

Arkansas 2018 Casino Amendment

Popular Name

AN AMENDMENT TO REQUIRE FOUR LICENSES TO BE ISSUED FOR CASINO GAMING AT CASINOS, ONE EACH IN CRITTENDEN (TO SOUTHLAND RACING CORPORATION), GARLAND (TO OAKLAWN JOCKEY CLUB, INC.), POPE, AND JEFFERSON COUNTIES

Ballot Title

An amendment to the Arkansas Constitution to require that the Arkansas Racing Commission issue licenses for casino gaming to be conducted at four casinos in Arkansas, being subject to laws enacted by the General Assembly in accord with this amendment and regulations issued by the Arkansas Racing Commission (“Commission”); defining “casino gaming” 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, as well as accepting wagers on sporting events; providing that individuals under 21 are prohibited from engaging in casino gaming; providing that the Commission shall issue four casino licenses, one to Southland Racing Corporation (“Southland”) for casino gaming at a casino to be located at or adjacent to Southland’s greyhound track and gaming facility in Crittenden County, one to Oaklawn Jockey Club, Inc. (“Oaklawn”) to require casino gaming at a casino to be located at or adjacent to Oaklawn’s horse track and gaming facility in Garland County, one to an applicant to require casino gaming at a casino to be located in Pope County within two miles of Russellville, and one to an applicant to require casino gaming at a casino to be located in Jefferson County within two miles of Pine Bluff; providing that upon receiving a casino license, licensees will be required to conduct casino gaming for as long as they have a casino license providing that Southland and Oaklawn do not have to apply for a license and will automatically receive a casino license upon the Commission adopting rules and regulations to govern casino gaming; providing that the Commission shall require all applicants for the two remaining casino licensees, one in Pope County and one in Jefferson County to pay an application fee, demonstrate experience in conducting casino gaming, and submit either a letter of support from the county judge or a resolution from the county quorum court in the county where the casino would be located and, if the proposed casino is to be located within a city, a letter of support from the mayor of that city; providing that the Commission shall regulate all casino licensees; defining “net casino gaming receipts” as casino gaming receipts less amounts paid out or reserved as winnings to casino patrons; providing that for each fiscal year, a casino licensee’s net casino gaming receipts are subject to a net casino gaming receipts tax of 13% on the first \$150,000,000 of net casino gaming receipts or any part thereof, and 20% on net casino gaming receipts exceeding \$150,000,001 or any part thereof; providing that no other tax, other than the net casino gaming receipts tax, may be imposed on gaming receipts or net casino gaming receipts; providing that the net casino gaming receipts tax shall be distributed 55% to the State of Arkansas General Revenue Fund, 17.5% to the 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 Oaklawn and Southland, as the case may be, 8% to the county in which the casino is located, and 19.5% to the city in which the casino is located, provided that if the casino is not located within a city, then the county in which the casino is located shall receive the 19.5%; permitting casino licensees to conduct casino gaming on any day for any portion or all of any day; permitting casino licensees to sell liquor or provide complimentary servings of liquor during all hours in

which the casino licensees conduct casino gaming only for on-premises consumption at the casinos and permitting casino licensees to sell liquor or provide complimentary servings of liquor without allowing the residents of a dry county or city to vote to approve the sale of liquor; providing that casino licensees shall purchase liquor from a licensed Arkansas wholesaler; permitting shipments of gambling devices that are duly registered, recorded, and labeled in accordance with federal law into any county in which casino gaming is authorized; declaring that all constitutional provisions, statutes, and common law of the state that conflict with this amendment are not to be applied to this Amendment.

SECTION 1. The following is added as an amendment to the Arkansas Constitution:

- **1. Short title.**

This Amendment shall be known and cited as “The Arkansas Casino Gaming Amendment of 2018.”

- **2. Definitions.** For purposes of this Amendment, the below terms are defined as follows:

(a) “Casino” is defined as a facility where casino gaming is conducted as authorized by this Amendment.

(b) “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.

(c) “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. Casino gaming shall also be defined to include accepting wagers on sporting events. “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) “Casino gaming receipts” is defined as gross receipts from casino gaming.

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

(f) “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) “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) “Intoxicating liquor” is defined as any beverage containing more than one-half of one percent of alcohol by weight.

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

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

(k) “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.

- **3. Authorizing Casinos and Casino Gaming.**

(a) Casinos and casino gaming are hereby authorized in the State of Arkansas as provided in this Amendment.

(b) Casino licensees may accept wagers on sporting events if and when not prohibited by federal law. 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.

(c) To fulfill the purposes of this Amendment, the Arkansas General Assembly shall from time to time enact laws, and appropriate monies to or for the use of the Arkansas Racing Commission. Initial laws and appropriations enacted by the General Assembly pursuant hereto shall be in full force and effect no later than June 30, 2019.

(d) Individuals under the age of 21 are prohibited from engaging in casino gaming.

- **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 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 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.

(i) The Arkansas Racing Commission shall issue 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. 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. 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. 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 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.

(o) Franchise holders are not applicants and are not required to submit applications for casino licenses in order to be issued a casino license.

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

(q) The Arkansas Racing Commission shall issue a renewal casino license within ten 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. Casino licenses shall be renewed every ten years.

