WEST virginia legislature

2023 regular session

Committee Substitute

for

House Bill 3232

By Delegates Riley and Nestor

[Originating in the Committee on the Judiciary; Reported on February 21, 2023]

A BILL to amend and reenact §29-22D-3 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §29-22D-25, all relating to allowing the West Virginia Lottery Commission to accredit independent evaluators to audit and opine on sports betting content directly or indirectly affiliated with management services providers; and subjecting management services providers and their direct or indirect affiliates to civil and criminal penalties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. PROVISIONS AS TO CONSTRUCTION.

§29-22D-3. Definitions.

For the purposes of this article, the following terms have the meanings ascribed to them in this section:

(1) “Adjusted gross sports wagering receipts” means an operator’s gross sports wagering receipts from West Virginia Lottery sports wagering, less winnings paid to wagerers in such games.

(2) “Collegiate sport or athletic event” means a sport or athletic event offered or sponsored by, or played in connection with, a public or private institution that offers educational services beyond the secondary level.

(3) “Content partners” means platforms or individuals who create sports wagering content for management services providers through a contracted work, affiliate or otherwise.

~~(3)~~ (4) “Commission” or “State Lottery Commission” means the West Virginia Lottery Commission, created by §29-22-1 *et seq.* of this code.

~~(4)~~ (5) “Director” means the Director of the West Virginia ~~State~~ Lottery Commission, appointed pursuant to §29-22-6 of this code.

~~(5)~~ (6) “E-sports event” means leagues, competitive circuits, tournaments, or similar competitions where individuals or teams play video games, typically for spectators, either in person or online, for the purpose of prizes, money, or entertainment.

(7) “Experts or Influencers” — also referred to as “sharps”, “touts”, “handicappers”, or otherwise — are defined as platforms or individuals who create sports wagering content for management services providers for their own benefit, for the benefit of content partners, or both.

~~(6)~~ (8) “Gaming equipment” or “sports wagering equipment” means any mechanical, electronic, or other device, mechanism, or equipment, and related supplies used or consumed in the operation of West Virginia Lottery sports wagering at a licensed gaming facility including, but not limited to, a kiosk installed to accept sports wagers.

~~(7)~~ (9) “Gaming facility” means a designated area on the premises of an existing historic resort hotel, licensed under §29-25-1 *et seq.* of this code, to operate video lottery and table games or the facility of an entity authorized to operate racetrack video lottery machines pursuant to §29-22A-1 *et seq.* of this code.

~~(8)~~ (10) “Government” means any governmental unit of a national, state, or local body exercising governmental functions, other than the United States government.

~~(9)~~ (11) “Gross sports wagering receipts” means the total gross receipts received by a licensed gaming facility from sports wagering.

~~(10)~~ (12) “License” means any license applied for or issued by the ~~commission~~ Commission under this article including, but not limited to:

(A) A license to act as agent of the ~~commission~~ Commission in operating West Virginia Lottery sports wagering at a licensed gaming facility (operator license or West Virginia Lottery sports wagering license);

(B) A license to supply a gaming facility licensed under this article to operate sports wagering with sports wagering equipment or services necessary for the operation of sports wagering (supplier license);

(C) A license to be employed at a racetrack or gaming facility licensed under this article to operate West Virginia Lottery sports wagering when the employee works in a designated gaming area that has sports wagering or performs duties in furtherance of or associated with the operation of sports wagering at the licensed gaming facility (occupational license); or

(D) A license to provide management services under a contract to a gaming facility licensed under this article to operate sports wagering (management services provider license).

~~(11)~~ (13) “Licensed gaming facility” means a designated area on the premises of an existing historic resort hotel, pursuant to §29-25-1 *et seq.* of this code, or the facility of an entity authorized to operate racetrack video lottery machines, pursuant to §29-22A-1 *et seq.* of this code licensed under this article to conduct West Virginia Lottery sports wagering.

~~(12)~~ (14) “Lottery” means the public gaming systems or games regulated, controlled, owned, and operated by the State Lottery Commission in the manner provided by general law, as provided in this article, §29-22-1 *et seq*., §29-22A-1 *et seq*., §29-22B-1 *et seq*., §29-22C-1 *et seq*., and §29-25-1 *et seq.* of this code.

~~(13)~~ (15) “National criminal history background check system” means the criminal history record system maintained by the Federal Bureau of Investigation based on fingerprint identification or any other method of positive identification.

~~(14)~~ (16) “Operator” means a licensed gaming facility which has elected to operate a sports pool and other authorized West Virginia Lottery sports wagering activities.

~~(15)~~ (17) “Professional sport or athletic event” means an event at which two or more persons participate in sports or athletic events and receive compensation in excess of actual expenses for their participation in such event.

~~(16)~~ (18) “Sports event” or “sporting event” means any professional sport or athletic event, any collegiate sport or athletic event, motor race event, e-sports event, or any other special event authorized by the ~~commission~~ Commission under this article.

~~(17)~~ (19) “Sports pool” means the business of accepting wagers on any sports event by any system or method of wagering.

~~(18)~~ (20) “Sports wagering account” means a financial record established by a licensed gaming facility for an individual patron in which the patron may deposit and withdraw funds for sports wagering and other authorized purchases, and to which the licensed gaming facility may credit winnings or other amounts due to that patron or authorized by that patron.

~~(19)~~ (21) “Sports wagering agreement” means a written agreement between the commission and one or more other governments whereby persons who are physically located in a signatory jurisdiction may participate in sports wagering conducted by one or more operators licensed by the signatory governments.

~~(20)~~ (22) “Sports wagering fund” means the special fund in the State Treasury created in §29-22D-17 of this code.

