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THE INTERNET GAMBLING PROHIBITION ACT

JULY 26, 1999.—Ordered to be printed

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

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 692]

The Committee on the Judiciary, to which was referred the bill (S. 692) to prohibit Internet gambling, 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 all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Internet Gambling Prohibition Act of 1999".

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:

69–010

"§ 1085. Internet gambling

"(a) DEFINITIONS.—In this section:

"(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 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);

"(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; or

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

"(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 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 or facilities 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.

"(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, including specifically a service or system that provides access to the Internet.

"(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.

"(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 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) 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 paragraph (2)(A) to comply with a notice described in paragraph (2)(B), or complying with any court order issued under paragraph (3).

"(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, 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;

"(iii) each person placing or otherwise making that bet or wager is physically located when such bet or wager 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 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 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.); or

"(II) live dog racing, subject to consent agreements that are comparable to those required by the Interstate Horse Racing Act of 1978, approved by the appropriate State regulatory agencies, in the State receiving the signal, and in the State in which the bet or wager originates; or

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

"(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 or promotion of any activity that is not prohibited by subsection (b)(1)(A).

"(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.

I. PURPOSE

The purpose of S. 692 is to prohibit any person 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 to send, receive, or invite information assisting in the placing of a bet or wager, and to establish mechanisms tailored to the Internet to enforce this prohibition.

II. LEGISLATIVE HISTORY

On March 23, 1999, Senators Jon Kyl and Richard Bryan introduced S. 692, the Internet Gambling Prohibition Act of 1999.[1] The bill was referred to the Judiciary Subcommittee on Technology, Terrorism, and Government Information, which held a public hearing on the bill on March 23, 1999, chaired by Senator Kyl.

Testifying in favor of the legislation were James E. Doyle, attorney general of the State of Wisconsin, and Betty Montgomery, attorney general of the State of Ohio, on behalf of the National Association of Attorneys General; James R. Hurley, chair, New Jersey Casino Control Commission; Jeffrey Pash, executive vice president, National Football League; Bill Saum, director of agent and gambling activities, National Collegiate Athletic Association; and Marianne McGettigan, Esq., representing the Major League Baseball Players Association. A statement in opposition to S. 692, arguing for regulation of Internet gambling rather than prohibition, was submitted by Sue Schneider, chair of the Interactive Gaming Council, a trade association representing the Internet gambling industry.

Letters in support of S. 692 were submitted by the American Horse Council, the American Quarter Horse Association, the National Association of Attorneys General, the National Football League, the National Collegiate Athletic Association, the National

[1] As of July 6, 1999, there were 21 additional cosponsors of the legislation: Senators Allard, Bond, Brownback, Bunning, Coverdell, DeWine, Enzi, Feinstein, Gorton, Grassley, Hutchinson, Johnson, Lott, Mack, Nickles, Reid, Santorum, Bob Smith, Thurmond, Torricelli, and Voinovich.

Hockey League, the National Basketball Association, Major League Baseball, and Major League Soccer. America Online, the Commercial Internet eXchange Association, the United States Telephone Association, and US West also submitted a letter stating that the bill had been revised to address their most significant concerns, but which also expressed a desire for broader liability protections.

S. 692 is also supported by the Federal Bureau of Investigation; the African Methodist Episcopal Church; the American Muslim Council; the Christian Coalition; the Church of Jesus Christ of Latter Day Saints; the Consumer Project on Technology (Ralph Nader); the Family Research Council; Focus on the Family; Friends United Meeting; the National Coalition Against Gambling Expansion; the National Council of Churches; the Presbyterian Church; Rev. Jay Lintner, Director, Washington Office of the United Church of Christ, Office of Church in Society (title for identification purposes only); the United Methodist Church, General Board of Church and Society; the Southern Baptist Convention, Ethics and Religious Liberty Commission; and the Traditional Values Coalition.

On May 12, 1999, the Subcommittee on Technology, Terrorism, and Government Information unanimously approved S. 692 after adopting, by unanimous consent, an amendment to the bill in the nature of a substitute offered by Senator Kyl. The substitute reflected certain changes incorporated after extensive discussions with groups affected by the legislation, including the National Football League, the National Collegiate Athletic Association, the National Association of Attorneys General, the Commercial Internet eXchange Association, the United States Telephone Association, Internet service providers, parimutuel wagering interests, fantasy sports league interests, institutions of higher education, and publishers.

On June 17, 1999, the full Judiciary Committee approved S. 692 by a recorded vote of 16 to 1 after adopting, by unanimous consent, a further amendment to the bill in the nature of a substitute offered by Senator Kyl. The approved version of the bill included changes responding to issues identified by the Department of Justice and by the Racketeering Records Analysis Unit of the FBI. The National Gambling Impact Study Commission submitted a letter to the Committee stating that S. 692 "is consistent with the intent of the Commission" that Internet gambling be federally prohibited.[2]

S. 692 is the successor to legislation introduced by Senator Kyl in the 105th Congress and passed overwhelmingly by the Senate—S. 474, the Internet Gambling Prohibition Act of 1997. This legislation, introduced on March 19, 1997, was considered at a hearing of the Subcommittee on Technology, Terrorism, and Government Information on July 28, 1997. Testifying in support of the legislation were Senator Richard Bryan; James E. Doyle, attorney general of the State of Wisconsin and then-president of the National Association of Attorneys General; Jeffrey Pash, executive vice president of the National Football League; Ann Geer, chair of the National Coalition Against Gambling Expansion; and Anthony Cabot, professor

[2] Letter dated June 15, 1999, from Kay C. James, Chair, and William Bible, Commissioner, National Gambling Impact Study Commission, to Senator Patrick Leahy, at 1. See National Gambling Impact Study Commission, final report (June 1999) ("Final Commission Report").

at the International Gaming Institute. Additionally, Louis Freeh, Director of the Federal Bureau of Investigation, endorsed the legislation during a Judiciary Committee hearing on oversight of the FBI. S. 474 was also supported by the National Collegiate Athletic Association, the National Hockey League, the National Basketball Association, Major League Soccer, and Major League Baseball, as well as a wide variety of consumer, religious, and antigambling groups.

The Subcommittee approved S. 474 by a unanimous poll on August 1, 1997. The full Judiciary Committee approved the legislation by a voice vote on October 23, 1997. In July 1998, the bill was attached as an amendment to the Commerce-Justice-State appropriations bill by a recorded vote of 90 to 10. The Subcommittee on Crime of the House Judiciary Committee held hearings on an Internet gambling bill (H.R. 2380) on February 4, 1998, and June 24, 1998, and approved by voice vote a revised version of that bill (H.R. 4427), with amendments, on September 14, 1998, but the House did not complete action on the legislation due to the lateness of the session. The Senate language was not included in the final version of the Commerce-Justice-State appropriations measure.

III. Discussion

A. Overview of Legislation

S. 692, the Internet Gambling Prohibition Act of 1999, would prohibit any person engaged in a gambling business from using the Internet or any other interactive computer service (collectively "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, and would establish mechanisms tailored to the Internet to enforce that prohibition. The bill would provide criminal penalties for violations, authorize civil enforcement proceedings by Federal and State authorities, establish mechanisms for requiring Internet service providers to terminate or block access to material or activity that violates the prohibition, and authorize other relief. By these means, the bill would strengthen and extend existing prohibitions on gambling, including gambling on sporting events. The legislation is needed to prevent the substantial societal harms caused by Internet gambling and to provide necessary and appropriate enforcement tools tailored to this medium.

S. 692 would add a new section 1085 to title 18 that would complement section 1084 of title 18, known as the Wire Act. Enacted in 1961, section 1084 prohibits a person engaged in the business of betting or wagering from using telephones or other "wire communication facilities" to transmit bets or wagers or information assisting in the placing of bets or wagers. 18 U.S.C. 1084(a). The statute requires a telephone company to terminate service to the gambling business upon receiving a notice from a Federal, State, or local law enforcement agency that the company's facilities are being used to transmit or receive gambling information in violation of Federal, State, or local law. 18 U.S.C. 1084(d). Section 1084 protects telephone companies from liability for complying with such notices, while preserving a subscriber's right to contest the termination of service. Id. The statute exempts the transmission of (i)

"information for use in news reporting of sporting events or contests" and (ii) "information assisting in the placing of bets or wagers on a sporting event or contest from a State or foreign country where the betting on that sporting event or contest is legal into a State or foreign country in which such betting is legal." 18 U.S.C. 1084(b). Section 1084 also specifies that it does not create immunity from criminal prosecution under State law. 18 U.S.C. 1084(c).

