

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]

1 A BILL to amend and reenact §29-22D-3 of the Code of West Virginia, 1931, as amended; and to
2 amend said code by adding thereto a new section, designated §29-22D-25, all relating to
3 allowing the West Virginia Lottery Commission to accredit independent evaluators to audit
4 and opine on sports betting content directly or indirectly affiliated with management
5 services providers; and subjecting management services providers and their direct or
6 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.

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

3 (1) "Adjusted gross sports wagering receipts" means an operator's gross sports wagering
4 receipts from West Virginia Lottery sports wagering, less winnings paid to wagerers in such
5 games.

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

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

11 ~~(3)~~ (4) "Commission" or "State Lottery Commission" means the West Virginia Lottery
12 Commission, created by §29-22-1 *et seq.* of this code.

13 ~~(4)~~ (5) "Director" means the Director of the West Virginia ~~State~~ Lottery Commission,
14 appointed pursuant to §29-22-6 of this code.

15 ~~(5)~~ (6) "E-sports event" means leagues, competitive circuits, tournaments, or similar
16 competitions where individuals or teams play video games, typically for spectators, either in
17 person or online, for the purpose of prizes, money, or entertainment.

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

21 ~~(6)~~ (8) “Gaming equipment” or “sports wagering equipment” means any mechanical,
22 electronic, or other device, mechanism, or equipment, and related supplies used or consumed in
23 the operation of West Virginia Lottery sports wagering at a licensed gaming facility including, but
24 not limited to, a kiosk installed to accept sports wagers.

25 ~~(7)~~ (9) “Gaming facility” means a designated area on the premises of an existing historic
26 resort hotel, licensed under §29-25-1 *et seq.* of this code, to operate video lottery and table games
27 or the facility of an entity authorized to operate racetrack video lottery machines pursuant to §29-
28 22A-1 *et seq.* of this code.

29 ~~(8)~~ (10) “Government” means any governmental unit of a national, state, or local body
30 exercising governmental functions, other than the United States government.

31 ~~(9)~~ (11) “Gross sports wagering receipts” means the total gross receipts received by a
32 licensed gaming facility from sports wagering.

33 ~~(10)~~ (12) “License” means any license applied for or issued by the ~~commission~~
34 Commission under this article including, but not limited to:

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

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

41 (C) A license to be employed at a racetrack or gaming facility licensed under this article to
42 operate West Virginia Lottery sports wagering when the employee works in a designated gaming

43 area that has sports wagering or performs duties in furtherance of or associated with the operation
44 of sports wagering at the licensed gaming facility (occupational license); or

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

47 ~~(11)~~ (13) “Licensed gaming facility” means a designated area on the premises of an
48 existing historic resort hotel, pursuant to §29-25-1 *et seq.* of this code, or the facility of an entity
49 authorized to operate racetrack video lottery machines, pursuant to §29-22A-1 *et seq.* of this code
50 licensed under this article to conduct West Virginia Lottery sports wagering.

51 ~~(12)~~ (14) “Lottery” means the public gaming systems or games regulated, controlled,
52 owned, and operated by the State Lottery Commission in the manner provided by general law, as
53 provided in this article, §29-22-1 *et seq.*, §29-22A-1 *et seq.*, §29-22B-1 *et seq.*, §29-22C-1 *et seq.*,
54 and §29-25-1 *et seq.* of this code.

55 ~~(13)~~ (15) “National criminal history background check system” means the criminal history
56 record system maintained by the Federal Bureau of Investigation based on fingerprint
57 identification or any other method of positive identification.

58 ~~(14)~~ (16) “Operator” means a licensed gaming facility which has elected to operate a sports
59 pool and other authorized West Virginia Lottery sports wagering activities.

60 ~~(15)~~ (17) “Professional sport or athletic event” means an event at which two or more
61 persons participate in sports or athletic events and receive compensation in excess of actual
62 expenses for their participation in such event.

63 ~~(16)~~ (18) “Sports event” or “sporting event” means any professional sport or athletic event,
64 any collegiate sport or athletic event, motor race event, e-sports event, or any other special event
65 authorized by the ~~commission~~ Commission under this article.

66 ~~(17)~~ (19) “Sports pool” means the business of accepting wagers on any sports event by
67 any system or method of wagering.

68 ~~(18)~~ (20) “Sports wagering account” means a financial record established by a licensed
69 gaming facility for an individual patron in which the patron may deposit and withdraw funds for
70 sports wagering and other authorized purchases, and to which the licensed gaming facility may
71 credit winnings or other amounts due to that patron or authorized by that patron.

72 ~~(19)~~ (21) “Sports wagering agreement” means a written agreement between the
73 commission and one or more other governments whereby persons who are physically located in a
74 signatory jurisdiction may participate in sports wagering conducted by one or more operators
75 licensed by the signatory governments.

76 ~~(20)~~ (22) “Sports wagering fund” means the special fund in the State Treasury created in
77 §29-22D-17 of this code.

78 ~~(24)~~ (23) “Supplier” means a person that requires a supplier license to provide a sports
79 wagering licensee with goods or services to be used in connection with operation of West Virginia
80 Lottery sports wagering.

81 ~~(22)~~ (24) “Wager” means a sum of money or thing of value risked on an uncertain
82 occurrence.

83 ~~(23)~~ (25) “West Virginia Lottery sports wagering” or “sports wagering” means the business
84 of accepting wagers on sporting events, and other events, the individual performance statistics of
85 athletes in a sporting event or other events, or a combination of any of the same by any system or
86 method of wagering approved by the commission including, but not limited to, mobile applications
87 and other digital platforms that utilize communications technology to accept wagers originating
88 within this state. The term includes, but is not limited to, exchange wagering, parlays, over-under,
89 moneyline, pools, ~~and straight bets-,~~ against the spread, totals, futures, propositions (game and
90 player), free predictions, subscription predictions, sold predictions, and predictions made through
91 an affiliation or other partnership. The term does not include:

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

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

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

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

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

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

100 (G) Daily Fantasy Sports (DFS).

101 ~~(24)~~ (26) “West Virginia Lottery sports wagering license” means authorization granted
102 under this article by the commission to a gaming facility that is already licensed under §29-22A-1
103 *et seq.* or §29-25-1 *et seq.* of this code, which permits the gaming facility as an agent of the
104 commission to operate West Virginia Lottery sports wagering in one or more designated areas or
105 in one or more buildings owned by the licensed gaming facility on the grounds where video lottery
106 is conducted by the licensee or through any other authorized platform developed by the gaming
107 facility. This term is synonymous with “operator’s license”.

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

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

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

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

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

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

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

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

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

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

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

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

35 (c) The independent evaluators shall report their findings to the State Lottery Commission
36 annually, or forthwith upon a finding of a false, misrepresented, or inaccurate management service
37 provider's performance, or a content platform's performance. The State Lottery Commission may

38 determine that material misrepresentations exist within the independent evaluators' reports and,
39 at the Commission's discretion, may require the management services provider, experts or
40 influencers, or content providers to provide further explanation of the material misrepresentation
41 or may require the management services provider, experts or influencers, or content providers to
42 undertake corrective action to cure existing material misrepresentations.

43 (d) If the State Lottery Commission determines, based on an independent evaluator's
44 report, that a management services provider, an expert or influencer, or a content provider is in
45 violation of the provisions of this article, the State Lottery Commission may impose civil penalties
46 on the management services provider, the expert or influencer, or the content provider pursuant to
47 §29-22D-19 of this code, and the management services provider, the expert or influencer, or the
48 content provider may be subject to criminal penalties pursuant to §29-22D-20 and §29-22D-21 of
49 this code.

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