

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

House Bill 4191

**FISCAL
NOTE**

BY DELEGATES STEELE, FLUHARTY, WESTFALL, BARRETT,

BYRD AND WILLIAMS

[Introduced January 14, 2020; Referred to the

Committee on the Judiciary]

1 A BILL to amend and reenact §29-22D-2, §29-22D-3, §29-22D-5, §29-22D-7, §29-22D-8, §29-
 2 22D-11, §29-22D-12, §29-22D-16, §29-22D-17, §29-22D-20, §29-22D-21, and §29-22D-
 3 22 of the Code of West Virginia, 1931, as amended; and to amend said code by adding
 4 thereto two new sections, designated §29-22D-6a and §29-22D-15a, all relating to
 5 permitting wagering on the results of certain professional or collegiate sports or athletic
 6 events and other events authorized as West Virginia Lottery sports wagering activities;
 7 providing legislative findings; defining terms; establishing license requirements and
 8 prohibitions; adopting house rules and the posting of the same; defining duties of a social
 9 sports wagering operator conducting social sports wagering; requiring the posting of
 10 betting limits; prohibiting unauthorized sports wagering in this state; creating the West
 11 Virginia Lottery Sports Wagering Fund; authorizing the collection of license fees;
 12 authorizing the West Virginia Lottery to collect an administrative allowance from gross
 13 sports wagering receipts; authorizing the West Virginia Lottery to levy and collect a tax in
 14 the amount of 10 percent of adjusted gross sports wagering receipts; defining how moneys
 15 deposited in the West Virginia Lottery Sports Wagering Fund shall be distributed;
 16 establishing the role of law enforcement; imposing civil and criminal penalties; establishing
 17 crimes; providing for the forfeiture of property for certain violations; and preempting this
 18 article from state and local law.

Be it enacted by the Legislature of West Virginia:

ARTICLE 22D. WEST VIRGINIA LOTTERY SPORTS WAGERING ACT.

§29-22D-2. State authorization of sports wagering at licensed racetrack facilities and historic resort hotel; legislative findings and declarations.

1 (a) *Operation of West Virginia Lottery sports wagering.* — Notwithstanding any provision
 2 of law to the contrary, the operation of sports wagering and ancillary activities are only lawful when
 3 conducted in accordance with the provisions of this article and rules of the commission.

4 (b) *Legislative findings.* —

5 (1) The Legislature finds that the operation of the ~~four racetracks and the historic resort~~
6 ~~hotel in this state~~ play hospitality industry plays a critical role in the economy of this state, and
7 such constitutional lotteries are rightfully authorized as state enterprises consistent with the rights
8 and powers granted to the states under the Tenth Amendment of the United States Constitution.
9 The federal government is a government of limited and enumerated powers, and powers not
10 delegated to the United States by the Constitution nor prohibited by it to the states are reserved
11 for the states and its respective citizens.

12 (2) The Legislature finds that section 36, article VI of the Constitution of the State of West
13 Virginia grants the state the exclusive right to lawfully own and operate a lottery in this state.
14 Authorization of wagering on any constitutional lottery within West Virginia is within the state's
15 sovereign rights as a state to act in the best interest of its citizens.

16 (3) The Legislature finds that it is in the best interests of the State of West Virginia for the
17 state to operate a lottery in the form of sports wagering and that it is the intent of the Legislature
18 to authorize sports wagering when federal law is enacted or repealed, or a federal court decision
19 is issued that permits a state to regulate sports wagering, as such power is reserved to the states.

20 (4) The Legislature finds that illegal sports wagering channels operating throughout the
21 United States pose a critical threat to the safety and welfare of the citizens of West Virginia and
22 that creating civil and criminal penalties to prosecute illegal operators, while transferring this black
23 market demand into a secure and highly regulated environment, will protect the public and
24 positively benefit state revenues and the state's economy.

25 (5) The Legislature finds that in order to protect residents of this state who wager on sports
26 or other events and to capture revenues and create jobs generated from sports wagering, it is in
27 the best interests of this state and its citizens to regulate this activity by authorizing and
28 establishing a secure, responsible, fair, and legal system of sports wagering immediately, when
29 the federal ban on sports wagering is lifted.

30 ~~(6) The Legislature finds that the most effective and efficient manner in which the state~~

31 ~~can operate and regulate the forms of lottery authorized by the provisions of this article is to limit~~
 32 ~~the number of authorized operators to those who are licensed, pursuant to the provisions of §29-~~
 33 ~~22A-1 et seq. of this code, and to facilities licensed to operate video lottery terminals, pursuant to~~
 34 ~~the provisions of §29-25-1 et seq. of this code~~

35 ~~(7)~~ (6) The Legislature finds that the granting of licenses pursuant to the provisions of this
 36 article, while maintaining all ownership rights and exercising control through strict regulation of all
 37 West Virginia Lottery sports wagering authorized by the provisions of this article, constitutes an
 38 appropriate exercise by the Legislature of the power granted it by the provisions of section 36,
 39 article VI of the Constitution of the State of West Virginia.

