

Y 4. In 8/4 : 95-174

95y4
In 8/4
95-174

INTERSTATE HORSERACING ACT

GOVERNMENT

DOCUMENTS

Storage

FEB 3 8 1979

FARRELL LIBRARY
KANSAS STATE UNIVERSITY

HEARING

BEFORE THE

SUBCOMMITTEE ON TRANSPORTATION AND COMMERCE

OF THE

COMMITTEE ON

INTERSTATE AND FOREIGN COMMERCE

HOUSE OF REPRESENTATIVES

NINETY-FIFTH CONGRESS

SECOND SESSION

ON

H.R. 14089

A BILL TO REGULATE INTERSTATE COMMERCE WITH RESPECT TO PARIMUTUEL WAGERING ON HORSERACING, TO MAINTAIN THE STABILITY OF THE HORSERACING INDUSTRY, AND FOR OTHER PURPOSES

SEPTEMBER 19, 1978

Serial No. 95-174

Printed for the use of the
Committee on Interstate and Foreign Commerce



U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1978

36-119 O

KSU LIBRARIES



✓
A11900 816582

AM-29: A/S H.C. + Y

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

HARLEY O. STAGGERS, West Virginia, *Chairman*

JOHN E. MOSS, California
JOHN D. DINGELL, Michigan
PAUL G. ROGERS, Florida
LIONEL VAN DEERLIN, California
FRED B. ROONEY, Pennsylvania
JOHN M. MURPHY, New York
DAVID E. SATTERFIELD III, Virginia
BOB ECKHARDT, Texas
RICHARDSON PREYER, North Carolina
CHARLES J. CARNEY, Ohio
RALPH H. METCALFE, Illinois
JAMES H. SCHEUER, New York
RICHARD L. OTTINGER, New York
HENRY A. WAXMAN, California
ROBERT (BOB) KRUEGER, Texas
TIMOTHY E. WIRTH, Colorado
PHILIP R. SHARP, Indiana
JAMES J. FLORIO, New Jersey
ANTHONY TOBY MOFFETT, Connecticut
JIM SANTINI, Nevada
ANDREW MAGUIRE, New Jersey
MARTY RUSSO, Illinois
EDWARD J. MARKEY, Massachusetts
THOMAS A. LUKEN, Ohio
DOUG WALGREN, Pennsylvania
BOB GAMMAGE, Texas
ALBERT GORE, Jr., Tennessee
BARBARA A. MIKULSKI, Maryland

SAMUEL L. DEVINE, Ohio
JAMES T. BROYHILL, North Carolina
TIM LEE CARTER, Kentucky
CLARENCE J. BROWN, Ohio
JOE SKUBITZ, Kansas
JAMES M. COLLINS, Texas
LOUIS FREY, Jr., Florida
NORMAN F. LENT, New York
EDWARD R. MADIGAN, Illinois
CARLOS J. MOORHEAD, California
MATTHEW J. RINALDO, New Jersey
W. HENSON MOORE, Louisiana
DAVE STOCKMAN, Michigan
MARC L. MARKS, Pennsylvania

W. E. WILLIAMSON, *Chief Clerk and Staff Director*
KENNETH J. PAINTER, *First Assistant Clerk*
ELEANOR A. DINKINS, *Assistant Clerk*
THOMAS M. RYAN, *Professional Staff*

SUBCOMMITTEE ON TRANSPORTATION AND COMMERCE

FRED B. ROONEY, Pennsylvania, *Chairman*

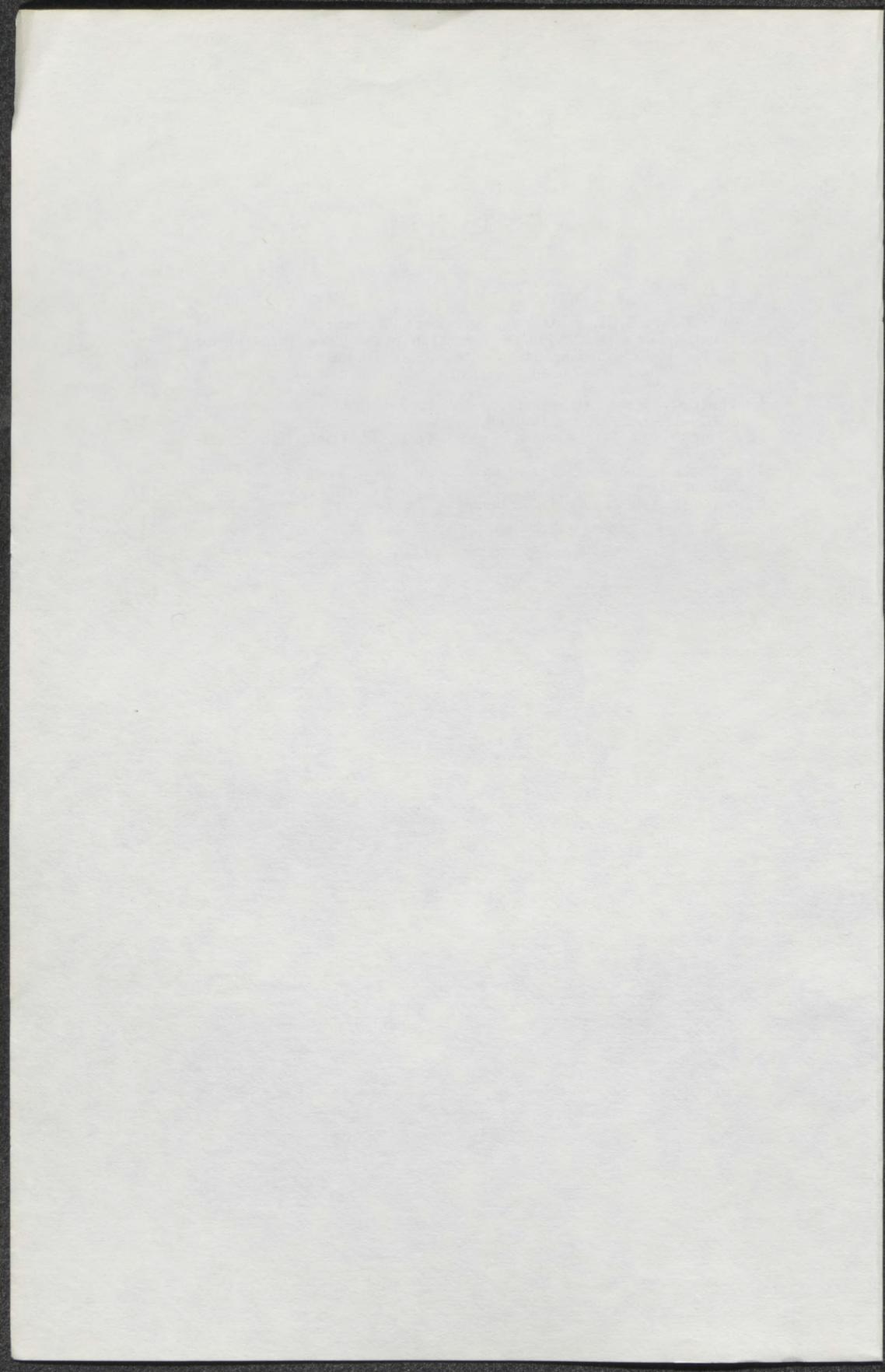
RALPH H. METCALFE, Illinois
BARBARA A. MIKULSKI, Maryland
JAMES J. FLORIO, New Jersey
JIM SANTINI, Nevada
MARTY RUSSO, Illinois
BOB GAMMAGE, Texas
JOHN M. MURPHY, New York
HARLEY O. STAGGERS, West Virginia
(*Ex Officio*)

JOE SKUBITZ, Kansas
EDWARD R. MADIGAN, Illinois
NORMAN F. LENT, New York
SAMUEL L. DEVINE, Ohio (E. ...)

WILLIAM T. DRUHAN, *Staff Director*

CONTENTS

	Page
Text of H.R. 14089.....	2
Statement of—	
Combs, Brownell, II, second vice president, National Association of State Racing Commissioners, general manager, Spendthrift Farm, and vice chairman, Kentucky State Racing Commission.....	26
Eaton, Lee, director, Thoroughbred Breeders of Kentucky, and owner of Eaton Farms, Inc.....	27
Kirkpatrick, Arnold H., executive secretary, advisory committee on racing, American Horse Council, Inc.....	14
Herman, Sharon L., associate counsel, National Association of Off- Track Betting.....	18
Ritchie, James E., special counsel, National Association of Off-Track Betting.....	18
Symington, Hon. James W., on behalf of the American Horse Council, Inc.....	14



INTERSTATE HORSERACING ACT

TUESDAY, SEPTEMBER 19, 1978

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TRANSPORTATION AND COMMERCE,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice, in room 2322, Rayburn House Office Building, Hon. Fred B. Rooney, chairman, presiding.

