

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 84th General Assembly  
3 Regular Session, 2003  
4

*As Engrossed: H3/12/03 H4/1/03*

# A Bill

HOUSE BILL 2329

5 By: Representatives Jones, Moore, R. Smith, Mathis, Sumpter  
6 By: Senators T. Smith, Higginbotham  
7

## For An Act To Be Entitled

10 AN ACT TO AUTHORIZE HORSE RACING AND GREYHOUND  
11 RACING FRANCHISEES TO CONDUCT WAGERING ON  
12 ELECTRONIC GAMES OF SKILL.

### Subtitle

15 REGARDING AUTHORITY OF HORSE RACING AND  
16 GREYHOUND RACING FRANCHISEES TO CONDUCT  
17 WAGERING ON ELECTRONIC GAMES OF SKILL.  
18  
19

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
21

22 SECTION 1. Arkansas Code, Title 23, is hereby amended to add an  
23 additional chapter to read as follows:

#### Chapter 113

24 WAGERING ON ELECTRONIC GAMES OF SKILL CONDUCTED BY HORSE RACING AND GREYHOUND  
25 RACING FRANCHISEES  
26  
27

#### SUBCHAPTER 1 - GENERAL PROVISIONS

28  
29  
30  
31 23-113-101. Title.

32 This chapter shall be referred to and may be cited as "The Horse Racing  
33 and Greyhound Racing Franchisee Electronic Games of Skill Wagering Act".  
34

35 23-113-102. Definitions.

36 As used in this chapter:



1           (1) "Arkansas Greyhound Racing Law" means the Arkansas Greyhound  
2 Racing Law, Arkansas Code § 23-111-101 et seq.;

3           (2) "Arkansas Horse Racing Law" means the Arkansas Horse Racing  
4 Law, Arkansas Code § 23-110-101 et seq.;

5           (3) "Commission" means the Arkansas Racing Commission or its  
6 successor having jurisdiction over horse racing and greyhound racing in this  
7 state;

8           (4) "Director" means the Director of the Arkansas Department of  
9 Finance and Administration;

10           (5)(A) "Electronic games of skill" means games played through  
11 any electronic device or machine that afford an opportunity for the exercise  
12 of skill or judgment where the outcome is not completely controlled by chance  
13 alone.

14           (B) "Electronic games of skill" include electronic  
15 versions of games such as poker, twenty-one, checkers, games involving  
16 formation of words with letters, and other electronic games affording an  
17 opportunity for the exercise of skill or judgment where the outcome is not  
18 completely controlled by chance alone;

19           (6) "Franchise holder" means any person holding a franchise to  
20 conduct horse racing under the Arkansas Horse Racing Law or greyhound racing  
21 under the Arkansas Greyhound Racing Law;

22           (7) "Net wagering revenues from electronic games of skill" means  
23 the gross wagering revenues received by a franchise holder from wagers placed  
24 by patrons on electronic games of skill, less amounts paid out, or separately  
25 reserved under rules of the commission for future pay out, to patrons on the  
26 wagers; and

27           (8) "Person" means any individual, corporation, partnership,  
28 association, trust, or other entity.

29  
30           SUBCHAPTER 2 - AUTHORIZATION OF WAGERING ON ELECTRONIC GAMES OF SKILL

31  
32           23-113-201. Wagering on electronic games of skill permitted -  
33 Conditions and limitations.

34           (a) In addition to pari-mutuel wagering on horse and greyhound racing  
35 authorized by the Arkansas Horse Racing Law and Arkansas Greyhound Racing  
36 Law, respectively, any franchise holder may conduct wagering on electronic

1 games of skill in accordance with this chapter at any time or times during  
2 the calendar year at locations on the grounds of the franchise holder's  
3 racetrack site where the franchise holder is authorized by the commission to  
4 conduct pari-mutuel wagering on horse racing or greyhound racing pursuant to  
5 the Arkansas Horse Racing Law or Arkansas Greyhound Racing Law, as the case  
6 may be.

7 (b)(1) In order to conduct wagering on electronic games of skill  
8 during a calendar year, the franchise holder must have been licensed by the  
9 commission to conduct a live racing meet within the calendar year or the  
10 immediately preceding calendar year of either:

11 (A) Horse racing under the Arkansas Horse Racing Law; or

12 (B) Greyhound racing under the Arkansas Greyhound Racing  
13 Law.

