

**WEST VIRGINIA  
SECRETARY OF STATE  
NATALIE E. TENNANT  
ADMINISTRATIVE LAW DIVISION**

Form #7

Do Not Mark In This Box  
Filing Date

2011 JUL 14 PM 4: 52

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

Effective Date

**NOTICE OF AN EMERGENCY RULE**

AGENCY: West Virginia Racing Commission TITLE NUMBER: 178

CITE AUTHORITY: West Virginia Code §§ 19-23-12d, 19-23-6(3) and 29A-3-15

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: Series 7

TITLE OF RULE BEING PROPOSED: Simulcast Pari-Mutuel Wagering at Authorized Gaming Facility in Historic Resort Hotel

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

Please see Attachment 1.

Use additional sheets if necessary

  
Authorized Signature

## ATTACHMENT 1

### Notice of Emergency Rule West Virginia Racing Commission

Title 178  
Series 7

#### FACTS AND CIRCUMSTANCES CONSTITUTING EMERGENCY

During the 2011 regular session of the Legislature, Senate Bill 550 was passed on March 12, 2011, creating a new section (12d) of Chapter 19, Article 23, authorizing the simulcasting of horse and dog racing and the conducting of pari-mutuel wagering thereon at certain historic resort hotels in this State. The new section went into effect on July 1, 2011. Prior to the enactment of this new section, simulcasting of horse and dog racing and the conducting of wagering thereon was only permitted at the racetracks in this State that are licensed to conduct live racing on their premises. Therefore, this new code section establishes new entities (off-track betting establishments in historic resort hotels) that the West Virginia Racing Commission is charged with licensing and regulating.

The new code section charges the West Virginia Racing Commission with the responsibility for promulgating rules for the licensing and regulating of these off-track betting establishments at historic resort hotels; with the permitting/registration of the persons who are employed at and engage in activities related to the operation of such off-track betting establishments; and for the wagering that occurs at such establishments. The Commission's current rules governing racing and wagering in this State do not govern off-track betting establishments at historic resort hotels. Therefore, in the absence of an emergency rule, the Commission has no rule in place to govern and regulate the simulcasting and wagering authorized by Senate Bill 550.

In order to comply with the July 1, 2011 effective date of the new article, and to allow the eligible entities to apply for a license to conduct simulcasting and wagering, the West Virginia Racing Commission respectfully requests that you consider these circumstances and approve the attached rule, 178 CSR 7, as an emergency rule.



**EMERGENCY RULE QUESTIONNAIRE**

DATE: July 7, 2011

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: *(Agency Name, Address & Phone No.)* West Virginia Racing Commission  
106 Dee Drive, Charleston, WV 25311  
(304) 558-2150

EMERGENCY RULE TITLE: \_\_\_\_\_

1. Date of filing \_\_\_\_\_

2. Statutory authority for promulgating emergency rule:  
West Virginia Code §§ 19-23-12d, 19-23-6(3) and 29A-3-15

3. Date of filing of proposed legislative rule: \_\_\_\_\_

4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule? \_\_\_\_\_  
No, it is a new rule series.

5. Has the same or similar emergency rule previously been filed and expired?  
No.

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the **immediate** preservation of public peace, health, safety or welfare.  
Please see Attachment 1.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

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Senate Bill 550, which creates West Virginia Code 19-23-12d, became effective July 1, 2011.

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8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

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Please see Attachment 1.

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APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

Simulcast Pari-Mutuel Wagering at Authorized Gaming Facility in Historic Resort Hotel

Rule Title: \_\_\_\_\_

Type of Rule:  Legislative  Interpretive  Procedural

Agency: West Virginia Racing Commission

Address: 106 Dee Drive, Suite 2  
Charleston, WV 25311

Phone Number: 304-558-2150 Email: joemoore@wvnet.edu

**Fiscal Note Summary**

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The financial impact this rule will have on the State of West Virginia is minimal. The Racing Commission will incur expenses for the auditing of the activity and receive minimal revenue generated from the activity.

