

Fifty-eighth
Legislative Assembly
of North Dakota

HOUSE BILL NO.

Introduced by

Representative Maragos

1 A BILL for an Act to create and enact chapter 53-12 and a new subsection to section
2 57-39.2-04 of the North Dakota Century Code, relating to establishment of the North Dakota
3 lottery and to exemptions from sales tax; to amend and reenact section 12.1-28-02 of the North
4 Dakota Century Code, relating to lottery offenses; to provide a penalty; to provide for a
5 continuing appropriation; and to declare an emergency.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

7 **SECTION 1. AMENDMENT.** Section 12.1-28-02 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **12.1-28-02. Gambling - Related offenses - Classification of offenses.** Except as
10 permitted by law:

- 11 1. It is an infraction to engage in gambling on private premises where the total
12 amount wagered by an individual player exceeds twenty-five dollars per individual
13 hand, game, or event.
- 14 2. It is a class A misdemeanor to:
 - 15 a. Sell, purchase, receive, or transfer a chance to participate in a lottery other
16 than a lawful lottery, whether the lottery is drawn in state or out of state, ~~and~~
17 ~~whether the lottery is lawful in the other state or country; or~~
 - 18 b. ~~Disseminate information about a lottery with intent to encourage participation~~
19 ~~in it, except that a legal lottery may be advertised in North Dakota; or~~
 - 20 c. Engage in gambling on private premises where the total amount wagered by
21 an individual player exceeds five hundred dollars per individual hand, game,
22 or event.

- 1 3. A person is guilty of a class C felony if that person engages or participates in the
2 business of gambling. Without limitation, a person is deemed to be engaged in the
3 business of gambling if that person:
- 4 a. Conducts a wagering pool or an unlawful lottery;
5 b. Receives unlawful wagers for or on behalf of another person;
6 c. Alone or with others, owns, controls, manages, or finances a gambling
7 business;
8 d. Knowingly leases or otherwise permits a place to be regularly used to carry on
9 a gambling business or maintain a gambling house;
10 e. Maintains for use on any place or premises occupied by that person a
11 coin-operated gaming device; or
12 f. Is a public servant who shares in the proceeds of a gambling business
13 whether by way of a bribe or otherwise.
- 14 4. a. As used in subsection 3 but with the exceptions provided by subdivision b ~~of~~
15 ~~this subsection~~, the term "coin-operated gaming device" means any machine
16 that is:
- 17 (1) A so-called "slot" machine that operates by means of the insertion of a
18 coin, token, or similar object and which, by application of the element of
19 chance, may deliver, or entitle the person playing or operating the
20 machine to receive cash, premiums, merchandise, or tokens; or
21 (2) A machine that is similar to machines described in paragraph 1 and is
22 operated without the insertion of a coin, token, or similar object.
- 23 b. The term "coin-operated gaming device" does not include a bona fide vending
24 or amusement machine in which gambling features are not incorporated as
25 defined in section 53-04-01, or an antique "slot" machine twenty-five years old
26 or older that is collected and possessed by a person as a hobby and is not
27 maintained for the business of gambling.
- 28 c. A law enforcement officer may seize any device described in subdivision a
29 upon probable cause to believe that the device was used or is intended to be
30 used in violation of this chapter or chapter 53-06.1. The court shall order the

device forfeited in the same manner and according to the same procedure as provided under chapter 29-31.1.

