

# SPORTS AND AMUSEMENTS

## CHAPTER 464

### SENATE BILL NO. 2356

(Senators Flakoll, J. Lee)  
(Representatives Koppelman, Wieland)

## MIXED FIGHTING STYLE COMPETITIONS

AN ACT to create and enact a new section to chapter 53-01 of the North Dakota Century Code, relating to mixed fighting style competitions; and to amend and reenact sections 53-01-02, 53-01-03, 53-01-07, 53-01-09, and 53-01-17 of the North Dakota Century Code, relating to the regulation of mixed fighting style competitions.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** A new section to chapter 53-01 of the North Dakota Century Code is created and enacted as follows:

**Mixed fighting style competition - Definition - Prohibition.** As used in this chapter, "mixed fighting style competition" means an advertised or professionally promoted exhibition or contest for which any type of admission fee is charged and in which participants who inflict or employ kicks, punches, blows, holds, and other techniques to injure, stun, choke, incapacitate, or disable an opponent. The techniques may include a combination of boxing, kickboxing, wrestling, grappling, or other recognized martial arts. Boxing and kickboxing exhibitions or contests without the combination of other techniques do not constitute mixed fighting style competitions. A person may not advertise, promote, sponsor, hold, or participate in any mixed fighting style competition in this state until a mixed fighting style advisory board is authorized and appointed and rules governing the competitions have been adopted by the secretary of state under this chapter.

**SECTION 2. AMENDMENT.** Section 53-01-02 of the North Dakota Century Code is amended and reenacted as follows:

**53-01-02. Administration by secretary of state - Appointment of athletic advisory board and mixed fighting style advisory board.** The secretary of state shall act as state athletic commissioner and administer this chapter. The secretary of state may appoint an athletic advisory board to assist and advise the secretary of state in matters relating to the regulation of boxing, kickboxing, and sparring. The secretary of state also may appoint a mixed fighting style advisory board whose members may include one or more members of the athletic advisory board. The secretary of state shall define the duties of ~~the~~ each board. ~~Members of the board shall serve without~~ Board members are not entitled to compensation, except for reimbursement for actual and necessary expenses at the same rate as allowed state employees incurred in performing their official duties.

**SECTION 3. AMENDMENT.** Section 53-01-03 of the North Dakota Century Code is amended and reenacted as follows:

**53-01-03. Restrictions.** The secretary of state may not promote, directly or indirectly, ~~promote~~ any boxing, kickboxing, mixed fighting style competition, or sparring exhibition, engage in the managing of any boxer ~~or~~, kickboxer, or mixed style fighter, or be interested in any manner in the proceeds from any boxing, kickboxing, mixed fighting style competition, or sparring exhibition.

**SECTION 4. AMENDMENT.** Section 53-01-07 of the North Dakota Century Code is amended and reenacted as follows:

**53-01-07. Duties of state athletic commissioner.** The secretary of state shall supervise all boxing, kickboxing, mixed fighting style competitions, or sparring exhibitions held in the state and may:

1. Adopt rules governing the conduct of boxing, kickboxing, mixed fighting style competitions, and sparring exhibitions.
2. Establish license fees for all boxers, kickboxers, mixed style fighters, boxing ~~and~~, kickboxing, and mixed fighting style competition promoters, managers, judges, timekeepers, cornerpersons, knockdown counters, matchmakers, and referees or other participants.
3. Establish by rule a fee based on the percentage of gross revenues from any boxing, kickboxing, mixed fighting style competition, or sparring exhibition held in this state to pay for the expenses of members of the athletic advisory board or the mixed fighting style advisory board. A fee established under this subsection may not exceed one percent of the gross revenues of the exhibition from any and all sources including cable television and pay-per-view telecasts of the event, exclusive of any federal tax thereon.

**SECTION 5. AMENDMENT.** Section 53-01-09 of the North Dakota Century Code is amended and reenacted as follows:

**53-01-09. Fees paid into special fund - Continuing appropriation.** All fees collected by the secretary of state pursuant to this chapter must be deposited in a special fund maintained in the state treasury. All money deposited in the fund is appropriated as a continuing appropriation to the secretary of state for administering this chapter and for the compensation and expenses of members of the athletic advisory board and the mixed fighting style advisory board.

**SECTION 6. AMENDMENT.** Section 53-01-17 of the North Dakota Century Code is amended and reenacted as follows:

**53-01-17. Exhibitions also governed by local ordinance.** Boxing, kickboxing, or sparring exhibitions may not be held in cities in which such contests or exhibitions are declared illegal by ordinance. All boxing, kickboxing, mixed fighting style competitions, or sparring exhibitions held in any city in this state must be held in conformity with the ordinances of the city in addition to the requirements under this chapter.

