

112TH CONGRESS
2D SESSION

S. 3431

To amend the Controlled Substances Act to more effectively regulate anabolic steroids.

IN THE SENATE OF THE UNITED STATES

JULY 25, 2012

Mr. WHITEHOUSE (for himself and Mr. HATCH) introduced the following bill;
which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the Controlled Substances Act to more effectively regulate anabolic steroids.

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 “Designer Anabolic
5 Steroid Control Act of 2012”.

6 **SEC. 2. AMENDMENTS TO THE CONTROLLED SUBSTANCES**
7 **ACT.**

8 (a) DEFINITIONS.—Section 102(41) of the Controlled
9 Substances Act (21 U.S.C. 802(41)) is amended—

10 (1) in subparagraph (A)—

1 (A) in clause (xlix), by striking “and” at
 2 the end;

3 (B) by redesignating clause (xlx) as clause
 4 (lxxvii); and

5 (C) by inserting after clause (xlix) the fol-
 6 lowing:

7 “(l) 5α -Androstan-3,6,17-trione;

8 “(li) Androst-4-ene-3,6,17-trione;

9 “(lii) Androsta-1,4,6-triene-3,17-
 10 dione;

11 “(liii) 6-bromo-androstan-3,17-dione;

12 “(liv) 6-bromo-androsta-1,4-diene-
 13 3,17-dione;

14 “(lv) 4-chloro- 17α -methyl-androsta-
 15 1,4-diene-3,17 β -diol;

16 “(lvi) 4-chloro- 17α -methyl-androst-4-
 17 ene-3 β ,17 β -diol;

18 “(lvii) 4-chloro- 17α -methyl-17 β -hy-
 19 droxy-androst-4-en-3-one;

20 “(lviii) 4-chloro- 17α -methyl-17 β -hy-
 21 droxy-androst-4-ene-3,11-dione;

22 “(lix) 4-chloro- 17α -methyl-androsta-
 23 1,4-diene-3,17 β -diol;

24 “(lx) 2α , 17α -dimethyl-17 β -hydroxy-
 25 5α -androstan-3-one;

- 1 “(lxi) $2\alpha,17\alpha$ -dimethyl- 17β -hydroxy-
- 2 5β -androstan-3-one;
- 3 “(lxii) $2\alpha,3\alpha$ -epithio- 17α -methyl- 5α -
- 4 androstan- 17β -ol;
- 5 “(lxiii) [3,2-c]-furazan- 5α -androstan-
- 6 17β -ol;
- 7 “(lxiv) 3β -hydroxy-estra-4,9,11-trien-
- 8 17-one;
- 9 “(lxv) 17α -methyl-androst-2-ene-
- 10 3, 17β -diol;
- 11 “(lxvi) 17α -methyl-androsta-1,4-diene-
- 12 3, 17β -diol;
- 13 “(lxvii) Estra-4,9,11-triene-3,17-dione;
- 14 “(lxviii) 18a-Homo-3-hydroxy-estra-
- 15 2,5(10)-dien-17-one;
- 16 “(lxix) 6α -Methyl-androst-4-ene-3,17-
- 17 dione;
- 18 “(lxx) 17α -Methyl-androstan-3-
- 19 hydroxyimine- 17β -ol;
- 20 “(lxxi) 17α -Methyl- 5α -androstan- 17β -
- 21 ol;
- 22 “(lxxii) 17β -Hydroxy-androstano[2,3-
- 23 d]isoxazole;
- 24 “(lxxiii) 17β -Hydroxy-androstano[3,2-
- 25 c]isoxazole;

1 “(lxxiv) 4-Hydroxy-androst-4-ene-
 2 3,17-dione[3,2-c]pyrazole-5 α -androstan-
 3 17 β -ol;

4 “(lxxv) [3,2-c]pyrazole-androst-4-en-
 5 17 β -ol;

6 “(lxxvi) [3,2-c]pyrazole-5 α -androstan-
 7 17 β -ol; and”; and

8 (2) by adding at the end the following:

9 “(C)(i) Subject to clause (ii) and the limi-
 10 tations under section 201(i)(6), a drug or hor-
 11 monal substance (other than estrogens,
 12 progestins, corticosteroids, and
 13 dehydroepiandrosterone) that is not listed in
 14 subparagraph (A) and is derived from, or has
 15 a chemical structure substantially similar to, 1
 16 or more anabolic steroids listed in subpara-
 17 graph (A) shall be considered to be an anabolic
 18 steroid for purposes of this Act if—

19 “(I) the drug or substance has been
 20 created or manufactured with the intent of
 21 producing a drug or other substance that
 22 either—

23 “(aa) promotes muscle growth; or

1 “(bb) otherwise causes a pharma-
2 cological effect similar to that of tes-
3 tosterone; or

4 “(II) the drug or substance has been,
5 or is intended to be, marketed or otherwise
6 promoted in any manner suggesting that
7 consuming it will promote muscle growth
8 or any other pharmacological effect similar
9 to that of testosterone.

