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2^D SESSION

H. R. 556

IN THE SENATE OF THE UNITED STATES

OCTOBER 2, 2002

Received; read twice and referred to the Committee on the Judiciary

AN ACT

To prevent the use of certain bank instruments for unlawful
Internet gambling, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Leach-LaFalce Inter-
3 net Gambling Enforcement Act”.

4 **SEC. 2. FINDINGS.**

5 The Congress finds as follows:

6 (1) Internet gambling is primarily funded
7 through personal use of bank instruments, including
8 credit cards and wire transfers.

9 (2) The National Gambling Impact Study Com-
10 mission in 1999 recommended the passage of legisla-
11 tion to prohibit wire transfers to Internet gambling
12 sites or the banks which represent them.

13 (3) Internet gambling is a major cause of debt
14 collection problems for insured depository institu-
15 tions and the consumer credit industry.

16 (4) Internet gambling conducted through off-
17 shore jurisdictions has been identified by United
18 States law enforcement officials as a significant
19 money laundering vulnerability.

20 **SEC. 3. PROHIBITION ON ACCEPTANCE OF ANY BANK IN-**
21 **STRUMENT FOR UNLAWFUL INTERNET GAM-**
22 **BLING.**

23 (a) IN GENERAL.—No person engaged in the busi-
24 ness of betting or wagering may knowingly accept, in con-
25 nection with the participation of another person in unlaw-
26 ful Internet gambling—

1 (1) credit, or the proceeds of credit, extended to
2 or on behalf of such other person (including credit
3 extended through the use of a credit card);

4 (2) an electronic fund transfer or funds trans-
5 mitted by or through a money transmitting business,
6 or the proceeds of an electronic fund transfer or
7 money transmitting service, from or on behalf of the
8 other person;

9 (3) any check, draft, or similar instrument
10 which is drawn by or on behalf of the other person
11 and is drawn on or payable at or through any finan-
12 cial institution; or

13 (4) the proceeds of any other form of financial
14 transaction as the Secretary may prescribe by regu-
15 lation which involves a financial institution as a
16 payor or financial intermediary on behalf of or for
17 the benefit of the other person.

18 (b) DEFINITIONS.—For purposes of this Act, the fol-
19 lowing definitions shall apply:

20 (1) BETS OR WAGERS.—The term “bets or
21 wagers”—

22 (A) means the staking or risking by any
23 person of something of value upon the outcome
24 of a contest of others, a sporting event, or a
25 game subject to chance, upon an agreement or

1 understanding that the person or another per-
2 son will receive something of greater value than
3 the amount staked or risked in the event of a
4 certain outcome;

5 (B) includes the purchase of a chance or
6 opportunity to win a lottery or other prize
7 (which opportunity to win is predominantly sub-
8 ject to chance);

9 (C) includes any scheme of a type de-
10 scribed in section 3702 of title 28, United
11 States Code;

12 (D) includes any instructions or informa-
13 tion pertaining to the establishment or move-
14 ment of funds in an account by the bettor or
15 customer with the business of betting or wager-
16 ing; and

17 (E) does not include—

18 (i) any activity governed by the secu-
19 rities laws (as that term is defined in sec-
20 tion 3(a)(47) of the Securities Exchange
21 Act of 1934) for the purchase or sale of se-
22 curities (as that term is defined in section
23 3(a)(10) of such Act);

24 (ii) any transaction conducted on or
25 subject to the rules of a registered entity

1 or exempt board of trade pursuant to the
2 Commodity Exchange Act;

3 (iii) any over-the-counter derivative
4 instrument;

5 (iv) any other transaction that—

6 (I) is excluded or exempt from
7 regulation under the Commodity Ex-
8 change Act; or

9 (II) is exempt from State gaming
10 or bucket shop laws under section
11 12(e) of the Commodity Exchange Act
12 or section 28(a) of the Securities Ex-
13 change Act of 1934;

14 (v) any contract of indemnity or guar-
15 antee;

16 (vi) any contract for insurance;

17 (vii) any deposit or other transaction
18 with a depository institution (as defined in
19 section 3(c) of the Federal Deposit Insur-
20 ance Act);

21 (viii) any participation in a simulation
22 sports game or an educational game or
23 contest that—

24 (I) is not dependent solely on the
25 outcome of any single sporting event

1 or nonparticipant's singular individual
2 performance in any single sporting
3 event;

4 (II) has an outcome that reflects
5 the relative knowledge and skill of the
6 participants with such outcome deter-
7 mined predominantly by accumulated
8 statistical results of sporting events;
9 and

10 (III) offers a prize or award to a
11 participant that is established in ad-
12 vance of the game or contest and is
13 not determined by the number of par-
14 ticipants or the amount of any fees
15 paid by those participants; and

16 (ix) any lawful transaction with a
17 business licensed or authorized by a State.

