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Internet Gambling: A Sketch of Legislative Proposals in the 106th Congress

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Summary

S. 692 (Sen. Kyl), as passed by the Senate, and H.R. 3125 (Rep. Goodlatte), as brought to the House floor on a suspension motion, would have outlawed commercial use of the Internet to gamble or to facilitate gambling, with fairly broad exceptions for certain forms of legalized gambling. Individual bettors were not covered and there were exemptions for parimutuel betting on horse racing and dog racing, and for state lotteries, among others. Violations were subject to criminal penalties and court injunctions. Service providers who cooperated with authorities in good faith enforcement of the Act were immunized for their cooperation and for violations occurring through use of their facilities. Both bills left intact the Wire Act which proscribes use of the telephone facilities to gamble and transmit gambling information.

H.R. 5020 (Rep. Conyers) would have amended the Wire Act so as to resolve disputes over its coverage of Internet gambling and otherwise. The bill had no explicit exceptions for parimutuel gambling or state lotteries.

H.R. 4419 (Rep. Leach), as reported out of the House Committee on Banking and Financial Services (H.Rept. 106-771), would have prohibited gambling businesses from accepting bettors' credit cards, electronic fund transfers, or checks, in connection with illegal internet gambling, and established criminal, civil, and regulatory mechanisms for enforcement of its proscriptions.

None of these proposals were enacted during the 106th Congress.

The Justice Department appropriation legislation, did included a section (§629) subsequently enacted and drafted to clarify the legality of the use of interstate communications in connect with off-track parimutuel gambling, 144 *Cong.Rec.* H12481 (daily ed. Dec. 15, 2001).

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S. 692 and H.R. 3125. Subject to various exceptions, S. 692 and H.R. 3125 would have prohibited anyone, engaged in the gambling business, from using the Internet (a) to place or receive a bet or wager or (b) to send, receive, or invite information assisting in the placement of a bet or wager, proposed 18 U.S.C. 1085(b). The proscriptions were to be reenforced by criminal penalties, injunctive relief, and provisions designed to enlist service provider cooperation in enforcement.

By focusing on those in the "gambling business," the bills intentionally would have excluded the casual bettor who patronizes such businesses, S.Rept. 106-121 at 23; H.R.Rept. 106-655. The bills used special definitions and exclusions to carve out other exceptions to their prohibitions. For instance, the definition of:

- "bets or wagers" did not include
  + bona fide securities transactions,
  + commodities transactions,
  + indemnity contracts,
  + various kinds of insurance, or
  + certain simulated sports games (only in H.R. 3125), proposed 18 U.S.C. 1085(a)(1);

- "gambling business" did not include any small or intermittent gambling business unless it generated more than $2000 during any given 24 hour period or operated substantially continuously for more than 10 days, proposed 18 U.S.C. 1085(a)(4);

- "information assisting in the placing of a bet or wager" did not include
  + certain kinds of parimutuel information,
  + information exchanged among state-licensed gambling facilities,
  + news reporting including odds and schedules, or
  + educational information on how to make a bet or wager, proposed 18 U.S.C. 1085(a)(5)(B).

The prohibitions were to be made specifically inapplicable under some circumstances to:

- state lotteries,
- legalized off-track betting on horse races, dog races, or in the case of H.R. 3125, jai alai,
- legalized subscription Internet gambling, and
- gambling conducted under the Indian Gaming Regulatory Act, proposed 18 U.S.C. 1085(f).

Internet gambling offenses would have been punishable by imprisonment for not more than 4 years and/or a fine of the greater $20,000 or the amount wagered, proposed 18 U.S.C. 1085(b)(2). Federal and state officials, and under S. 692 various sports organizations, would have been empowered to invoke the jurisdiction of the federal courts to enjoin violations, proposed 18 U.S.C. 1085(c),(d).

The bills would have afforded immunity to cooperative Internet service providers for their enforcement assistance. The immunity grants were to extended to any federal or state gambling violation. To qualify, when notified by state or federal law enforcement of an offending site, providers were required to remove or bar access to Internet gambling

material on sites that they control and to help authorities identify the source of offending sites they did not control, proposed 18 U.S.C. 1085(d).

H.R. 5020. H.R. 5020 would have amended the Wire Act (18 U.S.C. 1081, 1084) to:

- cover satellite and microwave, as well as telephone, communications facilities;
- permit gambling advertisements when the gambling is lawful where it occurs;
- require all wire communications facilities, not just communications carriers regulated by the Federal Communications Commission, to discontinue service being used for illegal gambling purposes and to immunize them for cooperation; and
- create an exception for certain fantasy sports leagues.

