## Amendment in the Nature of a Substitute то H.R. 4411 OFFERED BY MR. LEACH OF IOWA

Strike all after the enacting clause and insert the following:

#### 1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the "Unlawful Internet 3 Gambling Enforcement Act of 2006".

4 SEC. 2. PROHIBITION ON ACCEPTANCE OF ANY PAYMENT 5 INSTRUMENT FOR UNLAWFUL INTERNET 6 GAMBLING.

7 (a) IN GENERAL.—Chapter 53 of title 31, United States Code, is amended by adding at the end the fol-8 9 lowing new subchapter:

"SUBCHAPTER IV—PROHIBITION ON FUNDING 10

11 OF UNLAWFUL INTERNET GAMBLING

### 12 "§ 5361. Congressional findings and purpose

13 "(a) FINDINGS.—The Congress finds the following: 14 "(1) Internet gambling is primarily funded 15 through personal use of payment system instru-16 ments, credit cards, and wire transfers.

17 "(2) The National Gambling Impact Study 18 Commission in 1999 recommended the passage of



 $\mathbf{2}$ 

legislation to prohibit wire transfers to Internet
 gambling sites or the banks which represent such
 sites.

4 "(3) Internet gambling is a growing cause of
5 debt collection problems for insured depository insti6 tutions and the consumer credit industry.

"(4) New mechanisms for enforcing gambling
laws on the Internet are necessary because traditional law enforcement mechanisms are often inadequate for enforcing gambling prohibitions or regulations on the Internet, especially where such gambling crosses State or national borders.

"(b) RULE OF CONSTRUCTION.—No provision of this
subchapter shall be construed as altering, limiting, or extending any Federal or State law or Tribal-State compact
prohibiting, permitting, or regulating gambling within the
United States.

## 18 **"§ 5362. Definitions**

19 "For purposes of this subchapter, the following defi-20 nitions shall apply:

21 "(1) BET OR WAGER.—The term 'bet or
22 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



1	game subject to chance, upon an agreement or
2	understanding that the person or another per-
3	son will receive something of value in the event
4	of a certain outcome;
5	"(B) includes the purchase of a chance or
6	opportunity to win a lottery or other prize
7	(which opportunity to win is predominantly sub-
8	ject to chance);
9	"(C) includes any scheme of a type de-
10	scribed in section 3702 of title 28;
11	"(D) includes any instructions or informa-
12	tion pertaining to the establishment or move-
13	ment of funds by the bettor or customer in, to,
14	or from an account with the business of betting
15	or wagering; and
16	"(E) does not include—
17	"(i) any activity governed by the secu-
18	rities laws (as that term is defined in sec-
19	tion $3(a)(47)$ of the Securities Exchange
20	Act of 1934 for the purchase or sale of se-
21	curities (as that term is defined in section
22	3(a)(10) of that Act);
23	"(ii) any transaction conducted on or
24	subject to the rules of a registered entity



1	or exempt board of trade under the Com-
2	modity Exchange Act;
3	"(iii) any over-the-counter derivative
4	instrument;
5	"(iv) any other transaction that—
6	"(I) is excluded or exempt from
7	regulation under the Commodity Ex-
8	change Act; or
9	"(II) is exempt from State gam-
10	ing or bucket shop laws under section
11	12(e) of the Commodity Exchange Act
12	or section 28(a) of the Securities Ex-
13	change Act of 1934;
14	"(v) any contract of indemnity or
15	guarantee;
16	"(vi) any contract for insurance;
17	"(vii) any deposit or other transaction
18	with an insured depository institution; or
19	"(viii) any participation in a fantasy
20	or simulation sports game, an educational
21	game, or a contest, that—
22	"(I) is not dependent solely on
23	the outcome of any single sporting
24	event or nonparticipant's singular in-



2

5

dividual performance in any single sporting event;

"(II) has an outcome that re-3 4 flects the relative knowledge of the 5 participants, or their skill at physical 6 reaction or physical manipulation (but 7 not chance), and, in the case of a fan-8 tasy or simulation sports game, has 9 an outcome that is determined pre-10 dominantly by accumulated statistical 11 results of sporting events, including 12 any nonparticipant's individual per-13 formances in such sporting events; 14 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 the activities of a financial transaction provider, or any interactive computer service or telecommunications service.



