

## MEMORANDUM

**To:** Members of the Subcommittee on Crime, Terrorism, and Homeland Security  
**From:** Howard Coble  
Chairman, Subcommittee on Crime, Terrorism and Homeland Security  
**Date:** April 4, 2006  
**Subject:** Legislative Hearing on H.R. 4777, the Internet Gambling Prohibition Act of 2006

---

The Subcommittee on Crime, Terrorism, and Homeland Security will conduct a legislative hearing on **Wednesday, April 5, 2006**, at **2:00 p.m.**, in **Room 2141**, on H.R. 4777, The Internet Gambling Prohibition Act.

### **1. PURPOSE**

This hearing will focus on Representative Goodlatte's bill to modify existing criminal law to prohibit Internet gambling.

The four witnesses are (1) **the Honorable Bob Goodlatte**, 6<sup>th</sup> Congressional District of Virginia, Member of Congress; (2) **Mr. Bruce Ohr**, Chief, Organized Crime and Racketeering Section, DOJ; (3) **Mr. John Kindt**, Professor, University of Illinois; (4) **Mr. Sam Vallandingham**, Vice President, the First State Bank, West Virginia.

### **2. BACKGROUND AND PURPOSE OF LEGISLATION**

Currently, Federal law is unclear as to whether or not all types of Internet gambling are illegal. H.R. 4777 is intended to clarify when operating a gambling business on the Internet is illegal. The main federal statute outlawing gambling is the Interstate Wire Communications Act, (Wire Act) originally passed in 1961. There is much debate regarding the applicability and the parameters of this Act to Internet gambling. A primary focus of the debate is whether the Wire Act only applies to sports-related betting, or whether it also covers casino-style gambling like online poker, blackjack and roulette.

H.R. 4777, is an attempt to clarify the Wire Act to prohibit not only sports betting, but traditional gambling such as online poker. The bill also attempts to updates the Wire Act to cover more Internet technologies, such as wireless infrastructures that increasingly make up the Internet. Finally, the bill outlaws the transmission of electronic funds to pay for gambling bets; grants federal, state and local law enforcement the ability to seek injunctions to prevent the transmission of those funds; and increases the penalties for all violations of the Wire Act from a maximum of two years to a maximum of five years.

Gambling on the Internet has increasingly become an extremely lucrative business. The explosive growth of this industry, has seen an increase in both gambling websites available, and industry revenues. Internet gambling is now estimated to be a \$12 billion industry, with

approximately \$6 billion coming from bettors based in the U.S. It has been reported that there are as many as 2,300 gambling sites.

### **Federal Gambling Laws**

As a general rule, Congress has found that:

(1) the States should have the primary responsibility for determining what forms of gambling may legally take place within their borders; and

(2) the Federal Government should prevent interference by one State with the gambling policies of another, and should act to protect identifiable national interests. Title 15 U.S.C. 57, Sec 3001

Although the separate States generally regulate gambling, the federal government has proscribed certain gambling activities. In 1961, Congress enacted the “Interstate Wire Communications Act” Title 18, United States Code § 1084, (P.L. 87-216) which prohibits any person who is “engaged in the business of betting or wagering” from “knowingly using a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest.” The Act also grants State and local law enforcement agencies the power to direct a communication service provider (“common carrier”) to disconnect any persons who are using communication facilities to transmit gambling information. Violations of this Act can result in imprisonment for not more than two years, a fine, or both.

Also in 1961, Congress passed the “Travel Act” Title 18, United States Code § 1952, (Pub. L. 87-228), which makes it illegal to “travel in interstate or foreign commerce or use the mail or any facility in interstate or foreign commerce, with intent to 1) distribute the proceeds of any unlawful activity; or 2) commit any crime of violence to further any unlawful activity; or 3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity.” An unlawful activity is defined as, among other things, any business involving gambling committed in violation of state or federal laws.

