

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

Senate Bill 577

FISCAL
NOTE

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OJEDA AND UNGER

[Introduced March 10, 2017; Referred
to the Committee on Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
 2 designated §19-23-12e, relating to the licensing of advance deposit wagering; providing
 3 for source market fees; providing for the distribution of those fees from wagers made by
 4 West Virginia account holders, for distribution of those fees from wagers made by account
 5 holders located within and outside thirty miles of a licensed racing association and for
 6 distribution of those fees from wagers made by account holders located within thirty miles
 7 of two or more licensed racing associations; providing for regulatory authority in the Racing
 8 Commission over advance deposit wagering; providing for the assessment and imposition
 9 of regulatory fees and taxes on advance deposit wagering licensees' wagering in West
 10 Virginia and for the distribution of the fees and taxes; prohibiting advance deposit wagering
 11 in West Virginia unless conducted through an advance deposit wagering licensee or as
 12 otherwise provided by law; providing for criminal penalties for accepting or attempting to
 13 accept advance deposit wagers without a license; providing authority for the Racing
 14 Commission to seek civil remedies and damages; providing that all advance deposit
 15 wagers placed by residents or nonresidents within the state are considered to be wagering
 16 within West Virginia subject to the laws of this state and rules of the Racing Commission;
 17 authorizing rulemaking; and defining terms.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
 2 section, designated §19-23-12e, to read as follows:

3 **ARTICLE 23. HORSE AND DOG RACING.**

§19-23-12e. Licensing of advance deposit wagering.

1 (a) As used in this section:

2 (1) "Account" means an advance deposit wagering account or ADW account owned by an
 3 account holder and managed by an ADW licensee that the Racing Commission has determined
 4 will maintain a specific identifiable record of account deposits, wagers, credits, debits and

5 withdrawals and protect the account holder's confidential information.

6 (2) "Account holder" means an individual, at least eighteen years of age who applies for,
7 and successfully opens an account with an ADW licensee, including all resident account holders
8 and nonresident account holders to the extent that nonresident account holders place their
9 account wagers from within West Virginia: *Provided*, That the Racing Commission determines
10 that including the nonresident account holders' wagers would further West Virginia horse racing.

11 (3) "Advance deposit account wagering," or "ADW," means a method of pari-mutuel
12 wagering that is permissible under the Interstate Horseracing Act, 15 U.S.C §3001, et seq., in
13 which an individual may establish an account with a person or entity, licensed by the Racing
14 Commission, to place pari-mutuel wagers on horse or greyhound racing with the ADW licensee
15 via electronic media or by telephone, but not including account wagering conducted through a
16 licensee under subsection (a), section nine of this article, and the Racing Commission's rules
17 thereunder with respect to wagering conducted pursuant to Racing Commission Rule §178-5-5.

18 (4) "Advance deposit wagering licensee" or "ADW licensee" means an entity licensed by
19 the Racing Commission to conduct advance deposit account wagering that accepts deposits and
20 wagers, issues a receipt or other confirmation to the account holder evidencing the deposits and
21 wagers and transfers credits and debits to and from an account.

22 (5) "Confidential information" means: (A) The amount of money credited to, debited from,
23 withdrawn from, or present in an account; (B) the amount of money wagered by an account holder
24 on any race or series or races, or the identities of racing associations on which the account holder
25 is wagering or has wagered; (C) the account number and secure personal identification
26 information of an account holder; and (D) unless authorized by the account holder, the name,
27 address, or other information that would identify the account holder to any person or entity other
28 than the Racing Commission or the ADW licensee that manages the account.

29 (6) "Electronic media" means any electronic communication device or combination of
30 devices including, but not limited to, personal computers, the Internet, private networks,

31 interactive televisions and wireless communication technologies or other technologies approved
32 by the Racing Commission.

33 (7) "Licensee" means any racing association holding a license as defined by section three
34 of this article;

35 (8) "Located" means, in regard to a resident account holder, where his or her principal
36 residence is located, and in regard to a nonresident account holder, where he or she is physically
37 located.

38 (9) "Principal residence" means the street address identified by a resident account holder
39 as that individual's residential address, as the address may be verified by the ADW licensee to
40 the satisfaction of the Racing Commission.

