

Approved: 5-1-93
Date

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS

The meeting was called to order by Chairman Lana Oleen at 11:05 a.m. on March 19, 1993 in Room 254-E of the Capitol.

All members were present

Committee staff present: Mary Galligan, Legislative Research Department
Emalene Correll, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes
Jeanne Eudaley, Committee Secretary

Conferees appearing before the committee:
See attached list

Others attending: See attached list

Sen. Oleen announced a number of documents have been distributed to each member, one of those being the Memorandum of Understanding (Attachment 1), relating to HB 2427, which had been requested in a prior meeting. She also introduced pages from Sen. Vancrum's district who are assisting the committee today.

Sen. Oleen announced the hearing for SB 380, amending parimutuel racing act, concerning disposition of moneys from simulcast races. Sen. Ramirez stated he had requested the bill and explained that present law does not reflect legislative intent. Proponents offering testimony were:

Dana Nelson, (Attachment 2);
Gary Smith, (Attachment 3);
John McCoy - submitted no written testimony

Mr. McCoy stated present law does not reflect legislative intent and urged the committee to support the bill. He stated the division of breakage is treated differently here than in other states and said the thoroughbred industry depends on it to survive.

Dana Nelson, in additional remarks, told the committee of recent developments regarding transfer of breakage funds at Eureka Downs and of a decision by a racetrack in Nebraska which effects division of the breakage funds. Sen. Parkinson asked Mr. Nelson what is the percentage of breakage funds, and Mr. Nelson responded it is approximately 4/10 of 1% of the total, of about \$30 million last year, with unclaimed money being approximately \$70,000 for live races; approximately \$20,000 for simulcast races. The breakage for live races is: 75% - thoroughbreds; 25% - quarter horses. Mr. Nelson stated the question is how the breakage funds will be shared for the simulcast races. Mr. Nelson also stated the Racing Commission requested an Attorney General's opinion on the question of the breakage funds (Attachment 4). Sen. Gooch asked Mr. Nelson if the Attorney General stated simulcast funds should be treated the same as live races, and Mr. Nelson responded that is what the Opinion says based on the present law.

Opponents offering testimony were:

Jeff Rutland, (Attachment 5);
Helen Teichgraeber, (Attachment 6);
Karen Tolle, (Attachment 7).

Sen. Jones questioned Mr. Rutland about the Attorney General's Opinion and the amount of breakage to breeders, and Sen. Parkinson stated it is hard to believe that both the thoroughbred and quarter horse industries will collapse predicated upon the outcome of the breakage funds. Mr. Rutland answered that the quarter horse racing industry has raised money for parimutuel in the past, yet they are not rewarded. He said the parimutuel funds were set aside to benefit both breeders and the economy and that the funds should not be

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS, Room 254-E
Statehouse, at 11:05 a.m. on March 19, 1993.

distributed according to races outside the state, and that a real fear is simulcasting may replace live races in the state. Sen. Oleen asked Mr. Rutland if the quarter horse industry works with The Woodlands, and Mr. Rutland answered that they do. Sen. Ramirez stated the thoroughbred people worked hard to get parimutuel in Kansas, and he does not understand why the quarter horse people feel they should receive the same percentage as the thoroughbred people. Mr. Rutland stated he does not like the controversy and that he believes this bill is the result of greed. Sen. Oleen asked if some breeders have both thoroughbreds and quarter horses, and Ms. Teichgraeber responded that she raises both; Ms. Towle replied that several members of their association raise both thoroughbreds and quarter horses. Sen. Parkinson discussed the different percentages to go to each industry, and stated, based upon the Attorney General's Opinion and funds generated by live races only, the quarter horse breeders would receive over \$42,000 under present law. Sen. Oleen commented it is unfortunate this controversy has been brought to the legislature and asked Janet Chubb if the Racing Commission requested the Attorney General's Opinion. Ms. Chubb answered the Commission requested the Opinion, because the same controversy was brought to the Racing Commission. Sen. Oleen closed the hearing on SB 380.

Sen. Oleen announced written testimony has been distributed to the committee relating to SB 202. She also clarified several questions regarding HB 2129 with Gary Stotts, Secretary of DOC. She distributed proposed amendment to HCR 5006 (Attachment 8), in response to phone calls received by members of the committee, and asked committee members to study changes in the Resolution. Sen. Oleen referred to a proposed amendment to HB 2152 and asked Mary Torrence to explain. Ms. Torrence stated the change separates Department of Correction employees from other employees for court ordered testing for HIV and Hepatitis B if they are exposed by an offender. Sen Oleen asked committee members to study the proposed changes for action the first of next week. (Attachment 9)

Meeting adjourned at 12:05.

GUEST LIST

COMMITTEE: Senate Federal & State Affairs

DATE: MARCH 19, 1993

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Bob Oakeson	Leamington, KS	K.T.A.
Gary Smith	Leath KS	K.T.A.
John Mc Coy	Bonner Springs	K.T.A.
DANA NELSON	KC, K	K.T.A.
Andrew Pelletier	Topeka	K.D.H.E.
Don M. Porter	Lawrence	American Legion
Ralph Snyder	Topeka	American Legion
Jim & Sonia Yount	Valley Falls	K.Q.H.R.A.
Janet A. Chubb	Topeka	racing commission
R.P. Dwyer	Leamington, KS	K.Q.H.R.A.
Phil Rutland	Independence, KS	QH Breeder
Phil By	Dorby	QH Owner Breeder & Trainer
Karen S. Tolle	Oakland Park	Ks. QH Racing Assoc.
Helen P. Tuckman	Lawrence, KS	owner, breeder
K. Van Voorst	O.P.	PP of KS
Darlene Stearns	Topeka	RCAR
Julie Whizet	Topeka	Wichita Eagle
Chuck Simmons	Topeka	DOC
Kyle Smith	Topeka	K.B.I.
KAREN Wittman	TOPEKA	KRC
Peggy Jarman	Wichita	PCAL
Jean Barbie	Topeka	TIAK
Tom Ryan	Valley Falls	Jeff Co. Economic Develop.
H. Barbie	Topeka	Barbie & Assoc.
C. STOUTS	Topeka	DOC

SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

AGENDA

March 19, 1993

Hearing - Senate Bill 380

Proponents:

Dana Nelson, Kansas Thoroughbred Assoc.

