

1 HB278
2 172788-2
3 By Representative Ford (Constitutional Amendment)
4 RFD: Economic Development and Tourism
5 First Read: 23-FEB-16

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8 SYNOPSIS: Under existing law, lotteries and gift
9 enterprises are prohibited by Section 65 of the
10 Constitution of Alabama of 1901.

11 This bill proposes an amendment to Section
12 65 of the Constitution of Alabama of 1901, to
13 authorize and regulate gaming by an entity licensed
14 by the county commission of the county in which the
15 sponsor of the amendment resides and by the
16 entities currently licensed to conduct pari-mutuel
17 wagering at the four existing racetracks in Alabama
18 where pari-mutuel wagering is currently legal; to
19 levy a state gross receipts tax and a local gross
20 receipts tax on gaming revenue of the entities; to
21 levy a tax on vendors of gaming equipment; to
22 provide for the disposition of state gaming tax
23 proceeds; to create the Alabama Gaming Commission
24 to implement, regulate, and administer gaming and
25 regulate; to authorize the Governor to negotiate a
26 compact for gaming with the Poarch Band of Creek

1 Indians; and to require the Legislature to pass
2 general laws to implement the amendment.

3
4 A BILL
5 TO BE ENTITLED
6 AN ACT

7
8 Proposing an amendment to Section 65 of the
9 Constitution of Alabama of 1901, to authorize and regulate
10 gaming by an entity licensed by the county commission of the
11 county in which the sponsor of the amendment resides and the
12 entities currently licensed to conduct pari-mutuel wagering at
13 the four existing racetracks in Alabama where pari-mutuel
14 wagering is currently legal; to levy a state gross receipts
15 tax and a local gross receipts tax on gaming revenue; to levy
16 a tax on vendors of gaming equipment; to provide for the
17 disposition of state gaming tax proceeds; to create the
18 Alabama Gaming Commission to implement, regulate, and
19 administer gaming and regulate; to authorize the Governor to
20 negotiate a compact for gaming with the Poarch Band of Creek
21 Indians; and to require the Legislature to pass general laws
22 to implement the amendment.

23 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

24 Section 1. The following amendment to the
25 Constitution of Alabama of 1901, as amended, is proposed and
26 shall become valid as a part thereof when approved by a
27 majority of the qualified electors voting thereon and in

1 accordance with Sections 284, 285, and 287 of the Constitution
2 of Alabama of 1901, as amended:

3 PROPOSED AMENDMENT

4 "Section 65.

5 "Part I.

6 "Except as provided in Part II, the ~~The~~ legislature
7 shall have no power to authorize lotteries or gift enterprises
8 for any purposes, and shall pass laws to prohibit the sale in
9 this state of lottery or gift enterprise tickets, or tickets
10 in any scheme in the nature of a lottery; and all acts, or
11 parts of acts heretofore passed by the legislature of this
12 state, authorizing a lottery or lotteries, and all acts
13 amendatory thereof, or supplemental thereto, are hereby
14 avoided.

15 "Part II.

16 "Section 1. Definitions. As used in this amendment,
17 the following words and phrases shall have the following
18 respective meanings:

19 "(1) COMMISSION. The Alabama Gaming Commission
20 created by this amendment.

21 "(2) COVERED GAME. Any game or device included
22 within the definition of Class III gaming, as that term is
23 defined in the Indian Gaming Regulatory Act, Section 2703(8)
24 of Title 25 of the United States Code, including any and all
25 table games and electronic representations of such games, and
26 any electronic gaming devices. The term does not include
27 pari-mutuel wagering.

1 "(3) COVERED GAME VENDOR. Any person who
2 manufactures, distributes, supplies, vends, or leases covered
3 games or equipment necessary to conduct covered games by a
4 gaming operator.

