

CHAMBER OF COMMERCE  
OF THE  
UNITED STATES OF AMERICA

R. BRUCE JOSTEN  
EXECUTIVE VICE PRESIDENT  
GOVERNMENT AFFAIRS

1615 H STREET, N.W.  
WASHINGTON, D.C. 20062-2000  
202/463-5310

May 23, 2016

The Honorable Michael Burgess  
Chairman  
Subcommittee on Commerce,  
Manufacturing and Trade  
Committee on Energy and Commerce  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Jan Schakowsky  
Ranking Member  
Subcommittee on Commerce,  
Manufacturing and Trade  
Committee on Energy and Commerce  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairman Burgess and Ranking Member Schakowsky:

The U.S. Chamber of Commerce, the world's largest business federation representing the interests of more than three million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations, and dedicated to promoting, protecting, and defending America's free enterprise system, writes to express concern with H.R. 4460, the "Youth Sports Concussion Act," and to urge you to slow its consideration in order for these concerns to be addressed.

The Chamber applauds the subcommittee for focusing on the important issue of concussions among youth sports participants and agrees that deceptive safety claims for products designed to reduce concussions in children playing youth sports should not be made. However, the Chamber is concerned that, in its current form, H.R. 4460 is overbroad and could make it more difficult for retailers to market, stock, and sell legitimate products that are intended to better protect youth in sports from concussions. The bill contains provisions that would apply to *any* claim of safety benefits for *any* item that a manufacturer, importer, wholesaler, or retailer may sell (not just claims related to concussion-related injuries). As a result, products as varied as apparel, footwear, sunscreen, UV-protective sunglasses, and many other products sold with a safety claim could be covered.

Moreover, businesses that stock and sell products in the chain of commerce are not appropriately positioned to independently affirm the validity of data and scientific evidence used by a manufacturer to back up their safety claims of the products they design, produce, and manufacture. Furthermore, the bill provides no limit as to what the Federal Trade Commission (FTC) could regulate in this area, nor does the bill limit FTC from promulgating regulations exceeding the FTC's current doctrines for substantiating product claims. The bill would also inappropriately expand the enforcement authority of state attorneys general who have an increasing tendency to partner with the contingency fee class action trial bar to bring expansive lawsuits under new and troubling causes of action.

The Chamber believes it is likely that this legal framework would force many sellers to determine that the potential liability and business risk of selling protective items exceeds the benefit of selling them. The end result would be that the actual youth playing sports which the bill seeks to protect, would actually end up with fewer protective products available and far fewer places to purchase them.

For all these reasons, the Chamber believes the legislation as drafted would not achieve its goals, but would harm businesses as well as the children it intends to protect. The Chamber hopes to work with you and your colleagues to clarify and improve the legislation. Accordingly, we ask that the subcommittee defer its formal consideration of the legislation so these concerns can be appropriately addressed.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Bruce Josten". The signature is fluid and cursive, with a large initial "R" and a long, sweeping tail.

R. Bruce Josten

cc: Members of the Subcommittee on Commerce, Manufacturing and Trade