(r) (1) The Arkansas Racing Commission shall provide an annual amount of at least \$200,000 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.

- **5. Graduated taxation and distribution of proceeds.**

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

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

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

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

(1) 55% to the Arkansas General Revenue Fund

(2) 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),

(3) 8% to the county in which the casino is located, and

(4) 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.

(d) On the last day of each month, the Treasurer shall transfer the 17.5% 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.

(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.

- **6. Contribution to purses and promotion of Arkansas thoroughbred and greyhound breeding activities.**

(a) For so long as a Franchise holder is operating a franchise to conduct horse racing, an amount equal to 14% of the net casino gaming receipts shall be set aside by the Franchise holder in a separate account and used only for purses for live horse racing by the Franchise holder.

(b) For so long as a Franchise holder is operating a franchise to conduct greyhound racing, an amount equal to 14% of the net casino gaming receipts shall be set aside by the Franchise holder in a separate account and used only for purses for live greyhound racing and for capital improvements to the Franchise holder's facility by the Franchise holder. The amount of net casino gaming receipts set aside in this paragraph shall be apportioned as follows:

(1) 80% for purses for live greyhound racing by the Franchise holder; and

(2) 20% for capital improvements to the Franchise holder's facility so long as any amount so apportioned for capital improvements shall be matched by the Franchise holder and used only for capital improvements to the Franchise holder's facility.

(c) With respect to a Franchise holder operating a franchise to conduct horse racing, an amount equal to 1% of the net casino gaming receipts by the horse racing Franchise holder shall be paid by the Franchise holder to the Arkansas Racing Commission for deposit into the Arkansas Racing Commission Purse and Awards Fund to be used for purse supplements, breeders' awards, owners' awards, and stallion awards as provided in Ark. Code Ann. § 23-110-409 in order to promote and encourage thoroughbred horse breeding activities in Arkansas.

(d) With respect to a Franchise holder operating a franchise to conduct greyhound racing, an amount equal to 1% of the net casino gaming receipts by the greyhound racing Franchise holder shall be paid by the Franchise holder to the Arkansas Racing Commission to be used for breeders' awards as provided in the Arkansas Racing Commission's rules and regulations governing greyhound racing in Arkansas in order to promote and encourage greyhound breeding activities in Arkansas.

(e) (1) The dedication of net casino gaming receipts to purses and breeding activities as set forth in this section shall not 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 apply to the funds dedicated to purses and breeding activities as set forth in this section.

(2) The moneys dedicated to purses and breeding activities as set forth in this section are intended to be in addition to any such contractual purse obligations affecting moneys other than the amounts dedicated to purses and breeding activities as set forth in this section, as well as in addition to amounts required to be used for purses and breeding activities under applicable provisions of 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.

(f) The Arkansas Racing Commission shall have jurisdiction to check and verify compliance by the Franchise holders with the provisions of this section and shall make periodic determinations as to compliance under rules and regulations adopted by the Arkansas Racing Commission.

• **7. Other operational provisions.**

(a) Casino licensees are permitted to conduct casino gaming on any day for any portion or all of any day.

(b) Casino licensees shall be permitted to sell intoxicating liquor or provide complimentary servings of intoxicating liquor, only for on-premises consumption at the casinos, during all hours in which the casino licensees conduct casino gaming. To that extent, casino licensees shall not be subject to Ark. Code Ann. § 3-3-211, which prohibits the sale of intoxicating liquor on Christmas Day, and Ark. Code Ann. § 3-9-201, et seq. and other applicable Arkansas law requiring the residents of a dry county or city to vote to approve the sale of intoxicating liquor. Casino

licensees shall purchase all intoxicating liquor from a Wholesaler. Casino licensees shall be subject to all other applicable Arkansas laws involving the distribution and sale of intoxicating liquor that do not conflict with any provision of this Amendment.

- **8. Legal shipment of gambling devices into State.**

All shipments of gambling devices, including slot machines, that are duly registered, recorded, and labeled by the manufacturer and/or dealer thereof in accordance with applicable federal law into any county of this State in which casino gaming is authorized in accordance with this Amendment shall be deemed legal shipments.

- **9. Effect on existing law.**

(a) By adoption of this Amendment, there is no implied repeal of the existing Arkansas laws criminalizing gambling for purposes not specified in this Amendment.

(b) This Amendment does not amend, repeal, or otherwise affect Amendment 84 (authorizing bingo and raffles), Amendment 87 (creating the state scholarship lottery), or Act 1151 of 2005 (authorizing electronic games of skill), to the extent those Amendments and statute do not conflict with this Amendment.

- **10. Inconsistent provisions inapplicable.**

All provisions of the Constitution, statutes, and common law of this State, including without limitation laws forbidding the judicial enforcement of gambling debts and statutes declaring gambling to be a crime, to the extent inconsistent or in conflict with any provision of this Amendment are expressly declared null and void as to, and do not apply to, any activities allowed under this Amendment.

- **11. Severability.**

If any provision or section of this Amendment or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect any other provisions or application of the Amendment that can be given effect without the invalid provisions or applications, and to this end the provisions of this Amendment are declared to be severable.

SECTION 2. EFFECTIVE DATE. This Amendment shall be effective on and after November 14, 2018.