

105TH CONGRESS  
2D SESSION

# H. R. 4350

To amend title 18, United States Code, to prohibit Internet gambling, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 29, 1998

Mr. STEARNS (for himself, Mr. OXLEY, and Mr. LARGENT) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend title 18, United States Code, to prohibit 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 “Internet Gambling  
5 Prohibition Act of 1998”.

6       **SEC. 2. DEFINITIONS.**

7       Section 1081 of title 18, United States Code, is  
8 amended—

9               (1) in the matter immediately following the  
10       colon, by designating the first 5 undesignated para-

1 graphs as paragraphs (1) through (5), respectively,  
2 and indenting each paragraph 2 ems to the right;  
3 and

4 (2) by adding at the end the following:

5 “(6) BETS OR WAGERS.—The term ‘bets or wa-  
6 gers’—

7 “(A) means the staking or risking by any  
8 person of something of value upon the outcome  
9 of a contest of others, sporting event of others,  
10 or of any game of chance, upon an agreement  
11 or understanding that the person or another  
12 person will receive something of value based on  
13 that outcome;

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

18 “(C) includes any scheme of a type de-  
19 scribed in section 3702 of title 28, United  
20 States Code; and

21 “(D) does not include—

22 “(i) a bona fide business transaction  
23 governed by the securities laws (as that  
24 term is defined in section 3(a)(47) of the  
25 Securities Exchange Act of 1934 (15

1 U.S.C. 78c(a)(47))) for the purchase or  
2 sale at a future date of securities (as that  
3 term is defined in section 3(a)(10) of the  
4 Securities Exchange Act of 1934 (15  
5 U.S.C. 78c(a)(10)));

6 “(ii) a transaction on or subject to the  
7 rules of a contract market designated pur-  
8 suant to section 5 of the Commodity Ex-  
9 change Act (7 U.S.C. 7);

10 “(iii) a contract of indemnity or guar-  
11 antee;

12 “(iv) a contract for life, health, or ac-  
13 cident insurance; or

14 “(v) participation in a game or con-  
15 test, otherwise lawful under applicable  
16 Federal or State law—

17 “(I) that, by its terms or rules, is  
18 not dependent on the outcome of any  
19 single sporting event, any series or  
20 sporting events, any tournament, or  
21 the individual performance of 1 or  
22 more athletes or teams in a single  
23 sporting event;

24 “(II) in which the outcome is de-  
25 termined by accumulated statistical

1 results of games or contests involving  
2 the performances of amateur or pro-  
3 fessional athletes or teams; and

4 “(III) in which the winner or  
5 winners may receive a prize or award;  
6 (otherwise known as a ‘fantasy sport  
7 league’ or a ‘roisserie league’) if such par-  
8 ticipation is without charge to the partici-  
9 pant or any charge to a participant is lim-  
10 ited to a reasonable administrative fee.

11 “(7) FOREIGN JURISDICTION.—The term ‘for-  
12 eign jurisdiction’ means a jurisdiction of a foreign  
13 country or political subdivision thereof.

14 “(8) INFORMATION ASSISTING IN THE PLACING  
15 OF A BET OR WAGER.—The term ‘information as-  
16 sisting in the placing of a bet or wager’—

17 “(A) means information that is intended  
18 by the sender or recipient to be used by a per-  
19 son engaged in the business of betting or wa-  
20 gering to accept or place a bet or wager; and

21 “(B) does not include—

22 “(i) information concerning pari-  
23 mutuel pools that is exchanged between or  
24 among 1 or more racetracks or other pari-  
25 mutuel wagering facilities licensed by the

1 State or approved by the foreign jurisdic-  
2 tion in which the facility is located, and 1  
3 or more parimutuel wagering facilities li-  
4 censed by the State or approved by the for-  
5 eign jurisdiction in which the facility is lo-  
6 cated, if that information is used only to  
7 conduct common pool parimutuel pooling  
8 under applicable law;

