

1 SB116
2 196862-6
3 By Senator McClendon
4 RFD: Tourism
5 First Read: 19-MAR-19

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8 SYNOPSIS: This bill shall be known and may be cited as
9 the Alabama Lottery Act. This bill would provide
10 legislative intent; provide powers and duties of
11 the Alabama Lottery Commission; provide for use of
12 lottery proceeds; levy and allocate a state gross
13 receipts tax on gaming revenue; levy and allocate a
14 local gross receipts tax on gaming revenue; levy
15 and allocate a tax on vendors of video lottery
16 equipment; provide for the disposition of state
17 gaming tax proceeds; and provide limitations on
18 retailers.

19
20 A BILL
21 TO BE ENTITLED
22 AN ACT

23
24 Relating to lotteries; to provide legislative
25 intent; provide powers and duties of the Alabama Lottery
26 Commission; provide for use of lottery proceeds; levy and
27 allocate a state gross receipts tax on gaming revenue; levy

1 and allocate a local gross receipts tax on gaming revenue;
2 levy and allocate a tax on vendors of video lottery equipment;
3 and provide limitations on retailers.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

5 Section 1. This act shall be known and may be cited
6 as the Alabama Lottery Act.

7 Section 2. Declarations. The Legislature hereby
8 recognizes that the operations of a lottery are unique
9 activities for state government and that a corporate structure
10 will best enable a lottery to be managed in an entrepreneurial
11 and business-like manner. It is the intent of the Legislature
12 that the Alabama Lottery Corporation shall be accountable to
13 the Governor, the Legislature, and the people of the State
14 through a system of audits, reports, and thorough financial
15 disclosures as required by this act.

16 Section 3. For the purposes of this amendment, the
17 following terms shall have the following meanings:

18 (1) COMMISSION. The Alabama Lottery Commission.

19 (2) CORPORATION. The Alabama Lottery Corporation.

20 (3) EXECUTIVE DIRECTOR. The Executive Director of
21 the Alabama Lottery Corporation who shall also serve as the
22 chief executive officer of the corporation.

23 (4) GAMING GROSS REVENUE. The total amount of money
24 or value in any form received by a licensed facility with
25 respect to the playing of any form of video lottery, less the
26 total money or value in any form paid as prizes or winnings to
27 the players of the video lottery and free play or promotional

1 credits, but before deduction of any expenses incurred to
2 operate the establishment, including, but not limited to,
3 depreciation or leasing costs of physical facilities and
4 equipment, wages, and other employment costs, utilities,
5 interest, and taxes. Gaming gross revenue may not be included
6 in a pari-mutuel pool for the purpose of determining any tax
7 levied on pari-mutuel wagering or for any other purpose.

8 (5) LICENSED FACILITIES. The existing entities
9 currently licensed to conduct pari-mutuel wagering at the four
10 existing racetracks located in Jefferson, Mobile, Macon, and
11 Greene counties, and one location in Lowndes county to be
12 selected by the Lottery Commission. There will be no more than
13 one licensed facility in a county, and the Lottery Commission
14 will award the license.

15 (6) RACETRACK. A corporation, limited liability
16 company, or other business entity authorized by a local racing
17 commission pursuant to law to operate and conduct pari-mutuel
18 wagering on live or simulcast races upon the ratification of
19 the amendment adding this part, in Mobile County, Macon
20 County, the city of Birmingham in Jefferson County, or Greene
21 County.

22 (7) RETAILER. Any person with whom the corporation
23 has contracted to sell lottery tickets to the public.

24 (8) VENDOR. Any person who has entered into a major
25 lottery specific procurement contract with the corporation or
26 licensed facility.

1 (9) VIDEO LOTTERY TERMINAL. An video and/or
2 electronic device located in a licensed facility in which
3 currency or credits are deposited and a selection is made by a
4 player in order to play any lottery game. A terminal shall be
5 considered a video lottery terminal notwithstanding the use of
6 an electronic credit system making the deposit of bills or
7 coins necessary.

8 (10) VIDEO LOTTERY TERMINAL VENDOR. Any person who
9 manufactures, distributes, supplies, vends or leases an video
10 lottery terminal or equipment necessary to conduct an video
11 lottery by a licensed facility.

12 Section 4. Alabama Lottery Commission; duties;
13 powers.

14 (a) The Alabama Lottery commission shall authorize
15 the corporation to issue a proposal to secure goods and
16 services.

17 (b) The commission shall elect a chairman from among
18 its appointed members.

