

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 603

BY SENATOR MARONEY

[Introduced March 9, 2021; referred
to the Committee on Finance]

1 A BILL to amend and reenact §29-22D-2, §29-22D-3, §29-22D-4, §29-22D-6, §29-22D-17, and
 2 §29-22D-22 of the Code of West Virginia, 1931, as amended; to amend said code by
 3 adding thereto a new section, designated §29-22D-15a; to amend and reenact §29-22E-
 4 2, §29-22E-3, §29-22E-4, §29-22E-6, §29-22E-17, and §29-22E-22 of said code; and to
 5 amend said code by adding thereto a new section, designated §29-22E-15a, all relating
 6 to permitting wagering on the results of certain professional or collegiate sports or athletic
 7 events and other events authorized as West Virginia Lottery sports wagering activities;
 8 permitting wagering on interactive games authorized as West Virginia Lottery
 9 interactive wagering activities; providing legislative findings; defining terms; prescribing
 10 commission duties and powers; establishing license requirements and prohibitions;
 11 authorizing new market entrants; creating the West Virginia Lottery Sports Wagering
 12 Fund; creating the West Virginia Lottery Interactive Wagering Fund; and preempting
 13 this 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 West Virginia's hospitality industry, including bars and restaurants, plays a
 7 critical role in the economy of this state, and ~~such that~~ that constitutional lotteries are rightfully
 8 authorized as state enterprises consistent with the rights and powers granted to the states under
 9 the Tenth Amendment of the United States Constitution. The federal government is a government

10 of limited and enumerated powers, and powers not delegated to the United States by the
11 Constitution nor prohibited by it to the states are reserved 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 and to new market entrants, pursuant to the
35 provisions of §29-22D-15a of this code.

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

41 (8) The Legislature finds that the operation of West Virginia Lottery sports wagering at
42 racetracks, licensed pursuant to the provisions of §29-22A-1 *et seq.* of this code, ~~and~~ at a historic
43 resort hotel, licensed pursuant the provisions of §29-25-1 *et seq.* of this code, and by new market
44 entrants, pursuant to the provisions of §29-22D-15a of this code, serves to protect, preserve,
45 promote, and enhance the tourism industry of the state as well as the general fiscal wellbeing of
46 the state and its subdivisions.

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

§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 ~~(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)~~ “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 sports
31 wagering as a new market entrant;

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

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

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

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

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

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

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

53 “New market entrant” means a provider of online sports wagering that (i) is not licensed to
54 participate in sports wagering in any other jurisdiction; (ii) is not controlled, as control is defined
55 in §29-22D-5(c) of this code, or owned, in whole or in part, by any person or entity that is licensed
56 to participate in sports wagering in any other jurisdiction; and (iii) has had pending with the
57 commission an unapproved management services provider license application for at least one
58 year prior to the effective date of this enactment.

59 ~~(43)~~ “Operator” means a licensed gaming facility or a new market entrant which has
60 elected to operate a sports pool and other authorized West Virginia Lottery sports wagering
61 activities.

62 ~~(44)~~ “Professional sport or athletic event” means an event at which two or more persons

63 participate in sports or athletic events and receive compensation, or are eligible for monetary
64 prizes, in excess of actual expenses for their participation in such event.

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

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

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

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

78 ~~(19)~~ "Sports wagering fund" means the special fund in the State Treasury, created in §29-
79 22D-17 of this code.

80 ~~(20)~~ "Supplier" means a person that requires a supplier license to provide a sports
81 wagering licensee with goods or services to be used in connection with operation of West Virginia
82 Lottery sports wagering. Any holder of a Class A license issued by the West Virginia Alcohol
83 Beverage Control Administration that contracts with a new market entrant to promote or market
84 sports wagering on the restaurant's premises is not a supplier required to obtain a license under
85 this article.

86 ~~(21)~~ "Wager" means a sum of money or thing of value risked on an uncertain occurrence.

