

109TH CONGRESS
1ST SESSION

S. _____

To prevent the use of certain payment instruments, credit cards, and fund transfers for unlawful Internet gambling, and for other purposes.

IN THE SENATE OF THE UNITED STATES

introduced the following bill; which was read twice
and referred to the Committee on

A BILL

To prevent the use of certain payment instruments, credit cards, and fund transfers for unlawful 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 “Unlawful Internet
5 Gambling Enforcement Act of 2005”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) Internet gambling is primarily funded
9 through personal use of payment system instru-
10 ments, credit cards, and wire transfers.

1 (2) The National Gambling Impact Study Com-
2 mission in 1999 recommended the passage of legisla-
3 tion to prohibit wire transfers to Internet gambling
4 sites or the banks which represent such sites.

5 (3) Internet gambling is a growing cause of
6 debt collection problems for insured depository insti-
7 tutions and the consumer credit industry.

8 (4) Internet gambling conducted through off-
9 shore jurisdictions has been identified by United
10 States law enforcement officials as a significant
11 money laundering vulnerability.

12 (5) Gambling through the Internet, which has
13 grown rapidly in the decade preceding the enactment
14 of this Act, opens up the possibility of immediate,
15 individual, 24-hour access in every home to the full
16 range of wagering opportunities on sporting events
17 or casino-like contests, such as roulette, slot ma-
18 chines, poker, or blackjack.

19 **SEC. 3. PROHIBITION ON ACCEPTANCE OF ANY PAYMENT**
20 **INSTRUMENT FOR UNLAWFUL INTERNET**
21 **GAMBLING.**

22 (a) IN GENERAL.—Chapter 53 of title 31, United
23 States Code, is amended by adding at the end the fol-
24 lowing:

1 “SUBCHAPTER IV—PROHIBITION ON FUNDING
2 OF UNLAWFUL INTERNET GAMBLING

3 “§ 5361. Definitions

4 “In this subchapter, the following definitions shall
5 apply:

6 “(1) BET OR WAGER.—The term ‘bet or
7 wager’—

8 “(A) means the staking or risking by any
9 person of something of value upon the outcome
10 of a contest of others, a sporting event, or a
11 game subject to chance, upon an agreement or
12 understanding that the person or another per-
13 son will receive something of value in the event
14 of a certain outcome;

15 “(B) includes the purchase of a chance or
16 opportunity to win a lottery or other prize
17 (which opportunity to win is predominantly sub-
18 ject to chance);

19 “(C) includes any scheme of a type de-
20 scribed in section 3702 of title 28;

21 “(D) includes any instructions or informa-
22 tion pertaining to the establishment or move-
23 ment of funds in, to, or from an account by the
24 bettor or customer with regard to the business
25 of betting or wagering; and

1 “(E) does not include—

2 “(i) any activity governed by the secu-
3 rities laws (as that term is defined in sec-
4 tion 3(a)(47) of the Securities Exchange
5 Act of 1934 (15 U.S.C. 78i(a)(47)) for the
6 purchase or sale of securities (as that term
7 is defined in section 3(a)(10) of that Act);

8 “(ii) any transaction conducted on or
9 subject to the rules of a registered entity
10 or exempt board of trade under the Com-
11 modity Exchange Act (7 U.S.C. 1 et seq.);

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

14 “(iv) any other transaction that—

15 “(I) is excluded or exempt from
16 regulation under the Commodity Ex-
17 change Act (7 U.S.C. 1 et seq.); or

18 “(II) is exempt from State gam-
19 ing or bucket shop laws under section
20 12(e) of the Commodity Exchange Act
21 (7 U.S.C. 16(e)) or section 28(a) of
22 the Securities Exchange Act of 1934
23 (15 U.S.C. 77bb(a);

24 “(v) any contract of indemnity or
25 guarantee;

1 “(vi) any contract for insurance;

2 “(vii) any deposit or other transaction

3 with an insured institution; or

4 “(viii) any participation in a simula-
5 tion sports game, an educational game, or
6 a contest, that—

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

12 “(II) has an outcome that re-
13 flects the relative knowledge of the
14 participants, or their skill at physical
15 reaction or physical manipulation (but
16 not chance), and, in the case of a sim-
17 ulation sports game, has an outcome
18 that is determined predominantly by
19 accumulated statistical results of
20 sporting events; and

21 “(III) offers a prize or award to
22 a participant that is established in ad-
23 vance of the game or contest and is
24 not determined by the number of par-

1 participants or the amount of any fees
2 paid by those participants.

