

ARKANSAS REGISTER



Proposed Rule Cover Sheet

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Name of Department Arkansas Department of Finance and Administration
Agency or Division Name Arkansas Racing Commission
Other Subdivision or Department, If Applicable _____
Previous Agency Name, If Applicable _____
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Name of Rule Rule 2 - Application for Casino Gaming License and Renewal
Newspaper Name Arkansas Democrat Gazette
Date of Publishing February 7, 2024
Final Date for Public Comment March 8, 2024
Location and Time of Public Meeting No public meeting scheduled

PUBLIC NOTICE

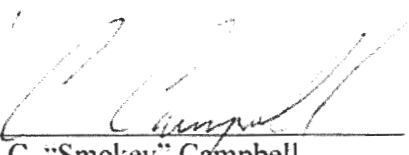
In compliance with the Administrative Procedure Act of the State of Arkansas (Act 434 of 1967), notice is hereby given that the Arkansas Racing Commission is to promulgate rules concerning Casino Gaming in the state of Arkansas.

The Department will consider rules in the following areas:

Rule 2 – Application for Casino Gaming License and Renewal

Public comments will be accepted from February 7, 2024, through March 8, 2024. The proposed rule is available on our website at: <https://www.dfa.arkansas.gov/racing-commission>.

The Arkansas Racing Commission will accept written comments on the proposed rules from February 7, 2024, to March 8, 2024. Please send all inquiries and written public comments regarding these rules to: John C. "Smokey" Campbell, Manager of the Arkansas Racing Commission, 1515 Building, 1515 W. 7th Street, Ste. 505, Little Rock, Arkansas 72201.



John C. "Smokey" Campbell
Arkansas Racing Commission
Arkansas Department of Finance and Administration

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY.

DEPARTMENT Arkansas Department of Finance and Administration

BOARD/COMMISSION Arkansas Racing Commission

PERSON COMPLETING THIS STATEMENT John C. "Smokey" Campbell

TELEPHONE NO. (501) 682-1467 **EMAIL** smokey.campbell@dfa.arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the Financial Impact Statement and email it with the questionnaire, summary, markup and clean copy of the rule, and other documents. Please attach additional pages, if necessary.

TITLE OF THIS RULE Rule 2 Application for Casino Gaming License and Renewal

1. Does this proposed, amended, or repealed rule have a financial impact?
Yes ☐ No ☒
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?
Yes ☒ No ☐
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes ☒ No ☐

If no, please explain:

(a) how the additional benefits of the more costly rule justify its additional cost;

(b) the reason for adoption of the more costly rule;

(c) whether the reason for adoption of the more costly rule is based on the interests of public health, safety, or welfare, and if so, how; and

(d) whether the reason for adoption of the more costly rule is within the scope of the agency's statutory authority, and if so, how.

4. If the purpose of this rule is to implement a *federal* rule or regulation, please state the following:

(a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total \$0.00 _____

Next Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total \$0.00 _____

(b) What is the additional cost of the state rule?

Current Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total \$0.00 _____

Next Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total \$0.00 _____

5. What is the total estimated cost by fiscal year to any private individual, private entity, or private business subject to the proposed, amended, or repealed rule? Please identify those subject to the rule, and explain how they are affected.

Current Fiscal Year

\$ _____

Next Fiscal Year

\$ _____

6. What is the total estimated cost by fiscal year to a state, county, or municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

\$ _____

Next Fiscal Year

\$ _____

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes ☐ No ☒

If yes, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and
 - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

RED-LINED VERSION

**STATE OF ARKANSAS
RULES OF THE
ARKANSAS RACING COMMISSION
LITTLE ROCK, ARKANSAS**

CASINO GAMING

RULE 2
APPLICATION FOR CASINO GAMING LICENSE AND RENEWAL

- 2.01 Authority of the Commission.**
- 2.02 Scope and Purpose.**
- 2.03 “Amendment” defined.**
- 2.04 “Casino” defined.**
- 2.05 “Casino applicant” defined.**
- 2.06 “Casino gaming” defined.**
- 2.07 “Casino license” defined.**
- 2.08 “Casino licensee” defined**
- 2.09 “Commission” defined.**
- 2.10 “EGS Law” defined.**
- 2.11 “Franchise holder” defined.**
- 2.12 “Disqualifying felony offense” defined.**
- 2.13 Casino Gaming Application, Licensing, and Renewal, License Required**

AUTHORITY OF THE COMMISSION

2.01 These Rules Governing the Application For, Issuance, and Renewal of Licenses to Conduct Casino Gaming at a Casino in Arkansas are duly adopted and promulgated by the Arkansas Racing Commission pursuant to Amendment No. 100 of the Constitution of the State of Arkansas of 1874, The Arkansas Casino Gaming Amendment of 2018.

SCOPE AND PURPOSE

2.02 These Rules govern the application procedures for the issuance and renewal of licenses to conduct casino gaming at a casino in Arkansas. These Rules also govern the selection methods to be used and the criteria to be considered by the Arkansas Racing Commission in awarding licenses to conduct casino gaming at a casino in Arkansas.

DEFINITIONS

2.03 “Amendment” means the Arkansas Casino Gaming Amendment of 2018.

2.04 “Casino” means a facility where casino gaming is conducted as authorized by the Amendment.

