

112TH CONGRESS
1ST SESSION

H. R. 1127

To encourage and ensure the use of safe football helmets and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 16, 2011

Mr. PASCARELL (for himself, Mr. PLATTS, and Mr. WEINER) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To encourage and ensure the use of safe football helmets and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Children’s Sports Athletic Equipment Safety Act”.

6 (b) **TABLE OF CONTENTS.**—The table of contents for
7 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Findings.

Sec. 3. Football helmet safety standards.

Sec. 4. Application of third-party testing and certification requirements to youth football helmets.

Sec. 5. False or misleading claims with respect to athletic sporting activity goods.

1 **SEC. 2. FINDINGS.**

2 The Congress finds the following:

3 (1) Participation in sports and athletic activi-
4 ties provides many benefits to children and should
5 be encouraged.

6 (2) Participation in sports and athletic activi-
7 ties does involve some inevitable risk of injury that
8 no protective gear or safety device can fully elimi-
9 nate.

10 (3) Sports-related concussion is a form of trau-
11 matic brain injury that can lead to lasting negative
12 health consequences.

13 (4) Direct medical costs and indirect costs of
14 traumatic brain injuries totaled an estimated
15 \$60,000,000,000 in the United States in the year
16 2000.

17 (5) Sports are the second leading cause of trau-
18 matic brain injury for Americans who are 15 to 24
19 years old, behind only motor vehicle crashes.

20 (6) Every year, American athletes suffer up to
21 an estimated 3,800,000 sports-related concussions.

22 (7) The potential for catastrophic injury result-
23 ing from multiple concussions make sports-related
24 concussion a significant concern for young athletes,
25 coaches, and parents.

1 (8) Football has the highest incidence of con-
2 cussions, which also occur in many other sports such
3 as baseball, basketball, ice hockey, lacrosse, soccer,
4 and softball.

5 (9) An estimated 4,500,000 children play foot-
6 ball in organized youth and school sports leagues, in-
7 cluding approximately 1,500,000 high school players.

8 (10) According to the Consumer Product Safety
9 Commission, more than 920,000 athletes under the
10 age of 18 were treated in emergency rooms, doctors'
11 offices, and clinics for football-related injuries in the
12 year 2007.

13 (11) In any given football season, 20 percent of
14 all high school football players sustain brain injuries.

15 (12) One study that included a post-season sur-
16 vey of football players found that 47 percent experi-
17 enced at least one concussion and almost 35 percent
18 experienced multiple concussions.

19 (13) Medical experts at Boston University
20 School of Medicine found that a deceased 18-year-
21 old athlete, who had experienced multiple concus-
22 sions playing high school football, suffered from
23 chronic traumatic encephalopathy, a degenerative
24 brain disease caused by head trauma.

1 (14) A football helmet’s ability to protect play-
2 ers from injury by attenuating acceleration forces
3 can decline over time as the helmet experiences
4 thousands of hits from use during successive football
5 seasons after its original date of manufacture.

6 (15) According to industry estimates, 100,000
7 football helmets more than ten years old, and thou-
8 sands almost twenty years old, were worn by players
9 in the 2009 season.

10 (16) A high school football player who suffered
11 brain damage from being hit in the head soon after
12 suffering a previous concussion was wearing a twen-
13 ty-year-old football helmet when he was injured.

14 (17) Children as young as 5 years old rely on
15 football helmets to protect against head injury.

16 (18) The widespread adoption of a voluntary in-
17 dustry standard for football helmet safety led to an
18 80-percent reduction in life-threatening subdural he-
19 matoma injuries.

20 (19) The voluntary industry safety standard for
21 football helmets does not specifically address concus-
22 sion risk.

23 (20) There is no voluntary industry safety
24 standard specifically for youth football helmets worn
25 by children, who have different physiological charac-

1 teristics from adults in terms of head size and neck
2 strength, especially those who are younger than 12
3 years old.

4 (21) Some football helmet manufacturers and
5 resellers have used misleading concussion safety
6 claims to sell children’s football helmets.

