



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-
MAKING REVIEW COMMITTEE**

AGENCY: Racing Commission TITLE-SERIES: 178-10
RULE TYPE: Legislative Amendment to Existing Rule: No Repeal of existing rule: No
RULE NAME: 178-10 Advance Deposit Account Wagering (ADW)

PRIMARY CONTACT

NAME: Joe Moore
ADDRESS: 900 Pennsylvania Avenue Suite 533
Charleston, WestVirginia 25302
EMAIL: joe.k.moore@wv.gov
PHONE NUMBER: 304-558-2150

CITE STATUTORY AUTHORITY: WV Code 19-23-12e(l)

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

WV Code 19-23-12e(l) specifically authorized the Racing Commission to promulgate this rule to allow the Commission to regulate ADW in WV. ADW was legalized in WV under the statute effective July 1, 2020. The rule establishes criteria for the licensure of ADW entities, establishes reporting requirements to ensure distribution of funds, and other items related to the regulation of ADW.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 7/1/2020

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/31/2020

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: Yes

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

There was no hearing.

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

The rule establishes criteria for the licensure of ADW entities, establishes reporting requirements to allow distribution of funds generated by ADW and other items related to the regulation of ADW. This rule was authorized by the Legislature in order for the Commission to regulate ADW upon its legalization effective July 1, 2020. This is a new rule.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

ADW was legalized in West Virginia by the Legislature effective July 1, 2020. This rule was specifically authorized by the Legislature to be enacted for the regulation of ADW.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

This rule has no economic impact on revenues of State Government by itself. The underlying legislation that authorized the rule has economic impact that was considered and determined during the Legislative session. Nothing in the rule imposes any additional requirements that are not in the underlying legislation.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

This rule has no economic impact on special revenue accounts by itself. The underlying legislation that authorized the rule has economic impact that was considered and determined during the Legislative session. Nothing in the rule imposes any additional requirements that are not in the underlying legislation.

C. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

This rule has no economic impact on the state or its residents by itself. The underlying legislation that authorized the rule has economic impact that was considered and determined during the Legislative session. Nothing in the rule imposes any additional requirements that are not in the underlying legislation.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2020 Increase/Decrease (use "-")	2021 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

This rule has no economic impact on revenues by itself. The underlying legislation that authorized the rule has economic impact that was considered and determined during the Legislative session. Nothing in the rule imposes any additional requirements that are not in the underlying legislation.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Allen R Prunty -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 178
LEGISLATIVE RULE
RACING COMMISSION

SERIES 10
ADVANCE DEPOSIT ACCOUNT WAGERING (ADW)

§178-10-1. General.

- 1.1. Scope. -- This rule regulates the conduct of advance deposit wagering in this state.
- 1.2. Authority. -- W. Va. Code §19-23-12e(1).
- 1.3. Filing Date. --
- 1.4. Effective Date. --
- 1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect upon the expiration of five years from its effective date.

PART 1. DEFINITIONS.

§178-10-2. Definitions.

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

- 2.1. "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.
- 2.2. "Account holder" means a resident individual, at least 18 years of age who applies for and successfully opens an account with an ADW licensee.
- 2.3. "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-mutual wagers on horse or greyhound racing with the ADW licensee via electronic media or by telephone, but not account wagering conducted through a licensee under §19-23-9(a) of the West Virginia code, and the Racing Commission's rules thereunder with respect to wagering conducted pursuant to Racing Commission Rule §178-5-5.
- 2.4. "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.
- 2.5. "ADW" means advance deposit account wagering.

2.6. "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.

2.7. "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.

2.8. "Licensee" means any racing association holding a license as defined by §19-23-3 of the West Virginia code.

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

2.10. "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.

2.11. "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.

2.12. "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 § 19-23-12e of the West Virginia code, excluding refunds and cancellations, payable on a monthly basis to the Racing Commission and distributed as set forth in §19-23-12e(b) of the West Virginia code.

2.13. "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 the West Virginia code, but excluding refunds, cancellations, and advance deposit account wagering under §19-23-12e of the West Virginia code.

PART 2. ISSUANCE OF ADW LICENSES.

§178-10-3. Authorization to conduct advance deposit account wagering.

