WEST VIRGINIA CODE: §19-23-12E

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

(a) As used in this section:

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

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

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

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

“ADW” means advance deposit account wagering.

“Confidential information” means: (A) The amount of money credited to, debited from, withdrawn from, or present in an account; (B) the amount of money wagered by an account holder on any race or series of races, or the identities of racing associations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

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

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

"Located" means, in regard to a resident account holder, where his or her principal residence is located.

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

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

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

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

(b) The source market fee shall be paid by the ADW licensee on a monthly basis to the Racing Commission and distributed as provided in this subsection. The Racing Commission shall prorate all source market fees derived from wagers of account holders between the licensees by dividing each licensee's total handle by the total handle of all West Virginia licensees in the prior calendar year, and distribute the prorated amounts as follows:

(1) Ten percent of each horse racing licensee's prorated amount to the West Virginia Thoroughbred Development Fund or 10 percent of each dog racing licensee's prorated amount to the West Virginia Racing Commission Special Account-West Virginia Greyhound Breeding Development Fund;

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

(3) Forty-five percent to each prorated licensee.

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

(d) The Racing Commission is vested with jurisdiction over any person or entity that solicits

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

(e) A person or entity may not conduct advance deposit account wagering in West Virginia unless the person or entity has applied for and been granted an ADW license by the Racing Commission. The Racing Commission shall also ensure that, except for advance deposit account wagering authorized under this section, all pari-mutuel wagering on racing is conducted within the confines of a licensee's racetrack or licensed contiguous hotel, as permitted under §19-23-9(a) and §19-23-12a(1) of this code and implementing rules thereunder, including Racing Commission Rule §178-5-5, or within an authorized gaming facility in a historic resort hotel, as permitted under §19-23-12d of this code and implementing rules thereunder.

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

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

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

(i) There is further assessed an additional fee paid by the ADW licensee, which shall be one and one-half percent of the total amount wagered through the ADW licensee by residents under this section, excluding refunds and cancellations, payable on a monthly basis to the Racing Commission for deposit into a special revenue account in the State Treasury to be

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known as the “Advance Deposit Wagering Account” to be expended pursuant to appropriation of the Legislature.

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

(k) The Racing Commission shall submit a report by December 31, 2020, and annually thereafter to the Joint Committee on Government and Finance detailing the operation of ADW in this state. The report shall include, but is not limited to, the following:

(1) A complete list of ADW licensees offering ADW services;

(2) The total amount of funds paid to the Racing Commission pursuant to subsection (h) of this section;

(3) The total amount deposited in the preceding 12-month period in the special revenue account set forth in subsection (i) of this section;

(4) The amounts distributed as set forth in subdivision (b) of this section;

(5) Beginning with the report due December 31, 2021, a statistical comparison of ADW services to the preceding year; and

(6) The total amount of wagering by West Virginia residents through ADW Licensees.

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

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