

105TH CONGRESS
2D SESSION

H. R. 4427

To amend title 18 of the United States Code with respect to gambling on the Internet, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 6, 1998

Mr. McCOLLUM (for himself, Mr. GOODLATTE, and Mr. LOBIONDO) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 18 of the United States Code with respect to gambling on the Internet, and for other purposes.

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 “Internet Gambling
5 Prohibition Act of 1998”.

6 **SEC. 2. DEFINITIONS.**

7 Section 1081 of title 18, United States Code, is
8 amended—

9 (1) in the matter immediately following the
10 colon, by designating the first 5 undesignated para-

1 graphs as paragraphs (1) through (5), respectively,
2 and moving the indentation of each paragraph 2 ems
3 to the right;

4 (2) in paragraph (5), as so designated—

5 (A) by striking “wire communication” and
6 inserting “communication”;

7 (B) by striking “transmission of writings”
8 and inserting “transmission or receipt of data,
9 writings”; and

10 (C) by striking “or other like” and all that
11 follows before the period and inserting “radio,
12 electromagnetic, photo-optical, photoelectric, or
13 other similar facility”; and

14 (3) by adding at the end the following:

15 “(6) The term ‘bets or wagers’—

16 “(A) means the staking or risking by any
17 person of something of value (other than in a
18 de minimis amount) upon the outcome of a con-
19 test or game predominantly subject to chance,
20 upon an agreement or understanding that the
21 person or another person will receive something
22 of greater value than the amount staked or
23 risked in the event of a certain outcome;

24 “(B) includes the purchase of a chance or
25 opportunity to win a lottery or other prize if the

1 opportunity to win is predominantly subject to
2 chance and the purchase requires a consider-
3 ation that is not in a de minimis amount; and

4 “(C) does not include—

5 “(i) a bona fide business transaction
6 governed by the securities laws (as that
7 term is defined in section 3(a)(47) of the
8 Securities Exchange Act of 1934 (15
9 U.S.C. 78c(a)(47))) for the purchase or
10 sale at a future date of securities (as that
11 term is defined in section 3(a)(10) of the
12 Securities Exchange Act of 1934 (15
13 U.S.C. 78c(a)(10)));

14 “(ii) a contract of indemnity or guar-
15 antee;

16 “(iii) a contract for life, health, or ac-
17 cident insurance;

18 “(iv) a transaction on or subject to
19 the rules of a contract market designated
20 pursuant to section 5 of the Commodity
21 Exchange Act (7 U.S.C. 7); or

22 “(v) participation in a simulation
23 sports game or an educational game or
24 contest that—

1 “(I) is not dependent solely on
2 the outcome of any single sporting
3 event or nonparticipant’s singular in-
4 dividual performance;

5 “(II) has an outcome that re-
6 flects the relative knowledge and skill
7 of the participants; and

8 “(III) offers a prize or award to
9 a participant that is established in ad-
10 vance of the game or contest and is
11 not determined by the number of par-
12 ticipants or the amount of any fees
13 paid by those participants.

14 “(7) The term ‘information assisting in the
15 placing of bets or wagers’ means information that
16 is—

17 “(A) sent by a person engaged in the busi-
18 ness of betting or wagering that is necessary in
19 order for the recipient to place a bet or wager
20 by means of a communication facility being
21 used in interstate or foreign commerce; or

22 “(B) intended by the sender to be used by
23 a person engaged in the business of betting or
24 wagering to accept or place a bet or wager.”.

1 **SEC. 3. TRANSMISSION OF WAGERING INFORMATION; PEN-**
2 **ALTIES.**

3 (a) IN GENERAL.—Section 1084 of title 18, United
4 States Code, is amended by striking subsections (a)
5 through (d) and inserting the following:

6 “(a) IN GENERAL.—

7 “(1) PERSONS ENGAGED IN THE BUSINESS OF
8 BETTING OR WAGERING.—Whoever, being engaged
9 in the business of betting or wagering knowingly
10 uses a communication facility for the transmission
11 or receipt in interstate or foreign commerce of bets
12 or wagers, information assisting in the placing of
13 bets or wagers, or a communication that entitles the
14 transmitter or receiver to the opportunity to receive
15 money or credit as a result of bets or wagers made
16 using a communication facility in interstate or for-
17 eign commerce, shall be fined under this title or im-
18 prisoned not more than 4 years, or both.

