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SENATE

REPORT
107–16

AMATEUR SPORTS INTEGRITY ACT

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 718

together with

MINORITY VIEWS

MAY 14, 2001.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

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AMATEUR SPORTS INTEGRITY ACT

MAY 14, 2001.—Ordered to be printed

Mr. MCCAIN, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany S. 718]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 718) "A bill to direct the National Institute of Standards and Technology to establish a program to support research and training in methods of detecting the use of performance-enhancing drugs by athletes, and for other purposes", having considered the same, reports favorably thereon with separate amendments and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

The purpose of the legislation is to protect the integrity of amateur athletics by addressing athletes' use of performance-enhancing substances and by implementing the recommendation of the National Gambling Impact Study Commission (NGISC) that "betting on collegiate and amateur athletic events that is currently legal be banned all-together." [1]

BACKGROUND AND NEEDS

Amateur and Olympic sports competitions engage the public because they represent and reflect ideals of American character: hard work, self-sacrifice, perseverance, teamwork, and individual courage and excellence. These ideals, and the perceived integrity of amateur sports, however, are challenged by athletes' use of per-

[1] "Final Report," National Gambling Impact Study Commission (June 1999).

formance-enhancing substances, and by gambling, both legal and illegal, on amateur athletes and sports contests. Senate bill 718 is intended to ensure the integrity of amateur sports by tackling these two scourges. First, Title I of the Act establishes a grant program, administered by the National Institute of Standards and Technology (NIST), to support research into athletes' use of performance-enhancing substances and methods of detecting their use. The grant program also includes an educational component to inform amateur athletes of the risks associated with these substances. Title I originated from hearings held by the Commerce Committee during the 106th Congress. Second, Title II of the Act amends the Ted Stevens Olympic and Amateur Sports Act of 1978 to make it unlawful for a government entity to authorize or operate, and for a person to operate pursuant to such authorization, a wagering scheme based on amateur athletic competition. Title II of S. 718 is proposed in response to the specific recommendations of the NGISC.

The need for legislation to address performance-enhancing substances became evident during hearings held by the Commerce Committee during the 106th Congress. As one witness testified on October 20, 1999, "[d]oping is a matter of ethics, which affects not only Olympic athletes but also youth, high school, college and professional athletes. The fact is, doping threatens to undermine the ethical and physical well-being of children."

The Committee heard testimony regarding the need for independent testing agencies at both the International Olympic Committee and United States Olympic Committee levels. Both organizations have now established such agencies. The Committee also heard testimony regarding the need for increased funding of research designed to find new ways of detecting and verifying the use of banned substances. Though recent years have seen a dramatic increase in the variety and sophistication of banned substances, little has been done to foster research into their detection.

The Amateur Sports Integrity Act establishes a grant program, administered by NIST, to support research and training in methods of detecting athletes' use of performance-enhancing substances. The bill also provides grants to educate amateur athletes of the risks of using such substances. By targeting resources at both research and development, and at education, the Act begins the process of reversing the trend of drug use in sports, and aims to restore the integrity of athletic competition.

Title II of S. 718 also addresses the integrity of amateur sports by implementing a recommendation of the NGISC, a non–partisan commission Congress established by Public Law 104-169 and charged with conducting a comprehensive legal and factual study of the social and economic impacts of gambling. After hearing testimony from hundreds of witnesses and reviewing extensive research on gambling, the Commission issued a final report in June 1999.

In its final report, the NGISC reviewed Congress' motivation for passing the Professional and Amateur Sports Protection Act (PASPA) (Pub. L. 102–559) in 1992, which made it illegal in all but a handful of states for a government entity to authorize or operate, and for a person to operate pursuant to such authorization, a wagering scheme based on athletic competition, and quoted a state-

ment by Senator Bill Bradley about gambling's harmful effects on athletes and on sports:

> Based on what I know about the dangers of sports betting, I am not prepared to risk the values that sports instill in youth just to add a few more dollars to state coffers. * * * State sanctioned sports betting conveys the message that sports are more about money than personal achievement and sportsmanship. In these days of scandal and disillusionment, it is important that our youngsters not receive this message * * * sports betting threatens the integrity of and public confidence in professional and amateur team sports, converting sports from wholesome entertainment into a vehicle for gambling * * * sports gambling raises people's suspicions about point-shaving and game-fixing * * * All of this puts undue pressure on players, coaches, and officials.[2]

In addition to addressing harm that gambling, both legal or illegal, does to athletes and to the public's perception of the integrity of amateur sports, the NGISC also observed a causal relationship between legal and illegal gambling. Not only does allowing gambling on amateur sports to continue in one state, Nevada, send a confusing message to people who often do not know that the majority of sports wagering in America is illegal, the NGISC observed that "[l]egal sports wagering-especially the publication in the media of Las Vegas and offshore-generated point spreads-fuels a much larger amount of illegal wagering." Although gambling on college sports is illegal in 49 states, the Las Vegas college sports line is published nationwide. In her written testimony for an April 26, 2001, hearing in the Commerce Committee, Tracy Dodds, an associate sports editor for the Cleveland Plain Dealer, confirmed the NGISC's assumptions. While only a few newspapers currently refuse to publish college point spreads, she noted, "[w]hat I have heard from other sports editors leads me to believe that [if gambling on amateur sports was not legal in Nevada] most newspapers would take the same position and stop publishing college betting lines-which would take away the legitimacy college gambling gets from being included in daily newspapers."

