106TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
106–655, Part I

INTERNET GAMBLING PROHIBITION ACT OF 2000

JUNE 7, 2000.—Ordered to be printed

Mr. MCCOLLUM, from the Committee on the Judiciary, submitted the following

R E P O R T

together with additional and

DISSENTING VIEWS

[To accompany H.R. 3125]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3125) to prohibit Internet gambling, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Internet Gambling Prohibition Act of 2000".

SEC. 2. PROHIBITION ON INTERNET GAMBLING.

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

"§ 1085. Internet gambling

"(a) DEFINITIONS.—In this section the following definitions apply:

"(1) BETS OR WAGERS.—The term 'bets or wagers'—

"(A) means the staking or risking by any person of something of value upon the outcome of a contest of others, a sporting event, or a game predominantly subject to chance, upon an agreement or understanding that the person or another person will receive something of greater value than the amount staked or risked in the event of a certain outcome;

"(B) includes the purchase of a chance or opportunity to win a lottery or other prize (which opportunity to win is predominantly subject to chance);

"(C) includes any scheme of a type described in section 3702 of title 28; and

"(D) does not include—

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

"(ii) a transaction on or subject to the rules of a contract market designated pursuant to section 5 of the Commodity Exchange Act (7 U.S.C. 7);

"(iii) a contract of indemnity or guarantee;

"(iv) a contract for life, health, or accident insurance; or

"(v) participation in a simulation sports game or an educational game or contest that—

"(I) is not dependent solely on the outcome of any single sporting event or nonparticipant's singular individual performance in any single sporting event;

"(II) has an outcome that reflects the relative knowledge and skill of the participants with such outcome determined predominantly by accumulated statistical results of sporting events and nonparticipants accumulated individual performances therein; and

"(III) offers a prize or award to a participant that is established in advance of the game or contest and is not determined by the number of participants or the amount of any fees paid by those participants.

"(2) CLOSED-LOOP SUBSCRIBER-BASED SERVICE.—The term 'closed-loop subscriber-based service' means any information service or system that uses—

"(A) a device or combination of devices—

"(i) expressly authorized and operated in accordance with the laws of a State, exclusively for placing, receiving, or otherwise making a bet or wager described in subsection (f)(1)(B); and

"(ii) by which a person located within any State must subscribe and be registered with the provider of the wagering service by name, address, and appropriate billing information to be authorized to place, receive, or otherwise make a bet or wager, and must be physically located within that State in order to be authorized to do so;

"(B) an effective customer verification and age verification system, expressly authorized and operated in accordance with the laws of the State in which it is located, to ensure that all applicable Federal and State legal and regulatory requirements for lawful gambling are met; and

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

"(3) FOREIGN JURISDICTION.—The term 'foreign jurisdiction' means a jurisdiction of a foreign country or political subdivision thereof.

"(4) GAMBLING BUSINESS.—The term 'gambling business' means—

"(A) a business that is conducted at a gambling establishment, or that—

"(i) involves—

"(I) the placing, receiving, or otherwise making of bets or wagers; or

"(II) the offering to engage in the placing, receiving, or otherwise making of bets or wagers;

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

"(iii) has been or remains in substantially continuous operation for a period in excess of 10 days or has a gross revenue of $2,000 or more from such business during any 24-hour period; and

"(B) any soliciting agent of a business described in subparagraph (A).

"(5) INFORMATION ASSISTING IN THE PLACING OF A BET OR WAGER.—The term 'information assisting in the placing of a bet or wager'—

"(A) means information that is intended by the sender or recipient to be used by a person engaged in the business of betting or wagering to place, receive, or otherwise make a bet or wager; and

"(B) does not include—

"(i) information concerning parimutuel pools that is exchanged exclusively between or among 1 or more racetracks or other parimutuel wagering facilities licensed by the State or approved by the foreign jurisdiction in which the facility is located, and 1 or more parimutuel wagering facilities licensed by the State or approved by the foreign jurisdiction in which the facility is located, if that information is used only to conduct common pool parimutuel pooling under applicable law;

"(ii) information exchanged exclusively between or among 1 or more racetracks or other parimutuel wagering facilities licensed by the State or approved by the foreign jurisdiction in which the facility is located, and a support service located in another State or foreign jurisdiction, if the information is used only for processing bets or wagers made with that facility under applicable law;

"(iii) information exchanged exclusively between or among 1 or more wagering facilities that are licensed and regulated by the State in which each facility is located, and any support service, wherever located, if the information is used only for the pooling or processing of bets or wagers made by or with the facility or facilities under each State's applicable law;

"(iv) any news reporting or analysis of wagering activity, including odds, racing or event results, race and event schedules, or categories of wagering; or

"(v) any posting or reporting of any educational information on how to make a bet or wager or the nature of betting or wagering.

"(6) INTERACTIVE COMPUTER SERVICE.—The term 'interactive computer service' means any information service, system, or access software provider that operates in, or uses a channel or instrumentality of, interstate or foreign commerce to provide or enable access by multiple users to a computer server, which includes the transmission, storage, retrieval, hosting, linking, formatting, or translation of a communication made by another person, and including specifically a service, system, or access software provider that—

"(A) provides access to the Internet; or

"(B) is engaged in the business of providing an information location tool (which means a service that refers or links users to an online location, including a directory, index, reference, pointer, or hypertext link).

"(7) INTERACTIVE COMPUTER SERVICE PROVIDER.—The term 'interactive computer service provider' means any person that provides an interactive computer service, to the extent that such person offers or provides such service.

"(8) INTERNET.—The term 'Internet' means the international computer network of both Federal and non-Federal interoperable packet switched data networks.

"(9) PERSON.—The term 'person' means any individual, association, partnership, joint venture, corporation (or any affiliate of a corporation), State or political subdivision thereof, department, agency, or instrumentality of a State or po-

litical subdivision thereof, or any other government, organization, or entity (including any governmental entity (as defined in section 3701(2) of title 28)).

"(10) PRIVATE NETWORK.—The term 'private network' means a communications channel or channels, including voice or computer data transmission facilities, that use either—

"(A) private dedicated lines; or

"(B) the public communications infrastructure, if the infrastructure is secured by means of the appropriate private communications technology to prevent unauthorized access.

"(11) STATE.—The term 'State' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a commonwealth, territory, or possession of the United States.

"(12) SUBSCRIBER.—The term 'subscriber'—

"(A) means any person with a business relationship with the interactive computer service provider through which such person receives access to the system, service, or network of that provider, even if no formal subscription agreement exists; and

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

"(13) SOLICITING AGENT.—The term 'soliciting agent' means any agent who knowingly solicits for a gambling business described in paragraph (4)(A) of this subsection.

"(b) INTERNET GAMBLING.—

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

"(A) to place, receive, or otherwise make a bet or wager; or

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

"(2) PENALTIES.—A person engaged in a gambling business who violates this section shall be—

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

"(i) the total amount that such person bet or wagered, or placed, received, or accepted in bets or wagers, as a result of engaging in that business in violation of this section; or

"(ii) $20,000;

"(B) imprisoned not more than 4 years; or

"(C) both.

"(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.

"(c) CIVIL REMEDIES.—

"(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.

"(2) PROCEEDINGS.—

"(A) INSTITUTION BY FEDERAL GOVERNMENT.—

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

"(ii) RELIEF.—Upon application of the United States under this subparagraph, the district court may enter a temporary restraining order or an injunction against any person to prevent or restrain a violation of this section if the court determines, after notice and an opportunity for a hearing, that there is a substantial probability that such violation has occurred or will occur.

"(B) INSTITUTION BY STATE ATTORNEY GENERAL.—

"(i) IN GENERAL.—The attorney general of a State (or other appropriate State official) in which a violation of this section allegedly has occurred or will occur, after providing written notice to the United States, may institute proceedings under this subsection to prevent or restrain the violation.

"(ii) RELIEF.—Upon application of the attorney general (or other appropriate State official) of an affected State under this subparagraph, the district court may enter a temporary restraining order or an injunction against any person to prevent or restrain a violation of this section

if the court determines, after notice and an opportunity for a hearing, that there is a substantial probability that such violation has occurred or will occur.

"(C) INDIAN LANDS.—Notwithstanding subparagraphs (A) and (B), for a violation that is alleged to have occurred, or may occur, on Indian lands (as that term is defined in section 4 of the Indian Gaming Regulatory Act (25 U.S.C. 2703))—

"(i) the United States shall have the enforcement authority provided under subparagraph (A); and

"(ii) the enforcement authorities specified in an applicable Tribal-State compact negotiated under section 11 of the Indian Gaming Regulatory Act (25 U.S.C. 2710) shall be carried out in accordance with that compact.

"(D) EXPIRATION.—Any temporary restraining order or preliminary injunction entered pursuant to subparagraph (A) or (B) shall expire if, and as soon as, the United States, or the attorney general (or other appropriate State official) of the State, as applicable, notifies the court that issued the order or injunction that the United States or the State, as applicable, will not seek a permanent injunction.

"(3) EXPEDITED PROCEEDINGS.—

"(A) IN GENERAL.—In addition to any proceeding under paragraph (2), a district court may, in exigent circumstances, enter a temporary restraining order against a person alleged to be in violation of this section upon application of the United States under paragraph (2)(A), or the attorney general (or other appropriate State official) of an affected State under paragraph (2)(B), without notice and the opportunity for a hearing as provided in rule 65(b) of the Federal Rules of Civil Procedure (except as provided in subsection (d)(3)), if the United States or the State, as applicable, demonstrates that there is probable cause to believe that the use of the Internet or other interactive computer service at issue violates this section.

"(B) HEARINGS.—A hearing requested concerning an order entered under this paragraph shall be held at the earliest practicable time.

"(d) INTERACTIVE COMPUTER SERVICE PROVIDERS.—

"(1) IMMUNITY FROM LIABILITY FOR USE BY ANOTHER.—

"(A) IN GENERAL.—An interactive computer service provider described in subparagraph (B) shall not be liable, under this section or any other provision of Federal or State law prohibiting or regulating gambling or gambling-related activities, for the use of its facilities or services by another person to engage in Internet gambling activity or advertising or promotion of Internet gambling activity that violates such law—

"(i) arising out of any transmitting, routing, or providing of connections for gambling-related material or activity (including intermediate and temporary storage in the course of such transmitting, routing, or providing connections) by the provider, if—

"(I) the material or activity was initiated by or at the direction of a person other than the provider;

"(II) the transmitting, routing, or providing of connections is carried out through an automatic process without selection of the material or activity by the provider;

"(III) the provider does not select the recipients of the material or activity, except as an automatic response to the request of another person; and

"(IV) the material or activity is transmitted through the system or network of the provider without modification of its content; or

"(ii) arising out of any gambling-related material or activity at an online site residing on a computer server owned, controlled, or operated by or for the provider, or arising out of referring or linking users to an online location containing such material or activity, if the material or activity was initiated by or at the direction of a person other than the provider, unless the provider fails to take expeditiously, with respect to the particular material or activity at issue, the actions described in paragraph (2)(A) following the receipt by the provider of a notice described in paragraph (2)(B).

"(B) ELIGIBILITY.—An interactive computer service provider is described in this subparagraph only if the provider—

"(i) maintains and implements a written or electronic policy that requires the provider to terminate the account of a subscriber of its sys-

tem or network expeditiously following the receipt by the provider of a notice described in paragraph (2)(B) alleging that such subscriber has violated or is violating this section; and

"(ii) with respect to the particular material or activity at issue, has not knowingly permitted its computer server to be used to engage in activity that the provider knows is prohibited by this section, with the specific intent that such server be used for such purpose.

"(2) NOTICE TO INTERACTIVE COMPUTER SERVICE PROVIDERS.—

"(A) IN GENERAL.—If an interactive computer service provider receives from a Federal or State law enforcement agency, acting within its authority and jurisdiction, a written or electronic notice described in subparagraph (B), that a particular online site residing on a computer server owned, controlled, or operated by or for the provider is being used by another person to violate this section, the provider shall expeditiously—

"(i) remove or disable access to the material or activity residing at that online site that allegedly violates this section; or

"(ii) in any case in which the provider does not control the site at which the subject material or activity resides, the provider, through any agent of the provider designated in accordance with section 512(c)(2) of title 17, or other responsible identified employee or contractor—

"(I) notify the Federal or State law enforcement agency that the provider is not the proper recipient of such notice; and

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

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

"(i) identifies the material or activity that allegedly violates this section, and alleges that such material or activity violates this section;

"(ii) provides information reasonably sufficient to permit the provider to locate (and, as appropriate, in a notice issued pursuant to paragraph (3)(A) to block access to) the material or activity;

"(iii) is supplied to any agent of a provider designated in accordance with section 512(c)(2) of title 17, if information regarding such designation is readily available to the public;

"(iv) provides information that is reasonably sufficient to permit the provider to contact the law enforcement agency that issued the notice, including the name of the law enforcement agency, and the name and telephone number of an individual to contact at the law enforcement agency (and, if available, the electronic mail address of that individual); and

"(v) declares under penalties of perjury that the person submitting the notice is an official of the law enforcement agency described in clause (iv).

"(3) INJUNCTIVE RELIEF.—

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

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

"(i) arising out of activity described in paragraph (1)(A)(i), the injunctive relief is limited to—

"(I) an order restraining the provider from providing access to an identified subscriber of the system or network of the interactive computer service provider, if the court determines that there is probable cause to believe that such subscriber is using that access to violate this section (or to engage with another person in a communication that violates this section), by terminating the specified account of that subscriber; and

"(II) an order restraining the provider from providing access, by taking reasonable steps specified in the order to block access, to a specific, identified, foreign online location;

"(ii) arising out of activity described in paragraph (1)(A)(ii), the injunctive relief is limited to—

"(I) the orders described in clause (i)(I);

"(II) an order restraining the provider from providing access to the material or activity that violates this section at a particular online site residing on a computer server operated or controlled by the provider; and

"(III) such other injunctive remedies as the court considers necessary to prevent or restrain access to specified material or activity that is prohibited by this section at a particular online location residing on a computer server operated or controlled by the provider, that are the least burdensome to the provider among the forms of relief that are comparably effective for that purpose.

"(C) CONSIDERATIONS.—The court, in determining appropriate injunctive relief under this paragraph, shall consider—

"(i) whether such an injunction, either alone or in combination with other such injunctions issued, and currently operative, against the same provider would significantly (and, in the case of relief under subparagraph (B)(ii), taking into account, among other factors, the conduct of the provider, unreasonably) burden either the provider or the operation of the system or network of the provider;

"(ii) whether implementation of such an injunction would be technically feasible and effective, and would not materially interfere with access to lawful material at other online locations;

"(iii) whether other less burdensome and comparably effective means of preventing or restraining access to the illegal material or activity are available; and

"(iv) the magnitude of the harm likely to be suffered by the community if the injunction is not granted.

"(D) NOTICE AND EX PARTE ORDERS.—Injunctive relief under this paragraph shall not be available without notice to the service provider and an opportunity for such provider to appear before the court, except for orders ensuring the preservation of evidence or other orders having no material adverse effect on the operation of the communications network of the service provider.

"(4) ADVERTISING OR PROMOTION OF NON-INTERNET GAMBLING.—

"(A) DEFINITIONS.—In this paragraph:

"(i) CONDUCTED.—With respect to a gambling activity, that activity is 'conducted' in a State if the State is the State in which the gambling establishment (as defined in section 1081) that offers the gambling activity being advertised or promoted is physically located.

"(ii) NON-INTERNET GAMBLING ACTIVITY.—The term 'non-Internet gambling activity' means—

"(I) a gambling activity in which the placing of the bet or wager is not conducted by the Internet; or

"(II) a gambling activity to which the prohibitions of this section do not apply.

"(B) IMMUNITY FROM LIABILITY FOR USE BY ANOTHER.—

"(i) IN GENERAL.—An interactive computer service provider described in clause (ii) shall not be liable, under any provision of Federal or State law prohibiting or regulating gambling or gambling-related activities, or under any State law prohibiting or regulating advertising and promotional activities, for—

"(I) content, provided by another person, that advertises or promotes non-Internet gambling activity that violates such law (unless the provider is engaged in the business of such gambling), arising out of any of the activities described in paragraph (1)(A) (i) or (ii); or

"(II) content, provided by another person, that advertises or promotes non-Internet gambling activity that is lawful under Federal law and the law of the State in which such gambling activity is conducted.

"(ii) ELIGIBILITY.—An interactive computer service is described in this clause only if the provider—

"(I) maintains and implements a written or electronic policy that requires the provider to terminate the account of a subscriber of its system or network expeditiously following the receipt by the provider of a notice described in paragraph (2)(B) alleging that

such subscriber maintains a website on a computer server controlled or operated by the provider for the purpose of engaging in advertising or promotion of non-Internet gambling activity prohibited by a Federal law or a law of the State in which such activity is conducted;

"(II) with respect to the particular material or activity at issue, has not knowingly permitted its computer server to be used to engage in the advertising or promotion of non-Internet gambling activity that the provider knows is prohibited by a Federal law or a law of the State in which the activity is conducted, with the specific intent that such server be used for such purpose; and

"(III) at reasonable cost, offers residential customers of the provider's Internet access service, if the provider provides Internet access service to such customers, computer software, or another filtering or blocking system that includes the capability of filtering or blocking access by minors to online Internet gambling sites that violate this section.

