



**Legislative Bulletin.....July 11, 2006**

**Contents:**

**H.R. 4411** — Unlawful Internet Gambling Enforcement Act of 2006

**Summary of the Bills Under Consideration Today:**

**Total Number of New Government Programs:** 0

**Total Cost of Discretionary Authorizations:** \$40 million over four years

**Effect on Revenue:** \$0

**Total Change in Mandatory Spending:** \$0

**Total New State & Local Government Mandates:** 0

**Total New Private Sector Mandates:** 1

**Number of Bills Without Committee Reports:** 0

**Number of Reported Bills that Don't Cite Specific Clauses of Constitutional Authority:** 0

**H.R. 4411 — Unlawful Internet Gambling Enforcement Act of 2006 — as amended (Leach, R-IA)**

**Order of Business:** The bill is scheduled for consideration on Tuesday, July 11, 2006, under a structured rule ([H.Res. 907](#)), allowing one amendment. See the “Additional Information” section below for legislative history.

**Summary:** H.R. 4411 would amend the Wire Act of 1961 to extend the prohibition on gambling (using wire communication facilities, defined below) to include internet technologies and all types of gambling (not just sports betting). The bill would increase maximum prison terms from two to five years for violations of the Wire Act. The bill would direct the Treasury Department and the Federal Reserve to issue regulations preventing financial transactions related to illegal internet gambling. The bill would also allow state and federal law enforcement officials to seek injunctions against entities who facilitate illegal internet gambling (defined in the bill and current

law), even when that entity is not criminally liable for an illegal gambling offense. The specific provisions of H.R. 4411 are summarized below:

### **Title I (provisions from H.R. 4777, Rep. Goodlatte).**

#### **Updated Wire Act Definitions.**

- Updates the Wire Act by expanding the definition of “communication facility” to include additional means of delivery (such as wire, cable, radio electromagnetic, etc.) and internet technologies (including fixed and mobile connections);
- Adds a new definition to the Wire Act for “bets or wagers” to mean “the staking of risking by any person of something of value upon the outcome of a contest of others, a sporting event, or a game predominantly 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” and specifies that purchasing a chance to win a lottery ticket or other prize is *within* the definition;
- Excludes legitimate business transactions from the definition of a bet or wager, such as purchasing financial securities, derivative instruments, insurance contracts, and other transactions that are exempt from regulation under the Commodity Exchange Act and the Securities Exchange Act. Also excludes participation in fantasy sports and education games (subject to certain requirements) and various other activities that do not risk anything of value.

#### **Increased Criminal Penalties.**

- Provides that whoever knowingly uses a communication facility to transmit a bet or wager (or transmits information assisting in the placing of a bet or wager or related money or credit transactions) will be fined or imprisoned up to five years (currently two years);
- *Permits* the transmission of information assisting in the placing of bets or wagers:
  - 1) for use in news reporting *if* it does not solicit or facilitate placing bets in a jurisdiction where betting is illegal;
  - 2) from a state or foreign country (where betting is legal) into a state or foreign country where betting on the same event is also legal; and
  - 3) if it relates to a state-specific lottery between a state or foreign country (where such betting is legal) and an out-of-state data center for operational purposes of the lottery.
- Permits the use of a communication facility for the transmission of bets or wagers (or information assisting in their placement) if:
  - 1) the person or entity placing the bet (or assisting with the bet placement) at the time of the transmission is physically located in the same state; or for class II or class III gaming (under the Indian Gaming Regulatory Act) is physically located on the Indian lands within that state (thus allowing an *intra*-state exception to respect states rights, and not effect legal transactions that states already allow), *and* any associated agents and the actual gambling business must physically reside within the state;
  - 2) the state or tribal entity has explicitly authorized bets and wagers, the entity requires a secure location and age verification system (to ensure age and location compliance), *and* the gambling business and its associated agents comply with such laws;

- 3) the state or tribal entity has explicitly authorized and licensed the operation of a gambling business and any individual or associated agents to process bets within its borders;
- 4) the game or gambling business complies with the requirements of the Indian Gaming Regulatory Act (IGRA), with respect to class II or class III gambling
- 5) the game is authorized under and conducted in accordance with the appropriate tribal-state compact (of a tribe having jurisdiction on the lands where the bets are taking place), the gambling business is located in the same land, and the compact expressly allows the game using a communication facility to transmit bets.