40 ~~(8) The Legislature finds that the operation of West Virginia Lottery sports wagering at~~
 41 ~~racetracks, licensed pursuant to the provisions of §29-22A-1 et seq. of this code, and at a historic~~
 42 ~~resort hotel, licensed pursuant the provisions of §29-25-1 et seq. of this code, serves to protect,~~
 43 ~~preserve, promote, and enhance the tourism industry of the state as well as the general fiscal~~
 44 ~~wellbeing of the state and its subdivisions~~

45 (7) The Legislature finds that individuals frequently place unlawful sports wagers against
 46 other individuals, and in sports wagering pools, at establishments that serve beverages and food,
 47 and that it is beneficial to the state to regulate that wagering activity and capture a portion of the
 48 revenue that it generates.

49 (8) The Legislature finds that the opportunity to participate in sports wagering should not
 50 be predominantly limited to out-of-state companies, and that locally owned businesses, especially
 51 small businesses, should also have the opportunity to participate in sports wagering.

52 (9) The Legislature finds that providing an opportunity for West Virginia-owned small
 53 businesses to participate in sports wagering will increase economic activity in the state.

§29-22D-3. Definitions.

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

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

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

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

17 ~~(6)~~ “Gaming facility” means a designated area on the premises of an existing historic resort
18 hotel, licensed under §29-25-1 *et seq.* of this code, to operate video lottery and table games or
19 the facility of an entity authorized to operate racetrack video lottery machines, pursuant to §29-
20 22A-1 *et seq.* of this code.

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

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

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

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

29 license);

30 (B) A license to act as an agent of the commission in operating West Virginia Lottery social
31 sports wagering (social operator license or West Virginia Lottery social sports wagering operator
32 license);

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

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

40 ~~(D)~~ (E) A license to provide management services under a contract to a gaming facility,
41 licensed under this article, to operate sports wagering, or to a social operator, licensed under this
42 article, to operate social sports wagering (management services provider license).

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

47 ~~(41)~~ "Lottery" means the public gaming systems or games regulated, controlled, owned,
48 and operated by the State Lottery Commission in the manner provided by general law, as provided
49 in this article, §29-22-1 *et seq.*, §29-22A-1 *et seq.*, §29-22B-1 *et seq.*, §29-22C-1 *et seq.*, and
50 §29-25-1 *et seq.* of this code.

51 ~~(42)~~ "National criminal history background check system" means the criminal history
52 record system maintained by the Federal Bureau of Investigation, based on fingerprint
53 identification or any other method of positive identification.

54 ~~(43)~~ "Operator" means a licensed gaming facility which has elected to operate a sports

55 pool and other authorized West Virginia Lottery sports wagering activities.

56 ~~(14)~~ “Professional sport or athletic event” means an event at which two or more persons
57 participate in sports or athletic events and receive compensation, or are eligible for monetary
58 prizes, in excess of actual expenses for their participation in such event.

59 “Social sports wagering operator” or “social operator” means any holder of a Class A
60 license issued by the West Virginia Alcohol Beverage Control Administration that has also been
61 licensed by the commission to operate a social sports wagering business.

62 “Social wagering receipts” means the total receipts received by a licensed social sports
63 wagering operator from social sports wagering.

64 ~~(15)~~ “Sports event” or “sporting event” means any professional sport or athletic event, any
65 collegiate sport or athletic event, motor race event, or any other special event authorized by the
66 commission under this article.

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

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

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

77 ~~(19)~~ “Sports wagering fund” means the special fund in the State Treasury, created in §29-
78 22D-17 of this code.

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

81 Lottery sports wagering.

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

83 “West Virginia Lottery social sports wagering” or “social sports wagering” means the
84 business of operating mobile applications or other digital platforms by which individuals may place
85 wagers against other individuals, or participate in wagering pools, on sporting, e-sports, political,
86 entertainment-industry, or other events, or the individual performances of competitors or entrants
87 in such events, or whether a given occurrence or series of occurrences will take place during the
88 course of such an event, or a combination of any of the same by any system or method of
89 wagering approved by the commission including, but not limited to, mobile applications and other
90 digital platforms that utilize communications technology to accept wagers originating within this
91 state: *Provided*, That no wager may be placed on any event sponsored or organized by any
92 elementary or secondary school or by the West Virginia Secondary Schools Activities
93 Commission. The term includes, but is not limited to, exchange wagering and pools. The term
94 does not include any of the types of wagering expressly excluded from the definition of “West
95 Virginia Lottery sports wagering” in this section. The term also does not include moneyline or
96 odds-based wagering or parlays.