Mr. ROONEY. The subcommittee will come to order.

The purpose of the hearing is to consider H.R. 14089, to regulate interstate commerce with respect to parimutuel wagering on horseracing, to maintain the stability of the horseracing industry, and for other purposes.

The subcommittee addressed the interrelationship of off-track betting and horseracing in the 94th Congress. As you all know, this bill passed in the 94th Congress on the suspension calendar. Our hearings at that time and the Senate hearings in the 95th Congress all revealed the potential damage to the great horseracing industry in this country which could be caused by uncontrolled off-track betting in interstate commerce.

However, we also have learned that off-track betting is a legitimate, growing industry in two of our States, an industry which even has potential to expand the traditional market of racing.

I commend those within both industries who have worked for 18 months to strike the compromise represented by H.R. 14089 and Senate bill 1185. I feel certain that this legislation will allow the commerce in this area to flow in a way advantageous to both racing and to off-track betting.

In addition, this legislation will assist States in regulating these industries within their borders and will allow both the horseracing and the off-track betting industries to grow to their full potential.

I wish to thank my good friend and colleague Chairman Carl Perkins for the fine assistance he has given both the subcommittee and myself on this subject.

Without objection, H.R. 14089 will be placed in the record at this point.

[Testimony resumes on p. 14.]

[The text of H.R. 14089 follows:]

95TH CONGRESS
2D SESSION

H. R. 14089

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 14, 1978

Mr. ROONEY (for himself, Mr. PERKINS, Mr. CHAPPELL, Mr. LENT, Mr. CARTER, Mr. KEMP, and Mr. MURPHY of New York) introduced the following bill; which was referred to the Committee on Interstate and Foreign Commerce

A BILL

To regulate interstate commerce with respect to parimutuel wagering on horseracing, to maintain the stability of the horseracing industry, 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,*

3 This Act may be cited as the "Interstate Horseracing Act of
4 1978."

5

FINDINGS AND POLICY

6 SEC. 2. (a) The Congress finds that—

I—E

1 Puerto Rico, and any territory or possession of the
2 United States;

3 (3) "interstate off-track wager" means a legal
4 wager placed or accepted in one State with respect to
5 the outcome of a horserace taking place in another
6 State;

7 (4) "on-track wager" means a wager with respect
8 to the outcome of a horserace which is placed at the
9 racetrack at which such horserace takes place;

10 (5) "host State" means the State in which the
11 horserace subject to the interstate wager takes place;

12 (6) "off-track State" means the State in which an
13 interstate off-track wager is accepted;

14 (7) "off-track betting system" means any group
15 which is in the business of accepting wagers on horse-
16 races at locations other than the place where the
17 horserace is run, which business is conducted by the
18 State or licensed or otherwise permitted by State law;

19 (8) "off-track betting office" means any location
20 within an off-track State at which off-track wagers are
21 accepted;

22 (9) "host racing association" means any person
23 who, pursuant to a license or other permission granted
24 by the host State, conducts the horserace subject to
25 the interstate wager;

1 (10) "host racing commission" means that person
2 designated by State statute or, in the absence of statute,
3 ute, by regulation, with jurisdiction to regulate the
4 conduct of racing within the host State;

5 (11) "off-track racing commission" means that
6 person designated by State statute or, in the absence
7 of statute, by regulation, with jurisdiction to regulate
8 off-track betting in that State;

9 (12) "horsemen's group" means, with reference to
10 the applicable host racing association, the group which
11 represents the majority of owners and trainers racing
12 there, for the races subject to the interstate off-track
13 wager on any racing day;

14 (13) "parimutuel" means any system whereby
15 wagers with respect to the outcome of a horserace are
16 placed with, or in, a wagering pool conducted by a
17 person licensed or otherwise permitted to do so under
18 State law, and in which the participants are wagering
19 with each other and not against the operator;

20 (14) "currently operating tracks" means racing
21 associations conducting parimutuel horseracing at the
22 same time of day (afternoon against afternoon; night-
23 time against nighttime) as the racing association conducting
24 the horseracing which is the subject of the
25 interstate off-track wager;

1 (15) "race meeting" means those scheduled days
2 during the year a racing association is granted permis-
3 sion by the appropriate State racing commission to
4 conduct horseracing;

5 (16) "racing day" means a full program of races
6 at a specified racing association on a specified day;

7 (17) "special event" means the specific individual
8 horserace which is deemed by the off-track betting
9 system to be of sufficient national significance and in-
10 terest to warrant interstate off-track wagering on that
11 event or events;

12 (18) "dark days" means those days when racing
13 of the same type does not occur in an off-track State
14 within sixty miles of an off-track betting office during a
15 race meeting, including, but not limited to, a dark
16 weekday when such racing association or associations
17 run on Sunday, and days when a racing program is
18 scheduled but does not take place, or cannot be com-
19 pleted due to weather, strikes and other factors not
20 within the control of the off-track betting system;

21 (19) "year" means calendar year;

22 (20) "takeout" means that portion of a wager
23 which is deducted from or not included in the parimu-
24 tuel pool, and which is distributed to persons other
25 than those placing wagers;

1 with the horsemen's group, under which said
2 racing association may give such consent, setting
3 forth the terms and conditions relating thereto;
4 provided,

5 (B) that where the host racing association
6 has a contract with a horsemen's group at the
7 time of enactment of this Act which contains no
8 provisions referring to interstate off-track betting,
9 the terms and conditions of said then-existing con-
10 tract shall be deemed to apply to the interstate
11 off-track wagers and no additional written agree-
12 ment need be entered into unless the parties to
13 such then-existing contract agree otherwise.
14 Where such provisions exist in such existing con-
15 tract, such contract shall govern. Where written
16 consents exist at the time of enactment of this
17 Act between an off-track betting system and the
18 host racing association providing for interstate off-
19 track wagers, or such written consents are ex-
20 ecuted by these parties prior to the expiration of
21 such then-existing contract, upon the expiration of
22 such then-existing contract the written agreement
23 of such horsemen's group shall thereafter be re-
24 quired as such condition precedent and as a part
25 of the regular contractual process, and may not be

1 withdrawn or varied except in the regular con-
2 tractual process. Where no such written consents
3 exist, and where such written agreement occurs
4 at a racing association which has a regular con-
5 tractual process with such horsemen's group, said
6 agreement by the horsemen's group may not be
7 withdrawn or varied except in the regular con-
8 tractual process;

9 (2) the host racing commission;

10 (3) the off-track racing commission.

11 (b)(1) In addition to the requirement of subsection (a),
12 any off-track betting office shall obtain the approval of—

13 (A) all currently operating tracks within sixty
14 miles of such off-track betting office; and

15 (B) if there are no currently operating tracks
16 within sixty miles then the closest currently operating
17 track in an adjoining State.

18 (2) Notwithstanding the provisions of paragraph (1) of
19 this subsection, any off-track betting office in a State with at
20 least two hundred fifty days of on-track parimutuel horserac-
21 ing a year, may accept interstate off-track wagers for a total
22 of sixty racing days and twenty-five special events a year
23 without the approval required by paragraph (1), if with re-
24 spect to such sixty racing days, there is no racing of the same
25 type at the same time of day being conducted within the off-

1 track betting State within sixty miles of the off-track betting
2 office accepting the wager, or such racing program cannot be
3 completed. Excluded from such sixty days and from the con-
4 sent required by subsection (b)(1) may be dark days which
5 occur during a regularly scheduled race meeting in said off-
6 track betting State. In order to accept any interstate off-
7 track wager under the terms of the preceding sentence the
8 off-track betting office shall make identical offers to any
9 racing association described in subparagraph (A) of subsec-
10 tion (b)(1). Nothing in this subparagraph shall be construed to
11 reduce or eliminate the necessity of obtaining all the ap-
12 provals required by subsection (a).

13 (c) No parimutuel off-track betting system may employ
14 a takeout for an interstate wager which is greater than the
15 takeout for corresponding wagering pools of off-track wagers
16 on races run within the off-track State except where such
17 greater takeout is authorized by State law in the off-track
18 State.

19 LIABILITY AND DAMAGES

20 SEC. 6. Any person accepting any interstate off-track
21 wager in violation of this Act shall be civilly liable for dam-
22 ages to the host State, the host racing association, and the
23 horsemen's group. Damages for each violation shall be based
24 on the total of off-track wagers as follows:

1 (d) Nothing in this Act shall be construed to permit a
2 State to be sued under this section other than in accordance
3 with its applicable laws.

4 JURISDICTION AND VENUE

5 SEC. 8. (a) Notwithstanding any other provision of law,
6 the district courts of the United States shall have jurisdiction
7 over any civil action under this Act, without regard to the
8 citizenship of the parties or the amount in controversy.

9 (b) A civil action under this Act may be brought in any
10 district court of the United States for a district located in the
11 host State or the off-track State, and all process in any such
12 civil action may be served in any judicial district of the
13 United States.