2.05 “Casino applicant” means any individual, corporation, partnership, association, trust, or other entity, other than a franchise holder, applying for a license to conduct casino gaming at a casino. Pursuant to the Amendment, a franchise holder is not a casino applicant and is not required to submit an application for a casino license under these Rules.

2.06 “Casino gaming” means dealing, operating, carrying on, conducting, maintaining, or exposing for play any game played with cards, dice, equipment, or any mechanical, electromechanical, or electronic device or machine for money, property, checks, credit, or any representative value. Casino gaming shall also be defined to include accepting wagers on sporting events. “Casino gaming” does not include lotteries conducted pursuant to Amendment 87 and/or The Arkansas Scholarship Lottery Act, Ark. Code Ann. § 23-115-101 ~~et seq~~ et seq.

2.07 “Casino license” means a license issued by the Arkansas Racing Commission to conduct casino gaming at a casino.

2.08 “Casino licensee” means any individual, corporation, partnership, association, trust, or other entity holding a license issued by the Arkansas Racing Commission to conduct casino gaming at a casino.

2.09 “Commission” means the Arkansas Racing Commission.

2.10 “EGS Law” means the Local Option Horse Racing and Greyhound Racing Electronic Games of Skill Act, Ark. Code Ann. § 23-113-101 *et seq.*, as amended.

2.11 “Franchise holder” means any individual, corporation, partnership, association, trust, or other entity holding a franchise to conduct horse racing under the Arkansas Horse Racing Law, Ark. Code Ann. § 23-110-101 ~~et seq.~~ *et seq.*, or greyhound racing under the Arkansas Greyhound Racing Law, Ark. Code Ann. § 23-111-101 ~~et seq.~~ *et seq.*, as of December 31, 2017.

2.12 “Disqualifying felony offense” means:

1. A felony offense as determined by the applicable state or federal law where the felony offense occurred, and a felony offense which the Commission has by Rule or Order determined to be a disqualifying felony offense for the issuance of a casino license, employee license, or for the owners, shareholders, board members or officers of any casino applicant or casino license holder;
2. However, the following offenses shall not be considered a disqualifying felony:
 - (a) An offense that has been sealed by a court or for which a pardon has been granted, or
 - (b) An offense whose sentence, including any term of probation, incarceration or supervised released, was completed ten (10) or more years earlier.
3. “Sealed” means expunge, remove, sequester, and treat as confidential the record or records of a felony offense.

CASINO GAMING APPLICATION, LICENSING, AND RENEWAL

2.13. License Required

1. No individual, corporation, partnership, association, trust, or other entity shall conduct casino gaming at a casino or at any other location within the State of Arkansas, unless the individual, corporation, partnership, association, trust, or other entity has a casino license issued by the Commission pursuant to these Rules.
2. Each license to conduct casino gaming at a casino shall specify:
 - (a) The name of the individual, corporation, partnership, association, trust, or other entity who holds the license;
 - (b) The address of the individual, corporation, partnership, association, trust, or other entity who holds the license;
 - (c) The effective dates of the license; and
 - (d) The address of the licensed casino.

3. Licenses Available

- (a) The Commission shall issue four licenses to conduct casino gaming at casinos, as follows:
 - i. The Commission shall issue a casino license, as provided in the Amendment, to a franchise holder located in Crittenden County, there being only one, to conduct casino gaming at a casino to be located at or adjacent to the franchise holder's greyhound racing track and gaming facility as of December 31, 2017 in Crittenden County.
 - ii. The Commission shall also issue a casino license, as provided in the Amendment, to a franchise holder located in Garland County, there being only one, to conduct casino gaming at a casino to be located at or adjacent to the franchise holder's horse racing track and gaming facility as of December 31, 2017 in Garland County.
 - (1) Casino licenses to be issued to franchise holders shall be issued upon:
 - a. Adoption by the Commission of rules necessary to carry out the purposes of the Amendment; and
 - b. Initial laws and appropriations required by the Amendment being in full force and effect.

Franchise holders at Oaklawn and Southland are not required to submit applications for casino licenses, under these Rules. Each franchise holder shall submit to the Commission a proposed date for the franchise holder to convert from operating under the EGS Law to operating under the Amendment and the Rules adopted by the Commission regulating casino gaming, and subject to the provisions of the Amendment, such date shall be subject to approval by the Commission. If Amendment 100 is amended or repealed in a manner that would restrict or preclude a franchise holder from operating casino gaming thereunder, the franchise holder may by written notice to the Commission elect, subject to approval by the Commission, to convert all or part of its facility and electronic games of skill back to operating under the EGS Law, and the Rules of the Commission thereunder.

- iii. The Commission shall award a casino license to a casino applicant for a casino to be located in Pope County within two miles of the city limits of the county seat.
- iv. The Commission shall also award a casino license to a casino applicant for a casino to be located in Jefferson County within two miles of the city limits of the county seat.
- v. No individual, corporation, partnership, association, trust, or other entity may hold more than one casino license in Arkansas.