19 (c) All members of the commission shall be
20 reimbursed for necessary travel and other reasonable expenses
21 incurred in the performance of their official duties.

22 (d) The commission shall appoint and shall provide
23 for the compensation of an executive director who shall direct
24 the day-to-day operations and management of the corporation.
25 The executive director shall serve at the pleasure of the
26 commission.

1 (e) The executive director may not be a member of
2 the commission.

3 (f) The commission shall provide the executive
4 director with private-sector perspectives on the operation of
5 a large marketing enterprise. The commission shall do all of
6 the following:

7 (1) Approve, disapprove, amend, or modify the budget
8 recommended by the executive director for the operation of the
9 corporation.

10 (2) Approve, disapprove, amend, or modify the terms
11 of major lottery procurements recommended by the executive
12 director.

13 (3) Serve as a board of appeal for any denial,
14 revocation, or cancellation by the executive director of a
15 contract with a lottery retailer.

16 (g) The commission may adopt, without recourse to
17 the administrative rule process unless it so desires, rules
18 for the conduct of specific lottery games, including but not
19 limited to, rules specifying any of the following:

20 (1) The types of games to be conducted, including,
21 but not limited to, a state lottery or a multi-state lottery,
22 instant tickets, scratch-off ticket games, Keno, iLottery, or
23 any other lottery offered in another state.

24 (2) The price of tickets.

25 (3) The number and amount of prizes.

26 (4) The method and location of selecting or
27 validating winning tickets.

1 (5) The frequency and the means of conducting
2 drawings which shall be open to the public.

3 (6) The manner of payment of prizes.

4 (7) The frequency of games and drawings.

5 (8) The manner and amount of compensation to lottery
6 retailers, which shall be uniform.

7 (9) Any other matters necessary or desirable for the
8 efficient and effective operation of the lottery and for the
9 convenience of the public.

10 (h) The corporation may enter into written
11 agreements with one or more states for the operation,
12 marketing, and promotion of a joint lottery or joint lottery
13 games.

14 (i) The corporation shall adopt by administrative
15 rule a system of continuous internal audits and maintain
16 weekly or more frequent records of lottery transactions,
17 including distribution of tickets to lottery retailers,
18 revenues received, claims for prizes, prizes paid, and all
19 other financial transactions of the corporation.

20 (j) No officer or employee of the corporation may
21 have a financial interest in any vendor doing business or
22 proposing to do business with the corporation or with a
23 licensed facility.

24 (k) No officer, director, or employee of the
25 corporation may organize, participate in, or contribute to a
26 political action committee.

1 (1) The executive director shall direct and
2 supervise all administrative and technical activities in
3 accordance with this act and with administrative rules adopted
4 by the commission.

5 Section 5. Disposition of Lottery Proceeds.

6 On or before the last business day of the succeeding
7 month, the corporation shall transfer the lottery proceeds
8 held in the Lottery Trust Fund as follows:

9 (1) 50 percent to the State General Fund; and

10 (2) 50 percent to the Education Trust Fund.

11 Section 6. State Gross Receipts Tax; Local Gross
12 Receipts Tax; Video Lottery Terminal Vendor Tax.

13 (a) The state gross receipts tax on gaming gross
14 revenue for each calendar month shall be paid by each licensed
15 facility to the Department of Revenue on or before the 20th
16 day of the next succeeding calendar month.

17 (b) Except as otherwise provided in subsection (c),
18 the local gross receipts tax on gaming gross revenue for each
19 calendar month shall be paid to the county in which the
20 facility is licensed on or before the 20th day of the next
21 succeeding calendar month. The county shall retain one-half of
22 the amount and shall apportion the remaining half among the
23 municipalities in the county on the basis of the ratio of the
24 population of the municipality to the population of all the
25 municipalities in the county and immediately pay the amounts
26 apportioned to the municipalities.

1 (c) The local gross receipts tax on gaming gross
2 revenue of a licensed facility operating in a Class 1 or Class
3 2 municipality for each calendar month shall be paid to the
4 Class 1 or Class 2 municipality on or before the 20th day of
5 the next succeeding calendar month. The municipality shall
6 retain one-half of the revenue, shall pay one-quarter of the
7 revenue to the county in which the municipality is principally
8 located, and shall apportion the remaining one-quarter of the
9 revenue to the municipalities in the county other than the
10 Class 1 or Class 2 municipality on the basis of the ratio of
11 the population of the municipality to the population of all
12 municipalities in the county other than the Class 1 or Class 2
13 municipality.