87 ~~(22)~~ "West Virginia Lottery sports wagering" or "sports wagering" means the business of
88 accepting wagers on sporting events, e-sports events and other events, the individual

89 performance statistics of athletes in a sporting event, e-sports event or other events, or a
 90 combination of any of the same by any system or method of wagering approved by the
 91 commission including, but not limited to, mobile applications and other digital platforms that utilize
 92 communications technology to accept wagers originating within this state. The term includes, but
 93 is not limited to, exchange wagering, parlays, over-under, moneyline, pools, and straight bets.
 94 The term does not include:

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

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

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

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

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

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

103 (G) Daily Fantasy Sports (DFS).

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

§29-22D-4. Commission duties and powers.

1 (a) In addition to the duties set forth elsewhere in this article, §29-22-1 *et seq.*, §29-22A-
 2 1 *et seq.*, §29-22B-1 *et seq.*, §29-22C-1 *et seq.*, and §29-25-1 *et seq.* of this code, the commission
 3 shall have the authority to regulate sports pools and the conduct of sports wagering under this

4 article.

5 (b) The commission shall examine the regulations implemented in other states where
6 sports wagering is conducted and shall, as far as practicable, adopt a similar regulatory framework
7 through promulgation of rules and regulations.

8 (c) The commission has the authority, pursuant to §29A-1-1, *et seq.* and §29A-3-1, *et seq.*
9 of this code, to promulgate or otherwise enact any legislative, interpretive, and procedural rules
10 the commission considers necessary for the successful implementation, administration, and
11 enforcement of this article. Rules proposed by the commission before December 1, 2018, may be
12 promulgated as emergency rules pursuant to §29A-3-15 of this code.

13 (1) Regulations promulgated by the commission may include, but are not limited to, those
14 governing the acceptance of wagers on a sports event or a series of sports events; maximum
15 wagers which may be accepted by an operator from any one patron on any one sports event;
16 type of wagering tickets which may be used; method of issuing tickets; method of accounting to
17 be used by operators; types of records which shall be kept; use of credit and checks by patrons;
18 type of system for wagering; protections for patrons placing wagers; and promotion of social
19 responsibility, responsible gaming, and inclusion of the statement, "If you or someone you know
20 has a gambling problem and wants help, call 1-800 GAMBLER", in every designated area
21 approved for sports wagering and on any mobile application or other digital platform used to place
22 wagers.

23 (2) The commission shall establish minimum internal control standards (MICS) and
24 approve minimum internal control standards proposed by licensed operators for administration of
25 sports wagering operations, wagering equipment and systems, or other items used to conduct
26 sports wagering, as well as maintenance of financial records and other required records.

27 (d) The commission shall determine the eligibility of a person to hold or continue to hold a
28 license, shall issue all licenses, and shall maintain a record of all licenses issued under this article.
29 The commission may accept applications, evaluate qualifications of applicants, and undertake

30 initial review of licenses prior to promulgation of emergency rules upon the effective date of this
31 article: Provided, That the commission shall determine the eligibility of a person to hold or continue
32 to hold a license to operate sports wagering as a new market entrant based on the criteria set
33 forth in §29-22D-3 and §29-22D-15a of this code, and that the commission shall not promulgate
34 any legislative rules pertaining to new market entrants: *Provided, however, That all rules*
35 otherwise pertaining to sports wagering by operators as of the effective date of this enactment
36 shall apply with equal force to new market entrants.

37 (e) The commission shall levy and collect all fees, surcharges, civil penalties, and weekly
38 tax on adjusted gross sports wagering receipts imposed by this article, and deposit all moneys
39 into the sports wagering fund, except as otherwise provided under this article.

40 (f) The commission may sue to enforce any provision of this article or any rule of the
41 commission by civil action or petition for injunctive relief.

42 (g) The commission may hold hearings, administer oaths, and issue subpoenas or
43 subpoenas duces tecum: *Provided, That all hearings shall be conducted pursuant to the*
44 *provisions of the State Administrative Procedures Act, § 29A-2-1, et seq. of this code and the*
45 *Lottery Administrative Appeal Procedures, W.Va. CSR § 179-2-1, et seq.*

46 (h) The commission may exercise any other powers necessary to effectuate the provisions
47 of this article and the rules of the commission.

§29-22D-6. Operator license; West Virginia sports wagering operators.

