

# BULLET POINTS ON MCCAIN'S ANTI-SUPPLEMENT BILL S.3002

## USE THESE POINTS WHEN TALKING WITH YOUR SENATORS

- 1 It's Worthless.** There is absolutely no need for this Bill. The purpose of the Bill is to stop steroid adulteration of dietary supplements. But the FDA already has these powers under DSHEA – it can halt the sales of such products, pull them off the market, and fine the companies selling and distributing them, right now. The FDA self-admittedly refused to enforce the current regulations in order to facilitate an industry of law breakers.
- 2 It's Anti-Freedom.** By amending the definition of a “new dietary ingredient” to mean any dietary ingredient that “is not included on the list of Accepted Dietary Ingredients to be prepared, published, and maintained by the Secretary,” this Bill puts an enormous amount of arbitrary power in the hands of the FDA Commissioner. Unlike present law that allows supplement ingredients already on the market to be lawfully sold, this new definition will eliminate the “grandfather clause” for products in use before October 15, 1994. In other words, if a dietary ingredient is not on the “accepted list,” then it will be unlawful to sell it unless and until the FDA Commissioner says otherwise. The Commissioner will be able to ban an ingredient as unsafe without a hearing, without a rulemaking, and without any due process, simply by excluding it from her Accepted Dietary Ingredient list.
- 3 It's Anti-Innovation.** This Bill will greatly stifle innovation in the dietary-supplement industry because it will increase regulatory costs, burdens, and barriers. Small- and medium-sized companies – the most innovative companies – will of course suffer the most.
- 4 It's Expensive Make-Work.** It requires reporting for even non-serious adverse events! The Bill fails to define a non-serious adverse event, making it likely that reporting will be required for everything from a consumer's dislike of the product's taste to a consumer's objection to the color of a label. FDA wasn't receiving enough adverse event reports on supplements before, so this is its way to increase the numbers – report everything! This will require taxpayer-funded bureaucrats to sort through non-serious adverse event reports when they could be doing far more-important tasks. Reporting of serious events is already required under the law.
- 5 It's Without Due-Process Safeguards.** Dietary supplements already have an enviable safety record without equal to any other consumable, even ordinary food. Yet, this Bill treats them as deadly and toxic, granting the FDA power to issue a cease-and-desist order if “there is a reasonable probability that a dietary supplement or a product marketed or sold as a dietary supplement would cause serious, adverse health consequences or death, or is adulterated or misbranded.” Yet, the FDA already has the power to halt the sale of any dietary ingredient that presents a risk of illness or injury, can get an injunction blocking the sale, and can prosecute those responsible. But this Bill encourages abusive and arbitrary use of this extended regulatory power by the FDA since it lacks normal, due-process requirements. Any FDA stop-order can remain in place for years before there is a trial on the merits.
- 6 It's Overkill.** The Dietary Supplement and Non-Prescription Consumer Protection Act (PL109-462) already requires supplement manufacturers and distributors to register with the FDA, which also has industry guidance in place. So, the intent of this Bill is already being accomplished and adequately protecting consumers. But this Bill would require everyone else who also holds or distributes supplements to register with the FDA, thereby encompassing even multi-level-marketing persons!
- 7 It's Unnecessary.** In a press release, Senator McCain said that this legislation was needed based upon six NFL players being accused of taking supplements containing steroids. According to the NFL, these all related to these athletes' desire to lose weight. Sports and doping is just a small portion of a very healthy and safe market, and access of millions of consumers of dietary supplements should prevail over six highly-paid football players who have other options. Sports associations already have an extensive banned list, and the Anabolic Control Act of 2004 makes the scheduling of steroids a relatively easy task for the DEA. The problem is very specific: Go after synthetic substances that activate the testosterone receptor – synthetic anabolic steroids – and this, the FDA and DEA can already do without this Bill.

Go on-line and sign our Petition at: [http://www.thenhf.com/press\\_releases/dietary2010\\_petition.htm](http://www.thenhf.com/press_releases/dietary2010_petition.htm)



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