Approved April 6, 2005  
Filed April 6, 2005

## CHAPTER 465

### SENATE BILL NO. 2384

(Senators Fischer, Trenbeath, Wardner)  
(Representatives D. Johnson, Weisz)

## RAFFLES AND GAMES OF CHANCE RECORDS

AN ACT to amend and reenact subsection 3 of section 53-06.1-06 and section 53-06.1-10.1 of the North Dakota Century Code, relating to raffles and games of chance accounting records.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsection 3 of section 53-06.1-06 of the North Dakota Century Code is amended and reenacted as follows:

3. An organization shall maintain complete, accurate, and legible bank and accounting records in North Dakota for all gaming activity and establish ~~an adequate~~ a system of internal control as prescribed by rule. The governing board of an eligible organization is primarily responsible and may be held accountable for the proper determination and use of net proceeds. If an organization does not renew its license or its license is denied, relinquished, or revoked and it has not disbursed all of its net proceeds, the organization shall file an action plan as prescribed by the gaming rules with the attorney general.

**SECTION 2. AMENDMENT.** Section 53-06.1-10.1 of the North Dakota Century Code is amended and reenacted as follows:

**53-06.1-10.1. Raffles.** A prize for a raffle may be cash or merchandise but may not be real estate. No single cash prize may exceed one thousand dollars and the total cash prizes in one day may not exceed three thousand dollars. However, on not more than one occasion per year a licensed organization may, at the request of a winning player, exchange a merchandise prize valued at not more than twenty-five thousand dollars for a cash prize.

Approved April 18, 2005  
Filed April 20, 2005

**CHAPTER 466****HOUSE BILL NO. 1087**

(Judiciary Committee)

(At the request of the Attorney General)

**GAMES OF CHANCE REGULATION**

AN ACT to amend and reenact subsections 2, 3, and 4 of section 53-06.1-15.1 of the North Dakota Century Code, relating to regulation of games of chance operations.

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

**SECTION 1. AMENDMENT.** Subsections 2, 3, and 4 of section 53-06.1-15.1 of the North Dakota Century Code are amended and reenacted as follows:

2. Inspect all gaming equipment and supplies ~~on a site or premises~~.
3. Seize ~~and~~ remove ~~from a site or premises and~~, or impound any gaming equipment, supplies, games, or books and records for the purpose of examination and inspection.
4. Demand access to and inspect, examine, photocopy, and audit all books and records of applicants, organizations, lessors, manufacturers, distributors, and affiliated companies ~~on their premises~~ concerning any income, expense, or use of net proceeds, and determine compliance with this chapter or gaming rules.

Approved March 4, 2005

Filed March 4, 2005

## CHAPTER 467

### SENATE BILL NO. 2340

(Senators Bowman, Holmberg, Lyson)  
(Representatives Carlson, Devlin, R. Kelsch)

### RACING COMMISSION

AN ACT to amend and reenact subsection 1 of section 53-06.2-02, subsection 3 of section 53-06.2-11, and section 53-06.2-13 of the North Dakota Century Code, relating to the North Dakota racing commission; and to declare an emergency.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>228</sup> **SECTION 1. AMENDMENT.** Subsection 1 of section 53-06.2-02 of the North Dakota Century Code is amended and reenacted as follows:

1. A North Dakota racing commission is established ~~in the office of the attorney general. The commission is subject to the supervision and direction of the attorney general, except with regard to the commission's authority to spend the funds described in subsection 6 of section 53-06.2-11. The attorney general may require payment for any services rendered to the racing commission. Payment for such services must be deposited into the attorney general's operating fund. The commission consists~~ consisting of the chairman and four other members appointed by the governor. ~~Of the members appointed by the governor, one~~ One of the members must be appointed from a list of four nominees, one of whom is nominated by the state chapter or affiliate of the American quarter horse racing association, one of whom is nominated by the state chapter or affiliate of the United States trotting association, one of whom is nominated by the state chapter or affiliate of the international Arabian horse association, and one of whom is nominated by the state chapter or affiliate of the North Dakota thoroughbred association. The members serve five-year terms and until a successor is appointed and qualified. A member appointed to fill a vacancy arising from other than the natural expiration of a term serves only for the unexpired portion of the term. The terms of the commissioners must be staggered so that one term expires each July first. At the expiration of the five-year term of each incumbent member of the commission, the governor shall appoint a new member to the commission.

<sup>229</sup> **SECTION 2. AMENDMENT.** Subsection 3 of section 53-06.2-11 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>228</sup> Section 53-06.2-02 was also amended by section 15 of House Bill No. 1003, chapter 3.

<sup>229</sup> Section 53-06.2-11 was also amended by section 1 of House Bill No. 1389, chapter 469.