3 “(2) BUSINESS OF BETTING OR WAGERING.—
4 The term ‘business of betting or wagering’ does not
5 include a financial transaction provider, or any
6 interactive computer service or telecommunications
7 service.

8 “(3) DESIGNATED PAYMENT SYSTEM.—The
9 term ‘designated payment system’ means any system
10 utilized by a financial transaction provider that the
11 Secretary, in consultation with the Board of Gov-
12 ernors of the Federal Reserve System and the Attor-
13 ney General, determines, by regulation or order,
14 could be utilized in connection with, or to facilitate,
15 any restricted transaction.

16 “(4) FINANCIAL TRANSACTION PROVIDER.—
17 The term ‘financial transaction provider’ means a
18 creditor, credit card issuer, financial institution, op-
19 erator of a terminal at, which an electronic fund
20 transfer may be initiated, money transmitting busi-
21 ness, or international, national, regional, or local
22 network utilized to effect a credit transaction, elec-
23 tronic fund transfer, stored value product trans-
24 action, or money transmitting service, or a partici-
25 pant in such network.

1 “(5) INTERNET.—The term ‘Internet’ means
2 the international computer network of interoperable
3 packet switched data networks.

4 “(6) INTERACTIVE COMPUTER SERVICE.—The
5 term ‘interactive computer service’ has the same
6 meaning as in section 230(f) of the Communications
7 Act of 1934 (47 U.S.C. 230(f)).

8 “(7) RESTRICTED TRANSACTION.—The term
9 ‘restricted transaction’ means any transaction or
10 transmittal involving any credit, funds, instrument,
11 or proceeds described in any paragraph of section
12 5362 which the recipient is prohibited from accept-
13 ing under section 5362.

14 “(8) SECRETARY.—The term ‘Secretary’ means
15 the Secretary of the Treasury.

16 “(9) UNLAWFUL INTERNET GAMBLING.—

17 “(A) IN GENERAL.—The term ‘unlawful
18 Internet gambling’ means to place, receive, or
19 otherwise knowingly transmit a bet or wager by
20 any means which involves the use, at least in
21 part, of the Internet where such bet or wager
22 is unlawful under any applicable Federal or
23 State law in the State in which the bet or
24 wager is initiated, received, or otherwise made.

1 “(B) INTERMEDIATE ROUTING.—The in-
2 termediate routing of electronic data shall not
3 determine the location or locations in which a
4 bet or wager is initiated, received, or otherwise
5 made.

6 “(10) OTHER TERMS.—

7 “(A) CREDIT; CREDITOR; CREDIT CARD;
8 AND CARD ISSUER.—The terms ‘credit’, ‘cred-
9 itor’, ‘credit card’, and ‘card issuer’ have the
10 same meanings as in section 103 of the Truth
11 in Lending Act (15 U.S.C. 1602).

12 “(B) ELECTRONIC FUND TRANSFER.—The
13 term ‘electronic fund transfer’—

14 “(i) has the same meaning as in sec-
15 tion 903 of the Electronic Fund Transfer
16 Act (15 U.S.C. 1693a et seq.), except that
17 such term includes transfers that would
18 otherwise be excluded under section
19 903(6)(E) (15 U.S.C. 1693a(6)(E)) of
20 that Act; and

21 “(ii) includes any fund transfer cov-
22 ered by Article 4A of the Uniform Com-
23 mercial Code, as in effect in any State.