1 (a) In addition to the casino games permitted pursuant to the provisions of §29-22A-1 *et*
2 *seq.*, §29-22C-1 *et seq.*, and §29-25-1 *et seq.* of this code, a licensed gaming facility may operate
3 West Virginia Lottery sports wagering upon the approval of the commission. A new market entrant
4 may likewise operate West Virginia Lottery sports wagering upon the approval of the commission,
5 and the commission shall have the general responsibility for the implementation of this article and
6 all other duties specified in §29-22-1 *et seq.*, §29-22A-1 *et seq.*, §29-22C-1 *et seq.*, and §29-25-
7 1 *et seq.* of this code, the provisions of this article, and applicable regulations.

8 (b) All sports wagering authorized by this article shall be West Virginia Lottery games
9 owned by the State of West Virginia. An operator license granted by the commission pursuant to
10 this article grants licensees lawful authority to conduct West Virginia Lottery sports wagering
11 within the terms and conditions of the license and any regulations promulgated under this article.

12 (c) *Sports wagering licenses.* -- The commission may issue up to five licenses to licensed
13 gaming facilities to operate West Virginia Lottery sports wagering in accordance with the
14 provisions of this article. No more than five licenses to licensed gaming facilities to operate a
15 gaming facility with West Virginia Lottery sports wagering shall be permitted in this state.

16 (d) *Grant of license.* -- Upon application by a gaming facility and payment of a \$100,000
17 application fee, the commission shall immediately grant a West Virginia Lottery sports wagering
18 license to an operator that provides for the right to conduct West Virginia Lottery sports wagering:
19 *Provided, That the applicant must hold a valid racetrack video lottery license issued by the*
20 *commission, pursuant to §29-22A-1 et seq. of this code, or a valid license to operate a gaming*
21 *facility, issued by the commission pursuant to §29-25-1 et seq. of this code, and otherwise meet*
22 *the requirements for licensure under the provisions of this article and the rules of the commission.*
23 *This license shall be issued for a five-year period, and may be renewed for five-year periods upon*
24 *payment of a \$100,000 renewal fee, as long as an operator continues to meet all qualification*
25 *requirements. Upon application by a new market entrant and payment of a \$10,000 application*
26 *fee, the commission shall immediately grant a West Virginia Lottery sports wagering operator's*
27 *license that provides for the right of the new market entrant to conduct West Virginia Lottery sports*
28 *wagering. A new market entrant license shall be issued for a five-year period, and may be*
29 *renewed for five-year periods upon payment of a \$10,000 renewal fee, as long as an operator*
30 *continues to meet all qualification requirements.*

31 (e) *Location.* -- A West Virginia Lottery sports wagering license authorizes the operation
32 of West Virginia Lottery sports wagering at locations and through any mobile application or other
33 digital platforms approved by the commission.

34 (f) Management service contracts. --

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

40 (2) *Material change*. -- The West Virginia Lottery sports wagering licensee shall submit
41 any material change in a management services contract, previously approved by the commission,
42 to the commission for its approval or rejection before the material change may take effect.

43 (3) *Other commission approvals and licenses*. -- The duties and responsibilities of a
44 management services provider under a management services contract may not be assigned,
45 delegated, subcontracted, or transferred to a third party without the prior approval of the
46 commission. Third parties must be licensed as a management services provider under this article
47 before providing services.

48 (g) *Expiration date and renewal*. --

49 (1) A licensed operator shall submit to the commission such documentation or information
50 as the commission may require demonstrating to the satisfaction of the director that the licensee
51 continues to meet the requirements of the law and regulations. Required documentation or
52 information shall be submitted no later than five years after issuance of an operator license and
53 every five years thereafter, or within lesser periods based on circumstances specified by the
54 commission.

55 (2) If the licensee fails to apply to renew its license issued pursuant to §29-22A-1 *et seq.*
56 or §29-25-1 *et seq.* of this code prior to expiration, the commission shall renew its license under
57 this article at the time the expired license is renewed as long as the licensee was operating in
58 compliance with applicable requirements in the preceding license year.

