

Calendar No. 158

106<sup>TH</sup> CONGRESS  
1<sup>ST</sup> Session

**S. 692**

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**A BILL**

To prohibit Internet gambling, and for other purposes.

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JUNE 17, 1999

Reported with an amendment

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106TH CONGRESS  
1ST SESSION

# S. 692

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## IN THE SENATE OF THE UNITED STATES

MARCH 23, 1999

Mr. KYL (for himself, Mr. BRYAN, Mr. GRASSLEY, Mrs. FEINSTEIN, Mr. GORTON, Mr. ENZI, Mr. NICKLES, Mr. THURMOND, Mr. MACK, Mr. COVERDELL, Mr. SANTORUM, Mr. REID, Mr. SMITH of New Hampshire, Mr. HUTCHINSON, Mr. ALLARD, Mr. BOND, Mr. LOTT, Mr. JOHNSON, Mr. VOINOVICH, Mr. DEWINE, Mr. BROWNBACK, Mr. BUNNING, and Mr. TORRICELLI) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

JUNE 17, 1999

Reported by Mr. HATCH, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

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## A BILL

To prohibit Internet gambling, 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 1999”.

1 **SEC. 2. PROHIBITION ON INTERNET GAMBLING.**

2 (a) IN GENERAL.—Chapter 50 of title 18, United  
3 States Code, is amended by adding at the end the fol-  
4 lowing:

5 **“§ 1085. Internet gambling**

6 “(a) DEFINITIONS.—In this section:

7 “(1) BETS OR WAGERS.—The term ‘bets or  
8 wagers’—

9 “(A) means the staking or risking by any  
10 person of something of value upon the outcome  
11 of a contest of others, a sporting event, or a  
12 game of chance, upon an agreement or under-  
13 standing that the person or another person will  
14 receive something of value based on that out-  
15 come;

16 “(B) includes the purchase of a chance or  
17 opportunity to win a lottery or other prize  
18 (which opportunity to win is predominantly sub-  
19 ject to chance);

20 “(C) includes any scheme of a type de-  
21 scribed in section 3702 of title 28, United  
22 States Code; and

23 “(D) does not include—

24 “(i) a bona fide business transaction  
25 governed by the securities laws (as that  
26 term is defined in section 3(a)(47) of the

1 Securities Exchange Act of 1934 (15  
 2 U.S.C. 78e(a)(47))) for the purchase or  
 3 sale at a future date of securities (as that  
 4 term is defined in section 3(a)(10) of the  
 5 Securities Exchange Act of 1934 (15  
 6 U.S.C. 78e(a)(10)));

7 “(ii) a transaction on or subject to the  
 8 rules of a contract market designated pur-  
 9 suant to section 5 of the Commodity Ex-  
 10 change Act (7 U.S.C. 7);

11 “(iii) a contract of indemnity or guar-  
 12 antee; or

13 “(iv) a contract for life, health, or ac-  
 14 cident insurance.

15 “(2) ~~CLOSED-LOOP SUBSCRIBER-BASED SERV-~~  
 16 ~~ICE.~~—The term ‘closed-loop subscriber-based service’  
 17 means any information service or system that uses—

18 “(A) a device or combination of devices—

19 “(i) expressly authorized and operated  
 20 in accordance with the laws of a State, ex-  
 21 clusively for placing, receiving, or otherwise  
 22 making a bet or wager described in sub-  
 23 section (d)(1)(B); and

24 “(ii) by which a person located within  
 25 any State must subscribe to be authorized

1 to place, receive, or otherwise make a bet  
2 or wager, and must be physically located  
3 within that State in order to be authorized  
4 to do so;

5 “(B) an effective customer verification and  
6 age verification system, expressly authorized  
7 and operated in accordance with the laws of the  
8 State in which it is located, to ensure that all  
9 applicable Federal and State legal and regu-  
10 latory requirements for lawful gambling are  
11 met; and

12 “(C) appropriate data security standards  
13 to prevent unauthorized access by any person  
14 who has not subscribed or who is a minor.

15 “(3) FOREIGN JURISDICTION.—The term ‘for-  
16 eign jurisdiction’ means a jurisdiction of a foreign  
17 country or political subdivision thereof.

18 “(4) GAMBLING BUSINESS.—The term ‘gam-  
19 bling business’ means a business that is conducted  
20 at a gambling establishment, or that—

21 “(A) involves—

22 “(i) the placing, receiving, or other-  
23 wise making of bets or wagers; or

1           “(ii) the offering to engage in the  
2           placing, receiving, or otherwise making of  
3           bets or wagers;

4           “(B) involves 1 or more persons who con-  
5           duct, finance, manage, supervise, direct, or own  
6           all or part of such business; and

7           “(C) has been or remains in substantially  
8           continuous operation for a period in excess of  
9           10 days or has a gross revenue of \$2,000 or  
10          more from such business during any 24-hour  
11          period.

12          “(5) INFORMATION ASSISTING IN THE PLACING  
13          OF A BET OR WAGER.—The term ‘information as-  
14          sisting in the placing of a bet or wager’—

15                 “(A) means information that is intended  
16                 by the sender or recipient to be used by a per-  
17                 son engaged in the business of betting or wa-  
18                 gering to accept or place a bet or wager; and

19                 “(B) does not include—

20                         “(i) information concerning pari-  
21                         mutuel pools that is exchanged exclusively  
22                         between or among 1 or more racetracks or  
23                         other parimutuel wagering facilities li-  
24                         censed by the State or approved by the for-  
25                         eign jurisdiction in which the facility is lo-

1           eated, and 1 or more parimutuel wagering  
2           facilities licensed by the State or approved  
3           by the foreign jurisdiction in which the fa-  
4           cility is located, if that information is used  
5           only to conduct common pool parimutuel  
6           pooling under applicable law;

7           “(ii) information exchanged exclu-  
8           sively between or among 1 or more race-  
9           tracks or other parimutuel wagering facili-  
10          ties licensed by the State or approved by  
11          the foreign jurisdiction in which the facility  
12          is located, and a support service located in  
13          another State or foreign jurisdiction, if the  
14          information is used only for processing  
15          bets or wagers made with that facility  
16          under applicable law;

17          “(iii) information exchanged exclu-  
18          sively between or among 1 or more wager-  
19          ing facilities that are located within a sin-  
20          gle State and are licensed and regulated by  
21          that State, and any support service, wher-  
22          ever located, if the information is used only  
23          for the pooling or processing of bets or wa-  
24          gers made by or with the facility or facili-  
25          ties under applicable State law;

1           “(iv) any news reporting or analysis  
2           of wagering activity, including odds, racing  
3           or event results, race and event schedules,  
4           or categories of wagering; or

5           “(v) any posting or reporting of any  
6           educational information on how to make a  
7           bet or wager or the nature of betting or  
8           wagering.

9           “(6) INTERACTIVE COMPUTER SERVICE.—The  
10          term ‘interactive computer service’ means any infor-  
11          mation service, system, or access software provider  
12          that uses a public communication infrastructure or  
13          operates in interstate or foreign commerce to provide  
14          or enable computer access by multiple users to a  
15          computer server, including specifically a service or  
16          system that provides access to the Internet.

17          “(7) INTERNET.—The term ‘Internet’ means  
18          the international computer network of both Federal  
19          and non-Federal interoperable packet switched data  
20          networks.

