

1 STATE OF OKLAHOMA

2 1st Session of the 55th Legislature (2015)

3 SENATE BILL 572

By: Shortey

4
5
6 AS INTRODUCED

7 An Act relating to amusements and sports; amending 3A
8 O.S. 2011, Sections 709, 713, as amended by Section
9 27, Chapter 304, O.S.L. 2012 and 717 (3A O.S. Supp.
10 2014, Section 713), which relate to the Oklahoma
11 Education Lottery Act; authorizing the Oklahoma
12 Lottery Commission to develop and administer
13 specified program; providing exception to certain
14 requirement related to net proceeds; providing
15 exception to certain criteria related to retailers;
16 creating pilot program and providing for
17 administration; establishing criteria for program;
18 defining term; providing for expenditures subject to
19 specified definitions; requiring Board of Trustees to
20 establish specified procedure by rule and providing
21 for certain related requirements; requiring certain
22 agreement be entered into; authorizing Board to make
23 specified determination; providing for codification;
24 providing an effective date; and declaring an
emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 3A O.S. 2011, Section 709, is
amended to read as follows:

Section 709. A. The Oklahoma Lottery Commission shall have any
and all powers necessary or convenient to its usefulness in carrying
out and effectuating the purposes and provisions of the Oklahoma

1 Education Lottery Act which are not in conflict with the Oklahoma
2 Constitution and laws of this state including, but not limited to,
3 the following:

4 1. To sue and be sued in contract, equity, mandamus, and
5 similar actions in its own name and to complain and defend in all
6 courts;

7 2. To adopt and alter a seal;

8 3. To hold copyrights, trademarks, and service marks and
9 enforce its rights with respect thereto;

10 4. To acquire or lease real property and make improvements
11 thereon and acquire by lease or by purchase personal property,
12 including, but not limited to, computers and intangible property,
13 including, but not limited to, computer programs, systems, and
14 software;

15 5. To enter into contracts to incur debt in its own name and
16 enter into financing agreements with the state, agencies or
17 instrumentalities of the state, or with any commercial financial
18 institution or credit provider as provided in Section 732 of this
19 title;

20 6. To select and contract with vendors and retailers;

21 7. To enter into contracts or agreements with state or local
22 law enforcement agencies for the performance of law enforcement,
23 background investigations, and security checks;

24

1 8. To administer oaths, take depositions, issue subpoenas, and
2 compel the attendance of witnesses and the production of books,
3 papers, documents, and other evidence relative to any investigation
4 or proceeding conducted by the Commission;

5 9. To enter into contracts of any and all types on such terms
6 and conditions as the Commission may determine;

7 10. To advertise and promote the lottery and lottery games.
8 None of the advertisement and promotion allowed by this paragraph
9 shall involve children under the age of eighteen (18) in any manner;
10 ~~and~~

11 11. To act as a retailer, to conduct promotions which involve
12 the dispensing of lottery tickets or shares, and to establish and
13 operate a sales facility to sell lottery tickets or shares and any
14 related merchandise; and

15 12. To develop and administer a program for the issuance of
16 charitable lottery tickets as provided in Section 4 of this act.

17 B. The board of trustees of the Oklahoma Lottery Commission
18 shall have any and all powers necessary or convenient to its
19 usefulness in carrying out and effectuating the purposes and
20 provisions of the Oklahoma Education Lottery Act which are not in
21 conflict with the Oklahoma Constitution and laws of this state
22 including, but not limited to, the following:

23 1. To adopt, amend, and repeal policies and procedures and to
24 promulgate rules for the regulation of its affairs and the conduct

1 of its business, to prescribe the duties of officers of the board,
2 and to perform such other duties as may be required by law. In the
3 promulgation of rules, the board shall be subject to the
4 Administrative Procedures Act;

5 2. To procure insurance;

6 3. To initiate, supervise, and administer the operation of the
7 lottery in accordance with the provisions of the Oklahoma Education
8 Lottery Act and rules, policies, and procedures adopted pursuant
9 thereto;