In 1970, Congress enacted §1955 of title 18, United States Code, the “Prohibition of Illegal Gambling Business Act.” This section provides for imprisonment of not more than five years for any person who “conducts, finances, manages, supervises, directs or owns all or part of an illegal gambling business.” An “illegal gambling business” is defined as a gambling business which is 1) in violation of State law; 2) involves five or more persons; and 3) has been or remains in substantially continuous operation for a period in excess of thirty days or has a gross revenue of \$2,000 in any single day.

However, there are specific federal laws which support interstate gambling. For example, the “Interstate Horseracing Act” Title 15, United States Code §§ 3001-3007, (P.L. 95-515) was enacted in 1978, permitting interstate off-track wagers under certain specified conditions. In 1988, Congress enacted the Indian Gaming Regulatory Act, Title 25, United States Code § 2701, (“IGRA”) (P.L. 100-497), allowing casinos to be built on Indian reservations.

3. **H.R. 4777, THE INTERNET GAMBLING PROHIBITION ACT SECTION BY SECTION**

**Section 1 – Short Title**

Internet Gambling Prohibition Act

**Section 2 – Definitions**

Among other definitions, this section amends the definition of “wire communication” under the Wire Act, Title 18 U.S.C. 1081, to make it clear that it also applies to wireless communications, such as satellite and microwave communications, which also provide much of the Internet infrastructure.

Defines “bets and wagers” to include bets for contests, sporting events or other games predominantly subject to chance, as well as purchasing lottery tickets. (Current law is ambiguous and many argue it applies only to sports-related betting).

Specifically stipulates that “bets and wagers” do not include:

- Bona fide business transactions under the securities laws
- Transactions pursuant to the Commodity Exchange Act
- Over-the-counter derivative instruments
- Contracts of indemnity or guarantee
- Contracts for life, health, or accident insurance
- Certain reward programs or contests conducted by businesses
- Certain fantasy sports leagues

Defines “information assisting in the placing of bets or wagers” as information knowingly transmitted by an individual in a gambling business for use in placing, receiving, making or otherwise enabling or facilitating a bet or wager. Specifically stipulates that “information assisting in the placing of bets or wagers” does not include:

- (A) Educational information about how to make a bet in jurisdictions where such bets are legal as long as it does not solicit or provide info for the purpose of facilitating the placing or receipt of bets or wagers
- (B) Advertising relating to betting or wagering in a jurisdiction where such bets or wagers are legal as it does not solicit or provide info for the purpose of facilitating the placing or receipt of bets or wagers

**Section 3 – Prohibitions**

(a) Prohibits anyone engaged in a gambling business from using the internet or other wire or wireless communications facilities to:

1. Transmit bets or wagers or information assisting in the placing of bets or wagers
2. Transmit a communication which entitles the recipient to receive money or credit as a result of bets or wagers or for information assisting in the placing of bets or wagers

This crime is punishable by fine and/or imprisonment for up to 5 years.

(b) Prohibits anyone engaged in a gambling business from accepting (in connection with a transmission of a communication in interstate or foreign commerce)

1. Credit or the proceeds of credit extended to or on behalf of another
2. An electronic funds transfer or funds transmitted by or through a money transmitting business or the proceeds of such a transfer
3. A check, draft, or similar instrument
4. The proceeds of any other form of financial transaction that the Secretary of Treasury may prescribe

This crime is punishable by fine and/or imprisonment for up to 5 years.