The nexus between legal and illegal gambling is evident not only in the publication nationwide of Las Vegas-generated point spreads, but in the involvement of Nevada sports books in recent point shaving scandals and prohibited sports gambling in the United States. Point shaving schemes at Northwestern University and at Arizona State University involved heavy betting by participants in Nevada sports books. At a February 1, 2000, press conference, Kevin Pendergast, the young man who orchestrated the Northwestern University gambling scandal, discussed the critical role of the Las Vegas sports books in his scheme and stated, "without Nevada, the Northwestern basketball point-sharing scandal wouldn't have occurred."[3] College athletes, of course, are not the only people who place wagers obtained in illegal gambling operations on Nevada sports books. Steve DuCharme, former chairman

[2] NGISC "Final Report", p. 3–9, statement of Senator Bill Bradley submitted with the testimony of Nancy Price to the NGISC on November 10, 1998.

[3] Fredreka Schouten, Gambling Ban Aims to End College Amateur Sports Gambling, The Tennessean, Feb. 2, 2000.

of the Nevada State Gaming Control Board said in a 1999 interview, "A lot of money made through illegal gambling is laid off in Las Vegas. If a bookie has a lot of money on one side of a bet, they bet the other one in Las Vegas to try to even the bet." [4]

In addition to expressing concerns about the impact legal gambling has on student athletes and how it might fuel illegal gambling, the NGISC also noted the extent of sports wagering among America's youth. "While studies of college gambling are sparse, Lesieur has found in a survey of six colleges in five states that 23 percent of students gambled at least once a week. The same study found that between 6 and 8 percent of college students are "probable problem gamblers. * * *" [5] As for gambling among college athletes, a University of Michigan Athletic Department study found that more than 45 percent of male college athletes admitted to betting on sporting events, and more than 5 percent of male student athletes provided inside information for gambling purposes, bet on a game in which they participated, or accepted money for performing poorly in a game.[6]

In its final report, the NGISC was unequivocal about what should be done to address concerns with gambling on amateur sports. Noting that sports wagering does not provide many of the positive impacts of other forms of gambling, but does have negative social impacts, the NGISC recommended that "betting on collegiate and amateur athletic events that is currently legal be banned altogether." [7]

Although the NGISC believed Congress has the authority and the responsibility to ban gambling on amateur sports throughout the country, concerns were raised during the Commerce Committee's consideration of S. 718 about regulating amateur sports gambling at the federal level.

A number of federal laws prohibit the use of the channels of interstate commerce to facilitate gambling activities. The "Wire Act," 18 U.S.C. 1804, for example, prohibits gambling businesses from using wire communications facilities for the transmission in interstate or foreign commerce of bets or wagers, or information that assists in the placing of bets or wagers. Although this statute makes specific reference to the placing of bets or wagers on "sporting events or contests," the Wire Act does not address the regulation of state-sanctioned sports gambling within a state. This issue, however, was addressed directly by Congress almost a decade ago.

While Congress has recognized the principal of federalism with respect to regulating gambling, the compelling federal interest in ensuring the integrity of America's sporting competitions led to the enactment in 1992 of the Professional and Amateur Sports Protection Act (PASPA). PASPA effectively outlawed gambling on amateur sports in all but a handful of states. In its report on PASPA, the Senate Judiciary Committee explained that "sports are national

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[4] Donald L. Barlett and James B. Steele, Time, September 25, 2000, p. 62.

[5] Henry Lesieur, et al., Gambling and Pathological Gambling Among University Students, Addictive Behavior (1991) at 517–527.

[6] "The Extent and Nature of Gambling Among College Student Athletes." Michael E. Cross and Ann G. Vollano, University of Michigan Athletic Department, 1999.

[7] NGISC, "Final Report," p. 3–18.

institutions and Congress has recognized a distinct federal interest in protecting sports from corruption."[8]

Today, Nevada is the only state in the country that permits gambling on amateur sports. Senate bill 718 would close this loophole left open by PASPA. The Amateur Sports Integrity Act is supported by a broad array of athletic organizations, pro-family groups, consumer groups, and universities.

Opponents of S. 718 have argued that the measure will not prevent illegal gambling. On this point, supporters and opponents agree. It is not suggested that this bill will end gambling on college sports. It will, however, send a consistent message that betting on college sports is wrong, and is illegal throughout the country. The NGISC believed that this legislation would also help reduce illegal gambling in part by reducing the publication of point spreads on college games. Most importantly, however, a ban on college sports gambling will help to end a practice that turns college athletes into objects to openly be bet on. In written testimony submitted for the record in support of S. 718, the Reverend Edward Malloy, President of the University of Notre Dame explained, "I, and all of us who support this legislation, know that its passage isn't the end of our battle with gambling. Far from it. But it is a crucial step because it enshrines in federal law the principle that the athletic victories and defeats of amateur athletes—student athletes—often, teenage athletes—should not be a legal source of revenue for the professional gambling industry."[9]

LEGISLATIVE HISTORY

The Commerce Committee held a hearing on the Amateur Sports Integrity Act on April 26, 2001, during which 22 witnesses, including members of Congress, testified in favor of or against the measure.

On May 3, 2001, the Committee met in open executive session to consider the Act. By voice vote, the Committee rejected amendments offered by Senators Boxer and Breaux. The amendment offered by Senator Boxer would have raised the minimum age for legal gambling to 21. The amendment proposed by Senator Breaux would have required colleges and universities to provide procedural protections, including retention of independent legal counsel, for student athletes accused of violating amateur sports rules.

Also by voice vote, the Committee adopted amendments offered by Senators Breaux, Inouye, and Ensign, amendments which were reported separately from the bill. One such amendment offered by Senator Breaux requires colleges to report annually on the occurrence of illegal gambling, including Internet gambling, and to submit annually a statement of policy regarding underage and other illegal gambling activity. A second amendment offered by Senator Breaux was intended to clarify that the Act does not prohibit purely social betting through office pools in which all of the money paid into the pool in entry fees is paid out to winning participants. The third amendment offered by Senator Breaux and also adopted separately from the bill by the Committee prohibits financial institu-

[8] Report 102–248 to accompany S. 474, Senate Judiciary Committee, 102d Congress, 1st Session.