10 4. To enter into written agreements with one or more other
11 states or sovereigns for the operation, participation in marketing,
12 and promotion of a joint lottery or joint lottery games. Such an
13 agreement may be entered into with a federally recognized Indian
14 tribe only if a cooperative agreement authorizing the Commission to
15 do so has been entered into by the Governor and such a tribe and has
16 been further approved by the Joint Committee on State-Tribal
17 Relations pursuant to the provisions of Section 1221 et seq. of
18 Title 74 of the Oklahoma Statutes;

19 5. To direct the executive director to conduct or have
20 conducted such market research as is necessary or appropriate, which
21 may include an analysis of the demographic characteristics of the
22 players of each lottery game and an analysis of advertising,
23 promotion, public relations, incentives, and other aspects of
24 communication; and

1 6. To adopt and amend such rules, policies, and procedures as
2 necessary to implement its powers and duties, organize and operate
3 the Commission, regulate the conduct of lottery games in general,
4 and any other matters necessary or desirable for the efficient and
5 effective operation of the lottery or the convenience of the public.

6 C. The powers enumerated in subsections A and B of this section
7 are cumulative of and in addition to those powers enumerated
8 elsewhere in the Oklahoma Education Lottery Act, and no such powers
9 limit or restrict any other powers of the Oklahoma Lottery
10 Commission or the board of trustees.

11 SECTION 2. AMENDATORY 3A O.S. 2011, Section 713, as
12 amended by Section 27, Chapter 304, O.S.L. 2012 (3A O.S. Supp. 2014,
13 Section 713), is amended to read as follows:

14 Section 713. A. All gross proceeds shall be the property of
15 the Oklahoma Lottery Commission. From its gross proceeds, the
16 Commission shall pay the operating expenses of the Commission. At
17 least forty-five percent (45%) of gross proceeds shall be made
18 available as prize money. However, the provisions of this
19 subsection shall be deemed not to create any lien, entitlement,
20 cause of action, or other private right, and any rights of holders
21 of tickets or shares shall be determined by the Commission in
22 setting the terms of its lottery or lotteries. ~~For~~ Except as
23 otherwise provided in Section 4 of this act, for each fiscal year,
24 net proceeds shall equal at least thirty-five percent (35%) of the

1 gross proceeds. However, for the purpose of repaying indebtedness
2 issued pursuant to Section 732 of this title, for the first two (2)
3 full fiscal years and any partial first fiscal year of the
4 Commission, net proceeds need only equal at least thirty percent
5 (30%) of the gross proceeds. All of the net proceeds shall be
6 transferred to the Oklahoma Education Lottery Trust Fund as provided
7 in subsection B of this section.

8 B. There is hereby created in the State Treasury a fund to be
9 designated the "Oklahoma Education Lottery Trust Fund". Except as
10 otherwise provided in subsections H and I of this section, on or
11 before the fifteenth day of each calendar quarter, the Commission
12 shall transfer to the State Treasurer, for credit to the Oklahoma
13 Education Lottery Trust Fund, the amount of all net proceeds
14 accruing during the preceding calendar quarter. Expenditures from
15 the fund shall be made upon warrants issued by the State Treasurer
16 against claims filed as prescribed by law with the Director of the
17 Office of Management and Enterprise Services for approval and
18 payment.

19 Upon their deposit into the State Treasury, any monies
20 representing a deposit of net proceeds shall then become the
21 unencumbered property of this state, and neither the Commission nor
22 the board of trustees shall have the power to agree or undertake
23 otherwise. The monies shall be invested by the State Treasurer in
24 accordance with state investment practices. All earnings

1 attributable to such investments shall likewise be the unencumbered
2 property of the state and shall accrue to the credit of the fund.

3 C. Monies in the Oklahoma Education Lottery Trust Fund shall
4 only be appropriated as follows:

5 1. Forty-five percent (45%) for the following:

6 a. kindergarten through twelfth grade public education,
7 including but not limited to compensation and benefits
8 for public school teachers and support employees, and

9 b. early childhood development programs, which shall
10 include but not be limited to costs associated with
11 prekindergarten and full-day kindergarten programs;

12 2. Forty-five percent (45%) for the following:

13 a. tuition grants, loans and scholarships to citizens of
14 this state to enable such citizens to attend colleges
15 and universities located within this state, regardless
16 of whether such colleges and universities are owned or
17 operated by the Oklahoma State Regents for Higher
18 Education, or to attend institutions operated under
19 the authority of the Oklahoma Department of Career and
20 Technology Education; provided such tuition grants,
21 loans and scholarships shall not be made to a citizen
22 of this state to attend a college or university which
23 is not accredited by the Oklahoma State Regents for
24 Higher Education,