21          “(8) PERSON.—The term ‘person’ means any  
22          individual, association, partnership, joint venture,  
23          corporation, State or political subdivision thereof,  
24          department, agency, or instrumentality of a State or  
25          political subdivision thereof, or any other govern-

1 ment, organization, or entity (including any govern-  
 2 mental entity (as defined in section 3701(2) of title  
 3 28, United States Code)).

4 “(9) PRIVATE NETWORK.—The term ‘private  
 5 network’ means a communications channel or chan-  
 6 nels, including voice or computer data transmission  
 7 facilities, that use either—

8 “(A) private dedicated lines; or

9 “(B) the public communications infrastruc-  
 10 ture, if the infrastructure is secured by means  
 11 of the appropriate private communications tech-  
 12 nology to prevent unauthorized access.

13 “(10) STATE.—The term ‘State’ means a State  
 14 of the United States, the District of Columbia, the  
 15 Commonwealth of Puerto Rico, or a commonwealth,  
 16 territory, or possession of the United States.

17 “(11) SUBSCRIBER.—The term ‘subscriber’—

18 “(A) means any person with a business re-  
 19 lationship with the interactive computer service  
 20 provider through which such person receives ac-  
 21 cess to the system, service, or network of that  
 22 provider, even if no formal subscription agree-  
 23 ment exists; and

24 “(B) includes registrants, students who are  
 25 granted access to a university system or net-

1 work, and employees who are granted access to  
2 the system or network of their employer.

3 “(b) GAMBLING BUSINESSES.—

4 “(1) PROHIBITION.—Subject to subsection (d),  
5 it shall be unlawful for a person engaged in a gam-  
6 bling business to use the Internet or any other inter-  
7 active computer service—

8 “(A) to place, receive, or otherwise make a  
9 bet or wager; or

10 “(B) to send, receive, or invite information  
11 assisting in the placing of a bet or wager.

12 “(2) PENALTIES.—A person engaged in a gam-  
13 bling business who violates paragraph (1) shall be—

14 “(A) fined in an amount equal to not more  
15 than the greater of—

16 “(i) the amount that such person re-  
17 ceived in bets or wagers as a result of en-  
18 gaging in that business in violation of this  
19 subsection; or

20 “(ii) \$20,000;

21 “(B) imprisoned not more than 4 years; or

22 “(C) both.

23 “(c) PERMANENT INJUNCTIONS.—Upon conviction of  
24 a person under this section, the court may, as an addi-  
25 tional penalty, enter a permanent injunction enjoining the

1 transmission of bets or wagers or information assisting in  
2 the placing of a bet or wager.

3 “(d) APPLICABILITY.—

4 “(1) IN GENERAL.—Subject to paragraph (2),  
5 the prohibition in this section does not apply to—

6 “(A) any otherwise lawful bet or wager  
7 that is placed, received, or otherwise made  
8 wholly intrastate for a State lottery, or for a  
9 multi-State lottery operated jointly between 2  
10 or more States in conjunction with State lot-  
11 teries if—

12 “(i) each such lottery is expressly au-  
13 thorized, and licensed or regulated, under  
14 applicable State law;

15 “(ii) the bet or wager is placed on an  
16 interactive computer service that uses a  
17 private network;

18 “(iii) each person placing or otherwise  
19 making that bet or wager is physically lo-  
20 cated when such bet or wager is placed at  
21 a facility that is open to the general public;  
22 and

23 “(iv) each such lottery complies with  
24 sections 1301 through 1304 of title 18,

1 United States Code, and other applicable  
2 provisions of Federal law;

3 ~~“(B) any otherwise lawful bet or wager~~  
4 ~~that is placed, received, or otherwise made on~~  
5 ~~an interstate or intrastate basis on a live horse~~  
6 ~~race, or the sending, receiving, or inviting of in-~~  
7 ~~formation assisting in the placing of such a bet~~  
8 ~~or wager, if such bet or wager, or the trans-~~  
9 ~~mission of such information, as applicable, is—~~

10 ~~“(i) expressly authorized, and licensed~~  
11 ~~or regulated by the State in which such bet~~  
12 ~~or wager is received, under applicable Fed-~~  
13 ~~eral and such State’s laws;~~

14 ~~“(ii) placed on a closed-loop sub-~~  
15 ~~scriber-based service;~~

16 ~~“(iii) initiated from a State in which~~  
17 ~~betting or wagering on that same type of~~  
18 ~~live horse racing is lawful and received in~~  
19 ~~a State in which such betting or wagering~~  
20 ~~is lawful;~~

21 ~~“(iv) subject to the regulatory over-~~  
22 ~~sight of the State in which the bet or~~  
23 ~~wager is received and subject by such~~  
24 ~~State to minimum control standards for~~  
25 ~~the accounting, regulatory inspection, and~~

1 auditing of all such bets or wagers trans-  
 2 mitted from 1 State to another; and

3 “(v) made in accordance with the  
 4 Interstate Horse Racing Act of 1978 (15  
 5 U.S.C. 3001 et seq.); or

6 “(C) any otherwise lawful bet or wager  
 7 that is placed, received, or otherwise made for  
 8 a fantasy sports league game or contest.

9 “(2) INAPPLICABILITY TO BETS OR WAGERS  
 10 MADE BY AGENTS OR PROXIES.—

11 “(A) IN GENERAL.—Paragraph (1)(A)  
 12 does not apply in any case in which a bet or  
 13 wager is placed, received, or otherwise made by  
 14 the use of an agent or proxy using the Internet  
 15 or an interactive computer service.

16 “(B) RULE OF CONSTRUCTION.—Nothing  
 17 in this paragraph may be construed to prohibit  
 18 the owner operator of a parimutuel wagering  
 19 facility that is licensed by a State from employ-  
 20 ing an agent in the operation of the account  
 21 wagering system owned or operated by the pari-  
 22 mutuel facility.”.

23 (b) TECHNICAL AMENDMENT.—The analysis for  
 24 chapter 50 of title 18, United States Code, is amended  
 25 by adding at the end the following:

“1085. Internet gambling.”.

1 **SEC. 3. CIVIL REMEDIES.**

2 (a) IN GENERAL.—

3 (1) JURISDICTION.—The district courts of the  
4 United States shall have original, exclusive, and con-  
5 tinuing jurisdiction to prevent and restrain violations  
6 of section 1085 of title 18, United States Code, as  
7 added by section 2 of this Act, by issuing appro-  
8 priate orders in accordance with this section, regard-  
9 less of whether a prosecution has been initiated  
10 under that section.

11 (2) PROCEEDINGS.—

12 (A) INSTITUTION BY FEDERAL GOVERN-  
13 MENT.—

14 (i) IN GENERAL.—The United States  
15 may institute proceedings under this sub-  
16 section to prevent or restrain a violation of  
17 section 1085 of title 18, United States  
18 Code.

19 (ii) RELIEF.—Upon application of the  
20 United States under this subparagraph,  
21 the district court may enter a temporary  
22 restraining order or an injunction against  
23 any person to prevent a violation of section  
24 1085 of title 18, United States Code, if the  
25 court determines, after notice and an op-  
26 portunity for a hearing, that there is a

1 substantial probability that such violation  
2 has occurred or will occur.

3 (B) INSTITUTION BY STATE ATTORNEY  
4 GENERAL.—

5 (i) IN GENERAL.—The attorney gen-  
6 eral of a State (or other appropriate State  
7 official) in which a violation of section  
8 1085 of title 18, United States Code, is al-  
9 leged to have occurred, or may occur, after  
10 providing written notice to the United  
11 States, may institute proceedings under  
12 this subsection to prevent or restrain the  
13 violation, unless the United States has ex-  
14 clusive jurisdiction over the violation under  
15 Federal law.