97 “West Virginia Lottery social sports wagering license” means authorization granted, under
98 this article, by the commission to a holder of a Class A license issued by the West Virginia Alcohol
99 Beverage Control Administration (ABCA) which permits that Class A ABCA license holder to
100 operate West Virginia Lottery social sports wagering. This term is synonymous with “social
101 operator’s license.”

102 ~~(22)~~ “West Virginia Lottery sports wagering” or “sports wagering” means the business of
103 accepting wagers on sporting events and other events, the individual performance statistics of
104 athletes in a sporting event or other events, West Virginia Lottery social sports wagering, or a
105 combination of any of the same by any system or method of wagering approved by the
106 commission including, but not limited to, mobile applications and other digital platforms that utilize

107 communications technology to accept wagers originating within this state: Provided, That no
108 wager may be placed on any event sponsored or organized by any elementary or secondary
109 school or by the West Virginia Secondary Schools Activities Commission. The term includes, but
110 is not limited to, exchange wagering, parlays, over-under, moneyline, pools, and straight bets.

111 The term does not include:

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

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

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

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

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

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

120 (G) Daily Fantasy Sports (DFS).

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

§29-22D-5. Licenses required.

1 (a) The commission shall not grant a license required under this article to any applicant
2 until the commission has published the notice in the State Register, as required by §29-22D-15(f)

3 of this code.

4 (b) No person may engage in any activity in connection with West Virginia Lottery sports
5 wagering in this state unless all necessary licenses have been obtained in accordance with this
6 article and rules of the commission. ~~Four~~ Five types of licenses: (1) Operator; (2) social operator;
7 (3) supplier; ~~(3)~~ (4) management services provider; and ~~(4)~~ (5) occupational—are issued pursuant
8 to this article, and no person or entity may engage in any sports wagering operation or activity
9 without first obtaining the appropriate license.

10 (c) The commission may not grant a license until it determines that each person who has
11 control of the applicant meets all qualifications for licensure. The following persons are considered
12 to have control of an applicant:

13 (1) Each person associated with a corporate applicant, including any corporate holding
14 company, parent company, or subsidiary company of the applicant who has the ability to control
15 the activities of the corporate applicant or elect a majority of the board of directors of that
16 corporation. This does not include any bank or other licensed lending institution which holds a
17 mortgage or other lien acquired in the ordinary course of business;

18 (2) Each person associated with a non-corporate applicant who directly or indirectly holds
19 a beneficial or proprietary interest in the applicant's business operation, or who the commission
20 otherwise determines has the ability to control the applicant; and

21 (3) Key personnel of an applicant, including any executive, employee, or agent, having the
22 power to exercise significant influence over decisions concerning any part of the applicant's
23 business operation.

24 (d) *License application requirements.* — All applicants for any license issued under this
25 article shall submit an application to the commission in the form the commission requires and
26 submit fingerprints for a national criminal records check by the Criminal Identification Bureau of
27 the West Virginia State Police and the Federal Bureau of Investigation. The fingerprints shall be
28 furnished by all persons required to be named in the application and shall be accompanied by a

29 signed authorization for the release of information by the Criminal Investigation Bureau and the
30 Federal Bureau of Investigation. The commission may require additional background checks on
31 licensees when they apply for annual license renewal, and any applicant convicted of any
32 disqualifying offense shall not be licensed.

33 (e) Each sports wagering licensee, social sports wagering licensee, licensed supplier, or
34 a licensed management services provider shall display the license conspicuously in its place of
35 business or have the license available for inspection by any agent of the commission or any law-
36 enforcement agency.

37 (f) Each holder of an occupational license shall carry the license and have some indicia of
38 licensure prominently displayed on his or her person when present in a licensed gaming facility
39 at all times, in accordance with the rules of the commission.

40 (g) Each person licensed under this article shall give the commission written notice within
41 30 days of any change to any information provided in the licensee's application for a license or
42 renewal.

43 (h) No commission employee may be an applicant for any license issued under this article
44 nor may any employee of any such licensee directly or indirectly hold an ownership or a financial
45 interest in any West Virginia Lottery sports wagering or social sports wagering license.

§29-22D-6a. Social operator license; West Virginia social sports wagering operators.

1 (a) A holder of a Class A license from the ABCA may operate West Virginia Lottery social
2 sports wagering upon the approval of the commission, and the commission shall have the general
3 responsibility for the implementation of this article and applicable rules.

4 (b) All social sports wagering authorized by this article shall be West Virginia Lottery
5 games owned by the State of West Virginia. A social operator license granted by the commission,
6 pursuant to this article, grants licensees lawful authority to conduct West Virginia Lottery social
7 sports wagering within the terms and conditions of the license and any rules promulgated under
8 this article.

