



STATE OF ARKANSAS
ATTORNEY GENERAL
LESLIE RUTLEDGE

Opinion No. 2018-029

March 29, 2018

Alex T. Gray, Esq.
Steel, Wright, Gray & Hutchinson, PLLC
400 West Capitol Avenue, Suite 2910
Little Rock, AR 72201

Dear Mr. Gray:

I am writing in response to your request for certification, pursuant to Ark. Code Ann. § 7-9-107 (Supp. 2017), of the popular name and ballot title for a proposed initiated measure.

At the outset, I wish to make clear to you that the decision to certify or reject a popular name and ballot title is in no way a reflection of my view of the merits of a particular proposal. I am not authorized to, and do not, consider the merits of the measure when making a decision to certify or reject.

Section 7-9-107 authorizes my office to 1) certify the popular name and ballot title of a proposed measure, 2) substitute and certify the popular name and ballot title, if practicable, or 3) reject the entire submission if “the ballot title, or the nature of the issue, is presented in such manner that the ballot title would be misleading” to voters.¹ The purpose of my review under section 7-9-107 is to ensure that the popular name and ballot title honestly, intelligibly, and fairly set forth the purpose of the proposed amendment or act.² In this way, voters will have a fair understanding of the issues presented by referenced to the ballot title alone.³

¹ Ark. Code Ann. § 7-9-107(c) (Supp. 2017).

² See *Arkansas Women's Political Caucus v. Riviere*, 283 Ark. 463, 466, 677 S.W.2d 846, 848 (1948).

³ *Becker v. Riviere*, 270 Ark. 219, 226, 604 S.W.2d 555, 558 (1980) (internal citations omitted).

Section 7-9-107 neither requires nor authorizes this office to make legal determinations concerning the merits of the proposed act or amendment, or concerning the likelihood that it will accomplish its stated objective. In addition, consistent with Arkansas Supreme Court precedent, unless the measure is “clearly contrary to law,”⁴ this office will not require that a measure’s proponents acknowledge in the ballot title any possible constitutional infirmities.⁵ Consequently, this review has been limited primarily to a determination, pursuant to the guidelines that have been set forth by the Arkansas Supreme Court, discussed below, of whether the popular name and ballot title you have submitted accurately and impartially summarize the provisions of your proposal.

REQUEST

You have requested certification, pursuant to Ark. Code Ann. § 7-9-107, of the following popular name and ballot title for a proposed constitutional amendment:

Popular Name

An Amendment to Authorize Four 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 authorizing four casinos in Arkansas, being subject to laws enacted by the General Assembly in accord with this amendment and regulations promulgated by the Office of Casino Gaming or the Arkansas Racing Commission, as the case may be; creating the Office of Casino Gaming within the Department of Finance and Administration; defining “casino gaming” as dealing, operating, carrying on, conducting, maintaining, or exposing for play any game

⁴ See *Kurrus v. Priest*, 342 Ark. 434, 445, 29 S.W.3d 669, 675 (2000); *Donovan v. Priest*, 326 Ark. 353, 359, 931 S.W.2d 119, 121 (1996); *Plugge v. McCuen*, 310 Ark. 654, 841 S.W.2d 139 (1992).

⁵ As part of my review, however, I may address constitutional concerns for consideration by the measure’s proponents.