16 (ii) RELIEF.—Upon application of the  
17 attorney general (or other appropriate  
18 State official) of an affected State under  
19 this subparagraph, the district court may  
20 enter a temporary restraining order or an  
21 injunction against any person to prevent a  
22 violation of section 1085 of title 18, United  
23 States Code, if the court determines, after  
24 notice and an opportunity for a hearing,

1           that there is a substantial probability that  
2           such violation has occurred or will occur.

3           (C) EXPIRATION.—Any temporary re-  
4           straining order or preliminary injunction en-  
5           tered pursuant to subparagraph (A) or (B)  
6           shall expire if, and as soon as, the United  
7           States, or the attorney general (or other appro-  
8           priate State official) of the State, as applicable,  
9           notifies the court that issued the injunction that  
10          the United States or the State, as applicable,  
11          will not seek a permanent injunction.

12          (3) EXPEDITED PROCEEDINGS.—

13          (A) IN GENERAL.—In addition to any pro-  
14          ceeding under paragraph (2), a district court  
15          may enter a temporary restraining order  
16          against a person alleged to be in violation of  
17          section 1085 of title 18, United States Code,  
18          upon application of the United States under  
19          paragraph (2)(A) of this subsection, or the at-  
20          torney general (or other appropriate State offi-  
21          cial) of an affected State under paragraph  
22          (2)(B) of this subsection, without notice and  
23          the opportunity for a hearing, if the United  
24          States or the State, as applicable, demonstrates  
25          that there is probable cause to believe that the

1 use of the Internet or other interactive com-  
2 puter service at issue violates section 1085 of  
3 title 18, United States Code.

4 (B) EXPIRATION.—A temporary restrain-  
5 ing order entered under this paragraph shall ex-  
6 pire on the earlier of—

7 (i) the expiration of the 30-day period  
8 beginning on the date on which the order  
9 is entered; or

10 (ii) the date on which a preliminary  
11 injunction is granted or denied.

12 (C) HEARINGS.—A hearing requested con-  
13 cerning an order entered under this paragraph  
14 shall be held at the earliest practicable time.

15 (b) INTERACTIVE COMPUTER SERVICE PRO-  
16 VIDERS.—

17 (1) ELIGIBILITY.—For purposes of this sub-  
18 section, an interactive computer service provider is  
19 described in this paragraph only if the provider has  
20 established and reasonably implements a policy that  
21 provides for the termination of the account of a sub-  
22 scriber of the service system or network of the pro-  
23 vider upon the receipt by the provider of a notice de-  
24 scribed in paragraph (4)(B).

1           (2) USE OF FACILITIES OR SERVICES.—Nothing  
2           in section 1085 of title 18, United States Code, may  
3           be construed to impose, or to provide any basis  
4           for, liability against an interactive computer service  
5           provider described in paragraph (1) whose facilities  
6           or services are used by another person to engage in  
7           an activity prohibited by that section—

8                   (A) arising out of any transmitting, rout-  
9                   ing, or providing of connections for the material  
10                  or activity (including intermediate and tem-  
11                  porary storage in the course of such transmit-  
12                  ting, routing, or providing connections) by the  
13                  provider, if—

14                           (i) the material or activity was initi-  
15                           ated by or at the direction of a person  
16                           other than the provider;

17                           (ii) the transmitting, routing, or pro-  
18                           viding of connections is carried out  
19                           through an automatic process without se-  
20                           lection of the material or activity by the  
21                           provider;

22                           (iii) the provider does not select the  
23                           recipients of the material or activity, ex-  
24                           cept as an automatic response to the re-  
25                           quest of another person; and

1                   (iv) the material or activity is trans-  
2                   mitted through the system or network of  
3                   the provider without modification of its  
4                   content; or

5                   (B) with respect to material or activity at  
6                   an online site residing on a computer server  
7                   owned, controlled, or operated by or for the pro-  
8                   vider, unless the provider fails to comply within  
9                   a reasonable time with a notification under  
10                  paragraph (4) with respect to the particular  
11                  material or activity at issue.

12                  (3) PROTECTION OF PRIVACY.—Nothing in this  
13                  section or in section 1085 of title 18, United States  
14                  Code, may be construed to impose or authorize an  
15                  obligation on an interactive computer service de-  
16                  scribed in paragraph (1) to—

17                         (A) monitor material or use of its service;  
18                         or

19                         (B) except as required by an order of a  
20                         court, to gain access to, to remove, or to disable  
21                         access to material in any case in which such  
22                         conduct is prohibited by law.

23                  (4) NOTICE TO INTERACTIVE COMPUTER SERV-  
24                  ICE PROVIDERS.—

1           (A) IN GENERAL.—If an interactive com-  
2           puter service provider receives from a Federal  
3           or State law enforcement agency, acting within  
4           its jurisdiction, a written or electronic notice  
5           described in subparagraph (B), that a par-  
6           ticular online site residing on a computer server  
7           owned, controlled, or operated by or for the pro-  
8           vider is being used to violate section 1085 of  
9           title 18, United States Code, the provider shall  
10          not be liable under any Federal or State law if,  
11          in a reasonably expeditious manner—

12                 (i) the provider removes or disables  
13                 access to the material or activity residing  
14                 at that online site that allegedly violates  
15                 that section; or

16                 (ii) if the provider does not own, oper-  
17                 ate, or control the site at which the subject  
18                 material or activity resides, the provider  
19                 notifies the Federal or State law enforce-  
20                 ment agency that—

21                         (I) the provider is not the proper  
22                         recipient of such notice; and

23                         (II) upon receipt of a subpoena,  
24                         the provider will cooperate with the  
25                         Federal or State law enforcement

1           agency in identifying the person or  
2           persons who control the site.

3           ~~(B)~~ NOTICE.—A notice is described in this  
4           subparagraph if it—

5           (i) identifies the material or activity  
6           that allegedly violates section 1085 of title  
7           18, United States Code;

8           (ii) provides information reasonably  
9           sufficient to permit the provider to locate  
10          the material or activity;

11          (iii) is supplied to any agent of a pro-  
12          vider designated under section 512 of title  
13          17, United States Code, if information re-  
14          garding such designation is readily avail-  
15          able to the public; and

16          (iv) provides information that is rea-  
17          sonably sufficient to permit the provider to  
18          contact the law enforcement agency that  
19          issued the notice, including—

20                  (I) the name of the law enforce-  
21                  ment agency; and

22                  (II) the name and telephone  
23                  number of an individual to contact at  
24                  the law enforcement agency; and, if

1 available, the electronic mail address  
2 of that individual.

3 (5) INJUNCTIVE RELIEF.—

4 (A) IN GENERAL.—Except as provided in  
5 subparagraph (B), a Federal or State law en-  
6 forcement agency acting within its jurisdiction,  
7 may, following the issuance of a notice to an  
8 interactive computer service provider under  
9 paragraph (4), in a civil action, obtain an in-  
10 junction or other appropriate relief to prevent  
11 the use of the interactive computer service in  
12 violation of Federal or State law.

