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109TH CONGRESS, 1st Session | HOUSE OF REPRESENTATIVES | REPT. 109–210, Part 1

DRUG FREE SPORTS ACT

JULY 27, 2005.—Ordered to be printed

Mr. BARTON of Texas, from the Committee on Energy and Commerce, submitted the following

R E P O R T

[To accompany H.R. 3084]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 3084) to direct the Secretary of Commerce to issue regulations requiring testing for steroids and other performance-enhancing substances for certain sports associations engaged in interstate commerce, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

39–006

SECTION 1. SHORT TITLE.

This Act may be cited as the "Drug Free Sports Act".

SEC. 2. DEFINITIONS.

As used in this Act—

(1) the term "Secretary" refers to the Secretary of Commerce; and

(2) the term "professional sports associations" means Major League Baseball, the National Basketball Association, the National Football League, the National Hockey League, Major League Soccer, the Arena Football League, and any other league or association that organizes professional athletic competitions as the Secretary may determine.

SEC. 3. RULES REQUIRING MANDATORY TESTING FOR ATHLETES.

(a) RULEMAKING.—Not later than 270 days after the date of enactment of this Act, the Secretary shall issue regulations requiring professional sports associations operating in interstate commerce to adopt and enforce policies and procedures for testing athletes who participate in their respective associations for the use of performance-enhancing substances. Such policies and procedures shall, at minimum, include the following:

(1) TIMING AND FREQUENCY OF RANDOM TESTING.—Each athlete shall be tested a minimum of 5 times each year that such athlete is participating in the activities organized by the professional sports association. Tests shall be conducted at random intervals throughout the entire year, during both the season of play and the off-season, and neither the athlete, nor any member of the coaching and training staffs shall be notified in advance of the test.

(2) APPLICABLE SUBSTANCES.—The Secretary, in consultation with the Director of the National Institute on Drug Abuse, shall, by rule, prescribe the substances for which each athlete shall be tested, which shall include—

(A) substances that—

(i) are determined by the World Anti-Doping Agency to be prohibited substances; and

(ii) the Secretary determines to be performance-enhancing substances for any particular sport, or substances whose purpose is to conceal the presence of performance-enhancing substances in the body, and for which testing is reasonable and practicable; and

(B) such additional substances that the Secretary may determine to be performance-enhancing substances for any particular sport, or substances whose purpose is to conceal the presence of performance-enhancing substances in the body, and for which testing is reasonable and practicable.

(3) THERAPEUTIC AND MEDICAL USE EXEMPTIONS.—The Secretary, in consultation with the Director of the National Institute on Drug Abuse, shall establish criteria by which professional sports associations, after consultation with the athletes who participate in the activities of such professional sports association (or the representatives of such athletes), may provide an athlete with an exemption for a particular substance, prior to or after any drug test, if such substance has a legitimate medical or therapeutic use, and if such use is for a documented medical condition of such athlete.

(4) METHOD OF TESTING AND ANALYSIS.—The Secretary, in consultation with the Director of the National Institute on Drug Abuse, shall establish criteria whereby tests shall be administered by an independent party not affiliated with the professional sports association.

(5) PENALTIES.—Subject to the determination made pursuant to an appeal as described in paragraph (6), a positive test shall result in the following penalties:

(A) SUSPENSION.—

(i) An athlete who tests positive shall be suspended from participation in the professional sports association for a period not less than ½ of a season of play, including suspension from the number of games constituting ½ of a season of play.

(ii) An athlete who tests positive, having once previously violated the policies concerning prohibited substances, shall be suspended from participation in the professional sports association for a period not less than an entire season of play, including suspension from the number of games constituting a full season of play.

(iii) An athlete who tests positive, having twice previously violated the policies concerning prohibited substances, shall be permanently suspended from participation in the professional sports association.

All suspensions shall include loss of pay for the period of suspension.