SECTION 2. Chapter 53-12 of the North Dakota Century Code is created and enacted as follows:

53-12-01. Definitions. As used in this chapter:

1. "Advisory commission" means the North Dakota lottery advisory commission.
2. "Director" means the director of the North Dakota lottery.
3. "Immediate family member" means a parent, stepparent, child, stepchild, spouse, or sibling who is a member of the same household in the principal place of abode.
4. "Major procurement" means any contract with any vendor directly involved in providing facilities, equipment, tickets, and services unique to the lottery, but not including materials, supplies, equipment, and services common to the ordinary operations of state agencies.
5. "North Dakota lottery" means the division of the attorney general's office created to operate a lottery pursuant to this chapter.
6. "On-line lottery" means a game linked to a central computer via a telecommunications network in which the player selects a specified group of numbers or symbols out of a predetermined range of numbers or symbols.
7. "Retailer" means any person with whom the North Dakota lottery has contracted to sell lottery tickets to the public.
8. "Ticket" means any tangible evidence issued or authorized by the North Dakota lottery to prove participation in an on-line lottery game.
9. "Vendor" means any person who has entered a major procurement contract with the North Dakota lottery.

53-12-02. North Dakota lottery - Administration - Overall control and operation of games. There is established a division of the attorney general's office to be called the North Dakota lottery. Under the supervision of the attorney general, a director shall administer the lottery as provided in this chapter. In all decisions, the director shall take into account the particularly sensitive nature of the lottery and shall act to promote and ensure the integrity, security, honesty, and fairness of its operation and administration. The overall management of the lottery and control over the operation of its games rest solely with the North Dakota lottery.

1 **53-12-03. Director - Appointment - Employment of personnel.** The attorney general
2 shall appoint a director who shall serve at the pleasure of the attorney general. The director
3 may employ those persons as may be necessary to operate the lottery.

4 **53-12-04. Functions of director.** Subject to the rules and policies established by the
5 attorney general, the director may:

- 6 1. Supervise and administer the operation of the lottery in accordance with this
7 chapter and in accordance with the written agreement with a multistate,
8 government-authorized lottery;
- 9 2. Employ other employees of the North Dakota lottery;
- 10 3. Enter contracts for promotional services; annuities or other methods deemed
11 appropriate for the payment of prizes; data processing and other technical
12 products, equipment, and services; and facilities as needed to operate the lottery,
13 including tickets and other services involved in major procurements;
- 14 4. Contract with and license persons for the sale of lottery tickets as provided by this
15 chapter and rules adopted to implement this chapter;
- 16 5. Make demographic studies of lottery players and studies of reactions of citizens to
17 existing and potential features of the lottery;
- 18 6. Require lottery retailers and persons licensed under this chapter to furnish proof of
19 financial stability or to post a bond in an amount the director deems necessary to
20 protect the financial interests of the state;
- 21 7. Provide for secure facilities to house the North Dakota lottery;
- 22 8. Provide for secure data processing facilities to be used for the reliable operation of
23 the lottery;
- 24 9. Examine, or cause to be examined by any agent or representative designated by
25 the director, any books, papers, records, or memoranda of any retailer or person
26 licensed under this chapter for the purpose of ascertaining compliance with this
27 chapter or any rule adopted under this chapter; and
- 28 10. Share human and financial resources of other divisions within the office of attorney
29 general.

30 **53-12-05. Competitive bidding required before entering into contracts.** When
31 entering contracts, the director shall utilize an open and competitive bid process which reflects

the best interest of the state. The director shall consider all relevant factors, including security, competence, experience, timely performance, and maximization of net revenues to the state.

53-12-06. Investigation of vendors. Before a contract for a major procurement is awarded, the director shall conduct a thorough background investigation of the vendor, any parent or subsidiary corporation of the vendor, all shareholders of five percent or more interest in the vendor or parent or subsidiary corporation of the vendor, and all officers and directors of the vendor or parent or subsidiary corporation of the vendor to whom the contract is to be awarded. In conducting the investigations, the director may use the information of other states to determine the qualifications of the vendor. The vendor shall submit appropriate investigation authorizations to facilitate this investigation. The director may require any additional information from the vendor that is considered appropriate to preserve the integrity and security of the lottery.