**Note:** As defined by IGRA, class I gambling includes social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations. Class II gambling includes the game of chance commonly known as bingo, which is played for prizes, including monetary prizes, or card games that are authorized by state laws or not explicitly prohibited by state laws. Class III gambling means all forms of gaming/gambling that are not class I or class II. For more information, see the [IGRA website](#).

**Note:** The current language of the Wire Act is ambiguous on whether the law applies to sports betting or all bets and wagers over wire communication. The Justice Department has consistently maintained that the Act prohibits all internet gambling, not just sports gambling. The provisions above modifying the Wire Act are meant to clarify the existing ambiguities. The current language in question is below with the ambiguous language in bold text:

Whoever being engaged in the business of betting or wagering knowingly uses 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**, or for the transmission

#### **Civil Enforcement.**

- Provides that the U.S. District Courts have original and exclusive jurisdiction to prevent and restrain violations of the Wire Act, including issuing injunctive or declarative relief and temporary restraining orders against persons in order to prevent or restrain a violation;
- Allows the U.S. Attorney General to direct insured depository institutions to seize funds of gambling businesses that violate the Wire Act;  
*Example:* These provisions would allow law enforcement to take action injunctive action against an internet service provider to remove advertisements or shut down accounts for illegal gambling websites.

#### **Appropriations.**

- Authorizes to be appropriated (in addition to other sums currently authorized for the Act) to the Department of Justice \$10 million per year for FY2007-FY2010, for investigations and prosecutions of violations of the Wire Act.

### **Rules of Construction and Sense of Congress.**

- Stipulates that nothing in the Act supercedes or prohibits activity that is allowed under the Interstate Horseracing Act (15 U.S.C. 3001 et seq.); and
- States the sense of Congress that “this Act does not change which activities related to horse racing may or may not be allowed under federal law.” Further states that the Act “is not intended to resolve any existing disagreements over how to interpret the relationship between the Interstate Horseracing Act and other federal statutes.”

### **Title II (provisions from H.R. 4411, Rep. Leach):**

#### **Prevention of Payments for Unlawful Gambling.**

- Defines various terms in the U.S. Code, such as creditor, credit card, card issuer, electronic fund transfer, restricted transaction, unlawful gambling, etc.) to facilitate the new prohibitions against payment to unlawful gambling entities; key terms include:
  - Financial Transaction Provider – a creditor, credit card issuer, or financial institution (such as Visa or Paypal) which may be utilized to effect a credit transaction, electronic fund transfer or other type of payment or credit.
  - Unlawful Gambling – to place, receive, or knowingly transmit a bet or wager using a communication facility in any way where the bet is unlawful under any applicable federal or state law where the bet took place.
- Prohibits any person engaged in a gambling business from knowingly accepting credit, electronic fund transfer, check, draft or proceeds from any other form of financial transaction in connection with another person engaged in unlawful internet gambling (known as a ‘restricted transaction’ in the definitions section). This section defines the various types of transactions that will be blocked or prevented, which may be expanded by the Treasury Secretary or the Federal Reserve Board of Governors through additional regulations;
- Directs the Treasury Secretary and Federal Reserve Board of Governors (in consultation with the Attorney General) to prescribe regulations requiring each designated payment system to identify and block or otherwise prevent restricted transactions through the establishment of policies reasonably designed to prevent such transactions (by coding transactions or other means);
- Provides that a financial transaction provider be considered in compliance with these regulations if such persons rely on and comply with the applicable polices and procedures set forth by the designated payment system of which it is a member;
- Provides immunity from liability for any person that identifies and blocks or prevents a transaction that is reasonably believed to be a restricted transaction; and
- Provides that the requirements of this section (regarding blocking restricted transactions) be enforced exclusively by the federal functional regulations and the Federal Trade Commission.

### **Title III**

#### **Interaction with Foreign Powers.**

- Provides that the U.S. government should:

- 1) encourage cooperation by foreign governments and relevant international entities in identifying whether internet gambling operations are being used for money laundering, corruption, or other crimes;
  - 2) advance policies that promote the cooperation of foreign governments, through information sharing and other measures; and
  - 3) encourage the Financial Action Task Force on Money Laundering to study the extent to which internet gambling operations are being used for money laundering purposes.
- Directs the Treasury Secretary to submit an annual report to Congress on any deliberations between the U.S. government and other countries on issues relating to internet gambling.