**Fiscal Note Detail**

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "--")	Next Increase/Decrease (use "--")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>			25,000.00
Personal Services			10,000.00
Current Expenses			15,000.00
Repairs & Alterations			
Assets			
Other			
<b>2. Estimated Total Revenues</b>			25,000.00

Rule Title: \_\_\_\_\_

Rule Title: \_\_\_\_\_

**3. Explanation of above estimates (including long-range effect):**

Please include any increase or decrease in fees in your estimated total revenues.

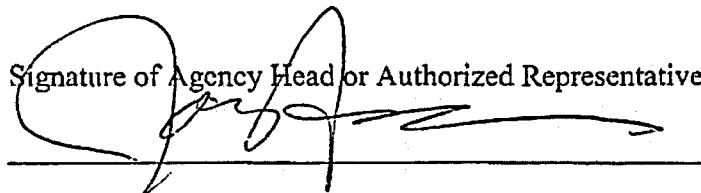
The Racing Commission will incur expenses related to the auditing of the Pari-Mutuel wagering activity. These expenses will incorporate some personal services as well as travel, computer expense, etc. The revenues generated from the activity will primarily be from the taxes from pari-mutuel wagering. The Racing Commission will also collect a license fee for personnel directly related to pari-mutuel wagering.

**MEMORANDUM**

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

Date: 7/7/2011

Signature of Agency Head or Authorized Representative



**TITLE 178  
LEGISLATIVE RULE  
RACING COMMISSION**

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**SERIES 7  
SIMULCAST PARI-MUTUEL WAGERING AT AUTHORIZED GAMING FACILITY  
IN HISTORIC RESORT HOTEL**

**§178-7-1. General.**

1.1. Scope. – This rule regulates the conducting of simulcast pari-mutuel wagering on horse and dog races at an authorized gaming facility in the historic resort hotel in this state.

1.2. Authority. – W. Va. Code § 19-23-12d.

1.3. Filing Date. –

1.4. Effective Date. –

**§178-7-2. Definitions.**

As used in this rule and unless the context clearly requires a different meaning, the following terms have the meaning ascribed in this section.

2.1. "Applicant" means any gaming licensee who is licensed under article twenty-five, chapter twenty-nine of this code, applying for a license under West Virginia Code § 19-23-12d to conduct pari-mutuel wagering on televised horse and dog races.

2.2. "Commission" or "Racing Commission" means the West Virginia Racing Commission created in article twenty-three, chapter nineteen of the West Virginia Code.

2.3 "Designated pari-mutuel wagering area" means one or more specific areas of an existing historic resort hotel within which the Racing Commission has authorized the gaming licensee to offer pari-mutuel wagering to patrons of the hotel.

2.4. "Gaming facility" means a designated area on the premises of an existing historic resort hotel in which pari-mutuel wagering is conducted by a gaming licensee.

2.5. "Gaming licensee" means the licensed operator of a gaming facility under article twenty-five, chapter twenty-nine of this code, who is also licensed under article twenty-three, chapter nineteen, to offer pari-mutuel wagering on simulcast horse or dog races or on both types of races.

2.6. "Handle" means the total amount of all pari-mutuel wagering sales less refunds and cancellations.

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2.7. "Historic resort hotel" means a historic resort hotel as defined in section two, article twenty-five, chapter twenty-nine of this code.

2.8. "In-state host track" means a racetrack within this state licensed to conduct horse or dog race meetings at which pari-mutuel wagering is conducted and which is an in-state sending track.

2.9. "In-state sending track" means a racetrack in this state licensed under this article to conduct horse or dog race meetings at which pari-mutuel wagering is conducted and which is equipped to conduct simulcasting of those races and intertrack pari-mutuel wagering on those races.

2.10. "In-state track" means an in-state host track or an in-state sending track.

2.11. "Interstate common pool" means a pari-mutuel pool established within this state or in another state or foreign nation within which is combined comparable pari-mutuel pools of one or more receiving legal wagering entities located in one or more states or foreign nations upon a race at a sending track located within or outside of this state for the purpose of establishing payoff prices in the various jurisdictions.

2.12. "Intertrack wagering" means parimutuel wagering on simulcast horse or dog races held at an in-state sending track by patrons at a gaming facility licensed under West Virginia Code § 19-23-12d and this rule and the electronic transmission of the wagers to the in-state sending track.