9 “(ii) information exchanged between  
10 or among 1 or more racetracks or other  
11 parimutuel wagering facilities licensed by  
12 the State or approved by the foreign jurisdic-  
13 tion in which the facility is located, and  
14 a support service located in another State  
15 or foreign jurisdiction, if the information is  
16 used only for processing bets or wagers  
17 made with that facility under applicable  
18 law;

19 “(iii) information exchanged between  
20 or among 1 or more wagering facilities  
21 that are located within a single State and  
22 are licensed and regulated by that State,  
23 and any support service, wherever located,  
24 if the information is used only for the pool-  
25 ing or processing of bets or wagers made

1 by or with the facility or facilities under  
2 applicable State law;

3 “(iv) any news reporting or analysis  
4 of wagering activity, including odds, racing  
5 or event results, race and event schedules,  
6 or categories of wagering; or

7 “(v) any posting or reporting of any  
8 educational information on how to make a  
9 bet or wager or the nature of betting or  
10 wagering.”.

11 **SEC. 3. PROHIBITION ON INTERNET GAMBLING.**

12 (a) IN GENERAL.—Chapter 50 of title 18, United  
13 States Code, is amended by adding at the end the follow-  
14 ing:

15 **“§ 1085. Internet gambling**

16 “(a) DEFINITIONS.—In this section:

17 “(1) CLOSED-LOOP SUBSCRIBER-BASED SERV-  
18 ICE.—The term ‘closed-loop subscriber-based service’  
19 means any information service or system that uses—

20 “(A) a device or combination of devices—

21 “(i) expressly authorized and operated  
22 in accordance with the laws of a State for  
23 the purposes described in subsection (e);  
24 and

1           “(ii) by which a person located within  
2           a State must subscribe to be authorized to  
3           place, receive, or otherwise make a bet or  
4           wager, and must be physically located  
5           within that State in order to be authorized  
6           to do so;

7           “(B) a customer verification system to en-  
8           sure that all applicable Federal and State legal  
9           and regulatory requirements for lawful gam-  
10          bling are met; and

11          “(C) appropriate data security standards  
12          to prevent unauthorized access.

13          “(2) GAMBLING BUSINESS.—The term ‘gam-  
14          bling business’ means a business that is conducted  
15          at a gambling establishment, or that—

16                 “(A) involves—

17                         “(i) the placing, receiving, or other-  
18                         wise making of bets or wagers; or

19                         “(ii) offers to engage in placing, re-  
20                         ceiving, or otherwise making bets or wa-  
21                         gers;

22                 “(B) involves 1 or more persons who con-  
23                 duct, finance, manage, supervise, direct, or own  
24                 all or part of such business; and

1           “(C) has been or remains in substantially  
2           continuous operation for a period in excess of  
3           10 days or has a gross revenue of \$2,000 or  
4           more during any 24-hour period.

5           “(3) INTERACTIVE COMPUTER SERVICE.—The  
6           term ‘interactive computer service’ means any infor-  
7           mation service, system, or access software provider  
8           that uses a public communication infrastructure or  
9           operates in interstate or foreign commerce to provide  
10          or enable computer access by multiple users to a  
11          computer server, including specifically a service or  
12          system that provides access to the Internet.

13          “(4) INTERNET.—The term ‘Internet’ means  
14          the international computer network of both Federal  
15          and non-Federal interoperable packet switched data  
16          networks.

17          “(5) PERSON.—The term ‘person’ means any  
18          individual, association, partnership, joint venture,  
19          corporation, State or political subdivision thereof,  
20          department, agency, or instrumentality of a State or  
21          political subdivision thereof, or any other govern-  
22          ment, organization, or entity.

23          “(6) PRIVATE NETWORK.—The term ‘private  
24          network’ means a communications channel or chan-

1 nels, including voice or computer data transmission  
2 facilities, that use either—

3 “(A) private dedicated lines; or

4 “(B) the public communications infrastruc-  
5 ture, if the infrastructure is secured by means  
6 of the appropriate private communications tech-  
7 nology to prevent unauthorized access.