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 if and when no longer prohibited by federal law; providing that individuals under 21 are prohibited from engaging in casino gaming; providing that the Office of Casino Gaming shall award four casino licenses, one to Southland Racing Corporation (“Southland”) for 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”) for a casino to be located at or adjacent to Oaklawn’s horse track and gaming facility in Garland County, one to an applicant for a casino to be located in Pope County within two miles of Russellville, and one to an applicant for a casino to be located in Jefferson County within two miles of Pine Bluff; providing that the Office of Casino Gaming shall require all applicants for casino licenses pay an application fee, demonstrate operational experience in providing casino gaming, provide 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, demonstrate a minimum investment of at least \$100,000,000 for the development of each casino facility with credit given for the market value of existing real estate, facilities, equipment, and other improvements, and provide general information relating to the applicant’s name, location, and ownership; providing that Southland and Oaklawn are not applicants and are not required to submit applications for casino licenses in order to be issued a casino license; providing that the Arkansas Racing Commission shall regulate Oaklawn and Southland and the Office of Casino Gaming shall regulate the other casino licensees; defining “net casino gaming receipts” as gross receipts from casino gaming 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 12% on the first \$100,000,000 of net casino gaming receipts or any part thereof, 15% on net casino gaming receipts between \$100,000,001 and \$150,000,000 or any part thereof, 17% on net casino gaming receipts between \$150,000,001 and \$200,000,000 or any part thereof, and 22.5% on net casino gaming receipts exceeding

\$200,000,001 or any part thereof; subjecting each casino to the same income, property, sales, 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 the Arkansas Gross Receipts Act of 1941 and local gross receipts taxes shall not apply to casino gaming receipts or net casino gaming receipts; providing that the net casino gaming receipts tax shall be distributed 52.5% to the State Highway and Transportation Department Fund or its successor fund, 17.5% 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 Oaklawn and Southland, as the case may be, 1.5% to the Arkansas Racing Commission, 1% to the Office of Casino Gaming, 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%; allowing a casino to operate on any day for any portion or all of any day; permitting casinos to sell liquor or provide complimentary servings of liquor during all hours in which the casino operates for on-premises consumption only and to that extent not subjecting casinos to Arkansas law prohibiting the sale of liquor on Christmas Day and requires the residents of a dry county or city to vote to approve the sale of liquor; providing that licensed casinos shall purchase liquor from a licensed Arkansas wholesaler and shall be subject to all other applicable Arkansas laws involving the distribution and sale of liquor that do not conflict with this Amendment; 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 inapplicable all constitutional provisions, statutes, and common law of the state to the extent they conflict with this amendment, but not otherwise amending, repealing, or otherwise affecting Amendment 84 (bingo or raffles) or Amendment 87 (state lottery) to the Arkansas Constitution, or Arkansas Act 1151 of 2005 (Electronic Games of Skill); providing that this Amendment does not impliedly repeal existing Arkansas laws criminalizing gambling for purposes not specified in this Amendment; permitting the General Assembly by two-thirds vote to amend certain sections of the amendment relating to distribution of tax revenue.

GUIDELINES

Popular Name

The popular name is primarily a useful legislative device.⁶ It need not contain detailed information or include exceptions that might be required of a ballot title, but it must not be misleading or give partisan coloring to the merit of the proposal.⁷ The popular name is to be considered together with the ballot title in determining the ballot title's sufficiency.⁸

Ballot Title

The ballot title must include an impartial summary of the proposed amendment or act that will give the voter a fair understanding of the issues presented.⁹ According to the Court, a ballot title will not be legally sufficient unless it “adequately inform[s]” the voters of the contents of a proposed amendment or act so that they can make a “reasoned decision in the voting booth.”¹⁰ A ballot title’s failure to “honestly and accurately reflect what is contained in the proposed [act or] Amendment” may lead the Court to conclude that the “omission is significant.”¹¹ The Court has also disapproved the use of terms that are “technical and not readily understood by voters.”¹² Without a definition of such terms in the ballot title, the title may be deemed insufficient.¹³

⁶ *Pafford v. Hall*, 217 Ark. 734, 739, 233 S.W.2d 72, 75 (1950).

⁷ See, e.g., *Chaney v. Bryant*, 259 Ark. 294, 297, 532 S.W.2d 741, 743 (1976); *Moore v. Hall*, 229 Ark. 411, 316 S.W.2d 207 (1958). For a better understanding of the term “partisan coloring,” see note 18 *infra*.