3. Unclaimed tickets and breakage from each live race meet and simulcast program as defined by the commission and the percentage of the wagering pool to be paid to the racing promotion fund under subsections 1 and 2 must be retained by the commission in a special fund to assist in improving and upgrading racetracks in the state, for the promotion of horse racing within the state, and in developing new racetracks in the state as necessary and approved by the commission. Notwithstanding this section, the commission may, ~~upon approval of the attorney general,~~ receive no more than twenty-five percent of this fund for the purpose of payment of operating expenses of the commission.

**SECTION 3. AMENDMENT.** Section 53-06.2-13 of the North Dakota Century Code is amended and reenacted as follows:

**53-06.2-13. Duty of attorney general to participate in certain hearings and to conduct investigations - Employment of private counsel by commission.**

1. The attorney general shall represent the state in all hearings before the commission and shall prosecute all criminal proceedings arising from violations of this chapter. The attorney general may require payment for any services rendered to the racing commission. Payment for the services must be deposited in the attorney general's operating fund. The commission may employ private counsel for adoption of rules and to ensure that its hearings are conducted fairly.
2. The attorney general may investigate licensed service providers and affiliated companies authorized by the commission to operate the simulcast parimutuel wagering system. The commission shall reimburse the attorney general for all services rendered to the racing commission. Payment for the services must be deposited in the attorney general's operating fund.

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

Approved April 6, 2005  
Filed April 6, 2005

## CHAPTER 468

### SENATE BILL NO. 2344

(Senators Heitkamp, Fischer, Grindberg)  
(Representatives Hawken, Kroeber, Thoreson)

## RACING COMMISSION FEE USE

AN ACT to amend and reenact subsection 6 of section 53-06.2-05 and section 53-06.2-08 of the North Dakota Century Code, relating to the use of racing commission fee collections.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsection 6 of section 53-06.2-05 of the North Dakota Century Code is amended and reenacted as follows:

6. Adopt additional rules for the administration, implementation, and regulation of activities conducted pursuant to this chapter. The commission shall deposit any fees collected under authority of this subsection in the racing commission operating fund. Subject to legislative appropriation, the commission may spend the fees for operating costs of the commission.

**SECTION 2. AMENDMENT.** Section 53-06.2-08 of the North Dakota Century Code is amended and reenacted as follows:

#### **53-06.2-08. License authorization and fees.**

1. Each license issued under the certificate system must describe the place, track, or racecourse at which the licensee may hold races. Every license must specify the number of days the licensed races may continue, the hours during which racing may be conducted, and the number of races that may be held each day. Races authorized under this chapter may be held during the hours approved by the commission and within the hours permitted by state law.
2. The commission may charge a license fee for racing commensurate with the size and attendance of the race meet. ~~The commission shall remit license fees to the state treasurer for deposit in the general fund.~~
3. Each applicant for a license under this chapter shall give bond payable to this state with good security as approved by the commission. The bond must be in the amount the commission determines will adequately protect the amount normally due and owing to this state in a regular payment period or, in the case of new or altered conditions, based on the projected revenues.
4. The commission may grant licenses to horse owners, jockeys, riders, agents, trainers, grooms, stable foremen, exercise workers, veterinarians, valets, concessionaires, service providers, employees of racing associations, and such other persons as determined by the commission. License fees are as established by the commission.

5. The commission may establish the period of time for which licenses issued under this chapter are valid.
6. The commission shall deposit all fees collected under this section in the racing commission operating fund. Subject to legislative appropriation, the commission may spend the fees for operating costs of the commission.

Approved April 7, 2005

Filed April 12, 2005



## CHAPTER 469

### HOUSE BILL NO. 1389

(Representatives Kretschmar, Boucher)  
(Senator Fischer)

## RACING BET PAYOFF FORMULAS

AN ACT to amend and reenact subsections 1, 2, and 3 of section 53-06.2-11 of the North Dakota Century Code, relating to bet payoff formulas; and to provide an expiration date.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>230</sup> **SECTION 1. AMENDMENT.** Subsections 1, 2, and 3 of section 53-06.2-11 of the North Dakota Century Code are amended and reenacted as follows:

