

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 83rd General Assembly
3 Regular Session, 2001
4

As Engrossed: S3/8/01
A Bill

Act 1294 of 2001
SENATE BILL 602

5 By: Senators T. Smith, Mahony
6 By: Representatives R. Smith, Moore, Mathis
7

8
9 **For An Act To Be Entitled**

10 AN ACT TO AMEND THE STATE PRIVILEGE TAX RATE ON
11 PARI -MUTUEL WAGERING ON HORSE RACING; TO CLARIFY
12 USE AND ADMINISTRATION OF THE PURSE, CONSTRUCTION
13 AND PATRONAGE AND TOURISM PROMOTION FUND UNDER
14 THE HORSE RACING LAW; AND TO AMEND THE HORSE AND
15 GREYHOUND RACING LAW TO PERMIT AUTHORIZED
16 FRANCHISE HOLDERS TO ACCEPT WAGERS ON HORSE AND
17 GREYHOUND RACING BY TELEPHONE OR OTHER ELECTRONIC
18 MEANS FROM PATRONS WITH MONIES ON DEPOSIT WITH
19 THE FRANCHISE HOLDER; AND FOR OTHER PURPOSES.
20

21 **Subtitle**

22 TO AMEND THE HORSE AND GREYHOUND RACING
23 LAW.
24

25
26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
27

28 SECTION 1. Arkansas Code 23-110-407(a)(2) and (3), concerning
29 disposition of wagering money on live horse racing, are amended to read as
30 follows:

31 (2) The franchise holder shall pay from the amounts withheld
32 pursuant to the provisions of subdivision (a)(1) of this section the
33 following:

34 (A) At all racing meets conducted in calendar ~~year~~ years
35 1989 ~~and in each calendar year thereafter through 2001~~, an amount equal to
36 two and one-half percent (2.5%) of all moneys wagered on all races shall be

1 paid to the commission for the use and benefit of the State of Arkansas, as a
 2 privilege tax. At all racing meets conducted in calendar year 2002 and in
 3 each calendar year thereafter, an amount equal to one percent (1%) of all
 4 moneys wagered on all races shall be paid to the commission for the use and
 5 benefit of the State of Arkansas, as a privilege tax; and

6 (B) In the case of all racing meets for thoroughbred
 7 horses, an amount equal to one-half of one percent (.5%) of all moneys
 8 wagered shall be paid to the commission for deposit in the Arkansas Racing
 9 Commission Purse and Awards Fund to be used for purse supplements, breeders'
 10 awards, owners' awards, and stallion awards as hereinafter specified. The
 11 number of Arkansas-bred races shall be a matter for negotiation between the
 12 franchise holder and the Arkansas Thoroughbred Breeders and Horsemen's
 13 Association.

14 (3) The remainder of the amounts withheld pursuant to the
 15 provisions of subdivision (a)(1) of this section shall be retained by the
 16 franchise holder for use as follows:

17 (A)(i) For all racing meets in calendar ~~year~~ years 1989
 18 ~~and in each calendar year thereafter~~ through 2001, three percent (3%) of all
 19 moneys wagered on races where the wagerer is required to select one (1) horse
 20 and two percent (2%) of all moneys wagered on races where the wagerer is
 21 required to select more than one (1) horse, and for all racing meets in
 22 calendar year 2002 and in each calendar year thereafter, four and one-half
 23 percent (4.5%) of all moneys wagered on races where the wagerer is required
 24 to select one (1) horse and three and one-half percent (3.5%) of all moneys
 25 wagered on races where the wagerer is required to select more than one (1)
 26 horse, i.e., the purse, construction, and patronage and tourism promotion
 27 moneys, shall be set aside by the franchise holder in a separate account to
 28 be used only for purses and construction, for debt service on money borrowed
 29 by the franchise holder for construction, or for promotions to encourage
 30 patronage and tourism.

31 (ii)(a) "Construction", as used in this section,
 32 shall include all items and expenditures incurred in keeping the overall
 33 racing facility in the best possible condition for the patrons, horsemen, and
 34 franchise holder, including, without limitation, land acquisition, provided
 35 that the franchise holder submits plans for utilizing the acquired land for
 36 an approved purpose within five (5) years of the acquisition, new

1 construction with related equipment, and reconstruction, renovation,
2 reconditioning, and repairing of facilities with related equipment.