"(C) NOTICE TO INTERACTIVE COMPUTER SERVICE PROVIDERS.—

"(i) NOTICE FROM FEDERAL LAW ENFORCEMENT AGENCY.—If an interactive computer service provider receives from a Federal law enforcement agency, acting within its authority and jurisdiction, a written or electronic notice described in paragraph (2)(B), that a particular online site residing on a computer server owned, controlled, or operated by or for the provider is being used by another person to advertise or promote non-Internet gambling activity that violates a Federal law prohibiting or regulating gambling or gambling-related activities, the provider shall expeditiously take the actions described in paragraph (2)(A) (i) or (ii) with respect to the advertising or promotion identified in the notice.

"(ii) NOTICE FROM STATE LAW ENFORCEMENT AGENCY.—If an interactive computer service provider receives from a State law enforcement agency, acting within its authority and jurisdiction, a written or electronic notice described in paragraph (2)(B), that a particular online site residing on a computer server owned, controlled, or operated by or for the provider is being used by another person to advertise or promote non-Internet gambling activity that is conducted in that State and that violates a law of that State prohibiting or regulating gambling or gambling-related activities, the provider shall expeditiously take the actions described in paragraph (2)(A) (i) or (ii) with respect to the advertising or promotion identified in the notice.

"(D) INJUNCTIVE RELIEF.—The United States, or a State law enforcement agency, acting within its authority and jurisdiction, may, not less than 24 hours following the issuance to an interactive computer service provider of a notice described in paragraph (2)(B), in a civil action, obtain a temporary restraining order, or an injunction, to prevent the use of the interactive computer service by another person to advertise or promote non-Internet gambling activity that violates a Federal law, or a law of the State in which such activity is conducted that prohibits or regulates gambling or gambling-related activities, as applicable. The procedures described in paragraph (3)(D) shall apply to actions brought under this subparagraph, and the relief in such actions shall be limited to—

"(i) an order requiring the provider to remove or disable access to the advertising or promotion of non-Internet gambling activity that violates Federal law, or the law of the State in which such activity is conducted, as applicable, at a particular online site residing on a computer server controlled or operated by the provider;

"(ii) an order restraining the provider from providing access to an identified subscriber of the system or network of the provider, if the court determines that such subscriber maintains a website on a computer server controlled or operated by the provider that the subscriber is knowingly using or knowingly permitting to be used to advertise or promote non-Internet gambling activity that violates Federal law or the law of the State in which such activity is conducted; and

"(iii) an order restraining the provider of the content of the advertising or promotion of such illegal gambling activity from disseminating such advertising or promotion on the computer server controlled or operated by the provider of such interactive computer service.

"(E) APPLICABILITY.—The provisions of subparagraphs (C) and (D) do not apply to the content described in subparagraph (B)(i)(II).

"(5) EFFECT ON OTHER LAW.—

"(A) IMMUNITY FROM LIABILITY FOR COMPLIANCE.—An interactive computer service provider shall not be liable for any damages, penalty, or forfeiture, civil or criminal, under Federal or State law for taking in good faith any action described in paragraphs (2)(A), (4)(B)(ii)(I), or (4)(C) to comply with a notice described in paragraph (2)(B), or complying with any court order issued under paragraph (3) or (4)(D).

"(B) DISCLAIMER OF OBLIGATIONS.—Nothing in this section may be construed to impose or authorize an obligation on an interactive computer service provider described in paragraph (1)(B)—

"(i) to monitor material or use of its service; or

"(ii) except as required by a notice or an order of a court under this subsection, to gain access to, to remove, or to disable access to material.

"(C) RIGHTS OF SUBSCRIBERS.—Nothing in this section may be construed to prejudice the right of a subscriber to secure an appropriate determination, as otherwise provided by law, in a Federal court or in a State or local tribunal or agency, that the account of such subscriber should not be terminated pursuant to this subsection, or should be restored.

"(e) AVAILABILITY OF RELIEF.—The availability of relief under subsections (c) and (d) shall not depend on, or be affected by, the initiation or resolution of any action under subsection (b), or under any other provision of Federal or State law.

"(f) APPLICABILITY.—

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

"(A) any otherwise lawful bet or wager that is placed and received, or otherwise made wholly intrastate for a State lottery, or for a multi-State lottery operated jointly between 2 or more States in conjunction with State lotteries if—

"(i) each such lottery is expressly authorized, and licensed or regulated, under applicable State law;

"(ii) the bet or wager is placed on an interactive computer service that uses a private network or a closed-loop subscriber based service regulated and operated by the State lottery or its expressly designated agent for such activity;

"(iii) each person placing or otherwise making that bet or wager is physically located when such bet or water is placed at a facility that is open to the general public; and

"(iv) each such lottery complies with sections 1301 through 1304, and other applicable provisions of Federal law;

"(B) any otherwise lawful bet or wager that is placed, received, or otherwise made on an interstate or intrastate basis on a live horse or a live dog race or on jai alai, or the sending, receiving, or inviting of information assisting in the placing of such a bet or wager, if such bet or wager, or the transmission of such information, as applicable, is—

"(i) expressly authorized, and licensed or regulated by the State in which such bet or wager is received, under applicable Federal and such State's laws;

"(ii) placed on a closed-loop subscriber-based service;

"(iii) initiated from a State in which betting or wagering on that same type of live horse or live dog racing or on jai alai is lawful and received in a State in which such betting or wagering is lawful;

"(iv) subject to the regulatory oversight of the State in which the bet or wager is received and subject by such State to minimum control standards for the accounting, regulatory inspection, and auditing of all such bets or wagers transmitted from 1 State to another; and

"(v) in the case of—

"(I) live horse racing, made in accordance with the Interstate Horse Racing Act of 1978 (15 U.S.C. 3001 et seq.) and the requirements, if any, established by an appropriate legislative or regulatory body of the State in which the bet or wager originates;

"(II) live dog racing, subject to regulatory consent agreements that are comparable to those required by the Interstate Horse Racing Act of 1978, and the requirements, if any, established by an appropriate legislative or regulatory body of the State in which the bet or wager originates; or

"(III) live jai alai, subject to regulatory consent agreements that are comparable to those required by the Interstate Horse Racing Act of 1978, and the requirements, if any, established by an appropriate legislative or regulatory body of the State in which the bet or wager originates;

"(C) any otherwise lawful bet or wager that is placed, received, or otherwise made wholly intrastate, or the sending, receiving, or inviting of information assisting in the placing of such a bet or wager, if such bet or wager, or the transmission of such information, as applicable is—

"(i) expressly authorized, and licensed or regulated by the State in which such bet or wager is initiated and received, under applicable Federal and such State's laws; and

"(ii) placed on a closed-loop subscriber based service; or

"(D) any otherwise lawful bet or wager that is—

"(i) placed on a closed-loop subscriber based service or a private network; and

"(ii) is lawfully received by a federally recognized Indian tribe, or the sending, receiving, or inviting of information assisting in the placing of any such bet or wager, if the game is permitted under and conducted in accordance with the Indian Gaming Regulatory Act, so long as each person placing, receiving, or otherwise making such a bet or wager, or transmitting such information, is physically located on Indian lands (as that term is defined in section 4 of the Indian Gaming Regulatory Act) when such person places, receives, or otherwise makes the bet or wager.

"(2) BETS OR WAGERS MADE BY AGENTS OR PROXIES.—

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

"(B) QUALIFICATION.—Nothing in this paragraph may be construed to prohibit the owner operator of a parimutuel wagering facility that is licensed by a State from employing an agent in the operation of the account wagering system owned or operated by the parimutuel facility.

"(3) ADVERTISING AND PROMOTION.—The prohibition of subsection (b)(1)(B) does not apply to advertising, promotion, or other communication by, or authorized by, anyone licensed to operate a gambling business in a State.

"(g) RULE OF CONSTRUCTION.—Nothing in this section may be construed to affect any prohibition or remedy applicable to a person engaged in a gambling business under any other provision of Federal or State law.".

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

"1085. Internet gambling.".

SEC. 3. REPORT ON ENFORCEMENT.

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

(1) an analysis of the problems, if any, associated with enforcing section 1085 of title 18, United States Code, as added by section 2 of this Act;

(2) recommendations for the best use of the resources of the Department of Justice to enforce that section; and

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

SEC. 4. SEVERABILITY.

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of this Act and the provisions of such amendments to any other person or circumstance shall not be affected thereby.

PURPOSE AND SUMMARY

Under current Federal law, it is unclear that using the Internet to operate a gambling business is illegal. H.R. 3125, the "Internet Gambling Prohibition Act of 2000," would prohibit persons engaged in a gambling business from using the Internet or any other interactive computer service to place, receive, or otherwise make a bet

or wager, or send, receive, or invite information assisting in the placing of a bet or wager. This legislation also contains mechanisms intended to facilitate enforcement through a "notice and takedown" civil remedy program involving interactive computer service providers and illegal gambling websites. The authorized penalties are imprisonment up to 4 years and fines as much as $20,000.

BACKGROUND AND NEED FOR THE LEGISLATION

Over the last few years, gambling websites have proliferated on the Internet. What was once a cottage industry has become an extremely lucrative and large business. Numerous studies have charted the explosive growth of this industry, both by the increases in gambling websites available, and via industry revenues. Earlier this year, an FBI study reported growth from $300 million in 1998 to $651 million in 1999. More recently Bear, Stearns & Co. Inc. reported that there were then at least 650 Internet gambling websites, and that total revenues for 1999 had been $1.2 billion (*an 80% increase from 1998*) and would grow to $3 billion by 2002.

On-line casino operators have created "virtual strip"—where gamblers who are tired of one casino can simply "walk" down the virtual Internet boardwalk into a different casino. Internet gambling sites offer everything from sports betting to blackjack. Most of these virtual casinos are organized and operated from tropical off-shore locations, where the operators feel free from both State and Federal interference. Among the most popular locales are Antigua, St. Martin and Costa Rica.

The bill brings the law up to date with Internet technology by clarifying Federal law that operating an Internet gambling business is illegal. It does not, however, supersede the traditional leadership roles of States in enforcing gambling border within their borders. It addresses a growing problem that no single State, or collection of States, can adequately address. Because of the uniquely interstate and international nature of the Internet, H.R. 3125 is necessary. The bill sets forth an effective Internet gambling regulatory framework that recognizes States' leadership role is regulating gambling, and avoids intruding the Federal Government into regulating legal gaming industries already regulated by the States. At the same time H.R. 3125 provides the States and the Federal Government with the needed tools to limit and regulate Internet gambling.

Since the founding of our country, the Federal Government has left gambling regulation to the States. The last two Federal commissions Congress created to look into gambling have concluded that States are best equipped to regulate gambling within their own borders, and recommended that Congress continue to defer to the States in this respect. The Federal Government has largely deferred to the authority of States to determine the type and amount of gambling permitted. For over 100 years, Congress has acted to assist States in enforcing their respective policies on gambling when development in technology, such as the Internet, have compromised the effectiveness of State gambling laws.

HEARINGS

In the 105th Congress, the Committee's Subcommittee on Crime held two day's of hearing on legislation to ban Internet gambling businesses. In the 106th Congress, one day of hearings on H.R. 3125 was held, on March 9, 2000. Testimony was received from the following witnesses: "John Doe," Internet Gambling Addict, San Diego, California; The Honorable Jon Kyl, U. S. Senator, Arizona; The Honorable Robert W. Goodlatte, 6th District, Virginia; Mr. Kevin DiGregory, Deputy Assistant Attorney General, Criminal Division, United States Department of Justice; Mr. Robert Minnix, Associate Athletics Director, Florida State University; The Honorable James E. Doyle, Attorney General, State of Wisconsin; Mr. Stephen Walters, Chairman, Oregon Racing Commission; Mr. Keith Whyte, Executive Director, National Council on Problem Gambling; Bartlett Cleland, Policy Director, Center for Technology and Freedom. Additional material was submitted by: Jeffrey Pash, Executive Vice President and General Counsel, National Football League; and, the Honorable Montie Deere, Chairman, National Indian Gaming Commission.

COMMITTEE CONSIDERATION

On November 3, 1999, the Subcommittee on Crime met in open session and ordered favorably reported the bill H.R.3125, by a vote of 5 to 3, a quorum being present. On April 6, 2000, the committee met in open session and ordered favorably reported the bill H.R. 3125 with amendment by a recorded vote of 21 to 8, a quorum being present.

VOTES OF THE COMMITTEE

The committee considered the following amendments with recorded votes:

Mr. Goodlatte offered an amendment making largely technical amendments to the bill, and providing a limited exemption for certain Indian gaming activities. Mr. Watt made a request for a division of the question on the technical amendments and the limited Indian gaming exemption, which Chairman Hyde granted.

Part I of the amendment offered by Mr. Goodlatte to H.R. 3125. By a rollcall vote of 24 yeas to 0 nays, the amendment was agreed to.

ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Sensenbrenner	X		
Mr. McCollum	X		
Mr. Gekas	X		
Mr. Coble	X		
Mr. Smith (TX)	X		
Mr. Gallegly			
Mr. Canady			
Mr. Goodlatte	X		
Mr. Chabot	X		
Mr. Barr	X		
Mr. Jenkins	X		
Mr. Hutchinson			

ROLLCALL NO. 1—Continued

	Ayes	Nays	Present
Mr. Pease	X		
Mr. Cannon	X		
Mr. Rogan	X		
Mr. Graham	X		
Ms. Bono	X		
Mr. Bachus	X		
Mr. Scarborough			
Mr. Vitter	X		
Mr. Conyers	X		
Mr. Frank			
Mr. Berman			
Mr. Boucher			
Mr. Nadler			
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren			
Ms. Jackson Lee			
Ms. Waters	X		
Mr. Meehan			
Mr. Delahunt			
Mr. Wexler	X		
Mr. Rothman	X		
Ms. Baldwin			
Mr. Weiner	X		
Mr. Hyde, Chairman	X		
Total	24	0	

Part II of the Goodlatte amendment, providing a limited exemption for certain Indian gaming activities, was agreed to by a rollcall vote of 19 yeas to 5 nays.

ROLLCALL NO. 2

	Ayes	Nays	Present
Mr. Sensenbrenner		X	
Mr. McCollum	X		
Mr. Gekas	X		
Mr. Coble	X		
Mr. Smith (TX)	X		
Mr. Gallegly			
Mr. Canady			
Mr. Goodlatte	X		
Mr. Chabot	X		
Mr. Barr	X		
Mr. Jenkins	X		
Mr. Hutchinson			
Mr. Pease	X		
Mr. Cannon	X		
Mr. Rogan	X		
Mr. Graham	X		
Ms. Bono	X		
Mr. Bachus	X		
Mr. Scarborough			
Mr. Vitter	X		
Mr. Conyers		X	
Mr. Frank			
Mr. Berman			
Mr. Boucher			
Mr. Nadler			
Mr. Scott		X	
Mr. Watt		X	

ROLLCALL NO. 2—Continued

	Ayes	Nays	Present
Ms. Lofgren			
Ms. Jackson Lee			
Ms. Waters		X	
Mr. Meehan			
Mr. Delahunt			
Mr. Wexler	X		
Mr. Rothman	X		
Ms. Baldwin			
Mr. Weiner	X		
Mr. Hyde, Chairman	X		
Total	19	5	

Mr. Pease offered an amendment to strike the portion of the State lottery exemption that would allow the sale of State lottery tickets over the Internet at home. By a vote of 24 to 11, the amendment was agreed to.

ROLLCALL NO. 3

	Ayes	Nays	Present
Mr. Sensenbrenner	X		
Mr. McCollum	X		
Mr. Gekas	X		
Mr. Coble	X		
Mr. Smith (TX)	X		
Mr. Gallegly	X		
Mr. Canady	X		
Mr. Goodlatte	X		
Mr. Chabot		X	
Mr. Barr	X		
Mr. Jenkins	X		
Mr. Hutchinson	X		
Mr. Pease	X		
Mr. Cannon		X	
Mr. Rogan	X		
Mr. Graham	X		
Ms. Bono	X		
Mr. Bachus	X		
Mr. Scarborough	X		
Mr. Vitter	X		
Mr. Conyers		X	
Mr. Frank		X	
Mr. Berman		X	
Mr. Boucher	X		
Mr. Nadler		X	
Mr. Scott		X	
Mr. Watt		X	
Ms. Lofgren			
Ms. Jackson Lee	X		
Ms. Waters		X	
Mr. Meehan			
Mr. Delahunt		X	
Mr. Wexler	X		
Mr. Rothman	X		
Ms. Baldwin	X		
Mr. Weiner		X	
Mr. Hyde, Chairman	X		
Total	24	11	

Mr. Scott offered an amendment that would extend criminal liability under the bill to individuals.

The amendment was defeated 7–24.

