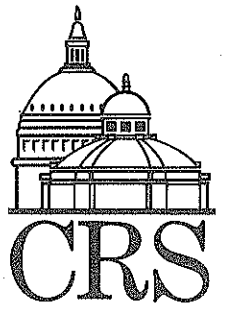
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CRS Report for Congress

Internet Gambling: A Sketch of Legislative Proposals (With Appendix)

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ABSTRACT

This is a copy of *Internet Gambling: A Sketch of Legislative Proposals*, CRS Report 98-158 (revised), with the changes in existing law produced by S. 2260 and H.R. 4427 appended. This report will be updated as circumstances dictate.

The Congressional Research Service works exclusively for the Congress, conducting research, analyzing legislation, and providing information at the request of committees, Members, and their staffs.

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Internet Gambling:
A Sketch of Legislative Proposals
(With Appendix)

Summary

The Senate passed the Internet Gambling Prohibition Act of 1998 (Senator Kyl) (S.Amdt. 3266) as an amendment to its Commerce, Justice, State appropriations bill (S.2260), 144 *Cong.Rec.* S8801-803 (daily ed. July 23, 1998)(text). Representative Stearns introduced the House companion, H.R. 4350 a week later. Representative McCollum, chair of the House Crime Subcommittee, offered a third measure (H.R. 4427) for himself and the sponsors of an earlier House proposal, Representatives Goodlatte and LoBiondo. Discussion here is limited to these three bills.

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Internet Gambling: A Sketch of Legislative Proposals (With Appendix)

Background

The Senate passed the Internet Gambling Prohibition Act of 1998 (Senator Kyl) (S.Amdt. 3266) as an amendment to its Commerce, Justice, State appropriations bill (S.2260), 144 *Cong.Rec.* S8801-803 (daily ed. July 23, 1998)(text). Representative Stearns introduced the House companion, H.R. 4350 a week later. Representative McCollum, chair of the House Crime Subcommittee, offered a third measure (H.R. 4427) for himself and the sponsors of an earlier House proposal, Representatives Goodlatte and LoBiondo. Discussion here is limited to these three bills.[1]

The legality and regulation of gambling is first and foremost a matter of state law that varies considerably from state to state. The role of federal law has been to guard against unwelcome intrusions of interstate or international gambling into states where the activity in question has been outlawed.

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[1] Both Houses have held hearings this Congress on bills that outlaw Internet gambling, *Internet Crimes Affecting Consumers: Hearing Before the Subcomm. on Technology, Terrorism and Government Information of the Senate Comm. on the Judiciary on S. 474*, 105th Cong., 1st Sess. (1997)(*Senate Hearing I*); *The Internet Gambling Act of 1997: Hearing Before the Subcomm. on Technology, Terrorism and Government Information of the Senate Comm. on the Judiciary on S. 474*, 105th Cong., 1st Sess. (1997)(*Senate Hearing II*); Hearings of the Subcommittee on Crime of the House Committee on the Judiciary on H.R. 2380 (*House Hearing*) were held during the first week of February this year and have yet to be printed. H.R. 2380 was introduced by Representative Goodlatte for himself and Representative LoBiondo; S. 474 was introduced by Senator Kyl for himself and Senators Feinstein, Graham, Hutchinson, Grassley, Johnson, Lieberman, Gorton, Bryan, Reid, Ashcroft, and Bond; and reported out of committee without a written report. Amend. 3266 evolved from S. 474 and during debate was referred to as S. 474, although the amendment passed by the Senate is clearly distinct.

Several other bills have been introduced that in one way or another impact Internet gambling, *e.g.*, H.R. 325 (to amend the Internal Revenue Code to provide that the unrelated business income tax shall apply to the gaming activities of Indian tribes); H.R. 334 (to amend the Indian Gaming Regulatory Act to require an individual participating in class II or class III Indian gambling be physically present at the authorized gaming activity, inter alia); S. 972 (to amend the Internal Revenue Code to prohibit any deduction for gambling losses); S. 1077 (to require those Indian gaming establishments not bound by the reporting requirements of a financial institution to adhere to 26 U.S.C. 6050I, an anti-money laundering provision which imposes reporting demands for transactions involving substantial amounts of cash).

