STATE OF OKLAHOMA

2nd Session of the 51st Legislature (2008)

SENATE BILL 1142 By: Corn

AS INTRODUCED

An Act relating to public finance and higher education; amending Section 4, Chapter 316, O.S.L. 2004, as amended by Section 1, Chapter 355, O.S.L. 2007 and Section 21, Chapter 316, O.S.L. 2004, as amended by Section 2, Chapter 355, O.S.L. 2007 (3A O.S. Supp. 2007, Sections 263 and 280), which relate to the State-Tribal Gaming Act; modifying apportionment of certain revenue and fees; updating statutory references; amending 70 O.S. 2001, Section 3951, as amended by Section 1, Chapter 115, O.S.L. 2004 (70 O.S. Supp. 2007, Section 3951), which relates to the Oklahoma State Regents' Endowment Trust Fund; modifying composition of the Trust Fund; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY Section 4, Chapter 316, O.S.L. 2004, as amended by Section 1, Chapter 355, O.S.L. 2007 (3A O.S. Supp. 2007, Section 263), is amended to read as follows:

Section 263. A. Each organization licensee described in paragraph 2 of subsection C of Section ~~3~~ 262 of this ~~act~~ title shall distribute from the first Ten Million Dollars ($10,000,000.00) of

adjusted gross revenues generated by any gaming conducted pursuant to ~~this act~~ the State-Tribal Gaming Act as follows:

1. Ten percent (10%) shall be remitted to the Oklahoma Tax Commission on the fifteenth day following the end of the month in which it was retained. Prior to July 1, 2008, twelve percent (12%) of the revenue derived pursuant to this paragraph shall be apportioned monthly to the Oklahoma Higher Learning Access Trust Fund and eighty-eight percent (88%) of such revenue shall be apportioned to the Education Reform Revolving Fund. On or after July 1, 2008, twelve percent (12%) of the revenue derived pursuant to this paragraph shall be apportioned monthly to the ~~General Revenue Fund~~ Oklahoma State Regents' Endowment Trust Fund and eighty-eight percent (88%) of such revenue shall be apportioned to the Education Reform Revolving Fund;

2. Twenty-five percent (25%) shall be retained by the organization licensee to be distributed according to subsection H of this section; and

3. Sixty-five percent (65%) shall be retained by the organization licensee.

B. The organization licensee described in paragraph 1 of subsection C of Section ~~3~~ 262 of this ~~act~~ title shall distribute from the first Ten Million Dollars ($10,000,000.00) of adjusted gross revenues generated by any gaming conducted pursuant to ~~this act~~ the State-Tribal Gaming Act as follows:

1. Ten percent (10%) shall be remitted to the Tax Commission on the fifteenth day following the end of the month in which it was retained. Prior to July 1, 2008, twelve percent (12%) of the revenue derived pursuant to this paragraph shall be apportioned monthly to the Oklahoma Higher Learning Access Trust Fund and eighty-eight percent (88%) of such revenue shall be apportioned to the Education Reform Revolving Fund. On or after July 1, 2008, twelve percent (12%) of the revenue derived pursuant to this paragraph shall be apportioned monthly to the ~~General Revenue Fund~~ Oklahoma State Regents' Endowment Trust Fund and eighty-eight percent (88%) of such revenue shall be apportioned to the Education Reform Revolving Fund;

2. Thirty percent (30%) shall be retained by the organization licensee to be distributed according to subsection H of this section; and

3. Sixty percent (60%) shall be retained by the organization licensee.

C. Each organization licensee shall distribute from retained adjusted gross revenues in excess of Ten Million Dollars ($10,000,000.00) per calendar year but not to exceed Thirty Million Dollars ($30,000,000.00) per calendar year generated from any gaming conducted pursuant to ~~this act~~ the State-Tribal Gaming Act as follows:

1. Ten percent (10%) shall be remitted to the Tax Commission on the fifteenth day following the end of the month in which it was retained. Prior to July 1, 2008, twelve percent (12%) of the revenue derived pursuant to this paragraph shall be apportioned monthly to the Oklahoma Higher Learning Access Trust Fund and eighty-eight percent (88%) of such revenue shall be apportioned to the Education Reform Revolving Fund. On or after July 1, 2008, twelve percent (12%) of the revenue derived pursuant to this paragraph shall be apportioned monthly to the ~~General Revenue Fund~~ Oklahoma State Regents' Endowment Trust Fund and eighty-eight percent (88%) of such revenue shall be apportioned to the Education Reform Revolving Fund;