8 “(7) STATE.—The term ‘State’ means a State  
9 of the United States, the District of Columbia, the  
10 Commonwealth of Puerto Rico, or a commonwealth,  
11 territory, or possession of the United States.

12 “(b) GAMBLING.—

13 “(1) PROHIBITION.—Subject to subsection (e),  
14 it shall be unlawful for a person knowingly to use  
15 the Internet or any other interactive computer serv-  
16 ice—

17 “(A) to place, receive, or otherwise make a  
18 bet or wager with any person; or

19 “(B) to send, receive, or invite information  
20 assisting in the placing of a bet or wager with  
21 the intent to send, receive, or invite information  
22 assisting in the placing of a bet or wager.

23 “(2) PENALTIES.—A person who violates para-  
24 graph (1) shall be—

1           “(A) fined in an amount that is not more  
2 than the greater of—

3           “(i) three times the greater of—

4           “(I) the total amount that the  
5 person is found to have wagered  
6 through the Internet or other inter-  
7 active computer service; or

8           “(II) the total amount that the  
9 person is found to have received as a  
10 result of such wagering; or

11           “(ii) \$500;

12           “(B) imprisoned not more than 3 months;

13           or

14           “(C) both.

15           “(c) GAMBLING BUSINESSES.—

16           “(1) PROHIBITION.—Subject to subsection (e),  
17 it shall be unlawful for a person engaged in a gam-  
18 bling business knowingly to use the Internet or any  
19 other interactive computer service—

20           “(A) to place, receive, or otherwise make a  
21 bet or wager; or

22           “(B) to send, receive, or invite information  
23 assisting in the placing of a bet or wager.

24           “(2) PENALTIES.—A person engaged in a gam-  
25 bling business who violates paragraph (1) shall be—

1           “(A) fined in an amount that is not more  
2 than the greater of—

3           “(i) the amount that such person re-  
4 ceived in bets or wagers as a result of en-  
5 gaging in that business in violation of this  
6 subsection; or

7           “(ii) \$20,000;

8           “(B) imprisoned not more than 4 years; or

9           “(C) both.

10          “(d) PERMANENT INJUNCTIONS.—Upon conviction  
11 of a person under this section, the court may, as an addi-  
12 tional penalty, enter a permanent injunction enjoining the  
13 transmission of bets or wagers or information assisting in  
14 the placing of a bet or wager.

15          “(e) EXCEPTIONS.—

16           “(1) IN GENERAL.—Subject to paragraph (2),  
17 the prohibitions in this section shall not apply to  
18 any—

19           “(A) otherwise lawful bet or wager that is  
20 placed, received, or otherwise made wholly  
21 intrastate for a State lottery or a racing or par-  
22 imutuel activity, or a multi-State lottery oper-  
23 ated jointly between 2 or more States in con-  
24 junction with State lotteries, (if the lottery or  
25 activity is expressly authorized, and licensed or

1 regulated, under applicable Federal or State  
2 law) on—

3 “(i) an interactive computer service  
4 that uses a private network, if each person  
5 placing or otherwise making that bet or  
6 wager is physically located at a facility  
7 that is open to the general public; or

8 “(ii) a closed-loop subscriber-based  
9 service that is wholly intrastate; or

10 “(B) otherwise lawful bet or wager for  
11 class II or class III gaming (as defined in sec-  
12 tion 4 of the Indian Gaming Regulatory Act  
13 (25 U.S.C. 2703)) that is placed, received, or  
14 otherwise made on a closed-loop subscriber-  
15 based service or an interactive computer service  
16 that uses a private network, if—

17 “(i) each person placing, receiving, or  
18 otherwise making that bet or wager is  
19 physically located on Indian land; and

20 “(ii) all games that constitute class  
21 III gaming are conducted in accordance  
22 with an applicable Tribal-State compact  
23 entered into under section 11(d) of the In-  
24 dian Gaming Regulatory Act (25 U.S.C.  
25 2701(d)) by a State in which each person

1 placing, receiving, or otherwise making  
2 that bet or wager is physically located.

