

Calendar No. 223

105TH CONGRESS
1ST Session

S. 474

A BILL

To amend sections 1081 and 1084 of title 18,
United States Code.

OCTOBER 23, 1997

Reported with an amendment

105TH CONGRESS
1ST SESSION

S. 474

To amend sections 1081 and 1084 of title 18, United States Code.

IN THE SENATE OF THE UNITED STATES

MARCH 19, 1997

Mr. KYL (for himself, Mrs. FEINSTEIN, Mr. GRAHAM, Mr. HUTCHINSON, Mr. GRASSLEY, Mr. JOHNSON, Mr. LIEBERMAN, Mr. GORTON, Mr. BRYAN, Mr. REID, Mr. ASHCROFT, and Mr. BOND) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

OCTOBER 23, 1997

Reported by Mr. HATCH, with an amendment

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

A BILL

To amend sections 1081 and 1084 of title 18, United States Code.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “~~Internet Gambling~~
5 ~~Prohibition Act of 1997~~”.

1 **SEC. 2. DEFINITIONS.**

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

4 (1) in the matter immediately following the
5 colon, by designating the first 5 undesignated para-
6 graphs as paragraphs (1) through (5), respectively,
7 and indenting each paragraph accordingly;

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

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

11 (B) by striking “transmission of writings”
12 and inserting “transmission or receipt of data,
13 writings”; and

14 (C) by striking “or other like” and all that
15 follows before the period and inserting “radio,
16 electromagnetic, photo-optical, photoelectric, or
17 other similar facility”; and

18 (3) by adding at the end the following:

19 “(6) BETS OR WAGERS.—The term ‘bets or wa-
20 gers’—

21 “(A) means the staking or risking by any
22 person of something of value upon the outcome
23 of a contest of chance or a future contingent
24 event not under the control or influence of the
25 person, upon an agreement or understanding
26 that the person or another person will receive

1 something of value in the event of a certain out-
 2 come;

3 “(B) includes the purchase of a chance or
 4 opportunity to win a lottery or other prize; and

5 “(C) does not include—

6 “(i) a bona fide business transaction
 7 governed by the securities laws (as that
 8 term is defined in section 3(a)(47) of the
 9 Securities Exchange Act of 1934 (15
 10 U.S.C. 78c(a)(47))) for the purchase or
 11 sale at a future date of securities (as that
 12 term is defined in section 3(a)(10) of the
 13 Securities Exchange Act of 1934 (15
 14 U.S.C. 78c(a)(10)));

15 “(ii) a contract of indemnity or guar-
 16 antee; or

17 “(iii) a contract for life, health, or ac-
 18 cident insurance.”

19 **SEC. 3. TRANSMISSION OF WAGERING INFORMATION; PEN-**
 20 **ALTIES.**

21 Section 1084 of title 18, United States Code, is
 22 amended—

23 (1) by striking subsections (a) and (b) and in-
 24 serting the following:

25 “(a) IN GENERAL.—

1 “(1) PERSONS ENGAGED IN THE BUSINESS OF
2 BETTING OR WAGERING.—Whoever, being engaged
3 in the business of betting or wagering knowingly
4 uses a communication facility for the transmission
5 or receipt in interstate or foreign commerce of bets
6 or wagers, information assisting in the placing of
7 bets or wagers, or a communication that entitles the
8 transmitter or receiver to the opportunity to receive
9 money or credit as a result of bets or wagers, shall
10 be fined not more than \$10,000, imprisoned not
11 more than 2 years, or both.

12 “(2) OTHER PERSONS.—Whoever (other than a
13 person described in paragraph (1)) knowingly uses a
14 communication facility for the transmission or re-
15 ceipt in interstate or foreign commerce of bets or
16 wagers, information assisting in the placing of bets
17 or wagers, or a communication that entitles the
18 transmitter or receiver to the opportunity to receive
19 money or credit as a result of bets or wagers, shall
20 be fined not more than \$5,000, imprisoned not more
21 than 1 year, or both.

