

1 SB8  
2 170827-4  
3 By Senator Marsh (Constitutional Amendment)  
4 RFD: Tourism and Marketing  
5 First Read: 13-JUL-15

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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 establish an Alabama Education Lottery and the  
14 Alabama Education Lottery Corporation; to authorize  
15 and regulate gaming by the entities currently  
16 licensed to conduct pari-mutuel wagering at the  
17 four existing racetracks in Alabama where  
18 pari-mutuel wagering is currently legal; to levy a  
19 state gross receipts tax and a local gross receipts  
20 tax on gaming revenue of the racetracks; to levy a  
21 tax on vendors of gaming equipment; to provide for  
22 the disposition of lottery proceeds and state  
23 gaming tax proceeds; to create the Alabama  
24 Education Lottery and Gaming Commission to  
25 implement, regulate, and administer gaming and  
26 regulate and supervise the Alabama Education

1 Lottery and Alabama Education Lottery Corporation;  
2 to authorize the Governor to negotiate a compact  
3 for gaming with the Poarch Band of Creek Indians;  
4 and to require the Legislature to pass general laws  
5 to implement the amendment.

6  
7 A BILL  
8 TO BE ENTITLED  
9 AN ACT

10  
11 Proposing an amendment to Section 65 of the  
12 Constitution of Alabama of 1901, to establish an Alabama  
13 Education Lottery and the Alabama Education Lottery  
14 Corporation; to authorize and regulate gaming by the entities  
15 currently licensed to conduct pari-mutuel wagering at the four  
16 existing racetracks in Alabama where pari-mutuel wagering is  
17 currently legal; to levy a state gross receipts tax and a  
18 local gross receipts tax on gaming revenue; to levy a tax on  
19 vendors of gaming equipment; to provide for the disposition of  
20 lottery proceeds and state gaming tax proceeds; to create the  
21 Alabama Education Lottery and Gaming Commission to implement,  
22 regulate, and administer gaming and regulate and supervise the  
23 Alabama Education Lottery and the Alabama Education Lottery  
24 Corporation; to authorize the Governor to negotiate a compact  
25 for gaming with the Poarch Band of Creek Indians; and to

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

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. The following amendment to the  
5 Constitution of Alabama of 1901, as amended, is proposed and  
6 shall become valid as a part thereof when approved by a  
7 majority of the qualified electors voting thereon and in  
8 accordance with Sections 284, 285, and 287 of the Constitution  
9 of Alabama of 1901, as amended:

10 PROPOSED AMENDMENT

11 "Section 65.

12 "Part I.

13 "Except as provided in Part II and Part III, the ~~The~~  
14 legislature shall have no power to authorize lotteries or gift  
15 enterprises for any purposes, and shall pass laws to prohibit  
16 the sale in this state of lottery or gift enterprise tickets,  
17 or tickets in any scheme in the nature of a lottery; and,  
18 except as provided in Part II and Part III, all acts, or parts  
19 of acts heretofore passed by the legislature of this state,  
20 authorizing a lottery or lotteries, and all acts amendatory  
21 thereof, or supplemental thereto, are hereby avoided.

22 "Part II.

23 "Section 1. Declarations. The Legislature finds that  
24 lotteries have been enacted in many states and the revenues  
25 generated from those lotteries have contributed to the benefit  
26 of those states. Many Alabamians already participate in other

1 state lotteries and visit casinos in neighboring states. The  
2 majority of Alabamians support the establishment of a lottery  
3 and support the limitation, regulation, and taxation of gaming  
4 in Alabama. Therefore, the purpose of the proposed amendment  
5 is fourfold: (1) to establish and provide for a fair and  
6 honest lottery to generate revenue for the Education Trust  
7 Fund and postsecondary education scholarships; (2) to limit  
8 and regulate gaming by the existing racetracks for which  
9 gaming is already legal in Alabama; (3) to levy taxes on  
10 gaming at those racetracks to generate revenues for the  
11 benefit of the State General Fund; and (4) to authorize the  
12 Governor to negotiate a compact for gaming with the Poarch  
13 Band of Creek Indians.

14 "Section 2. Establishment of an Alabama Education  
15 Lottery.

16 "(a) The Legislature, by general law, shall provide  
17 for the establishment, administration, operation, and  
18 regulation of an Alabama Education Lottery consistent with  
19 this part and Part III.