13 (B) OTHER LIMITATIONS.—In the case of  
14 any application for an injunction against an  
15 interactive computer service provider to prevent  
16 a violation of section 1085 of title 18, United  
17 States Code—

18 (i) arising out of the transmitting,  
19 routing, or providing of connections by the  
20 provider for material or activity that is  
21 prohibited by section 1085 of title 18,  
22 United States Code, or performing the in-  
23 termediate and temporary storage of such  
24 material or activity in the course of such  
25 transmitting, routing, or providing of con-

1 nections, the injunctive relief is limited  
2 to—

3 (I) an order restraining the pro-  
4 vider from providing access to an  
5 identified subscriber of the system or  
6 network of the interactive computer  
7 service provider, who is using that ac-  
8 cess to violate section 1085 of title 18,  
9 United States Code (or whose use of  
10 that access involves a violation of sec-  
11 tion 1085 of title 18, United States  
12 Code, by another person), by termi-  
13 nating the specified account of that  
14 subscriber; and

15 (II) an order restraining the pro-  
16 vider from providing access, by taking  
17 reasonable steps specified in the order  
18 to block access, to a specific, identi-  
19 fied, foreign online location;

20 (ii) with respect to conduct other than  
21 that which qualifies for the limitation on  
22 remedies set forth in clause (i), the injunc-  
23 tive relief is limited to—

24 (I) an order restraining the pro-  
25 vider from providing access to a mate-

1           rial or activity that violates section  
2           1085 of title 18, United States Code,  
3           at a particular online site residing on  
4           a computer server, owned, operated,  
5           or controlled by the provider;

6           (H) an order restraining the pro-  
7           vider from providing access to a sub-  
8           scriber of the system or network of  
9           the interactive computer service, who  
10          is identified in the order and who is  
11          using such service in violation of sec-  
12          tion 1085 of title 18, United States  
13          Code, by terminating the specified ac-  
14          count of that subscriber; or

15          (III) such other injunctive rem-  
16          edies as the court considers necessary  
17          to prevent or restrain access to speci-  
18          fied material or activity that is pro-  
19          hibited by section 1085 of title 18,  
20          United States Code, at a particular  
21          online location residing on a computer  
22          server owned, operated, or controlled  
23          by the provider, that are the least  
24          burdensome to the provider among the

1 forms of relief that are comparably ef-  
2 fective for that purpose.

3 (C) CONSIDERATIONS.—The court, in de-  
4 termining appropriate injunctive relief under  
5 this paragraph, shall consider—

6 (i) whether such an injunction, either  
7 alone or in combination with other such in-  
8 junctions issued against the same provider  
9 (under section 1085 of title 18, United  
10 States Code, or under this section) would  
11 significantly burden either the provider or  
12 the operation of the system or network of  
13 the provider;

14 (ii) whether implementation of such  
15 an injunction would be technically feasible  
16 and effective, and would not unreasonably  
17 interfere with access to lawful material at  
18 other online locations;

19 (iii) whether other less burdensome  
20 and comparably effective means of pre-  
21 venting or restraining access to the illegal  
22 material or activity are available; and

23 (iv) the magnitude of the harm likely  
24 to be suffered by the community if the in-  
25 junction is not granted.

1           (D) NOTICE AND EX PARTE ORDERS.—In-  
2           junctive relief under this paragraph shall not be  
3           available without notice to the service provider  
4           and an opportunity for such provider to appear  
5           before the court, except for orders ensuring the  
6           preservation of evidence or other orders having  
7           no material adverse effect on the operation of  
8           the communications network of the service pro-  
9           vider.

10          (6) EFFECT ON OTHER LAW.—

11           (A) PREEMPTION OF STATE LAW.—An  
12           interactive computer service provider described  
13           in paragraph (1) shall not be liable under any  
14           State law prohibiting or regulating gambling, or  
15           subject to any injunctive relief under any such  
16           State law, in connection with the use of the  
17           interactive computer service of that provider by  
18           any person in interstate or affecting commerce.

19           (B) IMMUNITY FROM LIABILITY.—In the  
20           absence of fraud or bad faith, an interactive  
21           computer service provider described in para-  
22           graph (1) shall not be liable for any damages,  
23           penalty, or forfeiture, civil or criminal, under  
24           Federal or State law for—

- 1 (i) taking any action described in  
 2 paragraph (1) or paragraph 4(A) to com-  
 3 ply with a notice described in paragraph  
 4 (4)(B); or
- 5 (ii) complying with any court order  
 6 issued under paragraph (5).

7 **(c) RELATIONSHIP TO OTHER REMEDIES.—**

8 (1) **IN GENERAL.**—Except as provided in sub-  
 9 section (b)(6), nothing in this section may be con-  
 10 strued to affect any remedy under section 1085 of  
 11 title 18, United States Code, or under any other  
 12 provision of Federal or State law.

13 (2) **AVAILABILITY OF RELIEF.**—The availability  
 14 of relief under this section shall not depend on, or  
 15 be affected by, the initiation or resolution of any ac-  
 16 tion under section 1085 of title 18, United States  
 17 Code, or under any other provision of Federal or  
 18 State law.

19 **SEC. 4. RULE OF CONSTRUCTION.**

20 Except as provided in section 3(b)(6) of this Act,  
 21 nothing in this Act or in section 1085 of title 18, United  
 22 States Code, as added by section 2 of this Act, may be  
 23 construed otherwise to affect any prohibition or remedy  
 24 relating to gambling that is imposed under any other pro-  
 25 vision of Federal or State law.

1 **SEC. 5. REPORT ON ENFORCEMENT.**

2 Not later than ~~3~~ years after the date of enactment  
3 of this Act, the Attorney General shall submit to Congress  
4 a report, which shall include—

5 (1) an analysis of the problems, if any, associ-  
6 ated with enforcing section 1085 of title 18, United  
7 States Code, as added by section 2 of this Act;

8 (2) recommendations for the best use of the re-  
9 sources of the Department of Justice to enforce that  
10 section; and

11 (3) an estimate of the amount of activity and  
12 money being used to gamble on the Internet.

13 **SEC. 6. SEVERABILITY.**

14 If any provision of this Act, an amendment made by  
15 this Act, or the application of such provision or amend-  
16 ment to any person or circumstance is held to be uncon-  
17 stitutional, the remainder of this Act, the amendments  
18 made by this Act, and the application of the provisions  
19 of such to any person or circumstance shall not be affected  
20 thereby.

21 **SECTION 1. SHORT TITLE.**

22 *This Act may be cited as the “Internet Gambling Pro-*  
23 *hibition Act of 1999”.*

24 **SEC. 2. PROHIBITION ON INTERNET GAMBLING.**

25 (a) *IN GENERAL.*—Chapter 50 of title 18, United  
26 States Code, is amended by adding at the end the following:

1 **“§ 1085. Internet gambling**

2 “(a) *DEFINITIONS.—In this section:*

3 “(1) *BETS OR WAGERS.—The term ‘bets or*  
4 *wagers’—*

5 “(A) *means the staking or risking by any*  
6 *person of something of value upon the outcome of*  
7 *a contest of others, a sporting event, or a game*  
8 *of chance, upon an agreement or understanding*  
9 *that the person or another person will receive*  
10 *something of value based on that outcome;*

11 “(B) *includes the purchase of a chance or*  
12 *opportunity to win a lottery or other prize*  
13 *(which opportunity to win is predominantly*  
14 *subject to chance);*

15 “(C) *includes any scheme of a type de-*  
16 *scribed in section 3702 of title 28; and*

17 “(D) *does not include—*

18 “(i) *a bona fide business transaction*  
19 *governed by the securities laws (as that*  
20 *term is defined in section 3(a)(47) of the*  
21 *Securities Exchange Act of 1934 (15 U.S.C.*  
22 *78c(a)(47))) for the purchase or sale at a*  
23 *future date of securities (as that term is de-*  
24 *fin ed in section 3(a)(10) of the Securities*  
25 *Exchange Act of 1934 (15 U.S.C.*  
26 *78c(a)(10)));*

1           “(ii) a transaction on or subject to the  
2           rules of a contract market designated pursu-  
3           ant to section 5 of the Commodity Exchange  
4           Act (7 U.S.C. 7);

5           “(iii) a contract of indemnity or guar-  
6           antee; or

7           “(iv) a contract for life, health, or acci-  
8           dent insurance.

