

Title: To prohibit Internet gambling, to regulate online poker, to provide consumer protections, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the “Internet Gambling Prohibition, Poker Consumer Protection, and Strengthening UIGEA Act of 2012”.

(b) Table of Contents.—The table of contents for this Act is as follows:

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Sec.105.Qualified bodies.

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TITLE II—ENFORCEMENT UNDER TITLES 18 AND 31, UNITED STATES CODE

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Sec.203.Further amendments to subchapter IV of chapter 53 of title 31, United States Code.

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TITLE III—ONLINE POKER REVENUE PROVISIONS

Sec.301.Amendment of 1986 Code.

Sec.302.Online poker activity fee; licensee information reporting.

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Sec.402.State and tribal support for public awareness, research, and treatment programs for problem and pathological gambling.

Sec.403.Resolution of international dispute over Internet gambling.

Sec.404.Severability.

TITLE I—INTERNET GAMBLING PROHIBITION AND ONLINE POKER CONSUMER PROTECTION

SEC. 101. FINDINGS AND SENSE OF CONGRESS.

(a) Findings.—Congress makes the following findings:

(1) Since the development of the Internet, online sites offering Internet gambling have raised consumer protection and enforcement concerns for Federal and State governments as such online sites are often run by unknown operators located in many different countries, subject to little or no oversight, and have sought to attract customers from the United States.

(2) Subchapter IV of chapter 53 of title 31, United States Code, which was added by the enactment of the Unlawful Internet Gambling Enforcement Act of 2006 (title VIII of Public Law 109–347; 120 Stat. 1952), makes it a Federal crime for gambling businesses to knowingly accept most forms of payment in connection with the participation of another

person in unlawful Internet gambling. Since the enactment of the Unlawful Internet Gambling Enforcement Act of 2006, such subchapter IV has helped aid enforcement efforts against unlawful Internet gambling operators and to limit unlawful Internet gaming involving United States persons.

(3) In 2011, subchapter IV of chapter 53 of title 31, United States Code, and other enforcement tools led to indictments of several major unlawful Internet gambling operators. However, the reach of those statutes remains limited and United States bettors continue to place bets and wagers on unlawful Internet websites.

(4) On December 23, 2011, the Department of Justice released a memorandum opinion of the Office of Legal Counsel dated September 20, 2011, that construed section 1084 of title 18, United States Code (referred to as the “Wire Act”), to apply only to sports-related gambling activities in interstate and foreign commerce, overturning the Department’s longstanding position that such section applied to all forms of Internet gambling. Congressional action is required to ensure the application of such section and the prohibitions contained therein to all forms of Internet gambling.

(5) A number of States are considering legalizing and promoting Internet gambling to generate revenue. Absent Federal limitations and enforcement, State regulation of Internet gambling, including consumer safeguards, could vary widely from State to State, and States could have difficulty enforcing Internet gambling restrictions within their borders, especially against out-of-State operators. In addition, State authorizations of Internet gambling would result in a major expansion of gambling of all types on the Internet.

(6) Federal law needs to be updated to make clear its relationship to Internet gambling to strengthen enforcement and to ensure an effective Internet gambling enforcement structure that leads to a substantial and sustainable decrease in Internet gambling.

(7) Since the passage of the Professional and Amateur Sports Protection Act (Public Law 102–559) in 1992, which added chapter 178 to title 28, United States Code, such chapter has played an important and effective role in implementing longstanding Federal policy against gambling on professional, scholastic, and amateur sporting events. This policy, as embodied by such chapter, and all criminal laws prohibiting such gambling, are crucial to ensuring the integrity of athletic competition and should remain in full force and effect.

(8) Additional tools to assist law enforcement, banks and financial transaction providers, and Internet service providers in the prevention of unlawful Internet gambling activities would be important and beneficial. Maintenance of a list of licensed online poker facilities would provide a level of certainty as to permitted transactions and law enforcement efforts.

(9) Sports betting raises concerns about the potential for undermining the integrity of athletic competitions through illegal inducements to players or other participants.

(10) Poker is unlike casino-banked games or sports betting. Poker operators are not participants in the games and only receive a set fee for hosting them. Much like winnings in pari-mutuel wagering, a type of betting that Congress has permitted, poker players’ winnings come not from the house, but from the pool of other players. In addition, winning

at poker involves some measure of skill. Skillful poker players can earn winnings in the long term, while players of house-banked games will always play against odds favoring the house.

(11) Because there is no interstate gaming regulatory structure in the United States, creating a new interstate online poker market that does not utilize existing State and tribal regulatory resources would pose complex regulatory and enforcement challenges to ensure protection of United States consumers.

(12) Internet gambling, like much other Internet commerce, traverses State boundaries. Any particular transaction may cross a number of State boundaries from origin to destination, and communications between the same parties at different times may travel along markedly different routes, based on factors such as traffic, load capacity, and other technical considerations outside the control of sender and recipient. For that reason, among others, the Federal courts consistently have ruled that the Internet is an instrumentality and channel of interstate commerce and, as such, is subject to Congress's plenary authority. For these same reasons, Internet gambling by its very nature implicates Federal concerns, and is different in kind and effect from traditional gambling activity.

(13) The United States never intended to include Internet gaming of any kind within the scope of its commitments under the General Agreement for Trade in Services, and therefore, no World Trade Organization Member had any competitive expectation of access to the United States Internet gaming market. Despite these obvious facts, the Dispute Settlement Panels and the Appellate Body of the World Trade Organization have determined that such commitments were made in a proceeding brought by the Government of Antigua and Barbuda, WT/DS285.

(14) As a result of the erroneous conclusion of World Trade Organization dispute settlement bodies, the United States has indicated its intention to withdraw that commitment and has initiated the appropriate process to that end. The United States should conclude this matter expeditiously.

(15) A number of States have authorized or are considering authorizing online purchases of lottery subscriptions or other lottery games.

(16) Different forms of gaming do not constitute like services under the General Agreement for Trade in Services because they raise different regulatory and policy concerns, require differing measures to protect consumers and to ensure fairness, entail different roles for operators and players, require differing infrastructure and support, are perceived differently by consumers and markets, and are grounded in differing cultural and historical contexts.

(b) Sense of Congress.—It is the sense of Congress that—

(1) Internet gambling involving house-banked games or sports betting should be strictly prohibited;

(2) an online poker market should be limited to only those States and Indian tribes that

affirmatively choose to opt-in and the market should be regulated by State and tribal entities that have an established track record of providing a well-regulated gaming market to United States consumers, subject to a robust licensing and regulatory framework—

(A) to prevent underage wagering and otherwise to protect vulnerable individuals;

(B) to ensure the games are fair and are conducted honestly;

(C) to address the concerns of law enforcement; and

(D) to ensure that States and Indian tribes that wish to prohibit online poker may do so;

(3) licensed online poker operators should be limited, at least initially, to service providers that have an established track record of complying with a strict regulatory environment, have an established track record of providing fair games to consumers, and have significant goodwill and assets at stake, in addition to their online poker assets, to ensure they would comply with the strict regulatory framework and that they only conduct business in those States that have elected to opt-in; and

(4) Congress should ensure that any intrastate lottery transactions completed through the use of the Internet are limited to sales of tickets and related activities so that they do not allow for the circumvention of Congressional limits on Internet gambling on house-banked and other casino games, without unduly limiting the power of the states to offer intrastate lottery purchases.

SEC. 102. DEFINITIONS.

In this title:

(1) **APPLICANT.**—The term “applicant” means any person who has applied for a license under this title.

(2) **BENCHMARK QUALIFIED BODY.**—The term “benchmark qualified body” means a qualified body designated by the Secretary under section 105(a)(1)(A).

(3) **BET OR WAGER.**—

(A) **IN GENERAL.**—Except as provided in subparagraph (B), the term “bet or wager” has the meaning given the term in section 5362 of title 31, United States Code.

(B) **EXCEPTION.**—The term “bet or wager” does not include the following:

(i) A bet or wager that is permissible under the Interstate Horseracing Act of 1978 (15 U.S.C. 3001 et seq.).

(ii) A qualifying intrastate lottery transaction.

(4) **CASINO GAMING.**—

(A) **IN GENERAL.**—Except as provided in subparagraph (B), the term “casino gaming” means the full range of casino gaming activity licensed by regulatory bodies of States or Indian tribes that would be qualified as class III gaming under section 4 of

the Indian Gaming Regulatory Act (25 U.S.C. 2703) if that Act were applicable to the gaming.

(B) EXCEPTION.—The term “casino gaming” does not include traditional lotteries of States or Indian tribes involving physical sales of tickets sold on a daily basis, but does include activities involving video lottery terminals operated by or on behalf of lotteries of States or Indian tribes.

(5) CASINO GAMING FACILITY.—Except as provided in subsections (g) and (h) of section 113, the term “casino gaming facility” means a facility that provides casino gaming on a riverboat, at a race track, or in another facility that hosts 500 or more gaming devices in 1 physical location pursuant to a duly authorized license issued by a gaming regulatory authority of a State or Indian tribe.

(6) GAMING DEVICE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term “gaming device” means any computer-based gambling machine, including slot machines and video lottery terminals that have been approved by a gaming regulatory authority of a State or Indian tribe.

(B) EXCEPTION.—The term “gaming device” does not include machines that process bets or wagers for pari-mutuel betting pools.

(7) INDIAN LANDS AND INDIAN TRIBE.—The terms “Indian lands” and “Indian tribe” have the meaning given the terms in section 4 of the Indian Gaming Regulatory Act (25 U.S.C. 2703).

(8) INTERNET.—The term “Internet” has the meaning given the term in section 5362 of title 31, United States Code.

(9) INTERNET GAMBLING FACILITY.—

(A) IN GENERAL.—The term “Internet gambling facility” means an Internet website, or similar communications facility in which transmissions may cross State boundaries, through which a bet or wager is initiated, received, or otherwise made, whether transmitted by telephone, Internet, satellite, or other wire or wireless communication facility, service, or medium, including an online poker facility not operating under a license in good standing issued under this title.

(B) EXCLUSION.—The term “Internet gambling facility” does not include the following:

(i) An online poker facility that operates under a license in good standing issued under this title.

(ii) A facility that facilitates qualifying intrastate lottery transactions to the degree that such facility facilitates such transactions.

(10) LICENSEE.—The term “licensee” means a person who operates an online poker facility under a license issued by a qualified body pursuant to this title.

(11) LIVE RACING.—The term “live racing” means, with respect to a physical race track, the conduct of live thoroughbred horse races at such race track and does not include any races simulcasted from a separate race track.

(12) ONLINE POKER.—The term “online poker” means a poker game, hand, tournament, or other contest of poker offered through the use of an online poker facility.

(13) ONLINE POKER FACILITY.—The term “online poker facility” means an Internet website, or similar communications facility in which transmissions may cross State boundaries, through which a bet or wager only with respect to a game, hand, tournament, or other contest of poker is initiated, received, or otherwise made, whether transmitted by telephone, Internet, satellite, or other wire or wireless communication facility, service, or medium.

(14) OPERATE AN INTERNET GAMBLING FACILITY.—The term “operate an Internet gambling facility” means to conduct, direct, manage, own, supervise, or control an Internet gambling facility.

(15) OPERATE AN ONLINE POKER FACILITY.—The term “operate an online poker facility” means to conduct, direct, manage, own, supervise, or control an online poker facility.

(16) POKER.—

(A) IN GENERAL.—The term “poker” means any of several card games—

(i) in which success over the long run is influenced by the skill of the player;

(ii) that are commonly referred to as “poker”;

(iii) that are played by 2 or more people who bet or wager against each other on cards dealt to them out of a common deck of cards—

(I) including games using community cards that any player may use to make his or her hand; and

(II) including games using electronic devices that simulate a deck of cards;

(iv) in which players compete against each other and not against the person operating the game;

(v) in which bets or wagers of one player are often designed to and may rationally affect the decision of another player in the game; and

(vi) in which the person operating the game may assess a commission fee (commonly referred to as a “rake”) or any other type of fee.

(B) POKER TOURNAMENTS.—The term “poker” includes poker tournaments in which players pay a fee to play against each other, including tournaments where the licensee guarantees a minimum tournament pot.

(17) QUALIFIED BODY.—The term “qualified body” means the following:

(A) The Office of Online Poker Oversight established under section 104(a) and

designated under section 105(a)(2).

(B) Any State agency or regulatory body of an Indian tribe that has been designated as a qualified body under paragraph (1) or (3) of section 105(a).

(18) QUALIFIED CARD ROOM.—The term “qualified card room” means a facility that has been licensed by a State or Indian tribe to provide at least 250 tables in 1 physical facility for bets or wagers on poker.

(19) QUALIFIED RACE TRACK.—The term “qualified race track” means a race track that has—

(A) been licensed by a regulatory authority of a State or Indian tribe; and

(B)(i) at least 500 gaming devices at one physical location; or

(ii) conducted live racing on which at least \$225,000,000 in all-source gross wagering handle was accepted during any 3 of the last 5 calendar years preceding the date of the enactment of this Act.

(20) QUALIFYING INTRASTATE LOTTERY TRANSACTION.—The term “qualifying intrastate lottery transaction” means the purchase of a chance or opportunity to win a lottery or other prize—

(A) which opportunity to win is predominantly subject to chance;

(B) which winning is determined not more frequently than daily;

(C) which is authorized by a State or Indian tribe wholly within its borders;

(D) with respect to which the Internet is solely the medium for purchase but is not the medium in which the drawing or the playing of the game or contest is conducted;

(E) which requires the delivery (electronically or non-electronically) of a tangible ticket or card for purposes of redemption of any prize; and

(F) which is not an online lottery game that is intended to mimic or does substantially mimic a gaming device, slot machine, poker, or any other casino game.

(21) REMOTE GAMING EQUIPMENT.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term “remote gaming equipment” means electronic or other equipment principally used by or on behalf of an operator of an online poker facility, including by any significant vendor to such operator, to—

(i) register a person’s participation in online poker and to store information relating thereto;

(ii) present to persons who are participating or who may participate in online poker the game that is to be played;

(iii) determine all or part of, or the effect of, a result relevant to a game, hand, tournament, or other contest of online poker and to store information relating

thereto;

- (iv) accept payment with respect to online poker from the player; or
- (v) authorize payment of any winnings in respect of online poker.

(B) EXCEPTION.—The term “remote gaming equipment” does not include the following:

(i) Equipment used for business continuity, back-up, excess capacity, or other secondary use.

(ii) A computer which is used by a person to participate in online poker unless the computer is provided by or on behalf of the person who is conducting or providing the facilities for the game.

(iii) Equipment operated in the ordinary course of providing banking, telecommunications, or payment processing services.

(iv) Such other equipment that provides ancillary services as the Secretary considers appropriate.

(22) SECRETARY.—The term “Secretary” means the Secretary of Commerce.

(23) SIGNIFICANT VENDOR.—The term “significant vendor” means a person who—

(A) on behalf of a licensee, knowingly manages, administers, or controls bets or wagers that are initiated, received, or otherwise made within the United States;

(B) on behalf of a licensee, knowingly manages, administers, or controls the games with which such bets or wagers are associated;

(C) on behalf of a licensee, develops, maintains, or operates the software or other system programs or hardware on which the games or the bets or wagers are managed, administered, or controlled;

(D) provides the trademarks, tradenames, service marks, or similar intellectual property under which a licensee identifies its online poker facility to its customers in the United States;

(E) sells, licenses, or otherwise receives compensation for selling or licensing information on individuals in the United States that made bets or wagers with an Internet gambling facility not licensed under this title via a database or customer lists;

(F) provides any products, services, or assets to a licensee and is paid a percentage of gaming revenue or online poker commission fees by the licensee (not including fees to financial institutions and payment providers for facilitating a deposit by a customer); or

(G) with respect to an applicant, proposes to provide any of the activities, services, or items identified in subparagraphs (A) through (F).

(24) SPORTING EVENT.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term “sporting event” means any athletic competition, whether professional, scholastic, or amateur or any performance of any athlete in such competitions.

(B) EXCEPTION.—The term “sporting event” does not include any activity described in section 3704(a)(4) of title 28, United States Code.

(25) STATE.—The term “State” means each of the several States of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(26) TOTAL UNITED STATES CASINO GAMING REVENUE.—The term “total United States casino gaming revenue” means the sum of—

(A) the sum of the amounts reported by the Bureau of the Census in the 2010 Statistical Abstract in the Arts, Recreation, and Travel section under the heading “Gaming Revenue by Industry” under the headings for card rooms and commercial casinos for the most recent year reported; and

(B) the number reported by the National Indian Gaming Commission as total tribal gaming revenues (in the report that was compiled from gaming operation audit reports received and entered by the National Indian Gaming Commission through May 18, 2010) for gaming operations with fiscal years ending in the year that corresponds with the most recent year for which amounts described in subparagraph (A) are reported.

SEC. 103. PROHIBITION ON OPERATION OF INTERNET GAMBLING FACILITIES.

(a) Prohibition.—

(1) IN GENERAL.—It shall be unlawful for a person to operate an Internet gambling facility.

(2) EXCEPTION.—Paragraph (1) shall not apply to the operation of an Internet gambling facility by a person located outside the United States in which bets or wagers are initiated, received, or otherwise made solely by individuals located outside the United States.

(b) Criminal Penalties.—Any person who violates this section shall be fined under title 18, United States Code, imprisoned for not more than 10 years, or both.

SEC. 104. OFFICE OF ONLINE POKER OVERSIGHT.

(a) Establishment.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall establish within the Department of Commerce an office to exercise the functions of the Secretary under this title.

(2) DESIGNATION.—The office established under paragraph (1) shall be known as the “Office of Online Poker Oversight” (in this section referred to as the “Office”).

(b) Executive Director.—

(1) IN GENERAL.—The Secretary shall appoint as the head of the Office an executive director.

(2) EXPERIENCE AND EXPERTISE.—The executive director of the Office shall be appointed by the Secretary from among individuals who demonstrate the following:

(A) Skill and experience in gaming regulation and enforcement.

(B) Experience in criminal investigations and law enforcement generally.

(C) A reputation for good character, honesty, and integrity.

(3) BACKGROUND INVESTIGATION.—Before appointing an individual as executive director under paragraph (1), the Secretary shall conduct a background investigation into the financial stability, integrity, and responsibility of the individual.

(4) LIMITATIONS.—The Secretary may not appoint under paragraph (1) an individual who

—

(A) has been convicted of a felony; or

(B) maintains any ownership or equity interest or any ongoing business relationship with—

(i) an operator of a casino gaming facility, online poker facility, race track, lottery, or other regulated gambling entity; or

(ii) a significant vendor.

(c) Delegation of Authority.—

(1) IN GENERAL.—The Secretary may delegate to the executive director of the Office any authority, duty, or responsibility conferred upon the Secretary by this title.