⁸ *May v. Daniels*, 359 Ark. 100, 105, 194 S.W.3d 771, 776 (2004).

⁹ *Becker v. Riviere*, 270 Ark. 219, 226, 604 S.W.2d 555, 558 (1980) (internal citations omitted).

¹⁰ *Lange v. Martin*, 2016 Ark. 337, 500 S.W.3d 154, at n. 2.

¹¹ *Id.* at *9, 500 S.W.3d at 159.

¹² *Wilson v. Martin*, 2016 Ark. 334, *9, 500 S.W.3d 160, 167.

¹³ *Id.*, 500 S.W.3d at 167.

Additionally, if information omitted from the ballot title is an “essential fact which would give the voter serious ground for reflection, it must be disclosed.”¹⁴ At the same time, however, a ballot title must be brief and concise;¹⁵ otherwise voters could run afoul of Ark. Code Ann. § 7-5-309’s five-minute limit in voting booths when other voters are waiting in line.¹⁶ The ballot title is not required to be perfect, nor is it reasonable to expect the title to cover or anticipate every possible legal argument the proposed measure might evoke.¹⁷ The title, however, must be “free of any misleading tendency whether by amplification, omission, or fallacy, and it must not be tinged with partisan coloring.”¹⁸ The ballot title must be honest and impartial,¹⁹ and it must convey an intelligible idea of the scope and significance of a proposed change in the law.²⁰

Furthermore, the Court has confirmed that a ballot title cannot be approved if the text of the proposed measure itself contributes to confusion and disconnect between the language in the popular name and the ballot title and the language in the measure.²¹ The Court concluded that “internal inconsistencies would inevitably lead to confusion in drafting a popular name and ballot title and to confusion in the ballot title itself.”²² Where the effects of a proposed measure on current law are unclear or ambiguous, it is impossible for me to perform my

¹⁴ *Bailey v. McCuen*, 318 Ark. 277, 285, 884 S.W.2d 938, 942 (1994).

¹⁵ See Ark. Code Ann. § 7-9-107(b).

¹⁶ *Bailey*, 318 Ark. at 284, 884 S.W.2d at 944.

¹⁷ *Id.* at 293, 884 S.W.2d at 946-47.

¹⁸ *Id.* at 284, 884 S.W.2d at 942. Language “tinged with partisan coloring” has been identified by the Arkansas Supreme Court as language that “creates a fatally misleading tendency” (*Crochet v. Priest*, 326 Ark. 338, 347, 931 S.W.2d 128, 133 (1996)) or that “gives the voter only the impression that the proponents of the proposed amendment wish to convey of the activity represented by the words.” *Christian Civic Action Committee v. McCuen*, 318 Ark. 241, 249, 884 S.W.2d 605, 610 (1994).

¹⁹ *Becker v. McCuen*, 303 Ark. 482, 489, 798 S.W.2d 71, 74 (1990).

²⁰ *Christian Civic Action Committee*, note 18 *supra*, 318 Ark. at 245, 884 S.W.2d at 607 (internal quotations omitted).

²¹ *Roberts v. Priest*, 341 Ark. 813, 825, 20 S.W.3d 376, 382 (2000).

²² *Id.*

statutory duty to the satisfaction of the Arkansas Supreme Court without (1) clarification or removal of the ambiguities in the proposal itself, and (2) conformance of the popular name and ballot title to the newly worded proposal.

RESPONSE

My statutory duty is to certify, substitute and certify, or reject the entire proposal as submitted. Your submission has shortcomings that require me to reject the ballot title as drafted. It is my opinion, based on the above guidelines established by the Court, that a number of additions or changes to your popular name and ballot title are necessary in order to more fully and correctly summarize your proposal. I cannot, however, at this time, fairly or completely summarize the effect of your proposed measure to the electorate in a popular name or ballot title without the resolution of some ambiguities in the text of the measure itself. And thus I cannot determine precisely what changes to the popular name and ballot title are necessary to fully and correctly summarize your proposal. It is therefore not appropriate, in my opinion, for me to try to substitute and certify a more suitable and correct popular name and ballot title pursuant to Ark. Code Ann. § 7-9-107(b).