14 (2) Provided, the commission may waive this requirement in the  
15 event the license shall not have been issued because of events such as fire,  
16 storm, accident or other casualty, epidemic, shortages of horses or  
17 greyhounds, war, sabotage, acts of a public enemy, civil disturbances,  
18 strikes, labor disputes, work stoppages, or similar events.

19 (c)(1) Wagering on electronic games of skill conducted by a franchise  
20 holder in accordance with this chapter shall be lawful, notwithstanding any  
21 laws or parts of laws of the State of Arkansas to the contrary.

22 (2) However, this chapter is not intended to authorize a lottery  
23 or the sale of lottery tickets prohibited by Article 19, Section 14 of the  
24 Arkansas Constitution.

25 (d)(1) In order to constitute an electronic game of skill under this  
26 chapter, the game must not be completely controlled by chance alone.

27 (2) A game is not completely controlled by chance alone if the  
28 betting public may attain through the exercise of skill or judgment a better  
29 measure of success in playing the game than could be mathematically expected  
30 on the basis of pure luck, i.e., on the basis of pure random chance alone.

31 (e)(1) Prior to conducting wagering on an electronic game of skill,  
32 the franchise holder shall present to the commission a complete description  
33 of the game and the electronic device or machine to be utilized in the play  
34 of the game, the proposed rules of play, and such further information as the  
35 commission determines is necessary or appropriate in order to effectively  
36 carry out its regulatory functions in accordance with this chapter.

1           (2)(A) Within sixty (60) calendar days thereafter, the  
2 commission shall make a finding as to whether the game and electronic device  
3 or machine constitutes an electronic game of skill authorized by this  
4 chapter.

5           (B) The finding shall further either approve the proposed  
6 rules of play or recommend modifications as the commission determines are  
7 necessary in the public interest in carrying out its regulatory functions in  
8 accordance with this chapter.

9           (3) If the finding concludes that the game and electronic device  
10 or machine constitutes an electronic game of skill authorized by this chapter  
11 and approves the rules of play or, if applicable, the franchise holder  
12 incorporates the changes recommended by the commission into the final rules  
13 of play, the franchise holder may commence conducting wagering on the  
14 electronic game of skill, subject to the other provisions of this chapter and  
15 other applicable rules and regulations of the commission adopted pursuant to  
16 this chapter.

17           (4) If the finding concludes that the game and electronic device  
18 or machine does not constitute an electronic game of skill authorized by this  
19 chapter or recommends changes in the proposed rules of play, the commission  
20 shall provide the franchise holder with the opportunity for a hearing by the  
21 commission before the finding is made final by the commission.

22           (f) For each electronic game of skill, the commission shall provide by  
23 appropriate rule or regulation the specifications for establishing that  
24 patrons, in the aggregate, exercising some degree of skill or judgment will,  
25 over the expected lifetime of the electronic game of skill, obtain a payout  
26 of at least eighty-three percent (83%) of the aggregate amounts wagered on  
27 the electronic game of skill.

28           (g) Wagers on electronic games of skill may be made only by  
29 individuals physically present at the location on the grounds of the  
30 franchise holder's authorized racetrack site as set forth in subsection (a)  
31 of this section where electronic games of skill are located and being  
32 operated in accordance with this chapter.

33           (h) No individual under the age of twenty-one (21) years shall be  
34 intentionally allowed to place wagers on electronic games of skill, and the  
35 commission shall provide by rule or regulation appropriate supervisory  
36 procedures for franchise holders to follow in order to safeguard against

1 individuals under the age of twenty-one (21) years placing wagers on  
2 electronic games of skill.

3  
4 SUBCHAPTER 3 - ARKANSAS RACING COMMISSION

5  
6 23-113-301. Jurisdiction of Arkansas Racing Commission.

7 Subject to the limitations and conditions in this chapter or other  
8 applicable law, the commission shall have full administrative regulatory  
9 jurisdiction over the business of electronic games of skill and wagering  
10 thereon conducted by franchise holders under this chapter.

11  
12 23-113-302. Powers and duties.