14 (c) The jurisdiction of the district courts of the United
15 States pursuant to this section shall be concurrent with that
16 of any State court of competent jurisdiction located in the
17 host State or the off-track State.

18 EFFECTIVE DATE; APPLICABILITY

19 SEC. 9. (a) The provisions of this Act shall take effect
20 on the date of enactment of this Act, and, except as provided
21 in subsection (b) of this section, shall apply to any interstate
22 off-track wager accepted on or after such date of enactment.

23 (b)(1) The provisions of this Act shall not apply to any
24 interstate off-track wager which is accepted pursuant to a
25 contract existing on May 1, 1978.

1 (2) The provisions of this Act shall not apply to any
2 form of legal nonparimutuel off-track betting existing in a
3 State on May 1, 1978.

4 (3) The provisions of subsection (b) of section 5 of this
5 Act shall not apply to any parimutuel off-track betting
6 system existing on May 1, 1978, in a State which does not
7 conduct parimutuel horseracing on the date of enactment of
8 this Act.

Mr. ROONEY. I might say that, unfortunately, I will not be here for the entire hearings. I have the ConRail bill up in the Rules Committee at 10:30. But Mr. Florio will assume the chairmanship.

Our first witness this morning is one of our former colleagues, the Honorable James W. Symington. Mr. Symington?

STATEMENT OF HON. JAMES W. SYMINGTON, ON BEHALF OF THE AMERICAN HORSE COUNCIL, INC., ACCOMPANIED BY ARNOLD H. KIRKPATRICK, EXECUTIVE SECRETARY, ADVISORY COMMITTEE ON RACING

Mr. SYMINGTON. Thank you very much, Mr. Chairman and members of the committee. We deeply appreciate this opportunity to testify on behalf of the American Horse Council. I expect shortly to be joined by Arnold Kirkpatrick, the executive secretary of the advisory committee on racing of the council. The American Horse Council is a national organization which includes 200 member organizations representing approximately 2 million American horsemen and women. We strongly support H.R. 14089 as the most important bill affecting the horse world presently before Congress. While it specifically deals with only racing, horseracing, Mr. Chairman, is the cornerstone of the economics of the horse industry in the United States. Thus, this legislation will have a significant impact on all segments of the industry.

The background and history of today's legislation is important to a proper understanding of it. I might say subsequent witnesses will be referring to certain elements of that history. I would like to address myself to one or two at this time.

During the closing days of the last session of Congress this House passed H.R. 14071, as the chairman mentioned, by a vote of 315 to 86. That bill prohibited entirely interstate off-track wagering. The legislation was not considered by the Senate, however. So in March 1977, S. 1185, the same bill passed by the House, was introduced and referred to the Senate Committee on Commerce, Science, and Transportation. Two days of hearings were held and that committee ordered the bill reported to the Senate and referred to the Senate Judiciary Committee in September 1977. Again this bill prohibited entirely interstate off-track wagers.

At this point a number of the interested parties began to reconsider their positions regarding whether interstate off-track wagering, permitted with the proper safeguards, might not, in fact, benefit the horse industry. At the same time, it was recognized that a compromise bill would have a better chance of passage. For this reason, the three major segments involved—the horse industry, the off-track betting interests, and the States, through the National Association of State Racing Commissioners—began meeting to resolve these differences and reach the position most beneficial for all. H.R. 14089, which is presently before this subcommittee, is the result.

This compromise bill was adopted in the Senate Judiciary Committee as an amendment in the nature of a substitute to the original S. 1185 and reported favorably to the Senate on August 14. It is presently waiting to be considered by the full Senate.

In essence, this bill regulates the acceptance of an interstate off-track wager that is placed or accepted in one State on the outcome of

a horserace taking place in another. The bill prohibits such wagering unless all of the parties involved in racing—the track, the horsemen, the off-track betting interests and the racing associations of the States involved—agree, either directly or indirectly, regarding the terms and conditions of such wagering.

This bill will present an off-track betting system in one State from using a race in another State without the permission of the parties that have a proprietary interest in that race. At the same time, the bill will permit off-track betting to expand appropriately and thus benefit more people. In sum, the bill protects the ordinary contractual process that parties usually go through when negotiating the purchase or sale of a desirable commodity. It is for these reasons that all segments of the racing industry support this legislation.

Built into the bill are a number of other safeguards and exceptions intended to protect the individual parties involved. For example, before a particular off-track betting office may take a wager on an out-of-State race, it must have the consent of any currently operating track located within 60 miles. If there are none within the State, then the consent of the closest currently operating track in an adjoining State is required. This provision provides tracks with a means of protecting their natural market areas from which they draw their attendance. At the same time, if a State has at least 250 days of scheduled parimutuel horseracing, this market area consent is not required for the first 60 days of interstate wagering, if there is no racing of the same type at the same time being held. This provision protects New York's existing and extensive OTB system and will do the same for similar States.

In addition, the bill recognizes that certain specific racing events have a national importance. Interstate wagers on up to 25 such events a year may be accepted without the market area consent just discussed.

The bill will be enforced by private action, not the Federal Government. An aggrieved party may sue for damages or for injunctive relief for violations.

From the horse industry's point of view, the bill is based on the fear that interstate off-track betting, if allowed to spread in an uncontrolled or unregulated manner, will result in the closing of a large number of the country's racetracks and the diminution of the industry. The industry fears that the proliferation of off-track betting without logical safeguards could result in 4 or 5 tracks surviving with betting on them in all 50 States. Of course, this would result in the end of the horseracing industry as we now know it.

Any decline in attendance or wagering at tracks throughout the country would result in a loss of revenue to the States involved, also. A percentage of every dollar bet at a track is withdrawn from the parimutuel pool in order to pay State taxes. In addition, horseracing provides substantial revenue to the States through direct taxation of gross wages and a number of other additional taxes and provides employment opportunities for thousands of individuals. It is these revenues and benefits which the council believes are put in jeopardy unless this bill is passed.

This bill is designed to insure a continued flow of revenue from parimutuel wagering, to protect and further the horseracing and legal off-track betting industries in the United States and to facilitate the cooperation of States in the regulation and acceptance of legal inter-

state wagers. It is supported by all segments of the industry, the States and the off-track betting interests.

Now, Mr. Chairman and members of the committee, it is your support that we most respectfully request. Thank you very much.

Mr. ROONEY. Thank you very much.

I notice the dean of the Kentucky delegation, the ranking member of the Congress, is here with us, Mr. Perkins. I commended you in my opening statement. We are very happy to have you before the committee today.

Mr. Symington, what is the status of the off-track betting and horseracing in the State of Pennsylvania?

Mr. SYMINGTON. Mr. Chairman, I was about to say, in connection with responding to questions, for the most up-to-date accurate information, I would like to call to the witness table at this time one of our client associates, Arnold Kirkpatrick, executive secretary of the advisory committee on racing, who will assist in responding to inquiries from the committee.

Mr. KIRKPATRICK. Thank you. In response to your question, sir, Pennsylvania racing is holding its own. Despite the proliferation of competition all around, it is holding its own at this time, I would say.

Mr. ROONEY. How are the tracks in the State provided for under this legislation?

Mr. KIRKPATRICK. Under this legislation, for example, if there were a big race at Keystone—

Mr. ROONEY. Where is Keystone?

Mr. KIRKPATRICK. Keystone is in eastern Pennsylvania. New York City off-track betting at any of the New York off-track betting offices would have to get the permission of Keystone to take races at their track. As it currently stands they could, if they wanted to, take the races without any remuneration to Keystone whatsoever. So it protects the tracks within Pennsylvania from encroachment by an out-of-State betting operation.

Mr. ROONEY. This bill would prohibit Pennsylvania from having off-track betting, is that correct?

Mr. KIRKPATRICK. No, sir; it would not prohibit Pennsylvania from doing whatever it wanted to within its own border. It would not prohibit Keystone from accepting bets on an interstate wager if the off-track betting people out of State offered them sufficient remuneration for them to entice them to allow that betting.

Mr. ROONEY. What is sufficient remuneration?

Mr. KIRKPATRICK. That varies from track to track and place to place. They are prohibited by statute right now from offering more than 3½ percent, I believe. There is a currently existing agreement with Keystone whereby, when the tracks in New York are not racing, they have gone to Keystone with the consent of the track and with payment to the tracks.

So I would say in the instance of Keystone, 3½ percent is sufficient. In the instance of Churchill Downs, 3½ percent is not sufficient to warrant their allowing off-track betting in New York on the Derby at this time.

Mr. FLORIO. Will the chairman yield?

Mr. ROONEY. Yes.

Mr. FLORIO. On this whole question of remuneration, the States receive their taxes on a percentage of the handle.

Mr. KIRKPATRICK. Yes, sir.