(B) DISCLOSURE.—The name of any athlete having a positive test result resulting in suspension shall be disclosed to the public.

(C) EXCEPTIONAL CIRCUMSTANCES.—The Secretary shall establish criteria by which professional sports associations may reduce the period of suspension for an athlete who has tested positive for a prohibited substance but who establishes that he or she bears no fault or negligence or no significant fault or negligence for the violation. In establishing such criteria, the Secretary shall consider the policies and practices of the World Anti-Doping Agency regarding reduced penalties for exceptional circumstances. Such criteria shall not require a professional sports association to adopt a policy providing for reductions in penalties for any circumstances.

(6) APPEALS PROCESS.—

(A) HEARING AND FINAL ADJUDICATION.—An athlete who tests positive and is subject to penalty under paragraph (5) shall be afforded an opportunity for a prompt hearing and a right to appeal. Such athlete shall file an appeal with the professional sports association within 5 business days after learning of the positive test. The association shall hold a hearing before an arbiter established under subparagraph (B) and such arbiter shall reach a final adjudication not later than 45 days after receiving notice of the appeal. The penalties specified in paragraph (5) shall be stayed pending an appeal and final adjudication.

(B) ARBITER.—The arbiter of the appeals process described in subparagraph (A) shall be agreed upon mutually by the professional sports association and the athletes who participate in the activities of such professional sports association (or the representatives of such athletes), and shall be approved by the Secretary, and such approval shall not be unreasonably withheld.

(b) CONSULTATION.—In prescribing regulations under this section, the Secretary may consult with anti-doping authorities, medical experts, and professional sports associations.

SEC. 4. NONCOMPLIANCE.

Beginning 1 year after the date on which the final rules required by section 3 are issued, the Secretary may fine any professional sports association that fails to adopt and enforce testing policies and procedures consistent with such regulations. An initial fine for failing to adopt or enforce such policies and procedures under this Act shall be $5,000,000 and may be increased by the Secretary by $1,000,000 for each day of noncompliance. The Secretary may reduce the fines specified in this section upon finding such fines to be unduly burdensome on a professional sports association.

SEC. 5. REPORTS.

(a) REPORT ON EFFECTIVENESS OF REGULATIONS.—Not later than 2 years after the date of enactment of this Act and every 2 years thereafter, the Secretary shall transmit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, a report describing the effectiveness of the regulations prescribed pursuant to this Act, the degree to which professional sports associations have complied with such regulations, and any significant examples of noncompliance.

(b) STUDY ON COLLEGE AND SECONDARY SCHOOL TESTING POLICIES AND PROCEDURES.—

(1) STUDY.—The Comptroller General shall conduct a study on the testing policies and practices (and their implementation) for performance-enhancing substances for athletes at colleges and secondary schools. The study shall examine the prohibited substance policies and testing procedures of—

(A) intercollegiate athletic associations;

(B) college and university athletic departments; and

(C) secondary schools and State and regional interscholastic athletic associations.

The study shall also include an analysis of the best available estimates for both licit and illicit use of anabolic steroids and human growth hormones by such athletes.

(2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall transmit a report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate. The report shall assess the adequacy of such testing policies and procedures in detecting and preventing the use of performance-enhancing substances, and shall include any recommendations to Congress regarding expanding the application of the regulations issued pursuant to this Act to such intercollegiate and interscholastic athletic associations.

SEC. 6. RULES OF CONSTRUCTION.

(a) PRE-EXISTING POLICIES.—Nothing in this Act shall be construed to prohibit a professional sports association from continuing to enforce policies and procedures governing the use of performance-enhancing substances that were in effect on the date of enactment of this Act until such time as such professional sports associations adopt policies and procedures consistent with the rules issued under section 3.

(b) MORE STRINGENT POLICIES.—Nothing in this Act shall be construed to prohibit a professional sports association and its athletes (or the representatives of its athletes) from negotiating and agreeing upon policies and procedures governing the use and testing of performance-enhancing substances that are more stringent than those required by this Act.

