

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 2955

BY DELEGATES WALTERS, STORCH, BLAIR, NELSON,

AMBLER AND ROWE

[Introduced March 13, 2017; Referred
to the Committee on the Judiciary then Finance.]

1 A BILL to amend and reenact §19-23-2 and §19-23-3 of the Code of West Virginia, 1931, as
 2 amended; and to amend said code by adding thereto six new sections, designated §19-
 3 23-9a, §19-23-9b, §19-23-9c, §19-23-9d, §19-23-9e and §19-23-9f, all relating to advance
 4 deposit wagering; adding definitions; establishing legislative intent; authorizing advance
 5 deposit wagering; establishing prohibited acts; requiring contracts between advance
 6 deposit wagering provider and racing association; requiring advance deposit wagering
 7 providers obtain bonds; requiring advance deposit wagering providers have a plan of
 8 operation; and establishing source market fees.

Be it enacted by the Legislature of West Virginia:

1 That §19-23-2 and §19-23-3 of the Code of West Virginia, 1931, as amended, be amended
 2 and reenacted; and that said code be amended by adding thereto six new sections, designated
 3 §19-23-9a, §19-23-9b, §19-23-9c, §19-23-9d, §19-23-9e and §19-23-9f, all to read as follows:

ARTICLE 23. HORSE AND DOG RACING.

**§19-23-2. Permits required for horse and dog racetrack positions; residency requirements
 for employees of licensees.**

1 (a) No person not required to be licensed under the provisions of section one of this article
 2 shall participate in or have anything to do with horse or dog racing for a purse or a horse or dog
 3 race meeting at any licensee's horse or dog racetrack, place or enclosure, where the pari-mutuel
 4 system of wagering upon the results of such horse or dog racing is permitted or conducted, as a
 5 horse owner, dog owner, jockey, apprentice jockey, exercise boy, kennel keeper, trainer, groom,
 6 plater, stable foreman, valet, veterinarian, agent, clerk of the scales, starter, assistant starter,
 7 timer, judge or pari-mutuel employee, ADW provider or in any other capacity specified in
 8 reasonable rules and regulations of the Racing Commission unless such person possesses a
 9 permit therefor from the West Virginia Racing Commission and complies with the provisions of
 10 this article and all reasonable rules and regulations of such Racing Commission.

11 (b) At least eighty percent of the individuals employed by a licensee at any horse or dog

12 race meeting must be citizens and residents of this state and must have been such citizens and
13 residents for at least one year. For the purpose of this subsection, citizens and residents of this
14 state shall be construed to mean individuals who maintain a permanent place of residence in this
15 state, and have been bona fide residents and citizens of this state for a period of one year
16 immediately prior to the filing of their applications for employment. The provisions of this
17 subsection shall not apply to individuals engaged in the construction of a horse or dog racetrack
18 or in the equipping of same, nor to racing officials designated by the Racing Commission or racing
19 officials designated by the executive officials of a licensee.

§19-23-3. Definitions.

1 Unless the context clearly requires a different meaning, as used in this article:

2 (1) "Horse racing" means any type of horse racing, including, but not limited to,
3 thoroughbred racing and harness racing;

4 (2) "Thoroughbred racing" means flat or running type horse racing in which each horse
5 participating is a thoroughbred and mounted by a jockey;

6 (3) "Harness racing" means horse racing in which the horses participating are harnessed
7 to a sulky, carriage or other vehicle and does not include any form of horse racing in which the
8 horses are mounted by jockeys;

9 (4) "Horse race meeting" means the whole period of time for which a license is required
10 by the provisions of section one of this article;

11 (5) "Dog racing" means any type of dog racing, including, but not limited to, greyhound
12 racing;

13 (6) "Purse" means any purse, stake or award for which a horse or dog race is run;

14 (7) "Racing Association" or "person" means any individual, partnership, firm, association,
15 corporation or other entity or organization of whatever character or description;

16 (8) "Applicant" means any Racing Association making application for a license under the

17 provisions of this article or any person making application for a permit under the provisions of this
18 article or any person making application for a construction permit under the provisions of this
19 article;

20 (9) "License" means the license required by the provisions of section one of this article;

21 (10) "Permit" means the permit required by the provisions of section two of this article;

22 (11) "Construction permit" means the construction permit required by the provisions of
23 section eighteen of this article;

24 (12) "Licensee" means any Racing Association holding a license required by the
25 provisions of section one of this article and issued under the provisions of this article;

26 (13) "Permit holder" means any person holding a permit required by the provisions of
27 section two of this article and issued under the provisions of this article;

28 (14) "Construction permit holder" means any person holding a construction permit required
29 by the provisions of section eighteen of this article and issued under the provisions of this article;

30 (15) "Hold or conduct" includes "assist, aid or abet in holding or conducting";

31 (16) "Racing Commission" means the West Virginia Racing Commission;