59 (h) *Surety bond*. -- A West Virginia Lottery sports wagering licensee shall execute a surety

60 bond in an amount and in the form approved by the commission, to be given to the state, to
61 guarantee the licensee faithfully makes all payments in accordance with the provisions of this
62 article and rules promulgated by the commission.

63 (i) *Audits.* -- Upon application for a license and annually thereafter, a West Virginia Lottery
64 sports wagering licensee shall submit to the commission an annual audit of the financial
65 transactions and condition of the licensee's total operations prepared by a certified public
66 accountant in accordance with generally accepted accounting principles and applicable federal
67 and state laws.

68 (j) *Commission office space.* -- A West Virginia Lottery sports wagering licensee shall
69 provide suitable office space at the sports wagering facility, at no cost, for the commission to
70 perform the duties required of it by this article and the rules of the commission.

71 (k) *Facility qualifications.* -- A West Virginia Lottery sports wagering licensee shall
72 demonstrate that its gaming facility with West Virginia Lottery sports wagering will: (1) Be
73 accessible to disabled individuals, in accordance with applicable federal and state laws; (2) be
74 licensed in accordance with this article, and all other applicable federal, state, and local laws; and
75 (3) meet any other qualifications specified in rules adopted by the commission. Notwithstanding
76 any provision of this code or any rules promulgated by the Alcohol Beverage Control
77 Commissioner to the contrary, vacation of the premises after service of beverages ceases is not
78 required for any licensed gaming facility.

§29-22D-15a. Authorization of new market entrants; requirements.

1 (a) A new market entrant 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 sports wagering account.

5 (b) A new market entrant 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 sports
11 wagering account.

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

17 (d) No employee of a new market entrant may place a wager through the new market
18 entrant's mobile application or digital platform.

19 (e) No commission employee may knowingly wager or be paid any prize from any wager
20 placed through the new market entrant's mobile application or digital platform.

§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 §29-22D-17(b) of this code.

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 by new
10 market entrants from the gross deposits into the sports wagering fund. The amount remaining
11 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-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 conducting sports wagering as a new market entrant, 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.

ARTICLE 22E. WEST VIRGINIA LOTTERY INTERACTIVE WAGERING ACT.

**§29-22E-2. State authorization of interactive wagering at licensed racetrack facilities and
 historic resort hotel; legislative findings, and declarations.**

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

5 (b) Legislative findings. —

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

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

17 (3) The Legislature finds that it is in the best interests of the State of West Virginia for the
18 state to operate a lottery in the form of interactive wagering and that it is the intent of the
19 Legislature to authorize interactive wagering within the state and through compacts with other
20 approved jurisdictions.

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

26 (5) The Legislature finds that the most effective and efficient manner in which the state
27 can operate and regulate the forms of lottery authorized by the provisions of this article is to limit
28 the number of authorized operators to those who are licensed, pursuant to the provisions of §29-
29 22A-1 *et seq.* of this code, and to facilities licensed to operate video lottery terminals, pursuant to

30 the provisions of §29-25-1 *et seq.* of this code, and to new market entrants, pursuant to the
 31 provisions of §29-22E-15a of this code.

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

37 (7) The Legislature finds that the operation of West Virginia Lottery interactive wagering
 38 at racetracks, licensed pursuant to the provisions of §29-22A-1 *et seq.* of this code, ~~and~~ at a
 39 historic resort hotel, licensed pursuant to the provisions of §29-25-1 *et seq.* of this code and by
 40 new market entrants, pursuant to the provisions of §29-22E-15a of this code, serves to protect,
 41 preserve, promote, and enhance the tourism industry of the state as well as the general fiscal
 42 wellbeing of the state and its subdivisions.

43 (8) The Legislature finds that the opportunity to participate in interactive wagering should
 44 not be predominantly limited to out-of-state companies, and that locally owned businesses,
 45 especially new small businesses, should also have the opportunity to participate in interactive
 46 wagering.

§29-22E-3. Definitions.

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

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

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

8 ~~(3)~~ “Director” means the Director of the West Virginia State Lottery Commission, appointed

9 pursuant to §29-22-6 of this code.

10 ~~(4)~~ “Gaming” or “interactive gaming” means wagering on any authorized interactive game.
11 Authorized interactive games are computerized or virtual versions of any game of chance or digital
12 simulation thereof, including, but not limited to, casino themed slot simulations, table games, and
13 other games approved by the commission.