9 (c) Grant of license. -- Upon application by a holder of a Class A license from the ABCA
10 and payment of an application fee of \$1,000 for each Class A license that the applicant holds, the
11 commission shall immediately grant a West Virginia Lottery social sports wagering license to an
12 operator that provides for the right to conduct West Virginia Lottery social sports wagering:
13 Provided, That the applicant must meet the requirements for licensure under the provisions of this
14 article and the rules of the commission. This license shall be issued for a five-year period, and
15 may be renewed for five-year periods upon payment of a renewal fee of \$1,000 for each Class A
16 license that the applicant holds, as long as an operator continues to meet all qualification
17 requirements.

18 (d) Platform. -- A West Virginia Lottery social sports wagering license authorizes the
19 operation of West Virginia Lottery social sports wagering through any mobile application or other
20 digital platform approved by the commission.

21 (e) Management service contracts. --

22 (1) Approval. -- A West Virginia Lottery social sports wagering licensee may not enter into
23 any management services contract that would permit any person other than the licensee to act
24 as the commission's agent in operating West Virginia Lottery social sports wagering, unless the
25 management services contract: (A) Is with a person licensed under this article to provide
26 management services; (B) is in writing; and (C) has been approved by the commission.

27 (2) Single management services provider. -- A West Virginia Lottery social sports wagering
28 licensee may not have more than one management services contract at any time.

29 (3) Material change. -- The West Virginia Lottery social sports wagering licensee shall
30 submit any material change in a management services contract, previously approved by the
31 commission, to the commission for its approval or rejection before the material change may take
32 effect.

33 (4) Other commission approvals and licenses. -- The duties and responsibilities of a
34 management services provider under a management services contract may not be assigned,

35 delegated, subcontracted, or transferred to a third party without the prior approval of the
36 commission. Third parties must be licensed as a management services provider, under this
37 article, before providing services.

38 (f) *Expiration date and renewal.* -- A licensed social operator shall submit to the
39 commission such documentation or information as the commission may require, to demonstrate
40 to the satisfaction of the director that the licensee continues to meet the requirements of the law
41 and rules. Required documentation or information shall be submitted no later than five years after
42 issuance of a social operator license and every five years thereafter, or within lesser periods,
43 based on circumstances specified by the commission.

§29-22D-7. Management services providers; license requirements.

1 (a) *License.* — The holder of a license to operate West Virginia Lottery sports wagering
2 or West Virginia Lottery social sports wagering may contract with an entity to conduct that
3 operation in accordance with the ~~regulations~~ rules of the commission. That entity shall obtain a
4 license as a management services provider prior to the execution of any such contract, and such
5 license shall be issued pursuant to the provisions of this article and any ~~regulations~~ rules
6 promulgated by the commission. Entities that are not licensed to provide management services
7 to holders of West Virginia sports wagering licenses may receive licenses to provide management
8 services to holders of West Virginia social sports wagering licenses.

9 (b) *License qualifications and fee.* — Each applicant for a management services provider
10 license shall meet all requirements for licensure and pay a nonrefundable license and application
11 fee of \$1,000. The commission may adopt rules establishing additional requirements for an
12 authorized management services provider. The commission may accept licensing by another
13 jurisdiction, that it specifically determines to have similar licensing requirements, as evidence the
14 applicant meets authorized management services provider licensing requirements.

15 (c) *Renewal.* — Management services provider licenses shall be renewed annually to any
16 licensee who continues to be in compliance with all requirements and who pays the annual

17 renewal fee of \$1,000.

18 (d) Any entity or individual who shares in revenue, including any affiliate operating under
19 a revenue share agreement, shall be licensed under this section.

§29-22D-8. Suppliers; license requirements.

1 (a) *Supplier license.* —

2 (1) The commission may issue a supplier license to a person to sell or lease sports
3 wagering or social sports wagering equipment, systems, or other gaming items necessary to
4 conduct sports wagering or social sports wagering, and offer services related to such equipment
5 or other gaming items to a West Virginia Lottery sports wagering or social sports wagering
6 licensee while the license is active. The commission may establish the conditions under which
7 the commission may issue provisional licenses, pending completion of final action on an
8 application.

9 (2) The commission may adopt rules establishing additional requirements for a West
10 Virginia Lottery sports wagering or social sports wagering supplier and any system or other
11 equipment utilized for wagering. The commission may accept licensing by another jurisdiction,
12 that it specifically determines to have similar licensing requirements, as evidence the applicant
13 meets West Virginia Lottery sports wagering or social sports wagering supplier licensing
14 requirements.