32 (17) "Stewards" means the steward or stewards representing the Racing Commission, the
33 steward or stewards representing a licensee and any other steward or stewards whose duty it is
34 to supervise any horse or dog race meeting, all as may be provided by reasonable rules of the
35 Racing Commission which rules shall specify the number of stewards to be appointed, the method
36 and manner of their appointment and their powers, authority and duties;

37 (18) "Pari-mutuel" means a mutuel or collective pool that can be divided among those who
38 have contributed their wagers to one central agency, the odds to be reckoned in accordance to
39 the collective amounts wagered upon each contestant running in a horse or dog race upon which
40 the pool is made, but the total to be divided among the first three contestants on the basis of the
41 number of wagers on these;

42 (19) "Pari-mutuel clerk" means any employee of a licensed Racing Association who is

43 responsible for the collection of wagers, the distribution of moneys for winning pari-mutuel tickets,
44 verification of the validity of pari-mutuel tickets and accounting for pari-mutuel funds;

45 (20) "Pool" means a combination of interests in a joint wagering enterprise or a stake in
46 such enterprise;

47 (21) "Legitimate breakage" is the percentage left over in the division of a pool;

48 (22) "To the dime" means that wagers shall be figured and paid to the dime;

49 (23) "Code" means the Code of West Virginia, 1931, as heretofore and hereinafter
50 amended;

51 (24) "Accredited thoroughbred horse" means a thoroughbred horse that is registered with
52 the West Virginia Thoroughbred Breeders Association and that is:

53 (A) Foaled in West Virginia; or

54 (B) Sired by an accredited West Virginia sire; or

55 (C) As a yearling, finished twelve consecutive months of verifiable residence in the state,
56 except for thirty days' grace:

57 (i) For the horse to be shipped to and from horse sales where the horse is officially entered
58 in the sales catalogue of a recognized thoroughbred sales company, or

59 (ii) For obtaining veterinary services, documented by veterinary reports;

60 (25) "Accredited West Virginia sire" is a sire that is permanently domiciled in West Virginia,
61 stands a full season in West Virginia and is registered with West Virginia Thoroughbred Breeders
62 Association;

63 (26) "Breeder of an accredited West Virginia horse" is the owner of the foal at the time it
64 was born in West Virginia;

65 (27) "Raiser of an accredited West Virginia horse" is the owner of the yearling at the time
66 it finished twelve consecutive months of verifiable residence in the state. During the period, the
67 raiser will be granted one month of grace for his or her horse to be shipped to and from
68 thoroughbred sales where the horse is officially entered in the sales catalogue of a recognized

69 thoroughbred sales company. In the event the yearling was born in another state and transported
70 to this state, this definition does not apply after the December 31, 2007, to any pari-mutuel racing
71 facility located in Jefferson County nor shall it apply after the December 31, 2012, and thereafter
72 to any pari-mutuel racing facility located in Hancock County. Prior to the horse being shipped out
73 of the state for sales, the raiser must notify the Racing Commission of his or her intentions;

74 (28) The “owner of an accredited West Virginia sire” is the owner of record at the time the
75 offspring is conceived;

76 (29) The “owner of an accredited West Virginia horse” means the owner at the time the
77 horse earned designated purses to qualify for restricted purse supplements provided in section
78 thirteen-b of this article;

79 (30) “Registered greyhound owner” means an owner of a greyhound that is registered with
80 the National Greyhound Association;

81 (31) “Fund” means the West Virginia Thoroughbred Development Fund established in
82 section thirteen-b of this article; ~~and~~

83 (32) “Regular purse” means both regular purses and stakes purses;

84 (33) “Account holder” means a natural person not otherwise prohibited from wagering who
85 applies for and opens an account with an authorized ADW provider;

86 (34) “Advance deposit wager” means a wager placed through an Advance Deposit
87 Wagering provider on a horse or dog race that is conducted outside of the state;

88 (35) “Advance Deposit Wagering” or “ADW” means a system of pari-mutuel wagering in
89 which wagers and withdrawals are debited and winning payoffs and deposits are credited to an
90 account held by an authorized ADW provider on behalf of an account holder. An Advance Deposit
91 Wager may be placed in person at a wagering facility or from any other location via a telephone-
92 type device or any other electronic means;

93 (36) “Advance deposit wagering terminal” means any electronic device placed by an
94 advance deposit wagering licensee at a wagering facility that facilitates the placement of an

95 advance deposit wager and that can be electronically tracked so the location of the wagering
 96 facility where the advance deposit wagering terminal is located can be readily identified and so
 97 all wagers placed through the Advance Deposit Wagering terminal are easily reportable;

98 (37) "Authorized Advance Deposit Wagering provider" or "ADW provider" means a person
 99 who has entered into a commission-approved contract with a licensee to provide Advance Deposit
 100 Wagering on horse and dog racing under this article; and

101 (38) "Source market fee" means a percentage of the amount wagered by a West Virginia
 102 resident through Advance Deposit Wagering that is paid by the ADW provider to the Racing
 103 Association and Commission.

