

Union Calendar No. 389

106TH CONGRESS
2^D SESSION

H. R. 3125

[Report No. 106-655, Part I]

To prohibit Internet gambling, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 21, 1999

Mr. GOODLATTE (for himself, Mr. LOBIONDO, Mr. WOLF, Mr. BOUCHER, Mr. GIBBONS, and Mr. GOODE) introduced the following bill; which was referred to the Committee on the Judiciary

JUNE 7, 2000

Reported with an amendment and referred to the Committee on Commerce for a period ending not later than June 23, 2000, for consideration of such provisions of the bill and amendment as fall within the jurisdiction of that committee pursuant to clause 1(f), rule X

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

JUNE 23, 2000

Additional sponsors: Mr. LUCAS of Kentucky, Mr. SMITH of Texas, Mr. DUNCAN, Mrs. NORTHUP, Mr. PETERSON of Minnesota, Mr. TRAFICANT, Mr. WAMP, Mr. COBURN, Mr. LAFALCE, Mr. FLETCHER, Mr. GOODLING, Mr. HASTINGS of Florida, Mr. WHITFIELD, Mr. WEXLER, Mr. MARTINEZ, Mr. GEORGE MILLER of California, Mr. SHAW, Mr. LEWIS of Kentucky, Mr. ROGERS, Mr. MALONEY of Connecticut, Mrs. THURMAN, Mr. RILEY, Mrs. FOWLER, Mr. GILCHREST, Mr. SHADEGG, Mr. STUMP, Mr. ENGLISH, Mr. SALMON, and Mr. COOK

JUNE 23, 2000

Committee on Commerce discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

A BILL

To prohibit Internet gambling, and for other purposes.

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 Pro-*
5 *hibition Act of 2000”.*

6 **SEC. 2. PROHIBITION ON INTERNET GAMBLING.**

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

9 **“§ 1085. Internet gambling**

10 *“(a) DEFINITIONS.—In this section the following defi-*
11 *initions apply:*

12 *“(1) BETS OR WAGERS.—The term ‘bets or*
13 *wagers’—*

14 *“(A) means the staking or risking by any*
15 *person of something of value upon the outcome of*
16 *a contest of others, a sporting event, or a game*
17 *predominantly subject to chance, upon an agree-*
18 *ment or understanding that the person or an-*
19 *other person will receive something of greater*

1 *value than the amount staked or risked in the*
2 *event of a certain outcome;*

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

7 “(C) *includes any scheme of a type de-*
8 *scribed in section 3702 of title 28; and*

9 “(D) *does not include—*

10 “(i) *a bona fide business transaction*
11 *governed by the securities laws (as that*
12 *term is defined in section 3(a)(47) of the*
13 *Securities Exchange Act of 1934 (15 U.S.C.*
14 *78c(a)(47))) for the purchase or sale at a*
15 *future date of securities (as that term is de-*
16 *fined in section 3(a)(10) of the Securities*
17 *Exchange Act of 1934 (15 U.S.C.*
18 *78c(a)(10)));*

19 “(ii) *a transaction on or subject to the*
20 *rules of a contract market designated pursu-*
21 *ant to section 5 of the Commodity Exchange*
22 *Act (7 U.S.C. 7);*

23 “(iii) *a contract of indemnity or guar-*
24 *antee;*

1 “(iv) a contract for life, health, or acci-
2 dent insurance; or

3 “(v) participation in a simulation
4 sports game or an educational game or con-
5 test that—

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

11 “(II) has an outcome that reflects
12 the relative knowledge and skill of the
13 participants with such outcome deter-
14 mined predominantly by accumulated
15 statistical results of sporting events
16 and nonparticipants accumulated in-
17 dividual performances therein; and

18 “(III) offers a prize or award to
19 a participant that is established in ad-
20 vance of the game or contest and is not
21 determined by the number of partici-
22 pants or the amount of any fees paid
23 by those participants.

1 “(2) *CLOSED-LOOP SUBSCRIBER-BASED SERV-*
2 *ICE.—The term ‘closed-loop subscriber-based service’*
3 *means any information service or system that uses—*

4 “(A) *a device or combination of devices—*

5 “(i) *expressly authorized and operated*
6 *in accordance with the laws of a State, ex-*
7 *clusively for placing, receiving, or otherwise*
8 *making a bet or wager described in sub-*
9 *section (f)(1)(B); and*

10 “(ii) *by which a person located within*
11 *any State must subscribe and be registered*
12 *with the provider of the wagering service by*
13 *name, address, and appropriate billing in-*
14 *formation to be authorized to place, receive,*
15 *or otherwise make a bet or wager, and must*
16 *be physically located within that State in*
17 *order to be authorized to do so;*

18 “(B) *an effective customer verification and*
19 *age verification system, expressly authorized and*
20 *operated in accordance with the laws of the State*
21 *in which it is located, to ensure that all applica-*
22 *ble Federal and State legal and regulatory re-*
23 *quirements for lawful gambling are met; and*

1 “(C) appropriate data security standards to
2 prevent unauthorized access by any person who
3 has not subscribed or who is a minor.

4 “(3) *FOREIGN JURISDICTION*.—The term ‘foreign
5 jurisdiction’ means a jurisdiction of a foreign country
6 or political subdivision thereof.

