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Brown, Poore

HOUSE OF REPRESENTATIVES  
152nd GENERAL ASSEMBLY

HOUSE BILL NO. 365

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO THE LOTTERY.

1           WHEREAS, the General Assembly has recognized in prior legislative enactments the critical role of the lottery in  
2 the economy of the State, including the lottery's significant revenue contributions to the State; significant employment  
3 opportunities in the State; benefits to the horse breeding, horse racing, and agricultural industries in the State; contributions  
4 to the preservation of open space in the State; contributions to tourism in the State; and many other indirect benefits to  
5 various parts of the State's economy. See 29 Del. C. § 4827(a); and

6           WHEREAS, because of its importance to the State's economy, the General Assembly has continually acted to  
7 assure Delaware's lottery system remains competitive, including through the authorization of a video lottery in 1994 (69  
8 Del. Laws, c. 446); the addition of a sports lottery in 2009 (77 Del. Laws, c. 28) and table games in 2010 (77 Del. Laws, c.  
9 219); and passage of "The Delaware Gaming Competitiveness Act of 2012" (78 Del. Laws, c. 285) authorizing use of the  
10 Internet for lottery games; and

11           WHEREAS, thirty-eight states (including Delaware), Puerto Rico, and the District of Columbia have all legalized  
12 some form of sports wagering and twenty-nine states, Puerto Rico, and the District of Columbia have legalized online  
13 sports wagering, including the neighboring states of Maryland, Pennsylvania, and New Jersey; and

14           WHEREAS, Internet-connected mobile and digital platforms are now the predominate means by which legal  
15 sports wagers are placed in the United States, with more than 80% of legal sports wagering activity occurring through  
16 computers, smartphones, or other Internet-connected devices; and

17           WHEREAS, the General Assembly finds and determines that authorizing an Internet sports lottery under the  
18 provisions set forth herein will help assure Delaware's lottery offerings remain competitive with neighboring states; offer  
19 Delaware residents a legal, regulated market in which to engage in online sports lottery games; draw consumers from  
20 neighboring states and the illicit, offshore sports wagering market; provide consumer convenience, protections, and  
21 safeguards; and produce additional revenue for the State.

22           NOW, THEREFORE:

23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all  
24 members elected to each house thereof concurring therein):

25 Section 1. Amend § 4803, Title 29 of the Delaware Code by making deletions as shown by strike through and  
26 insertions as shown by underline and redesignating accordingly:

27 § 4803. Definitions.

28 ( ) “Adjusted gross sports lottery receipts” means an Internet sports lottery operator’s gross receipts from sports  
29 wagering, excluding free bets and promotional credits as authorized herein, less the total of all winnings paid to patrons,  
30 which includes the cash equivalent of any merchandise or thing of value awarded as a prize, and less excise tax payments  
31 remitted to the Federal Government.

32 (1) When determining the free bets and promotional credits deduction used for calculating “adjusted gross  
33 sports lottery receipts” each month, an Internet sports lottery operator may include a portion of the total free bets and  
34 promotional credits placed by players with the Internet sports lottery operator as follows:

35 a. Effective until July 1, 2025, no more than 2.5% of the total amount of all bets placed by players with  
36 the Internet sports lottery operator each month.

37 b. Effective July 1, 2025, no more than 2.0% of the total amount of all bets placed by players with the  
38 Internet sports lottery operator each month.

39 (2) The Director may by rule authorize Internet sports lottery operators to exclude a greater percentage of free  
40 bets and promotional credits during a specific month or fiscal year when, in the Director’s discretion, the interests of  
41 the lottery system will be served thereby.

42 ( ) “Amateur sporting event” means a sporting event which is neither a collegiate nor professional sporting event  
43 and where a majority of the participants are 18 years of age or older.

44 ( ) “Excluded event” means collegiate sporting events that involve a Delaware college or university other than  
45 future wagers or sporting events in which a Delaware college or university participates as part of a sanctioned tournament.

46 (k) “Internet lottery” shall mean all lottery games in which the player’s interaction with the game operated by the  
47 Office occurs over the Internet (which, for purposes of this chapter, shall include any public or private computer or terminal  
48 network, whether linked electronically, wirelessly, through optical networking technology or other means), including  
49 Internet ticket games, the Internet video lottery and Internet table games.