For background information on existing law see, *Internet Gambling: Overview of Federal Criminal Law*, CRS REP. No. 97-619A (Feb. 2, 1998).

During congressional hearings witnesses argue that unregulated Internet gambling threatens the effectiveness of this approach.[2] Some contend that it fosters consumer fraud,[3] gambling addiction,[4] corruption of our young,[5] and affords a possible avenue for money laundering.[6] They urge that Internet service providers be used as an avenue of regulatory enforcement,[7] that the Department of Justice be encouraged to prosecute more vigorously,[8] and/or that every effort be made to secure international cooperation for enforcement.[9]

Others expressed reservations that adjustments in the Wire Act designed to confront the problem of Internet gambling might inadvertently unravel the existing protection and accommodating complexities of the Act[10] and that locking up recreational gamblers would be ill-advised and unproductive.[11] They also suggested that Internet gambling should be regulated rather than outlawed[12] and that Congress should await the report and recommendations of the National Gambling Impact Study Commission.[13]

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[2] *Senate Hearing II* at 1 (opening statement of Sen. Kyl); 8 (Wis.Att'y Gen. James E. Doyle); *House Hearing* (jt. statement of Reps. Goodlatte & LoBiondo).

[3] *House Hearing* (jt. statement of Reps. Goodlatte & LoBiondo); (testimony of Frank J. Fahrenkopf, Jr., American Gaming Association).

[4] *Senate Hearing II*, at 18-9 (prepared statement of Ann Geer, National Coalition Against Gambling Expansion).

[5] *Senate Hearing II*, at 14 (statement of Jeff Pash, Executive Vice President, National Football League).

[6] *Senate Hearing I*, at 24 (prepared statement of Dep. Att'y Gen. Robert S. Litt); *Senate Hearing II*, at 5 (statement of Sen. Bryan)

[7] *House Hearing* (testimony of Bill Saum, National Collegiate Athletic Association).

[8] *House Hearing* (testimony of Bernard P. Horn, National Coalition Against Gambling Expansion).

[9] *Senate Hearing II*, at 24 (statement of Anthony Cabot, Esq.).

[10] *Senate Hearing II*, at 4 (prepared statement of Sen. McConnell); 46 (prepared statement of the American House Council); *House Hearing* (testimony of Douglas Donn, Gulfstream Park Racing Association).

[11] *Senate Hearing II*, at 47 (prepared statement of Sue Schneider, Chairman, Interactive Gaming Council).

[12] *House Hearing* (testimony of Frank Miller, North American Gaming Regulators Association).

[13] *House Hearing* (testimony of Sue Schneider, Interactive Gaming Council).