5 "(4) GAMING GROSS REVENUE. The total amount of money
6 or value in any form received by a gaming operator with
7 respect to the playing of any form of covered game, less the
8 total money or value in any form paid as prizes or winnings to
9 the players of the covered game and free play or promotional
10 credits, but before deduction of any expenses incurred in
11 operating the establishment, including, but not limited to,
12 depreciation or leasing costs of physical facilities and
13 equipment, wages and other employment costs, utilities,
14 interest, and taxes. Gaming gross revenue may not be included
15 in a pari-mutuel pool for the purpose of determining any tax
16 levied on pari-mutuel wagering or for any other purpose.

17 "(5) GAMING OPERATOR. The limited liability company
18 holding on January 1, 2016, the development agreement with the
19 county commission of the county in which the sponsor of the
20 bill proposing the amendment resides or a corporation, limited
21 liability company, or other business entity authorized by a
22 local racing commission pursuant to law to operate and conduct
23 pari-mutuel wagering on live or simulcast races on April 15,
24 2016, in Mobile County, Macon County, the City of Birmingham
25 in Jefferson County, or Greene County.

26 "Section 2. Limitation on Gaming in Alabama.

1 "(a) Following the effective date of this amendment,
2 covered games may be operated or conducted only by a gaming
3 operator and only at a single location approved by the
4 commission in the county in which the gaming operator is
5 licensed to operate.

6 "(b) The conduct of covered games by a gaming
7 operator is not subject to or prohibited, limited, or impaired
8 by:

9 "(1) Any otherwise applicable provisions of Article
10 8 (commencing with Section 8-1-150) of Chapter 1 of Title 8 of
11 or Article 2 (commencing with Section 13A-12-20) of Chapter 12
12 of Title 13A of the Code of Alabama 1975.

13 "(2) Any other statute whenever enacted that is
14 inconsistent with any provision of this amendment.

15 "(3) Any judicial order, decision, or opinion issued
16 prior to the operative date of this amendment that would
17 otherwise have the effect of prohibiting, limiting, or
18 impairing the conduct of covered games. No provision of this
19 amendment may be construed to allow a person to operate or
20 conduct covered games except as permitted pursuant to this
21 amendment.

22 "(c) Except as otherwise provided in Section 5(f),
23 nothing herein shall be deemed to impair, impede, or restrict
24 the operation of charitable bingo conducted pursuant to any
25 validly enacted constitutional amendment authorizing such
26 activity.

27 "Section 3. Compliance with Federal Law.

1 "The State of Alabama, acting by and through the
2 adoption of this amendment, and in accordance with the
3 provisions of 15 U.S.C. §1172, does hereby declare that any
4 and all covered games and equipment, materials, paraphernalia,
5 and supplies may be transported in interstate commerce into or
6 out of the state without violating that section, or any other
7 applicable federal law, if the covered games and equipment,
8 paraphernalia, materials, and supplies are used, to be used,
9 or have been used, in the conduct of covered games by a gaming
10 operator.

11 "Section 4. State Gross Receipts Tax and Use of the
12 Proceeds Thereof; Local Gross Receipts Tax.

13 "(a) (1) A state gross receipts tax of 13 percent is
14 levied on the gaming gross revenue of each gaming operator. To
15 the extent a gaming operator owns and does not lease covered
16 games equipment that produces gaming gross revenue, an
17 additional state gross receipts tax of one percent of the
18 gaming gross revenue from the owned covered games equipment is
19 levied on the equipment.

20 "(2) The state gross receipts tax on gaming gross
21 revenue for each calendar month shall be paid by each gaming
22 operator to the Department of Revenue on or before the
23 twentieth day of the next succeeding calendar month.

24 "(3) A local gross receipts tax of one percent is
25 levied on the gaming gross revenue of each gaming operator.

26 "(4) Except as otherwise provided in subdivision
27 (5), the local gross receipts tax on gaming gross revenue for

1 each calendar month shall be paid to the county in which the
2 gaming operator is licensed on or before the twentieth day of
3 the next succeeding calendar month. The county shall retain
4 one-half of the amount and shall apportion the remaining half
5 among the municipalities in the county on the basis of the
6 ratio of the population of the municipality to the population
7 of all the municipalities in the county and pay the amounts
8 apportioned to the municipalities forthwith.