Most States prohibit many if not most forms of gambling currently offered on the Internet. Although Internet gambling, to the extent that it is carried over telephone lines may violate section 1084 and other Federal laws, these laws do not provide mechanisms for combating Internet gambling tailored specifically to this medium. S. 692 creates a new section 1085, modeled on section 1084 and other relevant law, to address Internet gambling specifically.

B. NEED FOR LEGISLATION

1. The growth of Internet gambling

Although the Internet is a new medium of communication, its attractiveness as a vehicle for gambling is unmistakable. First introduced in the summer of 1995, Internet gambling is "the newest medium offering games of chance."[3] As the National Gambling Impact Study Commission has stated, "the previously small number of operations has grown into an industry practically overnight."[4] The Commission reported that as of May 1998, there were approximately 90 online casinos, 39 lotteries, 8 bingo games, and 53 sports books providing gambling over the Internet.[5] A year later, the Commission found that there were over 250 online casinos, 64 lotteries, 20 bingo games, and 139 sports books providing gambling over the Internet.[6] The Racketeering Records Analysis Unit of the FBI informed the Subcommittee that a search for gambling websites had discovered 349 sites worldwide that offered gambling for real money, including 254 offering casino-style gambling and 143 sites offering sports wagering.[7] The Commission concluded that the number of these sites "can be expected to grow."[8]

The National Gambling Impact Study Commission also reported that Internet gambling revenues are both sizable and growing rapidly. Although estimates of the exact dollar amounts vary, two studies cited by the Commission indicate that Internet gambling revenues have doubled every year for the past 3 years. One study reported growth from $300 million in 1998 to $651 million in 1999, and projected revenues of $2.3 billion by 2001. Another study reported growth from $445.4 million in 1997 to $919.1 million in 1998.[9] The Commission noted estimates by the Financial Times and Smith Barney that Internet gambling will reach annual reve-

[3] Final Commission report at 2–15.
[4] Id.
[5] Id.
[6] Id.
[7] Federal Bureau of Investigation, Racketeering Records Analysis Unit, "Analysis of Offshore Gambling" at 1 (May 1999) ("FBI Analysis").
[8] Final Commission report at 5–3.
[9] Id. at 2–16, 5–1.

nues of $10 billion in the beginning of the next century.[10] One of the studies cited by the Commission found that the number of on-line gamblers increased from 6.9 million to 14.5 million between 1997 and 1998.[11] The Commission reported that "virtually all observers assume the rapid growth of Internet gambling will continue."[12]

The National Gambling Impact Study Commission provided a vivid description of Internet gambling sites:

> Gambling sites now feature interactive games, broadcast races in real-time video, and walk customers through a virtual tour of the site, complete with colorful graphics and background music. Prior to gambling, most sites require people to fill out registration forms and to either purchase "chips" or set up accounts with a preset minimum amount. Payment is made using credit or debit cards, money transfers, or other forms of electronic payment, such as "smart cards" or "Cybercash."[13]

As Betty Montgomery, attorney general of the State of Ohio, testified:

> These interactive sites allow individuals to play games as if he or she were inside a casino. Audio available while visiting or playing these sites allows individuals to hear the wheels turn, to hear the machines ring, to hear the chips fall and the dollars fall, to actually be in a virtual casino.[14]

The explosive growth of Internet gambling reflects three facts: (1) Internet gambling sites are inexpensive to operate; (2) Internet gambling is convenient; and (3) Internet gambling is largely uncontrolled. The National Gambling Impact Study Commission explained why Internet sports gambling is especially successful: First, unlike casino-style games, "Internet sports books do not necessarily use highly complex Web sites that require bettors to download software in order to participate." Second, the fact that the outcomes of sporting events are public knowledge and are assumed to be beyond the control of the site operator obviates concerns about "tampered results."[15]

Jeffrey Pash, executive vice president of the National Football League, identified these additional factors in the growth of Internet gambling:

> Internet gambling is successful both because it is currently uncontrolled and because so little effort is required to participate. Unlike traditional casinos, which require gamblers to travel to the casino and place their bets on-site, Internet gambling allows bettors access to on-line wagering facilities twenty-four hours per day, seven days a week. Gamblers can avoid the difficulty and expense of

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[10] Id. at 5–1.
[11] Id.
[12] Id.
[13] Id. at 5–3.
[14] "Hearing on S. 692 before the Subcommittee on Technology, Terrorism, and Government Information of the Senate Committee on the Judiciary, 106th Cong., 1st sess. (March 23, 1999) ("Senate Hearing").
[15] Final Commission report at 5–3; see also id. at 2–14 to 2–15, 3–8 to 3–11 (describing general harms of sports gambling).

> traveling to a casino, which in many parts of the country requires out-of-state travel. Internet gamblers also can avoid the stigma that may be attached to gambling in public on a regular basis. Indeed, Internet gambling threatens to erode the stigma of gambling generally, including sports gambling.
>
> Internet gambling sites are easily accessible and offer a wide range of gambling opportunities from all over the world. Any personal computer can be turned into an unregulated casino where Americans can lose their life savings with the mere click of a mouse. Many of these gambling web sites have been designed to resemble video games, and therefore are especially attractive to children. But gambling—even on the Internet—is not a game. Studies have shown that sports betting is a growing problem for high school and college students, who develop serious addictions to other forms of gambling as a result of being introduced to "harmless" sports wagering. * * *[16]

It is no exaggeration to say that the Internet has brought gambling into every home that has purchased a computer and chosen to go online. As an industry representative said of Internet gambling, "it's really in your home."[17]

2. The harms of Internet gambling

Internet gambling is harmful—for young people and adults alike. With respect to young people, the National Gambling Impact Study Commission noted that, "[b]ecause the Internet can be used anonymously, the danger exists that access to Internet gambling will be abused by underage gamblers."[18] According to the Commission:

> In most instances, a would-be gambler merely has to fill out a registration form in order to play. Most sites rely on the registrant to disclose his or her correct age and make little or no attempt to verify the accuracy of the information. Underage gamblers can use their parents' credit cards or even their own credit and debit cards to register and set up accounts for use at Internet gambling sites.[19]

As the NFL's Jeffrey Pash stated, "[b]ecause no one currently stands between Internet casinos and their gamblers to check identification, our children will have the ability to gamble on the family computer after school, or even in the schools themselves."[20] Senator Kyl warned that, "[a]s the Internet reaches more and more school children, Internet gambling is certain to promote even more gambling among young people."[21]

The younger generation's familiarity with and frequent use of the Internet makes it especially susceptible to the dangers of fraud and abuse that exist in Internet gambling. As Attorney general Doyle stated, "the kids are frequently much more adept at it than the

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[16] Senate hearing.
[17] "Nightline: Betting without Borders" (ABC television broadcast, Apr. 7, 1998) (statement of Mark Dohlen, Starnet Communications International).
[18] Final Commission report at 5–4.
[19] *Id.*
[20] Senate Hearing.
[21] Id.

parents, so that even if there are parents in the house, the parents may not know what their child is doing."[22] Young people use the Internet more frequently than any other segment of the population. For example, the Commission reported that more than 69 percent of 18- to 24-year-olds use computers for an average of four hours per day.[23] The Committee is particularly concerned about the growth of Internet gambling because young people have been shown, in recent studies, to have significant and growing problems with sports betting. For example, a 1998 study at the University of Michigan found that 35 percent of student-athletes gambled on sports while attending college.[24] As Bill Saum, Director of Agent and Gambling Activities for the NCAA, concluded, the "growing consensus of research reveals that the rates of pathological and problem gambling among college students are higher than any other segment of the population."[25]

College sports betting raises an additional concern—students betting on contests in which they are participants. As Bill Saum of the NCAA testified, "Internet gambling offers students virtual anonymity. With nothing more than a credit card, the possibility exists for any student-athlete to place a wager via the Internet and then attempt to influence the outcome of the contest while participating on the court or playing field."[26] Recent sports betting and point-shaving scandals on college campuses from Arizona State to Northwestern University to Boston College provide further evidence of the vulnerability of young people to the temptations of gambling. The ease of Internet gambling, its anonymity, and its ubiquity threaten the integrity of, and public confidence in, college sports. The Internet Gambling Prohibition Act is necessary to prevent young Americans from gambling and to prevent college athletes from placing wagers on sports contests in which they are participants.