15 (b) *Supplier specifications.* — An applicant for a supplier license shall demonstrate that
16 the equipment, system, or services that the applicant plans to offer to the sports wagering or social
17 sports wagering licensee conform to standards established by the commission and applicable
18 state law. The commission may accept approval by another jurisdiction, that it specifically
19 determines have similar equipment standards, as evidence the applicant meets the standards
20 established by the commission and applicable state law.

21 (c) *License application and renewal fees.* — Applicants shall pay to the commission a
22 nonrefundable license and application fee in the amount of \$1,000. After the initial one-year term,

23 the commission shall renew supplier licenses annually thereafter. Renewal of a supplier license
24 will be granted to any renewal applicant who has continued to comply with all applicable statutory
25 and regulatory requirements, upon submission of the commission issued renewal form and
26 payment of a \$1,000 renewal fee.

27 (d) *Inventory.* — A licensed sports wagering or social sports wagering supplier shall submit
28 to the commission a list of all sports wagering or social sports wagering equipment and services
29 sold, delivered to, or offered to a West Virginia Lottery sports wagering or social sports wagering
30 licensee in this state, as required by the commission, all of which must be tested and approved
31 by an independent testing laboratory approved by the commission. A sports wagering or social
32 sports wagering licensee may continue to use supplies acquired from a licensed ~~sports wagering~~
33 supplier, even if a supplier's license expires or is otherwise cancelled, unless the commission
34 finds a defect in the supplies.

§29-22D-11. Sports wagering house rules; posting of rules.

1 (a) Each operator and social operator shall adopt comprehensive house rules for game
2 play governing sports wagering or social sports wagering transactions with its patrons. These
3 comprehensive rules will be published as part of the minimum internal control standards. The
4 rules shall specify the amounts to be paid on winning wagers and the effect of schedule
5 changes. House rules shall be approved by the commission prior to implementation.

6 (b) The house rules, together with any other information the commission deems
7 appropriate, shall be conspicuously displayed and included in the terms and conditions of the
8 sports wagering system. Copies shall be made readily available to patrons.

9 (c) The commission shall license and require the display of West Virginia Lottery game
10 logos on game surfaces, other gaming items, and any locations the commission considers
11 appropriate.

§29-22D-12. Operator duties; sports wagering operations at a licensed gaming facility.

1 (a) *General.* — All operators and social operators licensed under this article to conduct

2 West Virginia Lottery sports wagering or West Virginia Lottery social sports wagering shall:

3 (1) Employ a monitoring system utilizing software to identify non-normal irregularities in
4 volume or odds swings which could signal suspicious activities that should require further
5 investigation which shall be immediately reported and investigated by the commission. System
6 requirements and specifications shall be developed according to industry standards and
7 implemented by the commission as part of the minimum internal control standards;

8 (2) Promptly report to the commission any facts or circumstances related to the operation
9 of a West Virginia Lottery sports wagering or social sports wagering licensee which constitute a
10 violation of state or federal law and immediately report any suspicious betting over a threshold
11 set by the operator that has been approved by the commission to the appropriate state or federal
12 authorities;

13 (3) Conduct all sports wagering and social sports wagering activities and functions in a
14 manner which does not pose a threat to the public health, safety, or welfare of the citizens of this
15 state and does not adversely affect the security or integrity of the West Virginia Lottery;

16 (4) Hold the commission and this state harmless from and defend and pay for the defense
17 of any and all claims which may be asserted against a licensee, the commission, the state, or
18 employees thereof, arising from the licensee's actions or omission while acting as an agent of the
19 commission operating West Virginia Lottery sports wagering or social sports wagering pursuant
20 to this article;

21 (5) Assist the commission in maximizing sports wagering or social sports wagering
22 revenues; and

23 (6) Keep current in all payments and obligations to the commission.

24 (b) *Duties.* — All West Virginia Lottery sports wagering licensees shall:

25 (1) Acquire West Virginia Lottery sports wagering or social sports wagering gaming
26 equipment by purchase, lease, or other assignment and provide a secure location for the
27 placement, operation, and play of sports wagering or social sports wagering gaming equipment;

28 (2) Prevent any person from tampering with or interfering with the operation of any West
29 Virginia Lottery sports wagering or social sports wagering;

30 (3) Ensure that West Virginia Lottery sports wagering conducted at a gaming facility is
31 within the sight and control of designated employees of the licensee and such wagering at the
32 facility or otherwise available by the licensee is conducted under continuous observation by
33 security equipment in conformity with specifications and requirements of the commission;

34 (4) Ensure that West Virginia Lottery sports wagering occurs only in the specific locations
35 within designated gaming areas approved by the commission or using a commission approved
36 mobile application or other digital platform that utilizes communications technology to accept
37 wagers originating within this state, or on a sports wagering device. West Virginia Lottery sports
38 wagering shall only be relocated or offered in additional authorized manners in accordance with
39 the rules of the commission;

40 (5) Maintain sufficient cash and other supplies to conduct sports wagering or social sports
41 wagering at all times; and

42 (6) Maintain daily records showing the gross sports wagering receipts and adjusted gross
43 sports wagering receipts, or social wagering receipts, of the licensee from West Virginia Lottery
44 sports wagering and shall timely file with the commission any additional reports required by rule
45 or by other provisions of this code.