[9] Testimony of Rev. Edward A. Malloy, submitted for the Commerce Committee hearing on April 26, 2001.

tions from accepting certain credit or proceeds of credit in connection with unlawful Internet gambling. The Committee also accepted by voice vote a second degree amendment offered by Senator Inouye addressing the impact of Senator Breaux's Internet gambling amendment on Indian tribes.

One of the amendments offered by Senator Ensign and adopted separately from the bill by voice vote modifies the Child Online Protection Act (47 U.S.C. 231 nt) to require institutions of higher learning to monitor the use of wire communication facilities to detect violations of 18 U.S.C. 1084. A second amendment offered by Senator Ensign and adopted separately from the bill provides for an expedited judicial review of the constitutionality of the provision regarding amateur sports gambling, and stays the enforcement of this provision until the Supreme Court has finally disposed of the case on its merits.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 9, 2001.

Hon. JOHN MCCAIN,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 718, the Amateur Sports Integrity Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contracts are Ken Johnson and Mark Hadley (for federal costs), Shelley Finalyson (for impacts on state and local governments), and Paige Piper/Bach (for private-sector impacts).

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

S. 718—Amateur Sports Integrity Act

Summary: S. 718 would authorize the National Institute of Standards and Technology (NIST) to make grants for research on performance-enhancing substances and methods for detecting their use by athletes. The bill also would authorize NIST to fund prevention and intervention programs related to the use of such substances by high school or college athletes. In addition, S. 718 would prohibit gambling businesses from accepting credit cards and other bank instruments from gamblers who illegally get over the Internet. The bill also would authorize the agencies that regulate insured depository institutions to issue cease-and-desist orders against institutions that knowingly facilitate Internet gambling.

Assuming appropriation of the authorized amounts, CBO estimates that implementing S. 718 would cost about $25 million over the 2002–2006 period. Because S. 718 would impose costs on federal banking regulators, we also estimate that the bill would have a negligible impact on both direct spending and revenues. Therefore, pay-as-you-go procedures would apply.

S. 718 contains intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). The bill would prohibit any governmental or private-sector entity from operating or authorizing any wagering on amateur sports and also would require colleges to compile and report gambling information and policies in a specified manner. CBO estimates that the costs associated with complying with the mandates would not exceed the thresholds established by the act ($56 million for intergovernmental mandates and $113 million for private-sector mandates in 2001, adjusted annually for inflation). S. 718 also would require public and private institutions of higher education, effectively as a condition of receiving federal education funding for the following year, to monitor their wire communications facilities for use in illegal gambling. Finally, the bill would establish research grant programs that could benefit public and private educational institutions.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 718 is shown in the following table. The costs of this legislation fall within budget function 370 (commerce and housing credit).

	By fiscal year, in millions of dollars—				
	2002	2003	2004	2005	2006
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Authorization Level	7	7	7	7	7
Estimated Outlays	1	4	6	7	7

Note.—The bill would also result in an increase in direct spending and a loss of revenues, but the amounts involved would be less than $500.00 a year.

Basis of estimate: Assuming appropriation of the authorized amounts, CBO estimates that enactment of S. 718 would result in a $25 million increase in discretionary spending over the 2002–2006 period and would have a negligible impact on direct spending and revenues. For this estimate, CBO assumes that the bill will be enacted late in fiscal year 2001.

Spending Subject to Appropriation

S. 718 would authorize the appropriation of $7 million a year over the 2002–2006 period for NIST to make grants for research on the use of performance-enhancing drugs and for program to prevent the use of such drugs by amateur athletes. For this estimate, CBO assumes that outlays will follow the spending patterns of other NIST grant programs.

Because S. 718 would establish a new federal crime relating to Internet gambling, the federal government would be able to pursue cases that it otherwise would not be able to prosecute. CBO expects, however, that most cases would be pursued under state law. Therefore, we estimate that any increase in federal costs for law enforcement, court proceedings, or prison operations would not be

significant. Any such additional costs would be subject to the availability of appropriated funds.

Direct Spending and Revenues

The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS), and the National Credit Union Administration (NCUA) would enforce the provisions of S. 718 as they apply to financial institutions. The NCUA, the OTS, and the OCC charge fees to the institutions they regulate to cover all of their administrative costs; therefore, any additional spending by these agencies to implement the bill would have no net budgetary effect. That is not the case with the FDIC, however, which uses insurance premiums paid by all banks to cover the expenses it incurs to supervise state-chartered banks. The bill's requirement that the FDIC prevent financial institutions from knowingly facilitating Internet gambling would cause a small increase in FDIC spending, but would not affect its premium income. In total, CBO estimates that S. 718 would increase net direct spending of the NCUA, OTS, OCC, and FDIC by less than $500,000 a year over the 2002–2006 period.

Budgetary effects on the Federal Reserve are recorded as changes in revenues (governmental receipts). Based on information from the Federal Reserve, CBO estimates that enacting S. 718 would reduce such revenues by less than $500,000 a year over the 2002–2006 period.

Because those prosecuted and convicted under the bill could be subject to criminal fines, the federal government might collect additional fines if the bill is enacted. Collections of such fines are recorded in the budget as governmental receipts (i.e., revenues), which are deposited in the Crime Victims Fund and spent in subsequent years. Any additional collections under S. 718 are likely to be negligible because of the small number of cases involved. Because any increase in direct spending would equal the amount of fines collected (with a lag of one year or more), the additional direct spending also would be negligible.

Pay-as-you-go consideration: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. Enacting S. 718 could affect both direct spending and receipts, but CBO estimates that any such effects would be negligible.