53-12-07. Additional functions of director. The director shall:

1. Enter a written agreement with a multistate government-authorized lottery, or with an organization created and controlled by those lotteries, for the operation, marketing, and promotion of a joint lottery;
2. Make and keep books and records which accurately and fairly reflect each day's transactions, including the distribution and sale of tickets, receipt of funds, prize claims, prize disbursements, or prizes liable to be paid, expenses and other financial transactions of the lottery necessary so as to ensure accountability;
3. Make quarterly and annual financial reports to the governor and the attorney general and biennial reports to the legislative assembly. The reports must be based upon generally accepted accounting principles and include a full and complete statement of the lottery's financial position and operations;
4. Have an annual audit of all accounts and transactions of the North Dakota lottery. The audit report must be presented to the governor, the state treasurer, and the legislative assembly;
5. Contract with an agency of state government or an independent firm experienced in security procedures to periodically conduct a comprehensive study and evaluation of all aspects of security in the operation of the lottery;
6. Prepare and submit budgets and proposals for the operation of the lottery;

7. Operate the lottery so that after the initial funding, it is self-sustaining and self-funded; and

8. Make provision for the timely and efficient transfer of funds due from lottery retailers and persons licensed pursuant to this chapter to the state general fund.

53-12-08. Lottery expenses and prizes to be paid from lottery funds - General funds not to be used or obligated - Exception. No claim for the payment of an expense of the lottery or the payment of a lottery prize may be made unless it is against the lottery operating fund or money collected from the sale of lottery tickets. Except for the initial startup funding to the lottery, the general funds of the state may not be used or obligated to pay the expenses of the lottery or prizes of the lottery.

53-12-09. Selection of lottery retailers.

1. The director shall select as retailers those persons the director deems best able to serve the public convenience and promote the sale of tickets. In the selection of retailers, the director shall consider factors, including financial responsibility, security of the applicant's place of business or activity, accessibility of the applicant's place of business or activity, integrity, reputation, sufficiency of existing lottery retailers to serve the public convenience, volume of expected sales, and any other factors as the director may deem appropriate. Any person lawfully engaged in nongovernmental business on state property may be selected as retailers.

2. No applicant for a license or other affirmative action has any right to a license or to the granting of the approval sought. Any license issued or other approval granted under this chapter is a revocable privilege, and the holder does not acquire any vested interest or property right in the license or other approval granted under this chapter.

53-12-10. Reapplication for license after denial or revocation - Denial or revocation decisions final. Any applicant for a license who has had an application denied or a license revoked by the director may not reapply until at least one year has elapsed from the date of the denial or revocation. Any person who has been denied a license or had a license revoked for a second time may not reapply until at least three years have passed since the date of the second denial or revocation. The decision of the director to deny an application or to revoke a license is final and is not reviewable.

1 **53-12-11. Retailer's application fee - Annual renewal of contract - Contract not**
2 **transferable or assignable.** The director may charge an application fee to a person applying
3 to become a retailer. All retailer contracts awarded by the lottery under this chapter are
4 renewable annually after issuance unless sooner canceled or terminated. A retailer contract
5 awarded under this chapter is not transferable or assignable.

6 **53-12-12. Issuance of retailer certificate - Display - Sales only at location on**
7 **certificate.** Each retailer must be issued a retailer certificate that must be conspicuously
8 displayed at the place where the retailer is authorized to sell tickets. Tickets may only be sold
9 by the retailer at the location stated on the retailer certificate.

10 **53-12-13. Qualifications of retailer.**

- 11 1. To be selected as a retailer, an individual acting as a sole proprietor must:
12 a. Be at least eighteen years of age;
13 b. Be of good character and reputation;
14 c. Have sufficient financial resources to support the activities required to sell
15 lottery tickets; and
16 d. Be current in payment of all taxes, interest, and penalties owed to the state,
17 excluding items under formal dispute or appeal pursuant to applicable
18 statutes.
19 2. A retailer may not be a lottery vendor or an employee or agent of any lottery
20 vendor doing business with the North Dakota lottery.