22 “(b) EXCEPTIONS.—

23 “(1) NEWS REPORTING; LEGAL BETS AND WA-
24 GERS.—Nothing in this section shall be construed to

1 prohibit the transmission or receipt in interstate or
 2 foreign commerce of any information—

3 “(A) for use in the news reporting of any
 4 activity, event, or contest upon which bets or
 5 wagers are based; or

6 “(B) relating to the placing of bets or wa-
 7 gers, if such betting or wagering—

8 “(i) is legal in the State or foreign
 9 country in which the transmission origi-
 10 nates; and

11 “(ii) is legal in each State and each
 12 foreign country in which the transmission
 13 is received.

14 “(2) STATE LAW.—Nothing in this section shall
 15 be construed to preempt any State law.”; and

16 (2) in subsection (d)—

17 (A) by striking “(d) When” and inserting
 18 the following:

19 “(d) DUTIES OF COMMON CARRIERS AND INTER-
 20 ACTIVE COMPUTER SERVICE PROVIDERS.—

21 “(1) IN GENERAL.—If”;

22 (B) by inserting “or interactive computer
 23 service provider” after “common carrier” each
 24 place that term appears;

1 (C) by striking “Nothing” and inserting
2 the following:

3 “~~(3) JUDICIAL ACTION.—Nothing~~”; and

4 (D) by inserting after paragraph (1), as so
5 designated by subparagraph (A) of this para-
6 graph, the following:

7 “~~(2) INJUNCTIVE RELIEF.—Any Federal, State,~~
8 or local law enforcement agency acting within its ju-
9 risdiction, shall have the authority, following the is-
10 suanee of a notice under paragraph (1), to seek an
11 injunction or other appropriate relief from a Federal
12 or State court of competent jurisdiction barring ac-
13 cess to the communication facility at issue or pre-
14 venting the use of such facility for the purpose of
15 transmitting or receiving gambling information in
16 interstate or foreign commerce in violation of Fed-
17 eral, State, or local law.”.

18 **SEC. 4. SENSE OF THE SENATE.**

19 It is the sense of the Senate that the Federal Govern-
20 ment should have extraterritorial jurisdiction over the
21 transmission to or receipt from the United States of—

22 (1) bets or wagers (as that term is defined in
23 section 1081 of title 18, United States Code);

24 (2) information assisting in the placing of bets
25 or wagers; and

1 ~~(3)~~ any communication that entitles the trans-
2 mitter or recipient to the opportunity to receive
3 money or credit as a result of bets or wagers.

4 **SEC. 5. REPORT.**

5 Not later than 360 days after the date of enactment
6 of this Act, the Attorney General shall submit a report
7 to Congress that includes—

8 (1) an analysis of the problems, if any, associ-
9 ated with enforcing section 1084 of title 18, United
10 States Code, as amended by this Act;

11 ~~(2)~~ recommendations for the best use of the re-
12 sources of the Department of Justice to enforce that
13 section;

14 ~~(3)~~ recommendations for the best use of the re-
15 sources of the Federal Communications Commission
16 to enforce that section; and

17 (4) an estimate of the amount of activity and
18 money being used to gamble on the Internet (as that
19 term is defined in section 230(e)(1) of the Commu-
20 nications Act of 1934 (47 U.S.C. 230(e)(1)).

21 **SECTION 1. SHORT TITLE.**

22 *This Act may be cited as the “Internet Gambling Pro-*
23 *hibition Act of 1997”.*

1 **SEC. 2. DEFINITIONS.**

2 *Section 1081 of title 18, United States Code, is amend-*
 3 *ed—*

4 *(1) in the matter immediately following the*
 5 *colon, by designating the first 5 undesignated para-*
 6 *graphs as paragraphs (1) through (5), respectively,*
 7 *and indenting each paragraph accordingly; and*

8 *(2) by adding at the end the following:*

9 *“(6) BETS OR WAGERS.—The term ‘bets or wa-*
 10 *gers’—*

11 *“(A) means the staking or risking by any*
 12 *person of something of value (other than a de*
 13 *minimis amount) upon the outcome of a contest,*
 14 *sporting event, or game of chance, upon an*
 15 *agreement or understanding that the person or*
 16 *another person will receive something of value in*
 17 *the event of a certain outcome;*

