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Internet Gambling: A Sketch of Legislative Proposals in the 107th Congress

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Summary

The Internet gambling bill passed by the House on October 1, 2002 (H.R. 556)(Reps. Leach & LaFalce), 148 *Cong.Rec.* H6848, outlaws the acceptance of credit cards, checks, electronic transfers, and the like for purposes of illegal Internet gambling. An amended version of the language approved by the Financial Services Committee and earlier endorsed by the Committee in H.R. 3004, it enlarges the coverage of the Wire Act to reach gambling-related transmissions by satellite or microwave. It also creates a system of regulation and immunities to ensure the enforcement assistance of financial institutions and Internet service providers. In related legislation, a Senate bill, S.718 (Sen. McCain), reported out by the Senate Commerce, Science and Transportation Committee includes provisions on athletic abuse of performance-enhancing drugs and on sports gambling. Another Senate bill, S. 3006 (Sen. Johnson), and a proposal approved by the House Judiciary Committee, H.R. 3215 (Rep. Goodlatte), rewrite the Wire Act to confirm its prohibition of illegal Internet gambling. A final offering, H.R. 2579 (Rep. LaFalce), applies funding proscriptions to both legal and illegal Internet gambling operations (the other bills only apply to funding related to illegal Internet gambling).

Related CRS products include CRS Report RS20880, *Sports Legislation in the 107th Congress*; CRS Report 97-619, *Internet Gambling: Overview of Federal Criminal Law*; and CRS Report RS20905, *Internet Gambling: A Sketch of Legislative Proposals in the 106th Congress*.

Background. Wagers amounting to an estimated $1.6 billion a year pass through the approximately 1500 sites available for Internet gambling, H.Rept. 107-339, at 6 (2002). Critics contend that gambling on the Internet offers a particularly addictive and child-alluring form of gambling; one that makes personal bankruptcy more likely; one that provides a convenient environment for fraud and money laundering by organized crime

and terrorists; one that is beyond the effective reach of state regulators; and one that is frequently operated offshore making it more resistant to law enforcement efforts.[1]

Although state and federal laws prohibit most Internet gambling,[2] enforcement has proven difficult. Our extradition treaties ordinarily cannot reach offshore operators. The federal Wire Act (18 U.S.C. 1081-1084), which features a number of enforcement advantages, also suffers from limitations. It does permit communication service providers to deny service to gamblers at the request of state and federal law enforcement officials, and Internet communications generally rely on wire communications in whole or in part and thus come within the scope of the Act. Yet the Wire Act's coverage of anything other than matters involving sports gambling is uncertain. Read literally, the Act seems to reach more than sports gambling. The Justice Department, however, has rarely prosecuted a case that did not involve sports and consequently there is little case law on the point.[3]

Internet gambling proposals seeking to overcome these difficulties in one manner or another have been working their way through the Congress since the 105th Congress.[4] The Senate approved an Internet gambling ban as part of the Commerce-Justice-State appropriations bill in 1998, 144 *Cong.Rec.* S8801-803 (daily ed. July 23, 1998), but the

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[1] *Unlawful Internet Gambling Funding Prohibition Act and the Combating Illegal Gambling Reform Act: Hearing Before the Subcomm. on Crime of the House Comm. on the Judiciary*, 107th Cong., 1st Sess. (2001) (*Judiciary Hearings*); *H.R. 556- The Unlawful Internet Gambling Funding Prohibition Act and Other Internet Gambling Proposals: Hearing Before the Subcomm. on Financial Institutions and Consumer Credit of the House Comm. on Financial Services*, 107th Cong., 1st Sess. (2001) (*Financial Services Hearings)*.

[2] *See generally, Internet Gambling: Overview of Federal Criminal Law*, CRS Rept. 97-619A.

[3] A few courts have found violations of the Wire Act in cases involving other forms of gambling, *People ex rel. Vacco v. World Interactive Gaming Corporation*, 185 Misc.2d 852, 714 N.Y.S.2d 844 (N.Y.S.Ct. 1999)(Internet casino offering slots, blackjack and roulette); *AT&T Corp. v. Coeur D'Alene Tribe*, 45 F.Supp. 2d 995 (D.Idaho 1998)(on-line lottery), *rev'd on other grounds*, 283 F.3d 1156 (9th Cir. 2002); *United States v. Smith*, 390 F.2d 420 (4th Cir. 1968)(numbers); *United States v. Chase*, 372 F.2d 453 (4th Cir. 1967)(same), *but see, In re MasterCard International, Inc. Internet Gambling Litigation*, 132 F.Supp.2d 468 (E.D.La. 2001)(the Wire Act only applies to sports gambling).

