

1 State of Arkansas
2 92nd General Assembly
3 Regular Session, 2019
4
5 By: Senator M. Johnson
6

As Engrossed: S4/3/19
A Bill

SENATE BILL 498

For An Act To Be Entitled

8 AN ACT TO AMEND THE PROVISIONS OF THE ARKANSAS CASINO
9 GAMING AMENDMENT OF 2018; TO AMEND ARKANSAS
10 CONSTITUTION, AMENDMENT 100, PURSUANT TO THE
11 AUTHORITY GRANTED BY ARKANSAS CONSTITUTION, ARTICLE
12 5, § 1; TO DECLARE AN EMERGENCY; AND FOR OTHER
13 PURPOSES.
14

Subtitle

15
16 TO AMEND THE PROVISIONS OF THE ARKANSAS
17 CASINO GAMING AMENDMENT OF 2018; AMENDING
18 ARKANSAS CONSTITUTION, AMENDMENT 100; AND
19 TO DECLARE AN EMERGENCY.
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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

24
25 SECTION 1. DO NOT CODIFY. LEGISLATIVE INTENT. (a) The General
26 Assembly finds:

27 (1) Arkansas Constitution, Article 5, § 1, provides that "[n]o
28 measure approved by a vote of the people shall be amended or repealed by the
29 General Assembly. . . except upon a yea and nay vote on roll call of two-
30 thirds of all the members elected to each house of the General Assembly. .
31 .";

32 (2) Arkansas Constitution, Article 5, § 1, defines a "measure"
33 to include any bill, law, resolution, ordinance, charter, constitutional
34 amendment or legislative proposal or enactment of any character;

35 (3) The plain language of the definition of "measure" in
36 Arkansas Constitution, Article 5, § 1 clearly includes amendments to the



1 Arkansas Constitution, meaning that the General Assembly may amend such
2 measures with a two-thirds vote of each house;

3 (4) Despite observing that the definition of "measure" in
4 Arkansas Constitution, Article 5, § 1 included "constitutional amendment(s)
5 'or legislative proposals of any character'", the Supreme Court in Arkansas
6 Game and Fish Commission v. Edgmon, 218 Ark. 207, 235 S.W.2d 554 (1951),
7 declined to construe the language literally and held that the General
8 Assembly lacked the power to amend or repeal amendments to the Arkansas
9 Constitution by a two-thirds vote of each house;

10 (5) In Board of Trustees of the University of Arkansas v.
11 Andrews, 2018 Ark. 12 (2018), the Supreme Court overturned years of precedent
12 by holding that the General Assembly cannot waive by law the state's
13 sovereign immunity granted by Arkansas Constitution, Article 5, § 20;

14 (6) In reaching its decision in Andrews, supra, the Supreme
15 Court held that the language of Arkansas Constitution, Article 5, § 20,
16 should be interpreted "precisely as it reads"; and

17 (7) An interpretation of Arkansas Constitution, Article 5, § 1,
18 "precisely as it reads" clearly leads to the conclusion that the General
19 Assembly may amend all measures, including constitutional amendments, by a
20 two-thirds vote of each house.

21 (b) By the passage of this act, the General Assembly expresses its
22 belief that, upon consideration of this act using the standard of review
23 established in Andrews, supra, the Supreme Court will:

24 (1) Interpret Arkansas Constitution, Article 5, § 1, precisely
25 as it reads;

26 (2) Overturn its decision in Edgmon, supra, as inconsistent with
27 its holding in Andrews, supra; and

28 (3) Uphold the constitutional authority of the General Assembly
29 under Arkansas Constitution, Article 5, § 1, to amend or repeal amendments to
30 the Arkansas Constitution by a two-thirds vote of each house.

31
32 SECTION 2. Pursuant to the authority granted in Arkansas Constitution,
33 Article 5, § 1, Arkansas Constitution, Amendment 100, § 2, is amended to read
34 as follows:

35 § 2. Definitions.

