

RACING INDUSTRY ISSUES AT THE FEDERAL LEVEL

James J. Hickey, Jr. - President, American Horse Council

Mr. Hickey: I am going to speak about some federal issues. A couple of bills are of great interest to this industry. One we've been talking about for six years now is the Internet Gambling Bill. At the end of the last Congress we had some changes to the Interstate Horseracing Act, which have been very helpful to clarify that interstate simulcasting and interstate wagering by phone or other electronic media between states that are receptive to it is in fact legal. That is a great victory. It is also history and in the category of "What have you done for me lately."

We now have two bills in Congress that deal again with Internet gambling. One is the Goodlatte bill and one is the so-called Leach bill. Mr. Goodlatte re-introduced his bill. He really introduced it a little sooner than he wanted to when he saw that the Leach Bill, which dealt with Internet credits, started to move. What Mr. Goodlatte's bill, which is the Combating Illegal Gambling Reform and Modernization Act, does is it amends the Federal Wire Statute: section 1084 and it prohibits interstate wagering on the

Internet except for a few exceptions. One of the exceptions is for Indian gaming on the reservation. Another exception is for fantasy sport leagues. Another exception is for intrastate wagering. Another provision, which is a grandfather provision rather than an exception, is for bets or wagers and information assisting in the process of bets and wagers that are made pursuant to the Interstate Horseracing Act. The bill excepts—grandfathers out—any transaction that is made pursuant to the Interstate Horseracing Act. Congressman Goodlatte realized that he has a new federal bill that will outlaw gambling on the Internet but is not intended to override other existing federal statutes such as the Interstate Horseracing Act. It was very fortunate that we got the Horseracing Act clarified a couple years ago and we were able to build on that in this Congress. They've had hearings on this bill five, six, seven times at this point and it is now before the Judiciary Committee.

The other bill is the Leach bill, introduced by Congressman Oxley from Ohio and Leach from Iowa, which deals with Internet credit. The Goodlatte bill prohibits credit being extended by the gaming establishment also. The Leach bill specifically deals only with credit on Internet wagering, and has a provision in it that also accepts legal interstate wagering. I believe we're covered by both bills should they be moved or put together but we prefer the

Goodlatte bill because it says racing is different, it's tied to the Interstate Horseracing Act.

Those are two good bills at this point. What the other people who are involved in this equation—the Native Americans, the state lotteries that want interstate lotteries, the casinos—don't want to recognize is that, with respect to pari-mutuel horseracing, the decision has already been made by 14 states that you can bet from your home, from your office, from your car, from anywhere you want and that is a public policy decision that has already been made. So if there is a federal prohibition on interstate wagering on horseracing that would be a rollback—changing something that had already been done. A couple of years ago \$500 million was wagered in a state on pari-mutuel horseracing, not at a track and not at an off-track betting facility. There is no other form of gambling that is doing this right now and that's the distinction as to why Mr. Goodlatte wants to allow it to continue. The Department of Justice has testified on these bills. They like the Goodlatte approach but their testimony was very sparse, did not get into the specifics and did not get into the provision dealing with horseracing. I'll be very interested to see what their position might be.

We don't know what it will be; we're hopeful that they'll recognize what the change to the horseracing act did and support that provision. Senator Kyl has not reintroduced his legislation. He's passed his bill twice now and he's going to defer to the House and let them act before he introduces his bill. That's where we are with Internet wagering. It's very possible that the House Judiciary Committee will take that up sometime in the future, probably prior to the summer recess. That's when we're going to call on people and as you have in the past, you'll be asked to contact your members of Congress about it saying "Support this provision."

Another matter that we've been working on for a number of years and now we have some light at the end of the tunnel is the so-called international merged pools. The industry would like very much to be able to merge betting pools between foreign companies and the U.S. Currently there is a provision called the Alien Withholding Requirement. When an alien bets with a U.S. gambling facility, the facility has to withhold 30 percent unless there are some exclusions. The concern was that if we had a betting pool in England or Canada or Mexico, and it was merged with a U.S. track that the 30 percent withholding might be applied to the alien betting in the foreign country simply because the pools were electronically merged. We've talked

to a number of Congressmen. Congressman Jim McCrery from Louisiana and Congressman Ron Lewis from Kentucky, both members of the Ways and Means Committee, are very interested in clarifying that a bet made in a foreign country on a U.S. horse race, and the only nexus is that the foreign pool and the domestic pool are merged electronically, is not subject to the 30 percent withholding. There was a letter sent to the joint tax committee asking “How much would this cost?” They came back with a \$14 million revenue loss over 10 years, which is really nothing at this point. I’m not sure why there is any revenue loss because it’s not being done to any great extent.