19 “(2) OTHER PERSONS.—Whoever (other than a
20 person described in paragraph (1) or a common car-
21 rier subject to the jurisdiction of the Federal Com-
22 munications Commission) knowingly uses a commu-
23 nication facility with the intent to initiate or receive
24 in interstate or foreign commerce the transmission
25 of bets or wagers, information assisting in the plac-
26 ing of bets or wagers, or a communication that enti-

1 tles the transmitter or receiver to the opportunity to
2 receive money or credit as a result of bets or wagers,
3 shall be fined under this title or imprisoned not
4 more than 6 months, or both.

5 “(b) EXCEPTIONS.—

6 “(1) NEWS REPORTING; LEGAL BETS AND WA-
7 GERS.—Nothing in this section shall be construed to
8 prohibit the transmission or receipt in interstate or
9 foreign commerce of—

10 “(A) information for use in the news re-
11 porting or analysis of any wagering activity, in-
12 cluding odds, racing or event results, schedules,
13 or categories of wagering;

14 “(B) educational material relating to bet-
15 ting or wagering;

16 “(C) information assisting in the placing of
17 bets or wagers, or parimutuel bets or wagers
18 conducted by an interactive computer service, if
19 such betting or wagering—

20 “(i) is legal in the State or foreign
21 country in which the transmission origi-
22 nates; and

23 “(ii) is legal in each State and each
24 foreign country in which the sender in-

1 tends the transmission to be received for
2 the purposes of betting or wagering; or

3 “(D) advertising, promotion, or other com-
4 munication by, or authorized by, anyone li-
5 censed to operate a gambling business in a
6 State.

7 “(2) INTERACTIVE COMPUTER SERVICE.—Sub-
8 section (a) does not impose liability on an interactive
9 computer service provider whose facilities or services
10 are used by another person to engage in activity pro-
11 hibited by that subsection—

12 “(A) arising out of the provider’s provision
13 of communications services, if—

14 “(i) the communication was initiated
15 by or at the direction of a person other
16 than the provider;

17 “(ii) the transmission, receipt, rout-
18 ing, or providing of connection is carried
19 out through an automatic process without
20 selection of the communicated information
21 by the provider; and

22 “(iii) the provider does not select the
23 recipients of the information, except as an
24 automatic response; or

1 “(B) if the provider does not intend the
2 use of its facility for a violation of this section,
3 and, with respect to material or information re-
4 siding on the provider’s system, the provider—

5 “(i) complies with subsection (c)(2)
6 with respect to the particular material or
7 information at issue; and

8 “(ii) makes available on its web site,
9 in a location accessible to the public, the
10 name address, phone number, and elec-
11 tronic mail address of an agent designated
12 to receive notices under subsection (c)(2).

13 “(3) STATE LAW.—Nothing in this section shall
14 be construed to preempt any State law.”.

15 “(c) DUTIES OF COMMON CARRIERS AND INTER-
16 ACTIVE COMPUTER SERVICE PROVIDERS.—

17 “(1) NOTICE TO COMMON CARRIERS.—If any
18 common carrier, subject to the jurisdiction of the
19 Federal Communications Commission, is notified in
20 writing by a Federal, State, or local law enforcement
21 agency, acting within its jurisdiction, that any facil-
22 ity furnished by it is being used or will be used for
23 the purpose of transmitting or receiving gambling
24 information in interstate or foreign commerce in vio-
25 lation of Federal, State, or local law, it shall dis-

1 continue or refuse, the leasing, furnishing, or main-
2 taining of such facility, after reasonable notice to the
3 subscriber, but no damages, penalty or forfeiture,
4 civil or criminal, shall be found against any common
5 carrier for any act done in compliance with any no-
6 tice received from a law enforcement agency.

7 “(2) NOTICE TO INTERACTIVE COMPUTER
8 SERVICE PROVIDERS.—If any interactive computer
9 service provider is notified by a Federal, State, or
10 local law enforcement agency, acting within its juris-
11 diction, through receipt of written or electronic no-
12 tice that a particular online site residing on the pro-
13 vider’s system or network is being used or will be
14 used for the purpose of engaging in the business of
15 betting or wagering or for displaying information as-
16 sisting in the placing of bets or wagers in interstate
17 or foreign commerce in violation of Federal, State,
18 or local law, the provider shall cease or refuse pro-
19 viding access to the material or information that al-
20 legedly violates this section residing at that online
21 site, but no civil or criminal liability shall be found
22 against any interactive computer service provider for
23 any act done in compliance with any notice received
24 from a law enforcement agency. Such notice shall

1 identify the business or information that allegedly
2 violates this section, and must—

3 “(A) be supplied to a service provider’s
4 agent if one is designated under this section
5 and information regarding such designation is
6 readily available to the public; and

7 “(B) provide information reasonably suffi-
8 cient to permit the provider to locate such ma-
9 terial or information.