50 ( ) “Internet sports lottery account” means a financial record established by an Internet sports lottery operator for  
51 an accountholder into which the accountholder may deposit or withdraw funds for Internet sports lottery wagers or other  
52 authorized purchases, and to which the Internet sports lottery operator may credit winnings or other amounts due to or

53 authorized by the accountholder. An Internet sports lottery account may be established electronically through an Internet  
54 sports lottery operator’s website, mobile application, or digital platform.

55 ( ) “Internet sports lottery” means a lottery in which the player’s interaction with the sports lottery occurs over the  
56 Internet through a website, mobile application, or digital platform and includes single-game wagers, teasers, parlay wagers,  
57 over-under wagers, moneyline, pools, and exchange wagers, in-game wagers, in-play wagers, proposition wagers, straight  
58 wagers, future wagers, and any other form of sports lottery wagering expressly authorized by rule of the Director.

59 ( ) “Internet sports lottery operator” means a person whom the Director has licensed to offer and accept wagers on  
60 the Internet sports lottery through a unique brand.

61 (q) “Lottery agent” or “lottery ticket sales agent” means a person whom the Director has licensed to sell lottery  
62 tickets.

63 ( ) “Market access agreement” means a co-branding, joint marketing, or other affiliation agreement between a  
64 video lottery agent and an Internet sports lottery operator.

65 (x) “Sports lottery” shall mean means a lottery in which the winners are determined based on the outcome of any  
66 professional or collegiate sporting event, including racing, held within or without the State, but excluding collegiate  
67 sporting events that involve a Delaware college or university and amateur or professional sporting events that involve a  
68 Delaware team amateur, professional, collegiate, or electronic (“e-sports”) sporting event or part thereof, including racing  
69 and other events authorized by the Director, or on the individual performance statistics of any athlete participating in a  
70 sporting event, held within or outside the State, except for excluded events.

71 Section 2. Amend § 4805, Title 29 of the Delaware Code by making deletions as shown by strike through and  
72 insertions as shown by underline as follows:

73 § 4805. Director — Powers and duties.

74 (a) The Director shall have the power and the duty to operate and administer the state lottery and to promulgate  
75 such rules and regulations governing the establishment and operation of the lottery as the Director deems necessary and  
76 desirable in order that the lottery be initiated at the earliest feasible time and in order that the system shall produce the  
77 maximum amount of net revenues consonant with the dignity of the State and the general welfare of the people. The rules  
78 shall provide for all matters necessary or desirable for the efficient and economical operation and administration of the  
79 system and for the convenience of the purchasers of lottery tickets and the holders of winning tickets, and the players of all  
80 state lottery games including, the following:

81 (22) Requiring the reporting of information about video lottery agents, sports lottery agents, Internet sports  
82 lottery operators, their employees, vendors vendors, and finances as necessary or desirable to ensure the security of the

83 lottery system. None of the information disclosed pursuant to this subsection shall be subject to disclosure under the  
84 Freedom of Information Act, § 10001 et seq. of this title;

85 (b) The Director shall also have the power and it shall be the Director's duty to:

86 (19) Make internet lottery games available at such websites and in such a manner as determined by the Office  
87 in accordance with this chapter, and utilizing technology to ensure that players are legally eligible to engage in such  
88 gaming.

89 (20) Make an Internet sports lottery available through the licensing of Internet sports lottery operators under  
90 the provisions of § 4826A and otherwise satisfying all requirements for licensure provided in this chapter and the rules  
91 and regulations established by the Director.

92 Section 3. Amend Subchapter I, Chapter 48, Title 29 of the Delaware Code by making deletions as shown by  
93 strike through and insertions as shown by underline as follows:

94 § 4826A. Internet Sports Lottery.

95 (a) Commencement of Internet sports lottery. The Director is authorized and directed to commence an Internet  
96 sports lottery in accordance with this chapter, other Delaware laws, and federal law. Under authority granted in this section  
97 and § 4805 of this title, the Director shall establish an initial regulatory framework for the Internet sports lottery, commence  
98 an Internet sports lottery as soon as practicable, and provide for the security, effective administration, and other features and  
99 attributes of the Internet sports lottery, including all the following:

100 (1) A requirement that the software, mobile applications, and digital platforms utilized by Internet sports  
101 lottery operators verify that a player engaged in or attempting to engage in an Internet sports lottery game is physically  
102 located in the State at the time the person places a wager in such game.