9           “(2) *CLOSED-LOOP SUBSCRIBER-BASED SERV-*  
10          *ICE.—The term ‘closed-loop subscriber-based service’*  
11          *means any information service or system that uses—*

12           “(A) a device or combination of devices—

13           “(i) expressly authorized and operated  
14           in accordance with the laws of a State, ex-  
15           clusively for placing, receiving, or otherwise  
16           making a bet or wager described in sub-  
17           section (f)(1)(B); and

18           “(ii) by which a person located within  
19           any State must subscribe and be registered  
20           with the provider of the wagering service by  
21           name, address, and appropriate billing in-  
22           formation to be authorized to place, receive,  
23           or otherwise make a bet or wager, and must  
24           be physically located within that State in  
25           order to be authorized to do so;

1           “(B) an effective customer verification and  
2           age verification system, expressly authorized and  
3           operated in accordance with the laws of the State  
4           in which it is located, to ensure that all applica-  
5           ble Federal and State legal and regulatory re-  
6           quirements for lawful gambling are met; and

7           “(C) appropriate data security standards to  
8           prevent unauthorized access by any person who  
9           has not subscribed or who is a minor.

10          “(3) FOREIGN JURISDICTION.—The term ‘foreign  
11          jurisdiction’ means a jurisdiction of a foreign country  
12          or political subdivision thereof.

13          “(4) GAMBLING BUSINESS.—The term ‘gambling  
14          business’ means—

15               “(A) a business that is conducted at a gam-  
16               bling establishment, or that—

17                       “(i) involves—

18                               “(I) the placing, receiving, or oth-  
19                               erwise making of bets or wagers; or

20                               “(II) the offering to engage in the  
21                               placing, receiving, or otherwise making  
22                               of bets or wagers;

23                       “(ii) involves 1 or more persons who  
24                       conduct, finance, manage, supervise, direct,  
25                       or own all or part of such business; and

1           “(iii) has been or remains in substan-  
2           tially continuous operation for a period in  
3           excess of 10 days or has a gross revenue of  
4           \$2,000 or more from such business during  
5           any 24-hour period; and

6           “(B) any soliciting agent of a business de-  
7           scribed in subparagraph (A).

8           “(5) INFORMATION ASSISTING IN THE PLACING  
9           OF A BET OR WAGER.—The term ‘information assist-  
10          ing in the placing of a bet or wager’—

11          “(A) means information that is intended by  
12          the sender or recipient to be used by a person en-  
13          gaged in the business of betting or wagering to  
14          place, receive, or otherwise make a bet or wager;  
15          and

16          “(B) does not include—

17          “(i) information concerning pari-  
18          mutuel pools that is exchanged exclusively  
19          between or among 1 or more racetracks or  
20          other parimutuel wagering facilities li-  
21          censed by the State or approved by the for-  
22          eign jurisdiction in which the facility is lo-  
23          cated, and 1 or more parimutuel wagering  
24          facilities licensed by the State or approved  
25          by the foreign jurisdiction in which the fa-

1            *cility is located, if that information is used*  
2            *only to conduct common pool parimutuel*  
3            *pooling under applicable law;*

4            *“(ii) information exchanged exclusively*  
5            *between or among 1 or more racetracks or*  
6            *other parimutuel wagering facilities li-*  
7            *censed by the State or approved by the for-*  
8            *foreign jurisdiction in which the facility is lo-*  
9            *ated, and a support service located in an-*  
10           *other State or foreign jurisdiction, if the in-*  
11           *formation is used only for processing bets or*  
12           *wagers made with that facility under appli-*  
13           *cable law;*

14           *“(iii) information exchanged exclu-*  
15           *sively between or among 1 or more wager-*  
16           *ing facilities that are located within a sin-*  
17           *gle State and are licensed and regulated by*  
18           *that State, and any support service, wher-*  
19           *ever located, if the information is used only*  
20           *for the pooling or processing of bets or wa-*  
21           *gers made by or with the facility or facili-*  
22           *ties under applicable State law;*

23           *“(iv) any news reporting or analysis of*  
24           *wagering activity, including odds, racing or*

1           *event results, race and event schedules, or*  
2           *categories of wagering; or*

3           “(v) *any posting or reporting of any*  
4           *educational information on how to make a*  
5           *bet or wager or the nature of betting or wa-*  
6           *gering.*

7           “(6) *INTERACTIVE COMPUTER SERVICE.—The*  
8           *term ‘interactive computer service’ means any infor-*  
9           *mation service, system, or access software provider*  
10           *that operates in, or uses a channel or instrumentality*  
11           *of, interstate or foreign commerce to provide or enable*  
12           *access by multiple users to a computer server, includ-*  
13           *ing specifically a service or system that provides ac-*  
14           *cess to the Internet.*

15           “(7) *INTERACTIVE COMPUTER SERVICE PRO-*  
16           *VIDER.—The term ‘interactive computer service pro-*  
17           *vider’ means any person that provides an interactive*  
18           *computer service, to the extent that such person offers*  
19           *or provides such service.*

20           “(8) *INTERNET.—The term ‘Internet’ means the*  
21           *international computer network of both Federal and*  
22           *non-Federal interoperable packet switched data net-*  
23           *works.*

24           “(9) *PERSON.—The term ‘person’ means any in-*  
25           *dividual, association, partnership, joint venture, cor-*

1        *poration (or any affiliate of a corporation), State or*  
2        *political subdivision thereof, department, agency, or*  
3        *instrumentality of a State or political subdivision*  
4        *thereof, or any other government, organization, or en-*  
5        *tity (including any governmental entity (as defined*  
6        *in section 3701(2) of title 28)).*

7                *“(10) PRIVATE NETWORK.—The term ‘private*  
8        *network’ means a communications channel or chan-*  
9        *nels, including voice or computer data transmission*  
10        *facilities, that use either—*

11                    *“(A) private dedicated lines; or*

12                    *“(B) the public communications infrastruc-*  
13        *ture, if the infrastructure is secured by means of*  
14        *the appropriate private communications tech-*  
15        *nology to prevent unauthorized access.*

16                *“(11) STATE.—The term ‘State’ means a State*  
17        *of the United States, the District of Columbia, the*  
18        *Commonwealth of Puerto Rico, or a commonwealth,*  
19        *territory, or possession of the United States.*

20                *“(12) SUBSCRIBER.—The term ‘subscriber’—*

21                    *“(A) means any person with a business re-*  
22        *lationship with the interactive computer service*  
23        *provider through which such person receives ac-*  
24        *cess to the system, service, or network of that*

1 provider, even if no formal subscription agree-  
2 ment exists; and

3 “(B) includes registrants, students who are  
4 granted access to a university system or network,  
5 and employees or contractors who are granted  
6 access to the system or network of their employer.