PURPOSE AND SUMMARY

The purpose of H.R. 3084 is to reduce the use of performance-enhancing substances by athletes by ensuring certain professional sports associations maintain minimum standards regarding their performance-enhancing substance policies for athletes.

While the Act alone may not entirely eliminate the use of the performance enhancing substances by professional athletes, the requirement of uniform, rigorous minimum standards will provide benefits beyond the professional level. Elite athletes are viewed as role models by many youths who mimic the athletes' behavior and attitudes. By reducing the use of performance-enhancing substances in professional sports, the Act will establish our commitment to both the integrity and value of sports and the commitment to reduce performance-enhancing substance use by youth.

Specifically, H.R. 3084 will require the Secretary of Commerce to promulgate rules, in consultation with the Director of the National Institute of Drug Abuse (NIDA) on certain rules, to require the sports associations to maintain and enforce policies that meet or exceed the minimums as specified by the Act. The rules will require the sports associations to adopt and implement, if they have not already done so, provisions regarding the minimum number of random tests per athlete per calendar year, the substances for which an athlete will be tested and are prohibited for the particular sport, criteria for therapeutic uses of prohibited substances for medicinal purposes, the minimum penalties imposed on an athlete for violations of the policy, the method of testing and analysis, and an appeals process for an athlete having tested positive.

Additionally, the Act requires the Secretary to issue criteria whereby a sports association and its players (or their representatives) may, but are not required to, adopt a provision for the reduction of penalties in exceptional circumstances. The legislation also provides the Secretary with authority to impose monetary fines on a sports association for failure to implement and enforce the minimum requirements of the Act.

Although H.R. 3084 only requires the Secretary to consult with the Director of NIDA for the purpose of issuing rules under Sections 3(a) (1, 2, & 3), the Committee expects that the Secretary will employ all available resources, which may include consulting with experts other than NIDA, such as other Federal agencies and medical professionals with experience and expertise regarding performance-enhancing substances and the testing thereof.

BACKGROUND AND NEED FOR LEGISLATION

Athletics have played an important role in the cultural development and identity of the United States. America's enthusiasm for participation in sports is exceeded only by its enthusiasm as spectators. Sports at the collegiate, Olympic, and professional levels have evolved since the latter half of the twentieth century into a profitable industry for many of the industry participants. Nowhere is this more apparent than at the highest level of competition: professional sports.

The average annual player's salary in the most popular professional team sports is over $1 million dollars, with the highest paid athletes earning as much as $20 million per season in salary. Additionally, endorsement opportunities for individual professional athletes often produce substantial financial gains. A plethora of media outlets now exist to provide non-stop coverage and broadcast of major professional sports, including sport-specific mediums. In total, the professional sports and related industries are multi-billion dollar enterprises.

Most sports experts believe the media attention and riches afforded to top athletes contribute to the temptation facing many athletes to use performance-enhancing substances for a competitive advantage. The prospect of earning millions of dollars can outweigh the risk, if any, of being caught using illegal or prohibited performance-enhancing substances.

Although the financial rewards in the modern sports era are greater than at any time in history, they are not the sole reason for doping in sports. In fact, the history of athletic doping, particularly through the use of stimulants, has been traced to the earliest days of the Olympics. Of greater relevance to the history of modern doping is the gained acceptance of testosterone and steroid use, along with other substances and techniques, by some athletes for their physiological benefits significance in the latter half of the twentieth century. Steroid use by Olympic athletes is reported to have been widespread beginning as early as the 1960's, and naturally began to find its way into professional sports.

To combat doping, the Olympic movement created the World Anti Doping Agency (WADA) in 1999 to implement and enforce testing policies for Olympic sports. In the United States, the U.S. Anti Doping Agency performs the testing for Olympic athletes. Some professional sports, including professional tennis, follow the WADA code for prohibited substances and penalties.