(2) REGULATORY AUTHORITY OF EXECUTIVE DIRECTOR.—The executive director of the office may prescribe such regulations and take such actions as may be necessary to carry out such authorities, duties, or responsibilities delegated to the executive director by the Secretary paragraph (1).

(d) Regulations and Standards.—

(1) REGULATIONS AND STANDARDS NECESSARY TO FUNCTION AS QUALIFIED BODY.—With respect to the application of this title to the functions of the Office as a qualified body under section 105(a)(2), the Secretary shall, not later than 270 days after the date of the enactment of this Act, prescribe regulations and standards to implement the requirements set out in subsections (d) and (g) of section 106 and section 107.

(2) SUBSTANTIALLY EQUIVALENT.—The regulations and standards prescribed by the Secretary under paragraph (1) shall be substantially equivalent to the regulations and standards of the agencies or regulatory bodies designated as qualified bodies under section 105(a)(1) implementing the requirements set out in subsections (d) and (g) of section 106 and section 107.

(3) **ADOPTION OF MODEL REGULATIONS.**—If the Secretary does not to prescribe regulations and standards required by paragraph (1) on or before the date that is 270 days after the date of the enactment of this Act, the regulations and standards required of the Office to implement the requirements set out in subsections (d) and (g) of section 106 and section 107 shall be the regulations and standards to implement such requirements of the first State agency or regulatory body of an Indian tribe that is designated as a benchmark qualified body until the Secretary has prescribed regulations under paragraph (1).

(4) **MANNER OF PRESCRIPTION.**—Regulations prescribed under paragraph (1) shall be prescribed in accordance with section 553 of title 5, United States Code.

(e) **Publication of Information to Facilitate Submittal of Applications for Designation as Benchmark Qualified Bodies.**—Not later than 150 days after the date of the enactment of this Act, the Secretary shall publish in the Federal Register such information as may be necessary for an applicant to submit a complete application under section 105(a)(1)(B).

(f) **Detail of Government Employees.**—Any Federal Government employee may be detailed to the office without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(g) **Functions of Office as Qualified Body.**—With respect to the application of this title to the functions of the office as a qualified body under section 105(a)(2), any reference to the State of the qualified body shall be considered a reference to the United States and any reference to the law of a State of the qualified body shall be considered a reference to a law of the United States.

SEC. 105. QUALIFIED BODIES.

(a) **Designation of Qualified Bodies.**—

(1) **INITIAL DESIGNATION OF EXPERIENCED QUALIFIED BODIES TO SERVE AS BENCHMARKS.**

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(A) **DESIGNATION.**—

(i) **IN GENERAL.**—Except as provided in clause (ii), not later than 270 days after the date of the enactment of this Act, the Secretary shall designate at least 3 State agencies or regulatory bodies of Indian tribes from among those who submit applications under subparagraph (B) as qualified bodies that satisfy the criteria set forth under subparagraph (C).

(ii) **MINIMUM NUMBER.**—If the Secretary does not designate at least 3 State agencies or regulatory bodies under clause (i) before the date that is 270 days after the date of the enactment of this Act, the Secretary shall, not later than 300 days after the date of the enactment of this Act, designate under such clause every State agency or regulatory body of an Indian tribe that—

(I) submits an application under subparagraph (B) before the date that is 270 days after the date of the enactment of this Act; and

(II) meets the criteria set forth under subparagraph (C).

(B) APPLICATION.—Each State agency or regulatory body of an Indian tribe seeking to be designated as a benchmark qualified body under subparagraph (A) shall submit to the Secretary not later than 180 days after the date of the enactment of this Act an application therefor in such form and containing such information as the Secretary may require.

(C) SELECTION.—Except as provided in subparagraph (E), the Secretary shall select for designation as benchmark qualified bodies under subparagraph (A) those agencies and regulatory bodies which submit an application under subparagraph (B) and which the Secretary determines in the Secretary's sole discretion have each of the following:

- (i) A reputation as a regulatory and enforcement leader in the gaming industry.
- (ii) A strict regulatory regime.
- (iii) Regulatory and enforcement personnel with recognized expertise.
- (iv) Adequate regulatory and enforcement resources.
- (v) Demonstrated capabilities relevant to the online poker environment.

(D) CONSIDERATIONS.—In making determinations and selections under subparagraph (C) with respect to a State agency or regulatory body of an Indian tribe, the Secretary shall consider the following:

- (i) The number of years the agency or regulatory body has directly regulated casino gaming.
- (ii) The size of the gaming market directly regulated by the agency or regulatory body, or a predecessor entity, as measured by the amount of gross gaming revenue generated by entities directly regulated by the applicant.
- (iii) The size and qualifications of regulatory and gaming staff of the agency or regulatory body.
- (iv) Whether the agency or regulatory body has demonstrated a capability to evaluate complex gaming technologies that raise regulatory and enforcement issues similar to those encountered in the online poker environment.
- (v) The extent to which the laws, regulations, and enforcement structures of the agency or regulatory body have influenced other gaming regulators.
- (vi) The extent to which the agency or regulatory body has experience working with Federal law enforcement authorities, including the Financial Crimes Enforcement Network.

(2) DESIGNATION OF OFFICE OF ONLINE POKER OVERSIGHT.—

(A) IN GENERAL.—Not later than 270 days after the date of the enactment of this Act, the Secretary shall designate the Office of Online Poker Oversight established under section 104(a) as a qualified body that may issue licenses to and regulate the operation of online poker facilities by Indian tribes or entities controlled by States.

(B) CONSTRUCTION.—Subparagraph (A) shall not be construed to require an Indian tribe or an entity controlled by a State seeking a license under this title and submitting an application under section 106(c)(1) to submit such application to the Office of Online Poker Oversight.

(3) OTHER AGENCIES AND REGULATORY BODIES.—

(A) APPLICATION.—Beginning on the date that is 1 year after the date on which the Secretary first designates a benchmark qualified body under paragraph (1), a State agency or regulatory body of an Indian tribe that regulates casino gaming that has not already been designated as a benchmark qualified body under such paragraph and seeks designation as a qualified body shall submit to the Secretary an application therefor in such form, in such manner, and containing such information as the Secretary considers appropriate.

(B) DETERMINATIONS.—Not later than 90 days after receiving an application from an agency or regulatory body under subparagraph (A), the Secretary shall—

(i) determine whether—

(I) the agency or regulatory body meets the standards established under subparagraph (C); and

(II) the applicable State or tribal laws, regulations, and standards to implement the requirements set out in subsections (d) and (g) of section 106 and section 107 are substantially equivalent to those of agencies or regulatory bodies designated as benchmark qualified bodies under paragraph (1);

(ii) if the Secretary makes an affirmative determination under clause (i), designate such agency or regulatory body as a qualified body; and

(iii) notify such agency or regulatory body of the determinations made under clause (i) and whether a designation was made under clause (ii).

(C) STRICT THRESHOLD REQUIREMENT STANDARDS FOR QUALIFIED BODIES.—The Secretary shall prescribe strict threshold requirements for the designation of agencies or regulatory bodies as qualified bodies under this paragraph that are modeled after the traits and qualifications of benchmark qualified bodies, including standards relating to the following:

(i) The size and qualification of staff of the qualified body to ensure the qualified body employs sufficient number of enforcement agents with experience in gaming regulatory enforcement areas to discharge its intended functions and has the sophistication and resources necessary to evaluate issues unique to the Internet environment.

(ii) The length of time the qualified body has regulated other forms of gaming and the size of the gaming market regulated to ensure designations of only those

regulatory bodies that have a history of demonstrated regulatory enforcement and oversight commensurate with the responsibilities imposed under this title.

(iii) The qualified body's experience and willingness to work with Federal authorities, including the Financial Crimes Enforcement Network.

(iv) The capacity and experience of the qualified body in conducting rigorous suitability reviews under section 106.

(v) The adequacy of enforcement and regulatory authorities for the qualified body under the law of the applicable State or Indian tribe, including, at a minimum, requirements and authorities on the following:

(I) To investigate the suitability of each person required to be found suitable in connection with an application or license under this title.

(II) To require licensees to maintain appropriate procedures to ensure the compliance of licensees with the provisions of this title and the regulations prescribed thereunder.

(III) To examine any licensee and any books, papers, records, or other data of licensees and significant vendors relevant to any recordkeeping or reporting requirements imposed by the agency or regulatory body under this title.

(IV) To summon a licensee, an applicant, a significant vendor, an officer or employee of a licensee, applicant, or significant vendor (including a former officer or employee), or any person having possession, custody, or care of the reports and records required by the agency or regulatory body as a qualified body under this title to appear before the agency or regulatory body at such time and place named in the summons, to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to any investigation in connection with the enforcement of this title or any application for a license under this title.

(V) To enforce or direct enforcement of a summons in State or tribal court, as the case may be.

(VI) To investigate any violation of a provision of this title, any applicable regulation prescribed under this title, and any other violation of applicable State or tribal law relating to the operation of an online poker facility.

(VII) To conduct continuing reviews of applicants, licensees, and significant vendors and the operation of online poker facilities by use of technological means, on-site observation of facilities, including servers, or other reasonable means to assure compliance with the provisions of this title and any applicable regulation prescribed thereunder.

(VIII) To impose civil penalties for violations of this title and any

applicable regulation prescribed thereunder or applicable order issued thereunder, including State or tribal law described under this subsection.

(IX) To ensure that the hardware, software, and communications equipment, randomness, configuration, and network security of the online poker facility are tested by an independent testing laboratory.

(X) To resolve disputes between licensees and the individuals participating in online poker via the online poker facilities of the licensees.

(vi) Such other standards as the Secretary considers relevant to the ability of an agency or regulatory body to serve as an effective qualified body.

(4) NONQUALIFYING STATE AND TRIBAL REGULATORY AUTHORITIES DUE TO LIMITED EXPERIENCE OR CONFLICTS.—

(A) IN GENERAL.—The Secretary may not approve an application from a State agency or regulatory body of an Indian tribe under paragraph (1) or (3) if—

(i) the agency or regulatory body, or predecessor entity, has not directly regulated casino gaming involving gross gaming revenues of at least 0.3 percent of total United States casino gaming revenue for at least 3 out of the 5 years preceding the date of the application;

(ii) the agency or regulatory body is located in a State or Indian lands that—

(I) has not opted in under section 108 and has not demonstrated an intent to opt in under such section; or

(II) has not opted in under such section and has demonstrated an intent to opt in under such section but has failed to opt in under such section during the 1-year period beginning on the date of the agency's or regulatory body's application; or

(iii) the members of the agency or regulatory body are selected or controlled, directly or indirectly, by a person that has any ownership interest in an applicant, licensee, or significant vendor under this title or an Internet gambling facility, unless—

(I) such applicant or licensee is licensed by the Secretary; or

(II) such significant vendor is certified as suitable by the Secretary (and remains so certified at all times while providing services as a significant vendor to any licensee under this title).

(B) NON-CONTROLLING INVESTMENTS.—A non-controlling investments of a State, Indian tribe, or local government pension, retirement, annuity, or endowment fund shall not be considered an ownership interest for purposes of subparagraph (A)(iii).

(5) WITHDRAWAL OF DESIGNATION.—

(A) IN GENERAL.—Beginning on the date that is 1 year after the date on which the

Secretary prescribes final regulations under this title, the Secretary may, after providing at least 60 days notice to a qualified body of the Secretary's intent to do so, withdraw the designation of a qualified body under this section if the Secretary determines that—

(i) the qualified body is not in compliance with the requirements of this title or regulations prescribed thereunder; or

(ii) the qualified body is not in compliance with the conditions under which the qualified body was designated, including paragraph (4)(A)(iii).

(B) OPPORTUNITY TO COMPLY.—

(i) IN GENERAL.—The Secretary may provide a qualified body who receives notice under subparagraph (A) with an opportunity to come into compliance as specified in that notice for a period of not more than 90 days.

(ii) EXTENSION.—The Secretary may extend the period in clause (i) by not more than 180 additional days if the qualified body has made substantial progress toward compliance as of the expiration of the first 90 day period.

(C) EFFECT OF NOTICE.—The Secretary may prohibit a qualified body that receives notice under subparagraph (A) from issuing new licenses under this title until the Secretary determines that the qualified body is in compliance with the requirements of this title and regulations prescribed thereunder.

(D) RIGHT TO APPEAL.—A State agency or regulatory body of an Indian tribe that has had its designation as a qualified body withdrawn under subparagraph (A) or (B) may seek judicial review of such withdrawal under chapter 7 of title 5, United States Code.

(6) ACTION UPON WITHDRAWAL OF DESIGNATION.—

(A) IN GENERAL.—Not later than 30 days after the date on which the Secretary withdraws a designation of a State agency or regulatory body of an Indian tribe under paragraph (5), each person with a license issued by the agency or regulatory body shall —

(i)(I) cease offering, accepting, and providing services with respect to bets or wagers from persons located in the United States under such license; and

(II) return all customer deposits of United States customers, or place those sums the return of which to United States customers is not feasible due to change in customer address, bank details, or similar difficulty in escrow in an account with a financial institution in the United States for safekeeping and orderly disposition by the Secretary; or

(ii) apply for a new license from a different qualified body.

(B) INTERIM OPERATION.—If a person applies for a new license under clause (ii) of subparagraph (A), the person may continue the activities described in clause (i)(I) of

such subparagraph until final action is taken on the license application by the qualified body.

(C) INTERIM REGULATORY OVERSIGHT.—

(i) IN GENERAL.—Until final action is taken under subparagraph (B) with respect to a person, the Secretary shall have enforcement and regulatory authority over the licensed activities of such person.

(ii) DELEGATION.—The Secretary may delegate enforcement and regulatory authority under clause (i) to such qualified body as the Secretary considers appropriate, with the consent of the qualified body.

(b) Oversight of Qualified Bodies.—The Secretary may investigate and take such action as the Secretary considers appropriate with respect to any qualified body that appears, based upon the Secretary's own inquiry or based upon credible information provided by other qualified bodies, applicants, licensees, or law enforcement officials, to be deficient or substantially less rigorous than other qualified bodies in the discharge of its responsibilities under this title.

SEC. 106. ESTABLISHMENT OF LICENSING PROGRAM ONLY FOR ONLINE POKER.

(a) Commerce Responsibilities and Powers.—The Secretary shall have responsibility and authority for the following activities:

(1) Reviewing and qualifying agencies and regulatory bodies under section 105.

(2) Exercising oversight over qualified bodies to ensure that qualified bodies—

(A) comply with the requirements of this title; and

(B) carry out their regulatory and enforcement functions under this title with appropriate diligence.

(3) Investigating and taking appropriate remedial action with respect to any qualified body under section 105.

(4) Prescribing such regulations as may be necessary to administer and enforce the provisions of this title, including issuing regulations establishing rules and procedures for dealing with sums placed in escrow under subsection (1)(7), section 105(a)(6)(A)(i)(II), and section 114(b)(1)(E).

(5) Employing enforcement agents with sufficient training and experience to administer the requirements of this title and the regulations prescribed thereunder.

(6) Enforcing the requirements of this title by all appropriate means provided under this title and other provisions of law.

(b) Online Poker Facility Licensing Program.—

(1) AUTHORITY TO ISSUE LICENSES LIMITED TO ONLINE POKER.—A qualified body may issue licenses under this title only for the operation of online poker facilities.

(2) AUTHORITY TO OPERATE ONLINE POKER FACILITY UNDER VALID LICENSE.—

(A) IN GENERAL.—Notwithstanding any other provision of law and subject to the provisions of this title, a licensee may accept a bet or wager with respect to online poker from an individual located in the United States and may offer related services so long as the license of the licensee issued under this title remains in good standing.

(B) ONLY ONE LICENSE REQUIRED.—Nothing in this title may be construed to require a person to obtain a license from more than one qualified body in order to operate an online poker facility under this title.

(C) SIGNIFICANT VENDORS.—

(i) IN GENERAL.—Except as provided in clause (ii), if a person seeks a certificate of suitability from a qualified body to provide services to a licensee or applicant as a significant vendor with respect to an online poker facility, such person shall not be required to obtain a license under this title to provide such services with respect to that online poker facility.

(ii) EXCEPTION.—If a qualified body determines that requiring a person described in clause (i) to seek a license is necessary to prevent evasion of any provision of this title, and requiring so would otherwise be consistent with the provisions of this title, such qualified body may require such person to seek a license under this title instead of a certificate of suitability.

(3) OPERATION OUTSIDE THE UNITED STATES.—

(A) LIMITATION.—A licensee or an affiliate of a licensee may not operate an Internet gambling facility or online poker facility that accepts a bet or wager from an individual located outside of the United States unless—

(i) the entity that operates such Internet gambling facility or online poker facility is separate from the entity that is licensed to operate an online poker facility under this title; and

(ii) there is no commingling of players, funds, or records of such Internet gambling facility or online poker facility with the players, funds, or records of such online poker facility licensed under this title (except as necessary for consolidated financial or tax reporting or compliance with other applicable law).

(B) CONSTRUCTION.—Nothing in this title shall be construed to authorize—

(i) a licensee or a United States affiliate thereof to accept a bet or wager from an individual located in any jurisdiction outside the United States; or

(ii) a licensee or a foreign affiliate thereof to accept a bet or wager from an individual located in any jurisdiction outside the United States that prohibits the licensee or a foreign affiliate from accepting such bet or wager.

(c) Application for License.—

(1) APPLICATION.—A person seeking to operate an online poker facility under this title shall submit to a qualified body an application for a license therefor at such time, in such form, and in such manner as the qualified body receiving the application considers appropriate.

(2) ELEMENTS.—Each application submitted under paragraph (1) shall include such information as the qualified body receiving the application considers appropriate, including at a minimum the following:

(A) Complete financial information about the applicant.

(B) Documentation showing the organization of the applicant and all related businesses and affiliates.

(C) The criminal and financial history of—

(i) the applicant;

(ii) each of the senior executives and directors of the applicant;

(iii) any other person who is in control of the applicant; and

(iv) such other persons as the qualified body considers appropriate.

(D) Such other information as may be necessary for the suitability analysis required under subsection (d).

(E) Disclosure of all other applications for licenses previously or simultaneously submitted under paragraph (1) to other qualified bodies and whether those applications are pending, were granted, or were denied.

(F) A detailed description of the applicant's plan for complying with all applicable requirements and regulations prescribed pursuant to this title, with particular emphasis on the applicant's ability to comply with the regulations prescribed under subsection (g).

(G) A certification by the applicant that the applicant consents to personal jurisdiction over the applicant by Federal courts and in the courts of the State or Indian tribe of the qualified body to which the applicant has applied with respect to a civil action relating to the operation of an online poker facility.

