Union Calendar No. 356

107TH CONGRESS  
2D SESSION  

H. R. 3215  

[Report No. 107-591, Part I]

To amend title 18, United States Code, to expand and modernize the prohibition against interstate gambling, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

November 1, 2001

Mr. Goodlatte (for himself, Mr. Boucher, Mr. Smith of Texas, Ms. Jackson-Lee of Texas, Mr. Oxley, Mr. LaFalce, Mr. Leach, Mr. Wolf, Mr. Roemer, Mr. Gibbons, Mr. Baxus, Mrs. Jo Ann Davis of Virginia, Mr. Duncan, Mr. Fletcher, Mr. Forbes, Mr. Goode, Mr. Graham, Mr. Lewis of Kentucky, Mr. Pitts, Mr. Rogers of Michigan, Mr. Shadegg, Mr. Sweeney, Mr. Tauzin, Mr. Vitter, Mr. Wamp, Mr. Peterson of Pennsylvania, Mrs. Kelly, and Mr. Hastings of Florida) introduced the following bill; which was referred to the Committee on the Judiciary.

July 18, 2002

Reported with an amendment and referred to the Committee on Energy and Commerce for a period ending not later than July 19, 2002, for consideration of such provisions of the bill and amendment as fall within the jurisdiction of that committee pursuant to clause 1(f), rule X.

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

July 19, 2002

Additional sponsors: Mr. Ehlers, Mr. Ballenger, Mr. Tancredo, Mr. Stump, Mr. Callahan, Mr. Brown of South Carolina, Mr. Culberson, Mr. Boehner, Mr. LaTourette, Mr. Coble, Mr. Lipinski, Mr. Delay, Mr. Foley, Mr. LaHood, Mr. Baker, Mr. Everett, Mr. Deal of Georgia, Mr. Collins, Mr. Johnson of Illinois, Mr. Reynolds, Mr. Combest, Mr. Terry, Mr. Hansen, Mr. Nethercutt, Ms. Pryce of Ohio, Mr. Pence, Ms. Hart, Mr. Keller, Mr. Hostettler, Mr. Pickering, Mr. Akin, Mr. Bass, Mr. Wicker, Ms. Northup, Mr. Jeff Miller of Florida, Mr. Crenshaw, Mr. McInnis, Mr. Bartlett of Maryland, Mrs. Roukema, Mr. Peterson of Min-
A BILL

To amend title 18, United States Code, to expand and modernize the prohibition against interstate gambling, and for other purposes.

Be it enacted by the Senate and House of Representa-

[For text of introduced bill, see copy of bill as introduced on November 1, 2001]
SECTION 1. SHORT TITLE.

This Act may be cited as the “Combating Illegal Gambling Reform and Modernization Act”.

SEC. 2. DEFINITIONS.

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

(1) by designating the five undesignated paragraphs that begin with “The term” as paragraphs (1) through (5), respectively;

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

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

(B) by inserting “satellite, microwave,” after “cable,”; and

(C) by inserting “(whether fixed or mobile)” after “connection”; and

(3) by adding at the end the following:

“(6) 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, not skill, 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); and

“(C) 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) or to any transaction subject to an exemption pursuant to section 4(c) of such Act;

“(iii) any over-the-counter derivative instrument;

“(iv) a contract of indemnity or guarantee;
“(v) a contract for life, health, or accident insurance;

“(vi) participation in any game or contest in which participants do not stake or risk anything of value other than—

“(I) personal efforts of the participants in playing the game or contest or obtaining access to the Internet; or

“(II) point or credits that the sponsor of the game or contest provides to participants free of charge and that can be used or redeemed only for participation in games or contests offered by the sponsor; or

“(vii) participation in any simulation sports game or educational game or contest in which (if the game or contest involves a team or teams) all teams are fictional and no team is a member of an amateur or professional sports organization (as those terms are defined in section 3701 of title 28) and that meets the following conditions:

“(I) All prizes and awards offered to winning participants are established and made known to the participants
in advance of the game or contest and their value is not determined by the number of participants or the amount of any fees paid by those participants.

“(II) All winning outcomes reflect the relative knowledge and skill of the participants and are determined predominantly by accumulated statistical results of the performance of individuals (athletes in the case of sports events) in multiple real-world sporting or other events.

“(III) No winning outcome is based—

“(aa) on the score, point-spread or any performance or performances of any single real-world team or any combination of such teams; or

“(bb) solely on any single performance of an individual athlete in any single real-world sporting or other event.

“(7) The term ‘gambling business’ means a business of betting or wagering;
“(8) The term ‘information assisting in the placing of bets or wagers’ means information knowingly transmitted by an individual in a gambling business for use in placing, receiving, making, or otherwise enabling or facilitating a bet or wager and does not include—

“(A) any posting or reporting of any educational information on how to make a legal bet or wager or the nature of betting or wagering, as long as such posting or reporting does not solicit or provide information for the purpose of facilitating or enabling the placing or receipt of bets or wagers in a jurisdiction where such betting is illegal; or

“(B) advertising relating to betting or wagering in a jurisdiction where such betting or wagering is legal, as long as such advertising does not solicit or provide information for the purpose of facilitating or enabling the placing or receipt of bets or wagers in a jurisdiction where such betting is illegal; or

“(C) information that is exchanged between or among 1 or more pari-mutuel wagering facilities licensed by the State or approved by the foreign jurisdiction in which the facility is located,
and any support services, wherever located, if the
information exchanged is used exclusively for the
pooling or processing of bets or wagers made by
or with the facility or facilities under each
State’s applicable law.