- 1 b. construction of educational facilities for elementary
2 school districts, independent school districts, the
3 Oklahoma State System of Higher Education, and career
4 and technology education,
- 5 c. capital outlay projects for elementary school
6 districts, independent school districts, the Oklahoma
7 State System of Higher Education, and career and
8 technology education,
- 9 d. technology for public elementary school district,
10 independent school district, state higher education,
11 and career and technology education facilities, which
12 shall include but not be limited to costs of providing
13 to teachers at accredited public institutions who
14 teach levels kindergarten through twelfth grade,
15 personnel at technology centers under the authority of
16 the Oklahoma State Department of Career and Technology
17 Education, and professors and instructors within the
18 Oklahoma State System of Higher Education, the
19 necessary training in the use and application of
20 computers and advanced electronic instructional
21 technology to implement interactive learning
22 environments in the classroom and to access the state-
23 wide distance learning network and costs associated

1 with repairing and maintaining advanced electronic
2 instructional technology,

3 e. endowed chairs for professors at institutions of
4 higher education operated by the Oklahoma State System
5 of Higher Education, and

6 f. programs and personnel of the Oklahoma School for the
7 Deaf and the Oklahoma School for the Blind;

8 3. Five percent (5%) to the School Consolidation and Assistance
9 Fund. When the total amount in the School Consolidation and
10 Assistance Fund from all sources equals Five Million Dollars
11 (\$5,000,000.00), all monies appropriated pursuant to this paragraph
12 which would otherwise be deposited in the School Consolidation and
13 Assistance Fund in excess of Five Million Dollars (\$5,000,000.00)
14 shall be allocated by the State Department of Education to public
15 schools based on the audited end-of-year average daily membership in
16 grades 8 through 12 during the preceding school year for the purpose
17 of purchasing technology equipment in order to conduct on-line
18 testing as required by the Achieving Classroom Excellence Act of
19 2005. If at any time the total amount in the School Consolidation
20 and Assistance Fund drops below Five Million Dollars
21 (\$5,000,000.00), the monies appropriated pursuant to this paragraph
22 shall be deposited in the School Consolidation and Assistance Fund
23 until the Fund again reaches Five Million Dollars (\$5,000,000; and
24

1 4. Five percent (5%) to the Teachers' Retirement System
2 Dedicated Revenue Revolving Fund.

3 D. The Legislature shall appropriate funds from the Oklahoma
4 Education Lottery Trust Fund only for the purposes specified in
5 subsection C of this section. Even when funds from the trust fund
6 are used for these purposes, the Legislature shall not use funds
7 from the trust fund to supplant or replace other state funds
8 supporting common education, higher education, or career and
9 technology education.

10 E. In order to ensure that the funds from the trust fund are
11 used to enhance and not supplant funding for education, the State
12 Board of Equalization shall examine and investigate appropriations
13 from the trust fund each year. At the meeting of the State Board of
14 Equalization held within five (5) days after the monthly
15 apportionment in February of each year, the State Board of
16 Equalization shall issue a finding and report which shall state
17 whether appropriations from the trust fund were used to enhance or
18 supplant education funding. If the State Board of Equalization
19 finds that education funding was supplanted by funds from the trust
20 fund, the Board shall specify the amount by which education funding
21 was supplanted. In this event, the Legislature shall not make any
22 appropriations for the ensuing fiscal year until an appropriation in
23 that amount is made to replenish the trust fund.

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1 F. Except as otherwise provided by this subsection, no
2 deficiency in the Oklahoma Education Lottery Trust Fund shall be
3 replenished by reducing any nonlottery funds, including specifically
4 but without limitation, the General Revenue Fund, the Constitutional
5 Reserve Fund or the Education Reform Revolving Fund of the State
6 Department of Education. No program or project started specifically
7 from lottery proceeds shall be continued from the General Revenue
8 Fund, the Constitutional Reserve Fund or the Education Reform
9 Revolving Fund of the State Department of Education. Such programs
10 must be adjusted or discontinued according to available lottery
11 proceeds unless the Legislature by general law establishes
12 eligibility requirements and appropriates specific funds therefor.
13 No surplus in the Oklahoma Education Lottery Trust Fund shall be
14 reduced or transferred to correct any nonlottery deficiencies in
15 sums available for general appropriations. The provisions of this
16 subsection shall not apply to bonds or other obligations issued
17 pursuant to or to the repayment of bonds or other obligations issued
18 pursuant to the Oklahoma Higher Education Promise of Excellence Act
19 of 2005.

