



AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: To improve the bill.

**IN THE SENATE OF THE UNITED STATES—114th Cong., 2d Sess.**

**S. 2508**

To reduce sports-related concussions in youth, and for other purposes.

Referred to the Committee on \_\_\_\_\_ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by \_\_\_\_\_ to the amendment (No. \_\_\_\_\_) proposed by \_\_\_\_\_

Viz:

1 Strike section 3 and insert the following:

2 **SEC. 3. DECEPTIVE CLAIMS WITH RESPECT TO YOUTH ATH-**  
3 **LETIC SPORTING ACTIVITY EQUIPMENT.**

4 (a) UNLAWFUL ACTIVITY.—It is unlawful for any  
5 person to make any deceptive claim, with respect to youth  
6 athletic sporting equipment, that such product will be ef-  
7 fective in reducing or preventing the risk of concussions.

8 (b) ENFORCEMENT BY FEDERAL TRADE COMMIS-  
9 SION.—

10 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-  
11 TICES.—A violation of any rule promulgated under

1 paragraph (2)(B) shall be treated as a violation of  
2 a rule under section 18 of the Federal Trade Com-  
3 mission Act (15 U.S.C. 57a) regarding unfair or de-  
4 ceptive acts or practices.

5 (2) POWERS OF FEDERAL TRADE COMMIS-  
6 SION.—

7 (A) IN GENERAL.—The Federal Trade  
8 Commission shall enforce this section in the  
9 same manner, by the same means, and with the  
10 same jurisdiction, powers, and duties as though  
11 all applicable terms and provisions of the Fed-  
12 eral Trade Commission Act (15 U.S.C. 41 et  
13 seq.) were incorporated into and made a part of  
14 this section.

15 (B) REGULATIONS.—Notwithstanding any  
16 other provision of law, the Federal Trade Com-  
17 mission shall promulgate under section 553 of  
18 title 5, United States Code, regulations to re-  
19 quire manufacturers to substantiate claims that  
20 youth athletic sporting activity equipment is ef-  
21 fective at reducing or preventing the risk of  
22 concussions based on competent and reliable  
23 scientific evidence.

24 (C) REQUIREMENTS.—In promulgating  
25 regulations under subparagraph (B), the Fed-

1           eral Trade Commission shall consider the fol-  
2           lowing factors to determine the amount of sub-  
3           stantiation necessary to constitute a reasonable  
4           basis for a particular claim:

5                   (i) The type and specificity of the  
6                   safety claim made.

7                   (ii) The type of youth sporting activity  
8                   equipment.

9                   (iii) The possible consequences of a  
10                  false claim, including personal injury,  
11                  property damage and economic loss.

12                  (iv) The benefits of a truthful claim,  
13                  including the provision to prospective pur-  
14                  chasers of important product information.

15                  (v) The degree of reliance by con-  
16                  sumers on the claim.

17                  (vi) The cost of developing substan-  
18                  tiation for the claim.

19                  (vii) The amount of substantiation  
20                  that experts in the field believe is reason-  
21                  able.

22                  (viii) The type, and accessibility of  
23                  evidence adequate to form a reasonable  
24                  basis for making the particular claim.

1           (D) DEFINITION OF COMPETENT AND RE-  
2           LIABLE SCIENTIFIC EVIDENCE.—For purposes  
3           of subparagraph (B), the term “competent and  
4           reliable scientific evidence” means tests, anal-  
5           yses, research, studies, or other evidence based  
6           upon the expertise of professionals in the rel-  
7           evant area, that has been conducted and evalu-  
8           ated in an objective manner by persons quali-  
9           fied to do so, using procedures generally accept-  
10          ed in the profession to yield accurate and reli-  
11          able results and may consist of 1 or more such  
12          test, analysis or study, if it is consistent with  
13          the determinations required under subpara-  
14          graph (C).

15          (E) PRIVILEGES AND IMMUNITIES.—Any  
16          person who violates subsection (a) shall be sub-  
17          ject to the penalties and entitled to the privi-  
18          leges and immunities provided in the Federal  
19          Trade Commission Act as though all applicable  
20          terms and provisions of the Federal Trade  
21          Commission Act (15 U.S.C. 41 et seq.) were in-  
22          corporated and made part of this section.