Intergovernmental and Private Sector Impact

Mandates

S. 718 contains intergovernmental and private-sector mandates as defined by UMRA, but CBO estimates that complying with those mandates would not exceed the thresholds established in the act ($56 million for intergovernmental mandates and $113 million for private-sector mandates in 2001, adjusted annually for inflation). CBO estimates that the prohibition on wagering on amateur sports would reduce tax revenues collected by the state of Nevada by approximately $3 million per year. Based on information from the Nevada Gaming Control Board, CBO estimates that because of this prohibition the private sector would lose about $45 million annu-

ally in net income (measured as the amount wagered less the amount paid out). In addition, CBO estimates that the requirement that colleges report certain gambling information and policies would increase costs to public and private colleges and universities. The amount of any increase is uncertain, but it is expected to be small because the colleges are already required to compile similar information on crime and policies on substance use.

Other Impacts

S. 718 would require public and private institutions of higher education, effectively as a condition of receiving federal education funding for the following year, to monitor their wire communications facilities for the purpose of detecting their use in illegal gambling. CBO cannot estimate the total costs associated with this condition because it is unclear what activities would be necessary to comply with the bill's requirement to "monitor" wire communications facilities.

S. 718 would also benefit any public and private educational institutions that qualify for the grant programs that would be established by the bill. The bill would authorize $4 million annually for fiscal years 2002 through 2006 for drug research and detection grants and $3 million annually for fiscal years 2002 through 2006 for intervention and prevention grants.

Estimate prepared by: Federal Costs: Ken Johnson and Mark Hadley. Revenues: Carolyn Lynch and Erin Whitaker. Impact on State, Local, and Tribal Governments: Shelley Finlayson. Impact on the Private Sector: Paige Piper/Bach.

Estimate approved by: Robert A. Sunshine, Assistant Director for Budget Analysis.

Regulatory Impact Statement

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

ECONOMIC IMPACT

Currently, wagering on college sports is legal only in the State of Nevada. According to the Nevada Gaming Control Board, $2.324 billion was wagered on legal sports books in Nevada in 2000, and casinos retained $123.8 million of this amount. College sports betting is believed to account for between 30 and 35 percent of these sports wagers.

PRIVACY

Senate bill 718 modifies the Child Online Protection Act (47 U.S.C. 231 nt) to require institutions of higher learning to monitor the use of wire communication facilities to detect violations of the "Wire Act" (18 U.S.C. 1084).

PAPERWORK

Senate bill 718 requires colleges and universities to report annually on the occurrence of illegal gambling, including Internet gambling, and to submit annually a statement of policy regarding un-

derage and other illegal gambling activity. This section of the bill will result in increased paperwork for affected colleges and universities.

SECTION-BY-SECTION ANALYSIS

TITLE I—PERFORMANCE ENHANCING DRUGS

Section 101. Short title

This section provides that this title may be cited as the "Athletic Performance-Enhancing Drugs Research and Detection Act."

Section 102. Research and detection program established

Subsection (a) requires the Director of the National Institute of Standards and Technology (NIST) to establish a program to support research into the use of athletic performance-enhancing drugs and methods of detecting their use.

Subsection (b) describes the type of research to be funded by the grant. The subsection requires the Director to consider research proposals involving athletic performance-enhancing substances banned by the International Olympic Committee, the United States Olympic Committee, the National Collegiate Athletic Association, the National Football League, the National Basketball Association and Major League Baseball. Specific substances to be studied should include naturally-occurring steroids, testosterone, human growth hormone and erythropoietin. The grants should also fund research on different population groups to ensure the tests are applicable to men, women, and differing ethnic groups. The subsection also prohibits use of the grants for research into drugs of abuse such as cocaine, marijuana, morphine/codeine, and barbiturates.

Subsection (c) establishes procedures for the award of grants. The subsection requires the Director to establish appropriate scientific peer review procedures for evaluating grant applications and results of research funded. The Director is also required to establish minimum criteria for the award of grants. This subsection requires a minimum grant award of not less than 500 thousand dollars per fiscal year. Applicants must demonstrate a record of publication and research in the area of athletic drug testing; provide a plan detailing the direct transfer of the research to lab applications; and certify that it is a not-for-profit research program.

Subsection (d) authorizes 4 million dollars per year for fiscal years 2002, 2003, 2004, 2005, and 2006 to carry out the purposes of this section.

Section 103. Prevention and intervention programs

Subsection (a) requires the Director of NIST to establish a grant program to fund educational substance abuse prevention and intervention programs related to the use of performance-enhancing drugs. This subsection also requires the Director to establish minimum criteria for grant applicants.

Subsection (b) requires a minimum individual grant award of not less than $300,000 per fiscal year.

Subsection (c) authorizes 3 million dollars per year for fiscal years 2002, 2003, 2004, 2005, and 2006 to carry out the purposes of this section.

TITLE II—GAMBLING

Section 201. Prohibition on gambling on competitive games involving high school and college athletes and the Olympics

Amends the Ted Stevens Olympic and Amateur Sports Act (chapter 2205 of title 36, United States Code), creating a new subchapter III containing section 220541.

Subsection (a) of the new section 220541 establishes a prohibition on any governmental entity, or person, from sponsoring, operating, advertising, promoting, licensing, or authorizing by law or compact a lottery, sweepstake, or other betting, gambling, or wagering scheme based, directly or indirectly, on a competitive game or performance described in subsection (b).

Subsection (b) describes the covered competitive game or performance as:

- One or more competitive games at the Summer or Winter Olympics.
- One or more competitive games in which high school or college athletes participate.
- One or more performances of high school or college athletes in a competitive game.