7 “(4) *GAMBLING BUSINESS*.—The term ‘gambling
8 business’ means—

9 “(A) a business that is conducted at a gam-
10 bling establishment, or that—

11 “(i) involves—

12 “(I) the placing, receiving, or oth-
13 erwise making of bets or wagers; or

14 “(II) the offering to engage in the
15 placing, receiving, or otherwise making
16 of bets or wagers;

17 “(ii) involves 1 or more persons who
18 conduct, finance, manage, supervise, direct,
19 or own all or part of such business; and

20 “(iii) has been or remains in substan-
21 tially continuous operation for a period in
22 excess of 10 days or has a gross revenue of
23 \$2,000 or more from such business during
24 any 24-hour period; and

1 “(B) any soliciting agent of a business de-
2 scribed in subparagraph (A).

3 “(5) INFORMATION ASSISTING IN THE PLACING
4 OF A BET OR WAGER.—The term ‘information assist-
5 ing in the placing of a bet or wager’—

6 “(A) means information that is intended by
7 the sender or recipient to be used by a person en-
8 gaged in the business of betting or wagering to
9 place, receive, or otherwise make a bet or wager;
10 and

11 “(B) does not include—

12 “(i) information concerning pari-
13 mutuel pools that is exchanged exclusively
14 between or among 1 or more racetracks or
15 other parimutuel wagering facilities li-
16 censed by the State or approved by the for-
17 eign jurisdiction in which the facility is lo-
18 cated, and 1 or more parimutuel wagering
19 facilities licensed by the State or approved
20 by the foreign jurisdiction in which the fa-
21 cility is located, if that information is used
22 only to conduct common pool parimutuel
23 pooling under applicable law;

24 “(ii) information exchanged exclusively
25 between or among 1 or more racetracks or

1 *other parimutuel wagering facilities li-*
2 *censed by the State or approved by the for-*
3 *foreign jurisdiction in which the facility is lo-*
4 *cated, and a support service located in an-*
5 *other State or foreign jurisdiction, if the in-*
6 *formation is used only for processing bets or*
7 *wagers made with that facility under appli-*
8 *cable law;*

9 *“(iii) information exchanged exclu-*
10 *sively between or among 1 or more wager-*
11 *ing facilities that are licensed and regulated*
12 *by the State in which each facility is lo-*
13 *cated, and any support service, wherever lo-*
14 *cated, if the information is used only for the*
15 *pooling or processing of bets or wagers*
16 *made by or with the facility or facilities*
17 *under each State’s applicable law;*

18 *“(iv) any news reporting or analysis of*
19 *wagering activity, including odds, racing or*
20 *event results, race and event schedules, or*
21 *categories of wagering; or*

22 *“(v) any posting or reporting of any*
23 *educational information on how to make a*
24 *bet or wager or the nature of betting or wa-*
25 *gering.*

1 “(6) *INTERACTIVE COMPUTER SERVICE.*—The
2 term ‘interactive computer service’ means any infor-
3 mation service, system, or access software provider
4 that operates in, or uses a channel or instrumentality
5 of, interstate or foreign commerce to provide or enable
6 access by multiple users to a computer server, which
7 includes the transmission, storage, retrieval, hosting,
8 linking, formatting, or translation of a communica-
9 tion made by another person, and including specifi-
10 cally a service, system, or access software provider
11 that—

12 “(A) provides access to the Internet; or

13 “(B) is engaged in the business of providing
14 an information location tool (which means a
15 service that refers or links users to an online lo-
16 cation, including a directory, index, reference,
17 pointer, or hypertext link).

18 “(7) *INTERACTIVE COMPUTER SERVICE PRO-*
19 *VIDER.*—The term ‘interactive computer service pro-
20 vider’ means any person that provides an interactive
21 computer service, to the extent that such person offers
22 or provides such service.

23 “(8) *INTERNET.*—The term ‘Internet’ means the
24 international computer network of both Federal and

1 *non-Federal interoperable packet switched data net-*
2 *works.*

3 “(9) *PERSON*.—*The term ‘person’ means any in-*
4 *dividual, association, partnership, joint venture, cor-*
5 *poration (or any affiliate of a corporation), State or*
6 *political subdivision thereof, department, agency, or*
7 *instrumentality of a State or political subdivision*
8 *thereof, or any other government, organization, or en-*
9 *tity (including any governmental entity (as defined*
10 *in section 3701(2) of title 28)).*

11 “(10) *PRIVATE NETWORK*.—*The term ‘private*
12 *network’ means a communications channel or chan-*
13 *nels, including voice or computer data transmission*
14 *facilities, that use either—*

15 “(A) *private dedicated lines; or*

16 “(B) *the public communications infrastruc-*
17 *ture, if the infrastructure is secured by means of*
18 *the appropriate private communications tech-*
19 *nology to prevent unauthorized access.*

20 “(11) *STATE*.—*The term ‘State’ means a State*
21 *of the United States, the District of Columbia, the*
22 *Commonwealth of Puerto Rico, or a commonwealth,*
23 *territory, or possession of the United States.*

24 “(12) *SUBSCRIBER*.—*The term ‘subscriber’—*

1 “(A) means any person with a business re-
2 lationship with the interactive computer service
3 provider through which such person receives ac-
4 cess to the system, service, or network of that
5 provider, even if no formal subscription agree-
6 ment exists; and

7 “(B) includes registrants, students who are
8 granted access to a university system or network,
9 and employees or contractors who are granted
10 access to the system or network of their employer.