DISCUSSION

I highlight below the more concerning aspects of the popular name, ballot title, and text of your proposal.

1. According to subsections 4(a) and (b) of your proposed amendment, the Office of Casino Gaming will “administer and regulate” casino licensing, including the issuance of licenses; and it will license casinos. But subsection 4(n) states that licenses to franchise holders will be issued upon the adoption of rules by the Arkansas Racing Commission. This suggests that both bodies have some regulatory authority with respect to the licensing of franchise holders. But their precise, respective authority is unclear. The uncertainty is compounded by the directive in section 4 that the Office of Casino “shall administer and enforce the provisions of this Amendment relating to casino *licensees that are not Franchise holders*” and the Arkansas Racing Commission “shall administer and enforce the provisions of this Amendment relating to casino *licensees that are Franchise holders, including the renewal thereof.*” (Emphasis added). It is unclear what “provisions of this Amendment” this refers to. Further confusing matters, subsection 4(e) states that “the Office of Casino Gaming and the Arkansas Racing Commission, as the case may be, shall adopt rules necessary to carry out the purposes of this Amendment....” Their respective rulemaking authority is unclear,

in my view. This must be clarified for proper inclusion in the ballot title so that voters will have a clear understanding of the licensing processes, both as to franchise holders and non-franchise holders.

2. Related to the foregoing, I believe the proposed ballot title is wholly deficient in its summary of the measure's provisions regarding the licensing and regulation of the four casinos. The ballot title states that "the Arkansas Racing Commission shall regulate Oaklawn and Southland and the Office of Casino Gaming shall regulate the other casino licensees[.]" This statement may be misleading, given the above observations regarding Section 4 of the measure. The location of this statement in the ballot title is also problematic, in my view. The opening clause of the ballot title states that the four casinos are subject to "laws enacted by the General Assembly ... and regulations promulgated by the Office of Casino Gaming or the Arkansas Racing Commission, *as the case may be*[.]" (Emphasis added). The phrase "*as the case may be*" is vague and insufficient to apprise the voters of each body's respective regulatory authority. And importantly, it is followed by a summary of other provisions of the measure concerning the "award" of licenses and application requirements that voters might reasonably on first impression assume also apply to franchise holders. The statement that "Southland and Oaklawn are not applicants and are not required to submit applications" is located further down in the ballot title. In my view, voters may be misled by both the ballot title's ordering of information regarding the licensing of the four casinos and the insufficient information regarding the precise authority of the Office of Casino Gaming and the Arkansas Racing Commission.

Additionally, in my opinion, the statement in the proposed ballot title that "Southland and Oaklawn are not applicants and are not required to submit applications" does not sufficiently alert voters to the process for awarding casino licenses to the franchise holders, or the ways in which that process differs from the process for "applicants."

3. Subsection 4(n) of the measure states that franchise holders "shall continue to conduct horse racing or greyhound racing, as the case may be, from their facilities for so long as authorized under Arkansas law." This provision, on its face, appears to compel a franchise holder to conduct racing unless and until prevented under Arkansas law. It is problematic in several respects. First, it is unclear how such a provision would be enforced. Additionally, while this may not be the intent, it impliedly gives franchise holders a license in perpetuity. This provision is not included in the proposed ballot title. Without clarification,

however, I believe it would need to be included due to its far-reaching consequences.

4. Subsection 5(b) of the measure states in part that “[e]ach casino licensee shall be subject to the same … sales, use, … and other taxation as any for-profit business located in the county and city or town in which the casino is located, except that the Arkansas Gross Receipts Act of 1941 and local gross receipts taxes shall not apply to casino gaming receipts or net casino gaming receipts.” It is difficult to reconcile the two clauses of this provision, which is basically restated in the proposed ballot title. Under the first clause, “sales” and “other taxation” will apply to licensees; but under the second clause, state and local sales taxes cannot apply to net gaming receipts. This confusing provision could suggest to voters that the tax authorized under the Arkansas Gross Receipts Act of 1941 is somehow a different tax than sales taxes as they are commonly understood.