Gary Smith, Pres., Kansas Thoroughbred Assoc.

John

~~Dale McCoy, Kansas Thoroughbred Assoc.~~

Opponents:

Jeff Rutland, Independence, Largest Breeder of Quarterhorses in State

Karen Tolle, Exec. Dir, KQHA
~~Albert Hogoboom, Pres., Kansas Quarterhorse Racing Assoc.~~

Helen Teichgraeber, Eureka, Owner/Breeder, representing the horse
industry

Action - Bills previously heard

MAR 12 1993

STATE OF KANSAS



KANSAS RACING COMMISSION

3400 Van Buren
Topeka, Kansas 66611-2228
(913) 296-5800
FAX (913) 296-0900

ATTACH. 1
HB 2427
Distrib. 3/19

March 12, 1993

Senator Lana Oleen, Chairperson
Federal and State Affairs
State Capitol, Room 136-N
Topeka, KS 66603

Dear Senator Oleen:

Attached is a copy of the commission's preliminary draft of a memorandum of understanding with the KBI, which we are advised the committee requested.

The agencies hope to finalize this agreement next week.

We are happy to respond to any questions committee members may have.

Respectfully,

A handwritten signature in cursive script that reads "Janet A. Chubb".

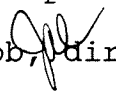
Janet A. Chubb
Executive Director

93JAC41-cd

Attachment

pc: Senator Ben Vidrickson

Sen. F. & S. A.
3-19-93
all 1

TO: Robert B. Davenport, director, KBI
FROM: Janet A. Chubb,  director, Kansas Racing Commission
DATE: February 16, 1993
RE: Memorandum of understanding between the
Kansas Racing Commission and the KBI

The statutory powers and duties of the Kansas Racing Commission security division are as follows:

DIRECTOR OF SECURITY

1. Conduct investigations relating to compliance with the racing act and commission regulations.
2. Recommend proper security measures to organization licensees.
3. Train and supervise security personnel to assist with the described duties.
4. Approve oral examinations for racetrack security guards.
5. Approve continuing education course qualifications for racetrack security guards.
6. Annually review and approve each organization licensee's security and safety procedure manual.
7. Annually observe and approve each organization licensee's emergency procedures/response rehearsal drills.
8. Perform such other duties as directed by the executive director.

SECURITY PERSONNEL

1. Conduct limited warrantless searches of licensee's person and property within the racetrack facility, as provided by the racing act and commission regulations.
2. Conduct background investigations on applicants for licensure as designated by the commission.

EMPLOYEES VESTED WITH LAW ENFORCEMENT POWERS

1. During routine conduct of duties as determined by the executive director, make arrests, conduct searches and seizures and carry firearms while investigating violations of the racing act.
2. As violations of criminal laws are encountered during the routine performance of duties, make arrests, conduct searches and seizures and generally enforce all Kansas criminal laws.
3. Issue notices to appear pursuant to K.S.A. 22-2408 and amendments thereto.

Commission personnel shall report to the KBI violations of criminal law or suspected violations of criminal law.

TESTIMONY OF DANA L. NELSON, KANSAS THOROUGHBRED ASSOC.
COMMITTEE ON FEDERAL & STATE AFFAIRS

Mr. Chairman, members of the Federal & State Affairs Committee, I am Dana L. Nelson, a registered lobbyist for the Kansas Thoroughbred Association, and I am appearing before you today in support of Senate Bill 380.

This bill is designed to reaffirm legislative intent which the drafters of the simulcast bill thought was abundantly clear, but which has been interpreted differently by the Attorney General.

In 1991 and 1992 the legislature considered expanding the Kansas Parimutuel Racing Act to incorporate simulcasting. Extensive discussions occurred both before the legislature and its committees from within the industry and before the Kansas Racing Commission. As the commission's executive director during that period of time, I listened to, participated in or contributed to all of those discussions. I was the person who drafted the simulcasting legislation, subject to style and form revisions by the legislature's staff. Throughout the discussions, the overriding goal was to merge the simulcast language into the existing act, making it part of, and supplemental to the original act.

I believe that we accomplished that, and also got all facets of the industry to agree to the language and support the bill, something which was not necessarily easy. The area which the bill addresses was not a major area of debate or concern during the simulcast negotiations. It was decided early that breakage and unclaimed money, the source of revenue for the Kansas Bred Funds, would be handled the same for a simulcast race as it was for a live race at every point that was possible. Testimony presented by me, in my capacity as executive director of the commission, reflected that philosophy. Senator Ben Vidrickson's remarks on the floor reflect the same philosophy, and are the only remarks on subject in the legislative history. If a simulcast race was conducted, it would be treated just like a live race, if it could be. There were some exceptions to that philosophy such as a horse track only (of which there are none today) conducting a simulcast greyhound race, where breakage and unclaimed money could not be handled the same as a live race.