7 “(b) *INTERNET GAMBLING.*—

8 “(1) *PROHIBITION.*—Subject to subsection (f), it  
9 shall be unlawful for a person engaged in a gambling  
10 business knowingly to use the Internet or any other  
11 interactive computer service—

12 “(A) to place, receive, or otherwise make a  
13 bet or wager; or

14 “(B) to send, receive, or invite information  
15 assisting in the placing of a bet or wager.

16 “(2) *PENALTIES.*—A person engaged in a gam-  
17 bling business who violates this section shall be—

18 “(A) fined in an amount equal to not more  
19 than the greater of—

20 “(i) the total amount that such person  
21 bet or wagered, or placed, received, or ac-  
22 cepted in bets or wagers, as a result of en-  
23 gaging in that business in violation of this  
24 section; or

25 “(ii) \$20,000;

1           “(B) imprisoned not more than 4 years; or

2           “(C) both.

3           “(3) *PERMANENT INJUNCTIONS.*—Upon conviction of a person under this section, the court may enter a permanent injunction enjoining such person from placing, receiving, or otherwise making bets or wagers or sending, receiving, or inviting information assisting in the placing of bets or wagers.

9           “(c) *CIVIL REMEDIES.*—

10           “(1) *JURISDICTION.*—The district courts of the United States shall have original and exclusive jurisdiction to prevent and restrain violations of this section by issuing appropriate orders in accordance with this section, regardless of whether a prosecution has been initiated under this section.

16           “(2) *PROCEEDINGS.*—

17           “(A) *INSTITUTION BY FEDERAL GOVERNMENT.*—

19           “(i) *IN GENERAL.*—The United States may institute proceedings under this subsection to prevent or restrain a violation of this section.

23           “(ii) *RELIEF.*—Upon application of the United States under this subparagraph, the district court may enter a temporary re-

1           *straining order or an injunction against*  
2           *any person to prevent or restrain a viola-*  
3           *tion of this section if the court determines,*  
4           *after notice and an opportunity for a hear-*  
5           *ing, that there is a substantial probability*  
6           *that such violation has occurred or will*  
7           *occur.*

8           “(B) *INSTITUTION BY STATE ATTORNEY*  
9           *GENERAL.—*

10           “(i) *IN GENERAL.—The attorney gen-*  
11           *eral of a State (or other appropriate State*  
12           *official) in which a violation of this section*  
13           *allegedly has occurred or will occur, after*  
14           *providing written notice to the United*  
15           *States, may institute proceedings under this*  
16           *subsection to prevent or restrain the viola-*  
17           *tion.*

18           “(ii) *RELIEF.—Upon application of*  
19           *the attorney general (or other appropriate*  
20           *State official) of an affected State under*  
21           *this subparagraph, the district court may*  
22           *enter a temporary restraining order or an*  
23           *injunction against any person to prevent or*  
24           *restrain a violation of this section if the*  
25           *court determines, after notice and an oppor-*

1            *tunity for a hearing, that there is a sub-*  
2            *stantial probability that such violation has*  
3            *occurred or will occur.*

4            “(C) *INDIAN LANDS.*—*Notwithstanding sub-*  
5            *paragraphs (A) and (B), for a violation that is*  
6            *alleged to have occurred, or may occur, on In-*  
7            *dian lands (as that term is defined in section 4*  
8            *of the Indian Gaming Regulatory Act (25 U.S.C.*  
9            *2703))—*

10            *“(i) the United States shall have the*  
11            *enforcement authority provided under sub-*  
12            *paragraph (A); and*

13            *“(ii) the enforcement authorities speci-*  
14            *fied in an applicable Tribal-State compact*  
15            *negotiated under section 11 of the Indian*  
16            *Gaming Regulatory Act (25 U.S.C. 2710)*  
17            *shall be carried out in accordance with that*  
18            *compact.*

19            “(D) *EXPIRATION.*—*Any temporary re-*  
20            *straining order or preliminary injunction en-*  
21            *tered pursuant to subparagraph (A) or (B) shall*  
22            *expire if, and as soon as, the United States, or*  
23            *the attorney general (or other appropriate State*  
24            *official) of the State, as applicable, notifies the*  
25            *court that issued the order or injunction that the*

1           *United States or the State, as applicable, will*  
2           *not seek a permanent injunction.*

3           “(3) *EXPEDITED PROCEEDINGS.*—

4                   “(A) *IN GENERAL.*—*In addition to any pro-*  
5                   *ceeding under paragraph (2), a district court*  
6                   *may, in exigent circumstances, enter a tem-*  
7                   *porary restraining order against a person al-*  
8                   *leged to be in violation of this section upon ap-*  
9                   *plication of the United States under paragraph*  
10                   *(2)(A), or the attorney general (or other appro-*  
11                   *priate State official) of an affected State under*  
12                   *paragraph (2)(B), without notice and the oppor-*  
13                   *tunity for a hearing as provided in rule 65(b) of*  
14                   *the Federal Rules of Civil Procedure (except as*  
15                   *provided in subsection (d)(3)), if the United*  
16                   *States or the State, as applicable, demonstrates*  
17                   *that there is probable cause to believe that the*  
18                   *use of the Internet or other interactive computer*  
19                   *service at issue violates this section.*

20                   “(B) *HEARINGS.*—*A hearing requested con-*  
21                   *cerning an order entered under this paragraph*  
22                   *shall be held at the earliest practicable time.*

23           “(d) *INTERACTIVE COMPUTER SERVICE PROVIDERS.*—

24                   “(1) *IMMUNITY FROM LIABILITY FOR USE BY AN-*  
25                   *OTHER.*—

1           “(A) *IN GENERAL.*—*An interactive com-*  
2 *puter service provider described in subparagraph*  
3 *(B) shall not be liable, under this section or any*  
4 *other provision of Federal or State law prohib-*  
5 *iting or regulating gambling or gambling-related*  
6 *activities, for the use of its facilities or services*  
7 *by another person to engage in Internet gam-*  
8 *bling activity that violates such law—*

9           “(i) *arising out of any transmitting,*  
10 *routing, or providing of connections for*  
11 *gambling-related material or activity (in-*  
12 *cluding intermediate and temporary storage*  
13 *in the course of such transmitting, routing,*  
14 *or providing connections) by the provider,*  
15 *if—*

16           “(I) *the material or activity was*  
17 *initiated by or at the direction of a*  
18 *person other than the provider;*

19           “(II) *the transmitting, routing, or*  
20 *providing of connections is carried out*  
21 *through an automatic process without*  
22 *selection of the material or activity by*  
23 *the provider;*

24           “(III) *the provider does not select*  
25 *the recipients of the material or activ-*

1                    *ity, except as an automatic response to*  
2                    *the request of another person; and*

3                    *“(IV) the material or activity is*  
4                    *transmitted through the system or net-*  
5                    *work of the provider without modifica-*  
6                    *tion of its content; or*

7                    *“(ii) arising out of any gambling-re-*  
8                    *lated material or activity at an online site*  
9                    *residing on a computer server owned, con-*  
10                   *trolled, or operated by or for the provider,*  
11                   *or arising out of referring or linking users*  
12                   *to an online location containing such mate-*  
13                   *rial or activity, if the material or activity*  
14                   *was initiated by or at the direction of a*  
15                   *person other than the provider, unless the*  
16                   *provider fails to take expeditiously, with re-*  
17                   *spect to the particular material or activity*  
18                   *at issue, the actions described in paragraph*  
19                   *(2)(A) following the receipt by the provider*  
20                   *of a notice described in paragraph (2)(B).*

