

109TH CONGRESS
1ST SESSION

S. 1114

To establish minimum drug testing standards for major professional sports leagues.

IN THE SENATE OF THE UNITED STATES

MAY 24, 2005

Mr. MCCAIN (for himself and Mr. STEVENS) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To establish minimum drug testing standards for major professional sports leagues.

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.**

4 This Act may be cited as the “Clean Sports Act of
5 2005”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—Congress finds the following:

8 (1) The use of anabolic steroids and other per-
9 formance-enhancing substances by minors is a public
10 health problem of national significance.

1 (2) Experts estimate that over 500,000 teen-
2 agers have used performance-enhancing substances,
3 which medical experts warn can cause a litany of
4 health problems for individuals who take them, in
5 particular children and teenagers.

6 (3) The adverse health effects caused by
7 steroids and other performance-enhancing sub-
8 stances include stunted growth, scarring acne, hair
9 loss, dramatic mood swings, hormonal and metabolic
10 imbalances, liver damage, a higher risk of heart dis-
11 ease and stroke later in life, as well as an increased
12 propensity to demonstrate aggressive behavior, com-
13 mit suicide, and commit crimes.

14 (4) Professional athletes are role models for
15 young athletes and influence the behavior of children
16 and teenagers.

17 (5) Congressional testimony by parents of mi-
18 nors who used performance enhancing drugs, as well
19 as medical and health experts, indicates that the ac-
20 tual or alleged use of performance-enhancing sub-
21 stances by professional athletes results in the in-
22 creased use of these substances by children and
23 teenagers.

24 (6) Surveys and studies suggest a connection
25 between the actual or alleged use of performance-en-

1 hancing substances by college and professional ath-
2 letes and the increased use of these substances by
3 children and teenagers.

4 (7) The real or perceived tolerance of the use
5 of performance-enhancing substances by professional
6 athletes has resulted in both increased pressure on
7 children and teenagers to use performance-enhanc-
8 ing drugs in order to advance their athletic careers
9 and to professional sports loss of integrity.

10 (8) The adoption by professional sports leagues
11 of strong policies to eliminate the use of perform-
12 ance-enhancing substances would result in the re-
13 duced use of these substances by children and teen-
14 agers.

15 (9) Minimum drug testing standards for profes-
16 sional sports established by Federal law would en-
17 sure the adoption of strong policies to eliminate the
18 use of performance-enhancing substances in profes-
19 sional sports.

20 (10) Minimum drug testing standards for pro-
21 fessional sports established by Federal law would
22 help return integrity to professional sports.

23 (11) Congress has for several years expressed a
24 strong interest in the problem of the role of perform-

1 ance-enhancing drugs in professional sports and
2 other levels of sports.

3 (12) Congress has for several years regulated
4 the use of anabolic steroids and other performance-
5 enhancing substances.

6 (13) Recent Federal laws regulating the use of
7 anabolic steroids and other performance-enhancing
8 substances were enacted in large part to reduce the
9 prevalence of these substances in sports.

10 (14) Congress has for several years regulated
11 both professional and amateur sports.

12 (b) PURPOSE.—The purpose of this Act is to protect
13 the integrity of professional sports and the health and
14 safety of athletes generally by establishing minimum
15 standards for the testing of steroids and other perform-
16 ance-enhancing substances by professional sports leagues.

17 **SEC. 3. DEFINITIONS.**

18 In this Act:

19 (1) ANTI-DOPING CODE.—The term “anti-
20 doping code” means the doping control standards es-
21 tablished in the United States Anti-Doping Agency
22 Protocol for Olympic Movement Testing (excluding
23 substances or methods prohibited in a particular
24 sport, as defined in such protocol).

1 (2) COMMISSION.—The term “Commission”
2 means the Federal Trade Commission.

3 (3) DIRECTOR.—The term “Director” means
4 the Director of the Office of National Drug Control
5 Policy.

6 (4) MAJOR PROFESSIONAL LEAGUE.—The term
7 “major professional league” means Major League
8 Baseball, the National Basketball Association, the
9 National Football League, and the National Hockey
10 League or any successor organization to those
11 leagues.

12 (5) OFF-SEASON.—The term “off-season”
13 means the period of time in each calendar year out-
14 side of the season of play for each major profes-
15 sional league.

16 (6) PROFESSIONAL ATHLETE.—The term “pro-
17 fessional athlete” means an individual who competes
18 in a major professional league.

19 (7) PROFESSIONAL GAME.—The term “profes-
20 sional game” means any game held in the United
21 States between any professional teams of a major
22 professional league.

23 (8) PROHIBITED METHOD OR SUBSTANCE.—

1 (A) PROHIBITED METHOD.—The term
2 “prohibited method” means a method listed and
3 described in the Anti-Doping Code.