Mr. FLORIO. Now, these payments, in a sense, are outside of the determination of the categorization of the handle; however, they are going to be categorized. Does that mean the State would not get a percentage of the payments that are made pursuant to these agreements?

Mr. KIRKPATRICK. Under this particular law, the States can or cannot, as they so desire, receive a portion of the interstate off-track revenue. This was the very point that we worked over very carefully in this particular bill because in certain instances—for example, New York wanted to take Florida racing when the NYRA was shut down. The Florida tracks agreed, the Florida horsemen agreed and the State Racing Commission agreed, but the State Racing Commission in Florida said: "We are getting enough money from racing and we don't want any of the interstate revenue."

So in Florida the State did not want any interstate revenues. So all the revenues from the interstate bets went to the track.

However, in Pennsylvania or in New York, if the racing commission wanted a portion of the racing revenue, they would get their share.

Mr. FLORIO. They would then be a party to the agreement?

Mr. KIRKPATRICK. Yes, sir; the State is a party. The consenting parties are the tracks and the two racing commissions involved—the track racing commission and the racing commission in the State where the race is to be run. So in order for the racing commission in the State where the race is to be run to give their permission, they would get their share.

Further, before the track can give its consent, in most instances they have to get the consent of the horsemen who are racing, who are putting on the show.

Mr. FLORIO. Thank you. What other types of consideration are being contemplated as part of this agreement? Still strictly cash remuneration?

Mr. KIRKPATRICK. No, sir; television. We hope that by permitting interstate off-track wagering on certain of these events it will increase the interest in terms of television and promotion and various aspects like that.

One of the bases of this compromise is that we, along with the off-track betting industry, have agreed to help each other in promoting the genre of the industry and trying to increase the attendance and coverage.

Mr. ROONEY. Mr. Santini.

Mr. SANTINI. Thank you, Mr. Chairman. I have a question to share with Mr. Symington. My general area of concern here relates to establishing a precedent by way of legislative enactment that could represent in some form or fashion down the line an opportunity for Federal intervention or Federal interference with an industry that is of more than passing interest to me, legalized gaming. We live in a perpetual state of paranoia about the prospect of some sweeping Federal intervention interrupting the economic basis of our State.

Do you perceive that this bill represents such a precedent or in any way would suggest a threat to the legalized gaming industry?

Mr. SYMINGTON. I do not, Mr. Santini. This bill was prepared with a very keen awareness of that problem and was an effort to preserve the delicate relationships, the rights of individuals in different States, to a fair share of the proceeds of a race, without inviting the heavy hand of the Federal Government into it.

I think Mr. Ritchie will respond more specifically to your question in terms of grandfathering in certain existing relationships in Nevada.

Mr. Kirkpatrick, would you like to amplify on that? I think that was really one of the most ticklish and difficult questions that we feel has been resolved. There was no intent to set that precedent or even set the country on that course.

Mr. ROONEY. What about the enforcement? Would the Justice Department be involved here? Would the Internal Revenue Service be involved here?

Mr. KIRKPATRICK. No, sir, neither one. I will offer Mr. Ritchie for the specifics of this. This bill is intended predominantly as a preventive measure and to establish the proprietorship of the people who are putting on the show. However, what it does provide is for recourse in the civil courts, but there is no Federal involvement on a continuing or ongoing basis.

Mr. ROONEY. Thank you.

Mr. SANTINI. I would observe additionally, Mr. Chairman, that Mr. Symington testifies as well as he legislated. I appreciate his contribution to the committee. We regret his absence from the legislative arena as well.

Mr. SYMINGTON. Thank you, sir.

Mr. ROONEY. Thank you, Mr. Symington.

Mr. SYMINGTON. Thank you, sir.

Mr. ROONEY. As I stated earlier, Chairman Perkins, I have a 10:30 appearance before the Rules Committee on the ConRail bill, so I am going to be excused, but I will return as quickly as I can. Mr. Florio will assume the Chair.

Mr. FLORIO [presiding]. The next witness is Mr. Ritchie. For the record would you give us your full name and title.

STATEMENT OF JAMES E. RITCHIE, SPECIAL COUNSEL, NATIONAL ASSOCIATION OF OFF-TRACK BETTING, ACCOMPANIED BY SHARON L. HERMAN, ASSOCIATE COUNSEL

Mr. RITCHIE. Mr. Chairman, it is James E. Ritchie. I am special counsel to the National Association of Off-Track Betting. With me today is my associate, Mrs. Sharon Herman.

Mr. Chairman, there is some need, I think, to perhaps clarify some of the issues that are obviously in the committee's mind. As is apparent, this has been a divisive issue to the parimutuel industry. When I say "the parimutuel industry of the United States," I include off-track betting, which is, of course, a segment of that industry.

This issue has evoked such strong emotions that, through the course of the events that Mr. Symington related to the committee, it became increasingly apparent that it was necessary to settle this issue for many reasons.

This is the third session of Congress before which this particular type of measure has been presented. It is something which involves a large segment of the economy, particularly as it relates to horse-racing.

I commend Mr. Symington and Mr. Kirkpatrick and those in the American Horse Council for their leadership in bringing this compromise to the Congress. The negotiations which occurred occurred among a variety of individuals, most of whom you will see represented

here today, including owners of horses, trainers, breeders, track owners, racing commission officials, as well as representatives of the off-track betting corporation.

In 1977 before the Senate Commerce Committee it was evident that there was to be some resistance to the rapid passage of a total prohibition. That resistance came, as Mr. Santini indicated, from Senators who were genuinely convinced that the Congress was considering a special interest bill which was a landmark of Federal involvement involving an issue where States had made a conscious decision to raise revenue by a particular measure and that the Congress was being asked to interfere with that measure.

The groundwork for the compromise which you have before you in H.R. 14089 was laid through some very careful and delicate negotiations by all of the parties that are involved in this issue.

I commend the National Association of State Racing Commissioners, who, if you will, do represent the State officials that are involved in this measure, for their leadership. It was they who first raised the issue of: Perhaps we had better consider settlement and we would like to continue negotiations.

It was the American Horse Council who took that particular issue to its executive board, and it was that board which authorized Mr. Rolap to begin this long series of negotiations.

When we describe the long series of negotiations, I am sure that is something which Members of Congress have as an ordinary course of your legislative duties. On the other hand, in the lay world we were very struck by the nature of the negotiations and the nature of the compromise which resulted.

We have tried to preserve the contract relationship of the parties that exists today and the relationship of the parties that we believe should exist, and this has come about in what has been introduced, as Mr. Symington said, as a substitute by Senator Mathias in the Judiciary, S. 1185, which has the provision which he described.

Again it is important, I think, to focus on the issue that the interstate contract—and I say “contract” underlines—is something which must be approved by both racing commissions—that is, both States. It also must be approved obviously by the track, and we have anticipated the proprietary interest that the horsemen and horsewomen have—that is, the people who are racing their animals at the track—in these negotiations and have attended to that in a manner which we believe truly protects the contract rights of the parties.

It is this regulatory scheme, if you will, that is set out in this particular bill and is the crux of the compromise.

Mr. FLORIO. Mr. Ritchie, I have had a problem since we have dealt with this issue over the last several years. It seems to me that the tracks have a property right in the very act of staging a race. I have had difficulty trying to understand how that right could not be enforced in court so as to stop the infringement upon that right by the off-track betting facilities.

Mr. RITCHIE. I hasten to add that that infringement is rather limited. It is one 2-minute event which is very important. The Kentucky Derby is the only instance where there has been interstate track wagering accepted without a contract. In each instance the offer has been made and, as Mr. Kirkpatrick said, New York statutory limitation of 3.5 percent, which is what they offered to pay, was refused

by Churchill Downs because they did not feel it was sufficient compensation. They chose not to seek any redress through the courts, but that was their decision.

In every other instance where there has been an issue of an interstate off-track wager there has always been a contract which was approved by the track. They did find that remuneration acceptable.

It is perplexing. It is something which is in need of remedy, and this bill will remedy that situation.

The amounts of money that are wagered on the Kentucky Derby are staggering. More money is wagered in New York City than is wagered at Churchill Downs. All that indicates, however, is that this is a unique national event and, were we not to have this type of legislation which would allow that and were we to prohibit the State of New York from accepting those wagers legally, there is no doubt in my mind that those wagers would be accepted illegally as they are accepted illegally throughout the rest of the United States.

This is, in effect, a protection against that while protecting the property and the proprietary interest of Churchill Downs. Using that as this isolated example, it also, in effect, gives the legal vehicle to conduct these types of wagers to the benefit of the States. Off-track betting returns money to the States as well as on-track betting. They also return money to the tracks and to the horsemen in those instances where there is a contract. The only exception, as I say, is that one event; that is the Kentucky Derby race itself. They don't take the races on the entire card that day.