21                   *“(B) ELIGIBILITY.—An interactive com-*  
22                   *puter service provider is described in this sub-*  
23                   *paragraph only if the provider—*

24                   *“(i) maintains and implements a writ-*  
25                   *ten or electronic policy that requires the*

1            *provider to terminate the account of a sub-*  
2            *scriber of its system or network expedi-*  
3            *tiously following the receipt by the provider*  
4            *of a notice described in paragraph (2)(B)*  
5            *alleging that such subscriber has violated or*  
6            *is violating this section; and*

7            *“(ii) with respect to the particular ma-*  
8            *terial or activity at issue, has not know-*  
9            *ingly permitted its computer server to be*  
10           *used to engage in activity that the provider*  
11           *knows is prohibited by this section, with the*  
12           *specific intent that such server be used for*  
13           *such purpose.*

14           *“(2) NOTICE TO INTERACTIVE COMPUTER SERV-*  
15           *ICE PROVIDERS.—*

16           *“(A) IN GENERAL.—If an interactive com-*  
17           *puter service provider receives from a Federal or*  
18           *State law enforcement agency, acting within its*  
19           *authority and jurisdiction, a written or elec-*  
20           *tronic notice described in subparagraph (B), that*  
21           *a particular online site residing on a computer*  
22           *server owned, controlled, or operated by or for*  
23           *the provider is being used by another person to*  
24           *violate this section, the provider shall*  
25           *expeditiously—*

1           “(i) remove or disable access to the ma-  
2           terial or activity residing at that online site  
3           that allegedly violates this section; or

4           “(ii) in any case in which the provider  
5           does not control the site at which the subject  
6           material or activity resides, the provider,  
7           through any agent of the provider des-  
8           ignated in accordance with section  
9           512(c)(2) of title 17, or other responsible  
10          identified employee or contractor—

11           “(I) notify the Federal or State  
12          law enforcement agency that the pro-  
13          vider is not the proper recipient of  
14          such notice; and

15           “(II) upon receipt of a subpoena,  
16          cooperate with the Federal or State law  
17          enforcement agency in identifying the  
18          person or persons who control the site.

19          “(B) NOTICE.—A notice is described in this  
20          subparagraph only if it—

21           “(i) identifies the material or activity  
22          that allegedly violates this section, and al-  
23          leges that such material or activity violates  
24          this section;

1           “(ii) provides information reasonably  
2           sufficient to permit the provider to locate  
3           (and, as appropriate, in a notice issued  
4           pursuant to paragraph (3)(A) to block ac-  
5           cess to) the material or activity;

6           “(iii) is supplied to any agent of a  
7           provider designated in accordance with sec-  
8           tion 512(c)(2) of title 17, if information re-  
9           garding such designation is readily avail-  
10          able to the public;

11          “(iv) provides information that is rea-  
12          sonably sufficient to permit the provider to  
13          contact the law enforcement agency that  
14          issued the notice, including the name of the  
15          law enforcement agency, and the name and  
16          telephone number of an individual to con-  
17          tact at the law enforcement agency (and, if  
18          available, the electronic mail address of that  
19          individual); and

20          “(v) declares under penalties of perjury  
21          that the person submitting the notice is an  
22          official of the law enforcement agency de-  
23          scribed in clause (iv).

24          “(3) INJUNCTIVE RELIEF.—

1           “(A) *IN GENERAL.*—*The United States, or a*  
2           *State law enforcement agency acting within its*  
3           *authority and jurisdiction, may, not less than 24*  
4           *hours following the issuance to an interactive*  
5           *computer service provider of a notice described*  
6           *in paragraph (2)(B), in a civil action, obtain a*  
7           *temporary restraining order, or an injunction to*  
8           *prevent the use of the interactive computer serv-*  
9           *ice by another person in violation of this section.*

10           “(B) *LIMITATIONS.*—*Notwithstanding any*  
11           *other provision of this section, in the case of any*  
12           *application for a temporary restraining order or*  
13           *an injunction against an interactive computer*  
14           *service provider described in paragraph (1)(B) to*  
15           *prevent a violation of this section—*

16                   “(i) *arising out of activity described in*  
17                   *paragraph (1)(A)(i), the injunctive relief is*  
18                   *limited to—*

19                           “(I) *an order restraining the pro-*  
20                           *vider from providing access to an iden-*  
21                           *tified subscriber of the system or net-*  
22                           *work of the interactive computer serv-*  
23                           *ice provider, if the court determines*  
24                           *that there is probable cause to believe*  
25                           *that such subscriber is using that ac-*

1            *cess to violate this section (or to engage*  
2            *with another person in a communica-*  
3            *tion that violates this section), by ter-*  
4            *minating the specified account of that*  
5            *subscriber; and*

6            *“(II) an order restraining the*  
7            *provider from providing access, by tak-*  
8            *ing reasonable steps specified in the*  
9            *order to block access, to a specific,*  
10           *identified, foreign online location;*

11           *“(ii) arising out of activity described*  
12           *in paragraph (1)(A)(ii), the injunctive re-*  
13           *lief is limited to—*

14           *“(I) the orders described in clause*  
15           *(i)(I);*

16           *“(II) an order restraining the*  
17           *provider from providing access to the*  
18           *material or activity that violates this*  
19           *section at a particular online site re-*  
20           *siding on a computer server operated*  
21           *or controlled by the provider; and*

22           *“(III) such other injunctive rem-*  
23           *edies as the court considers necessary*  
24           *to prevent or restrain access to speci-*  
25           *fied material or activity that is prohib-*

1                    *ited by this section at a particular on-*  
2                    *line location residing on a computer*  
3                    *server operated or controlled by the*  
4                    *provider, that are the least burdensome*  
5                    *to the provider among the forms of re-*  
6                    *lief that are comparably effective for*  
7                    *that purpose.*

8                    “(C) *CONSIDERATIONS.*—*The court, in de-*  
9                    *termining appropriate injunctive relief under*  
10                    *this paragraph, shall consider—*

11                    “(i) *whether such an injunction, either*  
12                    *alone or in combination with other such in-*  
13                    *junctions issued, and currently operative,*  
14                    *against the same provider would signifi-*  
15                    *cantly (and, in the case of relief under sub-*  
16                    *paragraph (B)(ii), taking into account,*  
17                    *among other factors, the conduct of the pro-*  
18                    *vider, unreasonably) burden either the pro-*  
19                    *vider or the operation of the system or net-*  
20                    *work of the provider;*

21                    “(ii) *whether implementation of such*  
22                    *an injunction would be technically feasible*  
23                    *and effective, and would not materially*  
24                    *interfere with access to lawful material at*  
25                    *other online locations;*

1                   “(iii) whether other less burdensome  
2                   and comparably effective means of pre-  
3                   venting or restraining access to the illegal  
4                   material or activity are available; and

5                   “(iv) the magnitude of the harm likely  
6                   to be suffered by the community if the in-  
7                   junction is not granted.

8                   “(D) NOTICE AND EX PARTE ORDERS.—In-  
9                   junctive relief under this paragraph shall not be  
10                  available without notice to the service provider  
11                  and an opportunity for such provider to appear  
12                  before the court, except for orders ensuring the  
13                  preservation of evidence or other orders having  
14                  no material adverse effect on the operation of the  
15                  communications network of the service provider.