Differences Between S. 692, H.R. 3125 and H.R. 5020. S. 692 and H.R. 3125 had few differences. H.R. 3125's definition of bets or wages excluded participation in simulated sports and education games, proposed 18 U.S.C. 1085(a)(1); the definition in S. 692 did not. S. 692 allowed various sports leagues to sue to enjoin Internet gambling violations involving the use of their contests; H.R. 3125 limited access to civil enforcement to federal and state authorities, proposed 18 U.S.C. 1085(c)(2). H.R. 3125 included jai alai in the exceptions granted horse racing and dog racing; S. 692 did not, proposed 18 U.S.C. 1085(a)(2), (f)(1), (f)(2).

S. 692 and H.R. 3125 supplemented the Wire Act; H.R. 5020 amended it. As a result, S. 692 and H.R. 3125 dealt with no more than Internet gambling and left the prohibitions of the Wire Act unchanged; H.R. 5020's amendment to the Wire Act altered federal gambling law more generally. S. 692 and H.R. 3125 contained express exemptions for state lotteries, and horse and dog racing; H.R. 5020 did not. The maximum prison terms H.R. 3125 and S. 692 impose for violations (4 years) were twice as long as those in H.R. 5020 (2 years), but the maximum fines were considerable smaller ($20,000 for S. 692 and H.R. 3125 v. $250,000/ $500,000 for H.R. 5020).

H.R. 4419 (as reported). Using the same definitions of gambling business and gambling (bets or wagers) as the House Internet Gambling Prohibition bill (H.R. 3125), the funding prohibition bill (H.R. 4419) would have outlawed a gambling business' acceptance of a bettor's credit cards, electronic fund transfers, checks, or the like in connection with illegal internet gambling business. Offenders were to be punished by imprisonment for more than 5 years and/or a fine of not more than $250,000 (not more than $500,000 if the offender is an organization) and could be enjoined from ever gambling again.

The United States Attorney General, state attorney generals, or (in the case of violations occurring on Indian lands) Indian Gaming Regulatory Act compact enforcement authorities would have been permitted to enforce the bill's proscriptions by bringing a civil action federal court. Unwitting, financial intermediaries would have been exempt from liability under the bill, but federal bank regulatory agencies were to be authorized to order federally insured banks to discontinue various financial services to gambling business that violated the bill's prohibitions.

In order to combat offshore internet gambling operations, the bill indicated that the United States should:

- encourage foreign government and international entities to cooperate in identifying internet gambling operations being used for money laundering, corruption, or other crimes;
- promote enforcement of the Act by sharing information with foreign governments; and
- encourage inclusion in the Financial Action Task Force on Money Laundering's annual report of the extent to which internet gambling is being used for money laundering.

Background. The Internet Gambling Funding Prohibition Act (H.R. 4419) was introduced by Representative Leach for himself and Representatives LaFalce, Roukema and Baker on May 10, 2000. On June 20, 2000, the House Banking and Financial Services Committee held hearings at which representatives from the Department of Justice, the Department of the Treasury and the Wisconsin Department of Justice testified (prepared statements available at [www.house.gov/banking]). The Committee approved an amended version of H.R. 4419 the following week (H.R.Rept. 106-771). The amendments would have limited the bill to financial transactions associated with *illegal* internet gambling and encouraged international cooperation to identify any criminal activity associated with internet gambling..

The Internet Gambling Prohibition Act of 1999 (S. 692), was introduced by Senators Kyl and Bryan, favorably reported by the Senate Judiciary Committee (S.Rept. 106-121) and passed the Senate on November 19, 1999, 145 *Cong.Rec.* S 14870. H.R. 3125, a similar bill with the same name was introduced by Representative Goodlatte for himself and Representatives LoBiondo, Wolf, Boucher, Gibbons and Good. It was favorably reported by the House Judiciary Committee (S.Rept. 106-655). It was then brought to the floor with a manager's amendment (which sought to make clear that the bill would not legalize any activity that is illegal now) under a motion for suspension of the rules which failed to secure the necessary two-third vote, 145 *Cong.Rec.* H6057 (daily ed. July 17, 2000). Representative Conyers introduced H.R. 5020 for himself and Rep. Cannon on July 27, 2000.