36 For purposes of this Amendment, the below terms are defined as follows:

1 (a) "Arkansas Racing Commission" is defined to include a
2 successor agency to the Arkansas Racing Commission that is established by
3 law;

4 ~~(b)~~ "Casino" is defined as a facility where casino gaming is
5 conducted as authorized by this Amendment.

6 ~~(c)~~ "Casino applicant" is defined as any individual,
7 corporation, partnership, association, trust, or other entity applying for a
8 license to conduct casino gaming at a casino.

9 ~~(d)~~(1) "Casino gaming" is defined as dealing, operating,
10 carrying on, conducting, maintaining, or exposing for play any game played
11 with cards, dice, equipment, or any mechanical, electromechanical, or
12 electronic device or machine for money, property, checks, credit, or any
13 representative value.

14 (2) "Casino gaming" shall also be defined to include
15 accepting wagers on sporting events which:

16 (A) Occur outside the State of Arkansas; and

17 (B) Do not involve amateur athletes.

18 (3) "Casino gaming" does not include lotteries conducted
19 pursuant to Amendment 87 and/or The Arkansas Scholarship Lottery Act, Ark.
20 Code Ann. § 23-115-101 et seq.

21 ~~(e)~~ "Casino gaming receipts" is defined as gross receipts
22 from casino gaming.

23 ~~(f)~~ "Casino license" is defined as a license issued by the
24 Arkansas Racing Commission to conduct casino gaming at a casino.

25 ~~(g)~~ "Casino licensee" is defined as any individual,
26 corporation, partnership, association, trust, or other entity holding a
27 license issued by the Arkansas Racing Commission to conduct casino gaming at
28 a casino.

29 ~~(h)~~ "Franchise holder" is defined as any individual,
30 corporation, partnership, association, trust, or other entity holding a
31 franchise to conduct horse racing under the Arkansas Horse Racing Law, Ark.
32 Code Ann. § 23-110-101 et seq., or greyhound racing under the Arkansas
33 Greyhound Racing Law, Ark. Code Ann. § 23-111-101 et seq. as of December 31,
34 2017.

35 ~~(i)~~ "Intoxicating liquor" is defined as any beverage
36 containing more than one-half of one percent of alcohol by weight.

1 ~~(i)~~(j) “Net casino gaming receipts” is defined as gross receipts
2 from casino gaming less amounts paid out or reserved as winnings to casino
3 patrons.

4 ~~(j)~~(k) “Net casino gaming receipts tax” is defined as a tax on
5 net casino gaming receipts.

6 ~~(k)~~(l) “Wholesaler” means any person who holds a permit under
7 any alcoholic beverage control law of the State of Arkansas to purchase
8 controlled beverages from a manufacturer, importer, or domestic wine or
9 brandy producer only and to sell such controlled beverages to retailers only.
10

11 SECTION 3. Pursuant to the authority granted in Arkansas Constitution,
12 Article 5, § 1, Arkansas Constitution, Amendment 100, § 3(b), concerning the
13 authorization for casinos and casino gaming, is amended to read as follows:

14 (b)(1) Casino licensees may accept wagers on sporting events if and
15 when not prohibited by federal law so long as the sporting events:

16 (A) Occur outside the State of Arkansas; and

17 (B) Do not involve amateur athletes.

18 (2) Franchise holders may continue to accept wagers on horse and
19 greyhound racing as now or hereafter provided under the Arkansas Horse Racing
20 Law, Ark. Code Ann. § 23-110-101 et seq., and the Arkansas Greyhound Racing
21 Law, Ark. Code Ann. § 23-111-101 et seq., as the case may be.
22

23 SECTION 4. Pursuant to the authority granted in Arkansas Constitution,
24 Article 5, § 1, Arkansas Constitution, Amendment 100, § 4, is amended to read
25 as follows:

26 § 4. Licensing of Casinos and Casino Gaming.