If we’re able to get it to be done at a higher extent, that three percent simulcast fee at a minimum will go up because more people will be betting on U.S. races and simulcasting. The bill has not been introduced. The plan is to attach it to a “vehicle.” What that vehicle might be, whether it’s a tax bill in the future or a trade bill, is being discussed now. But we’re very hopeful that that can be done and allow this industry to grow based upon foreign betting.

If there is a treaty between the country and the U.S. that accepts gambling winnings then we can merge pools. Most countries now have treaties that permit that. Canada, Mexico and Australia do not. We'd still like to get the law changed if at all possible so that we're not at the mercy of treaties that might be negotiated every 10 years or so.

Another provision is just the withholding tax itself. I'm happy to report that through the great efforts of the American Horse Council, the withholding tax was reduced to 27 percent, effective January 1. That happened because when they passed the tax bill last summer, there was a provision in there that said all withholding tax was also going to be reduced based upon the lowest rate for a single taxpayer. That will go down to 26 percent in 2004 and 2005 and 2006 and then the whole tax bill sunsets in 2010 so all the changes will go back to where they were when it was passed. At that point unless it's extended it will go back up to 28 percent.

Other tax provisions. The House passed a tax stimulus bill, which had increased first year depreciation and an increase in the expense deduction section 179 to \$35,000. The Senate never passed their tax bill. The House has now passed a third tax stimulus package, but it's not likely that any tax

bill will go through this year. There's just not enough thought to do this at this point.

Immigration reform. Approximately 58 percent of people who work on farms or the backstretch are aliens. There are several problems with the process of bringing in alien workers. One is the wage rate that has to be paid under the agricultural worker provision. It's an adverse effect wage rate, which is higher than the prevailing wage. One is the labor certification process. It's very cumbersome. And the third is that horse farms can only bring in workers for 10 months. That is very satisfactory to every other agricultural group except the horse industry. We prefer 11 months. We're talking to people to get that moved up to 11 months. There is legislation introduced that would satisfy all of the problems except for this one particular provision. It was moving fairly well prior to the attacks of September 11. Since September 11, all immigration legislation has been on the back burner. The administration and Mexico are starting to talk more about the possibility of reviving some sort of a guest-worker provision but the sympathy in Congress is tighter immigration laws rather than looser. We are continuing to work on the immigration issues and are very concerned about those who work on the farms and on getting more workers. Also

we're trying to streamline the application process for trainers who bring in grooms and workers from Mexico or other foreign countries.

Disaster loans. Mare Reproductive Loss Syndrome had a \$336 million effect on central Kentucky over this year, next year and the third year. A lot of people lost a lot of foals last year and had mares that did not get in foal. Thanks to the efforts of Senators McConnell and Bunning from Kentucky, Peterson from Minnesota, Fletcher from Kentucky, we were able to pass an emergency loan provision as part of the fiscal year of 2002 agricultural budget that provides emergency loans for horse farmers who lost 30 percent or more of their foals to MRLS or had mares boarded at their farms that lost 30 percent. That's the first time that horses have been eligible for disaster emergency loans. It passed last November and right now they're writing the regulations. You can get loans up to \$500,000 with a federal rate of 3.9 percent. Hopefully by this summer, people will be able to gain some emergency loans. That's for all horses, all farms, even if they're not in Kentucky. If you sent a horse to Kentucky and then brought it back to Illinois or Maryland, and lost mares, 30 percent or more, you'd be eligible for these loans. That led to another provision that we've been talking about for many years. Horses are not eligible for emergency loans—cattle are,

pigs are, poultry, orange groves, etc. and we're speaking to a number of people and Congressmen concerning that.