

Union Calendar No. 405

109TH CONGRESS
2D SESSION

H. R. 4777

[Report No. 109–552, Part I]

To amend title 18, United States Code, to expand and modernize the prohibition against interstate gambling, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 16, 2006

Mr. GOODLATTE (for himself, Mr. BOUCHER, Mr. WOLF, Mr. MCINTYRE, Mr. PITTS, Mr. PENCE, Mr. SHADEGG, Mr. ADERHOLT, Mr. AKIN, Mr. ALEXANDER, Mr. BACHUS, Mr. BAKER, Mr. BARRETT of South Carolina, Mr. BARTLETT of Maryland, Mr. BASS, Mr. BOEHLERT, Mr. BONNER, Mr. BOOZMAN, Mr. BOUSTANY, Mr. BURGESS, Mr. BURTON of Indiana, Mr. BUYER, Mr. CANTOR, Mrs. CAPITO, Mr. CHABOT, Mr. COBLE, Mr. CONAWAY, Mr. CRENSHAW, Mr. CULBERSON, Mrs. JO ANN DAVIS of Virginia, Mr. TOM DAVIS of Virginia, Mr. DEAL of Georgia, Mr. DEFazio, Mr. LINCOLN DIAZ-BALART of Florida, Mrs. DRAKE, Mr. DUNCAN, Mr. EHLERS, Mrs. EMERSON, Mr. EVERETT, Mr. FORBES, Mr. FORTENBERRY, Mr. FRANKS of Arizona, Mr. FORTUÑO, Mr. FRELINGHUYSEN, Ms. FOXX, Mr. GALLEGLY, Mr. GILCHREST, Mr. GILLMOR, Mr. GINGREY, Mr. GOHMERT, Mr. GOODE, Mr. GUTKNECHT, Ms. HART, Mr. HAYES, Mr. HEFLEY, Mr. HERGER, Mr. HOBSON, Mr. HOEKSTRA, Mr. HOSTETTLER, Mr. INGLIS of South Carolina, Mr. ISTOOK, Mr. JENKINS, Mr. JINDAL, Mrs. JOHNSON of Connecticut, Mr. JONES of North Carolina, Mr. KELLER, Mrs. KELLY, Mr. KENNEDY of Minnesota, Mr. KING of Iowa, Mr. KINGSTON, Mr. KUHL of New York, Mr. LEWIS of California, Mr. LINDER, Mr. LUCAS, Mr. DANIEL E. LUNGREN of California, Mr. MCCRERY, Mr. McKEON, Mr. MILLER of Florida, Mr. MORAN of Kansas, Mr. MORAN of Virginia, Mrs. MUSGRAVE, Mrs. MYRICK, Mr. NEUGEBAUER, Mr. NORWOOD, Mr. NUSSLE, Mr. OSBORNE, Mr. PETERSON of Minnesota, Mr. POE, Mr. PUTNAM, Mr. RAMSTAD, Mr. REGULA, Mr. REHBERG, Mr. REYNOLDS, Mr. ROGERS of Alabama, Mr. ROGERS of Michigan, Mr. SCHWARZ of Michigan, Mr. SHIMKUS, Mr. SHUSTER, Mr. SIMMONS, Mr. SMITH of Texas, Mr. SODREL, Mr. SOUDER, Mr. SULLIVAN, Mr. TERRY, Mr. THOMAS, Mr. TIAHRT, Mr. WALDEN of Oregon, Mr. WALSH, Mr. WELDON of Florida, Mr. WESTMORELAND, Mr. WICK-

ER, Mr. WILSON of South Carolina, Mrs. WILSON of New Mexico, Mr. BRADY of Texas, Mr. DELAY, and Mr. LAHOOD) introduced the following bill; which was referred to the Committee on the Judiciary

JULY 10, 2006

Reported with an amendment, and referred to the Committee on Energy and Commerce for a period ending not later than September 15, 2006, 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*]