3.1. No person or entity shall conduct advance deposit account wagering (ADW) in the state of West Virginia unless the person or entity has applied for and has been granted an ADW license by the Racing Commission. No ADW license shall be granted by the Commission unless the applicant meets all requirements specified in §19-23-12e of the West Virginia code and this rule.

3.2. An ADW license shall be valid for the calendar year in which it is issued. Provided that, those initial ADW licenses issued by the Racing Commission on or after the July 1, 2020 effective date of West

Virginia §§ 19-23-12e et seq., and the effective date of this rule, shall be valid from the date of issuance until December 31, 2020.

3.3. An application shall include, on a form prescribed by the Racing Commission, the names, addresses and telephone numbers of all officers and directors. The following information shall be required to be provided by an applicant to the Commission:

3.3.a. An application shall include an affidavit from the chief executive officer or a major financial participant in the applicant setting forth:

3.3.a.1. That the application is made for a license to conduct ADW in the state of West Virginia;

3.3.a.2. That the affiant is the agent of the applicant, its owners, partners, members, directors, officers, and personnel and is duly authorized to make the representations in the application on their behalf. Documentation of the authority shall be attached;

3.3.a.3. That the applicant seeks a grant of a privilege from the state of West Virginia, and the burden of proving the applicant's qualifications rests at all times with the applicant;

3.3.a.4. That the applicant consents to inquiries by the state of West Virginia, its employees, the Racing Commission, its staff and agents, into the financial, character, and other qualifications of the applicant by contacting individuals and organizations;

3.3.a.5. That the applicant, its owners, partners, members, directors, officers, and personnel accept any risk of adverse public notice, embarrassment, criticism, or other circumstance, including financial loss, which may result from action with respect to the application and expressly waive any claim which otherwise could be made against the state of West Virginia, its employees, the Racing Commission, staff, or agents;

3.3.a.6. That the affiant has read the application and knows the contents; the contents are true to affiant's own knowledge, except matters therein stated as information and belief; as to those matters, affiant believes them to be true;

3.3.a.7. That the applicant recognizes all representations in the application are binding on it, and false or misleading information in the application, omission of required information, or substantial deviation from representations in the application may result in denial, revocation, suspension or conditioning of a license or imposition of a fine, or any or all of the foregoing;

3.3.a.8. That the applicant will comply with all applicable state and federal statutes and rules, all rules of the Racing Commission and all other local ordinances;

3.3.a.9. The affiant's signature, name, organization, position, address, and telephone number; and

3.3.a.10. The date.

3.3.b. An applicant must disclose the following ownership and control information:

3.3.b.1. The type of organizational structure of the applicant, whether individual, business corporation, nonprofit corporation, partnership, joint venture, trust, association, or other;

3.3.b.2. If the applicant is an individual, the applicant's legal name, whether the applicant is a United States citizen, any aliases and business or trade names currently or previously used by the applicant, and copies of all state and federal tax returns for the past five years;

3.3.b.3. If the applicant is a corporation:

3.3.b.3.A. The applicant's full corporate name and any trade names currently or previously used by the applicant;

3.3.b.3.B. The jurisdiction and date of incorporation;

3.3.b.3.C. The date the applicant began doing business in West Virginia and a copy of the applicant's certificate of authority to do business in West Virginia;

3.3.b.3.D. Copies of the applicant's articles of incorporation, bylaws, and all state and federal corporate tax returns for the past five years;

3.3.b.3.E. The general nature of the applicant's business;

3.3.b.3.F. Whether the applicant is publicly held as defined by the rules and regulations of the Securities and Exchange Commission;

3.3.b.3.G. The classes of stock of the applicant. As to each class, the number of shares authorized, number of shares subscribed to, number issued, number outstanding, par value per share, issue price, current market price, number of shareholders, terms, position, rights, and privileges must be disclosed;

3.3.b.3.H. Whether the applicant has any other obligations or securities authorized or outstanding which bear voting rights either absolutely or upon any contingency, the nature thereof, face or par value, number of units authorized, number outstanding, and conditions under which they may be voted;

3.3.b.3.I. The names, in alphabetical order, and addresses of the directors and, in a separate list, officers of the applicant. The number of shares held of record directly or indirectly by each director and officer as of the application date of each class of stock, including stock options and subscriptions, and units held of record or beneficially of other obligations or securities which bear voting rights must be disclosed;