21 **53-12-14. Individuals ineligible to be licensed as retailer by the lottery.** An
22 individual may not be licensed by the lottery or involved in lottery activities under this chapter if
23 the individual:

- 24 1. Has been convicted of a felony in this or any other jurisdiction, unless at least ten
25 years have passed since satisfactory completion of the sentence or probation
26 imposed by the court in each felony;
27 2. Has been found to have violated any provision of this chapter or any rule adopted
28 to implement this chapter;
29 3. Has been found to have a background, including a criminal record, or prior
30 activities that pose a threat to the public interests of the state or to the security and
31 integrity of the lottery; create or enhance the dangers of unsuitable, unfair, or illegal

practices, methods, and activities in the conduct of gaming; or present
questionable business practices and financial arrangements incidental to the
conduct of lottery activities;

4. Is an immediate family member of an employee of the North Dakota lottery or of a
member of the advisory commission; or

5. Has knowingly made a false statement of material fact to the North Dakota lottery.

53-12-15. Partnership as retailer. For a partnership to be selected as a retailer, the
partnership must meet the requirements of subdivisions c and d of subsection 1 of section
53-12-13, and each partner of the partnership must meet the requirements of subdivisions a
and b of subsection 1 of section 53-12-13 and of section 53-12-14.

53-12-16. Organization as retailer. For an organization other than a partnership to be
selected as a retailer, the organization must meet the requirements of subdivisions c and d of
subsection 1 of section 53-12-13, and each officer and director and each shareholder who owns
five percent or more of an ownership interest in the organization must meet the requirements of
subdivisions a and b of subsection 1 of section 53-11-13 and of section 53-12-14.

**53-12-17. Lottery advisory commission created - Appointment of members - Term
of office - Qualifications - Chairman - Duties - Compensation - Restrictions - Penalty.**

1. There is created the North Dakota lottery advisory commission, which is composed
of five members, three of which are selected by the chairman of the legislative
council and two of which are selected by the attorney general. The term of office is
three years, expiring on December thirty-first with no more than two terms expiring
in any one year. Of the first members appointed, one must be appointed for a term
of one year, two must be appointed for terms of two years, and two must be
appointed for terms of three years. No member may be appointed to more than
two consecutive terms. Each member of the advisory commission must be a
citizen of the United States and a resident of this state. A chairman of the
commission must be chosen annually from the membership of the commission by
a majority of its members at the first meeting of the advisory commission each
year.

2. The advisory commission shall meet at least once a quarter and any additional
meetings as the chairman deems necessary. Special meetings may be called by

1 the chairman upon the written request of the director or any three members of the
2 commission.

3 3. The advisory commission shall advise the director and the attorney general in the
4 establishment of policy of the operation of the lottery and shall advise the director
5 regarding the operation of the lottery.

6 4. Members of the advisory commission who are not state employees are entitled to
7 be compensated at a rate of seventy-five dollars per day and are entitled to
8 mileage and expenses as provided by law for state officers and employees. A
9 state employee who is a member of the commission must receive that employee's
10 regular salary and is entitled to mileage and expenses, to be paid by the employing
11 agency.

12 5. No member of the advisory commission, employee of the North Dakota lottery, or
13 any individual residing in the same household as either of those individuals may
14 directly or indirectly, individually, as a member of a partnership or other
15 association, or as a stockholder, director, or officer of a corporation, have an
16 interest in a business which contracts for the operation or promotion of the lottery.
17 A knowing violation of this section is a class B misdemeanor.

18 **53-12-18. Rules.** The attorney general shall adopt rules governing the establishment
19 and operation of the lottery as necessary to carry out the purposes of this chapter. The
20 attorney general shall adopt rules concerning the following:

- 21 1. The manner of payment of prizes to the holders of winning tickets;
- 22 2. The types of locations at which tickets may be sold;
- 23 3. The methods to be used in selling tickets;
- 24 4. Additional qualifications for the selection of retailers and the amount of application
25 fees to be paid by each;
- 26 5. The amount and method of compensation to be paid to retailers, including special
27 bonuses and incentives;
- 28 6. Deadlines for claims for prizes by winners of each lottery game, however, in no
29 instance may the deadline be for more than one year;
- 30 7. Financial responsibility of persons licensed under this chapter;
- 31 8. Licensing procedures; and

9. Any other matters necessary or desirable for the efficient or economical operation of the lottery or for the convenience of the public.