41 (10) "Resident" is an individual who: (A) Is domiciled in West Virginia; (B) maintains a
42 place of abode and spends at least one hundred and eighty-three days within a calendar year in
43 West Virginia; or (C) lists an address in West Virginia as his or her principal residence when
44 opening an account.

45 (11) "Source market fee" means a fee that must be paid by the ADW licensee, which shall
46 be six percent of total handle, excluding refunds and cancellations wagered by ADW licensee
47 under this section, payable on a monthly basis to the West Virginia Racing Commission and
48 distributed as follows:

49 (A) All source market fees derived from wagers of account holders not located in a zip
50 code within thirty miles of any licensee, shall be prorated by dividing each licensee's total handle
51 by the total handle of all West Virginia licensees in the prior calendar year, and distributed as
52 follows:

53 (i) Ten percent of each horse racing licensee's prorated amount to the West Virginia
54 Thoroughbred Development Fund; and, ten percent of each dog racing licensees prorated amount
55 to the "West Virginia Racing Commission Special Account-West Virginia Greyhound Breeding
56 Development Fund;"

57 (ii) Forty-five percent to the Purse Fund of each prorated licensee; and

58 (iii) Forty-five percent to each prorated licensee.

59 (B) Unless otherwise agreed between a racing association licensee and an organization
60 of owners and trainers of permit holders pursuant to the terms of the Interstate Horseracing Act
61 of 1978, 15 U.S.C. §3004(a)(1), all source market fees derived from wagers of account holders
62 located in a zip code within thirty miles of a particular licensee, that is licensed to conduct live
63 racing, shall be distributed as follows:

64 (i) Ten percent to the West Virginia Thoroughbred Development Fund established in
65 section thirteen-b of this article, or to the "West Virginia Racing Commission Special Account-
66 West Virginia Greyhound Breeding Development Fund," depending on whether the account
67 holder when wagering, was located within a thirty mile of a horse or dog racing licensee;

68 (ii) Forty-five percent to the Purse Fund of the licensee; and

69 (iii) Forty-five percent to the licensee.

70 (C) Unless otherwise agreed between a racing association licensee and an organization
71 of owners and trainers of permit holders pursuant to the terms of the Interstate Horseracing Act
72 of 1978, 15 U.S.C. §3004(a)(1), all source market fees derived from wagers of account holders
73 who were, when wagering, located in an overlapping area located within a zip code within thirty
74 miles of two or more licensees, that are licensed to conduct live racing, shall be prorated between
75 the licensees by dividing each licensee's total handle by the total handle of all licensees within a
76 thirty mile radius of the area where the wagering account holder was located, and once prorated,
77 distributed in accordance with subparagraphs (ii) and (iii), paragraph (B) of this subdivision, with
78 ten percent of each licensee's prorated amount distributed to the respective development funds
79 in subparagraph (i) of that paragraph of the type or breed of racing of each prorated licensee.

80 (D) The Racing Commission shall determine, and shall make available to all licensed ADW
81 licensees, a list of all zip codes applicable in paragraphs (B) and (C) of this subdivision. The
82 Racing Commission shall prescribe the manner of reporting by ADW licensees to comply with

83 paragraphs (A), (B) and (C) of this subdivision.

84 (12) "Total handle" means the total annual dollar sales amount of all pari-mutuel wagering
85 on horse and greyhound races conducted at, or generated from imports or exports of simulcast
86 horse and greyhound races to or from, a licensee, including all moneys from wagering conducted
87 under sections nine, twelve-a, twelve-b and twelve-c of this article, but excluding refunds and
88 cancellations, excluding advance deposit wagering under this section.

89 (b) The advance deposit account wagers placed by account holders with an ADW licensee
90 licensed by the Racing Commission in accordance with this section twelve-e of this article are
91 hereby authorized and the provisions of section one, article ten, chapter sixty-one of this code
92 relating to gaming do not apply to advance deposit account wagering conducted in accordance
93 with this section.

94 (c) The Racing Commission is vested with jurisdiction over any person or entity that solicits
95 account holders or offers advance deposit wagering in West Virginia. Any person or entity under
96 the jurisdiction of the Racing Commission shall be licensed and the Racing Commission may
97 impose a nonrefundable initial and annual renewal licensing application fee not to exceed \$5,000.
98 Further, the Racing Commission may require any applicant for an initial or renewal ADW license
99 to bear the costs involved in conducting background checks and reviews.