ROLLCALL NO. 4

	Ayes	Nays	Present
Mr. Sensenbrenner		X	
Mr. McCollum		X	
Mr. Gekas		X	
Mr. Coble		X	
Mr. Smith (TX)		X	
Mr. Gallegly	X		
Mr. Canady		X	
Mr. Goodlatte		X	
Mr. Chabot		X	
Mr. Barr		X	
Mr. Jenkins		X	
Mr. Hutchinson		X	
Mr. Pease			
Mr. Cannon		X	
Mr. Rogan		X	
Mr. Graham			
Ms. Bono		X	
Mr. Bachus			
Mr. Scarborough	X		
Mr. Vitter	X		
Mr. Conyers		X	
Mr. Frank		X	
Mr. Berman		X	
Mr. Boucher		X	
Mr. Nadler		X	
Mr. Scott	X		
Mr. Watt		X	
Ms. Lofgren			
Ms. Jackson Lee	X		
Ms. Waters	X		
Mr. Meehan			
Mr. Delahunt		X	
Mr. Wexler		X	
Mr. Rothman			
Ms. Baldwin	X		
Mr. Weiner		X	
Mr. Hyde, Chairman		X	
Total	7	24	

Ms. Waters offered an amendment restating that the bill would not diminish any rights available to Indian tribes under the Indian Gaming Regulatory Act. The amendment was defeated 7–17.

ROLLCALL NO. 5

	Ayes	Nays	Present
Mr. Sensenbrenner			
Mr. McCollum			
Mr. Gekas		X	
Mr. Coble		X	
Mr. Smith (TX)		X	
Mr. Gallegly			
Mr. Canady		X	
Mr. Goodlatte		X	
Mr. Chabot		X	
Mr. Barr		X	

ROLLCALL NO. 5—Continued

	Ayes	Nays	Present
Mr. Jenkins		X	
Mr. Hutchinson		X	
Mr. Pease			
Mr. Cannon		X	
Mr. Rogan		X	
Mr. Graham			
Ms. Bono		X	
Mr. Bachus		X	
Mr. Scarborough		X	
Mr. Vitter		X	
Mr. Conyers			
Mr. Frank			
Mr. Berman			
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren			
Ms. Jackson Lee			
Ms. Waters	X		
Mr. Meehan			
Mr. Delahunt			
Mr. Wexler		X	
Mr. Rothman	X		
Ms. Baldwin	X		
Mr. Weiner	X		
Mr. Hyde, Chairman		X	
Total	7	17	

Final passage motion to report H.R. 3125 favorably, as amended. The motion passed 21–8.

ROLLCALL NO. 6

	Ayes	Nays	Present
Mr. Sensenbrenner	X		
Mr. McCollum	X		
Mr. Gekas	X		
Mr. Coble			
Mr. Smith (TX)	X		
Mr. Gallegly			
Mr. Canady	X		
Mr. Goodlatte	X		
Mr. Chabot	X		
Mr. Barr	X		
Mr. Jenkins	X		
Mr. Hutchinson	X		
Mr. Pease			
Mr. Cannon		X	
Mr. Rogan	X		
Mr. Graham	X		
Ms. Bono	X		
Mr. Bachus			
Mr. Scarborough	X		
Mr. Vitter	X		
Mr. Conyers		X	
Mr. Frank		X	
Mr. Berman		X	
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott		X	

ROLLCALL NO. 6—Continued

	Ayes	Nays	Present
Mr. Watt		X	
Ms. Lofgren			
Ms. Jackson Lee	X		
Ms. Waters	X		
Mr. Meehan			
Mr. Delahunt			
Mr. Wexler	X		
Mr. Rothman	X		
Ms. Baldwin		X	
Mr. Weiner		X	
Mr. Hyde, Chairman	X		
Total	21	8	

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the committee reports that the findings and recommendations of the committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM FINDINGS

No findings or recommendations of the Committee on Government Reform were received as referred to in clause 3(c)(4) of rule XIII of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of House Rule XIII is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 3125, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 1, 2000.

Hon. HENRY J. HYDE, *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3125, the Internet Gambling Prohibition Act of 2000.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Susanne S. Mehlman (for federal costs), who can be reached at 226–2860, Shelley

Finlayson (for the state and local impact), who can be reached at 225–3220, and John Harris (for the private-sector impact), who can be reached at 226–2618.

Sincerely,

DAN L. CRIPPEN, *Director.*

Enclosure

cc: Honorable John Conyers Jr.
Ranking Democratic Member

H.R. 3125—Internet Gambling Prohibition Act of 2000.

SUMMARY

H.R. 3125 would prohibit gambling conducted over the Internet or an interactive computer service. CBO estimates that implementing this legislation would not result in any significant cost to the federal government. Because enactment of H.R. 3125 could affect direct spending and receipts, pay-as-you-go procedures would apply to the bill. However, CBO estimates that any impact on direct spending and receipts would not be significant.

H.R. 3125 contains intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) because it would preempt certain state liability laws and prohibit certain state and local lottery activities. However, CBO estimates that these mandates would currently impose no costs on state, local, or tribal governments and that future costs, if any, would not exceed the threshold established by the act during the next five years ($55 million in 2000, adjusted annually for inflation).

H.R. 3125 would impose new private-sector mandates, as defined in UMRA, on operators of Internet sweepstakes and contests, certain gambling businesses that would use wireless communication systems to transfer data, and providers of Internet service. CBO expects that the costs of those mandates would not exceed the threshold in UMRA for private-sector mandates ($109 million in 2000, adjusted annually for inflation).

ESTIMATED COST TO THE FEDERAL GOVERNMENT

Because H.R. 3125 would establish a new federal crime relating to gambling, the federal government would be able to pursue cases that it otherwise would not be able to prosecute. CBO expects, however, that most cases would be pursued under state law. Therefore, we estimate that any increase in federal costs for law enforcement, court proceedings, or prison operations would not be significant. Any such additional costs would be subject to the availability of appropriated funds.

H.R. 3125 would require the Department of Justice, not later than three years after enactment, to submit a report on the enforcement of the bill's provisions and on the extent of Internet gambling. CBO estimates that preparing and completing the report would cost less than $500,000, subject to the availability of appropriated funds.

Because those prosecuted and convicted under the bill could be subject to criminal fines, the federal government might collect additional fines if the bill is enacted. Collections of such fines are re-

corded in the budget as governmental receipts (i.e., revenues), which are deposited in the Crime Victims Fund and spent in subsequent years. Any additional collections are likely to be negligible because of the small number of cases involved. Because any increase in direct spending would equal the amount of fines collected (with a lag of one year or more), the additional direct spending also would be negligible.

PAY-AS-YOU-GO CONSIDERATIONS

The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. Enacting H.R. 3125 could affect both direct spending and receipts, but CBO estimates that any such effects would be negligible.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

H.R. 3125 contains intergovernmental mandates as defined by UMRA. CBO estimates that these mandates would currently impose no costs on state, local, or tribal governments and that future costs, if any, would not exceed the threshold established by the act in the next five years ($55 million in 2000, adjusted annually for inflation).

The bill would impose two types of mandates on the state and local governments. First, it would preempt state liability laws by granting immunity to providers of interactive computer services if third parties use their facilities in ways that violate federal and state laws regulating gambling. CBO estimates that states would incur no direct costs to comply with this mandate.

H.R. 3125 also would prohibit state and local governments that conduct lotteries from using the Internet or other technology covered by the bill to provide access to the lottery in any place that is not public. While no governments currently use or plan to use the Internet for these purposes, as technology expands and becomes more widely used in the home (a nonpublic place), it is possible that, in the absence of this bill, some would offer such options. CBO cannot estimate the future loss of income from this prohibition because it is not clear if or when such access to lotteries would be provided by state and local governments. However, we do not expect that such losses would exceed the threshold established by UMRA ($55 million in 2000, adjusted annually for inflation) in the next five years.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

H.R. 3125 would have only a limited effect on the private sector because the Federal Interstate Wire Act ("Wire Act") currently prohibits the use of wire communication facilities to place or receive bets or wagers or to transmit information that assists persons who place bets or wagers on sporting events and certain contests. The Wire Act applies to all wires and cables used to transmit information across state lines, including telephone lines, cable television systems, and the Internet, and effectively prohibits many forms of Internet gambling. Other federal statutes, such as racketeering laws, also apply to Internet gambling. It is not clear, however, that

existing federal law prohibits all forms of Internet gambling. The status of some Internet contests, particularly lotteries or raffles that require entry fees, is ambiguous.

H.R. 3125 would impose new private-sector mandates, as defined in UMRA, on operators of Internet sweepstakes and contests, certain gambling businesses that use wireless communication systems to transfer data, and providers of Internet service. CBO expects that the costs of these mandates would not exceed the threshold in UMRA for private-sector mandates ($109 million in 2000, adjusted annually for inflation).

First, the bill would prohibit persons engaged in a gambling business from conducting lotteries, raffles, or other, similar contests over the Internet. Specifically, the bill would forbid any Internet contest in which participants stake or risk "something of value" and the "opportunity to win is predominantly subject to chance." According to the National Gambling Impact Study Commission Report, no known privately-operated Internet lotteries are located in the United States. Privately-operated lotteries are generally illegal under state laws, and most businesses that would be affected by the prohibition are located in foreign countries. Domestic lotteries are generally run by states and Indian tribes. Further, the prohibition would not affect privately-operated Internet contests that do not require entry fees. The prohibition would also not apply to certain other popular legal games that charge fees, including sports and educational contests, such as the popular fantasy sports leagues. Consequently, CBO expects that the costs of this mandate would not be significant.

Second, H.R. 3125 would impose a new mandate on some gambling businesses. The bill would prohibit the use of certain interactive computer services "to place, receive, or otherwise make a bet or wager." Under H.R. 3125 it would be illegal for gambling businesses to operate electronic gaming devices linked together by a wireless means of communication that do not meet certain technical requirements. Devices of this type are legal in some states, but are not popular with gambling businesses. Linked electronic gaming devices, such as progressive slot machines, typically use dedicated phone lines rather than wireless systems, which are susceptible to interference from other signals. The bill, moreover, would not prohibit wireless systems that are regulated by the states and meet the technical requirements. For these reasons, CBO estimates that the costs of the mandate would be low.

Finally, the bill would impose new mandates on Internet service providers (ISPs). H.R. 3125 would require Internet service providers to terminate the accounts of customers who run gambling businesses or promote illegal gambling and to block specific foreign gambling Internet sites when given an official notice of noncompliance by state or federal law enforcement agencies. Based on information from the Department of Justice, CBO estimates that the number of Internet service providers that would receive such notices would be low. Because such notices would apply to specific subscriber accounts (or foreign sites), the cost per order would also be low. Consequently, CBO estimates that the costs to Internet service providers of complying with this mandate would be small.

H.R. 3125 would impose an additional mandate on Internet service providers by requiring them to offer their residential customers filtering software (or equivalent systems) that would block access by children to gambling Internet sites. CBO estimates that the cost of complying with the mandate would be small because such software is commonly available. The bill would permit providers to charge reasonable fees for the use of the software, allowing them to pass the cost on to their customers.

PREVIOUS CBO ESTIMATE

On July 15, 1999, CBO transmitted a cost estimate for S. 692, a similar bill reported by the Senate Committee on the Judiciary on June 17, 1999. Both bills would prohibit gambling conducted over the Internet or an interactive computer service, but would provide for different exemptions from this prohibition. H.R. 3125, unlike S. 692, would not prohibit tribal governments from operating certain games of chance and therefore would not impose intergovernmental mandates with costs exceeding the threshold specified in UMRA.

ESTIMATE PREPARED BY:

Federal Costs: Susanne S. Mehlman (226-2860)
Impact on State, Local, and Tribal Governments: Shelley Finlayson (225-3220)
Impact on the Private Sector: John Harris (226-2618)

ESTIMATE APPROVED BY:

Robert A. Sunshine
Assistant Director for Budget Analysis

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article I, section 8, of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

Section 1. Short Title.

Section 1 states the short title as the "Internet Gambling Prohibition Act of 2000."

Section 2. Prohibition on Internet Gambling.

Section 2(a) adds a new Section 1085 to title 18 of the United States Code.

Section 1085(a). Definitions.

Subsection 1085(a)(1) defines "bets or wagers" as the staking or risking, by any person, of something of value upon the outcome of either: (1) a contest of others; (2) a sporting event; or (3) a game predominantly subject to chance, upon an agreement or understanding that such person or another person will receive something of value based on that outcome. It is important to note that the term includes the purchase of a chance or opportunity to win a lot-

tery or other prize (if the opportunity is predominantly subject to chance) and any scheme of a type prohibited by Federal laws prohibiting betting on professional and amateur sports. The term "bets or wagers" does not include bona fide business transactions governed by Federal securities law; certain specified transactions governed by Federal commodities law; contracts of indemnity or guarantee; or, contracts for life, health, or accident insurance.

It is the view of the committee that the term "bets or wagers" does not include participation in a simulation sports game or educational game or contest that: (1) is not dependent solely on the outcome of any single sporting event or nonparticipant's singular individual performance in any single sporting event; (2) has an outcome that reflects the knowledge and skill of the participants, with an outcome determined predominantly by accumulated statistical results of sporting events; and, (3) offers a prize or award established in advance of the game and not determined by the number of participants. This exclusion is intended to cover "fantasy sports league games" which are simulation sports games in which the outcome is determined using the results of actual sporting events, and the outcome reflects the relative knowledge and skill of the participants in determining those results. It is the view of the committee that fantasy sport leagues operated in this manner are not gambling. It is important to note, however, that this exclusion from the definition of a bet or wager for the purposes of 18 U.S.C. § 1085 is not intended to change the legality of fantasy sports league games or contests under the laws of any State, or under any other applicable Federal law.

It is the view of the committee that not all games offered on the Internet are "games of chance" for purposes of this definition. The committee recognizes that many computer and video games played on the Internet are based predominantly on skill, and are not intended to be included within the definition of "bets or wagers." The committee intends that the courts will continue to perform their traditional functions in determining whether games are "games of chance."

Subsection 1085(a)(2) defines a "closed-loop subscriber-based service" as an information service or system meeting specified conditions restricting use, including: 1) express State authorization of the particular customer and age verification system proposed to be used by the service, requiring a person within that State to subscribe and be registered with the provider of the wagering service by name, address, appropriate billing information, and the physical location of that subscribing person within that State; and 2) an effective customer and age verification system, expressly authorized under State law; and, 3) that appropriate date security standards to prevent unauthorized access by any person who has not lawfully subscribed or who is a minor. The committee intends that this term be narrowly construed to include only a closed-loop service that cannot be circumvented, or disabled, and is effective in preventing use by unauthorized persons, especially minors. The committee expects the States, in ensuring that any such system is truly effective in preventing unauthorized use, to consult with information security experts who are not current or prospective employees of or consultants to, and who have no financial relationship, direct or indi-

rect, with any gambling business or closed-loop subscriber-based service.

Subsection 1085(a)(3) defines "foreign jurisdiction" as a foreign country or political subdivision thereof.

Subsection 1085(a)(4) defines a "gambling business" as (i) a business that is conducted at a gambling establishment, or that involves the placing, receiving, or otherwise making bets or wagers, or the offering to engage in doing so, and that either has been in substantially continuous operation for more than 10 days or has a gross revenue of $2,000 or more from such business during any 24-hour period; and (ii) any soliciting agent of such a business.

This subsection contains a further qualification that a gambling business "involves 1 or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business." With respect to this qualification, it is the view of the committee that, in enforcing this section, it is appropriate for law enforcement agencies to pierce the corporate veil and prosecute individuals less directly involved in illegal Internet gambling business operations, such as silent financiers of illegal gambling businesses. However, the definition of "gambling business" is not intended to include credit card companies, or their cardholders, based only on the use of such credit cards for prohibited Internet gambling activities.

Subsection 1085(a)(5) defines "information assisting in the placing of a bet or wager" to include information intended by the sender or recipient to be used by a gambling business to place, receive, or otherwise make a bet or wager. It is the view of the committee that the definition does *not* include: (1) information concerning parimutuel pools exchanged exclusively between or among parimutuel wagering facilities, if the information is used only to conduct common pool parimutuel pooling; (2) information exchanged exclusively between or among parimutuel wagering facilities and a support service, if the information is used only for processing bets or wagers; (3) information exchanged exclusively between or among wagering facilities in the same State and a support service, if the information is used only for the pooling or processing of bets or wagers made by or with the facility or facilities; (4) information exchanged via private network if the information is used only to monitor gaming device play, display prize amounts, provide security information, and provide other accounting information; (5) news reporting or analysis of wagering activity; and (6) posting or reporting of educational information on how to make a bet or wager or the nature of betting or wagering. The exclusion of items (1) through (3) from the definition means that parimutuel wagering facilities and other wagering facilities will not be prohibited by Section 1085 from transmitting a narrow category of specified information in the course of conducting their parimutuel or wagering activity, subject to the laws of the States in which they operate. Additionally, the committee notes, and Section 1085(f) makes explicit, that H.R. 3125 does not prohibit advertising or promotion of gambling opportunities at casinos, at racetracks, or at other "brick-and-mortar" establishments.