11 “(13) SOLICITING AGENT.—The term ‘soliciting
12 agent’ means any agent who knowingly solicits for a
13 gambling business described in paragraph (4)(A) of
14 this subsection.

15 “(b) INTERNET GAMBLING.—

16 “(1) PROHIBITION.—Subject to subsection (f), it
17 shall be unlawful for a person engaged in a gambling
18 business knowingly to use the Internet or any other
19 interactive computer service—

20 “(A) to place, receive, or otherwise make a
21 bet or wager; or

22 “(B) to send, receive, or invite information
23 assisting in the placing of a bet or wager.

24 “(2) PENALTIES.—A person engaged in a gam-
25 bling business who violates this section shall be—

1 “(A) *fined in an amount equal to not more*
2 *than the greater of—*

3 “(i) *the total amount that such person*
4 *bet or wagered, or placed, received, or ac-*
5 *cepted in bets or wagers, as a result of en-*
6 *gaging in that business in violation of this*
7 *section; or*

8 “(ii) *\$20,000;*

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

10 “(C) *both.*

11 “(3) *PERMANENT INJUNCTIONS.—Upon convic-*
12 *tion of a person under this section, the court may*
13 *enter a permanent injunction enjoining such person*
14 *from placing, receiving, or otherwise making bets or*
15 *wagers or sending, receiving, or inviting information*
16 *assisting in the placing of bets or wagers.*

17 “(c) *CIVIL REMEDIES.—*

18 “(1) *JURISDICTION.—The district courts of the*
19 *United States shall have original and exclusive juris-*
20 *isdiction to prevent and restrain violations of this sec-*
21 *tion by issuing appropriate orders in accordance with*
22 *this section, regardless of whether a prosecution has*
23 *been initiated under this section.*

24 “(2) *PROCEEDINGS.—*

1 “(A) *INSTITUTION BY FEDERAL GOVERN-*
2 *MENT.—*

3 “(i) *IN GENERAL.—The United States*
4 *may institute proceedings under this sub-*
5 *section to prevent or restrain a violation of*
6 *this section.*

7 “(ii) *RELIEF.—Upon application of*
8 *the United States under this subparagraph,*
9 *the district court may enter a temporary re-*
10 *straining order or an injunction against*
11 *any person to prevent or restrain a viola-*
12 *tion of this section if the court determines,*
13 *after notice and an opportunity for a hear-*
14 *ing, that there is a substantial probability*
15 *that such violation has occurred or will*
16 *occur.*

17 “(B) *INSTITUTION BY STATE ATTORNEY*
18 *GENERAL.—*

19 “(i) *IN GENERAL.—The attorney gen-*
20 *eral of a State (or other appropriate State*
21 *official) in which a violation of this section*
22 *allegedly has occurred or will occur, after*
23 *providing written notice to the United*
24 *States, may institute proceedings under this*

1 *subsection to prevent or restrain the viola-*
2 *tion.*

3 “(ii) *RELIEF.*—Upon application of
4 *the attorney general (or other appropriate*
5 *State official) of an affected State under*
6 *this subparagraph, the district court may*
7 *enter a temporary restraining order or an*
8 *injunction against any person to prevent or*
9 *restrain a violation of this section if the*
10 *court determines, after notice and an oppor-*
11 *tunity for a hearing, that there is a sub-*
12 *stantial probability that such violation has*
13 *occurred or will occur.*

14 “(C) *INDIAN LANDS.*—Notwithstanding sub-
15 *paragraphs (A) and (B), for a violation that is*
16 *alleged to have occurred, or may occur, on In-*
17 *dian lands (as that term is defined in section 4*
18 *of the Indian Gaming Regulatory Act (25 U.S.C.*
19 *2703))—*

20 “(i) *the United States shall have the*
21 *enforcement authority provided under sub-*
22 *paragraph (A); and*

23 “(ii) *the enforcement authorities speci-*
24 *fied in an applicable Tribal-State compact*
25 *negotiated under section 11 of the Indian*

1 *Gaming Regulatory Act (25 U.S.C. 2710)*
2 *shall be carried out in accordance with that*
3 *compact.*

4 “(D) *EXPIRATION.*—*Any temporary re-*
5 *straining order or preliminary injunction en-*
6 *tered pursuant to subparagraph (A) or (B) shall*
7 *expire if, and as soon as, the United States, or*
8 *the attorney general (or other appropriate State*
9 *official) of the State, as applicable, notifies the*
10 *court that issued the order or injunction that the*
11 *United States or the State, as applicable, will*
12 *not seek a permanent injunction.*

