

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

House Bill 4406

**FISCAL
NOTE**

BY DELEGATES ESPINOSA, BARRETT, UPSON, MOORE

AND FOLK

[Introduced February 2, 2018; Referred
to the Committee on the Judiciary then 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 West Virginia account holders, for distribution of those fees from wagers made by account
5 holders located within and outside 50 miles of a licensed horse racing association and for
6 distribution of those fees from wagers made by account holders located within 50 miles of
7 two or more licensed horse racing associations; providing for regulatory authority in the
8 Racing Commission over advance deposit wagering; providing for the assessment and
9 imposition of regulatory fees and taxes on advance deposit wagering licensees' wagering
10 in West Virginia and for the distribution of the fees and taxes; prohibiting advance deposit
11 wagering in West Virginia unless conducted through an advance deposit wagering
12 licensee or as otherwise provided by law; providing for criminal penalties for accepting or
13 attempting to accept advance deposit wagers without a license; providing authority for the
14 Racing Commission to seek civil remedies and damages; providing that all advance
15 deposit wagers placed by residents within the state are considered to be wagering within
16 West Virginia subject to the laws of this state and rules of the Racing Commission;
17 authorizing rulemaking; and defining terms.

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 (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 18 years of age who applies for, and

7 successfully opens an account with an ADW licensee, including all resident account holders.

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

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

19 (5) "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 (6) "Electronic media" means any electronic communication device or combination of
27 devices including, but not limited to, personal computers, the Internet, private networks,
28 interactive televisions and wireless communication technologies or other technologies approved
29 by the Racing Commission.

30 (7) "Licensee" means any horse racing association holding a license as defined by §19-
31 23-3 of this code;

32 (8) "Located" means, in regard to a resident account holder, where his or her principal

33 residence is located.

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

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

40 (11) "Source market fee" means a fee that must be paid by the ADW licensee, which shall
41 be six percent of total ADW handle, excluding refunds and cancellations wagered by ADW
42 licensee under this section, payable on a monthly basis to the West Virginia Racing Commission
43 and distributed as follows:

44 (A) All source market fees derived from wagers of account holders not located in a zip
45 code within 50 miles of any licensee, shall be prorated by dividing each racing licensee's total
46 handle by the total handle of all West Virginia licensees in the prior calendar year, and distributed
47 as follows:

48 (i) Ten percent of each licensee's prorated amount to the West Virginia Thoroughbred
49 Development Fund;

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

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

52 (B) Unless otherwise agreed between a racing association licensee and an organization
53 of owners and trainers of permit holders pursuant to the terms of the Interstate Horseracing Act
54 of 1978, 15 U.S.C. §3004(a)(1), all source market fees derived from wagers of account holders
55 located in a zip code within 50 miles of a particular licensee, that is licensed to conduct live racing,
56 shall be distributed as follows:

57 (i) Ten percent to the West Virginia Thoroughbred Development Fund established in §19-
58 23-13b of this code;

59 (ii) Forty-five percent to the Purse Fund of the licensee; and

60 (iii) Forty-five percent to the licensee.

61 (C) Unless otherwise agreed between a racing association licensee and an organization
62 of owners and trainers of permit holders pursuant to the terms of the Interstate Horseracing Act
63 of 1978, 15 U.S.C. §3004(a)(1), all source market fees derived from wagers of account holders
64 who were, when wagering, located in an overlapping area located within a zip code within 50
65 miles of two or more licensees, that are licensed to conduct live racing, shall be prorated between
66 the licensees by dividing each licensee's total handle by the total handle of all licensees within a
67 50 mile radius of the area where the wagering account holder was located, and once prorated,
68 distributed in accordance with subparagraphs (ii) and (iii), paragraph (B) of this subdivision, with
69 10 percent of each licensee's prorated amount distributed to the West Virginia Thoroughbred
70 Development Fund

71 (D) The Racing Commission shall determine, and shall make available to all licensed ADW
72 licensees, a list of all zip codes applicable in paragraphs (B) and (C) of this subdivision. If a portion
73 of a zip code is within the 50 mile radius pursuant to this section, the entire zip code shall be
74 considered for all calculations and payments under this section. The Racing Commission shall
75 prescribe the manner of reporting by ADW licensees to comply with paragraphs (A), (B) and (C)
76 of this subdivision.