Subsection 1085(a)(6) defines an "interactive computer service" as any information service, system, or access software provider that operates in, or uses a channel or instrumentality of, interstate or

foreign commerce to provide or enable access by multiple users to a computer server. The definition of the term "interactive computer service" is intended to encompass all the interactive computer service functions defined elsewhere in Federal law, including functions such as Internet access and transmission, storage, hosting web sites, providing online services such as chatrooms and online bulletin boards in which users communicate with each other, and offering online links or directories of online content. The definition applies to interactive computer services performing these functions. It does not apply to these entities to the extent that they are operating a gambling business that violates H.R. 3125.

Subsection 1085(a)(7) defines "interactive computer service provider" as any person that provides an interactive computer service, to the extent that such person offers or provides such service. This term encompasses persons who provide an interactive computer service as defined in subsection (6). A person is treated as an interactive computer service provider only to the extent that the person provides an interactive computer service. To the extent that a person is engaged in a gambling business or otherwise violating Subsection (b), that person (to the extent of engaging in those activities) is not an interactive computer service provider and, therefore, is fully subject to the provisions of Section 1085 and other applicable Federal and State laws that apply to persons other than interactive computer service providers.

Subsection 1085(a)(8) defines "Internet" as the international computer network of both Federal and non-Federal interoperable packet switched data networks. The committee intends the terms "Internet" and "interactive computer service" to encompass technologies that in the future may perform functions similar or analogous to those that the Internet and interactive computer services perform today.

Subsection 1085(a)(9) defines "person" as any individual, association, partnership, joint venture, corporation (or any affiliate of a corporation), State or political subdivision thereof, department, agency, or instrumentality of a State or political subdivision thereof, or any other government, organization, or entity.

Subsection 1085(a)(10) defines "private network" as a communications channel meeting specified conditions restricting use, such as either private dedicated lines, or, the public communications infrastructure, if the infrastructure is secured by means of the appropriate private communications technology to prevent unauthorized access. It is the view of the committee that this term be narrowly construed to include only services that are (a) effective in preventing use by unauthorized persons and (b) specifically authorized by statute or regulation by the States involved.

Subsection 1085(a)(11) defines "State" as a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a commonwealth, territory, or possession of the United States.

Subsection 1085(a)(12) defines "subscriber" as any person with a business relationship with the interactive computer service provider through which such person receives access to the system, service, or network of that provider, even if no formal subscription agreement exists, and, includes registrants, students who are granted access to a university system or network, and employees

or contractors who are granted access to the system or network of their employer.

Subsection 1085(a)(13) defines "soliciting agent" as a person who knowingly solicits for a gambling business, as described in subsection 1085(a)(4). It is the view of the committee that a soliciting agent is an agent of such business who has actual knowledge of the illegal aspect of such a gambling business. However, the term would not include those parties lacking knowledge and who merely accept and/or run advertisements for such a business.

Section 1085(b). Prohibitions and Penalties.

Subsection 1085(b)(1) sets forth the prohibitions regarding Internet gambling. The subsection provides that it shall be unlawful for a person engaged in a gambling business to use the Internet or any other interactive computer service: (A) to place, receive, or otherwise make a bet or wager; or (B) to send, receive, or invite information assisting in the placing of a bet or wager. Paragraph (2) sets forth the penalties. These include a fine equal to, but not more than the greater of: (A) the *total* amount bet or wagered, or placed, received, or accepted in bets or wagers, by the person, or (B) $20,000. The subsection also provides for imprisonment of not more than 4 years, in lieu of or in addition to any fine. Paragraph (3) authorizes the court, upon conviction, to 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. It is important to note that the prohibitions of Section 1085(b) apply only to persons engaged in the gambling business, and not to individual bettors or communication services not engaged in a gambling business, but simply used by illegal gambling businesses to offer such activity. However, individual bettors who engage in Internet gambling (as well as persons engaged in a gambling business using the Internet) continue to be fully subject to prosecution under other laws, if applicable.

Section 1085(c). Civil Remedies.

Subsection 1085(c)(1) provides the district courts of the United States with jurisdiction to prevent and restrain violations of section 1085. Subsection (c)(2)(A) authorizes the United States to apply to a district court for a temporary restraining order or an injunction against any person to prevent or restrain a violation. Subsection (c)(2)(B) provides similar authority to the Attorney General or other appropriate State official of a State in which a violation allegedly has occurred or will occur. The court is authorized to grant relief upon determining, after notice and an opportunity for hearing, that there is a substantial probability that a violation has occurred or will occur. Subsections (c)(2)(C) and (D) cover proceedings on Indian lands and expiration of temporary restraining orders issued. Subsection (c)(3) permits temporary relief to be obtained on an expedited basis.

Section 1085(d). Interactive Computer Service Providers.

Section 1085(d) establishes a mechanism through which interactive computer service providers ("providers ") may be required to

terminate accounts, and/or remove, disable, or block access to material or activity that violates Section 1085. This scheme provides limitations on liability for qualifying providers, subject to providers meeting conditions for eligibility which involve certain responsibilities with regard to material that violates this section.

The Internet is a communications medium of great importance for both national and international commerce and human communication. Although illegal content, including illegal gambling sites, exist on the Internet, it is a very small percentage of content on the Internet. The committee does not intend to create remedies for illegal activity that burden the operation of online networks for lawful purposes, or that impose unreasonable burdens on interactive computer services who are not active participants in, and do not profit from, the illegal gambling activity.

Subsection 1085(d)(1)(A) clarifies that providers shall not be held liable for the use of their services by others to violate laws prohibiting gambling. It is important to note that the intent of this limitation is to avoid unintended criminal prosecution of interactive service providers under this new section 1085. Subsection 1085(d)(1)(A) limits liability under this section or "any other provision of Federal or State law prohibiting or regulating gambling or gambling-related activities for the use of its facilities or services by another person to engage in Internet gambling activity or advertising or promotion of Internet gambling activity." It is important to clarify the committee's view that this limitation of liability extends only to criminal offenses and penalties.

This liability limitation applies to providers with regard to gambling-related material for functions described in subsections 1085(d)(1)(i) & (ii), and it applies only to content provided by another person. For example, the provider of a hyperlink or Internet directory service would not be liable for links to a site containing an illegal gambling business run by a third party, if the directory service met the conditions for eligibility set forth in subsection (d)(1)(B). The committee intends that content provided by another person include content provided by third parties, including users, volunteers, or a different content provider. Qualifying providers also receive immunity with regard to conduit and server caching functions, such as those described in 17 U.S.C. § 512(a) & (b), to the extent that those functions are not initiated by the provider so as to evade the requirements of Section 1085. With regard to material that violates this section (as well as links to such material) posted to an online site controlled by the provider, a provider has responsibilities if it receives appropriate notice from a law enforcement official under subsection 1085(d)(2)(B).

Subsection 1085(d)(1)(B) sets forth the conditions of eligibility that a provider must meet to qualify for these criminal liability limitations. The provider must adopt and implement, in a reasonable fashion, a policy of terminating the accounts of subscribers whom the provider is notified (in accordance with subsection 1085(d)(2)(B)) are using their accounts to engage in an Internet gambling business prohibited by this bill. The provider also must not knowingly permit its computer server to be used to engage in the particular violation at issue with the specific intent that its server be used for such purpose.

Subsection 1085(d)(2)(A) establishes a "notice and takedown" regime under which certain law enforcement officials and providers will cooperate in removing or disabling access to online sites that violate § 1085(b). A provider receiving a notice that conforms to the requirements of subsection (d)(2)(B), and that relates to gambling material that violates § 1085(b), should expeditiously remove or disable access to the material described in the notice. If the notice relates to an online reference or hypertext link, then the provider should remove or disable access to the reference or the link to the illegal material. One of the purposes of this provision is to create an orderly process for the notice and take down of illegal materials. To ensure proper take down, notice must come from the law enforcement officials specified in subsection (d)(2)(A) and follow the procedures set forth in subsection (d)(2)(B). Therefore, it is the view of the committee that any notice that does not conform to the requirements of this subsection may not be considered as evidence bearing on whether a provider has met the conditions of eligibility in subsection (d)(1)(B).

It is the view of the committee that H.R. 3125 does not require a provider to take down content on any computer server that the provider does not control. For example, subsection (d)(2)(A)(ii) provides that if a provider receives notice from a law enforcement official regarding the site at which the illegal material or activity resides, but which is not under the control of such provider, then the provider should notify the law enforcement official that the provider is not the proper recipient of the notice and upon receipt of lawful process cooperate in identifying the entity that is the proper recipient of the notice. With respect to subsection (d)(1)(B), the committee intends that an interactive computer service provider not be deemed to fail to satisfy this specific intent condition unless at least one of the employees of such service had the requisite intent and the provider knowingly permitted the violation, or engaged in deliberate acts constituting a purposeful effort to avoid learning the true and accurate basis of such information. It is the view of the committee that the "collective knowledge" doctrine employed in some Federal circuit courts of appeals should not apply to aggregate the knowledge of intent of various employees of an interactive service provider.

Subsection 1085(d)(3) allows Federal or State law enforcement agencies to seek an injunction not less than 24 hours after providing notice under subsection (d)(2)(B). However, it limits injunctions that may be issued against providers in subsection (d)(3)(B) to orders restraining providers to terminate specified accounts of subscribers engaging in an activity that violates this section, to remove or disable access to material on a site residing on a computer server that the provider controls, and, in rare circumstances, to foreign online locations, as well as other injunctive remedies regarding material residing on a computer server that the provider controls that the court considers necessary and that are the least burdensome to the provider among comparably effective forms of relief.

It also requires that prior to issuing any injunction against an interactive computer service provider, a court weigh each of the considerations set forth in subsection (d)(3)(C). Subsection 1085(d)(3)(c) sets forth the factors a court shall consider in deter-

mining whether injunctive relief is appropriate, including: (i) whether the injunction would significantly burden the provider, or the operation that provider's system or network; (ii) that the injunction in question is technically feasible and effective and that it will not materially interfere with access to lawful material at other online locations; (iii) whether less burdensome preventative means are available; and, (iv) the magnitude of the harm likely to be suffered by the community. With respect to subsection (d)(3)(C)(iii), in many cases remedies against other entities or industries may be equally, or more, effective than an injunction against an interactive computer service. In such cases, it is the view of the committee that an injunction against the interactive computer service is not appropriate and that the court may instead issue other injunctions available under § 1085(c) against other persons.

Subsection 1085(d)(4) creates a notice and take down regime for advertising of non-Internet gambling activity, and preempts all other liability for such content under any Federal or State criminal law. The section applies to gambling activity that either is not conducted via the Internet, or is not prohibited by Section 1085. It is important to note that subsection (d)(4) concerns the advertising of criminal activity which is not protected by the first amendment, and that it does not regulate or restrict content of any commercial advertising of lawful activity. Subsection (d)(4)(E) clarifies that providers have no obligation to take down non-Internet gambling activity that is lawful where the gambling business is physically located and not prohibited by Federal law.

The injunctive relief available under this subsection is also different than under subsection 1085(d)(3). Providers are subject to an injunction: (1) to take down illegal advertising of gambling; or (2) to terminate the account of a subscriber of the provider who is knowingly using the site or permitting it to be used to engage in advertising of non-Internet gambling activity that violates Federal law, or the law of the State in which the gambling establishment is physically located. In addition, Federal or State law enforcement officials acting within their authority and jurisdiction may obtain an order against the provider of the illegal advertising content enjoining that provider from disseminating the illegal advertising in question on the provider's computer server.

Subsection 1085(d)(5)(A) makes clear that providers are not liable under any Federal, State or local law for good faith efforts to comply with the take down requests and injunctions authorized by this section. Subsection (d)(5)(B) makes clear that providers have no obligation to monitor particular material or use of their networks, or to take down illegal gambling material except pursuant to a notice or court order under this section. Subsection (d)(5)(C) provides that this section does not in any way interfere with the right of a subscriber to secure under other provisions of law, a determination that his or her account should not be terminated or that it should be restored, notwithstanding the account termination procedures set forth in this section.

To be eligible for this provision, the provider must abide by conditions for eligibility similar to those set forth in § (d)(1)(B), as well as an additional condition of eligibility for providers of residential access service, offering residential customers at reasonable cost

software that has some capability of filtering or blocking access by minors to online Internet gambling sites that violate § 1085. The committee understands that such user empowerment software deals with a wide array of objectionable content on the Internet and may not be fully effective in blocking access to illegal sites.

The committee notes that section 1085(d) is not a form of Internet regulation. It does not establish mandatory regulatory requirements for providers. The committee notes that subsection (d)(2)(A) is simply a law enforcement mechanism, conditioning a provider's eligibility for limitations on liability under existing laws on certain actions described in that subsection. This mechanism is conceptually modeled after the "Wire Act," 18 U.S.C. § 1084, which prohibits gambling businesses from using a "wire communication facility" (such as a telephone or the Internet) to place or receive bets or wagers. Specifically, § 1084(d) protects common carriers from "civil or criminal" liability if they "discontinue or refuse, the leasing, furnishing, or maintaining of such facility," upon proper notice from a law enforcement agency that "any facility furnished by it is being used or will be used for the purpose of transmitting or receiving gambling information in interstate or foreign commerce in violation of Federal, State, or local law." The committee notes that § 1084 was adopted by Congress in 1961 (Public Law 87–216). The 1961 legislation, which later was enacted as the Wire Act, was referred to and reported by the Committee on the Judiciary (House Report 87–967), and was not referred to any other committee.

Additionally, the liability immunity provisions in H.R. 3125 are similar to those within the "Electronic Communications Privacy Act of 1986," 18 U.S.C. § 3124(d), which immunize communications service providers that assist State and Federal law enforcement authorities to install pen registers or trap and trace devices. Specifically, § 3124(d) provides that "no cause of action shall lie in any court against any provider of a wire or electronic communications service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order under this chapter. . . ." Moreover, § 3124(e) provides that a "good faith reliance on a court order under this chapter . . . is a complete defense against any civil or criminal action brought under this chapter or any other law." The Electronic Communications Privacy Act (Public Law 99–508) originated as H.R. 4952, a bill referred to and reported out by the Committee on the Judiciary, and which was not referred to any other committee.

Section 1085(e). Availability of Relief.

This section clarifies that the availability of relief under sections (c) and (d), which is civil in nature, is independent of any criminal action under section (b) or any other Federal or State law.

Section 1085(f). Applicability.

It is the view of the committee that, if otherwise lawful, certain regulated gaming activities within this section are not subject to the prohibition of § 1085(b).

Subsection (f)(1)(A) clarifies that the prohibitions of § 1085 do not apply to any otherwise lawful bets or wagers placed, received, or otherwise made wholly intrastate for a State lottery, or for a multi-

State lottery operated jointly between two or more States in conjunction with State lotteries, subject to four conditions: (i) express authorization, and licensing or regulation, under applicable State law; (ii) use of a "private network"; (iii) use of facilities open to the general public to place the bet or wager, where each person placing or otherwise making the bet or wager must be physically located when such bet or wager is placed; and (iv) compliance with applicable Federal lottery laws (18 U.S.C. §§ 1301–1304) and other applicable Federal laws.

Subsection (f)(1)(B) clarifies that the prohibitions of § 1085 do not apply to any otherwise lawful bet or wager placed, received, or otherwise made on an interstate or intrastate basis on a live horse or a live dog race, or on jai alai, or the sending, receiving, or inviting of information assisting in the placing of such a bet or wager, subject to five specified conditions, which require: (i) express authorization, and licensing or regulation, by the State in which the bet or wager is received, under applicable Federal and such State's laws; (ii) use of a "closed-loop subscriber-based service"; (iii) initiation from a State in which betting or wagering on that same type of live horse racing, or on that same type of live dog racing, or jai alai, as applicable, is lawful, and receipt in a State in which such betting or wagering is lawful; (iv) specified regulatory oversight by the State in which the bet or wager is received; and (v) compliance with the Interstate Horse Racing Act of 1978 (15 U.S.C. § 3001 et seq.), or with comparable consent agreements between the participating States applicable to dog racing and jai alai.

Subsection (f)(1)(C) clarifies that the prohibitions of § 1085 do not apply to any otherwise lawful bet or wager, placed and received wholly intrastate on a closed-loop subscriber based service, and subject to the express authorization, licensing, and regulation by that State.

Subsection (f)(1)(D) clarifies that the prohibitions of § 1085 do not apply to any otherwise lawful bet or wager, placed on a closed-loop subscriber based service, and lawfully received by a federally recognized Indian tribe, subject to being permitted under and conducted in accordance with the Indian Gaming Regulatory Act ("IGRA"), and, so long as each person placing, receiving, or otherwise making such a bet or wager is physically located on Indian lands (as that term is defined in section 4 of IGRA) when such person places, receives, or otherwise makes the bet or wager.

Section 1085(g). Rule of Construction.

Section 1085(g) specifies that § 1085 is not to be construed to affect any prohibition or remedy applicable to a person engaged in a gambling business under any other provision of Federal or State law. This means that a person engaged in a gambling business who is subject to prosecution or the imposition of civil remedies under § 1085 continues to be subject to any other prohibitions or remedies applicable under any other provision of Federal or State law. Section 2(b) of the bill concerns codification of § 1085.