7 (22) Some used helmet reconditioners have
8 falsely certified that reconditioned helmets provided
9 to schools and youth football teams met voluntary
10 industry safety standards.

11 (23) Used helmet reconditioners do not inde-
12 pendently test reconditioned helmets before certi-
13 fying that they meet voluntary industry safety
14 standards.

15 (24) The industry organization that sets vol-
16 untary football helmet safety standards does not
17 conduct independent testing nor market surveillance
18 to ensure compliance with such voluntary safety
19 standards by manufacturers and reconditioners that
20 certify new and used helmets to such standards.

21 (25) Football helmet manufacturers and re-
22 conditioners place product warning labels under-
23 neath padding where the warning labels are ob-
24 scured from view and not clearly legible.

1 (26) The Consumer Product Safety Act (15
2 U.S.C. 2051 et seq.) charges the Consumer Product
3 Safety Commission with protecting the public from
4 unreasonable risks of serious injury or death from
5 consumer products, including consumer products
6 used in recreation and in schools.

7 (27) The Federal Trade Commission Act (15
8 U.S.C. 41 et seq.) empowers the Federal Trade
9 Commission to prevent unfair or deceptive acts or
10 practices, and prohibits the dissemination of mis-
11 leading claims for devices or services.

12 **SEC. 3. FOOTBALL HELMET SAFETY STANDARDS.**

13 (a) VOLUNTARY STANDARD DETERMINATION.—
14 Within 9 months after the date of enactment of this Act,
15 the Consumer Product Safety Commission shall deter-
16 mine, with respect to a standard or standards submitted
17 by a voluntary standards-setting organization regarding
18 youth football helmets, reconditioned football helmets, and
19 new football helmet concussion resistance (if feasible)
20 whether—

21 (1) compliance with the standard or standards
22 is likely to result in the elimination or adequate re-
23 duction of the risk of injury in connection with the
24 use of football helmets;

1 (2) it is likely that there will be substantial
2 compliance with the standard or standards; and

3 (3) the standard or standards are maintained
4 by a standards-setting organization that meets the
5 requirements of the document “ANSI Essential Re-
6 quirements: Due Process Requirements for Amer-
7 ican National Standards” published in January
8 2010 by the American National Standards Institute
9 (or any successor document).

10 (b) CONSUMER PRODUCT SAFETY STANDARD.—Un-
11 less the Consumer Product Safety Commission makes an
12 affirmative determination with respect to a standard or
13 standards under subsection (a) that addresses the matters
14 to which the following standards would apply, the Com-
15 mission shall initiate a rulemaking proceeding for the de-
16 velopment of a consumer product safety rule with respect
17 to the following:

18 (1) YOUTH FOOTBALL HELMETS.—A standard
19 for youth football helmets which is informed by chil-
20 dren’s different physiological characteristics from
21 adults in terms of head size and neck strength.

22 (2) RECONDITIONED FOOTBALL HELMETS.—A
23 standard for all reconditioned football helmets.

24 (3) NEW FOOTBALL HELMET CONCUSSION RE-
25 SISTANCE.—A standard for all new football helmets

1 that addresses concussion risk, if the Commission
2 determines that such a standard is feasible given
3 current understanding of concussion risk and how
4 helmets can prevent concussion.

5 (4) FOOTBALL HELMET WARNING LABELS.—A
6 standard for warning labels on all football helmets
7 that, at a minimum, requires clearly legible and fully
8 visible statements warning consumers of the limits
9 of protection afforded by the helmet. This standard
10 may include requirements for pictograms, instruc-
11 tions, guidelines, or other cautions to consumers
12 about injury risk and the proper use of football hel-
13 mets.

14 (5) DATE OF MANUFACTURE LABEL FOR NEW
15 FOOTBALL HELMETS.—A standard for a clearly leg-
16 ible and fully visible label on all new football helmets
17 stating the football helmet’s original date of manu-
18 facture and warning consumers that a football hel-
19 met’s ability to protect the wearer can decline over
20 time.