13 “(3) *EXPEDITED PROCEEDINGS.*—

14 “(A) *IN GENERAL.*—*In addition to any pro-*
15 *ceeding under paragraph (2), a district court*
16 *may, in exigent circumstances, enter a tem-*
17 *porary restraining order against a person al-*
18 *leged to be in violation of this section upon ap-*
19 *plication of the United States under paragraph*
20 *(2)(A), or the attorney general (or other appro-*
21 *priate State official) of an affected State under*
22 *paragraph (2)(B), without notice and the oppor-*
23 *tunity for a hearing as provided in rule 65(b)*
24 *of the Federal Rules of Civil Procedure (except*
25 *as provided in subsection (d)(3)), if the United*

1 *States or the State, as applicable, demonstrates*
2 *that there is probable cause to believe that the*
3 *use of the Internet or other interactive computer*
4 *service at issue violates this section.*

5 “(B) *HEARINGS.*—*A hearing requested con-*
6 *cerning an order entered under this paragraph*
7 *shall be held at the earliest practicable time.*

8 “(d) *INTERACTIVE COMPUTER SERVICE PROVIDERS.*—

9 “(1) *IMMUNITY FROM LIABILITY FOR USE BY AN-*
10 *OTHER.*—

11 “(A) *IN GENERAL.*—*An interactive com-*
12 *puter service provider described in subparagraph*
13 *(B) shall not be liable, under this section or any*
14 *other provision of Federal or State law prohib-*
15 *iting or regulating gambling or gambling-related*
16 *activities, for the use of its facilities or services*
17 *by another person to engage in Internet gam-*
18 *bling activity or advertising or promotion of*
19 *Internet gambling activity that violates such*
20 *law—*

21 “(i) *arising out of any transmitting,*
22 *routing, or providing of connections for*
23 *gambling-related material or activity (in-*
24 *cluding intermediate and temporary storage*
25 *in the course of such transmitting, routing,*

1 or providing connections) by the provider,
2 if—

3 “(I) the material or activity was
4 initiated by or at the direction of a
5 person other than the provider;

6 “(II) the transmitting, routing, or
7 providing of connections is carried out
8 through an automatic process without
9 selection of the material or activity by
10 the provider;

11 “(III) the provider does not select
12 the recipients of the material or activ-
13 ity, except as an automatic response to
14 the request of another person; and

15 “(IV) the material or activity is
16 transmitted through the system or net-
17 work of the provider without modifica-
18 tion of its content; or

19 “(ii) arising out of any gambling-re-
20 lated material or activity at an online site
21 residing on a computer server owned, con-
22 trolled, or operated by or for the provider,
23 or arising out of referring or linking users
24 to an online location containing such mate-
25 rial or activity, if the material or activity

1 *was initiated by or at the direction of a*
2 *person other than the provider, unless the*
3 *provider fails to take expeditiously, with re-*
4 *spect to the particular material or activity*
5 *at issue, the actions described in paragraph*
6 *(2)(A) following the receipt by the provider*
7 *of a notice described in paragraph (2)(B).*

8 “(B) *ELIGIBILITY.*—*An interactive com-*
9 *puter service provider is described in this sub-*
10 *paragraph only if the provider—*

11 “(i) *maintains and implements a writ-*
12 *ten or electronic policy that requires the*
13 *provider to terminate the account of a sub-*
14 *scriber of its system or network expedi-*
15 *tiously following the receipt by the provider*
16 *of a notice described in paragraph (2)(B)*
17 *alleging that such subscriber has violated or*
18 *is violating this section; and*

19 “(ii) *with respect to the particular ma-*
20 *terial or activity at issue, has not know-*
21 *ingly permitted its computer server to be*
22 *used to engage in activity that the provider*
23 *knows is prohibited by this section, with the*
24 *specific intent that such server be used for*
25 *such purpose.*

1 “(2) NOTICE TO INTERACTIVE COMPUTER SERV-
2 ICE PROVIDERS.—

3 “(A) IN GENERAL.—If an interactive com-
4 puter service provider receives from a Federal or
5 State law enforcement agency, acting within its
6 authority and jurisdiction, a written or elec-
7 tronic notice described in subparagraph (B), that
8 a particular online site residing on a computer
9 server owned, controlled, or operated by or for
10 the provider is being used by another person to
11 violate this section, the provider shall
12 expeditiously—

13 “(i) remove or disable access to the ma-
14 terial or activity residing at that online site
15 that allegedly violates this section; or

16 “(ii) in any case in which the provider
17 does not control the site at which the subject
18 material or activity resides, the provider,
19 through any agent of the provider des-
20 ignated in accordance with section
21 512(c)(2) of title 17, or other responsible
22 identified employee or contractor—

23 “(I) notify the Federal or State
24 law enforcement agency that the pro-

1 *vider is not the proper recipient of*
2 *such notice; and*

3 *“(II) upon receipt of a subpoena,*
4 *cooperate with the Federal or State law*
5 *enforcement agency in identifying the*
6 *person or persons who control the site.*

7 *“(B) NOTICE.—A notice is described in this*
8 *subparagraph only if it—*

9 *“(i) identifies the material or activity*
10 *that allegedly violates this section, and al-*
11 *leges that such material or activity violates*
12 *this section;*

13 *“(ii) provides information reasonably*
14 *sufficient to permit the provider to locate*
15 *(and, as appropriate, in a notice issued*
16 *pursuant to paragraph (3)(A) to block ac-*
17 *cess to) the material or activity;*