(3) REPORTS.—

(A) IN GENERAL.—Each qualified body shall report all applicants for licensure and the dispositions of their applications to the Secretary promptly upon disposition of each application or in such intervals as the Secretary may prescribe.

(B) CONTENTS.—Each report under subparagraph (A) shall include such information or documentation as the Secretary may require.

(d) Standards for License Issuance; Suitability Qualifications and Disqualification Standards.

(1) SUITABILITY FOR LICENSING.—

(A) IN GENERAL.—No applicant shall be eligible to obtain a license under this title unless a qualified body, with whom the applicant has filed an application for a license, has determined, upon completion of a background check and investigation, that the applicant, any person considered to be in control of the applicant, all significant vendors of the applicant, and any other person determined by the qualified body as having significant influence on the applicant are suitable for licensing.

(B) APPLICATION AS REQUEST FOR DETERMINATION OF SUITABILITY.—An application for a license submitted to a qualified body under this title constitutes a request for a determination of the general character, integrity, and ability to participate or engage in or be associated with an online poker facility, as appropriate, of the applicant, any person considered to be in control of the applicant, all significant vendors of the applicant, and all other persons determined by the qualified body as having significant influence on the applicant.

(C) ASSOCIATES.—

(i) IN GENERAL.—If an entity undergoing a determination of suitability under this paragraph is a corporation, partnership, or other business entity, a background check and investigation shall be carried out by the applicable qualified body with respect to the president or other chief executive of the corporation, partnership, or business entity and such other partners or senior executives and directors or shareholders of the corporation, partnership, or entity as the qualified body considers appropriate.

(ii) MINIMUM DETERMINATION.—In carrying out clause (i), the qualified body shall, at a minimum, carry out a suitability review of the 5 individuals receiving the most compensation (whether in the form of salary, bonus, dividends, distributions, disbursement of profits, or otherwise) from the entity, any person that controls the entity, and such other individuals or entities as the qualified body considers appropriate.

(D) PARITY OF INVESTIGATION AND ANALYSIS.—

(i) DILIGENCE WITH RESPECT TO SIGNIFICANT VENDORS AND AFFILIATES.—Each investigation and analysis of the suitability of a person with respect to an application for a license under this title, other than the applicant for such license, shall be carried out with the same degree of diligence as the investigation and analysis of the suitability of the applicant.

(ii) STRINGENCY WITH RESPECT TO CASINO GAMING FACILITIES.—Each qualified body that also issues licenses to casino gaming facilities shall ensure that each investigation and analysis of the suitability of a person carried out by the qualified body under this subsection is no less stringent than a suitability review carried out by the qualified body for the licensing of casino gaming facilities.

(2) **SUITABILITY STANDARDS.**—For purposes of this title, an applicant and any other person subject to a determination of suitability under paragraph (1) may only be considered suitable under this title if the applicant or person demonstrates to the applicable qualified body by clear and convincing evidence that the applicant or person—

(A) is a person of good character, honesty, and integrity;

(B) is a person whose prior activities, criminal record, if any, reputation, habits, and associations do not—

(i) pose a threat to the public interest or to the effective regulation and control of online poker facilities; or

(ii) create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of online poker facilities or the carrying on of the business and financial arrangements incidental to such facilities;

(C) is capable of and likely to conduct the activities for which the applicant is licensed or receives a certificate of suitability in accordance with the provisions of this title, any regulations prescribed under this title, and all other applicable laws;

(D) in the case of an applicant, has or guarantees acquisition of adequate business competence and experience in the operation of casino gaming facilities, online poker facilities, or Internet gambling facilities;

(E) in the case of an applicant, has or will obtain sufficient financing for the nature of the proposed operation and from a suitable source; and

(F) has disclosed to the qualified body all known affiliations or relationships, whether direct or indirect, with persons and assets of persons described by section 114(b)(2).

(3) **UNSUITABLE.**—An applicant or any other person may not be determined to be suitable under this subsection if the applicant or such person—

(A) has failed to provide information and documentation material to a determination of suitability for licensing under paragraph (1);

(B) has supplied information which is untrue or misleading as to a material fact pertaining to any such determination;

(C) has been convicted of an offense that is punishable by imprisonment of more than 1 year;

(D) is delinquent in the payment of any applicable Federal or State tax, tax penalty, addition to tax, or interest owed to a jurisdiction in which the applicant or person operates or does business, unless such payment has been extended or is the subject of a pending judicial or administrative dispute;

(E) has not certified in writing, pursuant to subsection (c)(2)(G), that the person submits to personal jurisdiction in the United States;

(F) knowingly accepts or knowingly has accepted bets or wagers on sporting events from persons located in the United States in violation of a provision of Federal or State law;

(G) has affiliated with any person that knowingly accepts or knowingly has accepted bets or wagers on sporting events from persons located in the United States in violation of a provision of Federal or State law; or

(H) fails to comply with such other standard as the applicable qualified body considers appropriate.

(4) ONGOING REQUIREMENT.—A licensee (and any other person who is required to be determined to be suitable for licensing in connection with such licensee) shall meet the standards necessary to be suitable for licensing or to receive a certificate of suitability, as the case may be, throughout the term of the license.

(5) CERTIFICATE OF SUITABILITY FOR SIGNIFICANT VENDORS.—

(A) IN GENERAL.—If a qualifying body determines under paragraph (1) that a significant vendor of an applicant is suitable under such paragraph, the qualifying body shall issue a certificate to such vendor that certifies the suitability of such vendor.

(B) REVOCATION OF CERTIFICATE.—A qualified body that issues a certificate to a significant vendor under subparagraph (A) shall revoke the certificate if at any time the significant vendor no longer meets the standards necessary for a determination of suitability.

(C) RELIANCE ON CERTIFICATE.—A qualified body may, but need not, rely upon a certificate issued under subparagraph (A) to a significant vendor with respect to one application in the review of the same significant vendor in other license applications.

(D) CERTIFICATES ISSUED BY OTHER QUALIFIED BODIES.—A qualified body may, but need not, accept a certificate issued to a significant vendor by another qualified body as evidence of the suitability of the significant vendor.

(6) OTHER VENDORS.—

(A) NOTICE.—A licensee shall promptly notify the qualified body that issued the license to the licensee of all persons that are not significant vendors that—

(i) direct, provide, or solicit customers to or for the licensee's online poker facility, or materially assist in any of those tasks, in return for a commission or other fee;

(ii) hold themselves out to the public as offering bets or wagers on the licensee's behalf;

(iii) offer bets or wagers under their own names or brands but using and relying on the licensee's online poker facilities;

(iv) license trademarks, trade names, service marks, or other similar intellectual

property to the licensee; or

(v) own a substantial interest in or control a person described in clause (i), (ii), (iii), or (iv).

(B) **SUITABILITY OF OTHER VENDORS AND PERSONS.**—A qualified body that reviews an application of an applicant for a license or issues a license to a licensee may, at the sole discretion of the qualified body and on a case-by-case basis, require as a condition of such license that a person meet suitability requirements under paragraph (1) if the person—

(i) is described in subparagraph (A) with respect to the applicant or licensee;

(ii) provides services to an applicant or licensee and the qualified body determines that, with respect to such services, there is a substantial risk of circumvention of the suitability requirements applicable to significant vendors; or

(iii) is associated with the applicant or licensee or one of the significant vendors of the applicant or licensee and the qualified body determines such person may pose a threat to the integrity of online poker facilities operated by the applicant or licensee.

(C) **INFORMATION.**—A qualified body may require such information from an applicant, licensee, significant vendor or other person identified in this paragraph as the qualified body considers necessary to carry out this paragraph.

(7) **ENFORCEMENT ACTIONS.**—

(A) **IN GENERAL.**—If the Secretary or the qualified body that issued a license to a licensee finds that the licensee, or any other person that is subject to a required determination of suitability in connection with such licensee, ceases to meet the suitability requirements of this subsection at any time during the tenure of the license, the Secretary or the qualified body may take action to protect the public interest, including, if the Secretary or qualified body considers necessary, the suspension or termination of the license.

(B) **IMPOSITION OF CONDITIONS INCLUDING REMOVAL OF PARTIES.**—Notwithstanding a determination under subparagraph (A), the Secretary or the qualified body that issued a license to a licensee may allow the licensee to continue engaging in licensed activities by imposing conditions on the person to which subparagraph (A) is applicable under penalty of revocation or suspension of a license or certificate of suitability, including—

(i) the identification of any person determined to be unsuitable; and

(ii) the establishment of appropriate safeguards to ensure such person is excluded from any management or involvement in operation of the licensed activities.

(C) **SPECIAL RULE FOR ENFORCEMENT OF PROHIBITION ON UNLAWFUL SPORTS**

WAGERING.—If the Secretary or a qualified body finds that a licensee is no longer suitable under this subsection because such licensee has accepted bets or wagers as described in paragraph (3)(F) or has affiliated as described in paragraph (3)(G), the Secretary or the qualified body, as the case may be, shall revoke the license of such licensee in addition to the imposition of such other penalties as the Secretary or qualified body considers appropriate under this title.

(8) ADMINISTRATIVE PROVISIONS.—

(A) BACKGROUND CHECK AND INVESTIGATION.—Each qualified body shall establish standards and procedures for conducting background checks and investigations for purposes of this subsection.

(B) PRIVILEGE.—Any written or oral statement made in the course of an official proceeding of the Secretary or a qualified body, by any member thereof, or any witness testifying under oath which is relevant to the purpose of the proceeding and relates to the review of an application for a license under this title, is privileged and shall not be admissible in any Federal or State court in a civil action to prove defamation.

(C) ADDITIONAL PRIVILEGE.—Notwithstanding section 552 of title 5, United States Code, or any other Federal, State, or tribal law to the contrary, any communication or document of an applicant, licensee, significant vendor, or affiliate thereof, which is made or transmitted pursuant to this title to the Secretary or a qualified body or any of their agents or employees, except information that is already public, shall be privileged and shall not be disclosed by the Secretary or the qualified body without the prior written consent of the applicant, licensee, significant vendor, or affiliate thereof (as applicable), or pursuant to a lawful court order, grand jury subpoena, or similar procedure. To the extent practicable and not prohibited by any other applicable provision of Federal, State, or tribal law, the Secretary or qualified body shall provide timely notice of the proceedings to the applicant, licensee, significant vendor, or affiliate thereof (as applicable).

(D) PRESERVATION OF PRIVILEGE RECOGNIZED UNDER OTHER PROVISIONS OF LAW.—Any privilege recognized under any other provision of Federal, State, or tribal law, including attorney-client, physician-patient, and accountant-client privileges, shall not be waived or lost because a document or communication otherwise protected by the privilege is disclosed to the Secretary or a qualified body under this title.

(E) CONFIDENTIALITY.—Any communication or document, except information that is already public, shall be treated as confidential and may not be disclosed, in whole or part, by the Secretary or a qualified body without a lawful court order or as otherwise expressly required by law, if the communication or document is—

(i) required by the Secretary or qualified body to be disclosed by the applicant, licensee, or significant vendor, including applications, financial or earnings information, and criminal records, whether of the applicant or licensee or of any affiliate, employee, officer, director or significant vendor thereof, or of any other

third party;

(ii) prepared or obtained by an agent or employee of the Secretary or qualified body that contains information described in clause (i); or

(iii) submitted by the applicant, licensee, or significant vendor in connection with a pending application or existing license.

(e) Assessments for Administrative Expenses.—

(1) USER FEES.—

(A) IN GENERAL.—The cost of administering this title with respect to each applicant, licensee, and significant vendor, including the cost of any review or examination of a licensee or its significant vendors to ensure compliance with the terms of the license and this title, shall be assessed by the qualified body receiving an application or issuing a license against the applicant, licensee, or significant vendor, as the case may be, by written notice in an amount that the qualified body determines is necessary to meet the qualified body's expenses in carrying out such administration, review, or examination.

(B) EXPENSES FOR REVIEW OR EXAMINATION.—Expenses that are attributable to review or examination of a particular applicant, licensee, or significant vendor shall be assessed under subparagraph (A) against that applicant, licensee, or significant vendor.

(C) EXPENSES FOR GENERAL ADMINISTRATION.—Expenses for general administration shall be assessed against all licensees equally.

(D) USER FEES ESTABLISHED BY SECRETARY.—

(i) IN GENERAL.—The Secretary may establish user fees to be paid by applicants, licensees, and significant vendors in amounts the Secretary determines necessary to meet the Secretary's cost of administering this title.

(ii) COLLECTION BY QUALIFIED BODIES.—Qualified bodies shall collect user fees established under clause (i) from applicants, licensees, and significant vendors and turn them over promptly to the Secretary.

(iii) DISPOSITION OF USER FEES.—Amounts assessed by the Secretary as user fees under clause (i) shall—

(I) be available to the Secretary to cover expenses incurred by the Secretary in carrying out the provisions of this title; and

(II) not be construed to be Government funds or appropriated monies, or subject to apportionment for the purposes of any other provision of law.

(E) DISPOSITION OF USER FEES.—Except as provided in subparagraph (D), amounts assessed by a qualified body as user fees under this paragraph shall—

(i) be available to the qualified body to cover expenses incurred by the qualified body in carrying out the provisions of this title; and

(ii) except in the case of the Office of Online Poker Oversight established under section 104, not be construed to be Government funds or appropriated monies, or subject to apportionment for the purposes of any other provision of law.

(F) COLLECTION.—If a licensee or significant vendor fails to pay a user fee to a qualified body under this paragraph after the assessment of the fee has become final—

(i) the qualified body may recover the amount assessed by action in a court of the State or Indian tribe of the qualified body or in the United States district court in the State in which such qualified body is located, along with any costs of collection and attorney fees; and

(ii) such failure may be grounds for denial of an application for a license under this title or revocation of a license or certificate of suitability under this title.

(G) PAYMENT OF SIGNIFICANT VENDOR USER FEES BY APPLICANTS AND LICENSEES.—A user fee assessed against a significant vendor may be paid by an applicant or licensee on behalf of the significant vendor.

(2) DIRECT AND EXCLUSIVE OBLIGATION OF LICENSEE.—With respect to a licensee, a user fee shall be the direct and exclusive obligation of the licensee and may not be deducted from amounts available as deposits to any person placing a bet or wager with the licensee.

(f) Approval of License.—

(1) IN GENERAL.—Except as provided in paragraph (2), a qualified body may issue to an applicant a license under this title for the operation of an online poker facility if the applicant meets the criteria established by the qualified body under this title.

(2) LIMITATION ON ELIGIBLE LICENSEES.—A qualified body may only issue a license under this title to the following:

(A) An applicant who—

(i) is, or owns or controls, a company that operates a casino gaming facility, a qualified race track, or a qualified card room; and

(ii) has owned or controlled such facility, race track, or card room (or the company that operates such facility, race track, or card room) throughout the 180-day period ending on the date of the enactment of this Act.

(B) An applicant who is owned or controlled by a person who—

(i) is or who owns or controls a company that operates a casino gaming facility, a qualified race track, or a qualified card room; and

(ii) has owned or controlled such facility, race track, or card room (or the company that operates such facility, race track, or card room) throughout the 180-day period ending on the date of the enactment of this Act.

(C) An applicant who, throughout the 180-day period ending on the date of the enactment of this Act, under a license issued by a State or Indian tribe, manufactured

and supplied gaming devices to casino gaming facilities with not fewer than 500 slot machines.

(D) Such other applicants as the Secretary determines appropriate under paragraph (3).

(3) EXPANSION OF LICENSEES ONLY IF NO RISK TO PUBLIC.—Beginning on the date that is 2 years after the date of first issuance specified in section 114(a), the Secretary may, by rule, authorize the issuance of licenses to applicants under paragraph (2)(D) if the Secretary determines, after providing the public with notice and an opportunity to comment, that such authorization will not increase the risk that the regulations prescribed under subsection (g) will not be satisfied by such applicants.

(4) AUTHORITY OF SECRETARY TO REVOKE LICENSES.—

(A) IN GENERAL.—Notwithstanding any license or certificate of suitability issued by a qualified body, the Secretary may suspend or revoke such license or certificate if the Secretary has reason to believe that the recipient does not meet the suitability requirements established under subsection (d) or, as applicable, any other requirement imposed on a licensee under this title.

(B) NO AUTHORITY TO OVERTURN DENIALS AND TERMINATIONS.—The Secretary may not overturn a decision by a qualified body (other than the Office of Online Poker Oversight) to deny or to terminate a license or to deny or revoke a certificate of suitability.

(5) CONFLICTS BETWEEN QUALIFIED BODIES.—If a qualified body denies a license, terminates a license, denies a certificate of suitability, or revokes a certificate of suitability to a person and within 1 year of such denial, termination, or revocation another qualified body grants such person a license or certificate of suitability, the Secretary shall—

(A) commence a review of such license or certificate of suitability; and

(B) not later than 90 days after such commencement, determine whether to act under paragraph (4).

(6) CONTROL DEFINED.—In this subsection, the term “control”, with respect to a person, means the possession, directly or indirectly, of the power to direct or influence the direction of the management or policies of the person, whether through the ownership of voting securities, through a management, executive officer, or board position, by shareholders or similar agreement, or otherwise.

(g) Safeguards Required of Licensee.—

(1) IN GENERAL.—No qualified body shall issue a license under this title unless the qualified body—

(A) prescribes regulations that prohibit a person from receiving or retaining a license under this title unless the person maintains or requires mechanisms so that the requirements described in paragraph (2) are met with respect to the operation of an

online poker facility; and

(B) reviews the applicant's ability to comply with the requirements of this subsection, including by testing the applicant's systems and software, or by mandating such testing by an independent, qualified entity.

(2) SAFEGUARDS.—The requirements described in this paragraph are as follows:

(A) PROHIBITION ON UNDERAGE GAMING.—Appropriate safeguards to ensure, to a reasonable degree of certainty, that the individual placing a bet or wager is not younger than 21 years of age, including by the use of biometric or other technologies of materially equivalent reliability at the time of registration and all logons.

(B) PROHIBITED LOCATIONS.—Appropriate safeguards to ensure, to a reasonable degree of certainty, that the individual placing a bet or wager is physically located in a jurisdiction that has opted in under section 108 at the time the bet or wager is placed, including by the use of Global Positioning System or other location technologies of materially equivalent reliability in combination with screening of Internet Protocol addresses or similar techniques at the time of registration and all log ons.

(C) COLLECTION OR REPORTING OF CUSTOMER TAXES.—Appropriate mechanisms to ensure, to a reasonable degree of certainty, that all taxes relating to online poker from persons engaged in bets or wagers relating to such online poker are collected or reported, as required by law, at the time of any payment of proceeds of such bets or wagers.