Both Houses held hearings on the subject in 105th and 106th Congresses,[1] and the Senate passed an earlier version as part of the Commerce-Justice-State appropriations bill

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[1] *Internet Crimes Affecting Consumers: Hearing Before the Subcomm. on Technology, Terrorism, and Government Information of the Senate Comm. on the Judiciary (Senate Hearing)*, 105th Cong., 1st Sess. (1997); *The Internet Gambling Act of 1997: Hearing Before the Subcomm. on Technology, Terrorism, and Government Information of the Senate Comm. on the Judiciary (Senate Hearing II)*, 105th Cong., 1st Sess. (1997); *Internet Gambling Prohibition Act of 1997: Hearings Before the Subcomm. on Crime of the House Comm. on the Judiciary (House Hearing I)*, 105th Cong., 2d Sess. (1998); *Internet Gambling: Hearing Before the Subcomm. on Technology, Terrorism, and Government Information of the Senate Comm. on the Judiciary (Senate Hearing III)*, 106th Cong., 1st Sess. (1999); *Internet Gambling: Hearing Before the Senate Comm. on Indian Affairs (Senate Hearing IV)*, 106th Cong., 1st Sess. (1999). Witness statements from the hearings before the Crime Subcommittee of the House Committee on the Judiciary during the 106th Congress (*House Hearing II*) and the Telecommunications, Trade & Consumer Protection Subcommittee of the House Committee on Commerce are available as of this writing on the Committees' home pages at [www.house.gov/judiciary] and [www.house.gov/cchear], respectively.

For background information on existing law see, *Internet Gambling: Overview of Federal Criminal Law*, CRS Report 97-619 A (Feb. 2, 1998).

at the end of the 105th Congress, 144 *Cong.Rec.* S8801-803 (daily ed. July 23, 1998)(text). The Internet gambling provision was stricken from the appropriations measure in conference, and the 105th Congress adjourned before the House could take up the measure separately.

The Department of Justice had suggested that Congress await the report of the National Gambling Impact Study Commission before enacting legislation. The Commission released its report recommending an Internet gambling ban on June 18, 1999, FINAL REPORT, *Rec. 5.1*, 5-12.

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 in large measure has been to guard against unwelcome intrusions of interstate or international gambling into states where the activity in question has been outlawed.

The Commission's report and witnesses during Congressional hearings argued 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]

S. 692, and in some cases H.R. 3125, addressed some of the objections raised by proposals in the 105th Congress. The Department of Justice, for example, advised against coverage of mere bettors. Some of the bills would have punished bettors as well as those

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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); FINAL REPORT, 5-5.

[5] *Senate Hearing II*, at 14 (statement of Jeff Pash, Executive Vice President, National Football League); FINAL REPORT, 5-4 to 5-5.

[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); FINAL REPORT, 5-6.

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

[8] *House Hearing* (testimony of Bernard P. Horn, National Coalition Against Gambling Expansion); FINAL REPORT, *Rec. 5.1*, 5-12 (Department of Justice should develop enforcement strategies).

[9] FINAL REPORT, *Rec. 5.4*, 5-12; *Senate Hearing II*, at 24 (statement of Anthony Cabot, Esq.).

engaged in a gambling business;[10] like H.R. 5020, both S. 692 and H.R. 3125 penalized only a person "engaged in a gambling business," proposed 18 U.S.C. 1085(b).[11]

The Gambling Commission recommended that the Internet gambling ban not create any new exceptions to any existing gambling proscriptions. Some of the original proposals were crafted as amendments to the Wire Act, 18 U.S.C. 1084, and thus adjustments made to accommodate exceptions to an Internet gambling ban might have had a more sweeping impact. H.R. 5020 contained an exception of Indian gambling, proposed 18 U.S.C. 1084(d). S. 692 and H.R. 3125 would have placed their Internet gambling prohibitions within a new section, 18 U.S.C. 1085, so that their exemptions and exceptions would have applied only to the ban in section 1085 and, with the exception of the service provider immunity provisions, would have no effect on liability under other gambling laws.

Some hearing witnesses expressed concerns that a ban on the use of the Internet for gambling and gambling information purposes would deny the advantages of technological development to the horse racing industry and to other gambling industries that are lawful and regulated in the states in which they are located.[12] S. 692 and H.R. 3125 each would have contained exceptions to permit the use of technology in various legalized gambling businesses. H.R. 5020 did not.

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[10] The bill that passed the Senate in the 105th Congress as part of the Commerce-Justice-State appropriation, for instance, subjected Internet bettors to 3 months imprisonment and/or a fine, proposed 18 U.S.C. 1085(b)(1),(2), Amend. 3266, *reprinted at*, 144 *Cong.Rec.* S8802 (daily ed. July 23, 1998). Although tracking the amendment in several other respects, neither S. 692 nor H.R. 3125 have any such provision.

[11] *See also*, S.Rept. 106-121, at 23 ("the prohibitions of section 1085(b) apply only to persons engaged in a gambling business and not to `casual bettors'").

The Justice Department also proposed that any legislation should (1) treat gambling on and off the Internet the same; (2) be technology neutral; and (3) avoid "stifling the growth of the Internet or chilling its use a medium of communication and commerce," *House Hearing II*,(statement of Dep.Ass't Attorney General Kevin V. DiGregory).

[12] *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).