18 *“(iii) is supplied to any agent of a*
19 *provider designated in accordance with sec-*
20 *tion 512(c)(2) of title 17, if information re-*
21 *garding such designation is readily avail-*
22 *able to the public;*

23 *“(iv) provides information that is rea-*
24 *sonably sufficient to permit the provider to*
25 *contact the law enforcement agency that*

1 *issued the notice, including the name of the*
2 *law enforcement agency, and the name and*
3 *telephone number of an individual to con-*
4 *tact at the law enforcement agency (and, if*
5 *available, the electronic mail address of that*
6 *individual); and*

7 *“(v) declares under penalties of perjury*
8 *that the person submitting the notice is an*
9 *official of the law enforcement agency de-*
10 *scribed in clause (iv).*

11 “(3) *INJUNCTIVE RELIEF.*—

12 “(A) *IN GENERAL.*—*The United States, or a*
13 *State law enforcement agency acting within its*
14 *authority and jurisdiction, may, not less than 24*
15 *hours following the issuance to an interactive*
16 *computer service provider of a notice described*
17 *in paragraph (2)(B), in a civil action, obtain a*
18 *temporary restraining order, or an injunction to*
19 *prevent the use of the interactive computer serv-*
20 *ice by another person in violation of this section.*

21 “(B) *LIMITATIONS.*—*Notwithstanding any*
22 *other provision of this section, in the case of any*
23 *application for a temporary restraining order or*
24 *an injunction against an interactive computer*

1 *service provider described in paragraph (1)(B) to*
2 *prevent a violation of this section—*

3 “(i) arising out of activity described in
4 *paragraph (1)(A)(i), the injunctive relief is*
5 *limited to—*

6 “(I) an order restraining the pro-
7 *vider from providing access to an iden-*
8 *tified subscriber of the system or net-*
9 *work of the interactive computer serv-*
10 *ice provider, if the court determines*
11 *that there is probable cause to believe*
12 *that such subscriber is using that ac-*
13 *cess to violate this section (or to engage*
14 *with another person in a communica-*
15 *tion that violates this section), by ter-*
16 *minating the specified account of that*
17 *subscriber; and*

18 “(II) an order restraining the
19 *provider from providing access, by tak-*
20 *ing reasonable steps specified in the*
21 *order to block access, to a specific,*
22 *identified, foreign online location;*

23 “(ii) arising out of activity described
24 *in paragraph (1)(A)(ii), the injunctive re-*
25 *lief is limited to—*

1 “(I) the orders described in clause
2 (i)(I);

3 “(II) an order restraining the
4 provider from providing access to the
5 material or activity that violates this
6 section at a particular online site re-
7 siding on a computer server operated
8 or controlled by the provider; and

9 “(III) such other injunctive rem-
10 edies as the court considers necessary
11 to prevent or restrain access to speci-
12 fied material or activity that is prohib-
13 ited by this section at a particular on-
14 line location residing on a computer
15 server operated or controlled by the
16 provider, that are the least burdensome
17 to the provider among the forms of re-
18 lief that are comparably effective for
19 that purpose.

20 “(C) CONSIDERATIONS.—The court, in de-
21 termining appropriate injunctive relief under
22 this paragraph, shall consider—

23 “(i) whether such an injunction, either
24 alone or in combination with other such in-
25 junctions issued, and currently operative,

1 *against the same provider would signifi-*
2 *cantly (and, in the case of relief under sub-*
3 *paragraph (B)(ii), taking into account,*
4 *among other factors, the conduct of the pro-*
5 *vider, unreasonably) burden either the pro-*
6 *vider or the operation of the system or net-*
7 *work of the provider;*

8 *“(ii) whether implementation of such*
9 *an injunction would be technically feasible*
10 *and effective, and would not materially*
11 *interfere with access to lawful material at*
12 *other online locations;*

13 *“(iii) whether other less burdensome*
14 *and comparably effective means of pre-*
15 *venting or restraining access to the illegal*
16 *material or activity are available; and*

17 *“(iv) the magnitude of the harm likely*
18 *to be suffered by the community if the in-*
19 *junction is not granted.*

20 *“(D) NOTICE AND EX PARTE ORDERS.—In-*
21 *junctionive relief under this paragraph shall not be*
22 *available without notice to the service provider*
23 *and an opportunity for such provider to appear*
24 *before the court, except for orders ensuring the*
25 *preservation of evidence or other orders having*

1 *no material adverse effect on the operation of the*
2 *communications network of the service provider.*

3 “(4) *ADVERTISING OR PROMOTION OF NON-*
4 *INTERNET GAMBLING.—*

5 “(A) *DEFINITIONS.—In this paragraph:*

6 “(i) *CONDUCTED.—With respect to a*
7 *gambling activity, that activity is ‘con-*
8 *ducted’ in a State if the State is the State*
9 *in which the gambling establishment (as de-*
10 *fined in section 1081) that offers the gam-*
11 *bling activity being advertised or promoted*
12 *is physically located.*

13 “(ii) *NON-INTERNET GAMBLING ACTIV-*
14 *ITY.—The term ‘non-Internet gambling ac-*
15 *tivity’ means—*