23          (F) AUTHORITY PRESERVED.—Nothing in  
24          this section shall be construed to limit the au-

1           thority of the Federal Trade Commission under  
2           any other provision of law.

3       (c) ENFORCEMENT BY STATES.—

4           (1) IN GENERAL.—Except as provided in para-  
5       graph (4), in any case in which the attorney general  
6       of a State has reason to believe that an interest of  
7       the residents of the State has been or is threatened  
8       or adversely affected by any person who violates sub-  
9       section (a), the attorney general of the State, as  
10      parens patriae, may bring a civil action on behalf of  
11      the residents of the State in an appropriate district  
12      court of the United States to obtain appropriate in-  
13      junctive relief.

14           (2) RIGHTS OF FEDERAL TRADE COMMIS-  
15      SION.—

16           (A) NOTICE TO FEDERAL TRADE COMMIS-  
17      SION.—

18           (i) IN GENERAL.—Except as provided  
19       in clause (iii), the attorney general of a  
20       State shall notify the Federal Trade Com-  
21       mission in writing that the attorney gen-  
22       eral intends to bring a civil action under  
23       paragraph (1) before initiating the civil ac-  
24       tion.

1           (ii) CONTENTS.—The notification re-  
2           quired by clause (i) with respect to a civil  
3           action shall include a copy of the complaint  
4           to be filed to initiate the civil action.

5           (iii) EXCEPTION.—If it is not feasible  
6           for the attorney general of a State to pro-  
7           vide the notification required by clause (i)  
8           before initiating a civil action under para-  
9           graph (1), the attorney general shall notify  
10          the Federal Trade Commission imme-  
11          diately upon instituting the civil action.

12          (B) INTERVENTION BY FEDERAL TRADE  
13          COMMISSION.—The Federal Trade Commission  
14          may—

15               (i) intervene in any civil action  
16               brought by the attorney general of a State  
17               under paragraph (1); and

18               (ii) upon intervening—

19                       (I) be heard on all matters aris-  
20                       ing in the civil action; and

21                       (II) file petitions for appeal.

22          (3) INVESTIGATORY POWERS.—Nothing in this  
23          subsection shall be construed to prevent the attorney  
24          general of a State from exercising the powers con-  
25          ferred on the attorney general by the laws of the

1 State to conduct investigations, to administer oaths  
2 or affirmations, or to compel the attendance of wit-  
3 nesses or the production of documentary or other  
4 evidence.

5 (4) PREEMPTIVE ACTION BY FEDERAL TRADE  
6 COMMISSION.—If the Federal Trade Commission in-  
7 stitutes a civil action or an administrative action  
8 with respect to a violation of subsection (a) or a rule  
9 promulgated under subsection (b)(2)(B) the attorney  
10 general of a State may not, during the pendency of  
11 that action, bring a civil action under paragraph (1)  
12 against any defendant named in the complaint of the  
13 Commission for the violation with respect to which  
14 the Commission instituted such action.

15 (5) VENUE; SERVICE OF PROCESS.—

16 (A) VENUE.—Any action brought under  
17 paragraph (1) may be brought in any district  
18 court of the United States that meets applicable  
19 requirements relating to venue under section  
20 1391 of title 28, United States Code.

21 (B) SERVICE OF PROCESS.—In an action  
22 brought under paragraph (1), process may be  
23 served in any district in which the defendant—

24 (i) is an inhabitant; or

25 (ii) may be found.

1           (6) ACTIONS BY STATE CONSUMER PROTECTION  
2           OFFICIALS.—In lieu of a civil action brought by the  
3           attorney general of a State under paragraph (1), a  
4           consumer protection officer of a State, who is au-  
5           thorized by the State to do so, may bring a civil ac-  
6           tion under paragraph (1), subject to the same re-  
7           quirements and limitations that apply under this  
8           subsection to civil actions brought by attorneys gen-  
9           eral.