

ROLL CALL

No Sprint to Finish for Internet Gambling Ban

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By Kate Ackley, Roll Call Staff

As bartenders begin crushing mint for juleps in preparation for this Saturday's Kentucky Derby, often called the most exciting two minutes in sports, a much slower process is unfolding that could have implications for future online wagers in the horse-racing industry.

Back in 2006, Congress passed the Unlawful Internet Gambling Enforcement Act, which required banks and credit card companies to no longer process payments for illegal Internet gambling.

Horse racing, which is regulated under the Interstate Horse Racing Act, received a much-publicized exception.

But it's been nearly two years now since the Internet gambling bill was passed, and the Treasury Department and Federal Reserve have yet to finish writing regulations implementing the law.

But if the rules put the onus on the credit card companies to determine which transactions are legal, banks and credit card companies say it could end up leaving them no choice but to cancel transactions for bets on horse racing, too, including the storied Derby at Churchill Downs.

"If this were implemented, banks would basically say, 'This is now a trap for us. We're not processing any payments to anything that might look like a betting activity — no payments to Churchill Downs even,'" said Wayne Abernathy, executive vice president for financial institutions policy at the American Bankers Association.

Not only could banks and credit card companies put the skids on Internet horse-racing bets, Abernathy said some of those companies, in an abundance of caution, might even cancel payments to casinos for such benign items as T-shirts.

The Internet gambling law, he said, gives too much authority and places too much responsibility on financial services companies.

"It makes us not only the police officer, but also the judge and jury, forced to make a sentence — with the sentence being your payment will not go through," Abernathy said.

Instead, he says, the ABA would prefer to refer any suspicious transaction to law enforcement officials.

The ABA is registering its concerns with the Fed and Treasury and also with Members on the Hill, he said. "We won't say whether we're for or against the gambling [legislation]. Our objection is when we're being asked to do something we can't do."

Other financial services lobbyists say their companies might err on the side of caution. "A lot of institutions would do what's called 'overblocking' to be on the safe side," said Leigh Williams of the Financial Services Roundtable. "It's quite possible that we would, in fact, go beyond the letter of the law."

House Financial Services Chairman Barney Frank (D-Mass.) has introduced two bills that pertain to Internet gambling. One bill would stop the implementation of the Internet gambling ban. The other, the Internet Gambling Regulation and Enforcement Act of 2007, would regulate online betting.

The financial services concerns have the horse-racing industry worried as well.

Anthony Cabot, a lawyer with the firm Lewis and Roca, represents the Nevada Pari-Mutuel Association, whose 80 race book members facilitate bets on horse races.

"They say they got a carve-out, but they really didn't," Cabot said of the horse-betting industry.

"Now, the reason I think it's concerning, from a legal perspective, is that if and when they ever adopt the Unlawful Internet Gambling Enforcement Act, banks, in my opinion, will always tend to take the more conservative position, and assume it's an unlawful transaction."

Cabot said that if that were to happen it would mean a potential disaster for the industry. "You would have a situation where the horse-racing industry is going to have a hard time surviving," he said.

Peggy Hendershot of the Lexington, Ky.-based National Thoroughbred Racing Association said her group has urged the Fed and Treasury to adopt regulations that set out a merchant category unique to horse racing, so that credit card companies would be free of confusion.

"There would be a number of steps that would have to be taken, and still at some level it would be up to the banks and credit card issuers," said Hendershot, the senior vice president of legislative affairs at the association. "I can't speculate because the regulations are still in an open process. Certainly, the overblocking provision is of some concern to us."

The horse-racing industry has thrown considerable effort behind its exception to the Internet gambling ban.

The group spent about \$400,000 on lobbying in both 2006 and 2007 and tapped such firms as the Alpine Group, Sidley Austin, Angus & Nickerson and Davis & Harman. In the

2006 election cycle, the association's political action committee handed out \$316,000 in federal contributions. So far this cycle, the PAC has given \$174,000.

That money, though, is dwarfed by the political muscle of the Poker Players Alliance, which in the first quarter of this year reported spending \$346,750 on lobbying. Unlike horse racing, online poker received no carve-out in the gambling bill and is working to overturn it by supporting Frank's measures.

The group's in-house lobbyist, John Pappas, said that the Poker Players believe they have a similar problem to the horse racing industry.

"All UIGEA does is say that banks have to stop transfers of money for illegal Internet gambling," Pappas said. "They do not define what unlawful Internet gambling is. You need to rely on existing state laws. No one knows what all the different state laws are. It really throws things into a muck."