Mr. SANTINI. If I understand the testimony of Mr. Symington, Mr. Kirkpatrick, and yourself, my understanding of the bill is that this legislative proposal is, in effect, an attempt to reconcile the kind of legal question that Mr. Florio posed to you and is being pursued as an alternative to a 10-, 15-, or 20-year battle through the judicial process to answer the very essential question that he raised.

Mr. RITCHIE. Yes. I hasten, Congressman Santini, to answer another one of your questions that I would answer a little differently than Mr. Symington. I do view this bill as an exception to what, in my judgment, the national policy for gaming should be—that is, that these are matters that should be left to the State.

I hasten to add that this is unique in that the States themselves and all segments of the industry have come to the Congress and said:

We need you to settle this matter and to provide this regulatory framework within which we can operate. We are not seeking the enforcement of the Justice Department. We are not seeking the use of any administrative process. Leave that matter of contract to the courts thereafter. We have provided that any of these difficulties which might arise from the construction of the regulatory demand would be settled in court between the parties themselves without involving the Congress any further.

It is that exception that allows me to urge the support of yourselves and other members of your delegation who are extremely sensitive to this as well as all of those delegations from the 30-some-odd States which themselves have made a choice to have legalized gaming within their confines.

If the Congress demands that the States and the parties come before it to settle these matters, I have no fear that in those limited instances it would be required as it is in this limited instance.

Mr. SANTINI. We do labor under the continuing apprehension that legislative proposals such as this, which are offered in the context

of a prophylactic measure, often get stretched to sort of meet the demand or the inventiveness of the governmental agency concerned at a later time.

I am particularly aware of explicit efforts in this legislation to proscribe that possibility at a later date. But I will never underestimate the inventiveness, the imagination, of an enterprising bureaucrat who wishes to find some sort of legislative vehicle to which he or she might ride to some sort of desired end. I see elements of this here. My trepidation may be unfounded but it is nevertheless very much there.

Mr. RITCHIE. As near as possible—and we have brought to bear a great deal of bureaucratic background to this issue from the parties that worked on it—we who are sharing your apprehension have attended to that issue in a manner that, we think, leaves little doubt to the intent of Congress should it pass this bill and the supporting reports that have been prepared.

Because we were bringing the expertise of so many aspects of this industry together into a situation of describing the compromise, we have tried to attend to every anticipation that one might discover through this hearing process, and the future, if the Congress should see fit to pass this bill and it becomes law, its effect upon not only the racing industry but all other industries of a like nature.

Mr. FLORIO. To give another side, I am also impressed with the ingenuity of nongovernmental individuals as well. Part of the reason for my support of this measure will be the involvement of the State agencies to assure that the public interest is being served. I can conceive as part of the agreement, and this may very well be the worst possible cause, the compensation being shares of stock in OTB corporations as being part of the consideration.

I am sure the States would not tolerate that sort of thing. By institutionalizing the States, playing a role in the agreement, I am sure we can avoid that type of thing.

I commend all those who worked very hard to strike this delicate balance so that the public interest as well as the appropriate interests are being served.

Mr. SANTINI. I realize this legislative product does reflect some of the crafting that you referred to in your earlier responses and observations. For example, in section 2, Findings and Policy:

The states should have primary responsibility for determining what forms of gambling may legally take place within their borders or,

(2) the Federal Government should prevent interference by one state with the gambling policies of another, and should act to protect identifiable national interests.

That seems reasonably clear and unambiguous. I do know that in addition, that is to the excellent efforts of Richard Rolap and other concerned entities as well, the language on page 11, section 9, sub-2, "The provisions of this act shall not apply to any form of legal pari-mutuel offset track betting existing in a State on May 1, 1978," represents continuing efforts to try to exercise this incredible balancing that you are all seeking to implement here. I hope you succeed.

I can understand Chairman Perkins' sensitivity on an industry that is of particular importance and concern to him in his State, and that is horseracing, and I think that is a very legitimate concern and expression.

I do not know how you all did it, got it together and made it work, to arrive at this juncture where all the entities concerned, with the possible exception of a nervous Italian member from Nevada, seem reasonably well settled that this is going to achieve the desired goal in interest of all.

I hope you are right, Mr. Ritchie. I know you were caught very much in the middle of that negotiation as you characterize it. We will keep our fingers crossed and then turn to you in damnation if your projections are incorrect.

Mr. RITCHIE. We hope you will support the measure in the sense that it is offered. It is a compromise. Not everybody is pleased on either side. But it represents the best aggregate judgment of how to settle this matter and, if you will, cease and desist from bothering Congress with it in every session. That is what we are faced with. We believe that this contains the framework by which the parties then can seek redress if necessary in the courts but which the States, we believe, will act in their natural catalyst to contract and it will see the industry we believe, benefit generally.

I say that from the sense of the off-track betting industry as well as the racing industry which is vital to the economy of this country as you have heard this morning.

Mr. FLORIO. Mr. Lent?

Mr. LENT. No, I do not have any questions. Thank you for testifying. I want to say I am a cosponsor of this bill. As you know, OTB generates a tremendous amount of revenue for my State and for the city of New York which is financially hard pressed as well. This bill will, presenting this compromise, permit OTB wages on out-of-State racing and it is very important to us.

Mr. RITCHIE. Thank you, Congressman. We appreciate your support.

Mr. FLORIO. Mr. Ritchie, thank you very much.

Mr. RITCHIE. I thank you, Mr. Chairman. I have a longer statement I wish to file for the record. Also, we would like to file, if appropriate, some of the other materials from the Senate Judiciary Committee.

Mr. FLORIO. Without objection, the materials will be included.

Mr. RITCHIE. Thank you, sir.

[Mr. Ritchie's prepared statement follows:]

STATEMENT OF JAMES E. RITCHIE, SPECIAL COUNSEL, NATIONAL
ASSOCIATION OF OFF-TRACK BETTING

Mr. Chairman, and members of the Subcommittee on Transportation and Commerce, I am pleased to appear today as Special Counsel on behalf of the National Association of Off-Track Betting. Appearing with me is my associate, Mrs. Sharon L. Herman.

Interstate off-track wagering is an issue which has been before three Congresses, and has, until now, evoked strong emotions within the legal parimutuel industries.

After a narrow passage in the Senate Commerce Committee, it was evident that a bill which would prohibit all interstate off-track wagering would have no easy path to becoming law. Another bill to prohibit all interstate off-track wagering, H.R. 14071, had passed the House in the 94th Congress, but was stalled in the Senate. A similar bill, H.R. 8046, had been introduced in the House, this Congress, but with the Senate version, S. 1185, entangled in the Judiciary Committee, it became evident that an industry settlement of this dispute was necessary and in the best interests of both the off-track betting and racing industries.

While Congress was in recess for the Christmas holiday, the groundwork was being laid for an industry settlement of the interstate issue. While continuing to

monitor Committee activities, efforts were being made to utilize the annual meetings of various horseracing industry groups as forums for promoting the concept of settlement.

After private meetings between representatives of on-track racing and off-track betting, a major breakthrough occurred when the National Association of State Racing Commissioners (NASRC), through its Off-Track Betting Committee, recommended amendments to S. 1185 which would protect the parimutuel industry from unregulated expansion of off-track betting systems, but "would not deny the parties any advantages that might accrue through a planned and controlled development of such systems." Their suggestions would require the consent of the host track, host racing commission and off-track racing commission; and, after an exempted fifty (50) days per year, the off-track betting system would be required to obtain the consent of any currently operating track in an adjoining State within one hundred miles of an off-track betting location.

The Racing Advisory Committee of the American Horse Council (AHC), reacted to the NASRC's initiative by voting "to consider the possibility of a settlement," and recommended numerous changes to the NASRC Off-Track Betting Committee proposal, including the added requirement of consent by the horsemen. The AHC proposal raised the mileage limit for consent of third party tracks to two hundred miles, and included tracks not within two hundred miles but in a State adjoining the off-track betting State. The exempted days from this consent was lowered to thirty. The following week the Racing Advisory Committee changed its proposed settlement by requiring the consent of all currently operating tracks within the off-track betting State, all currently operating tracks within one hundred miles in an adjoining State, and exempted from the latter requirement only forty days and ten special events a year. This proposal was presented to the AHC Executive Committee and Trustees on February 24, 1978. That body reaffirmed its support for S. 1185 but authorized Rich Rolapp, Executive Vice President, with the advice and consent of the Racing Advisory Committee, to negotiate a settlement of the interstate issue not significantly inconsistent with the terms of the proposed settlement. While these terms would have crippled the off-track betting industry, this action did mark the beginning of a long series of negotiations between representatives of the National Association of Off-Track Betting (NAOTB) and the AHC to arrive at the specific concepts and terms to be embodied in a settlement.

