

## FORMATION OF A NORTH DAKOTA GAMING COMMISSION - BACKGROUND MEMORANDUM

Senate Concurrent Resolution No. 4011 ([Appendix A](#)) directs a study of the formation of a North Dakota gaming commission to regulate and control all forms of gaming in North Dakota. Testimony in support of the resolution indicated as a way to deal with all the various types of gaming authorized by the state, a single gaming commission would provide for consistency and accountability.

Under North Dakota Century Code (NDCC) Chapters 53-06.1 (Games of Chance) and 53-06.2 (Parimutuel Horse Racing), certain charitable organizations are permitted to conduct a limited array of games of chance and horse racing events. North Dakota Century Code Chapter 53-12.1 provides for the participation of North Dakota in a multistate lottery. North Dakota Administrative Code Article 99-01 implements the games of chance chapter, North Dakota Administrative Code Title 69.5 implements the parimutuel horse racing chapter, and North Dakota Administrative Code Article 10-16 implements the lottery chapter.

### HISTORY OF GAMING IN NORTH DAKOTA

In North Dakota's first legislative session after statehood (1889-90), an attempt was made to establish the Louisiana Lottery, which was seeking a new home in light of the impending revocation of its charter in its state of origin. The operators of the lottery were willing to offer the state an initial payment of \$100,000, followed by annual payments of \$75,000, for the privilege of operating a lottery. The scandal and controversy following this attempt led to the state's first constitutional amendment. The amendment added what eventually became Article XI, Section 25, of the Constitution of North Dakota and outlawed all forms of lotteries and gift enterprises.

The constitutional prohibition was maintained until 1976 when the constitution was amended to allow certain forms of charitable gaming. Under the provision, the Legislative Assembly is permitted to authorize bona fide nonprofit veterans', charitable, educational, religious, or fraternal organizations; civic and service clubs; or such other public-spirited organizations as it may recognize to conduct games of chance when the entire net proceeds of the games are devoted to educational, patriotic, fraternal, religious, or other public-spirited use. In November 2002 the constitution was amended to authorize the state's participation in a multistate lottery.

After passage of the constitutional amendment in 1976, a temporary law was passed by the 1977 Legislative Assembly (1977 S.L., ch. 473), followed by another temporary law by the 1979 Legislative

Assembly (1979 S.L., ch. 531), and finally legislation in 1981 which was codified as NDCC Chapter 53-06.1. All three laws became effective without the approval of the Governor holding office at the time of passage. A bill passed by the Legislative Assembly in 1987 added NDCC Chapter 53-06.2 allowing charitable organizations to conduct parimutuel horse racing. In 2003 the Legislative Assembly passed a bill (2003 S.L., ch. 454) which provided for the establishment of a lottery as directed by the constitutional amendment approved by the voters in November 2002.

### THE STATE'S GAMING COMMISSIONS Gaming Commission and Gaming Advisory Board

Since the 1977 law that authorized charitable gaming in the state, the responsibility for enforcement of the charitable gaming law has been shared by the Attorney General and local officials. In 1991 the Legislative Assembly passed legislation that created the Gaming Commission, which was given a role in charitable gaming enforcement. Enforcement attention has been directed both at preventing crimes and at ensuring compliance with the many requirements of the law. The Gaming Commission has adopted extensive rules governing accounting procedure and auditing methods to increase opportunities to prevent and detect cheating by players or gaming personnel.

The 1991 legislation provided for a state Gaming Commission consisting of a chairman and four other members appointed by the Governor with the consent of the Senate. The bill provided that the Gaming Commission would share authority with the Attorney General to impose fines on organizations, distributors, and manufacturers who violate any provisions of law or rule and to suspend or revoke a charitable gaming distributor's or manufacturer's license for violation of any provision of law or rule. In 1993, however, the sole authority to impose fines and to suspend or revoke licenses was returned to the Attorney General. The commission is given full authority for adoption of rules to implement the charitable gaming laws.

Since 1985 the Gaming Advisory Board has provided guidance and assistance to the Gaming Commission and Attorney General on regulatory policy issues, the revision of the gaming rules, and on recommended law changes. The Gaming Advisory Board meets about three times annually as needed. Members serve on a voluntary basis and are not reimbursed for expenses.

The current members of the Gaming Commission and the Gaming Advisory Board are listed in [Appendix B](#).

