

112TH CONGRESS
1ST SESSION

S. 601

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

IN THE SENATE OF THE UNITED STATES

MARCH 16, 2011

Mr. UDALL of New Mexico (for himself, Mr. LAUTENBERG, and Mr. BLUMENTHAL) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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 makes sports-related

1 concussions a significant concern for young athletes,
2 coaches, and parents.

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

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

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

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

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

21 (13) Medical experts at Boston University
22 School of Medicine found that a deceased 18-year-
23 old athlete, who had experienced multiple concus-
24 sions playing high school football, suffered from

1 chronic traumatic encephalopathy, a degenerative
2 brain disease caused by head trauma.

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

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

12 (16) A high school football player who suffered
13 brain damage from being hit in the head soon after
14 suffering a previous concussion was wearing a 20-
15 year-old football helmet when he was injured.

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

18 (18) The widespread adoption of a voluntary in-
19 dustry standard for football helmet safety led to an
20 80 percent reduction in life-threatening subdural he-
21 matoma injuries.

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

1 (20) There is no voluntary industry safety
2 standard specifically for youth football helmets worn
3 by children, who have different physiological charac-
4 teristics from adults in terms of head size and neck
5 strength, especially those who are younger than 12
6 years old.

7 (21) Some football helmet manufacturers and
8 resellers have used misleading concussion safety
9 claims to sell children's football helmets.

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

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

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

24 (25) Football helmet manufacturers and re-
25 conditioners place product warning labels under-

1 neath padding where the warning labels are ob-
2 scured from view and not clearly legible.

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

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

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

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

23 (1) compliance with the standard or standards
24 is likely to result in the elimination or adequate re-

1 duction of the risk of injury in connection with the
2 use of football helmets;

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

5 (3) the standard or standards are maintained
6 by a standards-setting organization that meets the
7 requirements of the document “ANSI Essential Re-
8 quirements: Due Process Requirements for Amer-
9 ican National Standards” published in January
10 2010 by the American National Standards Institute
11 (or any successor document).

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

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

24 (2) RECONDITIONED FOOTBALL HELMETS.—A
25 standard for all reconditioned football helmets.

1 (3) NEW FOOTBALL HELMET CONCUSSION RE-
2 SISTANCE.—A standard for all new football helmets
3 that addresses concussion risk, if the Commission
4 determines that such a standard is feasible given
5 current understanding of concussion risk and how
6 helmets can prevent concussion.

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

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

23 (6) DATE OF RECONDITIONING LABEL FOR RE-
24 CONDITIONED HELMETS.—A standard for a clearly
25 legible and fully visible label on all reconditioned

1 football helmets stating the helmet's last date of re-
2 conditioning, its original date of manufacture, and
3 warning consumers that a football helmet's ability to
4 protect the wearer can decline over time, despite
5 being properly and regularly reconditioned.

6 (c) SAFETY STANDARDS.—

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

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

18 (B) in accordance with section 553 of title
19 5, United States Code, promulgate consumer
20 product safety standards that—

21 (i) are substantially the same as such
22 voluntary standards; or

23 (ii) are more stringent than such vol-
24 untary standards, if the Commission deter-
25 mines that more stringent standards would

1 further reduce the risk of injury associated
2 with football helmets.

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

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

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

1 to the age of the individual for whom it is primarily de-
2 signed or intended.

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

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

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

22 (2) that meets International Organization for
23 Standardization/International Electrotechnical Com-
24 mission Guide 65:1996 entitled General Require-
25 ments for Bodies Operating Product Certification

1 Systems (or any successor standard that is from an
2 accreditation body that is signatory to the Inter-
3 national Accreditation Forum for product certifi-
4 cation accreditation); and

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

8 **SEC. 5. FALSE OR MISLEADING CLAIMS WITH RESPECT TO**
9 **ATHLETIC SPORTING ACTIVITY GOODS.**

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

20 (b) ENFORCEMENT BY FEDERAL TRADE COMMIS-
21 SION.—

22 (1) IN GENERAL.—Violation of subsection (a),
23 or any regulation prescribed under this section, shall
24 be treated as a violation of a rule under section 18
25 of the Federal Trade Commission Act (15 U.S.C.

1 57a) regarding unfair or deceptive acts or practices.
2 The Federal Trade Commission shall enforce this
3 Act in the same manner, by the same means, and
4 with the same jurisdiction, powers, and duties as
5 though all applicable terms and provisions of the
6 Federal Trade Commission Act (15 U.S.C. 41 et
7 seq.) were incorporated into and made a part of this
8 Act.

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

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

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

1 (c) ENFORCEMENT BY STATE ATTORNEYS GEN-
2 ERAL.—

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

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

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

1 (A) be heard on all matters arising in such
2 civil action; and

3 (B) file petitions for appeal of a decision in
4 such civil action.

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

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

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

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

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