13 (a) The commission shall, in addition to all other duties, powers, and  
14 responsibilities conferred upon it by other laws of this state, exercise the  
15 duties, powers and responsibilities over electronic games of skill, and  
16 wagering thereon, as authorized in this chapter, and without necessarily  
17 being limited to the following enumeration, but subject to the other  
18 provisions of this chapter, it shall be the function, power, and duty of the  
19 commission to:

20 (1) Regulate the specific games, devices, machines and equipment  
21 played and utilized in connection with wagering on electronic games of skill,  
22 and the rules of play and methods of operation thereof, as contemplated by  
23 this chapter, as well as appropriate security and surveillance systems, in  
24 order to safeguard fairness and integrity in the conduct and operation of  
25 electronic games of skill and wagering thereon;

26 (2) Regulate the specific times of operation and specific areas  
27 of the franchise holder's premises where wagering on electronic games of  
28 skill may be conducted;

29 (3) Prescribe the procedures for issuing licenses to employees  
30 of the franchise holder conducting electronic games of skill and wagering  
31 thereon, including, without limitation, the information to be submitted by  
32 the individuals in connection with their background, employment, experience,  
33 and character, as reasonably necessary to determine the individual's  
34 qualifications and suitability for the position;

35 (4) Prescribe the procedures for issuing licenses to persons  
36 supplying electronic games of skill to the franchise holder, including,

1 without limitation, the information to be submitted by the persons in  
2 connection with their background, experience, character, business activities,  
3 and financial affairs, as reasonably necessary to determine the person's  
4 qualifications and suitability for supplying electronic games of skill to  
5 franchise holders for use in accordance with this chapter;

6 (5) Have authority to enter upon the premises where electronic  
7 games of skill are being operated and to observe the conduct of wagering  
8 thereon; and

9 (6) Take such other action, not inconsistent with law, as the  
10 commission may deem necessary or desirable in order to supervise and  
11 regulate, and to effectively control in the public interest, the operation of  
12 electronic games of skill and conduct of wagering thereon as authorized by  
13 this chapter.

14 (b) The commission shall have the authority to promulgate, revise,  
15 amend and repeal rules, regulations and orders, consistent with the policy,  
16 objects, and purposes of this chapter, as it reasonably deems necessary or  
17 desirable in the public interest in carrying out the provisions of this  
18 chapter.

19  
20 23-113-303. Licenses for employees and supplies.

21 (a) The commission shall have the authority to require persons  
22 employed by the franchise holder in the conduct of wagering on electronic  
23 games of skill to obtain a license from the commission under procedures  
24 generally consistent with the licensing procedures otherwise applicable to  
25 other employees of the franchise holder engaged in the conduct of pari-mutuel  
26 wagering on horse racing or greyhound racing, as the case may be.

27 (b)(1) No person may sell or otherwise supply electronic games of  
28 skill to a franchise holder for the conduct of wagering thereon as authorized  
29 in this chapter unless the person has:

30 (A) Demonstrated to the satisfaction of the commission  
31 that the person has the capability and qualifications necessary to reasonably  
32 furnish the equipment and perform the services to be provided by the  
33 supplier; and

34 (B) Obtained a license from the commission.

35 (2) Each such supplier shall pay to the commission an annual  
36 license fee in the amount of one hundred dollars (\$100) per year for each

1 year or part thereof that the license is in effect.

2 (c) Any person knowingly making any false statement on an employee or  
3 supplier license application under this chapter shall be guilty of an  
4 unclassified misdemeanor and upon conviction shall be fined an amount not  
5 less than one hundred dollars (\$100) nor more than one thousand dollars  
6 (\$1,000), or by imprisonment for not more than one (1) year, or by both fine  
7 and imprisonment.

8  
9 23-113-304. Hearings.

10 (a)(1) In the event any franchise holder or other person is aggrieved  
11 by any action of the commission, the franchise holder or other person shall  
12 be entitled to a hearing by the commission.

13 (2) The hearings shall be conducted in accordance with the  
14 rules and procedures governing other commission hearings.

15 (b)(1) At the conclusion of the hearing, the commission shall make its  
16 findings to be the basis for the action taken by the commission.

17 (2) The findings and orders of the commission shall be subject  
18 to review in the Pulaski County Circuit Court, from which an appeal may be  
19 taken to the Arkansas Supreme Court.

20  
21 SUBCHAPTER 4 - CONTRIBUTION TO PURSES AND

22 ARKANSAS THOROUGHBRED AND GREYHOUND BREEDING PROGRAMS

23  
24 23-113-401. Contribution to purses and promotion of Arkansas  
25 thoroughbred and greyhound breeding activities.