Other professional sports associations and their players have similarly responded to the growing awareness of doping and implemented drug-testing programs during the past two decades. However, not all programs test for the same performance-enhancing substances, test using strict protocols including frequency of testing, nor do they enforce violations with significant penalties—if at all. Some professional sports associations do not even test for steroids and other performance enhancing substances. While these provisions have historically been the subject of negotiation between the players and the sports associations, many of the programs are considered by experts to be deficient, particularly in regard to the penalties imposed on a player for violating the policy.

The integrity of professional sports diminished because there are inconsistent and inadequate testing policies among the various leagues. Recent allegations and admissions by current and former athletes of using steroids have undermined the credibility of some sports, and their testing programs, and cast a wider doubt about the prevalence of doping by professional athletes. More importantly, the effect of the disparate policies—including those that do not even test for certain illegal substances nor punish athletes for taking the substances—is to promote the perception that the use of such substances by some professional athletes is at best tolerated and at worst encouraged.

Such an effect is to contribute to the serious problem of youths increasingly using performance-enhancing substances, such as illegal steroids. Based on the May 2004 Centers for Disease Control report, there are more than 800,000 high school students who have used or are currently using anabolic steroids. There is no doubt that youths often seek to emulate sports idols, particularly in the professional ranks. Absent rigorous testing and penalties for professional athletes who use performance-enhancing substances, there is a clear message sent to youths that deterrence is not a priority.

The Committee's concern—and its intent to legislate minimum standards for performance-enhancing substance testing in professional sports—is the diminished value of the positive qualities of sport and the adverse health consequences of performance-enhancing substances for individuals.

HEARINGS

The Subcommittee on Commerce, Trade and Consumer Protection held a joint oversight hearing with the Subcommittee on Health on steroid use on Thursday, March 10, 2005. The hearing was entitled "Steroids in Sports: Checking the System and Gambling Your Health." The Subcommittees received testimony from: Congressman Jim Ryun; Don Hooton, Taylor Hooton Foundation; Dr. Linn Goldberg, Oregon Health & Science University; Robert Kanaby, Executive Director, National Federation of State High School Associations; Sandra Worth, Head Athletic Trainer, University of Maryland; Dr. Charles Yesalis, Pennsylvania State University; Dr. Ralph Hale, Chairman, United States Anti-Doping Agency; Adolpho Birch, Counsel for Labor Relations, National Football League; Frank Coonelly, Senior Vice President, Major League Baseball; Mary E. Wilfert, Chief Liaison, Committee on Competitive Safeguards and Medical Aspects of Sports, The National Collegiate Athletic Association.

The Subcommittee on Commerce, Trade, and Consumer Protection did not hold any hearings on H.R. 3084. However, the Subcommittee held a legislative hearing on H.R. 1862, which was substantially similar to H.R. 3084, on May 18 and 19, 2005. The Subcommittee received testimony from: Frank Shorter, former Chairman of the United States Anti-Doping Agency; Donald Garber, Commissioner, Major League Soccer; Robert Foose, Executive Director, Major League Soccer Players Union; Alan H. (Bud) Selig, Commissioner, Major League Baseball; Donald Fehr, Executive Director, Major League Baseball Players Association; Gary Bettman, Commissioner, National Hockey League; Robert Goodenow, Executive Director, National Hockey League Players Association; David

Stern, Commissioner, National Basketball Association; William Hunter, Executive Director, National Basketball Players Association; Paul Tagliabue, Commissioner, National Football League; and Gene Upshaw, Executive Director, National Football League Players Association.

COMMITTEE CONSIDERATION

On Wednesday, May 25, 2005, the Subcommittee on Commerce, Trade, and Consumer Protection met in open markup session and approved H.R. 1862, the Drug Free Sports Act of 2005, for Full Committee consideration, amended, by voice vote, a quorum being present. H.R. 1862 was superseded by H.R. 3084.