5. The proposed ballot title says the measure permits the General Assembly to amend, by two-thirds vote, “certain sections of the amendment relating to distribution of tax revenue.” This is insufficient, in my view, given the significance of the provisions subject to amendment. The General Assembly could amend the amount of the net gaming receipts tax distributed to the Highway and Transportation Fund, and the apportionment of that amount between the Transportation Fund, the County Aid Fund, and the Municipal Aid Fund. This amendment authority would likely give a voter serious ground for reflection, and must therefore be disclosed to comply with the Court’s guidelines.

CONCLUSION

The ambiguities noted above are not necessarily all the ambiguities contained in your proposal, but they (together with the other stated problems) are sufficiently serious to require me to reject your popular name and ballot title. I am unable to substitute language in a popular name or ballot title for your measure due to these ambiguities. Further, additional ambiguities may come to light on review of any revisions of your proposal. My office, in the certification of ballot titles and popular names, does not address the merits, philosophy, or ideology of proposed measures. I have no constitutional role in the shaping or drafting of such measures. My statutory mandate is embodied only in Ark. Code Ann. § 7-9-107, and my duty is to the electorate.

Based on what has been submitted, my statutory duty is to reject your proposed popular name and ballot title for the foregoing reasons and instruct you to redesign the proposed measure, popular name, and ballot title.²³

Sincerely,



LESLIE RUTLEDGE
Attorney General

Enclosure

²³ Ark. Code Ann. § 7-9-107(c).

Popular Name

AN AMENDMENT TO AUTHORIZE FOUR 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 authorizing four casinos in Arkansas, being subject to laws enacted by the General Assembly in accord with this amendment and regulations promulgated by the Office of Casino Gaming or the Arkansas Racing Commission, as the case may be; creating the Office of Casino Gaming within the Department of Finance and Administration; 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 if and when no longer prohibited by federal law; providing that individuals under 21 are prohibited from engaging in casino gaming; providing that the Office of Casino Gaming shall award four casino licenses, one to Southland Racing Corporation ("Southland") for 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") for a casino to be located at or adjacent to Oaklawn's horse track and gaming facility in Garland County, one to an applicant for a casino to be located in Pope County within two miles of Russellville, and one to an applicant for a casino to be located in Jefferson County within two miles of Pine Bluff; providing that the Office of Casino Gaming shall require all applicants for casino licenses pay an application fee, demonstrate operational experience in providing casino gaming, provide 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, demonstrate a minimum investment of at least \$100,000,000 for the development of each casino facility with credit given for the market value of existing real estate, facilities, equipment, and other improvements, and provide general information relating to the applicant's name, location, and ownership; providing that Southland and Oaklawn are not applicants and are not required to submit applications for casino licenses in order to be issued a casino license; providing that the Arkansas Racing Commission shall regulate Oaklawn and Southland and the Office of Casino Gaming shall regulate the other casino licensees; defining "net casino gaming receipts" as gross receipts from casino gaming 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 12% on the first \$100,000,000 of net casino gaming receipts or any part thereof, 15% on net casino gaming receipts between \$100,000,001 and \$150,000,000 or any part thereof, 17% on net casino gaming receipts between \$150,000,001 and \$200,000,000 or any part thereof, and 22.5% on net casino gaming receipts exceeding \$200,000,001 or any part thereof; subjecting each casino to the same income, property, sales, 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 the Arkansas Gross Receipts Act of 1941 and local gross receipts taxes shall not apply to casino gaming receipts or net casino gaming receipts; providing that the net casino gaming receipts tax shall be distributed