Subsection (c) provides that the prohibition of subsection (a) applies to activity described in that subsection without regard to whether the activity would be permitted under the Professional and Amateur Sports Protection Act. This subsection also creates an exception to the prohibited activity if all monies paid by the participants as entry fees are paid out to winning participants.

Subsection (d) provides that a civil action to enjoin a violation under the Act may be commenced in an appropriate district court of the United States by the Attorney General of the United States, local education agency, college, or sports organization, including an amateur sports organization or the corporation whose competitive game is alleged to be the basis of a violation under the Act.

Subsection (e) requires colleges that submit an annual report on information on criminal offenses under the Higher Education Act of 1965 (20 U.S.C. 1092(f)) to include statistics and information on the occurrence of illegal gambling, including Internet gambling, at such college. This subsection also requires colleges that submit annual policy statements on alcoholic beverages and underage drinking under the Higher Education Act of 1965, to include in their reports, statements of policy regarding underage and other illegal gambling activity at such colleges or universities, which includes any gambling abuse education programs that the colleges make available to students and employees. This subsection requires the United States Attorney General, in consultation with the Secretary of Education, periodically to review the policies, procedures, and practices of colleges with respect to campus crime and security related to illegal gambling.

Subsection (f) defines the following terms used in the new section:

- "High School" as having the same meaning as "secondary school" in section 14101 of the Elementary and Secondary Education Act of 1965 (U.S.C. 8801) or (ESEA).
- "College" as having the same meaning as institution of higher education in the ESEA.

- "Local Education Agency" as having the same meaning as that term in the ESEA.

Section 202. Judicial review

Subsection (a) provides that any persons adversely affected by section 220541 of the Ted Stevens Olympic and Amateur Sports Act may bring an action in the United States District Court for the District of Columbia for declaratory judgment and injunctive relief on the ground that this new subchapter violates the Constitution.

Subsection (b) provides a direct appeal to the Supreme Court of the United States for the review of any judicial order granting or denying an injunction regarding, or finally disposing of, an action brought under subsection (a). A notice of appeal is to be filed within 10 calendar days after the order is entered, and the jurisdictional statement is to be filed within 30 calendar days after the order is entered.

Subsection (c) provides that the District Court for the District of Columbia and the Supreme Court of the United States should expedite to the greatest possible extent, the disposition of any matter brought under subsection (a).

Subsection (d) stays the enforcement of any provision of section 220541 of title 36 for the period beginning on the date of filing of an action described under subsection (a), and ending on final disposition of the action on the merits by the Supreme Court of the United States.

Subsection (e) provides that this section applies to actions filed under subsection (a) not later than 30 days after the effective date of the Act.

TITLE III—INTERNET GAMBLING

Section 301. Short title

This section provides that this title may be cited as the "Unlawful Internet Gambling Funding Prohibition Act".

Section 302. Findings

This section provides that Congress makes the following findings: Internet gambling is primarily funded through bank instruments; the NGISC recommended legislation prohibiting wire transfers to Internet gambling sites or banks that represent them; Internet gambling causes debt collection problems for insured depository institutions and the consumer credit industry; and offshore Internet gambling has been identified by United States law enforcement as a significant money laundering vulnerability.

Section 303. Prohibition on acceptance of any bank instrument for lawful Internet gambling

Subsection (a) prohibits financial institutions from knowingly accepting, in connection with the participation of another person in unlawful Internet gambling—credit, or the proceeds of credit, extended to such other person, or the proceeds of any other form of financial transaction as the Secretary may prescribe by regulation, which involves a financial institution as a payor or financial intermediary on behalf of or for the benefit of the other person.

Subsection (b) defines the following terms used in this section:

- "Bets or wagers" 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 game predominantly subject to chance, upon an agreement or understanding that the person or another person will receive something of greater value than the amount staked or risked in the event of a certain outcome.
- "Internet" means the international computer network of interoperable packet switched data networks.
- "Unlawful Internet gambling" means placing, receiving, or otherwise making a bet or wager by any means which involves the use, at least in part, of the Internet where such bet or wager is unlawful under any applicable Federal or State law in the State in which the bet or wager is initiated, received, or otherwise made. Notwithstanding the definition of "unlawful Internet gambling," an Indian tribe may conduct Class III Internet gambling under a tribal-State compact.
- "Credit," "creditor," and "credit card" as having the same meanings given in section 103 of the Truth in Lending Act (15 U.S.C. 1602).
- "Electronic fund transfer" as having the meaning given such term in section 903 of the Electronic Fund Transfer Act (15 U.S.C. 1693a), and includes any fund transfer covered by Article 4 of the Uniform Commercial Code as in effect in any State.
- "Financial institution" as having the same meaning given in section 903 of the Electronic Fund Transfer Act (15 U.S.C. 1693a).
- "Money transmitting business" and "money transmitting service" as having the same meanings given in section 5330(d) of title 31, United States Code.
- "Secretary" means the Secretary of the Treasury.

Subsection (c) provides original and exclusive jurisdiction to the district courts of the United States to prevent and restrain violations of this section by issuing appropriate orders in accordance with this section, regardless of whether a prosecution has been initiated under this section. The United States Attorney General may institute proceedings under this section. In accordance with Rule 65 of the Federal Rules of Civil Procedure, the district court may enter a preliminary injunction or an injunction against any person to prevent or restrain a violation of this section. The attorney general of a State may also institute proceedings under this section. The district court may provide the same relief as with proceedings initiated by the United States Attorney General. Notwithstanding the jurisdiction provided under this subsection, for alleged violations on Indian lands, the United States is provided the same enforcement authority as previously provided in this subsection, and the enforcement authorities specified in an applicable Tribal-State compact under section 11 of the Indian Gaming Regulatory Act shall be carried out in accordance with that compact. In addition to any proceedings provided under this subsection, the district court may, in exigent circumstances, enter a temporary restraining order against a person alleged to be in violation of this section upon application of the United States or the attorney general of an affected State, in accordance with Rule 65(b) of the Federal Rules of Civil Procedure.