On Wednesday, June 29, 2005, the Full Committee met in open markup session and ordered H.R. 3084 favorably reported to the House, as amended, by a roll call vote of 38 yeas and 2 nays, a quorum being present.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. The following is the recorded vote taken on the motion by Mr. Barton to order H.R. 3084 reported to the House, as amended, which was agreed to by a recorded vote of 38 yeas and 2 nays.

COMMITTEE ON ENERGY AND COMMERCE -- 109TH CONGRESS
ROLL CALL VOTE # 37

Bill: H.R. 3084, the Drug Free Sports Act.

MOTION: A motion by Mr. Gillmor to order H.R. 3084 reported to the House, amended.

DISPOSITION: **AGREED TO**, by a roll call vote of 38 yeas to 2 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton				Mr. Dingell	X		
Mr. Hall				Mr. Waxman	X		
Mr. Bilirakis	X			Mr. Markey	X		
Mr. Upton	X			Mr. Boucher			
Mr. Stearns	X			Mr. Towns	X		
Mr. Gillmor	X			Mr. Pallone			
Mr. Deal	X			Mr. Brown	X		
Mr. Whitfield	X			Mr. Gordon	X		
Mr. Norwood	X			Mr. Rush	X		
Ms. Cubin				Ms. Eshoo			
Mr. Shimkus	X			Mr. Stupak	X		
Ms. Wilson				Mr. Engel			
Mr. Shadegg		X		Mr. Wynn	X		
Mr. Pickering				Mr. Green	X		
Mr. Fossella	X			Mr. Strickland	X		
Mr. Blunt				Ms. DeGette			
Mr. Buyer				Ms. Capps	X		
Mr. Radanovich	X			Mr. Doyle	X		
Mr. Bass	X			Mr. Allen	X		
Mr. Pitts	X			Mr. Davis			
Ms. Bono	X			Ms. Schakowsky	X		
Mr. Walden	X			Ms. Solis	X		
Mr. Terry		X		Mr. Gonzalez	X		
Mr. Ferguson	X			Mr. Inslee	X		
Mr. Rogers				Ms. Baldwin	X		
Mr. Otter				Mr. Ross			
Ms. Myrick	X						
Mr. Sullivan							
Mr. Murphy	X						
Mr. Burgess	X						
Ms. Blackburn	X						

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held an oversight hearing and made findings that are reflected in this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The objective of H.R. 3084 is to require testing for steroids and other performance-enhancing substances for certain sports associations engaged in interstate commerce

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 3084, the Drug Free Sports Act, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 18, 2005.

Hon JOE BARTON,
Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3084, the Drug Free Sports Act.

If you wish further detail on this estimate, we will be pleased to provide them. The CBO staff contact is Melissa E. Zimmerman.

Sincerely,

DOUGLAS HOLTZ-EAKIN,
Director.

Enclosure.

H.R. 3084—Drug Free Sports Act

Summary: H.R. 3084 would require professional sports leagues and associations to follow prescribed procedures for testing and penalizing athletes for the use of certain performance-enhancing substances identified by the World Anti-Doping Agency and the Secretary of Commerce. Under the bill, the Department of Commerce would create and enforce regulations for professional sports leagues and associations regarding performance-enhancing substances and would be directed to assess and collect fines for violations of these

regulations. (Civil penalties are recorded in the federal budget as revenues.)

CBO estimates that implementing the bill would cost $1 million in 2006 and $6 million over the 2000–2010 period, assuming the availability of appropriations funds. Because CBO expects that professional sports leagues and associations would comply with the law and the new regulations, we estimate that enacting H.R. 3084 would not have a significant effect on revenues. The bill would not affect direct spending.

H.R. 3084 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) because it would preempt some state privacy laws, but CBO estimates that any costs to state, local, or tribal governments would be minimal and would not exceed the threshold established in UMRA ($62 million in 2005, adjusted annually for inflation).