S. 2260/H.R. 4350	H.R. 4427
S. 2260 (H.R. 4276 after substituting the language of S. 2260) as passed by the Senate and H.R. 4350 as introduced in the House:	H.R. 4427, as introduced:
• expressly outlaw Internet gambling even if lawful under applicable state law (violations are punishable by imprisonment for not more than 3 months and/or a fine of not more than the greater of 3 times the amount risked or $500)(18 U.S.C. 1085)	○ amends the Wire Act's definition of communications facilities to include not only wire and cable transmissions but also radio, electromagnetic, photo-optical, photoelectric transmissions and receipts; establishes clear bettor liability
• expressly outlaw engaging in the Internet gambling business even if lawful under applicable state law (violations are punishable by imprisonment for not more than 4 years and/or a fine of not more than the greater of the amount risked or $20,000)(18 U.S.C. 1085)	○ increases the penalties for violations of the Wire Act and includes customers of gambling businesses (for gambling entrepreneurs, maximums of 4 years imprisonment (up from 2 years)/$250,000 for individuals, $500,000 for organizations; for bettors, 6 months/$5,000) (not previously prosecutable)
• exempt from the Internet gambling prohibitions private computer network gambling involving state lotteries, racing or parimutuels or conducted entirely on Indian land (other than proxy betting) (18 U.S.C. 1085)	○ exempts from Wire Act coverage (to the extent betting or wagering is lawful under applicable state law) transmission of information assisting placement of bets, or of parimutuel conducted by interactive computer service
• amend the Wire Act (18 U.S.C. 1081) by adding a definition of "bets or wagers" (staking or risking something of value upon the outcome of a contest of others, sporting event of others, or of any game of chance) that would apply to both Internet gambling and other gambling by wire proscriptions of the Wire Act (this assumes that the term "bet or wager" used in the Internet gambling section (18 U.S.C. 1085) is intended to be include within the term "bets or wagers")	○ adds a definition of "bets or wagers" to the Wire Act that seems to exclude gambling decided other than predominantly by chance (e.g., gambles on contests or events decided by skill, strength, speed, size, training, experience, etc. are not bets or wagers)

- amend the Wire Act (18 U.S.C. 1081) by adding a definition of "information assisting in the placing of a bet or wager" (information intended to be used by one in the gambling business to place or accept a bet or wager) that would apply to both Internet gambling and the other gambling by wire proscriptions of the Wire Act

- provide federal and state officials access to federal injunctive relief for Internet gambling violations (under 18 U.S.C. 1085); establish special procedures when injunctive relief is sought against Internet service providers

  - adds a relatively narrow definition of "information assisting in the placing of bets or wagers" to the Wire Act (includes necessary information but not information that is merely useful; includes information transmitted from the gambler to the bettor but not information transmitted to the gambler from a bettor or some third party)

  - expands the duty of communications common carriers to discontinue service being used for illegal gambling purposes; establishes procedures to enable federal and state officials to enforce provisions through court orders and other forms of injunctive relief

Appendix

Amendment 3266 to S.2260 as Passed by the Senate: Changes in Existing Federal Gambling Laws 18 U.S.C. (In Italics)

Sec. 1081. Definitions

As used in this chapter:

(1) The term "gambling ship" means a vessel used principally for the operation of one or more gambling establishments. Such term does not include a vessel with respect to gambling aboard such vessel beyond the territorial waters of the United States during a covered voyage (as defined in section 4472 of the Internal Revenue Code of 1986 as in effect on January 1, 1994).

(2) The term "gambling establishment" means any common gaming or gambling establishment operated for the purpose of gaming or gambling, including accepting, recording, or registering bets, or carrying on a policy game or any other lottery, or playing any game of chance, for money or other thing of value.

(3) The term "vessel" includes every kind of water and air craft or other contrivance used or capable of being used as a means of transportation on water, or on water and in the air, as well as any ship, boat, barge, or other water craft or any structure capable of floating on the water.

(4) The term "American vessel" means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country, if such vessel is owned by, chartered to, or otherwise

controlled by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any State.

(5) The term "wire communication facility" means any and all instrumentalities, personnel, and services (among other things, the receipt, forwarding, or delivery of communications) used or useful in the transmission of writings, signs, pictures, and sounds of all kinds by aid of wire, cable, or other like connection between the points of origin and reception of such transmission.

(6) 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, sporting event of others, or of any game of chance, upon an agreement or understanding that the person or another person will receive something of value based on that 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) includes any scheme of a type described in section 3702 of title 28, United States Code [relating to unlawful sports gambling];

(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; or

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

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

(8) INFORMATION ASSISTING IN THE PLACE 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 accept or place a bet or wager; and

(B) does not include—

(i) information concerning parimutuel pools that is exchanged 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 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, if that information is used only for processing bets or wagers made with that facility under applicable law;

(iii) information exchanged between or among 1 or more wagering facilities that are located within a single State and are licensed and regulated by that State, 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 under applicable State 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.