24 “(C) FINANCIAL INSTITUTION.—The term
25 ‘financial institution’ has the same meaning as

1 in section 903 of the Electronic Fund Transfer
2 Act (15 U.S.C. 1693a et seq.), except that such
3 term does not include a casino, sports book, or
4 other business at or through which bets or wa-
5 gers may be placed or received.

6 “(D) INSURED INSTITUTION.—The term
7 ‘insured institution’ means—

8 “(i) an insured depository institution,
9 as defined in section 3 of the Federal De-
10 posit Insurance Act (12 U.S.C. 1813); and

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

14 “(E) MONEY TRANSMITTING BUSINESS
15 AND MONEY TRANSMITTING SERVICE.—The
16 terms ‘money transmitting business’ and
17 ‘money transmitting service’ have the same
18 meanings as in section 5330(d) (determined
19 without regard to any regulations issued by the
20 Secretary thereunder).

21 **“§ 5362. Prohibition on acceptance of any financial**
22 **instrument for unlawful Internet gam-**
23 **bling**

24 “No person engaged in the business of betting or wa-
25 gering may knowingly accept, in connection with the par-

1 ticipation of another person in unlawful Internet gam-
2 bling—

3 “(1) credit, or the proceeds of credit, extended
4 to or on behalf of such other person (including credit
5 extended through the use of a credit card);

6 “(2) an electronic fund transfer, or funds trans-
7 mitted by or through a money transmitting business,
8 or the proceeds of an electronic fund transfer or
9 money transmitting service, from or on behalf of
10 such other person;

11 “(3) any check, draft, or similar instrument
12 which is drawn by or on behalf of such other person
13 and is drawn on or payable at or through any finan-
14 cial institution; or

15 “(4) the proceeds of any other form of financial
16 transaction, as the Secretary may prescribe by regu-
17 lation, which involves a financial institution as a
18 payor or financial intermediary on behalf of or for
19 the benefit of such other person.

20 **“§ 5363. Policies and procedures to identify and pre-**
21 **vent restricted transactions**

22 “(a) REGULATIONS.—Not later than 270 days after
23 the date of enactment of this subchapter, the Secretary,
24 in consultation with the Board of Governors of the Federal
25 Reserve System and the Attorney General, shall prescribe

1 regulations requiring each designated payment system,
2 and all participants therein, to identify and prevent re-
3 stricted transactions through the establishment of policies
4 and procedures reasonably designed to—

5 “(1) allow the payment system and any person
6 involved in the payment system to identify restricted
7 transactions by means of codes in authorization mes-
8 sages or by other means;

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

12 “(3) prevent the acceptance of the products or
13 services of the payment system in connection with a
14 restricted transaction.

15 “(b) REQUIREMENTS FOR POLICIES AND PROCE-
16 DURES.—In prescribing regulations under subsection (a),
17 the Secretary shall—

18 “(1) identify types of policies and procedures,
19 including nonexclusive examples, which would be
20 deemed, as applicable, to be reasonably designed to
21 identify, block, or prevent the acceptance of the
22 products or services with respect to each type of re-
23 stricted transaction;

24 “(2) to the extent practical, permit any partici-
25 pant in a payment system to choose among alter-

1 native means of identifying and blocking, or other-
2 wise preventing the acceptance of the products or
3 services of the payment system or participant in con-
4 nection with, restricted transactions; and

5 “(3) consider exempting restricted transactions
6 from any requirement imposed under such regula-
7 tions, if the Secretary finds that it is not reasonably
8 practical to identify and block, or otherwise prevent,
9 such transactions.

10 “(c) COMPLIANCE WITH PAYMENT SYSTEM POLI-
11 CIES AND PROCEDURES.—A financial transaction provider
12 shall be considered to be in compliance with the regula-
13 tions prescribed under subsection (a), if—

14 “(1) such person relies on and complies with
15 the policies and procedures of a designated payment
16 system of which it is a member or participant to—

17 “(A) identify and block restricted trans-
18 actions; or

19 “(B) otherwise prevent the acceptance of
20 the products or services of the payment system,
21 member, or participant in connection with re-
22 stricted transactions; and

23 “(2) such policies and procedures of the des-
24 ignated payment system comply with the require-

1 ments of regulations prescribed under subsection
2 (a).