3 (b) "Construction", as used in this section,
4 shall not include ordinary or routine maintenance of the overall racing
5 facility and shall not include the construction or improvement of areas of
6 the racing facility not generally accessible by, or used for the benefit of,
7 either the horsemen or patrons or both.

8 (c) "Construction", as used in this section,
9 shall not apply to office furniture, office telephones or other office
10 equipment primarily devoted to the use of the franchise holder and providing
11 little or no benefit to either horsemen or patrons or both.

12 (d) The franchise holder may only be
13 reimbursed for construction and patronage and tourism promotion expenditures
14 from the purse, construction, and patronage and tourism promotion fund after
15 submitting a claim that itemizes each expenditure listing the specific
16 expenditure, the payee of the expenditure and stating in specific terms with
17 respect to construction expenditures how the expenditure jointly benefits the
18 patrons, horsemen and franchise holder.

19 (iii) The commission shall have jurisdiction, and
20 shall seek the assistance of the Department of Finance and Administration, to
21 check and verify compliance by the franchise holder with the provisions of
22 this subdivision (a)(3) and shall make periodic determinations as to
23 compliance under such rules and regulations as the commission shall adopt.
24 The franchise holder must deliver to the Department of Finance and
25 Administration any documents reasonably requested to check and verify
26 compliance with this subdivision (a)(3), within thirty (30) days of receiving
27 a written request for the documents. If the department does not receive the
28 requested documents within the time period provided, the Director of the
29 Department of Finance and Administration shall notify the commission and no
30 reimbursement shall be approved from the fund until the documents are
31 delivered. In the case of construction and patronage and tourism promotion,
32 the commission may use a multi-year approach based on a multi-year program
33 being undertaken by the franchise holder so that accountability for
34 expenditures may be based on expenditures made during the entire multi-year
35 period out of the purse, construction, and patronage and tourism promotion
36 moneys derived during the multi-year period, provided that the multi-year

1 period shall not exceed five (5) years unless the commission makes a specific
2 determination that a longer period is necessary to finance long term
3 construction projects for the joint benefit of patrons, horsemen and the
4 franchise holder. The franchise holder may seek prior approval from the
5 commission for expenditures. The application for the approval must contain
6 the information required by subdivision (a)(3)(ii) of this section. The
7 initial approval will be subject to a final approval by the commission that
8 the expenditures were made for the approved purposes in compliance with the
9 requirements of this subdivision (a)(3), and the commission shall seek
10 assistance from the Arkansas Department of Finance and Administration to
11 verify that the expenditures were made for the approved purposes. If there
12 is a final determination that any of the purse, construction, and patronage
13 and tourism promotion moneys have not been used for the purposes herein
14 specified, the franchise holder shall pay the amount equal to any moneys used
15 for an unauthorized purpose to the commission for the use and benefit of the
16 State of Arkansas.

17 (iv) The purse, construction, and patronage and
18 tourism promotion moneys shall not be subject to the provisions of any
19 contract or agreement between the franchise holder and any organization
20 representing horsemen, to the end that any contractual obligations for the
21 use of moneys for purses shall not apply to any expenditures for construction
22 or patronage and tourism promotion out of the purse, construction, and
23 patronage and tourism promotion moneys. Any expenditures for purses out of
24 the purse, construction, and patronage and tourism promotion moneys shall be
25 in addition to contractual purse obligations affecting moneys other than the
26 purse, construction, and patronage and tourism promotion moneys. The
27 franchise holder shall determine the amount of the purse, construction, and
28 patronage and tourism promotion moneys to be used for the authorized
29 purposes, except that at least one-half (1/2) of the purse, construction, and
30 patronage and tourism promotion moneys must be used for purses;

31 (v) If the amount of approved expenditures exceeds
32 the balance of the purse, construction, and patronage and tourism promotion
33 fund, the excess amount will remain payable to the franchise holder out of
34 the purse, construction, and patronage and tourism promotion fund; provided,
35 with respect to expenditures incurred by the franchise holder on or after
36 January 1, 2001, interest shall not accrue on the deficit balance unless the

1 interest is payable to an unrelated third party lender with respect to
 2 indebtedness directly incurred to finance construction expenditures as
 3 contemplated by this subdivision (a)(3);

4 (B) The remainder of the amounts withheld pursuant to the
 5 provisions of subdivision (a)(1) of this section shall be retained by the
 6 franchise holder for its own use and benefit; and

7 (C) One percent (1%) of the moneys set aside by the
 8 franchise holder for purses from the moneys retained by it pursuant to the
 9 provisions of subdivision (a)(3) of this section, including that portion of
 10 the purse, construction, and patronage and tourism promotion moneys actually
 11 used for purses, shall be paid from such moneys set aside for purses to the
 12 Arkansas Horsemen's Benevolent and Protective Association to be used for its
 13 benevolent purposes. Such payment shall be made by the franchise holder at
 14 the conclusion of each racing meet.