3 “(2) INAPPLICABILITY OF EXCEPTION TO BETS  
4 OR WAGERS MADE BY AGENTS OR PROXIES.—An ex-  
5 ception under subparagraph (A) or (B) of paragraph  
6 (1) shall not apply in any case in which a bet or  
7 wager is placed, received, or otherwise made by the  
8 use of an agent or proxy using the Internet or an  
9 interactive computer service. Nothing in this para-  
10 graph shall be construed to prohibit the owner oper-  
11 ator of a parimutuel wagering facility that is li-  
12 censed by a State from employing an agent in the  
13 operation of the account wagering system owned or  
14 operated by the parimutuel facility.

15 “(f) STATE LAW.—Nothing in this section shall be  
16 construed to create immunity from criminal prosecution  
17 or civil liability under the law of any State.”.

18 (b) TECHNICAL AMENDMENT.—The analysis for  
19 chapter 50 of title 18, United States Code, is amended  
20 by adding at the end the following:

“1085. Internet gambling.”.

21 **SEC. 4. CIVIL REMEDIES.**

22 (a) IN GENERAL.—The district courts of the United  
23 States shall have original and exclusive jurisdiction to pre-  
24 vent and restrain violations of section 1085 of title 18,

1 United States Code, as added by section 3, by issuing ap-  
2 propriate orders.

3 (b) PROCEEDINGS.—

4 (1) INSTITUTION BY FEDERAL GOVERNMENT.—

5 The United States may institute proceedings under  
6 this section. Upon application of the United States,  
7 the district court may enter a temporary restraining  
8 order or an injunction against any person to prevent  
9 a violation of section 1085 of title 18, United States  
10 Code, as added by section 3, if the court determines,  
11 after notice and an opportunity for a hearing, that  
12 there is a substantial probability that such violation  
13 has occurred or will occur.

14 (2) INSTITUTION BY STATE ATTORNEY GEN-  
15 ERAL.—

16 (A) IN GENERAL.—Subject to subpara-  
17 graph (B), the attorney general of a State (or  
18 other appropriate State official) in which a vio-  
19 lation of section 1085 of title 18, United States  
20 Code, as added by section 3, is alleged to have  
21 occurred, or may occur, after providing written  
22 notice to the United States, may institute pro-  
23 ceedings under this section. Upon application of  
24 the attorney general (or other appropriate State  
25 official) of the affected State, the district court

1           may enter a temporary restraining order or an  
2           injunction against any person to prevent a vio-  
3           lation of section 1085 of title 18, United States  
4           Code, as added by section 3, if the court deter-  
5           mines, after notice and an opportunity for a  
6           hearing, that there is a substantial probability  
7           that such violation has occurred or will occur.

8           (B) INDIAN LANDS.—With respect to a  
9           violation of section 1085 of title 18, United  
10          States Code, as added by section 3, that is al-  
11          leged to have occurred, or may occur, on Indian  
12          lands (as defined in section 4 of the Indian  
13          Gaming Regulatory Act (25 U.S.C. 2703)), the  
14          enforcement authority under subparagraph (A)  
15          shall be limited to the remedies under the In-  
16          dian Gaming Regulatory Act (25 U.S.C. 2701  
17          et seq.), including any applicable Tribal-State  
18          compact negotiated under section 11 of that  
19          Act (25 U.S.C. 2710).