SEPTEMBER 15, 2006

Referral to the Committee on Energy and Commerce extended for a period ending not later than September 22, 2006

SEPTEMBER 22, 2006

Additional sponsors: Mr. HUNTER, Mr. BLUNT, Mr. GENE GREEN of Texas, Mr. CAMP of Michigan, Mr. EDWARDS, Mr. ETHERIDGE, Mr. PETERSON of Pennsylvania, Mr. PRICE of North Carolina, Mr. SESSIONS, Mr. MARCHANT, Mr. DAVIS of Tennessee, Mr. CARDOZA, Mr. CHANDLER, Mr. MCCAUL of Texas, Mr. FEENEY, Mr. KIRK, Mr. UPTON, Mr. BERRY, Mr. BROWN of South Carolina, Mr. CRAMER, Mrs. CUBIN, Mr. FOLEY, Ms. GRANGER, Mr. HALL, Mr. HULSHOF, Mr. LEWIS of Kentucky, Mr. SCOTT of Georgia, Mr. TAYLOR of North Carolina, Mr. THORNBERRY, Mr. HAYWORTH, and Miss MCMORRIS

SEPTEMBER 22, 2006

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

[For text of introduced bill, see copy of bill as introduced on February 16, 2006]

A BILL

To amend title 18, United States Code, to expand and modernize the prohibition against interstate 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,*

1 **SECTION 1. SHORT TITLE.**

2 *This Act may be cited as the “Internet Gambling Pro-*
3 *hibition Act”.*

4 **SEC. 2. DEFINITIONS.**

5 *Section 1081 of title 18, United States Code, is amend-*
6 *ed—*

7 *(1) by designating the five undesignated para-*
8 *graphs that begin with “The term” as paragraphs (1)*
9 *through (5), respectively;*

10 *(2) by amending paragraph (5), as so des-*
11 *ignated, to read as follows:*

12 *“(5) The term ‘communication facility’ means*
13 *any and all instrumentalities, personnel, and services*
14 *(among other things, the receipt, forwarding, or deliv-*
15 *ery of communications) used or useful in the trans-*
16 *mission of writings, signs, pictures, and sounds of all*
17 *kinds by aid of wire, cable, radio, or an electro-*
18 *magnetic, photoelectronic or photooptical system, or*
19 *other like connection (whether fixed or mobile) be-*
20 *tween the points of origin and reception of such*
21 *transmission.”; and*

22 *(3) by adding at the end the following:*

23 *“(6) The term ‘bets or wagers’—*

24 *“(A) means the staking or risking by any*
25 *person of something of value upon the outcome of*
26 *a contest of others, a sporting event, or a game*

1 *predominantly subject to chance, upon an agree-*
2 *ment or understanding that the person or an-*
3 *other person will receive something of greater*
4 *value than the amount staked or risked in the*
5 *event of a certain outcome;*

6 *“(B) includes the purchase of a chance or*
7 *opportunity to win a lottery or other prize*
8 *(which opportunity to win is predominantly*
9 *subject to chance); and*

10 *“(C) does not include—*

11 *“(i) a bona fide business transaction*
12 *governed by the securities laws (as that*
13 *term is defined in section 3(a)(47) of the*
14 *Securities Exchange Act of 1934 (15 U.S.C.*
15 *78c(a)(47))) for the purchase or sale at a*
16 *future date of securities (as that term is de-*
17 *finied in section 3(a)(10) of the Securities*
18 *Exchange Act of 1934 (15 U.S.C.*
19 *78c(a)(10)));*

20 *“(ii) a transaction on or subject to the*
21 *rules of a contract market designated pursu-*
22 *ant to section 5 of the Commodity Exchange*
23 *Act (7 U.S.C. 7) or to any transaction sub-*
24 *ject to an exemption pursuant to section*
25 *4(c) of such Act;*