### **Racing Commission**

In 1987 the Racing Commission was established and parimutuel horse racing authorized by the Legislative Assembly in Senate Bill No. 2319. Initially, the Racing Commission was established in the Secretary of State's office. Members of the commission originally were the Secretary of State and four other members appointed by the Governor. In 1989 the Legislative Assembly approved House Bill No. 1184, which moved the Racing Commission from the Secretary of State's office to the Attorney General's office. The Secretary of State was removed as chairman of the commission and one other member appointed by the Governor was added. This bill also established the breeders' fund and purse fund. The bill also authorized off-track wagering on races held at licensed racecourses either in state or out of state. In 1991 the Legislative Assembly passed House Bill No. 1260, which replaced the off-track wagering statute enacted in 1989 with a similar statute providing for simulcast wagering for in-state or out-of-state races. This bill also created the promotion fund and provided that unclaimed tickets and breakage from each live race and simulcast program be deposited in the promotion fund. The bill also provided that the money in the breeders' fund, purse fund, and promotion fund may be spent by the commission pursuant to a continuing appropriation.

In 1991 the Legislative Assembly also passed Senate Bill No. 2354, which provided that of the Governor's five appointees, one must be nominated by the state chapter or affiliate of the American Quarter Horse Racing Association, one by the state chapter or affiliate of the United States Trotting Association, one nominated by the state chapter or affiliate of the International Arabian Horse Association, and one nominated by the state chapter or affiliate of the North Dakota Thoroughbred Association.

In 1993 the Legislative Assembly approved Senate Bill No. 2155, which authorized simulcast dog racing in the state.

In 2001 the Legislative Assembly passed Senate Bill No. 2381, which authorized parimutuel wagering to be conducted through account wagering and that an account wager may be made on an account only through a licensed simulcast service provider authorized to operate the simulcast parimutuel wagering system under the certificate system.

In 2003 the Legislative Assembly passed Senate Bill No. 2015, which required the Racing Commission to reinstate race dates and issue a license under the certificate system to any racetrack in the state which was operational after December 31, 2000.

In 2005 the Legislative Assembly passed two bills relating to the Racing Commission. The first, House Bill No. 1003, provided that a member of the Racing Commission who is appointed to fill a vacancy arising

from other than the natural expiration of a term who serves the unexpired portion of the term may be reappointed. The second, Senate Bill No. 2340, removed the Racing Commission from the Attorney General's office. The bill authorized the Attorney General to request payment for any services the Attorney General renders to the Racing Commission.

The current members of the Racing Commission are listed in [Appendix C](#).

### **Lottery Advisory Commission**

The North Dakota Lottery and the Lottery Advisory Commission were established by 2003 House Bill No. 1243. The Lottery Advisory Commission is composed of five members, three of whom are legislators selected by the chairman of the Legislative Council and two of whom are selected by the Attorney General. The commission is required to meet at least once quarterly and any additional meetings as the chairman of the commission deems necessary. The commission advises the lottery director and the Attorney General on policy and general operation of the lottery. The commission also serves as the audit committee.

The Attorney General and director of the North Dakota Lottery consult with the Lottery Advisory Commission on substantive policies, plans, issues, contracts, timelines, and activities of the lottery, including selecting retailers, proposing new games, hiring a lottery director, proposing laws and rules, drafting legislative reports, proposing surveys or studies; proposing advertising, marketing, promotional, and educational campaigns; and proposing policies on monetary fines, license suspensions, and revocations.

The current members of the Lottery Advisory Commission are listed in Appendix D.

## **2007 Gaming-Related Legislation**

### **Charitable Gaming**

House Bill No. 1263 changed the maximum cash raffle prize amount that may be awarded in a single day from \$1,000 to \$4,000. The bill also increased from one to two the number of occasions per year which a licensed organization may exchange a merchandise prize for a cash prize.

Senate Bill No. 2225 imposed an excise tax of 3 percent on the gross proceeds from the sale at retail of bingo cards to final users.

### **Lottery**

House Bill No. 1330 provided that beginning July 1, 2007, \$150,625 must be transferred from the lottery operating fund to the State Treasurer each quarter for deposit in the Attorney General Multijurisdictional Drug Task Force grant fund.

Senate Bill No. 2101 made miscellaneous changes to the state's lottery laws. The bill authorizes lottery retailers to sell a ticket at a temporary site for a special event authorized by the lottery, clarifies that a prize may not be paid on a winning ticket if the ticket

was purchased using a stolen lottery gift certificate or otherwise acquired illegally, and provides that personal information on a player who purchases a subscription or a player who wins a prize on a winning ticket is confidential unless the player authorizes the release of the information.

### **Racing**

House Bill No. 1126 established the racing promotion fund as a fund administered by the Racing Commission to assist in improving and upgrading racetracks in the state and promoting horse racing; imposed duties upon the Racing Commission; required the approval of the Attorney General before a license to conduct races may be granted; modified the current tax structure for live horse racing and simulcast wagering; and authorized the Attorney General to audit and investigate service providers, totalizator companies, site operators, and organizations applying to conduct or conducting parimutuel wagering.