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

16 ~~(6)~~ “Gross interactive wagering receipts” means the total gross receipts received by a
17 licensed gaming facility from interactive wagering.

18 ~~(7)~~ “Interactive gaming operator” or “operator” means a licensed gaming facility which has
19 elected to operate authorized West Virginia Lottery interactive wagering activities or an interactive
20 gaming system on behalf of or in cooperation with an interactive gaming licensee.

21 ~~(8)~~ “Interactive gaming provider” or “management services provider” means an interactive
22 gaming licensee or an interactive gaming operator with a valid permit acting on behalf of or in
23 partnership with an interactive gaming licensee.

24 ~~(9)~~ “Interactive wagering account” means a financial record established by a licensed
25 gaming facility for an individual patron in which the patron may deposit and withdraw funds for
26 interactive wagering and other authorized purchases, and to which the licensed gaming facility
27 may credit winnings or other amounts due to that patron or authorized by that patron.

28 ~~(10)~~ “Interactive wagering agreement” means a written agreement between the
29 commission and one or more other governments whereby persons who are physically located in
30 a signatory jurisdiction may participate in interactive wagering conducted by one or more
31 operators licensed by the signatory governments.

32 ~~(11)~~ “Interactive wagering fund” means the special fund in the State Treasury, created in
33 §29-22E-17 of this code.

34 ~~(12)~~ “License” means any license, applied for or issued by the commission under this

35 article, including, but not limited to:

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

39 (B) A license to act as an agent of the commission in operating West Virginia Lottery
40 interactive wagering as a new market entrant.

41 ~~(B)~~ (C) A license to supply a gaming facility, licensed under this article, to operate
42 interactive wagering with interactive wagering equipment or services necessary for the operation
43 of interactive wagering (supplier license); or

44 ~~(C)~~ (D) A license to be employed at a racetrack or gaming facility, licensed under this
45 article, to operate West Virginia Lottery interactive wagering when the employee works in a
46 designated gaming area that has interactive wagering or performs duties in furtherance of or
47 associated with the operation of interactive wagering at the licensed gaming facility (occupational
48 license).

49 ~~(13)~~ “Licensed gaming facility” or “gaming facility” means a designated area on the
50 premises of an existing historic resort hotel, pursuant to §29-25-1 *et seq.* of this code, or the
51 facility of an entity authorized to operate racetrack video lottery machines, pursuant to §29-22A-
52 1 *et seq.* of this code, licensed under this article, to conduct West Virginia Lottery interactive
53 wagering.

54 ~~(14)~~ “Lottery” means the public gaming systems or games regulated, controlled, owned,
55 and operated by the State Lottery Commission in the manner provided by general law, as provided
56 in this article, and in §29-22-1 *et seq.*, §29-22A-1 *et seq.*, §29-22B-1 *et seq.*, §29-22C-1 *et seq.*,
57 §29-22D-1 *et seq.*, and §29-25-1 *et seq.* of this code.

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

61 “New market entrant” means a provider of online interactive wagering that (i) is not
62 licensed to participate in interactive wagering in any other jurisdiction; (ii) is not controlled, as
63 control is defined in §29-22E-5(b) of this code, or owned, in whole or in part, by any person or
64 entity that is licensed to participate in interactive wagering in any other jurisdiction; and (iii) has
65 had pending with the commission an unapproved management services provider license
66 application for at least one year prior to the effective date of this enactment.

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

68 ~~(17)~~ “West Virginia Lottery interactive wagering” or “interactive wagering” or “interactive
69 gaming” means the placing of wagers remotely and in real time on any authorized interactive
70 game with any interactive gaming provider, using any communications technology, by means of
71 any electronic or mobile device or other interface capable of providing a means of input and
72 output. The term does not include:

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

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

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

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

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

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

81 (G) Sports wagering, authorized by §29-22D-1 *et seq.*; and

82 (H) Daily Fantasy Sports (DFS).