3.3.b.3.J. The names, in alphabetical order, and addresses of each recordholder as of the date of application or beneficial owner of shares, including stock options and subscriptions, of the applicant or units of other obligations or securities which bear voting rights. As to each holder of shares or units, the number and class or type of shares or units shall be disclosed;

3.3.b.3.K. Whether the requirements of the Securities Act of 1933 and Securities and Exchange Act of 1934, as amended, and Securities and Exchange Commission rules and regulations have been met in connection with issuance of applicant's securities, and copies of the most recent registration statement and annual report filed with the Securities and Exchange Commission;

3.3.b.3.L. Whether the securities registration and filing requirements of the applicant's jurisdiction of incorporation have been met, and a copy of the most recent registration statement filed with the securities regulator in that jurisdiction; and

3.3.b.3.M. Whether the securities registration and filing requirements of the state of West Virginia have been met. If they have not, the applicant must disclose the reasons why. The applicant must provide copies of all securities filings with the West Virginia Securities Commission during the past five years.

3.3.b.4. If the applicant is an organization other than a corporation:

3.3.b.4.A. The applicant's full name and any aliases, business, or trade names currently or previously used by the applicant;

3.3.b.4.B. The jurisdiction of organization of the applicant;

3.3.b.4.C. The date the applicant began doing business in West Virginia;

3.3.b.4.D. Copies of any agreements creating or governing the applicant's organization and all of the applicant's state and federal tax returns for the past five years;

3.3.b.4.E. The general nature of the applicant's business;

3.3.b.4.F. The names, in alphabetical order, and addresses of any partners and officers of the applicant and other persons who have or share policy-making authority. As to each, the applicant must disclose the nature and extent of any ownership interest, direct or indirect, including options, or other voting interest, whether absolute or contingent, in the applicant; and

3.3.b.4.G. The names, in alphabetical order, and addresses of any individual or other entity holding a record or beneficial ownership interest, direct or indirect, including options, as of the date of the application, or other voting interest, whether absolute or contingent, in the applicant. As to each, the applicant must disclose the nature and extent of the interest.

3.3.b.5. If a non-individual record or beneficial holder of an ownership or other voting interest of 5.0% or more in the applicant is identified pursuant to subparagraph 3.3.b.3.I. or subparagraph 3.3.b.3.J. or subparagraphs 3.3.b.4.F. and 3.3.b.4.G., the applicant must disclose the information required by those subparagraphs as to record or beneficial holders of an ownership or other voting interest of 5.0% or more in that non-individual holder. The disclosure required by those subparagraphs must be repeated, in turn, until all other voting interests of 5.0% or more in the applicant or any non-individual holder are identified. When an applicant is unable to provide the information required, it shall explain fully and document its inability to do so;

3.3.b.6. Whether the applicant is directly or indirectly controlled to any extent or in any manner by another individual or entity. If so, the applicant must disclose the identity of the controlling entity and a description of the nature and extent of control;

3.3.b.7. Any agreements or understandings which the applicant or any individual or entity identified pursuant to this rule has entered into regarding ownership or operation of applicant's proposed

ADW business, and copies of any such agreements in writing;

3.3.b.8. Any agreements or understandings which the applicant has entered into for the payment of fees, rents, salaries, or other compensation concerning the proposed ADW business by the applicant, and copies of any such agreements in writing; and

3.3.b.9. Whether the applicant, any partner, director, officer, other policymaker, or holder of a direct or indirect record or beneficial ownership interest or other voting interest or control of 5.0% or more has held or holds a license or permit issued by a governmental authority to own or operate a horse or greyhound racing facility, pari-mutuel wagering facility or any other form of gambling entity, or has a financial interest in such an enterprise or conducts any aspect of horse or greyhound racing or gambling. If so, the applicant must disclose the identity of the license or permit holder, nature of the license or permit, issuing authority, and dates of issuance and termination.

