

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

ENGROSSED

Committee Substitute

for

House Bill 4438

BY DELEGATES ESPINOSA, HOUSEHOLDER, BARRETT,

STORCH AND HARDY

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

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §19-23-12e, relating to the licensing of advance deposit wagering; defining
3 terms; providing for source market fees; providing for certain distribution of source market
4 fees derived from wagers of account holders; providing that advance deposit account
5 wagers are authorized; providing exception from certain provisions of code; conferring
6 jurisdiction to the Racing Commission; providing for the assessment and imposition of
7 licensing and annual renewal fees; providing that applicants may bear certain costs;
8 prohibiting advance deposit wagering in West Virginia unless conducted through an
9 advance deposit wagering licensee; exempting advance deposit wagering from certain
10 provisions of code and implementing rules; providing for criminal penalties for accepting
11 advance deposit wagers without a license; providing authority for the Racing Commission
12 to seek civil remedies and damages; providing for a regulatory fee; providing that all
13 advance deposit wagers placed by residents within the state are considered to be
14 wagering within West Virginia subject to the laws of this state and rules of the Racing
15 Commission; providing for an investigation as to whether nonresident account holders of
16 a licensee placed wagers while physically located in West Virginia; and authorizing
17 rulemaking and emergency rulemaking.

Be it enacted by the Legislature of West Virginia:

ARTICLE 23. HORSE AND DOG RACING.

§19-23-12e. Licensing of advance deposit account wagering.

1 (a) As used in this section:

2 “Account” means an advance deposit account wagering account owned by an account
3 holder and managed by an ADW licensee that the Racing Commission has determined will
4 maintain a specific identifiable record of account deposits, wagers, credits, debits, and
5 withdrawals and protect the account holder’s confidential information.

6 “Account holder” means a resident individual, at least 18 years of age who applies for and
7 successfully opens an account with an ADW licensee.

8 “Advance deposit account wagering” means a method of pari-mutuel wagering that is
9 permissible under the Interstate Horseracing Act, 15 U.S.C §3001, et seq., in which an individual
10 may establish an account with a person or entity, licensed by the Racing Commission, to place
11 pari-mutuel wagers on horse or greyhound racing with the ADW licensee via electronic media or
12 by telephone, but not including account wagering conducted through a licensee under §19-23-
13 9(a) of this code, and the Racing Commission’s rules thereunder with respect to wagering
14 conducted pursuant to Racing Commission Rule §178-5-5.

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

19 “ADW” means advance deposit account wagering.

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

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

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

33 “Located” means, in regard to a resident account holder, where his or her principal
34 residence is located.

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

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

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

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

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

52 (1) The Racing Commission shall prorate all source market fees derived from wagers of
53 account holders between the licensees by dividing each licensee’s total handle by the total handle
54 of all West Virginia licensees in the prior calendar year, and distribute the prorated amounts as
55 follows:

56 (A) Ten percent of each horse racing licensee's prorated amount to the West Virginia
57 Thoroughbred Development Fund or ten percent of each dog racing licensee's prorated amount
58 to the West Virginia Racing Commission Special Account-West Virginia Greyhound Breeding
59 Development Fund;

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

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

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

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

77 (e) A person or entity may not conduct advance deposit account wagering in West Virginia
78 unless the person or entity has applied for and been granted an ADW license by the Racing
79 Commission. The Racing Commission shall also ensure that, except for advance deposit account
80 wagering authorized under this section, all pari-mutuel wagering on racing is conducted within the
81 confines of a licensee's racetrack or licensed contiguous hotel, as permitted under §19-23-9(a)

82 and §19-23-12a(1) of this code and implementing rules thereunder, including Racing Commission
83 Rule §178-5-5, or within an authorized gaming facility in a historic resort hotel, as permitted under
84 §19-23-12d of this code and implementing rules thereunder.

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

91 (g) The Racing Commission may seek injunctive relief against any person who is not
92 licensed as an advance deposit account wagering licensee by the Racing Commission who
93 accepts or attempts to accept an advance deposit account wager from a resident. The Racing
94 Commission may also seek recovery of all amounts that would have been payable to the Racing
95 Commission under this section, damages equal to three times the amount of recovery, and
96 reasonable costs and attorney fees. Damages recovered by the Racing Commission shall be
97 distributed as source market fees under this section.

98 (h) There is hereby assessed a regulatory fee paid by the ADW licensee, which shall be
99 one percent of the total amount wagered through the ADW licensee by residents under this
100 section, excluding refunds and cancellations, payable on a monthly basis to the Racing
101 Commission for deposit into the Racing Commission's general administrative account.

102 (i) Advance deposit account wagers placed by residents are considered to be wagering
103 conducted in this state and subject to the laws of this state and the rules of the Racing
104 Commission.

105 (j) The Racing Commission may propose legislative rules for promulgation, pursuant to
106 §29A-3-1 et seq. of this code to implement this section and may propose emergency rules to
107 provide conditions for the licensing of advance deposit account wagering. Those rules may

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

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

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