9 "(5) The local gross receipts tax on gaming gross
10 revenue of a gaming operator operating in a Class 1 or Class 2
11 municipality for each calendar month shall be paid to the
12 Class 1 or Class 2 municipality on or before the twentieth day
13 of the next succeeding calendar month. The municipality shall
14 retain one-half of the revenue, shall pay one-quarter of the
15 revenue to the county in which the municipality is principally
16 located, and shall apportion the remaining one-quarter of the
17 revenue to the municipalities in the county other than the
18 Class 1 or Class 2 municipality on the basis of the ratio of
19 the population of the municipality to the population of all
20 municipalities in the county other than the Class 1 or Class 2
21 municipality.

22 "(6) A state covered game vendor tax is hereby
23 levied on covered game vendors conducting business in the
24 state in an amount equal to four percent of the gross revenues
25 collected by the covered game vendor from leases or other
26 revenue sharing arrangements with a gaming operator.

1 "(7) A covered game vendor shall pay the state
2 covered game vendor tax for each calendar month to the
3 Department of Revenue on or before the twentieth day of the
4 next succeeding calendar month.

5 "(8) The state gross receipts tax on gaming gross
6 revenue, the local gross receipts tax on gaming gross revenue,
7 and the state covered game vendor tax shall be in lieu of all
8 other state or local taxes or license fees levied with respect
9 to the conduct of covered games by a gaming operator.

10 Notwithstanding the foregoing, a gaming operator is liable for
11 all income taxes, franchise taxes, property taxes, lodging
12 taxes, and sales and use taxes on merchandise, food, and
13 beverage generally applicable at uniform rates to all
14 businesses operating in the county in which the gaming
15 operator is licensed.

16 "(9) The proceeds derived from the state gross
17 receipts tax on gaming gross revenues and the covered game
18 vendor tax shall be deposited in the State General Fund.

19 "Section 5. Alabama Gaming Commission; creation;
20 powers.

21 "(a) There is hereby created the Alabama Gaming
22 Commission. The commission shall implement, regulate,
23 administer, supervise, and enforce all laws and rules related
24 to the operation and conduct of covered games by a gaming
25 operator; and cooperate with the Attorney General and local
26 district attorneys in enforcing all laws related to illegal
27 gambling.

1 "(b) The Alabama Gaming Commission shall consist of
2 five members. One member of the commission shall be appointed
3 by the Governor with the advice and consent of the Senate, one
4 member shall be appointed by the Attorney General with the
5 advice and consent of the Senate, one member shall be
6 appointed by the Lieutenant Governor with the advice and
7 consent of the Senate, one member shall be appointed by the
8 Speaker of the House of Representatives with the advice and
9 consent of the Senate, and one member shall be appointed by
10 the President Pro Tempore of the Senate with the advice and
11 consent of the Senate. The appointment of the initial members
12 of the commission shall be made by those officials holding
13 office on the effective date of this amendment without the
14 advice and consent of the Senate and shall be made within 60
15 days of the effective date of this amendment. The members,
16 where possible, shall represent the gender and racial
17 diversity of the state. No more than two members may reside in
18 the same congressional district.

19 "(1) Members of the commission shall be residents of
20 the State of Alabama, United States citizens, and prominent
21 persons in their businesses or profession, may not have been
22 convicted of a felony, and may not be the executive director
23 of or another employee of the commission, an officer of or
24 occupy an official position in any political party, an elected
25 official, or actively engaged in the business of, or have a
26 pecuniary interest in, a gaming operator.