10 “(ii) A substance shall not be considered to
11 be a drug or hormonal substance for purposes
12 of this subparagraph if it—

13 “(I) is—

14 “(aa) an herb or other botanical;

15 “(bb) a concentrate, metabolite,
16 or extract of, or a constituent isolated
17 directly from, an herb or other botan-
18 ical; or

19 “(cc) a combination of 2 or more
20 substances described in item (aa) or
21 (bb); and

22 “(II) is a dietary ingredient for pur-
23 poses of the Federal Food, Drug, and Cos-
24 metic Act (21 U.S.C. 301 et seq.).

1 “(iii) In accordance with section 515(a),
 2 any person claiming the benefit of an exemption
 3 or exception under clause (ii) shall bear the
 4 burden of going forward with the evidence with
 5 respect to such exemption or exception.”.

6 (b) CLASSIFICATION AUTHORITY.—Section 201 of
 7 the Controlled Substances Act (21 U.S.C. 811) is amend-
 8 ed by adding at the end the following:

9 “(i) TEMPORARY AND PERMANENT SCHEDULING OF
 10 RECENTLY EMERGED ANABOLIC STEROIDS.—

11 “(1) The Attorney General may issue a tem-
 12 porary order adding a drug or other substance to
 13 the list of anabolic steroids if the Attorney General
 14 finds that—

15 “(A) the drug or other substance satisfies
 16 the criteria for being considered an anabolic
 17 steroid under section 102(41) but is not listed
 18 in that section or by regulation of the Attorney
 19 General as being an anabolic steroid; and

20 “(B) adding such drug or other substance
 21 to the list of anabolic steroids will assist in pre-
 22 venting the unlawful importation, manufacture,
 23 distribution, or dispensing of such drug or other
 24 substance.

1 “(2) An order issued under paragraph (1) shall
2 not take effect until 30 days after the date of the
3 publication by the Attorney General of a notice in
4 the Federal Register of the intention to issue such
5 order and the grounds upon which such order is to
6 be issued. The order shall expire not later than 24
7 months after the date it becomes effective, except
8 that the Attorney General may, during the pendency
9 of proceedings under paragraph (5), extend the tem-
10 porary scheduling order for up to 6 months.

11 “(3) A temporary scheduling order issued under
12 paragraph (1) shall be vacated upon the issuance of
13 a permanent scheduling order under paragraph (5).

14 “(4) An order issued under paragraph (1) is
15 not subject to judicial review.

16 “(5) The Attorney General may, by rule, issue
17 a permanent order adding a drug or other substance
18 to the list of anabolic steroids if such drug or other
19 substance satisfies the criteria for being considered
20 an anabolic steroid under section 102(41). Such
21 rulemaking may be commenced simultaneously with
22 the issuance of the temporary order issued under
23 paragraph (1).

24 “(6) If a drug or other substance has not been
25 temporarily or permanently added to the list of ana-

1 bolic steroids pursuant to this subsection, the drug
 2 or other substance shall be considered an anabolic
 3 steroid if in any criminal, civil, or administrative
 4 proceeding arising under this Act it has been deter-
 5 mined in such proceeding, based on evidence pre-
 6 sented in the proceeding, that the substance satisfies
 7 the criteria for being considered an anabolic steroid
 8 under paragraph (41)(A), (41)(C)(i), or (41)(C)(ii)
 9 of section 102.”.

10 (c) LABELING REQUIREMENTS.—The Controlled
 11 Substances Act is amended by inserting after section 305
 12 (21 U.S.C. 825) the following:

13 **“§ 305A. Offenses involving false labeling of anabolic**
 14 **steroids**

15 “(a) UNLAWFUL ACTS.—

16 “(1) It shall be unlawful—

17 “(A) to import into the United States or to
 18 export from the United States;

19 “(B) to manufacture, distribute, dispense,
 20 sell, or offer to sell; or

21 “(C) to possess with intent to manufac-
 22 ture, distribute, dispense, sell, or offer to sell;
 23 any anabolic steroid, or any product containing an
 24 anabolic steroid, unless it bears a label clearly identi-
 25 fying any anabolic steroid contained in such steroid

1 or product by the nomenclature used by the Inter-
2 national Union of Pure and Applied Chemistry
3 (IUPAC).