53-12-19. Lottery operating fund established - Continuing appropriation -

Informational budget - Authorization of disbursements - Purposes. There is established within the state treasury the lottery operating fund into which must be deposited all revenues from the sale of lottery tickets, interest received on moneys in the lottery operating fund, and all other fees and moneys collected. All money in the funds created by this section are continuously appropriated for the purposes specified in this section. Any disbursement from the lottery operating fund must be by authorization of the director for any of the following purposes:

1. The payment of prizes to the holders of valid, winning lottery tickets. A revolving fund, designated as the "lottery prize payment fund", must be set apart and maintained by the director and held by the state treasurer for the payment of prizes;
2. Expenses of the lottery, which include all costs incurred in the operation and administration of the lottery; all costs resulting from contracts entered into for the purchase or lease of goods and services needed for operation of the lottery, including supplies, materials, tickets, independent studies and surveys, data transmission, advertising, printing, promotion, incentives, public relations, communications, and compensation paid to lottery retailers; distribution of tickets; and reimbursement of costs of facilities and services provided by other state agencies; and
3. Transfers of net proceeds to the state general fund.

53-12-20. Amount from sale of tickets allocated for payment of prizes - Means of payment for prizes. As nearly as practical, a minimum of fifty percent of the projected revenue from the sale of lottery tickets, computed on a year-round basis from the sale of on-line lottery games, must be allocated for payment of prizes. The director shall award the designated prize to the holder of the ticket upon validation of a winning claim ticket. The director may make payment for prizes by any means the director deems appropriate upon the validation of winning tickets.

1 **53-12-21. Net proceeds transferred to general fund.** Net proceeds from the sale of
2 lottery tickets must be transferred to the state treasurer on at least an annual basis for deposit
3 in the state general fund.

4 **53-12-22. Counterfeiting lottery tickets - Penalty.** Any person who, with intent to
5 defraud, falsely makes, alters, forges, passes, or counterfeits a lottery ticket issued by the North
6 Dakota lottery under this chapter is guilty of a class C felony.

7 **53-12-23. Sale of tickets at price greater than that fixed by rules prohibited - Sale**
8 **by authorized retailer only - Penalty.** No person may sell a lottery ticket at a price greater
9 than that fixed by the rules adopted under this chapter. No person other than a retailer
10 authorized by the North Dakota lottery may sell or resell lottery tickets. Any person convicted of
11 violating this section is guilty of a class A misdemeanor on the first offense and a class C felony
12 on the second or subsequent offense.

13 **53-12-24. Sale of ticket to minor prohibited - Violation - Gift of ticket to minor**
14 **permitted - Prize paid to parent or guardian.** No lottery ticket may be sold to a minor. Any
15 retailer, employee of a retailer, or any other person who knowingly sells or offers to sell a lottery
16 ticket to a minor is guilty of a class B misdemeanor on the first offense and a class A
17 misdemeanor on the second or subsequent offense. A lottery ticket may be given as a gift to a
18 minor. Any prize won by a minor from a ticket given as a gift must be paid to the minor's parent
19 or legal guardian.

20 **53-12-25. Purchase of ticket or payment of prize to certain persons prohibited -**
21 **Exceptions - Penalty.**

22 1. A lottery ticket may not be purchased by, and a prize may not be paid to, any of the
23 following individuals or to any immediate family member of the following persons:

24 a. Any member of the advisory commission or employee of the North Dakota
25 lottery, unless authorized in writing by the director; or

26 b. Any officer or employee of a business that is currently engaged in supplying
27 equipment, supplies, or services being used directly in the operation of any
28 lottery conducted pursuant to this chapter, unless authorized in writing by the
29 director.