2. Thirty percent (30%) shall be retained by the organization licensee to be distributed according to subsection H of this section; and

3. Sixty percent (60%) shall be retained by the organization licensee.

D. Each organization licensee shall distribute from retained adjusted gross revenues in excess of Thirty Million Dollars ($30,000,000.00) per calendar year but not to exceed Forty Million Dollars ($40,000,000.00) per calendar year generated by any gaming conducted pursuant to ~~this act~~ the State-Tribal Gaming Act as follows:

1. Fifteen percent (15%) shall be remitted to the Tax Commission on the fifteenth day following the end of the month in which it was retained. Prior to July 1, 2008, twelve percent (12%) of the revenue derived pursuant to this paragraph shall be apportioned monthly to the Oklahoma Higher Learning Access Trust Fund and eighty-eight percent (88%) of such revenue shall be apportioned to the Education Reform Revolving Fund. On or after July 1, 2008, twelve percent (12%) of the revenue derived pursuant to this paragraph shall be apportioned monthly to the ~~General Revenue Fund~~ Oklahoma State Regents' Endowment Trust Fund and eighty-eight percent (88%) of such revenue shall be apportioned to the Education Reform Revolving Fund;

2. Thirty percent (30%) shall be retained by the organization licensee to be distributed according to subsection H of this section; and

3. Fifty-five percent (55%) shall be retained by the organization licensee.

E. Each organization licensee shall distribute from retained adjusted gross revenues in excess of Forty Million Dollars ($40,000,000.00) per calendar year but not to exceed Fifty Million Dollars ($50,000,000.00) per calendar year generated from any gaming conducted pursuant to ~~this act~~ the State-Tribal Gaming Act as follows:

1. Twenty percent (20%) shall be remitted to the Tax Commission on the fifteenth day following the end of the month in which it was retained. Prior to July 1, 2008, twelve percent (12%) of the revenue derived pursuant to this paragraph shall be apportioned monthly to the Oklahoma Higher Learning Access Trust Fund and eighty-eight percent (88%) of such revenue shall be apportioned to the Education Reform Revolving Fund. On or after July 1, 2008, twelve percent (12%) of the revenue derived pursuant to this paragraph shall be apportioned monthly to the ~~General Revenue Fund~~ Oklahoma State Regents' Endowment Trust Fund and eighty-eight percent (88%) of such revenue shall be apportioned to the Education Reform Revolving Fund;

2. Twenty-five percent (25%) shall be retained by the organization licensee to be distributed according to subsection H of this section; and

3. Fifty-five percent (55%) shall be retained by the organization licensee.

F. Each organization licensee shall distribute from retained adjusted gross revenues in excess of Fifty Million Dollars ($50,000,000.00) per calendar year but not to exceed Seventy Million Dollars ($70,000,000.00) per calendar year generated from any gaming conducted pursuant to ~~this act~~ the State-Tribal Gaming Act as follows:

1. Twenty-five percent (25%) shall be remitted to the Tax Commission on the fifteenth day following the end of the month in which it was retained. Prior to July 1, 2008, twelve percent (12%) of the revenue derived pursuant to this paragraph shall be apportioned monthly to the Oklahoma Higher Learning Access Trust Fund and eighty-eight percent (88%) of such revenue shall be apportioned to the Education Reform Revolving Fund. On or after July 1, 2008, twelve percent (12%) of the revenue derived pursuant to this paragraph shall be apportioned monthly to the ~~General Revenue Fund~~ Oklahoma State Regents' Endowment Trust Fund and eighty-eight percent (88%) of such revenue shall be apportioned to the Education Reform Revolving Fund;

2. Twenty-two and one-half percent (22 1/2%) shall be retained by the organization licensee to be distributed according to subsection H of this section; and

3. Fifty-two and one-half percent (52 1/2%) shall be retained by the organization licensee.

G. Each organization licensee shall distribute from retained adjusted gross revenues in excess of Seventy Million Dollars ($70,000,000.00) per calendar year generated from any gaming conducted pursuant to ~~this act~~ the State-Tribal Gaming Act as follows:

1. Thirty percent (30%) shall be remitted to the Tax Commission on the fifteenth day following the end of the month in which it was

retained. Prior to July 1, 2008, twelve percent (12%) of the revenue derived pursuant to this paragraph shall be apportioned monthly to the Oklahoma Higher Learning Access Trust Fund and eighty-eight percent (88%) of such revenue shall be apportioned to the Education Reform Revolving Fund. On or after July 1, 2008, twelve percent (12%) of the revenue derived pursuant to this paragraph shall be apportioned monthly to the ~~General Revenue Fund~~ Oklahoma State Regents' Endowment Trust Fund and eighty-eight percent (88%) of such revenue shall be apportioned to the Education Reform Revolving Fund;