14 (d) An video lottery terminal vendor shall pay the
15 state video lottery terminal vendor tax for each calendar
16 month to the Department of Revenue on or before the 20th day
17 of the next succeeding calendar month.

18 (e) The state gross receipts tax on gaming gross
19 revenue, the local gross receipts tax on gaming gross revenue,
20 and the state video lottery terminal vendor tax shall be in
21 lieu of all other state taxes or license fees levied with
22 respect to the operation of video lotteries by a licensed
23 facility. Notwithstanding the foregoing, a licensed facility
24 is liable for all income taxes, franchise taxes, property
25 taxes, lodging taxes, and sales and use taxes on merchandise,
26 food, and beverage generally applicable at uniform rates to

1 all businesses operating in the county in which the facility
2 is licensed.

3 (f) The proceeds derived from the state gross
4 receipts tax on gaming gross revenue and the video lottery
5 terminal vendor tax shall be deposited as follows:

6 (1) 50 percent to the State General Fund; and

7 (2) 50 percent to the Education Trust Fund.

8 Section 7. Statewide Network of Retailers.

9 (a) The Legislature hereby recognizes that to
10 conduct a successful lottery, the corporation must develop and
11 maintain a statewide network of lottery retailers that will
12 serve the public convenience and promote the sale of tickets,
13 while insuring the integrity of the lottery.

14 (b) An applicant may not be engaged exclusively in
15 the sale of lottery tickets. However, this paragraph does not
16 preclude the corporation from contracting for the sale of
17 lottery tickets with nonprofit, charitable organizations or
18 units of local government in accordance with this act.

19 (c) Each lottery retailer shall be issued a lottery
20 retailer certificate that shall be conspicuously displayed at
21 the place where the lottery retailer is authorized to sell
22 lottery tickets.

23 (d) Except as otherwise provided in subsection (e)
24 and except for lottery vending machines located in factories
25 or package liquor stores, bars, or taverns to which persons
26 under the age of 18 years are not permitted access or operated
27 by blind persons as a part of a program established by a

1 federal or state law, a lottery retailer shall locate all
2 vending machines from which lottery tickets are dispensed in
3 the sight of the employees of the lottery retailer.

4 (e) Lottery kiosks or vending machines that are
5 equipped with ID readers that determine the player is of legal
6 age may be located out of sight of an employee of the lottery
7 retailer.

8 Section 8. Proceeds from Ticket Sales; Rule
9 Governing Retailers' Deposit of Lottery Proceeds.

10 (a) All proceeds from the sale of lottery tickets,
11 net of allowable sales commissions and credit for lottery
12 prizes paid to winners by lottery retailers, shall constitute
13 a trust fund until paid to the corporation either directly, or
14 through the corporation's authorized collection
15 representative. Proceeds shall include unsold instant tickets
16 received by a lottery retailer and cash proceeds of sale of
17 any lottery products. Sales proceeds and unused instant
18 tickets shall be delivered to the corporation or its
19 authorized collection representative upon demand. The
20 corporation shall, by administrative regulation, require
21 retailers to place all lottery proceeds due the corporation in
22 accounts in institutions insured by the Federal Deposit
23 Insurance Corporation or Federal Savings and Loan Insurance
24 Corporation not later than the close of the next banking day
25 after the date of their collection by the retailer until the
26 date they are paid over to the corporation. The corporation
27 may require a retailer to establish a single separate

1 electronic funds transfer account, where available, for the
2 purpose of receiving moneys from ticket sales, making payments
3 to the corporation, and receiving payments from the
4 corporation. Lottery retailers shall be personally liable for
5 all proceeds. This section shall apply to all lottery tickets
6 generated by computer terminal, other electronic device, and
7 any other tickets delivered to lottery retailers.

8 (b) Whenever any retailer who receives proceeds from
9 the sale of lottery tickets in the capacity of a lottery
10 retailer becomes insolvent, or dies insolvent, the proceeds
11 due the corporation from such person or his estate shall have
12 preference over all debts or demands.

