

112TH CONGRESS  
1ST SESSION

# H. R. 1127

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

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## 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

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## 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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