In spite of the fact that all facets of the industry agreed, when the actual results of simulcasting became known, one facet objected and suggested a different interpretation for the distribution of breed funds. An Attorney's General opinion followed, which I believe to be flawed. It suggested that rather than treating a simulcast race just like a live race, that breakage and unclaimed money on a simulcast race should be allocated back to the breeds of horse which were running in the live races, and the opinion ignores the language which states that expenditures from the fund shall be made consistent with the breed of horse which contributes to the fund. In other words, if the race is a thoroughbred race from which breakage or unclaimed money is generated, then that breed of horse should receive the benefit of the funds. The Attorney's General opinion chooses to use live races as the basis for the distribution. As the drafter of the bill, and the only person who listened to, and contributed to all of the

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conversations and deliberations on the bill, I can assure you that was not the intent.

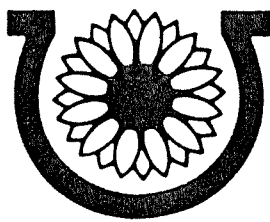
You will no doubt hear from the quarterhorse industry that "it isn't fair", and that there is not as much quarterhorse simulcasting conducted. That industry needs only look at the facts. Quarterhorse racing is not as popular to the betting public as thoroughbred racing. Quarterhorse races handle anywhere from 25 to 50 percent less on a race than thoroughbreds. That is not only true in Kansas, but these numbers are true across the country. There is virtually no quarterhorse racing east of the Mississippi River, and even the tracks that can speak to some success as quarterhorse tracks, like Ruidoso Downs, Remington Park, Delta Downs, and Los Alamitos, have experienced much greater success as thoroughbred tracks.

You may also hear that the parimutuel law does not specify thoroughbred or quarterhorse, or any other breed of horse, but simply talks about horse racing. As a result, one facet of the horse industry is suggesting that the more profitable side of the industry support it. That was never the intent of the simulcast act, and if the shoe were on the other foot the intent would be the same.

I urge support of this bill, because it would set right what the drafter of the simulcast bill intended, and what the legislators who supported the bill intended. Legislative intent should be sustained whenever possible, and legal opinions and court cases should not override legislative intent.

Attach. 3

KANSAS THOROUGHBRED ASSOCIATION



March 19, 1993

To: Lana Olseen, Chairperson

President
Gary Smith
913-764-0416

From : Gary J. Smith, President KTA *GS.*

Vice-President
Larry Wilkerson
316-488-3604

Sec.-Treasurer
Tom Bornholdt
913-242-5593

Directors
Dwight Daniels
913-738-3874

I would like to address the reason the KTA is supporting bill #380. We feel this bill will clarify the language and convey our (original intent when the simulcast legislation was drafted.) I personally worked on behalf of the KTA when the simulcast legislation was drafted and feel that bill #380 will clear up any misunderstanding that may now exist.

Pam Davis
913-456-7443

Our intent when drafting the simulcasting legislation was that each breed that participates in simulcasting would receive full compensation for their participation. It is only logical that the breed of the race horse that produces the income from simulcasting or live racing would receive full compensation in the form of added money for purses and breed awards.

Samuel Eismont
916-455-3727

Albert Freeman
316-624-1564

Bob Gentry, DVM
913-738-3207

Dennis Hammersmith
913-486-2400

It is illogical that one breed gets different compensation from simulcasting than from live racing. From a Thoroughbred standpoint, nationally we know of no other racing jurisdiction where simulcasting is different from live racing. Kansas cannot be out of step with the rest of the nation.

Kenneth Hanson
316-342-6390

J.D. Muench
316-872-5331

Robert Oakson
913-887-6030

Dr. R.W. Radke
913-897-3600

Gary Robinson
913-386-4500

John Watson
316-675-8375

Sen. F. + S.A.
3-19-93
act 3



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

January 28, 1993

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

ATTORNEY GENERAL OPINION NO. 93- 12

Robert Londerholm
Chairman
Kansas Racing Commission
3400 Van Buren
Topeka, Kansas 66611-2228

Re: State Boards, Commissions and Authorities--
Parimutuel Racing--Horse Breeding Development Fund;
Apportionment of Breakage on Simulcast Races

Synopsis: Moneys credited to the Kansas horse breeding development fund are to be apportioned into categories corresponding with the various breeds of horses participating in races conducted by Kansas, organization licensees and used to benefit Kansas-bred horses, certain Kansas-registered stallions and mares, and further equine research. Since Kansas organization licensees do not "conduct" the simulcast races they display at their tracks, horses participating in the simulcast races will not be considered in determining the categories to be created under K.S.A. 74-8829(b) and should not be considered when allocating breakage proceeds. Cited herein: K.S.A. 74-8802; 74-8821; 74-8829; 74-8836.

*

*

*

Dear Mr. Londerholm:

On behalf of the Kansas racing commission, our opinion has been requested with regard to the apportionment of breakage proceeds from simulcast horse races. Specifically the board

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questions whether breakage proceeds should be apportioned according to each breed's participation in all races or according to each breed's participation in only live races conducted in Kansas.

"Breakage" is defined as:

"[T]he odd cents by which the amount payable on each dollar wagered exceeds:

"(1) A multiple of \$.10, for parimutuel pools from races conducted in this state; and

"(2) a multiple of such other number of cents as provided by law of the host jurisdiction, for interstate combined wagering pools." K.S.A. 74-8802(a). But see K.S.A. 74-8821(a).

K.S.A. 74-8821 sets forth how breakage proceeds are to be distributed. Subsection (d) of K.S.A. 74-8821 states as follows:

"All breakage proceeds from parimutuel wagering conducted by a simulcast licensee on simulcast races displayed by the licensee shall be distributed as provided by K.S.A. 74-8836."