H.R. 3084 would impose several private-sector mandates, as defined in the UMRA, on major professional sports leagues. CBO estimates that the total direct cost of those mandates would fall well below the annual threshold established by UMRA for private-sector mandates ($123 million in 2005, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact H.R. 3084 is shown in the following table. The costs of this legislation fall within budget function 370 (commerce and housing credit). CBO assumes that the bill will be enacted by the end of 2005, that the necessary amounts will be appropriated for each fiscal year, and that outlays will follow historical trends. CBO estimates that implementing the bill would increase spending subject to appropriation by about $1 million in 2006 and $6 million over the 2006–2010 period for creating and enforcing regulations related to the use of performance-enhancing substances by professional athletes.

	By fiscal year, in millions of dollars—				
	2006	2007	2008	2009	2010
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Estimated Authorization Level	1	1	1	1	1
Estimated Outlays	1	1	1	1	1

Estimated impact on state, local, and tribal governments: H.R. 3084 would require the public disclosure of the name of any athlete having a positive test that results in suspension. Such a requirement would preempt numerous state privacy laws and would constitute a mandate as defined in UMRA. CBO estimates that the costs of such a preemption to state, local, and tribal governments would be minimal and would not exceed the threshold established in UMRA ($62 million in 2005, adjusted annually for inflation).

Estimated impact on the private sector: H.R. 3084 would impose several private-sector mandates, as defined in UMRA, on major professional sports leagues. CBO estimates that the total direct cost of those mandates would fall well below the annual threshold established by UMRA for private-sector mandates ($123 million in 2005, adjusted annually for inflation).

The bill would require Major League Baseball, the National Football League, the National Basketball Association, the National Hockey League, Major League Soccer, the Arena Football League,

and any other professional league as determined by the Secretary of Commerce to implement drug-testing programs for performance-enhancing substances. The leagues would be required to test, without advance notice to the athlete or any team staff member, their players a minimum of five times during the season of play and in the off-season. The Department of Commerce would prescribe the substances for which each athlete would be tested and establish the criteria whereby tests would be administered. Currently each of the sports leagues conduct their own testing, so the cost of the mandate would be the increase in cost attributable to the additional drug testing required by the bill. Based on information from the United State Anti-Doping Agency (USADA), the cost of drug testing of athletes could be up to $600 per test. The cost of the testing would include locating the athletes in the off-season, shipping charges, and the comprehensive analysis of samples at an approved laboratory. According to representatives of the professional sports leagues, approximately 6,000 athletes would need to be tested. Therefore, CBO estimates that the direct cost would fall below the annual threshold.

Under the bill, the leagues also would be required to publicly disclose the identity of any athlete who has tested positive resulting in a suspension. In addition, the leagues must establish an appeals process with an arbiter. Currently, the leagues provide some public disclosure of test results and penalties and provide adjudication. Thus, CBO expects that the cost to comply with those mandates would be small.

Previous CBO estimate: On July 7, 2005, CBO transmitted a cost estimate for H.R. 2565, the Clean Sports Act of 2005, as ordered reported by the House Committee on Government Reform on May 26, 2005. H.R. 2565 would establish similar requirements for professional sports organizations related to performance-enhancing substances, although that bill would be implemented by the Office of National Drug Control Policy rather than the Department of Commerce. CBO's estimate of the costs for regulation and enforcement would be similar under both bills; however, CBO's cost estimate for spending subject to appropriation for H.R. 2565 is higher than that for H.R. 3084 because a survey of high school and college athletes would not be required under H.R. 3084.

Both bills would preempt state privacy protections, but H.R. 2565 contains a potentially costly provision that would give the director of Office of National Drug Control Policy the authority to extend testing standards to colleges and athletes in Divisions I and II of the National Collegiate Athletic Association (NCAA)—more than half of which are public. The mandate statements reflect these differences in the two bills.