16 “(I) *a gambling activity in which*
17 *the placing of the bet or wager is not*
18 *conducted by the Internet; or*

19 “(II) *a gambling activity to*
20 *which the prohibitions of this section*
21 *do not apply.*

22 “(B) *IMMUNITY FROM LIABILITY FOR USE*
23 *BY ANOTHER.—*

24 “(i) *IN GENERAL.—An interactive*
25 *computer service provider described in*

1 *clause (ii) shall not be liable, under any*
2 *provision of Federal or State law prohib-*
3 *iting or regulating gambling or gambling-*
4 *related activities, or under any State law*
5 *prohibiting or regulating advertising and*
6 *promotional activities, for—*

7 *“(I) content, provided by another*
8 *person, that advertises or promotes*
9 *non-Internet gambling activity that*
10 *violates such law (unless the provider*
11 *is engaged in the business of such gam-*
12 *bling), arising out of any of the activi-*
13 *ties described in paragraph (1)(A) (i)*
14 *or (ii); or*

15 *“(II) content, provided by another*
16 *person, that advertises or promotes*
17 *non-Internet gambling activity that is*
18 *lawful under Federal law and the law*
19 *of the State in which such gambling*
20 *activity is conducted.*

21 *“(ii) ELIGIBILITY.—An interactive*
22 *computer service is described in this clause*
23 *only if the provider—*

24 *“(I) maintains and implements a*
25 *written or electronic policy that re-*

1 *quires the provider to terminate the ac-*
2 *count of a subscriber of its system or*
3 *network expeditiously following the re-*
4 *ceipt by the provider of a notice de-*
5 *scribed in paragraph (2)(B) alleging*
6 *that such subscriber maintains a*
7 *website on a computer server controlled*
8 *or operated by the provider for the*
9 *purpose of engaging in advertising or*
10 *promotion of non-Internet gambling*
11 *activity prohibited by a Federal law or*
12 *a law of the State in which such activ-*
13 *ity is conducted;*

14 *“(II) with respect to the par-*
15 *ticular material or activity at issue,*
16 *has not knowingly permitted its com-*
17 *puter server to be used to engage in the*
18 *advertising or promotion of non-Inter-*
19 *net gambling activity that the provider*
20 *knows is prohibited by a Federal law*
21 *or a law of the State in which the ac-*
22 *tivity is conducted, with the specific*
23 *intent that such server be used for such*
24 *purpose; and*

1 “(III) at reasonable cost, offers
2 residential customers of the provider’s
3 Internet access service, if the provider
4 provides Internet access service to such
5 customers, computer software, or an-
6 other filtering or blocking system that
7 includes the capability of filtering or
8 blocking access by minors to online
9 Internet gambling sites that violate
10 this section.

11 “(C) NOTICE TO INTERACTIVE COMPUTER
12 SERVICE PROVIDERS.—

13 “(i) NOTICE FROM FEDERAL LAW EN-
14 FORCEMENT AGENCY.—If an interactive
15 computer service provider receives from a
16 Federal law enforcement agency, acting
17 within its authority and jurisdiction, a
18 written or electronic notice described in
19 paragraph (2)(B), that a particular online
20 site residing on a computer server owned,
21 controlled, or operated by or for the pro-
22 vider is being used by another person to ad-
23 vertise or promote non-Internet gambling
24 activity that violates a Federal law prohib-
25 iting or regulating gambling or gambling-

1 *related activities, the provider shall expedi-*
2 *tiously take the actions described in para-*
3 *graph (2)(A) (i) or (ii) with respect to the*
4 *advertising or promotion identified in the*
5 *notice.*

6 “(ii) *NOTICE FROM STATE LAW EN-*
7 *FORCEMENT AGENCY.—If an interactive*
8 *computer service provider receives from a*
9 *State law enforcement agency, acting with-*
10 *in its authority and jurisdiction, a written*
11 *or electronic notice described in paragraph*
12 *(2)(B), that a particular online site resid-*
13 *ing on a computer server owned, controlled,*
14 *or operated by or for the provider is being*
15 *used by another person to advertise or pro-*
16 *mote non-Internet gambling activity that is*
17 *conducted in that State and that violates a*
18 *law of that State prohibiting or regulating*
19 *gambling or gambling-related activities, the*
20 *provider shall expeditiously take the actions*
21 *described in paragraph (2)(A) (i) or (ii)*
22 *with respect to the advertising or promotion*
23 *identified in the notice.*

24 “(D) *INJUNCTIVE RELIEF.—The United*
25 *States, or a State law enforcement agency, act-*

1 *ing within its authority and jurisdiction, may,*
2 *not less than 24 hours following the issuance to*
3 *an interactive computer service provider of a no-*
4 *tice described in paragraph (2)(B), in a civil ac-*
5 *tion, obtain a temporary restraining order, or*
6 *an injunction, to prevent the use of the inter-*
7 *active computer service by another person to ad-*
8 *vertise or promote non-Internet gambling activ-*
9 *ity that violates a Federal law, or a law of the*
10 *State in which such activity is conducted that*
11 *prohibits or regulates gambling or gambling-re-*
12 *lated activities, as applicable. The procedures de-*
13 *scribed in paragraph (3)(D) shall apply to ac-*
14 *tions brought under this subparagraph, and the*
15 *relief in such actions shall be limited to—*