Even for those individuals old enough to engage in traditional casino gambling legally—where such gambling is legal—Internet gambling poses great dangers. The harms caused by addiction to gambling and crimes related to gambling are well documented.

The Council on Compulsive Gambling reports that five percent of all gamblers become addicted.[27] Internet gambling threatens to expand the number of addicted gamblers because it can greatly expand the total number of gamblers in America. In addition, the Committee believes that the anonymous nature of Internet gambling increases the likelihood that individuals will become addicted to gambling. As General Montgomery testified, Internet gambling "allows individuals to gamble away their life savings and their family's life savings in just the click of a mouse. * * * Consumers can play poker, black jack, roulette, without ever leaving the convenience of their homes and computers."[28] Strong social pressures that temper addictive gambling practices are removed by Internet gam-

[22] Id.
[23] Final Commission report at 5–4.
[24] Senate Hearing (testimony of Bill Saum).
[25] Id.
[26] Id.
[27] Id.
[28] Id.

bling, including the stigma that may be attached to gambling in public. Internet gambling threatens to erode that stigma.

In its report, the National Gambling Impact Study Commission warned, "the high-speed instant gratification of Internet games and the high level of privacy they offer may exacerbate problem and pathological gambling."[29] Indeed, the Internet has been likened by Dr. Howard J. Schaffer of the Harvard Medical School's Division on Addictive Studies to "new delivery forms for addictive narcotics." Dr. Schaffer stated: "As smoking crack cocaine changed the cocaine experience, I think electronics is going to change the way gambling is experienced."[30] It is well established that gambling, as such, can be addictive. Bernie Horn, Director of Political Affairs, National Coalition Against Gaming Expansion, has testified that Internet gambling "magnifies the potential destructiveness of the addiction."[31] As General Doyle testified:

> [W]e are all moving in the direction [of] highly addictive video games. * * * [W]ithin a number of years, most people look at this and say that every home computer will be an Atlantic City-style video game sitting on your desk at home, in which the lemons are spinning around, in which the cherries are coming up, in which the bells are ringing.
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> Those are the addictive games; those are the really addictive games. And they are going to be able to be played in your home without anybody else around, without any of the other social interaction that is going on. And a person in a night, instead of reading a book or watching television, can lose $5,000 without even thinking about it. So we have yet to see the real addictive nature of this activity reaching right into our homes, but we are right on the verge of it. And as the Internet gets faster and more powerful, that is what we are going to see. That is why * * * we have got to do this now before it really hits * * * .[32]

The Committee is also concerned that Internet gambling will allow criminal practices to proliferate. Since Internet gambling operations require just a minimal initial investment and little physical space, they can dissolve rapidly and move easily. The National Gambling Impact Study Commission reported that "[t]his mobility makes it possible for dishonest operators to take credit card numbers and money from deposited accounts and close down. Stories of unpaid gambling winnings often surface in news reports and among industry insiders."[33] Additionally, unscrupulous operations may tamper with the payoff rates to modify odds in the operator's favor. In testimony before the Subcommittee, James R. Hurley, chair of the New Jersey Casino Control Commission, outlined the detailed procedures that New Jersey has implemented to prevent criminal activity in the gambling industry.[34] The regulatory safeguards outlined by Mr. Hurley for land-based gambling operations

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[29] Final Commission report at 5–5.
[30] Id.
[31] "Hearing on H.R. 2380 before the Subcommittee on Crime of the House Committee on the Judiciary," 105th Cong., 2d sess. (Feb. 4, 1998).
[32] Senate hearing.
[33] Final Commission report at 5–5.
[34] Senate hearing.

(from minimum required paybacks to background investigations on operators) are not available when gambling occurs on the Internet.[35] The Committee agrees with William A. Bible, the chair of the Internet gambling subcommittee of the National Gambling Impact Study Commission, who stated: "Anyone who gambles over the Internet is making a sucker bet."[36]

The involvement of organized crime in Internet gambling is particularly alarming. According to an analysis prepared by the Racketeering Records Analysis Unit of the FBI and provided to the Subcommittee in May 1999, organized crime groups are "heavily involved" in offshore gambling, and the majority of Internet gambling operations are located offshore—in the Caribbean and Central and South America.[37] The FBI predicts that:

> [i]n order to avoid prosecution [under the Wire Act], offshore sportsbooks will streamline their operations with the latest Internet technology available to assist setting up accounts, accepting wagers, and paying winners. Offshore gambling operations will increasingly make use of Internet software to interact with customers. This will allow the offshore owners/operators to conceal their identities from U.S. law enforcement.[38]

Both the National Gambling Impact Study Commission and the FBI also noted the "easy means" that Internet gambling provides for money laundering: "To launder money, a person need only deposit money into an offshore account, use those funds to gamble, lose a small percent of the original funds, then cash out the remaining funds. Through the dual protection of encryption and anonymity, much of this activity can take place undetected."[39]

3. The need for new Federal legislation

The Internet Gambling Prohibition Act of 1999 is a necessary and appropriate Federal response to a growing problem that, as Attorneys General Doyle and Montgomery testified, no single State, or collection of States, can adequately address. Because of the uniquely interstate and international nature of the Internet, a Federal response is required.

Ten years ago, a bookmaker might have used the telephone to call his customers or Las Vegas. Now, he simply logs on to a computer. Gambling businesses around the country—and around the world—have turned to the Internet in a clear (and illegitimate) attempt to circumvent the existing prohibitions on gambling contained in the Wire Act and the Professional and Amateur Sports Protection Act of 1992 ("PASPA"), Public Law 102–559, 106 stat. 4227 (1992) (codified at 28 U.S.C. 3701–3704). Many gambling organizations now provide betting opportunities over the Internet from offshore locations to avoid or complicate effective Federal and State law enforcement.

S. 692 is needed because it strengthens existing law to facilitate the enforcement of gambling prohibitions in the face of this new

[35] See id. (testimony of James R. Hurley and Attorney General Montgomery).
[36] Senate hearing (testimony of Senator Kyl).
[37] FBI Analysis at 1.
[38] Id. at 3.
[39] Final Commission report at 5–6; see also "FBI Analysis" at 3.

technology. In its report accompanying the legislation enacted as PASPA, the Committee noted the growth of "new technologies" facilitating gambling, including the use of automatic teller machines to sell lottery tickets and proposals to allow "video gambling" at home.[40] It was, in significant part, the specter of expanded gambling raised by those "new technologies" that spurred Congress to enact PASPA. In those days, the "new technologies" did not yet include the Internet. It is now appropriate for Congress to act to ensure that Federal law keeps pace with advances in technology.

The need for Federal action to address Internet gambling is underscored by the fact that the Nation's chief State law enforcement officers are among its strongest proponents. James E. Doyle, the attorney general of the State of Wisconsin and the former president of the National Association of Attorneys General, noted: "Almost three years ago, the National Association of Attorneys General took a step many of us never imagined: The organization recommended an expansion of the Federal government's traditional law enforcement role."[41] The Committee gives great weight to the fact that the Nation's State attorneys general have specifically and repeatedly urged Congress to address Internet gambling.

Attorney General Doyle told the Subcommittee that NAAG supports Federal legislation addressing Internet gambling because "[a]lthough the overwhelming majority of Internet traffic occurs within the United States, the Internet is global and any single State, or even any combination of States working together, can have only a limited effect in controlling the myriad of activities occurring in that medium."[42] Betty Montgomery, the attorney general of the State of Ohio, similarly testified that "[e]ach State's gambling laws are carefully crafted to meet its own public policy concerns. * * * But the Internet is a threat to the traditional independence of State law enforcement."[43] General Montgomery also testified that the Internet "is a global medium, and therefore intrinsically 'interstate' in its reach."[44]

The Committee agrees with this assessment. The Committee concludes that the control of Internet gambling can be effectively accomplished only through Federal legislation that gives Federal and State authorities the tools they need to address this serious social problem.