3 “(d) NO LIABILITY FOR BLOCKING OR REFUSING TO
4 HONOR RESTRICTED TRANSACTIONS.—

5 “(1) IN GENERAL.—A person that is subject to
6 a regulation prescribed or order issued under this
7 subchapter and blocks, or otherwise refuses to
8 honor, a restricted transaction or a transaction that
9 such person reasonably believes to be a restricted
10 transaction, or as a member of a designated pay-
11 ment system relies on the policies and procedures of
12 the payment system, in an effort to comply with reg-
13 ulations prescribed under subsection (a), shall not be
14 liable to any party for such action.

15 “(2) WAGERING IN FOREIGN COUNTRY.—For
16 purposes of this paragraph, a person who blocks a
17 transaction offering funds or using credit, drawn
18 from an account registered to an address in the
19 United States or initiated from a location in the
20 United States, to a person reasonably believed to be
21 engaged in the business of betting or wagering in a
22 foreign country shall be deemed to reasonably believe
23 that such a transaction is a restricted transaction.

24 “(e) REGULATORY ENFORCEMENT.—Regulations
25 issued by the Secretary under this subchapter shall be en-

1 forced by the Federal functional regulators and the Fed-
2 eral Trade Commission, in the manner provided in section
3 505(a) of the Gramm-Leach-Bliley Act (15 U.S.C.
4 6805(a)).

5 **“§ 5364. Civil remedies**

6 “(a) JURISDICTION.—The district courts of the
7 United States shall have original and exclusive jurisdiction
8 to prevent and restrain violations of this subchapter or
9 the rules or regulations issued under this subchapter by
10 issuing appropriate orders in accordance with this section,
11 regardless of whether a prosecution has been initiated
12 under this subchapter.

13 “(b) PROCEEDINGS.—

14 “(1) INSTITUTION BY FEDERAL GOVERN-
15 MENT.—

16 “(A) IN GENERAL.—The United States,
17 acting through the Attorney General, or, in the
18 case of rules or regulations issued under this
19 subchapter, through an agency authorized to
20 enforce such regulations in accordance with this
21 subchapter, may institute proceedings under
22 this section to prevent or restrain a violation or
23 a threatened violation of this subchapter or
24 such rules or regulations.

1 “(B) RELIEF.—Upon application of the
2 United States under this paragraph, the district
3 court may enter a preliminary injunction or an
4 injunction against any person to prevent or re-
5 strain a violation or threatened violation of this
6 subchapter or the rules or regulations issued
7 under this subchapter, in accordance with rule
8 65 of the Federal Rules of Civil Procedure.

9 “(2) INSTITUTION BY STATE ATTORNEY GEN-
10 ERAL.—

11 “(A) IN GENERAL.—The attorney general
12 (or other appropriate State official) of a State
13 in which a violation of this subchapter allegedly
14 has occurred or will occur may institute pro-
15 ceedings under this section to prevent or re-
16 strain the violation or threatened violation.

17 “(B) RELIEF.—Upon application of the at-
18 torney general (or other appropriate State offi-
19 cial) of an affected State under this paragraph,
20 the district court may enter a preliminary in-
21 junction or an injunction against any person to
22 prevent or restrain a violation or threatened
23 violation of this subchapter, in accordance with
24 rule 65 of the Federal Rules of Civil Procedure.

25 “(3) INDIAN LANDS.—

1 “(A) IN GENERAL.—Notwithstanding
2 paragraphs (1) and (2), for a violation of this
3 subchapter or the rules or regulations issued
4 under this subchapter that is alleged to have oc-
5 curred, or may occur, on Indian lands (as that
6 term is defined in section 4 of the Indian Gam-
7 ing Regulatory Act (25 U.S.C. 2703))—

8 “(i) the United States shall have the
9 enforcement authority provided under
10 paragraph (1); and

11 “(ii) the enforcement authorities spec-
12 ified in an applicable Tribal-State compact
13 negotiated under section 11 of the Indian
14 Gaming Regulatory Act (25 U.S.C. 2710)
15 shall be carried out in accordance with
16 that compact.