20 "(b) The proceeds from the Alabama Education Lottery  
21 shall be applied first to the payment of the expenses of  
22 administering and operating the Alabama Education Lottery,  
23 including, without limitation, the payment of all prizes,  
24 without any further appropriation required by law, and the  
25 balance of the proceeds remaining after the payments shall be  
26 deposited in the Education Trust Fund. A minimum of fifty

1 million dollars (\$50,000,000) of the proceeds deposited in the  
2 Education Trust Fund pursuant to this amendment each year is  
3 appropriated to a separate account for the purpose of funding  
4 a scholarship program for postsecondary education pursuant to  
5 a program for that purpose enacted by general law.

6 "(c) The administration of the Alabama Education  
7 Lottery shall be vested in a corporation hereby created and  
8 designated the Alabama Education Lottery Corporation. The  
9 duties, powers, authority, and composition of the Alabama  
10 Education Lottery Corporation shall be enumerated in one or  
11 more general laws enacted by the Legislature subsequent to and  
12 supplemental to this amendment.

13 "Part III.

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

17 "(1) COMMISSION. The Alabama Education Lottery and  
18 Gaming Commission created by this amendment.

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

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

17           "(5) RACETRACK. A corporation, limited liability  
18 company, or other business entity authorized by a local racing  
19 commission pursuant to law to operate and conduct pari-mutuel  
20 wagering on live or simulcast races on April 15, 2015, in  
21 Mobile County, Macon County, the City of Birmingham in  
22 Jefferson County, or Greene County. The term includes any  
23 business entity operating covered games under agreement with a  
24 racetrack.

25           "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 racetrack  
3 and only at a single location approved by the commission in  
4 the county in which the racetrack is licensed to operate and  
5 conduct pari-mutuel wagering.

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

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

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

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

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

26           "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 lottery equipment, materials, paraphernalia, and  
5 supplies and any and all covered games and equipment,  
6 materials, paraphernalia, and supplies may be transported in  
7 interstate commerce into or out of the state without violating  
8 that section, or any other applicable federal law, if the  
9 lottery equipment, materials, paraphernalia, and supplies are  
10 used, to be used, or have been used in the conduct and  
11 furtherance of the Alabama Education Lottery, and if the  
12 covered games and equipment, paraphernalia, materials, and  
13 supplies are used, to be used, or have been used, in the  
14 conduct of covered games by racetracks.

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

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

24           "(2) The state gross receipts tax on gaming gross  
25 revenue for each calendar month shall be paid by each

1 racetrack to the Department of Revenue on or before the  
2 twentieth day of the next succeeding calendar month.

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

5 "(4) Except as otherwise provided in subdivision  
6 (5), the local gross receipts tax on gaming gross revenue for  
7 each calendar month shall be paid to the county in which the  
8 racetrack is licensed on or before the twentieth day of the  
9 next succeeding calendar month. The county shall retain  
10 one-half of the amount and shall apportion the remaining half  
11 among the municipalities in the county on the basis of the  
12 ratio of the population of the municipality to the population  
13 of all the municipalities in the county and pay the amounts  
14 apportioned to the municipalities forthwith.

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

1 municipalities in the county other than the Class 1 or Class 2  
2 municipality.

3 "(6) A state covered game vendor tax is hereby  
4 levied on covered game vendors conducting business in the  
5 state in an amount equal to four percent of the gross revenues  
6 collected by the covered game vendor from leases or other  
7 revenue sharing arrangements with a racetrack.

8 "(7) A covered game vendor shall pay the state  
9 covered game vendor tax for each calendar month to the  
10 Department of Revenue on or before the twentieth day of the  
11 next succeeding calendar month.

12 "(8) The state gross receipts tax on gaming gross  
13 revenue, the local gross receipts tax on gaming gross revenue,  
14 and the state covered game vendor tax shall be in lieu of all  
15 other state or local taxes or license fees levied with respect  
16 to the conduct of covered games by a racetrack.

17 Notwithstanding the foregoing, a racetrack is liable for all  
18 income taxes, franchise taxes, property taxes, lodging taxes,  
19 and sales and use taxes on merchandise, food, and beverage  
20 generally applicable at uniform rates to all businesses  
21 operating in the county in which the racetrack is licensed.

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

25 "Section 5. Alabama Education Lottery and Gaming  
26 Commission; creation; powers.

