

## Exchange Wagering: Our Salvation or Our Demise?

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The most widely reported racing news out of New Jersey of late involves the failure of the executive branch to appreciate the overwhelming value horse racing brings to the state. Simply put, the plan outlined by the Governor's Gaming, Sports and Entertainment Advisory Commission preserves Atlantic City's boardwalk at the expense of every racetrack, training center, breeding farm and horseman in the Garden State. Hopefully, a majority of legislators at the state capital in Trenton will give the Commission's recommendations their just due, and scratch them

as sick.

Somewhat obscured by the fanfare surrounding the Governor's plans to euthanize horseracing is the June 28th unanimous vote of the General Assembly to make New Jersey the first state in the nation to permit exchange wagering. Despite the dubious future of live Thoroughbred and Standardbred racing in the state, understanding the potential benefits and pitfalls this type of betting can bring to the industry is important.

Andrew Black, who founded the prominent British online gambling concern BetFair, now the world's leading betting exchange, developed exchange wagering a decade ago. It is a form of gambling in which two or more persons place directly opposing wagers on the outcome of horse races and sporting events. In the typical case, exchange wagering allows a bettor to "back" or wager on a selected horse to win, with another bettor "laying" or wagering on that same horse not winning. A back and a lay become matched when a bettor lays at the same price at which another bettor backs that same outcome, with the amount subject to the lay being proportionately commensurate to the amount subject to the back.

Once the outcome of the race or races is determined, funds will be transferred from the exchange wagering pool to the bettor or bettors that won wagers in that pool, and applicable transaction or other fees will be levied by the exchange wagering licensee for use and distribution as provided by the commission's rules and regulations.

The bill passed in the General Assembly (A-2926) now goes to the state Senate's State Government, Wagering, Tourism and Historic Preservation committee for consideration. Inasmuch as both the Senate and General Assembly adjourned for the summer in early July, there will probably be no further debate or action on the proposal for at least a few months. When the debate resumes, several issues involving this introduction should be considered.

Obviously, any legitimate attempt to increase handle must be lauded. Unlike traditional pari-mutuel wagering, where the potential payout for a bet reflected at a point in time on the tote board often drops precipitously as the field is in motion, exchange wagering allows the bettor to name his own odds in the hopes of luring a match. While only one will win, the potential payout for both punters is guaranteed. This dynamic has proven highly attractive to serious gamblers across the pond and in

places like Australia, and there is little doubt that the properly marketed concept will garner significant curiosity, if not strong interest, when it is introduced.

While the New Jersey bill requires that all exchange account holders must be state residents, the introduction contemplates the possibility of in-state wagers being matched with those of residents outside the State registered with an authorized exchange operator in another jurisdiction. Moreover, the bill permits exchange wagering on out-of-state as well as in-state races. These aspects of the legislation can only serve to enhance the potential for increased handle.

Furthermore, while the proposed legislation contemplates wagering in person or direct telephone calling, the law would also permit the wager to be submitted by the most obvious means; that of, "by communication through other electronic media." Clearly, the lawmakers in Trenton have attempted to fully maximize the benefits of the federal exemption granted to horseracing pursuant to the Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA).

While the potential for positive industry effects is present, so too is the prospect for disaster.

First, the bill contemplates that the New Jersey Racing Commission will license the New Jersey Sports and Exposition Authority, who in turn will have the right to enter into a contract with a private entity to operate the exchange and act as an agent of the authority in all exchange wagering matters. With the prospect of New Jersey's premier racetracks becoming privatized in the near future, the long-term survival of the authority is doubtful. Thus, a single operator beholden only to the commission, and not to the racetracks, horsemen or breeders, will exclusively control the wagering platform.

The foregone conclusion is that this entity will be Betfair. The British group recently purchased the online wagering operator Television Games Network (TVG) for \$50 Million, ostensibly to lobby in the U.S. for just the type of legislation New Jersey has proposed. In fact, Betfair/TVG sponsored the \$750,000 United Nations Handicap at Monmouth Park run on July 3rd, just days after the bill's passage in the lower legislative house in Trenton. Having the control of wagering in the hands of a standalone Advance Deposit Wagering (ADW) entity, not the industry, brings the potential for all of the ills that have befallen the New York racing industry at the hands of its regional off-track betting system.

Along this line, it is noted that rather than establish a set percentage of handle either by statute or contract for the purpose of funding overnight purses, the bill contemplates the payment to purses of 50% of exchange revenues retained after payment of "all reasonable and necessary expenses." This vague wording could haunt horsemen forever. As with bankrupt NYC OTB, will these reasonable and necessary expenses include highly inflated executive salaries, a fleet of automobiles, a seemingly unlimited expense account, etc.? At the end of the day, will the net profit split for the horsemen amount to a pittance in relation to what they now receive from traditional pari-mutuel takeout?