“(9) The term ‘person’ includes a government
(including any governmental entity (as defined in
section 3701(2) of title 28)).

“(10) The term ‘State’ means a State of the
United States, the District of Columbia, or a com-
monwealth, territory, or possession of the United
States.

“(11) The terms ‘credit’, ‘creditor’, and ‘credit
card’ have the meanings given such terms in section
103 of the Truth in Lending Act.

“(12) The term ‘electronic fund transfer’—
“(A) has the meaning given such term in
section 903 of the Electronic Fund Transfer Act;
or
“(B) any fund transfer covered by Article
4A of the Uniform Commercial Code, as in effect
in any State.

“(13) The term ‘financial institution’ has the
meaning given such term in section 903 of the Elec-
tronic Fund Transfer Act.
“(14) The terms ‘money transmitting business’ and ‘money transmitting service’ have the meanings given such terms in section 5330(d) of title 31, United States Code.

“(15) The term ‘Tribe’ or ‘tribal’ means an Indian tribe, as defined under section 4(5) of the Indian Gaming Regulatory Act of 1988).”.

SEC. 3. MODIFICATION OF EXISTING PROHIBITION.

(a) In General.—Section 1084 of title 18, United States Code, is amended to read as follows:

“§ 1084. Use of a communication facility to transmit bets or wagers; Penalties

“(a) Except as otherwise provided in this section, whoever, being engaged in a gambling business, knowingly uses a communication facility—

“(1) for the transmission in interstate or foreign commerce, within the special maritime and territorial jurisdiction of the United States, or to or from any place outside the jurisdiction of any nation with respect to any transmission to or from the United States, of bets or wagers, or information assisting in the placing of bets or wagers; or

“(2) for the transmission of a communication in interstate or foreign commerce, within the special maritime and territorial jurisdiction of the United
States, or to or from any place outside the jurisdiction of any nation with respect to any transmission to or from the United States, which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers;

shall be fined under this title or imprisoned not more than five years, or both.

“(b)(1) Except as provided in paragraph (2), whoever, being engaged in a gambling business, knowingly accepts, in connection with the transmission of a communication in interstate or foreign commerce, within the special maritime and territorial jurisdiction of the United States, or to or from any place outside the jurisdiction of any nation with respect to any transmission to or from the United States of bets or wagers or information assisting in the placing of bets or wagers—

“(A) credit, or the proceeds of credit, extended to or on behalf of another (including credit extended through the use of a credit card);

“(B) an electronic fund transfer or funds transmitted by or through a money transmitting business, or the proceeds of an electronic fund transfer or money transmitting service, from or on behalf of the other person;
“(C) any check, draft, or similar instrument which is drawn by or on behalf of the other person and is drawn on or payable through any financial institution; or

“(D) the proceeds of any other form of financial transaction as the Secretary of the Treasury may prescribe by regulation which involves a financial institution as a payor or financial intermediary on behalf of or for the benefit of the other person,

shall be fined under this title or imprisoned not more than five years, or both.

“(2) Paragraph (b)(1) does not apply if the use of a communication facility for the transmission of bets or wagers or information assisting in the placing of bets or wagers is permitted under subsections (c) or (d).

“(c) Nothing in this section prohibits—

“(1) the transmission of information assisting in the placing of bets or wagers for use in news reporting if such transmission does not solicit or provide information for the purpose of facilitating or enabling the placing or receipt of bets or wagers in a jurisdiction where such betting is illegal;

“(2) the transmission of information assisting in the placing of bets or wagers from a State or foreign country where such betting or wagering is permitted
under Federal, State, tribal, or local law into a State
or foreign country in which such betting on the same
event is permitted under Federal, State, tribal, or
local law; or

“(3) the interstate transmission of information
relating to a State-specific lottery between a State or
foreign country where such betting or wagering is
permitted under Federal, State, tribal, or local law
and an out-of-State data center for the purposes of as-
sisting in the operation of such State-specific lottery.

“(d) Nothing in subsection (c) or (d) shall allow the
use of a communication facility for the transmission of bets
or wagers involving the purchase of a chance or opportunity
to win a lottery, or the use of a communication facility
for the transmission of information assisting in the placing
of bets or wagers involving the purchase of a chance or op-
portunity to win a lottery, except that communication fa-
cilities may be used for the transmission of such bets or
wagers and the transmission of information assisting such
bets or wagers as long as such bets or wagers are placed
on the premises of a retail outlet that is open to the public
and licensed by the State in which it is located to sell
chances or opportunities to win a lottery.