27 (a) The Arkansas Racing Commission shall administer and regulate
28 casino licenses, including their issuance and renewal, and shall administer
29 and enforce the provisions of this Amendment relating to all casino
30 licensees. Each casino license shall be issued for the purpose of requiring
31 casino licensees to conduct casino gaming at a casino as provided in this
32 Amendment and by regulation of the Arkansas Racing Commission, and all other
33 applicable law.

34 (b) Casino gaming under this Amendment shall not be regulated under or
35 be subject to the provisions of the Local Option Horse Racing and Greyhound
36 Racing Electronic Games of Skill Act, Ark. Code Ann. § 23-113-101 et seq.

1 (c) The Arkansas Racing Commission shall adopt rules necessary to
2 carry out the purposes of this Amendment and perform its duties under this
3 Amendment.

4 (d) Rules adopted under this section are rules as defined in the
5 Arkansas Administrative ~~Procedures~~ Procedure Act, Ark. Code Ann. § 25-15-201
6 et seq.

7 (e) Not later than 120 days after the effective date of this
8 Amendment, the Arkansas Racing Commission shall adopt rules governing:

9 (1) The establishment of a casino license application fee which
10 shall not exceed \$250,000;

11 (2) The manner in which the Arkansas Racing Commission considers
12 applications for issuance of casino licenses;

13 (3) The renewal of casino licenses;

14 (4) The form and content of renewal for casino licenses;

15 (5) Oversight requirements for casinos and casino gaming;

16 (6) Recordkeeping requirements for casinos;

17 (7) Personnel requirements for casinos and casino gaming;

18 (8) Procedures for suspending or terminating casino licenses
19 held by casino licensees that violate the provisions of this Amendment or the
20 rules adopted under this Amendment;

21 (9) A schedule of penalties and procedures for appealing
22 penalties;

23 (10) Procedures for inspection and investigations of casinos and
24 casino gaming;

25 (11) Responsibilities of casino licensees related to conducting
26 casino gaming;

27 (12) The Arkansas Racing Commission shall allow licensees to
28 transfer their casino license only to a party who has casino gaming
29 experience.

30 (13) Any other matters necessary for the fair, impartial,
31 stringent, and comprehensive administration of its duties under this
32 Amendment.

33 (f) Not later than June 1, 2019, the Arkansas Racing Commission shall
34 begin accepting applications for casino licenses.

35 (g) The application for casino licenses shall include without
36 limitation the following:

- 1 (1) The application fee;
- 2 (2) The legal name of the casino;
- 3 (3) The physical address of the casino;
- 4 (4) The name, address, and date of birth of each officer and
- 5 owner of the casino applicant; and
- 6 (5) If the city, town, or county in which the casino would be
- 7 located has enacted zoning restrictions, a sworn statement certifying that
- 8 the casino will operate in compliance with the restrictions+.

9 (h) Prior to the submission of an application for a casino license,

10 the owners, shareholders, board members, or officers of the casino applicant:

11 (1) If an individual, shall not have been convicted of a

12 disqualifying felony offense as defined by the Arkansas Racing Commission;

13 (2) Shall not have previously had a casino license in any state

14 revoked;

15 (3) If an individual, shall not be under twenty-one years of

16 age; and

17 (4) If an individual, shall not be ~~a county judge or mayor that~~

18 ~~provides a letter of support, or a quorum court member that votes in favor of~~

19 ~~a letter of support as identified in this Amendment~~ an elected official of

20 the county or city or town within the county in which the proposed casino

21 will be located or a person who has served as an elected official of the

22 county or the city or town within the county in which the proposed casino

23 will be located within the past ten (10) years.

24 (i) The Arkansas Racing Commission shall issue no more than four

25 casino licenses.