20 G. There is hereby created in the State Treasury a revolving
21 fund to be designated the "Oklahoma Education Lottery Revolving
22 Fund". The fund shall be a continuing fund, not subject to fiscal
23 year limitations, and shall consist of all monies received by the
24 Commission. The Commission shall make payments of net proceeds from

1 the fund to the Oklahoma Education Lottery Trust Fund on or before
2 the fifteenth day of each calendar quarter as provided in subsection
3 B of this section. All monies accruing to the credit of the
4 Oklahoma Education Lottery Revolving Fund are hereby appropriated
5 and may be budgeted and expended for the payment of net proceeds,
6 prizes, commissions to retailers, administrative expenses and all
7 other expenses arising out of the operation of the education
8 lottery, subject to the limitations provided in the Oklahoma
9 Education Lottery Act. Expenditures from the fund shall be made
10 upon warrants issued by the State Treasurer against claims filed as
11 prescribed by law with the Director of the Office of Management and
12 Enterprise Services for approval and payment.

13 The monies in the fund shall be invested by the State Treasurer
14 in accordance with state investment practices. All earnings
15 attributable to such investments shall likewise accrue to the credit
16 of the fund.

17 H. When appropriations from the Oklahoma Education Lottery
18 Trust Fund are made to common education pursuant to the provisions
19 of paragraph 1 of subsection C of this section, the appropriations
20 shall be made available on a monthly basis. In addition to the
21 provisions of subsection B of this section, the following process
22 shall be used to insure that the appropriations are made available
23 to common education in a timely manner:

24

1 1. Beginning in July of the fiscal year in which appropriations
2 are made to common education from the Oklahoma Education Lottery
3 Trust Fund, the Commission, on or before the ninth day of each
4 month, shall transfer to the State Treasurer, for credit to the
5 Oklahoma Education Lottery Trust Fund, the amount of net proceeds
6 accruing during the preceding month equal to the amount of total
7 monthly collections due to common education as required by paragraph
8 1 of subsection C of this section;

9 2. The Director of the Office of Management and Enterprise
10 Services shall allocate the transfers provided for in paragraph 1 of
11 this subsection to the State Department of Education on a monthly
12 basis, not to exceed one-twelfth (1/12) of the annual apportionment
13 for the fiscal year; and

14 3. The total amount of transfers to the Oklahoma Education
15 Lottery Trust Fund of net lottery proceeds made pursuant to this
16 subsection shall not exceed the total appropriations made to common
17 education from the Oklahoma Education Lottery Trust Fund for the
18 specific fiscal year.

19 I. When appropriations from the Oklahoma Education Lottery
20 Trust Fund are made to The Oklahoma State System of Higher
21 Education, the appropriations shall be made available to the System
22 on a monthly basis. In addition to the provisions of subsection B
23 of this section, the following process shall be used to ensure that
24

1 the appropriations are made available to The Oklahoma State System
2 of Higher Education in a timely manner:

3 1. Beginning in July of the fiscal year in which appropriations
4 are made to The Oklahoma State System of Higher Education from the
5 Oklahoma Education Lottery Trust Fund, the Commission, on or before
6 the ninth day of each month, shall transfer to the State Treasurer,
7 for credit to the Oklahoma Education Lottery Trust Fund, the amount
8 of net proceeds accruing during the preceding month equal to the
9 amount of total monthly collections due to the Oklahoma State
10 Regents for Higher Education as required by paragraph 2 of
11 subsection C of this section;

12 2. The Director of the Office of Management and Enterprise
13 Services shall allocate the transfers provided for in paragraph 1 of
14 this subsection to the Oklahoma State Regents for Higher Education
15 on a monthly basis, not to exceed one-twelfth (1/12) of the annual
16 apportionment for the fiscal year; and

17 3. The total amount of transfers to the Oklahoma Education
18 Lottery Trust Fund of net lottery proceeds made pursuant to this
19 subsection shall not exceed the total appropriations made to The
20 Oklahoma State System for Higher Education from the Oklahoma
21 Education Lottery Trust Fund for the specific fiscal year.