4. Non-Franchise Holder Application Process

- (a) An application for a casino license as set forth in these Rules shall be submitted to the Commission on a form and in a manner prescribed by the Commission. The provisions of this section apply to applications for non-franchise holder casino licenses.
- (b) Applications for a casino license will be accepted by the Commission for a period of thirty (30) days, beginning on the date established by the Commission and the notice of open application is published as a legal notice by the Commission. No applications will be accepted after the thirty (30) day period, ~~except for good cause shown.~~
- (c) Applications that have been received and verified by the Commission will be considered based upon the selection processes set out in these Rules.

- (d) If no application is received by the Commission for the casino licenses in Pope County and/or Jefferson County, then the Commission shall re-open the application process in compliance with 2.13(4)(a)-(c) upon receipt of a written request by a casino applicant.
 - (e) If no casino license is awarded at the conclusion of the application process, the Commission shall open a new application period in compliance with 2.13(4)(a)-(c).
 - (f) If a casino license is not renewed by a casino licensee, is surrendered by the casino licensee, revoked by the Commission, or voided by a court, the Commission shall open a new application period in compliance with 2.13(4)(a)-(c).
5. Minimum Qualifications for Non-Franchisor Applicant
- (a) All casino applicants for a casino license in Pope County and Jefferson County are required to demonstrate experience conducting casino gaming.
 - (b) All casino applicants for a casino license in Pope County and Jefferson County are required to submit either a letter of support from the county judge or a resolution from the quorum court in the county where the proposed casino is to be located and, if the proposed casino is to be located within a city or town, are also required to submit a letter of support from the mayor in the city or town where the casino applicant is proposing the casino to be located. All letters of support or resolutions by the quorum court ~~Quorum Court~~, required by these Rules and the Amendment, shall be dated and signed by the county judge ~~County Judge~~, quorum court ~~Quorum Court~~ members, or mayor ~~Mayor~~ holding office at the time of the submission of an application for a casino gaming license.
 - (c) Prior to the submission of an application for a casino license, the owners, shareholders, board members, or officers of the casino applicant:
 - i. If an individual, shall not have been convicted of a disqualifying felony offense;
 - ii. Shall not have previously had a casino license in any state revoked;
 - iii. If an individual, shall not be under twenty-one years of age; and
 - iv. If an individual, shall not be a county judge or mayor that provides a letter of support, or a quorum court member that votes in favor of a letter of support as identified in the Amendment.
 - (d) Casino applicants shall provide a complete application with responses for each required item.
6. Documentation and Information for Non-Franchisor Casino Applicant
- (a) The application for non-franchisor casino licenses shall include without limitation the following:
 - i. The application fee;
 - ii. The legal name of the casino applicant;
 - iii. The physical address of the casino applicant;
 - iv. The physical address of the proposed casino;
 - v. The name, address, and date of birth of each officer and owner of the casino applicant;
 - vi. If the city, town, or county in which the casino would be located has enacted zoning restrictions, a sworn statement certifying that the casino will operate in compliance with the restrictions;
 - vii. To establish proof of no felony convictions, all owners, shareholders, board

members, or officers of the casino applicant shall provide consent to a background check, including fingerprinting, except those exempt from suitability requirements as contemplated in these Rules;

viii. A photocopy of a valid, unexpired driver's license or valid, unexpired U.S. passport for each of the casino applicant's owners, board members, and officers evidencing that they are over the age of twenty-one; and

ix. Consents for criminal background checks for each owner, shareholder, board member, and officer of the casino applicant, except those exempt from suitability requirements as contemplated in these Rules.

- (b) The information and documents shall be submitted in a method prescribed by the Commission in the notice of open application.
- (c) All information contained in applications for casino licenses shall remain confidential until after the deadline for submission of applications. After the closing date for submission of applications for casino licenses, the Commission will release, upon request, any information submitted by a casino applicant not otherwise protected as confidential or proprietary under Arkansas law.

7. Background Checks

- (a) The following are subject to background checks conducted by the Commission or its designee in considering an application for a casino license:
 - i. All owners, shareholders, officers, and board members of a casino applicant, except those exempt from suitability requirements as contemplated in these Rules
- (b) A person subject to background checks as provided in these Rules shall be disqualified from being an owner, shareholder, officer or board member of a casino and be prohibited from having any responsibility for operating a casino if the person has been convicted of a disqualifying felony offense.
- (c) Each person undergoing a background check shall provide written consent and all applicable processing fees to the Commission or its designee to conduct the background check. Each person shall use Arkansas State Police Form 122, which can be found at the following link: https://static.ark.org/asp/pdf/asp_122.pdf.

8. Application Fee

- (a) Each application for a casino license shall include an application fee of up to \$250,000.00 by cash or certified funds. Certified checks or cashier's checks shall be made payable to the state of Arkansas, delivered or mailed by certified mail, return receipt requested, to the address specified in the notice of open application.
- (b) In the event a casino applicant is not successful, one-half (50%) of the initial application fee shall be refunded to the casino applicant.
- (c) An application is not complete and will not be considered unless all required information, documentation, and the application fee are timely received by the Commission.

9. Selection Process and Criteria Based on Merit Selection

- (a) In addition to documentation establishing minimum qualifications, the casino applicant shall submit responses to the Commission's merit criteria in a form and manner prescribed by the Commission. Criterion shall be published with the initial notice of open application. In addition, representatives of the casino applicant shall appear before the Commission and the Commission's consultant for an interview regarding

the casino applicant's qualifications and proposal for operating a casino in Arkansas.