4 (B) PROHIBITED SUBSTANCE.—The term
5 “prohibited substance” means a substance list-
6 ed and described in the Anti-Doping Code.

7 (C) PERIOD OF PROHIBITION.—A sub-
8 stance prohibited in-competition by the Anti-
9 Doping Code shall be a prohibited substance
10 only during the season of play. Only a sub-
11 stance or method prohibited out-of-competition
12 by the Anti-Doping Code shall be a prohibited
13 substance or method during the off-season.

14 (9) SEASON OF PLAY.—

15 (A) IN GENERAL.—The term “season of
16 play” for each major professional league means
17 the period of time in each calendar year begin-
18 ning with the date on which professional ath-
19 letes of that major professional league are col-
20 lectively obligated to report to their teams in
21 preparation for play and ending with the last
22 game of the major professional league’s regular
23 season.

24 (B) POST-SEASON.—The season of play
25 shall include post-season play for an athlete

1 who is a member of a team that remains active
2 in post-season play.

3 **SEC. 4. MINIMUM UNIFORM TESTING STANDARDS.**

4 (a) CONDUCT PROHIBITED.—It shall be unlawful for
5 a major professional league to arrange, promote, organize,
6 or produce a professional game without meeting the re-
7 quirements in subsection (b).

8 (b) MINIMUM TESTING REQUIREMENTS.—Each
9 major professional league shall implement policies and
10 procedures for the testing of the use of prohibited sub-
11 stances by professional athletes who compete in each re-
12 spective major professional league which shall be inde-
13 pendently administered and shall be consistent with and
14 as stringent as the doping control standard established by
15 the United States Anti-Doping Agency, and which shall,
16 at minimum, include the following:

17 (1) TIMING AND FREQUENCY OF TESTING.—

18 (A) IN GENERAL.—Each professional ath-
19 lete shall be tested a minimum of 5 times each
20 calendar year that such athlete is competing in
21 games organized by the major professional
22 league.

23 (B) TIMING.—Each athlete shall be test-
24 ed—

1 (i) at least 3 times, each with no ad-
2 vance notice, during each season of play;
3 and

4 (ii) at least 2 times, each with no ad-
5 vance notice, during the off-season.

6 (2) TEST DISTRIBUTION PLANNING.—Each
7 major professional league shall certify to the Direc-
8 tor on or prior to December 31 of each year that it
9 has consulted with the United States Anti-Doping
10 Agency in the development of its test distribution
11 plan for both season of play and off-season testing.

12 (3) METHOD OF TESTING.—Each major profes-
13 sional league shall certify to the Director on or prior
14 to December 31 of each year that it has consulted
15 with the United States Anti-Doping Agency in the
16 development of its drug testing protocols for both
17 season of play and off-season testing.

18 (4) APPLICABLE SUBSTANCES.—Each profes-
19 sional athlete shall be tested for all prohibited sub-
20 stances at the time of each test. A major profes-
21 sional league may make exceptions for any prohib-
22 ited substances that have been properly prescribed
23 by a doctor of medicine licensed in the United States
24 for legitimate and documented therapeutic purposes.

1 (5) ANALYSIS OF SAMPLE.—Each sample pro-
2 vided shall be analyzed by a laboratory approved by
3 the United States Anti-Doping Agency.

4 (6) POSITIVE TESTS.—

5 (A) IN GENERAL.—A positive test shall
6 consist of the presence in the sample of any
7 prohibited substance or its metabolites or mark-
8 ers, or evidence of the use of a prohibited meth-
9 od, unless that substance was prescribed to the
10 athlete in accordance with paragraph (4).

11 (B) REFUSAL.—A refusal by a professional
12 athlete to submit to a test or a failure of a pro-
13 fessional athlete to submit to a test without
14 compelling justification shall also be considered
15 a positive test.

16 (7) PENALTIES.—

17 (A) GENERAL RULE.—

18 (i) FIRST VIOLATION.—Except as pro-
19 vided in subparagraph (B), a professional
20 athlete who tests positive shall be imme-
21 diately suspended for a minimum of 2
22 years for a first violation. All suspensions
23 shall include a loss of pay for the period of
24 the suspension.

1 (ii) SECOND VIOLATION.—A second
2 violation shall result in a lifetime ban of
3 the professional athlete from all major pro-
4 fessional leagues.

5 (B) EXCEPTIONS.—

6 (i) KNOWLEDGE OF THE ATHLETE.—
7 A major professional league may impose a
8 lesser penalty than provided in subpara-
9 graph (A) or no penalty if the professional
10 athlete establishes that he did not know or
11 suspect, and could not reasonably have
12 known or suspected even with the exercise
13 of utmost caution, that he had used the
14 prohibited substance.