22 SECTION 3. AMENDATORY 3A O.S. 2011, Section 717, is
23 amended to read as follows:

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1 Section 717. A. The people of this state recognize that to
2 conduct a successful lottery, the Oklahoma Lottery Commission must
3 develop and maintain a statewide network of lottery retailers that
4 will serve the public convenience and promote the sale of tickets or
5 shares and the playing of lottery games while ensuring the integrity
6 of the lottery operations, games, and activities.

7 B. The Commission shall make every effort to provide small
8 retailers a chance to participate in the sales of lottery tickets or
9 shares.

10 C. The Commission shall provide for compensation to lottery
11 retailers in the form of commissions in an amount of not less than
12 two percent (2%) of gross sales and may provide for other forms of
13 compensation for services rendered in the sale or cashing of lottery
14 tickets or shares.

15 D. The Commission shall issue a certificate of authority to
16 each person with whom it contracts as a retailer for purposes of
17 display for each location at which tickets or shares are offered for
18 sale. Every lottery retailer shall post and keep conspicuously
19 displayed in a location on the premises accessible to the public its
20 certificate of authority. No certificate of authority shall be
21 assignable or transferable.

22 E. The board of trustees of the Oklahoma Lottery Commission
23 shall develop a list of objective criteria upon which the
24 qualification of lottery retailers shall be based. Separate

1 criteria shall be developed to govern the selection of retailers of
2 instant tickets. In developing these criteria, the board shall
3 consider such factors as the financial responsibility of the
4 applicant, security of the place of business or activity of the
5 applicant, accessibility to the public, integrity, and reputation.
6 The board shall not consider political affiliation, activities, or
7 contributions to political committees or candidates for any public
8 office. ~~The~~ Except as otherwise provided in subsection H of this
9 section, the criteria shall include, but not be limited to, the
10 following:

11 1. The applicant shall be current in filing all applicable tax
12 returns to the State of Oklahoma and in payment of all taxes,
13 interest, and penalties owed to the State of Oklahoma, excluding
14 items under formal appeal pursuant to applicable statutes. An
15 applicant who has entered into and is abiding by a payment agreement
16 with the Oklahoma Tax Commission shall be deemed current in payment
17 of such taxes, penalties and interest. Notwithstanding the
18 provisions of Section 205 of Title 68 of the Oklahoma Statutes, the
19 Oklahoma Tax Commission shall provide this information to the
20 Commission;

21 2. No person, partnership, unincorporated association,
22 corporation, or other business entity or principal, officer or
23 director of a corporation or other business entity shall be selected
24 as a lottery retailer who:

- 1 a. has been convicted of or is awaiting sentencing on a
2 plea of guilt or nolo contendere to a criminal offense
3 related to the security or integrity of the lottery in
4 this or any other jurisdiction,
- 5 b. has been convicted of or is awaiting sentencing on a
6 plea of guilt or nolo contendere to any illegal
7 gambling activity, false statements, false swearing,
8 or perjury in this or any other jurisdiction or
9 convicted of or is awaiting sentencing on a plea of
10 guilt or nolo contendere to any crime punishable by
11 more than one (1) year of imprisonment or a fine of
12 more than One Thousand Dollars (\$1,000.00) or both,
13 unless the civil rights of the person have been
14 restored and at least five (5) years have elapsed from
15 the date of the completion of the sentence without a
16 subsequent conviction of a crime described in this
17 subparagraph,
- 18 c. has been found to have violated the provisions of the
19 Oklahoma Education Lottery Act or any rule, policy, or
20 procedure of the Commission unless either ten (10)
21 years have passed since the violation or the board
22 finds the violation both minor and unintentional in
23 nature,
24

- 1 d. is a vendor or any employee or agent of any vendor
2 doing business with the Commission,
3 e. resides in the same household as the executive
4 director, any board member, or any employee of the
5 Commission,
6 f. has made a statement of material fact to the
7 Commission knowing such statement to be false, or
8 g. is engaged exclusively in the business of selling
9 lottery tickets or shares. This subparagraph shall
10 not preclude the Commission from selling or giving
11 away lottery tickets or shares for promotional
12 purposes;