13 (c) Except as otherwise provided in subsections (d)
14 and (e), a lien is hereby given to the corporation on all
15 funds and other personal property, on all real property, and
16 on all rights to real or personal property owned or
17 subsequently acquired by each retailer in the amount of, and
18 to secure, the retailer's obligations to remit lottery
19 proceeds to the corporation. The lien shall be in the amount
20 of all sums due to the corporation at any time, together with
21 all interest, penalties, fees, commissions, charges, and other
22 expenses incurred by reason of nonpayment of the lottery
23 proceeds to the corporation or in the process of collecting
24 those proceeds, and shall have priority over any other
25 obligation or liability for which the funds or real or
26 personal property are liable. The lien shall be of equal rank
27 with the tax liens of the state, or any city, county, or other

1 taxing authority within the state. The lien shall arise upon
2 the receipt of lottery proceeds by the retailer, whether or
3 not the retailer is at that time obligated to remit all or any
4 portion of those proceeds to the corporation, and shall be
5 enforceable until the liability is paid or extinguished.

6 (d) The lien imposed by subsection (c) shall not be
7 valid as against any purchaser, judgment lien creditor, or
8 holder of a security interest or mechanic's lien until notice
9 of the corporation's lien has been filed by the corporation
10 with the county clerk of any county or counties in which the
11 retailer's business or residence is located, or in any county
12 in which the retailer has an interest in property. The
13 recording of the lien shall constitute notice of both the
14 original obligation to the corporation and all subsequent
15 obligations to the corporation of the same retailer. Upon
16 request, the corporation shall disclose the specific amount of
17 liability at any given date to any interested party legally
18 entitled to the information.

19 (e) The lien imposed by subsection (c) shall not be
20 valid with respect to a security interest which comes into
21 existence after the notice of lien has been filed by reason of
22 disbursements made within 45 days after the date the lien was
23 filed or the date the person making the disbursements had
24 actual notice of the lien filing, whichever is earlier, if the
25 security interest is both of the following:

26 (1) In property that at the time of filing is
27 subject to the lien imposed by subsection (c), and is covered

1 by the terms of a written agreement entered into before the
2 lien is filed.

3 (2) Protected under local law against a judgment
4 lien arising as of the time of the lien filing, out of an
5 unsecured obligation.

6 (f) The corporation shall be afforded the same
7 rights and remedies with respect to enforcement of any lien
8 and collection of lottery proceeds as is afforded state,
9 county, city, and other taxing authorities.

10 Section 9. Computation of Retailer's Rental
11 Payments.

12 If a lottery retailer's rental payments for the
13 business premises are contractually computed, in whole or in
14 part, on the basis of a percentage of retail sales, and such
15 computation of retail sales is not explicitly defined to
16 include sales of tickets in a state operated lottery, the
17 compensation received by the lottery retailer from the lottery
18 shall be considered the amount of the retail sale for purposes
19 of computing the rental payment.

20 Section 10. Verification Rules and Prizes Payments.

21 (a) This section does not apply to a retailer.

22 (b) The commission shall adopt rules to establish a
23 system of verifying the validity of tickets claimed to win
24 prizes and to effect payment of such prizes, except that:

25 (1) No prize, nor any portion of a prize, nor any
26 right of any person to a prize awarded is assignable. Any
27 prize, or portion thereof, remaining unpaid at the death of a

1 prize winner shall be paid to the estate of the deceased prize
2 winner or to the trustee under a revocable living trust
3 established by the deceased prize winner as settlor, provided
4 that a copy of such a trust has been filed with the
5 corporation along with a notarized letter of direction from
6 the settlor and no written notice of revocation has been
7 received by the corporation prior to the settlor's death.
8 Following the death of such a settlor and prior to any payment
9 to such a successor trustee, the corporation shall obtain from
10 the trustee and each trust beneficiary a written agreement to
11 indemnify and hold the corporation harmless with respect to
12 any claims that may be asserted against the corporation
13 arising from payment to or through the trust. Notwithstanding
14 any other provision of this section, any person, pursuant to
15 an appropriate judicial order, shall be paid the prize to
16 which a winner is entitled.

17 (2) No prize shall be paid arising from claimed
18 tickets that are stolen, counterfeit, altered, fraudulent,
19 unissued, produced or issued in error, unreadable, not
20 received or not recorded by the corporation within applicable
21 deadlines, lacking in captions that conform and agree with the
22 play symbols as appropriate to the lottery game involved, or
23 not in compliance with such additional specific rules and
24 public or confidential validation and security tests of the
25 corporation appropriate to the particular lottery game
26 involved.

1 (3) No particular prize in any lottery game shall be
2 paid more than once, and in the event of a binding
3 determination that more than one claimant is entitled to a
4 particular prize, the sole remedy of such claimants is the
5 award to each of them of an equal share in the prize.