In turn, K.S.A. 74-8836 provides in part as follows:

"(h) Except as provided by subsection (j):

"(1) If a simulcasting licensee has a license to conduct live horse races and the licensee displays a simulcast horse race, breakage and unclaimed winning ticket proceeds shall be distributed in the manner provided by K.S.A. 74-8821 and 74-8822, and amendments thereto, for breakage and unclaimed winning ticket proceeds from live horse races.

. . . .

"(4) If a simulcasting licensee has a license to conduct live racing of only

Robert Londerholm
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greyhounds and the licensee displays a simulcast horse race, breakage and unclaimed winning ticket proceeds shall be distributed in the manner provided by K.S.A. 74-8821 and 74-8822, and amendments thereto, for breakage and unclaimed winning ticket proceeds from live horse races.

....
"[(j)](4) Breakage for interstate combined wagering pools shall be calculated in accordance with the statutes and rules and regulations of the host jurisdiction and shall be allocated among the participating jurisdictions in a manner agreed to among the jurisdictions. Breakage allocated to this jurisdiction shall be distributed as provided by subsection (h)." (Emphasis added.)

Thus all breakage proceeds from simulcast horse races displayed in this state are to be remitted by the organization licensee to the commission, which must then remit such proceeds to the state treasurer for deposit in the state treasury credited to the horse breeding development fund. K.S.A. 74-8821(b). K.S.A. 74-8829 provides for the allocation of moneys credited to the horse breeding development fund:


"(b) Moneys credited to the Kansas horse breeding development fund shall be apportioned into categories corresponding with the various breeds of horses which are participating in races conducted by organization licensees in direct proportion to each category's contribution to the fund and shall be used in each category to provide:"

Simulcast races displayed by a Kansas organization licensee are not "conducted" by that licensee; they are conducted by the operator or owner of the track at which they are actually being run. Thus horses participating in a simulcast race do not participate in "races conducted by organization licensees." Those horses are therefore not to be considered in determining the categories under K.S.A. 74-8829(b) 'or the categories' contributions to the fund. In our opinion this is

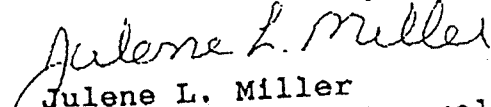
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the plain reading of the statute and in addition it serves the purpose of the statute which is to benefit Kansas-bred horses that race in this state and certain Kansas-registered stallions and mares the offspring of which participate in races conducted in this state.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Julene L. Miller
Deputy Attorney General

RTS:JLM:jm

Date: March 19, 1993

To: Senate Federal and State Affairs Committee

From: Jeff Rutland, Rutland Quarter Horse Ranch
Route 1, Box 41, Independence, KS 67301
(316) 331-2485

RE: Opposition to SB 380

For over 30 years, the Rutland Quarter Horse Ranch has carried a reputation in Kansas of producing some of the finest running quarter horses in the country. We have been among the leading breeders in the nation, in virtually every category, and still today we are The Leading Breeder of Race ROM Qualifiers of ALL TIME in the American Quarter Horse Association, the national registry. Not only do I speak as the largest breeder of quarter horses in Kansas, but as one of the largest in the entire country.

To give you a quick run down of the economic impact my quarter horse operation has on the State of Kansas, I have put together a few facts that should be of interest to you. Keep in mind, I am only one of many breeders in the State that raise racing quarter horses.

~The improvements on my ranch include a 320' x 252' barn, (that is bigger than a football field), with 148 permanent stalls, that is normally full in the Spring with mares shipped in to be bred, both from out of state and from across Kansas.

~Over the past 10 years, we have bred more than 2,000 mares to our stallions. These mares will incur expenses of \$1,000 - \$1,500 per head.

~I have one stallion, Pacific Bailey, known nation wide as one of the "All Time Greats," that has sired over 3,000 foals himself throughout his lifetime.

~For the past 26 years we have held an annual production sale offering between 120 to 180 foals that we have raised each year. In 1985 we sold 145 head that average \$3,000 each.

~I have a large investment in my horses, machinery, land, etc., totaling over \$1 Million. Over the past 7 years, I have spent close to \$1.5 Million on feed and hay alone, and I am only one breeder!

In a survey done for the AQHA it shows there are approximately 14,000 race bred quarter horses in Kansas, (which includes mares, stallions, foals; racing stock of all ages.) The total annual investment (which includes: horse, land, buildings, tack, trailers, etc.) is \$6,390 per head. That is a \$90 Million investment Kansans have in Quarter Horse Racing today!

So you see, Quarter Horse Racing is indeed a large industry in our state. Yet, with the very limited opportunities to race quarter horses in Kansas now, it's a very unstable one. It is difficult financially to

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produce a horse to race in a state that only has a total of 217 races for them. (In Comparison, Oklahoma has 1,543 and Texas has 2,672 Quarter Horse Races.) Only as far back as 1990, Kansas had 525 races for quarter horses, over twice what we now have. Breeders have less incentive to breed in Kansas if they must take their horses out of state to race them. This along with several other factors have put a strain on our survival.

If this bill is allowed to be made into law, it could literally destroy my own business. Many others would be the same. We must reward the Quarter Horses breeders of the state for quality production just as we do the thoroughbred breeders. The economic impact they create is the same.

Let's be fair to all horse breeders of the state. Don't allow our system to discriminate because of the breed of race horse we have. We should not allow horse races in other states, which are shown here through simulcast, dictate what kind of race horses we raise in Kansas. Give all breeders of quality race horses the incentives and rewards we deserve for raising the best, no matter the breed.

