109TH CONGRESS 1ST SESSION H.R.4411

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

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 18, 2005

Mr. LEACH (for himself, Mr. PENCE, Mr. BACHUS, Mr. OSBORNE, Mr. PITTS, Mr. BOEHLERT, Mr. GILLMOR, Mr. GILCHREST, Mr. ROGERS of Michigan, Mr. BASS, Mr. FORTENBERRY, Mr. EHLERS, Mr. KIRK, Mr. RAMSTAD, Mr. DENT, Mr. WALSH, Mr. MCCAUL of Texas, Mr. LATHAM, and Mr. AKIN) introduced the following bill; which was referred to the Committee on Financial Services

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".

1 SEC. 2. PROHIBITION ON ACCEPTANCE OF ANY PAYMENT 2 INSTRUMENT FOR UNLAWFUL INTERNET 3 GAMBLING. 4 (a) IN GENERAL.—Chapter 53 of title 31, United 5 States Code, is amended by adding at the end the following new subchapter: 6 7 "SUBCHAPTER IV—PROHIBITION ON FUNDING 8 OF UNLAWFUL INTERNET GAMBLING 9 "§ 5361. Congressional findings and purpose 10 "(a) FINDINGS.—The Congress finds the following: 11 "(1) Internet gambling is primarily funded 12 through personal use of payment system instru-13 ments, credit cards, and wire transfers. 14 "(2) The National Gambling Impact Study 15 Commission in 1999 recommended the passage of 16 legislation to prohibit wire transfers to Internet 17 gambling sites or the banks which represent such 18 sites.

19 "(3) Internet gambling is a growing cause of 20 debt collection problems for insured depository insti-21 tutions and the consumer credit industry.

22 "(4) New mechanisms for enforcing gambling laws on the Internet are necessary because tradi-23 24 tional law enforcement mechanisms are often inad-25 equate for enforcing gambling prohibitions or regula1 tions on the Internet, especially where such gam-2 bling crosses State or national borders.

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3 "(b) RULE OF CONSTRUCTION.—No provision of this 4 subchapter shall be construed as altering, limiting, or ex-5 tending any Federal or State law or Tribal-State compact prohibiting, permitting, or regulating gambling within the 6 7 United States.

8 "§ 5362. Definitions

"In this subchapter, the following definitions shall 9 10 apply:

11 ((1))BET OR WAGER.—The term 'bet or 12 wager'—

"(A) means the staking or risking by any 13 14 person of something of value upon the outcome 15 of a contest of others, a sporting event, or a 16 game subject to chance, upon an agreement or 17 understanding that the person or another per-18 son will receive something of value in the event 19 of a certain outcome;

"(B) includes the purchase of a chance or 20 21 opportunity to win a lottery or other prize 22 (which opportunity to win is predominantly sub-23 ject to chance);

"(C) includes any scheme of a type de-24 25 scribed in section 3702 of title 28;

1	"(D) includes any instructions or informa-
2	tion pertaining to the establishment or move-
3	ment of funds by the bettor or customer in, to,
4	or from an account with the business of betting
5	or wagering; and
6	"(E) does not include—
7	"(i) any activity governed by the secu-
8	rities laws (as that term is defined in sec-
9	tion $3(a)(47)$ of the Securities Exchange
10	Act of 1934 for the purchase or sale of se-
11	curities (as that term is defined in section
12	3(a)(10) of that Act);
13	"(ii) any transaction conducted on or
14	subject to the rules of a registered entity
15	or exempt board of trade under the Com-
16	modity Exchange Act;
17	"(iii) any over-the-counter derivative
18	instrument;
19	"(iv) any other transaction that—
20	"(I) is excluded or exempt from
21	regulation under the Commodity Ex-
22	change Act; or
23	"(II) is exempt from State gam-
24	ing or bucket shop laws under section
25	12(e) of the Commodity Exchange Act

