

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 4438

BY DELEGATES ESPINOSA, HOUSEHOLDER, BARRETT,

STORCH AND HARDY

[Passed March 6, 2020; in effect July 1, 2020.]

1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new
2 section, designated §19-23-12e, relating to the licensing of advance deposit wagering;
3 defining terms; providing for source market fees; providing for certain distribution of source
4 market fees derived from wagers of account holders; providing that advance deposit
5 account wagers are authorized; providing exception from certain provisions of code;
6 conferring jurisdiction to the Racing Commission; providing for the assessment and
7 imposition of licensing and annual renewal fees; providing that applicants may bear certain
8 costs; providing for a special revenue account; providing for a fee to be paid by advance
9 deposit wagering licensees and deposited into the special revenue account; prohibiting
10 advance deposit wagering in West Virginia unless conducted through an advance deposit
11 wagering licensee; exempting advance deposit wagering from certain provisions of code
12 and implementing rules; providing for criminal penalties for accepting advance deposit
13 wagers without a license; providing authority for the Racing Commission to seek civil
14 remedies and damages; providing for a regulatory fee; providing that all advance deposit
15 wagers placed by residents within the state are considered to be wagering within West
16 Virginia subject to the laws of this state and rules of the Racing Commission; providing for
17 an investigation as to whether nonresident account holders of a licensee placed wagers
18 while physically located in West Virginia; providing for an annual report of the Racing
19 Commission; setting forth elements of the report; and authorizing rulemaking and
20 emergency rulemaking.

Be it enacted by the Legislature of West Virginia:

ARTICLE 23. HORSE AND DOG RACING.

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

1 (a) As used in this section:

2 "Account" means an advance deposit wagering (ADW) account owned by an account
3 holder and managed by an ADW licensee that the Racing Commission has determined will

4 maintain a specific identifiable record of account deposits, wagers, credits, debits, and
5 withdrawals, and protect the account holder's confidential information.

6 "Account holder" means a resident individual, at least 18 years of age who applies for and
7 successfully opens an account with an ADW licensee.

8 "Advance deposit account wagering" means a method of pari-mutuel wagering that is
9 permissible under the Interstate Horseracing Act, 15 U.S.C. §3001 *et seq.*, in which an individual
10 may establish an account with a person or entity, licensed by the Racing Commission, to place
11 pari-mutuel wagers on horse or greyhound racing with the ADW licensee via electronic media or
12 by telephone, but not including account wagering conducted through a licensee under §19-23-
13 9(a) of this code, and the Racing Commission's rules thereunder with respect to wagering
14 conducted pursuant to Racing Commission Rule §178-5-5.

15 "Advance deposit account wagering licensee" means an entity licensed by the Racing
16 Commission to conduct advance deposit account wagering that accepts deposits and wagers,
17 issues a receipt or other confirmation to the account holder evidencing the deposits and wagers,
18 and transfers credits and debits to and from an account.

19 "ADW" means advance deposit account wagering.

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

27 "Electronic media" means any electronic communication device or combination of devices,
28 including, but not limited to, personal computers, the Internet, private networks, interactive

29 televisions, and wireless communication technologies or other technologies approved by the
30 Racing Commission.

31 “Licensee” means any racing association holding a license as defined by §19-23-3 of this
32 code;

33 “Located” means, in regard to a resident account holder, where his or her principal
34 residence is located.

35 “Principal residence” means the street address identified by a resident account holder as
36 that individual’s residential address, as the address may be verified by the ADW licensee to the
37 satisfaction of the Racing Commission.

38 “Resident” is an individual who: (A) Is domiciled in West Virginia; (B) maintains a place of
39 abode and spends at least 183 days within a calendar year in West Virginia; or (C) lists an address
40 in West Virginia as his or her principal residence when opening an account.

41 “Source market fee” means a fee paid by the ADW licensee which shall be four percent of
42 the total amount wagered through the ADW licensee by residents under this section, excluding
43 refunds and cancellations, payable on a monthly basis to the Racing Commission and distributed
44 as set forth in subsection (b) of this section.

45 “Total handle” means the total annual dollar sales amount of all pari-mutuel wagering on
46 horse and greyhound races conducted at, or generated from, imports or exports of simulcast
47 horse and greyhound races to or from a licensee, including all moneys from wagering conducted
48 under §19-23-9, §19-23-12a, §19-23-12b, and §19-23-12c of this code, but excluding refunds,
49 cancellations, and advance deposit account wagering under this section.

50 (b) The source market fee shall be paid by the ADW licensee on a monthly basis to the
51 Racing Commission and distributed as provided in this subsection. The Racing Commission shall
52 prorate all source market fees derived from wagers of account holders between the licensees by
53 dividing each licensee’s total handle by the total handle of all West Virginia licensees in the prior
54 calendar year, and distribute the prorated amounts as follows:

55 (1) Ten percent of each horse racing licensee's prorated amount to the West Virginia
56 Thoroughbred Development Fund or 10 percent of each dog racing licensee's prorated amount
57 to the West Virginia Racing Commission Special Account-West Virginia Greyhound Breeding
58 Development Fund;

59 (2) Forty-five percent to the purse fund of each prorated licensee; and

60 (3) Forty-five percent to each prorated licensee.