Respectfully,



Jeff Rutland

RE: Opposition to SB 380

Submitted by:

**Jeff Rutland
Rutland Quarter Horse Ranch
Route 1, Box 41
Independence, KS 67301
(316) 331-2485**

1. Rutland Quarter Horse Ranch

- a. Over 30 years as a Kansas industry
- b. Reputation as some of the country's finest racing quarter horses
- c. The Leading Breeder of Race ROMs of ALL TIME in the AQHA

2. Investment - Well over \$1 Million

- a. Improvements - barn larger than football field
 - 148 stalls
 - normally filled with mares to breed
- b. Horses - bred more than 2,000 mares over past 10 years; \$1,000 to \$1,500 expenses / head
 - Pacific Bailey, sire of more than 3,000 foals
 - Annual production sale; 120 - 180 foals each year; 1985 - average \$3,000 / head
- c. Feed and Hay - Past 7 years, have spent close to \$1.5 Million

3. Economic Impact

- 14,000 race bred Quarter Horses in Kansas
- Annual Investment of \$6,390 / horse
- Total investment in Quarter Horse racing in Kansas \$90 Million

4. Unstable Industry - Fewer opportunities to race Quarter Horses in Kansas

- 1992 ~~ 217 Quarter Horse Races
- 1990 ~~ 525 Quarter Horse Races

5. Fairness to ALL horse breeders of the State

- Don't allow our system to discriminate
- Don't allow horse racing in other states, shown in Kansas through simulcasting, dictate what kind of race horses we raise in Kansas.

Attach. 1

Date: March 19, 1993

RE: Senate Bill 380

Chairman Oleen and members of the Senate Federal and State Affairs Committee.

My name is Helen Teichgraeber. I formerly served on the pari-mutuel enabling legislation committee and on the pari-mutuel advisory committee to the Kansas Racing Commission

I am here today in opposition to Senate Bill 380. I uphold the present decision of the Kansas Attorney General which bases the distribution of the simulcast monies on the live racing. I have and always will promote live racing over simulcasting. Live racing promotes economical development of the horse industry. Simulcasting was only put in place to supplement live racing and keep the horse industry and breeding programs alive in Kansas.

The Kansas Breeders Development Fund was set up to provide incentives for Kansas horses regardless of breed. If you really want to help the horse industry and provide economic development for the State of Kansas, I would suggest the amendment which is attached to my testimony. This amendment would provide for the distribution of the breed fund money from simulcasting proportionate to the number of horses participating in the Kansas Bred program. This distribution would support the actual numbers of horses that are presently participating in the breed program in Kansas and promote economic development. If we allow any of the breeds, Appaloosa, Arabian, Standard Breds, Paint Horses, Quarter Horses or even Thoroughbreds in the program to die, we are defeating the purpose intended.

Senate Bill 380 is not in the best interest of the horse industry in Kansas and should not be passed out of this committee. I ask that you consider the entire horse industry when considering any action on this bill and take into consideration the amendment that I have offered. Thank you, I will stand for questions.

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Proposed Amendment to Senate Bill 380

74-8829 be amended with a new section (b) as outlined below, to protect and provide incentives to all breeds of horses registered to participate in the Kansas Bred Program and the Kansas Breeders Development Fund.

Moneys credited to the Kansas Horse Breeding Development Fund shall be apportioned into categories corresponding with the various breeds of horses participating. For live horse races conducted by organization licensees in direct proportion to each breeds contribution to the fund from live races during the live meet. For simulcast horse races conducted by organization licensees in direct proportion to each breeds participation through registration in the Kansas bred program during the calendar year and each shall be used in each category to provide:

(1) - (5) remain without changes

Attach. 7

The Kansas Quarter Horse Racing Association

P.O. Box 26272 • Shawnee Mission, KS 66225-6272 • 913/681-1984 • FAX 913/681-1994

MARCH 19, 1993

Senator Lana Oleen, Chairman
Members of the Committee
House Federal and State Affairs
State Capitol Building
Topeka, Kansas 66612

Chairman Oleen and members of the Senate Federal and State Affairs Committee. My name is Albert Hogoboom, President of the Kansas Quarter Horse Racing Association. I am here today on behalf of the Kansas Quarter Horse Racing Association in opposition to Senate Bill 380.

Senate Bill 380 speaks to the distribution of breakage and unclaimed monies available through the new simulcast legislation passed in the 1992 Kansas legislative session. Senate Bill 380, does not provide for fair and equitable distribution of the breed fund monies being generated from simulcast of horse races. If passed, the monies designated for the horses registered in the Kansas Bred program would be distributed 99% to the thoroughbred breed and 1% to the quarter horse breed.

At the end of the 1992 calendar year, records from the Kansas Horsemen's Association show that there were 1830 Thoroughbreds, 1727 Quarter Horses, 15 Arabians, 17 Appaloosas, 7 Paint Horses and 8 Standard Bred horses registered in the Kansas Bred program. Although each of these breeds are registered to participate in the Kansas Bred program, under Senate bill 380, only the thoroughbred breed would benefit.

When we supported simulcast legislation in the 1992 session, our interest and concern was for the welfare and the advancement of all Kansas horses. The Kansas Quarter Horse Racing Association was assured by supporters of simulcast legislation that simulcasting was important to the horse industry in Kansas because it would provide the needed purse monies and breed fund monies for the horse racing programs to survive.

The breed fund monies were set aside during the adoption of the pari-mutuel legislation as the incentive for horse owners and breeders to race and breed horses in Kansas. The Kansas Quarter Horse Racing Association does not feel that the Kansas Legislature intended to eliminate any breed from participation and benefits in the program.

