STATE OF ARKANSAS
ATTORNEY GENERAL
LESLIE RUTLEDGE

Opinion No. 2018-072

May 24, 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 recertification of the initiated measure you initially submitted on May 14, 2018. This office certified the popular name and ballot title as submitted on May 23, 2018, in Op. Att'y Gen. 2018-068. On May 24, 2018, we received your request for recertification to correct a typographical error and other scrivener's errors that were contained in your May 14 submission. You have neither noted nor requested any *substantive* changes to the language of your popular name or ballot title.

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 I do not, consider the merits of the measure when making a decision to certify or reject.

Arkansas Code Annotated § 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

[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).

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have a fair understanding of the issues presented by reference to the ballot title alone.[3]

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 revised your popular name and ballot title and, pursuant to Ark. Code Ann. § 7-9-107, have submitted the following proposed popular name and ballot title, as revised, for my certification:

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

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

[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.

("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 of 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.

GUIDELINES

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]

The ballot title must include an impartial summary of the proposed amendment or

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[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 *infra* note 19.

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

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]

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 the statutory five-minute limit in voting booths[16] when other voters are waiting in line.[17] 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.[18] 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."[19] The ballot title must be honest and

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[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 (stating that "voters [should not] be placed in a position of either having to be an expert in the subject or having to guess as to the effect his or her vote would have").

[13] *Id.*, 500 S.W.3d at 167.

[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] Ark Code Ann. § 7-5-309 (Supp. 2017).

[17] *Bailey*, 318 Ark. at 284, 884 S.W.2d at 944.

[18] *Id.* at 293, 884 S.W.2d at 946-47.

[19] *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.*

impartial,[20] and it must convey an intelligible idea of the scope and significance of a proposed change in the law.[21]

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.[22] 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."[23] Where the effects of a proposed measure on current law are unclear or ambiguous, it is impossible for me to perform my 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

As I previously noted, this is a recertification of your proposed popular name and ballot title that I certified in Op. Att'y Gen. 2018-068. You have not requested any substantive changes be made. Instead, you have only corrected a typographical error and other scrivener's errors that were a part of your initial submission. Accordingly, your proposed popular name and ballot title are certified as resubmitted.

As stated in Op. Att'y Gen. 2018-068, a cautionary note is warranted in light of the significance of the subject matter undertaken—a constitutional amendment requiring casino gaming and taxation thereof—and the complexity and far-reaching effects of this proposal. You should be aware that experience has shown a correlation between the length and complexity of initiated measures and their

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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).

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

[21] *Christian Civic Action Committee*, 318 Ark. at 245, 884 S.W.2d at 607 (internal quotations omitted).

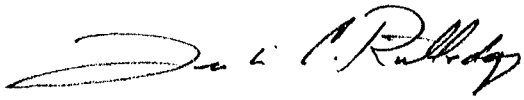
[22] *Roberts v. Priest*, 341 Ark. 813, 825, 20 S.W.3d 376, 382 (2000).

[23] *Id.*

susceptibility to a successful ballot title challenge. Any ambiguity in the text of a measure could lead to a successful challenge.

Pursuant to Ark. Code Ann. § 7-9-108, instructions to canvassers and signers must precede every petition, informing them of the privileges granted by the Arkansas Constitution and of the associated penalties for violations. Enclosed herewith are instructions that should be incorporated in your petition prior to circulation.

Sincerely,



LESLIE RUTLEDGE
Attorney General

Enclosures

Instructions to Canvassers and Signers

1. The Arkansas Constitution gives Arkansas citizens the power to (*a*) initiate legislation by petition of 8% of the legal voters or constitutional amendments by petition of 10% of legal voters, or (*b*) order the referendum against any general act or any item of an appropriation bill or measure passed by the General Assembly by petition of 6% of legal voters. A proposed measure must be submitted at a regular election. Referendum petitions may be referred at special elections on petition of 15% of the registered voters. Any measure submitted to the people becomes law when approved by a majority of the votes cast on the measure.

2. Only registered voters may sign. All signatures must be in the signer's own handwriting and in the presence of the person circulating the petition. Each petition part should contain only the signatures of voters residing in a single county.

3. Printed name, date of birth, residence, city or town of residence, and date of signing must be given as an aid to verification. If a petition signer needs assistance with this information due to disability, another person may print the signer's information and that person shall sign and print their name in the margin of the petition.

4. Do not attach additional sheets to this petition unless they contain the full language of the petition. The signature section of the petition must be formatted as prescribed by the Secretary of State.

5. Pursuant to section 5-55-601(b) of the Arkansas Code, each of the following activities constitutes "petition fraud," which is a Class A misdemeanor and is punishable by a fine of up to $2,500 and imprisonment for up to one year:

A person commits the offense of petition fraud:

(1) If the person knowingly:

(A) Signs a name other than his or her name to a petition;

(B) Signs his or her name more than one (1) time to a petition; or

(C) Signs a petition when he or she is not legally entitled to sign the petition;

(2) If the person acting as a canvasser, notary, sponsor as defined under § 7-9-101, or agent of a sponsor:

(A) Signs a name other than his or her own to a petition;

(B) Prints a name, address, or birth date other than his or her own to a petition unless the signor requires assistance due to disability and the person complies with § 7-9-103;

(C) Solicits or obtains a signature to a petition knowing that the person signing is not qualified to sign the petition;

(D) Knowingly pays a person any form of compensation in exchange for signing a petition as a petitioner;

(E) Accepts or pays money or anything of value for obtaining signatures on a petition when the person acting as a canvasser, sponsor, or agent of a sponsor knows that the person acting as a canvasser's name or address is not included on the sponsor's list filed with the Secretary of State under § 7-9-601; or

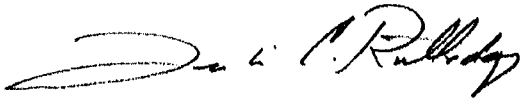
(F) Knowingly misrepresents the purpose and effect of the petition or the measure affected for the purpose of causing a person to sign a petition;

(3) If the person acting as a canvasser knowingly makes a false statement on a petition verification form; [or]

* * *

(5) If the person acting as a sponsor files a petition or a part of a petition with the official charged with verifying the signatures knowing that the petition or part of the petition contains one (1) or more false or fraudulent signatures unless each false or fraudulent signature is clearly stricken by the sponsor before filing.

The Attorney General is by law required to certify the sufficiency of the popular name and ballot title of all initiative or referendum petitions. This certification does not necessarily indicate the approval or disapproval of the contents thereof.



LESLIE RUTLEDGE
Attorney General of the State of Arkansas

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.