

Text of Amendments

Mr. KYL. Madam President, let me briefly describe what this amendment does, and then I understand the representative of the minority will interpose an objection.

This is an amendment that embodies a bill to prohibit Internet gambling and permit the enforcement of that prohibition. Most States, if not all States, already have laws on the books that prohibit Internet gambling . The problem is that those bills are difficult to enforce by the individual State attorneys general because the Internet is ubiquitous--it is across the State lines--and the attorney general in Arizona can't go to Montana and enforce such prohibition in that State.

About 10 years ago, the State Attorneys General Association came before our subcommittee and asked for this Federal legislation so that there could be a national enforcement that would enable them to give force to all of the different States' laws prohibiting Internet gambling. We have worked on this now for a decade, and twice the legislation has passed the Senate. Twice the legislation has passed the House of Representatives, each time in somewhat different form. But we have never been able to get the two bodies to pass legislation in the same year in order to effectuate that.

It is very troublesome because the process by which we have to consider legislation makes it very difficult for something like this to get floor time and have a week or several days on the floor to debate back and forth, get it passed, and do the same thing with the House and then work out a conference committee and the like. That is why we have had to resort to attaching amendments such as this to appropriations bills or other bills that are on the floor already and moving forward so that we can gain consideration of this issue. It is not particularly contentious. It is certainly not partisan. The legislation has enjoyed wide bipartisan support in both bodies.

Let me briefly describe it. All it does is it allows banks and credit card companies to do what most of them are already doing voluntarily; that is, simply not honoring a credit card debt for Internet gambling . When some Internet gambling site in Aruba, for example, submits the bill to Master Charge or Bank of America and says, Joe Blow here gambled away \$1,000 of his money, put it on the credit card, and you now owe that to our Internet gambling site in Aruba, the bank or credit card company says, No. That was against the law. You can't do that. We are not paying.

It has had some effect on these operations. But to show you why it hasn't had enough, when we started a decade ago, there were 20-some sites. Today, there are over 2,000 sites. The amount of money was relatively insignificant back then. Now it is hundreds of billions of dollars. It is incredible.

A Harvard law professor described this kind of Internet gambling with regard to kids doing it on the Internet . He said it is like the crack cocaine of gambling ; it is so addictive; there is no supervision.

We have gambling in Las Vegas, Atlantic City, and on Indian reservations, and it is tightly supervised and regulated. Even our subcommittee found testimony from the New Jersey Gambling Commission and said one reason we can do it is we highly regulate it. But there is no way to regulate these offshore sites. That is why it is against the law in every State.

We have a Federal act called the Wire Act which prohibits horse gambling . That is now being done on the Internet . There is a means of enforcing existing law in a meaningful way and ensuring that all of the State laws can be enforced as well. I want to indicate who is in favor of this, and then I will allow the process here to occur.

Obviously, sports groups are very concerned about the adulteration of sports. We have seen it in college sports. Even one of the universities in my State was involved in a point-shaving scandal not too long ago. Why did this young athlete involved have to shave points in the games in which he played? It was because he got into trouble with gambling debts.

The NFL, Major League Baseball, the National Hockey League, National Baseball Association, National Collegiate Athletic Association, and the NCAA strongly support this legislation because they understand that if Internet gambling becomes part of their sports, nobody can count on those sports being pure. There is always the possibility that they have been adulterated by gambling .

There are a lot of groups. The National Gambling Commission called for legislation such as this, and a lot of the groups that testified before that Commission are also strongly in support. The National Coalition Against Gambling Expansion and groups such as the Family Research Council, Focus on the Family, Concerned Women for America, the Christian Coalition, United Methodist Church, Southern Baptist Convention, together with their comembers of the National Council of Churches, and the National Coalition Against Gambling Expansion--it includes a whole host of organizations.

Madam President, I ask unanimous consent to have this list printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows;

Supporters

National Football League, Major League Baseball, National Hockey League, National Baseball Association, and National Collegiate Athletic Association.

Family Research Council, Focus on the Family, Christian Coalition, Concerned Women for America, National Coalition Against Gambling Expansion, United Methodist Church, and Southern Baptist Convention.

Together with their co-members of The National Council of Churches, which includes:

African Methodist Episcopal Church, The African Methodist Episcopal Zion Church, Alliance of Baptists, American Baptist Churches in the USA, and The Antiochian Orthodox Christian Archdiocese of North America.

Diocese of the Armenian Church of America, Christian Church (Disciples of Christ), Christian Methodist Episcopal Church, Church of the Brethren, and The Coptic Orthodox Church in North America.

The Episcopal Church, Evangelical Lutheran Church in America, Friends United Meeting, Greek Orthodox Archdiocese of America, Hungarian Reformed Church in America, International Council of Community Churches, Korean Presbyterian Church in America, Malankara Orthodox Syrian Church, and Mar Thoma Church.