The legislation creating section 1084 was a centerpiece of Attorney General Robert F. Kennedy's 1961 program to curb organized crime and racketeering.[45] That legislation was the culmination of 65 years of efforts—begun before Colonel Roosevelt charged up San Juan Hill—to enact Federal legislation prohibiting the use of the

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[40] See S. Rep. No. 248, 102d Cong., 1st sess. 5 (1991).
[41] Senate hearing.
[42] Id.
[43] Id.
[44] Id.
[45] Pub. L. 87–216, sec. 2, 75 Stat. 491 (1961). See S. Rep. No. 588, 87th Cong., 1st sess. 3 (1961); "Attorney General's Program To Curb Organized Crime and Racketeering: Hearings on H.R. 1653, etc., before the Committee on the Judiciary," 87th Cong., 1st sess. 1, 5–6, 12–36 (1961) ("1961 Senate Hearings") (statement and testimony of Attorney General Kennedy); "Legislation Relating to Organized Crime: Hearings on H.R. 468, etc., before Subcommittee No. 5 of the House Committee on the Judiciary," 87th Cong., 1st sess. 1, 18, 24–26 (1961) (statement and testimony of Attorney General Kennedy).

telegraph and telephone for gambling purposes.[46] Indeed, section 1084 dates back to a time when the telephone, itself, was new and the use of the telegraph to transmit bets and racing odds from one State to another was the principal concern.[47] Even when section 1084 was finally enacted in 1961—based on a 1952 ABA recommendation[48]—Americans still marveled at the "modern techniques" that allowed callers to make long-distance telephone calls without the assistance of an operator.[49]

The "modern techniques" of the Internet present a new set of challenges to law enforcement. The Committee believes that Federal law must be adapted to meet the challenges of this new technology. S. 692 would, in Senator Kyl's words, "bring federal law up to date."[50]

Section 1084(d), which was designed to address issues presented by the telephone and other "wire communication facilities," was not designed to address the issues presented by the Internet. For example, section 1084(d) requires telephone companies, upon receiving an appropriate notice from a law enforcement agency, to terminate service to subscribers using their facilities for gambling purposes. It provides no similar mechanism requiring Internet service providers to terminate or block access to gambling material or activity on the Internet. Similarly, section 1084(d), by its terms, ap-

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[46] The Congressional Information Service index discloses bills introduced, as early as 1896, "to protect State antigambling laws from nullification through interstate gambling by telegraph, telephone, or otherwise, by extending to such gambling the penalties provided for interstate gambling by mail or express." See, e.g., H.R. 5921, 54th Cong., 1st sess. (1896); S. 2846, 54th Cong., 1st sess. (1896); H.R. 10355, 54th Cong., 2d sess. (1897) (Report No. 3066); H.R. Rep. No. 3066, 54th Cong., 2d sess. (1897); H.R. 8497, 56th Cong., 1st sess. (1900); H.R. 12545, 57th Cong., 1st sess. (1902); H.R. 6298, 58th Cong., 2d sess. (1903); S. 7451, 59th Cong., 2d sess. (1907); S. 509, 60th Cong., 1st sess. (1907); S. 8703, 60th Cong., 2d sess. (1909); S. 225, 61st Cong., 1st sess. (1909); H.R. 15949, 64th Cong., 1st sess. (Report No. 773); H.R. Rep. No. 773, 64th Cong., 1st sess. (1916).

[47] "Interstate Race Gambling by Telegraph: Hearing on S. 509 before a Subcommittee of the Senate Committee on the Judiciary," 60th Cong., 2d sess. 7 (1909) ("1909 Senate Hearing") (statement of Rev. Wilbur F. Crafts, superintendent and treasurer, International Reform Bureau) ("This bill applies first to the telegraph and then to all other carriers, so that no interstate communication of odds or bets can be made from a race track to another State for gambling purposes."). The telegraph, like the telephone a half-century later and the Internet today, was regarded in its early days as "an epoch in the progress of time," a new technology that "has changed the habits of business, and become one of the necessities of commerce." *Pensacola Telegraph Co.* v. *Western Union Telegraph Co.,* 96 U.S. 1, 9 (1877). The telegraph and telephone legislation introduced on the eve of the 20th century was viewed as "the logical successor" to earlier Federal legislation prohibiting lottery materials from being sent through the mails. 1909 Senate hearing at 7 (Rev. Crafts) ("This bill extends the prohibition to all other carriers except the mails, from which gambling messages are already excluded."); "Interstate Race Gambling: Hearing on S. 225 before a Subcommittee of the Senate Committee on the Judiciary," 61st Cong., 1st sess. 6 (1909) (Rev. Crafts) ("[T]his Burkett bill is simply one step further in a line in which Congress has acted again and again."). Examples of the 19-century legislation addressing the use of the mails for gambling purposes include act of Mar. 2, 1895, 28 Stat. 963 (prohibiting the transportation in interstate or foreign commerce, and the mailing of, tickets and advertisements for lotteries and similar enterprises); Anti-Lottery Act of 1890, sec. 1, 26 Stat. 465 (extending the mails prohibition to newspapers containing advertisements or prize lists for lotteries or gift enterprises); Act of July 12, 1876, sec. 2, 19 Stat. 90 (repealing an 1872 limitation of the mails prohibition to letters and circulars concerning "illegal" lotteries); Act of July 27, 1868, sec. 13, 15 Stat. 196 (prohibiting the mailing of any letters or circulars concerning lotteries or similar enterprises); Act of Mar. 2, 1827, sec. 6, 4 Stat. 238 (restricting the participation of postmasters and assistant postmasters in the lottery business).

[48] The direct source of section 1084(d) was section 5(2) of the American Bar Association's Model Anti-Gambling Act of 1952. 1961 Senate hearings, supra note 45, at 140–43. Section 5(2) of the Model Act was based, in turn, on a recently enacted Delaware statute. Id. at 143 (citing Delaware Senate Bill No. 214, 48 Del. Laws ch. 493 (1952) (current version codified at 11 Del. Code 1412 (1998)).

[49] 107 Cong. Rec. 16534 (1961) (Rep. Harris) ("with the modern techniques that have been developed a person can pick up his phone in one city and dial someone in another city and State and obviously the common carrier would know nothing about what the conversation was and therefore would be in no position to know what is taking place").

[50] Senate hearing.

plies to common carriers subject to the jurisdiction of the Federal Communications Commission. Such carriers are subject to regulatory action by the Commission and similar State agencies if they fail to comply with notices issued under section 1084(d). Internet service providers, however, typically are not subject to the jurisdiction of the Commission or similar State agencies. In the future, moreover, Internet communications may no longer depend on telephone lines to carry their transmissions.[51] Other means of ensuring compliance by Internet service providers with notices to remove, disable, or block access to gambling material or activity on the Internet are required. However, given the unique nature of the Internet as an interactive communications medium, it is important that any such mechanism does not have the unintended effect of disrupting or impeding lawful communications.

Just as Congress enacted the Wire Act to prohibit the use of the telephone as an instrument of gambling, so S. 692 prohibits the use of the Internet as an instrument of gambling. Just as the Wire Act provides a mechanism for terminating telephone service to gambling businesses, so S. 692 provides an appropriate and effective mechanism for terminating or blocking access to gambling material or activity on the Internet. The Committee emphasizes that simply prohibiting Internet gambling is not adequate. Enforcing that prohibition against persons who violate section 1085, and using all of the means provided in section 1085 and other law to remedy violations, are essential.

Like the Wire Act of 1961 and the Professional and Amateur Sports Protection Act of 1992, S. 692 is a logical and appropriate extension of existing Federal law and policy. The precedents for Federal action in this area were well canvassed by the Committee in its report accompanying the legislation enacted as PASPA.[52] The Committee incorporates that analysis by reference here. The Internet Gambling Prohibition Act of 1999 reinforces this well-established Federal policy by, in Senator Kyl's phrase, "ensur[ing] that the law keeps pace with technology."[53] As the Racketeering Records Analysis Unit of the FBI has stated, Section 1085 is "a modernized version" of section 1084.[54] "By using the combined prosecution vehicles of U.S.C. 1084, 1085, and U.S.C. 1955, Federal law enforcement action can be effective against offshore Internet gambling operations."[55]

Although the Department of Justice has recommended that the issues presented by Internet gambling be handled through amendments to sections 1081–1084, the Committee believes that Internet gambling is best addressed through a new section 1085 specifically tailored to the Internet. Section 1084, itself, was added as a new section to a chapter in title 18 that already prohibited the operation of gambling ships on the high seas (18 U.S.C. 1082), and, as mentioned, Congress has addressed the use of the mails for gambling purposes in other statutory provisions. This reflects Congress'

[51] Id. (testimony of Bill Saum, NCAA) (S. 692 "recognizes that the Internet is quickly moving to a wireless environment"); id. (testimony of Attorney General James E. Doyle) (same); Final Commission report at 5–7 (same).
[52] S. Rep. No. 248, 102d Cong., 1st sess. 5–8 (1991).
[53] Senate hearing.
[54] "FBI Analysis" at 3.
[55] Id. at 4.

judgment that different instrumentalities of gambling should be treated in legislation specifically tailored to the particular instrumentality.