18 (2) BUSINESS OF BETTING OR WAGERING.—

19 The term “business of betting or wagering” does not
20 include, other than for purposes of subsection (e),
21 any creditor, credit card issuer, insured depository
22 institution, financial institution, operator of a ter-
23 minal at which an electronic fund transfer may be
24 initiated, money transmitting business, or inter-
25 national, national, regional, or local network utilized

1 to effect a credit transaction, electronic fund trans-
2 fer, stored value product transaction, or money
3 transmitting service, or any participant in such net-
4 work, or any interactive computer service or tele-
5 communications service.

6 (3) DESIGNATED PAYMENT SYSTEM DE-
7 FINED.—The term “designated payment system”
8 means any system utilized by any creditor, credit
9 card issuer, financial institution, operator of a ter-
10 minal at which an electronic fund transfer may be
11 initiated, money transmitting business, or inter-
12 national, national, regional, or local network utilized
13 to effect a credit transaction, electronic fund trans-
14 fer, or money transmitting service, or any partici-
15 pant in such network, that the Secretary, in con-
16 sultation with the Board of Governors of the Federal
17 Reserve System and the Attorney General, deter-
18 mines, by regulation or order, could be utilized in
19 connection with, or to facilitate, any restricted trans-
20 action.

21 (4) INTERNET.—The term “Internet” means
22 the international computer network of interoperable
23 packet switched data networks.

24 (5) INTERACTIVE COMPUTER SERVICE.—The
25 term “interactive computer service” has the same

1 meaning as in section 230(f) of the Communications
2 Act of 1934.

3 (6) RESTRICTED TRANSACTION.—The term “re-
4 stricted transaction” means any transaction or
5 transmittal involving any credit, funds, instrument,
6 or proceeds described in any paragraph of subsection
7 (a) which the recipient is prohibited from accepting
8 under subsection (a).

9 (7) UNLAWFUL INTERNET GAMBLING.—The
10 term “unlawful Internet gambling” means to place,
11 receive, or otherwise transmit a bet or wager by any
12 means which involves the use, at least in part, of the
13 Internet where such bet or wager is unlawful under
14 any applicable Federal or State law in the State in
15 which the bet or wager is initiated, received, or oth-
16 erwise made.

17 (8) OTHER TERMS.—

18 (A) CREDIT; CREDITOR; AND CREDIT
19 CARD.—The terms “credit”, “creditor”, and
20 “credit card” have the meanings given such
21 terms in section 103 of the Truth in Lending
22 Act.

23 (B) ELECTRONIC FUND TRANSFER.—The
24 term “electronic fund transfer”—

1 (i) has the meaning given such term
2 in section 903 of the Electronic Fund
3 Transfer Act; and

4 (ii) includes any fund transfer covered
5 by Article 4A of the Uniform Commercial
6 Code, as in effect in any State.

7 (C) FINANCIAL INSTITUTION.—The term
8 “financial institution” has the meaning given
9 such term in section 903 of the Electronic
10 Fund Transfer Act.

11 (D) MONEY TRANSMITTING BUSINESS AND
12 MONEY TRANSMITTING SERVICE.—The terms
13 “money transmitting business” and “money
14 transmitting service” have the meanings given
15 such terms in section 5330(d) of title 31,
16 United States Code.

17 (E) SECRETARY.—The term “Secretary”
18 means the Secretary of the Treasury.

19 (c) CIVIL REMEDIES.—

20 (1) JURISDICTION.—The district courts of the
21 United States shall have original and exclusive juris-
22 diction to prevent and restrain violations of this sec-
23 tion by issuing appropriate orders in accordance
24 with this section, regardless of whether a prosecu-
25 tion has been initiated under this section.

1 (2) PROCEEDINGS.—

2 (A) INSTITUTION BY FEDERAL GOVERN-
3 MENT.—

4 (i) IN GENERAL.—The United States,
5 acting through the Attorney General, may
6 institute proceedings under this subsection
7 to prevent or restrain a violation of this
8 section.

9 (ii) RELIEF.—Upon application of the
10 United States under this subparagraph,
11 the district court may enter a preliminary
12 injunction or an injunction against any
13 person to prevent or restrain a violation of
14 this section, in accordance with Rule 65 of
15 the Federal Rules of Civil Procedure.