[4] *H.R.4419, The Internet Gambling Funding Prohibition Act: Hearing Before the House Comm. on Banking and Financial Services*, 106th Cong., 2d Sess.(2000); *Internet Gambling Prohibition Act of 1999: Hearing Before the Subcomm. on Crime of the House Comm. on the Judiciary*, 106th Cong., 2d Sess. (2000); *H.R. 3125, the Internet Gambling Prohibition Act of 1999: Hearing Before the Subcomm. on Telecommunications, Trade & Consumer Protection of the House Comm. on Commerce*, 106th Cong. 2d Sess. (2000); *Internet Gambling: Hearing Before the Subcomm. on Technology, Terrorism, and Government Information of the Senate Comm. on the Judiciary*, 106th Cong., 1st Sess. (1999); *Internet Gambling: Hearing Before the Senate Comm. on Indian Affairs*, 106th Cong., 1st Sess. (1999); *Internet Gambling Prohibition Act of 1997: Hearings Before the Subcomm. on Crime of the House Comm. on the Judiciary*, 105th Cong., 2d Sess. (1998); *Internet Crimes Affecting Consumers: Hearing Before the Subcomm. on Technology, Terrorism, and Government Information of the Senate Comm. on the Judiciary*, 105th Cong., 1st Sess. (1997); *The Internet Gambling Act of 1997: Hearing Before the Subcomm. on Technology, Terrorism, and Government Information of the Senate Comm. on the Judiciary*, 105th Cong., 1st Sess. (1997).

provision died in conference. The following year, the Senate passed the Internet Gambling Prohibition Act of 1999 (S. 692)(Sen. Kyl), 145 *Cong.Rec.* S14870 (daily ed. Nov. 18, 1999); *see also*, S.Rept. 106-121.[5] In the House, Rep. Goodlatte introduced H.R. 3125, a similar bill with the same name. The House Judiciary Committee reported it favorably, H.Rept. 106-655 (2000). It was brought to the floor under suspension of the rules, but failed to secure the necessary two-thirds vote, 145 *Cong.Rec.* H6057 (daily ed. July 17, 2000). These bills outlawed Internet gambling in a separate statute. Other proposals sought (1) to deny Internet gambling entrepreneurs the benefits of access to their customers' checks, credit cards, and electronic fund transfers, H.R.4419 (Rep. Leach), or, (2) at the suggestion of the Justice Department, to clarify the Wire Act's ban on Internet gambling, H.R. 5020 (Rep. Conyers).

The dual approach continued in the 107th Congress. The House Judiciary Committee approved a Wire Act amendment bill that included a credit card ban, H.R. 3215 (Rep. Goodlatte) (H.Rept. 107-591), while the House Financial Services and Senate Commerce, Science and Technology Committees endorsed free standing credit card bans, H.R. 556 (Rep. Leach)(H.Rept. 107-339); S. 718 (Sen. McCain)(S.Rept. 107-16). Other proposals include one to deny the use of credit cards and the like in relation to both legal and illegal Internet gambling (the other proposals address only the financing of *illegal* Internet gambling), H.R. 2579 (Rep. LaFalce), and a Senate proposal that features the credit card ban as part of a Wire Act amendment, S. 3006 (Sen. Johnson). The House ultimately passed a compromise version of H.R. 556 (Leach-LaFalce) that added some amendments to the Wire Act to its free standing credit card ban.

Issues. Although over the years Congress has enacted a number of statutes designed to protect the states from the unwelcome intrusions of interstate or international gambling, some resist further federal gambling legislation even for this limited purpose.[6] Others clearly favor federal legislation which reenforces the prerogative of the states to effectively determine which forms of gambling, if any, will be permitted within their

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[5] The same year, the National Gambling Impact Study Commission recommended a ban on internet gambling and related financial transactions, *Final Report*, at 5-12 (1999).

[6] *E.g.*, H.Rept. 107-339 at 16 (2001) (Dissenting Views of Rep. Paul)("the Federal Government has no constitutional authority to ban or even discourage any form of gambling"); *Judiciary Hearings*, at 49 (prepared statement of Lisa S. Dean and J.Bradley Jansen, Free Congress Foundation)(Internet gambling proposals "fly in the face of conservative principles of federalism, individual responsibility, and limited government").

Contemporary construction of the Constitution's commerce and necessary and proper clauses seems to recognize Congress's legislative authority over commercial activities and over activities that utilize the instrumentalities of interstate and foreign commerce such as the Internet and other forms of communications, *United States v. Lopez*, 514 U.S. 549, 558-60 (1995); *United States v. Morrison*, 529 U.S. 598, 608-9 (2000).

borders.[7] And some favor additional federal proscriptions of Internet gambling, whether legal or illegal under relevant state laws.[8]

Beyond the question of whether federal legislation is appropriate lies the question of what form any such legislation should take. To compensate for the difficulties involved in prosecuting offshore Internet gambling operations, the proposals in this Congress seek to deny them the benefits of American financial services. In addition to a general prohibition, the proposals generally contain a mechanism enabling state and federal law enforcement officials to secure a court order to deny service to at least certain Internet gambling operations.[9] Critics have argued that this could expose credit card companies and others to a series of inconsistent and conflicting court orders.[10]