17 “(B) RULE OF CONSTRUCTION.—No provi-
18 sion of this section shall be construed as alter-
19 ing, superseding, or otherwise affecting the ap-
20 plication of the Indian Gaming Regulatory Act
21 (25 U.S.C. 2701 et seq.).

22 “(c) EXPEDITED PROCEEDINGS.—In addition to any
23 proceeding under subsection (b), a district court may, in
24 exigent circumstances, enter a temporary restraining
25 order against a person alleged to be in violation of this

1 subchapter or the rules or regulations issued under this
2 subchapter, upon application of the United States under
3 subsection (b)(1), or the attorney general (or other appro-
4 priate State official) of an affected State under subsection
5 (b)(2), in accordance with rule 65(b) of the Federal Rules
6 of Civil Procedure.

7 “(d) LIMITATION RELATING TO INTERACTIVE COM-
8 PUTER SERVICES.—

9 “(1) IN GENERAL.—Relief granted under this
10 section against an interactive computer service
11 shall—

12 “(A) be limited to the removal of, or dis-
13 abling of access to, an online site violating this
14 subchapter, or a hypertext link to an online site
15 violating this subchapter, that resides on a com-
16 puter server that such service controls or oper-
17 ates, except that the limitation in this subpara-
18 graph shall not apply if the service is subject to
19 liability under this section under section 5366;

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

23 “(C) not impose any obligation on an
24 interactive computer service to monitor its serv-

1 ice or to affirmatively seek facts indicating ac-
2 tivity violating this subchapter;

3 “(D) specify the interactive computer serv-
4 ice to which it applies; and

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

8 “(2) COORDINATION WITH OTHER LAW.—An
9 interactive computer service that does not violate
10 this subchapter shall not be liable under section
11 1084 of title 18, except that the limitation in this
12 paragraph shall not apply if an interactive computer
13 service has actual knowledge and control of bets and
14 wagers and—

15 “(A) operates, manages, supervises, or di-
16 rects an Internet website at which unlawful bets
17 or wagers may be placed, received, or otherwise
18 made or at which unlawful bets or wagers are
19 offered to be placed, received, or otherwise
20 made; or

21 “(B) owns or controls, or is owned or con-
22 trolled by, any person who operates, manages,
23 supervises, or directs an Internet website at
24 which unlawful bets or wagers may be placed,
25 received, or otherwise made, or at which unlaw-

1 ful bets or wagers are offered to be placed, re-
2 ceived, or otherwise made.

3 “(e) FACTORS TO BE CONSIDERED IN CERTAIN
4 CASES.—In considering granting relief under this section
5 against any payment system, or any participant in a pay-
6 ment system that is a financial transaction provider, the
7 court shall consider—

8 “(1) the extent to which the person extending
9 credit or transmitting funds knew or should have
10 known that the transaction was in connection with
11 unlawful Internet gambling;

12 “(2) the history of such person in extending
13 credit or transmitting funds when such person knew
14 or should have known that the transaction is in con-
15 nection with unlawful Internet gambling;

16 “(3) the extent to which such person has estab-
17 lished and is maintaining policies and procedures in
18 compliance with rules and regulations issued under
19 this subchapter;

20 “(4) the extent to which it is feasible for any
21 specific remedy prescribed as part of such relief to
22 be implemented by such person without substantial
23 deviation from normal business practice; and

24 “(5) the costs and burdens that the specific
25 remedy will have on such person.