13 3. Persons applying to become lottery retailers shall be
14 charged a uniform application fee for each lottery outlet;

15 4. Any lottery retailer contract executed pursuant to this
16 section may, for good cause, be suspended, revoked, or terminated by
17 the executive director or designee if the retailer is found to have
18 violated any provisions of the Oklahoma Education Lottery Act or
19 objective criteria established by the board. Review of such
20 activities shall be in accordance with the procedures outlined in
21 the Oklahoma Education Lottery Act and shall not be subject to the
22 Administrative Procedures Act; and

1 5. All lottery retailer contracts may be renewable annually in
2 the discretion of the Commission unless sooner canceled or
3 terminated.

4 F. No certificate of authority to act as a lottery retailer
5 shall be issued to any applicant doing business or who holds a
6 license to do business as a pawnbroker, supervised lender, or
7 deferred deposit lender, also known as a payday lender, or whose
8 primary business is categorized as a check casher.

9 G. No lottery retailer or applicant to be a lottery retailer
10 shall pay, give, or make any economic opportunity, gift, loan,
11 gratuity, special discount, favor, hospitality, or service, to the
12 executive director, any board member, or any employee of the
13 Commission, or to any person related to any such person within the
14 third degree of consanguinity or affinity.

15 H. Notwithstanding the requirements set forth in this section,
16 any charitable health care organization approved to participate in
17 the program set forth in Section 4 of this act shall be authorized
18 by the Board of Trustees of the Oklahoma Lottery Commission to sell
19 charitable lottery tickets during the time period of participation.

20 SECTION 4. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 736 of Title 3A, unless there is
22 created a duplication in numbering, reads as follows:

23 A. There is hereby created a pilot program for the issuance of
24 charitable lottery tickets. The program shall be administered by

1 the Board of Trustees of the Oklahoma Lottery Commission, subject to
2 the provisions of this section.

3 B. The pilot program shall consist of the sale of up to two and
4 one-half million (2,500,000) charitable lottery tickets over a
5 twelve month time period. For purposes of this section, "charitable
6 lottery ticket" means a single ticket designed with words, logos or
7 symbols which represent three different charitable health care
8 organizations, designated as provided in subsection D of this
9 section.

10 C. Expenditures related to the pilot program shall be paid from
11 the operating expenses of the Oklahoma Lottery Commission, as
12 defined in paragraph 16 of Section 703 of Title 3A of the Oklahoma
13 Statutes, and shall not be subject to the net proceeds requirement
14 pursuant to subsection A of Section 713 of Title 3A of the Oklahoma
15 Statutes.

16 D. The Board shall establish by rule a procedure for charitable
17 health care organizations to make application to be featured on a
18 charitable lottery ticket and the rule shall provide for the three
19 organizations approved to vary in purpose, mission, and size. Each
20 ticket shall feature the three organizations approved by the Board.
21 In order to apply, an organization shall:

22 1. Be exempt from taxation pursuant to the provisions of the
23 Internal Revenue Code 26 U.S.C., Section 501(c)(3);

24 2. Have a physical presence in this state; and

1 3. Provide health care services or treatment to individuals in
2 the state on an on-going basis as such service or treatment is
3 permitted by law or regulation.

4 E. The Board shall enter into a licensing agreement with each
5 charitable health care organization chosen which allows the words,
6 logos or symbols which represent the organization to be used on the
7 charitable lottery tickets and which provides each organization with
8 a portion of the total amount generated by the sale of such tickets.
9 That portion, which shall be paid out of the Commission's operating
10 expenses as provided in subsection C of this section, shall equal
11 one-third (1/3) to each charitable organization.

12 F. At the end of the pilot program provided for in this
13 section, the Board may make a determination to make the charitable
14 lottery ticket program permanent.

15 SECTION 5. This act shall become effective July 1, 2015.

16 SECTION 6. It being immediately necessary for the preservation
17 of the public peace, health and safety, an emergency is hereby
18 declared to exist, by reason whereof this act shall take effect and
19 be in full force from and after its passage and approval.

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