26 (a) An amount equal to fourteen percent (14%) of the net wagering  
27 revenues from electronic games of skill shall be set aside by the franchise  
28 holder in a separate account and used only for purses for live horse racing  
29 or live greyhound racing conducted by the franchise holder, as the case may  
30 be.

31 (b) With respect to a franchise holder operating a franchise to  
32 conduct horse racing, an amount equal to one percent (1%) of the net wagering  
33 revenues from electronic games of skill conducted by the horse racing  
34 franchise holder shall be paid by the franchise holder to the commission for  
35 deposit into the Arkansas Racing Commission Purse and Awards Fund to be used  
36 for purse supplements, breeders' awards, owners' awards, and stallion awards

1 as provided in § 23-110-409 in order to promote and encourage thoroughbred  
2 horse breeding activities in Arkansas.

3 (c) With respect to a franchise holder operating a franchise to  
4 conduct greyhound racing, an amount equal to one percent (1%) of the net  
5 wagering revenues from electronic games of skill conducted by the greyhound  
6 racing franchise holder shall be paid by the franchise holder to the  
7 commission to be used for breeders' awards as provided in the commission's  
8 rules and regulations governing greyhound racing in Arkansas in order to  
9 promote and encourage greyhound breeding activities in Arkansas.

10 (d)(1) The dedication of net wagering revenues from electronic games  
11 of skill to purses and breeding activities as set forth in this section shall  
12 not be subject to any contract or agreement between the franchise holder and  
13 any organization representing horsemen or greyhound owners or trainers, to  
14 the end that any such contractual obligations for the use of moneys for  
15 purses shall not apply to the funds dedicated to purses and breeding  
16 activities as set forth in this section.

17 (2) The funds dedicated to purses and breeding activities as set  
18 forth in this section are intended to be in addition to any such contractual  
19 purse obligations affecting moneys other than the amounts dedicated to purses  
20 and breeding activities as set forth in this section, as well as in addition  
21 to amounts required to be used for purses and breeding activities under  
22 applicable provisions of the Arkansas Horse Racing Law and Arkansas Greyhound  
23 Racing Law, as the case may be.

24 (e) The commission shall have jurisdiction to check and verify  
25 compliance by the franchise holder with the provisions of this section and  
26 shall make periodic determinations as to compliance under rules and  
27 regulations adopted by the commission.

#### 28 29 SUBCHAPTER 5 – TAXES

##### 30 31 23-113-501. Taxes.

32 (a) A privilege tax is imposed on wagering on electronic games of  
33 skill conducted under this chapter as follows:

34 (1) An amount equal to eighteen percent (18%) of the net  
35 wagering revenues from electronic games of skill shall be paid by the  
36 franchise holder to the Director of the Department of Finance and



1 Administration for disposition under § 23-113-604.

2 (2) An amount equal to one-half of one percent (0.5%) of the net  
3 wagering revenues from electronic games of skill shall be paid by the  
4 franchise holder to the county in which the franchise holder is operating the  
5 electronic games of skill; and

6 (3) An amount equal to one and one-half percent (1.5%) of the  
7 net wagering revenues from electronic games of skill shall be paid by the  
8 franchise holder to the city or town in which the franchise holder is  
9 operating the electronic games of skill.

10 (b) The taxes shall be paid on a monthly basis pursuant to rules and  
11 procedures adopted by the director.

12 (c) The taxes levied by this section are in lieu of any state or local  
13 gross receipts, sales, or other similar taxes, and to this end the Arkansas  
14 Gross Receipts Tax Act of 1941, as amended, Arkansas Code § 26-52-101 et  
15 seq., shall not be applicable to gross receipts derived by franchise holders  
16 from wagering on electronic games of skill.

17 (d) The privilege tax payable to the director under subdivision (a)(1)  
18 of this section shall be administered by the director pursuant to the  
19 Arkansas Tax Procedure Act, Arkansas Code § 26-18-101, et seq., provided  
20 regulatory authority over licensing and other matters under this chapter not  
21 relating to the administration, payment and collection of the privilege tax  
22 shall remain with the commission.

23  
24 SUBCHAPTER 6 – MISCELLANEOUS

25  
26 23-113-601. Duty to maintain records.