Part VI-A. Advance Deposit Wagering.

§19-23-9a. Legislative intent.

1 It is the intent of the Legislature that the proceeds of Advance Deposit Wagering
 2 authorized by this chapter be used to support and improve the horse and dog racing industries in
 3 West Virginia by improving purses, supporting breeding, and ensuring that the industry is
 4 adequately regulated for the protection of all participants.

§19-23-9b. Advance Deposit Wagering authorized; prohibited acts.

1 (a) Advance Deposit Wagering is authorized pari-mutuel betting on horse and dog racing
 2 under this article if conducted in compliance with this article.

3 (b) It is unlawful for any person to accept an advance deposit wager from a West Virginia
 4 resident unless the person is an authorized Advance Deposit Wagering provider as defined in
 5 section three and conducts Advance Deposit Wagering under the terms of a contract that meets
 6 the requirements in section nine-c and in accordance with this article.

§19-23-9c. Contract required.

1 Before accepting an advance deposit wager from a West Virginia resident, an ADW
 2 provider must have a written contract in place with the licensed racetrack that conducts horse and
 3 dog racing on which wagers will be accepted. The contract must be approved by the Racing

4 Commission. The contract must, at a minimum:

5 (1) Provide for the payment of a source market fee for advance deposit wagers placed
6 by West Virginia residents;

7 (2) Specify the manner in which the amount of the source market fee is determined;

8 (3) Govern all other aspects of the business relationship between the licensed racetrack
9 and the ADW provider;

10 (4) Provide for what will happen if either party to the contract discontinues operations or
11 ceases to be licensed in West Virginia;

12 (5) Provide that the contract is enforceable only in the state courts of West Virginia; and

13 (6) Provide for a term of agreement of not more than three years.

§19-23-9d. Bond requirements.

1 Before accepting an advance deposit wager from a West Virginia resident, an authorized
2 Advance Deposit Wagering provider shall demonstrate evidence of financial responsibility in a
3 format prescribed by the Racing Commission through a surety bond executed and issued by an
4 insurer authorized to issue surety bonds in this state, an irrevocable letter of credit, or other form
5 of financial guarantee in an amount to be determined by the commission. The commission may
6 ask for additional evidence of financial responsibility at any time the commission deems
7 necessary. Any surety bond, an irrevocable letter of credit, or other form of financial guarantee
8 issued under this article shall be in favor of this state and shall specifically authorize recovery by
9 the Racing Commission for the payment of all fees required by this article, as well as payments
10 due to West Virginia resident account holders.

§19-23-9e. Plan of operation.

1 (a) The commission shall not authorize a person to conduct Advance Deposit Wagering
2 under this section unless the person has submitted, and the commission approved, a plan of
3 operation for Advance Deposit Wagering. At a minimum, the plan of operation must provide for:

4 (1) Methods of resolving disputes with account holders and licensed racetracks;

5 (2) Procedures to protect the security of account holders' accounts and information;

6 (3) Methods to verify the identity of account holders and ensure that all account holders
7 are natural persons who are at least eighteen years of age;

8 (4) Procedures to ensure that wagers are only accepted from account holders who have
9 sufficient funds on deposit and that no credit is extended by the person to an account holder;

10 (5) Procedures for keeping accurate records of all contests, wagers and payouts;

11 (6) Annually contracting with an independent third party to conduct an audit and submit
12 the results of the audit to the commission; and

13 (7) Other requirements established by the commission in rule.

14 (b) A plan of operation must be submitted in a manner prescribed by the commission. A
15 plan of operation may only be amended with the approval of the commission. The commission
16 may withdraw approval of a plan of operation.

§19-23-9f. Source market fees; payment; distribution.

1 (a) An ADW provider shall agree to pay a source market fee in an amount equal to a
2 percentage, as set forth in its contract, of the total amount wagered by West Virginia residents
3 from their accounts with the ADW provider.

4 (1) A source market fee shall be paid monthly, unless otherwise directed by the
5 commission, for all accounts that have West Virginia as the principal residence address.

6 (2) The ADW provider shall distribute ninety percent of the total source market fee directly
7 to the Racing Association and the remaining ten percent directly to the commission.

8 (b) The Racing Association shall distribute forty percent of the total source market fee to
9 the West Virginia Racing Commission Special Account - West Virginia Thoroughbred
10 Development Fund, as provided in section thirteen b, article twenty three, chapter nineteen.

11 (c) The commission shall annually review the distribution of the source market fee. Any
12 changes to the distribution shall be adopted by rule.

NOTE: The purpose of this bill is to allow Advanced Deposit Wagering in West Virginia, to

provide definitions.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.