Albert Hogoboom
PRESIDENT, KQHRA
Rt. 1, El Dorado, Kansas 67042
(316) 321-1397 (O) (316) 321-3879 (H)

Karen Tolle
EXECUTIVE SECRETARY, KQHRA
P.O. Box 26272, Shawnee Mission, KS 66225-6272
(913) 681-1984 FAX (913) 681-1994

Sen. F. & S. Q.
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Based on figures from the Kansas Racing Commission, if passed, Senate Bill 380 would provide for distribution of monies for the Kansas Bred program approximately as follows.:

Thoroughbred Breed	\$ 172,398.18
Quarter Horse Breed	\$ 641.33
Appaloosa Breed	\$ 225.55
Arabian Breed	\$ 19.72
Paint/Standard Bred	\$.00

As you can see, Senate Bill 380 provides for only one breed to benefit from simulcasting of horse races and that breed is the thoroughbred breed.

At the January 6, 1993 meeting of the Kansas Racing Commission, the horse industry questioned the interpretation of the legislation providing for the distribution of breakage from the simulcasting of horse races. The Kansas Racing Commission asked the Kansas Attorney General for his interpretation of the law. (See attachment 1- the Attorney General Opinion dated January 28, 1993).

The Attorney General's Opinion is that the distribution of the breakage should be based on the participation of the breeds racing live and their contribution to the breed fund during the live race meets. Based on the Kansas Attorney General's opinion and figures provided from the Kansas Racing Commission, this interpretation would provide breed fund monies to be distributed as follows:

Thoroughbred Breed	\$ 130,841.66
Quarter Horse Breed	\$ 42,688.39
All Other Breeds	\$.00

As you can see, this interpretation supports the quarter horse and thoroughbred breeds because these are the only two breeds running live horse races in Kansas. The opinion provides for 24.6% of the available breed fund money from simulcasting to go to Quarter Horses and 75.4% to the Thoroughbreds with no breed fund monies to other breeds, even though they have horses registered in the Kansas Bred Program. During the 1992 racing season, 32.8% of the horses running live were quarter horses and 67.2% were thoroughbred horses.

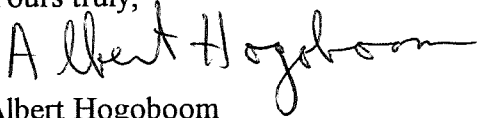
The report from the Kansas Horsemen's Association shows the following numbers of horses registered to participate in the Kansas Bred program:

47% THOROUGHBRED (1830 thoroughbreds)
45% QUARTER HORSE (1727 quarter horses)
8% ALL OTHER BREEDS

If Senate Bill 380 is passed, it will be the devastation of the quarter horse industry in Kansas and all other breeds of horses with the exception of the thoroughbred breed. This bill does not support economic development for the entire horse industry in Kansas. The Kansas Quarter Horse Racing Association supports fairness and growth opportunities for all breeds of horses in Kansas participating in the Kansas Bred program.

Chairman Oleen and members of this committee, we urge you to report Senate Bill 380 not passed. Thank you.

Yours truly,

A handwritten signature in cursive script that reads "Albert Hogoboom". The signature is fluid and extends to the right.

Albert Hogoboom
President



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

January 28, 1993

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296ATTORNEY GENERAL OPINION NO. 93- 12Robert Londerholm
Chairman
Kansas Racing Commission
3400 Van Buren
Topeka, Kansas 66611-2228Re: State Boards, Commissions and Authorities--
Parimutuel Racing--Horse Breeding Development Fund;
Apportionment of Breakage on Simulcast Races

Synopsis: Moneys credited to the Kansas horse breeding development fund are to be apportioned into categories corresponding with the various breeds of horses participating in races conducted by Kansas, organization licensees and used to benefit Kansas-bred horses, certain Kansas-registered stallions and mares, and further equine research. Since Kansas organization licensees do not "conduct" the simulcast races they display at their tracks, horses participating in the simulcast races will not be considered in determining the categories to be created under K.S.A. 74-8829(b) and should not be considered when allocating breakage proceeds. Cited herein: K.S.A. 74-8802; 74-8821; 74-8829; 74-8836.

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Dear Mr. Londerholm:

On behalf of the Kansas racing commission, our opinion has been requested with regard to the apportionment of breakage proceeds from simulcast horse races. Specifically the board

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questions whether breakage proceeds should be apportioned according to each breed's participation in all races or according to each breed's participation in only live races conducted in Kansas.

"Breakage" is defined as:

"[T]he odd cents by which the amount payable on each dollar wagered exceeds:

"(1) A multiple of \$.10, for parimutuel pools from races conducted in this state; and

"(2) a multiple of such other number of cents as provided by law of the host jurisdiction, for interstate combined wagering pools." K.S.A. 74-8802(a). But see K.S.A. 74-8821(a).

K.S.A. 74-8821 sets forth how breakage proceeds are to be distributed. Subsection (d) of K.S.A. 74-8821 states as follows:

"All breakage proceeds from parimutuel wagering conducted by a simulcast licensee on simulcast races displayed by the licensee shall be distributed as provided by K.S.A. 74-8836."

In turn, K.S.A. 74-8836 provides in part as follows:

"(h) Except as provided by subsection (j):

"(1) If a simulcasting licensee has a license to conduct live horse races and the licensee displays a simulcast horse race, breakage and unclaimed winning ticket proceeds shall be distributed in the manner provided by K.S.A. 74-8821 and 74-8822, and amendments thereto, for breakage and unclaimed winning ticket proceeds from live horse races.

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"(4) If a simulcasting licensee has a license to conduct live racing of only

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greyhounds and the licensee displays a simulcast horse race, breakage and unclaimed winning ticket proceeds shall be distributed in the manner provided by K.S.A. 74-8821 and 74-8822, and amendments thereto, for breakage and unclaimed winning ticket proceeds from live horse races.