26 (j) The Arkansas Racing Commission shall issue a casino license, as

27 provided in this Amendment, to a Franchise holder located in Crittenden

28 County, there being only one, to conduct casino gaming at a casino to be

29 located at or adjacent to the Franchise holder's greyhound racing track and

30 gaming facility as of December 31, 2017 in Crittenden County for up to ten

31 (10) years. The Arkansas Racing Commission shall also issue a casino license,

32 as provided in this Amendment, to a Franchise holder located in Garland

33 County, there being only one, to conduct casino gaming at a casino to be

34 located at or adjacent to the Franchise holder's horse racing track and

35 gaming facility as of December 31, 2017 in Garland County for up to ten (10)

36 years. Casino licenses to be issued to Franchise holders shall be issued

1 upon:

2 (1) Adoption by the Arkansas Racing Commission of rules
3 necessary to carry out the purposes of this Amendment; and

4 (2) Initial laws and appropriations required by this Amendment
5 being in full force and effect.

6 (k) The Arkansas Racing Commission shall award a casino license to a
7 casino applicant for a casino to be located in Pope County ~~within two miles~~
8 ~~of the city limits of the county seat~~ or a county adjacent to Pope County
9 bisected by an interstate highway if approved at a local option election
10 under this amendment. The Arkansas Racing Commission shall also award a
11 casino license to a casino applicant for a casino to be located in Jefferson
12 County *within two miles of the city limits of the county seat*.

13 (l) Casino licensees are required to conduct casino gaming for as long
14 as they have a license.

15 (m) The Arkansas Racing Commission shall require all casino applicants
16 for a casino license ~~in Pope County and Jefferson County~~ who are not
17 Franchise holders to demonstrate experience conducting casino gaming.

18 ~~(n) The Arkansas Racing Commission shall require all casino applicants~~
19 ~~for a casino license in Pope County and Jefferson County to submit either a~~
20 ~~letter of support from the county judge or a resolution from the quorum court~~
21 ~~in the county where the proposed casino is to be located and, if the proposed~~
22 ~~casino is to be located within a city or town, shall also require all casino~~
23 ~~applicants to include a letter of support from the mayor in the city or town~~
24 ~~where the applicant is proposing the casino to be located.~~

25 (n)(1) The Arkansas Racing Commission shall not issue a casino license
26 for the conducting of casino gaming in Pope County unless the voters of the
27 county approve conducting casino gaming in Pope County.

28 (2)(A) An election shall be called on the issue of conducting
29 casino gaming in Pope County upon the:

30 (i) Calling of a special election by the quorum
31 court of Pope County; or

32 (ii) Submission to the county clerk of a petition
33 bearing signatures equal to at least eight percent (8%) of the qualified
34 electors of Pope County who cast a vote in the county for the office of
35 Governor in the last general election in which the office appeared on the
36 ballot.

1 (B) If a petition under subdivision (n)(2)(A)(ii) of this
2 section is found by the county clerk to be insufficient, the sponsor of the
3 petition shall be permitted at least thirty (30) days from the date of
4 notification for correction or amendment.

5 (3)(A) If a petition under subdivision (n)(2)(A)(ii) of this
6 section is found to be sufficient, the issue of conducting casino gaming in
7 Pope County shall be considered by the qualified electors of the county at a
8 special election called for that purpose.

9 (B)(i) If the qualified electors approve conducting casino
10 gaming in Pope County, the Arkansas Racing Commission shall accept
11 applications for a casino license in Pope County.

12 (ii) If the qualified electors reject conducting
13 casino gaming in Pope County, the Arkansas Racing Commission shall not accept
14 applications for a casino license in Pope County.

15 (4)(A) If casino gaming in Pope County is rejected at an
16 election under this subsection (n), any county adjacent to Pope County and
17 bisected by an interstate highway may hold a special election on the issue of
18 conducting casino gaming in the respective county within one hundred twenty
19 (120) days of the rejection of casino gaming in Pope County.

20 (B)(i) A special election on the issue of conducting
21 casino gaming in a county adjacent to Pope County and bisected by an
22 interstate highway shall follow the procedures under this subsection (n).

23 (ii) All special elections held in counties adjacent
24 to Pope County and bisected by an interstate highway on the issue of
25 conducting casino gaming shall be held on the same date.