F:\V9\031406\031406.293 (3 March 14, 2006

21

22

23

24

"(3) 1 DESIGNATED PAYMENT SYSTEM.—The 2 term 'designated payment system' means any system 3 utilized by a financial transaction provider that the 4 Secretary and the Board of Governors of the Fed-5 eral Reserve System, in consultation with the Attor-6 ney General, jointly determine, by regulation or 7 order, could be utilized in connection with, or to fa-8 cilitate, any restricted transaction.

9 "(4) FINANCIAL TRANSACTION PROVIDER.— 10 The term 'financial transaction provider' means a 11 creditor, credit card issuer, financial institution, op-12 erator of a terminal at which an electronic fund 13 transfer may be initiated, money transmitting busi-14 ness, or international, national, regional, or local 15 payment network utilized to effect a credit trans-16 action, electronic fund transfer, stored value product 17 transaction, or money transmitting service, or a par-18 ticipant in such network, or other participant in a 19 designated payment system.

20 "(5) INTERNET.—The term 'Internet' means
21 the international computer network of interoperable
22 packet switched data networks.

"(6) INTERACTIVE COMPUTER SERVICE.—The term 'interactive computer service' has the same



F:\V9\031406\031406.293 (340696|9) March 14. 2006

23

1	meaning as in section 230(f) of the Communications
2	Act of 1934.
3	"(7) RESTRICTED TRANSACTION.—The term
4	'restricted transaction' means any transaction or
5	transmittal involving any credit, funds, instrument,
6	or proceeds described in any paragraph of section
7	5363 which the recipient is prohibited from accept-
8	ing under section 5363.
9	"(8) Secretary.—The term 'Secretary' means
10	the Secretary of the Treasury.
11	"(9) STATE.—The term 'State' means any
12	State of the United States, the District of Columbia,
13	or any commonwealth, territory, or other possession
14	of the United States.
15	"(10) Unlawful internet gambling.—
16	"(A) IN GENERAL.—The term 'unlawful
17	Internet gambling' means to place, receive, or
18	otherwise knowingly transmit a bet or wager by
19	any means which involves the use, at least in
20	part, of the Internet where such bet or wager
21	is unlawful under any applicable Federal or
22	State law in the State or Tribal lands in which
23	the bet or wager is initiated, received, or other-
24	wise made.



1	"(B) INTRASTATE TRANSACTIONS.—The
2	term 'unlawful Internet gambling' shall not in-
3	clude placing, receiving, or otherwise transmit-
4	ting a bet or wager where—
5	"(i) the bet or wager is initiated and
6	received or otherwise made exclusively
7	within a single State;
8	"(ii) the bet or wager and the method
9	by which the bet or wager is initiated and
10	received or otherwise made is expressly au-
11	thorized by and placed in accordance with
12	the laws of such State, and the State law
13	or regulations include—
14	"(I) age and location verification
15	requirements reasonably designed to
16	block access to minors and persons lo-
17	cated out of such State; and
18	"(II) appropriate data security
19	standards to prevent unauthorized ac-
20	cess by any person whose age and
21	current location has not been verified
22	in accordance with such State's law or
23	regulations; and
24	"(iii) the bet or wager does not violate
25	any provision of the—