Both of the bills would require testing for performance-enhancing substances of professional athletes. H.R. 2565 could require the professional boxing industry to test their boxers if the U.S. Boxing Commission is established. That requirement is not in H.R. 3084. H.R. 3084 would require more professional sports leagues, adding Major League Soccer and Arena Football, to test their athletes than H.R. 2565.

Estimate prepared by: Federal Costs: Melissa E. Zimmerman. Impact on State, Local, and Tribal Governments: Sarah Puro. Impact on the Private Sector: Paige Piper/Bach.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 establishes the legislation as the "Drug Free Sports Act."

Section 2. Definitions

Section 2 defines that the Secretary shall refer to the Secretary of Commerce. This section also defines "sports associations," to whom the legislation applies, as the National Football League, National Basketball League, National Hockey League, Major League Soccer, Major League Baseball, and the Arena Football League. The Secretary is authorized to add other professional sports associations which will be subject to the Act.

Section 3. Rules requiring mandatory testing for athletes

Section 3 requires the Secretary of Commerce to promulgate rules within 270 days requiring that sports associations adopt and enforce policies and procedures for testing athletes in their sport for the use of performance-enhancing substances. The Committee recognizes that most of the sports associations have existing policies and procedures in place. The Committee does not foresee the Secretary's rulemaking requiring sports association to rewrite their rules to comply with the Act so long as they exceed the minimum requirements set forth in section 3.

This section also requires the sports associations' programs to test an athlete a minimum of five times a year. The Committee intentionally did not specify an allocation of the tests between in-season and out-of-season testing to preserve the randomness of unannounced testing. Additionally, the Committee believes that random

unannounced testing, coupled with strict penalties, is the best deterrent for professional athletes. The requirement for a minimum of five tests per athlete per year is intended to compliment the random aspect of testing and assist the programs in ensuring the integrity of their sport. To further ensure the integrity of the program, tests are to be unannounced, and neither the athlete nor the coaching and training staffs may be notified in advance.

Further, this section requires the Secretary to consult with the Director of the National Institute of Drug Abuse (NIDA) regarding the list of applicable substances for which an athlete will be tested. The initial list of substances are those determined by the World Anti–Doping Agency to be prohibited substances and which are determined by the Secretary to be performance-enhancing substances for a particular sport and which testing is reasonable and practicable. The Secretary may also add substances determined to be performance-enhancing for a particular sport as knowledge of such substances and their performance-enhancing characteristics for a particular sport becomes available.

In adopting the WADA list as the starting point for identifying applicable substances under this section, the Committee believes the anti-doping authorities and their experts have developed a useful reference point based upon their expertise. However, the Committee recognizes that the list promulgated by WADA is meant to apply to all Olympic sports and therefore includes some substances of no relevance to the professional sports for which this Act applies. For example, certain substances—including legal substances—such as beta blockers are banned for individual sports whose athletes potentially benefit from their use, such as archery. The Committee believes that if such a substance offers no performance-enhancing benefit to other sports, there is no reason to require testing for such substances to be consistent with the purposes of this Act. Additionally, nothing in this Act prohibits a sports association and their players from agreeing to adopt provisions to test for substances not yet identified as applicable substances by the Secretary. The Committee expects that the initial list of substances will, at a minimum, include all illegal steroids and steroid precursors. As testing procedures become available and practicable, the Committee expects that other substances, such as human growth hormone, will be added to the list if the Secretary determines it to be performance enhancing.

This section also requires the Secretary to issue criteria under which an exemption to the athlete for the use of particular substances for legitimate medical needs may be granted if the sports organization so chooses. The Committee intends to provide athletes with ailments or disabilities access to needed medicine that may otherwise be prohibited, such as insulin for diabetes. The medical exemption may be granted either prior to testing, in which case it is on record, or post-test. The Committee recognizes that medical exemptions can and have been provided to athletes under some existing programs after athletes initially test positive. Exemptions applied in this manner meet the intent of this Act and need not require an existing program to abandon it.