20          (3) ORDERS AND INJUNCTIONS AGAINST INTER-  
21          NET SERVICE PROVIDERS.—Notwithstanding para-  
22          graph (1) or (2), the following rules shall apply in  
23          any proceeding instituted under this subsection in  
24          which application is made for a temporary restrain-

1 ing order or an injunction against an interactive  
2 computer service:

3 (A) SCOPE OF RELIEF.—

4 (i) If the violation of section 1085 of  
5 title 18, United States Code, originates  
6 with a customer of the interactive com-  
7 puter service's system or network, the  
8 court may require the service to terminate  
9 the specified account or accounts of the  
10 customer, or of any readily identifiable  
11 successor in interest, who is using such  
12 service to place, receive or otherwise make  
13 a bet or wager, engage in a gambling busi-  
14 ness, or to initiate a transmission that vio-  
15 lates such section 1085.

16 (ii) Any other relief ordered by the  
17 court shall be technically feasible for the  
18 system or network in question under cur-  
19 rent conditions, reasonably effective in pre-  
20 venting a violation of section 1085, of title  
21 18, United States Code, and shall not un-  
22 reasonably interfere with access to lawful  
23 material at other online locations.

24 (iii) No relief shall be issued under  
25 subparagraph (A)(ii) if the interactive

1 computer service demonstrates, after an  
2 opportunity to appear at a hearing, that  
3 such relief is not economically reasonable  
4 for the system or network in question  
5 under current conditions.

6 (B) CONSIDERATIONS.—In the case of an  
7 application for relief under subparagraph  
8 (A)(ii), the court shall consider, in addition to  
9 all other factors that the court shall consider in  
10 the exercise of its equitable discretion, wheth-  
11 er—

12 (i) such relief either singularly or in  
13 combination with such other injunctions  
14 issued against the same service under this  
15 subsection, would seriously burden the op-  
16 eration of the service’s system network  
17 compared with other comparably effective  
18 means of preventing violations of section  
19 1085 of title 18, United States Code;

20 (ii) in the case of an application for a  
21 temporary restraining order or an injunc-  
22 tion to prevent a violation of section 1085  
23 of title 18, United States Code, by a gam-  
24 bling business (as is defined in such sec-  
25 tion 1085) located outside the United

1 States, the relief is more burdensome to  
2 the service than taking comparably effective  
3 steps to block access to specific, identified  
4 sites used by the gambling business located  
5 outside the United States; and

6 (iii) in the case of an application for  
7 a temporary order or an injunction to prevent  
8 a violation of section 1085 of title 18,  
9 United States Code, as added by section 3,  
10 relating to material or activity located  
11 within the United States, whether less burdensome,  
12 but comparably effective means are available to  
13 block access by a customer of the service's system  
14 or network to information or activity that violates  
15 such section 1085.

17 (C) FINDINGS.—In any order issued by the  
18 court under this subsection, the court shall set  
19 forth the reasons for its issuance, shall be specific  
20 in its terms, and shall describe in reasonable  
21 detail, and not be reference to the complaint  
22 or other document, the act or acts sought to be  
23 restrained and the general steps to be taken  
24 to comply with the order.

1           (4) EXPIRATION.—Any temporary restraining  
2 order or preliminary injunction entered pursuant to  
3 this subsection shall expire if, and as soon as, the  
4 United States, or the attorney general (or other ap-  
5 propriate State official) of the State, as applicable,  
6 notifies the court that issued the injunction that the  
7 United States or the State, as applicable, will not  
8 seek a permanent injunction.

9           (c) EXPEDITED PROCEEDINGS.—

10           (1) IN GENERAL.—In addition to proceedings  
11 under subsection (b), a district court may enter a  
12 temporary restraining order against a person alleged  
13 to be in violation of section 1085 of title 18, United  
14 States Code, as added by section 3, upon application  
15 of the United States under subsection (b)(1), or the  
16 attorney general (or other appropriate State official)  
17 of an affected State under subsection (b)(2), without  
18 notice and the opportunity for a hearing, if the  
19 United States or the State, as applicable, dem-  
20 onstrates that there is probable cause to believe that  
21 the transmission at issue violates section 1085 of  
22 title 18, United States Code, as added by section 3.