1	"(I) Interstate Horseracing Act;
2	"(II) Professional and Amateur
3	Sports Protection Act;
4	"(III) Gambling Devices Trans-
5	portation Act; or
6	"(IV) Indian Gaming Regulatory
7	Act.
8	"(C) INTRATRIBAL TRANSACTIONS.—The
9	term 'unlawful Internet gambling' shall not in-
10	clude placing, receiving, or otherwise transmit-
11	ting a bet or wager where—
12	"(i) the bet or wager is initiated and
13	received or otherwise made exclusively—
14	"(I) within the Indian lands of a
15	single Indian tribe (as those terms are
16	defined by the Indian Gaming Regu-
17	latory Act); or
18	"(II) between the Indian lands of
19	2 or more Indian tribes to the extent
20	that intertribal gaming is authorized
21	by the Indian Gaming Regulatory Act;
22	"(ii) the bet or wager and the method
23	by which the bet or wager is initiated and
24	received or otherwise made is expressly au-



1	thorized by and complies with the require-
2	ments of—
3	((I) the applicable tribal ordi-
4	nance or resolution approved by the
5	Chairman of the National Indian
6	Gaming Commission; and
7	"(II) with respect to class III
8	gaming, the applicable Tribal-State
9	Compact;
10	"(iii) the applicable tribal ordinance
11	or resolution or Tribal-State compact
12	includes—
13	"(I) age and location verification
14	requirements reasonably designed to
15	block access to minors and persons lo-
16	cated out of the applicable Tribal
17	lands; and
18	"(II) appropriate data security
19	standards to prevent unauthorized ac-
20	cess by any person whose age and
21	current location has not been verified
22	in accordance with the applicable trib-
23	al ordinance or resolution or Tribal-
24	State Compact; and



1	"(iv) the bet or wager does not violate
2	any provision of the—
3	"(I) Interstate Horseracing Act;
4	"(II) the Professional and Ama-
5	teur Sports Protection Act;
6	"(III) the Gambling Devices
7	Transportation Act; or
8	"(IV) the Indian Gaming Regu-
9	latory Act.
10	"(D) INTERSTATE HORSERACING.—The
11	term 'unlawful Internet gambling' shall not in-
12	clude placing, receiving, or otherwise transmit-
13	ting a bet or wager that is governed by and
14	complies with the Interstate Horseracing Act of
15	1978.
16	"(E) INTERMEDIATE ROUTING.—The in-
17	termediate routing of electronic data shall not
18	determine the location or locations in which a
19	bet or wager is initiated, received, or otherwise
20	made.
21	"(11) OTHER TERMS.—
22	"(A) CREDIT; CREDITOR; CREDIT CARD;
23	AND CARD ISSUER.—The terms 'credit', 'cred-
24	itor', 'credit card', and 'card issuer' have the



12
same meanings as in section 103 of the Truth
in Lending Act.
"(B) ELECTRONIC FUND TRANSFER.—The
term 'electronic fund transfer'—
"(i) has the same meaning as in sec-
tion 903 of the Electronic Fund Transfer
Act, except that such term includes trans-
fers that would otherwise be excluded
under section $903(6)(E)$ of that Act; and
"(ii) includes any fund transfer cov-
ered by Article 4A of the Uniform Com-
mercial 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, 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 DEPOSITORY INSTITU-
TION.—The term 'insured depository
institution'—
"(i) has the same meaning as in sec-
tion 3 of the Federal Deposit Insurance
Act; and



"(ii) includes an insured credit union
 (as defined in section 101 of the Federal
 Credit Union Act).

4 (E)MONEY TRANSMITTING BUSINESS 5 SERVICE.—The AND MONEY TRANSMITTING 6 transmitting business' 'money and terms 7 'money transmitting service' have the same 8 meanings as in section 5330(d) (determined 9 without regard to any regulations prescribed by 10 the Secretary thereunder).

11 "§ 5363. Prohibition on acceptance of any financial
12 instrument for unlawful Internet gam13 bling

14 "No person engaged in the business of betting or wa-15 gering may knowingly accept, in connection with the par-16 ticipation of another person in unlawful Internet 17 gambling—

18 "(1) credit, or the proceeds of credit, extended
19 to or on behalf of such other person (including credit
20 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;



F:\V9\031406\031406.293 (340696|9) March 14, 2006

"(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 finan cial institution; or

5 "(4) the proceeds of any other form of financial
6 transaction, as the Secretary and the Board of Gov7 ernors of the Federal Reserve System may jointly
8 prescribe by regulation, which involves a financial in9 stitution as a payor or financial intermediary on be10 half of or for the benefit of such other person.