103 (2) Requirements related to the creation, utilization, accessing, and funding of player accounts with Internet  
104 sports lottery operators, provided that such accounts shall be possessed only by a natural person and not in the name of  
105 any beneficiary, custodian, joint trust, corporation, partnership, or other organization or entity, and provided that such  
106 accounts shall not be assignable or otherwise transferable.

107 (3) Requirements related to logging in account holders; authenticating the identity and verifying the age of a  
108 player engaged or attempting to engage in an Internet sports lottery game; prohibiting individuals under the age of 21  
109 from wagering or in any way participating in the Internet sports lottery; obtaining consent of players to all terms,  
110 conditions, and rules applicable to the Internet sports lottery adopted by the Director, or Internet sports lottery operator;  
111 and logging out account holders, including procedures for automatically logging out individuals from the Internet sport  
112 lottery after a specified period of inactivity.

113           (4) Requirements related to the deposit of funds into an Internet sports lottery account by cash, transfer, or  
114 other means; the withdrawal of funds from such accounts; the suspension of Internet sports lottery account activity for  
115 security reasons; the termination of Internet sports lottery accounts and disposition of proceeds therein; and the  
116 disposition of unclaimed amounts in dormant Internet sports lottery accounts under Chapter 11 of Title 12. Except as  
117 expressly prohibited by Delaware law, federal law, or rule or regulation of the Director, a player account established  
118 with an Internet sports lottery operator may be funded using cash; credit, debit, prepaid or gift card; bank draft, money  
119 order, personal check, traveler's check, or cashier's check; electronic bank or funds transfer; bonuses or player  
120 promotions; digital or mobile payment systems; and any other means authorized by the Director.

121           (5) Requirements by which the players of the Internet sports lottery may place limits on the amount of money  
122 being deposited or wagered on a specific game or during any specified period of time.

123           (6) Requirements related to exclusion from the Internet sports lottery of individuals who are ineligible to play  
124 by reason of age, inclusion on a list of self-excluded persons under § 4834 of this title, or inclusion by the Director on a  
125 list for exclusion under § 4835 of this title.

126           (7) Marketing and advertising rules that prohibit an Internet sports lottery operator from contracting with a  
127 Delaware college or university to promote participation in the Internet sports lottery or the payment of any fee,  
128 commission, or bonus associated with student participation in Internet sports lottery games, and that require Internet  
129 sports lottery operators to include as part of any website, mobile application, or digital platform accessible by a player  
130 of the Internet sports lottery an advertisement for and link to additional information for services for the treatment,  
131 education, and assistance of compulsive gamblers and their families. Internet sports lottery operators shall be required  
132 to conspicuously include the toll-free national problem gambling hotline number, 1-800-GAMBLER, in all  
133 advertisements.

134           (8) Requirements related to the adoption and approval by Internet sports lottery operators of house rules  
135 governing game play, including information specifying the amounts to be paid on winning wagers; the circumstances  
136 under which a wager will be voided; the treatment of errors, late wagers, and related contingencies; and the effect of  
137 schedule changes.

138           (9) Requirements related to the acceptance of wagers; method of accounting, and types of records which must  
139 be maintained by Internet sports lottery operators; minimum design and security requirements for websites, mobile  
140 applications, and digital platforms for the acceptance of wagers; and minimum design, testing, and security  
141 requirements for sports wagering equipment, systems, or services provided by service companies licensed under §  
142 4829 of this title.

143           (10) Requirements related to internal control standards; procedures for safeguarding deposits, accounts, and  
144 revenues; the recording of cash and evidence of indebtedness; reports of transactions, operations, and events on which  
145 wagering occurs; the placing or accepting of layoff wagers and pooling of liquidity; the required audits and the  
146 frequency thereof; and the reporting and transfer of revenues to the Office.

147           (b) Licensing of Internet sports lottery operators.