16 (B) INSTITUTION BY STATE ATTORNEY
17 GENERAL.—

18 (i) IN GENERAL.—The attorney gen-
19 eral of a State (or other appropriate State
20 official) in which a violation of this section
21 allegedly has occurred or will occur may in-
22 stitute proceedings under this subsection to
23 prevent or restrain the violation.

24 (ii) RELIEF.—Upon application of the
25 attorney general (or other appropriate

1 State official) of an affected State under
2 this subparagraph, the district court may
3 enter a preliminary injunction or an in-
4 junction against any person to prevent or
5 restrain a violation of this section, in ac-
6 cordance with Rule 65 of the Federal
7 Rules of Civil Procedure.

8 (C) INDIAN LANDS.—

9 (i) IN GENERAL.—Notwithstanding
10 subparagraphs (A) and (B), for a violation
11 that is alleged to have occurred, or may
12 occur, on Indian lands (as that term is de-
13 fined in section 4 of the Indian Gaming
14 Regulatory Act)—

15 (I) the United States shall have
16 the enforcement authority provided
17 under subparagraph (A); and

18 (II) the enforcement authorities
19 specified in an applicable Tribal-State
20 compact negotiated under section 11
21 of the Indian Gaming Regulatory Act
22 shall be carried out in accordance
23 with that compact.

24 (ii) RULE OF CONSTRUCTION.—No
25 provision of this section shall be construed

1 as altering, superseding, or otherwise af-
2 fecting the application of the Indian Gam-
3 ing Regulatory Act.

4 (3) EXPEDITED PROCEEDINGS.—In addition to
5 any proceeding under paragraph (2), a district court
6 may, in exigent circumstances, enter a temporary re-
7 straining order against a person alleged to be in vio-
8 lation of this section upon application of the United
9 States under paragraph (2)(A), or the attorney gen-
10 eral (or other appropriate State official) of an af-
11 fected State under paragraph (2)(B), in accordance
12 with Rule 65(b) of the Federal Rules of Civil Proce-
13 dure.

14 (4) LIMITATION RELATING TO INTERACTIVE
15 COMPUTER SERVICES.—

16 (A) IN GENERAL.—Relief granted under
17 this subsection against an interactive computer
18 service shall—

19 (i) be limited to the removal of, or dis-
20 abling of access to, an online site violating
21 this section, or a hypertext link to an on-
22 line site violating this section, that resides
23 on a computer server that such service
24 controls or operates; except this limitation
25 shall not apply if the service is subject to

1 liability under this section pursuant to sub-
2 section (e);

3 (ii) be available only after notice to
4 the interactive computer service and an op-
5 portunity for the service to appear are pro-
6 vided;

7 (iii) not impose any obligation on an
8 interactive computer service to monitor its
9 service or to affirmatively seek facts indi-
10 cating activity violating this section;

11 (iv) specify the interactive computer
12 service to which it applies; and

13 (v) specifically identify the location of
14 the online site or hypertext link to be re-
15 moved or access to which is to be disabled.

16 (B) COORDINATION WITH OTHER LAW.—

17 An interactive computer service that does not
18 violate this section shall not be liable under sec-
19 tion 1084 of title 18, except this limitation shall
20 not apply if an interactive computer service has
21 actual knowledge and control of bets and wa-
22 gers and—

23 (i) operates, manages, supervises, or
24 directs an Internet website at which unlaw-
25 ful bets or wagers may be placed, received,

1 or otherwise made or at which unlawful
2 bets or wagers are offered to be placed, re-
3 ceived, or otherwise made; or

4 (ii) owns or controls, or is owned or
5 controlled by, any person who operates,
6 manages, supervises, or directs an Internet
7 website at which unlawful bets or wagers
8 may be placed, received, or otherwise made
9 or at which unlawful bets or wagers are of-
10 fered to be placed, received, or otherwise
11 made.

12 (5) FACTORS TO BE CONSIDERED IN CERTAIN
13 CASES.—In considering granting relief under this
14 subsection against any payment system, or any par-
15 ticipant in a payment system that is a creditor, cred-
16 it card issuer, financial institution, operator of a ter-
17 minal at which an electronic fund transfer may be
18 initiated, money transmitting business, or inter-
19 national, national, regional, or local network utilized
20 to effect a credit transaction, electronic fund trans-
21 fer, or money transmitting service, or a participant
22 in such network, the court shall consider the fol-
23 lowing factors:

24 (A) The extent to which such person is ex-
25 tending credit or transmitting funds knowing

1 the transaction is in connection with unlawful
2 Internet gambling.