1084. Transmission of wagering information; penalties

(a) Whoever being engaged in the business of betting or wagering knowingly uses 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 on any sporting event or contest, or for the transmission of a wire communication 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 two years, or both.

(b) Nothing in this section shall be construed to prevent the transmission in interstate or foreign commerce of information for use in news reporting of sporting events or contests, or for the transmission of information assisting in the placing of bets or wagers on a sporting event or contest from a State or foreign country where betting on that sporting event or contest is legal into a State or foreign country in which such betting is legal.

(c) Nothing contained in this section shall create immunity from criminal prosecution under any laws of any State.

(d) When any common carrier, subject to the jurisdiction of the Federal Communications Commission, is notified in writing by a Federal, State, or local law enforcement agency, acting within its jurisdiction, 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, 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 or local tribunal or agency, that such facility should not be discontinued or removed, or should be restored.

(e) As used in this section, 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.

Sec. 1085. Internet gambling

(a) DEFINITIONS.— In this section:

(1) 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 for the purposes described in subsection (e); and

(ii) by which a person located within a State must subscribe 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) a customer verification system 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.

(2) GAMBLING BUSINESS.—The term "gambling business" means a business that is conducted at a gambling establishment, or that—

(A) involves—

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

(ii) offers to engage in placing, receiving, or otherwise making bets or wagers;

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

(C) 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 during any 24-hour period.

(3) INTERACTIVE COMPUTER SERVICE.—The term "interactive computer service" means any information service, system, or access software provider that uses a public communication infrastructure or operates in interstate or foreign commerce to provide or enable computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet.

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

(5) PERSON.—The term "person" means any individual, association, partnership, joint venture, corporation, State or political subdivision thereof, department, agency, or instrumentality of a State or political subdivision thereof, or any other government, organization, or entity.

(6) 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.

(7) 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.

(b) GAMBLING

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

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

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

(2) PENALTIES.—A person who violates paragraph (1) shall be—

(A) fined in an amount that is not more than the greater of—

(i) three times the greater of—

(I) the total amount that the person is found to have wagered through the Internet or other interactive computer service; or

(II) the total amount that the person is found to have received as a result of such wagering; or

(ii) $500;

(B) imprisoned not more than 3 months; or

(C) both.

(c) GAMBLING BUSINESSES

(1) PROHIBITION.—Subject to subsection (e), 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 paragraph (1) shall be—

(A) fined in an amount that is not more than the greater of—

(i) the amount that such person received in bets or wagers as a result of engaging in that business in violation of this subsection; or

(ii) $20,000;

(B) imprisoned not more than 4 years; or

(C) both.

(d) PERMANENT INJUNCTIONS

Upon conviction of a person under this section, the court may, as an additional penalty, enter a permanent injunction enjoining the transmission of bets or wagers or information assisting in the placing of a bet or wager.

(e) EXCEPTIONS

(1) IN GENERAL.—Subject to paragraph (2), the prohibitions in this section shall not apply to any—

(A) otherwise lawful bet or wager that is placed, received, or otherwise made wholly intrastate for a State lottery or a racing or parimutuel activity, or a multi-State lottery operated jointly between 2 or more States in conjunction with State lotteries, (if the lottery or activity is expressly authorized, and licensed or regulated, under applicable Federal or State law) on—

(i) an interactive computer service that uses a private network, if each person placing or otherwise making that bet or wager is physically located at a facility that is open to the general public; or

(ii) a closed-loop subscriber-based service that is wholly intrastate; or

(B) otherwise lawful bet or wager for class II or class III gaming (as defined in section 4 of the Indian Gaming Regulatory Act (25 U.S.C. 2703)) that is placed, received, or otherwise made on a closed-loop subscriber-based service or an interactive computer service that uses a private network, if—

(i) each person placing, receiving, or otherwise making that bet or wager is physically located on Indian land; and

(ii) all games that constitute class III gaming are conducted in accordance with an applicable Tribal-State compact entered into under

section 11(d) of the Indian Gaming Regulatory Act (25 U.S.C. 2701(d)) by a State in which each person placing, receiving, or otherwise making that bet or wager is physically located.