At the full Committee markup, Chairman Hatch succinctly summarized many of the concerns of the Committee:

> Gambling has a pernicious and far reaching effect on society. According to the Department of Justice, gambling contributes to corruption and organized crime, underwrites bribery, narcotics trafficking and other illegal conduct, imposes a regressive tax on the poor and fosters a false hope of financial advancement. But it is not only illegal gambling which is harmful in its effect. Compulsive gambling has grown concurrently with the expansion of legalized gambling nationwide, leading to billions of dollars in economic costs, and loss to the gamblers, their families, and communities.
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> Now, I am a great proponent of e-commerce; the Internet is a wonderful medium whose existence has in no small part contributed to the growth of our economy over the last ten years. However, while recognizing and appreciating the opportunities the Internet has created, we must also guard against the use of that medium for improper purposes. Were we to fail to take action to prevent gambling on the Internet, we would be faced with the possibility that any home with a computer could be turned into an unregulated casino. S. 692 draws a line in the sand—ensuring that the Internet will become a gambling-free zone.

Upon careful consideration, the Committee concludes that Federal legislation is both warranted and necessary to prohibit Internet gambling.

IV. Vote of the Committee

On June 17, 1999, with a quorum present, the Committee on the Judiciary ordered the bill, S. 692, favorably reported by a rollcall vote of 16 to 1, after adopting, by unanimous consent, an amendment to the bill in the nature of a substitute offered by Senator Kyl.

The following rollcall votes occurred:

Yeas	*Nays*
Thurmond	Feingold (proxy)
Grassley (proxy)	
Specter	
Kyl	
DeWine	
Ashcroft	
Abraham (proxy)	
Sessions	
Smith (proxy)	
Leahy	
Kennedy (proxy)	
Kohl	

Feinstein
Torricelli
Schumer (proxy)
Hatch

V. SECTION-BY-SECTION ANALYSIS

Section 1

Section 1 contains the short title.

Section 2

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

Section 1085(a) contains definitions.

Section 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 of chance, upon an agreement or understanding that the person or another person will receive something of value based on that outcome. The term includes the purchase of a chance or opportunity to win a lottery or other prize (if the opportunity is predominantly subject to chance) and any scheme of a type described in PASPA, 28 U.S.C. 3702, that PASPA prohibits a State or other governmental entity from legalizing, sponsoring, or fostering. The term "bets or wagers" does not include bona fide business transactions governed by the securities laws for the purchase or sale of securities at a later date, transactions on or subject to the rules of a contract market designated pursuant to the Commodity Exchange Act, contracts of indemnity or guarantee, or contracts for life, health, or accident insurance. The Committee does not presuppose that all games offered on the Internet are "games of chance" for purposes of this definition. 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. The Committee intends that this term be narrowly construed to include only services that are effective in preventing use by unauthorized persons. Such services may not be utilized unless the States involved have by statute or regulation specifically authorized the particular customer and age verification system proposed to be used by the service, and determined that the system cannot be circumvented, fooled, or disabled. 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 other current or prospective financial relationship, direct or indirect, with, any gambling business or closed-loop subscriber-based service.

Subsection 1085(a)(3) defines "foreign jurisdiction."

Subsection 1085(a)(4) defines a "gambling business" as (i) a business that (a) is conducted at a gambling establishment, or (b) involves specified gambling operations, 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.

Section 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. Stated in simplified form for the sake of summary, and subject to further limitations set forth in the bill, the definition does *not* include: (i) information concerning parimutuel pools exchanged exclusively between or among parimutuel wagering facilities, if the information is used only to conduct common pool parimutuel pooling; (ii) information exchanged exclusively between or among parimutuel wagering facilities and a support service, if the information is used only for processing bets or wagers; (iii) 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; (iv) news reporting or analysis of wagering activity; and (v) 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 (i) through (iii) 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. The Committee stresses that these exclusions have been carefully crafted to apply only to the narrow category of "back office" operations identified in those three items. Additionally, the Committee notes, and section 1085(f) makes explicit, that S. 692 does not prohibit advertising or promotion of gambling opportunities at casinos, at racetracks, or at other "brick-and-mortar" establishments.

Section 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 instrumentation of, interstate or foreign commerce to provide or enable access to a computer server, including specifically a service or system that provides access to the Internet." The Committee emphasizes that it intends by this legislation to regulate interstate and foreign commerce to the fullest extent permitted by the Constitution. As the Supreme Court long ago recognized, Commerce Clause powers

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> are not confined to the instrumentalities of commerce * * * known or in use when the Constitution was adopted, but * * * keep pace with the progress of the country, and adapt themselves to the new developments of time and circumstances. * * * They extend from the horse with its rider to the stage coach, from the sailing vessel to the steamboat, from the coach and the steamboat to the railroad, and from the railroad to the telegraph, as these new agencies are successively brought into use to meet the demands of increasing population and wealth.

Champion v. *Ames,* 188 U.S. 321, 350 (1903) (citation omitted).

Section 1085(a)(7) defines "interactive computer service provider." This term encompasses persons who provide, among other

things, access to the Internet. A person is subject to treatment 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 in gambling-related acivities, that person, to the extent of engaging in those activities, is not an interactive computer service provider, and 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.

Section 1085(a)(8) defines "Internet." This definition is drawn from the Communications Act of 1934, as amended, 47 U.S.C. 230(f)(1). The Committee intends the terms "Internet" and "interactive computer service" as encompassing all yet-to-be-developed technologies that in the future may perform functions similar or analogous to those that the Internet and interactive computer services perform today.

Section 1085(a)(9) defines "person."

Subsection 1085(10) defines "private network" as a communications channel meeting specified conditions restricting use. As in the case of a "closed-looped subscriber-based service," the Committee intends 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(11) defines "State."

Subsection 1085(12) defines "subscriber."

Section 1085(b) sets forth the prohibitions and penalties. Paragraph (1) sets forth the prohibitions, providing 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 (A) the *total* amount bet or wagered, or placed, received, or accepted in bets or wagers, by the person or (B) $20,000 (whichever is greater), imprisonment of not more than 4 years, or both. Paragraph (3) authorizes the court, upon conviction, to enter a permanent injunction. In determining whether the total amount exceeds $20,000, the court is to consider all bets and wagers made, placed, received, or accepted by a person within a single 24–hour period to constitute a single violation. Whether the total amount of the bets and wagers made, placed, received, or accepted by a person exceeds $20,000 is to be determined by aggregating the amounts of all bets and wagers made, placed, received, and accepted by a person within a single 24-hour period. The prohibitions of section 1085(b) apply only to persons engaged in a gambling business and not to "casual bettors." Casual 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 applicable State and other Federal law.

Section 1085(c) provides for civil actions to prevent and restrain violations of Section 1085. Paragraph (1) provides the district courts of the United States with jurisdiction to prevent and restrain violations. Paragraph (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. Paragraph (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. Paragraph (2)(C) covers proceedings on Indian lands. Paragraph (3) permits temporary relief to be obtained on an expedited basis.