2.13. "License" means a license issued by the Racing Commission pursuant to West Virginia code § 19-23-12d and this rule, including:

2.13.a. A license to operate a gaming facility in which pari-mutuel wagering on simulcast races will be available to patrons;

2.13.b. A license to be employed in connection with the operation of a gaming facility at which pari-mutuel wagering is offered on simulcast races; or

2.13.c. A license to provide management services under a contract to a gaming facility licensed under article twenty-three, chapter nineteen of the Code and this rule.

2.14. "Licensed gaming facility employee" means any individual licensed or registered to be employed by a gaming licensee in connection with the operation of a pari-mutuel wagering pursuant to West Virginia Code § 19-23-12d and this rule.

2.15. "Out-of-state host track" means a racetrack in a jurisdiction other than this state, the operator of which is lawfully permitted to conduct a horse or dog race meeting and which conducts horse or dog races upon which pari-mutuel wagers may be placed.

2.16. "Out-of-state track" means an out-of-state host track or an out-of-State sending track.

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2.17. "Out-of-state sending track" means a racetrack in a jurisdiction other than the State of West Virginia which is lawfully permitted to conduct a horse or dog race meeting and to provide simulcast horse or dog races to a racetrack in this state.

2.18. "Participation agreement" means the written contract that provides for the establishment or implementation of simulcasting of horse or dog races and pari-mutuel wagering. Each contract shall set forth the manner in which the pari-mutuel wagering system shall be managed, operated and capitalized, as well as how expenses and revenues shall be allocated and distributed by and among the licensed gaming facility under West Virginia Code § 19-23-12d and this rule and the other eligible participants in the contract.

2.19. "Premises of an existing historic resort hotel" means the historic resort hotel, attachments of the historic resort hotel, and the traditional, immediate grounds of the historic resort hotel.

2.20. "Receiving gaming facility" means a licensed racetrack or authorized gaming facility within this state licensed under article twenty-three, chapter nineteen of the Code which is equipped to receive simulcast horse and dog races and to conduct intertrack or interstate wagering on those races.

2.21. "Simulcast horse or dog races" means horse or dog races conducted at an in-state sending track or an out-of-state sending track, as the case may be, and transmitted simultaneously by picture to the authorized gaming facility licensed under West Virginia Code § 19-23-12d and this rule or other legal wagering facility.

2.22. "Simulcasting" means the simultaneous audio or visual transmission of horse or dog races conducted at in-state and out-of-state racetracks to the gaming facility licensee under West Virginia Code § 19-23-12d and this rule and pari-mutuel wagering on the results of those races.

### **§178-7-3. License Required.**

3.1. An applicant may apply to the Racing Commission for a license to conduct at the historic resort hotel pari-mutuel wagering on simulcast horse and dog races held at a licensed racetrack in this state, or in another jurisdiction, where pari-mutuel wagering is permitted and conducted.

3.2. The application shall be submitted in the form prescribed by the Commission and must provide the information required by the Commission under this rule.

3.3. No applicant may conduct pari-mutuel wagering on simulcast horse and dog races under West Virginia Code § 19-23-12d without first obtaining a license from the Commission.

3.4. Licenses issued under this rule are not transferrable or assignable. The sale of the assets of a gaming licensee requires the buyer to apply for a license from the Commission.

3.5. Licenses shall be issued for the period of January 1 through December 31 of each year, unless approved otherwise by the Commission.

3.6. Licenses shall be renewed, suspended or revoked on the same basis as licenses issued to racing associations under article twenty-three, chapter nineteen of the Code.

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3.7. An application for a license must include the following:

3.7.a. The full name and address of each partner, member, officer or director of the applicant;

3.7.b. The dates on which the applicant intends to offer simulcast pari-mutuel wagering on horse and dog races and the racetracks from which it intends to receive simulcast transmissions;

3.7.c. Copies of the participation agreements that the applicant has entered into or intends to enter into;

3.7.d. The location of the gaming facility in which the applicant intends to offer simulcast pari-mutuel wagering on horse and dog races;

3.7.e. Whether the applicant, any partner, member, officer or director has previously applied for a license or similar authority in another state to offer simulcast pari-mutuel wagering on horse and dog races, and if so, whether such license was issued or refused, and if issued, whether it was ever suspended or revoked.