Subsection (d) establishes criminal penalties for a violation of this section of a fine under title 18, United States Code or imprisonment of not more than 5 years, or both. Upon conviction of a person under this subsection, the court may enter a permanent injunction enjoining such person from placing, receiving, or otherwise making bets or wagers or sending, receiving, or inviting information assisting in the placing of bets or wagers.

Subsection (e) provides a safe harbor for financial intermediaries. This subsection provides that no creditor, credit card issuer, financial institution, operator of a terminal at which an electronic fund transfer may be initiated, money transmitting business, or national, regional or local network used to affect a credit transaction, electronic fund transfer, or money transmitting service shall be liable under this section for the involvement of such person, or the use of the facilities of such person—in any credit transaction, electronic fund transfer, or money transmitting service described in subsection (a); or in drawing, paying, transferring, or collecting any check, draft, or other instrument described in subsection (a) or in any regulation prescribed under such subsection. The safe harbor does not apply to any person that is a gambling business or that knowingly participates in certain activities as an agent or representative of a gambling business.

Section 304. Enforcement actions

Amends section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) by adding a subsection (x) that provides that notwithstanding section 303(e) of the Unlawful Internet Gambling Prohibition Act, if any appropriate Federal financial agency determines that any insured depository institution is engaged in certain activities with actual knowledge that any person is violating section 303(a) of the Unlawful Internet Gambling Prohibition Act, the agency may issue an order prohibiting the institution from continuing to engage in the activity.

Section 305. Monitoring by institutions of higher education of transmissions of wagering information through the Internet

Subsection (a) amends the Child Online Protection Act to require each institution of higher education to monitor the use of its wire communications facilities for purposes of detecting the use of those facilities for transmissions described in the Wire Act, 18 U.S.C. 1084(a). Any such institution that fails to so monitor is ineligible for Federal education funding in the following academic year.

Subsection (b) provides an effective date of one year after the date of enactment.

Section 306. Savings clause

Provides that nothing in this Act shall be construed to alter, affect, or waive any existing rights of Indian tribes pursuant to the Indian Gaming Regulatory Act.

ROLLCALL VOTES IN COMMITTEE

In accordance with paragraph 7(c) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following description of the record votes during its consideration of S. 718:

Although the Committee considered a number of amendments by voice vote, it conducted only one roll call vote on an amendment offered by Senator Ensign to preserve the grandfather for college sports wagering in the Professional and Amateur Sports Protection Act. By a rollcall vote of 10 yeas and 10 nays as follows, the amendment was defeated:

YEAS—10	NAYS—10
Mr. Burns	Mr. McCain
Mr. Lott	Mrs. Hutchison
Mr. Smith	Ms. Snowe
Mr. Ensign	Mr. Brownback
Mr. Allen	Mr. Fitzgerald
Mr. Rockefeller	Mr. Hollings
Mr. Breaux	Mr. Inouye
Mr. Wyden	Mr. Dorgan
Mr. Cleland	Mr. Edwards
Ms. Boxer	Ms. Carnahan

MINORITY VIEWS OF SENATOR ENSIGN, SENATOR BREAUX, AND SENATOR BOXER

We agree with the majority of the members of the Commerce Committee that illegal sports gambling is a serious and pervasive problem on our college campuses and in society at large. Having heard the testimony of the foremost expert on addictive behavior, we are particularly concerned that underage college students and other young people are twice as likely to suffer from problem and pathological gambling as the adult population. Further, several witnesses testifying before the Committee acknowledged that the illegal gambling trade and illegal college bookies is a problem of epic proportions.

Nonetheless, as overwhelming evidence and witness testimony demonstrate, it is illegal sports gambling on college campuses, and illegal sports gambling over the Internet—not lawful and highly regulated sports gambling in states such as Nevada—that create the pathology facing youth addicted to gambling. Simply put, S. 718 does nothing to resolve the problem caused by illegal gambling. S. 718 does nothing to police the activities of illegal bookies on college campuses. S. 718 does not strengthen the penalties for such criminal behavior. S. 718 is a solution in search of a problem.

Unlawful gambling on sports represents the vast majority of illegal wagers conducted annually within U.S. borders, and it is a widespread problem among college students. According to the congressionally mandated National Gambling Impact Study Commission (NGISC), between 80 and 380 billion dollars is wagered illegally on sporting events every year. During the hearing on S. 718, witnesses cited two academic studies—a University of Michigan survey and a University of Cincinnati study—that found illegal gambling on college campuses to be of epidemic proportion. The University of Michigan survey found that nearly half (45 percent) of all male student-athletes nationwide gambled illegally on college and professional sports. The University of Cincinnati study conducted on behalf of the National Collegiate Athletic Association (NCAA) found that a quarter of the NCAA Division I male basketball and football student-athletes gambled on games in which they played. Students are placing bets with illegal college bookies across our nation and over the Internet. By and large, they are not placing bets in Nevada—where you have to be 21 years of age and physically present within the state's borders.

Yet, proponents of S. 718 want to combat illegal gambling by eliminating legal sports wagering in Nevada. Unfortunately, this misguided legislation will actually increase the likelihood of future point shaving/game fixing scandals by removing the only oversight currently in place to ensure the games' integrity—the Nevada sports books. 640 million dollars is wagered annually on college games, and lawful gambling in Nevada is highly regulated by the

Nevada Gaming Commission and State Gaming Control Board. The prohibition of legal gambling S. 718 forces on the State of Nevada—in contravention to the will and wisdom of her people—will drive gambling underground and prevent the legitimate regulation of gambling.