Under authority given by the NAOTB at their Albany meeting on March 7, 1978, a document prepared as a response to the NASRC and AHC proposals was presented to representatives of the AHC. The issues which surfaced as being the most difficult to solve were the role of the horsemen and the definition of the geographic market area to be protected. NAOTB's position on the horsemen issue had been to retain the traditional relationship in negotiations between horsemen and management, so that the interstate issue would not be isolated and subject to the leverage the horsemen could mount to obtain some unrelated concession from management. The concept presented in this first NAOTB response was to have the consent of the horsemen a condition precedent to the consent by the host track. To define the geographic market area, the NAOTB draft required consent of all tracks within fifty miles, or if none, the closest operating track within a hundred miles. If there were no tracks within a hundred miles, then consent would be required of the closest operating track in an adjoining State only within two hundred miles. This latter clause was a concession to the Western States which perceived a broader market area than on the East Coast.

As these private negotiations continued, the State Racing Commissioners put a formal stamp of approval on the settlement effort through a position statement issued from their National Convention in Bal Harbour, Florida. Although no agreement was reached by the Commissioners on the terms of a settlement, their statement was a landmark in recognizing and stating that an absolute prohibition of interstate off-track betting was not in the best interest of racing or of the States. It provided that the NASRC should join in negotiations with the AHC, NAOTB and other interested parties to work out the specifics of a settlement.

These three position papers (by the AHC, NASRC and NAOTB) provided points of reference and discussion for the first industry working session on the settlement provisions. This meeting was held in Washington on April 10, 1978. It was chaired by Jack Krumpe (Thoroughbred Racing Association/Harness Tracks of America) and was attended by representatives of the NASRC, Harness Tracks of America, United States Trotting Association, Horsemen's Benevolent and Protective Association, Harness Horseman's International, Thoroughbred Racing Association, AHC and NAOTB. Unfortunately, the morning session recessed into private industry caucuses to resolve the issue of horsemen's consent.

What was to later be referred to as the "Buch Proposal," authored by Harry Buch and Warren Schweder of the NASRC, was an accommodation to the Racing Commissioners who did not wish to be directly involved in negotiations with the horsemen. Under the Buch proposal, a full agreement, reached by the off-track betting system, host track and horsemen would be presented to the host and off-track State Racing Commissioners for final approval. This accommodation, however, arrived at in a private caucus from which NAOTB representatives were excluded, did not provide an acceptable solution to NAOTB concerns. Without even being given an opportunity to discuss the issue, NAOTB representatives were faced with a "take it or leave it" situation.

A futile attempt was made that afternoon to lay aside the issue of horsemen and address the issue of protection and definition of market areas. The meeting adjourned, however, with the assurance that both sides would address, in writing, their position and reasoning on this subject.

In the two weeks following the April 10, 1978 meeting, numerous exchanges and meetings occurred between individuals on various sides. Several variations of the Buch proposal were offered by NAOTB which would provide the horsemen with either the portion of the revenue they were attempting to receive from interstate off-track wagering, or a role in the negotiations to protect their interests. Although the AHC agreed to circulate these ideas to the various parties, it became evident that the horsemen were adamant in insisting on a role unlike any they had in other aspects of racetrack operations. This was unacceptable, not only to the NAOTB, but to many racetrack owners who refused to allow the interstate issue to disrupt the traditional relationships in contract negotiations at their tracks.

Developments in New York State during this interval avoided a stalemate on this issue. Legislation was to be presented to the State legislature in Albany which instituted various changes in New York State parimutuel wagering. One aspect of the New York legislation was "parity" for horsemen in the amount of revenue they would receive from off-track wagers (in comparison to on-track wagers). A primary, and crucial backer of the parity issue was Bernard Rome, President of New York City Off-Track Betting. As a philosophical and moral issue, Mr. Rome was in agreement with parity and recognized the desirability of providing more revenue to horsemen in this manner; but as a financial matter, it became apparent that support for parity would be impossible if there remained the possibility New York City Off-Track Betting would face an additional ten million dollar a year loss from the prohibition of interstate wagering. This dilemma was posed by Mr. Rome to representatives of the Horsemen's Benevolent and Protective Association (HBPA). A meeting was arranged for representatives of New York City Off-Track Betting and HBPA in Washington on April 25, 1978 in order to resolve, in the light of the parity problem, the role of horsemen in the interstate legislation. This was to be followed on April 26, 1978 by a second industry working session, to resolve the remaining issues concerning market protection and grandfather clauses.

The April 25th meeting was, at the last minute, enlarged to include other industry representatives, and, due largely to semantic problems and emotionally charged rhetoric, nearly broke apart in frustration. The parties agreed, however, that after the months of work already involved in the settlement effort it might be profitable to continue with plans to meet the following day, and to be addressed personally by Bernard Rome. In addition, Counsel for NAOTB and HBPA agreed to continue to work in private that evening in an attempt to achieve through the drafting of appropriate language, a solution acceptable to both sides.

A Statement of Settlement was finally agreed to on April 26, 1978, encompassing the concept originally proposed by NAOTB providing that the consent of the horsemen must be obtained by the track prior to their consenting to the taking of interstate wagers. Although the wording was still to be developed, critical to off-track betting's agreement to the Statement of Settlement was the concept that the horsemen's consent be obtained by the track as part of the many issues the track and the horsemen resolve pertaining to the conduct of racing, and not as an isolated issue. NAOTB's agreement was also contingent upon certain absolutely necessary exceptions to "market area consents" without which off-track betting could not be assured of continuing its operations. These exceptions included sixty (60) days whether or not dark days plus other dark days under conditions specified in the statute, which occur during a regularly scheduled race meeting, plus twenty five (25) special events per year.

Further refinements were made in the Statement of Settlement between representatives of racing and NAOTB Counsel on April 27, 1978 and the final version

was presented to Senator Mathias and aides to Senators Biden and Ford on April 28th. It was agreed that the process of transforming the Statement of Settlement into legislative language as an amendment to S. 1185 to be introduced by Senator Mathias would initially be attempted by NAOTB and AHC Counsel. A draft of the amendment was approved by the AHC Racing Advisory Committee on May 23, 1978 (with representatives of NAOTB present) and by its Executive Committee on May 24, 1971. The only substantive change was the insertion of a Thoroughbred Racing Association-Horsemen's Benevolent and Protective Association agreement to exempt the New York Racing Association from the requirement of horsemen's consent.

Final drafting occurred in the Senate's Office of Legislative Counsel. The Senate Judiciary Committee met in July, adopted the amendment in the nature of a substitute, offered by Senator Mathias, and reported the bill favorably subject to an agreement between Senators Mathias and Metzenbaum concerning objections voiced by Senator Metzenbaum to the amendment. After several more weeks of meeting with staff members from the offices of Senator Mathias and Senator Metzenbaum, an agreement was reached and the bill was reported out. It is currently pending Senate Floor action.

The bill before this Committee is identical to S. 1185 as reported by the Senate Judiciary Committee. It provides that interstate off-track wagers may only be accepted with the consent of certain parties with an interest in the applicable horserace, that is, the racetrack where the race is run and the racing commissions of the two States involved. With one exception, the consent of the horsemen racing at the host track must be obtained by the host track prior to entering into any agreement with an off-track betting system. Generally, this consent would be obtained as part of the regular contractual process between the host track and its horsemen's group.

The bill also requires the consent of certain racetracks within the natural market area of an off-track betting location. Necessary exceptions to this requirement are provided, under certain circumstances, for a limited number of days each year, to allow continuous operation of off-track betting systems when local racing is affected by weather, scheduling or other conditions, and to allow interstate wagering on special events.

These exceptions were critical to acceptance to the Settlement by off-track betting, and the scheme of the bill revolves around them. Through these exceptions, an off-track betting system is able to continue its operations when local tracks are, for any reason, not available to provide the necessary races to off-track betting.

The exceptions to the market area consent requirements are provided to off-track betting offices in States with at least two hundred fifty (250) days of scheduled parimutuel horseracing a year. Under this scheme, they may accept interstate off-track wagers for a total of sixty (60) racing days and twenty five (25) special events a year, if, with respect to such sixty (60) racing days, there is no racing of the same type at the same period of the day being conducted within the off-track betting State within sixty (60) miles of the off-track betting office accepting the interstate wager. The bill additionally recognizes the operational requirements of off-track betting systems by allowing interstate wagering without market area consents on "dark days," that is, on days during a scheduled race meeting when no racing of the same type occurs at the same period of day in the off-track State within sixty (60) miles of the off-track betting office, provided an identical offer is made to any currently operating track within sixty (60) miles of the off-track betting office.

The off-track betting office has the option of counting a dark day towards one of the sixty (60) excepted days or utilizing the dark day exception.

A limited exception from provisions in the bill concerning protection of market areas is provided for any parimutuel off-track betting system existing on May 1, 1978 in a State which, at the time of enactment of the act, does not conduct parimutuel horseracing. Thus, Connecticut's off-track betting system, and the State revenues derived therefrom, are not jeopardized by these Federal regulations.