- (b) The Commission shall consider the following criteria based on merit to evaluate applications.
 - i. Experience conducting casino gaming;
 - ii. Timeline for opening a casino;
 - iii. Proof of financial stability and access to financial resources, including but not limited to legal sources of finances immediately available to begin operating a casino; and
 - iv. Detailed summary of proposed casino including hotel, amenities, projected number of employees, and any other information the casino applicant deems relevant.
- (c) ~~Detailed summary of proposed casino including hotel, amenities, projected number of employees, and any other information the casino applicant deems relevant.~~ Each merit criterion will be worth a number of points announced by the commission in the notice of open application period.
- (d) ~~A review panel comprised of members of the~~ The Commission shall evaluate the applications and award points for each merit criterion. The points shall be totaled for each application and the applications ranked from the highest total score to the lowest total score. The Commission shall notify in writing each of the casino applicants of their respective score and their respective ranking among all casino applicants.

10. Issuance of License

- (a) The Commission shall award and issue a casino license within 30 business days from the date the Commission announces that the application process has concluded.
- (b) Upon issuance of a casino license, the casino licensee may begin operations.
- (c) The casino licensee shall visibly post a copy of its license at the casino covered under the license.

11. Term

- (a) A casino license shall expire ten years after it is issued and is renewable at any time before expiration, unless the license is:
 - i. Suspended or revoked by the Commission; or
 - ii. Surrendered by the casino licensee.

12. Denial of a Casino Application ~~for or Renewal of a License~~

- (a) The Commission may deny an application for or renewal of a license for any of the following reasons:
 - i. Failure to provide the information required in these Rules;
 - ii. Failure to meet the requirements set forth in these Rules;
 - iii. Providing misleading, incorrect, false, or fraudulent information with the intent to deceive; and-or
 - iv. Receipt of an application evaluation score lower than the successful casino applicants for a license in the application period for which the casino applicant applied.
- (b) If the Commission denies an application for or renewal of a license, the Commission shall notify the casino applicant in writing of the Commission's decision, including the reason for the denial.

- (c) A ~~person or entity aggrieved~~ casino applicant denied a casino license by a decision made pursuant to this section is entitled to a hearing before the Commission and may appeal the Commission's decision pursuant to ~~this~~ Rule 2.13(18).

13. License Renewal Process and Fee

- (a) A casino license may be renewed if the casino licensee:
 - i. Submits to the commission a renewal application on a form and in a manner prescribed by the Commission at least six (6) months prior to the expiration date on the license;
 - ii. Is in good standing with the Arkansas Secretary of State's office;
 - iii. Continues to be in good standing with the Arkansas Department of Finance and Administration; and
 - iv. Continues to meet all the requirements set out in these Rules.
- (b) Before renewing a license, the Commission may require further information and documentation and may conduct additional background checks to determine that the licensee continues to meet the requirements of these Rules.
- (c) Within seven days of receiving written notice from the Commission that its renewal application has been approved, the casino licensee shall pay the ten-year renewal fee of \$10,000.00 in certified funds. Any certified or cashier's check shall be payable to the state of Arkansas.
- (d) A casino licensee whose license is not renewed shall cease all casino gaming immediately upon expiration of the license and return the license to the Commission.
- (e) Upon the determination that a casino licensee has not met the requirements for renewal, the Commission shall provide written notice by certified mail or personal delivery to the casino licensee. The notice shall provide an explanation for the denial of the renewal application. The casino licensee whose license is not renewed pursuant to this section is entitled to a hearing before the Commission and may appeal the Commission's decision pursuant to ~~these Rules~~ Rule 2.13(18).

14. Surrender of License

- (a) A casino licensee may voluntarily surrender its license to the Commission at any time.
- (b) If a casino licensee surrenders its license, the casino licensee shall:
 - i. Return the license to the Commission;
 - ii. Submit a report to the Commission including the reason for surrendering the license; contact information following the close of business; the person or persons responsible for the close of the business; and where business records will be retained.

15. Change in Information

- (a) The casino licensee shall notify the Commission of any changes in contact information.
- (b) The casino licensee shall notify the Commission in writing no less than fourteen days in advance of any change that may affect the licensee's qualifications for licensure, and submit to the ~~Commission~~ commission supporting documentation to prove the casino licensee continues to be qualified. In the event of a change for which a casino licensee does not have prior notice, the licensee shall notify the Commission immediately upon learning of the change.
- (c) Pursuant to section (b), the licensee shall notify the Commission of the following:

- i. The arrest or conviction for any felony of any individual listed in an application or subsequently identified as a casino applicant, licensee, or individual with a financial interest;
 - ii. The temporary closure of the casino for any reason for longer than fifteen days;
 - iii. The permanent closure of the business; and
 - iv. Any other change that may affect the licensee's qualification for licensure.
- (d) If the Commission determines that the change has the potential to disqualify a licensee, the Commission shall conduct a hearing governed by the terms of the Arkansas Administrative Procedure Act, § 25-15-201, et seq. for adjudication.