1 “(f) NOTICE TO REGULATORS AND FINANCIAL INSTI-
2 TUTIONS.—Before initiating any proceeding under sub-
3 section (b), with respect to a violation or potential viola-
4 tion of this subchapter or the rules or regulations issued
5 under this subchapter by any financial transaction pro-
6 vider, the Attorney General, an attorney general (or other
7 appropriate State official) of a State, or an agency author-
8 ized to initiate such proceeding under this subchapter,
9 shall—

10 “(1) notify such person, and the appropriate
11 regulatory agency (as determined in accordance with
12 section 5363(e) for such person) of such violation or
13 potential violation and the remedy to be sought in
14 such proceeding; and

15 “(2) allow such person not longer than 60 days
16 to implement a remedy for the violation or potential
17 violation, consistent with the factors described in
18 subsection (e), and in conjunction with such action
19 as the appropriate regulatory agency may take, if
20 such person takes reasonable steps within that 60-
21 day period to prevent the occurrence of such viola-
22 tion or potential violation pending implementation of
23 such remedy.

1 **“§ 5365. Criminal penalties**

2 “(a) IN GENERAL.—Whoever violates section 5362
3 shall be fined under title 18, or imprisoned for not more
4 than 5 years, or both.

5 “(b) PERMANENT INJUNCTION.—Upon conviction of
6 a person under this section, the court may enter a perma-
7 nent injunction enjoining such person from placing, receiv-
8 ing, or otherwise making bets or wagers or sending, receiv-
9 ing, or inviting information assisting in the placing of bets
10 or wagers.

11 **“§ 5366. Circumventions prohibited**

12 “Notwithstanding section 5361(2), a financial trans-
13 action provider, or any interactive computer service or
14 telecommunications service, may be liable under this sub-
15 chapter if such person has actual knowledge and control
16 of bets and wagers, and—

17 “(1) operates, manages, supervises, or directs
18 an Internet website at which unlawful bets or wagers
19 may be placed, received, or otherwise made, or at
20 which unlawful bets or wagers are offered to be
21 placed, received, or otherwise made; or

22 “(2) owns or controls, or is owned or controlled
23 by, any person who operates, manages, supervises,
24 or directs an Internet website at which unlawful bets
25 or wagers may be placed, received, or otherwise

1 made, or at which unlawful bets or wagers are of-
2 ferred to be placed, received, or otherwise made.

3 **“§ 5367. Rule of construction**

4 “No provision of this subchapter shall be construed
5 as altering, limiting, or extending any Federal or State
6 law or Tribal-State compact prohibiting, permitting, or
7 regulating gambling within the United States.”.

8 (b) TECHNICAL AND CONFORMING AMENDMENT.—

9 The table of sections for chapter 53 of title 31, United
10 States Code, is amended by adding at the end the fol-
11 lowing:

“SUBCHAPTER IV—PROHIBITION ON FUNDING OF UNLAWFUL INTERNET
GAMBLING

“Sec. 5361. Definitions.

“Sec. 5362. Prohibition on acceptance of any financial instrument for unlawful
Internet gambling.

“Sec. 5363. Policies and procedures to identify and prevent restricted trans-
actions.

“Sec. 5364. Civil remedies.

“Sec. 5365. Criminal penalties.

“Sec. 5366. Circumventions prohibited.

“Sec. 5367. Rule of construction.”

12 **SEC. 4. INTERNET GAMBLING IN OR THROUGH FOREIGN**
13 **JURISDICTIONS.**

14 (a) IN GENERAL.—In deliberations between the
15 United States Government and any other country on
16 money laundering, corruption, and crime issues, the
17 United States Government should—

18 (1) encourage cooperation by foreign govern-
19 ments and relevant international fora in identifying

1 whether Internet gambling operations are being used
2 for money laundering, corruption, or other crimes;

3 (2) advance policies that promote the coopera-
4 tion of foreign governments, through information
5 sharing or other measures, in the enforcement of
6 this Act; and

7 (3) encourage the Financial Action Task Force
8 on Money Laundering, in its annual report on
9 money laundering typologies, to study the extent to
10 which Internet gambling operations are being used
11 for money laundering purposes.

12 (b) **REPORT REQUIRED.**—The Secretary of the
13 Treasury shall submit an annual report to Congress on
14 any deliberations between the United States and other
15 countries on issues relating to Internet gambling.