Nevada's sports books electronically monitor all games, and any unusual wagering activity is easily detected. Furthermore, it is in the financial best interest of the sports books to maintain the games' integrity—any impropriety (point shaving/game fixing) can result in significant financial losses for all parties involved. Thus, the Nevada sports books were the first to inform the Federal Bureau of Investigation (FBI) of the Arizona State scandal in 1994 according to a December 2000 interview with FBI Special Agent Tom Noble. Without the cooperation of the Nevada sports books, the Arizona State scandal would have gone undetected and those responsible would have gone free. If intercollegiate athletic events are removed from the Nevada sports books, expert witnesses before the Committee predict a subsequent rash of attempts to tamper with the outcome of games, most of them undetected. More specifically, Danny Sheridan, a leading sports analyst and odds-maker for USA Today, testified before the Committee stating that "between 30 and 40 games will be fixed within 90 days" of enactment of S. 718.

It is noteworthy that to date not one witness from law enforcement—federal, state or local—has testified before Congress on the practical effects of S. 718. The only law enforcement witness, however, to comment on illegal gambling and banning legal amateur sports wagering appeared before the NGISC in 1998. Detective Edward Galanek—an undercover officer and expert on organized crime and gambling cases—testified that he had "firsthand knowledge of how important illegal gambling operations were to the daily business of organized crime" and that "legalized sports betting is clearly an answer to the illegal problem." Unfortunately, the Committee's request to have Detective Galanek testify during deliberations on S. 718 was denied. However, his 1998 testimony further proves the indelible link between organized crime and illegal gambling, as well as emphasizing that our law enforcement efforts should be directed at combating the illegal gambling trade.

Despite evidence to the contrary, proponents of S. 718 argue that prohibiting amateur sports betting in Nevada will eliminate the publishing of betting lines on college athletic events. However, newspapers are neither the primary nor the exclusive source of betting lines. The lines will continue to be available via offshore Internet websites and in newspapers, as the data is generated by independent analysts for purposes other than sports wagering. Expert analyst and odds-maker Danny Sheridan stated, "70-75% of newspaper readers aren't reading the lines to place bets." Moreover, in an April 25, 2001 letter from the Newspaper Agency Association (NAA), the NAA indicated that the betting lines would continue to be published by newspapers. The letter stated:

> Like all editorial decisions, the decision on whether to publish point spreads for college sporting events is made by each newspaper and is likely to vary from newspaper to newspaper. If Congress prohibits gambling on college sports, the NAA believes newspapers will continue to have an interest in pub-

lishing point spreads on college games, since point spreads appear to be useful to newspaper readers who have no intention of betting on games.

We also disagree to the specious contention that Nevada's exemption in the Professional and Amateur Sports Protection Act (PASPA) (28 U.S.C. 3701 et sec) is a "loophole," a "loophole" that S. 718 would repeal. Previous congressional action and court decisions are clear on this issue. The record clearly reflects that Nevada was expressly included in PASPA out of respect for the Constitution and the States that had authorized sports wagering prior to enactment of the 1992 federal ban. Congress was careful when passing PASPA to guard against Fifth and Tenth Amendment issues by exempting Nevada, Oregon, Montana and New Jersey from the prohibition on sports wagering activity. S. 718, however, would contravene Congress' intent under PASPA, and would, thus, raise serious Fifth and Tenth Amendment issues.

The Fifth Amendment's Takings Clause prohibits the government from taking "private property for the public use without just compensation." The U.S. Supreme Court in Ruckelshaus v. Monsanto Co. 467 U.S. 986, 103 (1984) held that the Takings Clause protects both tangible and intangible property rights, such as gambling infrastructure and gambling licenses, respectively. Indeed, Congress has previously recognized that federal gambling legislation can have the effect of injuring private property interests (Senate Report 102–248, 1991). S. 718's prohibition on state regulated college sports wagering without compensation violates the Takings Clause.

Moreover, the courts have recognized the federalism interests in leaving gambling enforcement to the states. In the case of United States v. King, 834 F .2d 109, 111 (6th Cir. 1987) the Sixth Circuit court held that as with other state police powers, gambling regulation has been historically left to the states. In United States v. Lopez, 514 U.S. 549 (1995), Supreme Court Justices Kennedy and O'Connor recognized the importance of maintaining separation of powers between state and federal government by stating, "Were the Federal Government to take over the regulation of entire areas of traditional state concern * * * the boundaries between the spheres of federal and state authority would blur and political responsibility would become illusory." 514 U.S. at 577.

If S. 718 is enacted into law, we expect constitutional challenges to follow. For that reason, during consideration of S. 718, the Committee unanimously adopted an amendment that would provide adversely affected parties with expedited judicial review before the United States District Court for the District of Columbia and the United States Supreme Court. We believe that the courts should closely examine the Fifth and Tenth Amendment issues raised by this legislation with the utmost speed and that the state of Nevada and other aggrieved parties should have their day in court. Congress established such a precedent for expedited judicial review during Senate consideration of Campaign Finance Reform and the enactment of appropriations bills governing the use of funds to conduct the 2000 Census.

Although those in the majority claim S. 718 is a "first step" to bolster the integrity of intercollegiate athletics, a nationally recog-

nized sports analyst testified that organized crime will derive a financial windfall from the bill's enactment and that, having removed regulated and policed sports wagering in Nevada, those who would corrupt student athletes will attempt do so with impunity.