6 (4) A holder of a winning cash ticket from an
7 Alabama Lottery game shall claim the prize within 365 days. A
8 holder of a winning ticket for a multistate lottery game
9 within 180 days, after the drawing in which the prize was won.
10 In any Alabama Lottery game in which the player may determine
11 instantly if he or she has won or lost, he or she shall claim
12 a prize within 365 days, or for a multistate lottery game
13 within 180 days, after the end of the lottery game as
14 announced by the corporation. If a valid claim is not made for
15 a prize within the applicable period, the prize shall
16 constitute an unclaimed prize for purposes of subsection (c).

17 (5) No prize shall be paid upon a ticket purchased
18 or sold in violation of this act. Any such prize shall
19 constitute an unclaimed prize for purposes of subsection (c).

20 (c) Any unclaimed prize money may be retained by the
21 corporation and added to the pool from which future prizes are
22 to be awarded or used for special prize promotions, or may be
23 appropriated by the Alabama Legislature directly from the
24 corporation for any public purpose. A portion of the unclaimed
25 prize money, not to exceed two hundred thousand dollars
26 (\$200,000) annually, shall be directed to the Alabama
27 Department of Public Health for the treatment of compulsive

1 gaming disorder and educational programs related to such
2 programs.

3 (d) Upon payment of a prize, the corporation is
4 discharged of all liability.

5 (e) No ticket may be purchased by and no prize may
6 be paid to any of the following persons:

7 (1) Any member of the board of directors, officers,
8 or employees of the corporation.

9 (2) Any vendor or related entity, or any member of
10 the commission, officers, employees of, partners in, or owners
11 of any vendor or related entity to a vendor.

12 (3) Any spouse, child, brother, sister, or parent
13 residing as a member of the same household in the principal
14 place of abode of any person listed in this subsection.

15 (f) The winner of any prize of two hundred fifty
16 thousand dollars (\$250,000) or higher may elect to remain
17 anonymous.

18 Section 11. Procurement Procedures.

19 (a) The corporation shall adopt rules establishing
20 its procurement procedures. The rules shall be designed to
21 provide for the purchase of supplies, equipment, services, and
22 construction items that provide the greatest long term benefit
23 to the state, the greatest integrity for the corporation, and
24 the best service and products, for the public.

25 Section 12. Content of Contracts; Powers of
26 Executive Director in Regard to Contracts.

1 (a) Any contract executed by the corporation
2 pursuant to this act shall specify the reasons for which any
3 contract may be suspended, revoked, or terminated by the
4 corporation, including, but not limited to any of the
5 following:

6 (1) Commission of a violation of this chapter or
7 administrative regulations adopted pursuant thereto.

8 (2) Failure to accurately account for lottery
9 tickets, revenues, or prizes as required by the corporation.

10 (3) Commission of fraud, deceit, or
11 misrepresentation.

12 (4) Insufficient sale of tickets.

13 (5) Conduct prejudicial to public confidence in the
14 lottery.

15 (6) Any material change in any matter considered by
16 the corporation in executing the contract with the retailer.

17 (b) If, in the discretion of the executive director,
18 the denial, revocation, suspension or rejection of renewal of
19 a contract under this section is in the best interests of the
20 lottery, the public welfare, or the State of Alabama, the
21 executive director may suspend, revoke, or terminate, after
22 notice and a hearing, any contract entered into pursuant to
23 this act. A contract, however, may be temporarily suspended by
24 the executive director without prior notice, pending any
25 prosecution, hearing, or investigation, whether by a third
26 party or by the executive director. A contract may be

1 suspended, revoked, or terminated by the executive director
2 for one or more of the reasons enumerated in subsection (b).

3 Section 13. This act and any enabling legislation
4 enacted by the Legislature with respect to this act supersedes
5 and takes precedence over any other provision of law that may
6 conflict or be inconsistent with this act or the legislation,
7 and this act and the legislation shall operate and be
8 construed without regard to the conflict or inconsistency.

9 Section 14. The provisions of this act are
10 severable. If any part of this act is declared invalid or
11 unconstitutional, that declaration shall not affect the part
12 which remains.

13 Section 15. This act shall become effective
14 immediately upon its passage and approval by the Governor or
15 upon its otherwise becoming an act, and shall be implemented
16 only upon ratification by the voters of Alabama of the
17 Constitutional Amendment as contained in Senate Bill ?? of the
18 2019 Regular Session of the Alabama Legislature. In the event
19 the Constitutional Amendment contained in Senate Bill ?? of
20 the 2019 Regular Session of the Legislature is not ratified by
21 the voters of Alabama, then this act shall become null and
22 void.