3.3.c. An applicant for an ADW license must disclose and furnish character information as to whether the applicant or any individual or other entity identified pursuant to this rule has:

3.3.c.1. Been charged in any criminal proceeding other than a traffic violation. If so, the applicant must disclose nature of the charge, the date charged, court and disposition;

3.3.c.2. Had a horse or greyhound racing, gambling, ADW, business, professional, or occupational license or permit revoked or suspended or renewal denied or been a party in a proceeding to do so. If so, the applicant must disclose the date of commencement, circumstances and disposition;

3.3.c.3. Been accused in an administrative or judicial proceeding of violating a statute or regulation relating to horse or greyhound racing, or gambling, or ADW operations;

3.3.c.4. Been charged in an administrative or judicial proceeding of violating a statute or regulation relating to unfair labor practices or discrimination;

3.3.c.5. Initiated an administrative or judicial action against a governmental regulator of horse or greyhound racing, or gambling, or ADW operations. If so, the applicant must disclose the date of commencement, forum, circumstances and disposition;

3.3.c.6. Been a party in any administrative or judicial action involving ADW. If so, the applicant must disclose the nature of the action, the forum of the action, the circumstances and disposition;

3.3.c.7. Been the subject of voluntary or involuntary bankruptcy proceedings. If so, the applicant must disclose the date of commencement, forum, circumstances, date of decision and disposition;

3.3.c.8. Failed to satisfy any judgment, decree or order of an administrative or judicial tribunal. If so, the applicant must disclose the date and circumstances; and

3.3.c.9. Been delinquent in filing a tax return required or remitting a tax imposed by any government. If so, the applicant must disclose the date and circumstances.

3.3.d. The disclosure of character information that is required by subdivision 3.3.c. of this rule must be made if the applicant, any individual or entity that owns a 5.0% or greater equity interest in the applicant, or any person or entity that will exercise any degree of management or control of the applicant,

has committed any of the acts or otherwise meets any of the criteria listed in subdivision 3.3.c.

3.3.e. An applicant for an ADW license must provide the following with regard to financial resources:

3.3.e.1. The most recent independently audited financial statement showing:

3.3.e.1.A. The applicant's current assets, including investments in affiliated entities, loans and accounts receivable;

3.3.e.1.B. Fixed assets;

3.3.e.1.C. Current liabilities, including loans and accounts payable;

3.3.e.1.D. Long-term debt and equity; and

3.3.e.1.E. Statement of income and expenses, and statement of cash flow.

3.3.f. As part of the application process, the ADW license applicant shall submit a detailed plan, including a detailed budget of the cost of implementation, how its proposed ADW system will operate, and internal controls procedures. The Racing Commission may require changes in a proposed plan of operations as a condition of granting an ADW license. No subsequent material changes in the system's operation may occur unless ordered by the Racing Commission or until approval is obtained from the Racing Commission after it receives a written request.

3.4. The Racing Commission may conduct investigations or inspections or request additional information from the applicant for a license and its officers, directors, managers and equity holders, as applicable, holding 5.0% or more of the applicant's equity interest, as it deems appropriate in determining if the applicant has the financial resources to conduct ADW, and whether to allow the applicant to conduct ADW.

3.5. Before being granted its original ADW license, and every six months thereafter, an ADW licensee shall furnish the Racing Commission with proof that the account holders will be guaranteed the full value of their accounts regardless of the acts of the ADW licensee or any other entity. If the proof offered to the Racing Commission is not satisfactory to the Commission, the Commission may require the ADW licensee to purchase a bond or other form of insurance guaranteeing that the account holders receive the full value of their accounts.

3.6. An application to renew an ADW license for each succeeding calendar year is due in the offices of the Racing Commission by 5:00 p.m. on December 1 on a form prescribed by the Racing Commission. If December 1 falls on a Saturday, Sunday or designated state holiday, then the renewal application shall be submitted to the Racing Commission by 5:00 p.m. on the next business day.

PART 3. ADW LICENSEE OPERATIONS, REQUIREMENTS AND FEES.

§178-10-4. Operations by advance deposit account wagering licensees.

4.1. Before beginning operations in the state of West Virginia, an ADW licensee must be qualified to do business in West Virginia.

4.2. Any action that suspends or otherwise prohibits an ADW licensee of the Racing Commission from operating in another state may be used as grounds for a suspension of its ADW license in West Virginia. An ADW licensee whose ADW license has been suspended, revoked or otherwise rendered inoperable in another state has a duty to immediately notify the Racing Commission.

4.3. Only individuals who have established accounts with an ADW entity licensed by the Racing Commission may wager through an account and that account must be with an ADW entity licensed in West Virginia.