77 (12) "Total handle" means the total annual dollar sales amount of all pari-mutuel wagering
78 on horse races conducted at, or generated from imports or exports of simulcast horse races to or
79 from, a licensee, including all moneys from wagering conducted under §19-23-9 §19-23-12a, §19-
80 23-12b, and §19-23-12c of this code, but excluding refunds and cancellations, as reported to the
81 Racing Commission, excluding advance deposit wagering under this section.

82 (b) The advance deposit account wagers placed by account holders with an ADW licensee
83 licensed by the Racing Commission in accordance with this section are authorized and the
84 provisions of §61-10-1 of this code relating to gaming do not apply to advance deposit account

85 wagering conducted in accordance with this section.

86 (c) The Racing Commission is vested with jurisdiction over any person or entity that solicits
87 account holders or offers advance deposit wagering in West Virginia. Any person or entity under
88 the jurisdiction of the Racing Commission shall be licensed and the Racing Commission may
89 impose a nonrefundable initial and annual renewal licensing application fee not to exceed \$5,000.
90 Further, the Racing Commission may require any applicant for an initial or renewal ADW license
91 to bear the costs involved in conducting background checks and reviews, unless the applicant is
92 an entity affiliated with a licensee.

93 (d) No person or entity may conduct advance deposit wagering in West Virginia unless the
94 person or entity has applied for and been granted an ADW license by the Racing Commission.
95 The commission shall also ensure that, except for advance deposit wagering authorized in this
96 section, all pari-mutuel wagering on racing is conducted within the confines of a licensee's
97 racetrack or licensed contiguous hotel, as permitted under §19-23-9(a) and §19-23-12a(1) of this
98 code and implementing rules thereunder, including Racing Commission Rule §178-5-5, or within
99 an authorized gaming facility in a historic resort hotel, as permitted under §19-23-12d of this code
100 and implementing rules thereunder.

101 Any person who accepts an advance deposit wager who is not licensed as an advance
102 deposit wagering licensee by the Racing Commission is guilty of a felony and, upon conviction
103 thereof, shall be fined not more than \$50,000 or imprisoned in a state correctional facility not more
104 than five years, or both fined and imprisoned. Further, the court shall order any convicted person
105 to pay restitution to recover all amounts that would have been payable to the Racing Commission
106 under this section.

107 The Racing Commission may seek injunctive relief against any person who accepts or
108 attempts to accept an advance deposit wager without a license issued by the commission. The
109 Racing Commission may also seek recovery of all amounts that would have been payable to the
110 Racing Commission under this section, damages equal to three times the amount of recovery,

111 and reasonable costs and attorney fees. Damages recovered by the Racing Commission shall be
112 distributed as source market fees under this section.

113 (e) In addition to §19-23-11(a) of this code, there is assessed a regulatory fee of one
114 percent of total ADW handle, excluding refunds and cancellations wagered by ADW licensee
115 under this section, payable monthly to the Racing Commission's general administrative account.

116 (f) Advance deposit wagers placed by residents are considered to be wagering conducted
117 in this state and subject to the laws of this state and the rules of the Racing Commission. The
118 Racing Commission shall promulgate rules establishing standards for ADW licensees.

119 (g) The Racing Commission may propose rules for legislative approval, pursuant to §29A-
120 3-1 et seq. of this code to implement this section and may propose emergency rules to provide
121 conditions for the licensing of advance deposit wagering. Those rules are to include, but are not
122 limited to: (1) Standards, qualifications and procedures for the issuance of an advance deposit
123 wagering license in West Virginia; (2) rules establishing initial and renewal license fees and
124 payment of same to the Racing Commission to cover the costs of licensing ADW licensees; (3)
125 provisions regarding access to books and records and submission to investigations and audits by
126 the Racing Commission; (4) provisions regarding the collection and distribution of those fees; (5)
127 standards and procedures for opening, maintaining, operating and securing ADW accounts, as
128 well as protecting confidential information therein; and (6) any other conditions to ensure an
129 orderly process of accepting ADW wagers in acting in the best interests of the West Virginia racing
130 industry.

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.