Section 1085(d) establishes a mechanism through which Internet service providers ("providers") may be required to terminate, remove, disable, or block access to material or activity that violates section 1085. This scheme regulates the responsibilities and immunities of providers under the statute. The specified remedies address situations in which the provider is hosting, providing an online forum where third parties may post content, or acting as a conduit for, illegal material or activity originated by others, and not by the provider itself. These remedies take two forms. First, they require a provider to terminate the account of a subscriber whose material or activity violates section 1085, if the provider receives a notice from a Federal or State law enforcement agency that the subscriber is using the provider's facilities in violation of section 1085. This "notice" remedy is derived from the notice remedy for telephone companies provided under section 1084(d). Second, the United States and State law enforcement agencies are authorized to obtain injunctions requiring providers to eliminate access to material or activity originated by others that violates section 1085. This injunction remedy is derived from the remedy for online copyright infringement in similar circumstances in title II of the WIPO bill, formally known as the Digital Millennium Copyright Act, Public Law 105–304, 112 Stat. 2877–86 (1998) (codified at 17 U.S.C. 512). Paragraphs (d)(1)(A) (i) and (ii) are intended to encompass, with greater economy of language, the service provider functions described in 17 U.S.C. 512 (a) and (b). Clause (i) applies both to the conduit and caching activities covered by 17 U.S.C. 512 (a) and (b). Clause (ii) applies to the operation of online sites and location tools covered by 17 U.S.C. 512 (c) and (d).

Paragraph (1) creates incentives for providers to prevent the illegal use of their facilities by others for Internet gambling on a voluntary basis. It encourages them to take such voluntary action by immunizing an eligible provider from liability for the illegal use of its facilities by another person for Internet gambling in return for the provider's cooperation in preventing that illegal use, once the provider has received notice of the illegal use from a Federal or State law enforcement agency. Specifically, a provider will receive immunity from liability as specified if it maintains and implements a written policy requiring it to terminate the account of a subscriber following receipt by the provider of a notice issued by a Federal or State law enforcement agency that the subscriber has violated or is violating section 1085. If the provider maintains and implements such a policy, and complies with such a notice, the provider is immunized from liability—under section 1085 and any other provision of Federal or State law prohibiting or regulating

Internet gambling or Internet gambling related activities—for the use of its facilities by such person to engage in Internet gambling activity that violates such laws.

Paragraph (2) describes the form of such notices and the actions a provider is required to take upon receipt of such a notice. Those actions include expeditiously removing or disabling access to material or activity residing on an online site controlled by the provider that is identified as violating section 1085. If the provider does not control the site at which the offending material or activity resides, the provider must expeditiously so notify the Federal or State law enforcement agency. Upon receipt of a subpoena, the provider must cooperate with the Federal or State law enforcement agency in expeditiously working to identify the person or persons who control the site and is the appropriate recipient of a notice.

Paragraph (3) authorizes the United States and State law enforcement agencies to apply to a U.S. district court for a temporary restraining order or an injunction to remove, disable, or block access to material or activity originated by others that violates section 1085. If a provider maintains and implements the policy described in paragraph (1), the bill specifies the forms of relief that may be entered. First, if the provider is simply serving as a "conduit" for the violative material or activity, the court may issue (i) an order restraining the provider from providing access to the subscriber who is using that access to violate section 1085 or to engage in a transmission that violates section 1085; and (ii) an order requiring the provider to take reasonable steps to block access to an identified foreign online location being used to violate section 1085. Second, if the provider is "hosting" the violative material, a court may also impose such other injunctive remedies as the court considers necessary to prevent or restrain access to material or activity that is prohibited by section 1085 at a particular online location. The court, in determining appropriate injunctive relief in either situation, must take into account a variety of considerations designed to ensure that the relief will be reasonable and appropriate under all of the circumstances. Expedited relief is available in exigent circumstances, as provided in paragraph (d)(3)(D).

The Committee intends that, in determining what "reasonable steps" a provider should be required to take under paragraph (d)(1)(B)(i)(II), the court will take into account the considerations identified in paragraph (d)(3)(C). A court is not limited to ordering blocking steps that have previously been shown to be effective. The Committee intends that, before ordering blocking steps, a court will satisfy itself that those steps are likely to be effective in blocking access to the material or activity in question to a meaningful degree, based on the knowledge that is available at the time. The Committee does not intend that violations must be remedied at any cost, or regardless of cost, but the Committee does intend that violations will be remedied to the fullest extent possible, consistent with the considerations in paragraph (d)(3)(C).

Paragraph (4) specifies that a provider shall not be liable under any Federal or State law for complying with any notice or court order issued under subsection (d). It also specifies that section 1085 is not to be construed to require a provider described in paragraph (d)(1)(B) to monitor material or use of its service. This paragraph

also clarifies that section 1085 does not require a provider described in paragraph (d)(1)(B) to gain access to, remove, or disable access to material or activity violative of section 1085, except as required by a notice or court order issued under this section. Finally, it specifies that section 1085 is not to be construed to prejudice the right of a subscriber to secure an appropriate determination that its account should not be terminated pursuant to subsection (d), or should be restored.

Section 1085(e) specifies that the availability of relief under subsection (c) and (d), which is civil in nature, is independent of any criminal action under subsection (b) or any other Federal or State law.

Section 1085(f) specifies three categories of activities that, if otherwise lawful under State and Federal law, are not subject to the prohibition of section 1085(b).

Paragraph (1)(A) specifies that the prohibitions of section 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.

Paragraph (1)(B) specifies that the prohibitions of section 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 the sending, receiving, or inviting of information assisting in the placing of such a bet or wager, subject to five specified conditions: (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, 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.) (including consents from the host racing association, the host racing commission, and the off-track racing commission in each of the States involved), or with comparable consent agreements between the States involved applicable to dog racing. Section 1085, and this subparagraph in particular, do not authorize any new forms of parimutuel wagering but merely exclude from the prohibitions of section 1085 "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." This paragraph does not expand the current scope of legally permissible parimutuel wagering activity, but simply makes clear that the bill does not restrict that which already is legal with regard to wagering on horse and dog racing.

Paragraph (1)(C) specifies that the prohibitions of section 1085 do not apply to any otherwise lawful bet or wager placed, received, or otherwise made on a fantasy sports league game or contest. Bets and wagers that are otherwise unlawful would be subject to the prohibitions of section 1085, but section 1085 would not change the prohibited or permitted status of any fantasy sports league game or contest under the laws of any State, or under any other Federal law. Whether a particular fantasy sports league game or contest is otherwise lawful is to be determined under applicable State or other Federal law, without regard to section 1085. Section 1085 treats fantasy sports league games and contests in this fashion because of their highly fact-dependent status under State and Federal law. These games and contests, which require at most a small fee to participate and award modest prizes to winners,[56] are permitted in some States but deemed illegal in others, depending on whether (for example) the particular game or contest meets a particular State's definition of "gambling." Moreover, depending on how it is conducted, a fantasy sports league game or contest may be prohibited by other Federal law. In short, fantasy sports league games and contests may or may not, but do not automatically, constitute illegal "gambling" under State or other Federal law. It would not be appropriate to make these games and contests either automatically illegal under section 1085, or automatically exempt from its prohibition on Internet gambling.

Under section 1085, fantasy sports league games and contests that are legal in a State and not prohibited by other Federal law would continue to be legal in that State (subject to changes in the law of that State), both as a matter of State law and section 1085. Section 1085 does not make a fantasy sports league game or contest illegal in all States simply because it is illegal in one State. Conversely, section 1085 does not make a game or contest legal in all States simply because it is legal in one State. The operation of a fantasy sports league game or contest in violation of the laws of a State would violate section 1085 in that State, but not in a State where the game or contest is legal. The refusal of a sponsor to permit a participant to claim a prize if the participation was undertaken in a State in which the fantasy game or contest was illegal could be a sufficient defense to a prosecution under section 1085 if such refusal would be a sufficient defense to a prosecution under other applicable law. Subsection (f) does not render section 1085 inapplicable to persons engaged in a gambling business who use the Internet to gamble on the performance of participants in fantasy sports league games or contests, or to transmit information assisting in such gambling.

Subsection (f)(3) specifies that the prohibition of subsection (b)(1)(B) does not apply to the advertising or promotion of any activity that is not prohibited by subsection (b)(1)(A).

Section 1085(g) specifies that section 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. Thus, a person engaged in a gambling business who is

[56] See Senate hearing (testimony of Marianne McGettigan, Esq., representing the Major League Baseball Players Association); id. (testimony of Attorney General James E. Doyle).

subject to prosecution or the imposition of civil remedies under section 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 section 1085.

Section 3

Section 3 directs the Attorney General, not later than 3 years after the date of enactment, to submit to Congress a report including (1) an analysis of the problems, if any, associated with enforcing section 1085; (2) recommendations for the best use of Department of Justice resources to enforce section 1085; and (3) an estimate of the amount of activity and money being used to gamble on the Internet.

Section 4

Section 4 is a severability provision.

VI. Cost Estimate

U.S. Congress,
Congressional Budget Office,
Washington, DC, July 15, 1999.

Hon. Orrin G. Hatch,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate and mandate statements for S. 692, the Internet Gambling Prohibition Act of 1999. One enclosure includes the estimate of federal costs and the estimate of the impact of the legislation on the private sector. The estimated impact on state, local, and tribal governments is discussed in a separate enclosure.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mark Grabowicz (for federal costs), Lisa Cash Driskill (for the state and local impact), and John Harris (for the private-sector impact).

Sincerely,

Barry B. Anderson
(For Dan L. Crippen, Director).

Enclosures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 692—Internet Gambling Prohibition Act of 1999

Summary

S. 692 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 S. 692 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.

S. 692 would impose new private-sector mandates, as defined in the Unfunded Mandates Reform Act (UMRA), on operators of Inter-

net sweepstakes and contests and on providers of Internet service. CBO expects that the costs of these mandates would be below the threshold established by that act ($100 million in 1996, adjusted for inflation). S. 692 also contains intergovernmental mandates as defined in UMRA; CBO's estimate of the costs of those intergovernmental mandates is detailed in a separate statement.

Estimated cost to the Federal Government

Because S. 692 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 the government would not pursue many additional cases. 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.

S. 692 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 recorded 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 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 S. 692 could affect both direct spending and receipts, but CBO estimates that any such effects would be less than $500,000 a year.

Estimated impact on State, local, and Tribal Governments

S. 692 would impose intergovernmental mandates as defined in UMRA. CBO's analysis of those mandates is contained in a separate statement on intergovernmental mandates.

Estimated impact on the private sector

S. 692 would create new private-sector mandates, as defined in UMRA, for operators of Internet sweepstakes and contests and for providers of Internet service. CBO expects that the costs of these mandates would be below the threshold established by that act ($100 million in 1996, adjusted for inflation).

The definition of "bets or wagers" used in S. 692 would prohibit Internet contests, such as raffles, that award nontrivial prizes and require entry fees. CBO has been unable to obtain reliable information on the number of these contests or their revenues, but expects

that the costs of this mandate would be small. The vast majority of contests advertised or conducted through the Internet are intended to generate publicity or advertise a product and do not require entry fees. S. 692 would expressly exempt contests for fantasy sports leagues.

S. 692 would allow law enforcement agencies to obtain court orders requiring Internet service providers (ISPs) to block customer access to specific foreign Internet gambling sites. The costs of this mandate would depend on the actions of law enforcement agencies. Based on information from the Department of Justice, CBO expects that the number of ISPs served with such orders would be low. Because the orders would require ISPs to block specific sites rather than all gambling sites, the cost per order would also be low. Consequently, CBO estimates that costs to ISPs would be small.

Estimate prepared by: Federal costs: Mark Grabowicz; impact on the private sector: John Harris.

Estimate approved by: Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

CONGRESSIONAL BUDGET OFFICE INTERGOVERNMENTAL MANDATES STATEMENT

S. 692—Internet Gambling Prohibition Act of 1999

Summary

S. 692 would prohibit gambling conducted over the Internet or an interactive computer service. The bill would grant immunity to providers of interactive computer services if third parties use their facilities in ways that violate federal and state laws regulating gambling. The bill also would provide several exemptions to the gambling prohibition, including, under certain circumstances, gaming conducted by states, parimutuel betting, and betting on legal horse and dog racing. The bill would not provide similar exemptions for gaming conducted by tribal governments.

The bill contains several intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA). CBO estimates that the total costs of complying with these mandates, which would be borne primarily by tribal governments, would exceed the threshold established in UMRA ($50 million in 1996, adjusted annually for inflation).

Intergovernmental mandates contained in bill

The prohibition on gambling conducted over the Internet or an interactive computer service would impose mandates on state, local, or tribal governments in several ways. First, S. 692 defines an interactive computer service as any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server. This definition is sufficiently broad that it probably would encompass the systems used by tribal governments to offer linked bingo and progressive slot machines. Linked bingo occurs when several tribes, either within a state or across many states, use an interactive computer service to simultaneously play one bingo game, thereby increasing the potential payoff available to all participants. Assuming the bill would

prohibit tribes from operating these games, the prohibition would constitute an intergovernmental mandate as defined by UMRA.

The prohibition on gambling conducted over the Internet would also constitute a mandate because state, local, and tribal governments would not be allowed to provide access to gaming or lottery sites using this technology. The bill also would preempt certain state liability laws as they apply to providers of interactive computer services.

Finally, progressive slot machines, like linked bingo, allow several tribes to link their slot machines using technology that apparently also would be prohibited by this bill. Slot machines are linked for the purpose of increasing the available winnings to all participants. Because the legality of this activity under current law is unclear, we cannot determine if the prohibitions in S. 692 would constitute a new intergovernmental mandate as defined by UMRA.

Estimated direct costs of mandates to state, local, and tribal governments

Is the Statutory Threshold Exceeded ($50 million in 1996, Adjusted Annually for Inflation)?

Yes.

Total direct costs of mandates

Linked Bingo.—Tribal gambling is regulated in different ways, depending on the type of activity. Bingo is considered a Class II form of gaming, which is currently regulated by the tribes themselves, under guidelines set forth in the Indian Gaming Regulatory Act (IGRA). IGRA explicitly allows tribes to use available forms of technology, such as those used in linked bingo, to increase the economic benefits of Class II gaming. Assuming the bill would have the effect of barring the use of such linked bingo machines, CBO estimates that the net costs to tribal governments would total more than $60 million a year. CBO considers the cost of this mandate to be the net revenues that tribal governments would lose if this activity were interpreted to be illegal under the bill. Net revenues are the funds remaining from total bets after associated operating expenses are paid and payments are made to winners.

Currently, computers owned by at least 60 tribes are linked together to play bingo. CBO cannot determine the exact amount of net revenue generated from the bingo games because much of the information is proprietary. Based on information provided by the companies that provide these machines and some of the tribes that use them, however, we estimate that the cost to tribal governments would exceed the threshold established in UMRA ($50 million in 1996, adjusted annually for inflation). Assuming a conservative growth rate, the revenue loss could increase to as much as $90 million by 2004.

It might be possible for tribes to implement alternative forms of gaming that would not use the electronic systems covered by the bill. However, CBO cannot predict the likelihood that tribes would implement such systems, how quickly they could do so, or how much revenue they could generate. In the absence of electronic linkages, participation might increase in other games unaffected by S. 692. But different types of games tend to have different kinds

of participants, so this might not be a substantial shift. In the absence of linked bingo, participation also might shift away from tribal bingo to other games operated by nonprofit groups.

Internet Gambling.—Of all governmental entities, Indian tribes have shown the greatest interest in using the Internet as a forum for generating gaming revenues and thus are most likely to be affected by the bill's ban on Internet gambling. The use by tribal governments of gambling sites on the Internet that are accessible to the public from their home computers has been subject to court challenges. Because these challenges are still pending, no tribes are currently offering gambling on the Internet. Thus, the legality of such activities and the potential for Indian tribes to generate revenues from them, in the absence of this legislation, are uncertain.

State and Local Lotteries.—State and local governments would also be prohibited 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 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.

Immunity From State Liability Laws.—The bill 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. This preemption would be a mandate as defined by UMRA, but CBO estimates that it would impose no costs on state, local, or tribal governments.

Progressive Slot Machines.—Slot machines are considered Class III gaming, and are generally regulated by agreements between a state and tribe. Unlike Class II gaming, however, this category does not clearly fit within the existing federal exceptions in IGRA that allow for the use of certain technology. CBO is therefore unsure whether current federal laws that prohibit the use of wire communication to assist in gambling apply to progressive slot machines. We thus cannot determine whether the prohibition in S. 692 would constitute a new mandate as defined by UMRA or a reaffirmation of current law.

Progressive slot machines are found at 90 Indian casinos in 12 states. Based on information from vendors that provide such machines and some of the tribes that use them, CBO estimates that prohibiting their use would cause net revenue losses totaling more than $80 million per year. This estimate conservatively assumes that net revenues from the more than 2,200 affected slot machines average at least $100 a day.