4 “(2) A product that is the subject of an ap-
5 proved application as described in section 505(b), (i)
6 or (j) of the Federal Food, Drug, and Cosmetic Act
7 (21 U.S.C. 355(b), (i), or (j)) is exempt from the
8 International Union of Pure and Applied Chemistry
9 nomenclature requirement of this subsection if such
10 product is labeled in the manner required by the
11 Federal Food, Drug, and Cosmetic Act.

12 “(b) CRIMINAL PENALTIES.—Any person who vio-
13 lates subsection (a) knowing, intending, or having reason-
14 able cause to believe, that the substance or product is an
15 anabolic steroid, or contains an anabolic steroid, shall be
16 sentenced to a term of imprisonment of not more than
17 10 years, a fine not to exceed the greater of that author-
18 ized in accordance with the provisions of title 18, United
19 States Code, or \$500,000 if the defendant is an individual
20 or \$2,500,000 if the defendant is other than an individual,
21 or both.

22 “(c) CIVIL PENALTIES.—

23 “(1) Any person who violates subsection (a)
24 shall be subject to a civil penalty as follows:

1 “(A) In the case of an importer, exporter,
2 manufacturer, or distributor (other than as pro-
3 vided in subparagraph (B)), up to \$500,000 per
4 violation. For purposes of this subparagraph, a
5 violation is defined as each instance of importa-
6 tion, exportation, manufacturing, or distribu-
7 tion, and each anabolic steroid or product im-
8 ported, exported, manufactured, or distributed.

9 “(B) In the case of a sale or offer to sell
10 at retail, up to \$25,000 per violation. For pur-
11 poses of this subparagraph, each sale and each
12 product offered for sale shall be considered a
13 separate violation. Continued offers to sell by a
14 person 10 or more days after written notice (in-
15 cluding through electronic message) to the per-
16 son by the Attorney General or the Secretary
17 shall be considered additional violations.

18 “(2) In this subsection, the term ‘product’
19 means a discrete article, either in bulk or in finished
20 form prepared for sale. A number of articles, if simi-
21 larly packaged and bearing identical labels, shall be
22 considered as one product, but each package size,
23 form, or differently labeled article shall be consid-
24 ered a separate product.

1 “(d) IDENTIFICATION AND PUBLICATION OF LIST OF
2 PRODUCTS CONTAINING ANABOLIC STEROIDS.—

3 “(1) The Attorney General may, in his discre-
4 tion, collect data and analyze products to determine
5 whether they contain anabolic steroids and are prop-
6 erly labeled in accordance with this section. The At-
7 torney General may publish in the Federal Register
8 or on the website of the Drug Enforcement Adminis-
9 tration a list of products that he has determined,
10 based on substantial evidence, contain an anabolic
11 steroid and are not labeled in accordance with this
12 section.

13 “(2) The absence of a product from the list re-
14 ferred to in paragraph (1) shall not constitute evi-
15 dence that the product does not contain an anabolic
16 steroid.”.

17 **SEC. 3. SENTENCING COMMISSION GUIDELINES.**

18 The United States Sentencing Commission shall—

19 (1) review and amend the Federal sentencing
20 guidelines with respect to offenses involving anabolic
21 steroids, including the offenses established in section
22 2 (section 305A of the Controlled Substance Act);

23 (2) amend the Federal sentencing guidelines,
24 including notes to the drug quantity tables, to pro-
25 vide clearly that in a case involving an anabolic ster-

1 oid not in a tablet, capsule, liquid, or other form
2 where dosage can be readily ascertained (such as a
3 powder, topical cream, gel, or aerosol), the sentence
4 shall be determined based on the entire weight of the
5 mixture or substance;

6 (3) amend the applicable guidelines by designating quantities of mixture or substance that correspond to a unit so that offenses involving such forms of anabolic steroids are penalized at least as severely as offenses involving forms whose dosage can be readily ascertained; and

12 (4) take such other action as the Commission considers necessary to carry out this Act and this section.

15 **SEC. 4. CONGRESSIONAL OVERSIGHT.**

16 The Administrator of the Drug Enforcement Administration shall report to Congress every 2 years—

18 (1) what anabolic steroids have been scheduled on a temporary basis under the provisions of this Act; and

21 (2) the findings and conclusions that led to such scheduling.

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