

1 SB130
2 196887-7
3 By Senators McClendon, Holley, Livingston, Singleton,
4 Smitherman, Beasley and Marsh (Constitutional Amendment)
5 RFD: Tourism
6 First Read: 19-MAR-19

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8 SYNOPSIS: Under existing law, lotteries and gift
9 enterprises are prohibited.

10 This bill would propose an amendment to
11 Section 65 of the Constitution of Alabama of 1901,
12 to establish an Alabama Lottery; to establish the
13 Lottery Trust Fund; to provide for the allocation
14 of lottery proceeds to the Lottery Trust Fund; to
15 establish the Alabama Lottery Corporation; to
16 establish the Alabama Lottery Commission to
17 regulate and supervise the operation of the Alabama
18 Lottery Corporation; to provide for the appointment
19 of members to the commission; to authorize the levy
20 of a state gaming gross revenue tax; to authorize
21 the levy of a local gaming gross revenue tax; to
22 authorize the levy of an video lottery terminal
23 vendor tax; and to authorize the Legislature to
24 pass general laws to implement the amendment.

25
26 A BILL
27 TO BE ENTITLED

1 AN ACT

2
3 Proposing an amendment to Section 65 of the
4 Constitution of Alabama of 1901, now appearing as Section 65
5 of the Official Recompilation of the Constitution of Alabama
6 of 1901, as amended, to establish an Alabama Lottery; to
7 establish the Lottery Trust Fund; to provide for the
8 allocation of the lottery proceeds; to establish the Alabama
9 Lottery Corporation to administer the lottery; to establish
10 the Alabama Lottery Commission to regulate and supervise the
11 Alabama Lottery Corporation; to provide for the appointment of
12 members to the commission; to authorize the levy of a state
13 gaming gross revenue tax; to authorize the levy of a local
14 gaming gross revenue tax; to authorize the levy of an video
15 lottery terminal vendor tax; and to authorize the Legislature
16 to implement the amendment through enabling legislation.

17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

18 Section 1. The following amendment to the
19 Constitution of Alabama of 1901, as amended, is proposed and
20 shall become valid as a part thereof when approved by a
21 majority of the qualified electors voting thereon and in
22 accordance with Sections 284, 285, and 287 of the Constitution
23 of Alabama of 1901, now appearing as Sections 284, 285 and 287
24 of the Official Recompilation of the Constitution of Alabama
25 of 1901, as amended:

26 PROPOSED AMENDMENT

1 Section 65 of Article IV of the Constitution of
2 Alabama of 1901, as amended, is amended to read as follows:

3 "Section 65.

4 "PART I.

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

15 "PART II.

16 Section 1. 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. A 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 2. Establishment of an Alabama Lottery.

13 "(a) There is hereby created and established a state
14 lottery which shall be administered by an independent, de jure
15 municipal corporation and political subdivision of the State
16 of Alabama which shall be a public body corporate and politic
17 created and designated as the Alabama Lottery Corporation. No
18 employee of the corporation, including the members of the
19 Alabama Lottery Commission, shall be a state employee or
20 entitled to any benefits of a state employee.

21 (b) The affairs of the corporation shall be
22 administered by a board of directors composed of five (5)
23 members, established and known as the Alabama Lottery
24 Commission. Members of the commission shall be residents of
25 the State of Alabama, United States citizens, and prominent
26 persons in their business or profession.

1 (c) Members of the commission may not have been any
2 of the following:

3 (i) Convicted of a felony.

4 (ii) An officer of or occupy an official position in
5 any political party.

6 (iii) An elected official.

7 (iv) Actively engaged in the business of or have a
8 pecuniary interest in a licensed facility.

9 (d) The members of the commission shall be appointed
10 as follows:

11 (1) Two members by the Governor;

12 (2) One member by the Lieutenant Governor;

13 (3) One member by the President Pro Tempore of the
14 Senate; and

15 (4) One member by the Speaker of the House of
16 Representatives.

17 (e) The existence of the corporation shall begin
18 when the five members are appointed, without confirmation by
19 the Senate. Subsequent appointments shall be subject to Senate
20 confirmation. If a vacancy occurs when the Legislature is not
21 in session, an interim appointment shall be made by the
22 appropriate appointing authority, and shall be subject to
23 Senate confirmation upon the next meeting of the Senate.