Moravian Church in America Northern Province and Southern Province, National Baptist Convention of America, National Baptist Convention, U.S.A., Inc., National Missionary Baptist Convention of America, Orthodox Church in America, Patriarchal Parishes of the Russian Orthodox Church in the U.S.A., and Philadelphia Yearly Meeting of the Religious Society of Friends.

Polish National Catholic Church of America, Presbyterian Church (U.S.A.), Progressive National Baptist Convention, Inc., Reformed Church in America, and Serbian Orthodox Church in the U.S.A. and Canada.

The Swedenborgian Church, Syrian Orthodox Church of Antioch, Ukrainian Orthodox Church of America, and United Church of Christ.

The National Thoroughbred Racing Association.

Mr. KYL. This is a page and a half of religious institutions in support of this legislation.

Even groups that also are involved in sports that do involve some form of gambling , such as the National Thoroughbred Racing Association, understand that for their sport to remain pure--and it is highly regulated, as well--for them not to have the taint of gambling , they support this kind of legislation.

It has been very frustrating for me because there is such broad-based support, it makes such sense. It is so dangerous, especially for the kids in our society. We have a very tight bill. It is quite similar to the bill that got through the Committee on Banking last year. The various groups directly involved in this are supportive of the legislation, or at least are not in opposition.

It is time to get this done before this phenomenon explodes any further and--and I underline this--before the lobbying money of these groups defeats it again. I will not name names, but people who are today in trouble with the law were partially responsible for the defeat of this legislation previously.

This kind of money should not be brought to bear as a special interest on our bodies to keep us from adopting important legislation such as this. That is why I have attempted to use the appropriations bill that is before the Senate as the vehicle to bring up this matter again. I understand from a purely technical parliamentary point of view it is incumbent upon the distinguished ranking member of the subcommittee to interpose a rule XVI objection. I understand that. I appreciate her need to maintain the committee jurisdiction and the process.

However, I note in conclusion we have legislated on appropriations bills in the past. So this is not something that has never been done before. I had hoped we would be permitted to do it in this case because of the importance of the issue, the fact that there is a very large consensus to get this done. It is very difficult to do it any other way. I am disappointed we are not able to do it at this time.

When the objection is interposed, I ask the Presiding Officer's indulgence to direct a brief inquiry to the ranking member of the subcommittee.

Ms. MIKULSKI. Madam President, I wish to acknowledge the validity of the fact that the Senator from Arizona has worked long and hard on this issue and sees this as a consumer protection issue, and protection-of-our-sovereignty issue also.

Without taking any prejudice on the merits of the amendment, I have to make a point of order under rule XVI that the amendment does constitute general legislation on an appropriations bill and is not in order.

Mr. KYL. With the Presiding Officer's indulgence, I ask a question, and I appreciate that the ranking member may not know the answer to this question.

Can the ranking member advise me who it is that is requiring the imposition of this so I can speak to that Senator or those Senators to try to reach some kind of an accommodation so we can take this matter up in the future?

Ms. MIKULSKI. Madam President, I say to my friend and member of the Judiciary Committee, I do not know. I truly do not know. I do know that these parliamentary mechanisms were worked out at the leadership level.

Mr. KYL. I appreciate that. I appreciate the words of the ranking member and make this point that this will proceed in some way at some time when we find out who is making the objections, if anyone. It may simply be a procedural matter to preserve the committee's jurisdiction.

We will proceed. It will become law at some point at some time. I ask my colleagues on both sides of the aisle, if you have problems with this legislation, please let me know so we can try to work on those problems. There should be no reason we cannot move forward. We will be back. The next time I am back, I hope there is no one who is interposing an objection.

I appreciate the comments of the ranking member.

Ms. MIKULSKI. I call for the ruling.

The PRESIDING OFFICER. The point of order is sustained. The amendment fails.

SA 1718. Mr. KYL proposed an amendment to the bill H.R. 2862, An Act making appropriations for the Departments of Commerce and Justice, Science, and related agencies for the fiscal year ending September 30, 2006, and for other purposes; as follows:

On page 190, after line 14, insert the following:

SEC. 522. UNLAWFUL INTERNET GAMBLING .

(a) *Short Title.*--This section may be cited as the ``Unlawful Internet Gambling Enforcement Act of 2005''.

(b) *Findings.*--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.

(c) Prohibition on Acceptance of Any Payment Instrument for Unlawful Internet Gambling .--

(1) **IN GENERAL.**--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. Definitions

``In 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 in, to, or from an account by the bettor or customer with regard to 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 (15 U.S.C. 78i(a)(47)) 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 (7 U.S.C. 1 et seq.);

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

“(iv) any other transaction that--

“(I) is excluded or exempt from regulation under the Commodity Exchange Act (7 U.S.C. 1 et seq.);

“(II) is exempt from State gaming or bucket shop laws under section 12(e) of the Commodity Exchange Act (7 U.S.C. 16(e)) or section 28(a) of the Securities Exchange Act of 1934 (15 U.S.C. 77bb(a)); or

“(III) is conducted in accordance with the Interstate Horseracing Act of 1978 (15 U.S.C. 3001 et seq.);

“(v) any contract of indemnity or guarantee;

“(vi) any contract for insurance;

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

“(viii) any participation in a 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 simulation sports game, has an outcome that is determined predominantly by accumulated statistical results of 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 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, in consultation with the Board of Governors of the Federal Reserve System and the Attorney General, determines, 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 network utilized to effect a credit transaction, electronic fund transfer, stored value product transaction, or money transmitting service, or a participant in such network.