16                  “(4) EFFECT ON OTHER LAW.—

17                  “(A) IMMUNITY FROM LIABILITY FOR COM-  
18                  PLIANCE.—An interactive computer service pro-  
19                  vider shall not be liable for any damages, pen-  
20                  alty, or forfeiture, civil or criminal, under Fed-  
21                  eral or State law for taking in good faith any  
22                  action described in paragraph (2)(A) to comply  
23                  with a notice described in paragraph (2)(B), or  
24                  complying with any court order issued under  
25                  paragraph (3).

1           “(B) *DISCLAIMER OF OBLIGATIONS.*—*Nothing*  
2           *in this section may be construed to impose*  
3           *or authorize an obligation on an interactive*  
4           *computer service provider described in para-*  
5           *graph (1)(B)—*

6                     “(i) *to monitor material or use of its*  
7                     *service; or*

8                     “(ii) *except as required by a notice or*  
9                     *an order of a court under this subsection, to*  
10                    *gain access to, to remove, or to disable ac-*  
11                    *cess to material.*

12           “(C) *RIGHTS OF SUBSCRIBERS.*—*Nothing*  
13           *in this section may be construed to prejudice the*  
14           *right of a subscriber to secure an appropriate de-*  
15           *termination, as otherwise provided by law, in a*  
16           *Federal court or in a State or local tribunal or*  
17           *agency, that the account of such subscriber*  
18           *should not be terminated pursuant to this sub-*  
19           *section, or should be restored.*

20           “(e) *AVAILABILITY OF RELIEF.*—*The availability of*  
21           *relief under subsections (c) and (d) shall not depend on,*  
22           *or be affected by, the initiation or resolution of any action*  
23           *under subsection (b), or under any other provision of Fed-*  
24           *eral or State law.*

25           “(f) *APPLICABILITY.*—

1           “(1) *IN GENERAL.*—Subject to paragraph (2), the  
2           *prohibition in this section does not apply to—*

3                   “(A) *any otherwise lawful bet or wager that*  
4                   *is placed, received, or otherwise made wholly*  
5                   *intrastate for a State lottery, or for a multi-*  
6                   *State lottery operated jointly between 2 or more*  
7                   *States in conjunction with State lotteries if—*

8                           “(i) *each such lottery is expressly au-*  
9                           *thorized, and licensed or regulated, under*  
10                           *applicable State law;*

11                           “(ii) *the bet or wager is placed on an*  
12                           *interactive computer service that uses a pri-*  
13                           *vate network;*

14                           “(iii) *each person placing or otherwise*  
15                           *making that bet or wager is physically lo-*  
16                           *cated when such bet or wager is placed at*  
17                           *a facility that is open to the general public;*  
18                           *and*

19                           “(iv) *each such lottery complies with*  
20                           *sections 1301 through 1304, and other ap-*  
21                           *plicable provisions of Federal law;*

22                   “(B) *any otherwise lawful bet or wager that*  
23                   *is placed, received, or otherwise made on an*  
24                   *interstate or intrastate basis on a live horse or*  
25                   *a live dog race, or the sending, receiving, or in-*

1            *viting of information assisting in the placing of*  
2            *such a bet or wager, if such bet or wager, or the*  
3            *transmission of such information, as applicable,*  
4            *is—*

5                    *“(i) expressly authorized, and licensed*  
6                    *or regulated by the State in which such bet*  
7                    *or wager is received, under applicable Fed-*  
8                    *eral and such State’s laws;*

9                    *“(ii) placed on a closed-loop subscriber-*  
10                   *based service;*

11                   *“(iii) initiated from a State in which*  
12                   *betting or wagering on that same type of*  
13                   *live horse or live dog racing is lawful and*  
14                   *received in a State in which such betting or*  
15                   *wagering is lawful;*

16                   *“(iv) subject to the regulatory oversight*  
17                   *of the State in which the bet or wager is re-*  
18                   *ceived and subject by such State to min-*  
19                   *imum control standards for the accounting,*  
20                   *regulatory inspection, and auditing of all*  
21                   *such bets or wagers transmitted from 1*  
22                   *State to another; and*

23                   *“(v) in the case of—*

24                            *“(I) live horse racing, made in ac-*  
25                            *cordance with the Interstate Horse*

1                   *Racing Act of 1978 (15 U.S.C. 3001 et*  
2                   *seq.); or*

3                   “*(II) live dog racing, subject to*  
4                   *consent agreements that are com-*  
5                   *parable to those required by the Inter-*  
6                   *state Horse Racing Act of 1978, ap-*  
7                   *proved by the appropriate State regu-*  
8                   *latory agencies, in the State receiving*  
9                   *the signal, and in the State in which*  
10                  *the bet or wager originates; or*

11                  “*(C) any otherwise lawful bet or wager that*  
12                  *is placed, received, or otherwise made for a fan-*  
13                  *tasy sports league game or contest.*

14                  “*(2) BETS OR WAGERS MADE BY AGENTS OR*  
15                  *PROXIES.—*

16                  “*(A) IN GENERAL.—Paragraph (1) does not*  
17                  *apply in any case in which a bet or wager is*  
18                  *placed, received, or otherwise made by the use of*  
19                  *an agent or proxy using the Internet or an inter-*  
20                  *active computer service.*

21                  “*(B) QUALIFICATION.—Nothing in this*  
22                  *paragraph may be construed to prohibit the*  
23                  *owner operator of a parimutuel wagering facility*  
24                  *that is licensed by a State from employing an*  
25                  *agent in the operation of the account wagering*

1           *system owned or operated by the parimutuel fa-*  
 2           *cility.*

3           “(3) *ADVERTISING AND PROMOTION.*—*The prohi-*  
 4           *bition of subsection (b)(1)(B) does not apply to adver-*  
 5           *tising or promotion of any activity that is not pro-*  
 6           *hibited by subsection (b)(1)(A).*”

7           “(g) *RULE OF CONSTRUCTION.*—*Nothing in this sec-*  
 8           *tion may be construed to affect any prohibition or remedy*  
 9           *applicable to a person engaged in a gambling business*  
 10          *under any other provision of Federal or State law.”.*

11          (b) *TECHNICAL AMENDMENT.*—*The analysis for chap-*  
 12          *ter 50 of title 18, United States Code, is amended by adding*  
 13          *at the end the following:*

          “1085. *Internet gambling.*”.

14          **SEC. 3. REPORT ON ENFORCEMENT.**

15          *Not later than 3 years after the date of enactment of*  
 16          *this Act, the Attorney General shall submit to Congress a*  
 17          *report, which shall include—*

18                 (1) *an analysis of the problems, if any, associ-*  
 19                 *ated with enforcing section 1085 of title 18, United*  
 20                 *States Code, as added by section 2 of this Act;*

21                 (2) *recommendations for the best use of the re-*  
 22                 *sources of the Department of Justice to enforce that*  
 23                 *section; and*

24                 (3) *an estimate of the amount of activity and*  
 25                 *money being used to gamble on the Internet.*

1 **SEC. 4. SEVERABILITY.**

2       *If any provision of this Act, an amendment made by*  
3 *this Act, or the application of such provision or amendment*  
4 *to any person or circumstance is held to be unconstitu-*  
5 *tional, the remainder of this Act, the amendments made by*  
6 *this Act, and the application of this Act and the provisions*  
7 *of such amendments to any other person or circumstance*  
8 *shall not be affected thereby.*