61 (c) The advance deposit account wagers placed by account holders with an ADW licensee
62 licensed by the Racing Commission in accordance with this section are authorized, and the
63 provisions of §61-10-1 *et seq.* of this code relating to gaming do not apply to advance deposit
64 account wagering conducted in accordance with this section.

65 (d) The Racing Commission is vested with jurisdiction over any person or entity that solicits
66 account holders or offers advance deposit account wagering in West Virginia. Any person or entity
67 that solicits account holders or offers advance deposit account wagering in West Virginia shall be
68 licensed and the Racing Commission may impose a nonrefundable initial and annual renewal
69 licensing application fee not to exceed \$5,000. The Racing Commission may also require any
70 applicant for an initial or renewal ADW license to bear the costs involved in conducting
71 background checks and reviews. If a licensee or an affiliate of a licensee applies for an ADW
72 license under this section, all fees under this subsection shall be deemed paid and an ADW
73 license issued as part of a licensee's annual licensing, or, if the license application is submitted
74 apart from annual licensing, an ADW license shall be issued at the time the application is
75 submitted.

76 (e) A person or entity may not conduct advance deposit account wagering in West Virginia
77 unless the person or entity has applied for and been granted an ADW license by the Racing
78 Commission. The Racing Commission shall also ensure that, except for advance deposit account
79 wagering authorized under this section, all pari-mutuel wagering on racing is conducted within the
80 confines of a licensee's racetrack or licensed contiguous hotel, as permitted under §19-23-9(a)

81 and §19-23-12a(1) of this code and implementing rules thereunder, including Racing Commission
82 Rule §178-5-5, or within an authorized gaming facility in a historic resort hotel, as permitted under
83 §19-23-12d of this code and implementing rules thereunder.

84 (f) Any person who is not licensed as an advance deposit account wagering licensee by
85 the Racing Commission who accepts an advance deposit account wager from a resident is guilty
86 of a felony and, upon conviction thereof, shall be fined not more than \$50,000 or imprisoned in a
87 state correctional facility not more than five years, or both fined and imprisoned. Further, the court
88 shall order any convicted person to pay restitution to recover all amounts that would have been
89 payable to the Racing Commission under this section.

90 (g) The Racing Commission may seek injunctive relief against any person who is not
91 licensed as an advance deposit account wagering licensee by the Racing Commission who
92 accepts or attempts to accept an advance deposit account wager from a resident. The Racing
93 Commission may also seek recovery of all amounts that would have been payable to the Racing
94 Commission under this section, damages equal to three times the amount of recovery, and
95 reasonable costs and attorney fees. Damages recovered by the Racing Commission shall be
96 distributed as source market fees under this section.

97 (h) There is hereby assessed a regulatory fee paid by the ADW licensee, which shall be
98 one-half percent of the total amount wagered through the ADW licensee by residents under this
99 section, excluding refunds and cancellations, payable on a monthly basis to the Racing
100 Commission for deposit into the Racing Commission's general administrative account.

101 (i) There is further assessed an additional fee paid by the ADW licensee, which shall be
102 one and one-half percent of the total amount wagered through the ADW licensee by residents
103 under this section, excluding refunds and cancellations, payable on a monthly basis to the Racing
104 Commission for deposit into a special revenue account in the State Treasury to be known as the
105 "Advance Deposit Wagering Account" to be expended pursuant to appropriation of the
106 Legislature.

107 (j) Advance deposit account wagers placed by residents are considered to be wagering
108 conducted in this state and subject to the laws of this state and the rules of the Racing
109 Commission.

110 (k) The Racing Commission shall submit a report by December 31, 2020, and annually
111 thereafter to the Joint Committee on Government and Finance detailing the operation of ADW in
112 this state. The report shall include, but is not limited to, the following:

113 (1) A complete list of ADW licensees offering ADW services;

114 (2) The total amount of funds paid to the Racing Commission pursuant to subsection (h)
115 of this section;

116 (3) The total amount deposited in the preceding 12-month period in the special revenue
117 account set forth in subsection (i) of this section;

118 (4) The amounts distributed as set forth in subdivision (b) of this section;

119 (5) Beginning with the report due December 31, 2021, a statistical comparison of ADW
120 services to the preceding year; and

121 (6) The total amount of wagering by West Virginia residents through ADW Licensees.

122 (l) The Racing Commission may propose legislative rules for promulgation, pursuant to
123 §29A-3-1 *et seq.* of this code, to implement this section and may propose emergency rules to
124 provide conditions for the licensing of advance deposit account wagering. Those rules may
125 include, but are not limited to: (1) Standards, qualifications, and procedures for the issuance of
126 an advance deposit account wagering license in West Virginia; (2) rules establishing initial and
127 renewal license fees and payment of same to the Racing Commission to cover the costs of
128 licensing ADW licensees; (3) provisions regarding the collection and distribution of those fees; (4)
129 provisions regarding access to books and records and submission to investigations and audits by
130 the Racing Commission; (5) standards and procedures for opening, maintaining, operating, and
131 securing ADW accounts, as well as protecting confidential information therein; and (6) any other

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132 conditions to ensure an orderly process of accepting ADW wagers in acting in the best interests
133 of the West Virginia horse and dog racing industries.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect July 1, 2020.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2020.

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Governor