Accordingly, and in conclusion, we recommend another approach, one that recognizes that illegal sports' gambling is at the root of addictive gambling among the young. Illegal campus bookies and those who seek the anonymity and protection of offshore facilities to accept illegal Internet sports wagers are responsible for this growing problem among today's student population. Witnesses testified that illegal bookies are ubiquitous on our college campuses. Therefore, we propose a solution to the real issue—illegal gambling. We need stricter enforcement of existing laws coupled with a dedicated Department of Justice task force on illegal gambling, as well as increased criminal penalties for those who engage in this activity. We should not eliminate a system perfected in Nevada, and protected as a matter of Constitutional principle, in our efforts to extricate illegal gambling on college campuses and among students and student-athletes. Rather, we should subject illegal gambling to the scrutiny of law enforcement and focus our efforts to reduce it.

JOHN ENSIGN.
JOHN B. BREAUX.
BARBARA BOXER.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

TED STEVENS OLYMPIC AND AMATEUR SPORTS ACT

[36 UNITED STATES CODE 220501 ET SEQ.]

SUBCHAPTER III—MISCELLANEOUS

§220541. Unlawful sports gambling: Olympics; high school and college athletes

(a) PROHIBITION.—It shall be unlawful for—

(1) a governmental entity to sponsor, operate, advertise, promote, license, or authorize by law or compact, or

(2) a person, including an amateur sports organization (as defined in section 3701 of title 28), or a corporate sponsor of such an organization, to sponsor, operate, advertise, or promote, a lottery, contest, sweepstakes, or other betting, gambling, or wagering scheme based, directly or indirectly, on a competitive game or performance described in subsection (b), including a sweepstakes or contest that includes prizes related directly or indirectly to such a covered game or performance.

(b) COVERED GAMES AND PERFORMANCES.—A competitive game or performance described in this subsection is the following:

(1) One or more competitive games at the Summer or Winter Olympics.

(2) One or more competitive games in which high school or college athletes participate.

(3) One or more performances of high school or college athletes in a competitive game.

(c) APPLICABILITY.—

(1) IN GENERAL.—The prohibition in subsection (a) applies to activity described in that subsection without regard to whether the activity would otherwise be permitted under subsection (a) or (b) of 3704 of title 28.

(2) EXCEPTION.—The prohibition in subsection (a) shall not apply to activity otherwise described in that subsection if all of the monies paid by the participants, as an entry fee or otherwise, are paid out to winning participants.

(d) INJUNCTIONS.—A civil action to enjoin a violation of subsection (a) may be commenced in an appropriate district court of the United States by the Attorney General of the United States, a local educational agency, college, or sports organization, including an

amateur sports organization or the corporation, whose competitive game is alleged to be the basis of such violation.

(e) GAMBLING ENFORCEMENT INFORMATION AND POLICIES.—

(1) GAMBLING INFORMATION.—Each college submitting an annual report on information on criminal offenses under paragraph (1)(F) of section 485(f) of the Higher Education Act of 1965 (20 U.S.C. 1092(f)) shall include in each such report statistics and other information on the occurrence of illegal gambling, including gambling over the Internet, at such college.

(2) POLICY ON GAMBLING ACTIVITY.—Each college submitting an annual statement of policy on alcoholic beverages and underage drinking under paragraph (1)(H) of section 485(f) of the Higher Education Act of 1965 shall include in each such report a statement of policy regarding underage and other illegal gambling activity at such college, including a description of any gambling abuse education programs available to students and employees of such college.

(3) PERIODIC REVIEW.—Notwithstanding paragraph (2) of section 485(f) of the Higher Education Act of 1965, the Attorney General shall, in consultation with the Secretary of Education, periodically review the policies, procedures, and practices of colleges with respect to campus crimes and security related directly or indirectly to illegal gambling, including with respect to the integrity of the athletics contests in which students of colleges participate.

(f) DEFINITIONS.—In this section:

(1) HIGH SCHOOL.—The term "high school" has the meaning given the term 'secondary school' in section 14101 of the Elementary and Secondary Education Act of 1965 (U.S.C. 8801).

(2) COLLEGE.—The term "college" has the meaning given the term 'institution of higher education' in section 101 of the Higher Education Act of 1965 (20 U.S.C. 8801).

(3) LOCAL EDUCATIONAL AGENCY.—The term "local educational agency" has the meaning given that term in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801).

FEDERAL DEPOSIT INSURANCE ACT

[12 U.S.C. 1818]

SEC. 8. TERMINATION OF STATUS AS INSURED DEPOSITORY INSTITUTION

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(x) DEPOSITORY INSTITUTION INVOLVEMENT IN INTERNET GAMBLING.—Notwithstanding section 303(e) of the Unlawful Internet Gambling Funding Prohibition Act, if any appropriate Federal banking agency determines that any insured depository institution is engaged in any of the following activities, the agency may issue an order to such institution prohibiting such institution from continuing to engage in any of the following activities:

(1) Extending credit, or facilitating an extension of credit, electronic fund transfer, or money transmitting service with the

actual knowledge that any person is violating section 303(a) of the Unlawful Internet Gambling Funding Prohibition Act in connection with such extension of credit, electronic fund transfer, or money transmitting service.

(2) Paying, transferring, or collecting on any check, draft, or other instrument drawn on any depository institution with the actual knowledge that any person is violating section 303(a) of the Unlawful Internet Gambling Funding Prohibition Act in connection with such check, draft, or other instrument.

CHILD ONLINE PROTECTION ACT

[47 U.S.C. 231 NT]

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SUBTITLE B—MONITORING OF USE OF INTERNET FACILITIES

SEC. 1411. HIGHER EDUCATION INSTITUTIONS TO MONITOR INTERNET USE.

Each institution of higher education (as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001) shall monitor the use of the wire communications facilities of that institution for purposes of detecting the use of those facilities for transmissions described in section 1084(a) of title 18, United States Code.

SEC. 1412. ENFORCEMENT.

Any institution of higher education that fails to monitor the use of its wire communications facilities as required by section 1411 during any academic year is, notwithstanding any provision of law to the contrary, ineligible for Federal education funding for the succeeding academic year.

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