~~(21)~~ (23) “Supplier” means a person that requires a supplier license to provide a sports wagering licensee with goods or services to be used in connection with operation of West Virginia Lottery sports wagering.

~~(22)~~ (24) “Wager” means a sum of money or thing of value risked on an uncertain occurrence.

~~(23)~~ (25) “West Virginia Lottery sports wagering” or “sports wagering” means the business of accepting wagers on sporting events, and other events, the individual performance statistics of athletes in a sporting event or other events, or a combination of any of the same by any system or method of wagering approved by the commission including, but not limited to, mobile applications and other digital platforms that utilize communications technology to accept wagers originating within this state. The term includes, but is not limited to, exchange wagering, parlays, over-under, moneyline, pools, ~~and~~ straight bets~~.~~, against the spread, totals, futures, propositions (game and player), free predictions, subscription predictions, sold predictions, and predictions made through an affiliation or other partnership. The term does not include:

(A) Pari-mutuel betting on the outcome of horse or dog races authorized by §19-23-12a and §19-23-12d of this code;

(B) Lottery games of the West Virginia ~~State~~ Lottery authorized by §29-22-1 *et seq.* of this code;

(C) Racetrack video lottery authorized by §29-22A-1 *et seq.* of this code;

(D) Limited video lottery authorized by §29-22B-1 *et seq.* of this code;

(E) Racetrack table games authorized by §29-22C-1 *et seq.* of this code;

(F) Video lottery and table games authorized by §29-25-1 *et seq.* of this code; and

(G) Daily Fantasy Sports (DFS).

~~(24)~~ (26) “West Virginia Lottery sports wagering license” means authorization granted under this article by the commission to a gaming facility that is already licensed under §29-22A-1 *et seq.* or §29-25-1 *et seq.* of this code, which permits the gaming facility as an agent of the commission to operate West Virginia Lottery sports wagering in one or more designated areas or in one or more buildings owned by the licensed gaming facility on the grounds where video lottery is conducted by the licensee or through any other authorized platform developed by the gaming facility. This term is synonymous with “operator’s license”.

§29-22D-25. Regulation of sports wagering through independent evaluations.

(a) *Criteria* — Independent evaluators, at a minimum, must meet the following criteria:

(1) The audit process shall be constructed, executed, and maintained by no less than one in-house, active CPA. The audit process shall test for all of the following key assertions: completeness, existence, accuracy, valuation, presentation, and occurrence;

(2) The results or any other data attribute of the sports wagering content shall not have the ability to be adjusted, duplicated, or altered in any way by experts or influencers, mobile sports wagering licensees, or content partners after the related sports wagering content event begins;

(3) The core business of the independent evaluator shall be in the performance evaluation, performance ratings, and audit practice of sports wagering content;

(4) The independent evaluator shall have been an established business actively executing core business for no less than one year; and

(5) The independent evaluator shall have no existing conflicts, including the following criteria:

(A) No employee or founder of the independent evaluator, or the independent evaluator as an entity, may also be engaged in sports wagering or engaged with a sports wagering content platform through a direct relationship (such as working for a management services provider or its content partners to create sports wagering content, sell sports wagering content, or otherwise), through investment, or through advising;

(B) No employee or founder of the independent evaluator, or the independent evaluator as an entity, may have cost per acquisition or revenue sharing affiliate relationships with a management services provider; and

(C) No employee or founder of the independent evaluator, or the independent evaluator as an entity, may have links to a management services provider or peer-to-peer betting platforms.

(6) This subsection does not limit an independent evaluator from marketing a management services provider’s performance or a sports wagering content platform’s performance *Provided*, That: Those marketing materials display accurate attributes.

(b) *Enactment*. — The State Lottery Commission shall accredit certain independent evaluators that meet the criteria of subsection (a) of this section to evaluate sports wagering content, specifically sports wagering content from experts or influencers for management services providers and their content partners. The State Lottery Commission shall have six months to identify and accredit independent evaluators. Once identified, management services providers, experts or influencers, and content partners shall have three months to select an independent evaluator from the pool of independent evaluators that the State Lottery Commission identified and accredited.

(c) The independent evaluators shall report their findings to the State Lottery Commission annually, or forthwith upon a finding of a false, misrepresented, or inaccurate management service provider’s performance, or a content platform’s performance. The State Lottery Commission may determine that material misrepresentations exist within the independent evaluators’ reports and, at the Commission’s discretion, may require the management services provider, experts or influencers, or content providers to provide further explanation of the material misrepresentation or may require the management services provider, experts or influencers, or content providers to undertake corrective action to cure existing material misrepresentations.

(d) If the State Lottery Commission determines, based on an independent evaluator’s report, that a management services provider, an expert or influencer, or a content provider is in violation of the provisions of this article, the State Lottery Commission may impose civil penalties on the management services provider, the expert or influencer, or the content provider pursuant to §29-22D-19 of this code, and the management services provider, the expert or influencer, or the content provider may be subject to criminal penalties pursuant to §29-22D-20 and §29-22D-21 of this code.

(e) The State Lottery Commission shall promulgate and implement rules to effectuate the provisions of this section and to facilitate the establishment of an independent evaluation process that is timely, effective, consistent among management services providers, and designed to avoid litigation and grievance. The State Lottery Commission has the authority, pursuant to §29A-1-1 *et seq.* and §29A-3-1 *et seq.* of this code, to promulgate or otherwise enact any legislative, interpretive, and procedural rules the Commission considers necessary for the implementation, administration, and enforcement of this section. At the State Lottery Commission’s discretion, the Commission may implement an independent evaluation fee to be paid by management services providers and may promulgate emergency rules to oversee independent evaluation fees pursuant to §29A-3-15 of this code.