10 “(3) INJUNCTIVE RELIEF.—Except as provided
11 in paragraph (4), any State or local law enforcement
12 agency acting within its jurisdiction, may, following
13 the issuance of a notice under this subsection, in a
14 civil action, obtain an injunction or other appro-
15 priate relief preventing the use of the common car-
16 rier or interactive computer service provider for the
17 purpose of transmitting or receiving gambling infor-
18 mation in interstate or foreign commerce in violation
19 of State or local law.

20 “(4) LIMITATION ON INJUNCTIVE RELIEF
21 AGAINST AN INTERACTIVE COMPUTER SERVICE PRO-
22 VIDER.—In the case of any application for an in-
23 junction against an interactive computer service pro-
24 vider to prevent a violation by another person of this
25 section—

1 “(A) arising out of the provider’s transmit-
2 ting, routing, or providing connections for an
3 activity or information that is prohibited by this
4 section, or performing the intermediate and
5 transient storage of such material or activity in
6 the course of such transmitting, routing, or pro-
7 viding connections, the injunctive relief is lim-
8 ited to—

9 “(i) an order restraining the provider
10 from providing access to an identified sub-
11 scriber of the interactive computer service
12 provider’s system or network, who is using
13 that access to violate this section by termi-
14 nating the specified accounts of such sub-
15 scriber; and

16 “(ii) an order restraining the provider
17 from providing access, by taking reason-
18 able steps specified in the order to block
19 access to a specific, identified, foreign on-
20 line location.

21 “(B) with respect to conduct other than
22 that which qualifies for the limitation on rem-
23 edies set forth in subparagraph (A), the injunc-
24 tive relief is limited to—

1 “(i) an order restraining the provider
2 from providing access to information or
3 material that violates this section residing
4 at a particular online site on the provider’s
5 system or network;

6 “(ii) an order restraining the provider
7 from providing access to a subscriber of
8 the interactive computer service’s system
9 or network, who is identified in the order
10 and who is using such service to engage in
11 a gambling business or to initiate a trans-
12 mission that violates this section by termi-
13 nating the specified accounts of such sub-
14 scriber; or

15 “(iii) such other injunctive remedies
16 as the court considers necessary to prevent
17 or restrain specified activity or information
18 that is prohibited by this section at a par-
19 ticular online location that are the least
20 burdensome to the provider that are com-
21 parably effective for that purpose.

22 “(C) CONSIDERATIONS.—The court, in de-
23 termining appropriate injunctive relief, shall
24 consider—

1 “(i) whether such an injunction, either
2 alone or in combination with other such in-
3 junctions issued against the same provider,
4 would significantly burden either the pro-
5 vider or the operation of the provider’s sys-
6 tem or network;

7 “(ii) the magnitude of the harm likely
8 to be realized by law enforcement if the in-
9 junction is not granted;

10 “(iii) whether implementation of such
11 an injunction would be technically feasible
12 and effective, and would not interfere with
13 access to lawful material at other online lo-
14 cations;

15 “(iv) whether other less burdensome
16 and comparably effective means of prevent-
17 ing or restraining access to the illegal ac-
18 tivity are available; and

19 “(v) the magnitude of the harm likely
20 to be suffered by the community through
21 the accessibility of illegal activity.

22 “(D) NOTICE AND EX PARTE ORDERS.—
23 Injunctive relief under this subsection shall not
24 be available without notice to the service pro-
25 vider and an opportunity for such provider to

1 appear before the court, except for orders en-
2 suring the preservation of evidence or other or-
3 ders having no material adverse effect on the
4 operation of the service provider’s communica-
5 tions network.”.

6 (b) **STYLISTIC AMENDMENT.**—Subsection (e) of sec-
7 tion 1084 of title 18, United States Code, is amended—
8 (1) by inserting “Definition.—” after “(e)”;
9 and
10 (2) by redesignating the subsection as sub-
11 section (d).

○