148           (1) The Internet sports lottery shall be conducted exclusively through Internet sports lottery operators licensed  
149 by the Director. The Director shall establish the procedures and criteria for licensing Internet sports lottery operators  
150 and, subject to the limitations in paragraph (b)(2) of this section, administer an application process to award licenses to  
151 qualified Internet sports lottery operators who have entered into a market access agreement with a licensed video  
152 lottery agent. At a minimum, the procedures and criteria established by the Director must require applicants to provide  
153 all the following:

154                   a. An estimate of the applicant's potential adjusted gross sports lottery receipts.

155                   b. The websites the applicant proposes to use for its Internet sports lottery operations in Delaware.

156                   c. The applicant's responsible gaming plan and a description of responsible gaming measures that the  
157 applicant currently employs.

158                   d. A list of all jurisdictions where the applicant and any parent companies are currently authorized to  
159 conduct Internet sports lottery operations, including duration of operations.

160                   e. The applicant's player acquisition model, advertising, promotional and affiliate programs, and  
161 marketing budget, including details on how the applicant will begin converting customers from wagering through  
162 illegal channels to the Internet sports lottery.

163                   f. The estimated time frame for implementing the Internet sports lottery.

164                   g. The applicant's integrity monitoring systems, including any current affiliations related to integrity  
165 monitoring.

166                   h. The applicant's plan for maximizing sustainable, long-term revenue for the State, including a detailed  
167 market analysis, to affirmatively support the long-term sustainability of the applicant's operation in the State and  
168 the potential market share of the applicant.

169                   i. A description of the technology the applicant will use to ensure all players of the Internet sports lottery  
170 are physically within the State at the time a wager is accepted through equipment physically located within the  
171 State, as well as the applicant's safeguards against abuses and problem gaming.

172                   j. Any other factors which, in the discretion of the Director, are relevant to the integrity, sustainability, or  
173                   safety of the Internet sports lottery system.

174                   (2) Each licensed video lottery agent may enter into market access agreements with no more than 2 licensed  
175                   Internet sports lottery operators. No licensed Internet sports lottery operator may enter into a market access agreement  
176                   with more than 1 licensed video lottery agent. Nothing in this section shall be interpreted as requiring the Director to  
177                   license an unqualified applicant. The Director may disqualify any applicant that fails to provide information required  
178                   by the Director or that otherwise fails to meet any eligibility guidelines or licensure requirements established by the  
179                   Director or this section.

180                   (c) Authorization to operate; licensing fee.

181                   (1) An Internet sports lottery operator licensed by the Director is authorized to accept wagers on sports lottery  
182                   games from individuals 21 years of age or older who are physically present in Delaware at the time the wager is placed.  
183                   The Director may suspend or revoke a license issued to an Internet sports lottery operator for cause as provided in §  
184                   4805(c) of this chapter.

185                   (2) An Internet sports lottery operator licensed under subsection (b) of this section shall pay an initial  
186                   licensing fee of \$500,000 for the privilege to operate the Internet sports lottery in the State for a period of five years.  
187                   The Director and an Internet sports lottery operator may negotiate a renewal license and the Director shall assess a fee  
188                   of \$250,000 for an additional 5-year license period.

189                   (3) All fees for licensing of Internet sports lottery operators shall be collected by the Director and deposited to  
190                   the General Fund.

191                   (d) Duties of Internet sports lottery operators. In addition to any requirements established by the Director, Internet  
192                   sports lottery operators must do all of the following:

193                   (1) Employ a monitoring system to identify irregularities in volume or odds swings that may signal suspicious  
194                   activity and promptly report such activity to the Director. All system requirements and specifications must be in  
195                   accordance with industry standards and any standards adopted by the Director.

196                   (2) Promptly report to the Director any facts or circumstances related to a violation of State or federal law and  
197                   immediately report any suspicious activity to the Director and appropriate State or federal authorities.

198                   (3) Conduct all sports wagering activities and functions in a manner that does not pose a threat to the public  
199                   health, safety, or welfare of the citizens of this State.

200                   (4) Keep current in all payments and obligations to the Director.

201                   (5) Prevent any person from tampering with or interfering with the operation of any sports lottery games in  
202 Delaware.

203                   (6) Ensure that the Internet sports lottery is conducted using only a mobile application or digital platform  
204 approved by the Director that uses communications technology to accept wagers originating in this State.

205                   (7) Maintain sufficient cash and other supplies to conduct sports wagering at all times.

