

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 562

FISCAL
NOTE

BY SENATOR SNYDER

[Introduced February 10, 2016;

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 account holders located within West Virginia but not within thirty miles of any licensed
 5 racing association, for distribution of those fees from wagers made by account holders
 6 located within thirty miles of a licensed racing association and for distribution of those fees
 7 from wagers made by account holders located within thirty miles of two or more licensed
 8 racing associations; providing for regulatory authority in the Racing Commission over
 9 advance deposit wagering; providing for the assessment and imposition of regulatory fees
 10 and taxes on advance deposit wagering licensees' wagering in West Virginia and for the
 11 distribution of the fees and taxes; prohibiting advance deposit wagering in West Virginia
 12 unless conducted through an advance deposit wagering licensee or as otherwise provided
 13 by law; providing that all advance deposit wagers placed by residents or nonresidents
 14 within the state are considered to be wagering within West Virginia subject to the laws of
 15 this state and rules of the Racing Commission; 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:

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 that
10 including the nonresident account holders' wagers would further West Virginia horse racing.

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

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

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

30 (6) "Electronic media" means any electronic communication device or combination of
31 devices including, but not limited to, personal computers, the Internet, private networks,
32 interactive televisions, and wireless communication technologies or other technologies approved

33 by the Racing Commission.

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

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

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

43 (10) "Secure personal identification code" means a numeric, alpha-numeric or other
44 secure character code chosen by an account holder pursuant to appropriate security
45 requirements established by an ADW licensee and satisfactory to the Racing Commission, as a
46 means by which the ADW licensee may receive or verify an account holder's instructions for
47 wagers and account deposits, credits, debits and withdrawals.

48 (11) "Source market fee" means the fee payable by the ADW licensee, which may be no
49 less than six percent, but not more than ten percent of all advance deposit wagers made by
50 account holders, as determined by the Racing Commission in accordance with the best interests
51 of West Virginia horse racing. Source market fees shall be calculated and distributed as follows:

52 (A) All source market fees derived from wagers of account holders not located within thirty
53 miles of any racing association licensee, shall be prorated by dividing each racing association
54 licensee's total handle by the total handle of all West Virginia racing association licensees, and
55 distributed as follows:

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

59 Breeding Development Fund;"

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

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

62 (B) All source market fees derived from wagers of account holders located within thirty
63 miles of a particular racing association licensee, 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 thirty miles of a horse or dog racing licensee;

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

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

70 (C) All source market fees derived from wagers of account holders who were, when
71 wagering, located in an overlapping area within thirty miles of two or more racing association
72 licensees shall be prorated between the licensees by dividing each licensee's total handle by the
73 total handle of all licensees within a thirty mile radius of the area where the wagering account
74 holder was located, and once prorated, distributed in accordance with subparagraphs (ii) and (iii),
75 paragraph (B) of this subdivision, with ten percent of each licensee's prorated amount distributed
76 to the respective development funds in subparagraph (i) of that paragraph of the type or breed of
77 racing of each prorated licensee.

78 (12) "Total handle" means the total annual dollar sales amount of all pari-mutuel wagering
79 on horse races conducted at, or generated from imports or exports of simulcast horse racing to
80 or from, a racing association licensee, including all moneys from wagering conducted under
81 sections nine, twelve-a, twelve-b and twelve-c of this article, but excluding refunds and
82 cancellations of the wagering and excluding advance deposit wagering.

83 (b) The Racing Commission is vested with jurisdiction over any person or entity that solicits
84 account holders located in West Virginia, or offers advance deposit wagering in West Virginia.

85 Any person or entity under the jurisdiction of the Racing Commission shall be licensed, and the
86 Racing Commission may impose a nonrefundable initial licensing application fee not to exceed
87 \$5,000, and a nonrefundable annual renewal licensing fee not to exceed \$1,000, but the Racing
88 Commission may require any applicant for an initial or renewal ADW license to bear the additional
89 costs involved in conducting background checks and reviews.

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

99 (d) There is hereby assessed an annual regulatory fee of one-half percent of the total
100 dollar amount of all advance deposit wagering conducted in West Virginia, payable to the Racing
101 Commission, but any initial and renewal licensing fees, and additional costs, if any, required for
102 background checks and reviews under subsection (b) of this section shall be credited against this
103 regulatory fee, on at least an annual basis as determined by the Racing Commission. There is
104 hereby imposed an annual ADW tax of one percent of the total dollar amount of all advance
105 deposit wagering conducted in West Virginia payable to the General Revenue Fund.

106 (e) Advance deposit wagers placed by residents and nonresidents located in West Virginia
107 are considered to be wagering conducted in this state and subject to the laws of this state and
108 the rules of the Racing Commission.

109 (f) The Racing Commission has the authority to promulgate rules, pursuant to article three,
110 chapter twenty-nine-a, to implement this section, and to provide conditions for the licensing of

111 advance deposit wagering. Those rules are to include, but are not limited to: (1) Standards,
112 qualifications and procedures for the issuance of an advance deposit wagering license in West
113 Virginia; (2) rules establishing initial and renewal license fees, and payment of same to the
114 commission to cover the costs of licensing ADW licensees; (3) provisions regarding access to
115 books and records and submission to investigations and audits by the Racing Commission; (4)
116 provisions regarding the percentage payable as source market fees under subsection (a) of this
117 section, as well as the collection and distribution of those fees; (5) provisions regarding whether
118 and how to include advance deposit wagering by nonresident account holders wagering while
119 located in this state under subsection (a) of this section; and (6) standards and procedures for
120 opening, maintaining and securing ADW accounts, as well as protecting confidential information
121 therein.

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 located within West Virginia 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 in West Virginia 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 and provides that all advance deposit wagers placed by residents or nonresidents 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.