(2) INAPPLICABILITY OF EXCEPTION TO BETS OR WAGERS MADE BY AGENTS OR PROXIES.—An exception under subparagraph (A) or (B) of paragraph (1) shall 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. Nothing in this paragraph shall 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.

(f) STATE LAW

Nothing in this section shall be construed to create immunity from criminal prosecution or civil liability under the law of any State.

_ U.S.C. _

CIVIL REMEDIES

(1) IN GENERAL.—

The district courts of the United States shall have original and exclusive jurisdiction to prevent and restrain violations of section 1085 of title 18, United States Code, as added by this section, by issuing appropriate orders.

(2) PROCEEDINGS.—

(A) INSTITUTION BY FEDERAL GOVERNMENT.—The United States may institute proceedings under this section. Upon application of the United States, the district court may enter a temporary restraining order or an injunction against any person to prevent a violation of section 1085 of title 18, United States Code, as added by 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.—Subject to subclause (ii), the attorney general of a State (or other appropriate State official) in which a violation of section 1085 of title 18, United States Code, as added by this section, is alleged to have occurred, or may occur, after providing written notice to the United States, may institute proceedings under this subsection. Upon application of the attorney general (or other appropriate State official) of the affected State, the district court may enter a temporary restraining order or an injunction against any person to prevent a violation of section 1085 of title 18, United States Code, as added by 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.

(ii) INDIAN LANDS.—With respect to a violation of section 1085 of title 18, United States Code, as added by this section, that is alleged to have occurred, or may occur, on Indian lands (as defined in section 4 of the Indian Gaming Regulatory Act (25 U.S.C. 2703)), the enforcement authority under clause (i) shall be limited to the remedies under the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.), including any applicable

Tribal-State compact negotiated under section 11 of that Act (25 U.S.C. 2710).

(C) ORDERS AND INJUNCTIONS AGAINST INTERNET SERVICE PROVIDERS.—Notwithstanding subparagraph (A) or (B), the following rules shall apply in any proceeding instituted under this paragraph in which application is made for a temporary restraining order or an injunction against an interactive computer service:

(i) SCOPE OF RELIEF:

(I) If the violation of section 1085 of title 18, United States Code, originates with a customer of the interactive computer service's system or network, the court may require the service to terminate the specified account or accounts of the customer, or of any readily identifiable successor in interest, who is using such service to place, receive or otherwise make a bet or wager, engage in a gambling business, or to initiate a transmission that violates such section 1085.

(II) Any other relief ordered by the court shall be technically feasible for the system or network in question under current conditions, reasonably effective in preventing a violation of section 1085, of title 18, United States Code, and shall not unreasonably interfere with access to lawful material at other online locations.

(III) No relief shall issue under clause (i)(II) if the interactive computer service demonstrates, after an opportunity to appear at a hearing, that such relief is not economically reasonable for the system or network in question under current conditions.

(ii) CONSIDERATIONS.—In the case of an application for relief under clause (i)(II), the court shall consider, in addition to all other factors that the court shall consider in the exercise of its equitable discretion, whether—

(I) such relief either singularly or in combination with such other injunctions issued against the same service under this paragraph, would seriously burden the operation of the service's system or network compared with other comparably effective means of preventing violations of section 1085 of title 18, United States Code;

(II) in the case of an application for a temporary restraining order or an injunction to prevent a violation of section 1085 of title 18, United States Code, by a gambling business (as is defined in such section 1085) located outside the United States, the relief is more burdensome to the service than taking comparably effective steps to block access to specific, identified sites used by the gambling business located outside the United States; and

(III) in the case of an application for a temporary restraining order or an injunction to prevent a violation of section 1085 of title 18, United States Code, as added by this section, relating to material or activity located within the United States, whether less burdensome, but comparably effective means are available to block access by a customer of the service's system or network to information or activity that violates such section 1085.