“(e) Nothing in this section prohibits the use of a com-
munication facility for the transmission of bets or wagers
or information assisting in the placing of bets or wagers, if—

“(1) at the time the transmission occurs, the individual or entity placing the bets or wagers or information assisting in the placing of bets or wagers, the gambling business, and any facility or support service processing those bets or wagers are physically located in the same State, and the State has a secure and effective customer verification and age verification system to assure compliance with age and residence requirements, and for class II or class III gaming under the Indian Gaming Regulatory Act, are physically located on Indian lands within that State;

“(2) the State or Tribe has explicitly authorized such bets and wagers;

“(3) the State has explicitly authorized and licensed the operation of the gambling business, any facility processing the bets and wagers, and the support service within its borders or the Tribe has explicitly authorized and licensed the operation of such gambling business, any facility processing the bets and wagers, and the support service on Indian lands within its jurisdiction;
“(4) with respect to class II or class III gaming, the game is permitted under and conducted in accordance with the Indian Gaming Regulatory Act;

“(5) with respect to class III gaming under the Indian Gaming Regulatory Act, the game is authorized under, and is conducted in accordance with, the respective Tribal-State compact of the Tribe having jurisdiction over the Indian lands where the individual or entity placing the bets or wagers or information assisting in the placing of bets or wagers, the gambling business, and any facility or support service processing those bets or wagers are physically located; and

“(6) with respect to class III gaming under the Indian Gaming Regulatory Act, each such Tribal-State compact expressly provides that the game may be conducted using a communication facility to transmit bets or wagers or information assisting in the placing of bets or wagers.

“(f) Nothing in this section creates immunity from criminal prosecution under any laws of any State or Tribe.

“(g) Nothing in this section authorizes activity that is prohibited under chapter 178 of title 28, United States Code.
“(h) When any common carrier, subject to the jurisdiction of the Federal Communications Commission, is notified in writing by a Federal, State, tribal or local law enforcement agency, acting within its jurisdiction, that any communication facility furnished by it is being used or will be used by its subscriber for the purpose of transmitting or receiving gambling information, in interstate or foreign commerce, within the special maritime and territorial jurisdiction of the United States, or to or from any place outside the jurisdiction of any nation with respect to any transmission to or from the United States in violation of Federal, State, tribal or local law, it shall discontinue or refuse, the leasing, furnishing, or maintaining of such facility, after reasonable notice to the subscriber, but no damages, penalty or forfeiture, civil or criminal, shall be found against any common carrier for any act done in compliance with any notice received from a law enforcement agency. Nothing in this section shall be deemed to prejudice the right of any person affected thereby to secure an appropriate determination, as otherwise provided by law, in a Federal court or in a State, tribal, or local tribunal or agency, that such facility should not be discontinued or removed, or should be restored.

“(i)(1) A Federal, State, tribal, or local law enforcement agency, acting within its jurisdiction may, in a civil
action, obtain injunctive or declaratory relief to restrain
or prevent any person from paying or assisting in the pay-
ment of bets or wagers, or communicating information as-
sisting in the placing of bets or wagers, in interstate or
foreign commerce, within the special maritime and terri-
torial jurisdiction of the United States, or to or from any
place outside the jurisdiction of any nation with respect to
any transmission to or from the United States in violation
of Federal, State, tribal, or local law.

“(2) No damages, penalty, or forfeiture, civil or crimi-
nal, shall be found against any person or entity for any
act done in compliance with any notice received from a law
enforcement agency.

“(3) Relief granted under paragraph (1) against an
interactive computer service (as defined in section 230(f)
of the Communications Act of 1934) shall—

“(A) be limited to the removal of, or disabling of
access to, an online site violating this section, or a
hypertext link to an online site violating this section,
that resides on a computer server that such service
controls or operates; except this limitation shall not
apply if the service is violating this section or is in
active concert with a person who is violating this sec-
tion and receives actual notice of the relief;
“(B) be available only after notice to the interactive computer service and an opportunity for the service to appear are provided;

“(C) not impose any obligation on an interactive computer service to monitor its service or to affirmatively seek facts indicating activity violating this section;

“(D) specify the interactive computer service to which it applies; and

“(E) specifically identify the location of the online site or hypertext link to be removed or access to which is to be disabled.

“(j) Nothing in this section allows the use of a communication facility for the purpose of placing a bet or wager or the use of a communication facility for the purpose of transmitting information assisting in the placement of bets or wagers that was illegal as of June 6, 2002.”.

(b) Clerical Amendment.—The table of sections at the beginning of chapter 50 of such title is amended so that the item relating to section 1084 reads as follows:

“1084. Use of a communication facility to transmit bets or wagers; penalties.”.
A BILL

To amend title 18, United States Code, to expand and modernize the prohibition against interstate gambling, and for other purposes.

JULY 18, 2002

Reported with an amendment and referred to the Committee on Energy and Commerce for a period ending no later than July 19, 2002, for consideration of such provisions of the bill and amendment as fall within the jurisdiction of that committee pursuant to clause 1(f), rule X.

JULY 19, 2002

Committee on Energy and Commerce discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed.