

UNLAWFUL INTERNET GAMBLING ENFORCEMENT ACT
OF 2006

APRIL 6, 2006.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. OXLEY, from the Committee on Financial Services,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 4411]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 4411) to prevent the use of certain payment instruments, credit cards, and fund transfers for unlawful Internet gambling, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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AMENDMENT

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 “Unlawful Internet Gambling Enforcement Act of 2006”.

SEC. 2. PROHIBITION ON ACCEPTANCE OF ANY PAYMENT INSTRUMENT FOR UNLAWFUL INTERNET GAMBLING.

(a) IN GENERAL.—Chapter 53 of title 31, United States Code, is amended by adding at the end the following new subchapter:

“SUBCHAPTER IV—PROHIBITION ON FUNDING OF UNLAWFUL INTERNET GAMBLING

“§ 5361. Congressional findings and purpose

“(a) FINDINGS.—The Congress finds the following:

“(1) Internet gambling is primarily funded through personal use of payment system instruments, credit cards, and wire transfers.

“(2) The National Gambling Impact Study Commission in 1999 recommended the passage of legislation to prohibit wire transfers to Internet gambling sites or the banks which represent such sites.

“(3) Internet gambling is a growing cause of debt collection problems for insured depository institutions and the consumer credit industry.

“(4) New mechanisms for enforcing gambling laws on the Internet are necessary because traditional law enforcement mechanisms are often inadequate for enforcing gambling prohibitions or regulations on the Internet, especially where such gambling crosses State or national borders.

“(b) RULE OF CONSTRUCTION.—No provision of this subchapter shall be construed as altering, limiting, or extending any Federal or State law or Tribal-State compact prohibiting, permitting, or regulating gambling within the United States.

“§ 5362. Definitions

“For purposes of this subchapter, the following definitions shall apply:

“(1) BET OR WAGER.—The term ‘bet or wager’—

“(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 subject to chance, upon an agreement or understanding that the person or another person will receive something of value in the event of a certain outcome;

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

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

“(D) includes any instructions or information pertaining to the establishment or movement of funds by the bettor or customer in, to, or from an account with the business of betting or wagering; and

“(E) does not include—

“(i) any activity governed by the securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934 for the purchase or sale of securities (as that term is defined in section 3(a)(10) of that Act);

“(ii) any transaction conducted on or subject to the rules of a registered entity or exempt board of trade under the Commodity Exchange Act;

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

“(iv) any other transaction that—

“(I) is excluded or exempt from regulation under the Commodity Exchange Act; or

“(II) is exempt from State gaming or bucket shop laws under section 12(e) of the Commodity Exchange Act or section 28(a) of the Securities Exchange Act of 1934;

“(v) any contract of indemnity or guarantee;

“(vi) any contract for insurance;

“(vii) any deposit or other transaction with an insured depository institution; or

“(viii) any participation in a fantasy or simulation sports game, an educational game, or a contest, that—

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

“(II) has an outcome that reflects the relative knowledge of the participants, or their skill at physical reaction or physical manipulation (but not chance), and, in the case of a fantasy or simulation sports game, has an outcome that is determined predominantly by accumulated statistical results of sporting events, including any nonparticipant’s individual performances in such sporting events; and

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

“(2) BUSINESS OF BETTING OR WAGERING.—The term ‘business of betting or wagering’ does not include the activities of a financial transaction provider, or any interactive computer service or telecommunications service.

“(3) DESIGNATED PAYMENT SYSTEM.—The term ‘designated payment system’ means any system utilized by a financial transaction provider that the Secretary and the Board of Governors of the Federal Reserve System, in consultation with the Attorney General, jointly determine, by regulation or order, could be utilized in connection with, or to facilitate, any restricted transaction.

“(4) FINANCIAL TRANSACTION PROVIDER.—The term ‘financial transaction provider’ means a creditor, credit card issuer, financial institution, operator of a terminal at which an electronic fund transfer may be initiated, money transmitting business, or international, national, regional, or local payment network utilized to effect a credit transaction, electronic fund transfer, stored value product transaction, or money transmitting service, or a participant in such network, or other participant in a designated payment system.

“(5) INTERNET.—The term ‘Internet’ means the international computer network of interoperable packet switched data networks.

“(6) INTERACTIVE COMPUTER SERVICE.—The term ‘interactive computer service’ has the same meaning as in section 230(f) of the Communications Act of 1934.

“(7) RESTRICTED TRANSACTION.—The term ‘restricted transaction’ means any transaction or transmittal involving any credit, funds, instrument, or proceeds described in any paragraph of section 5363 which the recipient is prohibited from accepting under section 5363.

“(8) SECRETARY.—The term ‘Secretary’ means the Secretary of the Treasury.

“(9) STATE.—The term ‘State’ means any State of the United States, the District of Columbia, or any commonwealth, territory, or other possession of the United States.

“(10) UNLAWFUL INTERNET GAMBLING.—

“(A) IN GENERAL.—The term ‘unlawful Internet gambling’ means to place, receive, or otherwise knowingly transmit a bet or wager by any means which involves the use, at least in part, of the Internet where such bet or wager is unlawful under any applicable Federal or State law in the State or Tribal lands in which the bet or wager is initiated, received, or otherwise made.

“(B) INTRASTATE TRANSACTIONS.—The term ‘unlawful Internet gambling’ shall not include placing, receiving, or otherwise transmitting a bet or wager where—

“(i) the bet or wager is initiated and received or otherwise made exclusively within a single State;

“(ii) the bet or wager and the method by which the bet or wager is initiated and received or otherwise made is expressly authorized by and placed in accordance with the laws of such State, and the State law or regulations include—

“(I) age and location verification requirements reasonably designed to block access to minors and persons located out of such State; and

“(II) appropriate data security standards to prevent unauthorized access by any person whose age and current location has not been verified in accordance with such State’s law or regulations; and

“(iii) the bet or wager does not violate any provision of the—

“(I) Interstate Horseracing Act;

- “(II) Professional and Amateur Sports Protection Act;
- “(III) Gambling Devices Transportation Act; or
- “(IV) Indian Gaming Regulatory Act.

“(C) INTRATRIBAL TRANSACTIONS.—The term ‘unlawful Internet gambling’ shall not include placing, receiving, or otherwise transmitting a bet or wager where—

“(i) the bet or wager is initiated and received or otherwise made exclusively—

“(I) within the Indian lands of a single Indian tribe (as those terms are defined by the Indian Gaming Regulatory Act); or

“(II) between the Indian lands of 2 or more Indian tribes to the extent that intertribal gaming is authorized by the Indian Gaming Regulatory Act;

“(ii) the bet or wager and the method by which the bet or wager is initiated and received or otherwise made is expressly authorized by and complies with the requirements of—

“(I) the applicable tribal ordinance or resolution approved by the Chairman of the National Indian Gaming Commission; and

“(II) with respect to class III gaming, the applicable Tribal-State Compact;

“(iii) the applicable tribal ordinance or resolution or Tribal-State compact includes—

“(I) age and location verification requirements reasonably designed to block access to minors and persons located out of the applicable Tribal lands; and

“(II) appropriate data security standards to prevent unauthorized access by any person whose age and current location has not been verified in accordance with the applicable tribal ordinance or resolution or Tribal-State Compact; and

“(iv) the bet or wager does not violate any provision of the—

“(I) Interstate Horseracing Act;

“(II) the Professional and Amateur Sports Protection Act;

“(III) the Gambling Devices Transportation Act; or

“(IV) the Indian Gaming Regulatory Act.

“(D) INTERSTATE HORSE RACING.—The term ‘unlawful Internet gambling’ shall not include placing, receiving, or otherwise transmitting a bet or wager that is governed by and complies with the Interstate Horseracing Act of 1978.

“(E) INTERMEDIATE ROUTING.—The intermediate routing of electronic data shall not determine the location or locations in which a bet or wager is initiated, received, or otherwise made.

“(11) OTHER TERMS.—

“(A) CREDIT; CREDITOR; CREDIT CARD; AND CARD ISSUER.—The terms ‘credit’, ‘creditor’, ‘credit card’, and ‘card issuer’ have the same meanings as in section 103 of the Truth in Lending Act.

“(B) ELECTRONIC FUND TRANSFER.—The term ‘electronic fund transfer’—

“(i) has the same meaning as in section 903 of the Electronic Fund Transfer Act, except that such term includes transfers that would otherwise be excluded under section 903(6)(E) of that Act; and

“(ii) includes any fund transfer covered by Article 4A of the Uniform Commercial Code, as in effect in any State.

“(C) FINANCIAL INSTITUTION.—The term ‘financial institution’ has the same meaning as in section 903 of the Electronic Fund Transfer Act, except that such term does not include a casino, sports book, or other business at or through which bets or wagers may be placed or received.

“(D) INSURED DEPOSITORY INSTITUTION.—The term ‘insured depository institution’—

“(i) has the same meaning as in section 3 of the Federal Deposit Insurance Act; and

“(ii) includes an insured credit union (as defined in section 101 of the Federal Credit Union Act).

“(E) MONEY TRANSMITTING BUSINESS AND MONEY TRANSMITTING SERVICE.—The terms ‘money transmitting business’ and ‘money transmitting service’ have the same meanings as in section 5330(d) (determined without regard to any regulations prescribed by the Secretary thereunder).

“§ 5363. Prohibition on acceptance of any financial instrument for unlawful Internet gambling

“No person engaged in the business of betting or wagering may knowingly accept, in connection with the participation of another person in unlawful Internet gambling—

“(1) credit, or the proceeds of credit, extended to or on behalf of such other person (including credit extended through the use of a credit card);

“(2) an electronic fund transfer, or funds transmitted by or through a money transmitting business, or the proceeds of an electronic fund transfer or money transmitting service, from or on behalf of such other person;

“(3) any check, draft, or similar instrument which is drawn by or on behalf of such other person and is drawn on or payable at or through any financial institution; or

“(4) the proceeds of any other form of financial transaction, as the Secretary and the Board of Governors of the Federal Reserve System may jointly prescribe by regulation, which involves a financial institution as a payor or financial intermediary on behalf of or for the benefit of such other person.

“§ 5364. Policies and procedures to identify and prevent restricted transactions

“(a) REGULATIONS.—Before the end of the 270-day period beginning on the date of the enactment of this subchapter, the Secretary and the Board of Governors of the Federal Reserve System, in consultation with the Attorney General, shall prescribe regulations (which the Secretary and the Board jointly determine to be appropriate) requiring each designated payment system, and all participants therein, to identify and block or otherwise prevent or prohibit restricted transactions through the establishment of policies and procedures reasonably designed to identify and block or otherwise prevent or prohibit the acceptance of restricted transactions in any of the following ways:

“(1) The establishment of policies and procedures that—

“(A) allow the payment system and any person involved in the payment system to identify restricted transactions by means of codes in authorization messages or by other means; and

“(B) block restricted transactions identified as a result of the policies and procedures developed pursuant to subparagraph (A).

“(2) The establishment of policies and procedures that prevent or prohibit the acceptance of the products or services of the payment system in connection with a restricted transaction.

“(b) REQUIREMENTS FOR POLICIES AND PROCEDURES.—In prescribing regulations under subsection (a), the Secretary and the Board of Governors of the Federal Reserve System shall—

“(1) identify types of policies and procedures, including nonexclusive examples, which would be deemed, as applicable, to be reasonably designed to identify and block or otherwise prevent or prohibit the acceptance of the products or services with respect to each type of restricted transaction;

“(2) to the extent practical, permit any participant in a payment system to choose among alternative means of identifying and blocking, or otherwise preventing or prohibiting the acceptance of the products or services of the payment system or participant in connection with, restricted transactions; and

“(3) consider exempting certain restricted transactions or designated payment systems from any requirement imposed under such regulations, if the Secretary and the Board jointly find that it is not reasonably practical to identify and block, or otherwise prevent or prohibit the acceptance of, such transactions.

“(c) COMPLIANCE WITH PAYMENT SYSTEM POLICIES AND PROCEDURES.—A financial transaction provider shall be considered to be in compliance with the regulations prescribed under subsection (a), if—

“(1) such person relies on and complies with the policies and procedures of a designated payment system of which it is a member or participant to—

“(A) identify and block restricted transactions; or

“(B) otherwise prevent or prohibit the acceptance of the products or services of the payment system, member, or participant in connection with restricted transactions; and

“(2) such policies and procedures of the designated payment system comply with the requirements of regulations prescribed under subsection (a).

“(d) NO LIABILITY FOR BLOCKING OR REFUSING TO HONOR RESTRICTED TRANSACTIONS.—A person that identifies and blocks a transaction, prevents or prohibits the acceptance of its products or services in connection with a transaction, or otherwise refuses to honor a transaction—

“(1) that is a restricted transaction;

“(2) that such person reasonably believes to be a restricted transaction; or
 “(3) as a designated payment system or a member of a designated payment system in reliance on the policies and procedures of the payment system, in an effort to comply with regulations prescribed under subsection (a), shall not be liable to any party for such action.

“(e) REGULATORY ENFORCEMENT.—The requirements of this section shall be enforced exclusively by—

“(1) the Federal functional regulators, with respect to the designated payment systems and financial transaction providers subject to the respective jurisdiction of such regulators under section 505(a) of the Gramm-Leach-Bliley Act and section 5g of the Commodities Exchange Act; and

“(2) the Federal Trade Commission, with respect to designated payment systems and financial transaction providers not otherwise subject to the jurisdiction of any Federal functional regulators (including the Commission) as described in paragraph (1).

“§ 5365. Civil remedies

“(a) JURISDICTION.—The district courts of the United States shall have original and exclusive jurisdiction to prevent and restrain restricted transactions by issuing appropriate orders in accordance with this section, regardless of whether a prosecution has been initiated under this subchapter.

“(b) PROCEEDINGS.—

“(1) INSTITUTION BY FEDERAL GOVERNMENT.—

“(A) IN GENERAL.—The United States, acting through the Attorney General, may institute proceedings under this section to prevent or restrain a restricted transaction.

“(B) RELIEF.—Upon application of the United States under this paragraph, the district court may enter a temporary restraining order, a preliminary injunction, or an injunction against any person to prevent or restrain a restricted transaction, in accordance with rule 65 of the Federal Rules of Civil Procedure.

“(2) INSTITUTION BY STATE ATTORNEY GENERAL.—

“(A) IN GENERAL.—The attorney general (or other appropriate State official) of a State in which a restricted transaction allegedly has been or will be initiated, received, or otherwise made may institute proceedings under this section to prevent or restrain the violation or threatened violation.

“(B) RELIEF.—Upon application of the attorney general (or other appropriate State official) of an affected State under this paragraph, the district court may enter a temporary restraining order, a preliminary injunction, or an injunction against any person to prevent or restrain a restricted transaction, in accordance with rule 65 of the Federal Rules of Civil Procedure.

“(3) INDIAN LANDS.—

“(A) IN GENERAL.—Notwithstanding paragraphs (1) and (2), for a restricted transaction that allegedly has been or will be initiated, received, or otherwise made on Indian lands (as that term is defined in section 4 of the Indian Gaming Regulatory Act)—

“(i) the United States shall have the enforcement authority provided under paragraph (1); 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.

“(B) RULE OF CONSTRUCTION.—No provision of this section shall be construed as altering, superseding, or otherwise affecting the application of the Indian Gaming Regulatory Act.

“(c) LIMITATION RELATING TO INTERACTIVE COMPUTER SERVICES.—

“(1) IN GENERAL.—Relief granted under this section against an interactive computer service shall—

“(A) be limited to the removal of, or disabling of access to, an online site violating section 5363, or a hypertext link to an online site violating such section, that resides on a computer server that such service controls or operates, except that the limitation in this subparagraph shall not apply if the service is subject to liability under this section under section 5367;

“(B) be available only after notice to the interactive computer service and an opportunity for the service to appear are provided;

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

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

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

“(2) COORDINATION WITH OTHER LAW.—An interactive computer service that does not violate this subchapter shall not be liable under section 1084(d) of title 18, except that the limitation in this paragraph shall not apply if an interactive computer service has actual knowledge and control of bets and wagers and—

“(A) operates, manages, supervises, or directs an Internet website at which unlawful bets or wagers may be placed, received, or otherwise made or at which unlawful bets or wagers are offered to be placed, received, or otherwise made; or

“(B) owns or controls, or is owned or controlled by, any person who operates, manages, supervises, or directs an Internet website at which unlawful bets or wagers may be placed, received, or otherwise made, or at which unlawful bets or wagers are offered to be placed, received, or otherwise made.

“(d) LIMITATION ON INJUNCTIONS AGAINST REGULATED PERSONS.—Notwithstanding any other provision of this section, and subject to section 5367, no provision of this subchapter shall be construed as authorizing the Attorney General of the United States, or the attorney general (or other appropriate State official) of any State to institute proceedings to prevent or restrain a restricted transaction against any financial transaction provider, to the extent that the person is acting as a financial transaction provider.

“§ 5366. Criminal penalties

“(a) IN GENERAL.—Whoever violates section 5363 shall be fined under title 18, or imprisoned for not more than 5 years, or both.

“(b) PERMANENT INJUNCTION.—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.

“§ 5367. Circumventions prohibited

“Notwithstanding section 5362(2), a financial transaction provider, or any interactive computer service or telecommunications service, may be liable under this subchapter if such person has actual knowledge and control of bets and wagers, and—

“(1) operates, manages, supervises, or directs an Internet website at which unlawful bets or wagers may be placed, received, or otherwise made, or at which unlawful bets or wagers are offered to be placed, received, or otherwise made; or

“(2) owns or controls, or is owned or controlled by, any person who operates, manages, supervises, or directs an Internet website at which unlawful bets or wagers may be placed, received, or otherwise made, or at which unlawful bets or wagers are offered to be placed, received, or otherwise made.”.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 53 of title 31, United States Code, is amended by adding at the end the following:

“SUBCHAPTER IV—PROHIBITION ON FUNDING OF UNLAWFUL INTERNET GAMBLING

“5361. Congressional findings and purpose.

“5362. Definitions.

“5363. Prohibition on acceptance of any financial instrument for unlawful Internet gambling.

“5364. Policies and procedures to identify and prevent restricted transactions.

“5365. Civil remedies.

“5366. Criminal penalties.

“5367. Circumventions prohibited.”.

SEC. 4. INTERNET GAMBLING IN OR THROUGH FOREIGN JURISDICTIONS.

(a) IN GENERAL.—In deliberations between the United States Government and any other country on money laundering, corruption, and crime issues, the United States Government should—

(1) encourage cooperation by foreign governments and relevant international fora in identifying whether Internet gambling operations are being used for money laundering, corruption, or other crimes;

(2) advance policies that promote the cooperation of foreign governments, through information sharing or other measures, in the enforcement of this Act; and

(3) encourage the Financial Action Task Force on Money Laundering, in its annual report on money laundering typologies, to study the extent to which Internet gambling operations are being used for money laundering purposes.

(b) REPORT REQUIRED.—The Secretary of the Treasury shall submit an annual report to the Congress on any deliberations between the United States and other countries on issues relating to Internet gambling.

PURPOSE AND SUMMARY

The Unlawful Internet Gambling Enforcement Act of 2006, H.R. 4411, prohibits the acceptance of any bank instrument for unlawful Internet gambling. It defines certain terms for purposes of the Act; establishes civil remedies, criminal penalties, and regulatory enforcement authorities; encourages cooperation by foreign governments in the enforcement of the Act; and requires the Secretary of the Treasury to report annually to Congress on deliberations between the United States and other countries on issues relating to Internet gambling. Its primary purpose is to give U.S. law enforcement new, more effective tools for combating offshore Internet gambling sites that illegally extend their services to U.S. residents via the Internet.

BACKGROUND AND NEED FOR LEGISLATION

The Committee on Financial Services has established a comprehensive hearing and markup record on Internet gambling, most particularly in the 107th Congress. In addition to the extensive debate at the Committee's October 11, 2001 markup of H.R. 3004, the Financial Anti-Terrorism Act of 2001, Internet gambling was addressed at the Committee's October 3, 2001 hearing on terrorism and money laundering. At that hearing, the Federal Bureau of Investigation (FBI), the Department of Justice, and a money laundering expert testified that Internet gambling serves as a vehicle for money laundering and can be exploited by terrorists for that purpose. The FBI also testified about pending litigation linking organized crime to money laundering and Internet gambling.

At two hearings held in July 2001 by the Subcommittee on Oversight and Investigations and the Subcommittee on Financial Institutions and Consumer Credit, witnesses discussed the legal status of Internet gambling, the social and financial challenges it poses, and legislative options for addressing those challenges.

Many legal experts, including officials from the Department of Justice, State attorneys general, and others involved in law enforcement hold the view that Internet gambling is generally prohibited under various Federal statutes. Among them, the Federal Wire Act (18 U.S.C. 1084 et seq.) criminalizes the knowing use of a wire communication facility by a gambling establishment for the transmission of bets and wagers in interstate or foreign commerce.

Conventional forms of gambling activities, such as casino wagering, State lotteries, slot machines and horse racing, legal in many jurisdictions, are regulated by the individual States. However, these activities are subject to intense scrutiny and a myriad of licensing and other operational requirements. Virtually all States prohibit the operation of gambling businesses not expressly permitted by their respective constitutions or special legislation. Internet gambling currently constitutes illegal gambling activity in all 50 States. Although in June of 2001 the Nevada legislature authorized the Nevada Gaming Commission to legalize on-line, Internet gambling operations if and when such operations can be conducted in compliance with Federal law, the Gaming Commission believes that such compliance cannot be ensured at present.

Because Internet gambling is generally held to be illegal under Federal and State law, most of the estimated 2,000 Internet gam-

bling sites today operate from offshore locations in the Caribbean and elsewhere. As such, they operate effectively beyond the reach of U.S. regulators and law enforcement, as well as the statutory anti-money laundering regimes that apply to U.S.-based casinos. These “virtual casinos” advertise the ease of opening betting accounts mainly through the use of credit cards and alternative payment systems. Internet gambling sites are not only vulnerable to criminal exploitation by money launderers; they also can easily abuse a customer’s credit card information or manipulate the odds of a particular wager to the casino’s advantage.

At the Oversight Subcommittee’s hearing on July 12, 2001, the American Gaming Association (AGA), representing commercial casinos and their supporters in the United States, addressed some of the practical problems associated with Internet gambling, including the difficulty of subjecting Internet operations to the kinds of regulation currently applied to U.S.-based casinos. According to the AGA, its major concern is that offshore Internet gambling sites “frustrate important state policies, including restrictions on the availability of gaming within each State.” The AGA went on to say: “* * * unregulated Internet gambling that exists today allows an unlicensed, untaxed, unsupervised operator to engage in wagering that is otherwise subject to stringent federal and state regulatory controls. These controls are vital to preserving the honesty, integrity and fairness that those in the gaming industry today have worked so hard for so long to bring about.” The AGA further reported that it does not believe the technology for exercising such controls with respect to Internet gambling is yet available.

Testifying from a State perspective, the New Jersey Director of Gaming Enforcement also noted that offshore Internet gambling operations provide no tax revenue or jobs to States, unlike State-regulated casinos.

In addition to the legal and economic challenges cited above, problem gambling, including problem Internet gambling, can lead to personal and family hardships, such as lost savings, excessive debt, bankruptcy, foreclosed mortgages, and divorce. In particular, Internet gambling is proving to be a serious problem for many college students. The National Collegiate Athletic Association (NCAA) at the July 2001 hearings underscored the vulnerability of young people to losing large sums through Internet gambling. A 2003 study by the NCAA showed that almost 35 percent of male student-athletes engaged in some type of sports wagering behavior in the past year, and 10 percent of female student-athletes. One student reportedly lost \$10,000 on Internet sports gambling over a three-month period. In another case, a student reportedly lost \$5,000 on a single Internet wager on the Super Bowl and was forced to drop out of school. Further, current events show that not just student athletes, but professional athletes can be caught by the lure of Internet gambling, as the sports pages have detailed the roughly \$500,000 owed by Washington Capitals hockey star Jaromir Jagr to a Caribbean Internet betting site.

The New Jersey Director of Gaming Enforcement testified that the State of New Jersey had filed a suit against certain offshore casinos found to be taking online bets from minors in that State. Witnesses from the National Council on Problem Gambling and the Compulsive Gambling Center testified about the problems associ-

ated with compulsive or pathological gambling, and the Christian Coalition, in a letter to a Member of the Committee, echoed concerns about the impact of gambling on families and society and, in particular, the impact of Internet gambling on the poor, youth, and those who are already compulsive gamblers.

Because of the pervasive legal, economic and social challenges posed by the rapid growth of Internet gambling, the National Gambling Impact Study Commission unanimously recommended in its 1999 final report that the Federal government prohibit, with no new exemptions, all Internet gambling not already authorized by law. The Commission also recommended that legislation be adopted to prohibit wire transfers to Internet gambling sites or to the banks which represent them, and called on the government to develop enforcement strategies that include credit card providers and money transfer agencies that facilitate Internet gambling.

H.R. 4411, the Unlawful Internet Gambling Enforcement Act of 2006, builds on the recommendations of the National Gambling Impact Study Commission by prohibiting gambling businesses from accepting credit cards or other bank instruments in connection with unlawful Internet gambling. The bill requires the Secretary of the Treasury and the Federal Reserve Board, in conjunction with the U.S. Attorney General, to prescribe regulations requiring any payment system to establish policies and procedures reasonably designed to identify and block restricted transactions, or otherwise prevent restricted transactions from entering its system and provides that a payment system is not liable for blocking or refusing a restricted transaction in an attempt to comply with the bill's enforcement. It is intended to provide regulatory flexibility so that compliance may be achieved through coding of transactions or—for those financial instruments for which coding is not viable—through alternative methods consistent with the bill's goals. The bill is similar to H.R. 21, reported by the House Financial Services Committee by voice vote in the 108th Congress, and H.R. 556, which passed the House of Representatives by voice vote in the 107th Congress. It is similar to provisions incorporated in the 108th Congress in the Committee-reported H.R. 10 and the 107th Congress in the Committee-reported version of H.R. 3004, the Financial Anti-Terrorism Act of 2001, as well as to legislation adopted by the House Banking Committee in the 106th Congress (H.R. 4419).

H.R. 4411 does not spell out which activities are legal and which are illegal under the bill; rather, it relies on the substantive laws in effect at the time a case is brought under the legislation, and law enforcement's interpretation of the underlying law. It clarifies that "bet or wager" does not include bona fide business transactions such as securities trading or buying or selling insurance contracts, or participation in a simulation sports game or educational game.

H.R. 4411 does not change the legality of any gambling-related activity in the United States. For instance, if use of the Internet in connection with dog racing is approved by state regulatory agencies and does not violate any Federal law, then it is allowed under the new section 5362(10)(A) of title 31.

H.R. 4411 does not interfere with intrastate laws. New section 5362(10)(B) creates a safe harbor from the term "unlawful internet gambling" for authorized intrastate transactions. The safe harbor

would leave intact the current interstate gambling prohibitions such as the Wire Act, federal prohibitions on lotteries, and the Gambling Ship Act so that casino and lottery games could not be placed on websites and individuals could not access these games from their homes or businesses. The safe harbor is intended to recognize current law which allows states jurisdiction over wholly intrastate activity, where bets or wagers, or information assisting bets or wagers, do not cross state lines. This would, for example, allow retail lottery terminals to interact with a processing center within a state, and linking of terminals between separate casinos within a state if authorized by the state.

H.R. 4411 is not intended to impose new burdens on financial institutions to identify which offshore gambling sites may be engaged in unlawful activities. Rather, the legislation contemplates a mechanism whereby banks and other financial service providers will be provided with the identity of specific Internet gambling bank accounts to which payments are to be prohibited. The obligation of financial institutions under H.R. 4411 would be similar in effect to their obligations under certain other U.S. laws, such as those administered by the Office of Foreign Assets Control (OFAC) barring financial transactions with terrorists and drug kingpins. The bill recognizes that many credit card companies and issuing banks are taking steps to identify, block or prevent Internet gambling transactions, and builds on the experience gained through these voluntary efforts.

It is the view of the Committee that the definition of “bets or wagers” does not include information exchanged via private network if the information is used only to monitor gaming device play, display prize amounts, provide security information, and provide other accounting information. Furthermore, it is the view of the Committee that information exchanged via a linked progressive game accounting system that does not accept bets or wagers and that does not affect game outcome is not included in the definition of the term “bets or wagers.”

HEARINGS

No hearings were held on this legislation in the 109th Congress.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on March 15, 2006, and ordered H.R. 4411, the Unlawful Internet Gambling Enforcement Act of 2006, reported to the House as amended by a voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. No record votes were taken in conjunction with the consideration of this legislation. A motion by Mr. Oxley to report the bill as amended to the House with a favorable recommendation was agreed to by a voice vote.

The Committee considered the following amendment:

An amendment in the nature of a substitute by Mr. Leach, No.1, making various substantive and technical changes in the bill, was agreed to by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has held hearings and made findings that are reflected in this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee establishes the following performance related goals and objectives for this legislation:

By prohibiting the acceptance of any payment instruments for unlawful internet gambling, the availability of illegal offshore Internet gambling in the United States will be reduced.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

MARCH 30, 2006.

Hon. MICHAEL G. OXLEY,
*Chairman, Committee on Financial Services,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4411, the Unlawful Internet Gambling Enforcement Act of 2006.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Kathleen Gramp.

Sincerely,

DONALD B. MARRON,
Acting Director.

Enclosure.

H.R. 4411—Unlawful Internet Gambling Enforcement Act of 2006

Summary: H.R. 4411 would prohibit businesses from accepting credit cards, checks, or other bank instruments from gamblers who illegally bet over the Internet. It also would direct the Department of the Treasury and the Board of Governors of the Federal Reserve System (the Federal Reserve) to issue regulations outlining policies and procedures that could be used by financial institutions to identify and block gambling-related transactions that are transmitted through their payment systems. Compliance with those prohibitions and regulations would be enforced by various federal agencies as well as state governments, and violations would be subject to new civil remedies and criminal penalties. Finally, the bill would require the Secretary of the Treasury to report annually to the Congress on any international deliberations regarding Internet gambling.

Assuming appropriation of the necessary amounts, CBO estimates that implementing H.R. 4411 would cost about \$2 million over the 2007–2011 period. Enacting the bill would affect direct spending and revenues, but CBO estimates that the net impact on direct spending and revenues would not be significant in any year.

H.R. 4411 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

H.R. 4411 would impose mandates, as defined in UMRA, on financial institutions and other financial transaction providers. Because the cost of the mandates would depend on regulations to be prescribed under the bill, CBO cannot determine whether the direct cost to comply with those mandates would exceed the annual threshold established by UMRA for private-sector mandates (\$128 million in 2006, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 4411 is shown in the following table. The costs of this legislation fall within budget function 370 (commerce and housing credit).

	By fiscal year, in millions of dollars—				
	2007	2008	2009	2010	2011
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Estimated Authorization Level	1	*	*	*	*
Estimated Outlays	1	*	*	*	*

Note.—* = Less than \$500,000.

Basis of estimate: For this estimate, CBO assumes that H.R. 4411 will be enacted near the end of fiscal year 2006 and that funds will be appropriated for the activities authorized by the bill.

Spending subject to appropriation

Based on information from the Department of the Treasury and other affected agencies, CBO estimates that implementing this bill would cost about \$2 million over the 2007–2011 period, assuming appropriation of the necessary amounts. That estimate primarily reflects the cost of developing regulations to identify and block financial transactions related to illegal Internet gambling. The cost of preparing annual reports to the Congress on international deliberations on this issue would not be significant. Spending by the De-

partment of Justice and the Federal Trade Commission to enforce certain provisions in the bill would likely be negligible in any given year, CBO estimates.

Direct spending and revenues

Enacting H.R. 4411 would affect direct spending and revenues because of provisions affecting financial regulatory agencies and criminal penalties. CBO estimates that such effects would not be significant.

H.R. 4411 would direct financial regulatory agencies to enforce the regulations on illegal Internet gambling as they apply to financial institutions, including Office of the Comptroller of the Currency (OCC), Federal Deposit Insurance Corporation (FDIC), the Federal Reserve, the National Credit Union Administration (NCUA), and the Office of Thrift Supervision (OTS). Any additional direct spending by NCUA, OCC, and OTS to implement the bill would have no net budgetary impact because those agencies charge annual fees to cover all of their administrative expenses. In contrast, the FDIC's sources of income—primarily intragovernmental interest earnings and deposit insurance premiums—do not change in tandem with its annual expenditures; as a result, any added costs would increase direct spending unless and until the FDIC raised deposit insurance premiums to offset those expenses. Budgetary effects on the Federal Reserve are recorded as changes in revenues.

According to financial regulatory agency officials, enacting H.R. 4411 would not have a significant effect on their workload or budgets. For this estimate, CBO assumes that the FDIC would not assess additional premiums to cover the small costs associated with implementing this bill. Thus, CBO estimates that enacting this bill would increase direct spending and offsetting receipts of the NCUA, OCC, OTS, and FDIC by less than \$500,000 a year. Based on information from the Federal Reserve, CBO estimates that the rulemaking and enforcement activities required by H.R. 4411 would reduce revenues by less than \$500,000 a year.

Because those prosecuted and convicted under the bill could be subject to criminal penalties, the federal government might collect additional fines if the bill is enacted. Collections of such fines are recorded in the budget as revenues, which are deposited in the Crime Victims Fund and spent in subsequent years. Any additional collections are likely to be negligible because of the small number of cases involved. Because any increase in direct spending would equal the amount of fines collected (with a lag of one year or more), the additional direct spending also would be insignificant.

Estimated impact on state, local, and tribal governments: Although H.R. 4411 would prohibit gambling businesses from accepting credit card payments and other bank instruments from gamblers who bet illegally over the Internet, the bill would not create a new intergovernmental mandate as defined in UMRA. Under current federal and state law, gambling businesses are generally prohibited from accepting bets or wagers over the Internet. Thus, H.R. 4411 does not contain a new mandate relative to current law and would impose no costs on state, local, or tribal governments.

Estimated impact on the private sector: H.R. 4411 would impose mandates, as defined in UMRA, on financial institutions and other

financial transaction providers. Because the cost of the mandates would depend on regulations to be prescribed under the bill, CBO cannot determine whether the direct cost to comply with those mandates would exceed the annual threshold established by UMRA for private-sector mandates (\$128 million in 2006, adjusted annually for inflation).

The bill would require the Secretary of the Treasury and the Board of Governors of the Federal Reserve System, in consultation with the Attorney General, to prescribe regulations that would require financial transaction providers to identify and block restricted transactions in connection with unlawful Internet gambling through the establishment of reasonable policies and procedures. Such requirements would impose private-sector mandates on certain financial entities. Under the bill, the term “financial transaction providers” means creditors, credit card issuers, financial institutions, or other payment networks that utilize a designated payment system. Such systems would be determined by regulation.

The cost for financial transaction providers to comply with those mandates would depend on the regulations to be prescribed. Information from representatives of the financial services industry indicates that electronic transactions can currently be identified and blocked through the use of a coding system. If the regulations apply only to those transactions, based on information from industry and government sources, CBO expects that the cost of the mandates would fall below UMRA’s annual threshold. However, if the regulations also include the requirement for banks to identify and block checks or similar paper instruments used in a restricted transaction, the direct cost to comply with the mandates could increase significantly and CBO has no basis to estimate whether those costs would be above or below the annual threshold.

Although section 2 would prohibit gambling businesses from accepting credit card payments and other bank instruments from gamblers who bet illegally over the Internet, those provisions would not create a new private-sector mandate as defined in UMRA. Under current federal and state law, gambling businesses are generally prohibited from accepting bets or wagers over the Internet. Thus, those provisions do not contain a new mandate relative to current law.

Estimate prepared by: Federal Spending: Kathleen Gramp and Melissa Petersen. Federal Revenues: Barbara Edwards. Impact on State, Local, and Tribal Governments: Sarah Puro. Impact on the Private Sector: Page Piper/Bach.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional Authority of Congress to enact this legislation is provided by Article 1, section 8, clause 1 (relating to the general welfare of the United States) and clause 3 (relating to the power to regulate interstate commerce).

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b) (3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This Act may be cited as the “Unlawful Internet Gambling Enforcement Act of 2006.”

Section 2. Prohibition on acceptance of any payment instrument for unlawful Internet gambling

Subsection (a) adds a new “Subchapter IV-Prohibition on Funding of Unlawful Internet Gambling” to Chapter 53 of Title 31 (Monetary Transactions). The new subchapter will come immediately after subchapter III, covering Money Laundering and Related Financial Crimes.

Section 5361. Congressional findings and purpose

(a) Findings. The Congressional findings note that: (1) Internet gambling is primarily funded through the personal use of payment system instruments, credit cards, and wire transfers; (2) the National Gambling Impact Study Commission in 1999 recommended the passage of legislation to prohibit wire transfers to Internet gambling sites or the banks which represent such sites; (3) Internet gambling is a growing cause of debt collection problems for insured depository institutions and the consumer credit industry; and (4) new mechanisms for enforcing gambling laws on the Internet are necessary because traditional law enforcement mechanisms are often inadequate for enforcing gambling prohibitions on the Internet, especially where such gambling crosses State or national borders.

(b) Rule of Construction. No provision is to be construed as altering, limiting, or extending any Federal or State law or Tribal-State compact prohibiting, permitting or regulating gambling within the United States. This is intended to alleviate fears that this bill could have the effect of changing the legality of any gambling-related activity in the United States.

Section 5362. Definitions

This defines the term “bet or wager” as 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 subject to chance with the agreement that the winner will receive something of value in the

event of a certain outcome. This subsection clarifies that “bet or wager” does not include bona fide business transactions such as securities trading or buying or selling insurance contracts, or participation in a simulation sports game or educational game.

Defines the term “unlawful Internet gambling” as placing, receiving, or transmitting a bet or wager by any means which involves the use of the Internet, where such bet or wager is unlawful under any applicable Federal or State law in the State or Tribal lands in which the bet or wager is initiated, received, or otherwise made. Clarifies that purely intrastate transactions conducted in accordance with state laws with appropriate security controls will not be considered unlawful internet gambling. Likewise, transactions solely within Tribal lands complying with similar security requirements and the Indian Gaming Regulatory Act will not be considered unlawful. Section 5362 (10)(D) addresses transactions complying with Interstate Horseracing Act (IHA) which will not be considered unlawful, because the IHA only regulates legal transactions that are lawful in each of the states involved. Also clarifies that intermediate routing of data packets does not determine the location in which bets or wagers are made.

Section 5362 also defines the terms “business of betting or wagering,” “designated payment system,” “Internet,” and “restricted transaction.” Several additional terms are defined by reference to other sections of the U.S. Code.

Section 5363. Prohibition on acceptance of any financial instrument for unlawful Internet gambling

Prohibits persons engaged in the business of betting or wagering from knowingly accepting credit, funds, bank instruments, or proceeds of any other form of financial transaction in connection with the participation of another person in unlawful Internet gambling. This is called a “restricted transaction” according to the definitions section.

Section 5364. Policies and procedures to identify and prevent restricted transactions

(a) Regulations and (b) Requirements for Policies and procedures. Requires the Secretary of the Treasury and the Federal Reserve Board, in conjunction with the U.S. Attorney General, to prescribe regulations within nine months requiring any payment system to establish policies and procedures reasonably designed to identify and block restricted transactions, or otherwise prevent restricted transactions from entering its system.

(c) Compliance and (d) Liability. Provides persons operating financial systems with immunity from civil liability for blocking transactions that they reasonably believe are restricted transactions, or in reliance on the regulations promulgated by the Treasury Department and Federal Reserve. Though a financial institution may block additional transactions based on reasonable belief, it has no duty to do so, and may rely solely on the regulations to fully discharge its obligations.

(e) Enforcement. The Federal functional regulators and the Federal Trade Commission are given the exclusive authority to enforce this section.

Section 5365. Civil remedies

Authorizes the U.S. Attorney General and State Attorneys General to pursue civil remedies, including a preliminary injunction or injunction against any person to prevent or restrain a violation of this legislation. It clarifies that the bill does not alter, supersede or otherwise affect the Indian Gaming Regulatory Act; generally limits responsibility of an interactive computer service to the removal or disabling of access to an online site violating this section, upon proper notice; restricts the ability to bring injunctive cases against financial transaction provider activities.

Section 5366. Criminal penalties

Authorizes criminal penalties for violating section 5363, including fines or imprisonment for not more than five years or both. Also authorizes permanently enjoining a person convicted under this section from engaging in gambling activities.

Section 5367. Circumventions prohibited

Provides that, notwithstanding the safe harbor provided in section 5362(2), a financial intermediary or interactive computer service or telecommunications service that has actual knowledge and control of bets and wagers, and operates or is controlled by an entity that operates, an unlawful Internet gambling site can be held criminally liable under this subchapter.

Section 3. Internet gambling in or through foreign jurisdictions

Section 4(a) provides that, in deliberations between the U.S. Government and any other country on money laundering, corruption, and crime issues, the U.S. Government should encourage cooperation by foreign governments in identifying whether Internet gambling operations are being used for money laundering, corruption, or other crimes, advance policies that promote the cooperation by foreign governments in the enforcement of this Act, and encourage the Financial Action Task Force on Money Laundering to study the extent to which Internet gambling operations are being used for money laundering. It also requires the Secretary of the Treasury to submit an annual report to Congress on the deliberations between the United States and other countries on issues relating to Internet gambling.

Subsection (b) requires the Secretary of the Treasury to submit an annual report to Congress on any deliberations between the United States and other countries on tissues relating to Internet Gambling.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

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

TITLE 31, UNITED STATES CODE

* * * * *

SUBTITLE IV—MONEY

* * * * *

CHAPTER 53—MONETARY TRANSACTIONS

SUBCHAPTER I—CREDIT AND MONETARY EXPANSION

Sec.
5301. Buying obligations of the United States Government.

* * * * *

SUBCHAPTER IV—PROHIBITION ON FUNDING OF UNLAWFUL INTERNET GAMBLING

- 5361. Congressional findings and purpose.
- 5362. Definitions.
- 5363. Prohibition on acceptance of any financial instrument for unlawful Internet gambling.
- 5364. Policies and procedures to identify and prevent restricted transactions.
- 5365. Civil remedies.
- 5366. Criminal penalties.
- 5367. Circumventions prohibited.

* * * * *

SUBCHAPTER IV—PROHIBITION ON FUNDING OF UNLAWFUL INTERNET GAMBLING

§ 5361. Congressional findings and purpose

- (a) FINDINGS.—*The Congress finds the following:*
 - (1) *Internet gambling is primarily funded through personal use of payment system instruments, credit cards, and wire transfers.*
 - (2) *The National Gambling Impact Study Commission in 1999 recommended the passage of legislation to prohibit wire transfers to Internet gambling sites or the banks which represent such sites.*
 - (3) *Internet gambling is a growing cause of debt collection problems for insured depository institutions and the consumer credit industry.*
 - (4) *New mechanisms for enforcing gambling laws on the Internet are necessary because traditional law enforcement mechanisms are often inadequate for enforcing gambling prohibitions or regulations on the Internet, especially where such gambling crosses State or national borders.*
- (b) RULE OF CONSTRUCTION.—*No provision of this subchapter shall be construed as altering, limiting, or extending any Federal or State law or Tribal-State compact prohibiting, permitting, or regulating gambling within the United States.*

§ 5362. Definitions

For purposes of this subchapter, the following definitions shall apply:

- (1) BET OR WAGER.—*The term “bet or wager”—*
 - (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 subject to chance, upon an agreement or understanding that the person or another person will receive something of value in the event of a certain outcome;*

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

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

(D) includes any instructions or information pertaining to the establishment or movement of funds by the bettor or customer in, to, or from an account with the business of betting or wagering; and

(E) does not include—

(i) any activity governed by the securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934 for the purchase or sale of securities (as that term is defined in section 3(a)(10) of that Act);

(ii) any transaction conducted on or subject to the rules of a registered entity or exempt board of trade under the Commodity Exchange Act;

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

(iv) any other transaction that—

(I) is excluded or exempt from regulation under the Commodity Exchange Act; or

(II) is exempt from State gaming or bucket shop laws under section 12(e) of the Commodity Exchange Act or section 28(a) of the Securities Exchange Act of 1934;

(v) any contract of indemnity or guarantee;

(vi) any contract for insurance;

(vii) any deposit or other transaction with an insured depository institution; or

(viii) any participation in a fantasy or simulation sports game, an educational game, or a contest, that—

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

(II) has an outcome that reflects the relative knowledge of the participants, or their skill at physical reaction or physical manipulation (but not chance), and, in the case of a fantasy or simulation sports game, has an outcome that is determined predominantly by accumulated statistical results of sporting events, including any nonparticipant's individual performances in such sporting events; and

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

(2) BUSINESS OF BETTING OR WAGERING.—The term “business of betting or wagering” does not include the activities of a financial transaction provider, or any interactive computer service or telecommunications service.

(3) *DESIGNATED PAYMENT SYSTEM.*—The term “designated payment system” means any system utilized by a financial transaction provider that the Secretary and the Board of Governors of the Federal Reserve System, in consultation with the Attorney General, jointly determine, by regulation or order, could be utilized in connection with, or to facilitate, any restricted transaction.

(4) *FINANCIAL TRANSACTION PROVIDER.*—The term “financial transaction provider” means a creditor, credit card issuer, financial institution, operator of a terminal at which an electronic fund transfer may be initiated, money transmitting business, or international, national, regional, or local payment network utilized to effect a credit transaction, electronic fund transfer, stored value product transaction, or money transmitting service, or a participant in such network, or other participant in a designated payment system.

(5) *INTERNET.*—The term “Internet” means the international computer network of interoperable packet switched data networks.

(6) *INTERACTIVE COMPUTER SERVICE.*—The term “interactive computer service” has the same meaning as in section 230(f) of the Communications Act of 1934.

(7) *RESTRICTED TRANSACTION.*—The term “restricted transaction” means any transaction or transmittal involving any credit, funds, instrument, or proceeds described in any paragraph of section 5363 which the recipient is prohibited from accepting under section 5363.

(8) *SECRETARY.*—The term “Secretary” means the Secretary of the Treasury.

(9) *STATE.*—The term “State” means any State of the United States, the District of Columbia, or any commonwealth, territory, or other possession of the United States.

(10) *UNLAWFUL INTERNET GAMBLING.*—

(A) *IN GENERAL.*—The term “unlawful Internet gambling” means to place, receive, or otherwise knowingly transmit a bet or wager by any means which involves the use, at least in part, of the Internet where such bet or wager is unlawful under any applicable Federal or State law in the State or Tribal lands in which the bet or wager is initiated, received, or otherwise made.

(B) *INTRASTATE TRANSACTIONS.*—The term “unlawful Internet gambling” shall not include placing, receiving, or otherwise transmitting a bet or wager where—

(i) the bet or wager is initiated and received or otherwise made exclusively within a single State;

(ii) the bet or wager and the method by which the bet or wager is initiated and received or otherwise made is expressly authorized by and placed in accordance with the laws of such State, and the State law or regulations include—

(I) age and location verification requirements reasonably designed to block access to minors and persons located out of such State; and

(II) appropriate data security standards to prevent unauthorized access by any person whose age

and current location has not been verified in accordance with such State's law or regulations; and
 (iii) the bet or wager does not violate any provision of the—

- (I) Interstate Horseracing Act;
- (II) Professional and Amateur Sports Protection Act;
- (III) Gambling Devices Transportation Act; or
- (IV) Indian Gaming Regulatory Act.

(C) *INTRATRIBAL TRANSACTIONS.*—The term “unlawful Internet gambling” shall not include placing, receiving, or otherwise transmitting a bet or wager where—

(i) the bet or wager is initiated and received or otherwise made exclusively—

(I) within the Indian lands of a single Indian tribe (as those terms are defined by the Indian Gaming Regulatory Act); or

(II) between the Indian lands of 2 or more Indian tribes to the extent that intertribal gaming is authorized by the Indian Gaming Regulatory Act;

(ii) the bet or wager and the method by which the bet or wager is initiated and received or otherwise made is expressly authorized by and complies with the requirements of—

(I) the applicable tribal ordinance or resolution approved by the Chairman of the National Indian Gaming Commission; and

(II) with respect to class III gaming, the applicable Tribal-State Compact;

(iii) the applicable tribal ordinance or resolution or Tribal-State compact includes—

(I) age and location verification requirements reasonably designed to block access to minors and persons located out of the applicable Tribal lands; and

(II) appropriate data security standards to prevent unauthorized access by any person whose age and current location has not been verified in accordance with the applicable tribal ordinance or resolution or Tribal-State Compact; and

(iv) the bet or wager does not violate any provision of the—

- (I) Interstate Horseracing Act;
- (II) the Professional and Amateur Sports Protection Act;
- (III) the Gambling Devices Transportation Act;
- or
- (IV) the Indian Gaming Regulatory Act.

(D) *INTERSTATE HORSERACING.*—The term “unlawful Internet gambling” shall not include placing, receiving, or otherwise transmitting a bet or wager that is governed by and complies with the Interstate Horseracing Act of 1978.

(E) *INTERMEDIATE ROUTING.*—The intermediate routing of electronic data shall not determine the location or loca-

tions in which a bet or wager is initiated, received, or otherwise made.

(11) OTHER TERMS.—

(A) CREDIT; CREDITOR; CREDIT CARD; AND CARD ISSUER.—The terms “credit”, “creditor”, “credit card”, and “card issuer” have the same meanings as in section 103 of the Truth in Lending Act.

(B) ELECTRONIC FUND TRANSFER.—The term “electronic fund transfer”—

(i) has the same meaning as in section 903 of the Electronic Fund Transfer Act, except that such term includes transfers that would otherwise be excluded under section 903(6)(E) of that Act; and

(ii) includes any fund transfer covered by Article 4A of the Uniform Commercial Code, as in effect in any State.

(C) FINANCIAL INSTITUTION.—The term “financial institution” has the same meaning as in section 903 of the Electronic Fund Transfer Act, except that such term does not include a casino, sports book, or other business at or through which bets or wagers may be placed or received.

(D) INSURED DEPOSITORY INSTITUTION.—The term “insured depository institution”—

(i) has the same meaning as in section 3 of the Federal Deposit Insurance Act; and

(ii) includes an insured credit union (as defined in section 101 of the Federal Credit Union Act).

(E) MONEY TRANSMITTING BUSINESS AND MONEY TRANSMITTING SERVICE.—The terms “money transmitting business” and “money transmitting service” have the same meanings as in section 5330(d) (determined without regard to any regulations prescribed by the Secretary thereunder).

§5363. Prohibition on acceptance of any financial instrument for unlawful Internet gambling

No person engaged in the business of betting or wagering may knowingly accept, in connection with the participation of another person in unlawful Internet gambling—

(1) credit, or the proceeds of credit, extended to or on behalf of such other person (including credit extended through the use of a credit card);

(2) an electronic fund transfer, or funds transmitted by or through a money transmitting business, or the proceeds of an electronic fund transfer or money transmitting service, from or on behalf of such other person;

(3) any check, draft, or similar instrument which is drawn by or on behalf of such other person and is drawn on or payable at or through any financial institution; or

(4) the proceeds of any other form of financial transaction, as the Secretary and the Board of Governors of the Federal Reserve System may jointly prescribe by regulation, which involves a financial institution as a payor or financial intermediary on behalf of or for the benefit of such other person.

§5364. Policies and procedures to identify and prevent restricted transactions

(a) *REGULATIONS.*—Before the end of the 270-day period beginning on the date of the enactment of this subchapter, the Secretary and the Board of Governors of the Federal Reserve System, in consultation with the Attorney General, shall prescribe regulations (which the Secretary and the Board jointly determine to be appropriate) requiring each designated payment system, and all participants therein, to identify and block or otherwise prevent or prohibit restricted transactions through the establishment of policies and procedures reasonably designed to identify and block or otherwise prevent or prohibit the acceptance of restricted transactions in any of the following ways:

(1) *The establishment of policies and procedures that—*

(A) *allow the payment system and any person involved in the payment system to identify restricted transactions by means of codes in authorization messages or by other means; and*

(B) *block restricted transactions identified as a result of the policies and procedures developed pursuant to subparagraph (A).*

(2) *The establishment of policies and procedures that prevent or prohibit the acceptance of the products or services of the payment system in connection with a restricted transaction.*

(b) *REQUIREMENTS FOR POLICIES AND PROCEDURES.*—In prescribing regulations under subsection (a), the Secretary and the Board of Governors of the Federal Reserve System shall—

(1) *identify types of policies and procedures, including non-exclusive examples, which would be deemed, as applicable, to be reasonably designed to identify and block or otherwise prevent or prohibit the acceptance of the products or services with respect to each type of restricted transaction;*

(2) *to the extent practical, permit any participant in a payment system to choose among alternative means of identifying and blocking, or otherwise preventing or prohibiting the acceptance of the products or services of the payment system or participant in connection with, restricted transactions; and*

(3) *consider exempting certain restricted transactions or designated payment systems from any requirement imposed under such regulations, if the Secretary and the Board jointly find that it is not reasonably practical to identify and block, or otherwise prevent or prohibit the acceptance of, such transactions.*

(c) *COMPLIANCE WITH PAYMENT SYSTEM POLICIES AND PROCEDURES.*—A financial transaction provider shall be considered to be in compliance with the regulations prescribed under subsection (a), if—

(1) *such person relies on and complies with the policies and procedures of a designated payment system of which it is a member or participant to—*

(A) *identify and block restricted transactions; or*

(B) *otherwise prevent or prohibit the acceptance of the products or services of the payment system, member, or participant in connection with restricted transactions; and*

(2) *such policies and procedures of the designated payment system comply with the requirements of regulations prescribed under subsection (a).*

(d) **NO LIABILITY FOR BLOCKING OR REFUSING TO HONOR RESTRICTED TRANSACTIONS.**—*A person that identifies and blocks a transaction, prevents or prohibits the acceptance of its products or services in connection with a transaction, or otherwise refuses to honor a transaction—*

(1) *that is a restricted transaction;*

(2) *that such person reasonably believes to be a restricted transaction; or*

(3) *as a designated payment system or a member of a designated payment system in reliance on the policies and procedures of the payment system, in an effort to comply with regulations prescribed under subsection (a),*

shall not be liable to any party for such action.

(e) **REGULATORY ENFORCEMENT.**—*The requirements of this section shall be enforced exclusively by—*

(1) *the Federal functional regulators, with respect to the designated payment systems and financial transaction providers subject to the respective jurisdiction of such regulators under section 505(a) of the Gramm-Leach-Bliley Act and section 5g of the Commodities Exchange Act; and*

(2) *the Federal Trade Commission, with respect to designated payment systems and financial transaction providers not otherwise subject to the jurisdiction of any Federal functional regulators (including the Commission) as described in paragraph (1).*

§ 5365. Civil remedies

(a) **JURISDICTION.**—*The district courts of the United States shall have original and exclusive jurisdiction to prevent and restrain restricted transactions by issuing appropriate orders in accordance with this section, regardless of whether a prosecution has been initiated under this subchapter.*

(b) **PROCEEDINGS.**—

(1) **INSTITUTION BY FEDERAL GOVERNMENT.**—

(A) **IN GENERAL.**—*The United States, acting through the Attorney General, may institute proceedings under this section to prevent or restrain a restricted transaction.*

(B) **RELIEF.**—*Upon application of the United States under this paragraph, the district court may enter a temporary restraining order, a preliminary injunction, or an injunction against any person to prevent or restrain a restricted transaction, in accordance with rule 65 of the Federal Rules of Civil Procedure.*

(2) **INSTITUTION BY STATE ATTORNEY GENERAL.**—

(A) **IN GENERAL.**—*The attorney general (or other appropriate State official) of a State in which a restricted transaction allegedly has been or will be initiated, received, or otherwise made may institute proceedings under this section to prevent or restrain the violation or threatened violation.*

(B) **RELIEF.**—*Upon application of the attorney general (or other appropriate State official) of an affected State under*

this paragraph, the district court may enter a temporary restraining order, a preliminary injunction, or an injunction against any person to prevent or restrain a restricted transaction, in accordance with rule 65 of the Federal Rules of Civil Procedure.

(3) INDIAN LANDS.—

(A) IN GENERAL.—*Notwithstanding paragraphs (1) and (2), for a restricted transaction that allegedly has been or will be initiated, received, or otherwise made on Indian lands (as that term is defined in section 4 of the Indian Gaming Regulatory Act)—*

(i) the United States shall have the enforcement authority provided under paragraph (1); 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.

(B) RULE OF CONSTRUCTION.—*No provision of this section shall be construed as altering, superseding, or otherwise affecting the application of the Indian Gaming Regulatory Act.*

(c) LIMITATION RELATING TO INTERACTIVE COMPUTER SERVICES.—

(1) IN GENERAL.—*Relief granted under this section against an interactive computer service shall—*

(A) be limited to the removal of, or disabling of access to, an online site violating section 5363, or a hypertext link to an online site violating such section, that resides on a computer server that such service controls or operates, except that the limitation in this subparagraph shall not apply if the service is subject to liability under this section under section 5367;

(B) be available only after notice to the interactive computer service and an opportunity for the service to appear are provided;

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

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

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

(2) COORDINATION WITH OTHER LAW.—*An interactive computer service that does not violate this subchapter shall not be liable under section 1084(d) of title 18, except that the limitation in this paragraph shall not apply if an interactive computer service has actual knowledge and control of bets and wagers and—*

(A) operates, manages, supervises, or directs an Internet website at which unlawful bets or wagers may be placed, received, or otherwise made or at which unlawful bets or wagers are offered to be placed, received, or otherwise made; or

(B) owns or controls, or is owned or controlled by, any person who operates, manages, supervises, or directs an

Internet website at which unlawful bets or wagers may be placed, received, or otherwise made, or at which unlawful bets or wagers are offered to be placed, received, or otherwise made.

(d) **LIMITATION ON INJUNCTIONS AGAINST REGULATED PERSONS.**—Notwithstanding any other provision of this section, and subject to section 5367, no provision of this subchapter shall be construed as authorizing the Attorney General of the United States, or the attorney general (or other appropriate State official) of any State to institute proceedings to prevent or restrain a restricted transaction against any financial transaction provider, to the extent that the person is acting as a financial transaction provider.

§5366. Criminal penalties

(a) **IN GENERAL.**—Whoever violates section 5363 shall be fined under title 18, or imprisoned for not more than 5 years, or both.

(b) **PERMANENT INJUNCTION.**—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.

§5367. Circumventions prohibited

Notwithstanding section 5362(2), a financial transaction provider, or any interactive computer service or telecommunications service, may be liable under this subchapter if such person has actual knowledge and control of bets and wagers, and—

(1) operates, manages, supervises, or directs an Internet website at which unlawful bets or wagers may be placed, received, or otherwise made, or at which unlawful bets or wagers are offered to be placed, received, or otherwise made; or

(2) owns or controls, or is owned or controlled by, any person who operates, manages, supervises, or directs an Internet website at which unlawful bets or wagers may be placed, received, or otherwise made, or at which unlawful bets or wagers are offered to be placed, received, or otherwise made.

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DISSENTING VIEWS

H.R. 4411 limits the ability of individual citizens to use bank instruments, including credit cards or checks, to finance Internet gambling. This legislation should be rejected by Congress since the federal government has no constitutional authority to ban or even discourage any form of gambling.

In addition to being unconstitutional, H.R. 4411 is likely to prove ineffective at ending Internet gambling. Instead, this bill will ensure that gambling is controlled by organized crime. History, from the failed experiment of prohibition to today's futile "war on drugs," shows that the government cannot eliminate demand for something like Internet gambling simply by passing a law. Instead, H.R. 4411 will force those who wish to gamble over the Internet to patronize suppliers willing to flaunt the ban. In many cases, providers of services banned by the government will be members of criminal organizations. Even if organized crime does not operate Internet gambling enterprises, their competitors are likely to be controlled by organized crime. After all, since the owners and patrons of Internet gambling cannot rely on the police and courts to enforce contracts and resolve other disputes, they will be forced to rely on members of organized crime to perform those functions. Thus, the profits of Internet gambling will flow into organized crime. Furthermore, outlawing an activity will raise the price vendors are able to charge consumers, thus increasing the profits flowing to organized crime from Internet gambling. It is bitterly ironic that a bill masquerading as an attack on crime will actually increase organized crime's ability to control and profit from Internet gambling.

In conclusion, H.R. 4411 violates the constitutional limits on federal power. Furthermore, laws such as H.R. 4411 are ineffective in eliminating the demand for vices such as Internet gambling; instead, they ensure that these enterprises will be controlled by organized crime. Therefore I urge my colleagues to reject H.R. 4411, the Unlawful Internet Gambling Funding Prohibition Act.

RON PAUL.

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