100 (d) No person or entity may conduct advance deposit wagering in West Virginia unless the
101 person or entity has applied for and been granted an ADW license by the Racing Commission.
102 The commission shall also ensure that, except for advance deposit wagering authorized in this
103 section, all pari-mutuel wagering on racing shall be conducted within the confines of a licensee's
104 racetrack or licensed contiguous hotel, as permitted under subsection (a), section nine and
105 subsection (1), section twelve-a of this article and implementing rules thereunder, including
106 Racing Commission Rule §178-5-5, or within an authorized gaming facility in a historic resort
107 hotel, as permitted under section twelve-d of this article and implementing rules thereunder.

108 Any person who accepts an advance deposit wager who is not licensed as an advance

109 deposit wagering licensee by the Racing Commission is guilty of a felony and, upon conviction
110 thereof, shall be fined not more than \$50,000 or imprisoned in a state correctional facility not more
111 than five years, or both fined and imprisoned. Further, the court shall order any convicted person
112 to pay restitution to recover all amounts that would have been payable to the Racing Commission
113 under this section.

114 The Racing Commission may seek injunctive relief against any person who accepts or
115 attempts to accept an advance deposit wager without a license issued by the commission. The
116 Racing Commission may also seek recovery of all amounts that would have been payable to the
117 Racing Commission under this section, damages equal to three times the amount of recovery,
118 and reasonable costs and attorney fees. Damages recovered by the Racing Commission shall
119 be distributed as source market fees under this section.

120 (e) There is hereby assessed a regulatory fee of one percent of the total dollar amount of
121 all advance deposit wagering, excluding refunds and cancellations, conducted in West Virginia,
122 payable monthly to the Racing Commission's general administrative account.

123 (f) Advance deposit wagers placed by residents and nonresidents physically located in
124 West Virginia are considered to be wagering conducted in this state and subject to the laws of
125 this state and the rules of the Racing Commission. Upon request by licensees or organizations
126 representing a majority of owners and trainers, the Racing Commission is authorized to inquire
127 into and investigate whether nonresident account holders of an ADW licensee have placed
128 wagers with such ADW licensee while such account holders were physically located in West
129 Virginia. The Racing Commission shall promulgate rules establishing standards for ADW
130 licensees to determine when, where and how much nonresident account holders wager while they
131 are physically located in West Virginia.

132 (g) The Racing Commission may propose rules for legislative approval, pursuant to article
133 three, chapter twenty-nine-a of this code to implement this section and may propose emergency
134 rules to provide conditions for the licensing of advance deposit wagering. Those rules are to

135 include, but are not limited to: (1) Standards, qualifications and procedures for the issuance of an
136 advance deposit wagering license in West Virginia; (2) rules establishing initial and renewal
137 license fees and payment of same to the Racing Commission to cover the costs of licensing ADW
138 licensees; (3) provisions regarding access to books and records and submission to investigations
139 and audits by the Racing Commission; (4) provisions regarding the collection and distribution of
140 those fees; (5) standards and procedures for opening, maintaining, operating and securing ADW
141 accounts, as well as protecting confidential information therein; and (6) any other conditions to
142 ensure an orderly process of accepting ADW wagers in acting in the best interests of the West
143 Virginia racing industry.

NOTE: The purpose of this bill is to provide for the licensing of advance deposit wagering. The bill provides for source market fees. The bill provides for the distribution of those fees from wagers made by account holders but not within thirty miles of any licensed racing association, for distribution of those fees from wagers made by account holders located within thirty miles of a licensed racing association, and for distribution of those fees from wagers made by account holders located within thirty miles of two or more licensed racing associations. The bill provides for regulatory authority in the Racing Commission over advance deposit wagering. The bill provides for the assessment and imposition of regulatory fees and taxes on advance deposit wagering licensees' wagering by account holders and for the distribution of the fees and taxes. The bill prohibits advance deposit wagering in West Virginia unless conducted through an advance deposit wagering licensee or as otherwise provided by law. The bill provides for criminal penalties for accepting or attempting to accept advance deposit wagers without a license and provides authority for the Racing Commission to seek civil remedies and damages. The bill and provides that all advance deposit wagers placed by residents within the state is considered to be wagering within West Virginia subject to the laws of this state and rules of the Racing Commission. The bill authorizes rule-making. The bill defines terms.

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