15 (ii) ASSISTANCE IN IDENTIFYING VIO-
16 LATIONS.—A major professional league
17 may impose a lesser penalty than provided
18 in subparagraph (A) if the professional
19 athlete provides substantial assistance to
20 the major professional league in identifying
21 violations of the league's drug testing pol-
22 icy by other professional athletes or assist-
23 ance in violations of the league's drug test-
24 ing policy by any coach, trainer, manager,
25 agent, team staff, official, medical, or

1 other personnel working with or treating
2 professional athletes participating in or
3 preparing for sports competition.

4 (8) ADJUDICATION.—

5 (A) CONSULTATION.—Each major profes-
6 sional league shall certify to the Director on or
7 prior to December 31 of each year that it has
8 consulted with the United States Anti-Doping
9 Agency in the development of its adjudication
10 process.

11 (B) DUE PROCESS.—If a professional ath-
12 lete tests positive, the professional athlete shall
13 have the right to notice, a fair, timely, and ex-
14 pedited hearing, representation by counsel and
15 appeal.

16 (C) SUSPENSION.—During the pendency of
17 any proceedings the professional athlete shall be
18 suspended from participating in any profes-
19 sional game.

20 (9) PUBLIC DISCLOSURE.—

21 (A) TESTING.—A major professional
22 league shall publicly disclose the identity of any
23 professional player who has tested positive as
24 well as the prohibited substance or prohibited

1 method for which he tested positive not later
2 than 30 days after receiving the test results.

3 (B) PENALTY.—A major professional
4 league shall publicly disclose the name of any
5 penalized athlete, the penalty imposed, the sub-
6 stance for which the player tested positive, and
7 the reason for the penalty not later than 15
8 days after the final disposition of the player's
9 case.

10 **SEC. 5. PROMULGATION OF STANDARDS BY THE DIRECTOR**
11 **OF THE OFFICE OF NATIONAL DRUG CON-**
12 **TROL POLICY.**

13 (a) IN GENERAL.—The Director shall have the au-
14 thority to promulgate standards that would modify the
15 provisions of section 4 as they apply to an individual major
16 professional league for exceptional circumstances or for
17 other good cause.

18 (b) EFFECTIVENESS MAINTAINED.—A modification
19 under subsection (a) shall not—

20 (1) reduce the effectiveness of the standards in
21 eliminating the use of steroids or other performance-
22 enhancing substances in any major professional
23 league; or

1 (2) diminish the leadership role of the United
2 States in eliminating the use of steroids or other
3 performance-enhancing substances in sports.

4 (c) INCLUSION OF ADDITIONAL LEAGUES.—The Di-
5 rector may include an additional professional sporting
6 league or the colleges and athletes participating in Divi-
7 sion I or Division II of the NCAA as a major professional
8 league if the Director determines that such additions
9 would prevent the use of performance-enhancing sub-
10 stances by high school, college, or professional athletes.

11 (d) DELEGATION.—The Director may delegate the
12 administration of this Act to any other appropriate agency
13 of the Federal Government.

14 **SEC. 6. ENFORCEMENT BY THE FEDERAL TRADE COMMIS-**
15 **SION.**

16 (a) UNFAIR OR DECEPTIVE ACTS OR PRACTICES.—
17 A violation of section 4 shall be treated as a violation of
18 section 18 of the Federal Trade Commission Act (15
19 U.S.C. 57a) regarding unfair or deceptive acts or prac-
20 tices.

21 (b) POWERS OF COMMISSION.—

22 (1) IN GENERAL.—The Commission shall issue
23 and enforce the regulations for the enforcement of
24 section 4 in the same manner, by the same means,
25 and with the same jurisdiction, powers, and duties

1 as though all applicable terms and provisions of the
2 Federal Trade Commission Act (15 U.S.C. 41 et
3 seq.) were incorporated into and made a part of this
4 Act. Any person who violates such regulations shall
5 be subject to the penalties and entitled to the privi-
6 leges and immunities provided in that Act.

7 (2) ENHANCED PENALTY FOR VIOLATIONS.—
8 Notwithstanding subsection (a) and the Federal
9 Trade Commission Act, in the case of a person who
10 violates section 4, the Commission may, in its discre-
11 tion, seek a civil penalty for such violation in an
12 amount, as determined by the Commission, of not
13 more than \$1,000,000 for each violation of section
14 4.

15 (3) GENERAL AUTHORITY.—Nothing in this Act
16 shall be construed to limit the authority of the Com-
17 mission under any other provision of law.

18 **SEC. 7. REPORTS TO CONGRESS.**

19 (a) FIRST LEAGUE REPORT.—

20 (1) IN GENERAL.—Not later than 6 months
21 after completion of a professional sports league's
22 first season of play after the effective date of this
23 Act, each major professional league shall transmit to
24 the Committee on Commerce, Science, and Trans-
25 portation of the Senate and the Committee on En-

1 ergy and Commerce and the Committee on Govern-
2 ment Reform of the House of Representatives, a re-
3 port on its testing policies and procedures.