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"[(j)](4) Breakage for interstate combined wagering pools shall be calculated in accordance with the statutes and rules and regulations of the host jurisdiction and shall be allocated among the participating jurisdictions in a manner agreed to among the jurisdictions. Breakage allocated to this jurisdiction shall be distributed as provided by subsection (h)." (Emphasis added.)

Thus all breakage proceeds from simulcast horse races displayed in this state are to be remitted by the organization licensee to the commission, which must then remit such proceeds to the state treasurer for deposit in the state treasury credited to the horse breeding development fund. K.S.A. 74-8821(b). K.S.A. 74-8829 provides for the allocation of moneys credited to the horse breeding development fund:

"(b) Moneys credited to the Kansas horse breeding development fund shall be apportioned into categories corresponding with the various breeds of horses which are participating in races conducted by organization licensees in direct proportion to each category's contribution to the fund and shall be used in each category to provide:"

Simulcast races displayed by a Kansas organization licensee are not "conducted" by that licensee; they are conducted by the operator or owner of the track at which they are actually being run. Thus horses participating in a simulcast race do not participate in "races conducted by organization licensees." Those horses are therefore not to be considered in determining the categories under K.S.A. 74-8829(b) or the categories' contributions to the fund. In our opinion this is

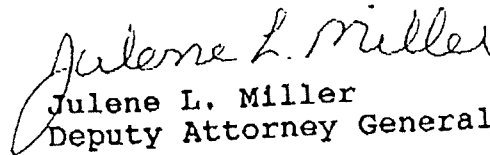
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the plain reading of the statute and in addition it serves the purpose of the statute which is to benefit Kansas-bred horses that race in this state and certain Kansas-registered stallions and mares the offspring of which participate in races conducted in this state.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Julene L. Miller
Deputy Attorney General

RTS:JLM:jm

House Concurrent Resolution No. 5006

By Representatives M. Smith, Allen, Benlon, Boston, Bruns, Bryant, Cornfield, Cox, Crabb, Crowell, Dawson, Donovan, Empson, Everhart, Flower, Fuller, Glasscock, Goodwin, Graeber, Grant, Haulmark, Hayzlett, Henry, Holmes, Jennison, Kejr, King, Phil Kline, Phill Kline, Lawrence, Lowther, Mason, Mayans, Mays, McKechnie, Mead, Mollenkamp, Morrison, Myers, Neufeld, Nichols, O'Connor, O'Neal, Packer, Pauls, Plummer, Powers, Robinett, Roe, Samuelson, Scott, Shallenburger, Shore, Snowbarger, Tomlinson, Toplikar, Vickrey, Wagle, E. Wells, J. Wells and Wilk

1-22

A CONCURRENT RESOLUTION memorializing Congress to ~~propose~~ petitioning
for ratification by the states, a U.S. constitutional amend- submit
ment authorizing Congress and the states to prohibit desecration
of the United States Flag.

WHEREAS, The Flag of the United States is the most recognized
and cherished symbol of a grateful nation and no other American
symbol has been as universally honored as the American Flag; and

WHEREAS, The United States remains the destination for mil-
lions of immigrants attracted by the freedoms of liberty, equality
and expression; and

WHEREAS, While the right of expression is a principal freedom
provided by the United States Constitution, very carefully drawn
limits of expression in specific instances have long been recognized
as legitimate means in maintaining public safety and decency, as
well as providing order and value to public debate; and

WHEREAS, Certain actions, while related to an individual's right
to free expression, nevertheless raises issues concerning public de-
cency, peace, rights of expression and the values of others; and

~~WHEREAS, The Supreme Court struck down the 1990 Flag Pro-
tection Act passed by the Congress in lieu of a Constitutional Amend-
ment, thus leaving the only course of action to be a Constitutional
Amendment; and~~

~~WHEREAS, Kansans find desecration of the American Flag to be
highly offensive and are appalled by the Supreme Court's decision
allowing this type of repugnant behavior; and~~

WHEREAS, More than 500 Kansas veteran, fraternal and civic
organizations have joined many city and county bodies of Govern-

WHEREAS, The law as interpreted by the United
States Supreme Court no longer accords the Flag
the reverence, respect and dignity befitting the
banner of that most noble experiment of a
nation-state; and

WHEREAS, It is only fitting that people
everywhere should lend their voices to a forceful
call for restoration to the Flag of a proper
station under law and decency; and

Sen. F. & S. A.
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all

ment in signing resolutions calling upon the Kansas legislature to approve a resolution memorializing the Congress of the United States to propose a Constitutional Amendment to allow states the authority to pass laws prohibiting the physical desecration of the Flag of the United States; and

petitioning

WHEREAS, Kansans believe the right to express displeasure with government is a cherished right protected by the First Amendment, however, Kansans also believe that the desecration of the American Flag, ~~as defined in Kansas law, K.S.A. 21-4114,~~ is an atrocious act which should be prohibited: Now, therefore,

Be it resolved by the House of Representatives of the State of Kansas, the Senate concurring therein: That the Legislature ~~memorialize~~ the Congress of the United States to ~~propose~~ an amendment to the United States Constitution, for ratification by the states, specifying that Congress and the states shall have the power to prohibit the physical desecration of the Flag of the United States; and

petition

submit

Be it further resolved: That the Secretary of State be directed to send enrolled copies of this resolution to the Speaker of the United States House of Representatives, the President of the United States Senate and all members of the congressional delegation from the State of Kansas.

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Distrib. 3.