§29-22D-15a. Authorization of social sports wagering in this state; requirements.

1 (a) A social operator may operate mobile or other digital platforms or sports wagering
2 devices, approved by the commission, by which a patron located within this state may place
3 wagers against other patrons also located in this state, or participate in wagering pools, through
4 the patron's social sports wagering account.

5 (b) A social operator may operate mobile or other digital platforms or sports wagering
6 devices, approved by the commission, by which a patron located in a state or jurisdiction with
7 which the commission has entered into a sports wagering agreement may place wagers against

8 other patrons also located in states or jurisdictions with which the commission has entered into
9 sports wagering agreements, or may participate in a wagering pool in a state or jurisdiction with
10 which the commission has entered into a sports wagering agreement, through the patron's social
11 sports wagering account.

12 (c) The commission and social operator may ban any person from participating in the play
13 or operation of any West Virginia Lottery social sports wagering. A log of all excluded players shall
14 be kept by the West Virginia Lottery and each licensee, and no player on the commission's
15 exclusion list or the licensed social operator's exclusion list, shall wager on any West Virginia
16 Lottery social sports wagering under this article.

17 (d) The commission shall promulgate rules implementing the provisions of subsection (a)
18 of this section by interpretive rule and minimum internal control standards.

19 (e) No licensed social operator employee may place a wager on any social sports
20 wagering at the employer's facility or through any other mobile application or digital platform of
21 their employer.

22 (f) No commission employee may knowingly wager or be paid any prize from any wager
23 placed in West Virginia Lottery social sports wagering within this state or at any facility outside
24 this jurisdiction that is directly or indirectly owned or operated by a social sports wagering licensee.

**§29-22D-16. Sports wagering revenues; accounting for the state's share of revenue
imposed for the privilege of offering West Virginia Lottery sports wagering;
limitation of other taxes; recoupment for improvements.**

1 *(a) Imposition and rate of assessment.* — For the privilege of holding a license to operate
2 sports or social sports wagering under this article, the state shall impose and collect 10 percent
3 of the licensee's adjusted gross sports wagering or social sports wagering receipts from the
4 operation of West Virginia Lottery sports wagering or West Virginia Lottery social sports wagering
5 (hereinafter "privilege tax" or "tax"). The accrual method of accounting shall be used for purposes
6 of calculating the amount of the tax owed by the licensee.

7 (b) *Operator revenue reports and payment of privilege tax.* —

8 (1) The tax levied and collected pursuant to subsection (a) of this section is due and
9 payable to the commission in weekly installments on or before the Wednesday following the
10 calendar week in which the adjusted gross sports wagering receipts or social sports wagering
11 receipts were received and the tax obligation was accrued.

12 (2) The licensed operator or social operator shall complete and submit the return for the
13 preceding week by electronic communication to the commission, on or before Wednesday of each
14 week, in the form prescribed by the commission that provides:

15 (A) The total gross sports wagering receipts and adjusted gross sports wagering receipts
16 or social sports wagering receipts from operation of West Virginia Lottery sports wagering or West
17 Virginia Lottery social sports wagering during that week;

18 (B) The tax amount for which the sports wagering or social sports wagering licensee is
19 liable; and

20 (C) Any additional information necessary in the computation and collection of the tax on
21 adjusted gross sports wagering or social sports wagering receipts required by the commission.

22 (3) The tax amount shown to be due shall be remitted by electronic funds transfer
23 simultaneously with the filing of the return. All moneys received by the commission pursuant to
24 this section shall be deposited in the sports wagering fund in accordance with the provisions of
25 this article.

26 (4) When adjusted gross receipts for a week is a negative number because the winnings
27 paid to patrons wagering on the licensee's West Virginia Lottery sports wagering exceeds the
28 licensee's total gross receipts from sports wagering by patrons, the commission shall allow the
29 licensee to carry over the negative amount to returns filed for subsequent weeks. The negative
30 amount of adjusted gross receipts may not be carried back to an earlier week and moneys
31 previously received by the commission will not be refunded, except if the licensee surrenders its
32 operator's license and the licensee's last return reported negative adjusted gross receipts. In that

33 case, the commission shall multiply the amount of negative adjusted gross receipts by 10 percent
 34 and pay the amount to the licensee in the manner approved by the commission.

