

OFFICE OF POLICY AND LEGAL ANALYSIS

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To: Veterans and Legal Affairs Committee

From: Janet Stocco, Legislative Analyst

LD 587 **An Act Regarding the Licensing of Persons To Conduct Advance Deposit Wagering**
(*Rep. Sawin Millett*)

LD 623 **An Act To Amend the Advance Deposit Wagering Laws** (*Rep. Jay McCreight*)

SUMMARY — *All citations are to Title 8 of the Maine Revised Statutes, unless otherwise specified*

Under current law, enacted by [P.L. 2015, ch. 499](#) (*attached*), the Gambling Control Board is required to develop an RFP process to award one bidder the privilege of conducting advance deposit wagering in the State for a five-year, renewable license period. These bills amend that law as follows:

- **LD 587** would increase the number of ADW licenses the Gambling Control Board may grant by allowing the board to select up to three winning bidders.
- **LD 623** would repeal the RFP process and allow the Gambling Control Board to issue licenses to any eligible applicant who applies for a license to conduct ADW in the State.

	LD 587 (red = only change from current law)	LD 623
ADW definition	"Advance deposit wagering" means a form of pari-mutuel wagering <i>on harness or thoroughbred races</i> in which wagers are made by telephone, <i>via electronic device</i> or in person and the bettor deposits funds in a wagering account administered by an advance deposit wagering licensee from which the advance deposit wagering licensee makes wagers on behalf of the bettor and to which the advance deposit wagering licensee deposits money from winning wagers awarded to the bettor.	"Advance deposit wagering" means a form of pari-mutuel wagering <i>on horse races</i> in which wagers are made in person or by telephone, <i>Internet, mobile device, electronic communication or, if approved by the board, other electronic medium</i> and the account holder deposits funds in a wagering account administered by an advance deposit wagering licensee. An advance deposit wagering licensee makes wagers from the wagering account at the direction of and on behalf of the account holder, and the advance deposit wagering licensee deposits money into the wagering account from winning wagers awarded to the account holder.
# Licensees	Up to 3 licenses issued after RFP.	All eligible applicants may be licensed.
Eligible entities	For at least 2 years has been licensed to accept wagers on horse racing as: <ul style="list-style-type: none"> • A commercial track; • An OTB under §275-D; or • As an entity licensed in another state to conduct ADW 	Two-year requirement eliminated. <ul style="list-style-type: none"> • Licensed Maine commercial track • Licensed Maine OTB under §275-D • Multijurisdictional account wagering provider—<i>i.e.</i>, out-of-state entity licensed to offer ADW in another state. Licensee may conduct ADW itself or may contract with another entity to conduct ADW.

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Application fees and term	<ul style="list-style-type: none"> • <i>Application fee</i>: \$1,000 plus expenses of background check • <i>Initial 5-year license fee</i>: \$500 • <i>Renewal 5-year license fee</i>: \$250 	Same
Investigation	<p>Board may perform background investigations it determines necessary to investigate the suitability of the winning bidder to be issued a license.</p> <p>In addition, 8 M.R.S. §1017 & §1019 apply, including requirements to submit board application form and to consent to fingerprinting and background investigations.</p>	<p>Title 8, §1017 & §1019 apply, including requirements to submit board application form and to consent to fingerprinting and background investigations.</p> <p>Board may refuse license under §1016(2)-(3) due to applicant’s lack of good moral character, past felony convictions, any past violations of gambling laws, tax arrears, etc.</p> <p><u>Exception</u>: multijurisdictional account wagering provider’s, parent company’s or affiliates’ past violations of State ADW laws may not disqualify it from licensure.</p>
Additional RFP considerations or license requirements	Board must consider adequacy of bidder’s system to ensure ADW account holders and bettors are 18 years of age or older and residents of the State.	Must use a system to ensure ADW account holders and bettors are 18 years of age or older and residents of the State.
	<ul style="list-style-type: none"> • Board must consider bidder’s financial suitability to operate ADW • Board may require purchase of a bond to secure ADW accounts 	<ul style="list-style-type: none"> • Applicant must have sufficient financial assets and responsibility to conduct ADW and to continue operating a commercial track or OTB • Applicant must purchase a bond to secure ADW accounts
		Applicant must have sufficient knowledge and experience in the business of ADW to effectively operate ADW.
	Board must consider bidder’s methods to provide board access to systems and records for monitoring and enforcement. §1017(3) & §1019(1)-(2) also apply.	Must consent to board’s review of records and financial accounts for application purposes and for compliance monitoring. §1017(3) & §1019(1)-(2) .
Employee licensing	Not required	Required, except for employees of a multijurisdictional account wagering provider who (1) don’t process Mainer residents’ ADW wagers or (2) are licensed in another state.
Board director rulemaking requirements	<ul style="list-style-type: none"> • ADW license requirements • Prevention of fraud or deception on ADW account holders • Required statements to ADW account holders 	Same

