

1 HB11  
2 178827-2  
3 By Representative Ford (Constitutional Amendment)  
4 RFD:  
5 First Read: 07-FEB-17  
6 PFD: 10/13/2016

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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 state tax on vendors of gaming equipment; to  
22 provide for the disposition of the state 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  
27 Indians; to establish an Alabama Lottery to fund

1           scholarships; to create an Alabama Lottery  
2           Corporation to implement and to regulate the  
3           operation of the lottery; to dedicate the net  
4           proceeds from the lottery to the Lottery Trust Fund  
5           for scholarships for students to attend a public  
6           two- or four-year college located in Alabama; to  
7           establish the Lottery Trust Fund; and to require  
8           the Legislature to pass general laws to implement  
9           the amendment.

10  
11                           A BILL  
12                           TO BE ENTITLED  
13                           AN ACT

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

1 establish an Alabama Lottery; to establish an Alabama Lottery  
2 Corporation; to establish the Lottery Trust Fund; to provide  
3 for the allocation of the lottery proceeds to the Lottery  
4 Trust Fund for scholarships for students to attend a public  
5 two- or four-year college located in Alabama; and to require  
6 the Legislature to implement the amendment through enabling  
7 legislation.

8 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

15 PROPOSED AMENDMENT

16 "Section 65.

17 "Part I.

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

27 "Part II.

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

4           "(1) COMMISSION. The Alabama Gaming Commission  
5 created by this amendment.

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

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

17           "(4) GAMING GROSS REVENUE. The total amount of money  
18 or value in any form received by a gaming operator with  
19 respect to the playing of any form of covered game, less the  
20 total money or value in any form paid as prizes or winnings to  
21 the players of the covered game and free play or promotional  
22 credits, but before deduction of any expenses incurred in  
23 operating the establishment, including, but not limited to,  
24 depreciation or leasing costs of physical facilities and  
25 equipment, wages and other employment costs, utilities,  
26 interest, and taxes. Gaming gross revenue may not be included

1 in a pari-mutuel pool for the purpose of determining any tax  
2 levied on pari-mutuel wagering or for any other purpose.

3 "(5) GAMING OPERATOR. The limited liability company  
4 holding on January 1, 2016, the development agreement with the  
5 county commission of the county in which the sponsor of the  
6 bill proposing the amendment resides or a corporation, limited  
7 liability company, or other business entity authorized by a  
8 local racing commission pursuant to law to operate and conduct  
9 pari-mutuel wagering on live or simulcast races on April 15,  
10 2016, in Mobile County, Macon County, the City of Birmingham  
11 in Jefferson County, or Greene County.

12 "Section 2. Limitation on Gaming in Alabama.

13 "(a) Following the effective date of this amendment,  
14 covered games may be operated or conducted only by a gaming  
15 operator and only at a single location approved by the  
16 commission in the county in which the gaming operator is  
17 licensed to operate.

18 "(b) The conduct of covered games by a gaming  
19 operator is not subject to or prohibited, limited, or impaired  
20 by:

21 "(1) Any otherwise applicable provisions of Article  
22 8 (commencing with Section 8-1-150) of Chapter 1 of Title 8 of  
23 or Article 2 (commencing with Section 13A-12-20) of Chapter 12  
24 of Title 13A of the Code of Alabama 1975.

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

1           "(3) Any judicial order, decision, or opinion issued  
2 prior to the operative date of this amendment that would  
3 otherwise have the effect of prohibiting, limiting, or  
4 impairing the conduct of covered games. No provision of this  
5 amendment may be construed to allow a person to operate or  
6 conduct covered games except as permitted pursuant to this  
7 amendment.

8           "(c) Except as otherwise provided in Section 5(f),  
9 nothing herein shall be deemed to impair, impede, or restrict  
10 the operation of charitable bingo conducted pursuant to any  
11 validly enacted constitutional amendment authorizing such  
12 activity.

13           "Section 3. Compliance with Federal Law.

14           "The State of Alabama, acting by and through the  
15 adoption of this amendment, and in accordance with the  
16 provisions of 15 U.S.C. §1172, does hereby declare that any  
17 and all covered games and equipment, materials, paraphernalia,  
18 and supplies may be transported in interstate commerce into or  
19 out of the state without violating that section, or any other  
20 applicable federal law, if the covered games and equipment,  
21 paraphernalia, materials, and supplies are used, to be used,  
22 or have been used, in the conduct of covered games by a gaming  
23 operator.