15
 16 SECTION 2. Arkansas Code 23-110-405(b), concerning wagering on
 17 simulcast and delayed and replayed races, is amended to read as follows:

18 (b)(1) With the prior approval of the Arkansas Racing Commission and
 19 consistent with applicable federal law, a franchise holder may enter into
 20 agreements and arrangements with other parties pursuant to which its patrons
 21 may wager on races run at other race tracks which are shown live or in any
 22 other manner approved by the commission by television or otherwise at
 23 locations on the grounds at the Arkansas race track at any time or times
 24 during the calendar year and agreements and arrangements whereby its races
 25 are shown live or in any other manner approved by the commission at other
 26 race tracks and locations.

27 (2) Such agreements and arrangements shall specify all
 28 financial, wagering, distribution, and other details which shall govern, and,
 29 to that end, the provisions of §§ 23-110-402 and 23-110-407 and any other
 30 inconsistent provisions shall not be applicable to such agreements and
 31 arrangements.

32 (3)(A) For all races simulcast to the grounds of the franchise
 33 holder's Arkansas race track from other race tracks and races conducted in
 34 the past and re-broadcast by electronic means and shown on a delayed or
 35 replayed basis on the grounds of the franchise holder's Arkansas race track
 36 under subdivision (b)(1) of this section, the franchise holder shall withhold

1 and pay to the commission for the use and benefit of the State of Arkansas,
2 as a privilege tax, one percent (1%) of all moneys wagered on the races on
3 the grounds of franchise holder's Arkansas race track.

4 (B) The difference between the two percent (2%) rate being
5 withheld and so paid by the franchise holder to the State of Arkansas on
6 wagers on the races described in subdivision (b)(3)(A) under rules and
7 regulations of the commission in effect prior to the enactment of this
8 subdivision (b)(3), and the one percent (1%) rate established in subdivision
9 (b)(3)(A), shall be withheld by the franchise holder from wagers on such
10 races and set aside by the franchise holder in a separate account to be used
11 only for purses and construction, for debt service on money borrowed by the
12 franchise holder for construction, or for promotions to encourage patronage
13 and tourism, in accordance with the provisions of § 23-110-407(a)(3).

14
15 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the
16 General Assembly that horse and greyhound racing and activities related
17 thereto in Arkansas have a significant favorable impact on the economy of the
18 entire state and the welfare of our citizens and residents; that competition
19 from outside the State of Arkansas is having an adverse impact on the horse
20 and greyhound racing industry in Arkansas; that other states have allowed
21 horse and greyhound race tracks to conduct account wagering; that the State
22 of Arkansas is presently losing tax revenues when wagers on horse and
23 greyhound racing are placed by Arkansas citizens and residents outside the
24 state or with illegal bookmakers; that these economic conditions adversely
25 affect the benefit to the State of Arkansas directly and indirectly accruing
26 from horse and greyhound racing and related activities in Arkansas; that it
27 is imperative that Arkansas franchise holders be able to increase purses,
28 improve facilities and encourage patronage and tourism in order to keep up
29 with competition and hold and improve Arkansas' premier and traditional
30 position in horse and greyhound racing; and in order to accomplish these
31 goals, essential to the welfare of the state and its citizens and residents,
32 the amendments and provisions set forth in this act must be effective
33 immediately. Therefore, an emergency is hereby declared to exist, and this
34 act, being immediately necessary for the preservation of the public peace,
35 health and safety, shall take effect, and be in full force, immediately from
36 and after the date of its approval by the Governor. If the bill is neither

1 approved nor vetoed by the Governor, it shall become effective on the
2 expiration of the period of time during which the Governor may veto the bill.
3 If the bill is vetoed by the Governor and the veto is overridden, it shall
4 become effective on the date the last house overrides the veto.

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/s/ T. Smith

APPROVED: BECAME LAW ON 4/5/2001, WITHOUT THE GOVERNOR'S SIGNATURE.