206                   (8) Maintain daily records showing the gross sports lottery receipts and adjusted gross sports lottery receipts  
207 of the Internet sports lottery operator and timely file any reports required by the Director or this chapter.

208                   (e) Internet sports lottery proceeds; proceeds returned to the State.

209                   (1) Internet sports lottery operators licensed under this section shall monthly return to the State proceeds from  
210 the operation of the Internet sports lottery at a rate equal to 18% of the operator's adjusted gross sports lottery receipts.  
211 Internet sports lottery operators shall also monthly pay from the proceeds of the Internet sports lottery contributions to  
212 purses at a rate equal to 1.5% of the operator's adjusted gross sports lottery receipts. If total purses from all sports  
213 lottery and Internet sports lottery operations in any fiscal year are less than the total purses paid in the last 12 months  
214 prior to commencement of the Internet sports lottery, then each Internet sports lottery operator shall pay additional  
215 purses equal to such operator's pro rata share of the deficit.

216                   (2) All proceeds returned to the State by Internet sports lottery operators under paragraph (e)(1) of this section  
217 shall be transferred into a designated state lottery account on or before the 15<sup>th</sup> calendar day of the month following the  
218 month in which the Internet sports lottery operator's adjusted gross sports lottery receipts were received. If in any  
219 month an Internet sports lottery operator's adjusted gross sports lottery receipts is a negative number because the  
220 winnings paid to patrons exceed the Internet sports lottery operator's gross sports lottery receipts, the negative amount  
221 shall be carried forward to subsequent months and applied as a reduction against the Internet sports lottery operator's  
222 gross sports lottery receipts. A negative amount of adjusted gross sports lottery receipts shall not be carried back to an  
223 earlier month and money previously remitted to the Director may not be refunded.

224                   (3) From the proceeds returned to the State from the operation of the Internet sports lottery, the Director shall  
225 first pay the Office's costs and administrative expenses associated with the Internet sports lottery. Thereafter, the  
226 greater of \$400,000 or 3.5% of the amounts returned to the State shall be applied to the Division of Substance Abuse  
227 and Mental Health of the Department of Health and Social Services to be used exclusively for funding programs for the  
228 treatment, education, and assistance of compulsive gamblers and their families. The balance of the proceeds returned to  
229 the State in each fiscal year remaining after such allocations shall be transferred to the State Lottery Fund for the  
230 benefit of the State.



231           (4) Contributions for purses paid by Internet sports lottery operators shall be allocated to the Delaware  
232           Thoroughbred Racing Commission and the Delaware Harness Racing Commission according to a formula adopted by  
233           the Director and applied under the direction of the respective commission.

234           (f) Enforcement – The Director shall enforce this section and the rules and regulations promulgated under § 4823  
235           of this title.

236           Section 4. Amend § 4829, Title 29 of the Delaware Code by making deletions as shown by strike through and  
237           insertions as shown by underline as follows:

238           § 4829. Licensing of service companies.

239           (a) “Service company” ~~shall mean:~~ means:

240                   (1) Any vendor offering goods or services relating to the manufacture, operation, maintenance, security,  
241                   distribution, service or repair of video lottery machines, sports lottery machines or table game equipment directly to the  
242                   State;

243                   (2) Any vendor offering goods or services to a video lottery agent on a regular and continuing basis, as  
244                   defined in regulations promulgated ~~hereunder;~~ or hereunder;

245                   (3) Any person providing gaming excursion services to a video lottery ~~agent;~~ agent; or

246                   (4) Any vendor providing geolocation, payment processing, laboratory testing, and player identification,  
247                   authentication, or “know your customer” services to an Internet sports lottery operator in connection with the Internet  
248                   sports lottery.

249           Section 5. This Act shall be known and may be ~~referenced to~~ cited as the “Delaware Internet Sports Lottery  
250           Authorization Act.”

251           Section 6. Effective Date. This Act shall take effect immediately and, to the extent necessary, may be implemented  
252           through the Lottery Director’s adoption and publication of regulations or emergency regulations, as applicable, in the  
253           Register of Regulations. The Lottery Director shall establish the initial regulatory framework and commence the Internet  
254           sports lottery through the issuance of a Request for Applications as provided in § 4826A(b) of this Act as soon as  
255           reasonably practicable, but not later than 75 days after enactment and shall thereafter commence the Internet sports lottery  
256           through the award of Internet sports lottery licenses not later than 150 days after enactment. Licenses to Internet sports  
257           lottery operators may be issued by the Lottery Director as “conditional” or “probationary” based on information received or  
258           determinations made during the application process prior to the issuance of final regulations. Final regulations  
259           implementing this Act shall be promulgated by the Lottery Director within 1 year after enactment.