Section 3. Report on Enforcement.

Section 3 directs the Attorney General, not later than 3 years after the date of enactment, to submit to Congress a report includ-

ing (1) an analysis of the problems, if any, associated with enforcing § 1085; (2) recommendations for the best use of Department of Justice resources to enforce § 1085; and (3) an estimate of the amount of activity and money being used to gamble on the Internet.

Section 4. Severability.

Section 4 is a severability provision that provides that any provisions within the act found to be unconstitutional shall not affect any other provisions within the act.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

CHAPTER 50 OF TITLE 18, UNITED STATES CODE

CHAPTER 50—GAMBLING

Sec.
1081. Definitions.
* * * * * * *
1085. Internet gambling.
* * * * * * *

§ 1085. Internet gambling

(a) DEFINITIONS.—In this section the following definitions apply:

(1) BETS OR WAGERS.—The term "bets or wagers"—

(A) means the staking or risking by any person of something of value upon the outcome of a contest of others, a sporting event, or a game predominantly subject to chance, upon an agreement or understanding that the person or another person will receive something of greater value than the amount staked or risked in the event of a certain outcome;

(B) includes the purchase of a chance or opportunity to win a lottery or other prize (which opportunity to win is predominantly subject to chance);

(C) includes any scheme of a type described in section 3702 of title 28; and

(D) does not include—

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

(ii) a transaction on or subject to the rules of a contract market designated pursuant to section 5 of the Commodity Exchange Act (7 U.S.C. 7);

(iii) a contract of indemnity or guarantee;

(iv) a contract for life, health, or accident insurance; or

(v) participation in a simulation sports game or an educational game or contest that—

(I) is not dependent solely on the outcome of any single sporting event or nonparticipant's singular individual performance in any single sporting event;

(II) has an outcome that reflects the relative knowledge and skill of the participants with such outcome determined predominantly by accumulated statistical results of sporting events and nonparticipants accumulated individual performances therein; and

(III) offers a prize or award to a participant that is established in advance of the game or contest and is not determined by the number of participants or the amount of any fees paid by those participants.

(2) CLOSED-LOOP SUBSCRIBER-BASED SERVICE.—The term "closed-loop subscriber-based service" means any information service or system that uses—

(A) a device or combination of devices—

(i) expressly authorized and operated in accordance with the laws of a State, exclusively for placing, receiving, or otherwise making a bet or wager described in subsection (f)(1)(B); and

(ii) by which a person located within any State must subscribe and be registered with the provider of the wagering service by name, address, and appropriate billing information to be authorized to place, receive, or otherwise make a bet or wager, and must be physically located within that State in order to be authorized to do so;

(B) an effective customer verification and age verification system, expressly authorized and operated in accordance with the laws of the State in which it is located, to ensure that all applicable Federal and State legal and regulatory requirements for lawful gambling are met; and

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

(3) FOREIGN JURISDICTION.—The term "foreign jurisdiction" means a jurisdiction of a foreign country or political subdivision thereof.

(4) GAMBLING BUSINESS.—The term "gambling business" means—

(A) a business that is conducted at a gambling establishment, or that—

(i) involves—

(I) the placing, receiving, or otherwise making of bets or wagers; or

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

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

(iii) has been or remains in substantially continuous operation for a period in excess of 10 days or has a gross revenue of $2,000 or more from such business during any 24-hour period; and

(B) any soliciting agent of a business described in subparagraph (A).

(5) INFORMATION ASSISTING IN THE PLACING OF A BET OR WAGER.—The term "information assisting in the placing of a bet or wager"—

(A) means information that is intended by the sender or recipient to be used by a person engaged in the business of betting or wagering to place, receive, or otherwise make a bet or wager; and

(B) does not include—

(i) information concerning parimutuel pools that is exchanged exclusively between or among 1 or more racetracks or other parimutuel wagering facilities licensed by the State or approved by the foreign jurisdiction in which the facility is located, and 1 or more parimutuel wagering facilities licensed by the State or approved by the foreign jurisdiction in which the facility is located, if that information is used only to conduct common pool parimutuel pooling under applicable law;

(ii) information exchanged exclusively between or among 1 or more racetracks or other parimutuel wagering facilities licensed by the State or approved by the foreign jurisdiction in which the facility is located, and a support service located in another State or foreign jurisdiction, if the information is used only for processing bets or wagers made with that facility under applicable law;

(iii) information exchanged exclusively between or among 1 or more wagering facilities that are licensed and regulated by the State in which each facility is located, and any support service, wherever located, if the information is used only for the pooling or processing of bets or wagers made by or with the facility or facilities under each State's applicable law;

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

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

(6) INTERACTIVE COMPUTER SERVICE.—The term "interactive computer service" means any information service, system, or access software provider that operates in, or uses a channel

or instrumentality of, interstate or foreign commerce to provide or enable access by multiple users to a computer server, which includes the transmission, storage, retrieval, hosting, linking, formatting, or translation of a communication made by another person, and including specifically a service, system, or access software provider that—

(A) provides access to the Internet; or

(B) is engaged in the business of providing an information location tool (which means a service that refers or links users to an online location, including a directory, index, reference, pointer, or hypertext link).

(7) INTERACTIVE COMPUTER SERVICE PROVIDER.—The term "interactive computer service provider" means any person that provides an interactive computer service, to the extent that such person offers or provides such service.

(8) INTERNET.—The term "Internet" means the international computer network of both Federal and non-Federal interoperable packet switched data networks.

(9) PERSON.—The term "person" means any individual, association, partnership, joint venture, corporation (or any affiliate of a corporation), State or political subdivision thereof, department, agency, or instrumentality of a State or political subdivision thereof, or any other government, organization, or entity (including any governmental entity (as defined in section 3701(2) of title 28)).

(10) PRIVATE NETWORK.—The term "private network" means a communications channel or channels, including voice or computer data transmission facilities, that use either—

(A) private dedicated lines; or

(B) the public communications infrastructure, if the infrastructure is secured by means of the appropriate private communications technology to prevent unauthorized access.

(11) STATE.—The term "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a commonwealth, territory, or possession of the United States.

(12) SUBSCRIBER.—The term "subscriber"—

(A) means any person with a business relationship with the interactive computer service provider through which such person receives access to the system, service, or network of that provider, even if no formal subscription agreement exists; and

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

(13) SOLICITING AGENT.—The term "soliciting agent" means any agent who knowingly solicits for a gambling business described in paragraph (4)(A) of this subsection.

(b) INTERNET GAMBLING.—

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

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

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

(2) PENALTIES.—A person engaged in a gambling business who violates this section shall be—

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

(i) the total amount that such person bet or wagered, or placed, received, or accepted in bets or wagers, as a result of engaging in that business in violation of this section; or

(ii) $20,000;

(B) imprisoned not more than 4 years; or

(C) both.

(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.

(c) CIVIL REMEDIES.—

(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.

(2) PROCEEDINGS.—

(A) INSTITUTION BY FEDERAL GOVERNMENT.—

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

(ii) RELIEF.—Upon application of the United States under this subparagraph, the district court may enter a temporary restraining order or an injunction against any person to prevent or restrain a violation of this section if the court determines, after notice and an opportunity for a hearing, that there is a substantial probability that such violation has occurred or will occur.

(B) INSTITUTION BY STATE ATTORNEY GENERAL.—

(i) IN GENERAL.—The attorney general of a State (or other appropriate State official) in which a violation of this section allegedly has occurred or will occur, after providing written notice to the United States, may institute proceedings under this subsection to prevent or restrain the violation.

(ii) RELIEF.—Upon application of the attorney general (or other appropriate State official) of an affected State under this subparagraph, the district court may enter a temporary restraining order or an injunction against any person to prevent or restrain a violation of this section if the court determines, after notice and an opportunity for a hearing, that there is a substantial

probability that such violation has occurred or will occur.

(C) INDIAN LANDS.—Notwithstanding subparagraphs (A) and (B), for a violation that is alleged to have occurred, or may occur, on Indian lands (as that term is defined in section 4 of the Indian Gaming Regulatory Act (25 U.S.C. 2703))—

(i) the United States shall have the enforcement authority provided under subparagraph (A); and

(ii) the enforcement authorities specified in an applicable Tribal-State compact negotiated under section 11 of the Indian Gaming Regulatory Act (25 U.S.C. 2710) shall be carried out in accordance with that compact.

(D) EXPIRATION.—Any temporary restraining order or preliminary injunction entered pursuant to subparagraph (A) or (B) shall expire if, and as soon as, the United States, or the attorney general (or other appropriate State official) of the State, as applicable, notifies the court that issued the order or injunction that the United States or the State, as applicable, will not seek a permanent injunction.

(3) EXPEDITED PROCEEDINGS.—

(A) IN GENERAL.—In addition to any proceeding under paragraph (2), a district court may, in exigent circumstances, enter a temporary restraining order against a person alleged to be in violation of this section upon application of the United States under paragraph (2)(A), or the attorney general (or other appropriate State official) of an affected State under paragraph (2)(B), without notice and the opportunity for a hearing as provided in rule 65(b) of the Federal Rules of Civil Procedure (except as provided in subsection (d)(3)), if the United States or the State, as applicable, demonstrates that there is probable cause to believe that the use of the Internet or other interactive computer service at issue violates this section.

(B) HEARINGS.—A hearing requested concerning an order entered under this paragraph shall be held at the earliest practicable time.

(d) INTERACTIVE COMPUTER SERVICE PROVIDERS.—

(1) IMMUNITY FROM LIABILITY FOR USE BY ANOTHER.—

(A) IN GENERAL.—An interactive computer service provider described in subparagraph (B) shall not be liable, under this section or any other provision of Federal or State law prohibiting or regulating gambling or gambling-related activities, for the use of its facilities or services by another person to engage in Internet gambling activity or advertising or promotion of Internet gambling activity that violates such law—

(i) arising out of any transmitting, routing, or providing of connections for gambling-related material or activity (including intermediate and temporary storage in the course of such transmitting, routing, or providing connections) by the provider, if—

(I) the material or activity was initiated by or at the direction of a person other than the provider;

(II) the transmitting, routing, or providing of connections is carried out through an automatic process without selection of the material or activity by the provider;

(III) the provider does not select the recipients of the material or activity, except as an automatic response to the request of another person; and

(IV) the material or activity is transmitted through the system or network of the provider without modification of its content; or

(ii) arising out of any gambling-related material or activity at an online site residing on a computer server owned, controlled, or operated by or for the provider, or arising out of referring or linking users to an online location containing such material or activity, if the material or activity was initiated by or at the direction of a person other than the provider, unless the provider fails to take expeditiously, with respect to the particular material or activity at issue, the actions described in paragraph (2)(A) following the receipt by the provider of a notice described in paragraph (2)(B).

(B) ELIGIBILITY.—An interactive computer service provider is described in this subparagraph only if the provider—

(i) maintains and implements a written or electronic policy that requires the provider to terminate the account of a subscriber of its system or network expeditiously following the receipt by the provider of a notice described in paragraph (2)(B) alleging that such subscriber has violated or is violating this section; and

(ii) with respect to the particular material or activity at issue, has not knowingly permitted its computer server to be used to engage in activity that the provider knows is prohibited by this section, with the specific intent that such server be used for such purpose.

(2) NOTICE TO INTERACTIVE COMPUTER SERVICE PROVIDERS.—

(A) IN GENERAL.—If an interactive computer service provider receives from a Federal or State law enforcement agency, acting within its authority and jurisdiction, a written or electronic notice described in subparagraph (B), that a particular online site residing on a computer server owned, controlled, or operated by or for the provider is being used by another person to violate this section, the provider shall expeditiously—

(i) remove or disable access to the material or activity residing at that online site that allegedly violates this section; or

(ii) in any case in which the provider does not control the site at which the subject material or activity resides, the provider, through any agent of the provider

designated in accordance with section 512(c)(2) of title 17, or other responsible identified employee or contractor—

(I) notify the Federal or State law enforcement agency that the provider is not the proper recipient of such notice; and

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

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

(i) identifies the material or activity that allegedly violates this section, and alleges that such material or activity violates this section;

(ii) provides information reasonably sufficient to permit the provider to locate (and, as appropriate, in a notice issued pursuant to paragraph (3)(A) to block access to) the material or activity;

(iii) is supplied to any agent of a provider designated in accordance with section 512(c)(2) of title 17, if information regarding such designation is readily available to the public;

(iv) provides information that is reasonably sufficient to permit the provider to contact the law enforcement agency that issued the notice, including the name of the law enforcement agency, and the name and telephone number of an individual to contact at the law enforcement agency (and, if available, the electronic mail address of that individual); and

(v) declares under penalties of perjury that the person submitting the notice is an official of the law enforcement agency described in clause (iv).

(3) INJUNCTIVE RELIEF.—

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

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

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

(I) an order restraining the provider from providing access to an identified subscriber of the system or network of the interactive computer service provider, if the court determines that there is probable cause to believe that such subscriber is using

that access to violate this section (or to engage with another person in a communication that violates this section), by terminating the specified account of that subscriber; and

(II) an order restraining the provider from providing access, by taking reasonable steps specified in the order to block access, to a specific, identified, foreign online location;

(ii) arising out of activity described in paragraph (1)(A)(ii), the injunctive relief is limited to—

(I) the orders described in clause (i)(I);

(II) an order restraining the provider from providing access to the material or activity that violates this section at a particular online site residing on a computer server operated or controlled by the provider; and

(III) such other injunctive remedies as the court considers necessary to prevent or restrain access to specified material or activity that is prohibited by this section at a particular online location residing on a computer server operated or controlled by the provider, that are the least burdensome to the provider among the forms of relief that are comparably effective for that purpose.

(C) CONSIDERATIONS.—The court, in determining appropriate injunctive relief under this paragraph, shall consider—

(i) whether such an injunction, either alone or in combination with other such injunctions issued, and currently operative, against the same provider would significantly (and, in the case of relief under subparagraph (B)(ii), taking into account, among other factors, the conduct of the provider, unreasonably) burden either the provider or the operation of the system or network of the provider;

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

(iii) whether other less burdensome and comparably effective means of preventing or restraining access to the illegal material or activity are available; and

(iv) the magnitude of the harm likely to be suffered by the community if the injunction is not granted.

(D) NOTICE AND EX PARTE ORDERS.—Injunctive relief under this paragraph shall not be available without notice to the service provider and an opportunity for such provider to appear before the court, except for orders ensuring the preservation of evidence or other orders having no material adverse effect on the operation of the communications network of the service provider.

(4) ADVERTISING OR PROMOTION OF NON-INTERNET GAMBLING.—

(A) DEFINITIONS.—In this paragraph:

(i) CONDUCTED.—With respect to a gambling activity, that activity is "conducted" in a State if the State is the State in which the gambling establishment (as defined in section 1081) that offers the gambling activity being advertised or promoted is physically located.

(ii) NON-INTERNET GAMBLING ACTIVITY.—The term "non-Internet gambling activity" means—

(I) a gambling activity in which the placing of the bet or wager is not conducted by the Internet; or

(II) a gambling activity to which the prohibitions of this section do not apply.

(B) IMMUNITY FROM LIABILITY FOR USE BY ANOTHER.—

(i) IN GENERAL.—An interactive computer service provider described in clause (ii) shall not be liable, under any provision of Federal or State law prohibiting or regulating gambling or gambling-related activities, or under any State law prohibiting or regulating advertising and promotional activities, for—

(I) content, provided by another person, that advertises or promotes non-Internet gambling activity that violates such law (unless the provider is engaged in the business of such gambling), arising out of any of the activities described in paragraph (1)(A) (i) or (ii); or

(II) content, provided by another person, that advertises or promotes non-Internet gambling activity that is lawful under Federal law and the law of the State in which such gambling activity is conducted.

(ii) ELIGIBILITY.—An interactive computer service is described in this clause only if the provider—

(I) maintains and implements a written or electronic policy that requires the provider to terminate the account of a subscriber of its system or network expeditiously following the receipt by the provider of a notice described in paragraph (2)(B) alleging that such subscriber maintains a website on a computer server controlled or operated by the provider for the purpose of engaging in advertising or promotion of non-Internet gambling activity prohibited by a Federal law or a law of the State in which such activity is conducted;

(II) with respect to the particular material or activity at issue, has not knowingly permitted its computer server to be used to engage in the advertising or promotion of non-Internet gambling activity that the provider knows is prohibited by a Federal law or a law of the State in which the activity is conducted, with the specific intent that such server be used for such purpose; and

(III) at reasonable cost, offers residential customers of the provider's Internet access service, if

the provider provides Internet access service to such customers, computer software, or another filtering or blocking system that includes the capability of filtering or blocking access by minors to online Internet gambling sites that violate this section.

(C) NOTICE TO INTERACTIVE COMPUTER SERVICE PROVIDERS.—

(i) NOTICE FROM FEDERAL LAW ENFORCEMENT AGENCY.—If an interactive computer service provider receives from a Federal law enforcement agency, acting within its authority and jurisdiction, a written or electronic notice described in paragraph (2)(B), that a particular online site residing on a computer server owned, controlled, or operated by or for the provider is being used by another person to advertise or promote non-Internet gambling activity that violates a Federal law prohibiting or regulating gambling or gambling-related activities, the provider shall expeditiously take the actions described in paragraph (2)(A) (i) or (ii) with respect to the advertising or promotion identified in the notice.