35 (c) *Privilege tax obligation imposed by this section is in lieu of other taxes.* — With the
 36 exception of the ad valorem property tax collected under chapter 11A of this code, the privilege
 37 tax on adjusted gross sports wagering receipts and social wagering receipts imposed by this
 38 section is in lieu of all other state and local taxes and fees imposed on the operation of, or the
 39 proceeds from operation of West Virginia Lottery sports wagering or West Virginia Lottery social
 40 sports wagering, except as otherwise provided in this section. The consumers sales and services
 41 tax imposed pursuant to §11-15-1 *et seq.* of this code, the use tax imposed by §11-15A-1 *et seq.*
 42 of this code and any similar local tax imposed at the municipal or county level, shall not apply to
 43 the licensee’s gross receipts from any West Virginia Lottery sports wagering or West Virginia
 44 Lottery social sports wagering, or to the licensee’s purchase of sports wagering or social sports
 45 wagering equipment, supplies, or services directly used in operation of the sports wagering, or
 46 social sports wagering authorized by this article.

47 (d) Acquisition of any system or wagering equipment and other items related to the
 48 operation of West Virginia sports wagering or West Virginia Lottery social sports wagering shall
 49 be considered “facility modernization improvements” eligible for recoupment as defined in §29-
 50 22A-10(b)(2) and §29-25-22(c) of this code.

51 (e) *Prohibition on credits.* — Notwithstanding any other provision of this code to the
 52 contrary, no credit may be allowed against the privilege tax obligation imposed by this section or
 53 against any other tax imposed by any other provision of this code for any investment in gaming
 54 equipment or for any investment in or improvement to real property that is used in the operation
 55 of West Virginia Lottery sports wagering or West Virginia Lottery social sports wagering.

§29-22D-17. West Virginia Lottery Sports Wagering Fund; distribution of funds.

1 (a) The special fund in the State Treasury known as the West Virginia Lottery Sports
 2 Wagering Fund is hereby created and all moneys collected under this article by the commission

3 shall be deposited with the State Treasurer to the West Virginia Lottery Sports Wagering Fund.
4 The fund shall be an interest-bearing account with all interest or other return earned on the money
5 of the fund credited to and deposited in the fund. All expenses of the commission incurred in the
6 administration and enforcement of this article shall be paid from the sports wagering fund pursuant
7 to subsection (b) of this section.

8 (b) The commission shall deduct an amount sufficient to reimburse its actual costs and
9 expenses incurred in administering sports wagering at licensed gaming facilities and in
10 administering social sports wagering from the gross deposits into the sports wagering fund. The
11 amount remaining after the deduction for administrative expenses is the net profit.

12 (1) *Administrative allowance.* — The commission shall retain up to 15 percent of gross
13 deposits for the fund operation and its administrative expenses: *Provided,* That in the event that
14 the percentage allotted for operations and administration generates a surplus, the surplus shall
15 be allowed to accumulate but may not exceed \$250,000. On a monthly basis, the director shall
16 report any surplus in excess of \$250,000 to the Joint Committee on Government and Finance and
17 remit the entire amount of those surplus funds in excess of \$250,000 to the State Treasurer which
18 shall be allocated as net profit.

19 (2) *Distribution of net profit.* — In each fiscal year, net profit shall be deposited into the
20 State Lottery Fund created by §29-22-18 of this code until a total of \$15 million is deposited;
21 thereafter, the remainder shall be deposited into the Public Employees Insurance Agency
22 Financial Stability Fund to stabilize and preserve the future solvency of PEIA, and such amount
23 may not be included in the calculation of any plan year aggregate premium cost-sharing
24 percentages between employers and employees.

§29-22D-20. Crimes and penalties related to unauthorized sports wagering operations.

1 (a) Any person, other than a licensee under this article, who engages in accepting,
2 facilitating, or operating a sports wagering or social sports wagering operation is guilty of a
3 misdemeanor and, upon conviction thereof, shall be fined not more than \$10,000 or confined in

4 jail for not more than 90 days, or both fined and confined.

5 (b) Notwithstanding the penalty provisions subsection (a) of this section, any person
6 convicted of a second violation of subsection (a) of this section is guilty of a misdemeanor and,
7 upon conviction thereof, shall be fined not more than \$50,000, or confined in jail for not more than
8 six months, or both fined and confined.

9 (c) Notwithstanding the penalty provisions of subsections (a) and (b) of this section, any
10 person convicted of a third or subsequent violation of ~~said~~ subsection (a) of this section is guilty
11 of a felony, and upon conviction thereof, shall be fined not less than \$25,000 nor more than
12 \$100,000 or imprisoned in a state correctional facility for not less than one year nor more than
13 five years, or both fined and ~~confined~~ imprisoned.

§29-22D-21. Crimes and penalties related to authorized sports wagering operation.

