

## CAN NEW YORK RACING SURVIVE NYC OTB'S SURVIVAL?

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What's wrong with New York City Off Track Betting? Well, just about everything.

In 1970, then-New York Governor Rockefeller established NYCOTB as a quasi-governmental public benefit corporation. This presents the first problem. Having no ties to the state's tracks, horsemen or breeders, NYC OTB has spent the last four decades making critical decisions on the basis of perpetuating itself, instead of the racing industry it is charged to assist. Don't believe that? Here are some

examples:

When several years ago NYC OTB unilaterally made the decision that New York harness racing was not a quality product, it imported out-of-state harness racing to compete with the in-state tracks' signals. Later, it decided to import out-of-state Thoroughbred signals to compete with New York harness racing. When the legislature in Albany granted NYC OTB the right to do these damaging things, it wisely required payments be made by NYC OTB to the harness tracks in order to ensure they would be kept whole. When the imports proved to be a financial disaster, NYC OTB didn't stop the ill-advised importing; rather, it just failed to make the legislatively mandated payments. Six years later, after both the New York Racing and Wagering Board and the state's highest court determined that the payments were both valid and required, NYC OTB did not make the payments; it simply filed for bankruptcy.

Yonkers Raceway alone is owed over \$18 million from the bankrupt government entity. It has plenty of company. The New York Racing Association (NYRA), the group that runs arguably the world's top Thoroughbred tracks, is owed over \$14 million in various payments. The creditors' list attached to the bankruptcy petition reads like a who's who of the American racing industry. With NYRA, having recently survived its own bankruptcy, teetering again on insolvency, and tracks like Laurel, Pimlico, Santa Anita and Gulfstream Park presently before the bankruptcy court, it isn't hard to figure that racing desperately needs off-track bookmakers they can trust to pay up.

NYC OTB's convenient solution to their woes involves an elaborate statutory scheme that would eliminate mandated payments to the harness tracks for the unwarranted competing imports and permit it to slash other payments to the racing industry, not to mention local government. Imagine a vendor that refuses to pay its manufacturer unless it can turn a profit selling the wholesale goods it purchased. This flight of fancy is easy to understand: NYC OTB has zero synergy with the racing industry. Its entire connection to racing is that it offers wagering on racing's products, and then fails to live up to its obligations to pay in full for the products it uses.

Last month, NYC OTB, an entity of state government, threatened the rest of state government that it would be forced to close its doors if it did not get its way with the state legislature by a set date. When the legislature didn't move quickly, the entity extended the deadline by one week. When the Albany lawmakers went home without passing NYC OTB's self-serving bailout plan, the betting parlors didn't close. In fact, NYC OTB announced that it had miraculously found a way to remain open for not just another week, but for a full year. This newly-fangled arrangement, evidencing that the sky never really was falling, doesn't seem to include paying off the tens of millions it owes to racing any time soon, if at all.

Playing the horses is one thing; playing with the intelligence and emotions of 212 legislators via an unnecessary, highhanded diversion amid a \$9 billion state budget shortfall crisis is something else. Under the guise of saving 1,300 OTB jobs at the risk of jeopardizing over 40,000 New Yorkers who in some way or another depend upon racing for their livelihood, NYC OTB almost succeeded in getting Albany to make the wrong decision about its continued existence.

What's the right decision? Simply, like any other completely flawed business, NYC OTB should be liquidated, with its customer base absorbed by the place it has always belonged; the racing industry. Sound harsh? Why would anyone attempt to prop up an entity that fails to pay bills, or restructure it so it no longer has to pay? The solution isn't harsh at all. In fact, having parlor-based and advance deposit telephone wagering operations owned and managed by the racing industry is what virtually all other jurisdictions have in place.

In this regard, Illinois provides a model that Albany should consider. The Illinois Horse Racing Act of 1975, as amended, establishes a legislative scheme known as "Inter-track Wagering" Each Illinois racetrack is entitled to receive up to 6 OTB licenses, except Fairmount Park, which is entitled to 7 licenses. The act provides for rigid regulation of what races may be shown in the parlors so as not to unduly dilute the exposure of in-state racing at the facilities. It additionally defines percentages of required payments to state and local government, horsemen's purses and horsemen's organizations.

Illinois OTBs are industry owned, industry managed and thus fund not just state and local government coffers, but the needs of the product-producing racing industry as well. Without a self-perpetuating and ironically termed "public benefit" group acting as a middleman, decisions are made solely on the basis of what's good for Illinois and for racing. Thus, when NYC OTB proposed to close many of its unprofitable parlors, it did so in an effort to cut its losses and enhance its chances of survival, not to enhance what it pays to stakeholders. When Inter-Track Partners, the joint venture of Maywood, Balmoral and Hawthorne that manages 14 OTBs closed its Peru, Illinois branch on May 2, it did so with the thought of opening another branch in a potentially more profitable region of the state. In sum, when the groups producing the wagering product control off-track wagering, correct business decisions are made without prompting and without everyone having to look over their shoulder.

The Illinois Act also sets forth a regulatory format for advance deposit wagering (ADW). It states that only an "organization licensee," meaning a group licensed to conduct race meets, or third party who contracts with an organization licensee may conduct advance deposit wagering. The law further provides that an advance deposit wager may be placed via a telephone-type device or any other electronic means, but may only be placed in person at a licensed wagering facility. The statute clearly contemplates that the tracks and their OTBs control ADW by Illinois residents, either directly or through contract with out-of-state ADW companies.

Whoever started the saying "gambling is recession proof" never foresaw the depth of the economic crisis that presently engulfs the planet. With many major racetracks and casino companies either laboring under Chapter 11 bankruptcy reorganization plans or contemplating a chapter filing, it is apparent that the continued existence of any gaming operation is impossible when a parasitic outsider is feeding off of what little revenue is produced.

While the details of an industry-based OTB model may be cumbersome to develop, embracing the concept is both easy and necessary. Placing a band-aid over a mortally wounded NYC OTB would simply forestall the inevitable. New York racing can't survive another year to wait and see a result that nobody with any sense needs to wait to see. In rejecting NYC OTBs hopelessly defective restructuring plan, Albany took an extremely positive step. It's now time for the legislators to proactively develop a plan that will advance the economic value of the industry for the benefit of its stakeholders and their constituent taxpayers into this century.

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