21 (6) DATE OF RECONDITIONING LABEL FOR RE-
22 CONDITIONED HELMETS.—A standard for a clearly
23 legible and fully visible label on all reconditioned
24 football helmets stating the helmet’s last date of re-
25 conditioning, its original date of manufacture, and

1 warning consumers that a football helmet’s ability to
2 protect the wearer can decline over time, despite
3 being properly and regularly reconditioned.

4 (c) SAFETY STANDARDS.—

5 (1) IN GENERAL.—The Commission shall—

6 (A) in consultation with representatives of
7 coaches, consumer groups, engineers, medical
8 experts, school sports directors, scientists, and
9 sports equipment standard-setting organiza-
10 tions, examine and assess the effectiveness of
11 any voluntary consumer product safety stand-
12 ards for youth football helmets, reconditioned
13 football helmets, and new football helmet con-
14 cussion resistance proposed by a voluntary
15 standards-setting organization; and

16 (B) in accordance with section 553 of title
17 5, United States Code, promulgate consumer
18 product safety standards that—

19 (i) are substantially the same as such
20 voluntary standards; or

21 (ii) are more stringent than such vol-
22 untary standards, if the Commission deter-
23 mines that more stringent standards would
24 further reduce the risk of injury associated
25 with football helmets.

1 (2) **TIMETABLE FOR RULEMAKING.**—If the
2 Commission does not make an affirmative deter-
3 mination under subsection (a) within the 9-month
4 period, the Commission shall commence the rule-
5 making required by subsection (b) within 30 days
6 after the end of that 9-month period. The Commis-
7 sion shall periodically review and revise the stand-
8 ards set forth in the consumer product safety rule
9 prescribed pursuant to that proceeding to ensure
10 that such standards provide the highest level of safe-
11 ty for football helmets that is feasible.

12 **SEC. 4. APPLICATION OF THIRD-PARTY TESTING AND CER-**
13 **TIFICATION REQUIREMENTS TO YOUTH**
14 **FOOTBALL HELMETS.**

15 (a) **IN GENERAL.**—The third-party testing and cer-
16 tification requirements of section 14(a)(2) of the Con-
17 sumer Product Safety Act (15 U.S.C. 2063(a)(2)) shall
18 apply to any youth football helmet (including a recondi-
19 tioned youth football helmet) to which any consumer prod-
20 uct safety rule prescribed under section 3(b) of this Act
21 applies as if the helmet were a children’s product that is
22 subject to a children’s product safety rule without regard
23 to the age of the individual for whom it is primarily de-
24 signed or intended.

1 (b) SPECIAL APPLICATION OF DEFINITION OF CHIL-
2 DREN’S PRODUCT FOR PURPOSES OF TESTING AND CER-
3 TIFICATION OF FOOTBALL HELMETS.—For the exclusive
4 purpose of applying the definition of the term “children’s
5 product” in section 3(a)(2) of the Consumer Product Safe-
6 ty Act (15 U.S.C. 2052(a)(2)) to the requirements of sub-
7 section (a) of this section, “18 years” shall be substituted
8 for “12 years” each place it appears.

9 (c) For the purposes of this section, third-party test-
10 ing and certification shall be conducted by a testing lab-
11 oratory that has an accreditation—

12 (1) that meets International Organization for
13 Standardization/International Electrotechnical Com-
14 mission standard 17025:2005 entitled General Re-
15 quirements for the Competence of Testing and Cali-
16 bration Laboratories (or any successor standard that
17 is from an accreditation body that is signatory to
18 the International Laboratory Accreditation Coopera-
19 tion for testing accreditation);

20 (2) that meets International Organization for
21 Standardization/International Electrotechnical Com-
22 mission Guide 65:1996 entitled General Require-
23 ments for Bodies Operating Product Certification
24 Systems (or any successor standard that is from an
25 accreditation body that is signatory to the Inter-

1 national Accreditation Forum for product certifi-
2 cation accreditation); and

3 (3) that includes all appropriate football helmet
4 standards and test methods within the scope of the
5 accreditation.