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

3 “(iv) *a contract of indemnity or guar-*
4 *antee;*

5 “(v) *a contract for life, health, or acci-*
6 *dent insurance;*

7 “(vi) *participation in any game or*
8 *contest in which participants do not stake*
9 *or risk anything of value other than—*

10 “(I) *personal efforts of the partici-*
11 *pants in playing the game or contest*
12 *or obtaining access to the Internet; or*

13 “(II) *point or credits that the*
14 *sponsor of the game or contest provides*
15 *to participants free of charge and that*
16 *can be used or redeemed only for par-*
17 *ticipation in games or contests offered*
18 *by the sponsor; or*

19 “(vii) *participation in any simulation*
20 *sports game or educational game or contest*
21 *in which (if the game or contest involves a*
22 *team or teams) all teams are fictional and*
23 *no team is a member of an amateur or pro-*
24 *fessional sports organization (as those terms*

1 are defined in section 3701 of title 28) and
2 that meets the following conditions:

3 “(I) All prizes and awards offered
4 to winning participants are established
5 and made known to the participants
6 in advance of the game or contest and
7 their value is not determined by the
8 number of participants or the amount
9 of any fees paid by those participants.

10 “(II) All winning outcomes reflect
11 the relative knowledge and skill of the
12 participants and are determined pre-
13 dominantly by accumulated statistical
14 results of the performance of individ-
15 uals (athletes in the case of sports
16 events) in multiple real-world sporting
17 or other events.

18 “(III) No winning outcome is
19 based—

20 “(aa) on the score, point-
21 spread or any performance or per-
22 formances of any single real-world
23 team or any combination of such
24 teams; or

1 “(bb) solely on any single
2 performance of an individual ath-
3 lete in any single real-world
4 sporting or other event.

5 “(7) The term ‘foreign jurisdiction’ means a ju-
6 risdiction of a foreign country or political subdivision
7 thereof.

8 “(8) The term ‘gambling business’ means a busi-
9 ness of betting or wagering;

10 “(9) The term ‘information assisting in the plac-
11 ing of bets or wagers’ means information knowingly
12 transmitted by an individual in a gambling business
13 for use in placing, receiving, making, or otherwise en-
14 abling or facilitating a bet or wager and does not in-
15 clude—

16 “(A) any posting or reporting of any edu-
17 cational information on how to make a legal bet
18 or wager or the nature of betting or wagering, as
19 long as such posting or reporting does not solicit
20 or provide information for the purpose of facili-
21 tating or enabling the placing or receipt of bets
22 or wagers in a jurisdiction where such betting is
23 illegal; or

24 “(B) advertising relating to betting or wa-
25 gering in a jurisdiction where such betting or

1 *wagering is legal, as long as such advertising*
2 *does not solicit or provide information for the*
3 *purpose of facilitating or enabling the placing or*
4 *receipt of bets or wagers in a jurisdiction where*
5 *such betting is illegal.*

6 “(10) *The term ‘person’ includes a government*
7 *(including any governmental entity (as defined in*
8 *section 3701(2) of title 28)).*

9 “(11) *The term ‘State’ means a State of the*
10 *United States, the District of Columbia, or a com-*
11 *monwealth, territory, or possession of the United*
12 *States.*

13 “(12) *The terms ‘credit’, ‘creditor’, and ‘credit*
14 *card’ have the meanings given such terms in section*
15 *103 of the Truth in Lending Act.*

16 “(13) *The term ‘electronic fund transfer’—*

17 “(A) *has the meaning given such term in*
18 *section 903 of the Electronic Fund Transfer Act;*
19 *or*

20 “(B) *any fund transfer covered by Article*
21 *4A of the Uniform Commercial Code, as in effect*
22 *in any State.*

23 “(14) *The term ‘financial institution’ has the*
24 *meaning given such term in section 903 of the Elec-*
25 *tronic Fund Transfer Act.*

1 “(15) The term ‘insured depository institu-
2 tion’—

3 “(A) has the same meaning as in section
4 3(c) of the Federal Deposit Insurance Act; and

5 “(B) includes any insured credit union (as
6 defined in section 101 of the Federal Credit
7 Union Act).