In addition, this section specifies that the Secretary, in consultation with the Director of NIDA, shall establish criteria to ensure the testing and analysis under a program is independent. The

Committee intends this provision to limit, to the extent possible, direct links between the sports association and the personnel employed for collection and testing. For purposes of complying with the Act, personnel that are not affiliated with the sports association, but are paid by the sports association solely for their functions specifically related to the sports association's program (such as specimen collectors) shall be considered independent.

This section also requires sports associations to adopt minimum suspensions, without pay, for violations including: ½ year suspension for first violation; one full season for a second violation; and lifetime suspension for third violation. Such suspensions shall extend into subsequent seasons of competition if necessary to meet the criteria. The Committee believes these penalties are more substantial than the existing penalties of the professional sports associations and will serve as a greater deterrent to athletes. Although the penalties are stronger, they are not unreasonable and will provide a player the opportunity to continue his career after serving the suspension.

This section requires the Secretary to issue criteria for the reduction in penalties (where an athlete bears no fault or no significant fault for a violation) for which a sports association may adopt. The Secretary shall look to the WADA Code in developing such criteria. This provision is intended to mirror the provisions of the WADA Code providing reduced penalties in exceptional circumstances where the athlete bears no fault or no significant fault. The sports associations are not required to adopt this provision unless they agree to it with their players. This provision is not intended to provide a loophole to the penalties, but rather a provision—if agreed to—that will provide the ability to reduce a suspension in the very rare instance where the athlete bears no fault. Such reductions in penalties have been provided under the WADA code in certain instances where an entire batch of supplements was contaminated and resulted in athletes who used the supplements to test positive. The Committee recognizes that some sports associations adopt a strict liability regime where the athlete is responsible for anything he puts in his body and therefore does not anticipate the provision would be relevant to their program.

Finally, this section provides for an appeals process for athletes who test positive for a prohibited substance and provides for a mutually agreeable arbiter for the appeals process, subject to the approval of the Secretary. This section provides the athlete the right to appeal if he provides notice within 5 days of notification of a positive test. A hearing before an arbiter and final adjudication must be completed within 45 days of receipt of notice of the appeal. In addition, this section provides that the arbiter shall be mutually agreed upon by the sports association and the athletes (or their representatives) and approved by the Secretary. For purposes of this provision, the Committee anticipates the Secretary to approve a mutually agreed upon arbiter absent any evidence the arbiter is incapable of remaining impartial.

Section 4. Noncompliance

This section provides for monetary penalties for a sports association not in compliance with the Act. In such instances where a sports association has failed to adopt or enforce the Act, the Sec-

retary shall fine the association $5 million dollars, and may increase the fine by an additional $1 million for each day of non-compliance thereafter. The provision also provides the Secretary the discretion to reduce penalties based on the financial condition of the league. The Committee intends this discretion to be used judiciously. In the event a sports association with little or no profits falls out of compliance, the Committee expects the penalty would be reduced to a level that would serve as a severe penalty without creating an insurmountable burden on the league. At this time, the Committee does not anticipate the reduction in penalties would apply to the NFL, NBA, or MLB.

Section 5. Reports

Section 5 requires the Secretary to provide a report every two years on the effectiveness of the regulations. The GAO is required to study and report on the performance-enhancing substance testing policies and procedures of intercollegiate sports associations, individual college and athletic departments, and interscholastic athletic associations.

Section 6. Rule of construction

Section 6 preserves the sports associations' existing testing policies before the Secretary promulgates such rules. The pre-existing policies should continue until such time as changes—as necessary—are adopted to be in compliance with the Act. Sec. 6 also clarifies that such rules do not prevent sports associations from negotiating and agreeing upon more stringent policies than those required by the Act.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

This legislation does not amend any existing Federal statute.

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