Exempted from the regulations contained in the bill are interstate off-track wagers accepted pursuant to a contract entered into on or before May 1, 1978. An exemption is also provided for any form of legal non-parimutuel off-track betting which exists in a particular State on or before May 1, 1978. Thus, the regulations provided in the bill would not apply to the legal handbook operations in the State of Nevada.

It is hoped that this rather lengthy history and explanation sheds some light on the difficult and painstaking negotiations which resulted in this industry Settlement. A desire to obtain a solution to this problem which would be in the best interest of all the industries involved, and to expend a unified effort on other matters of importance to the entire industry gave impetus to the effort to overcome at times seemingly insurmountable disagreements and arrive at a settlement which is viewed by all as a reasonable means of ensuring the growth of interstate off-track betting that will benefit the States and the racing industry. It is a settlement within the bounds of which the off-track betting industry can operate and to which it has agreed.

We appreciate your continued concern for the welfare of all the legal parimutuel industries, and will be pleased to answer any question.

Mr. FLORIO. Our next witness is Brownell Combs II.

**STATEMENT OF BROWNELL COMBS II, SECOND VICE PRESIDENT,
NATIONAL ASSOCIATION OF STATE RACING COMMISSIONERS,
GENERAL MANAGER, SPENDTHRIFT FARM, AND VICE CHAIR-
MAN, KENTUCKY STATE RACING COMMISSION**

Mr. COMBS. I am Brownell Combs II, general manager of Spendthrift Farm, Lexington, Ky.; vice chairman of the Kentucky State Racing Commission and second vice president of the National Association of State Racing Commissioners, an organization comprised of 34 State racing commissions which span the country from the State of Washington to Florida and from Maine to California. Our membership also includes the Connecticut Committee on Special Revenue, the Florida Board of Business Regulation, and 10 associate members from Canada, Mexico, Puerto Rico and the Bahamas.

In hearings before this subcommittee on Tuesday, March 23, 1976, Harry Buch of the NASRC testified that the organization had "voted overwhelmingly to oppose interstate off-track betting and to support any * * * measure to prohibit it as would be introduced before this Congress." To me, as to most other racing commissioners at that time, the prospect of interstate off-track wagering was anathema.

However, a wise old judge once said, "Knowledge lately gained is better than knowledge never gained." In the years subsequent to Mr. Buch's statement, the National Association has conscientiously and carefully reassessed its position on interstate off-track betting, and at the NASRC convention held in Miami earlier this year, the organization resolved:

* * * the NASRC should enter into discussions with representatives of the American Horse Council, the National Association of Off-Track Betting and other interested parties in order to develop legislation which would protect the racing industry from an unconscionable, ungovernable expansion of interstate off-track betting systems, and safeguard the proprietary interests of racing associations, horsemen, and the states, but would not deny the parties any advantages that might accrue through a planned and controlled development of such systems.

It is for this reason that I am here today in support of H.R. 14089, a compromise version of the Interstate Horseracing Act, which I believe comes as close as is humanly possible to accomplishing the goals set forth in the NASRC resolution. It is a result of weeks and weeks of work by the most knowledgeable people in both the racing and off-track betting industries, and I would like to offer my hearty encouragement for the speedy passage of this legislation, which is an essential concomitant to the health and security of both segments of the parimutuel industry.

Thank you very much.

Mr. FLORIO. Mr. Santini.

Mr. SANTINI. A question of curiosity that I shared with some of my friends on this issue relates to an appearance to me that potentially the working together of the off-track betting people and the horse-racing or racing people could work to the mutual interest of both, in the context that it increases enthusiasm by way of off-track betting and the money that that brings could be enjoyed in significant part by both the horseracers and the racetrack if they were permitted to share to a reasonable degree in the profits that are realized from that off-track betting.

Do you share that positive possibility with me?

Mr. COMBS. Yes, sir.

Mr. FLORIO. I gather, too, that you have sort of been brought to the table of understanding with some degree of apprehension and concern about the industry which you represent both as a horseracer, as I gather you are, and as a commissioner.

You feel this is the best legislative product that can be put together, as Mr. Ritchie characterized it, making not everyone entirely happy, but making most of the people concerned happy enough to be satisfied with the product.

Mr. COMBS. Yes, sir, I definitely feel that way. Of course, if this legislation is not enacted, we feel that there is very great danger that all of the States will suffer and the whole horse industry will suffer from a shrinking of the number of racetracks that will be able to operate.

Earlier in the discussion, Mr. Kirkpatrick brought up Keystone in Pennsylvania. In that marketing area, there are lots of racetracks in several States in close proximity. This bill will protect interests of all the States in that area or in any area in the country.

Mr. FLORIO. I commend you, Mr. Combs, and the National Association of State Racing Commissioners for being willing to listen to alternative legislative solutions and being willing to put your stamp of approval on a product which you feel justifies your support even if it is necessary to come back later and reverse a position previously taken.

Mr. COMBS. Thank you.

Mr. FLORIO. Mr. Lent, do you have any questions?

Mr. LENT. I have no questions.

Mr. FLORIO. Thank you very much.

Our last witness is Lee Eaton, director of Thoroughbred Breeders of Kentucky.

STATEMENT OF LEE EATON, DIRECTOR, THOROUGHBRED BREEDERS OF KENTUCKY, AND OWNER OF EATON FARMS, INC.

Mr. EATON. Thank you, Mr. Florio, and gentlemen, good morning.

I am Lee Eaton. I live in Lexington, Ky. I am a thoroughbred owner and breeder. I am also a director of the Thoroughbred Breeders of Kentucky which is a trade organization whose purpose is to protect the thoroughbred industry in Kentucky.

This industry in our State is presently estimated to be in excess of \$1 billion. Additionally, in Kentucky, we have a multiplied standard-bred industry, a rapidly growing quarterhorse industry, and a substantial number of individuals who are interested in horse showing

and pleasure riding. As you all know, Kentucky, in short, is horse country.

As I travel around the country, whether I am in horse circles or otherwise, I am always asked about the horse industry regardless of where I might be.

For many years, the racing industry in Kentucky has supported a total prohibition of interstate off-track betting as provided, for example, by H.R. 14071, which passed the House at the end of the 94th Congress by an overwhelming vote of 315 to 85, but failed to gain passage in the Senate as that body adjourned before being able to consider it.

What seemed to be a defeat for the horse industry at the time may have turned out to be a victory for, in the intervening 2 years, we of the horse industry have become convinced that there are certain instances in which interstate off-track betting, if properly controlled in order to establish the proprietary relationship of the industry over its products, may be of more benefit to the industry than a total prohibition.

H.R. 14089, we believe, provides those controls. It enables the racetracks to have a say in their destiny. It enables the horsemen to have a say in their destiny; and it provides for the traditional control of the racing commissions which govern racing. Further, it provides protections for the market areas of the racetracks around the country and it also contains provisions to protect the most important segment of all—the fans.

It is something which, when passed, can be cited as a significant accomplishment of the horse industry, not only for the protection of the industry, but also for its betterment. As a result of this legislation, for example, the representatives of the off-track betting industry have vowed to promote the use of interstate off-track wagering to benefit the racing industry; they have expressed a sincere desire to work in cooperation with the industry to think of affirmative ways that interstate off-track betting can benefit the industry.

We as breeders are further concerned that if we do not get satisfactory legislation controlling interstate off-track betting that the 30,000 horses that we are producing annually will no longer be marketable. We are very aware, and we want you to be aware, that we are employing hundreds of people, minority groups, people with very limited education, who, I believe, in many instances would be on our welfare rolls.

I will give you one example of an employee that we have had for approximately 16 years who has less than a junior high education but being in the horse industry, he is able to earn wages in excess of \$20,000 a year. He could not go to a service station and be employed because he simply could not handle the filling out of credit cards.

Yet, due to the horse industry he can raise two lovely daughters and give them an opportunity to have an education and advance themselves beyond him. We have many people in our industry that are employed that would not be if we ultimately had interstate off-track betting which would possible lead to three to five tracks across the United States and would use only a percentage of the 30,000 horses that we are now producing.

I think that we would find the economic ramifications would be rather unbelievable.

H.R. 14089 is not perfect, but we feel that it affords the best possible solution to the problem available for the present and for the future.

Thank you very much.

Mr. FLORIO. Thank you very much. The gentleman from Nevada.

Mr. SANTINI. I do not have any questions other than the question that was raised by my friend from Illinois, Mr. Russo, and I think it is a question—

Mr. RUSSO. If the gentleman will yield at this point, I would like to make a comment.

I realize this is a compromise which means it is not perfect as you stated, Mr. Eaton. I am just wondering if the four gentlemen would object to a provision in this legislation which would make the legislation die within 3 years after enactment subject to reauthorization, the reason for that being to see if, in effect, it is actually doing the job it was intended to do?