(D) COLLECTION OR REPORTING OF TAXES OF LICENSEE.—Appropriate mechanisms to ensure that all taxes relating to the operation of an online poker facility from any licensee are collected as required by law and that adequate records to enable later audit or verification are maintained.

(E) REPORTING OF FEES OF LICENSEE.—Appropriate mechanisms to ensure that adequate records are maintained to enable later audit or verification that the licensee has paid all fees required under this title.

(F) SAFEGUARDS AGAINST FINANCIAL CRIME.—Appropriate safeguards to prevent, to a reasonable degree of certainty, fraud, money laundering, and terrorist financing.

(G) SAFEGUARDS AGAINST COMPULSIVE PLAY.—Appropriate safeguards to ensure, to a reasonable degree of certainty, compliance with the requirements of section 107(b).

(H) PRIVACY SAFEGUARDS.—Appropriate safeguards to protect, to a reasonable degree of certainty, the privacy and online security of any person engaged in bets or wagers with the licensee's online poker facility.

(I) PAYMENT OF ASSESSMENTS.—Appropriate mechanisms to ensure that any user fee required under subsection (e) is paid to the qualified body.

(J) HONEST GAMES.—Appropriate safeguards to ensure, to a reasonable degree of certainty, that online poker games are fair and honest, and to prevent, to a reasonable

degree of certainty, cheating, including collusion, and use of cheating devices, including use of software programs (sometimes referred to as “bots”) that make bets or wagers according to algorithms.

(K) SEGREGATION OF PLAYER FUNDS.—Appropriate safeguards to ensure player funds are held in accounts segregated from the funds of licensees and are otherwise protected from corporate insolvency, financial risk, or criminal or civil actions against the licensee.

(L) OTHER REQUIREMENTS.—Such other mechanisms and safeguards as the qualified body may establish by regulation.

(h) Location of Remote Gaming Equipment.—

(1) WITHIN THE UNITED STATES.—A licensee shall maintain its remote gaming equipment within the territory of the United States throughout the term of its license.

(2) WITHIN TERRITORY OF QUALIFIED BODY.—A qualified body may require a licensee of the qualified body to locate the remote gaming equipment of the licensee within the territory of the State or Indian tribe of the qualified body if the qualified body determines that such requirement will advance the regulatory interests of this title.

(i) License Is a Privilege Not a Right.—

(1) IN GENERAL.—A decision by a qualified body not to grant a person a license or certificate of suitability, or to terminate a license or revoke a certificate of suitability, is not reviewable under the law of any jurisdiction other than the jurisdiction of the qualified body.

(2) APPEAL.—With respect to a decision described in paragraph (1) of a qualified body, the State or Indian tribe of the jurisdiction of the qualified body may, but need not, provide an opportunity to appeal such decision.

(j) Term, Renewal, and Transfer of License.—

(1) TERM.—Any license issued under this title shall be issued for a 5-year term beginning on the date of issuance.

(2) RENEWAL.—A license may be renewed in accordance with requirements prescribed by the qualified body that issued the license under this title.

(3) TRANSFER.—A transfer of a license, change of control of a licensee, or change in significant vendor shall require prior approval by the qualified body that issued the license. The qualified body shall at a minimum ensure the suitability requirements of subsection (d) continue to be satisfied before approving any such transfer or change.

(k) Administrative Provisions.—

(1) DETERMINATION OF ONLINE POKER.—

(A) INITIAL DETERMINATION BY QUALIFIED BODY.—A determination whether a game, hand, tournament, or other contest of a licensee is online poker shall be made in

the first instance by the qualified body that issued the license to such licensee under this title.

(B) CHALLENGES.—

(i) IN GENERAL.—A licensee or qualified body may challenge whether a game, hand, tournament, or other contest of another licensee is online poker.

(ii) CHALLENGE MADE WITH SECRETARY.—A challenge made under clause (i) shall be made with the Secretary.

(iii) DETERMINATION MADE BY SECRETARY WITHIN 30 DAYS.—If a challenge is made under clause (i), the Secretary shall make a determination whether the game, hand, tournament, or other contest is online poker not later than 30 days after the date on which the challenge is made.

(iv) OPERATION UNTIL DETERMINATION.—A licensee that offers a game, hand, tournament, or other contest that is challenged under clause (i) may continue to offer such game, hand, tournament, or other contest until the Secretary makes a determination under clause (iii).

(C) APPEALS.—

(i) IN GENERAL.—Not later than 30 days after the date on which the Secretary makes a determination under subparagraph (B)(iii), a licensee or a qualified body may appeal such determination under chapter 7 of title 5, United States Code.

(ii) OPERATION PENDING APPEAL.—During the period in which a game, hand, tournament, or other contest is being challenged through an appeal under clause (i), the United States District Court for the District of Columbia may allow a licensee to continue offering the game, hand, tournament, or other contest in full compliance with the terms of its existing license and any other conditions the court considers necessary, if the court determines that—

(I) the licensee has a reasonable likelihood of success on the merits; and

(II) allowing the licensee to continue offering the challenged game, hand, tournament, or other contest while the appeal is pending will not threaten the public interest.

(2) CHALLENGES UNDER STATE LAW.—Except as provided in paragraph (1) and unless otherwise specifically provided in this title, actions taken by a qualified body may be challenged by applicants and licensees only as permitted under the law of the State or Indian tribe in which the qualified body is located.

(3) SUMMONS.—

(A) IN GENERAL.—The Secretary may issue a summons with respect to an applicant or licensee necessary to carry out the provisions of this title.

(B) PRODUCTION AT DESIGNATED SITE.—A summons issued by the Secretary

pursuant to this paragraph may require that books, papers, records, or other data stored or maintained at any place be produced at any—

- (i) business location of a licensee or applicant for a license;
- (ii) designated location in the State or Indian lands of the applicable qualified body; or
- (iii) designated location in the District of Columbia.

(C) NO LIABILITY FOR EXPENSES.—The Secretary shall not be liable for any expense incurred in connection with the production of books, papers, records, or other data under this paragraph.

(D) SERVICE OF SUMMONS.—Service of a summons issued under this subsection may be by registered mail or in such other manner calculated to give actual notice as determined by the Secretary.

(E) AUTHORIZATION TO INVOKE AID OF COURTS.—The Secretary may invoke the aid of any court of the United States to compel compliance with the summons within the jurisdiction of which—

- (i) the investigation which gave rise to the summons or the examination is being or has been carried on;
- (ii) the person summoned is an inhabitant; or
- (iii) the person summoned carries on business or may be found.

(F) POWER OF COURTS TO COMPEL APPEARANCE.—The court may issue an order requiring the person summoned to appear before the Secretary—

- (i) to produce books, papers, records, and other data;
- (ii) to give testimony as may be necessary to explain how such material was compiled and maintained;
- (iii) to allow the Secretary to examine the business of a licensee; and
- (iv) to pay the costs of the proceeding.

(G) CONTUMACY OR REFUSAL.—Any failure to obey the order of the court under this paragraph may be punished by the court as a contempt thereof. All process in any case under this subsection may be served in any judicial district in which such person may be found.

(I) Disciplinary Action.—

(1) IN GENERAL.—A licensee may be subject to disciplinary action, including the imposition of civil penalties or suspension or revocation of its license, by a qualified body that issued a license to the licensee or by the Secretary if the licensee fails to comply with any provision of this title, any regulation prescribed thereunder, or any other applicable provision of State or tribal law.

(2) INITIATING AGENCY.—Only the Secretary or the qualified body which granted the license to a licensee may initiate disciplinary action under this title against the licensee.

(3) SAVINGS PROVISION.—Nothing in this subsection shall be construed to limit or alter the application of any law other than this title to a licensee or affiliated person, or to effect the enforcement of such law by the appropriate law enforcement administrative, or regulatory entity.

(4) DISCIPLINARY PROCEDURES.—

(A) IN GENERAL.—A qualified body shall commence disciplinary action under this subsection against a licensee upon service of a formal written complaint upon the licensee, with a copy forwarded to the Secretary, that sets forth the grounds for the disciplinary action and the proposed penalty that is being sought, which may include any or all of the imposition of a fine as provided pursuant to subsection (m)(1) or limitation, condition, suspension or revocation of the license.

(B) IN ACCORDANCE WITH LAW OF JURISDICTION OF QUALIFIED BODY.—The process for disciplinary action under this subsection shall proceed according to the law of the jurisdiction of the applicable qualified body.

(5) FINALITY OF ACTION AND APPEALS.—

(A) FINALITY.—Any disciplinary action under this subsection shall be treated as a final action.

(B) ACTION BY QUALIFIED BODIES.—A licensee aggrieved by disciplinary action under this subsection by a qualified body may file an appeal in the jurisdiction where the qualified body taking such action is located only to the extent permitted by the law of such jurisdiction.

(6) PENDING APPEAL.—During the period in which a suspension or revocation of an existing license is being challenged through a pending judicial proceeding, the court handling the challenge may allow the licensee to continue offering bets and wagers in full compliance with the terms of its existing license and any other conditions the court considers necessary, if the court determines that—

(A) the appellant has a reasonable likelihood of success on the merits; and

(B) allowing the appellant to continue offering bets and wagers while the appeal is pending will not threaten the public interest.

(7) RETURN OF CUSTOMER FUNDS.—If a licensee's license is revoked and no appeal pursuant to paragraph (5) is pending, the licensee shall—

(A) to the degree feasible, return all customer funds to United States customers in an orderly manner not later than 30 days after the date of the revocation of the license; and

(B) place in escrow those sums return of which to United States customers is not feasible due to change in customer address, bank details, or similar difficulty in an

account with a financial institution in the United States for safekeeping and orderly disposition by the Secretary.

(8) REFERRAL TO ATTORNEY GENERAL.—If, in the course of carrying out the provisions of this title, the Secretary or a qualified body finds a substantial basis to believe that a person has violated section 103(a), the Secretary or qualified body shall refer such matter to the Attorney General.

(m) Civil Monetary Penalties.—

(1) IN GENERAL.—

(A) PENALTIES ASSESSED BY QUALIFIED BODIES.—A qualified body may assess upon any licensee or other person subject to the requirements of this title for each violation of this title or any regulation prescribed or order issued under this title, a civil penalty of not more than the greater of—

- (i) the amount involved in the violation, if any;
- (ii) \$250,000 for an individual and \$750,000 for a corporation; or
- (iii) such other amount as provided under the applicable State or tribal law of the qualified body.

(B) PENALTIES ASSESSED BY SECRETARY.—The Secretary may assess upon any licensee or other person subject to the requirements of this title for each violation of this title or any regulation prescribed or order issued under this title, a civil penalty of not more than the greater of—

- (i) the amount involved in the violation, if any; or
- (ii) \$250,000 for an individual and \$750,000 for a corporation.

(C) NOT CUMULATIVE.—

(i) IN GENERAL.—The penalties authorized under subparagraphs (A) and (B) shall not be cumulative and only one such penalty may be assessed per violation.

(ii) CONSTRUCTION.—Clause (i) shall not be construed to limit the authority of a qualifying body or the Secretary, as the case may be, to pursue a civil penalty for each violation of a related series of violations.

(D) FAILURE TO OBTAIN A LICENSE.—Notwithstanding any other provision of law, the Secretary shall assess upon a person that is required to maintain a license under this title, but fails to maintain a license under this title, a civil penalty of not more than the greater of—

- (i) the amount of bets or wagers taken by the person from players in the United States during the period that a license was needed but not held by the person; or
- (ii) \$1,000,000 per day that the person accepts bets or wagers from players in the United States during the period that a license was needed but not held by the

person.

(E) CONSTRUCTION.—Nothing in this paragraph shall be construed to affect the ability of a law enforcement official to seek criminal penalties against a person.

(2) ASSESSMENT.—

(A) ENFORCEMENT BY QUALIFIED BODIES.—Qualified bodies and such other entities as are authorized by applicable State or tribal law shall enforce the provisions of this title under the law of the applicable State or Indian tribe, and penalties shall be determined, reviewable, collectable, and disposed of as provided under such law.

(B) ENFORCEMENT BY SECRETARY.—

(i) WRITTEN NOTICE.—Any penalty imposed under paragraph (1)(B) shall be assessed and collected by the Secretary by written notice.

(ii) FINALITY OF ASSESSMENT.—If, with respect to any assessment under paragraph (1)(B), a hearing is not requested pursuant to clause (v) within the period of time allowed under such clause, the assessment shall constitute a final agency order.

(iii) AUTHORITY TO MODIFY OR REMIT PENALTY.—The Secretary may compromise, modify, or remit any penalty which the Secretary may assess or has already assessed under paragraph (1)(B).

(iv) MITIGATING FACTORS.—In determining the amount of any penalty imposed under paragraph (1)(B), the Secretary shall take into account the appropriateness of the penalty with respect to the following:

(I) The size of the financial resources and the good faith of the person against whom the penalty is assessed.

(II) The gravity of the violation.

(III) The history of previous violations.

(IV) Such other matters as justice may require.

(v) HEARING.—The person against whom any penalty is assessed under paragraph (1)(B) shall be afforded a hearing by the Secretary if such person submits to the Secretary a request for such hearing not later than 20 days after the date of the issuance of the notice of assessment.

(vi) COLLECTION.—

(I) REFERRAL.—If any person fails to pay an assessment after any penalty assessed under this subparagraph has become final, the Secretary shall recover the amount assessed by action in the appropriate United States district court.

(II) SCOPE OF REVIEW.—In any civil action under subclause (I), the

validity and appropriateness of the penalty shall be subject to review for abuse of agency discretion.

(vii) DISBURSEMENT.—All penalties collected under authority of paragraph (1) (B) shall be deposited into the Treasury of the United States.

(3) CONDITION FOR LICENSURE.—Payment by a licensee of any civil penalty assessed under this subsection that has become final shall be a requirement for the retention of its license.

(n) List of Licensed Online Poker Facilities.—The Secretary shall establish and maintain a list of all online poker facilities licensed under this section. The Secretary shall update such list regularly and make such list publicly available on an Internet website.

SEC. 107. COMPULSIVE GAMING, RESPONSIBLE GAMING, AND SELF-EXCLUSION PROGRAM REQUIREMENTS.

(a) Regulations Required.—

(1) IN GENERAL.—Each qualified body shall, before issuing any licenses under this title, prescribe regulations for the development of a Compulsive Gaming, Responsible Gaming, and Self-Exclusion Program that each licensee of that qualified body shall implement as a condition of licensure.

(2) OUTREACH.—The regulations required by paragraph (1) shall also provide for the establishment of a program to alert the public to the existence, consequences, and availability of the self-exclusion list established under subsection (c).

(b) Minimum Requirements.—Under each program under subsection (a), a licensee shall, under the scope of the license issued the licensee under this title, at a minimum—

(1) provide informational materials written in plain language about responsible gaming, including information about the self-exclusion list established under subsection (c) and how a player may request placement on the list, each time a player signs in to make a bet or wager, which materials shall be provided via a prominently displayed hyperlink or comparable mechanism;

(2) provide informational materials about responsible gaming to any player that requests such materials;

(3) make continuously available individualized responsible gaming options that any customer may choose, including allowing customers to self-limit their access to the issuance of credit, check cashing, or direct mail marketing by the licensee, in each case as and to the extent that the qualified body may consider appropriate;

(4) ensure to a reasonable degree of certainty that persons on the list of self-excluded persons established pursuant to subsection (c) are prevented from initiating any bets or wagers within the scope of this title; and

(5) ensure that the information required under this subsection is clearly and prominently made available by the licensee in each language in which services of the online poker facility of the licensee are offered.

(c) List of Persons Self-excluded.—

(1) ESTABLISHMENT.—

(A) LISTS MAINTAINED BY QUALIFIED BODIES.—

(i) IN GENERAL.—Each qualified body shall establish and maintain a list of persons self-excluded from playing online poker through online poker facilities licensed by the qualified body.

(ii) SUBMITTAL TO SECRETARY.—At the end of each day, each qualified body shall submit to the Secretary a current copy of the list established and maintained by the qualified body under clause (i).

(B) MASTER LIST MAINTAINED BY SECRETARY.—

(i) IN GENERAL.—The Secretary shall establish and maintain a master list of all persons self-excluded from playing online poker through online poker facilities licensed under this title. Such list shall consist of all persons submitted under subparagraph (A)(ii).

(ii) AVAILABILITY.—The Secretary shall make the master list established and maintained under clause (i) available to all qualified bodies and licensees on an ongoing basis and licensees shall ensure to a reasonable degree of certainty that persons on the master list of self-excluded persons are prevented from initiating any bets or wagers within the scope of this title.

(C) PLACEMENT REQUEST.—Any person may request placement on the list of self-excluded persons by—

(i) acknowledging in a manner to be established by each qualified body with respect to its licensees that the person wishes to be denied gaming privileges within the scope of this title; and

(ii) agreeing that, during any period of voluntary exclusion, the person may not participate in online poker or collect any winnings or recover any losses resulting from any gaming activity at any online poker facility of a licensee.

(2) LIMITATION ON LIABILITY.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the United States, the Secretary, a qualified body, the State or Indian tribe in which that qualified body is located, an enforcement agent, licensee, or any employee or agent thereof, shall not be liable to any self-excluded person or to any other party in any judicial or administrative proceeding for any harm, monetary or otherwise, which may arise as a result of—

(i) any failure to withhold gaming privileges from, or to restore gaming

privileges to, a self-excluded person;

(ii) otherwise permitting a self-excluded person to engage in gaming activity while on the list of self-excluded persons; or

(iii) disclosure to licensees, significant vendors, or employees or agents of licensees or significant vendors of the fact that an individual has been placed on the list of self-excluded persons and of other information that is reasonably necessary to identify that individual in order to carry out this subsection, including the address, date of birth, and taxpayer identification number of the individual.

(B) LICENSEES.—A licensee or employee or agent thereof may be liable to a self-excluded person in a judicial or administrative proceeding for a harm described in subparagraph (A) to the extent provided under the law of the State or Indian tribe of the qualified body that issued the license.

(C) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed to prevent the Secretary or a qualified body from assessing a regulatory sanction against a licensee or person for failing to comply with a provision of this section or a regulation prescribed thereunder or for misuse of any list of self-excluded persons for purposes not authorized under this section.

(3) DISCLOSURE PROVISIONS.—

(A) IN GENERAL.—Notwithstanding any other provision of Federal, State, or tribal law, the list of self-excluded persons shall not be open to public inspection.

(B) AFFILIATE DISCLOSURE.—If necessary to effectuate the self-exclusion purposes of this subsection, any licensee may disclose the identities of persons on the self-excluded list to any significant vendor, service provider, or affiliated company to the extent that the significant vendor, service provider, or affiliated company maintains such information under confidentiality provisions comparable to those in this subsection.