1	or section 28(a) of the Securities Ex-
2	change Act of 1934;
3	"(v) any contract of indemnity or
4	guarantee;
5	"(vi) any contract for insurance;
6	"(vii) any deposit or other transaction
7	with an insured depository institution; or
8	"(viii) any participation in a simula-
9	tion sports game, an educational game, or
10	a contest, that—
11	"(I) is not dependent solely on
12	the outcome of any single sporting
13	event or nonparticipant's singular in-
14	dividual performance in any single
15	sporting event;
16	"(II) has an outcome that re-
17	flects the relative knowledge of the
18	participants, or their skill at physical
19	reaction or physical manipulation (but
20	not chance), and, in the case of a sim-
21	ulation sports game, has an outcome
22	that is determined predominantly by
23	accumulated statistical results of
24	sporting events; and

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1	"(III) offers a prize or award to
2	a participant that is established in ad-
3	vance of the game or contest and is
4	not determined by the number of par-
5	ticipants or the amount of any fees
6	paid by those participants.
7	"(2) BUSINESS OF BETTING OR WAGERING.
8	The term 'business of betting or wagering' does not
9	include a financial transaction provider, or any
10	interactive computer service or telecommunications
11	service.
12	"(3) Designated payment system.—The
13	term 'designated payment system' means any system
14	utilized by a financial transaction provider that the
15	Secretary, in consultation with the Board of Gov-
16	ernors of the Federal Reserve System and the Attor-
17	ney General, determines, by regulation or order,
18	could be utilized in connection with, or to facilitate,
19	any restricted transaction.
20	"(4) FINANCIAL TRANSACTION PROVIDER.—
21	The term 'financial transaction provider' means a
22	creditor, credit card issuer, financial institution, op-
23	erator of a terminal at which an electronic fund
24	transfer may be initiated, money transmitting busi-
25	ness, or international, national, regional, or local

1	network utilized to effect a credit transaction, elec-
2	tronic fund transfer, stored value product trans-
3	action, or money transmitting service, or a partici-
4	pant in such network, or other participant in a des-
5	ignated payment system.
6	"(5) INTERNET.—The term 'Internet' means
7	the international computer network of interoperable
8	packet switched data networks.
9	"(6) INTERACTIVE COMPUTER SERVICE.—The
10	term 'interactive computer service' has the same
11	meaning as in section 230(f) of the Communications
12	Act of 1934.
13	"(7) RESTRICTED TRANSACTION.—The term
14	'restricted transaction' means any transaction or
15	transmittal involving any credit, funds, instrument,
16	or proceeds described in any paragraph of section
17	5363 which the recipient is prohibited from accept-
18	ing under section 5363.
19	"(8) Secretary.—The term 'Secretary' means
20	the Secretary of the Treasury.
21	"(9) UNLAWFUL INTERNET GAMBLING.—
22	"(A) IN GENERAL.—The term 'unlawful
23	Internet gambling' means to place, receive, or
24	otherwise knowingly transmit a bet or wager by
25	any means which involves the use, at least in

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

1	current location has not been verified
2	in accordance with such State's law or
3	regulations; and
4	"(iii) the bet or wager does not violate
5	any provision of the—
6	"(I) Interstate Horseracing Act;
7	"(II) Professional and Amateur
8	Sports Protection Act;
9	"(III) Gambling Devices Trans-
10	portation Act; or
11	"(IV) Indian Gaming Regulatory
12	Act.
13	"(C) INTRATRIBAL TRANSACTIONS.—The
14	term 'unlawful Internet gambling' shall not in-
15	clude placing, receiving, or otherwise transmit-
16	ting a bet or wager where—
17	"(i) the bet or wager is initiated and
18	received or otherwise made exclusively—
19	"(I) within the Indian lands of a
20	single Indian tribe (as those terms are
21	defined by the Indian Gaming Regu-
22	latory Act); or
23	"(II) between the Indian lands of
24	2 or more Indian tribes to the extent

1	that intertribal gaming is authorized
2	by the Indian Gaming Regulatory Act;
3	"(ii) the bet or wager and the method
4	by which the bet or wager is initiated and
5	received or otherwise made is expressly au-
6	thorized by and complies with the require-
7	ments of—
8	"(I) the applicable tribal ordi-
9	nance or resolution approved by the
10	Chairman of the National Indian
11	Gaming Commission; and
12	"(II) with respect to class III
13	gaming, the applicable Tribal-State
14	Compact;
15	"(iii) the applicable tribal ordinance
16	or resolution or Tribal-State compact in-
17	cludes—
18	"(I) age and location verification
19	requirements reasonably designed to
20	block access to minors and persons lo-
21	cated out of the applicable Tribal
22	lands; and
23	"(II) appropriate data security
24	standards to prevent unauthorized ac-
25	cess by any person whose age and