83 ~~(18)~~ “West Virginia Lottery interactive wagering license” means authorization granted
84 under this article by the commission to a gaming facility that is already licensed under §29-22A-1
85 *et seq.* or §29-25-1 *et seq.* of this code, which permits the gaming facility as an agent of the
86 commission to operate West Virginia Lottery interactive wagering on the grounds where video

87 lottery is conducted by the licensee or through any other authorized interactive platform developed
88 by the gaming facility. This term is synonymous with “operator’s license.”

§29-22E-4. Commission duties and powers.

1 (a) In addition to the duties set forth elsewhere in this article, and in §29-22-1 *et seq.*, §29-
2 22A-1 *et seq.*, §29-22B-1 *et seq.*, §29-22C-1 *et seq.*, §29-22D-1 *et seq.*, and §29-25-1 *et seq.* of
3 this code, the commission shall have the authority to regulate interactive wagering and the
4 conduct of interactive gaming.

5 (b) The commission shall examine the regulations implemented in other states where
6 interactive wagering is conducted and shall, as far as practicable, adopt a similar regulatory
7 framework through promulgation of rules.

8 (c) The commission has the authority, pursuant to §29A-1-1 *et seq.* and §29A-3-1 *et seq.*
9 of this code, to promulgate or otherwise enact any legislative, interpretive, and procedural rules
10 the commission considers necessary for the successful implementation, administration, and
11 enforcement of this article. Rules proposed by the commission before July 1, 2020, may be
12 promulgated as emergency rules pursuant to §29A-3-15 of this code.

13 (1) Rules promulgated by the commission may include, but are not limited to, those
14 governing the acceptance of wagers on interactive games; maximum wagers which may be
15 accepted by an operator from any one patron on any one interactive game; method of accounting
16 to be used by operators; types of records which shall be kept; use of credit and checks by patrons;
17 type of system for wagering; protections for patrons placing wagers; and promotion of social
18 responsibility, responsible gaming, and inclusion of the statement, “If you or someone you know
19 has a gambling problem and wants help, call 1-800 GAMBLER”, in every designated area
20 approved for interactive wagering and on any mobile application or other digital platform used to
21 place wagers.

22 (2) The commission shall establish minimum internal control standards (MICS) and
23 approve minimum internal control standards proposed by licensed operators for administration of

24 interactive wagering operations, interactive wagering equipment and systems, or other items used
25 to conduct interactive wagering, as well as maintenance of financial records and other required
26 records.

27 (d) The commission shall determine the eligibility of a person to hold or continue to hold a
28 license, shall issue all licenses, and shall maintain a record of all licenses issued under this article.
29 The commission may accept applications, evaluate qualifications of applicants, and undertake
30 initial review of licenses prior to promulgation of emergency rules upon the effective date of this
31 article: Provided, That the commission shall determine the eligibility of a person to hold or continue
32 to hold a license to operate interactive wagering as a new market entrant based on the criteria
33 set forth in §29-22E-3 and §29-22E-15a of this code, and that the commission shall not
34 promulgate any legislative rules pertaining to new market entrants: *Provided, however, That all*
35 rules otherwise pertaining to interactive wagering by operators as of the effective date of this
36 enactment shall apply with equal force to new market entrants.

37 (e) The commission shall levy and collect all fees, surcharges, civil penalties, and weekly
38 tax on adjusted gross interactive wagering receipts imposed by this article, and deposit all moneys
39 into the interactive wagering fund, except as otherwise provided under this article.

40 (f) The commission may sue to enforce any provision of this article or any rule of the
41 commission by civil action or petition for injunctive relief.

42 (g) The commission may hold hearings, administer oaths, and issue subpoenas or
43 subpoenas duces tecum: *Provided, That all hearings shall be conducted pursuant to the*
44 *provisions of the State Administrative Procedures Act, §29A-2-1 et seq. of this code and the*
45 *Lottery Administrative Appeal Procedures, W.Va. CSR § 179-2-1 et seq.*

46 (h) The commission may exercise any other powers necessary to effectuate the
47 provisions of this article and the rules of the commission.

§29-22E-6. Operator license; West Virginia interactive wagering operators.