27 A franchise holder operating electronic games of skill and conducting  
28 wagering thereon under this chapter shall keep a complete set of books and  
29 records as necessary to show fully the activities and transactions of the  
30 franchise holder with respect to the operations and wagering conducted in  
31 accordance with this chapter, and the commission shall have reasonable access  
32 to the books and records in order to verify compliance with the provisions of  
33 this chapter and the rules and regulations of the commission.

34  
35 23-113-602. Inconsistent statutes inapplicable.

36 (a) Title 5, Chapter 66, and all other laws and parts of laws

1 inconsistent with any of the provisions of this chapter are expressly  
2 declared not to apply to any person engaged in, conducting or otherwise  
3 participating in operating electronic games of skill or wagering thereon as  
4 authorized by this chapter.

5 (b) No person shall be guilty of any criminal offense set forth in  
6 Title 5, Chapter 66, or any other law relating to illegal gambling to the  
7 extent the person relied on any rule, regulation, order, finding, or other  
8 determination by the commission that the activity was authorized by this  
9 chapter.

10  
11 23-113-603. Pari-mutuel wagering on horse and greyhound racing.

12 (a) This chapter does not apply to, and for purposes of this chapter  
13 electronic games of skill do not include, pari-mutuel wagering on horse  
14 racing and greyhound racing governed by the Arkansas Horse Racing Law or  
15 Arkansas Greyhound Racing Law, whether pari-mutuel wagering on live racing,  
16 simulcast racing or races conducted in the past and rebroadcast by electronic  
17 means, to the end that pari-mutuel wagering on horse racing and greyhound  
18 racing shall continue to be governed by the Arkansas Horse Racing Law and  
19 Arkansas Greyhound Racing Law, respectively, and not by this chapter.

20 (b)(1) Provisions of the Arkansas Horse Racing Law and Arkansas  
21 Greyhound Racing Law prohibiting wagering other than on horse or greyhound  
22 races and other than under the pari-mutuel or certificate method of wagering  
23 shall not apply to wagering on electronic games of skill conducted pursuant  
24 to this chapter, and to this end the provisions of §§ 23-110-405(d)(1) and  
25 23-111-508(b) and (d)(1) and (2), the provisions of §§ 23-110-405(d)(2) and  
26 23-111-508(d)(4), and any other inconsistent provisions of the Arkansas Horse  
27 Racing Law and Arkansas Greyhound Racing Law shall not apply to wagering on  
28 electronic games of skill conducted in accordance with this chapter.

29 (2) Wagering under this chapter is not required to be pari-  
30 mutuel.

31  
32 23-113-604 Disposition of privilege taxes, license fees, etc.

33 (a) All privilege taxes received by the Director of the Department of  
34 Finance and Administration under this chapter for the benefit of the state  
35 shall be deposited in the State Treasury as special revenues to be allocated  
36 as follows:

1 (1) Fifty percent (50%) to the credit of the Higher Education  
2 Grants Fund Account to be used by the Department of Higher Education for  
3 student assistance grants and scholarships as provided by law; and

4 (2) Fifty percent (50%) to the credit of the Arkansas Medicaid  
5 Program Trust Fund to be used for the state match of federal funds  
6 participation under the Arkansas Medicaid Program as provided by law.

7 (b) All permit or license fees, penalties, and fines received by the  
8 commission under this chapter, shall be deposited in the State Treasury as  
9 general revenues.

10  
11 SECTION 2. EMERGENCY CLAUSE. It is found and determined by the  
12 Eighty-Fourth General Assembly of the State of Arkansas that competition from  
13 outside the State of Arkansas is having an adverse impact on the horse and  
14 greyhound racing industry in this state; that these economic conditions  
15 adversely affect the benefits to the State of Arkansas directly and  
16 indirectly accruing from the horse and greyhound racing industries; that the  
17 state is in need of additional revenues to support state funded programs,  
18 functions, and activities; that it is imperative to address immediately these  
19 competitive burdens and revenue needs, and in order to accomplish these  
20 goals, essential to the welfare of the State of Arkansas and its citizens and  
21 residents, the provisions set forth in this act must be effective  
22 immediately. Therefore, an emergency is declared to exist and this act being  
23 immediately necessary for the preservation of the public peace, health, and  
24 safety shall become effective on:

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

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

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

31  
32 /s/ Jones, et al  
33  
34  
35  
36