**Additional Information:** Similar legislation was introduced by Rep. Leach in each Congress since the 106<sup>th</sup>: H.R. 4419 (106<sup>th</sup>), H.R. 556 (107<sup>th</sup>), H.R. 21 (108<sup>th</sup>). H.R. 556 passed the House on suspension by a voice vote on October 1, 2002, but was not acted upon in the Senate.

Rep. Goodlatte has also introduced legislation on internet gambling in recent Congresses: H.R. 2380 (105<sup>th</sup>), H.R. 3125 (106<sup>th</sup>), H.R. 3215 (107<sup>th</sup>), H.R. 4777 (108<sup>th</sup>). H.R. 3125 failed in the House by a suspension vote of 245-159 on July 17, 2000. An almost identical measure sponsored by Sen. Kyl (S. 692) passed the Senate on October 23, 1999.

For more information on legislative history of prohibiting internet gambling, see this CRS Report: <http://www.congress.gov/erp/rs/pdf/RS22418.pdf>.

**Administration Policy:** At press time, no official Statement of Administration Policy was available. However, Bruce Ohr with the Justice Department who testified at a hearing before the Crime Subcommittee on Crime, Terrorism, and Homeland Security for H.R. 4777, stated that the Justice Department “supports legislations, such as H.R. 4777, that would apply equally to wagering over the telephone, over the internet, and over other communication facilities.”

**Amendments:** The rule makes in order one amendment:

*Berkley (D-NV)/Wexler (D-FL)/Conyers (D-MI)*. The amendment would strike the provisions of the bill that provide an intra-state exception to the general prohibition on internet gambling, including internet gambling that is currently allowed under the Indian Gaming Regulatory Act. The amendment would also strike the section of the bill that states nothing in the bill may be construed to prohibit activity allowed under the Interstate Horseracing Act (15 U.S.C. 3001 et seq.). Finally, the amendment also strikes the Sense of Congress (Sec. 106) that states that Congress wishes to remain neutral regarding existing disagreements on the proper interpretation of the Interstate Horseracing Act. Thus, the amendment would expand the prohibition on internet gambling to include forms legal under existing law, and would effectively strike the key provisions that have been crafted to ensure states rights and abilities to regulate gambling within their borders are protected under the bill. This amendment is viewed by the bill’s sponsor as a gutting amendment that would doom passage of the bill.

**Committee Action:** H.R. 4411 was introduced on November 18, 2005, and referred to the Committee on Financial Services. The bill was marked-up on March 15, 2006, and reported out by voice vote (H. Rept. [109-412, Part I](#)). Title II of the bill, originally introduced by Rep. Goodlatte as H.R. 4777, was referred to the Judiciary Committee, was marked-up on May 26, 2006, and reported out, as amended, by voice vote on the same day (H. Rept. [109-412, Part II](#)).

**Cost to Taxpayers:** A CBO score of H.R. 4411 is unavailable, but the bill appropriates an additional \$40 million for each fiscal year 2007-2010, in addition to funds already available to the Department of Justice to carry out internet gambling prohibitions in current law.

**Does the Bill Expand the Size and Scope of the Federal Government?:** No.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** Yes. Though there is no CBO score which specifically determines if the bill includes private-sector mandates defined by UMRA (Unfunded Mandate Reform Act), the bill requires private sector financial institutions to comply with new regulations to code and block illegal internet gambling transactions.

**Constitutional Authority:** The Committee Report, [H. Rept. 109-412 - Part 1](#), cites constitutional authority for this legislation in Article 1, Section 8, Clause 1 (relating to the general welfare of the United States) and Clause 3 (relating to the power to regulate interstate commerce) of the Constitution.

House Rule XIII, Section 3(d)(1), requires that all committee reports contain “a statement citing the *specific* powers granted to Congress in the Constitution to enact the law proposed by the bill or joint resolution.” *[emphasis added]*

**RSC Staff Contact:** Derek V. Baker; [derek.baker@mail.house.gov](mailto:derek.baker@mail.house.gov); 202-226-8585

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