If not, it is much tougher to remove a piece of legislation once it is authorized and all you have to do is continue to renew as opposed to its dying within a certain period of time and its having to make its case to be re-enacted.

I was wondering if you gentlemen would object to a provision in this legislation that would do exactly that, 3 years after enactment of this legislation, it shall terminate.

The only reason we would bring it back into existence is if it was proved that, in effect, it was doing the job. As the gentleman from Nevada has indicated, a lot of legislation that we pass here is passed with good intentions. Unfortunately, when handled by the bureaucratic agencies it does not turn out that way.

If we do not do something about that we may have another turkey on our hands 3 years in a row that anybody cannot possibly live with.

Mr. EATON. I am not in a position to answer that for the other gentlemen.

Mr. RUSSO. I have asked everybody. So you can answer for yourself.

Mr. EATON. I am of the opinion there has been a lot of work, a lot of thought from the people involved in all aspects of the industry, not only the horse industry, but the off-track betting industry.

I think it will prove to be very workable. I am sure that plans will have to be formulated that would require large investments. It might be a detriment if it had a 3-year limit, as I understand your question.

Mr. FLORIO. Mr. Symington?

Mr. SYMINGTON. Mr. Chairman and Mr. Russo, I think all of us understand and appreciate the sentiment behind that suggestion. I would only offer the thought that that might be very damaging in this situation because of the contractual relationships which would be existent at the time

This bill really provides a context for private contracts to occur. For them to be untimely stopped, requiring all kinds of rearrangements of relationships, I think would probably not be in the best interest—

Mr. RUSSO. Would you enter into long-term contracts as the result of this legislation or short-term contracts?

Mr. EATON. I suspect one or the other, depending on the interests of the parties concerned.

Mr. RUSSO. Assuming we did not have a sunset provision, your statement would have validity if it were a long-term contract. If it were not a long-term contract, it would not make that much difference.

Mr. EATON. Of course, contracts would be entered into from year to year, some of them extending beyond the term of the sunset and others just beginning at that time. I think the Congressman's concern could be monitored pretty easily without such a rigid line being drawn. Everone involved in the racing industry will be watching this very closely and making their judgments.

I think all the States will have their opportunity to comment. As Mr. Santini said a few moments ago, it is not inconceivable that some adjustment will be requested at some future time, but this is the best we think we can do now.

Mr. RUSSO. I would be willing to go 4 or 5 years just to make sure, if it is not working, we know that it will come to an end surely.

Mr. EATON. I think any period suffers from the same disability. Once you get close to the period, it is more difficult to make the arrangements that otherwise might be made. Speaking for the horse council, we would certainly not wish to support that approach although we fully understand and sympathize with the Congressman's concern.

Mr. Ritchie may have a comment.

Mr. RITCHIE. I think it is useful, Congressman, if I give you a perspective of what from within the off-track betting industry we perceive. There are several States, including your own, which have considered it and it is somewhat involved in the political process now. There are several States which are considering off-track betting as a revenue measure both from the standpoint of enhancing their existing pari-mutuel operation as well as increasing those revenues to the States which are needed to pay for the services that are being required presently.

The legislative process of creation of an off-track betting industry, is one that does not occur in a very short time. New York's was introduced some 10 years into the New York Assembly before it became law and it has just evolved into a full partner with racing through this particular act.

That 15- or 16-year history had a lot of cyclical treatment to it. It probably is something which would not lend itself to not being regulated in the future once it has been regulated.

The contracts that exist between off-track betting and track for interstate wagers generally run about a 3-year duration. I do not know I do not know of any contract in existence now that would not expire within the 3-year period. It would have to be renegotiated for an additional period that may satisfy what your concerns are.

Our interest in creating the regulatory system that describes the contracts that must exist, and then leaving it to the parties to enforce that through the courts between themselves was to not anticipate coming back in the next session of Congress and saying it should not have been 60 miles, it should have been 100, or anything such as that.

We absolutely tried to forecast those States that were likely to go to off-track betting as well as those States which had a proprietary interest in an unusual track situation. The whole reason, for example,

of our using the track in the adjoining State is that in New England, the location of tracks is not the location of tracks in Arizona or in Arkansas.

That is the specific reason that we tried to contemplate all of these things. On behalf of the National Association of Off-Track Betting, I do not believe that we could support a provision which would eliminate this bill. As their lobbyist, I would be very happy for it. It means that they will be employing me 3 years from now to come back to, if you will, litigate another piece of legislation.

I think that the situation needs to have the flexibility of this legislation, but it needs to have the inflexibility of some legislation. I think that the industry is so complex and there are so many pressures, economic, among the States as well as among the interests at the track and among the interests of the off-track system, that there needs to be this regulation. I fully appreciate the concerns you are expressing, but I believe that as much as it is humanly possible, albeit for our good intentions, that we have tried to foresee that and have tried to anticipate not being back before this body seeking some additional changes to a bill which, as I gather from your judgment, should not have existed beyond a certain period of time.

Mr. LENT. Will the gentleman yield for a comment?

I share the gentleman's interest in sunset legislation as a general rule, but I would just point out that in this particular piece of legislation we are not creating a Government agency or regulatory agency, and we are not spending the taxpayers' money. So that the usual reasons that would mitigate in favor of a sunset provision do not apply in this particular instance.

Since we have the representatives on all sides who are present here and seem to indicate that a 3-year statute would be a Sword of Damocles that would have a chilling effect on contractual relationships that might be created under this statute, I frankly think it would be ill-advised in this particular bill.

Mr. SANTINI. I join in the general enthusiasm for the legislative objective that the gentleman proposed to the witnesses this morning. I am not much interested at this juncture, I suppose, in sinking the ship that you all have been steering on such a stormy course, through the process described by the witnesses, just before it gets to port.

To the point of the gentleman from New York, I truly believe that in any eventuality as you go through the pragmatics of working out the legislative language, you are going to find that you are going to need some form of legislative modification as you go down the road. It seems somewhat logical to me that if you all were able to point to a specific timetable, 4 years or 5 years, whatever it might be, that that time frame would have a redemptive kind of positive prospect for those trying to iron out all of these thorny, practical, problems and inevitably you are going to ensue with a brand new legislative proposal.

I do not want to add an amendment that would seem to destroy or impair, at least, all of the hard work, negotiation, and laborious consideration that you all have gone through so far.

I just offer it to you. I think it has some virtue. I can appreciate immediately what it might do in terms of your contractual relationships and that is a very telling point that you have raised.

I do not know that that is an impossible barrier and if you accept my premise, you are going to be back with us inevitably in any event

for some kind of minor modifications, changes, adaptations, to the realities that you are grappling with.

That time frame does not seem all that illogical. That is just my initial impression. If you change your viewpoint, please let us know.

Mr. SYMINGTON. Mr. Chairman, if I may be permitted to respond to your remarks, it occurs to me, and I am sure to my colleagues here, that what we established in an effort to bring this bill before you was a relationship which becomes an ongoing relationship of mutual exchange of information and difficulties that we may perceive in the arrangement, and I think the committee can be sure that there is in a sense an informal committee of concerned participants in this measure that not wait 2, 3, 4, or 5 years. They will be monitoring it from year to year, the workability of the arrangements. We have tried to anticipate and make it durable into the future, and we think we have done so. I do not think that we need a particular time.

If there is something wrong with this measure, we will learn probably sooner than 3 years. If there is nothing wrong with it, or little wrong with it, we may walk through that 3-year period and not be bothered by the requirement to sit down and rebuild the structure that we have worked so hard to bring to you today. So, I would hope that the committee could speak, and perhaps even observe in the report that it expects the participants in this area to work together and see that it works and to constantly exchange information so that we will know if there is any possible breakdown in it and take whatever action we think is appropriate at that time.

Mr. RUSSO. I have no further questions.

Mr. FLORIO. The gentleman from New York?

Mr. LENT. I have no further questions.

Mr. SANTINI. Mr. Chairman, one vital question I would like to pursue while we have the witnesses before us. That is, what will be the specific impact of this proposed legislation on the State of Nevada?

Mr. EATON. I feel somewhat qualified to answer that. As long as the existing non-par-mutuel handbook, legal handbook operation exists in Nevada, this legislation will not impact it at all. If Nevada chooses to go to a pari-mutuel system, it will be fully covered under this bill.

Mr. SANTINI. Thank you.

Mr. Eaton, I want to commend you for your testimony and for your joining and participating in this arduous compromise that has been hammered out here and for your support of that outstanding representative of the American Horse Council, Ritchie Rolap.

Thank you.

Mr. EATON. Thank you.

Mr. FLORIO. Gentleman, thank you very much.

Ladies and gentlemen, the committee will stand in recess, to the call of the chair, until the chairman is able to reconvene for the purpose of a markup.

Thank you.

[Whereupon, at 11 a.m., the subcommittee adjourned.]