1 "(2) Members shall serve a term of five years and
2 may serve two complete terms and any portion of an initial
3 term of less than five years or any portion of an unexpired
4 term to which appointed. Any vacancy occurring on the
5 commission shall be filled for the unexpired term by the
6 appointing authority as described in this section. The initial
7 term of office upon the effective date of this amendment shall
8 be one year for the member appointed by the Lieutenant
9 Governor, two years for the member appointed by the Governor,
10 three years for the member appointed by the Attorney General,
11 four years for the member appointed by the Speaker of the
12 House of Representatives, and five years for the member
13 appointed by the President Pro Tempore of the Senate. Each
14 member of the commission shall serve for the duration of his
15 or her term and until his or her successor is duly appointed
16 and confirmed by the Senate; provided, however, that if a
17 successor is not appointed and confirmed within 120 days after
18 the expiration of a member's term, a vacancy shall be deemed
19 to exist.

20 "(c) The commission and its members and employees
21 shall be subject to the Ethics Law, Section 36-25-1, et seq.,
22 Code of Alabama 1975; the Open Records Act, Section 36-12-40,
23 Code of Alabama 1975; the Open Meetings Act, Section 36-25A-1
24 et seq., Code of Alabama 1975; and the Administrative
25 Procedure Act, Section 41-22-1, et seq., Code of Alabama 1975.

26 "(d) In addition to other enforcement powers granted
27 by general law, the commission shall have full power and

1 authority to issue subpoenas and compel the attendance of
2 witnesses at any place within this state, to administer oaths,
3 and to require testimony under oath. Any process or notice may
4 be served in the manner provided for service of process and
5 notices in civil actions. The commission may pay such
6 transportation and other expenses of witnesses as the
7 commission deems reasonable and proper. Any person making a
8 false oath in any matter before the commission is guilty of
9 perjury. The commission may appoint hearing examiners who may
10 administer oaths and receive evidence and testimony under
11 oath.

12 "(e) The commission shall regulate and supervise the
13 conduct and operation of covered games by gaming operators. In
14 addition to the powers granted in subsection (d), additional
15 powers, procedures, and operations of the commission with
16 respect to regulation and supervision of covered games by
17 gaming operators shall be enumerated in one or more general
18 laws enacted by the Legislature subsequent to and supplemental
19 to this amendment to further its purposes and provide for its
20 implementation, subject to the following provisions:

21 "(1) Upon ratification of the amendment, a gaming
22 operator may operate covered games. If a gaming operator
23 operates covered games under this subdivision, the provisions
24 related to the state gross receipts tax on gaming gross
25 revenues, the local gross receipts tax on gaming gross
26 revenue, and the covered game vendor tax are immediately
27 applicable.

1 "(2) Until such time as the commission is fully
2 established, a local racing commission having jurisdiction
3 over a gaming operator, in addition to the powers that it has
4 under existing law, shall have the same power to supervise the
5 conduct of covered games as it has to regulate and supervise
6 racing activities and pari-mutuel wagering thereon, with such
7 modification of such powers, not inconsistent with this
8 amendment, as is necessary or appropriate to adapt them to the
9 purposes of supervising the operation of covered games.

10 "(3) Nothing in this subsection prohibits, limits,
11 or alters the authority of any local racing commission with
12 respect to the continued regulation and supervision of racing
13 and pari-mutuel wagering by a gaming operator.

14 "(4) Once the commission is fully established, the
15 commission shall assume the regulation and supervision of the
16 conduct and operation of covered games by gaming operators and
17 shall issue an initial covered game license to each gaming
18 operator to operate and conduct covered games for a period of
19 20 years. Thereafter, the license shall renew automatically
20 for a period of five years subject to and in accordance with
21 one or more general laws enacted by the Legislature
22 supplemental to and subsequent to this amendment to further
23 its purposes and provide for its implementation, and subject
24 to and in accordance with rules adopted by the commission. The
25 general laws enacted to implement this amendment shall provide
26 a basis on which the commission may refuse to renew a license
27 or a license may be revoked or suspended.

1 "(5) The number of covered games in operation by a
2 gaming operator and the percentage payout to a patron may not
3 be restricted or limited by any general or local law, a local
4 racing commission, or the commission.

5 "(6) A gaming operator may not operate covered games
6 without remitting to the state the applicable state gross
7 receipts tax on gaming gross revenue.