# 11 "§ 5364. Policies and procedures to identify and prevent restricted transactions

13 "(a) REGULATIONS.—Before the end of the 270-day period beginning on the date of the enactment of this sub-14 15 chapter, the Secretary and the Board of Governors of the Federal Reserve System, in consultation with the Attorney 16 17 General, shall prescribe regulations (which the Secretary and the Board jointly determine to be appropriate) requir-18 19 ing each designated payment system, and all participants 20 therein, to identify and block or otherwise prevent or pro-21 hibit restricted transactions through the establishment of 22 policies and procedures reasonably designed to identify 23 and block or otherwise prevent or prohibit the acceptance 24 of restricted transactions in any of the following ways:



F:\V9\031406\031406.293 (340696|9) March 14, 2006

1 "(1) The establishment of policies and proce-2 dures that—

"(A) allow the payment system and any 3 4 person involved in the payment system to iden-5 tify restricted transactions by means of codes in 6 authorization messages or by other means; and 7 "(B) block restricted transactions identi-8 fied as a result of the policies and procedures 9 developed pursuant to subparagraph (A).

10 "(2) The establishment of policies and proce-11 dures that prevent or prohibit the acceptance of the 12 products or services of the payment system in con-13 nection with a restricted transaction.

14 "(b) REQUIREMENTS FOR POLICIES AND PROCE-15 DURES.—In prescribing regulations under subsection (a), the Secretary and the Board of Governors of the Federal 16 17 Reserve System 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 and block or otherwise prevent or prohibit 22 the acceptance of the products or services with re-23 spect to each type of restricted transaction;

"(2) to the extent practical, permit any participant in a payment system to choose among alter-



F:\V9\031406\031406.293 (340696|9)

24

native means of identifying and blocking, or other wise preventing or prohibiting the acceptance of the
 products or services of the payment system or par ticipant in connection with, restricted transactions;
 and

6 "(3) consider exempting certain restricted 7 transactions or designated payment systems from 8 any requirement imposed under such regulations, if 9 the Secretary and the Board jointly find that it is 10 not reasonably practical to identify and block, or 11 otherwise prevent or prohibit the acceptance of, such 12 transactions.

13 "(c) COMPLIANCE WITH PAYMENT SYSTEM POLI14 CIES AND PROCEDURES.—A financial transaction provider
15 shall be considered to be in compliance with the regula16 tions prescribed under subsection (a), if—

17 "(1) such person relies on and complies with
18 the policies and procedures of a designated payment
19 system of which it is a member or participant to—
20 "(A) identify and block restricted trans21 actions; or

"(B) otherwise prevent or prohibit the acceptance of the products or services of the payment system, member, or participant in connection with restricted transactions; and



F:\V9\031406\031406.293 (340696|9) March 14, 2006

22

23

24

"(2) such policies and procedures of the des ignated payment system comply with the require ments of regulations prescribed under subsection
 (a).

5 "(d) NO LIABILITY FOR BLOCKING OR REFUSING TO 6 HONOR RESTRICTED TRANSACTIONS.—A person that 7 identifies and blocks a transaction, prevents or prohibits 8 the acceptance of its products or services in connection 9 with a transaction, or otherwise refuses to honor a 10 transaction—

11 "(1) that is a restricted transaction;

12 "(2) that such person reasonably believes to be13 a restricted transaction; or

"(3) as a designated payment system or a member of a designated payment system in reliance on
the policies and procedures of the payment system,
in an effort to comply with regulations prescribed
under subsection (a),

19 shall not be liable to any party for such action.