4.4. The following provisions apply to opening an ADW account:

4.4.a. An ADW licensee shall require from an applicant the following information including, but not limited to:

4.4.a.1. Name;

4.4.a.2. Principal residence address;

4.4.a.3. Telephone number;

4.4.a.4. The entire or last four digits of the applicant's Social Security number, or the equivalent for a foreign applicant such as a passport or taxpayer identification number;

4.4.a.5. Age; and

4.4.a.6. Other information necessary for account administration.

4.4.b. The information obtained from the applicant shall be verified by the ADW licensee using means acceptable to the Racing Commission.

4.5. The following provisions apply to administration of an ADW account:

4.5.a. Each account holder's ADW account shall be administered in accordance with the terms of agreement, which have been approved by the Racing Commission, including but not limited to:

4.5.a.1. Deposits;

4.5.a.2. Credits to accounts;

4.5.a.3. Debits to accounts;

4.5.a.4. Withdrawals;

4.5.a.5. Minimum deposit; and

4.5.a.6. Fees, if any, per wager.

4.6. Only the holder of an ADW account shall place an account wager. Unless otherwise approved

by the Commission, no person, corporation or other entity shall directly or indirectly act as an intermediary, transmitter or agent in the placing of wagers for a holder of an ADW account. Provided, however, that the use of credit or debit cards specifically approved by the ADW licensee or the use of checks, money orders or negotiable orders of withdrawal or the use of telephonic, computer or electronic means by the account holder to place such wagers shall not be prohibited.

4.7. An ADW licensee shall maintain for at least three years all records of the opening and closing of accounts, wagers, earnings and withdrawals.

4.8. An ADW licensee may close accounts for violation of its terms of agreement or other appropriate reasons;

4.9. An ADW licensee may close wagering on any particular race or racetrack;

4.10. An ADW licensee shall provide the account holder with appropriate identification materials and the terms of agreement.

4.11. The principal residence address provided in writing by the account holder at the time of application is deemed to be the proper address for the purposes of mailing checks, statements of account, account withdrawals, notices, or other appropriate correspondence. The mailing of checks or other correspondence to the address given by the account holder shall be at the sole risk of the account holder.

§178-10-5. ADW licensee requirements.

5.1. An ADW licensee shall conduct its operations with account holders in accordance with the terms of agreement, previously approved by the Racing Commission.

5.2. No employee or agent of the ADW licensee shall divulge any confidential information related to the placing of any wager or any confidential information related to the operation of the ADW licensee except:

5.2.a. To the account holder as required by this rule;

5.2.b. To the Racing Commission;

5.2.c. To the ADW licensee; and

5.2.d. As otherwise required by state or federal law.

5.3. All wagering conversations, transactions or other wagering communications through the ADW system, verbal or electronic, shall be recorded by means of the appropriate electronic media, and the tapes or other records of such communications shall be kept by the ADW licensee for a period of three years. These tapes and other records shall be made available to Racing Commission, its employees and designees upon request.

5.4. The recording of the confirmation of the transaction, as reflected in the voice or data recording records, shall be deemed to be the actual wager, regardless of what was recorded by the pari-mutuel system.

5.5. An ADW licensee shall not accept wagers if its transcribing system is not operable.

5.6. An ADW license shall be administered in accordance with its terms of licensure and the previously approved terms of agreement.

5.7. The Racing Commission, its employees and designees may audit, review and monitor the equipment, staff and records of an ADW licensee and any of the transactions conducted by the ADW licensee in regards to wagers made by account holders; the calculation and determination of the source market fee set forth in West Virginia Code §19-23-12e(b); the total amount wagered through the ADW licensee by residents; the calculation and determination of the regulatory fee set forth in West Virginia Code §19-23-12e(h); and, the calculation and determination of the additional fee set forth in West Virginia Code §19-23-12e(i) to be deposited in the special revenue “Advance Deposit Wagering Account.”

§178-10-6. ADW licensee fees.

6.1. An initial or renewal application for an ADW license shall be accompanied by a nonrefundable application fee of \$5,000.00 payable to the Racing Commission. Provided that an initial application for an ADW license submitted on or after the July 1, 2020 effective date of West Virginia §§ 19-23-12e *et seq.* and the effective date of this rule, for the period ending on December 31, 2020, shall be accompanied by a nonrefundable application fee of \$2,500.00 payable to the Racing Commission.