3 (B) The history of such person in extend-
4 ing credit or transmitting funds knowing the
5 transaction is in connection with unlawful
6 Internet gambling.

7 (C) The extent to which such person has
8 established and is maintaining policies and pro-
9 cedures in compliance with regulations pre-
10 scribed under subsection (f).

11 (D) The feasibility that any specific rem-
12 edy prescribed in the order issued under this
13 subsection can be implemented by such person
14 without substantial deviation from normal busi-
15 ness practice.

16 (E) The costs and burdens the specific
17 remedy will have on such person.

18 (6) NOTICE TO REGULATORS AND FINANCIAL
19 INSTITUTIONS.—Before initiating any proceeding
20 under paragraph (2) with respect to a violation or
21 potential violation of this section by any creditor,
22 credit card issuer, financial institution, operator of a
23 terminal at which an electronic fund transfer may be
24 initiated, money transmitting business, or inter-
25 national, national, regional, or local network utilized

1 to effect a credit transaction, electronic fund trans-
2 fer, or money transmitting service, or any partici-
3 pant in such network, the Attorney General of the
4 United States or an attorney general of a State (or
5 other appropriate State official) shall—

6 (A) notify such person, and the appro-
7 priate regulatory agency (as determined in ac-
8 cordance with subsection (f)(5)) for such per-
9 son, of such violation or potential violation and
10 the remedy to be sought in such proceeding;
11 and

12 (B) allow such person 30 days to imple-
13 ment a reasonable remedy for the violation or
14 potential violation, consistent with the factors
15 described in paragraph (5) and in conjunction
16 with such action as the appropriate regulatory
17 agency may take.

18 (d) CRIMINAL PENALTY.—

19 (1) IN GENERAL.—Whoever violates this section
20 shall be fined under title 18, United States Code, or
21 imprisoned for not more than 5 years, or both.

22 (2) PERMANENT INJUNCTION.—Upon convic-
23 tion of a person under this subsection, the court
24 may enter a permanent injunction enjoining such
25 person from placing, receiving, or otherwise making

1 illegal bets or wagers or sending, receiving, or invit-
2 ing information assisting in the placing of bets or
3 wagers.

4 (e) CIRCUMVENTIONS PROHIBITED.—Notwith-
5 standing subsection (b)(2), a creditor, credit card issuer,
6 financial institution, operator of a terminal at which an
7 electronic fund transfer may be initiated, money transmit-
8 ting business, or international, national, regional, or local
9 network utilized to effect a credit transaction, electronic
10 fund transfer, or money transmitting service, or any par-
11 ticipant in such network, or any interactive computer serv-
12 ice or telecommunications service, may be liable under this
13 section if such creditor, issuer, institution, operator, busi-
14 ness, network, or participant has actual knowledge and
15 control of bets and wagers and—

16 (1) operates, manages, supervises, or directs an
17 Internet website at which unlawful bets or wagers
18 may be placed, received, or otherwise made or at
19 which unlawful bets or wagers are offered to be
20 placed, received, or otherwise made; or

21 (2) owns or controls, or is owned or controlled
22 by, any person who operates, manages, supervises,
23 or directs an Internet website at which unlawful bets
24 or wagers may be placed, received, or otherwise

1 made or at which unlawful bets or wagers are of-
2 ferred to be placed, received, or otherwise made.

3 (f) POLICIES AND PROCEDURES TO IDENTIFY AND
4 PREVENT RESTRICTED TRANSACTIONS IN PAYMENT FOR
5 UNLAWFUL INTERNET GAMBLING.—

6 (1) REGULATIONS.—Before the end of the 6-
7 month period beginning on the date of the enact-
8 ment of this Act, the Secretary of the Treasury, in
9 consultation with the Board of Governors of the
10 Federal Reserve System and the Attorney General,
11 shall prescribe regulations requiring any designated
12 payment system to establish policies and procedures
13 reasonably designed to identify and prevent re-
14 stricted transactions in any of the following ways:

15 (A) The establishment of policies and pro-
16 cedures that—

17 (i) allow the payment system and any
18 person involved in the payment system to
19 identify restricted transactions by means of
20 codes in authorization messages or by
21 other means; and

22 (ii) block restricted transactions iden-
23 tified as a result of the policies and proce-
24 dures developed pursuant to clause (i).

1 (B) The establishment of policies and pro-
2 cedures that prevent the acceptance of the
3 products or services of the payment system in
4 connection with a restricted transaction.