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

26           "(a) (1) A state gross receipts tax of 13 percent is  
27 levied on the gaming gross revenue of each gaming operator. To

1 the extent a gaming operator owns and does not lease covered  
2 games equipment that produces gaming gross revenue, an  
3 additional state gross receipts tax of one percent of the  
4 gaming gross revenue from the owned covered games equipment is  
5 levied on the equipment.

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

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

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

22 "(5) The local gross receipts tax on gaming gross  
23 revenue of a gaming operator operating in a Class 1 or Class 2  
24 municipality for each calendar month shall be paid to the  
25 Class 1 or Class 2 municipality on or before the twentieth day  
26 of the next succeeding calendar month. The municipality shall  
27 retain one-half of the revenue, shall pay one-quarter of the



1 revenue to the county in which the municipality is principally  
2 located, and shall apportion the remaining one-quarter of the  
3 revenue to the municipalities in the county other than the  
4 Class 1 or Class 2 municipality on the basis of the ratio of  
5 the population of the municipality to the population of all  
6 municipalities in the county other than the Class 1 or Class 2  
7 municipality.

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

13 "(7) A covered game vendor shall pay the state  
14 covered game vendor tax for each calendar month to the  
15 Department of Revenue on or before the twentieth day of the  
16 next succeeding calendar month.

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

22 Notwithstanding the foregoing, a gaming operator is liable for  
23 all income taxes, franchise taxes, property taxes, lodging  
24 taxes, and sales and use taxes on merchandise, food, and  
25 beverage generally applicable at uniform rates to all  
26 businesses operating in the county in which the gaming  
27 operator is licensed.

1           "(9) The proceeds derived from the state gross  
2 receipts tax on gaming gross revenues and the covered game  
3 vendor tax shall be allocated exclusively to provide  
4 scholarships for up to two years to Alabama citizens to attend  
5 two- and four-year public institutions of higher education  
6 located in Alabama.

7           "Section 5. Alabama Gaming Commission; creation;  
8 powers.

9           "(a) There is hereby created the Alabama Gaming  
10 Commission. The commission shall implement, regulate,  
11 administer, supervise, and enforce all laws and rules related  
12 to the operation and conduct of covered games by a gaming  
13 operator; and cooperate with the Attorney General and local  
14 district attorneys in enforcing all laws related to illegal  
15 gambling.

16           "(b) The Alabama Gaming Commission shall consist of  
17 five members. One member of the commission shall be appointed  
18 by the Governor with the advice and consent of the Senate, one  
19 member shall be appointed by the Attorney General with the  
20 advice and consent of the Senate, one member shall be  
21 appointed by the Lieutenant Governor with the advice and  
22 consent of the Senate, one member shall be appointed by the  
23 Speaker of the House of Representatives with the advice and  
24 consent of the Senate, and one member shall be appointed by  
25 the President Pro Tempore of the Senate with the advice and  
26 consent of the Senate. The appointment of the initial members  
27 of the commission shall be made by those officials holding

1 office on the effective date of this amendment without the  
2 advice and consent of the Senate and shall be made within 60  
3 days of the effective date of this amendment. The members,  
4 where possible, shall represent the gender and racial  
5 diversity of the state. No more than two members may reside in  
6 the same congressional district.

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

15 "(2) Members shall serve a term of five years and  
16 may serve two complete terms and any portion of an initial  
17 term of less than five years or any portion of an unexpired  
18 term to which appointed. Any vacancy occurring on the  
19 commission shall be filled for the unexpired term by the  
20 appointing authority as described in this section. The initial  
21 term of office upon the effective date of this amendment shall  
22 be one year for the member appointed by the Lieutenant  
23 Governor, two years for the member appointed by the Governor,  
24 three years for the member appointed by the Attorney General,  
25 four years for the member appointed by the Speaker of the  
26 House of Representatives, and five years for the member  
27 appointed by the President Pro Tempore of the Senate. Each

1 member of the commission shall serve for the duration of his  
2 or her term and until his or her successor is duly appointed  
3 and confirmed by the Senate; provided, however, that if a  
4 successor is not appointed and confirmed within 120 days after  
5 the expiration of a member's term, a vacancy shall be deemed  
6 to exist.