6.2. An applicant for an initial or renewal ADW license shall be billed and shall be responsible for any costs involved in the background checks and review conducted by the Racing Commission in connection with the application. Payment for such costs shall be due within fifteen days of receipt of the bill issued by the Racing Commission.

6.3. The source market fee set forth in West Virginia Code §19-23-12e(b) shall be paid by an ADW licensee to the Racing Commission on the tenth day of each month for the previous month. Thereafter, the Racing Commission shall distribute the source market fee in the manner required by West Virginia Code §19-23-12e(b) by no later than the twentieth day of each month.

6.4. The regulatory fee set forth in West Virginia Code §19-23-12e(h) shall be paid by an ADW licensee to the Racing Commission on the tenth day of each month for the previous month.

6.5. The additional fee set forth in West Virginia Code §19-23-12e(i) to be deposited in the special revenue “Advance Deposit Wagering Account” shall be paid by an ADW licensee to the Racing Commission on the tenth day of each month for the previous month.

6.6. For purposes of this subsection, if a fee is required to be paid or a distribution is required to be made on a day that is a Saturday, Sunday or designated state holiday, then the fee shall be paid or the distribution shall be made on the next business day.

PART 4. DENIAL AND DISCIPLINE OF A LICENSE AND ENFORCEMENT AND PENALTIES.

§178-10-7. Grounds for Denial and Discipline of a License.

7.1 The Racing Commission may, in its discretion, refuse to issue or renew an ADW license to an applicant, or may in its discretion, suspend, revoke, or impose other disciplinary measures upon an ADW license issued in this state if the applicant or any individual or other entity identified pursuant to this rule

in connection with the application, or the ADW licensee has:

7.1.a. has been convicted of a crime in any jurisdiction, other than a traffic violation, that bears a rational nexus to the qualifications, functions or duties necessary to engage in ADW operations;

7.1.b. has demonstrated financial irresponsibility or financial instability in such a manner that it bears on the ability of the applicant or the licensee to engage in ADW operations;

7.1.c. has had a horse or greyhound racing, gambling, ADW, business, professional, or occupational license or permit revoked, denied, suspended or otherwise disciplined, or been a party in a proceeding to do so;

7.1.d. has violated, attempted to violate, or knowingly aided and abetted the violation of any law, rule, ruling or order with respect to ADW or racing in West Virginia or any other jurisdiction;

7.1.e. has failed to disclose or has falsely stated any information required in the application for an ADW license;

7.1.f. has violated any provision of this rule and/or the provisions of § 19-23-12e et seq. of the West Virginia code;

7.1.g. has failed to pay a required fee, fine or cost;

7.1.h. has failed to cooperate with the Racing Commission, its Executive Director, its employees, agents and designees in any inquiry, audit, investigation, review or proceeding.

178-10-8. Denial of ADW license application.

8.1. Whenever the Racing Commission shall deny an application for an ADW license it shall make and enter an order to that effect and serve a copy thereof on the applicant in any manner in which a summons may be served in a civil action or by certified mail, return receipt requested. Such order shall state the grounds for the action taken.

8.2. An ADW license applicant adversely affected by any such order shall be entitled to a hearing thereon if, within twenty days after service, the applicant files with the Racing Commission a written demand for such hearing. The Racing Commission may require the applicant demanding a hearing to give reasonable security for the costs of the hearing and if the applicant does not substantially prevail at the hearing, such costs, less the security, and the Commission's attorney fees shall be assessed against such person and may be collected by an action at law or other proper remedy.

8.3. Upon receipt of a written demand for such hearing, the Racing Commission shall set a time and place therefor not less than ten and not more than thirty days thereafter. Any hearing may be continued by the Racing Commission or its appointed hearing examiner for good cause shown.

8.4. All of the pertinent provisions of §29A-5-1 et seq. of the West Virginia code and the pertinent provisions of 178 CSR 6, the Racing Commission's Due Process and Hearings procedural rule, apply to and govern the hearing and the administrative procedures in connection with such hearing.