House Bill No. 1324 required the Racing Commission to provide for registration of a North Dakota-bred horse for qualification for breeders' fund awards or purse supplements. The bill required the commission to contract with a private person to maintain the registry. The bill also prohibited the commission from transferring money among the breeders' fund, purse fund, and racing promotion fund. The bill requires the commission to distribute awards and payment supplements from the breeders' fund in the same calendar year the money was earned by the recipient.

Senate Bill No. 2260 authorized the Racing Commission, for the purpose of licensing a participant in the racing and simulcast parimutuel wagering industry, to obtain a statewide and nationwide criminal history record check.

## **Summary of Neighboring States' Gaming Commission Structure**

### **South Dakota**

The South Dakota Lottery Commission is a seven-member board appointed by the Governor which establishes policy for and advises the lottery director on the operation of the South Dakota Lottery. Any major procurement of the lottery requires the approval of the commission. Members are appointed by the Governor and confirmed by the Senate. Each commissioner's term is three years.

Other gaming in South Dakota, which includes the slot machines and table games conducted at Deadwood and the state's parimutuel racing, is regulated by the South Dakota Gaming Commission. The South Dakota Gaming Commission consists of five members appointed by the Governor. Each commissioner's term is three years. Members may not serve more than two consecutive full terms.

### **Minnesota**

In Minnesota, the Gaming Control Board adopts rules for the conduct of charitable gambling (pull tabs, bingo, paddlewheels, tipboards, and raffles), approves all gambling equipment for use, issues licenses, provides training and education to organizations, conducts compliance reviews and site inspections, and imposes penalties for violations. The board has delegated to its director the power to issue or deny licenses and permits under board guidelines. The board receives the financial reports of licensed organizations and verifies gross receipts, prize payouts, expenses, and expenditures of net profits for lawful purposes. The board may investigate alleged violations of law or rule, issue consent orders, and impose civil penalties. Suspected criminal violations are referred to the Alcohol and Gambling Enforcement Division of the Minnesota Department of Public Safety.

The Minnesota Racing Commission regulates horse racing and card playing in Minnesota. The mission of the commission is to ensure that the activities are "... conducted in the public interest, and to take all necessary steps in ensuring the integrity of racing and card playing in Minnesota thus promoting the breeding of race horses in order to stimulate agriculture and rural agribusiness."

The Minnesota State Lottery is operated under the control of a director appointed by the Governor with the advice and consent of the Senate. The Minnesota State Lottery does not have a regulatory commission or board. The 2004 Minnesota Legislature created the Lottery Organizational Task Force to study the organization and profitability of the state lottery. The January 10, 2005, final report of the task force recommended the establishment of a board to oversee the activities of the Minnesota State Lottery. A bill introduced in the 2005 Minnesota legislative session, which would have established a state lottery board, failed to pass.

### **Montana**

The Gambling Control Division of the Montana Department of Justice regulates all forms of gambling in Montana other than the Montana Lottery and horse racing. The Gaming Advisory Council, created in 1989, advises the Department of Justice and other state agencies on public policy matters related to gaming, including amendments to the gambling statutes; additional or modified departmental rules; clarification of existing rules; and operation of the Gambling Control Division.

The Montana Lottery Commission, which is a five-member board appointed by the Governor, sets policies for the operation of the Montana Lottery. The members are appointed to a four-year term.

The Board of Horse Racing, which is a division of the Montana Department of Livestock, is responsible for regulating the live and simulcast horse racing industry; ensuring compliance by the approximately 3,500 licensees with state laws and board rules;

licensing all racing personnel, establishing race dates for various communities; establishing veterinary practices and standards in connection with horse racing meets; and the auditing, supervision, and investigations related to the parimutuel racing system in Montana. The Board of Horse Racing is funded with state special revenue derived from a 1 percent tax on gross betting receipts from parimutuel betting. For simulcast facilities, the tax is the greater of 1 percent of gross betting receipts or the actual cost to the board for regulating the meet.

### **SUGGESTED STUDY APPROACH**

The committee, in its review of the formation of a North Dakota gaming commission to regulate and control all forms of gaming in North Dakota, may wish to approach this study as follows:

- Receive testimony from the Attorney General's office, including representatives of the Gaming Division and the North Dakota Lottery, and from the director of the Racing Commission regarding the operation of each form of gaming and the function each commission serves;
- Receive testimony from representatives of the Gaming Commission, the Gaming Advisory Board, the North Dakota Lottery Advisory Commission, and the North Dakota Racing Commission regarding the feasibility and desirability of forming a single gaming commission in the state;
- Receive testimony from charitable gaming organizations, racing organizations, lottery retailers, and others directly involved in each type of gaming industry in the state regarding the operation of separate gaming commissions and whether the establishment of a single gaming commission would be desirable;
- Receive information regarding the structure and organization of gaming commissions in other states; and
- Develop recommendations and prepare legislation necessary to implement the recommendations.

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