1           "(a) There is hereby created the Alabama Education  
2 Lottery and Gaming Commission. The commission shall regulate  
3 and supervise the operation of the Alabama Education Lottery  
4 and the Alabama Education Lottery Corporation; implement,  
5 regulate, administer, supervise, and enforce all laws and  
6 rules related to the operation and conduct of covered games by  
7 racetracks; and cooperate with the Attorney General and local  
8 district attorneys in enforcing all laws related to illegal  
9 gambling.

10           "(b) The Alabama Education Lottery and Gaming  
11 Commission shall consist of seven members. The members of the  
12 commission shall be appointed as follows:

13           "(1) One by the Governor.

14           "(2) One by the Speaker of the House of  
15 Representatives.

16           "(3) One by the President Pro Tempore of the Senate.

17           "(4) One by the Alabama Restaurant and Hospitality  
18 Alliance, Inc.

19           "(5) One by the Alabama State Bar

20           "(6) One by the Alabama Sheriff's Association, Inc.

21           "(7) One by the Economic Development Partnership of  
22 Alabama, Inc.

23           "(c) All members shall be appointed with the advice  
24 and consent of the Senate. The appointment of the initial  
25 members of the commission shall be made by those officials  
26 holding office on the effective date of this amendment or by

1 the appropriate organization named herein without the advice  
2 and consent of the Senate and shall be made within 60 days  
3 after the effective date of this amendment. If an organization  
4 authorized to make an appointment ceases to exist, the  
5 appointment shall be made by its successor organization. If  
6 there is no successor organization, the Legislature, by  
7 general law, shall provide for the appointment. The members,  
8 where possible, shall represent the gender and racial  
9 diversity of the state.

10 "(1) Members of the commission shall be residents of  
11 the State of Alabama, United States citizens, and prominent  
12 persons in their businesses or profession, may not have been  
13 convicted of a felony, and may not be the executive director  
14 of or another employee of the commission, an officer of or  
15 occupy an official position in any political party, an elected  
16 official, or actively engaged in the business of, or have a  
17 pecuniary interest in, a racetrack.

18 "(2) Members shall serve a term of four years and  
19 may serve two complete terms and any portion of an initial  
20 term of less than four years or any portion of an unexpired  
21 term to which appointed. Any vacancy occurring on the  
22 commission shall be filled for the unexpired term by the  
23 appointing authority as described in this section or by its  
24 successor organization if the appointing authority ceases to  
25 exist, or as otherwise provided by Act of the Legislature. The  
26 initial term of office upon the effective date of this

1 amendment shall be two years for the member appointed by the  
2 Governor, Alabama Restaurant and Hospitality Alliance, Inc.,  
3 Alabama State Bar, and the Economic Development Partnership of  
4 Alabama, Inc.; and four years for the member appointed by the  
5 Speaker of the House of Representatives, the President Pro  
6 Tempore of the Senate, and the Alabama Sheriff's Association,  
7 Inc. Each member of the commission shall serve for the  
8 duration of his or her term and until his or her successor is  
9 duly appointed and confirmed by the Senate.

10 "(d) The commission and its members and employees  
11 shall be subject to the Ethics Law, Section 36-25-1, et seq.,  
12 Code of Alabama 1975; the Open Records Act, Section 36-12-40,  
13 Code of Alabama 1975; the Open Meetings Act, Section 36-25A-1  
14 et seq., Code of Alabama 1975; and the Administrative  
15 Procedure Act, Section 41-22-1, et seq., Code of Alabama 1975.

16 "(e) In addition to other enforcement powers granted  
17 by general law, the commission shall have full power and  
18 authority to issue subpoenas and compel the attendance of  
19 witnesses at any place within this state, to administer oaths,  
20 and to require testimony under oath. Any process or notice may  
21 be served in the manner provided for service of process and  
22 notices in civil actions. The commission may pay such  
23 transportation and other expenses of witnesses as the  
24 commission deems reasonable and proper. Any person making a  
25 false oath in any matter before the commission is guilty of  
26 perjury. The commission may appoint hearing examiners who may

1 administer oaths and receive evidence and testimony under  
2 oath.

3 "(f) The commission shall regulate and supervise the  
4 conduct and operation of the Alabama Education Lottery and the  
5 Alabama Education Lottery Corporation. In addition to the  
6 powers granted in subsection (d), additional powers,  
7 procedures, and operations of the commission with respect to  
8 regulation and supervision of the Alabama Education Lottery  
9 and the Alabama Education Lottery Corporation shall be  
10 enumerated in one or more general laws enacted by the  
11 Legislature subsequent to and supplemental to this amendment  
12 to further its purposes and provide for its implementation.