(d) Gaming by Prohibited Persons.—

(1) PROHIBITION ON BENEFITTING FROM PROHIBITED GAMING ACTIVITY.—A person who is prohibited from gaming with a licensee by law, or by order of the Secretary, a qualified body, or any court of competent jurisdiction, including any person on the self-exclusion list under subsection (c), shall not collect, in any manner or proceeding, any winnings or recover any losses arising as a result of prohibited gaming activity with a licensee.

(2) FORFEITURE.—In addition to any other penalty provided by law, any money or thing of value that has been obtained by, or is owed to, any prohibited person by a licensee as a result of bets or wagers made by a prohibited person after the applicable prohibition has become effective shall be subject to forfeiture by order of the Secretary or a qualified body, following notice to the prohibited person and opportunity to be heard.

(3) DEPOSIT OF FORFEITED FUNDS.—Any funds forfeited pursuant to this subsection shall be deposited into the Treasury of the United States, or, in the case of a forfeiture to a qualified body, as provided by the applicable State or tribal law.

(e) Administrative Provisions.—

(1) NO DUTY TO IDENTIFY OR EXCLUDE COMPULSIVE PLAYERS NOT ON LIST.—No provision of this section shall be construed as creating a legal duty in the Secretary, a qualified body, a licensee, or any employee or agent thereof to identify or to exclude compulsive players not on the list of self-excluded persons.

(2) NO CAUSE OF ACTION.—The Secretary, a qualified body, a licensee, and any employee or agent thereof, shall not be liable to any person in any proceeding for losses or other damages of any kind arising out of that person's gaming activities based on a claim that the person was a compulsive, problem, or pathological player.

(3) NO PRIVATE RIGHT OF ACTION.—Nothing in this section shall be construed to create a private right of action.

SEC. 108. PROHIBITION ON USE OF LICENSES IN CERTAIN STATES AND INDIAN LANDS.

(a) In General.—Online poker provided by online poker facilities licensed under this title shall be lawful in the United States only with respect to the acceptance of bets or wagers from individuals located in States and Indian lands that have opted-in under this section.

(b) State Participation.—

(1) OPT-IN ELECTION.—A State shall be considered to have opted-in under this section if

—

(A) a majority of a quorum of each chamber of the legislature of the State has approved a bill, resolution, or similar measure that expresses that bets or wagers authorized under this title should not be prohibited in such State; and

(B) such bill, resolution, or similar measure is the most recent bill, resolution, or similar measure approved by a majority of a quorum of each chamber of the legislature of the State that expresses whether bets or wagers authorized under this title should be prohibited in such State.

(2) OPT-OUT ELECTION.—A State shall be considered not to have opted-in under this section if—

(A) a majority of a quorum of each chamber of the legislature of the State has approved a bill, resolution, or similar measure that expresses that bets or wagers authorized under this title should be prohibited in such State; and

(B) such bill, resolution, or similar measure is the most recent bill, resolution, or similar measure approved by a majority of a quorum of each chamber of the legislature of the State that expresses whether bets or wagers authorized under this title should be

prohibited in such State.

(3) LIMITATION ON STATE PARTICIPATION.—Notwithstanding any other provision of law, for purposes of determining whether a State has opted-in under this section, neither the Secretary nor any provision of State law may require a State to undertake any additional or different procedures than those specified in paragraphs (1) and (2).

(4) EFFECTIVE DATE OF CHANGES.—If a State changes its election to participate or not to participate in a bill, resolution, or similar measure under paragraph (1) or (2), such change shall apply, for purposes of this title, beginning on the later of—

- (A) 60 days after the date of the approval of such bill, resolution, or similar measure;
- or
- (B) the effective date specified in such bill, resolution, or similar measure.

(c) Indian Tribe Notice and Participation.—

(1) OPT-IN ELECTION.—Except as provided in paragraphs (3) and (4), an Indian tribe shall be considered to have opted-in under this section if the principal chief or other chief executive officer or designated authority of such Indian tribe submits written notice to the Secretary that bets or wagers authorized under this title should not be prohibited on the Indian lands of such Indian tribe.

(2) OPT-OUT ELECTION.—Except as provided in paragraph (3) and subsection (d), an Indian tribe shall be considered not to have opted-in under this section if the principal chief or other chief executive officer or designated authority of such Indian tribe—

- (A) submits written notice to the Secretary that bets or wagers otherwise authorized under this title should be prohibited on the Indian lands of such Indian tribe; or
- (B) does not submit to the Secretary notice specified in paragraph (1).

(3) SUBSEQUENT CHANGE OF ELECTION.—

(A) NOTICE OF CHANGE.—Except as provided in paragraph (4), in a case in which the principal chief or other chief executive officer or designated authority of an Indian tribe has submitted notice under paragraph (1) or (2) to opt-in or opt-out, respectively, such Indian tribe may change its election at any time under this subsection if the principal chief or other chief executive officer or designated authority of such Indian tribe submits to the Secretary a written notice indicating such change.

(B) STATUS.—An Indian tribe that submits notice under subparagraph (A) shall be considered—

- (i) to have opted-in under this section if the most recent notice submitted under such subparagraph indicates that bets or wagers authorized under this title should not be prohibited on the Indian lands of such Indian tribe; and
- (ii) not to have opted-in under this section if such notice indicates that bets or wagers authorized under this title should be prohibited on the Indian lands of such

Indian tribe.

(C) EFFECTIVE DATE.—A change in election under this paragraph shall apply, for purposes of this title, beginning on the later of—

- (i) 60 days after the date the most recent notice is submitted under subparagraph (A); or
- (ii) the effective date specified in such notice.

(4) INDIAN LANDS LOCATED IN STATES THAT HAVE OPTED-OUT.—

(A) IN GENERAL.—If the lands of an Indian tribe are located in a State that is considered not to have opted-in under this section, the Indian tribe shall also be considered not to have opted-in under this section for purposes of subsection (a), regardless of any action by the principal chief or other chief executive officer or designated authority of such Indian tribe under paragraph (1) or (3).

(B) DESIGNATION OF REGULATORY BODIES STILL AUTHORIZED.—Notwithstanding any other provision of this Act, a regulatory body of an Indian tribe may not be deemed ineligible for designation as a qualified body solely because such Indian tribe is considered pursuant to subparagraph (A) not to have opted-in under this section.

(d) Prohibition on Unlicensed Remote Bets or Wagers.—

(1) IN GENERAL.—Except as expressly authorized in this title, no State or Indian tribe may authorize or operate a facility that offers remote bets or wagers, even if such bets or wagers involve participants wholly within the boundaries of such State or the Indian lands of such Indian tribe, if such facility utilizes the services of any party located outside such State or Indian lands in connection with its operation or involves a financial institution in the receipt or transmission of deposits or withdrawals.

(2) LIMITATION.—The prohibition set out in paragraph (1) shall not apply to any bet or wager authorized pursuant to a State or tribal law enacted before May 1, 2012, or authorized by a license issued pursuant to this title.

(3) DEFINITIONS.—In this subsection:

(A) FINANCIAL INSTITUTION.—The term “financial institution” means any entity the business of which is engaging in financial activities as described in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(B) REMOTE BETS OR WAGERS.—The term “remote bets or wagers” means bets or wagers—

- (i) that are transmitted and received entirely within the boundaries of a single State or of the Indian lands of a single Indian tribe, using a communications facility in which transmissions and all intermediate routing of electronic data occur wholly within the boundaries of such State or the Indian lands of such Indian tribe; and

(ii) with respect to which the participants are not located on the premises of the same casino gambling facility.

(e) Notification and Enforcement of State and Indian Tribe Prohibitions.—

(1) IN GENERAL.—The Secretary shall notify qualified bodies, all licensees, and applicants of all States and Indian tribes that are considered to have opted-in under this section, promptly upon receipt of any notice received under subsection (b) or (c) and not fewer than 30 days before the effective date of such notice.

(2) VIOLATIONS.—It shall be a violation of this title for any licensee to accept a bet or wager initiated or otherwise made by a person who the licensee knows is located at the time of placing such bet or wager within any State or on the Indian lands of any Indian tribe which is not considered to have opted-in under this section.

(3) STATE ATTORNEY GENERAL ENFORCEMENT.—In any case in which the attorney general of a State or any State or local law enforcement agency, authorized by the attorney general of the State or by State statute to prosecute violations of consumer protection law, has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by a violation by a licensee under paragraph (2), the State, or the State or local law enforcement agency, may bring a civil action on behalf of the residents of that State or jurisdiction in a district court of the United States located therein—

(A) to enjoin that practice; or

(B) to enforce compliance with this section.

(4) INDIAN TRIBE ENFORCEMENT.—In any case in which the chief law enforcement officer of an Indian tribe or tribal law enforcement agency, authorized by the chief law enforcement officer of the Indian tribe or by tribal law to prosecute violations of consumer protection law, has reason to believe that an interest of the residents of the Indian lands within the tribe's jurisdiction has been or is threatened or adversely affected by a violation by a licensee under paragraph (2), the Indian tribe, or the tribal law enforcement agency, may bring a civil action on behalf of the residents of those Indian lands in a district court of the United States located nearest to those Indian lands—

(A) to enjoin that practice; or

(B) otherwise to enforce compliance with this section.

(f) No Impact on Indian Gaming Regulatory Act.—

(1) IN GENERAL.—No provision of this title or decision or action taken by an Indian tribe or State pursuant thereto shall have any effect on non-Internet gaming activities within the scope of section 11 of the Indian Gaming Regulatory Act (25 U.S.C. 2710) or any successor provisions or on any Tribal-State compacts or authorities pursuant thereto.

(2) TRIBAL STATUS OR CATEGORY NOT AFFECTED.—Tribal operation of online poker facilities under this title shall not be considered class II or class III gaming under such section, and an Indian tribe's status, category, or class under such section shall not impact its

status or ability to offer bets or wagers pursuant to this title.

(3) NEW NEGOTIATIONS NOT REQUIRED.—

(A) INDIAN TRIBES.—The fact that an Indian tribe is operating under a license issued under this title or that a tribal regulatory body is acting as a qualified body under this title shall not require an Indian tribe to negotiate a new agreement, limitation, or other provision of tribal-State compact, agreement, or other understanding with respect to gaming or revenue-sharing, with regard to any bet or wager occurring pursuant to a license issued under this title.

(B) STATES.—The fact that a State has opted in under this section or that a State regulatory body is acting as a qualified body under this title shall not require the State to negotiate a new agreement, limitation, or other provision of tribal-State compact, agreement, or other understanding with respect to gaming or revenue-sharing, with regard to any bet or wager occurring pursuant to a license issued under this title.

SEC. 109. PROHIBITION ON BETS OR WAGERS ON SPORTING EVENTS AND GAMES OTHER THAN ONLINE POKER.

(a) In General.—No provision of this title shall be construed to authorize any licensee to accept a bet or wager on—

- (1) any game, event, or activity that is not online poker; or
- (2) any sporting event in violation of any applicable provision of Federal or State law.

(b) Construction.—Nothing in this title shall be construed to repeal or amend any provision of Federal or State law prohibiting, restricting, or otherwise addressing bets or wagers on sporting events, including provisions of Federal and State law that permit participation in any fantasy or simulation sports games.

SEC. 110. PUBLIC INTERNET GAMBLING AND ONLINE POKER PARLORS PROHIBITED.

(a) In General.—It shall be considered a violation of this title to operate a place of public accommodation, club (including a club or association limited to dues-paying members or similar restricted groups), or similar establishment in which computer terminals or similar access devices are made available to be used principally for the purpose of accessing Internet gambling facilities or online poker facilities.

(b) Criminal Penalties.—Any person who violates subsection (a) shall be fined under title 18, United States Code, imprisoned for not more than 5 years, or both.

(c) Construction.—Nothing in this title shall be construed to authorize or otherwise to permit the operation of places of public accommodation, clubs (including clubs or associations limited to dues-paying members or similar restricted groups) and similar establishments that permit

access to Internet gambling facilities or online poker facilities.

(d) Relation to State, Local, and Tribal Law.—Places of public accommodation, clubs, or similar establishments described in subsection (c) shall be subject to all otherwise applicable State, local, and tribal police, criminal, zoning, and other regulatory powers which are not intended to be limited in any way by this title.

SEC. 111. SAFE HARBOR.

It shall be an affirmative defense to any prosecution or enforcement action under any provision of Federal, State, or tribal law that the activity forming the basis of such prosecution or enforcement action is authorized under and has been carried out lawfully in accordance with and under the terms of this title.

SEC. 112. CHEATING AND OTHER FRAUD.

(a) Cheating and Cheating Devices Prohibited.—

(1) CHEATING PROHIBITED.—No person initiating, receiving, or otherwise making a bet or wager with a licensee, or sending, receiving, or inviting information assisting with a bet or wager with a licensee shall knowingly violate, attempt to violate, or assist another in violating the rules of play established by the licensee for the purpose of obtaining prohibited or unfair advantage in any game authorized under this title.

(2) CHEATING DEVICES.—Except as provided in paragraph (3), no person initiating, receiving, or otherwise making a bet or wager with a licensee, or sending, receiving, or inviting information assisting with a bet or wager with a licensee shall knowingly use, possess, or assist another in the use of, an electronic, electrical, or mechanical device or software or other program or tool which is designed, constructed, or programmed specifically for use in obtaining an advantage in any game authorized under this title, where such advantage is prohibited or otherwise violates the rules of play established by the licensee.

(3) PERMISSIBLE USES.—It shall not be a violation of this subsection for a licensee, its agents, a qualified body, or its agents to use or possess a device described in the preceding sentence if—

(A) such use or possession is solely for purposes of testing an online poker facility;

(B) such device is not used in live play involving actual bets or wagers; and

(C) such device is registered with the qualified body that issued the applicable license.

(4) DISCLOSURE TO PUBLIC NOT REQUIRED.—Notwithstanding any other provision of law, a registration under paragraph (3)(C) is not required to be made available to the public.

(b) Additional Offense.—

(1) IN GENERAL.—Except as provided in paragraph (3), no person initiating, receiving, or

otherwise making a bet or wager with a licensee, or sending, receiving, or inviting information assisting with a bet or wager with a licensee, shall knowingly use, possess, or assist another in the use of any cheating device with intent to cheat or defraud any licensee or other persons placing bets or wagers with such licensee.

(2) BOTS.—A software program that makes bets or wagers according to an algorithm shall constitute a type of cheating device under this subsection.

(3) PERMISSIBLE USES.—It shall not be a violation of this subsection for a licensee, its agents, a qualified body, or its agent to use or possess a device described in paragraph (1) or (2) if—

(A) such use or possession is solely for purposes of testing an online poker facility;

(B) such device is not used in live play involving actual bets or wagers; and

(C) such device is registered with the qualified body that issued the applicable license.

(4) DISCLOSURE TO PUBLIC NOT REQUIRED.—Notwithstanding any other provision of law, a registration under paragraph (3)(C) is not required to be made available to the public.

(c) Criminal Penalty.—Whoever violates subsection (a) or (b) shall be fined under title 18, United States Code, imprisoned for not more than 3 years, or both.

(d) Permanent Injunction.—Upon conviction of a person for violation of this section, the court may enter a permanent injunction enjoining such person from initiating, receiving, or otherwise making bets or wagers or sending, receiving, or inviting information assisting in the placing of bets or wagers.

(e) Report on Threats to Operation of Online Poker Facilities.—

(1) IN GENERAL.—Not later than 1 year after the date of first issuance specified in section 114(a), the Director of the National Institute of Standards and Technology shall submit to Congress a report on threats to the integrity of online poker facilities operated by licensees.

(2) ELEMENTS.—The report required by paragraph (1) shall include the following:

(A) Identification of threats to the integrity of online poker facilities operated by licensees.

(B) Identification of technologies that could be used to hack computer networks, facilitate cheating, or otherwise place consumers at risk of fraud or monetary loss.

(C) An evaluation of steps taken by online poker facilities licensed under this title to respond to the threats identified pursuant to subparagraph (A).

(D) Recommendations for such measures as the Director considers appropriate to deal with the threats identified pursuant subparagraph (A).

SEC. 113. CONSTRUCTION AND RELATION TO OTHER LAW.

(a) No Impact on Existing Lawful Games.—

(1) IN GENERAL.—If bets or wagers on certain games of skill that are not online poker are not regarded as gambling or otherwise prohibited under all provisions of Federal, applicable State, or tribal law—

(A) nothing in this title shall be construed to require licensing under this title with respect to such games; and

(B) fees paid to participate in such games shall not be regarded as bets or wagers for purposes of this title.

(2) RELIANCE.—Nothing in this title may be relied on as support for the legality or permissibility of any games without compliance with the licensing and other requirements of this title

(b) Preemption of State and Tribal Laws.—

(1) IN GENERAL.—Except as otherwise expressly provided in this title, the provisions of this title shall supersede any provisions of the law of any State or Indian tribe expressly relating to the permitting, prohibiting, licensing, or regulating of Internet gambling facilities or online poker facilities and the law of any State or Indian tribe expressly relating to the authorization, prohibiting, licensing, expansion, or regulation of gambling, except to the extent such State or tribal laws are not inconsistent with this title.

(2) SAVINGS PROVISION.—Nothing in this title may be construed to limit the applicability or enforcement of any State or tribal consumer protection law of general applicability or preempt the applicability of State or tribal trespass, contract, or tort law.

(c) Relation to Gambling Devices Transportation Act.—Equipment used by a licensee or significant vendor in the furtherance of licensed activities pursuant to this title (but not to the extent it is used for other purposes) shall not be considered a gambling device within the meaning of section 1 of the Act of January 2, 1951, prohibiting the transportation of gambling devices in interstate and foreign commerce (15 U.S.C. 1171).

(d) Exemptions From Subchapter Iv of Chapter 53 of Title 31, United States Code.—Subchapter IV of chapter 53 of title 31, United States Code, is amended by adding at the end the following:

“SEC. 5368. INAPPLICABILITY TO CERTAIN GAMING AND WAGERS.

“The provisions of this subchapter—

“(1) restricting acceptance of bets or wagers made by individuals located in the United States or requiring the blocking or other prevention of restricted transactions shall not apply with respect to the placing, transmitting, or receiving of interstate off-track wagers, as such term is defined in section 3 of the Interstate Horseracing Act of 1978 (15 U.S.C. 3002), that are permissible under such Act (15 U.S.C. 3001 et seq.), whether such off-track wager is

made by telephone, Internet, satellite, or other wire or wireless communication facility, service, or medium; and

“(2) shall not apply to any bet or wager—

“(A) occurring pursuant to a license issued under title I of the Internet Gambling Prohibition, Poker Consumer Protection, and Strengthening UIGEA Act of 2012, subject to section 109 of that Act;

“(B) that is permissible under the Interstate Horseracing Act of 1978 (15 U.S.C. 3001 et seq.); or

“(C) is the purchase of a chance or opportunity to win a lottery or other prize—

“(i) which opportunity to win is predominantly subject to chance;

“(ii) which winning is determined not more frequently than daily;

“(iii) which is authorized by a State or Indian tribe wholly within its borders;

“(iv) with respect to which the Internet is solely the medium for purchase but is not the medium in which the drawing or the playing of the game or contest is conducted;

“(v) which requires the delivery (electronically or non-electronically) of a tangible ticket or card for purposes of redemption of any prize; and

“(vi) which is not an online lottery game that is intended to mimic or does substantially mimic a gaming device, slot machine, poker, or any other casino game.”.