2. Twenty percent (20%) shall be retained by the organization licensee to be distributed according to subsection H of this section; and

3. Fifty percent (50%) shall be retained by the organization licensee.

H. Each organization licensee shall remit, on the fifteenth day following the end of the month in which they were retained, an amount equal to nine percent (9%) of the funds generated pursuant to paragraph 2 of subsections A through G of this section to the Oklahoma Horse Racing Commission for deposit in the Oklahoma Breeding Development Fund Special Account pursuant to Section 208.3 of ~~Title 3A of the Oklahoma Statutes~~ this title, to be distributed to the participating breeds as provided in paragraphs 1 and 2 of this subsection.

Each organization licensee shall remit to the official horsemen's organization representing participating horsemen during the live race meets, on the fifteenth day following the end of the month in which they were retained, an amount equal to one and five-tenths percent (1.5%) of the funds generated pursuant to paragraph 2 of subsections A through G of this section on a pro rata basis based on the distribution of purse funds available to the breeds of horses participating in the live race meetings with one percent (1%) to be used for administrative expenses and five-tenths of one percent (0.5%) to provide funding for a benevolence program at each racetrack to benefit participating horsemen and their employees. Such benevolence program shall provide medical benefits or services to persons associated with the horse racing industry who are in financial need.

Each organization licensee shall remit to the breed organizations designated by the official horsemen's representative, on the fifteenth day following the end of the month in which they were retained, an amount equal to one percent (1%) of the funds generated pursuant to paragraph 2 of subsections A through G of this section on a pro rata basis based on the distribution of purse funds available to the breeds of horses participating in the live race meetings for funding to support the breed organizations dedicated to the promotion of breeding and racing horses in Oklahoma.

Subject to the provisions of subsection I of this section, the remainder of the funds generated pursuant to paragraph 2 of subsections A through G of this section shall be distributed by the organization licensee as purses for participating horses as follows:

1. For organization licensees that conduct one or more race meetings dedicated to Thoroughbred racing and one or more race meetings dedicated to Quarter Horse, Paint and Appaloosa horse racing, fifty percent (50%) to purses for Thoroughbred races, forty-five percent (45%) to purses for Quarter Horse races, and five percent (5%) to purses for Paint and Appaloosa races; and

2. For all other organization licensees, forty-five percent (45%) to purses for Thoroughbred races, forty-five percent (45%) to purses for Quarter Horse races and ten percent (10%) to purses for Paint and Appaloosa horse races.

I. The percentage of purse money generated by an organization licensee that is designated for deposit to the Oklahoma Breeding Development Fund Special Account pursuant to subsection H of this section may be increased by an additional percentage that shall not exceed thirty-three percent (33%) of the total funds for participating horsemen upon the written application of the official horsemen’s representative for each of the breeds of horses participating in a race meeting at the track.

All Oklahoma Breeding Development Fund Special Account monies generated pursuant to this section shall not be subject to a

reduction pursuant to paragraph 7 of subsection B of Section 208.3 of ~~Title 3A of the Oklahoma Statutes~~ this title.

J. An organization licensee's annual application for race dates shall include any existing agreement between the organization licensee and the official horsemen's representative for each breed participating in the live racing meeting at that track which sets forth the thresholds whereby the minimum number of races will increase or decrease during that calendar year.

K. For purposes of ~~this act~~ the State-Tribal Gaming Act a "recipient licensee" means an organization licensee operating a racetrack location at which an organization licensee is licensed to conduct a race meeting pursuant to the provisions of Section 208.2 of ~~Title 3A of the Oklahoma Statutes~~ this title located in a county with a population exceeding five hundred thousand (500,000) persons, according to the most recent federal decennial census, and a "participating tribe" means a tribe which operates a gaming facility within a radius of twenty (20) miles from the enclosure of a recipient licensee pursuant to a compact set forth in Section ~~22~~ 281 of this ~~act~~ title. Such compact shall require that a participating tribe contribute a percentage of its "monthly average take" from electronic amusement games, electronic bonanza-style bingo games and electronic instant bingo games (hereinafter referred to collectively as "electronic covered games") as defined in that tribe's Gaming Compact as long as the prohibition against fair associations or

organizations licensed pursuant to Section 208.2 of ~~Title 3A of the Oklahoma Statutes~~ this title conducting authorized gaming under ~~this act~~ the State-Tribal Gaming Act as set forth in subsection A of Section ~~3~~ 262 of this ~~act~~ title remains in effect. Participating tribes shall make contributions in accordance with the following requirements:

1. Each participating tribe shall calculate its monthly average take for electronic covered games for each calendar month of operation of electronic covered games. For purposes of this paragraph, the "monthly average take" shall mean all adjusted gross revenue from electronic covered games at the tribal gaming facilities that are located within a radius of twenty (20) miles from the enclosure of a recipient licensee during the applicable calendar month, divided by the number of electronic covered games operated by the tribe at the gaming facility during the applicable calendar month;

2. Each participating tribe shall calculate its pro rata share of the payments required by this subsection, based on the number of electronic covered games in the tribal gaming facilities within the twenty-mile radius described in paragraph 1 of this subsection, during the applicable calendar month ("tribal share"). As an example only, if three (3) tribes participate in this subsection during a calendar month, and have the respective number of games in the amount of 500, 1,000, and 1,000, then the payments called for in

paragraph 3 of this subsection would be multiplied by 20%, 40% and 40% to determine each tribe's pro rata share; and

3. Each participating tribe shall make the following payments no later than the fifteenth day following the end of the applicable calendar month, with the first payment to be due no later than the fifteenth day following the end of the first month in which a participating tribe commences gaming operations pursuant to the compact set out in Section ~~22~~ 281 of this ~~act~~ title:

a. the tribe shall pay its pro rata share of the product of 450 multiplied by .05 multiplied by the greater of Seven Thousand Four Hundred Eight Dollars ($7,408.00) or the tribe's monthly average take for the applicable month to the recipient licensee, and

b. the tribe shall pay its pro rata share of the product of 450 multiplied by .25 multiplied by the tribe's monthly average take for the applicable month to the Oklahoma Horse Racing Commission to be distributed to organization licensees for purses for participating horses pursuant to subsection L of this section.

L. The "purse committees" shall be comprised of the official elected horsemen representatives for each breed as designated in Section ~~8~~ 267 of this ~~act~~ title. The total contribution of the participating tribes made pursuant to subparagraph b of paragraph 3 of subsection K of this section shall be distributed as directed by

the purse committees based on the following formula, to wit: fifty percent (50%) by the purse committee representing Thoroughbred horses; forty percent (40%) by the purse committee representing Quarter Horses; and ten percent (10%) by the purse committee representing Paint and Appaloosa horses.

The purse committees shall meet at least sixty (60) days prior to the beginning of a calendar year to provide directions for placement of the purse funds described in subparagraph b of paragraph 3 subsection K of this section with one or more organization licensees for the succeeding calendar year. In providing such directions the purse committees shall consider and attempt to achieve the following preferences in the order set forth below:

FIRST. Through the use of no more than fifty percent (50%) of the purse funds available for distribution under this section, maintaining the purse structures of any organization licensee operating a racetrack location located in a county with a population exceeding six hundred thousand (600,000) persons, according to the most recent federal decennial census, at a level that is competitive with the purse structures of similarly situated race tracks, including those in surrounding states, and that will encourage the participation by horsemen in that organization licensee's race meet or meets; and

SECOND. Maintaining the purse structures of the organization licensee closest in geographic proximity to the location where the purse funds described in subparagraph b of paragraph 3 of subsection K of this section were generated at a level that is competitive with the purse structures of similarly situated race tracks, including those in surrounding states, and that will encourage the participation by horsemen in that organization licensee's race meet or meets; and

THIRD. Maintaining the purse structures of the remaining organization licensees in the state at a level that will encourage the participation by horsemen in those organization licensees' race meet or meets.

SECTION 2. AMENDATORY Section 21, Chapter 316, O.S.L. 2004, as amended by Section 2, Chapter 355, O.S.L. 2007 (3A O.S. Supp. 2007, Section 280), is amended to read as follows:

Section 280. The State of Oklahoma through the concurrence of the Governor after considering the executive prerogatives of that office and the power to negotiate the terms of a compact between the state and a tribe, and by means of the execution of the State-Tribal Gaming Act, and with the concurrence of the State Legislature through the enactment of the State-Tribal Gaming Act, hereby makes the following offer of a model tribal gaming compact regarding gaming to all federally recognized Indian tribes as identified in the Federal Register within this state that own or are the

beneficial owners of Indian lands as defined by the Indian Gaming Regulatory Act, 25 U.S.C., Section 2703(4), and over which the tribe has jurisdiction as recognized by the Secretary of the Interior and is a part of the tribe's "Indian reservation" as defined in 25 C.F.R., Part 151.2 or has been acquired pursuant to 25 C.F.R., Part 151, which, if accepted, shall constitute a gaming compact between this state and the accepting tribe for purposes of the Indian Gaming Regulatory Act. Acceptance of the offer contained in this section shall be through the signature of the chief executive officer of the tribal government whose authority to enter into the compact shall be set forth in an accompanying law or ordinance or resolution by the governing body of the tribe, a copy of which shall be provided by the tribe to the Governor. No further action by the Governor or the state is required before the Compact can take effect. A tribe accepting this Model Tribal Gaming Compact is responsible for submitting a copy of the Compact executed by the tribe to the Secretary of the Interior for approval and publication in the Federal Register. The tribe shall provide a copy of the executed Compact to the Governor. No tribe shall be required to agree to terms different than the terms set forth in the Model Tribal Gaming Compact, which is set forth in Section 281 of this title. As a precondition to execution of the Model Tribal Gaming Compact by any tribe, the tribe must have paid or entered into a written agreement for payment of any fines assessed prior to the effective date of the

State-Tribal Gaming Act by the federal government with respect to the tribe's gaming activities pursuant to the Indian Gaming Regulatory Act.

Notwithstanding the provisions of Sections 941 through 988 of Title 21 of the Oklahoma Statutes, the conducting of and the participation in any game authorized by the model compact set forth in Section 281 of this title are lawful when played pursuant to a compact which has become effective.

Prior to July 1, 2008, twelve percent (12%) of all fees received by the state pursuant to subsection A of Part 11 of the Model Tribal Gaming Compact set forth in Section 281 of this title shall be deposited in the Oklahoma Higher Learning Access Trust Fund, and eighty-eight percent (88%) of such fees shall be deposited in the Education Reform Revolving Fund. On or after July 1, 2008, twelve percent (12%) of all fees received by the state pursuant to subsection A of Part 11 of the Model Tribal Gaming Compact set forth in Section 281 of this title shall be deposited in the ~~General Revenue Fund~~ <u>Oklahoma State Regents' Endowment Trust Fund</u> and eighty-eight percent (88%) of such fees shall be deposited in the Education Reform Revolving Fund. Provided, the first Twenty Thousand Eight Hundred Thirty-three Dollars and thirty-three cents ($20,833.33) of all fees received each month by the state pursuant to subsection A of Part 11 of the Model Tribal Gaming Compact set forth in Section 281 of this title shall be transferred to the

Department of Mental Health and Substance Abuse Services for the treatment of compulsive gambling disorder and educational programs related to such disorder.

SECTION 3. AMENDATORY 70 O.S. 2001, Section 3951, as amended by Section 1, Chapter 115, O.S.L. 2004 (70 O.S. Supp. 2007, Section 3951), is amended to read as follows:

Section 3951. A. There is hereby created a trust fund to be known as the "Oklahoma State Regents' Endowment Trust Fund." The Oklahoma State Regents for Higher Education shall be the trustees of said Trust Fund.

B. The State Regents shall utilize said Trust Fund to implement the provisions of Section 3952 of this title.

C. The Trust Fund principal shall consist of monies the Legislature appropriates or transfers to the Oklahoma State Regents for Higher Education for the Trust Fund, the proceeds of any obligations issued pursuant to Section ~~2~~ 4019 of this ~~act and~~ title, monies apportioned to the Trust Fund pursuant to Sections 263 and 280 of Title 3A of the Oklahoma Statutes and any monies or assets contributed to the Trust Fund from any other source, public or private. Trust Fund principal shall not be diminished for any reason except to retire obligations issued pursuant to Section ~~2~~ 4019 of this ~~act~~ title if the State Regents fail to make such payments as provided in subsection C of Section ~~2~~ 4019 of this ~~act~~ title.

D. Notwithstanding other provisions of law, income and investment return on Trust Fund principal shall accrue to the Trust Fund for use as provided by authorization of the trustees for the purposes provided in this act. No such income or investment return shall be used for administrative expenses; expenses incurred by the State Regents in the administration of the Trust Fund and of the endowment program established by ~~this act~~ Section 3951 et seq. of this title shall be paid from monies appropriated to the State Regents' coordinating board for their general operating budget.

SECTION 4. This act shall become effective July 1, 2008.

SECTION 5. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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