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	<ul style="list-style-type: none"> Defining “abandoned ADW account” and disposal of funds in such accounts Methods for verifying age and residency of ADW account applicants Methods to ensure ADW accounts are not held by third parties or entities Methods for depositing funds in ADW accounts; must prohibit EBT funds Prohibiting transfer of ADW accounts between persons 	
Tax Rate	Applicant proposes percentage of wagers it will pay to the board for administrative expenses and percentage to the cascade.	5% tax on gross ADW income —i.e., total amount of wagers by Maine residents less payment of money to winning bettors
Board expenses	A percentage (proposed in bid) of wagers is paid to board for admin. expenses	Not included
Tax cascade for revenue from bets on in-State races	10% General Fund 20% to OTBs licensed under §275-D 1% Sire Stakes Fund 10% Agricultural Fair Support Fund (not to be distributed to commercial track) 24% fund to supp. harness racing purses 20% to track where race was conducted 15% to commercial tracks (pro rata based on tracks’ share of year’s race days)	Same
Tax cascade for revenue from bets on out-of-state races	10% General Fund 36% to OTBs licensed under §275-D 1% Sire Stakes Fund 10% Agricultural Fair Support Fund (not to be distributed to commercial track) 7% Fund to supp. harness racing purses 36% to commercial tracks (pro rata by the track’s share of race days that year)	Same
Operating without a license	Subject to penalties for unlawful gambling under Title 17-A, chapter 39 . <ul style="list-style-type: none"> Class B crime to accept/receive as a business > 5 bets totaling >\$500 within any 24-hour period. Class D crime to profit from unlawful gambling activity as a business. Board must send cease-and-desist notice to people who facilitate or accept ADW	Penalties not expressly stated. Nevertheless, facilitation or acceptance of ADW wagers without a license will remain unlawful gambling under Title 17-A, chapter 39 . Exception: multijurisdictional account wagering provider may not be found in violation of any State law based on its own, its parent company’s or its affiliates’ unlicensed ADW conduct in this State before the effective date of this legislation.

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	wagers on horse races from a Maine resident without a license.	Cease-and-desist notice not expressly required.

ADDITIONAL INFORMATION

1. **Past Legislation.** In the 129th Legislature, a majority (11-2) of the VLA Committee favored [an amendment](#) to [LD 1797](#), An Act To Amend the Advance Deposit Wagering Laws, that was nearly identical to the proposal contained in LD 623. The bill, as amended, was placed on the special appropriations table where it remained when the Legislature finally adjourned in March 2020.
2. **Interstate Horseracing Act of 1978** (federal law, [Title 15, Chapter 57 of the U.S. Code](#)). Under this federal law, an “off-track betting system” may “accept an interstate off-track wager”—defined as a legal wager placed in person, by telephone or electronically in one state on a horserace conducted in another state where lawful in each state involved—only if consent is obtained from:
 - a. The “host racing association”—defined as the person conducting the race subject to the wager. Before the host racing association may consent, it must obtain the consent of the “horsemen’s group”—defined as the majority of the owners or trainers racing at the track;
 - b. The “host racing commission”—defined as the entity with authority to regulate the conduct of horse racing in the state where the race occurs; **and**
 - c. The “off-track racing commission”—defined as the entity with authority to regulate off-track betting in the state where the wager is placed.

AMENDMENTS PROPOSED

1. **James Day (Lewiston OTB)** proposed either:
 - a. Removing the provision of the bill (p.5, lines 11-16) that authorizes a multijurisdictional account wagering provider to obtain an ADW license even if it, its parent company or its affiliated companies engaged in previous unlicensed acceptance of advance deposit wagers in the State; **or**
 - b. Requiring, as a condition of licensure, that any entity that obtains an ADW license and that also conducts horse racing, must provide the “signal” of those races to OTBs in the state “at a cost no more than 0.5% greater than their best customer.”