(c) Provides that the following interstate communications are NOT prohibited:

1. Transmitting information assisting in the placing of bets or wagers for use in news reporting in a jurisdiction where the betting is illegal
2. Transmitting information assisting in the placing of bets or wagers from a State or foreign country where such betting is permitted by law into another State or foreign country in which such betting on the same event is permitted by law
3. Transmission of information related to a State-specific lottery, between a State or foreign country where such betting is legal and an out-of-State data center for the purposes of assisting in the operation of such State-specific lottery

(d) (States' rights / intra-state provision) Provides that the following is NOT prohibited:

Using the Internet or other wire or wireless communications facilities to transmit bets or wagers or information assisting in the placing of bets or wagers if:

1. The person or business placing the bets, the gambling business, and any facility processing those bets are located within the same State and the State has an effective resident and age verification system in place (and if the gambling is under the Indian Gaming Regulatory Act (IGRA), then they must be physically located on Indian lands within that State)
2. The State or Tribe has explicitly authorized such bets or wagers
3. The State or Tribe has explicitly authorized and licensed the operation of the gambling business, any facility processing the bets and wagers and support service within its borders
4. For class II or class III gaming, the game is permitted and controlled under IGRA
5. For class III gaming, the game is authorized under and conducted in accordance with, the respective Tribal-State compact of the Tribe with jurisdiction over the lands where the individual or entity placing the bets, the gambling business, and the processing facility are physically located, AND
6. For class III gaming, each Tribal-State compact expressly provides that the game may be conducted using a communication facility to transmit bets or wagers or information assisting in the placing of bets or wagers

(e) Provides that nothing in this section creates immunity from criminal prosecution under any laws of any State or Tribe

(f) Provides that nothing in this section shall be construed to overturn the previous act of Congress embodied in the Interstate Horse Racing Act, (PL 95-515).

(g) Provides that nothing in this section authorizes anything prohibited by 28 U.S.C. 178, The Professional and Amateur Sports Protection

(h) Provides that when a common carrier is notified in writing that a communication facility furnished by it is being used to violate this Act, then it must discontinue service to the offender after reasonable notice to the subscriber is given. Further provides that no civil or criminal damages, penalty, or forfeiture shall be imposed on the common carrier for carrying out this provision. Stipulates that nothing in this section prevents the ability of an affected party to seek redress in court.

(i) Provides that:

1. Federal, state, tribal or local law enforcement may obtain injunctive or declaratory relief to restrain or prevent anyone from paying or assisting in the payment of bets or wagers or communicating information assisting in the placing of bets and wagers in violation of federal, state, tribal or local law
2. No civil or criminal damages, penalty or forfeiture shall be found against anyone for any act done in compliance with any notice received from a law enforcement agency
3. Any relief granted against an interactive computer service must:
  - Be limited to the removal of, or disabling access to, an offending online website or a hypertext link to an offending online website that resides on a computer server that that Service operates. However, this particular limitation of liability does not apply when the interactive computer service itself is violating the Act or if it is acting in active concert with a violator and receives actual notice of the relief
  - Be available only after notice and an opportunity to appear are provided to the interactive computer service
  - Not impose any obligation on the interactive computer service to monitor its service or affirmatively seek facts indicating violating activity
  - Specify the interactive computer service to which it applies
  - Specifically identify the offending website's or hyperlink's location that must be removed or disabled

#### **Section 4 – Enforcement**

Authorizes, in addition to any other sums, \$10,000,000 for each of the fiscal years 2007 through 2010 to be used exclusively for investigations and prosecutions regarding Internet gambling

#### **4. ISSUES**

- a. What harmful effect does internet gambling have on children and the family?
- b. What measures can be taken to crack down on the growing problem of illegal, off shore gambling, as well as illegal gambling that crosses state lines over phone lines and internet technologies?
- c. What effect will defining “bet or wager” to include wagering on sporting events, lotteries and games of chance, while excluding securities and commodities

transactions, indemnity and insurance contracts, and fantasy sports leagues, have on curbing illegal gambling?

- d. What effect does illegal gambling have on the U.S. economy? How does illegal internet gambling relate to and facilitate money laundering?
- e. What additional resources are needed to effectively investigate and prosecute illegal internet gambling, including establishing stiffer penalties?
- f. What measures can be implemented to bring the current ban against interstate gambling up to speed with the development of new technology?
- g. The need to legalize Internet gambling?