23           (2) EXPIRATION.—A temporary restraining  
24 order entered under this subsection shall expire on  
25 the earlier of—

1 (A) the expiration of the 30-day period be-  
2 ginning on the date on which the order is en-  
3 tered; or

4 (B) the date on which a preliminary in-  
5 junction is granted or denied.

6 (3) HEARINGS.—A hearing requested concern-  
7 ing an order entered under this subsection shall be  
8 held at the earliest practicable time.

9 (d) RULE OF CONSTRUCTION.—In the absence of  
10 fraud or bad faith, no interactive computer service (as de-  
11 fined in section 1085(a) of title 18, United States Code,  
12 as added by section 3) shall be liable for any damages,  
13 penalty, or forfeiture, civil or criminal, for any reasonable  
14 course of action taken to comply with a court order issued  
15 under subsection (b) or (c) of this section.

16 (e) PROTECTION OF PRIVACY.—Nothing in this Act  
17 or the amendments made by this Act shall be construed  
18 to authorize an affirmative obligation on an interactive  
19 computer service—

20 (1) to monitor use of its service; or

21 (2) except as required by an order of a court,  
22 to access, remove or disable access to material where  
23 such material reveals conduct prohibited by this sec-  
24 tion and the amendments made by this section.

1 (f) NO EFFECT ON OTHER REMEDIES.—Nothing in  
2 this section shall be construed to affect any remedy under  
3 section 1084 or 1085 of title 18, United States Code, as  
4 amended by this Act, or under any other Federal or State  
5 law. The availability of relief under this section shall not  
6 depend on, or be affected by, the initiation or resolution  
7 of any action under section 1084 or 1085 of title 18,  
8 United States Code, as amended by this Act, or under any  
9 other Federal or State law.

10 (g) CONTINUOUS JURISDICTION.—The court shall  
11 have continuous jurisdiction under this section to enforce  
12 section 1085 of title 18, United States Code, as added by  
13 section 3.

14 **SEC. 5. REPORT ON ENFORCEMENT.**

15 Not later than 3 years after the date of enactment  
16 of this Act, the Attorney General shall submit a report  
17 to Congress that includes—

18 (1) an analysis of the problems, if any, associ-  
19 ated with enforcing section 1085 of title 18, United  
20 States Code, as added by section 3;

21 (2) recommendations for the best use of the re-  
22 sources of the Department of Justice to enforce that  
23 section; and

24 (3) an estimate of the amount of activity and  
25 money being used to gamble on the Internet.

1 **SEC. 6. REPORT ON COSTS.**

2 Not later than 3 years after the date of enactment  
3 of this Act, the Secretary of Commerce shall submit a re-  
4 port to Congress that includes—

5 (1) an analysis of existing and potential meth-  
6 ods or technologies for filtering or screening trans-  
7 missions in violation of section 1085 of title 18,  
8 United States Code, as added by section 3, that  
9 originate outside of the territorial boundaries of any  
10 State or the United States;

11 (2) a review of the effect, if any, on interactive  
12 computer services of any court ordered temporary  
13 restraining orders or injunctions imposed on those  
14 services under this section;

15 (3) a calculation of the cost to the economy of  
16 illegal gambling on the Internet, and other societal  
17 costs of such gambling; and

18 (4) an estimate of the effect, if any, on the  
19 Internet caused by any court ordered temporary re-  
20 straining orders or injunctions imposed under this  
21 Act.

22 **SEC. 7. SEVERABILITY.**

23 If any provision of this Act, an amendment made by  
24 this Act, or the application of such provision or amend-  
25 ment to any person or circumstance is held to be unconsti-  
26 tutional, the remainder of this Act, the amendments made

1 by this Act, and the application of the provisions of such  
2 to any person or circumstance shall not be affected there-  
3 by.

○