8 “(16) The terms ‘money transmitting business’
9 and ‘money transmitting service’ have the meanings
10 given such terms in section 5330(d) of title 31, United
11 States Code.

12 “(17) The terms ‘own or control’ and to be
13 ‘owned or controlled’ have the same meanings as in
14 section 2(a)(2) of the Bank Holding Company Act of
15 1956.

16 “(18) The term ‘Secretary’ means the Secretary
17 of the Treasury.

18 “(19) The term ‘Tribe’ or ‘tribal’ means an In-
19 dian tribe, as defined under section 4(5) of the Indian
20 Gaming Regulatory Act of 1988.”.

21 **SEC. 3. MODIFICATION OF EXISTING PROHIBITION.**

22 Section 1084 of title 18, United States Code, is amend-
23 ed to read as follows:

1 **“§ 1084. Use of a communication facility to transmit**
2 **bets or wagers; penalties**

3 “(a) *Except as otherwise provided in this section, who-*
4 *ever, being engaged in a gambling business, knowingly uses*
5 *a communication facility—*

6 “(1) *for the transmission in interstate or foreign*
7 *commerce, within the special maritime and territorial*
8 *jurisdiction of the United States, or to or from any*
9 *place outside the jurisdiction of any nation with re-*
10 *spect to any transmission to or from the United*
11 *States, of bets or wagers, or information assisting in*
12 *the placing of bets or wagers; or*

13 “(2) *for the transmission of a communication in*
14 *interstate or foreign commerce, within the special*
15 *maritime and territorial jurisdiction of the United*
16 *States, or to or from any place outside the jurisdic-*
17 *tion of any nation with respect to any transmission*
18 *to or from the United States, which entitles the recipi-*
19 *ent to receive money or credit as a result of bets or*
20 *wagers, or for information assisting in the placing of*
21 *bets or wagers;*

22 *shall be fined under this title or imprisoned not more than*
23 *five years, or both.*

24 “(b) *Except as otherwise provided in this section, who-*
25 *ever, being engaged in a gambling business, knowingly ac-*
26 *cepts, in connection with the transmission of a communica-*

1 *tion in interstate or foreign commerce, within the special*
2 *maritime and territorial jurisdiction of the United States,*
3 *or to or from any place outside the jurisdiction of any na-*
4 *tion with respect to any transmission to or from the United*
5 *States of bets or wagers or information assisting in the*
6 *placing of bets or wagers—*

7 “(1) credit, or the proceeds of credit, extended to
8 *or on behalf of another (including credit extended*
9 *through the use of a credit card);*

10 “(2) an electronic fund transfer or funds trans-
11 *mitted by or through a money transmitting business,*
12 *or the proceeds of an electronic fund transfer or*
13 *money transmitting service, from or on behalf of the*
14 *other person;*

15 “(3) any check, draft, or similar instrument
16 *which is drawn by or on behalf of the other person*
17 *and is drawn on or payable through any financial*
18 *institution; or*

19 “(4) the proceeds of any other form of financial
20 *transaction as the Secretary of the Treasury may pre-*
21 *scribe by regulation which involves a financial insti-*
22 *tution as a payor or financial intermediary on behalf*
23 *of or for the benefit of the other person,*

24 *shall be fined under this title or imprisoned not more than*
25 *five years, or both.*

1 “(c) *Nothing in this section prohibits—*

2 “(1) *the transmission of information assisting in*
3 *the placing of bets or wagers for use in news reporting*
4 *if such transmission does not solicit or provide infor-*
5 *mation for the purpose of facilitating or enabling the*
6 *placing or receipt of bets or wagers in a jurisdiction*
7 *where such betting is illegal;*

