



President Signs Internet Gambling Bill

On October 13, the President signed into law the Unlawful Internet Gambling Enforcement Act. The Act took effect when it was signed.

The Act, which was attached to a larger bill on port security (H.R. 4954), amends federal money laundering laws by prohibiting anyone who is engaged in the business of betting or wagering from knowingly accepting credit cards, electronic fund transfers, checks or other payment instruments that are given in order to participate in unlawful Internet gambling. In addition, the Act instructs the Federal Reserve System, in consultation with the Attorney General, to develop policies and procedures for financial institutions to identify illegal transactions.

Although earlier versions of an Internet gambling bill included provisions making the advertising of Internet gambling illegal, that language was deleted from the final version and it appears that this bill does not specifically target advertisers. However, the Department of Justice has charged advertisers of Internet sports gambling under the federal Wire Act, as recently as July, 2006.

Definitions and Safe Harbor

The Act defines unlawful Internet gambling as “to place, receive, or otherwise knowingly transmit 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 or Tribal lands in which the bet or wager is initiated, received, or otherwise made.”

The Act includes several important exceptions from this definition:

1. Participation in any game or contest in which participants do not stake or risk anything of value other than (a) personal efforts of the participants, or (b) points or credits that the sponsor of the game or contest provides to participants free of charge and that can be used or redeemed only for participation in games or contests offered by the sponsor.
2. Participation in any fantasy or simulation sports game or educational game or contest (as long as no fantasy sports team is based on the current membership of an actual team that is a member of an amateur or professional sports organization) that meets the following conditions:
 - (a) All prizes and awards offered to winning participants are established and made known to the participants in advance of the game or contest and their value is not determined by the number of participants or the amount of any fees paid by those participants.
 - (b) All winning outcomes reflect the relative knowledge and skill of the participants and are determined predominantly by accumulated statistical results of the performance of individuals (athletes in the case of sports events) in multiple real-world sporting or other events.
 - (c) No winning outcome is based on the score, point-spread, or any performance or performances of any single real-world team or any combination of such

teams, or solely on any single performance of an individual athlete in any single real-world sporting or other event.

There is a safe harbor from enforcement actions for interactive computer services that disable access to an online gambling site that is violating the Act, after receiving notice of the violation. The notice must specifically identify the location of the online site or link to be removed. The safe harbor provision also states that it does not impose any obligation on an interactive computer service to monitor its service or to affirmatively seek facts about possible violations of the Act.

In addition, an interactive computer service will not be liable under the Wire Act unless the computer service has actual knowledge and control of bets and wagers and operates or manages, or is controlled by, a website that is violating the Act.

The definition of interactive computer service is the same as in the federal Communications Act: "any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions."

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