24 (f) Members shall serve a term of four years and may
25 serve two complete terms and any portion of an initial term
26 less than four years or any portion of an unexpired term to
27 which appointed. Any vacancy occurring on the commission shall

1 be filled for the unexpired term by the appointing authority
2 as described in this amendment or as otherwise provided by an
3 act of the Legislature. The initial term of office upon the
4 effective date of this amendment shall be as follows:

5 (1) Three years for the member appointed by the
6 Speaker of the House of Representatives.

7 (2) Four years for the member appointed by the
8 President Pro Tempore of the Senate.

9 (3) Three years for the member appointed by the
10 Lieutenant Governor.

11 (4) Four years for the members appointed by the
12 Governor.

13 (g) Each member shall serve for the duration of his
14 or her term and until his or her successor is duly appointed
15 and confirmed by the Senate.

16 (i) The corporation shall conduct and administer
17 lottery games that provide continuing entertainment to the
18 public and, maximize revenues and ensure that the lottery is
19 operated with integrity and dignity and free of political
20 influence.

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

24 (k) The corporation and its members and employees
25 shall be subject to the Ethics Law, Section 36-25-1, et. seq.,
26 Code of Alabama, 1975; the Open Records Act, Section 36-12-40,

1 Code of Alabama, 1975; and the Open Meetings Act, Section
2 36-25A-1, et. seq., Code of Alabama 1975.

3 Section 3. Lottery Trust Fund

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

13 (b) The corporation shall be self-sustaining and
14 self-funded and moneys in the state General Fund or the
15 Education Trust Fund shall not be used or obligated to pay the
16 expenses of the corporation or prizes of the lottery and no
17 claim for the payment of an expense of the lottery or prizes
18 of the lottery shall be made against any moneys other than
19 moneys credited to the corporate operating account.

20 (c) Monthly, no later than the last business day of
21 the succeeding month, the corporation shall transfer to the
22 Lottery Trust Fund, the amount of net revenues which the
23 corporation determines surplus to its needs.

24 (d) Moneys credited to the Lottery Trust Fund shall
25 be invested in accordance with state investment practices and
26 all earnings from the investment shall accrue to this account.

27 Section 4. Prizes Taxable.

1 (a) Lottery prizes are subject to Alabama state
2 income tax. Any attachment, garnishment, or execution
3 authorized and issued pursuant to law shall also be withheld
4 if served upon the process agent of the corporation.

5 (b) No ticket may knowingly be sold to any person
6 under the age of eighteen, but this section does not prohibit
7 the purchase of a ticket by a person eighteen years of age or
8 older for the purpose of making a gift to any person of any
9 age. In that case, the corporation shall direct payments to an
10 adult member of the person's family or the legal guardian of
11 the person on behalf of the person.

12 (c) No person may sell a ticket at a price other
13 than that established by the corporation, unless authorized in
14 writing by the executive director.

15 (d) No person other than a duly certified lottery
16 retailer shall sell lottery tickets, except that nothing in
17 this amendment shall be construed to prevent a person who may
18 lawfully purchase tickets from making a gift of lottery
19 tickets to another.

20 (e) Lottery tickets may be given by merchants as a
21 means of promoting goods or services to customers or
22 prospective customers subject to approval by the corporation.

23 (f) No lottery retailer may sell a ticket away from
24 the locations listed in the contract of the retailer.

25 Section 5. State Gross Receipts Tax; Local Gross
26 Receipts Tax; Video Lottery Terminal Vendor Tax.

1 (a) A state gross receipts tax shall be levied on
2 the gaming gross revenue generated from video lotteries at
3 each licensed facility. This rate shall be set at twenty-two
4 percent.

5 (b) An additional state gross receipts tax shall be
6 levied on the gaming gross revenue generated from video
7 lotteries at each licensed facility to the extent that the
8 licensed facility owns and does not lease video lottery
9 terminals and equipment. This rate shall be set at one
10 percent.

11 (c) A local gross receipts tax shall be levied on
12 the gaming gross revenue generated from video lotteries at
13 each licensed facility. This rate shall be set at two percent.

14 (d) A state gross receipts tax shall be levied on
15 the sports wagering gross revenue generated from sports
16 wagers. The Legislature shall set this rate by general law.