8 "(7) A person under the age of 21 years may not play
9 any covered game, be employed to operate any covered game,
10 facilitate the playing of any covered game, or serve any
11 persons playing any covered game. This subsection does not
12 prohibit persons under the age of 21 years from being allowed
13 on the premises of a facility where covered games are being
14 played in areas of the facility in which covered games are not
15 being conducted.

16 "(8) A gaming operator and an officer, director,
17 shareholder, member, or other owner of a gaming operator may
18 not make a campaign contribution, whether monetary or in kind,
19 to any of the following or a political action committee or
20 principal campaign committee of any of the following:

21 "(A) An elected public official authorized to make
22 an appointment to the commission or a candidate for the office
23 of an elected public official authorized to make an
24 appointment to the commission.

25 "(B) A candidate for the Legislature.

26 "(f) The commission shall license, regulate, and
27 supervise the conduct and operation of charitable bingo games

1 pursuant to and in accordance with any validly enacted
2 constitutional amendment authorizing such activity; provided,
3 however, that bingo games operated pursuant to any validly
4 enacted constitutional amendment shall be limited to being
5 played on paper sheets or paper cards. Any provision in any
6 local constitutional amendment authorizing the conduct and
7 operation of charitable bingo games to the contrary is hereby
8 amended to conform to this provision. The powers, procedures,
9 and operations of the commission with respect to the
10 licensing, regulation, and supervision of charitable bingo
11 games shall be enumerated in one or more general laws enacted
12 by the Legislature subsequent to and supplemental to this
13 amendment to further its purposes and provide for its
14 implementation.

15 "(g) The commission shall coordinate with local
16 communities and gaming operators in developing educational
17 programs and other social programs to enhance social and
18 public awareness of gaming-related issues.

19 "Section 6. Special Session for Enabling
20 Legislation.

21 "For the exclusive purpose of enacting general laws
22 to implement this amendment, the Legislature shall meet in
23 Extraordinary Session within 30 days after the effective date
24 of this amendment on a day determined jointly by the Speaker
25 of the House and the President Pro Tempore of the Senate. The
26 Legislature may meet for no more than 12 legislative days and
27 no other items of legislation may be considered during the

1 Extraordinary Session except by a vote of two-thirds of each
2 house.

3 "Section 7. Compact Negotiations.

4 "The Governor is hereby authorized and instructed to
5 negotiate in good faith a compact with the Poarch Band of
6 Creek Indians for the conduct and operation of covered games
7 at the three locations in Alabama where, on the effective date
8 of this amendment, the Poarch Band of Creek Indians conduct
9 gaming. Any such compact shall then be submitted to the
10 Legislature for ratification."

11 END OF PROPOSED AMENDMENT

12 Section 2. An election upon the proposed amendment
13 shall be held in accordance with Sections 284 and 285 of the
14 Constitution of Alabama of 1901, now appearing as Sections 284
15 and 285 of the Official Recompilation of the Constitution of
16 Alabama of 1901, as amended, and the election laws of this
17 state on September 15, 2015.

18 Section 3. The appropriate election official shall
19 assign a ballot number for the proposed constitutional
20 amendment on the election ballot and shall set forth the
21 following description of the substance or subject matter of
22 the proposed constitutional amendment:

23 "Proposing an amendment to the Constitution of
24 Alabama of 1901, to authorize and regulate gaming by one
25 facility licensed by the county commission of the county in
26 which the sponsor of the amendment resides and the four
27 existing racetracks in Alabama where pari-mutuel wagering is

1 currently legal; to levy a state gross receipts tax and a
2 local gross receipts tax on gaming revenue; to levy a tax on
3 vendors of gaming equipment; to state gaming tax proceeds; to
4 create the Alabama Gaming Commission to implement, regulate,
5 and administer gaming; to authorize the Governor to negotiate
6 a compact for gaming with the Poarch Band of Creek Indians;
7 and to authorize the Legislature to pass general laws to
8 implement the amendment.

9 "Proposed by Act _____."

10 This description shall be followed by the following
11 language:

12 "Yes () No ()."