5 (2) REQUIREMENTS FOR POLICIES AND PROCE-
6 DURES.—In prescribing regulations pursuant to
7 paragraph (1), the Secretary shall—

8 (A) identify types of policies and proce-
9 dures, including nonexclusive examples, which
10 would be deemed to be “reasonably designed to
11 identify” and “reasonably designed to block” or
12 to “prevent the acceptance of the products or
13 services” with respect to each type of trans-
14 action, such as, should credit card transactions
15 be so designated, identifying transactions by a
16 code or codes in the authorization message and
17 denying authorization of a credit card trans-
18 action in response to an authorization message;

19 (B) to the extent practical, permit any par-
20 ticipant in a payment system to choose among
21 alternative means of identifying and blocking,
22 or otherwise preventing the acceptance of the
23 products or services of the payment system or
24 participant in connection with, restricted trans-
25 actions; and

1 (C) consider exempting restricted trans-
2 actions from any requirement under paragraph
3 (1) if the Secretary finds that it is not reason-
4 ably practical to identify and block, or otherwise
5 prevent, such transactions.

6 (3) COMPLIANCE WITH PAYMENT SYSTEM POLI-
7 CIES AND PROCEDURES.—A creditor, credit card
8 issuer, financial institution, operator of a terminal at
9 which an electronic fund transfer may be initiated,
10 money transmitting business, or international, na-
11 tional, regional, or local network utilized to effect a
12 credit transaction, electronic fund transfer, or money
13 transmitting service, or a participant in such net-
14 work, meets the requirement of paragraph (1) if—

15 (A) such person relies on and complies
16 with the policies and procedures of a designated
17 payment system of which it is a member or par-
18 ticipant to—

19 (i) identify and block restricted trans-
20 actions; or

21 (ii) otherwise prevent the acceptance
22 of the products or services of the payment
23 system, member, or participant in connec-
24 tion with restricted transactions; and

1 (B) such policies and procedures of the
2 designated payment system comply with the re-
3 quirements of regulations prescribed under
4 paragraph (1).

5 (4) NO LIABILITY FOR BLOCKING OR REFUSING
6 TO HONOR RESTRICTED TRANSACTIONS.—A person
7 that is subject to a regulation prescribed or order
8 issued under this subsection and blocks, or otherwise
9 refuses to honor, a restricted transaction, or as a
10 member of a designated payment system relies on
11 the policies and procedures of the payment system,
12 in an effort to comply with this section shall not be
13 liable to any party for such action.

14 (5) ENFORCEMENT.—This subsection shall be
15 enforced by the Federal functional regulators and
16 the Federal Trade Commission under applicable law
17 in the manner provided in section 505(a) of the
18 Gramm-Leach-Bliley Act.

19 **SEC. 4. INTERNET GAMBLING IN OR THROUGH FOREIGN**
20 **JURISDICTIONS.**

21 (a) IN GENERAL.—In deliberations between the
22 United States Government and any other country on
23 money laundering, corruption, and crime issues, the
24 United States Government should—

1 (1) encourage cooperation by foreign govern-
2 ments and relevant international fora in identifying
3 whether Internet gambling operations are being used
4 for money laundering, corruption, or other crimes;

5 (2) advance policies that promote the coopera-
6 tion of foreign governments, through information
7 sharing or other measures, in the enforcement of
8 this Act; and

9 (3) encourage the Financial Action Task Force
10 on Money Laundering, in its annual report on
11 money laundering typologies, to study the extent to
12 which Internet gambling operations are being used
13 for money laundering.

14 (b) **REPORT REQUIRED.**—The Secretary of the
15 Treasury shall submit an annual report to the Congress
16 on the deliberations between the United States and other
17 countries on issues relating to Internet gambling.

18 **SEC. 5. AMENDMENTS TO GAMBLING PROVISIONS.**

19 (a) **AMENDMENT TO DEFINITION.**—Section 1081 of
20 title 18, United States Code, is amended—

21 (1) by designating the five undesignated para-
22 graphs that begin with “The term” as paragraphs
23 (1) through (5), respectively; and

24 (2) in paragraph (5), as so designated—

1 (A) by striking “wire communication” and
2 inserting “communication”;

3 (B) by inserting “satellite, microwave,”
4 after “cable,”; and

5 (C) by inserting “(whether fixed or mo-
6 bile)” after “connection”.

7 (b) INCREASE IN PENALTY FOR UNLAWFUL WIRE
8 TRANSFERS OF WAGERING INFORMATION.—Section
9 1084(a) of title 18, United States Code, is amended by
10 striking “two years” and inserting “5 years”.

Passed the House of Representatives October 1,
2002.

Attest:

JEFF TRANDAHL,

Clerk.