1	current location has not been verified
2	in accordance with the applicable trib-
3	al ordinance or resolution or Tribal-
4	State Compact; and
5	"(iv) the bet or wager does not violate
6	any provision of the—
7	"(I) Interstate Horseracing Act;
8	"(II) the Professional and Ama-
9	teur Sports Protection Act;
10	"(III) the Gambling Devices
11	Transportation Act; or
12	"(IV) the Indian Gaming Regu-
13	latory Act.
14	"(D) INTERSTATE HORSERACING.—The
15	term 'unlawful Internet gambling' shall not in-
16	clude placing, receiving, or otherwise transmit-
17	ting a bet or wager that is governed by and
18	complies with the Interstate Horseracing Act of
19	1978.
20	"(E) INTERMEDIATE ROUTING.—The in-
21	termediate routing of electronic data shall not
22	determine the location or locations in which a
23	bet or wager is initiated, received, or otherwise
24	made.
25	"(10) Other terms.—
25	"(10) Other terms.—

1	"(A) CREDIT; CREDITOR; CREDIT CARD;
2	AND CARD ISSUER.—The terms 'credit', 'cred-
3	itor', 'credit card', and 'card issuer' have the
4	same meanings as in section 103 of the Truth
5	in Lending Act.
6	"(B) Electronic fund transfer.—The
7	term 'electronic fund transfer'—
8	"(i) has the same meaning as in sec-
9	tion 903 of the Electronic Fund Transfer
10	Act, except that such term includes trans-
11	fers that would otherwise be excluded
12	under section $903(6)(E)$ of that Act; and
13	"(ii) includes any fund transfer cov-
14	ered by Article 4A of the Uniform Com-
15	mercial Code, as in effect in any State.
16	"(C) FINANCIAL INSTITUTION.—The term
17	'financial institution' has the same meaning as
18	in section 903 of the Electronic Fund Transfer
19	Act, except that such term does not include a
20	casino, sports book, or other business at or
21	through which bets or wagers may be placed or
22	received.
23	"(D) INSURED DEPOSITORY INSTITU-
24	TION.—The term 'insured depository institu-
25	tion'—

1	"(i) has the same meaning as in sec-
2	tion 3 of the Federal Deposit Insurance
3	Act; and
4	"(ii) includes an insured credit union
5	(as defined in section 101 of the Federal
6	Credit Union Act).
7	"(E) Money transmitting business
8	AND MONEY TRANSMITTING SERVICE.—The
9	terms 'money transmitting business' and
10	'money transmitting service' have the same
11	meanings as in section 5330(d) (determined
12	without regard to any regulations issued by the
13	Secretary thereunder).
14	"§5363. Prohibition on acceptance of any financial
15	instrument for unlawful Internet gam-
16	bling
17	"No person engaged in the business of betting or wa-
18	gering may knowingly accept, in connection with the par-
19	ticipation of another person in unlawful Internet gam-
20	bling—
21	"(1) credit, or the proceeds of credit, extended
22	to or on behalf of such other person (including credit
23	extended through the use of a credit card);
24	((2) an electronic fund transfer, or funds trans-

or the proceeds of an electronic fund transfer or
 money transmitting service, from or on behalf of
 such other person;

4 "(3) any check, draft, or similar instrument
5 which is drawn by or on behalf of such other person
6 and is drawn on or payable at or through any finan7 cial institution; or

8 "(4) the proceeds of any other form of financial 9 transaction, as the Secretary may prescribe by regu-10 lation, which involves a financial institution as a 11 payor or financial intermediary on behalf of or for 12 the benefit of such other person.