(ii) NOTICE FROM STATE LAW ENFORCEMENT AGENCY.—If an interactive computer service provider receives from a State law enforcement agency, acting within its authority and jurisdiction, a written or electronic notice described in paragraph (2)(B), that a particular online site residing on a computer server owned, controlled, or operated by or for the provider is being used by another person to advertise or promote non-Internet gambling activity that is conducted in that State and that violates a law of that State prohibiting or regulating gambling or gambling-related activities, the provider shall expeditiously take the actions described in paragraph (2)(A) (i) or (ii) with respect to the advertising or promotion identified in the notice.

(D) INJUNCTIVE RELIEF.—The United States, or a State law enforcement agency, acting within its authority and jurisdiction, may, not less than 24 hours following the issuance to an interactive computer service provider of a notice described in paragraph (2)(B), in a civil action, obtain a temporary restraining order, or an injunction, to prevent the use of the interactive computer service by another person to advertise or promote non-Internet gambling activity that violates a Federal law, or a law of the State in which such activity is conducted that prohibits or regulates gambling or gambling-related activities, as applicable. The procedures described in paragraph (3)(D) shall apply to actions brought under this subparagraph, and the relief in such actions shall be limited to—

(i) an order requiring the provider to remove or disable access to the advertising or promotion of non-Internet gambling activity that violates Federal law, or the law of the State in which such activity is con-

ducted, as applicable, at a particular online site residing on a computer server controlled or operated by the provider;

(ii) an order restraining the provider from providing access to an identified subscriber of the system or network of the provider, if the court determines that such subscriber maintains a website on a computer server controlled or operated by the provider that the subscriber is knowingly using or knowingly permitting to be used to advertise or promote non-Internet gambling activity that violates Federal law or the law of the State in which such activity is conducted; and

(iii) an order restraining the provider of the content of the advertising or promotion of such illegal gambling activity from disseminating such advertising or promotion on the computer server controlled or operated by the provider of such interactive computer service.

(E) APPLICABILITY.—The provisions of subparagraphs (C) and (D) do not apply to the content described in subparagraph (B)(i)(II).

(5) EFFECT ON OTHER LAW.—

(A) IMMUNITY FROM LIABILITY FOR COMPLIANCE.—An interactive computer service provider shall not be liable for any damages, penalty, or forfeiture, civil or criminal, under Federal or State law for taking in good faith any action described in paragraphs (2)(A), (4)(B)(ii)(I), or (4)(C) to comply with a notice described in paragraph (2)(B), or complying with any court order issued under paragraph (3) or (4)(D).

(B) DISCLAIMER OF OBLIGATIONS.—Nothing in this section may be construed to impose or authorize an obligation on an interactive computer service provider described in paragraph (1)(B)—

(i) to monitor material or use of its service; or

(ii) except as required by a notice or an order of a court under this subsection, to gain access to, to remove, or to disable access to material.

(C) RIGHTS OF SUBSCRIBERS.—Nothing in this section may be construed to prejudice the right of a subscriber to secure an appropriate determination, as otherwise provided by law, in a Federal court or in a State or local tribunal or agency, that the account of such subscriber should not be terminated pursuant to this subsection, or should be restored.

(e) AVAILABILITY OF RELIEF.—The availability of relief under subsections (c) and (d) shall not depend on, or be affected by, the initiation or resolution of any action under subsection (b), or under any other provision of Federal or State law.

(f) APPLICABILITY.—

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

(A) any otherwise lawful bet or wager that is placed and received, or otherwise made wholly intrastate for a

State lottery, or for a multi-State lottery operated jointly between 2 or more States in conjunction with State lotteries if—

(i) each such lottery is expressly authorized, and licensed or regulated, under applicable State law;

(ii) the bet or wager is placed on an interactive computer service that uses a private network or a closed-loop subscriber based service regulated and operated by the State lottery or its expressly designated agent for such activity;

(iii) each person placing or otherwise making that bet or wager is physically located when such bet or water is placed at a facility that is open to the general public; and

(iv) each such lottery complies with sections 1301 through 1304, and other applicable provisions of Federal law;

(B) any otherwise lawful bet or wager that is placed, received, or otherwise made on an interstate or intrastate basis on a live horse or a live dog race or on jai alai, or the sending, receiving, or inviting of information assisting in the placing of such a bet or wager, if such bet or wager, or the transmission of such information, as applicable, is—

(i) expressly authorized, and licensed or regulated by the State in which such bet or wager is received, under applicable Federal and such State's laws;

(ii) placed on a closed-loop subscriber-based service;

(iii) initiated from a State in which betting or wagering on that same type of live horse or live dog racing or on jai alai is lawful and received in a State in which such betting or wagering is lawful;

(iv) subject to the regulatory oversight of the State in which the bet or wager is received and subject by such State to minimum control standards for the accounting, regulatory inspection, and auditing of all such bets or wagers transmitted from 1 State to another; and

(v) in the case of—

(I) live horse racing, made in accordance with the Interstate Horse Racing Act of 1978 (15 U.S.C. 3001 et seq.) and the requirements, if any, established by an appropriate legislative or regulatory body of the State in which the bet or wager originates;

(II) live dog racing, subject to regulatory consent agreements that are comparable to those required by the Interstate Horse Racing Act of 1978, and the requirements, if any, established by an appropriate legislative or regulatory body of the State in which the bet or wager originates; or

(III) live jai alai, subject to regulatory consent agreements that are comparable to those required by the Interstate Horse Racing Act of 1978, and the

requirements, if any, established by an appropriate legislative or regulatory body of the State in which the bet or wager originates;

(C) any otherwise lawful bet or wager that is placed, received, or otherwise made wholly intrastate, or the sending, receiving, or inviting of information assisting in the placing of such a bet or wager, if such bet or wager, or the transmission of such information, as applicable is—

(i) expressly authorized, and licensed or regulated by the State in which such bet or wager is initiated and received, under applicable Federal and such State's laws; and

(ii) placed on a closed-loop subscriber based service; or

(D) any otherwise lawful bet or wager that is—

(i) placed on a closed-loop subscriber based service or a private network; and

(ii) is lawfully received by a federally recognized Indian tribe, or the sending, receiving, or inviting of information assisting in the placing of any such bet or wager, if the game is permitted under and conducted in accordance with the Indian Gaming Regulatory Act, so long as each person placing, receiving, or otherwise making such a bet or wager, or transmitting such information, is physically located on Indian lands (as that term is defined in section 4 of the Indian Gaming Regulatory Act) when such person places, receives, or otherwise makes the bet or wager.

(2) BETS OR WAGERS MADE BY AGENTS OR PROXIES.—

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

(B) QUALIFICATION.—Nothing in this paragraph may be construed to prohibit the owner operator of a parimutuel wagering facility that is licensed by a State from employing an agent in the operation of the account wagering system owned or operated by the parimutuel facility.

(3) ADVERTISING AND PROMOTION.—The prohibition of subsection (b)(1)(B) does not apply to advertising, promotion, or other communication by, or authorized by, anyone licensed to operate a gambling business in a State.

(g) RULE OF CONSTRUCTION.—Nothing in this section may be construed to affect any prohibition or remedy applicable to a person engaged in a gambling business under any other provision of Federal or State law.

ADDITIONAL VIEWS

While I support the overall thrust of H.R. 3125, the Internet Gambling Prohibition Act, I have serious concerns relating to the tribal gaming exemption provided by Section 2: (f)(1)(D).

The provision exempts gambling on a closed loop system, as the term is defined in H.R. 3125. It requires both the sender and the receiver to be on Indian lands. This is not limited to the Indian lands on which the game is conducted, therefore, it would allow linking of all Indian lands nationwide.

Because the language is broad enough to authorize just about any type of wagering on a closed loop system between tribal lands, language must also be added to ensure that no Class III gaming activity can occur without the explicit authorization of a Tribal/State compact.

The language that a bet be "lawfully received" by a tribe is ambiguous, because it is unclear if the Act itself will make the receipt of the wager "lawful," independent of any Compact. The requirement that the "game is permitted under and conducted in accordance with IGRA" is ambiguous, because if the underlying game (i.e. slot machines) is authorized by a Compact, without specific authorization for a closed loop system, the requirement would appear to be met.

Let me provide an example: If State A's compact allows for slots, and State B's compact allows for blackjack and slots, absent clarification, the tribe in State A would argue it can now participate in blackjack.

In conclusion, the ambiguous provision, combined with the rules of statutory construction, require that the language be clarified so that the carefully negotiated Tribal/State compacts are not at risk.

F. JAMES SENSENBRENNER, JR.

DISSENTING VIEWS

Although we are opposed to illegal gambling, whether done over the Internet or otherwise, we cannot support the legislation reported by the Judiciary Committee. H.R. 3125 not only expands gambling over the Internet, it arbitrarily favors certain forms of gambling over others. In addition, the bill inappropriately requires Internet service providers and others to police websites, threatens the privacy and civil liberty of all Americans, and creates a patchwork of inconsistent laws. By approving this legislation, the Majority reveals its insensitivity to the growth of the Internet and the interests of our citizens in the information age.

Concerns or outright opposition with regard to the legislation (or similar predecessor versions of it) have been expressed by the Justice Department and a wide variety of groups. These include Internet and telecommunications concerns such as the Computer & Communications Industry Association (CCIA), Covad Communications, and AT&T; civil liberties groups such as the Center for Democracy and Technology (CDT) and the ACLU; and groups harmed by the bill's arbitrary preference for pari-mutuel betting[1] and its equally arbitrary dismissal of other forms of gambling,[2] including State lotteries, charitable gaming, and gambling on Indian reservations.

H.R. 3125 would make it unlawful for a person[3] engaged in a gambling business[4] knowingly to use the Internet to place, receive or otherwise make a bet or wager or to send, receive or invite information assisting in the placing of a bet or wager.[5] At the same time the bill vitiates the existing Federal wire statute prohibition[6] on certain bets from the home by making it legal to place a bet or wager at home over the Internet on a horse race, dog race or jai

[1] The Christian Coalition, Family Research Council, and Madison Project oppose the expansion of gambling in the bill.

[2] These groups include the National Governors Association, lottery.com, the Association of Lottery Retailers, and the Lac Vieux Band of Lake Superior Chippewa Indians.

[3] Subsection (a)(9) of H.R. 3125 would broadly define "person" to include individuals and entities with indirect or highly attenuated connections to the activity in question, such as shareholders of a corporation or officers of a holding company.

[4] Subsection (a)(4) of H.R. 3125 would define a person engaged gambling business to include those persons who place or receive bets and is in continuous operation for more than 10 days or has a gross revenue of at least $2,000. This definition could be construed to apply to an individual gambler.

[5] H.R. 3125, subsection (b)(1). The bill would institute new civil and criminal penalties for violating its provisions. Civil penalties would include the greater of the amount of bets and wagers placed or received by the defendant or $20,000. Criminal penalties would include imprisonment up to 4 years. A defendant could be subject to both the civil and criminal penalties. H.R. 3125, subsection (b)(2).

[6] The Wire Communications Act, 18 U.S.C. § 1084, prohibits persons who are "engaged in the business of betting or wagering knowingly [to] use[ ] a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers." As defined by 18 U.S.C. § 1081, a "wire communication facility" includes the Internet.

alai match,[7] the bill also discriminates against regulated gambling by church and non-profit organizations,[8] in-State lottery sales,[9] and Native American tribes [10] by severely restricting their legality over the Internet. The bill excludes fantasy sports leagues from its coverage by defining a "bet or wager" to exclude such activities.[11]

The bill's enforcement scheme is premised on several broad "notice and take down," blocking, and injunctive requirements, which principally rely on so-called "interactive computer service" (ICS) providers to act as surrogates for law enforcement (presumably, this would include Internet service providers, such as AOL or the Microsoft Network (MSN), but potentially include a far broader range of companies such as search engines and portals [12]). With regard to "notice-and-takedown," the bill specifies that after notice from a law enforcement agency, an ICS is required to "take down" any web site, customer account, or other offending material which is seen as facilitating illegal Internet gambling or advertising thereof.[13] This requirement would attach merely upon a court order based on probable cause and is written so broadly that even individual consumers engaging in a form of gambling which is not illegal for them can lose their accounts without any advance notice.[14] In terms of blocking, H.R. 3125 would require any ICS to mandatorily block an individual's access to specified foreign websites.[15] Again, this provision is not premised on the individual whose access is being blocked having violated any Federal or State gambling law. (In nominal exchange for these new burdens, the bill

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[7] H.R. 3125, subsection (f). Such bets would be permitted if allowed by the State and placed on a closed-loop subscriber service, broadly defined, which would include the purchase of a diskette with a credit card which could be used to access the system.

[8] Charitable donations that are placed through bets are neither excluded from definition of "bet or wager," nor from the prohibition on Internet gambling.

[9] Subsection (f)(1)(A) of H.R. 3125 would permit the purchase of lottery tickets on the Internet only by a person who "is physically located when such bet or water [sic] is physically located when such bet or water [sic] is placed at a facility that is open to the general public."

[10] Subsection (f)(1)(D) of H.R. 3125 would restrict the placement and receipt of Indian gambling bets over the Internet to situations in which the person is "physically located on Indian lands." The 1988 Indian Gambling Regulatory Act currently permits Native Americans to use the Internet and telecommunications technologies to link Bingo that is played on different Reservations. This legislation expressly encouraged tribes to deploy the latest technology and communications for Bingo. Like its treatment of State lotteries, H.R. 3125 would eliminate the ability of tribes to conduct lawful Bingo games at the same time that it opens the floodgates for currently unlawful horse races, dog races, and jai alai.

[11] H.R. 3125, subsection (a)(1)(D)(v). The bill defines fantasy sports leagues as contests that do not depend on the outcome of any single sporting event or a singular individual performance, that have an outcome reflecting the skill and knowledge of contestants, and that offer a prize that is determined in advance of the event and do not depend on the number of participants or the fees paid by those participants.

[12] Subsection (a)(7) of H.R. 3125 would define an "interactive computer service provider" to be "any person that provides an interactive computer service, to the extent that such person offers or provides such service." Since the essence of the Internet is to provide its users with interactive computer services, the definition would encompass not only Internet Service Providers like AOL, but also on any search engine, portal, website, or even a website infrastructure, all of which provide interactive services to users.

[13] Two subsections of H.R. 3125 establish the notice and takedown requirements. First, subsection (b)(2) of H.R. 3125 provides that an ICS, upon receipt of a notice that a website is violating the prohibitions on Internet gambling, must "expeditiously remove or disable" access to the material or notify law enforcement that it incorrectly received the notice. If the ICS fails to take either of these steps within 24 hours of receiving the notice, law enforcement may seek a temporary restraining order or an injunction preventing the ICS from being used to violate this section. Parallel provisions apply to online advertising of Internet gambling websites. Subsection (3)(D) of H.R. 3125.

[14] See *infra*.

[15] Subsection (d)(3)(B)(II) of H.R. 3125 would authorize law enforcement to go into court to obtain an order requiring the ICS to block access to "specific, foreign online location[s]."

immunizes qualifying ICSs from liability under Federal or State law for the use of its facilities to violate the Act.) [16]

Finally, the legislation includes a very broad court-ordered injunction provision. This relief can be obtained upon a mere showing of "probable cause." The authorization for an injunction can be brought against any person other than an ICS to prevent or restrain a violation of the law.[17] A summary of our concerns with the legislation follows.

I. H.R. 3125 EXPANDS GAMBLING OVER THE INTERNET, AND ARBITRARILY FAVORS CERTAIN FORMS OF GAMBLING OVER OTHER FORMS

Amazingly, a bill that purportedly originated as an anti-gambling initiative would significantly *expand* the availability of gambling over the Internet. Rather then calling the bill the "Internet Gambling Prohibition Act of 2000," the bill more appropriately should be referred to as the "Internet Gambling Expansion Act of 2000." The sponsors of H.R. 3125 have catered to special interests by ripping gaping loopholes in a bill originally drafted to prohibit Internet gambling. At the same time, perhaps in a transparent effort to innoculate the bill against charges that it opens up more loopholes than it closes, the bill's sponsors have effectively barred State lotteries, charitable organizations, and Tribes from merging onto the information superhighway.

This result, though denied or ignored by the legislation's proponents, is indisputable. In testimony before the Subcommittee on Crime, the Department of Justice described how the bill prohibits Internet gambling in name only:

> [T]he Department is concerned that the bill does not really prohibit Internet gambling, but rather facilitates certain types of gambling from the home and, therefore, arguably expands gambling opportunities. Specifically, the Department recognizes that H.R. 3125 exempts pari-mutuel wagering from the prohibition against Internet gambling. The result is that people will be able to bet on horse racing, dog racing, and jai alai from their living rooms. While the bill provides that such gambling must be done on a "closed loop subscriber based service," the definition of that term is extremely broad. I could receive a free disk in the mail, load it on my computer, connect through my regular Inter-

[16] Subsection (d)(1) of H.R. 3125. The immunity would apply under the following conditions: (1) the violating material or activity was not initiated by or at the direction of the interactive computer service providers; (2) the material or activity was automatically processed without selection by the interactive computer service providers; and (3) the interactive computer service providers played no role in modifying the content of the site. The bill would further immunize qualifying interactive computer service providers from liability under Federal or State gambling law if another person advertised legal or illegal gambling activity.