16. Transfer of License

- (a) Casino licenses shall only be effective for the individual, corporation, partnership, association, trust, or other entity identified in the original application.
- (b) A casino licensee may ~~not~~ sell, transfer, or otherwise dispose of its license to another person or entity who demonstrates casino gaming experience upon ~~without~~ approval from the Commission.
- (c) A casino licensee shall not make any modification to the board members, or officers as designated in the initial application without prior approval from the Commission.
- (d) A casino licensee's failure to obtain approval from the Commission before engaging in ownership changes described in (b) and (c) above may result in Commission's revocation of that license.
- (e) In order to obtain approval to transfer ownership of a casino license, the casino licensee shall submit to the Commission an application for license transferal on a form and in a manner prescribed by the Commission.
- (f) If the Commission denies an application for transfer of license, the Commission shall provide written notice by certified mail or personal delivery to the licensee. The notice shall provide an explanation for the denial of the application. The casino licensee whose application for transfer is denied may request a hearing before the Commission and may appeal the Commission's decision pursuant to ~~these Rules~~ Rule 2.13(18).

17. Transfer of Location

- (a) A casino license shall only be valid at the location for which it was originally issued by the Commission.
- (b) A casino licensee shall not relocate a casino without prior approval by the Commission.
- (c) In order to obtain approval to transfer a casino license to another location, a casino licensee shall submit to the Commission an application for license transferal on a form and in a manner prescribed by the Commission.
- (d) If the Commission denies an application for transfer of location, the Commission shall provide written notice by certified mail or personal delivery to the licensee. The notice shall provide an explanation for the denial of the application. The casino licensee whose application for transfer of location is denied may request ~~is entitled to~~ a hearing before the Commission and may appeal the Commission's decision pursuant to ~~these Rules~~ Rule 2.13(18).

18. Appellate Procedure following Denial of Application for License, Renewal, Transfer of License, or Location.

- (a) Denial of Application for License

- i. If the Commission denies an application for a casino license, the casino applicant is entitled to a hearing before the Commission by filing a written request no later than fifteen (15) days from receipt of the notice of denial from the Commission. The Commission's decision may be appealed to the Pulaski County Circuit Court. Appeals shall be governed by the terms of the Arkansas Administrative Procedure Act, § 25-15-201, ~~et seq.~~ et seq.
- (b) Denial of Application for Renewal of License, Transfer of License or Transfer of Location
 - i. If the Commission denies an application for the renewal of a casino license, the transfer of a casino license, or the transfer of the location for a casino license, the casino licensee is entitled to a hearing before the Commission by filing a written request no later than fifteen (15) days from receipt of the notice of denial from the Commission.
 - ii. The Commission shall conduct a hearing no later than sixty (60) days from the receipt of the request for hearing. The Commission shall provide notice of the hearing to all interested parties, conduct the hearing, and issue a decision in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 ~~et seq.~~ et seq.
 - iii. The Commission's decision may be appealed to the circuit court of the county in which the casino is situated or the Pulaski County Circuit Court. Appeals shall be governed by the terms of the Arkansas Administrative Procedure Act, § 25-15-201, ~~et seq.~~ et seq.

End Rule 2

SUMMARY AND BASIS FOR RULE AMENDMENT

Pursuant to Amendment 100 of the Constitution of the State of Arkansas of 1874, the Arkansas Casino Gaming Amendment of 2018, the Arkansas Racing Commission shall promulgate rules governing the manner the Commission considered applications for issuance of casino licenses. The rules promulgated in 2018 did not contemplate steps to accepting and opening a new application process if a license was not renewed, surrendered, revoked by the Commission, or voided by the Court. These rules are necessary to open up a new application period, correct formatting and grammatical errors, and provide consistency with Amendment 100.

CLEAN VERSION

**STATE OF ARKANSAS
RULES OF THE
ARKANSAS RACING COMMISSION
LITTLE ROCK, ARKANSAS**

CASINO GAMING

RULE 2
APPLICATION FOR CASINO GAMING LICENSE AND RENEWAL

- 2.01 Authority of the Commission.**
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2.08 “Casino licensee” means any individual, corporation, partnership, association, trust, or other entity holding a license issued by the Arkansas Racing Commission to conduct casino gaming at a casino.

2.09 “Commission” means the Arkansas Racing Commission.

2.10 “EGS Law” means the Local Option Horse Racing and Greyhound Racing Electronic Games of Skill Act, Ark. Code Ann. § 23-113-101 *et seq.*, as amended.

2.11 “Franchise holder” means any individual, corporation, partnership, association, trust, or other entity holding a franchise to conduct horse racing under the Arkansas Horse Racing Law, Ark. Code Ann. § 23-110-101 *et seq.*, or greyhound racing under the Arkansas Greyhound Racing Law, Ark. Code Ann. § 23-111-101 *et seq.*, as of December 31, 2017.

2.12 “Disqualifying felony offense” means:

1. A felony offense as determined by the applicable state or federal law where the felony offense occurred, and a felony offense which the Commission has by Rule or Order determined to be a disqualifying felony offense for the issuance of a casino license, employee license, or for the owners, shareholders, board members or officers of any casino applicant or casino license holder;
2. However, the following offenses shall not be considered a disqualifying felony:
 - (a) An offense that has been sealed by a court or for which a pardon has been granted, or
 - (b) An offense whose sentence, including any term of probation, incarceration or supervised released, was completed ten (10) or more years earlier.
3. “Sealed” means expunge, remove, sequester, and treat as confidential the record or records of a felony offense.