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

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

26 "(e) The commission shall regulate and supervise the  
27 conduct and operation of covered games by gaming operators. In

1 addition to the powers granted in subsection (d), additional  
2 powers, procedures, and operations of the commission with  
3 respect to regulation and supervision of covered games by  
4 gaming operators shall be enumerated in one or more general  
5 laws enacted by the Legislature subsequent to and supplemental  
6 to this amendment to further its purposes and provide for its  
7 implementation, subject to the following provisions:

8 "(1) Upon ratification of the amendment, a gaming  
9 operator may operate covered games. If a gaming operator  
10 operates covered games under this subdivision, the provisions  
11 related to the state gross receipts tax on gaming gross  
12 revenues, the local gross receipts tax on gaming gross  
13 revenue, and the covered game vendor tax are immediately  
14 applicable.

15 "(2) Until such time as the commission is fully  
16 established, a local racing commission having jurisdiction  
17 over a gaming operator, in addition to the powers that it has  
18 under existing law, shall have the same power to supervise the  
19 conduct of covered games as it has to regulate and supervise  
20 racing activities and pari-mutuel wagering thereon, with such  
21 modification of such powers, not inconsistent with this  
22 amendment, as is necessary or appropriate to adapt them to the  
23 purposes of supervising the operation of covered games.

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

1           "(4) Once the commission is fully established, the  
2           commission shall assume the regulation and supervision of the  
3           conduct and operation of covered games by gaming operators and  
4           shall issue an initial covered game license to each gaming  
5           operator to operate and conduct covered games for a period of  
6           20 years. Thereafter, the license shall renew automatically  
7           for a period of five years subject to and in accordance with  
8           one or more general laws enacted by the Legislature  
9           supplemental to and subsequent to this amendment to further  
10           its purposes and provide for its implementation, and subject  
11           to and in accordance with rules adopted by the commission. The  
12           general laws enacted to implement this amendment shall provide  
13           a basis on which the commission may refuse to renew a license  
14           or a license may be revoked or suspended.

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

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

22           "(7) A person under the age of 21 years may not play  
23           any covered game, be employed to operate any covered game,  
24           facilitate the playing of any covered game, or serve any  
25           persons playing any covered game. This subsection does not  
26           prohibit persons under the age of 21 years from being allowed  
27           on the premises of a facility where covered games are being

1 played in areas of the facility in which covered games are not  
2 being conducted.

3 "(8) A gaming operator and an officer, director,  
4 shareholder, member, or other owner of a gaming operator may  
5 not make a campaign contribution, whether monetary or in kind,  
6 to any of the following or a political action committee or  
7 principal campaign committee of any of the following:

8 "(A) An elected public official authorized to make  
9 an appointment to the commission or a candidate for the office  
10 of an elected public official authorized to make an  
11 appointment to the commission.

12 "(B) A candidate for the Legislature.

13 "(f) The commission shall license, regulate, and  
14 supervise the conduct and operation of charitable bingo games  
15 pursuant to and in accordance with any validly enacted  
16 constitutional amendment authorizing such activity; provided,  
17 however, that bingo games operated pursuant to any validly  
18 enacted constitutional amendment shall be limited to being  
19 played on paper sheets or paper cards. Any provision in any  
20 local constitutional amendment authorizing the conduct and  
21 operation of charitable bingo games to the contrary is hereby  
22 amended to conform to this provision. The powers, procedures,  
23 and operations of the commission with respect to the  
24 licensing, regulation, and supervision of charitable bingo  
25 games shall be enumerated in one or more general laws enacted  
26 by the Legislature subsequent to and supplemental to this

1 amendment to further its purposes and provide for its  
2 implementation.

3 "(g) The commission shall coordinate with local  
4 communities and gaming operators in developing educational  
5 programs and other social programs to enhance social and  
6 public awareness of gaming-related issues.

7 "Section 6. Special Session for Enabling  
8 Legislation.

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

18 "Section 7. Compact Negotiations.

19 "The Governor is hereby authorized and instructed to  
20 negotiate in good faith a compact with the Poarch Band of  
21 Creek Indians for the conduct and operation of covered games  
22 at the three locations in Alabama where, on the effective date  
23 of this amendment, the Poarch Band of Creek Indians conduct  
24 gaming. Any such compact shall then be submitted to the  
25 Legislature for ratification.

26 "PART III.



1           "Section 1. Establishment of an Alabama Lottery. The  
2 Legislature, by general law, shall provide for the  
3 establishment, administration, operation, and regulation of an  
4 Alabama Lottery.