20 "(e) REGULATORY ENFORCEMENT.—The require21 ments of this section shall be enforced exclusively by—
22 "(1) the Federal functional regulators, with re23 spect to the designated payment systems and finan-

spect to the designated payment systems and financial transaction providers subject to the respective
jurisdiction of such regulators under section 505(a)



F:\V9\031406\031406.293 (340696|9) March 14, 2006

- of the Gramm-Leach-Bliley Act and section 5g of
   the Commodities Exchange Act; and
- "(2) the Federal Trade Commission, with respect to designated payment systems and financial
  transaction providers not otherwise subject to the jurisdiction of any Federal functional regulators (including the Commission) as described in paragraph
  (1).

## 9 "§ 5365. Civil remedies

10 "(a) JURISDICTION.—The district courts of the 11 United States shall have original and exclusive jurisdiction 12 to prevent and restrain restricted transactions by issuing 13 appropriate orders in accordance with this section, regard-14 less of whether a prosecution has been initiated under this 15 subchapter.

- 16 "(b) PROCEEDINGS.—
- 17 "(1) INSTITUTION BY FEDERAL GOVERN18 MENT.—

"(A) IN GENERAL.—The United States,
acting through the Attorney General, may institute proceedings under this section to prevent
or restrain a restricted transaction.

"(B) RELIEF.—Upon application of the United States under this paragraph, the district court may enter a temporary restraining order,



23

24

1 a preliminary injunction, or an injunction 2 against any person to prevent or restrain a re-3 stricted transaction, in accordance with rule 65 4 of the Federal Rules of Civil Procedure. "(2) INSTITUTION BY STATE ATTORNEY GEN-5 6 ERAL.— 7 "(A) IN GENERAL.—The attorney general 8 (or other appropriate State official) of a State 9 in which a restricted transaction allegedly has been or will be initiated, received, or otherwise 10 11 made may institute proceedings under this sec-12 tion to prevent or restrain the violation or 13 threatened violation. 14 "(B) RELIEF.—Upon application of the at-15 torney general (or other appropriate State offi-16 cial) of an affected State under this paragraph, 17 the district court may enter a temporary re-18 straining order, a preliminary injunction, or an 19 injunction against any person to prevent or re-20 strain a restricted transaction, in accordance 21 with rule 65 of the Federal Rules of Civil Pro-22 cedure. 23 "(3) INDIAN LANDS.— 24 "(A) IN GENERAL.—Notwithstanding 25 paragraphs (1) and (2), for a restricted trans-





1	action that allegedly has been or will be initi-
2	ated, received, or otherwise made on Indian
3	lands (as that term is defined in section 4 of
4	the Indian Gaming Regulatory Act)—
5	"(i) the United States shall have the
6	enforcement authority provided under
7	paragraph (1); and
8	"(ii) the enforcement authorities spec-
9	ified in an applicable Tribal-State compact
10	negotiated under section 11 of the Indian
11	Gaming Regulatory Act (25 U.S.C. 2710)
12	shall be carried out in accordance with
13	that compact.
14	"(B) RULE OF CONSTRUCTION.—No provi-
15	sion of this section shall be construed as alter-
16	ing, superseding, or otherwise affecting the ap-
17	plication of the Indian Gaming Regulatory Act.
18	"(c) Limitation Relating to Interactive Com-
19	PUTER SERVICES.—
20	"(1) IN GENERAL.—Relief granted under this
21	section against an interactive computer service
22	shall—
23	"(A) be limited to the removal of, or dis-
24	abling of access to, an online site violating sec-
25	tion 5363, or a hypertext link to an online site