3 RS 1246

Attach. 9

Amendment to
PROPOSED ~~SENATE SUBSTITUTE~~ FOR HOUSE BILL NO. 2152

By Committee on Federal and State Affairs

AN ACT concerning certain diseases; authorizing a court to order tests for such diseases under certain circumstances; authorizing disclosure of certain information; amending K.S.A. 65-6004 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. As used in sections 1 through 3:

(a) "Body fluid" means blood, amniotic fluid, pericardial fluid, pleural fluid, synovial fluid, cerebrospinal fluid, semen or vaginal secretions, or any body fluid visibly contaminated with blood.

(b) "Corrections employee" means an employee of the department of corrections.

(c) "HIV" means the human immunodeficiency virus.

(d) "HIV infection" means the presence of HIV in the body.

(e) "Offender" means a person in the legal custody of the secretary of corrections.

(f) "Physician" means any person licensed to practice medicine and surgery.

(g) "Positive reaction to a hepatitis B test" means the confirmed presence of hepatitis B surface antigen.

(h) "Positive reaction to an HIV test" means a positive screening test, approved by the secretary, indicating infection by HIV, with a positive specific test as specified by the secretary comprising confirmed analytical results which are evidence of HIV infection.

(i) "Tests for HIV infection and hepatitis B" means tests approved by the secretary of health and environment for detection of HIV infection and hepatitis B.

New Sec. 2. (a) If a corrections employee has been placed in contact with body fluid from one or more offenders while performing duties within the scope of such employee's duties as a

*Sen F. + S. A.
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corrections employee, the secretary of corrections may make application to the district court of the county where the offender or offenders are in custody for an order requiring such offender or offenders to submit to tests for HIV infection and hepatitis B. Such application shall include an allegation that the offender or offenders sought to be tested have been requested to voluntarily submit to tests for HIV infection and hepatitis B and have refused the tests and that the corrections employee has agreed to voluntary testing for HIV infection and hepatitis B, including appropriate follow-up testing. When any such application is received, the court shall hold a hearing forthwith and shall issue its order thereon immediately if the court finds that: (1) There is probable cause to believe that the employee involved has been placed in contact with body fluid of the offender or offenders sought to be tested; and (2) the offender or offenders sought to be tested have been requested to submit to the tests and have refused, unless the court makes a further finding that exigent circumstances exist that would, in the court's judgment, excuse the applicant from making such a request. Expenses of the testing shall be assessed as a cost of the proceeding.

(b) If a test ordered pursuant to this section results in a negative reaction, the court, upon proper application, shall order the offender tested to submit to another test six months after the date the first test was administered.

(c) If a test is ordered pursuant to this section, the corrections employee shall designate a health care provider or counselor to receive the test results on behalf of the corrections employee. The results of the test shall be disclosed to the court that ordered the test, the person tested and the health care provider or counselor designated by the corrections employee. The results shall also be disclosed to the secretary of corrections for inclusion in the offender's medical records. Test results of the corrections employee shall not be disclosed except as specifically authorized in writing by the employee.

(d) When a court orders an offender to submit to tests under

this section, the withdrawal of the blood may be performed only by: (1) A physician or a person acting under the supervision of a physician; (2) a licensed professional nurse or a licensed practical nurse; or (3) a qualified medical technician. No person authorized by this subsection to withdraw blood, no person assisting in the performance of the tests nor any medical care facility where blood is withdrawn or tested that has been ordered by the court to withdraw or test blood shall be liable in any civil or criminal action when the act is performed in a reasonable manner according to generally accepted medical practices.

(e) The results of tests or reports, or information therein, obtained under this section shall be confidential and shall not be divulged to any person not authorized by this act to receive such results, reports or information. Any violation of this subsection is a class C misdemeanor.

New Sec. 3. (a) Notwithstanding any other law to the contrary, a physician performing medical or surgical procedures on a patient who the physician knows has HIV or hepatitis B or has had a positive reaction to an HIV or hepatitis B test may disclose such information to corrections employees who have been or will be placed in contact with body fluid of such patient. The information shall be confidential and shall not be disclosed by corrections employees except as may be necessary in providing treatment for such patient.

(b) Nothing in this section shall be construed to create a duty to warn any person of possible exposure to infection or hepatitis B.

(c) Any physician who discloses information in accordance with the provisions of this section in good faith and without malice shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed in an action resulting from such disclosure. Any such physician shall have the same immunity with respect to participation in any judicial proceeding resulting from such disclosure.

Sec. 4. K.S.A. 65-6004 is hereby amended to read as follows:

65-6004. (a) Notwithstanding any other law to the contrary, a physician performing medical or surgical procedures on a patient who the physician knows has AIDS or has had a positive reaction to an AIDS test may disclose such information to other health care providers, emergency personnel, ~~correctional officers employed by the department of corrections~~ or law enforcement officers who have been or will be placed in contact with bodily fluids of such patient. The information shall be confidential and shall not be disclosed by such health care providers, emergency personnel, ~~correctional officers employed by the department of corrections~~ or law enforcement officers except as may be necessary in providing treatment for such patient.

(b) Notwithstanding any other law to the contrary, a physician who has reason to believe that the spouse or partner of a person who has had a positive reaction to an AIDS test or who has AIDS may have been exposed to HIV and is unaware of such exposure may inform the spouse or partner of the risk of exposure. The information shall be confidential and shall not be disclosed by such spouse or partner to other persons except to the spouse or partner who has had a positive reaction to an AIDS test or who has AIDS.

(c) Nothing in this section shall be construed to create a duty to warn any person of possible exposure to HIV.

(d) Any physician who discloses information in accordance with the provisions of this section in good faith and without malice shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed in an action resulting from such disclosure. Any such physician shall have the same immunity with respect to participation in any judicial proceeding resulting from such disclosure.

Sec. 5. K.S.A. 65-6004 is hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its publication in the statute book.