8 “(2) *the transmission of information assisting in*
9 *the placing of bets or wagers from a State or foreign*
10 *country where such betting or wagering is permitted*
11 *under Federal, State, tribal, or local law into a State*
12 *or foreign country in which such betting on the same*
13 *event is permitted under Federal, State, tribal, or*
14 *local law; or*

15 “(3) *the interstate transmission of information*
16 *relating to a State-specific lottery between a State or*
17 *foreign country where such betting or wagering is*
18 *permitted under Federal, State, tribal, or local law*
19 *and an out-of-State data center for the purposes of as-*
20 *sisting in the operation of such State-specific lottery.*

21 “(d) *Nothing in this section prohibits the use of a com-*
22 *munication facility for the transmission of bets or wagers*
23 *or information assisting in the placing of bets or wagers,*
24 *if—*

1 “(1) at the time the transmission occurs, the in-
2 dividual or entity placing the bets or wagers or infor-
3 mation assisting in the placing of bets or wagers, the
4 gambling business, and any facility or support service
5 processing those bets or wagers is physically located
6 in the same State, and the State has a secure and ef-
7 fective customer verification and age verification sys-
8 tem to assure compliance with age and residence re-
9 quirements, and for class II or class III gaming
10 under the Indian Gaming Regulatory Act, are phys-
11 ically located on Indian lands within that State;

12 “(2) the State or Tribe has explicitly authorized
13 such bets and wagers;

14 “(3) the State has explicitly authorized and li-
15 censed the operation of the gambling business, any fa-
16 cility processing the bets and wagers, and the support
17 service within its borders or the Tribe has explicitly
18 authorized and licensed the operation of such gam-
19 bling business, any facility processing the bets and
20 wagers, and the support service on Indian lands with-
21 in its jurisdiction;

22 “(4) with respect to class II or class III gaming,
23 the game is permitted under and conducted in accord-
24 ance with the Indian Gaming Regulatory Act;

1 “(5) *with respect to class III gaming under the*
2 *Indian Gaming Regulatory Act, the game is author-*
3 *ized under, and is conducted in accordance with, the*
4 *respective Tribal-State compact of the Tribe having*
5 *jurisdiction over the Indian lands where the indi-*
6 *vidual or entity placing the bets or wagers or infor-*
7 *mation assisting in the placing of bets or wagers, the*
8 *gambling business, and any facility or support service*
9 *processing those bets or wagers are physically located;*
10 *and*

11 “(6) *with respect to class III gaming under the*
12 *Indian Gaming Regulatory Act, each such Tribal-*
13 *State compact expressly provides that the game may*
14 *be conducted using a communication facility to trans-*
15 *mit bets or wagers or information assisting in the*
16 *placing of bets or wagers.*

17 “(e) *Nothing in this section creates immunity from*
18 *criminal prosecution under any laws of any State or Tribe.*

19 “(f) *Nothing in this section authorizes activity that is*
20 *prohibited under chapter 178 of title 28, United States*
21 *Code.*

22 “(g) *When any common carrier, subject to the jurisdic-*
23 *tion of the Federal Communications Commission, is noti-*
24 *fied in writing by a Federal, State, tribal or local law en-*
25 *forcement agency, acting within its jurisdiction, that any*

1 *communication facility furnished by it is being used or will*
2 *be used by its subscriber for the purpose of transmitting*
3 *or receiving gambling information, in interstate or foreign*
4 *commerce, within the special maritime and territorial ju-*
5 *risdiction of the United States, or to or from any place out-*
6 *side the jurisdiction of any nation with respect to any*
7 *transmission to or from the United States in violation of*
8 *Federal, State, tribal or local law, it shall discontinue or*
9 *refuse, the leasing, furnishing, or maintaining of such facil-*
10 *ity, after reasonable notice to the subscriber, but no dam-*
11 *ages, penalty or forfeiture, civil or criminal, shall be found*
12 *against any common carrier for any act done in compli-*
13 *ance with any notice received from a law enforcement agen-*
14 *cy. Nothing in this section shall be deemed to prejudice the*
15 *right of any person affected thereby to secure an appro-*
16 *priate determination, as otherwise provided by law, in a*
17 *Federal court or in a State, tribal, or local tribunal or*
18 *agency, that such facility should not be discontinued or re-*
19 *moved, or should be restored.*