Interactive computer service providers would only qualify for these immunities, however, if they: (1) maintain a written or electronic policy that requires them to terminate a subscriber's account expeditiously following the receipt of a notice; (2) prevent their server from being used to engage in activity which violates the Act, with the specific intent that the server be used for that purpose; (3) do not knowingly permit their server to be used to advertise non-Internet gambling activity that violates the law; and (4) offer blocking software that would assist in blocking minors' access to Internet gambling sites.

[17] Subsection (d)(3) of H.R. 3125. This provision, by its own terms, would authorize injunctive relief "to prevent the use of the interactive computer service *by another person*" (emphasis supplied). Since "person" is broadly defined in subsection (a)(9) to include "any individual," the bill plainly would authorize a court to enjoin any person that is in violation of the bill without notice or an opportunity to be heard.

> net service provider, and start betting on horse racing from my living room. Additionally, if my children have access to that same computer, they may also be able to get online and bet and wager on pari-mutual activities. Simply stated, the Department does not understand why the pari-mutuel wagering industry should be allowed to accept bets from people in their homes, when other forms of gambling have rightly been prohibited from doing so.[18]

Federal law enforcement is not alone in expressing its concerns regarding a bill that expands Internet gambling. Socially conservative advocacy groups pleaded with the bill's sponsors to eliminate the bill's exemptions—to no avail. The Christian Coalition declared that "it cannot support any legislation that purports to restrict gambling on the Internet and at the same time expands gambling opportunities on the Internet."[19] The Family Research Council found "the 'exemptions' in the bill unnecessary."[20] In a letter signed by Paul Weyrich, the Free Congress Foundation wrote to voice its "strong opposition":

> The bill seems to fly in the face of a number of core principles of conservatism. It turns federalism on its head by taking the power away from the States to regulate their own State lotteries . . . There are also substantive concerns about even achieving the goal of regulating gambling on the Internet. . . . But are we going to create a national police force to monitor individuals or the server industry?[21]

Finally, the Madison Project noted that "this bill contains loopholes that actually expand [Internet gambling]. . . . Why would Congress want to pass a law that encourages the expansion of a problem that already affects 15.4 million Americans. . . . Please do not allow this bill to be used as a vehicle for expanding the scope of gambling in America."[22]

Recognizing that the prohibition on Internet gambling in H.R. 3125 has become a proxy for the expansion of Internet gambling, the Legal Times of Washington described the bill's posture:

> Thanks to some swift lobbying, the proposed ban carves out some big exemptions for online gambling by any State-regulated industry. . . . Translation: The bill that aims to rein in online gambling would nonetheless allow online versions of some of the most popular gaming attractions—horse racing, dog tracks, . . . and jai alai.[23]

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[18] Hearing on H.R. 3125 Before the House Comm. on the Judiciary, Subcomm. on Crime, 106th Cong., 2d Sess. (March 9, 2000) (testimony by Deputy Assistant Attorney General Kevin DiGregory).

[19] Letter to Judiciary Chairman Hyde from Jeffrey K. Taylor, Director of Government Relations, the Christian Coalition (March 22, 2000).

[20] Letter to Judiciary Chairman Hyde from Michael D. Bowman, Director of State & Local Affairs, the Family Research Council (March 22, 2000).

[21] Letter to House Majority Leader Armey and Majority Whip DeLay from Paul M. Weyrich, President, the Free Congress Foundation (May 11, 2000).

[22] Letter to Judiciary Chairman Hyde from Michael P. Farris, Chairman, the Madison Project (April 3, 2000).

[23] Ron Eckstein, *"Rolling the Dice,"* LEGAL TIMES, at 1 (March 13, 2000). See also, Thomas E. Weber, *"Playing the Ponies In Your Underwear,"* The Wall Street Journal Interactive Edition, http://interactive.wsj.com/archive/retrieve.cgi?id=SB957138139977057683.djm (May 1, 2000).

The result of this expansion of Internet gambling could carry with it potentially devastating results for those Americans who are at risk for gambling addiction or are compulsive gamblers. This is completely contrary to the findings of the congressionally created National Gambling Impact Study Commission, which issued a report to President Clinton and found that gambling is a widespread problem, and criticized the carve-outs and exemptions contained in H.R. 3125:

> The Commission recommends to the President, Congress, and the Department of Justice (DOJ) that the Federal Government should prohibit, without allowing new exemptions or the expansion of existing Federal exemptions to other jurisdictions, Internet gambling not already authorized within the United States.[24]

At the Crime Subcommittee hearing on the bill, a self-described gambling addict described the allure of gambling on the Internet:

> Mr. WEINER: Now, if there were other types of gambling that were available, for example, we particularly take note in this legislation of horse racing and dog racing, and I guess jai alai is also included, if there were other types of gambling available, would you simply move? Do you have a desire to gamble or is it just a desire to play blackjack?
>
> Mr. DOE: It is mainly a desire to gamble. My game of choice—well, it is my desire and win money, so it is my passion for gambling that was driven uncontrollably with the ease of the Internet.
>
> Mr. WEINER: So if you had a sure shot on a 25 to 1 horse that you thought for sure was going to win, you would have a desire to gamble on that horse race, just like you would have a desire to double down on 11?
>
> Mr. DOE: I would consider that.[25]

In addition to gambling addicts, the bill also could open the way for children, who are prohibited by law from gambling in "bricks and mortar" casinos, to become gambling addicts using the Internet. Although the supporters of H.R. 3125 assert that by requiring permitted Internet gambling to be carried out on a closed-loop subscriber-based system, website operators can effectively screen out minors, a closed-loop system does not, by itself, adequately ensure that minors will be unable to access gambling sites. In fact, the nation's largest Internet Service Provider, AOL, available in tens of millions of American homes, would fit the definition of a closed-loop, subscriber-based system.

Just as disturbing, from a policy perspective, is the fact that the bill arbitrarily discriminates against certain forms of gambling as it elevates the legality of some types of gambling over others. The victims of this discrimination are State lotteries, charitable contests, and gambling on Indian reservations. Ironically, the very entities that one would expect Congress to protect in a bill to regulate Internet gambling—those that have the greatest overall benefit to

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[24] National Gambling Impact Study Commission, Final Report, Recommendation 5.1 (June 18, 1999).

[25] Hearing on H.R. 3125 Before the House Comm. on the Judiciary, Subcomm. on Crime, 106th Cong., 2d Sess. (March 9, 2000) (testimony by John Doe).

society, State lotteries, charitable giving, and those that are essential to the livelihood of Native Americans—have been disregarded in H.R. 3125.

H.R. 3125 would prevent State lotteries from entering the Internet age. Lotteries are the only form of gaming that return profits directly to the public.[26] H.R. 3125 does this by allowing the online purchase of in-state lottery tickets only in facilities "open to the general public." In other words, States may not allow their own residents to purchase lottery tickets over the Internet from the convenience of their homes. As a result, whether online gaming activities supplant or supplement physical gaming activities, State lotteries stand to lose even more ground to other forms of gaming that provide no direct return to the public whatsoever. The Association of Lottery Retailers noted that the real beneficiaries of the bill's restrictions on State lotteries would be the offshore operators of Internet lotteries, and pointed out the irony that the professed opponents of Internet gambling have only benefitted "a handful of offshore, illegal operators of unregulated and unregulatable internet lotteries [who] could not be happier."[27]

The anti-lottery provision has also drawn the ire of the National Governors Association, which wrote:

> States possess the authority to regulate gambling within their own borders and must continue to be allowed to do so. An incursion into this area with respect to online gambling would establish a dangerous precedent with respect to gambling in general as well as broader principles of State sovereignty.[28]

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[26] In fiscal year 1999 alone, lotteries generated more than $12 billion nationwide for essential public education, seniors, and environmental programs, as well as for local governments, State general coffers, and a variety of other programs. Since 1964, thirty-seven States, the District of Columbia, and Puerto Rico have opted to offer their citizens lotteries, and use the proceeds to fund critical programs and projects.

[27] Letter to Judiciary Chairman Hyde from Mark F. Jones, Executive Director, the Association of Lottery Retailers (May 16, 2000). The Free Congress Foundation reached the same conclusion: "The only thing that will be accomplished [by H.R. 3125] is that money will be sent abroad as foreign governments and companies set up their own online lottery games for American consumers." Letter to House Majority Leader Armey and Majority Whip DeLay from Paul M. Weyrich, President, the Free Congress Foundation (May 11, 2000).

[28] Letter to Judiciary Chairman Henry Hyde and Ranking Member John Conyers from Governors Michael O. Leavitt and Parris N. Glendening, National Governors Association (April 4, 2000). In addition to the Governors, representatives of the lottery industry wrote that permitting States to determine the format of their lotteries is fundamental to States' rights. The North American Association of State & Provincial Lotteries asserted:

> [G]aming is a States-rights issue. . . . Lottery profits support much needed programs and services, and each State must maintain the right to decide the best ways to raise revenue so that these programs and services do not suffer. . . . We strongly believe that the States determination to provide gaming is appropriately left at the State legislative and gubernatorial levels.

Letter to Representative Robert Goodlatte from David B. Gale, Executive Director of the North American Association of State & Provincial Lotteries (March 29, 2000). See also, Letter to Judiciary Chairman Hyde from Mark F. Jones, Executive Director, the Association of Lottery Retailers (May 16, 2000) (noting the "heavy-handed effort by some in Congress to take a Federal slap at State lotteries"); Letter to Judiciary Chairman Hyde from Steven M. Saferin, President & Chief Executive Officer, MDI Entertainment, Inc. (May 12, 2000) ("The consequences of this Bill may be extreme . . . To continue to provide valuable revenues to the good causes they serve, lotteries must be able to compete on a level playing field and the use of the Internet as a distribution method for existing and future games should clearly be a decision left to each individual State and the lottery it operates."); Letter to Judiciary Ranking Member Conyers from Roger W. Ach, II, President & Chief Executive Officer, lottery.com (May 12, 2000) ("By eliminating the ability of State lotteries to sell lottery tickets on-line, Congress will cause a detrimental impact on lottery revenues and on lottery.com business.").

H.R. 3125 also would discriminate against charities (as compared to pari-mutuel gambling), completely preventing non-profits from raising funds through Internet lotteries and bingo. Although section 1955 of title 18 and most State laws permit charitable gaming, H.R. 3125 would block charities from raising funds through online games. Despite the fact that charitable gaming accounts for a mere 1.5% of all wagering in the United States and is not the game of choice for compulsive gamblers, H.R. 3125 deprives charitable organizations of conducting activities in cyberspace which are perfectly legal in the physical world. Such an exclusion will place charitable organizations at a competitive disadvantage as the Internet becomes an increasingly important tool of commerce and communication in our society. Individuals who wish to participate in games of chance that have social value will have no ability to do so online.

Finally, H.R. 3125 discriminates against Native-Americans by requiring that the player of a game be "physically located on Indian lands." This would outlaw a form of online gambling in which a Tribe conducts a Class II Bingo game and the player need not be physically on the Reservation. This type of Bingo was developed at great expense to some tribes, in reliance on the letter and spirit of the Indian Gambling Regulatory Act (IGRA).[29] Indeed, in testimony before a Senate Committee on Indian Affairs Oversight Hearing on Internet Gaming, one Tribe acknowledged its expenditure of "millions of dollars and countless hours developing a Bingo game that utilizes Internet technology to expand its participation levels."[30] The Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan wrote:

> [T]he Tribe opposes passage of this legislation . . . [because] such a broad-sweeping prohibition runs counter to the letter and spirit of the 1988 Indian Gambling Regulatory Act (IGRA) and deals a serious blow to tribal sovereign rights to enter into legal Class II gaming activities, via the Internet. . . . In essence, H.R. 3125 takes away existing legal rights of tribes authorized under the IGRA, while expanding more privileges to non-Indian gaming interests.[31]

The Tribe also noted that H.R. 3125 has been universally condemned by tribes and national tribal organization throughout the country. These include the National Congress of American Indians, the United South and Eastern Tribes, the Midwest Alliance of Sovereign Tribes, and the National Indian Gaming Association.

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[29] 25 U.S.C. § 2703(7)(A)(i). This provision of the IGRA applies to "Class II" games, such as Bingo, but does not include other forms of gambling such as parimutuel wagering, slot machines, blackjack, and other "casino" type games.

[30] Oversight Hearing on Internet Gaming, Before the Senate Committee on Indian Affairs, on Crime, 106th Cong., 1st Sess. (June 9, 1999) (testimony by Richard Williams, Chairman, Lac Vieux Desert Band of Lake Superior Chippewa Indians).

[31] Letter to Judiciary Ranking Member Conyers from the Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan (April 3, 2000). See also, Letter to Judiciary Ranking Member Conyers from Anthony C. Minthorn, Chairman of the Board of Trustees, Confederated Tribes of the Umatilla Reservation of Oregon (March 23, 2000) ("Without a tribal gaming exemption, H.R. 3125 will bear the dubious distinction of not only treating tribal governments in an arbitrary—if not discriminatory—fashion, but of stifling one of the few successful economic engines available to our communities within memory.")

II. THE NOTICE AND TAKEDOWN PROVISIONS VIOLATE THE RIGHTS AND LIBERTIES OF WEBSITE OPERATORS AND INDIVIDUAL CUSTOMERS

The notice and takedown provisions in H.R. 3125 operate to allow any local or Federal law enforcement official to require ICSs and ISPs to take down a supposedly offending sight with no prior notice or any semblance of due process. This inappropriately deputizes these parties to serve as law enforcement authorities. As the Computer and Communications Industry Association wrote:

> [R]equiring ISPs to 'take down' websites based solely on the request of a law enforcement official from the Federal Government or any of the fifty States is a dangerously broad new grant of censorship power to Federal and State governments. . . . The provision sets forth a flawed precedent. . . . We believe it is more appropriate to adhere to well-established procedures of notice and opportunity to be heard, court review, and judicially imposed injunctions."[32]

These concerns were echoed by the Center for Democracy and Technology (CDT), perhaps the nation's leading authority on rights and liberties on the Internet, which observed that the bill's takedown provisions place "too much discretion in the hands of government officials, who get to decide in the first instance, without any independent review, what is legal and what is illegal."[33] CDT noted further that it is not those government officials, but the ISPs, which are required to deliver the notice or face injunctive relief:

> This approach, were it to serve as a precedent for other similar burdens on ISPs to cooperate with mere requests that they take down other illegal or undesirable content, would fundamentally change the nature of the Internet. While ISPs can decide what to host and what not to host, they should not be required to police their systems, nor should the government, through immunity provisions, dictate their terms of service with their customers.[34]

We also have a separate concern that H.R. 3125 will operate to allow individual Internet users who have not violated the statute to have their accounts taken down, also without any prior warning. Under the bill, if a government actor notifies an ISP that a "subscriber" is in violation of the Act's provisions, the ISP must take action against the offending "subscriber." As reported by the committee, the definition of "subscribers" includes both the operators of gambling websites, as well as the individual consumers who log on to the targeted websites.[35] This is because the definition of "subscriber" would cover anyone with a business relationship with the ICS through which the person receives access to the system.[36]

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[32] Letter to Judiciary Ranking Member Conyers from Ed Black, President and CEO, the Computer & Communications Industry Association (April 3, 2000).

[33] Position Paper, Center for Democracy and Technology.

[34] *Id.*

[35] The plain language of H.R. 3125 cannot fairly construed to limit the definition of "subscriber." H.R. 3125 defines "subscriber" in section 1085(a)(12)(A) to mean (emphasis supplied):

> *any person* with a business relationship with the interactive computer service provider through which such person receives access to the system, service, or network of that provider, even if no formal subscription agreement exists.

[36] In addition, in discussing the scope of injunctive relief available, the bill states that the relief is limited to:

> an order restraining the provider from providing access to an identified subscriber of the system or network of the interactive computer service provider, if the court deter-

The notice and takedown provisions fail to include the process and legal safeguards specified in the Digital Millennium Copyright Act (DMCA), which the legislation purportedly uses as a model.[37] The DMCA included language to protect people from becoming the subject of wrongful or erroneous takedowns. This is because the DMCA includes a requirement that the ISP give notice to the website operator and gives the website the opportunity to file a counter-notification.[38] This ensures that the website operator at least has the opportunity to register its objections to the action by the ISP if the website believes that the allegation of copyright infringement is not supported by the law. By contrast, under H.R. 3125, without the ability to file a counter-notification, the website will have no protection from a takedown by an ICS or ISP that incorrectly believes that the site facilitates or promotes illegal gambling or that is acting in response to an overzealous prosecutor.[39]

III. THE BLOCKING PROVISIONS WILL HARM THE OPERATION OF THE INTERNET AND CONSTITUTE A THREAT TO INDIVIDUAL PRIVACY RIGHTS

The legislation's provisions mandating blocking of foreign websites are also far broader than any existing law. The requirement not only represents a real and viable threat to our own privacy and our nation's birthright as an exemplar of individual liberty, but it will have the likely effect of slowing down and interfering with the operation of the Internet.