(e) Inapplicability of Certain Provisions to Interstate Off-track Wagers.—The provisions of this title requiring a license shall not apply with respect to the placing, transmitting, or receiving of interstate off-track wagers, as such term is defined in section 3 of the Interstate Horseracing Act of 1978 (15 U.S.C. 3002), that are permissible under such Act (15 U.S.C. 3001 et seq.), whether such off-track wager is made by telephone, Internet, satellite, or other wire or wireless communication facility, service, or medium.

(f) Wire Act Amendments.—

(1) DEFINITIONS.—Section 1081 of title 18, United States Code, is amended—

(A) by designating the five undesignated paragraphs as paragraphs (1) through (5), respectively;

(B) in paragraph (2), as so designated by subparagraph (A), by striking “value.” and inserting “value, including any Internet gambling facility.”;

(C) by amending paragraph (5), as so designated by subparagraph (A), to read as follows:

“(5) The term ‘communication facility’ includes any instrumentality, personnel, and services (including, the receipt, forwarding, or delivery of communications) used in the

transmission of a writing, sign, picture, or sound of any kind by aid of wire, cable, radio, or an electromagnetic, photoelectronic, or photooptical system, or other like connection (whether fixed or mobile) between the points of origin and reception of such transmission.”; and

(D) by adding at the end the following:

“(6) The term ‘bet or wager’ has the meaning given the term in section 102 of the Internet Gambling Prohibition, Poker Consumer Protection, and Strengthening UIGEA Act of 2012.

“(7) The term ‘Internet’ means the international computer network of interoperable packet switched data networks.

“(8) The term ‘Internet gambling facility’ has the same meaning given the term in section 102 of the Internet Gambling Prohibition, Poker Consumer Protection, and Strengthening UIGEA Act of 2012.

“(9) The terms ‘financial transaction provider’ and ‘insured depository institution’ have the meanings given those terms in section 5362 of title 31, United States Code.

“(10) The term ‘gambling business’ means a business of betting or wagering.

“(11) The terms ‘own or control’ and ‘owned or controlled’ include circumstances within the meaning of section 2(a)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a)(2)).”.

(2) MODIFICATION OF EXISTING PROHIBITION.—Section 1084 of title 18, United States Code, is amended to read as follows:

“1084. Transmission of wagering information; penalties

“(a) Offense.—Except as otherwise provided in this section, it shall be unlawful for a person that is engaged in a gambling business to knowingly use a communication facility for the transmission in interstate or foreign commerce, within the special maritime and territorial jurisdiction of the United States, or to or from any place outside the jurisdiction of any country with respect to any transmission to or from the United States, of—

“(1) bets or wagers;

“(2) information assisting in the placing of bets or wagers; or

“(3) a communication, which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers.

“(b) Penalty.—Any person who violates subsection (a) shall be fined under this title, imprisoned for not more than 5 years, or both.

“(c) Transmission in Interstate or Foreign Commerce.—Except as otherwise provided in this section, the transmission of bets or wagers, information assisting in the placing of bets or wagers, or a communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers shall be considered a

transmission in interstate or foreign commerce subject to this section if such transmission involved the use, in some part, of the Internet.

“(d) Rules of Construction.—

“(1) IN GENERAL.—Nothing in this section shall be construed to—

“(A) prohibit—

“(i) the transmission of information assisting in the placing of bets or wagers for use in news reporting if such transmission does not solicit or provide information for the purpose of facilitating or enabling the placing or receipt of bets or wagers;

“(ii) the interstate transmission of information relating to a State-specific lottery between a State or foreign country where such betting or wagering is permitted under Federal, State, tribal, or local law and an out-of-State data center for the purposes of assisting in the operation of such State-specific lottery; or

“(iii) a qualifying intrastate lottery transaction (as defined in section 102 of the Internet Gambling Prohibition, Poker Consumer Protection, and Strengthening UIGEA Act of 2012).

“(B) create immunity from criminal prosecution under any laws of a State or tribe;
or

“(C) authorize activity that is prohibited under chapter 178 of title 28.

“(2) EXCEPTION.—Paragraph (1)(A)(iii) shall not include any online lottery game that is intended to mimic or does substantially mimic a gaming device, slot machine, poker, or any other casino game;

“(e) Applicability.—This section shall not apply to any activity that is permissible under the Interstate Horseracing Act of 1978 (15 U.S.C. 3001 et seq.), or any activity that is permissible under title I of the Internet Gambling Prohibition, Poker Consumer Protection, and Strengthening UIGEA Act of 2012.

“(f) Duty of Common Carrier.—

“(1) IN GENERAL.—If a common carrier (as defined in section 3 of the Communications Act of 1934 (47 U.S.C. 153)), subject to the jurisdiction of the Federal Communications Commission, is notified in writing by a Federal, State, tribal, or local law enforcement agency, acting within the jurisdiction of the law enforcement agency, that a communication facility furnished by the common carrier is being used or will be used by a subscriber of the common carrier for the purpose of transmitting or receiving gambling information in interstate or foreign commerce, within the special maritime and territorial jurisdiction of the United States, or to or from any place outside the jurisdiction of any country with respect to any transmission to or from the United States in violation of Federal, State, tribal, or local law, the common carrier shall discontinue or refuse, the leasing, furnishing, or maintaining of such facility, after reasonable notice to the subscriber.

“(2) LIMITATION ON LIABILITY.—No damages, penalty, or forfeiture, civil or criminal, shall be found against a common carrier for any act done in compliance with any notice received from a law enforcement agency.

“(3) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to prejudice the right of any person affected to secure an appropriate determination, as otherwise provided by law, in a Federal court or in a State, tribal, or local tribunal or agency, that such facility should not be discontinued or removed, or should be restored.”.

(3) AUTHORIZATION OF CIVIL ENFORCEMENT.—

(A) IN GENERAL.—Chapter 50 of title 18, United States Code, is amended by adding at the end the following:

“1085. Civil remedies

“(a) Jurisdiction.—The district courts of the United States (in addition to any other remedies under current law) shall have original and exclusive jurisdiction to prevent and restrain violations of section 1084 by issuing appropriate orders in accordance with this section, regardless of whether a prosecution has been initiated under section 1084.

“(b) Proceedings.—

“(1) DEFINITION.—In this subsection, the term ‘account’ means—

“(A) the unpaid balance of money or its equivalent received or held by an insured depository institution in the usual course of business and for which it has given or is obligated to give credit, either conditionally or unconditionally, to an account, including interest credited, or which is evidenced by an instrument on which the depository institution is primarily liable; and

“(B) money received or held by an insured depository institution, or the credit given for money or its equivalent received or held by the insured depository institution in the usual course of business for a special or specific purpose, regardless of the legal relationships established thereby, including escrow funds, funds held as security for securities loaned by the depository institution, funds deposited as advance payment on subscriptions to United States Government securities, and funds held to meet its acceptances.

“(2) PROCEEDINGS.—The United States may institute proceedings under this section—

“(A) to obtain injunctive or declarative relief, including a temporary restraining order and a preliminary injunction, against any person (other than a financial transaction provider, except as provided in paragraph (3)) to prevent or restrain a violation or a threatened violation of section 1084;

“(B) in the case of an insured depository institution that is a financial transaction provider, to—

“(i) restrain an account maintained at such insured depository institution if such

account is—

“(I) owned or controlled by a gambling business; and

“(II) includes proceeds of, or is used to facilitate a violation of section 1084; or

“(ii) seize funds in an account described in clause (i) if such funds—

“(I) are owned or controlled by a gambling business; and

“(II) constitute the proceeds of, were derived from, or facilitated, a violation of section 1084.

“(3) FINANCIAL TRANSACTION PROVIDERS.—The limitation in paragraph (2)(A) shall not apply if the financial transaction provider is a gambling business, in which case, such financial transaction provider shall be subject to the enforcement provisions under paragraph (2).

“(4) INJUNCTIVE PROCEEDINGS.—

“(A) IN GENERAL.—The attorney general (or other appropriate State official) of a State in which a communication in violation of section 1084 allegedly has been or will be initiated or received may institute proceedings under this section to obtain injunctive or declarative relief to prevent or restrain the violation or threatened violation.

“(B) RELIEF.—Upon application of the attorney general (or other appropriate State official) of an affected State under subparagraph (A), the district court may enter a temporary restraining order, a preliminary injunction, an injunction, or declaratory relief against any person (other than a financial transaction provider) to prevent or restrain a violation or threatened violation of section 1084, in accordance with rule 65 of the Federal Rules of Civil Procedure.

“(5) ENFORCEMENT AUTHORITY.—Notwithstanding paragraphs (2) and (4), for a communication in violation of section 1084 that allegedly has been or will be initiated or received on Indian lands (as that term is defined in section 4 of the Indian Gaming Regulatory Act (25 U.S.C. 2703))—

“(A) the United States shall have the enforcement authority provided under paragraph (2);

“(B) the enforcement authorities specified in an applicable Tribal-State compact negotiated under section 11 of the Indian Gaming Regulatory Act (25 U.S.C. 2710) shall be carried out in accordance with that compact; and

“(C) if there is no applicable Tribal-State compact, an appropriate tribal official may institute proceedings in the same manner as an attorney general of a State.

“(6) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to alter, supersede, or otherwise affect the application of the Indian Gaming Regulatory Act (25

U.S.C. 2701 et seq.).

“(7) LIMITATION ON RELIEF.—Notwithstanding paragraph (4), no relief shall be granted under this section against a financial transaction provider except as provided in paragraph (3).

“(c) Limitation on Liability.—No damages, penalty, or forfeiture, civil or criminal, shall be found against any person or entity for any act done in compliance with any notice received from a law enforcement agency.”.

(B) CLERICAL AMENDMENT.—The table of sections for chapter 50 of title 18, United States Code, is amended by inserting after the item relating to section 1084 the following:

“1085. Civil remedies.”.

(g) Systems Used in Support of Lawful Gambling.—

(1) IN GENERAL.—This title, subchapter IV of chapter 53 of title 31, United States Code, section 1084 of title 18, United States Code, and any other provision of Federal law that establishes criminal penalties for any activity involved in placing, receiving, or otherwise transmitting a bet or wager, information assisting in the placing of bets or wagers, or a communication which entitles the recipient to receive money or credit as a result of bets or wagers, shall not apply to gaming devices, information, or communications, to the extent used to support bets or wagers offered by a casino gaming facility that—

(A) occur between participants who are located on the premises of the same casino gaming facility; and

(B) are lawful in the State or on the Indian lands in or on which the casino gaming facility is located.

(2) DEFINITIONS.—In this subsection:

(A) CASINO GAMING FACILITY.—The term “casino gaming facility” means any facility that provides casino gaming on a riverboat, at a race track, or in another facility, regardless of the number of gaming devices in 1 physical location, pursuant to a duly authorized license issued by a gaming regulatory authority of a State of Indian tribe.

(B) PARTICIPANTS.—The term “participants” includes all persons who are party to the bet or wager, including, in the case of banked games, the casino gaming facility or operator itself.

(h) Preservation of Existing Lawful Gambling.—

(1) IN GENERAL.—This title, subchapter IV of chapter 53 of title 31, United States Code, section 1084 of title 18, United States Code, and any other provision of Federal law that establishes criminal penalties for any activity involved in placing, receiving, or otherwise transmitting a bet or wager, information assisting in the placing of bets or wagers, or a communication which entitles the recipient to receive money or credit as a result of bets or

wagers, shall not apply to the offering of a bet or wager or gambling game authorized, licensed, and regulated by a State or Indian tribe on the day before the date of enactment of this Act and otherwise lawful activities in support of the offering of that bet or wager or gambling game.

(2) APPLICABILITY.—Paragraph (1) shall not apply to—

(A) any expansion of or other change to any such bet or wager or gambling game that otherwise would violate any applicable provision of Federal law if a change in State or tribal law is necessary in order to permit such expansion or change;

(B) the offering of a bet or wager or gambling game of the same type and character in a State or Indian tribe in which that bet or wager or gambling game is not permitted on the date of enactment of this Act; and

(C) qualifying intrastate lottery transactions.

(3) CASINO GAMING FACILITY DEFINED.—In this subsection, the term “casino gaming facility” means any facility that provides casino gaming on a riverboat, at a race track, or in another facility, regardless of the number of gaming devices in 1 physical location, pursuant to a duly authorized license issued by a gaming regulatory authority of a State of Indian tribe.

SEC. 114. ORDERLY TRANSITION.

(a) Issuance of Initial Licenses.—

(1) IN GENERAL.—Each qualified body designated under section 105 before the date of first issuance specified in this subsection, shall, to the extent practicable while meeting the requirements and standards of this title, issue multiple licenses under this title before such date in order to ensure a robust and competitive market for consumers and to prevent the first licensees from gaining an unfair competitive advantage.

(2) EFFECTIVE DATE OF INITIAL LICENSES.—No license issued under this title shall authorize a licensee to accept a bet or wager under this title before the date of first issuance specified in this subsection.

(3) DATE OF FIRST ISSUANCE.—The date of first issuance specified in this subsection is the date that is 450 days after the date of the enactment of this Act.

(b) Orderly Cessation of Unlicensed Activity and Safekeeping of Customer Funds.—

(1) IN GENERAL.—Each covered person shall, with respect to an Internet gambling facility and to the extent applicable to the person—

(A) not later than 30 days after the date of the enactment of this Act, cease offering, accepting, and providing services with respect to bets or wagers from individuals the person knows, or reasonably should know, are located in the United States;

(B) provide to each individual located in the United States who has outstanding sums on deposit with such person notice to such individual that operations will be

ceasing pursuant to paragraph (1) with instructions indicating the procedures the individual should use to request the return of such sums—

(i) not later than 7 days after the date of the enactment of this Act and not less frequently than quarterly thereafter until such sums have been returned, by e-mail;

(ii) not later than 30 days after the date of the enactment of this Act and not less frequently than semi-annually thereafter until such sums have been returned, by mail; and

(iii) beginning not later than 14 days after the date of the enactment of this Act and ending on the date that such sums have been returned, by promptly displaying notice each time such individual signs into the Internet gambling facility;

(C) promptly return all outstanding sums to individuals located in the United States who have sums on deposit with such person, upon the request of such individuals;

(D) during the 2-year period beginning on the date of the enactment of this Act, retain all outstanding sums on deposit with such person that are owed to individuals under subparagraph (C) the disposition of which remains unresolved because of a lack of a request by such individual under such subparagraph or other reason; and

(E) on the date that is 2 years and 1 day after the date of the enactment of this Act, place any remaining sums on deposit with such person that are owed to individuals under subparagraph (C) the disposition of which remains unresolved in escrow with a financial institution in the United States for safekeeping and orderly disposition as the Secretary may direct.

(2) APPLICABILITY REGARDLESS OF LICENSE APPLICATION STATUS.—Paragraph (1) applies to any covered person regardless of whether the covered person applies for a license or seeks a certificate of suitability with respect to an application for a license under this title.

(3) CRIMINAL PENALTY.—Whoever violates paragraph (1) shall be fined under title 18, United States Code, in an amount not to exceed 3 times the amount of the funds subject to this subsection or imprisoned under such title for not more than 2 years, or both.

(c) Limitations on Licensing of Covered Persons.—

(1) IN GENERAL.—Except as provided in subsection (e)(1), no covered person may be considered suitable for licensing under this title before the date that is 5 years after the date of the enactment of this Act.

(2) NO DETERMINATION OF SUITABILITY BY OTHER QUALIFIED BODIES.—No qualified body other than the Office of Online Poker Oversight or a benchmark qualified body may determine that a covered person is suitable for licensing under this title.

(3) SUBMISSION TO JURISDICTION AND WAIVER OF LIMITATIONS.—No covered person may be determined suitable for licensing under this title unless such covered person—

(A) expressly submits to the jurisdiction of the United States and of all States with respect to which such covered person knowingly offered, accepted, made available, or

facilitated bets or wagers after December 31, 2006; and

(B) agrees to waive any statutes of limitations or equitable remedies of laches that otherwise would preclude prosecution for a violation of a Federal or State law in connection with knowingly offering, accepting, making available, or facilitating bets or wagers after December 31, 2006.

(d) Prohibition on Use of Covered Assets.—

(1) INELIGIBILITY FOR LICENSE.—Except as provided in subsection (e)(2), no person may be considered suitable for licensing under this title (including a significant vendor under section 106(d)(1)(A)) before the date that is 5 years after the date of the enactment of this Act if such person uses a covered asset for the operation of an online poker facility.

(2) REVOCATION OF LICENSE.—Except as provided in subsection (e)(2), use of a covered asset by a licensee shall be grounds for revocation of the licensee's license under this title.

(e) Waivers.—

(1) WAIVERS FOR COVERED PERSONS.—The Office of Online Poker Oversight and a benchmark qualified body may each waive the application of subsection (c)(1) to a covered person if the Office or the benchmark qualified body determines by a preponderance of the evidence—

(A) in the case of a covered person described in subparagraph (A) or (B) of subsection (f)(2), that—

(i) the covered person did not violate, directly or indirectly, any provision of Federal or State law in connection with the operation or provision of services to an Internet gambling facility that made available bets or wagers to persons located in the United States after December 31, 2006, and

(ii) the assets to be used or that are being used by such person that were used in connection with an Internet gambling facility or bets or wagers from persons located in the United States were not used (and that the Internet gambling facility in connection with which the assets were used was not used) in violation of such Federal or State laws after that date; and

(B) in the case of a covered person described in subparagraph (C) of such subsection, that the assets that the covered person will use in connection with an online poker facility for which the covered person seeks a determination of suitability were not used (and that the Internet gambling facility in connection with which the assets were used was not used) in violation of any provision of Federal or State law after December 31, 2006.

(2) WAIVERS FOR USE OF COVERED ASSETS.—The Office of Online Poker Oversight and a benchmark qualified body may waive the application of subsection (d) to a covered asset if the Office or the benchmark qualified body determines by a preponderance of the evidence that the covered asset was not used in violation of any provision of Federal or State law

after December 31, 2006, and that the Internet gambling facility in connection with which the covered asset was used was not used in violation of any provision of Federal or State law after that date.