1 (a) In addition to the casino games permitted pursuant to the provisions of §29-22A-1 et

2 *seq.*, §29-22C-1 *et seq.*, and §29-25-1 *et seq.* of this code, a licensed gaming facility may operate
3 West Virginia Lottery interactive wagering upon the approval of the commission. A new market
4 entrant may likewise operate West Virginia Lottery interactive wagering upon the approval of the
5 commission, and the commission shall have the general responsibility for the implementation of
6 this article and all other duties specified in §29-22-1 *et seq.*, §29-22A-1 *et seq.*, §29-22C-1 *et*
7 *seq.*, §29-22D-1 *et seq.*, and §29-25-1 *et seq.* of this code, the provisions of this article, and
8 applicable rules.

9 (b) All interactive wagering authorized by this article shall be West Virginia Lottery games
10 owned by the State of West Virginia. An operator license granted by the commission pursuant to
11 this article grants licensees lawful authority to conduct West Virginia Lottery interactive wagering
12 within the terms and conditions of the license and any rules promulgated under this article.

13 (c) Interactive wagering licenses. -- The commission may issue up to five licenses to
14 licensed gaming facilities to operate West Virginia Lottery interactive wagering in accordance with
15 the provisions of this article. No more than five licenses to licensed gaming facilities to operate a
16 gaming facility with West Virginia Lottery interactive wagering shall be permitted in this state.

17 (d) Grant of license. -- Upon application by a gaming facility and payment of a \$250,000
18 application fee, the commission shall immediately grant a West Virginia Lottery interactive
19 wagering license to an operator that provides for the right to conduct West Virginia Lottery
20 interactive wagering: Provided, That the applicant must hold a valid racetrack video lottery license
21 issued by the commission, pursuant to §29-22A-1 *et seq.* of this code, or a valid license to operate
22 a gaming facility, issued by the commission pursuant to §29-25-1 *et seq.* of this code, and
23 otherwise meet the requirements for licensure under the provisions of this article and the rules of
24 the commission. This license shall be issued for a five-year period, and may be renewed for five-
25 year periods upon payment of a \$100,000 renewal fee, as long as an operator continues to meet
26 all qualification requirements. Upon application by a new market entrant and payment of a
27 \$10,000 application fee, the commission shall immediately grant a West Virginia Lottery

28 interactive wagering operator's license that provides for the right of the new market entrant to
29 conduct West Virginia Lottery interactive wagering. A new market entrant license shall be issued
30 for a five-year period, and may be renewed for five-year periods upon payment of a \$10,000
31 renewal fee, as long as an operator continues to meet all qualification requirements.

32 (e) Location. — A West Virginia Lottery interactive wagering license authorizes the
33 operation of West Virginia Lottery interactive wagering at approved locations and through any
34 mobile application or other digital platforms approved by the commission.

35 (f) Management service contracts. —

36 (1) Approval. — A West Virginia Lottery interactive wagering licensee may not enter into
37 any management services contract that would permit any person other than the licensee to act
38 as the commission's agent in operating West Virginia Lottery interactive wagering unless the
39 management service contract: (A) Is with a person licensed under this article to provide
40 management services; (B) is in writing; and (C) has been approved by the commission.

41 (2) Material change. — The West Virginia Lottery interactive wagering licensee shall
42 submit any material change in a management services contract, previously approved by the
43 commission, to the commission for its approval or rejection before the material change may take
44 effect.

45 (3) Other commission approvals and licenses. — The duties and responsibilities of a
46 management services provider under a management services contract may not be assigned,
47 delegated, subcontracted, or transferred to a third party without the prior approval of the
48 commission. Third parties must be licensed as a management services provider under this article
49 before providing services.

50 (g) Expiration date and renewal. —

51 (1) A licensed operator shall submit to the commission such documentation or information
52 as the commission may require demonstrating to the satisfaction of the director that the licensee
53 continues to meet the requirements of the law and rules. Required documentation or information

54 shall be submitted no later than five years after issuance of an operator license and every five
55 years thereafter, or within lesser periods based on circumstances specified by the commission.

56 (2) If the licensee fails to apply to renew its license issued pursuant to §29-22A-1 *et seq.*
57 or §29-25-1 *et seq.* of this code prior to expiration, the commission shall renew its license under
58 this article at the time the expired license is renewed as long as the licensee was operating in
59 compliance with applicable requirements in the preceding license year.