CASINO GAMING APPLICATION, LICENSING, AND RENEWAL

2.13. License Required

1. No individual, corporation, partnership, association, trust, or other entity shall conduct casino gaming at a casino or at any other location within the State of Arkansas, unless the individual, corporation, partnership, association, trust, or other entity has a casino license issued by the Commission pursuant to these Rules.
2. Each license to conduct casino gaming at a casino shall specify:
 - (a) The name of the individual, corporation, partnership, association, trust, or other entity who holds the license;
 - (b) The address of the individual, corporation, partnership, association, trust, or other entity who holds the license;
 - (c) The effective dates of the license; and
 - (d) The address of the licensed casino.

3. Licenses Available

- (a) The Commission shall issue four licenses to conduct casino gaming at casinos, as follows:
 - i. The Commission shall issue a casino license, as provided in the Amendment, to a franchise holder located in Crittenden County, there being only one, to conduct casino gaming at a casino to be located at or adjacent to the franchise holder's greyhound racing track and gaming facility as of December 31, 2017 in Crittenden County.
 - ii. The Commission shall also issue a casino license, as provided in the Amendment, to a franchise holder located in Garland County, there being only one, to conduct casino gaming at a casino to be located at or adjacent to the franchise holder's horse racing track and gaming facility as of December 31, 2017 in Garland County.
 - (1) Casino licenses to be issued to franchise holders shall be issued upon:
 - a. Adoption by the Commission of rules necessary to carry out the purposes of the Amendment; and
 - b. Initial laws and appropriations required by the Amendment being in full force and effect.

Franchise holders at Oaklawn and Southland are not required to submit applications for casino licenses, under these Rules. Each franchise holder shall submit to the Commission a proposed date for the franchise holder to convert from operating under the EGS Law to operating under the Amendment and the Rules adopted by the Commission regulating casino gaming, and subject to the provisions of the Amendment, such date shall be subject to approval by the Commission. If Amendment 100 is amended or repealed in a manner that would restrict or preclude a franchise holder from operating casino gaming thereunder, the franchise holder may by written notice to the Commission elect, subject to approval by the Commission, to convert all or part of its facility and electronic games of skill back to operating under the EGS Law, and the Rules of the Commission thereunder.

- iii. The Commission shall award a casino license to a casino applicant for a casino to be located in Pope County within two miles of the city limits of the county seat.
- iv. The Commission shall also award a casino license to a casino applicant for a casino to be located in Jefferson County within two miles of the city limits of the county seat.
- v. No individual, corporation, partnership, association, trust, or other entity may hold more than one casino license in Arkansas.

4. Non-Franchise Holder Application Process

- (a) An application for a casino license as set forth in these Rules shall be submitted to the Commission on a form and in a manner prescribed by the Commission. The provisions of this section apply to applications for non-franchise holder casino licenses.
- (b) Applications for a casino license will be accepted by the Commission for a period of thirty (30) days, beginning on the date established by the Commission and the notice of open application is published as a legal notice by the Commission. No applications will be accepted after the thirty (30) day period.
- (c) Applications that have been received and verified by the Commission will be considered based upon the selection processes set out in these Rules.

- (d) If no application is received by the Commission for the casino licenses in Pope County and/or Jefferson County, then the Commission shall re-open the application process in compliance with 2.13(4)(a)-(c) upon receipt of a written request by a casino applicant.
- (e) If no casino license is awarded at the conclusion of the application process, the Commission shall open a new application period in compliance with 2.13(4)(a)-(c).
- (f) If a casino license is not renewed by a casino licensee, is surrendered by the casino licensee, revoked by the Commission, or voided by a court, the Commission shall open a new application period in compliance with 2.13(4)(a)-(c).

5. Minimum Qualifications for Non-Franchisor Applicant

- (a) All casino applicants for a casino license in Pope County and Jefferson County are required to demonstrate experience conducting casino gaming.
- (b) All casino applicants for a casino license in Pope County and Jefferson County are required to submit either a letter of support from the county judge or a resolution from the quorum court in the county where the proposed casino is to be located and, if the proposed casino is to be located within a city or town, are also required to submit a letter of support from the mayor in the city or town where the casino applicant is proposing the casino to be located. All letters of support or resolutions by the quorum court, required by these Rules and the Amendment, shall be dated and signed by the county judge, quorum court members, or mayor holding office at the time of the submission of an application for a casino gaming license.
- (c) Prior to the submission of an application for a casino license, the owners, shareholders, board members, or officers of the casino applicant:
 - i. If an individual, shall not have been convicted of a disqualifying felony offense;
 - ii. Shall not have previously had a casino license in any state revoked;
 - iii. If an individual, shall not be under twenty-one years of age; and
 - iv. If an individual, shall not be a county judge or mayor that provides a letter of support, or a quorum court member that votes in favor of a letter of support as identified in the Amendment.
- (d) Casino applicants shall provide a complete application with responses for each required item.