260 Section 7. The provisions of the Act shall not apply to any vendor awarded a contract or otherwise licensed by the  
261 Lottery Office to provide an online casino and mobile sports gaming platform for all three licensed video lottery agents  
262 pursuant to that certain Request for Proposal issued by the Lottery Office on January 12, 2023, entitled “Internet Wagering  
263 System and Services Solution [FIN23001-IWSSS]” or any renewal or successor contract thereto.

#### SYNOPSIS

This Act is enabling legislation that establishes the framework and requirements for a competitive mobile sports wagering market in Delaware under the authority of the Lottery Director. Sports wagering is now legal in 38 states, and 29 states have legalized mobile sports wagering using computers or other Internet-connected devices, including the neighboring states of Maryland, Pennsylvania, and New Jersey. Pursuant to this Act, the Lottery Director is authorized and directed to commence the Internet sports lottery by administering a solicitation and request for applications process to license qualified operators that have entered into a market access agreement with one of Delaware’s existing video lottery agents. Each video lottery agent is authorized to partner with a maximum of two prospective Internet sports lottery operators, and certain minimum requirements for applicants are established in the legislation as part of the criteria the Lottery Director will develop to evaluate proposals from applicants. The Lottery Director may disqualify applicants that fail to provide required information. Further, the Director is not required to license applicants that are deemed not to be qualified.

Licensed Internet sports lottery operators are required to pay a \$500,000 fee for an initial 5-year license to offer Internet sports lottery games in Delaware, and operators must return proceeds from their operations at a rate of 18% of the operator’s monthly adjusted gross sports lottery receipts. Licensed operators will also contribute 1.5% of their monthly adjusted gross sports lottery receipts to purses for allocation under the direction of the Delaware Thoroughbred Racing Commission or the Delaware Harness Racing Commission, as applicable. Licensed Internet sports lottery operators must also contribute additional purses to cover any deficit in the event total purse revenues in any fiscal year from all sports lottery and Internet sports lottery operations are less than the total purses paid in the last 12 months prior to the start of the Internet sports lottery.

Licensing fees collected from operators are allocated to the General Fund. Proceeds returned to the State by Internet sports lottery are allocated first to the Lottery Office’s costs and administrative expenses. Thereafter, \$400,000 or 3.5% of the proceeds returned to the State, whichever is greater, is allocated to DSAMH for programs for the treatment, education, and assistance of compulsive gamblers and problem gambling. The balance of the proceeds remaining are allocated to the State Lottery Fund for the benefit of the State.

The Act provides the Lottery Director with authority to regulate and provide for the security and effective administration of the Internet sports lottery. Minimum duties of licensed Internet sport lottery operators are established in the Act, including, among other requirements: (i) employing a monitoring system to identify betting irregularities; (ii) reporting suspicious activity to the Director; (iii) maintaining sufficient cash balances and daily records of receipts; and (iv) keeping current in all payments and obligations to the Director. Violations are subject to enforcement under existing statutory provisions.

The Act directs the Lottery Director to implement the Internet sports lottery as soon as reasonably possible, but not later than 150 days after enactment. The Lottery Director is authorized to issue conditional or probationary licenses during initial implementation of the Internet sports lottery and may issue emergency regulations to the extent necessary to implement the Act. Final regulations for the Internet sports lottery are to be promulgated within 1 year after enactment. Finally, Section 8 of the Act provides that the Act’s provisions do not apply to any vendor awarded a contract by the Lottery Office to provide an online casino and sports gaming platform for Delaware’s three licensed video lottery agents pursuant to that certain Request for Proposal issued by the Lottery Office on January 12, 2023, entitled “Internet Wagering System and Services Solution [FIN23001-IWSSS]” or any renewal or successor contract thereto.

This Act expands the definition of “Sports lottery” to include amateur and electronic sporting events.

This Act requires a 3/5 vote because it creates a fee.