3.7.f. A verification that the applicant shall comply with the requirements of the federal Interstate Horseracing Act of 1978, P. L. 95-515, 15 U.S.C. §§ 3001-3007.

3.7.g. Such other information as the Racing Commission may require, including, but not limited to, satisfactory evidence that the applicant has the ability to pay all taxes due the state, salaries of employees necessary for the conducting of simulcast pari-mutuel wagering, and other expenses incident to the activity for which the license is sought. If satisfactory evidence of ability to pay such expenses cannot be produced by the applicant, the Commission may require a bond or other adequate security before the license is issued; and

3.7.h. A signed, notarized verification that the information contained on the application is true and accurate. Such verification shall be signed by a partner, member, officer or director of the applicant.

3.8. Applicants for licenses may be required to have their partners, members, officers or directors provide fingerprints for examination by the West Virginia State Police Criminal Investigation Bureau and the Federal Bureau of Investigation. If fingerprints are required to be provided by an applicant's partners, members, officers or directors, such persons shall provide a signed authorization for the release of information by those agencies.

3.9.. The filing of an application for a license shall authorize the Racing Commission to investigate criminal and employment records, to engage in interviews to determine the applicant's character and qualifications and to verify information provided by the applicant.

3.10. The Racing Commission shall have the discretion to impose conditions upon any license necessary to effectuate the purposes of the Commission's rules and the West Virginia Code pertaining to a Gaming Licensee's operations.

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**§178-7-4. Permitting and registration of persons conducting wagering-related activities.**

4.1. All persons engaged in simulcast wagering-related activities at the gaming facility authorized by West Virginia Code § 19-23-12d shall apply for and obtain an occupational permit from the Racing Commission. Provided, that employees of the gaming licensee who hold licenses issued by the West Virginia Lottery Commission need not obtain an occupational permit from the Racing Commission, but must register with the Racing Commission.

4.2. The Racing Commission shall not grant an occupational permit or registration to anyone under the age of eighteen (18) years. An applicant/registrant may be required to submit a certified copy of his or her birth certificate in connection with his or her application for a permit/registration.

4.3. An occupational permit/registration is neither transferable nor assignable to any other person.

4.4. Applicants for occupational permits/registrations may be required to provide fingerprints for examination by the West Virginia State Police Criminal Investigation Bureau and the Federal Bureau of Investigation. If fingerprints are required to be provided by an applicant, the applicant shall provide a signed authorization for the release of information by those agencies.

4.5. The filing of an application for a permit/registration shall authorize the Racing Commission to investigate criminal and employment records, to engage in interviews to determine the applicant's character and qualifications and to verify information provided by the applicant.

4.6. An occupational permit holder/registrant shall be knowledgeable of the rules of the Racing Commission; and by acceptance of a permit/registration agrees to abide by such rules.

4.7. An occupational permit holder/registrant shall report to the Racing Commission any knowledge he or she has that a violation of the Commission's rules or the laws of this State pertaining to the gaming facility's operations has occurred or may occur.

4.8. The occupational permit and registration required under this rule shall be renewed according to the schedule set forth in West Virginia Code § 19-23-8.

4.9. Persons seeking an occupational permit or registration shall pay an annual fee in the amount of twenty-dollars (\$20.00).

4.10. All applications for an occupational permit or registration, and for renewal thereof, shall be on forms prescribed by the Racing Commission. The application for a permit or registration shall include the following information:

4.10.a. The name, address and date of birth of the person seeking to obtain or renew an occupational permit or registration;

4.10.b. The name and address of the gaming licensee at which the individual is intending to be engaged in wagering-related activities;

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4.10.c. Whether the person seeking to obtain a permit or registration has ever been convicted of a crime. If so, the person shall include a written narrative and court records explaining the circumstances of the conviction;

4.10.d. Whether the person has had a permit, or similar authority, suspended, revoked or denied by the Racing Commission or by a racing board or commission in another jurisdiction. If so, the person shall include a written narrative and records explaining the circumstances of the suspension, revocation or denial; and

4.10.e. A signed, notarized verification that the information contained on the application is true and accurate.