NYC OTB owes New York's Thoroughbred and Standardbred tracks, horsemen and breeders tens of millions of dollars in statutorily required payments. They owe out-of-state simulcast outlets even more. For the last year, this debtor has tried to

persuade the New York legislature to allow it to pay the racing industry from its net after expenses; a net that is nothing. The danger here is more than apparent. Enhanced handle is less than nothing if the industry sees little or none of it, and part of it is simply diverted from traditional pari-mutuel handle bet at the tracks.

Maybe the most distressing issue to be faced is how exchange wagering threatens the integrity of the sport. In this regard, it is unnecessary to conjure hypothetical scenarios. Over the course of the last few years, numerous highly publicized incidents have plagued the British turf that have been directly connected to the "back and lay" concept.

Consider that while it's impossible to guarantee that a horse will win, it can assuredly be guaranteed that a horse will lose, provided its connections are in on the fix. Here, the concept of the laying odds that a horse will lose opens the door of appearances of impropriety quite wide. In 2007, a six-time champion jockey and two other riders were accused of assisting exchange bettors by agreeing to make horses lose in 27 races from 2002 to 2004. The trio actually won six of the 27 races.

The entire case unraveled when the prosecution's expert witness, an Australian racing steward, admitted that his testimony regarding the failure of the jocks to "ride-out" their mounts was based on Australian, and not United Kingdom racing rules. His ignorance of U.K. rules was so glaring that the judge took the matter out of the hands of the jury and directed dismissal. Despite the acquittals, horse racing suffered a significant black eye from all of the bad exposure and notions of mistrust that enveloped the U.K. during the investigation and trial.

On July 14th of this year, major racehorse owner Harry Findlay won his appeal against a six-month ban from the sport. Findlay, who owned the 2008 Cheltenham Gold Cup winner, received a six-month ban on June 10th after admitting to laying (betting against) his own horse on two occasions in violation of British Horseracing Authority rules. Finding no evidence of corrupt intent, the appeal board reduced the fine to a £4,500 fine (about \$7,000); the total he won from breaking the rules. While Findlay did, in fact, lay bet his own horses, he was a net backer of both. This means that Findlay lay bet against the horse, but jumped in with more money to back it than lay when the odds were right. Thus, it was determined that Findlay as an owner was employing an illegal wagering strategy, but not a corrupt practice or conspiracy.

Others owners in violation of the rule have not fared so well. In 2004, the British Disciplinary Panel suspended an owner for six months because at the time he laid his gelding to lose, he knew it was no longer running in the race (scratched) and was thus impossible to lose. In 2009, the Panel indefinitely suspended an owner who "shared" a Betfair account with a friend and denied knowledge of his friend's lay bets on his losing horses.

Also in 2009, the Panel imposed a one year ban on owners who laid heavily on their mare and earned a substantial sum after she was pulled up with muscle spasms two furlongs into her race. Their rejected defense was that they leased the horse to a trainer and, as lessors, were permitted to lay under rules in their native Ireland. In 2008, another owner was ruled off for eight years for laying seven of his own horses at a hefty profit utilizing the Betfair account of a co-conspirator. Worse, it was established that the owner received inside information from a trainer and a jockey

who was found to have made insufficient effort on four of the losing mounts in question. The duo also received bans of 2 ½ and 4 years respectively.

Curiously, the bill passed by the New Jersey General Assembly is silent as to the propriety of exchange wagering by owners, lessors, lessees, trainers, stable employees, jockeys and drivers. It will presumably be left up to the commission to decide the rules in this regard, how to effectively enforce them, and the measure by which punishment for violation is to be meted out. Still, the mere discovery and disclosure of a violation can have adverse consequences on racing. While racing scandals raise their ugly heads every so often, the lure of the lay bet would seem to present fertile opportunity for nefarious players to do what they do best and ruin the reputation of our sport.

When the New Jersey State Senate reconvenes and takes up A-2926, it is hoped that exchange wagering will be debated from all angles, and that a final compromise bill will ensure that the industry, especially its horsemen and breeders, as well as the wagering public at large will be afforded every possible safeguard. If exchange wagering is finally made law in New Jersey, other states will look to the legislation as a point of reference. While certainly not the most critical concern facing the state's racing and breeding industry, poorly crafted exchange wagering legislation can impact every jurisdiction for years to come.

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