	<b>2</b> 1
1	violating such section, that resides on a com-
2	puter server that such service controls or oper-
3	ates, except that the limitation in this subpara-
4	graph shall not apply if the service is subject to
5	liability under this section under section 5367;
6	"(B) be available only after notice to the
7	interactive computer service and an opportunity
8	for the service to appear are provided;
9	"(C) not impose any obligation on an
10	interactive computer service to monitor its serv-
11	ice or to affirmatively seek facts indicating ac-
12	tivity violating this subchapter;
13	"(D) specify the interactive computer serv-
14	ice to which it applies; and
15	"(E) specifically identify the location of the
16	online site or hypertext link to be removed or
17	access to which is to be disabled.
18	"(2) Coordination with other law.—An
19	interactive computer service that does not violate
20	this subchapter shall not be liable under section
21	1084(d) of title 18, except that the limitation in this
22	paragraph shall not apply if an interactive computer
23	service has actual knowledge and control of bets and
24	wagers and—





"(A) operates, manages, supervises, or di rects an Internet website at which unlawful bets
 or wagers may be placed, received, or otherwise
 made or at which unlawful bets or wagers are
 offered to be placed, received, or otherwise
 made; or

"(B) owns or controls, or is owned or controlled by, any person who operates, manages,
supervises, or directs an Internet website at
which unlawful bets or wagers may be placed,
received, or otherwise made, or at which unlawful bets or wagers are offered to be placed, received, or otherwise made.

14 "(d) LIMITATION ON INJUNCTIONS AGAINST REGU-15 LATED PERSONS.—Notwithstanding any other provision of this section, and subject to section 5367, no provision 16 17 of this subchapter shall be construed as authorizing the 18 Attorney General of the United States, or the attorney 19 general (or other appropriate State official) of any State 20 to institute proceedings to prevent or restrain a restricted 21 transaction against any financial transaction provider, to 22 the extent that the person is acting as a financial trans-23 action provider.



F:\V9\031406\031406.293 (340696|9) March 14, 2006

#### 1 "§ 5366. Criminal penalties

2 "(a) IN GENERAL.—Whoever violates section 5363 3 shall be fined under title 18, or imprisoned for not more than 5 years, or both. 4

5 "(b) PERMANENT INJUNCTION.—Upon conviction of a person under this section, the court may enter a perma-6 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 "§ 5367. Circumventions prohibited

12 "Notwithstanding section 5362(2), a financial trans-13 action provider, or any interactive computer service or telecommunications service, may be liable under this sub-14 15 chapter if such person has actual knowledge and control 16 of bets and wagers, and—

"(1) operates, manages, supervises, or directs 17 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

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



F:\V9\031406\031406.293 March 14, 2006

22

23

24

- 1 made, or at which unlawful bets or wagers are of-
- 2 fered to be placed, received, or otherwise made.".
- 3 (b) TECHNICAL AND CONFORMING AMENDMENT.—
- 4 The table of sections for chapter 53 of title 31, United
- 5 States Code, is amended by adding at the end the fol-
- lowing: 6

## "SUBCHAPTER IV-PROHIBITION ON FUNDING OF UNLAWFUL INTERNET GAMBLING

"5361. Congressional findings and purpose. "5362. Definitions. "5363. Prohibition on acceptance of any financial instrument for unlawful Internet gambling. "5364. Policies and procedures to identify and prevent restricted transactions. "5365. Civil remedies. "5366. Criminal penalties. "5367. Circumventions prohibited.".

## 7 SEC. 4. INTERNET GAMBLING IN OR THROUGH FOREIGN 8 JURISDICTIONS.

9 (a) IN GENERAL.—In deliberations between the 10 United States Government and any other country on 11 money laundering, corruption, and crime issues, the 12 United States Government should—

13 (1) encourage cooperation by foreign govern-14 ments and relevant international for in identifying 15 whether Internet gambling operations are being used 16 for money laundering, corruption, or other crimes;

17 (2) advance policies that promote the coopera-18 tion of foreign governments, through information 19 sharing or other measures, in the enforcement of 20 this Act; and



F:\V9\031406\031406.293 March 14, 2006

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

6 (b) REPORT REQUIRED.—The Secretary of the
7 Treasury shall submit an annual report to the Congress
8 on any deliberations between the United States and other
9 countries on issues relating to Internet gambling.