18 *“(B) includes the purchase of a chance or*
 19 *opportunity to win a lottery or other prize*
 20 *(which opportunity to win is predominantly*
 21 *subject to chance and which purchase requires*
 22 *consideration in an amount exceeding a de*
 23 *minimis amount); and*

24 *“(C) does not include—*

25 *“(i) a bona fide business transaction*
 26 *governed by the securities laws (as that*

1 *term is defined in section 3(a)(47) of the*
 2 *Securities Exchange Act of 1934 (15 U.S.C.*
 3 *78c(a)(47))) for the purchase or sale at a*
 4 *future date of securities (as that term is de-*
 5 *fin ed in section 3(a)(10) of the Securities*
 6 *Exchange Act of 1934 (15 U.S.C.*
 7 *78c(a)(10))));*

8 *“(ii) a contract of indemnity or guar-*
 9 *antee; or*

10 *“(iii) a contract for life, health, or ac-*
 11 *cident insurance.”.*

12 **SEC. 3. PROHIBITION ON INTERNET GAMBLING.**

13 *(a) IN GENERAL.—Chapter 50 of title 18, United*
 14 *States Code, is amended by adding at the end the following:*

15 **“§ 1085. Internet gambling**

16 *“(a) DEFINITIONS.—In this section—*

17 *“(1) the term ‘interactive computer service’*
 18 *means any information service, system, or access soft-*
 19 *ware provider that provides or enables computer ac-*
 20 *cess by multiple users to a computer server, including*
 21 *specifically a service or system that provides access to*
 22 *the Internet;*

23 *“(2) the term ‘Internet’ means the international*
 24 *computer network of both Federal and non-Federal*
 25 *interoperable packet switched data networks; and*

1 “(3) the term ‘State’ means a State of the United
2 States, the District of Columbia, the Commonwealth
3 of Puerto Rico, or a commonwealth, territory, or pos-
4 session of the United States.

5 “(b) GAMBLING.—

6 “(1) PROHIBITION.—It shall be unlawful for a
7 person to place, receive, or otherwise make a bet or
8 wager, via the Internet or any other interactive com-
9 puter service in any State.

10 “(2) PENALTIES.—A person who willfully vio-
11 lates paragraph (1) shall be—

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

14 “(i) the amount that the person is
15 found to have wagered via the Internet; or

16 “(ii) \$2,500;

17 “(B) imprisoned not more than 6 months;

18 or

19 “(C) both.

20 “(c) GAMBLING INFORMATION.—

21 “(1) PROHIBITION.—It shall be unlawful for a
22 person engaged in the business of betting or wagering
23 to engage in that business through the Internet or
24 through any other interactive computer service in any
25 State.

1 “(2) *PENALTIES.*—*A person engaged in the busi-*
 2 *ness of betting or wagering who violates paragraph*
 3 *(1) shall be—*

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

6 “(i) *the amount that such person is*
 7 *found to have received in bets or wagers as*
 8 *a result of engaging in that business in vio-*
 9 *lation of this subsection; or*

10 “(ii) *\$20,000;*

11 “(B) *imprisoned not more than 4 years; or*

12 “(C) *both.*”.

13 (b) *TECHNICAL AMENDMENT.*—*The analysis for chap-*
 14 *ter 50 of title 18, United States Code, is amended by adding*
 15 *at the end the following:*

 “1085. *Internet gambling.*”.

16 **SEC. 4. CIVIL REMEDIES.**

17 (a) *The district courts of the United States shall have*
 18 *original and exclusive jurisdiction to prevent and restrain*
 19 *violations of section 1085 of title 18, United States Code,*
 20 *as added by this Act, by issuing appropriate orders.*

21 (b)(1) *The Attorney General of the United States may*
 22 *institute proceedings under this section. Upon application*
 23 *of the Attorney General, the district court may enter a re-*
 24 *straining order or an injunction, or may take any other*
 25 *action necessary to prevent a violation of section 1085 of*

