

1 State of Arkansas
2 84th General Assembly
3 Second Extraordinary Session, 2003
4

Call Item 4

A Bill

HOUSE BILL 1180

5 By: Representative Jones
6
7

For An Act To Be Entitled

9 AN ACT TO AUTHORIZE HORSE RACING AND GREYHOUND
10 RACING FRANCHISEES TO CONDUCT WAGERING ON
11 ELECTRONIC GAMES OF SKILL; AND FOR OTHER
12 PURPOSES.
13

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 amended to add an additional
23 chapter to read as follows:

24 CHAPTER 113 – WAGERING ON ELECTRONIC GAMES OF SKILL CONDUCTED BY HORSE RACING
25 AND GREYHOUND RACING FRANCHISEES
26

SUBCHAPTER 1 – GENERAL PROVISIONS

27 23-113-101. Title.

28
29 This chapter shall be referred to and may be cited as the "Horse Racing
30 and Greyhound Racing Franchisee Electronic Games of Skill Wagering Act".
31
32

33 23-113-102. Definitions.

34 As used in this chapter:

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



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

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

6 (4) "Director" means the Director of the Department of Finance
 7 and Administration;

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

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

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

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

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

27
 28 SUBCHAPTER 2 – AUTHORIZATION OF WAGERING ON ELECTRONIC GAMES OF SKILL
 29

30 23-113-201. Wagering on electronic games of skill permitted –
 31 Conditions and limitations.

32 (a) In addition to pari-mutuel wagering on horse and greyhound racing
 33 authorized by the Arkansas Horse Racing Law and Arkansas Greyhound Racing
 34 Law, respectively, any franchise holder may conduct wagering on electronic
 35 games of skill in accordance with this chapter at any time or times during
 36 the calendar year at locations on the grounds of the franchise holder's

1 racetrack site where the franchise holder is authorized by the Arkansas
 2 Racing Commission to conduct pari-mutuel wagering on horse racing or
 3 greyhound racing pursuant to the Arkansas Horse Racing Law or Arkansas
 4 Greyhound Racing Law, as the case may be.

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

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

10 (B) Greyhound racing under the Arkansas Greyhound Racing
 11 Law.

12 (2) However, the commission may waive this requirement if the
 13 license was not issued because of events such as fire, storm, accident or
 14 other casualty, epidemic, shortages of horses or greyhounds, war, sabotage,
 15 acts of a public enemy, civil disturbances, strikes, labor disputes, work
 16 stoppages, or similar events.

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

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

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

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

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

35 (2)(A) Within sixty (60) calendar days after the filing under
 36 subdivision (e)(1), the commission shall make a finding as to whether the

1 game and electronic device or machine constitutes an electronic game of skill
 2 authorized by this chapter.

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

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

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

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

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

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

1
2 SUBCHAPTER 3 – ARKANSAS RACING COMMISSION

3
4 23-113-301. Jurisdiction of Arkansas Racing Commission.

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

9
10 23-113-302. Powers and duties.

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

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

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

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

33 (4) Prescribe the procedures for issuing licenses to persons
34 supplying electronic games of skill to the franchise holder, including,
35 without limitation, the information to be submitted by the persons in
36 connection with their background, experience, character, business activities,

1 and financial affairs, as reasonably necessary to determine the person's
 2 qualifications and suitability for supplying electronic games of skill to
 3 franchise holders for use in accordance with this chapter;

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

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

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

17
 18 23-113-303. Licenses for employees and supplies.

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

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

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

33 (B) Obtained a license from the commission.

34 (2) Each supplier shall pay to the commission an annual license
 35 fee in the amount of one hundred dollars (\$100) per year for each year or
 36 part thereof that the license is in effect.

1 (c) Any person knowingly making any false statement on an employee
 2 application or a supplier license application under this chapter shall be
 3 guilty of an unclassified misdemeanor and upon conviction shall be fined an
 4 amount no less than one hundred dollars (\$100) nor greater than one thousand
 5 dollars (\$1,000), or by imprisonment for no more than one (1) year, or by
 6 both fine and imprisonment.

7
 8 23-113-304. Hearings.

9 (a)(1) If any franchise holder or other person is aggrieved by any
 10 action of the Arkansas Racing Commission, the franchise holder or other
 11 person shall be entitled to a hearing by the commission.

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

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

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

19
 20 SUBCHAPTER 4 – CONTRIBUTION TO PURSES AND
 21 ARKANSAS THOROUGHBRED AND GREYHOUND BREEDING PROGRAMS

22
 23 23-113-401. Contribution to purses and promotion of Arkansas
 24 thoroughbred and greyhound breeding activities.

25 (a) An amount equal to twelve percent (12%) of the net wagering
 26 revenues from electronic games of skill shall be set aside by the franchise
 27 holder in a separate account and used only for purses for live horse racing
 28 or live greyhound racing conducted by the franchise holder, as the case may
 29 be.

30 (b) With respect to a franchise holder operating a franchise to
 31 conduct horse racing, an amount equal to one percent (1%) of the net wagering
 32 revenues from electronic games of skill conducted by the horse racing
 33 franchise holder shall be paid by the franchise holder to the Arkansas Racing
 34 Commission for deposit into the Arkansas Racing Commission Purse and Awards
 35 Fund to be used for purse supplements, breeders' awards, owners' awards, and
 36 stallion awards as provided in § 23-110-409 in order to promote and encourage

1 thoroughbred horse breeding activities in Arkansas.