4 (2) CONTENTS.—The report required by this
5 subsection shall contain—

6 (A) a comparison of the major professional
7 league’s testing policy (including its adjudica-
8 tion procedures) to that of the United States
9 Anti-Doping Agency, emphasizing the dif-
10 ferences between the policies and the rationales
11 for the differences; and

12 (B) aggregate data on the number of pro-
13 fessional players tested by the major profes-
14 sional league and the prohibited substances de-
15 tected in samples or prohibited methods, includ-
16 ing the number of tests conducted during the
17 season of play and during the off-season.

18 (b) BIENNIAL LEAGUE REPORTS.—Each major pro-
19 fessional league shall transmit to the Committee on Com-
20 merce, Science, and Transportation of the Senate and the
21 Committee on Energy and Commerce and the Committee
22 on Government Reform of the House of Representatives,
23 on a biennial basis, a report containing the data and anal-
24 ysis required in subsection (a) for each of the 2 prior
25 years.

1 (c) ONDCP REPORT.—Not later than 1 year after
2 the date of enactment of this Act, and subsequently there-
3 after as determined appropriate by the Director, the Di-
4 rector shall report to the Committee on Commerce,
5 Science, and Transportation of the Senate and the Com-
6 mittee on Energy and Commerce and the Committee on
7 Government Reform of the House of Representatives, rec-
8 ommendations for improving any Federal law governing
9 controlled substances as may be necessary for reducing the
10 use of steroids and other performance-enhancing sub-
11 stances.

12 **SEC. 8. PROMULGATION OF STANDARDS BY UNITED**
13 **STATES BOXING COMMISSION.**

14 Upon the latter of 12 months after enactment of this
15 Act or 12 months after the establishment of the United
16 States Boxing Commission pursuant to Federal law, that
17 commission shall, in consultation with the Association of
18 Boxing Commissions and the United States Anti-Doping
19 Agency, promulgate uniform performance-enhancing sub-
20 stance testing standards for professional boxing that are
21 consistent with section 4.

22 **SEC. 9. STUDY ON COLLEGE TESTING POLICIES AND PRO-**
23 **CEDURES.**

24 (a) STUDY.—The Government Accountability Office
25 shall conduct a study on the use of performance-enhancing

1 substances by college athletes which shall examine the pro-
2 hibited substance policies and testing procedures of inter-
3 collegiate athletic associations and college and university
4 athletic departments.

5 (b) REPORT.—

6 (1) SUBMISSION TO CONGRESS.—Not later than
7 1 year after the date of enactment of this Act, the
8 Government Accountability Office shall transmit a
9 report to the Committee on Commerce, Science, and
10 Transportation of the Senate and the Committee on
11 Energy and Commerce and the Committee on Gov-
12 ernment Reform of the House of Representatives.

13 (2) CONTENTS.—The report required by this
14 subsection shall—

15 (A) assess the adequacy of the testing poli-
16 cies and procedures described in subsection (a)
17 in detecting and preventing the use of perform-
18 ance-enhancing substances; and

19 (B) include recommendations to Congress
20 regarding expanding the application of the reg-
21 ulations issued pursuant to this Act to such
22 intercollegiate and interscholastic athletic asso-
23 ciations.

1 **SEC. 10. COMMISSION ON HIGH SCHOOL AND COLLEGIATE**
2 **ATHLETICS.**

3 (a) COMMISSION.—The Director shall establish a
4 commission on high school and collegiate athletics.

5 (b) REPORT.—Not later than 1 year after the date
6 of enactment of this Act, the commission shall report to
7 Congress—

8 (1) findings on the use of steroids and other
9 performance-enhancing substances in high school
10 and collegiate sports; and

11 (2) recommendations for reducing their use.

12 **SEC. 11. SENSE OF CONGRESS.**

13 It is the sense of Congress that—

14 (1) professional sports leagues not regulated by
15 this Act should adhere to the drug testing standards
16 established in this Act;

17 (2) all professional sports should implement
18 policies and procedures for the testing of the use of
19 prohibited substances or the detection of prohibited
20 methods by professional athletes that ensure that
21 American professional sports leagues are world lead-
22 ers in the effort to keep steroids and other perform-
23 ance-enhancing drugs out of sports;

24 (3) all professional sports should implement
25 policies and procedures that address the development
26 of designer steroids and emerging methods for

1 doping, including gene doping, that enhance sports
2 performance, are potential or actual health risks,
3 and are contrary to the spirit of the sport; and

4 (4) each major professional league should
5 produce and publicize public service announcements
6 regarding the health and safety consequences of
7 steroids and other similar performance-enhancing
8 substances on children and teenagers.

9 **SEC. 12. EFFECTIVE DATE.**

10 This Act shall take effect 1 year after the date of
11 enactment of this Act.

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