Although it has endorsed the approaches taken in the Goodlatte, Leach and McCain bills, the Justice Department has consistently urged that Internet gambling be treated the same as gambling accomplished through use of the telephone and prefers amendments to the Wire Act in order to expand or clarify the Act's coverage of Internet gambling.[11] Opening the Wire Act for amendment, however, unleashes a number of other issues unrelated to Internet gambling.[12]

Comparison of H.R. 556 and S. 718. The House-passed Leach-LaFalce Internet Gambling Enforcement Act (H.R. 556):

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[7] *E.g.*, H.Rept. 107-591 at 6 (2002)(This legislation "does not, however, supersede the traditional leadership roles of States in enforcing gambling laws within their borders. It addresses a growing problem that no single State, or collection of States, can adequately address. Because of the unique interstate and international nature of the Internet, [this legislation] is necessary").

[8] *E.g., Financial Services Hearings*, at 10 (comments of Reps. LaFalce and Leach).

[9] Whether because of litigation costs, the perils of collection, or anticipation of federal legislation, some financial institutions have already begun to limit service, *Financial Services Hearings*, at 25 (statement of Michael L. Farmer, Wachovia Bank Card Services);("Wachovia developed a policy to decline internet gambling charges in order to mitigate our losses"); *Citi to Block Online Gambling Payments, American Banker*, 24 (June 17, 2002)(reporting that Citibank, Bank of America, MBNA Corp., and J.P.Morgan Chase & Co. have begun to block credit card transactions with online gambling operations); *eBay Goals for PayPal, American Banker*, 1 (July 9, 2002 (reporting that eBay plans to close down it PayPal Internet gambling business); *see also, Cheyenne Sales, Ltd. v. Western Union*, 8 F.Supp.2d 469 (E.D.Pa. 1998)(Wire Act precludes customer's suit following Western Union's termination of its electronic fund transfer account used to make payments to offshore Internet gambling operations); *The Enforceability of Internet Gambling Debts: Law, Policies, and Causes of Action,* 6 VIRGINIA JOURNAL OF LAW & TECHNOLOGY 6 (2001).

[10] H.Rept. 107-591, at 124 (Dissenting Views of Rep. Conyers, Scott, Watt, and Waters)("Credit card companies such as Visa and MasterCard have raised concerns with the bill because it could subject them to injunctions in numerous jurisdictions that require different – or even conflicting – remedies to prevent the payment of Internet bets or wagers. The result will be a hodge-podge of inconsistent court orders, rather than a cohesive enforcement scheme")

[11] *Judiciary Hearings*, at 8-9 (statement of Rep. Goodlatte); at 48 (prepared statement of Ass't Attorney General Michael Chertoff).

[12] *Financial Services Hearings*, at 11 (testimony of Sen. Kyl).

- prohibits anyone engaged in a gambling business ("business of betting or wagering") from accepting credit cards, checks, electronic fund transfers, or the like in connection with illegal Internet gambling;

- violators are subject to imprisonment for not more than 5 years and/or a fine under title 18, and may be barred from engaging in future illegal Internet gambling;

- excludes lawful transactions with a state licensed or authorized business from the definition of "betting or wagering";

- exempts financial institutions and internet service providers from the definition of gambling business unless they conduct or control an unlawful Internet gambling site;

- authorizes federal courts to enjoin violations at the behest of the Attorney General or state attorneys general; and

- urges diplomatic action to encourage international cooperation for the enforcement of its provisions and to identify any connection between Internet gambling and money laundering.

The modifications made to H.R. 556 prior to its passage under suspension of the rules involve:

- limits on the civil remedies available against Internet service providers;

- a list of aggravating factors to be considered before financial institutions are exposed to a corrective court order;

- adjustment of the powers given bank regulatory authorities to permit them to require the establishment of policies and practices designed to identify and prevent prohibited transactions, and enforceable by both the regulators and the Federal Trade Commission (FTC); and

- expansion of the Wire Act to cover satellite and microwave transmissions.

S. 718, as reported out of committee, differs from H.R. 556 in a number of respects. Among other things it:

- outlaws the knowing receipt of illegal Internet gambling proceeds by financial institutions, rather than prohibiting Internet gambling businesses from accepting credit cards or the like;

- states more explicitly that illegal Internet gambling occurs where it is unlawful either in the place where a bet is placed or the place where it is received (with an exception for Class III Indian gambling pursuant to a state compact);

- does not address Internet service providers;

- makes no changes in the Wire Act;

- says nothing of international cooperation;

- directs the National Institute of Standards and Technology to establish grant programs to support research and preventive education with respect to the use of performance-enhancing substances by athletes;

- prohibits gambling on Olympic, high school, or college sporting events;

- requires colleges to report on the prevalence of underage and other illegal campus gambling and on their policies concerning such gambling; and

- instructs colleges to monitor use of its wire communications facilities to detect violations of the Wire Act.