Analyst Notes:

- It is not clear what is meant by the “best customer”; is it the customer that pays the highest rate (best from racetrack’s perspective) or the lowest rate (best from OTB’s perspective)?
- In addition, it is unclear whether such a requirement would be preempted by the Interstate Horseracing Act of 1978. As is discussed above, federal law requires each OTB and ADW to obtain the consent of the “host racing association,” the racetrack hosting the race, prior to accepting interstate wagers on races conducted by that racetrack. It is possible that a court might conclude that this type of state-mandated contractual term conflicts with and is therefore preempted by the federal law’s grant of authority to the racetrack owner to establish the terms under which it will consent to the placement of interstate wagers on its races.
Compare Horseman's Benevolent & Protective Ass'n-Ohio Div. v. DeWine, 666 F.3d 997,

1000 (6th Cir. 2012) (concluding that an Ohio law that prevented a horsemen’s group from “unreasonably with[olding] consent” and that created a process through which racetracks could consent to simulcast races if the Ohio State Racing Commission concluded that the horsemen’s group’s withholding of consent was “without substantial merit” was preempted by the Interstate Horseracing Act).

TECHNICAL ISSUES

Both bills:

1. **Eligible off-track betting facilities.** Current [§1017\(1\)](#), LD 587 and LD 623 each provide that an ADW license may be issued to “an off-track betting facility licensed under section 275-D.” These provisions prevent Scarborough Downs—which obtained an off-track betting facility license pursuant to [Public Law 2019, chapter 626, §16](#) rather than [§275-D](#)—from obtaining an ADW license. In addition, because the Scarborough Downs’s OTB was not licensed under [§275-D](#), under the plain language of [§1072\(1\)\(B\) & \(2\)\(B\)](#), which is not amended in either bill, this OTB facility is ineligible to receive distributions of revenue from the ADW cascade. *See* [LD 623](#), pp.3-4.

Two bills currently pending before the VLA committee would address this issue. [LD 860](#) would amend [§275-D](#) to provide that a person licensed as an OTB under Public Law 2019, chapter 626 is deemed to have been licensed under [§275-D](#). By contrast, [LD 1405](#) would amend the ADW statutes to provide that an OTB licensed under Public Law 2019, chapter 626 is eligible to obtain an ADW license and to receive a share of distributions by directly amending [§1071](#) and [§1072\(1\)\(B\) & \(2\)\(B\)](#).

LD 587:

2. **New RFP.** Would the Gambling Control Board be required to issue a new RFP for selecting up to 2 additional ADW licensees under LD 587? Is the board authorized to decide none of the bids received would benefit the State and, for this reason, authorized not issue any new licenses?

LD 623:

3. Should the definition of “**gross advance deposit wagering income**” on p.1, lines 18-20 be amended to provide: “total amount of wagers placed by residents of this State via advance deposit wagering before payment of money to winning residents of this State bettors?” Otherwise, if the percentage of all bets placed by Maine residents is lower than the percentage of all nationwide bets that are paid out as winnings, then a multijurisdictional account wagering provider will not have any gross ADW income and will therefore owe no taxes to the State.
4. **Inconsistency?** On page 3, lines 16-21, the bill amends [§1016\(1\)\(D\)](#) to require that a person applying for a license to conduct ADW “has sufficient knowledge and experience in the business of operating . . . ADW.” Yet, new [§1073\(3\)](#) in the bill provides that an ADW licensee may either conduct ADW directly or the licensee may contract with another entity to provide ADW services. Does the committee intend that the ADW licensee itself have expertise in ADW or is it sufficient if the applicant demonstrates that the contracted provider will have expertise in operating ADW?
5. **Conflict?** Current [§1016\(1\)](#) (bill p.3, lines 25-27) prohibits a casino from holding more than one type of license under Title 8, chapter 31. The current ADW law and each bill, however, allow a casino that owns a commercial track or an OTB to obtain an ADW license; therefore, it may be wise to amend [§1016\(1\)](#) to except ADW licenses from [§1016\(1\)](#)’s dual-license prohibition.

6. **Requirement that bettors be state residents.** Should this requirement on p.5, lines 28-20 be amended as follows to reflect the potential licensure of multijurisdictional account wagering providers: “ensure that bettors who establish accounts to place bets on horse racing via advance deposit wagering are 18 years of age or older and residents of the State or of another state in which the licensee is licensed to conduct advance deposit wagering”?

FISCAL IMPACT

Not yet determined.

The [fiscal note](#) to the majority committee amendment to LD 1797 in the 129th Legislature, which was analogous to LD 623 except that it imposed a 4% rather than a 5% tax rate, estimated that the State would generate approximately \$250 in General Fund revenue from the tax cascade and approximately \$22,500 in the first year due to initial licensing fees. By contrast, the fiscal note estimated an expense of approximately \$127,000 per full fiscal year, which included both personnel and all other costs, for one additional Public Safety Manager II position within the Gambling Control Board to regulate advance deposit wagering.