60 (h) Surety bond. — A West Virginia Lottery interactive wagering licensee shall execute a
61 surety bond in an amount and in the form approved by the commission, to be given to the state,
62 to guarantee the licensee faithfully makes all payments in accordance with the provisions of this
63 article and rules promulgated by the commission.

64 (i) Audits. — Upon application for a license and annually thereafter, a West Virginia Lottery
65 interactive wagering licensee shall submit to the commission an annual audit of the financial
66 transactions and condition of the licensee's total operations prepared by a certified public
67 accountant in accordance with generally accepted accounting principles and applicable federal
68 and state laws.

69 (j) Commission office space. — A West Virginia Lottery interactive wagering licensee shall
70 provide suitable office space at the interactive wagering facility, at no cost, for the commission to
71 perform the duties required of it by this article and the rules of the commission.

72 (k) Facility qualifications. — A West Virginia Lottery interactive wagering licensee shall
73 demonstrate that its gaming facility with West Virginia Lottery interactive wagering will: (1) Be
74 accessible to disabled individuals, in accordance with applicable federal and state laws; (2) be
75 licensed in accordance with this article, and all other applicable federal, state, and local laws; and
76 (3) meet any other qualifications specified in rules adopted by the commission. Notwithstanding
77 any provision of this code or any rules promulgated by the Alcohol Beverage Control
78 Commissioner to the contrary, vacation of the premises after service of beverages ceases is not
79 required for any licensed gaming facility.

§29-22E-15a. Authorization of new market entrants; requirements.

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

5 (b) A new market entrant may operate mobile or other digital platforms or interactive
6 wagering devices, approved by the commission, by which a patron located in a state or jurisdiction
7 with which the commission has entered into an interactive wagering agreement may place wagers
8 against other patrons also located in states or jurisdictions with which the commission has entered
9 into interactive wagering agreements, or may participate in a wagering pool in a state or
10 jurisdiction with which the commission has entered into an interactive wagering agreement,
11 through the patron's interactive wagering account.

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

17 (d) No employee of a new market entrant may place a wager through the new market
18 entrant's mobile application or digital platform.

19 (e) No commission employee may knowingly wager or be paid any prize from any wager
20 placed through the new market entrant's mobile application or digital platform.

§29-22E-17. West Virginia Lottery Interactive Wagering Fund; distribution of funds.

1 (a) The special fund in the State Treasury known as the West Virginia Lottery Interactive
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 Interactive Wagering
4 Fund. The fund shall be an interest-bearing account with all interest or other return earned on the

5 money of the fund credited to and deposited in the fund. All expenses of the commission incurred
6 in the administration and enforcement of this article shall be paid from the interactive wagering
7 fund pursuant to §29-22E-17(b) of this code.

8 (b) The commission shall deduct an amount sufficient to reimburse its actual costs and
9 expenses incurred in administering interactive wagering at licensed gaming facilities and by new
10 market entrants from the gross deposits into the interactive wagering fund. The amount remaining
11 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 to pension plan for racing association employees.* -- In each fiscal year,
20 the Lottery Commission shall deposit one-quarter of a percent of the net profit into each of the
21 four special funds established by the Racing Commission, pursuant to §29-22A-10 and §29-22C-
22 27 of this code, to be used for payment into the pension plan for the employees of the licensed
23 racing associations in this state.

24 (3) *Distribution of net profit.* -- In each fiscal year, remaining net profit shall be deposited
25 into the State Lottery Fund created by §29-22-18 of this code unless otherwise required by this
26 code.

§29-22E-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 interactive wagering or supplying a
3 licensed gaming facility, or for conducting interactive wagering as a new market entrant, may be

- 4 enacted, and the provisions of this article preempt all regulations, rules, ordinances, and laws of
5 any county or municipality in conflict with this article.

NOTE: The purpose of this bill is to authorize new market entrants to conduct remote sports wagering and to conduct remote interactive 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 these events, or on interactive games authorized as West Virginia Lottery interactive wagering activities 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.