26 (C)(i) If the qualified electors in a county adjacent to
27 Pope County and bisected by an interstate highway approve conducting casino
28 gaming, the Arkansas Racing Commission shall accept applications for a casino
29 license in the county at issue.

30 (ii) If the qualified electors in a county adjacent
31 to Pope County and bisected by an interstate highway reject conducting casino
32 gaming, the Arkansas Racing Commission shall not accept applications for a
33 casino license in the county at issue.

34 (D) If the qualified electors of more than one (1) county
35 adjacent to Pope County and bisected by an interstate highway approve
36 conducting casino gaming in the respective county within one hundred twenty

1 (120) days of the rejection of casino gaming in Pope County, the Arkansas
2 Racing Commission shall accept applications for a casino license in the
3 county which received the highest percentage of votes in favor of casino
4 gaming in the county.

5 (5) The General Assembly may enact laws necessary to implement
6 this subsection (n), including without limitation laws concerning the
7 requirements and procedures for elections on the issue of conducting casino
8 gaming under this subsection (n).

9 (o) If the proposed casino is to be located within a city or town, the
10 Arkansas Racing Commission shall require an applicant for a casino license to
11 submit a resolution adopted by the local governing body of the city or town
12 where the applicant is proposing the casino to be located.

13 ~~(p)~~(l) Franchise holders are not applicants and are not required to
14 submit applications for casino licenses in order to be issued ~~a~~ an initial
15 casino license.

16 (2) A Franchise holder may apply for renewal of a casino license
17 in advance of its expiration in the manner required for the renewal of casino
18 licenses.

19 ~~(p)~~(q) No individual, corporation, partnership, association, trust, or
20 other entity may hold more than one casino license in Arkansas.

21 ~~(q)~~(r) The Arkansas Racing Commission ~~shall~~ may issue a renewal casino
22 license within ~~ten~~ one hundred twenty days to any licensed casino that
23 complies with the requirements contained in this Amendment, including without
24 limitation the payment of the casino license renewal fee, which shall not
25 exceed ~~\$10,000~~ \$100,000. Casino licenses shall be renewed every ten years.

26 ~~(r)~~(s)(l) The Arkansas Racing Commission shall provide an annual
27 amount of at least ~~\$200,000~~ \$800,000 for compulsive gambling disorder
28 treatment and compulsive gambling disorder educational programs.

29 (2) The Arkansas Racing Commission shall work together with the
30 Department of Human Services to implement the compulsive gambling disorder
31 treatment programs and the compulsive gambling disorder educational programs
32 under this section.

33 (3) The Arkansas Racing Commission may contract with the
34 Department of Human Services for providing all services related to and
35 administration of the compulsive gambling disorder treatment programs and the
36 compulsive gambling disorder educational programs.

1 (4) The Department of Human Services may promulgate rules to
 2 administer the compulsive gambling disorder treatment programs and the
 3 compulsive gambling disorder educational programs.

4
 5 SECTION 5. Pursuant to the authority granted in Arkansas Constitution,
 6 Article 5, § 1, Arkansas Constitution, Amendment 100, § 5, is amended to read
 7 as follows:

8 § 5. Graduated taxation and distribution of proceeds.

9 (a)(1) For each fiscal year, a casino licensee's net casino gaming
 10 receipts are subject to a net casino gaming receipts tax as follows:

11 ~~(1)(A)~~ 13% on the first \$150,000,000 of net casino gaming
 12 receipts or any part thereof; and

13 ~~(2)(B)~~ 20% on net casino gaming receipts exceeding
 14 \$150,000,001 or any part thereof.

15 (2) By a majority vote of each house, the General Assembly may
 16 enact laws amending the tax rates under subdivision (a)(1) of this section.

17 (b) Each casino licensee shall be subject to the same income,
 18 property, sales, gross receipts, use, employment, and other taxation as any
 19 for-profit business located in the county and city or town in which the
 20 casino is located, except that no sales or gross receipts tax shall apply to
 21 casino gaming receipts or net casino gaming receipts.