(3) PREVIOUS PROSECUTION NOT CONSIDERED.—A determination made under paragraph (1) or (2) with respect to a covered person or covered asset shall be made without regard to whether the conduct of the covered person or use of the covered asset was ever the subject of a criminal proceeding for violation of a provision of Federal or State law or whether the covered person has been prosecuted and the prosecution terminated in a manner other than with a conviction.

(4) HEARING.—In making a determination under paragraph (1) with respect to a covered person or under paragraph (2) with respect to a person seeking a waiver for the use of a covered asset, the Office of Online Poker Oversight or benchmark qualified body, as applicable, shall afford the covered person or person an opportunity for hearing at which evidence may be presented. The Office of Online Poker Oversight or benchmark qualified body shall act as finder of fact and shall be entitled to evaluate the credibility of the witnesses and persuasiveness of the evidence.

(5) IDENTIFICATION OF AFFECTED STATES.—A covered person that is the subject of a determination under paragraph (1) or a person seeking a waiver under paragraph (2) shall upon request of the Office of Online Poker Oversight or a benchmark qualified body identify all States with respect to which such covered person knowingly offered, accepted, made available, or facilitated bets or wagers after December 31, 2006, or with respect to which covered assets were used after that date, as the case may be.

(6) EFFECT OF WAIVER.—If the Office of Online Poker Oversight or a benchmark qualified body waives the application of subsection (c)(1) or (d) for a person, such person may only receive a license or certificate of suitability under this title if such license or certificate is issued from the same regulatory body that made the waiver.

(7) REGULATIONS.—The Office of Online Poker Oversight and the benchmark qualified bodies shall prescribe regulations to carry out this subsection.

(8) JUDICIAL REVIEW.—An applicant may seek judicial review of a determination under paragraph (1) or (2) only by the United States district court for the District of Columbia in accordance with chapter 7 of title 5, United States Code.

(f) No Effect on Existing Law.—Nothing in this section shall be construed to repeal, to amend, or to affect the interpretation of any provision of Federal or State law that was in effect before the date of the enactment of this Act that—

- (1) prohibits, restricts, or otherwise addresses bets or wagers; or
- (2) prohibits fraud, unfair or deceptive acts or practices, or other criminal activity.

(g) Definitions.—In this section:

- (1) COVERED ASSET.—The term “covered asset” means any asset specifically designed

for use and used in connection with the operation of an Internet gambling facility that offered, accepted, or made available bets or wagers involving persons located in the United States after December 31, 2006, including the following:

(A) Any trademark, trade name, service mark, or similar intellectual property that was used to identify any aspect of an Internet gambling facility to the customers of such facility.

(B) Any database of customer information or customer list of individuals residing in the United States who made bets or wagers with an Internet gambling facility.

(C) Any derivative of a database or customer list described in subparagraph (B).

(D) Software and hardware relating to the management, administration, development, testing, or control of an Internet gambling facility.

(2) COVERED PERSON.—The term “covered person” means any person who—

(A) has at any time, owned, in whole or in significant part, an Internet gambling facility or an entity that operated an Internet gambling facility that—

(i) accepted bets or wagers from persons located in the United States after December 31, 2006; and

(ii) acted with knowledge of the fact that such bets or wagers involved persons located in the United States;

(B) was a significant vendor with respect to the bets or wagers from persons located in the United States for a person described in subparagraph (A), except to the extent such services consisted solely of advertising on behalf of a person described in subparagraph (A), and acted with knowledge of the fact that such bets or wagers involved persons located in the United States; or

(C) purchased or acquired, directly or indirectly—

(i) in whole or in significant part, a person described in subparagraph (A) or (B); or

(ii) covered assets, tangible or intangible and in whole or in part, of such person.

(3) SIGNIFICANT PART.—The term “significant part”, with respect to ownership of a person, means ownership of—

(A) 5 percent or more of that person; or

(B) any amount of ownership of that person that provides control over such person.

SEC. 115. ANNUAL REPORTS.

(a) Licensing and Regulation of Online Poker Facilities.—

(1) IN GENERAL.—Not later than 1 year after the date of first issuance specified in section

114(a) and not less frequently than annually thereafter, the Secretary shall submit to Congress a report on the licensing and regulation of online poker facilities under this title.

(2) ELEMENTS.—Each report submitted under paragraph (1) shall include the following:

(A) A description of all notices received by the Secretary under subsections (b) and (c) of section 108.

(B) The amount of assessments collected under section 106(e) and, in cooperation with the Secretary of Treasury, an estimate of the amount of income tax revenue that is attributable to the operation of online poker facilities during the period covered by the report.

(C) A list of qualified bodies, the number of licensees reviewed by the qualified bodies under this title, and the outcomes of such reviews.

(D) A description of the efforts the Secretary has undertaken to ensure that qualified bodies are properly issuing licenses and regulating licensees under this title.

(E) A detailed description of each type of game offered by licensees and how each type is consistent with the definition of “poker” under section 102.

(F) Such other information as the Secretary considers appropriate.

(b) Consumer Protection.—

(1) IN GENERAL.—Not later than 1 year after the date of first issuance specified in section 114(a) and not less frequently than annually thereafter, the Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives a report on commercial and regulatory practices carried out to protect consumers with respect to online poker, including the practices carried out pursuant to the requirements of section 107 and the regulations prescribed pursuant to such section.

(2) ELEMENTS.—Each report submitted under paragraph (1) shall include the following:

(A) A detailed description of the efforts of each qualifying body to protect consumers from unfair or deceptive acts or practices, including deceptive advertising and marketing to minors.

(B) A description of the practices that the Secretary recommends qualifying bodies adopt to protect consumers.

(C) Such recommendations as the Secretary may have for legislative action as the Secretary considers necessary to protect consumers with respect to online poker.

(D) Such other information as the Secretary considers appropriate.

SEC. 116. EFFECTIVE DATE.

(a) In General.—Except as otherwise provided in this title, the provisions of this title shall take effect on the date that is 30 days after the date of the enactment of this Act.

(b) Regulations Required Before Issuing Licenses.—Notwithstanding any other provision of this title, a qualified body may not issue a license under this title until the qualified body has issued regulations to meet its obligations as a qualified body.

TITLE II—ENFORCEMENT UNDER TITLES 18 AND 31, UNITED STATES CODE

SEC. 201. FINANCIAL SERVICE PROVIDERS.

(a) Listing of Licensed Online Poker Facilities.—Subchapter IV of chapter 53 of title 31, United States Code, is amended—

(1) in section 5362—

(A) by redesignating paragraph (11) as paragraph (12); and

(B) by inserting after paragraph (10) the following:

“(11) LIST OF LICENSED ONLINE POKER FACILITIES.—The term ‘list of licensed online poker facilities’ means the list established and maintained under section 106(n) of the Internet Gambling Prohibition, Poker Consumer Protection, and Strengthening UIGEA Act of 2012.”; and

(2) in section 5364, by striking subsection (d) and inserting the following:

“(d) Financial Transaction Providers.—

“(1) IN GENERAL.—A financial transaction provider shall prevent, prohibit, or suspend its service from completing payment transactions involving customers within the United States and a person or entity that is—

“(A) an Internet gambling facility not included on the list of licensed online poker facilities, or that the financial transaction provider reasonably believes is included on such list; or

“(B) demonstrated to be, or that the financial transaction provider reasonably believes to be, an unlicensed Internet gambling enterprise, based on information other than the list of licensed online poker facilities; or

“(C) acting on behalf of an Internet gambling facility that is not included on the list of licensed online poker facilities, or that the financial transaction provider reasonably believes is included on such list, if the financial transaction provider has knowledge that such person or entity is acting on behalf of the unlicensed person or entity.

“(2) SAFE HARBOR.—A financial transaction provider shall not be held liable to any person—

“(A) for engaging in a financial activity or transaction, including a payments processing activity, in connection with a bet or wager that the provider believes is permitted by the Internet Gambling Prohibition, Poker Consumer Protection, and Strengthening UIGEA Act of 2012 or the Internet Horse Racing Act of 1978 (15

U.S.C. 3001 et seq.), unless the financial transaction provider has actual knowledge that the financial activity or transaction was conducted in violation of either such Act or any applicable provision of Federal or State law; or

“(B) for taking any action pursuant to paragraph (1).”.

SEC. 202. AMENDMENTS RELATING TO ILLEGAL GAMBLING BUSINESSES.

Section 1955(b)(1) of title 18, United States Code, is amended—

- (1) in clause (i), by striking “(i) is” and inserting “(A)(i) is”;
- (2) in clause (iii), by striking the period at the end and inserting “; or”; and
- (3) by adding at the end the following:

“(B) is an unlawful Internet gambling facility, as defined in section 102 of the Internet Gambling Prohibition, Poker Consumer Protection, and Strengthening UIGEA Act of 2012.”.

SEC. 203. FURTHER AMENDMENTS TO SUBCHAPTER IV OF CHAPTER 53 OF TITLE 31, UNITED STATES CODE.

Section 5362(10) of title 31, United States Code, is amended—

- (1) by striking subparagraphs (A) through (C) and inserting the following:

“(A) IN GENERAL.—The term ‘unlawful Internet gambling’ means to place, receive, or otherwise knowingly transmit a bet or wager by or on behalf of a person located in the United States by any means which involves the use, at least in part, of the Internet, unless such bet or wager is expressly permitted under applicable Federal law.”;

- (2) by redesignating subparagraph (D) as subparagraph (B);
- (3) in subparagraph (B), as so redesignated, by striking clause (iii); and
- (4) by striking subparagraph (E) and inserting the following:

“(C) QUALIFYING INTRASTATE LOTTERY TRANSACTIONS.—The term ‘unlawful Internet gambling’ does not include the purchase of a chance or opportunity to win a lottery or other prize that satisfies all of the conditions and limitations set out in section 102(3)(B)(ii) of the Internet Gambling Prohibition, Poker Consumer Protection, and Strengthening UIGEA Act of 2012.

“(D) LICENSED ONLINE POKER FACILITIES.—The term ‘unlawful Internet gambling’ does not include an activity carried out by an online poker facility, as such term is defined in section 102 of the Internet Gambling Prohibition, Poker Consumer Protection, and Strengthening UIGEA Act of 2012, operated by a person under a license provided under title I of that Act, in accordance with the provisions of that title I.”.

SEC. 204. BETTOR FORFEITURE.

Section 981(a)(1) of title 18, United States Code, is amended by adding at the end the following:

“(I) Any property, real or personal, involved in a transaction or attempted transaction in violation of section 103 of the Internet Gambling Prohibition, Poker Consumer Protection, and Strengthening UIGEA Act of 2012, or any property traceable to such property.”.

SEC. 205. REGULATIONS.

(a) Regulations.—Not later than 180 days after the date of enactment of this Act, the Secretary of the Treasury shall prescribe such regulations as the Secretary of the Treasury considers necessary to ensure compliance with the Bank Secrecy Act (12 U.S.C. 1951 et seq.; 31 U.S.C. 5311 et seq.), by licensees, significant vendors to such licensees, and financial service providers to such licensees (as those terms are defined in section 102).

(b) Revision of Regulations.—Not later than 180 days after the date of enactment of this Act, the Secretary of the Treasury shall revise part 233 of title 12, Code of Federal Regulations, and part 132 of title 31, Code of Federal Regulations, to conform with the provisions of title I.

SEC. 206. CONFORMING AMENDMENT.

Section 310(b)(2)(I) of title 31, United States Code, is amended by striking “subchapter II” and inserting “subchapters II and IV”.

TITLE III—ONLINE POKER REVENUE PROVISIONS

SEC. 301. AMENDMENT OF 1986 CODE.

Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

SEC. 302. ONLINE POKER ACTIVITY FEE; LICENSEE INFORMATION REPORTING.

(a) In General.—Chapter 36 is amended by adding at the end the following new subchapter:

“Subchapter E—Online Poker

“SEC. 4491. IMPOSITION OF ONLINE POKER ACTIVITY FEE.

“(a) Imposition of Online Poker Activity Fee.—Each person who is a licensee shall be required to pay not later than 15 days after the end of each calendar month an online poker

activity fee equal to 16 percent of a licensee's online poker receipts for that calendar month.

“(b) Online Poker Receipts.—

“(1) IN GENERAL.—The term ‘online poker receipts’ with respect to any calendar month means the amounts received by a licensee which are attributable to any commission fee, tournament fee (reduced by the amount of any tournament prizes paid by the licensee), or other fee or charge required or received from customers during such month which are directly connected to online poker.

“(2) EXCLUSIONS.—Revenues derived from the sale or provision of goods or services that are ancillary and not integral to the game, tournament, or contest of online poker, and amounts with respect to which a bonus or promotional credit was issued by or on behalf of the licensee to a customer, shall not be taken into account in determining online poker receipts.

“(c) Unauthorized Gambling.—Each person who is not a licensee and who operates any Internet gambling facility shall be required to pay not later than the end of each calendar month a fee equal to the amount of the online poker activity fee that would be applicable under subsection (a), applied by substituting ‘50 percent’ for ‘16 percent’, to such person for such month if such person were a licensee and if all of the Internet gambling receipts of such person were online poker receipts. Nothing in this section shall be construed to limit the criminal or civil liability under any other provision of law of a person that has operated or operates any Internet gambling facility.

“(d) Definitions.—For purposes of this subchapter, the terms ‘licensee’, ‘bet or wager’, ‘poker’, ‘online poker’, and ‘Internet gambling facility’ have the meaning given such terms by section 102 of the Internet Gambling Prohibition, Poker Consumer Protection, and Strengthening UIGEA Act of 2012.

“(e) Persons Liable.—

“(1) IN GENERAL.—Each licensee or other person (including an Indian tribal government or instrumentality thereof which is a licensee) who operates an Internet gambling facility shall be liable for and shall pay the applicable fees under this section with respect to all online poker receipts or Internet gambling receipts, whichever is applicable.

“(2) JOINT AND SEVERAL LIABILITY FOR UNAUTHORIZED GAMBLING.—In the case of any fee imposed under subsection (c), the person described in such subsection and any significant vendor to such person shall be jointly and severally liable for the fee under such subsection.

“(f) Administrative Provisions.—Except to the extent the Secretary shall by regulations prescribe, the administrative provisions of this title applicable to the excise taxes imposed by chapter 35 shall apply to the fees imposed by this section.

“SEC. 4492. RECORDKEEPING REQUIREMENTS.

“(a) In General.—Each licensee who is liable for the fees imposed by this subchapter shall

keep a daily record showing all deposits and withdrawals to which this subchapter applies, in addition to all other records required pursuant to section 6001(a).

“(b) Records With Respect to Online Poker Activity Fee.—Each licensee to which subsection (a) applies shall keep a record, using methods determined to be satisfactory by the qualified body (within the meaning of section 105 of the Internet Gambling Prohibition, Poker Consumer Protection, and Strengthening UIGEA Act of 2012) responsible for oversight of such licensee, of the location where each bet or wager with respect to which a fee is imposed by this subchapter was placed.”.

(b) Information Returns.—Subpart B of part III of subchapter A of chapter 61 is amended by adding at the end the following new section:

“SEC. 6050X. RETURNS RELATING TO ONLINE POKER.

“(a) Requirement.—Every person described in section 4491(e)(1) with respect to any month during a taxable year shall furnish, at such time and in such manner as the Secretary shall by regulations prescribe, the information described in subsection (b), and such person shall maintain (in the location and manner and to the extent prescribed in such regulations) such records as may be appropriate with respect to such information.

“(b) Required Information.—For purposes of subsection (a), the information described in this subsection is—

“(1) the name, address, and TIN of the person described in subsection (a);

“(2) the name, address, and TIN of each person placing a bet or wager on online poker (within the meaning of section 4491) with the person described in subsection (a) during the calendar year;

“(3) the gross winnings, gross wagers, and gross losses for the calendar year of each person placing a bet or wager as described in paragraph (2);

“(4) the net online poker winnings for each such person for the calendar year;

“(5) the amount of tax withheld, if any, with respect to each such person by the person described in subsection (a) for the calendar year;

“(6) the balance of any account maintained for each person placing a bet or wager as described in paragraph (2) by the person described in subsection (a), at the beginning and the end of the calendar year; and

“(7) the amounts of all deposits and withdrawals from each such account during such calendar year.

“(c) Statement To Be Furnished to Persons With Respect to Whom Information Is Required.—Every person required to make a return under subsection (a) shall furnish to each person whose name is required to be set forth in such return a written statement showing—

“(1) the name, address, and phone number of the information contact of the person required to make such return; and

“(2) the information required to be shown on such return with respect to each person whose name is required to be set forth in such return.

The written statement required under the preceding sentence shall be furnished to the person on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made.

“(d) Net Online Poker Winnings.—The term ‘net online poker winnings’ means annual gross winnings from bets or wagers with an online poker facility (within the meaning of section 4491) for which a license is required under section 103 of the Internet Gambling Prohibition, Poker Consumer Protection, and Strengthening UIGEA Act of 2012, reduced by gross losses from such bets or wagers.”.

(c) Online Poker Activity Fee Trust Fund.—Subchapter A of chapter 98 is amended by adding at the end the following new section:

“SEC. 9512. ONLINE POKER ACTIVITY FEE TRUST FUND.

“(a) Creation of Trust Fund.—There is established in the Treasury of the United States a trust fund to be known as the ‘Online Poker Activity Fee Trust Fund’ (hereafter in this section referred to as the ‘Trust Fund’), consisting of such amounts as may be appropriated or credited to such Trust Fund as provided in this section and section 9602(b).

“(b) Transfers to Fund.—There are hereby appropriated to the Trust Fund amounts equivalent to the amount of the fees received in the Treasury with respect to each calendar month under section 4491.

“(c) Expenditures From Fund.—

“(1) STATE AND INDIAN TRIBAL GOVERNMENT FEES.—

“(A) IN GENERAL.—On a monthly basis, the Secretary shall pay to States and Indian tribal governments the State and tribal share of the Trust Fund with respect to each licensee, to be allocated as follows:

“(i) 70 percent of such share to be allocated among such States and Indian tribal governments, with each such government receiving an amount which bears the same ratio to the total amount so allocated as—

“(I) the amount of all fees paid under section 4491 by all licensees for such month which are attributable to customers located within the jurisdiction of such government, bears to

“(II) the amount of all online poker receipts received by all licensees for such month.

“(ii) Except as provided in subparagraph (D), 30 percent to be allocated among such States and Indian tribal governments, with each such government receiving an amount which bears the same ratio to the total amount so allocated as—

“(I) the amount of all fees paid under section 4491 for such month by all licensees licensed by a qualified body located within the jurisdiction of such government, bears to

“(II) the amount of all online poker receipts received by all licensees for such month.