(iii) FINDINGS.—In any order issued by the court under this paragraph, the court shall set forth the reasons for its issuance, shall be specific in its terms, and shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained and the general steps to be taken to comply with the order.

(D) EXPIRATION.—Any temporary restraining order or preliminary injunction entered pursuant to this paragraph 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 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 proceedings under paragraph (2), a district court may enter a temporary restraining order against a person alleged to be in violation of section 1085 of title 18, United States Code, as added by 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, if the United States or the State, as applicable, demonstrates that there is probable cause to believe that the transmission at issue violates section 1085 of title 18, United States Code, as added by this section.

(B) EXPIRATION.—A temporary restraining order entered under this paragraph shall expire on the earlier of—

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

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

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

(4) RULE OF CONSTRUCTION.—

In the absence of fraud or bad faith, no interactive computer service (as defined in section 1085(a) of title 18, United States Code, as added by this section) shall be liable for any damages, penalty, or forfeiture, civil or criminal, for a reasonable course of action taken to comply with a court order issued under paragraph (2) or (3) of this subsection.

(5) PROTECTION OF PRIVACY.—

Nothing in this section or the amendments made by this section shall be construed to authorize an affirmative obligation on an interactive computer service—

(A) to monitor use of its service; or

(B) except as required by an order of a court, to access, remove or disable access to material where such material reveals conduct prohibited by this section and the amendments made by this section.

(6) NO EFFECT ON OTHER REMEDIES.—

Nothing in this subsection shall be construed to affect any remedy under section 1084 or 1085 of title 18, United States Code, as amended by this section, or under any other Federal or State law. The availability of relief under this subsection shall not depend on, or be affected by, the initiation or resolution of any action under section 1084 or 1085 of title 18, United States Code, as amended by this section, or under any other Federal or State law.

(7) CONTINUOUS JURISDICTION.—

The court shall have continuous jurisdiction under this subsection to enforce section 1085 of title 18, United States Code, as added by this section.

(e) REPORT ON ENFORCEMENT.—

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

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

(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.

(f) REPORT ON COSTS.—

Not later than 3 years after the date of enactment of this Act, the Secretary of Commerce shall submit a report to Congress that includes—

(1) an analysis of existing and potential methods or technologies for filtering or screening transmissions in violation of section 1085 of title 18, United States Code, as added by this section, that originate outside of the territorial boundaries of any State or the United States;

(2) a review of the effect, if any, on interactive computer services of any court ordered temporary restraining orders or injunctions imposed on those services under this section;

(3) a calculation of the cost to the economy of illegal gambling on the Internet, and other societal costs of such gambling; and

(4) an estimate of the effect, if any, on the Internet caused by any court ordered temporary restraining orders or injunctions imposed under this section.

(g) SEVERABILITY.—

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

H.R. 4427:
Changes in Existing Federal Gambling Laws
18 U.S.C.(In Italics)

Sec. 1081. Definitions

As used in this chapter:

(1) The term "gambling ship" means a vessel used principally for the operation of one or more gambling establishments. Such term does not include a vessel with respect to gambling aboard such vessel beyond the territorial waters of the United States during a covered voyage (as defined in section 4472 of the Internal Revenue Code of 1986 as in effect on January 1, 1994).

(2) The term "gambling establishment" means any common gaming or gambling establishment operated for the purpose of gaming or gambling, including accepting, recording, or registering bets, or carrying on a policy game or any other lottery, or playing any game of chance, for money or other thing of value.