16 *“(i) an order requiring the provider to*
17 *remove or disable access to the advertising*
18 *or promotion of non-Internet gambling ac-*
19 *tivity that violates Federal law, or the law*
20 *of the State in which such activity is con-*
21 *ducted, as applicable, at a particular online*
22 *site residing on a computer server controlled*
23 *or operated by the provider;*

24 *“(ii) an order restraining the provider*
25 *from providing access to an identified sub-*

1 *scriber of the system or network of the pro-*
2 *vider, if the court determines that such sub-*
3 *scriber maintains a website on a computer*
4 *server controlled or operated by the provider*
5 *that the subscriber is knowingly using or*
6 *knowingly permitting to be used to adver-*
7 *tise or promote non-Internet gambling ac-*
8 *tivity that violates Federal law or the law*
9 *of the State in which such activity is con-*
10 *ducted; and*

11 *“(iii) an order restraining the provider*
12 *of the content of the advertising or pro-*
13 *motion of such illegal gambling activity*
14 *from disseminating such advertising or pro-*
15 *motion on the computer server controlled or*
16 *operated by the provider of such interactive*
17 *computer service.*

18 *“(E) APPLICABILITY.—The provisions of*
19 *subparagraphs (C) and (D) do not apply to the*
20 *content described in subparagraph (B)(i)(II).*

21 *“(5) EFFECT ON OTHER LAW.—*

22 *“(A) IMMUNITY FROM LIABILITY FOR COM-*
23 *PLIANCE.—An interactive computer service pro-*
24 *vider shall not be liable for any damages, pen-*
25 *alty, or forfeiture, civil or criminal, under Fed-*

1 *eral or State law for taking in good faith any*
2 *action described in paragraphs (2)(A),*
3 *(4)(B)(ii)(I), or (4)(C) to comply with a notice*
4 *described in paragraph (2)(B), or complying*
5 *with any court order issued under paragraph (3)*
6 *or (4)(D).*

7 *“(B) DISCLAIMER OF OBLIGATIONS.—Nothing*
8 *in this section may be construed to impose*
9 *or authorize an obligation on an interactive*
10 *computer service provider described in para-*
11 *graph (1)(B)—*

12 *“(i) to monitor material or use of its*
13 *service; or*

14 *“(ii) except as required by a notice or*
15 *an order of a court under this subsection, to*
16 *gain access to, to remove, or to disable ac-*
17 *cess to material.*

18 *“(C) RIGHTS OF SUBSCRIBERS.—Nothing*
19 *in this section may be construed to prejudice the*
20 *right of a subscriber to secure an appropriate de-*
21 *termination, as otherwise provided by law, in a*
22 *Federal court or in a State or local tribunal or*
23 *agency, that the account of such subscriber*
24 *should not be terminated pursuant to this sub-*
25 *section, or should be restored.*

1 “(e) *AVAILABILITY OF RELIEF.*—*The availability of*
2 *relief under subsections (c) and (d) shall not depend on,*
3 *or be affected by, the initiation or resolution of any action*
4 *under subsection (b), or under any other provision of Fed-*
5 *eral or State law.*

6 “(f) *APPLICABILITY.*—

7 “(1) *IN GENERAL.*—*Subject to paragraph (2), the*
8 *prohibition in this section does not apply to—*

9 “(A) *any otherwise lawful bet or wager that*
10 *is placed and received, or otherwise made wholly*
11 *intrastate for a State lottery, or for a multi-*
12 *State lottery operated jointly between 2 or more*
13 *States in conjunction with State lotteries if—*

14 “(i) *each such lottery is expressly au-*
15 *thorized, and licensed or regulated, under*
16 *applicable State law;*

17 “(ii) *the bet or wager is placed on an*
18 *interactive computer service that uses a pri-*
19 *vate network or a closed-loop subscriber*
20 *based service regulated and operated by the*
21 *State lottery or its expressly designated*
22 *agent for such activity;*

23 “(iii) *each person placing or otherwise*
24 *making that bet or wager is physically lo-*
25 *cated when such bet or wager is placed at*

1 *a facility that is open to the general public;*
2 *and*

3 “(iv) *each such lottery complies with*
4 *sections 1301 through 1304, and other ap-*
5 *plicable provisions of Federal law;*

6 “(B) *any otherwise lawful bet or wager that*
7 *is placed, received, or otherwise made on an*
8 *interstate or intrastate basis on a live horse or*
9 *a live dog race or on jai alai, or the sending, re-*
10 *ceiving, or inviting of information assisting in*
11 *the placing of such a bet or wager, if such bet*
12 *or wager, or the transmission of such informa-*
13 *tion, as applicable, is—*

14 “(i) *expressly authorized, and licensed*
15 *or regulated by the State in which such bet*
16 *or wager is received, under applicable Fed-*
17 *eral and such State’s laws;*

18 “(ii) *placed on a closed-loop subscriber-*
19 *based service;*

20 “(iii) *initiated from a State in which*
21 *betting or wagering on that same type of*
22 *live horse or live dog racing or on jai alai*
23 *is lawful and received in a State in which*
24 *such betting or wagering is lawful;*