13 "§ 5364. Policies and procedures to identify and prevent restricted transactions

"(a) REGULATIONS.—Before the end of the 270-day 15 period beginning on the date of the enactment of this sub-16 17 chapter, the Secretary, in consultation with the Board of 18 Governors of the Federal Reserve System and the Attorney General, shall prescribe regulations requiring each 19 designated payment system, and all participants therein, 20 21 to identify and prevent restricted transactions through the 22 establishment of policies and procedures reasonably de-23 signed to identify and prevent restricted transactions in 24 any of the following ways:

1	"(1) The establishment of policies and proce-
2	dures that—
3	"(A) allow the payment system and any
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 the acceptance of the products or
12	services of the payment system in connection with a
13	restricted transaction.
14	"(b) Requirements for Policies and Proce-
15	DURES.—In prescribing regulations under subsection (a),
16	the Secretary shall—
17	"(1) identify types of policies and procedures,
18	including nonexclusive examples, which would be
19	deemed, as applicable, to be reasonably designed to
20	identify, block, or prevent the acceptance of the
21	products or services with respect to each type of re-
22	stricted transaction;
22	

23 "(2) to the extent practical, permit any partici24 pant in a payment system to choose among alter25 native means of identifying and blocking, or other-

1	wise preventing the acceptance of the products or
2	services of the payment system or participant in con-
3	nection with, restricted transactions; and
4	"(3) consider exempting restricted transactions
5	from any requirement imposed under such regula-
6	tions, if the Secretary finds that it is not reasonably
7	practical to identify and block, or otherwise prevent,
8	such transactions.
9	"(c) Compliance With Payment System Poli-
10	CIES AND PROCEDURES.—A financial transaction provider
11	shall be considered to be in compliance with the regula-
12	tions prescribed under subsection (a), if—
13	"(1) such person relies on and complies with
14	the policies and procedures of a designated payment
15	system of which it is a member or participant to—
16	"(A) identify and block restricted trans-
17	actions; or
18	"(B) otherwise prevent the acceptance of
19	the products or services of the payment system,
20	member, or participant in connection with re-
21	stricted transactions; and
22	((2) such policies and procedures of the des-
23	ignated payment system comply with the require-
24	ments of regulations prescribed under subsection
25	(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 transaction—

6 "(1) that is a restricted transaction;

7 "(2) that such person reasonably believes to be8 a restricted transaction; or

9 "(3) as a member of a designated payment sys10 tem in reliance on the policies and procedures of the
11 payment system, in an effort to comply with regula12 tions prescribed under subsection (a),

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

14 "(e) REGULATORY ENFORCEMENT.—The require15 ments of this section shall be enforced exclusively by the
16 Federal functional regulators and the Federal Trade Com17 mission, in the manner provided in section 505(a) of the
18 Gramm-Leach-Bliley Act.

19 "§ 5365. 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 by
issuing appropriate orders in accordance with this section,
regardless of whether a prosecution has been initiated
under this subchapter.

1 "(b) PROCEEDINGS.—

2 "(1) INSTITUTION BY FEDERAL GOVERN-3 MENT.—

4 "(A) IN GENERAL.—The United States,
5 acting through the Attorney General, may insti6 tute proceedings under this section to prevent
7 or restrain a violation or a threatened violation
8 of this subchapter.

9 "(B) RELIEF.—Upon application of the 10 United States under this paragraph, the district 11 court may enter a preliminary injunction or an 12 injunction against any person to prevent or re-13 strain a violation or threatened violation of this 14 subchapter, in accordance with rule 65 of the 15 Federal Rules of Civil Procedure.

16 "(2) INSTITUTION BY STATE ATTORNEY GEN17 ERAL.—

18 "(A) IN GENERAL.—The attorney general
19 (or other appropriate State official) of a State
20 in which a violation of this subchapter allegedly
21 has occurred or will occur may institute pro22 ceedings under this section to prevent or re23 strain the violation or threatened violation.

24 "(B) RELIEF.—Upon application of the at25 torney general (or other appropriate State offi-

1	cial) of an affected State under this paragraph,
2	the district court may enter a preliminary in-
3	junction or an injunction against any person to
4	prevent or restrain a violation or threatened
5	violation of this subchapter, in accordance with
6	rule 65 of the Federal Rules of Civil Procedure.
7	"(3) Indian lands.—
8	"(A) IN GENERAL.—Notwithstanding
9	paragraphs (1) and (2), for a violation of this
10	subchapter that is alleged to have occurred, or
11	may occur, on Indian lands (as that term is de-
12	fined in section 4 of the Indian Gaming Regu-
13	latory Act)—
14	"(i) the United States shall have the
15	enforcement authority provided under
16	paragraph (1); and
17	"(ii) the enforcement authorities spec-
18	ified in an applicable Tribal-State compact
19	negotiated under section 11 of the Indian
20	Gaming Regulatory Act (25 U.S.C. 2710)
21	shall be carried out in accordance with
22	that compact.
23	"(B) RULE OF CONSTRUCTION.—No provi-
24	sion of this section shall be construed as alter-