4.11. The Racing Commission may deny, suspend or revoke an occupational permit or registration required under this rule for any reason sufficient to the cause the denial, suspension or revocation of an occupational permit issued pursuant to 178CSR1, governing thoroughbred racing in this state, or 178CSR2, governing greyhound racing in this state.

4.12. The Racing Commission shall comply with its Procedural Rule on Due Process and Hearings, 178CSR6, with regard to the denial, suspension or revocation of a permit or registration issued under this rule.

### **§178-7-5. Duties of Gaming Licensees.**

5.1. A Gaming Licensee shall be responsible for compliance with all rules relating to associations licensed by the Commission as they apply to pari-mutuel wagering contained in 178CSR5.

5.2. A Gaming Licensee shall file audited financial statements on or before the 30th of April of each year, unless otherwise authorized by the Racing Commission. These financial statements shall cover all income and disbursements relating directly and indirectly to the conducting of simulcast pari-mutuel wagering. The financial statements shall be prepared in accordance with generally accepted accounting principles and shall be accompanied by the report of an independent certified public accountant. If the Gaming Licensee is a corporation, it shall provide the Racing Commission with a copy of its annual audited, consolidated financial statements contained in the corporation's annual report to its shareholders and, if applicable, as submitted to the United States Securities and Exchange Commission.

5.3. A Gaming Licensee is obligated to ensure the amounts retained from the pari-mutuel handles are distributed according to the West Virginia Code and Racing Commission rules.

5.4. A Gaming Licensee shall provide proof of liability insurance coverage upon the request of the Racing Commission.

5.5. A Gaming Licensee shall ensure that its gaming facility is designed and maintained for the safety of the patrons and occupational permit holders/registrants and is accessible to persons with disabilities as required by state and federal law.

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5.6. A Gaming Licensee shall cooperate in all respects with the Racing Commission, its employees and representatives in the performance of their regulatory duties.

5.7. A Gaming Licensee shall provide members of the Racing Commission, its employees, its representatives and its designated agents the right of full and complete entry to any and all parts of the Gaming Licensee's gaming facility.

5.8. A Gaming Licensee shall provide suitable office and parking space at its gaming facility for the use of the Racing Commission, its employees, its representatives and its designated agents for private consultation and the performance of any on-site work associated with the Commission's regulation of the Gaming Licensee.

5.9. A Gaming Licensee contemplating a change of any kind pertaining to its gaming facility shall notify the Racing Commission in writing and obtain the Racing Commission's permission before any changes are made.

5.10. A Gaming Licensee shall maintain security controls over its gaming facility.

5.11. A Gaming Licensee shall establish a system or method of issuing credentials or passes to restrict access to its restricted areas in its gaming facility.

5.12. A Gaming Licensee shall ensure that all persons engaged in simulcast wagering-related activities at its gaming facility, including its employees who are so engaged, hold occupational permits or are registered as required by the West Virginia Code and this rule.

5.13. A Gaming Licensee shall prevent access to and shall remove or cause to be removed from its restricted areas any person who does not have an occupational permit or registration issued by the Racing Commission, or who has not been issued a visitor's pass or other indentifying credential that authorizes him or her to have access to the restricted areas.

5.14. Upon the request of the Racing Commission, a Gaming Licensee shall make a report to the Racing Commission which details any and all occurrences or incidents at the gaming facility. The report shall include the name of all persons involved in the occurrences or incidents and the circumstances of the occurrences or incidents.

5.15. It is the responsibility of a Gaming Licensee to ensure that all persons under the age of sixteen (16) years are properly supervised by an adult when admitted to the gaming facility. Persons under the age of eighteen (18) years may not be admitted in the restricted areas of the gaming facility without the written permission of the Commission's Executive Director, except in case of an emergency.

5.16. A Gaming Licensee shall not permit or allow any individual under the age of eighteen (18) years to wager at its gaming facility, knowing or having reason to believe that the individual is under the age of eighteen (18) years.

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5.17. A Gaming Licensee shall issue a badge or credential to all occupational permit holders/registrants and shall ensure that those persons who are issued a badge or credential visibly display the same at all times while on duty.

5.18. A Gaming Licensee, its employees or agents shall report to the Racing Commission any knowledge they have that a violation of the Commission's rules or the laws of this State pertaining to the gaming facility's operations has occurred or may occur.