

# WEST VIRGINIA LEGISLATURE

## 2020 REGULAR SESSION

Introduced

### House Bill 4438

FISCAL  
NOTE

BY DELEGATES ESPINOSA, HOUSEHOLDER, BARRETT AND

STORCH

[Introduced January 21, 2020; Referred to the  
Committee on the Judiciary ]

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; defining  
 3 terms; providing for source market fees; providing for certain distribution of source market  
 4 fees derived from wagers of account holders; providing that advance deposit account  
 5 wagers are authorized; providing exception from certain provisions of code; conferring  
 6 jurisdiction to the Racing Commission; providing for the assessment and imposition of  
 7 licensing and annual renewal fees; providing that applicants may bear certain costs;  
 8 prohibiting advance deposit wagering in West Virginia unless conducted through an  
 9 advance deposit wagering licensee; exempting advance deposit wagering from certain  
 10 provisions of code and implementing rules; providing for criminal penalties for accepting  
 11 advance deposit wagers without a license; providing authority for the Racing Commission  
 12 to seek civil remedies and damages; providing for a regulatory fee; providing that all  
 13 advance deposit wagers placed by residents within the state are considered to be  
 14 wagering within West Virginia subject to the laws of this state and rules of the Racing  
 15 Commission; providing for an investigation as to whether nonresident account holders of  
 16 a licensee placed wagers while physically located in West Virginia; and authorizing  
 17 rulemaking and emergency rulemaking.

*Be it enacted by the Legislature of West Virginia:*

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

### **§19-23-12e. Licensing of advance deposit 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 wagering licensee” means an entity licensed by the Racing Commission  
16 to conduct advance deposit account wagering that accepts deposits and wagers, issues a receipt  
17 or other confirmation to the account holder evidencing the deposits and wagers and transfers  
18 credits and debits to and from an account.

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20 withdrawn from, or present in an account; (B) the amount of money wagered by an account holder  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

26 “Electronic media” means any electronic communication device or combination of devices  
27 including, but not limited to, personal computers, the Internet, private networks, interactive  
28 televisions, and wireless communication technologies or other technologies approved by the  
29 Racing Commission.

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

32 “Located” means, in regard to a resident account holder, where his or her principal

33 residence is located.

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

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

40 “Source market fee” means a fee that must be paid by the ADW licensee, which shall be  
41 five percent of total handle derived from ADW, excluding refunds and cancellations wagered by  
42 ADW licensee under this section, payable on a monthly basis to the West Virginia Racing  
43 Commission and distributed as set forth in subsection (b) of this section.

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

49 (b) The source market fee must be paid by the ADW licensee on a monthly basis to the  
50 West Virginia Racing Commission and distributed as provided in this subsection.

51 (1) All source market fees derived from wagers of account holders shall be prorated  
52 between the licensees by dividing each licensee’s total handle by the total handle of all West  
53 Virginia licensees in the prior calendar year, and distributed as follows:

54 (A) Ten percent of each horse racing licensee’s prorated amount to the West Virginia  
55 Thoroughbred Development Fund; and 10 percent of each dog racing licensees prorated amount  
56 to the West Virginia Racing Commission Special Account-West Virginia Greyhound Breeding  
57 Development Fund;

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

59 (C) Forty-five percent to each prorated licensee.

60 (2) The Racing Commission shall be responsible for the distribution of all source market  
61 fee payments pursuant to subdivision (1) subsection (b) of this section.

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

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

76 (e) A person or entity may not conduct advance deposit wagering in West Virginia unless  
77 the person or entity has applied for and been granted an ADW license by the Racing Commission.  
78 The Racing Commission shall also ensure that, except for advance deposit wagering authorized  
79 under this section, all pari-mutuel wagering on racing is conducted within the confines of a  
80 licensee's racetrack or licensed contiguous hotel, as permitted under §19-23-9(a) and §19-23-  
81 12a(1) of this code and implementing rules thereunder, including Racing Commission Rule §178-  
82 5-5, or within an authorized gaming facility in a historic resort hotel, as permitted under §19-23-  
83 12d of this code and implementing rules thereunder.

84 (f) Any person who accepts an advance deposit wager who is not licensed as an advance

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

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

96 (h) There is hereby assessed a regulatory fee of one percent of the total dollar amount of  
97 all advance deposit wagering placed by residents, excluding refunds and cancellations, to be paid  
98 by each ADW licensee, payable monthly to the Racing Commission's general administrative  
99 account.

100 (i) Advance deposit wagers placed by residents are considered to be wagering conducted  
101 in this state and subject to the laws of this state and the rules of the Racing Commission. After  
102 January 1, 2022, upon joint request by licensees or organizations representing a majority of  
103 owners and trainers, the Racing Commission is authorized to inquire into and investigate whether  
104 nonresident account holders of an ADW licensee have placed wagers with such ADW licensee  
105 while such account holders were physically located in West Virginia. The Racing Commission  
106 shall promulgate rules establishing standards for ADW licensees to fully account for the  
107 origination of ADW wagers.

108 (j) The Racing Commission may propose legislative rules for promulgation, pursuant to  
109 §29A-3-1 et seq. of this code to implement this section and may propose emergency rules to  
110 provide conditions for the licensing of advance deposit wagering. Those rules are to include, but

111 are not limited to: (1) Standards, qualifications, and procedures for the issuance of an advance  
112 deposit wagering license in West Virginia; (2) rules establishing initial and renewal license fees  
113 and payment of same to the Racing Commission to cover the costs of licensing ADW licensees;  
114 (3) provisions regarding access to books and records and submission to investigations and audits  
115 by the Racing Commission; (4) provisions regarding the collection and distribution of those fees;  
116 (5) standards and procedures for opening, maintaining, operating, and securing ADW accounts,  
117 as well as protecting confidential information therein; and (6) any other conditions to ensure an  
118 orderly process of accepting ADW wagers in acting in the best interests of the West Virginia horse  
119 and dog racing industries.

NOTE: The purpose of this bill is to provide a mechanism to allow licensing of advance deposit wagering.

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