurt legal businesses in the state of Massachusetts.

Let me first explain how the dietary supplement industry is regulated and make clear how consumers are protected.

The Dietary Supplement Health and Education Act (DSHEA), a federal law enacted in 1994, establishes federal regulatory structure for dietary supplements, and provides the U.S. Food and Drug Administration (FDA) with substantial authority to protect consumers. DSHEA gives FDA tools to remove dietary supplement products from the market if the product, or any of its ingredients, is adulterated or misbranded, poses an imminent hazard to public health or safety, presents a significant or unreasonable risk of illness or injury, contains new ingredients for which there is not adequate evidence of safety, or was manufactured or packaged under conditions that do not comply with good manufacturing practices.

Further, there are other federal regulations in place that protect consumers in Massachusetts and all other states. For example, the dietary supplement industry fought to pass the Designer Anabolic Steroid Control Act which allows federal agencies to ban those products masquerading as dietary supplements, thereby protecting consumers from illegal, spiked products for which there is a legitimate concern.

In addition, the dietary supplement industry helped pass the Dietary Supplement and Non-Prescription Consumer Protection Act, regulation that set up a post-market surveillance program by creating a system for submitting and monitoring serious adverse events to FDA to determine a potential pattern of problems with a particular product or ingredient that would need be addressed.

Clearly, consumers are well protected under this federal regulatory structure. Given that our industry fights for laws that protect consumers as well as our industry, we hope you will recognize our concerns with the serious flaws in HB 1195.

Our concerns with HB 1195 fall into three specific areas:

First, it casts a wide—and inappropriate—net when it comes to the products it attempts to ban and restrict. For example, this bill would place behind the counter popular and beneficial supplements, including protein and protein powders, creatine, fiber and more. While we agree that consumers should be educated about the products they choose to take, and that these products should be used responsibly to supplement healthy habits, we strongly disagree that there is a need to restrict access to these products. With passage of this bill, beneficial products, backed by considerable scientific evidence and a long history of safe use, could essentially become unavailable to Massachusetts consumers.

Second, proponents of HB 1195 are using broad and unproven arguments that don't apply to dietary supplements. Advocates argue that eating disorders may arise from the use and/or misuse of dietary supplements, and that assertion is not based in fact. We are not aware of any scientific evidence to prove causation or effect between eating disorders and the responsible use of dietary supplements. If you're going to ban dietary supplements because of concerns regarding eating disorders, then you will also need to ban fashion magazines, youth culture perpetuated by commercial interests, societal expectations, the media and its messages about self-esteem and body image, genetic predisposition, and so forth.

Third, we are concerned about the impact this bill may have on legitimate retail businesses and I know you will hear more about that from my colleague from the Retailers Association of Massachusetts. But the fact is that HB 1195 will unfairly hurt these businesses from large chain drug pharmacies to small mom and pop health food stores.

Legislating mandatory age restrictions on legally marketed products in Massachusetts could force many retailers to cease selling the products altogether out of fear of liability. Self-service availability of the products for adults will also diminish. Experience in other consumer industries repeatedly demonstrates that age restrictions imposed on a product makes it much harder for purchase by responsible consumers.

Over 400 private retail establishments and 300 registered pharmacies currently exist in the state of Massachusetts, all of which would be required to adhere to restrictions enacted by HB 1195. The legislation may require the hiring of new staff, the purchase of equipment/operating systems, costs for additional storage, and other measures to ensure products aren't easily accessible. In addition, we anticipate costs to the state for education and enforcement, costs not addressed by the legislation.

CRN opposes HB 1195. The legislation, if passed, would create restrictions to consumer access to products that promote good health—without achieving any clear public health objectives. Rather than banning or placing restrictions on legal products—actions which only serve to heighten interest by those under 18 by making these products “forbidden fruit”—it's education

campaigns and public/private partnerships that yield the kind of results that can help ensure health and wellness for Massachusetts citizens—not overreaching bills like HB 1195.

Many Massachusetts consumers take dietary supplements each year. The dietary supplement industry has a total direct economic impact in the state of Massachusetts of \$298 million, and the industry generates \$52 million in tax revenue for the state annually. On behalf of the Council for Responsible Nutrition and its member companies, we appreciate the opportunity to testify before you today and would be glad to answer any questions you may have.