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

22 "(1) Upon ratification of the amendment, a racetrack  
23 may operate covered games. If a racetrack operates covered  
24 games under this subdivision, the provisions related to the  
25 state gross receipts tax on gaming gross revenues, the local

1 gross receipts tax on gaming gross revenue, and the covered  
2 game vendor tax are immediately applicable.

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

12 "(3) Nothing in this subsection prohibits, limits,  
13 or alters the authority of any local racing commission with  
14 respect to the continued regulation and supervision of racing  
15 and pari-mutuel wagering at a racetrack.

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



1 laws enacted to implement this amendment shall provide a basis  
2 on which the commission may refuse to renew a license or a  
3 license may be revoked or suspended.

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

8 "(6) A racetrack may not operate covered games  
9 without remitting to the state the applicable state gross  
10 receipts tax on gaming gross revenue.

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

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

24 "(A) An elected public official authorized to make  
25 an appointment to the commission or a candidate for the office

1 of an elected public official authorized to make an  
2 appointment to the commission.

3 "(B) A candidate for the Legislature.

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

20 "(i) The Alabama Education Lottery Corporation may  
21 enter into reciprocal agreements with other jurisdictions for  
22 the operation and promotion of lottery games that are  
23 permitted by the commission to be operated, utilized, or  
24 conducted.

25 "(j) The Alabama Education Lottery Corporation may  
26 conduct, employ, include, or utilize only those lotteries

1 approved by the commission. Except as otherwise provided in  
2 this amendment, the corporation may not operate, use, or  
3 employ, and the commission, directly or indirectly, may not  
4 authorize the operation, use, or employment of, any covered  
5 game by any entity other than a racetrack.

6 "(k) The commission shall coordinate with local  
7 communities and the racetracks in developing educational  
8 programs and other social programs to enhance social and  
9 public awareness of gaming-related issues.

10 "Section 6. Special Session for Enabling  
11 Legislation.

12 "For the exclusive purpose of enacting general laws  
13 to implement this amendment, the Legislature shall meet in  
14 Extraordinary Session within 30 days after the effective date  
15 of this amendment on a day determined jointly by the Speaker  
16 of the House and the President Pro Tempore of the Senate. The  
17 Legislature may meet for no more than 12 legislative days and  
18 no other items of legislation may be considered during the  
19 Extraordinary Session except by a vote of two-thirds of each  
20 house.

21 "Section 7. Compact Negotiations.

22 "The Governor is hereby authorized and instructed to  
23 negotiate in good faith a compact with the Poarch Band of  
24 Creek Indians for the conduct and operation of covered games  
25 at the three locations in Alabama where, on the effective date  
26 of this amendment, the Poarch Band of Creek Indians conduct

1 gaming. Any such compact shall then be submitted to the  
2 Legislature for ratification."

3 END OF PROPOSED AMENDMENT

4 Section 2. An election upon the proposed amendment  
5 shall be held in accordance with Sections 284 and 285 of the  
6 Constitution of Alabama of 1901, now appearing as Sections 284  
7 and 285 of the Official Recompilation of the Constitution of  
8 Alabama of 1901, as amended, and the election laws of this  
9 state on November 17, 2015.

10 Section 3. The appropriate election official shall  
11 assign a ballot number for the proposed constitutional  
12 amendment on the election ballot and shall set forth the  
13 following description of the substance or subject matter of  
14 the proposed constitutional amendment:

15 "Proposing an amendment to the Constitution of  
16 Alabama of 1901, to establish an Alabama Education Lottery and  
17 the Alabama Education Lottery Corporation; to authorize and  
18 regulate gaming by the four existing racetracks in Alabama  
19 where pari-mutuel wagering is currently legal; to levy a state  
20 gross receipts tax and a local gross receipts tax on gaming  
21 revenue of the racetracks; to levy a tax on vendors of gaming  
22 equipment; to provide for the allocation of lottery proceeds  
23 and state gaming tax proceeds; to create the Alabama Education  
24 Lottery and Gaming Commission to implement, regulate, and  
25 administer gaming and regulate and supervise the Alabama  
26 Education Lottery Corporation; to authorize the Governor to

1 negotiate a compact for gaming with the Poarch Band of Creek  
2 Indians; and to authorize the Legislature to pass general laws  
3 to implement the amendment.

4 "Proposed by Act \_\_\_\_\_."

5 This description shall be followed by the following  
6 language:

7 "Yes ( ) No ( )."