1 ing, superseding, or otherwise affecting the ap-2 plication of the Indian Gaming Regulatory Act. 3 "(c) EXPEDITED PROCEEDINGS.—In addition to any 4 proceeding under subsection (b), a district court may, in 5 exigent circumstances, enter a temporary restraining order against a person alleged to be in violation of this 6 7 subchapter, upon application of the United States under 8 subsection (b)(1), or the attorney general (or other appro-9 priate State official) of an affected State under subsection (b)(2), in accordance with rule 65(b) of the Federal Rules 10 11 of Civil Procedure.

12 "(d) LIMITATION RELATING TO INTERACTIVE COM-13 PUTER SERVICES.—

14 "(1) IN GENERAL.—Relief granted under this
15 section against an interactive computer service
16 shall—

17 "(A) be limited to the removal of, or dis-18 abling of access to, an online site violating this 19 subchapter, or a hypertext link to an online site 20 violating this subchapter, that resides on a com-21 puter server that such service controls or oper-22 ates, except that the limitation in this subpara-23 graph shall not apply if the service is subject to 24 liability under this section under section 5367;

1	"(B) be available only after notice to the
2	interactive computer service and an opportunity
3	for the service to appear are provided;
4	"(C) not impose any obligation on an
5	interactive computer service to monitor its serv-
6	ice or to affirmatively seek facts indicating ac-
7	tivity violating this subchapter;
8	"(D) specify the interactive computer serv-
9	ice to which it applies; and
10	"(E) specifically identify the location of the
11	online site or hypertext link to be removed or
12	access to which is to be disabled.
13	"(2) Coordination with other law.—An
14	interactive computer service that does not violate
15	this subchapter shall not be liable under section
16	1084(d) of title 18, except that the limitation in this
17	paragraph shall not apply if an interactive computer
18	service has actual knowledge and control of bets and
19	wagers and—
20	"(A) operates, manages, supervises, or di-
21	rects an Internet website at which unlawful bets
22	or wagers may be placed, received, or otherwise
23	made or at which unlawful bets or wagers are
24	offered to be placed, received, or otherwise
25	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.

"(e) Limitation on Injunctions Against Regu-8 9 LATED PERSONS.—Nothwithstanding any other provision of this section, and subject to section 5367, no provision 10 of this subchapter shall be construed as authorizing the 11 12 Attorney General of the United States, or the attorney 13 general (or other appropriate State official) of any State to institute proceedings to prevent or restrain a violation 14 15 or threatened violation of this subchapter against any financial transaction provider with respect to the designated 16 17 payment system (or systems) of the financial transaction 18 provider.

19 "§ 5366. Criminal penalties

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

23 "(b) PERMANENT INJUNCTION.—Upon conviction of
24 a person under this section, the court may enter a perma25 nent injunction enjoining such person from placing, receiv-

ing, or otherwise making bets or wagers or sending, receiv ing, or inviting information assisting in the placing of bets
 or wagers.

4 "§ 5367. Circumventions prohibited

5 "Notwithstanding section 5362(2), a financial trans-6 action provider, or any interactive computer service or 7 telecommunications service, may be liable under this sub-8 chapter if such person has actual knowledge and control 9 of bets and wagers, and—

"(1) 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; 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
made, or at which unlawful bets or wagers are offered to be placed, received, or otherwise made.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—
The table of sections for 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. 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.".

1SEC. 4. INTERNET GAMBLING IN OR THROUGH FOREIGN2JURISDICTIONS.

3 (a) IN GENERAL.—In deliberations between the 4 United States Government and any other country on 5 money laundering, corruption, and crime issues, the 6 United States Government should—

7 (1) encourage cooperation by foreign govern8 ments and relevant international fora in identifying
9 whether Internet gambling operations are being used
10 for money laundering, corruption, or other crimes;

(2) advance policies that promote the cooperation of foreign governments, through information
sharing or other measures, in the enforcement of
this Act; and

(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.

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