8.5. Any such hearing shall be conducted by a quorum of the Racing Commission or by a hearing

examiner appointed by the Racing Commission who is licensed to practice law in the State of West Virginia. For the purpose of conducting any such hearing, any member of the Racing Commission or its appointed hearing examiner has the power and authority to issue subpoenas and subpoenas duces tecum as provided in §19-23-6 of the West Virginia code. Any such subpoenas and subpoenas duces tecum shall governed by the provisions of §29A-5-1 of the West Virginia code.

8.6. At any such hearing the applicant who demanded it may be represented by an attorney-at-law admitted to practice in West Virginia. The Racing Commission shall be represented at any such hearing by the Attorney General or his or her assistants. The Racing Commission, with the written approval of the Attorney General, may employ special counsel to represent the Racing Commission at any such hearing.

8.7. After any such hearing and consideration of all of the testimony, evidence and record in the case, the Racing Commission shall render its decision in writing. The written decision of the Racing Commission shall be accompanied by findings of fact and conclusions of law as specified in §29A-5-3 of the West Virginia code, and a copy of such decision and accompanying findings and conclusions shall be served by certified mail, return receipt requested, upon the applicant demanding such hearing, and his or her attorney of record, if any. If a hearing is conducted by a hearing examiner appointed by the Racing Commission, he or she shall prepare a written recommended decision for the Commission's consideration. The Racing Commission, in its discretion, may accept the recommendation in its entirety, modify it, or reject it. If the Racing Commission modifies or rejects a recommended decision of an appointed hearing examiner, either in whole or in part, it shall issue a reasoned, articulate explanation and a recitation of the underlying evidence or other matters upon which it bases its decision, including findings of fact and conclusions of law.

8.8. The decision of the Racing Commission shall be final unless reversed, vacated or modified upon judicial review thereof in accordance with the provisions of §29A-5-4 of the West Virginia code.

§178-10-9. Discipline of ADW Licensees and Penalties.

9.1. After notice and an opportunity to be heard, the Racing Commission may impose one of the following penalties or any combination of two or more of the following penalties on an ADW licensee who has been found to have engaged in conduct constituting grounds for disciplinary action:

9.1.a. issue a reprimand;

9.1.b. assess a fine not to exceed one hundred thousand dollars (\$100,000.00) per violation, which may be deposited in the Racing Commission's general administrative account;

9.1.c. place an ADW licensee on probation;

9.1.d. place conditions on an ADW license;

9.1.e. suspend an ADW license for an indefinite or fixed period; or

9.1.f. revoke an ADW license.

9.2. Disciplinary proceedings initiated by the Racing Commission against an ADW licensee and any hearings scheduled in connection with those disciplinary proceedings shall be governed by the pertinent provisions of §29A-5-1 *et seq.* of the West Virginia code, the pertinent provisions of 178 CSR 6, the Racing

Commission's Due Process and Hearings procedural rule, and subsections 8.5., 8.6., 8.7. and 8.8. of this rule.

9.3. If the Racing Commission substantially prevails in a disciplinary proceeding against an ADW licensee, it may assess the cost of the proceeding and the Commission's attorney fees against the licensee. The Racing Commission may collect such costs and fees by an action at law or other proper remedy, if necessary.

9.4. The Racing Commission may summarily suspend an ADW license for a period not to exceed ninety days pending a hearing and final determination by the Commission if the Commission determines that emergency action is required to protect the public health, safety and welfare including, but not limited to, revenues due the state of West Virginia, the Racing Commission, its horse and greyhound racing licensees, its racing licensees' purse accounts, the West Virginia Thoroughbred Development Fund and the Greyhound Breeding Development Fund. The Racing Commission shall schedule a hearing within fourteen business days after the license is summarily suspended and notify the licensee not less than five business days before the hearing of the date, time, and place of the hearing.

§178-10-10. Enforcement.

10.1. The Racing Commission shall have all of the rights, powers and remedies provided for in §§19-23-1 et seq. and 19-23-12e et seq. of the West Virginia code to ensure compliance with this rule and applicable statutes, including, but not limited to, injunctive relief.

10.2. Additionally, with respect to any person or entity that engages in ADW in West Virginia without a license issued by the Racing Commission, the Commission may take such measures as it deems necessary, including, but not limited to, seeking injunctive relief in a court of competent jurisdiction and/or referral to the appropriate prosecutorial and law-enforcement authorities for criminal prosecution.