17 (e) A state video lottery terminal vendor tax shall
18 be levied on video lottery terminal vendors conducting
19 business in the state. This rate shall be set at four percent
20 of the gross gaming revenue.

21 Section 6. Games Allowed; Games Not Allowed.

22 (a) The corporation may allow lottery games of all
23 types, including new lottery games. This may include but is
24 not limited to draw lotteries of various types, unique to
25 Alabama draw lottery, interstate lotteries such as Powerball
26 and Mega Millions, instant winners such as scratch-offs, Keno,
27 and iLottery or any other lottery offered in another state.

1 Video lottery terminals shall only be made available at
2 licensed facilities. The corporation shall make participation
3 convenient to Alabamians by ensuring that purchases are
4 available at retail outlets either by ticket purchase from an
5 employee or from a kiosk or vending machine that does not
6 require an employee to handle the transaction. The corporation
7 may allow iLottery, mobile platforms, and computer purchases.

8 (b) The corporation may not approve or operate any
9 casino or similar gambling establishment and may not approve
10 or operate any game played with playing cards, dice, dominos,
11 slot machines, or roulette wheels. Any game using live dealers
12 is strictly prohibited.

13 Section 7. Pari-mutuel Wagering to Continue.

14 (a) Licensed facilities, as determined by the
15 lottery commission, may legally continue to employ video bingo
16 terminals until such times as the lottery commission mandates
17 as termination date. This change must occur within twelve (12)
18 months of the effective date of this amendment.

19 (b) Nothing in this amendment affects, prohibits, or
20 limits any activity that was legal at the time this amendment
21 becomes effective including, without limitation, pari-mutuel
22 betting and charity bingo as provided for by specific laws.

23 (c) The operation of a lottery, lottery game, or
24 video lottery terminal authorized by this amendment shall not
25 be subject to or prohibited, limited, or impaired by otherwise
26 applicable provisions of Article 8, commencing with Section
27 8-1-150, of Chapter 1 of Title 8, or article 2, commencing

1 with Section 13A-12-20, of Chapter 12 of Title 13A of the Code
2 of Alabama 1975.

3 Section 8.

4 (a) To conduct the lottery authorized by this part
5 at a licensed facility, the licensed facility shall remit a
6 licensing fee of one hundred thousand dollars (\$100,000) for a
7 ten year license. The license may not be sold or transferred
8 without the express consent of the lottery commission,
9 whereupon a fee of one hundred thousand dollars (\$100,000)
10 will be due. Any approved purchaser or recipient of a license
11 not originally approved by the lottery commission may not
12 operate any video lottery terminals in the State of Alabama
13 unless that facility remits gross receipts taxes consistent
14 with this amendment. If the license holder is not operational
15 for a period of 12 months the license shall be void and the
16 commission shall seek another licensee in that county.

17 (b) The Legislature shall provide for the control,
18 management, and operation of the Alabama Lottery in one or
19 more general laws subsequent to and supplemental to this
20 amendment.

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

25 (d) This part and any enabling legislation enacted
26 by the Legislature with respect to this part supersedes and
27 takes precedence over any other provision of law that may

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

4 Section 2. The provisions of this amendment are
5 severable. If any part of this amendment is declared invalid
6 or unconstitutional, that declaration shall not affect the
7 part which remains.

8 Section 3. An election upon the above proposed
9 amendment shall be held, in accordance with the provisions of
10 Sections 284 and 285 of the Constitution of Alabama of 1901,
11 now appearing as Sections 284 and 285 of the Official
12 Recompilation of the Constitution of Alabama of 1901, as
13 amended, and the general election laws of this state on March
14 3, 2020.

15 Section 4. The appropriate election official shall
16 assign ballot number one (1) for the proposed constitutional
17 amendment on the election ballot and shall set forth the
18 following description on the proposed constitutional
19 amendment:

20 "Proposing an amendment to the Constitution of
21 Alabama of 1901, to establish an Alabama Lottery and an
22 Alabama Lottery Trust Fund, to create an Alabama Lottery
23 Corporation to administer the lottery; to establish the
24 Alabama Lottery Commission to regulate and supervise the
25 Alabama Lottery Corporation; and to allow the Legislature to
26 implement the Alabama Lottery through appropriate general
27 law."

1 This description shall be followed by the following
2 language:
3 "Yes () No ()."