6. Documentation and Information for Non-Franchisor Casino Applicant

- (a) The application for non-franchisor casino licenses shall include without limitation the following:
 - i. The application fee;
 - ii. The legal name of the casino applicant;
 - iii. The physical address of the casino applicant;
 - iv. The physical address of the proposed casino;
 - v. The name, address, and date of birth of each officer and owner of the casino applicant;
 - vi. If the city, town, or county in which the casino would be located has enacted zoning restrictions, a sworn statement certifying that the casino will operate in compliance with the restrictions;
 - vii. To establish proof of no felony convictions, all owners, shareholders, board

members, or officers of the casino applicant shall provide consent to a background check, including fingerprinting, except those exempt from suitability requirements as contemplated in these Rules;

viii. A photocopy of a valid, unexpired driver's license or valid, unexpired U.S. passport for each of the casino applicant's owners, board members, and officers evidencing that they are over the age of twenty-one; and

ix. Consents for criminal background checks for each owner, shareholder, board member, and officer of the casino applicant, except those exempt from suitability requirements as contemplated in these Rules.

(b) The information and documents shall be submitted in a method prescribed by the Commission in the notice of open application.

(c) All information contained in applications for casino licenses shall remain confidential until after the deadline for submission of applications. After the closing date for submission of applications for casino licenses, the Commission will release, upon request, any information submitted by a casino applicant not otherwise protected as confidential or proprietary under Arkansas law.

7. Background Checks

(a) The following are subject to background checks conducted by the Commission or its designee in considering an application for a casino license:

i. All owners, shareholders, officers, and board members of a casino applicant, except those exempt from suitability requirements as contemplated in these Rules

(b) A person subject to background checks as provided in these Rules shall be disqualified from being an owner, shareholder, officer or board member of a casino and be prohibited from having any responsibility for operating a casino if the person has been convicted of a disqualifying felony offense.

(c) Each person undergoing a background check shall provide written consent and all applicable processing fees to the Commission or its designee to conduct the background check. Each person shall use Arkansas State Police Form 122, which can be found at the following link: https://static.ark.org/asp/pdf/asp_122.pdf.

8. Application Fee

(a) Each application for a casino license shall include an application fee of up to \$250,000.00 by cash or certified funds. Certified checks or cashier's checks shall be made payable to the state of Arkansas, delivered or mailed by certified mail, return receipt requested, to the address specified in the notice of open application.

(b) In the event a casino applicant is not successful, one-half (50%) of the initial application fee shall be refunded to the casino applicant.

(c) An application is not complete and will not be considered unless all required information, documentation, and the application fee are timely received by the Commission.

9. Selection Process and Criteria Based on Merit Selection

(a) In addition to documentation establishing minimum qualifications, the casino applicant shall submit responses to the Commission's merit criteria in a form and manner prescribed by the Commission. Criterion shall be published with the notice of open application. In addition, representatives of the casino applicant shall appear before

the Commission and the Commission's consultant for an interview regarding the casino applicant's qualifications and proposal for operating a casino in Arkansas.

- (b) The Commission shall consider the following criteria based on merit to evaluate applications.
 - i. Experience conducting casino gaming;
 - ii. Timeline for opening a casino;
 - iii. Proof of financial stability and access to financial resources, including but not limited to legal sources of finances immediately available to begin operating a casino; and
 - iv. Detailed summary of proposed casino including hotel, amenities, projected number of employees, and any other information the casino applicant deems relevant.
- (c) Each merit criterion will be worth a number of points announced by the commission in the notice of open application period.
- (d) The Commission shall evaluate the applications and award points for each merit criterion. The points shall be totaled for each application and the applications ranked from the highest total score to the lowest total score. The Commission shall notify in writing each of the casino applicants of their respective score and their respective ranking among all casino applicants.

10. Issuance of License

- (a) The Commission shall award and issue a casino license within 30 business days from the date the Commission announces that the application process has concluded.
- (b) Upon issuance of a casino license, the casino licensee may begin operations.
- (c) The casino licensee shall visibly post a copy of its license at the casino covered under the license.

11. Term

- (a) A casino license shall expire ten years after it is issued and is renewable at any time before expiration, unless the license is:
 - i. Suspended or revoked by the Commission; or
 - ii. Surrendered by the casino licensee.

12. Denial of a Casino Application

- (a) The Commission may deny an application for or renewal of a license for any of the following reasons:
 - i. Failure to provide the information required in these Rules;
 - ii. Failure to meet the requirements set forth in these Rules;
 - iii. Providing misleading, incorrect, false, or fraudulent information with the intent to deceive; or
 - iv. Receipt of an application evaluation score lower than the successful casino applicants for a license in the application period for which the casino applicant applied.
- (b) If the Commission denies an application for or renewal of a license, the Commission shall notify the casino applicant in writing of the Commission's decision, including the reason for the denial.
- (c) A casino applicant denied a casino license by a decision made pursuant to this section is

entitled to a hearing before the Commission and may appeal the Commission's decision pursuant to Rule 2.13(18).