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

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

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

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

27
 28 SUBCHAPTER 5 – TAXES

29
 30 23-113-501. Taxes.

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

33 (1) An amount equal to twenty-six percent (26%) of the net
 34 wagering revenues from electronic games of skill shall be paid by the
 35 franchise holder to the Director of the Department of Finance and
 36 Administration for disposition under § 23-113-604;

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

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

9 (b) Except as provided in § 23-113-502, the taxes shall be paid on a
 10 monthly basis pursuant to rules and procedures adopted by the director.

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

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

22
 23 23-113-502. Payment of privilege tax to the state.

24 (a) Once the Arkansas Racing Commission makes a finding that a game
 25 and electronic device or machine constitutes an electronic game of skill
 26 under § 23-113-201(e) of this chapter, a franchise holder will pay to the
 27 Director of the Department of Finance and Administration the sum which is
 28 equal to the estimated total privilege tax payable by the franchise holder to
 29 the director under § 23-113-501(a)(1) for the following twelve (12) months.

30 (b)(1) At the conclusion of the twelve-month period set out in
 31 subsection (a) of this section, the franchise holder shall calculate the
 32 actual amount of the privilege tax payable by the franchise holder to the
 33 director under § 23-113-501(a)(1) for that twelve-month period. The
 34 calculation by the franchise holder is subject to audit by the director
 35 pursuant to the Arkansas Tax Procedure Act, § 26-18-101 et seq.

36 (2) If the amount calculated in subdivision (b)(1) of this

1 section is less than the estimated total privilege tax paid to the director
 2 under subsection (a) of this section, the difference will be a credit applied
 3 to the monthly payments thereafter due under § 23-113-501(a)(1) until the
 4 difference is reduced to zero. Any difference remaining after three (3)
 5 years from the date of the payment set out in subsection (a) of this section
 6 shall be a credit applied to any other taxes thereafter due from the
 7 franchise holder to the State of Arkansas until the difference is reduced to
 8 zero.

9 (3) If the amount calculated in subdivision (b)(1) of this
 10 section exceeds the estimated total privilege tax paid to the director under
 11 subsection (a) of this section, the difference will be immediately paid to
 12 the director by the franchise holder.

13
 14 SUBCHAPTER 6 – MISCELLANEOUS

15
 16 23-113-601. Duty to maintain records.

17 A franchise holder operating electronic games of skill and conducting
 18 wagering thereon under this chapter shall keep a complete set of books and
 19 records as necessary to show fully the activities and transactions of the
 20 franchise holder with respect to the operations and wagering conducted in
 21 accordance with this chapter, and the Arkansas Racing Commission shall have
 22 reasonable access to the books and records in order to verify compliance with
 23 the provisions of this chapter and the rules and regulations of the
 24 commission.

25
 26 23-113-602. Inconsistent statutes inapplicable.

27 (a) Title 5, Chapter 66 and all other laws and parts of laws
 28 inconsistent with any of the provisions of this chapter are expressly
 29 declared not to apply to any person engaged in, conducting or otherwise
 30 participating in, operating electronic games of skill or wagering thereon as
 31 authorized by this chapter.

32 (b) No person shall be guilty of any criminal offense set forth in
 33 Title 5, Chapter 66 or any other law relating to illegal gambling to the
 34 extent the person relied on any rule, regulation, order, finding, or other
 35 determination by the Arkansas Racing Commission that the activity was
 36 authorized by this chapter.

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

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

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

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

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

(a) All privilege taxes received by the Director of the Department of Finance and Administration under this chapter for the benefit of the state shall be special revenues deposited by Treasurer of State to the credit of the Educational Adequacy Trust Fund.

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

SECTION 2. Educational Adequacy Trust Fund.

(a) There is created on the books of the Treasurer of State, the Auditor of State, and Chief Fiscal Officer of the State a special revenue fund to be known as the Educational Adequacy Trust Fund.

(b) The Educational Adequacy Trust Fund shall consist of the revenues

1 provided under § 23-113-604(a) and other revenues as provided by law.

2 (c) On the last day of the month, the Treasurer of State shall
 3 transfer amounts available in the Educational Adequacy Trust Fund to the
 4 Department of Education Public School Fund Account established in § 19-5-305,
 5 to be used for the purposes provided by law. The Treasurer of State shall
 6 make the transfer after making the deductions required from the net special
 7 revenues as set out in § 19-5-203(b)(2)(A).

8
 9 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the
 10 General Assembly of the State of Arkansas that competition from outside the
 11 State of Arkansas is having an adverse impact on the horse and greyhound
 12 racing industry in this state; that these economic conditions adversely
 13 affect the benefits to the State of Arkansas directly and indirectly accruing
 14 from the horse and greyhound racing industries; that additional funds are
 15 immediately needed to provide an equal opportunity for an adequate education;
 16 that it is imperative to address immediately these competitive burdens and
 17 revenue needs, and in order to accomplish these goals, essential to the
 18 welfare of the State of Arkansas and its citizens and residents, the
 19 provisions set forth in this act must be effective immediately. Therefore,
 20 an emergency is declared to exist and this act being immediately necessary
 21 for the preservation of the public peace, health, and safety shall become
 22 effective on:

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

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

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

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