“(B) STATE AND TRIBAL SHARE.—Except as provided in subparagraph (D), for purposes of this section and with respect to a calendar month, the State and tribal share of the Trust Fund with respect to a licensee is 14 percent of such licensee’s online poker receipts which are taken into account for purposes of the fee under section 4491 for such month.

“(C) STATE AND INDIAN TRIBAL GOVERNMENT JURISDICTION.—For purposes of subparagraph (A)(i), online poker receipts of a customer located within the jurisdiction of an Indian tribal government shall be attributed to such Indian tribal government and not to the State or States in which such Indian tribal government is located. For purposes of subparagraph (A)(ii), a qualified body located within the jurisdiction of an Indian tribal government shall be considered to be located solely within the jurisdiction of such Indian tribal government and not within the jurisdiction of any State.

“(D) FEDERAL QUALIFIED BODY.—In the case of a licensee licensed by a qualified body which is a Federal agency (or any component thereof, including the Office of Online Poker Oversight), the amount of the State and tribal share of the Trust Fund which, if such qualified body were not a Federal agency (or component thereof) and were located within the jurisdiction of a State or Indian tribal government, would be allocated under subparagraph (A)(ii) to such State or Indian tribal government—

“(i) shall be subtracted from the State and tribal share of the Trust Fund with respect to such licensee, and

“(ii) shall be added to the Federal share of the Trust Fund with respect to such licensee, and shall be available for expenditure as provided in paragraphs (2), (3), and (4).

“(E) STATE.—For purposes of this section, the term ‘State’ means any State of the United States, the District of Columbia, or any commonwealth, territory or other possession of the United States.

“(F) INDIAN TRIBAL GOVERNMENT.—For purposes of this section, the term ‘Indian tribal government’ means the government of an Indian tribe (within the meaning of section 4 of the Indian Gaming Regulatory Act).

“(G) TIME OF PAYMENTS.—The payment made under this paragraph with respect to any calendar month shall be made not later than the 11th day of the succeeding calendar month.

“(2) ENFORCEMENT.—Subject to paragraphs (3), (4), and (5), amounts in the Federal share of the Trust Fund are available exclusively, without further appropriation—

“(A) to the Secretary of Commerce for carrying out, and enforcing the provisions of, title I of the Internet Gambling Prohibition, Poker Consumer Protection, and Strengthening UIGEA Act of 2012, and

“(B) to the Secretary of the Treasury for carrying out, and enforcing the provisions of, the Unlawful Internet Gambling Enforcement Act of 2006 (as amended by title II of the Internet Gambling Prohibition, Poker Consumer Protection, and Strengthening UIGEA Act of 2012).

“(3) NATIVE AMERICAN PROGRAM.—The Secretary shall transfer \$3,000,000 per year from the Federal share of the Trust Fund (only to the extent the funds are available) to the Administration for Native Americans in the Department of Health and Human Services to be used for purposes consistent with the Native American Programs Act of 1974 (42 U.S.C. 2991 et seq.).

“(4) SUPPORT OF RESPONSIBLE GAMING PROGRAMS.—In each of the 5 years following the date of the enactment of the Internet Gambling Prohibition, Poker Consumer Protection, and Strengthening UIGEA Act of 2012, the Secretary shall transfer \$2,000,000 from the Federal share of the Trust Fund (only to the extent the funds are available after compliance with paragraph (3)) to the Secretary of Health and Human Services for the purpose of conducting programs relating to the treatment of, awareness about, and research on problem and pathological gambling.

“(5) REDISTRIBUTION TO STATE AND TRIBAL SHARE.—On the last day of each fiscal year, any amounts remaining in the Federal share of the Trust Fund with respect to calendar months in such fiscal year which are not obligated under paragraph (2), (3), or (4) shall be paid to States and Indian tribal governments with each such State or Indian tribal government receiving the amount which bears the same ratio to the total amount so paid as

—
“(A) the total amount received by such State or Indian tribal government under paragraph (1)(A) for calendar months in such fiscal year, bears to

“(B) the total amount distributed under paragraph (1)(A) to all States and Indian tribal governments for calendar months in such fiscal year.

“(6) FEDERAL SHARE.—

“(A) IN GENERAL.—Except as provided in subparagraph (B)(ii)(I) and paragraph (1) (D), for purposes of this section and with respect to a calendar month, the Federal share of the Trust Fund is the aggregate of the amounts received under section 4491 for such month which are equal to 2 percent of the online poker receipts received by each licensee which are taken into account for purposes of the fee under such section 4491 for such month.

“(B) 3-YEAR ASSESSMENT AND RECALCULATION.—

“(i) ASSESSMENT AND REPORT.—

“(I) IN GENERAL.—Not later than 36 months after the date of the enactment of this Act, and every 3 years thereafter, the Secretary of Commerce shall publish the amounts allocated under paragraph (2) in each of the preceding years in the 3-year period ending with the year of the report.

“(II) REPORT OF SHORTFALL.—If, during the 3-year period with respect to which the report under subclause (I) is made, any recipient of the amounts allocated under paragraph (2) requested an amount in excess of available funds, the Secretary of Commerce shall report the amount of such excess.

“(ii) RECALCULATION OF FEDERAL SHARE RATE.—

“(I) IN GENERAL.—In the case of any adjustment period, subparagraph (A) shall be applied by substituting ‘3.5 percent’ for ‘2 percent’.

“(II) ADJUSTMENT PERIOD.—For purposes of subclause (I), the term ‘adjustment period’ means the 3-year period immediately following the year of a report of any excess under clause (i)(II).

“(d) Definitions.—For purposes of this section—

“(1) LICENSEE; ONLINE POKER RECEIPTS.—The terms ‘licensee’ and ‘online poker receipts’ have the same meaning as when used in section 4491.

“(2) QUALIFIED BODY.—The term ‘qualified body’ has the meaning given such term by section 105 of the Internet Gambling Prohibition, Poker Consumer Protection, and Strengthening UIGEA Act of 2012.”.

(d) Clerical Amendments.—

(1) The table of subchapters for chapter 36 is amended by adding at the end the following item:

“subchapter e—online poker”.

(2) The table of sections for subpart B of part III of subchapter A of chapter 61 is amended by inserting after the item relating to section 6050W the following new item:

“Sec.6050X>Returns relating to online poker.”.

(3) The table of sections for subchapter A of chapter 98 of such Code is amended by adding at the end the following new item:

“Sec.9512.Online Poker Activity Fee Trust Fund.”.

(e) Effective Date.—The amendments made by this section shall apply to amounts received by a licensee after the date of the enactment of this Act.

SEC. 303. WITHHOLDING FROM CERTAIN ONLINE POKER WINNINGS.

(a) Net Online Poker Winnings.—Paragraph (3) of section 3406(b) is amended—

- (1) by striking “or” at the end of subparagraph (E);
- (2) by striking the period at the end of subparagraph (F) and inserting “, or”; and
- (3) by adding at the end the following new subparagraph:

“(G) section 6050X(b)(4) (relating to net online poker winnings).”.

(b) Effective Date.—The amendments made by this section shall apply to amounts paid after the date of the enactment of this Act.

SEC. 304. WITHHOLDING OF TAX ON NONRESIDENT ALIENS.

(a) Tax on Nonresident Alien Individuals.—Paragraph (1) of section 871(a) is amended—

- (1) by striking “and” at the end of subparagraph (C);
- (2) by inserting “and” at the end of subparagraph (D); and
- (3) by inserting after subparagraph (D) the following new subparagraph:

“(E) the net online poker winnings (as defined in section 6050X(d)), determined at the time monies are withdrawn from a person who operates an online poker facility for which a license is required under section 103 of the Internet Gambling Prohibition, Poker Consumer Protection, and Strengthening UIGEA Act of 2012.”.

(b) Exemption for Certain Poker Winnings.—The first sentence of section 871(j) is amended by inserting “, or to net online poker winnings (as defined in section 6050X(d))” before the period.

(c) Withholding of Tax on Nonresident Alien Individuals.—The first sentence of subsection (b) of section 1441 is amended by inserting “amounts described in section 871(a)(1)(E),” after “gains subject to tax under section 871(a)(1)(D).”.

(d) Source of Online Poker Winnings.—Subsection (a) of section 861 is amended by adding at the end the following new paragraph:

“(9) ONLINE POKER WINNINGS.—Net online poker winnings (as defined in section 6050X(d)).”.

(e) Foreign Off-Track Wagers.—Subsection (b)(5) of section 872 is amended by inserting “, including a legal wagering transaction placed over the Internet or other remote means from outside the United States. Any payment to any person with respect to income derived from a legal wagering transaction excluded by this subsection shall not be subject to any obligation under section 1441, 1442, 3402(q), or 6041” before the period.

(f) Effective Date.—The amendments made by this section shall apply to payments made after the date of the enactment of this Act.

SEC. 305. PROVISIONS FOR STATE AND TRIBAL TAX.

(a) Exemption From Tax on Online Poker.—A State or political subdivision thereof, and an Indian tribal government or political subdivision thereof, shall impose no tax on—

(1) bets or wagers placed with a licensee that is subject to the fees under section 4491 of the Internal Revenue Code of 1986; or

(2) income or revenue of a licensee relating to such bets or wagers, unless such licensee maintains a permanent physical presence in such State or within the area of the jurisdiction of such Indian tribal government.

(b) Definitions.—For purposes of this section—

(1) IN GENERAL.—The terms “bet or wager” and “licensee” have the same meaning as when used in section 4491 of the Internal Revenue Code of 1986. The terms “State” and “Indian tribal government” have the same meaning as when used in section 9512 of such Code.

(2) TAX.—The term “tax” includes any tax, charge, or fee levied by a taxing jurisdiction, whether such tax, charge, or fee is imposed on a licensee or on a customer of a licensee, and without regard to the terminology used to describe such tax, charge, or fee.

(3) PERMANENT PHYSICAL PRESENCE.—

(A) IN GENERAL.—The term “permanent physical presence” means a substantial and continuous physical presence for the majority of the applicable taxable year. Such determination shall be made solely by reference to the assets of a licensee and the activities conducted by its employees.

(B) PRESENCE IN INDIAN TRIBE NOT TO AFFECT STATE PRESENCE.—If a licensee has permanent physical presence within the area of jurisdiction of an Indian tribal government for purposes of this section, such presence shall not be deemed to constitute permanent physical presence in any State in which such area of jurisdiction is located or partially located.

(c) Effective Date.—This section shall apply to bets or wagers after the date of the enactment of this Act.

SEC. 306. FOREIGN LICENSEES SUBJECT TO UNITED STATES FEDERAL INCOME TAX.

(a) Nonresident Alien Individuals.—Section 872 is amended by inserting after subsection (b) the following new subsection:

“(c) Income Earned by Nonresident Alien Individuals Operating Online Poker Facilities.—

“(1) TREATMENT AS UNITED STATES TRADE OR BUSINESS.—For purposes of this title, a nonresident alien individual who is a licensee or operates an online poker facility for which a license is required under section 103 of the Internet Gambling Prohibition, Poker Consumer Protection, and Strengthening UIGEA Act of 2012, at any time during a taxable year shall be deemed to be engaged in the conduct of a trade or business within the United

States during the taxable year.

“(2) TREATMENT OF GROSS INCOME AS EFFECTIVELY CONNECTED INCOME.—For purposes of this title, all gross income related to domestic wagers that are placed over the Internet shall be deemed to be effectively connected with the licensee’s trade or business within the United States.

“(3) TREATMENT OF GROSS INCOME AS ATTRIBUTABLE TO PERMANENT ESTABLISHMENT.—For purposes of any applicable United States income tax treaty, a nonresident alien individual who is a licensee or operates an online poker facility for which a license is required under section 103 of the Internet Gambling Prohibition, Poker Consumer Protection, and Strengthening UIGEA Act of 2012, at any time during a taxable year shall be deemed to have a permanent establishment located in the United States, and all gross income arising from domestic wagers that are placed over the Internet shall be treated as attributable to the permanent establishment of such nonresident alien individual.

“(4) DEFINITIONS.—

“(A) WAGER.—The term ‘wager’ has the meaning given the term ‘bet or wager’ in section 102(2) of the Internet Gambling Prohibition, Poker Consumer Protection, and Strengthening UIGEA Act of 2012.

“(B) DOMESTIC WAGER.—The term ‘domestic wager’ means a wager placed by a person located in the United States.

“(C) INTERNET.—The term ‘Internet’ has the meaning given in section 5362(5) of title 31, United States Code.”.

(b) Foreign Corporations.—Section 882 is amended by—

- (1) redesignating subsections (e) and (f) as subsections (f) and (g), respectively; and
- (2) by inserting after subsection (d) the following:

“(e) Income Earned by Foreign Corporations Operating Online Poker Facilities.—

“(1) TREATMENT AS UNITED STATES TRADE OR BUSINESS.—For purposes of this title, a foreign corporation that is a licensee or operates an online poker facility for which a license is required under section 103 of the Internet Gambling Prohibition, Poker Consumer Protection, and Strengthening UIGEA Act of 2012, at any time during a taxable year shall be deemed to be engaged in the conduct of a trade or business within the United States during the taxable year.

“(2) TREATMENT OF GROSS INCOME AS EFFECTIVELY CONNECTED INCOME.—For purposes of this title, all gross income related to domestic wagers that are placed over the Internet shall be deemed to be effectively connected with the licensee’s trade or business within the United States.

“(3) TREATMENT OF GROSS INCOME AS ATTRIBUTABLE TO PERMANENT ESTABLISHMENT.—For purposes of any applicable United States income tax treaty, a foreign corporation that is a licensee or operates an online poker facility for which a license is required under section

103 of the Internet Gambling Prohibition, Poker Consumer Protection, and Strengthening UIGEA Act of 2012, at any time during a taxable year shall be deemed to have a permanent establishment located in the United States, and all gross income arising from domestic wagers that are placed over the Internet shall be treated as attributable to the permanent establishment of such foreign corporation.

“(4) DEFINITIONS.—

“(A) WAGER.—The term ‘wager’ has the meaning given the term ‘bet or wager’ in section 102(2) of the Internet Gambling Prohibition, Poker Consumer Protection, and Strengthening UIGEA Act of 2012.

“(B) DOMESTIC WAGER.—The term ‘domestic wager’ means a wager placed by a person located in the United States.

“(C) INTERNET.—The term ‘Internet’ has the meaning given in section 5362(5) of title 31, United States Code.”.

(c) Effective Date.—The amendment made by this section shall apply to payments made after the date of the enactment of this Act.

SEC. 307. NO EXCISE TAX ON ONLINE POKER WAGERING.

(a) Definition of Wager.—Paragraph (1) of section 4421 is amended by inserting after subparagraph (C) the following flush text:

“For purposes of this chapter, the term ‘wager’ does not include any bet or wager that complies with, and is taken pursuant to, section 108(a) of the Internet Gambling Prohibition, Poker Consumer Protection, and Strengthening UIGEA Act of 2012.”.

(b) Effective Date.—The amendment made by this section shall apply to wagers made after the date of the enactment of this Act.

TITLE IV—OTHER MATTERS

SEC. 401 LIMITATION ON EXPANSION TO GAMES OTHER THAN POKER.

(a) Operate an Internet Gambling Facility and Poker Defined.—In this section, the terms “operate an Internet gambling facility” and “poker” have the meanings given such terms in section 102.

(b) In General.—It shall not be in order in the Senate or the House of Representatives to consider any bill, resolution, amendment, or conference report that licenses, regulates, or otherwise permits the operation of an Internet gambling facility or that licenses, regulates, or otherwise permits any form of Internet gambling other than poker.

(c) Limitation on Changes to This Section.—It shall not be in order in the Senate or the House

of Representatives to consider any bill, resolution, amendment, or conference report that would repeal or otherwise amend this section.

(d) Waiver.—A provision of this section may be waived or suspended in the Senate only by the affirmative vote of three-fifths of the Members, duly chosen and sworn.

(e) Appeals.—An affirmative vote of three-fifths of the Members of the Senate, duly chosen and sworn, shall be required to sustain an appeal of the ruling of the Chair on a point of order raised under this section.

(f) Rules of the Senate and House of Representatives.—This section is enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and is deemed to be part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a bill, resolution, amendment, or conference report under this section, and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as they relate to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

SEC. 402. STATE AND TRIBAL SUPPORT FOR PUBLIC AWARENESS, RESEARCH, AND TREATMENT PROGRAMS FOR PROBLEM AND PATHOLOGICAL GAMBLING.

(a) In General.—Subject to subsection (b), a State or Indian tribal government receiving payments from the Online Poker Activity Fee Trust Fund established under section 9512 of the Internal Revenue Code of 1986, as added by section 302, shall determine appropriate amounts from those payments to be used for the following purposes:

(1) TREATMENT.—To provide treatment services with respect to problem and pathological and underage gambling, including supporting and augmenting existing programs.

(2) PUBLIC AWARENESS.—To increase knowledge and improve awareness with respect to problem and pathological and underage gambling, including supporting and augmenting existing programs.

(3) RESEARCH.—To support peer-reviewed scientific and medical research into the causes and treatment of problem and pathological and underage gambling, including supporting and augmenting existing programs.

(b) Limitation on Amounts Applied to Public Awareness, Research, and Treatment Programs for Problem and Pathological Gambling.—In a fiscal year, a State or Indian tribal government described in subsection (a) shall determine an amount to be used for the purposes described in such subsection that is not less than the lesser of—

- (1) 0.5 percent of the payments received by the State or Indian tribe from Online Poker Activity Fee Trust Fund during that fiscal year, or
- (2) \$1,000,000.

SEC. 403. RESOLUTION OF INTERNATIONAL DISPUTE OVER INTERNET GAMBLING.

(a) Negotiation of Withdrawal.—Not later than 180 days after the date of the enactment of this Act, the United States Trade Representative shall take such action as may be necessary to conclude the process of withdrawing the commitment of the United States with respect to remote or Internet gambling under the General Agreement on Trade in Services in accordance with the provisions of Article XXI of that Agreement.

(b) Arbitration of Withdrawal.—If the United States Trade Representative is unable to conclude the process of withdrawing the commitment of the United States with respect to remote or Internet gambling under the General Agreement on Trade in Services by the deadline specified in subsection (a), the United States shall take all available steps to complete arbitration under Article XXI of that Agreement to conclude the process of withdrawing that commitment.

(c) General Agreement on Trade in Services Defined.—In this section, the term “General Agreement on Trade in Services” means the General Agreement on Trade in Services referred to in section 101(d)(14) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(14)).

SEC. 404. SEVERABILITY.

If any provision of this Act is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the remainder of the Act shall remain in effect and will continue to apply to other persons and circumstances.