1 (a) A sports wagering or social sports wagering licensee is guilty of unlawful operation and
2 is guilty of a misdemeanor when:

3 (1) The licensee operates West Virginia Lottery sports wagering or social sports wagering
4 without authority of the commission to do so;

5 (2) The licensee operates West Virginia Lottery sports wagering or social sports wagering
6 in any location or by any manner that is not approved by the commission;

7 (3) The licensee knowingly conducts, carries on, operates, or allows any sports wagering
8 or social sports wagering to occur on premises or through any other device if equipment or
9 material has been tampered with, or exposed to conditions in which it will be operated in a manner
10 designed to deceive the public;

11 (4) The licensee employs an individual who does not hold a valid occupational license in
12 a position for which a license is required or otherwise allows an individual to perform duties for
13 which such license is required or continues to employ an individual after the employee's
14 occupational license is no longer valid;

15 (5) The licensee acts or employs another person to act as if he or she is not an agent or

16 employee of the licensee in order to encourage participation in West Virginia Lottery sports
17 wagering at the licensed gaming facility;

18 (6) The licensee knowingly permits an individual under the age of 21 to enter or remain in
19 a designated gaming area or to engage in sports wagering at a licensed gaming facility; or

20 (7) The licensee exchanges tokens, chips, electronic media, or other forms of credit used
21 for wagering for anything of value except money or credits applied to a sports wagering account
22 at a gaming facility authorized under this article.

23 (b) A person is guilty of a felony when:

24 (1) A person offers, promises, or gives anything of value to anyone for the purpose of
25 influencing the outcome of a race, sporting event, contest, or game upon which a wager may be
26 made, or a person places, increases, or decreases a wager after acquiring knowledge, not
27 available to the general public, that anyone has been offered, promised, or given anything of value
28 for the purpose of influencing the outcome of the race, sporting event, contest, or game upon
29 which the wager is placed, increased or decreased, or attempts to do any of the same;

30 (2) A person changes or alters the normal outcome of any game played on a mobile or
31 other digital platform, including any interactive gaming system used to monitor the same or the
32 way in which the outcome is reported to any participant in the game;

33 (3) The person manufactures, sells, or distributes any device that is intended by that
34 person to be used to violate any provision of this article or the sports wagering laws of any other
35 state;

36 (4) The person places a bet or aids any other individual in placing a bet on a sporting event
37 or other sports wagering game or offering authorized under this article after unlawfully acquiring
38 knowledge of the outcome on which winnings from that bet are contingent;

39 (5) The person claims, collects, or takes anything of value from a gaming facility with West
40 Virginia Lottery sports wagering with intent to defraud or attempts such action without having
41 made a wager in which such amount or value is legitimately won or owed;

42 (6) The person knowingly places a wager using counterfeit currency or other counterfeit
43 form of credit for wagering at a gaming facility with West Virginia Lottery sports wagering; or

44 (7) The person, not a licensed gaming facility under this article or an employee or agent
45 of a gaming facility licensed under this article acting in furtherance of the licensee's interest, has
46 in his or her possession on grounds owned by the gaming facility licensed under this article or on
47 grounds contiguous to the licensed gaming facility, any device intended to be used to violate a
48 provision of this article or any rule of the commission.

49 (c) Any person who violates any provision of subsection (a) of this section is guilty of a
50 misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 or confined in jail
51 for not more than six months, or both fined and confined, except any violation that is not committed
52 by a natural person may result in a fine of not more than \$25,000.

53 (d) Any person who violates any provision of subsection (b) of this section is guilty of a
54 felony and, upon conviction thereof, shall be fined not less than \$5,000 nor more than \$10,000,
55 or ~~confined~~ imprisoned in a state correctional facility for not less than one year nor more than five
56 years, or both fined and ~~confined~~ imprisoned.

57 (e) With regard to subsection (a) of this section, each West Virginia sports wagering, and
58 social sports wagering licensee shall post notice of the prohibitions and penalties of this section
59 in a manner determined by the rules of the commission.

§29-22D-22. Preemption.

1 No local law or rule providing any penalty, disability, restriction, regulation, or prohibition
2 for operating a gaming facility with West Virginia Lottery sports wagering or supplying a licensed
3 gaming facility or for operating West Virginia Lottery social sports wagering, may be enacted, and
4 the provisions of this article preempt all regulations, rules, ordinances, and laws of any county or
5 municipality in conflict with this article.

NOTE: The purpose of this bill is to allow social sports wagering. It allows the business of

operating mobile applications or other digital platforms by which individuals may place wagers against other individuals, or participate in wagering pools, on sporting, e-sports, political, entertainment-industry, or other events, or the individual performances of competitors or entrants in such events, or whether a given occurrence or series of occurrences will take place during the course of such an event, or a combination of any of the these events by any system or method of wagering approved by the Lottery Commission including, but not limited to, mobile applications and other digital platforms that use communications technology to accept wagers originating within this state.

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