

## ***Keeping An Eye On The Interstate Horseracing Act***

These days horsemen usually aren't too concerned with legislation unless it involves slot machines. Then their efforts turn to drumming up support to pass laws allowing slots at race tracks and toward establishing formulas for sharing slots revenue with race track owners. While that may make sense in the short run it should not blind horsemen to the long term need to protect the legislative underpinning of their livelihood, the Interstate Horseracing Act ("IHA").

In 1978 the United States Congress passed the IHA permitting race tracks to televise their races to off-track locations for wagering, like the nine satellite wagering facilities in Virginia. Prior to the IHA it was illegal to do so because the federal Wire Act prohibits interstate transmission of bets or wagers. The IHA was amended in 2000 to allow wagering at home on races, either by phone or the internet, through personal credit accounts with companies like TVG, XpressBet and PhoneBet, all of which do business in Virginia.

Last year 88% of the nearly \$15 billion bet in the United States on horse races was wagered off track courtesy of the IHA. That handle in turn funded over a billion dollars in purses. None of that explosive growth was foreseen in 1978, and certainly not the ever increasing amount (now about 15%) being wagered on-line. Racing as we know it today cannot exist without the IHA.

The IHA also gives horsemen important leverage in their contract negotiations with track owners. By law a race track cannot simulcast its live races to an off track location in another state, or to an account wagering firm, without the consent of the horsemen's organization representing a majority of the owners and trainers racing at the track. Practically speaking that means track owners must reach agreement with the horsemen on whether and where their races will be simulcast; what fees will be charged off track receiving sites for the races; and, how revenue generated by simulcasting will be shared by horsemen and the tracks. In Virginia, Colonial Downs and the VHBPA regularly engage in those negotiations which in turn affect bargaining on other issues like purses, race days, and back stretch conditions.

So why think now about a law that's been around for nearly thirty years? Because there are events unfolding that could lead to detrimental changes to the IHA that horsemen should lobby against.

The first challenge comes from an unlikely source, the World Trade Organization ("WTO"). The island nation of Antigua, which has a thriving internet gaming industry, filed a discrimination complaint with the WTO

claiming the United States was violating international trade law by preventing Antigua from taking bets over the internet from Americans while permitting American companies (e.g. TVG, XpressBet, etc.) to do so under the IHA. The WTO ruled in favor of Antigua on that point and gave the United States until April 3, 2006 to change its discriminatory laws. How that can be done without repealing or changing the IHA is not easy to imagine, though no such legislation has yet received serious consideration in Congress.

On April 3<sup>rd</sup> the United States can ignore the WTO ruling and possibly incur trade sanctions by Antigua. That probably is of little consequence given the very limited trade between the U.S. and Antigua. But the precedent is there if countries like England and Australia, which have extensive trade with the U.S., decide to follow the same complaint route because their internet gaming companies also are prohibited from taking bets from Americans. The U.S. could not ignore trade sanctions involving those countries. Changing, if not repealing portions of the IHA, may be an easier option.

Second, and quite apart from the WTO case, each year for the past several years legislation has been introduced in Congress to prohibit all internet gaming, usually by forbidding credit card companies from extending credit for on-line gaming. Some of those proposals, like the Internet Gambling Prohibition Act introduced this year by Congressmen Bob Goodlatte (R-Virginia) and Rick Boucher (D-Virginia), exempt internet gaming on horseracing. Other proposed legislation does not do so, and would make all internet wagering illegal, including wagering on horse racing currently permitted by the IHA.

Finally, Representative Ed Whitfield (R-Kentucky), whose subcommittee recently held hearings in Congress on the issue of jockey insurance, is considering legislation to amend the IHA to give jockeys a right to approve simulcast contracts, the same right horsemen's groups have under the IHA's current provisions. Congressman Whitfield believes "there's no reason jockeys should not be a party to approving those simulcasting contracts" and approval should be worth "sufficient funds to provide a good insurance fund for jockeys and backside workers as well." Needless to say, an amendment of that sort would certainly alter the bargaining dynamics between track ownership and horsemen to say nothing of its potential economic impact on purses.

For all of the above reasons horsemen should keep their eye on the Interstate Horseracing Act. Even though it lacks the excitement of slots legislation in the long run it's probably more important.