52.5% to the State Highway and Transportation Department Fund or its successor fund, 17.5% 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 Oaklawn and Southland, as the case may be, 1.5% to the Arkansas Racing Commission, 1% to the Office of Casino Gaming, 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%; allowing a casino to operate on any day for any portion or all of any day; permitting casinos to sell liquor or provide complimentary servings of liquor during all hours in which the casino operates for on-premises consumption only and to that extent not subjecting casinos to Arkansas law prohibiting the sale of liquor on Christmas Day and requires the residents of a dry county or city to vote to approve the sale of liquor; providing that licensed casinos shall purchase liquor from a licensed Arkansas wholesaler and shall be subject to all other applicable Arkansas laws involving the distribution and sale of liquor that do not conflict with this Amendment; 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 inapplicable all constitutional provisions, statutes, and common law of the state to the extent they conflict with this amendment, but not otherwise amending, repealing, or otherwise affecting Amendment 84 (bingo or raffles) or Amendment 87 (state lottery) to the Arkansas Constitution, or Arkansas Act 1151 of 2005 (Electronic Games of Skill); providing that this Amendment does not impliedly repeal existing Arkansas laws criminalizing gambling for purposes not specified in this Amendment; permitting the General Assembly by two-thirds vote to amend certain sections of the amendment relating to distribution of tax revenue.

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

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

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

(d) “Casino applicant” is defined as any individual, corporation, partnership, association, trust, or other entity applying for a license to operate a facility where casino gaming is conducted as authorized by this Amendment.

(e) “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. If and when not prohibited by federal law, casino gaming shall also be defined to include accepting wagers on sporting events.

(f) “Casino gaming receipts” is defined as gross receipts from casino gaming.

(g) “Casino license” is defined as a license issued by the Office of Casino Gaming to operate a facility where casino gaming is conducted as authorized by this Amendment.

(h) “Casino licensee” is defined as any individual, corporation, partnership, association, trust, or other entity holding a license issued by the Office of Casino Gaming to operate a facility where casino gaming is conducted as authorized by this Amendment.

(i) “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.

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

(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) Only 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) There is created within the Management Services Division of the Department of Finance and Administration the Office of Casino Gaming (“Office of Casino Gaming”).

(d) 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 Office of Casino Gaming. Initial laws and appropriations enacted by the General Assembly pursuant hereto shall be in full force and effect no later than June 30, 2019.

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

§ 4. Licensing of Casinos and Casino Gaming.

(a) Casinos shall be licensed by the Office of Casino Gaming.

(b) The Office of Casino Gaming shall administer and regulate the licensing of casinos, including the issuance of a casino license, and shall administer and enforce the provisions of this Amendment relating to the casino licensees that are not Franchise holders.

(c) The Arkansas Racing Commission shall administer and enforce the provisions of this Amendment relating to the casino licensees that are Franchise holders, including the renewal thereof.

(d) 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.

(e) The Office of Casino Gaming and the Arkansas Racing Commission, as the case may be, shall adopt rules necessary to carry out the purposes of this Amendment; and perform their duties under this Amendment.

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

(g) Not later than 120 days after the effective date of this Amendment, the Office of Casino Gaming and the Arkansas Racing Commission, as the case may be, shall adopt rules governing:

- (1) The renewal of casino licenses;
- (2) The term of the casino licenses;
- (3) The form and content of renewal for casino licenses;
- (4) Oversight requirements for casinos and casino gaming;
- (5) Recordkeeping requirements for casinos;
- (6) Personnel requirements for casinos and casino gaming;
- (7) 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;
- (8) A schedule of penalties and procedures for appealing penalties;
- (9) Procedures for inspection and investigations of casinos and casino gaming; and
- (10) Any other matters necessary for the fair, impartial, stringent, and comprehensive administration of its duties under this Amendment.

(h) Not later than 120 days after the effective date of this Amendment, the Office of Casino Gaming 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 Office of Casino Gaming considers applications for issuance of casino licenses.