1 *title 18, United States Code, as added by this Act, if, prior*
2 *to the filing of an indictment or information by the United*
3 *States, the court determines that there is a substantial prob-*
4 *ability that such violation has occurred or will occur. Upon*
5 *the filing of an indictment or information by the United*
6 *States, the district court shall enter a preliminary injunc-*
7 *tion, or may take any other action necessary to prevent a*
8 *violation of section 1085 of title 18, United States Code,*
9 *as added by this Act. Notwithstanding any other provisions*
10 *of this paragraph the court may not enter an order affecting*
11 *the transmission of bets, wagers, or related gambling infor-*
12 *mation in, into, or through any State other than the State*
13 *in which the court is situated.*

14 (2) *The attorney general of a State (or other appro-*
15 *priate State official) in which a violation of section 1085*
16 *of title 18, United States Code, as added by this Act, is*
17 *alleged to have occurred, after providing written notice to*
18 *the Attorney General of the United States, may institute*
19 *proceedings under this section. Upon application of the at-*
20 *torney general of the affected State, the district court may*
21 *enter a temporary restraining order or an injunction, or*
22 *may take any other action necessary to prevent a violation*
23 *of section 1085 of title 18, United States Code, as added*
24 *by this Act, if, prior to the filing of an indictment or infor-*
25 *mation by the United States or the State, the court deter-*

1 *mines that there is a substantial probability that the United*
2 *States will prevail at trial. Notwithstanding any other pro-*
3 *visions of this paragraph the court may not enter an order*
4 *affecting the transmission of bets, wages, or related gam-*
5 *bling information in, into, or through any State other than*
6 *the State in which the court is situated.*

7 (3) *Any temporary restraining order or a preliminary*
8 *injunction entered pursuant to this subsection shall expire*
9 *if, and as soon as the Attorney General of the United States,*
10 *and the attorney general (or other appropriate State offi-*
11 *cial) of the State at issue, each notify the court that issued*
12 *the order or injunction that the United States or the State,*
13 *as applicable, will not seek a permanent injunction.*

14 (c)(1) *A district court may enter a temporary restrain-*
15 *ing order under this section upon application of the Attor-*
16 *ney General of the United States under subsection (b)(1),*
17 *or the attorney general (or other appropriate State official)*
18 *of an affected State under subsection (b)(3), without notice*
19 *and the opportunity for a hearing when an indictment or*
20 *information has not yet been filed with respect to a trans-*
21 *mission of bets, wagers, or related gambling information in,*
22 *into, or through the State in which the court is situated*
23 *if the United States demonstrates that there is probable*
24 *cause to believe that the transmission violates section 1085*
25 *of title 18, United States Code, as added by this Act.*

1 (2) *A temporary restraining order entered under this*
2 *subsection shall expire only upon the grant or denial of a*
3 *permanent injunction.*

4 (3) *A hearing requested concerning an order entered*
5 *under this subsection shall be held at the earliest practicable*
6 *time.*

7 (d) *The court may receive and consider at a hearing*
8 *held pursuant to this section evidence and information that*
9 *would be inadmissible under the Federal Rules of Evidence.*

10 (e) *Upon conviction of a person under this section, the*
11 *court may enter a permanent injunction enjoining the*
12 *transmission of bets, wagers, or related gambling informa-*
13 *tion in, into, or through the State in which the court is*
14 *situated.*

15 **SEC. 5. MULTILATERAL NEGOTIATIONS.**

16 (a) *IN GENERAL.*—*Not later than 6 months after the*
17 *date of enactment of this Act, the Secretary of State, in*
18 *consultation with the Secretary of the Treasury, the Attor-*
19 *ney General of the United States, and the Secretary of Com-*
20 *merce, shall commence negotiations with foreign countries*
21 *in order to conclude international agreements that would*
22 *enable the United States to enforce section 1085(c)(1) of title*
23 *18, United States Code, as added by this Act, with respect*
24 *to persons described in that section who are engaging in*
25 *violations of that section from outside the United States.*

1 **(b) REPORT.**—*Not less frequently than every 6 months*
2 *after the commencement of the negotiations under subsection*
3 *(a), the Secretary of State shall report on the progress of*
4 *the negotiations to the Majority and Minority Leaders of*
5 *the Senate, the Speaker and Minority Leader of the House*
6 *of Representatives, and the Chairmen and Ranking Mem-*
7 *bers of the Committees on the Judiciary of the House of*
8 *Representatives and the Senate.*