13. License Renewal Process and Fee

- (a) A casino license may be renewed if the casino licensee:
 - i. Submits to the commission a renewal application on a form and in a manner prescribed by the Commission at least six (6) months prior to the expiration date on the license;
 - ii. Is in good standing with the Arkansas Secretary of State's office;
 - iii. Continues to be in good standing with the Arkansas Department of Finance and Administration; and
 - iv. Continues to meet all the requirements set out in these Rules.
- (b) Before renewing a license, the Commission may require further information and documentation and may conduct additional background checks to determine that the licensee continues to meet the requirements of these Rules.
- (c) Within seven days of receiving written notice from the Commission that its renewal application has been approved, the casino licensee shall pay the ten-year renewal fee of \$10,000.00 in certified funds. Any certified or cashier's check shall be payable to the state of Arkansas.
- (d) A casino licensee whose license is not renewed shall cease all casino gaming immediately upon expiration of the license and return the license to the Commission.
- (e) Upon the determination that a casino licensee has not met the requirements for renewal, the Commission shall provide written notice by certified mail or personal delivery to the casino licensee. The notice shall provide an explanation for the denial of the renewal application. The casino licensee whose license is not renewed pursuant to this section is entitled to a hearing before the Commission and may appeal the Commission's decision pursuant to Rule 2.13(18).

14. Surrender of License

- (a) A casino licensee may voluntarily surrender its license to the Commission at any time.
- (b) If a casino licensee surrenders its license, the casino licensee shall:
 - i. Return the license to the Commission;
 - ii. Submit a report to the Commission including the reason for surrendering the license; contact information following the close of business; the person or persons responsible for the close of the business; and where business records will be retained.

15. Change in Information

- (a) The casino licensee shall notify the Commission of any changes in contact information.
- (b) The casino licensee shall notify the Commission in writing no less than fourteen days in advance of any change that may affect the licensee's qualifications for licensure, and submit to the Commission supporting documentation to prove the casino licensee continues to be qualified. In the event of a change for which a casino licensee does not have prior notice, the licensee shall notify the Commission immediately upon learning of the change.
- (c) Pursuant to section (b), the licensee shall notify the Commission of the following:

- i. The arrest or conviction for any felony of any individual listed in an application or subsequently identified as a casino applicant, licensee, or individual with a financial interest;
 - ii. The temporary closure of the casino for any reason for longer than fifteen days;
 - iii. The permanent closure of the business; and
 - iv. Any other change that may affect the licensee's qualification for licensure.
- (d) If the Commission determines that the change has the potential to disqualify a licensee, the Commission shall conduct a hearing governed by the terms of the Arkansas Administrative Procedure Act, § 25-15-201, *et seq.*

16. Transfer of License

- (a) Casino licenses shall only be effective for the individual, corporation, partnership, association, trust, or other entity identified in the original application.
- (b) A casino licensee may sell, transfer, or otherwise dispose of its license to another person or entity who demonstrates casino gaming experience upon approval from the Commission.
- (c) A casino licensee shall not make any modification to the board members, or officers as designated in the initial application without prior approval from the Commission.
- (d) A casino licensee's failure to obtain approval from the Commission before engaging in ownership changes described in (b) and (c) above may result in Commission's revocation of that license.
- (e) In order to obtain approval to transfer ownership of a casino license, the casino licensee shall submit to the Commission an application for license transferal on a form and in a manner prescribed by the Commission.
- (f) If the Commission denies an application for transfer of license, the Commission shall provide written notice by certified mail or personal delivery to the licensee. The notice shall provide an explanation for the denial of the application. The casino licensee whose application for transfer is denied may request a hearing before the Commission and may appeal the Commission's decision pursuant to Rule 2.13(18).

17. Transfer of Location

- (a) A casino license shall only be valid at the location for which it was originally issued by the Commission.
- (b) A casino licensee shall not relocate a casino without prior approval by the Commission.
- (c) In order to obtain approval to transfer a casino license to another location, a casino licensee shall submit to the Commission an application for license transferal on a form and in a manner prescribed by the Commission.
- (d) If the Commission denies an application for transfer of location, the Commission shall provide written notice by certified mail or personal delivery to the licensee. The notice shall provide an explanation for the denial of the application. The casino licensee whose application for transfer of location is denied may request a hearing before the Commission and may appeal the Commission's decision pursuant to Rule 2.13(18).

18. Appellate Procedure following Denial of Application for License, Renewal, Transfer of License, or Location.

- (a) Denial of Application for License

- i. If the Commission denies an application for a casino license, the casino applicant is entitled to a hearing before the Commission by filing a written request no later than fifteen (15) days from receipt of the notice of denial from the Commission. The Commission's decision may be appealed to the Pulaski County Circuit Court. Appeals shall be governed by the terms of the Arkansas Administrative Procedure Act, § 25-15-201, *et seq.*
- (b) Denial of Application for Renewal of License, Transfer of License or Transfer of Location
 - i. If the Commission denies an application for the renewal of a casino license, the transfer of a casino license, or the transfer of the location for a casino license, the casino licensee is entitled to a hearing before the Commission by filing a written request no later than fifteen (15) days from receipt of the notice of denial from the Commission.
 - ii. The Commission shall conduct a hearing no later than sixty (60) days from the receipt of the request for hearing. The Commission shall provide notice of the hearing to all interested parties, conduct the hearing, and issue a decision in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 *et seq.*
 - iii. The Commission's decision may be appealed to the circuit court of the county in which the casino is situated or the Pulaski County Circuit Court. Appeals shall be governed by the terms of the Arkansas Administrative Procedure Act, § 25-15-201, *et seq.*

End Rule 2