(3) The term "vessel" includes every kind of water and air craft or other contrivance used or capable of being used as a means of transportation on water, or on water and in the air, as well as any ship, boat, barge, or other water craft or any structure capable of floating on the water.

(4) The term "American vessel" means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country, if such vessel is owned by, chartered to, or otherwise controlled by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any State.

(5) The term "wire communication facility" means any and all instrumentalities, personnel, and services (among other things, the receipt, forwarding, or delivery of communications) used or useful in the transmission *or receipt of data,* writings, signs, pictures, and sounds of all kinds by aid of wire, cable, *radio, electromagnetic, photo-optical, photoelectric, or other similar facility* or other like connection between the points of origin and reception of such transmission.

(6) The term "bets or wagers"—

(A) means the staking or risking by any person of something of value (other than in a de minimis amount) upon the outcome of a contest or 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 if the opportunity to win is predominantly subject to chance and the purchase requires a consideration that is not in a de minimis amount; 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 contract of indemnity or guarantee;

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

(iv) 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

(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;

(II) has an outcome that reflects the relative knowledge and skill of the participants; 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.

(7) The term "information assisting in the placing of bets or wagers"' means information that is—

(A) sent by a person engaged in the business of betting or wagering that is necessary in order for the recipient to place a bet or wager by means of a communication facility being used in interstate or foreign commerce; or

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

18 U.S.C. 1084

(a) IN GENERAL-

(1) PERSONS ENGAGED IN THE BUSINESS OF BETTING OR WAGERING- Whoever, being engaged in the business of betting or wagering knowingly uses a communication facility for the transmission or receipt in interstate or foreign commerce of bets or wagers, information assisting in the placing of bets or wagers, or a communication that entitles the transmitter or receiver to the opportunity to receive money or credit as a result of bets or wagers made using a communication facility in interstate or foreign commerce, shall be fined under this title or imprisoned not more than 4 years, or both.

Whoever being engaged in the business of betting or wagering knowingly uses 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 on any sporting event or contest, or for the transmission of a wire communication 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 two years, or both.

(2) OTHER PERSONS- Whoever (other than a person described in paragraph (1) or a common carrier subject to the jurisdiction of the Federal Communications Commission) knowingly uses a communication facility with the intent to initiate or receive in interstate or foreign commerce the transmission of bets or wagers, information assisting in the placing of bets or wagers, or a communication that entitles the transmitter or receiver to the opportunity to receive money or credit as a result of bets or wagers, shall be fined under this title or imprisoned not more than 6 months, or both.

Nothing in this section shall be construed to prevent the transmission in interstate or foreign commerce of information for use in news reporting of sporting events or contests, or for the transmission of information assisting in the placing of bets or wagers on a sporting event or contest from a State or foreign country where betting on that sporting event or contest is legal into a State or foreign country in which such betting is legal.

(b) EXCEPTIONS-

(1) NEWS REPORTING; LEGAL BETS AND WAGERS- Nothing in this section shall be construed to prohibit the transmission or receipt in interstate or foreign commerce of—

(A) information for use in the news reporting or analysis of any wagering activity, including odds, racing or event results, schedules, or categories of wagering;

(B) educational material relating to betting or wagering;

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

(i) is legal in the State or foreign country in which the transmission originates; and

(ii) is legal in each State and each foreign country in which the sender intends the transmission to be received for the purposes of betting or wagering; or

(D) advertising, promotion, or other communication by, or authorized by, anyone licensed to operate a gambling business in a State.

(2) INTERACTIVE COMPUTER SERVICE- Subsection (a) does not impose liability on an interactive computer service provider whose facilities or services are used by another person to engage in activity prohibited by that subsection—

(A) arising out of the provider's provision of communications services, if—

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

(ii) the transmission, receipt, routing, or providing of connection is carried out through an automatic process without selection of the communicated information by the provider; and

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

(B) if the provider does not intend the use of its facility for a violation of this section, and, with respect to material or information residing on the provider's system, the provider—

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

(ii) makes available on its web site, in a location accessible to the public, the name address, phone number, and electronic mail address of an agent designated to receive notices under subsection (c)(2).