Estimate prepared by: Lisa Cash Driskill.

Estimate approved by: Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

VII. Regulatory Impact Statement

In compliance with paragraph 11(b)(1), rule XXVI of the Standing Rules of the Senate, the Committee, after due consideration, concludes that S. 692 will not have significant regulatory impact.

VIII. Additional Views

I have long been an advocate for legislation that ensures that existing laws keep pace with developing technology. It is for this reason that I have sponsored and supported over the past few years a host of bills to bring us into the 21st Century.

This same impetus underlies my support of legislation to ensure our Nation's gambling laws keep pace with developing technology, particularly the Internet. The Department of Justice has noted that "the Internet has allowed for new types of electronic gambling, including interactive games such as poker or blackjack, that may not clearly be included within the types of gambling currently made illegal * * *."[1] This new technology clearly has the potential to diminish the effectiveness of current gambling statutes.

Vermonters have spoken clearly that they do not want certain types of gambling permitted in our State, and they do not want current laws to be rendered obsolete by the Internet. Vermont Attorney General William Sorrell strongly supports Federal legislation to address Internet gambling, as do other law enforcement officials in Vermont.

I believe, therefore, that there is considerable value in updating our Federal gambling statutes, which is why I voted for S. 692, the "Internet Gambling Prohibition Act," during Committee consideration. I supported the bill as a step forward in our bipartisan efforts to make sure our Federal laws continue to keep pace with emerging technologies.

I do, however, have concerns that S. 692 as currently written may unnecessarily weaken existing Federal and State gambling laws.

My first concern is that the bill provides unnecessary exemptions from its Internet gambling ban for certain forms of gambling activities without a clear public policy justification. For example, the bill exempts parimutuel wagering on horse and dog racing from its ban on Internet gambling. The sponsors of S. 692 have offered no complying reason for this special treatment of one form of gambling. Indeed, the Department of Justice is "especially troubled by the broad exemptions given to parimutuel wagering, which essentially would make legal on the Internet types of parimutuel wagering that are not legal in the physical world."[2]

Broad exemptions from the Internet gambling ban also contradict the recent recommendations to Congress of the National Gambling

[1] Letter dated June 9, 1999, from Jon P. Jennings, Acting Assistant Attorney General, Department of Justice, to Senator Patrick Leahy, at 1 ("DOJ letter").

[2] DOJ letter at 4. The DOJ letter continues: "The Department of Justice notes that S. 692 may incorrectly imply that the Interstate Horse Racing Act of 1978, 15 U.S.C. 3001 et seq., allows for the legal transmission and receipts of interstate parimutuel bets or wagers. The Interstate Horse Racing Act does not allow for such gambling, and if a parimutuel wagering business currently transmits or receives interstate bets or wagers (as opposed to intrastate bets or wagers on the outcome of a race occurring in another state), it is violating Federal gambling laws."

Impact Study Commission. After 2 years of taking testimony at hearings across the country, the Commission has endorsed the need for Federal legislation to prohibit Internet gambling. But the Commission clearly rejected adding new exemptions to the law in such a ban:

> 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 or among parties in the United States and any foreign jurisdiction.[3]

My second concern is that the bill unnecessarily creates a new section in our Federal gambling statutes, which may prove inconsistent with existing law and established legal precedent. Instead of updating section 1084 of title 18, which has prohibited interstate gambling through wire communications since 1961, S. 692 creates a new section 1085 to title 18 to cover Internet gambling only. Creating a new section out of whole cloth with different definitions and other provisions from existing Federal gambling statutes creates overlapping and inconsistent Federal gambling laws for no good reason.

The Department of Justice believes overlapping and inconsistent Federal gambling laws can be easily avoided by amending section 1084 of title 18 to cover Internet gambling:

> We therefore strongly recommend that Congress address the objective of this legislation through amending existing gambling laws, rather than creating new laws that specifically govern the Internet. Indeed, the Department of Justice believes that an amendment to section 1084 of title 18 could satisfy many of the concerns addressed in S. 692, as well as ensure that the same laws apply to gambling businesses, whether they operate over the Internet, the telephone, or some other instrumentality of interstate commerce.[4]

My third concern is that the bill may unnecessarily create immunity from criminal prosecution under State law for Internet gambling. Any new immunity is in sharp contrast to existing Federal law, which specifically does not grant immunity from State prosecution for illegal gambling over wire communications.[5] The sponsors of S. 692 have not explained why we should tie the hands of our State crime-fighting partners in the battle against Internet gambling when we do not mandate Federal preemption of State criminal laws for other forms of illegal gambling.

During our consideration of the Internet Gambling Prohibition Act in this Congress and the last, the Committee has improved and

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[3] Letter dated June 15, 1999, from Kay C. James, Chair, and William Bible, Commissioner, National Gambling Impact Study Commission, to Senator Patrick Leahy, at 1 (emphasis in the original).

[4] DOJ letter at 2.

[5] Compare 18 U.S.C. 1084(c) ("Nothing contained in this section shall create immunity from criminal prosecution under any laws of any State.") and sec. 2(g) of S. 692 ("Nothing in this section may be construed to affect any prohibition or remedy applicable to a person engaged in a gambling business under any provision of Federal or State law.").

refined the bill on a bipartisan basis. The bill now applies only to gambling businesses, instead of individual betters. This will permit Federal authorities to target the prosecution of interstate gambling businesses, while rightly leaving the prosecution of individual bettors to the discretion of State authorities acting under State law. But granting immunity from criminal prosecution for illegal Internet gambling under State law would prohibit such an effective Federal-State partnership.

Finally, I note that the Chairman and Ranking Member of the Senate Indian Affairs Committee have requested referral of S. 692 to their committee.[6] I believe this referral is appropriate because the bill restricts gaming activities under the Indian Gaming Regulatory Act.[7] Indeed, the Congressional Budget Office estimates that S. 692 would cost tribal governments millions of dollars in lost revenue as a result of its restrictions on Indian gaming.

As Senators continue to work together to enact a ban on Internet gambling, we should keep these words from the Department of Justice foremost in our minds: "[A]ny prohibitions that are designed to prohibit criminal activity on the Internet must be carefully drafted to accomplish the legislation's objectives without stifling the growth of the Internet or chilling its use as a communication medium."[8]

I look forward to working with my colleagues on both sides of the aisle and the Administration to enact into law carefully drafted legislation to update our Federal gambling statutes to ensure that new types of gambling activities made possible by emerging technologies are prohibited.

PATRICK LEAHY.

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[6] See letter dated June 15, 1999, from Senator Ben Nighthorse Campbell and Senator Daniel K. Inouye, Chairman and Vice Chairman of the Senate Indian Affairs Committee, to Senator Orrin Hatch and Senator Patrick Leahy, Chairman and Ranking Member of the Senate Judiciary Committee.

[7] See DOJ letter at 5: "We are concerned that S.692 would make illegal those gaming activities occurring entirely on Indian lands that are currently legal under the Indian Gaming Regulatory Act ("IGRA")."

[8] DOJ letter at 2.

IX. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 692, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

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TITLE 18—CRIMES AND CRIMINAL PROCEDURE

PART I—CRIMES

Chapter **Section**

1. General provisions 1

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CHAPTER 50—GAMBLING

Sec.

1081. Definitions.

* * * * * * *

1084. Transmission of wagering information; penalties.

1085. Internet gambling.

* * * * * * *

§ 1085. Internet gambling

(a) DEFINITIONS.—In this section:

(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 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);

(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; or

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

(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 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 or facilities 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.

(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, including specifically a service or system that provides access to the Internet.

(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.

(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 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 expedi-

tiously 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) 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 paragraph (2)(A) to comply with a notice described in paragraph (2)(B), or complying with any court order issued under paragraph (3).

(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, received, or otherwise made wholly intrastate for a State lot-

tery, 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;

(iii) each person placing or otherwise making that bet or wager is physically located when such bet or wager 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 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 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.); or

(II) live dog racing, subject to consent agreements that are comparable to those required by the Interstate Horse Racing Act of 1978, approved by the appropriate State regulatory agencies, in the State receiving the signal, and in the State in which the bet or wager originates; or

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

(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 or promotion of any activity that is not prohibited by subsection (b)(1)(A).

(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.

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