Not only is it inappropriate to place ICSs in the position of becoming Internet hall monitors, it would have the effect of chilling unfettered expression on the Internet. For example, H.R. 3125 authorizes court orders to shut off subscriber accounts based merely on a showing of probable cause that the subscriber is betting at a prohibited website, even if the subscriber's activities are lawful under Federal and State laws. In a letter filed with the Senate during the debate on Senator Kyl's version of the Internet gambling bill, the ACLU noted the threat to privacy that arises from ill-conceived measures to regulate the Internet:

> [R]espect for issues of personal privacy and content freedom should be central to this and any other debate on Internet policy. We oppose any effort by States to regulate

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mines that there is probable cause to believe that such subscriber is using that access to violate this section (or to engage with another person in a communication that violates this section), by terminating the specified account of that subscriber.

H.R. 3125, subsection (d)(3)(B)(i)(I).

[37] Pub. L. 105–304 (105th Cong., 2d Sess.).

[38] The counter-notification provisions appear in section 512(g)(3) of the DMCA and in section 202(a) of Pub. L. 105–34, 112 Stat. 2282 (105th Congress, 2d Sess.). An effective counter-notification must "substantially" include a physical or electronic signature of the subscriber; information that enables the identification and location of the material in question; a statement of the subscriber's good-faith belief that the material was removed or disabled due to mistake or misidentification; and identifying information about the subscriber along with the subscriber's consent to Federal jurisdiction.

[39] Subsection (e) of H.R. 3125 also departs from the DMCA by allowing takedowns and injunctions without any accompanying prosecution for violations of the prohibition on Internet gambling:

> The availability of relief . . . shall not depend on, or be affected by, the initiation or resolution of any action under subsection (b), or under any other provision of Federal or State law.

> content on the internet, a national and global communications medium that the Supreme Court has found to be especially valuable because of the breadth and diversity of the speech found there. We also oppose all attempts to turn internet service providers into de facto government agents.[40]

The CCIA also has explained that the blocking obligation imposed under H.R. 3125 is inappropriate and discriminatory:

> It is not appropriate for Congress to mandate that ISPs police the content of the millions of websites accessible through their facilities, but the risk of criminal sanctions would clearly force any responsible ISP to do so. . . . [L]ike many new content regulations, these requirements unfairly discriminate against the Internet as a medium of communication. Newspapers, magazines, telephone companies, and mail delivery services need not fear criminal prosecution for facilitating illegal gambling, although undoubtedly these media are much more central to illegal gambling activities.[41]

Similar concerns were echoed by the Center for Democracy and Technology:

> [T]his mandatory filtering approach is fundamentally incompatible with the user empowerment vision of the Internet: filtering is appropriate at the user level [when voluntary], but it is inappropriate at the ISP or server level, particularly when mandated by the government. The Internet's power stems from its decentralized, user-controlled nature. Installing ISPs as chokepoints or gatekeepers turns the Internet into something different, akin to the broadcast media.[42]

Intruding on individual privacy by denying individual Internet users access to websites of their own choosing establishes a very poor precedent for other nations that look to the United States as the leader in safeguarding individual liberty. It would be ironic indeed if Congress passed legislation that required private parties to act as censorship agents for government officials in a medium that virtually everyone agrees should be left alone. There is a national consensus that the Internet is the singlemost significant force driving this nation's unprecedented economic expansion and corresponding explosion of information and communication. H.R. 3125 would represent a dramatic departure from that objective.[43]

By requiring ISPs to block individual access to specified Internet locations, H.R. 3125 would send an unintended signal to China, Cuba, and other autocratic regimes, that they too may block their citizens access to the Internet. As *Time Digital* editor Joshua

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[40] Letter to Senate Judiciary Chairman Hatch from the American Civil Liberties Union, Americans for Tax Reform, the Association of Concerned Taxpayers, Citizens for a Sound Economy, the Competitive Enterprise Institute, the First Amendment Coalition for Expression, the Interactive Services Association, the Small Business Survival Committee, and the United States Internet Council (October 8, 1997).

[41] Letter to Judiciary Ranking Member Conyers from Ed Black, President and CEO, CCIA (May 5, 2000).

[42] Position Paper, Center for Democracy and Technology.

[43] See, e.g., the DMCA, Pub. L. 105–304 (105th Cong., 2d Sess.); the Internet Tax Freedom Act, Pub. L. 105–277 (105th Cong., 2d Sess.).

Quittner has observed, "I find it objectionable that the government would feel the need to act as a proxy in this way [mandating blocking of foreign websites]. . . . This is exactly the kind of thing a totalitarian regime would undertake—in fact, it's exactly what the Chinese government has already done."[44]

As the ACLU noted in its analysis of similar blockage provisions in the Senate version of the Internet gambling bill, efforts to require ISPs to block overseas websites "would attempt to segment the Internet—in effect, placing an electronic wall around the United States—to 'protect us from ourselves' much like China and Singapore have tried to do. The idea of making U.S. ISPs responsible for policing the content of offshore Internet sites is clearly unworkable."[45] For example, in China, the Ministry of Education recently took steps to police content on the Internet by requiring distance learning websites to register. The Ministry is expected to have direct supervision of a website's content. In addition, the State Council Information Office created the Internet Information Management Bureau, which is responsible for overseeing the Internet news industry and is requiring pre-approval of all news that is published on the Internet.

Turkey, a country whose leadership has repeatedly cracked down on dissenting political views, is considering requirements for patrolling Internet content that is strikingly similar to the framework proposed in H.R. 3125. The Turkish government is considering creating a watchdog body of government officials who could order "registered Internet corporations, public and private, to take any measures the watchdog body may request" against Internet communications by those with "evil intentions."[46]

Finally, the potential for blocking to become a tool for government censorship is demonstrated by Saudi Arabia, which requires all ISPs to be linked through a central node in Riyadh. This enables the Saudi government to block all pornographic websites as well as access to any site that the government believes could stir up religious hatred.[47] These are not precedents this country or this Congress should support.

Another concern that we have stems from the harm that H.R. 3125's mandatory blockage provisions will cause to the Internet in general and to smaller ISPs in particular. The burdens on smaller ISPs could prove particularly devastating. It is one thing to ask a multi-billion dollar company such as AOL to institute complex blocking requirements; it is quite another to ask a fledgling ISP provider or a new technology firm to change his or her business to conform to the blocking requirements of this bill. Thus, for the thousands of small start-up ISPs and other telecommunications firms, compliance with the blockage provisions would be expensive

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[44] Time.com Digital Daily Edition, http://www.time.com/time/daily/0,2960,42462–101000405,00.html (April 9, 2000).

[45] Letter to Senate Judiciary Chairman Orrin Hatch from the ACLU, Americans for Tax Reform, the Association of Concerned Taxpayers, Citizens for a Sound Economy, the Competitive Enterprise Institute, the First Amendment Coalition for Expression, the Interactive Services Association, the Small Business Survival Committee, and the United States Internet Council (October 8, 1997).

[46] Elif Unal, "Turkey Debates Cyberspace Controls," Reuters.com, http://dailynews.yahoo.com/h/nm/20000416/wr/turkey—internet—1.html (April 18, 2000).

[47] Frank Gardner, "Saudi censors say they're winning the war against porn," POLITECH, http://www.politech.bot.com (May 10, 2000).

and invasive. Either the small ISP would have to dedicate personnel and resources to repeatedly reprogram its computer systems to block an ever-changing list of online locations where the gambling sites are located—resources that could have been spent on innovation and growth—or the ISP would have to spend funds that otherwise could be used for capital investment on paying lawyers to defend against a temporary restraining order or an injunction.

Supporters of the bill would argue that much of its framework was drawn from the Digital Millennium Copyright Act (DMCA),[48] which contains a similar blocking provision. However, there are important differences between the DMCA and H.R. 3125. Unlike H.R. 3125, the DMCA's blocking provisions require that the ISP be in violation of the law before a blocking injunction can issue. Under H.R. 3125, a blocking injunction can issue regardless of whether the ISP has any complicity in illegal activity. And, as discussed below, the threshold for issuing an injunction under the DMCA appears to be substantially higher than under H.R. 3125.

We are also concerned that despite all of the threats this bill poses to civil liberties and privacy, it will all be for naught, as the provisions are likely to carry little real enforcement value. As one representative of the ISP industry noted in testimony during consideration of a substantially similar bill that was considered in the last Congress:

> If an ISP receives a court order specifying a list of sites to be blocked, it can attempt to block access to these sites. However, as soon as the targeted site moves to another IP (Internet Protocol) address, as it inevitably will do, the block is worthless. Sites can change addresses within hours. Efforts to keep the blocks updated would require hundreds of thousands of employee hours, while employees attempt, with dubious likelihood of timely success, to track down the new location of the targeted site.[49]

IV. THE GENERAL INJUNCTION PROVISIONS ARE OVERBROAD

It is also important to note that H.R. 3125 includes a broad general injunction provision which applies to anyone other than an ISP or Interactive Computer Service Provider.[50] Although this provision does require a court order, its scope is incredibly broad, and it could well burden all sorts of unsuspecting parties with little obvious relationship to illegal gambling. As talking points provided by AT&T explained, the injunctive relief provisions "would give courts sweeping power to issue injunctions against 'any person to prevent a violation' of the statute, regardless of whether that person had any involvement in criminal activity."

These general injunction provisions could allow a State attorney general to launch a "fishing expedition" in which it enlists the help of an e-mail service to review all of its subscriber accounts for gambling references, seeking to prevent search engines from accessing any website with any gambling in it (no matter how benign, such as Gamblers Anonymous), and to limit advertising for these

[48] Section 512(c) of the DMCA, Pub. L. 105–304, 112 Stat. 2879–2881 (105th Cong. 2d Sess.).
[49] Testimony of David G. Jemmett, President, WinStar GoodNet, Hearing on H.R. 2380 before the House Comm. on the Judiciary, Subcomm. On Crime, 105th Cong., 2d Sess. (June 24, 1998).
[50] Subsections (d)(3) and (d)(4)(D) of H.R. 3125.

websites in newspapers, television, radio and other outlets, to cite but a few possible examples. Moreover, it is not a stretch to realize that this provision could authorize a State attorney general to search through millions of credit card receipts or to prohibit extending credit to users of certain specified websites, legitimate or otherwise. In this regard, the Department of Justice has previously noted that the Internet gambling prohibition "may have serious economic and societal consequences for Internet usage generally" and "is likely to promote a spate of litigation over what solutions are feasible."

The standard for issuing injunctive relief under the bill may well encourage law enforcement officials to abuse this authority. Not only would H.R. 3125 authorize injunctive relief against any person, the bill would empower a court to issue such relief if there is "probable cause to believe that such subscriber is using that access to violate this section." It is inappropriate to import the probable cause standard from fourth amendment search and seizure criminal law jurisprudence to the injunctive relief criteria under H.R. 3125. It is arguably lower—and certainly different—from the criteria for preliminary injunctive relief under rule 65 of Federal Rules of Civil Procedure, which requires a court to find a reasonable likelihood of success on the merits, no adequate remedy at law, irreparable injury, and a balance of hardships weighing in the moving party's favor; or the DMCA, which also requires a court to weigh the burdens and balance the hardships.[51] Not only is the standard itself easier to satisfy than that which is in place under rule 65 or the DMCA, H.R. 3125 would authorize its issuance against a party without any requirement that law enforcement give the enjoined party notice and an opportunity to be heard.

V. H.R. 3125 CREATES A CONFUSING PATCHWORK OF INCONSISTENT LAWS THAT REGULATE THE INTERNET

H.R. 3125 sets up the wrong model for how to regulate the Internet because it creates a patchwork of inconsistent Internet laws that conflict with existing laws that govern the physical world. The Wire Communications Act, 18 U.S.C. § 1084, already governs Internet gambling in that the Internet is a "wire communications facility" under the Act. Rather than amending this statute to clarify its applicability to new types of Internet communications, H.R. 3125 would create a new section of the code, 18 U.S.C. § 1085, that would overlap with—and be inconsistent with—existing law.

The proposed section 1085 would conflict with existing laws on gambling. Whereas the Wire Communications Act outlaws all inter-

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[51] F.R.C.P. Rule 65. The criteria for injunctive relief under § 512(j) of the DMCA, Pub. L. 105–304, 112 Stat. 2885 (Oct. 28, 1998), require the court to consider:

> (A) whether such an injunction, either alone or in combination with other such injunctions issued against the same service provider under this subsection, would significantly burden either the provider or the operation of the provider's system or network;
>
> (B) the magnitude of the harm likely to be suffered by the copyright owner in the digital network environment if steps are not taken to prevent or restrain the infringement;
>
> (C) whether implementation of such an injunction would be technically feasible and effective, and would not interfere with access to noninfringing material at other online locations; and
>
> (D) whether other less burdensome and comparably effective means of preventing or restraining access to the infringing material are available.

state bets or wagers that use a "wire communications facility" (including those that use the Internet), H.R. 3125 would create a special set of rules and exceptions that apply to Internet activity only. Thus, some activity would be legal under the proposed Section 1085, but illegal under the existing Section 1084. One sure way to spur litigation and quelch innovation is to create a patchwork of laws that conflict with each other. Yet that is exactly what H.R. 3125 does.

If we are going to regulate content on the Internet—as supporters of the bill are intent on doing—we should not create a hodge-podge of Internet-specific laws that layer on top of and conflict with existing law. Legislation should treat physical activity and cyber-activity the same way. As the Department of Justice has stated, "If activity is prohibited in the physical world but not on the Internet, then the Internet becomes a safe haven for that criminal activity."[52] It is hard to understand why conduct previously deemed unacceptable in the physical world and over the telephone should now be legal when carried out in cyberspace.

The distinction between "Internet" activity and other types of "wire communications" activity is a false one. Indeed, any effort to distinguish Internet transmissions from other methods of communication will likely create artificial and unworkable distinctions. For example, many expect digital Internet telephony to grow in popularity over the next few years. How would we deal with gambling that occurred over this technology, which would use the Internet for voice communications? Would the applicable law be the proposed Section 1085, which is designed specifically for the Internet, or under Section 1084, which deals with wire communications in general, but also includes the Internet?[53]

Finally, we note the inconsistency that is created by H.R. 3125's treatment of individual Internet subscribers. Although individuals come within the definition of "subscribers" who may be the target of a notice and takedown, and are "person[s]" who may be enjoined, the criminal penalties of H.R. 3125 would apply only to a "person engaged in a gambling business."[54] This term is not defined in current law by 18 U.S.C. § 1081, but it has been interpreted by courts to mean persons who facilitate or accept bets,[55] and to exclude the individual bettors.[56] Thus, individuals not engaged in gambling businesses are subject to sanctions under H.R. 3125, but not under current law.

CONCLUSION

H.R. 3125 will establish an unfortunate and dangerous precedent for selective regulation of content on the Internet. The exemptions in the bill eliminate the ability of the bill's sponsors to claim that they are taking a principled or coherent approach to the regulation

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[52] Department of Justice Letter, at 1.
[53] DiGregory Testimony, at 2.
[54] Subsections (b)(1) and (b)(2) of H.R. 3125.
[55] See, e.g., *United States* v. *Reeder*, 614 F.2d 1179 (8th Cir. 1980); *Cohen* v. *United States*, 378 F.2d 751 (7th Cir. 1967); 5th Circuit Pattern Jury Instruction (Instructing jurors to find that a person is engaged in a gambling business when the "defendant was prepared on a regular basis to accept bets placed by others, that is, the defendant was a 'bookie'.").
[56] See, e.g., *United States* v. *Anderson*, 542 F.2d 428, 436 (7th Cir. 1976); *United States* v. *Baborian*, 528 F. Supp. 324 (D.R.I. 1981).

of Internet gambling. With respect to the purported policy goals of the bill's sponsors and the concern for regulating the Internet, the bill represents the worst of both worlds. The bill would legalize the use of the Internet for the most addictive types of gambling, while excluding the use of the Internet for more benign activities, like State lotteries, charitable gaming, or Bingo. And to carry out its goals, the bill would conscript anyone who provides computer services into serving as a handmaiden for law enforcement officials who want to remove sites that law enforcement deems unlawful.

As more and more activity—both commercial and criminal—migrates to the Internet, we should resist the urge to create Internet-specific legislation that sets a different standard for cyber-activity as compared to activity in the physical world. A checkerboard of inconsistent and overlapping laws will only create legal uncertainty and will not benefit Internet providers or Internet users. It is hardly surprising that this scattershot and unprincipled approach to content-based regulation of the Internet would give rise to an enforcement scheme that disregards the due process and privacy rights of website operators and individual subscribers. Given the significant concerns that have been voiced concerning privacy rights and effective law enforcement on the Internet, we must oppose H.R. 3125.

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