(3) STATE LAW- Nothing in this section shall be construed to preempt any State law.

Nothing contained in this section shall create immunity from criminal prosecution under any laws of any State.

When any common carrier, subject to the jurisdiction of the Federal Communications Commission, is notified in writing by a Federal, State, or local law enforcement agency, acting within its jurisdiction, 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, 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 or local tribunal or agency, that such facility should not be discontinued or removed, or should be restored.

(c) DUTIES OF COMMON CARRIERS AND INTERACTIVE COMPUTER SERVICE PROVIDERS—

(1) NOTICE TO COMMON CARRIERS- If any common carrier, subject to the jurisdiction of the Federal Communications Commission, is notified in writing by a Federal, State, or local law enforcement agency, acting within its jurisdiction, 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, 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.

(2) NOTICE TO INTERACTIVE COMPUTER SERVICE PROVIDERS- If any interactive computer service provider is notified by a Federal, State, or local law enforcement agency, acting within its jurisdiction, through receipt of written or electronic notice that a particular online site residing on the provider's system or network is being used or will be used for the purpose of engaging in the business of betting or wagering or for displaying information assisting in the placing of bets or wagers in interstate or foreign commerce in violation of Federal, State, or local law, the provider shall cease or refuse providing access to the material or information that allegedly violates this section residing at that online site, but no civil or criminal liability shall be found against any interactive computer service provider for any act done in compliance with any notice received from a law enforcement agency. Such notice shall identify the business or information that allegedly violates this section, and must—

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

(B) provide information reasonably sufficient to permit the provider to locate such material or information.

(3) INJUNCTIVE RELIEF- Except as provided in paragraph (4), any State or local law enforcement agency acting within its jurisdiction, may, following the issuance of a notice under this subsection, in a civil action, obtain an injunction or other appropriate relief preventing the use of the common carrier or interactive computer service provider for the purpose of transmitting or receiving gambling information in interstate or foreign commerce in violation of State or local law.

(4) LIMITATION ON INJUNCTIVE RELIEF AGAINST AN INTERACTIVE COMPUTER SERVICE PROVIDER- In the case of any application for an injunction against an interactive computer service provider to prevent a violation by another person of this section—

(A) arising out of the provider's transmitting, routing, or providing connections for an activity or information that is prohibited by this section, or performing the intermediate and transient storage of such material or activity in the course of such transmitting, routing, or providing connections, the injunctive relief is limited to—

(i) an order restraining the provider from providing access to an identified subscriber of the interactive computer service provider's system or network, who is using that access to violate this section by terminating the specified accounts of such 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.

(B) with respect to conduct other than that which qualifies for the limitation on remedies set forth in subparagraph (A), the injunctive relief is limited to—

(i) an order restraining the provider from providing access to information or material that violates this section residing at a particular online site on the provider's system or network;

(ii) an order restraining the provider from providing access to a subscriber of the interactive computer service's system or network, who is identified in the order and who is using such service to engage in a gambling business or to initiate a transmission that violates this section by terminating the specified accounts of such subscriber; or

(iii) such other injunctive remedies as the court considers necessary to prevent or restrain specified activity or information that is prohibited by this section at a particular online location that are the least burdensome to the provider that are comparably effective for that purpose.

(C) CONSIDERATIONS- The court, in determining appropriate injunctive relief, shall consider—

(i) whether such an injunction, either alone or in combination with other such injunctions issued against the same provider, would significantly burden either the provider or the operation of the provider's system or network;

(ii) the magnitude of the harm likely to be realized by law enforcement if the injunction is not granted;

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

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

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

(D) NOTICE AND EX PARTE ORDERS- Injunctive relief under this subsection 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 service provider's communications network.

(d) DEFINITIONS.- As used in this section, 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.