22 (c)(1) *The net casino gaming receipts tax shall be distributed as*
 23 *follows:*

24 ~~(1)(A)~~ 55% to the Arkansas General Revenue Fund;

25 ~~(2)(B)~~ 17.5% ~~to the~~ to the Arkansas Racing Commission for
 26 deposit into the Arkansas Racing Commission Purse and Awards Fund to be used
 27 only for purses for live horse racing and greyhound racing by the Franchise
 28 holders, as the case may be, and then to be apportioned as set forth in
 29 section (e).

30 ~~(3)(C)~~ 8% to the county in which the casino is located;
 31 and

32 ~~(4)(D)~~ 19.5% to the city or town in which the casino is
 33 located, provided that the casino is not located within a city or town, then
 34 the 19.5% dedicated to the city or town shall go to the county in which the
 35 casino is located.

36 (2) By a majority vote of each house, the General Assembly may

1 enact laws amending the distribution of revenues under subdivision (c)(1) of
2 this section.

3 (d)(1) On the last day of each month, the Treasurer shall transfer the
4 ~~17.5%~~ 7.5% of revenues derived by the taxes levied under this Amendment
5 referenced in section (c)(2) to the Arkansas Racing Commission to be
6 distributed to the Franchise holders as follows: for the period prior to
7 January 1, 2024, 60% shall be distributed to the Franchise holder operating a
8 franchise to conduct horse racing, and 40% shall be distributed to the
9 Franchise holder operating a franchise to conduct greyhound racing; and for
10 each calendar year thereafter, pro rata to the Franchise holders based upon
11 the total respective amounts of each Franchise holder's pari-mutuel wagering
12 handle during each respective immediately preceding calendar year from wagers
13 placed on and off-track on the Franchise holder's live races (horse or
14 greyhound, as the case may be) conducted at the Franchise holder's licensed
15 premises.

16 (2) By a majority vote of each house, the General Assembly may
17 enact laws amending the distribution of revenues under subdivision (d)(1) of
18 this section.

19 (e) On the last day of each month, the Treasurer of State shall
20 transfer the other percentage allocations made in section (c) to the
21 designated entities.

22

23 SECTION 6. Pursuant to the authority granted in Arkansas Constitution,
24 Article 5, § 1, Arkansas Constitution, Amendment 100, § 6(e)(1), concerning
25 the contribution to purses and promotion of Arkansas thoroughbred and
26 greyhound breeding activities, is amended to read as follows:

27 (e)(1) The dedication of net casino gaming receipts to purses and
28 breeding activities as set forth in this section ~~shall not~~ may be subject to
29 any contract or agreement between the Franchise holder and any organization
30 representing horsemen or greyhound owners or trainers, to the end that any
31 such contractual obligations for the use of moneys for purses ~~shall not~~ may
32 apply to the funds dedicated to purses and breeding activities as set forth
33 in this section.

34

35 SECTION 7. EMERGENCY CLAUSE. It is found and determined by the
36 General Assembly of the State of Arkansas that the adoption of Arkansas

1 Constitution, Amendment 100, has authorized casino gaming in certain areas of
2 the state; that this act amends the procedures for casino license
3 applications in the affected areas of the state; and that this act should
4 become effective at the earliest opportunity to avoid confusion on the
5 procedures to apply for a casino license under the Arkansas Casino Gaming
6 Amendment of 2018. Therefore, an emergency is declared to exist, and this
7 act being immediately necessary for the preservation of the public peace,
8 health, and safety shall become effective on:

9 (1) The date of its approval by the Governor;

10 (2) If the bill is neither approved nor vetoed by the Governor,
11 the expiration of the period of time during which the Governor may veto the
12 bill; or

13 (3) If the bill is vetoed by the Governor and the veto is
14 overridden, the date the last house overrides the veto.

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17 */s/M. Johnson*
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