5           "Section 2. Lottery Trust Fund. The proceeds from  
6 the Alabama Lottery shall be applied first to the payment of  
7 the expenses of administering and operating the Alabama  
8 Lottery, including, without limitation, the payment of all  
9 prizes, without any further appropriation required by law, and  
10 the balance of the proceeds remaining after the payments shall  
11 be deposited, as provided by general law, and held in a  
12 special, separate account in the State Treasury hereby created  
13 and designated the Lottery Trust Fund until such time as the  
14 proceeds are disbursed pursuant to this amendment.

15           "Section 3. Alabama Lottery Corporation. The  
16 administration of the Alabama Lottery shall be vested in a  
17 corporation hereby created and designated the Alabama Lottery  
18 Corporation. The duties, powers, authority, and composition of  
19 the Alabama Lottery Corporation shall be provided by general  
20 law.

21           "Section 4. Allocations and Disbursements. Monies in  
22 the Lottery Trust Fund shall be allocated exclusively to  
23 provide scholarships for up to two years to citizens of  
24 Alabama to attend two- and four-year public institutions of  
25 higher education located in Alabama.

26           "Section 5. Agreements with other Jurisdictions. The  
27 Alabama Lottery Corporation may enter into reciprocal

1 agreements with other jurisdictions for the operation and  
2 promotion of games that are permitted to be operated,  
3 utilized, or conducted by the Alabama Lottery.

4 "Section 6. Limitation on Activities. The Alabama  
5 Lottery may authorize, conduct, employ, or utilize only those  
6 games of chance approved by the Alabama Lottery Corporation  
7 which may include, without limitation, the sale of lottery  
8 tickets.

9 "Section 7. Implementation. The Legislature may  
10 enforce and implement this amendment by appropriate general  
11 law. Any act or acts that are enacted by the Legislature  
12 during the same session of the Legislature at which this  
13 amendment is proposed and which are in implementation and  
14 furtherance of the purposes of this amendment and the  
15 authority granted by this amendment, and all actions  
16 heretofore taken pursuant to such act or acts, are hereby  
17 validated, ratified, and confirmed as effective as of the date  
18 on which the act or acts were so enacted in accordance with  
19 the Constitution of Alabama of 1901, as amended, and as of the  
20 respective dates on which such actions were taken.

21 "Section 8. Nothing in this part affects, prohibits,  
22 or limits any activity that was legal at the time this part  
23 becomes effective including, without limitation, pari-mutuel  
24 betting and bingo as provided for by specific laws.

25 "Section 9. This part and any enabling legislation  
26 enacted by the Legislature with respect to this part  
27 supersedes and takes precedence over any other provision of

1 law that may conflict or be inconsistent with this part or the  
2 legislation, and this part and the legislation shall operate  
3 and be construed without regard to the conflict or  
4 inconsistency."

5 END OF PROPOSED AMENDMENT

6 Section 2. An election upon the proposed amendment  
7 shall be held in accordance with Sections 284 and 285 of the  
8 Constitution of Alabama of 1901, now appearing as Sections 284  
9 and 285 of the Official Recompilation of the Constitution of  
10 Alabama of 1901, as amended, and the election laws of this  
11 state on September 15, 2015.

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

17 "Proposing an amendment to the Constitution of  
18 Alabama of 1901, to authorize and regulate gaming by one  
19 facility licensed by the county commission of the county in  
20 which the sponsor of the amendment resides and the four  
21 existing racetracks in Alabama where pari-mutuel wagering is  
22 currently legal; to levy a state gross receipts tax and a  
23 local gross receipts tax on gaming revenue; to levy a tax on  
24 vendors of gaming equipment; to provide for allocation of  
25 state gaming tax proceeds; to create the Alabama Gaming  
26 Commission to implement, regulate, and administer gaming; to  
27 authorize the Governor to negotiate a compact for gaming with

1 the Poarch Band of Creek Indians; to establish an Alabama  
2 Lottery and an Alabama Lottery Trust Fund, to distribute net  
3 lottery proceeds to provide scholarships for qualifying  
4 students to attend a public two- or four-year college located  
5 in Alabama; to create an Alabama Lottery Corporation to  
6 regulate and administer the lottery; and to require the  
7 Legislature to pass general laws to implement the amendment.

8 "Proposed by Act \_\_\_\_\_."

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

11 "Yes ( ) No ( )."