

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
92nd General Assembly
Regular Session, 2019

As Engrossed: S4/3/19
A Bill

SENATE BILL 498

By: Senator M. Johnson

For An Act To Be Entitled

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

Subtitle

TO AMEND THE PROVISIONS OF THE ARKANSAS CASINO GAMING AMENDMENT OF 2018; AMENDING ARKANSAS CONSTITUTION, AMENDMENT 100; AND TO DECLARE AN EMERGENCY.

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

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

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Arkansas Constitution, Article 5, § 1, provides that "[n]o measure approved by a vote of the people shall be amended or repealed by the General Assembly.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

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

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



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

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

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

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

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

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

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

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

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

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

§ 2. Definitions.

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

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

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

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

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

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

(A) Occur outside the State of Arkansas; and

(B) Do not involve amateur athletes.

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

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

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

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

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

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

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

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

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

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

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

(A) Occur outside the State of Arkansas; and

(B) Do not involve amateur athletes.

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

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

§ 4. Licensing of Casinos and Casino Gaming.

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

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

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

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

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

- (1) The establishment of a casino license application fee which shall not exceed \$250,000;
- (2) The manner in which the Arkansas Racing Commission considers applications for issuance of casino licenses;
- (3) The renewal of casino licenses;
- (4) The form and content of renewal for casino licenses;
- (5) Oversight requirements for casinos and casino gaming;
- (6) Recordkeeping requirements for casinos;
- (7) Personnel requirements for casinos and casino gaming;
- (8) Procedures for suspending or terminating casino licenses held by casino licensees that violate the provisions of this Amendment or the rules adopted under this Amendment;
- (9) A schedule of penalties and procedures for appealing penalties;
- (10) Procedures for inspection and investigations of casinos and casino gaming;
- (11) Responsibilities of casino licensees related to conducting casino gaming;
- (12) The Arkansas Racing Commission shall allow licensees to transfer their casino license only to a party who has casino gaming experience.
- (13) Any other matters necessary for the fair, impartial, stringent, and comprehensive administration of its duties under this Amendment.

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

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

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

(h) Prior to the submission of an application for a casino license, the owners, shareholders, board members, or officers of the casino applicant:

- (1) If an individual, shall not have been convicted of a disqualifying felony offense as defined by the Arkansas Racing Commission;
- (2) Shall not have previously had a casino license in any state revoked;
- (3) If an individual, shall not be under twenty-one years of age; and
- (4) If an individual, shall not be ~~a county judge or mayor that provides a letter of support, or a quorum court member that votes in favor of a letter of support as identified in this Amendment~~ an elected official of the county or city or town within the county in which the proposed casino will be located or a person who has served as an elected official of the county or the city or town within the county in which the proposed casino will be located within the past ten (10) years.

(i) The Arkansas Racing Commission shall issue no more than four casino licenses.

(j) The Arkansas Racing Commission shall issue a casino license, as provided in this Amendment, to a Franchise holder located in Crittenden County, there being only one, to conduct casino gaming at a casino to be located at or adjacent to the Franchise holder's greyhound racing track and gaming facility as of December 31, 2017 in Crittenden County for up to ten (10) years. The Arkansas Racing Commission shall also issue a casino license, as provided in this Amendment, to a Franchise holder located in Garland County, there being only one, to conduct casino gaming at a casino to be located at or adjacent to the Franchise holder's horse racing track and gaming facility as of December 31, 2017 in Garland County for up to ten (10) years. Casino licenses to be issued to Franchise holders shall be issued

upon:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(p)~~(1) Franchise holders are not applicants and are not required to submit applications for casino licenses in order to be issued ~~a~~ an initial casino license.

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

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

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

~~(r)~~(1)~~(s)~~(1) The Arkansas Racing Commission shall provide an annual amount of at least ~~\$200,000~~ \$800,000 for compulsive gambling disorder treatment and compulsive gambling disorder educational programs.

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

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

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

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

§ 5. Graduated taxation and distribution of proceeds.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

/s/M. Johnson