30 2. This section does not prohibit any retailer or the retailer's employee from
31 purchasing lottery tickets or from being paid a prize of a winning ticket.

3. Any person who knowingly violates this section is guilty of a class B misdemeanor on the first offense and a class A misdemeanor on the second or subsequent offense.

53-12-26. Prize paid to holder of winning ticket - Deceased winner's prize paid to representative - Right to prize nonassignable - Prizes subject to taxation - Disposition of unclaimed prize - Liability of lottery after payment of prize. The prize to be paid or awarded for each winning ticket must be paid to the person who is adjudged by the director to be the holder of the winning ticket. However, the prize of a deceased winner must be paid to the duly appointed representative of the estate of the winner. The right of a person to a prize drawn or awarded is not assignable. All prizes awarded are subject to state and federal income tax laws and regulations. Unclaimed prize money must be retained for a period deemed appropriate by the director, and if no claim is made within that period, the unclaimed prize money must be added to the prize pools of subsequent lottery games. The state, members of the advisory commission, and employees of the North Dakota lottery are discharged of all further liability upon payment of a prize under this section.

53-12-27. Lottery products on Indian reservations. The governor may negotiate with Indian tribes for the placement and distribution of lottery products within the exterior boundaries of Indian reservations within the state.

53-12-28. Confidentiality of lottery records. Information and records of the North Dakota lottery are confidential, except for official purposes, and may not be disclosed except to officers, employees, or legal representatives of the attorney general for the purpose of and only to the extent necessary in the investigation and audit procedures or in accordance with a judicial order. No person may use a subpoena, discovery, or other applicable statutes to obtain the information or records. Information and records considered confidential include:

1. Applications, credit, and security checks of lottery retailers, licensees, and persons seeking or doing business with the lottery;
2. Marketing, financial, or sales data, the disclosure of which may be harmful to the competitive position of the lottery, its retailers, licensees, or persons seeking or doing business with the lottery;
3. Audit workpapers, worksheets, and auditing procedures used by the lottery, its agent, or employees; and

4. Tax returns of individual licensees.

53-12-29. Lottery setoff program established - Computerized file of persons

owing state. The director shall establish a liability setoff program by which lottery prize payments may be used to satisfy debts owed or collected through state agencies. Any participating state agency, on a monthly basis, shall provide the director a computerized file of persons owing a debt to or collected through that state agency which contains the following information: the first name, last name, middle initial, social security number, and the amount and type of the debt.

53-12-30. Debt setoff from prize due - Notice of right to appeal - Time limitation -

Transfer of setoff amount to agency. The director shall match the information submitted by the agency with persons who are entitled to a lottery prize payment in an amount in excess of one hundred dollars. If there is a match, the director shall set off the amount of the debt from the prize due and notify the person of the person's right to appeal to the appropriate court or to request a review by the agency pursuant to agency rule. The person must make a request or appeal within thirty days after the setoff. If the setoff accounts for only a portion of the prize due, the remainder of the prize shall be paid to the person. The director shall promptly transfer the setoff amount to the agency.

53-12-31. Advisory commission, employees, and lottery discharged from liability.

The members of the advisory commission, director, employees, and the North Dakota lottery are discharged of all further liability for the amount of any setoff paid to a state agency.

53-12-32. Apportionment of prize among agencies - Priority of child support

payments. If two or more agencies have delinquent accounts for the same person, the director shall apportion the prize equally among them. However, a setoff to the department of human services for child support payments has priority over all other setoffs.

53-12-33. Collection of remainder of debt. If the prize is insufficient to satisfy the

entire debt, the remainder of the debt may be collected by the agency as provided by law and resubmitted for setoff against any other prize awarded.

SECTION 3. A new subsection to section 57-39.2-04 of the North Dakota Century Code is created and enacted as follows:

Gross receipts from the sale of lottery tickets under chapter 53-12.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.