

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

As Engrossed: H2/6/04
A Bill

Call Item 4

HOUSE BILL 1181

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

27 SUBCHAPTER 1 – GENERAL PROVISIONS
28

29 23-113-101. Title.

30 This chapter shall be referred to and may be cited as the "Horse Racing
31 and Greyhound Racing Franchisee Electronic Games of Skill Wagering Act".
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)(1) In addition to pari-mutuel wagering on horse and greyhound
33 racing authorized by the Arkansas Horse Racing Law and Arkansas Greyhound
34 Racing Law, respectively, any franchise holder may conduct wagering on
35 electronic games of skill in accordance with this chapter at any time or
36 times during the calendar year at locations on the grounds of the franchise

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

5 (2)(A) The franchise holder may not conduct wagering on
6 electronic games of skill under this chapter unless the question of the
7 wagering on electronic games of skill has been submitted to the electors of
8 the city, town, or county in which the franchise holder's racetrack site is
9 located where the wagering on electronic games of skill is to be conducted,
10 at a special or any regular election, and a majority of the electors voting
11 on the question shall have approved the wagering on electronic games of skill
12 at the election. If the racetrack site is located within the corporate
13 limits of a city or town, the question shall be submitted to the electors of
14 either the city, town, or county in which the racetrack site is located, as
15 requested by the franchise holder, and if the racetrack site is not located
16 within the corporate limits of a city or town, then the question shall be
17 submitted to the electors of the county in which the racetrack site is
18 located.

19 (B) The governing body of the city, town, or county, as
20 the case may be, shall submit the question to the electors as and when
21 requested by the franchise holder. The franchise holder may make requests on
22 one or more occasions, and elections so requested from time to time by the
23 franchise holder may be held during any one or more calendar years as
24 requested from time to time by the franchise holder, but not more than two
25 (2) special elections shall be held during any particular calendar year. The
26 cost incurred by the city, town, or county involved in conducting each
27 special election pursuant to the franchise holder's request shall be paid by
28 the franchise holder. The election shall be held and conducted under the
29 general election laws of the state except as otherwise provided in this
30 subdivision (2).

31 (C) The ordinance shall set forth the ballot question
32 substantially as follows:

33 "For wagering on electronic games of skill conducted by _____ [name of
34 franchise holder] on the grounds of its racetrack site in _____
35 [city, town, or county] []

36

1 Against wagering on electronic games of skill conducted by _____ [name of
 2 franchise holder] on the grounds of its racetrack site in _____
 3 [city, town, or county] []

4
 5 As authorized by Arkansas Code § 23-113-201, the question presented is
 6 whether or not wagering on electronic games of skill may be conducted by
 7 _____ [name of franchise holder] on the grounds of its
 8 racetrack site in _____ [city, town, or county]. Vote for or
 9 against the question by marking the appropriate box above. Electronic games
 10 of skill mean games played through any electronic device or machine that
 11 afford an opportunity for the exercise of skill or judgment where the outcome
 12 is not completely controlled by chance alone, and include electronic versions
 13 of games such as poker, twenty-one, checkers, games involving formation of
 14 words with letters, and other electronic games affording an opportunity for
 15 the exercise of skill or judgment where the outcome is not completely
 16 controlled by chance alone."

17 (D) Notice of the election shall be given by the clerk of
 18 the city, town, or county involved by one (1) publication in a newspaper
 19 having general circulation within the city, town, or county involved not less
 20 than ten (10) days before the election. No other publication or posting of a
 21 notice by any other public official shall be required.

22 (E) The election shall be held no earlier than fifteen
 23 (15) days after the date of adoption of the ordinance in which the election
 24 is called by the legislative body.

25 (F) The mayor of the city or town or the county judge of
 26 the county, as the case may be, shall proclaim the results of the election by
 27 issuing a proclamation and publishing it one (1) time in a newspaper having
 28 general circulation within the city, town, or county involved. The results
 29 of the election as stated in the proclamation shall be conclusive unless suit
 30 is filed in the circuit court in the county where the election took place
 31 within twenty (20) days after the date of publication of the proclamation.