6 **SEC. 5. FALSE OR MISLEADING CLAIMS WITH RESPECT TO**
7 **ATHLETIC SPORTING ACTIVITY GOODS.**

8 (a) IN GENERAL.—It is unlawful for any person to
9 sell, or offer for sale, in interstate commerce, or import
10 into the United States for the purpose of selling or offer-
11 ing for sale, any item of equipment intended, designed,
12 or offered for use by an individual engaged in any athletic
13 sporting activity, whether professional or amateur, for
14 which the seller or importer, or any person acting on be-
15 half of the seller or importer, makes any false or mis-
16 leading claim with respect to the safety benefits of such
17 item.

18 (b) ENFORCEMENT BY FEDERAL TRADE COMMIS-
19 SION.—

20 (1) IN GENERAL.—Violation of subsection (a),
21 or any regulation prescribed under this section, shall
22 be treated as a violation of a rule under section 18
23 of the Federal Trade Commission Act (15 U.S.C.
24 57a) regarding unfair or deceptive acts or practices.
25 The Federal Trade Commission shall enforce this

1 Act in the same manner, by the same means, and
2 with the same jurisdiction, powers, and duties as
3 though all applicable terms and provisions of the
4 Federal Trade Commission Act (15 U.S.C. 41 et
5 seq.) were incorporated into and made a part of this
6 Act.

7 (2) REGULATIONS.—Notwithstanding any other
8 provision of law, the Commission may promulgate
9 such regulations as it finds necessary or appropriate
10 under this Act under section 553 of title 5, United
11 States Code.

12 (3) PENALTIES.—Any person who violates sub-
13 section (a) or any regulation prescribed under that
14 section, shall be subject to the penalties and entitled
15 to the privileges and immunities provided in the
16 Federal Trade Commission Act as though all appli-
17 cable terms and provisions of the Federal Trade
18 Commission Act were incorporated in and made part
19 of this Act.

20 (4) AUTHORITY PRESERVED.—Nothing in this
21 section shall be construed to limit the authority of
22 the Commission under any other provision of law.

23 (c) ENFORCEMENT BY STATE ATTORNEYS GEN-
24 ERAL.—

1 (1) RIGHT OF ACTION.—Except as provided in
2 paragraph (5), the attorney general of a State, or
3 other authorized State officer, alleging a violation of
4 subsection (a) or any regulation issued under that
5 section that affects or may affect such State or its
6 residents may bring an action on behalf of the resi-
7 dents of the State in any United States district
8 court for the district in which the defendant is
9 found, resides, or transacts business, or wherever
10 venue is proper under section 1391 of title 28,
11 United States Code, to obtain appropriate injunctive
12 relief.

13 (2) INITIATION OF CIVIL ACTION.—A State
14 shall provide prior written notice to the Federal
15 Trade Commission of any civil action under para-
16 graph (1) together with a copy of its complaint, ex-
17 cept that if it is not feasible for the State to provide
18 such prior notice, the State shall provide such notice
19 immediately upon instituting such action.

20 (3) INTERVENTION BY THE COMMISSION.—The
21 Commission may intervene in such civil action and
22 upon intervening—

23 (A) be heard on all matters arising in such
24 civil action; and

1 (B) file petitions for appeal of a decision in
2 such civil action.

3 (4) CONSTRUCTION.—Nothing in this section
4 shall be construed—

5 (A) to prevent the attorney general of a
6 State, or other authorized State officer, from
7 exercising the powers conferred on the attorney
8 general, or other authorized State officer, by
9 the laws of such State; or

10 (B) to prohibit the attorney general of a
11 State, or other authorized State officer, from
12 proceeding in State or Federal court on the
13 basis of an alleged violation of any civil or
14 criminal statute of that State.

15 (5) LIMITATION.—No separate suit shall be
16 brought under this subsection if, at the time the suit
17 is brought, the same alleged violation is the subject
18 of a pending action by the Federal Trade Commis-
19 sion or the United States under this section.

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