20 “(h)(1) *A Federal, State, tribal, or local law enforce-*
21 *ment agency, acting within its jurisdiction may, in a civil*
22 *action, obtain injunctive or declaratory relief to restrain*
23 *or prevent any person from paying or assisting in the pay-*
24 *ment of bets or wagers, or communicating information as-*
25 *sisting in the placing of bets or wagers, in interstate or*

1 *foreign commerce, within the special maritime and terri-*
2 *torial jurisdiction of the United States, or to or from any*
3 *place outside the jurisdiction of any nation with respect to*
4 *any transmission to or from the United States in violation*
5 *of Federal, State, tribal, or local law.*

6 “(2) *No damages, penalty, or forfeiture, civil or crimi-*
7 *nal, shall be found against any person or entity for any*
8 *act done in compliance with any notice received from a law*
9 *enforcement agency.*

10 “(3) *Relief granted under paragraph (1) against an*
11 *interactive computer service (as defined in section 230(f)*
12 *of the Communications Act of 1934) shall—*

13 “(A) *be limited to the removal of, or disabling of*
14 *access to, an online site violating this section, or a*
15 *hypertext link to an online site violating this section,*
16 *that resides on a computer server that such service*
17 *controls or operates; except this limitation shall not*
18 *apply if the service is violating this section or is in*
19 *active concert with a person who is violating this sec-*
20 *tion and receives actual notice of the relief;*

21 “(B) *be available only after notice to the inter-*
22 *active computer service and an opportunity for the*
23 *service to appear are provided;*

24 “(C) *not impose any obligation on an interactive*
25 *computer service to monitor its service or to affirma-*

1 *tively seek facts indicating activity violating this sec-*
 2 *tion;*

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

5 *“(E) specifically identify the location of the on-*
 6 *line site or hypertext link to be removed or access to*
 7 *which is to be disabled.”.*

8 **SEC. 4. AUTHORIZATION OF APPROPRIATIONS.**

9 *In addition to any other sums authorized to be appro-*
 10 *priated for this purpose, there are authorized to be appro-*
 11 *priated to the Department of Justice for each of fiscal years*
 12 *2007 through 2010 \$10,000,000 for investigations and pros-*
 13 *ecutions of violations of section 1084 of title 18, United*
 14 *States Code.*

15 **SEC. 5. RULE OF CONSTRUCTION.**

16 *Nothing in this Act may be construed to prohibit any*
 17 *activity that is allowed under Public Law 95–515 as*
 18 *amended (15 U.S.C. 3001 et seq.).*

19 **SEC. 6. SENSE OF CONGRESS.**

20 *It is the sense of Congress that this Act does not change*
 21 *which activities related to horse racing may or may not*
 22 *be allowed under Federal law; section 5 is intended to ad-*
 23 *dress concerns that this Act could have the effect of changing*
 24 *the existing relationship between the Interstate Horseracing*
 25 *Act (15 U.S.C. 3001 et seq.), and other Federal statutes that*

1 *were in effect at the time of this Act's consideration; this*
2 *Act is not intended to change that relationship; and this*
3 *Act is not intended to resolve any existing disagreements*
4 *over how to interpret the relationship between the Interstate*
5 *Horseracing Act and other Federal statutes.*

6 **SEC. 7. RULE OF CONSTRUCTION.**

7 *Nothing in this Act may be construed to preempt State*
8 *law prohibiting gambling.*

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2^D Session

H. R. 4777

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A BILL

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