(i) Not later than June 1, 2019, the Office of Casino Gaming shall begin accepting applications for casino licenses.

(j) 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;

(k) 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 Office of Casino Gaming;

(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.

(l) The Office of Casino Gaming shall award four casino licenses.

(m) The Office of Casino Gaming shall award no more than one casino license per county.

(n) The Office of Casino Gaming shall award casino licenses to a Franchise holder located in Crittenden County, there being only one, for 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 and to a Franchise holder located in Garland County, there being only one, for 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. The Franchise holders shall continue to conduct horse racing or greyhound racing, as the case may be, from their facilities for so long as authorized under Arkansas law. 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.

(o) The Office of Casino Gaming shall award a casino license to an applicant for a casino to be located in Pope County within two miles of the city limits of the county seat.

(p) The Office of Casino Gaming shall award a casino license to an applicant for a casino to be located in Jefferson County within two miles of the city limits of the county seat.

(q) The Office of Casino Gaming shall require all applicants to demonstrate current operational experience, by the applicant or an affiliate of the applicant, in providing casino gaming.

(r) The Office of Casino Gaming shall require all applicants to demonstrate a minimum investment of at least \$100,000,000 for the development of each proposed casino facility, with

credit given for the market value of existing real estate, facilities, equipment, and other improvements where the casino will be located.

(s) The Office of Casino Gaming shall require all applications to include 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 applications to include a letter of support from the mayor in the city or town where the applicant is proposing the casino to be located.

(t) The Office of Casino Gaming may conduct a criminal background check of the owners, shareholders, board members, or officers of the casino applicant in order to carry out this section.

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

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

(w) The casino licensee may receive compensation for providing the goods and services allowed by this Amendment.

(x) The Office of Casino Gaming and the Arkansas Racing Commission, as the case may be, 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.

(y) (1) The Office of Casino Gaming shall provide an annual amount of at least \$200,000 for compulsive gambling disorder treatment and compulsive gambling disorder educational programs.

(2) The Office of Casino Gaming 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 Office of Casino Gaming 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) 12% on the first \$100,000,000 of net casino gaming receipts or any part thereof;

(2) 15% on net casino gaming receipts between \$100,000,001 and \$150,000,000 or any part thereof;

(3) 17% on net casino gaming receipts between \$150,000,001 and \$200,000,000 or any part thereof; and

(4) 22.5% on net casino gaming receipts exceeding \$200,000,001 or any part thereof.

(b) Each casino licensee shall be subject to the same income, property, sales, 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 the Arkansas Gross Receipts Act of 1941 and local gross receipts taxes shall not apply to casino gaming receipts or net casino gaming receipts.

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

(1) 52.5% to the State Highway and Transportation Department Fund as identified in Ark. Code Ann. § 19-6-405 or its successor fund and then to be apportioned as set forth in section (d),

(2) 17.5% 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) 1.5% to the Arkansas Racing Commission,

(4) 1% to the Office of Casino Gaming,

(5) 8% to the county in which the casino is located, and

(6) 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 of State shall transfer the 52.5% of revenues derived by the taxes levied under this Amendment referenced in section (c)(1) to the State Highway and Transportation Department Fund, the County Aid Fund and the Municipal Aid Fund in the percentages provided in the Arkansas Highway Revenue Distribution Law, Ark. Code Ann. §§ 27-70-201 and 27-70-206.

(e) 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.

(f) 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:

(l) 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) Casinos may operate on any day for any portion or all of any day.

(b) Casinos shall be permitted to sell intoxicating liquor or provide complimentary servings of intoxicating liquor, for on-premises consumption only, during all hours in which the casinos operate. To that extent, casinos 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. Casinos 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.

§ 12. Amendment by General Assembly.

The General Assembly, in the same manner as required for amendment of laws initiated by the people, may amend sections 5(c)(1), and 5(d) of this Amendment.

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