1 “(iv) subject to the regulatory oversight
2 of the State in which the bet or wager is re-
3 ceived and subject by such State to min-
4 imum control standards for the accounting,
5 regulatory inspection, and auditing of all
6 such bets or wagers transmitted from 1
7 State to another; and

8 “(v) in the case of—

9 “(I) live horse racing, made in ac-
10 cordance with the Interstate Horse
11 Racing Act of 1978 (15 U.S.C. 3001 et
12 seq.) and the requirements, if any, es-
13 tablished by an appropriate legislative
14 or regulatory body of the State in
15 which the bet or wager originates;

16 “(II) live dog racing, subject to
17 regulatory consent agreements that are
18 comparable to those required by the
19 Interstate Horse Racing Act of 1978,
20 and the requirements, if any, estab-
21 lished by an appropriate legislative or
22 regulatory body of the State in which
23 the bet or wager originates; or

24 “(III) live jai alai, subject to reg-
25 ulatory consent agreements that are

1 *comparable to those required by the*
2 *Interstate Horse Racing Act of 1978,*
3 *and the requirements, if any, estab-*
4 *lished by an appropriate legislative or*
5 *regulatory body of the State in which*
6 *the bet or wager originates;*

7 *“(C) any otherwise lawful bet or wager that*
8 *is placed, received, or otherwise made wholly*
9 *intrastate, or the sending, receiving, or inviting*
10 *of information assisting in the placing of such a*
11 *bet or wager, if such bet or wager, or the trans-*
12 *mission of such information, as applicable is—*

13 *“(i) expressly authorized, and licensed*
14 *or regulated by the State in which such bet*
15 *or wager is initiated and received, under*
16 *applicable Federal and such State’s laws;*
17 *and*

18 *“(ii) placed on a closed-loop subscriber*
19 *based service; or*

20 *“(D) any otherwise lawful bet or wager that*
21 *is—*

22 *“(i) placed on a closed-loop subscriber*
23 *based service or a private network; and*

24 *“(ii) is lawfully received by a federally*
25 *recognized Indian tribe, or the sending, re-*

1 *ceiving, or inviting of information assisting*
2 *in the placing of any such bet or wager, if*
3 *the game is permitted under and conducted*
4 *in accordance with the Indian Gaming Reg-*
5 *ulatory Act, so long as each person placing,*
6 *receiving, or otherwise making such a bet or*
7 *wager, or transmitting such information, is*
8 *physically located on Indian lands (as that*
9 *term is defined in section 4 of the Indian*
10 *Gaming Regulatory Act) when such person*
11 *places, receives, or otherwise makes the bet*
12 *or wager.*

13 *“(2) BETS OR WAGERS MADE BY AGENTS OR*
14 *PROXIES.—*

15 *“(A) IN GENERAL.—Paragraph (1) does not*
16 *apply in any case in which a bet or wager is*
17 *placed, received, or otherwise made by the use of*
18 *an agent or proxy using the Internet or an inter-*
19 *active computer service.*

20 *“(B) QUALIFICATION.—Nothing in this*
21 *paragraph may be construed to prohibit the*
22 *owner operator of a parimutuel wagering facility*
23 *that is licensed by a State from employing an*
24 *agent in the operation of the account wagering*

1 *system owned or operated by the parimutuel fa-*
2 *cility.*

3 “(3) *ADVERTISING AND PROMOTION.*—*The prohi-*
4 *bition of subsection (b)(1)(B) does not apply to adver-*
5 *tising, promotion, or other communication by, or au-*
6 *thorized by, anyone licensed to operate a gambling*
7 *business in a State.*

8 “(g) *RULE OF CONSTRUCTION.*—*Nothing in this sec-*
9 *tion may be construed to affect any prohibition or remedy*
10 *applicable to a person engaged in a gambling business*
11 *under any other provision of Federal or State law.”.*

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

 “1085. *Internet gambling.*”.

15 **SEC. 3. REPORT ON ENFORCEMENT.**

16 *Not later than 3 years after the date of enactment of*
17 *this Act, the Attorney General shall submit to Congress a*
18 *report, which shall include—*

19 (1) *an analysis of the problems, if any, associ-*
20 *ated with enforcing section 1085 of title 18, United*
21 *States Code, as added by section 2 of this Act;*

22 (2) *recommendations for the best use of the re-*
23 *sources of the Department of Justice to enforce that*
24 *section; and*

1 (3) *an estimate of the amount of activity and*
2 *money being used to gamble on the Internet.*

3 **SEC. 4. SEVERABILITY.**

4 *If any provision of this Act, an amendment made by*
5 *this Act, or the application of such provision or amendment*
6 *to any person or circumstance is held to be unconstitu-*
7 *tional, the remainder of this Act, the amendments made by*
8 *this Act, and the application of this Act and the provisions*
9 *of such amendments to any other person or circumstance*
10 *shall not be affected thereby.*

Union Calendar No. 389

106TH CONGRESS
2D SESSION

H. R. 3125

[Report No. 106-655, Part I]

A BILL

To prohibit Internet gambling, and for other
purposes.

JUNE 23, 2000

Committee on Commerce discharged; committed to the
Committee of the Whole House on the State of the
Union and ordered to be printed