``(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 (47 U.S.C. 230(f)).

``(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 5362 which the recipient is prohibited from accepting under section 5362.

``(8) **SECRETARY.**--The term `Secretary' means the Secretary of the Treasury.

``(9) **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 in which the bet or wager is initiated, received, or otherwise made.

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

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

“(ii) the bet or wager is expressly authorized by and placed in accordance with the laws of such State, and such State's laws or regulations include--

“(I) age and location verification requirements reasonably designed to block access to minors and persons located outside 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 laws or regulations; and

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

“(I) Interstate Horseracing Act (15 U.S.C. 3001 et seq.);

“(II) Professional and Amateur Sports Protection Act (28 U.S.C. 3701 et seq.);

“(III) Gambling Devices Transportation Act (15 U.S.C. 1171 et seq.); or

“(IV) Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.).

“(C) 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.

“(10) 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 (15 U.S.C. 1602).

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

“(i) has the same meaning as in section 903 of the Electronic Fund Transfer Act (15 U.S.C. 1693a et seq.), except that such term includes transfers that would otherwise be excluded under section 903(6)(E) (15 U.S.C. 1693a(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 (15 U.S.C. 1693a et seq.), 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 INSTITUTION.**--The term ‘insured institution’ means--

“(i) an insured depository institution, as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813); and

“(ii) an insured credit union, as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752(7)).

“(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 issued by the Secretary thereunder). “§5362. 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 may 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. “§5363. Policies and procedures to identify and prevent restricted transactions

“(a) *Regulations.*--Not later than 270 days after the date of enactment of this subchapter, the Secretary, in consultation with the Board of Governors of the Federal Reserve System and the Attorney General, shall prescribe regulations requiring each designated payment system, and all participants therein, to identify and prevent restricted transactions through the establishment of policies and procedures reasonably designed to-

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“(1) 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;

“(2) block restricted transactions identified as a result of the policies and procedures developed under paragraph (1); and

“(3) prevent 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 shall--

“(1) identify types of policies and procedures, including nonexclusive examples, which would be deemed, as applicable, to be reasonably designed--

“(A) to identify, block, or prevent the acceptance of the products or services with respect to each type of restricted transaction; and

“(B) not to disrupt the legal transactions of persons licensed to engage in the business of betting or wagering;

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

“(3) consider exempting restricted transactions from any requirement imposed under such regulations, if the Secretary finds that it is not reasonably practical to identify and block, or otherwise prevent, such transactions without significant disruption of legal business 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 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 is subject to a regulation prescribed or order issued under this subchapter and blocks, or otherwise refuses to honor, a restricted transaction or a transaction that such person reasonably believes to be a restricted transaction, or as a member of a designated payment system relies 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.*--Regulations issued by the Secretary under this subchapter shall be enforced by the Federal functional regulators and the Federal Trade Commission, in the manner provided in section 505(a) of the Gramm-Leach-Bliley Act (15 U.S.C. 6805(a)). “§5364. Civil remedies

“(a) *Jurisdiction.*--The district courts of the United States shall have original and exclusive jurisdiction to prevent and restrain violations of this subchapter or the rules or regulations issued under this subchapter 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, or, in the case of rules or regulations issued under this subchapter, through an agency authorized to enforce such regulations in accordance with this subchapter, may institute proceedings under this section to prevent or restrain a violation or a threatened violation of this subchapter or such rules or regulations.

“(B) **RELIEF.**--Upon application of the United States under this paragraph, the district court may enter a preliminary injunction or an injunction against any person to prevent or restrain a violation or threatened violation of this subchapter or the rules or regulations issued under this subchapter, 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 violation of this subchapter allegedly has occurred or will occur 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 preliminary injunction or an injunction against any person to prevent or restrain a violation or threatened violation of this subchapter, 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 violation of this subchapter or the rules or regulations issued under this subchapter that is alleged to have occurred, or may occur, on Indian lands (as that term is defined in section 4 of the Indian Gaming Regulatory Act (25 U.S.C. 2703))--

“(i) the United States shall have the enforcement authority provided under 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 (25 U.S.C. 2701 et seq.).

“(c) *Expedited Proceedings.--*In addition to any proceeding under subsection (b), a district court may, in exigent circumstances, enter a temporary restraining order against a person alleged to be in violation of this subchapter or the rules or regulations issued under this subchapter, upon application of the United States under subsection (b)(1), or the attorney general (or other appropriate State official) of an affected State under subsection (b)(2), in accordance with rule 65(b) of the Federal Rules of Civil Procedure.

“(d) *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 this subchapter, or a hypertext link to an online site violating this subchapter, 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 5366;

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