32 (G) If and when the wagering on electronic games of skill
 33 is approved at any election as provided in this subdivision, that approval
 34 shall be final and shall continue in effect thereafter for so long as
 35 wagering on electronic games of skill at the location involved is authorized
 36 by the other provisions of this chapter, other than this subdivision (a)(2)

1 of this section.

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

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

7 (B) Greyhound racing under the Arkansas Greyhound Racing
8 Law.

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

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

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

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

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

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

32 (2)(A) Within sixty (60) calendar days after the filing under
33 subdivision (e)(1), the commission shall make a finding as to whether the
34 game and electronic device or machine constitutes an electronic game of skill
35 authorized by this chapter.

36 (B) The finding shall further either approve the proposed

1 rules of play or recommend modifications as the commission determines are
2 necessary in the public interest in carrying out its regulatory functions in
3 accordance with this chapter.

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

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

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

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

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

34
35 SUBCHAPTER 3 – ARKANSAS RACING COMMISSION
36

1 23-113-301. Jurisdiction of Arkansas Racing Commission.

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

6
7 23-113-302. Powers and duties.

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

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

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

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

30 (4) Prescribe the procedures for issuing licenses to persons
31 supplying electronic games of skill to the franchise holder, including,
32 without limitation, the information to be submitted by the persons in
33 connection with their background, experience, character, business activities,
34 and financial affairs, as reasonably necessary to determine the person's
35 qualifications and suitability for supplying electronic games of skill to
36 franchise holders for use in accordance with this chapter;

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

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

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

14
15 23-113-303. Licenses for employees and supplies.

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

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

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

30 (B) Obtained a license from the commission.

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

34 (c) Any person knowingly making any false statement on an employee
35 application or a supplier license application under this chapter shall be
36 guilty of an unclassified misdemeanor and upon conviction shall be fined an

1 amount no less than one hundred dollars (\$100) nor greater than one thousand
2 dollars (\$1,000), or by imprisonment for no more than one (1) year, or by
3 both fine and imprisonment.

4
5 23-113-304. Hearings.

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

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

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

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

16
17 SUBCHAPTER 4 – CONTRIBUTION TO PURSES AND
18 ARKANSAS THOROUGHBRED AND GREYHOUND BREEDING PROGRAMS

19
20 23-113-401. Contribution to purses and promotion of Arkansas
21 thoroughbred and greyhound breeding activities.

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

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

35 (c) With respect to a franchise holder operating a franchise to
36 conduct greyhound racing, an amount equal to one percent (1%) of the net

1 wagering revenues from electronic games of skill conducted by the greyhound
2 racing franchise holder shall be paid by the franchise holder to the
3 commission to be used for breeders' awards as provided in the commission's
4 rules and regulations governing greyhound racing in Arkansas in order to
5 promote and encourage greyhound breeding activities in Arkansas.

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

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

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

24 25 SUBCHAPTER 5 – TAXES

26 27 23-113-501. Taxes.

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

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

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

1 electronic games of skill; and

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

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

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

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

19
20 SUBCHAPTER 6 – MISCELLANEOUS

21
22 23-113-601. Duty to maintain records.

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

31
32 23-113-602. Inconsistent statutes inapplicable.

33 (a) Title 5, Chapter 66 and all other laws and parts of laws
34 inconsistent with any of the provisions of this chapter are expressly
35 declared not to apply to any person engaged in, conducting or otherwise
36 participating in, operating electronic games of skill or wagering thereon as

1 authorized by this chapter.

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

7
8 23-113-603. Pari-mutuel wagering on horse and greyhound racing.

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

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

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

28
29 23-113-604. Disposition of privilege taxes, license fees, etc.

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

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

