

Calendar No. 618

113TH CONGRESS }
2d Session }

SENATE

{ REPORT
113-310 }

YOUTH SPORTS CONCUSSION ACT

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 1014



DECEMBER 12, 2014.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED THIRTEENTH CONGRESS

SECOND SESSION

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Mr. ROCKEFELLER, from the Committee on Commerce, Science, and Transportation, submitted the following

R E P O R T

[To accompany S. 1014]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1014) to reduce sports-related concussions in youth, and for other purposes, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

The purpose of S. 1014, the Youth Sports Concussion Act, is to help reduce sports-related concussions in youth by providing the Federal Trade Commission (FTC) greater enforcement authority.

BACKGROUND AND NEEDS

In recent years, a constant drumbeat of press coverage about the long-term implications of traumatic brain injury among athletes has caused widespread alarm among parents and growing public awareness of its dangers. Yet this public concern has also resulted in the proliferation of unfair and deceptive safety claims to sell protective sports equipment and has highlighted the need to streamline the FTC's authority over these claims, as well as a closer review of safety standards for sports equipment.

On October 19, 2011, the Committee on Commerce, Science, and Transportation of the Senate held a hearing, *Concussions and the Marketing of Sports Equipment*, which examined its investigative findings of widespread usage of “anti-concussion,” “concussion-reducing,” or other unfounded claims in the marketing of sports equipment. In August 2012, the FTC brought an enforcement ac-

tion against the makers of Brain-Pad mouth guards for false and misleading claims. Still, products touting unfounded promises of concussion “prevention” continue to be readily available online.

While much of the media coverage has centered on the tragedies of former NFL players with histories of brain injuries, doctors say that young athletes are more vulnerable to concussions and face greater negative consequences. This past school year, more than 300,000 high school athletes were diagnosed with concussions. And since 2005, over 1.3 million concussions have been diagnosed among high school athletes in just the top 9 most popular sports. These figures, researchers say, likely understate – vastly – the true extent of the epidemic because many head injuries go unreported or ignored.

In October 2013, the Institute of Medicine of the National Academies issued a report, *Sports-Related Concussions in Youth: Improving the Science, Changing the Culture*, which is referenced in the legislation and was commissioned at the urging of Chairman John D. Rockefeller IV and Senator Tom Udall. The report found that much remains unknown about the extent of concussions in youth, but it found limited evidence that current helmet designs reduce the risk of sport-related concussions and no evidence that mouth guards or other facial protection equipment reduce concussion risk. The Institute of Medicine’s report recommended that the Federal Government invest in additional research into biomechanical factors that influence injury risk in youth and that this data be used to inform the development of effective protective equipment safety standards.

SUMMARY OF PROVISIONS

S. 1014 would allow the FTC to clarify what constitutes an unfair and deceptive act or practice in regards to safety claims involving sports equipment, and it would provide the FTC the authority to impose civil penalties for such violations. The legislation would also provide State attorneys general the authority to enforce such advertising violations.

The bill has received support from numerous sports, medical, and consumer organizations: American Academy of Neurology, American Academy of Pediatrics, Brain Injury Association of America, Brain Trauma Foundation, Cleveland Clinic, Consumer Federation of America, Consumers Union, Major League Baseball, Major League Baseball Players Association, Major League Soccer, Major League Soccer Players Union, National Association of State Head Injury Administrators, National Athletic Trainers’ Association, National Basketball Association, National Collegiate Athletic Association, National Consumers League, National Federation of State High School Associations, National Football League, National Football League Players Association, National Hockey League, National Interscholastic Athletic Administrators Association, National Operating Committee on Standards for Athletic Equipment, Safe Kids Worldwide, US Lacrosse, U.S. Soccer Federation, and USA Hockey.

LEGISLATIVE HISTORY

On April 9, 2014, in an open Executive Session, the Committee considered the bill and reported S. 1014, as amended, favorably by

voice vote. The Committee adopted a substitute amendment from Senator Rockefeller.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

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S. 1014 would prohibit importers and sellers of athletic equipment from making deceptive claims about the safety of that equipment. The Federal Trade Commission (FTC) would be directed to write regulations to enforce the new prohibition.

Based on information from the FTC, CBO estimates that the cost of implementing S. 1014 would not be significant because the agency is already taking action to enforce such a prohibition under its general authority. Enacting S. 1014 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

S. 1014 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Susan Willie. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

The legislation would apply to manufacturers of sports equipment, including any person who sells, offers for sale, or imports any item or equipment intended, designed, or offered for use by an individual engaged in any athletic sporting activity, whether professional or amateur.

ECONOMIC IMPACT

This legislation is not expected to have an adverse economic impact on the Nation.

PRIVACY

S. 1014 would not have a negative impact on the personal privacy of individuals.

PAPERWORK

S. 1014 is not expected to create new reporting requirements.

CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions

contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title.

Section 1 of the bill would establish the short title of the bill as the “Youth Sports Concussion Act.”

Section 2. Sense of Congress.

Section 2 of the bill would provide the sense of Congress that scientific advancements and a greater understanding of the issues that affect the health and safety of young athletes are key to reducing sports-related concussions in youth. The sense of Congress would call on the Consumer Product Safety Commission and the FTC to review the October 2013 report from the Institute of Medicine to inform their efforts to protect consumers. It also urges that any voluntary standards adopted by protective sports equipment manufacturers include a mechanism to ensure substantial compliance.

Section 3. False or misleading claims with respect to athletic sporting activity equipment.

Section 3 of the bill would make it unlawful for any person to sell, offer for sale, or import any item or equipment for which the seller or importer, or anyone on their behalf, makes any deceptive claim about the safety benefits of the item or equipment. Any such violation would be considered a violation of a rule under section 18 of the FTC Act (15 U.S.C. 57a). Should the FTC believe that a rule-making is needed to carry out this section, the FTC would be empowered to do so under section 553 of title 5, United States Code (commonly known as the Administrative Procedure Act). Section 3 of the bill also would authorize State attorneys general to bring actions against entities that are in violation of this section, subject to intervention by the FTC.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that the bill as reported would make no change to existing law.