1. a. For each day of a live race meet or a simulcast day in this state on win, place, and show parimutuel pools, the licensee shall deduct up to twenty percent of the total win, place, and show pool. On the first eleven million dollars of total wagering handle in each biennium, two percent must be paid to the state treasurer to be deposited in the general fund. One-half of one percent must be paid to the North Dakota racing commission to be used for the North Dakota purse fund. One-half of one percent must be paid to the North Dakota racing commission to be used for the North Dakota breeders' fund for the respective breed of horses racing at that meet. On the first thirty five million five hundred thousand dollars of total wagering handle in each biennium, two percent must be paid to the state treasurer to be deposited in the general fund. On the total wagering handle in excess of thirty five million five hundred thousand dollars in each biennium, one-half of one percent must be paid to the state treasurer to be deposited in the general fund. Breakage must be paid to the North Dakota racing commission to be deposited in the promotion fund.
- b. On the wagering handle on win, place, and show wagering pools in excess of eleven million dollars in each biennium, one-sixteenth of one percent must be paid to the commission to be deposited in the purse fund; one-sixteenth of one percent must be paid to the commission to be deposited in the promotion fund; one-sixteenth of one percent must be paid to the commission to be deposited in the breeders' fund; and one-sixteenth of one percent must be paid to the state treasurer to be deposited in the general fund.
2. For each day of a live race meet or a simulcast day in this state for each daily double, quinella, exacta, trifecta, or other wager combining two or more horses for winning payoffs, the licensee shall deduct up to

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<sup>230</sup> Section 53-06.2-11 was also amended by section 2 of Senate Bill No. 2340, chapter 467.

twenty-five percent of each wagering pool. Of each wagering dollar, the amounts to be deposited in the general fund and other funds are as follows:

- a. On the first ~~one hundred two eleven~~ million ~~four hundred thousand~~ dollars of wagering handle in each biennium, one-half of one percent must be paid to the commission to be deposited in the purse fund; one-half of one percent must be paid to the commission to be deposited in the promotion fund; one-half of one percent must be paid to the commission to be deposited in the breeders' fund; and two and one-half percent must be paid to the state treasurer to be deposited in the general fund.
  - b. On the wagering handle in excess of ~~one hundred two eleven~~ million ~~four hundred thousand~~ dollars in each biennium, ~~one-half~~ one-sixteenth of one percent must be paid to the commission to be deposited in the purse fund; ~~one-half~~ one-sixteenth of one percent must be paid to the commission to be deposited in the promotion fund; ~~one-half~~ one-sixteenth of one percent must be paid to the commission to be deposited in the breeders' fund; and ~~one-fourth~~ one-sixteenth of one percent must be paid to the state treasurer to be deposited in the general fund.
3. Unclaimed tickets and breakage from each live race meet and simulcast program as defined by the commission and the percentage of the wagering pool to be paid to the racing promotion fund under subsections 1 and 2 must be retained by the commission in a special fund to assist in improving and upgrading racetracks in the state, for the promotion of horse racing within the state, and in developing new racetracks in the state as necessary and approved by the commission. Notwithstanding this section, the commission may, upon approval of the attorney general, receive no more than twenty-five percent of this fund for the purpose of payment of operating expenses of the commission. For wagering handle in excess of eleven million dollars in each biennium, breakage must be divided, one-third to the North Dakota racing commission to be deposited in the promotion fund, one-third to the charity operating the site where the wagers are placed, and one-third to the service provider.

**SECTION 2. EXPIRATION DATE.** This Act is effective through June 30, 2007, and after that date is ineffective.

Approved March 9, 2005  
Filed March 9, 2005

## CHAPTER 470

### HOUSE BILL NO. 1259

(Representatives R. Kelsch, DeKrey, Delmore)  
(Senators Fischer, Klein, Trenbeath)

## LOTTERY ADMINISTRATION

AN ACT to create and enact chapter 53-12.1 of the North Dakota Century Code, relating to a lottery; to amend and reenact subsection 5 of section 28-32-08.1, section 50-06-22, subsection 2 of section 50-09-14, subsection 2 of section 54-10-01, subsection 7 of section 57-38-57, subsection 47 of section 57-39.2-04, and subsection 7 of section 57-39.2-23 of the North Dakota Century Code, relating to economic impact statements, the compulsive gambling prevention and treatment fund, child support setoff, annual audits, compliance with tax reporting requirements, and sales tax exemptions; to repeal chapter 53-12 of the North Dakota Century Code, relating to a lottery; to provide a penalty; to provide a continuing appropriation; to provide an appropriation; to provide a contingent appropriation; and to declare an emergency.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsection 5 of section 28-32-08.1 of the North Dakota Century Code is amended and reenacted as follows:

5. This section does not apply to any agency that is an occupational or professional licensing authority, nor does this section apply to the following agencies or divisions of agencies:
  - a. Council on the arts.
  - b. Beef commission.
  - c. Dairy promotion commission.
  - d. Dry bean council.
  - e. Highway patrolmen's retirement board.
  - f. Indian affairs commission.
  - g. Board for Indian scholarships.
  - h. State personnel board.
  - i. Potato council.
  - j. Board of public school education.
  - k. Real estate trust account committee.
  - l. Seed commission.

- m. Soil conservation committee.
- n. Oilseed council.
- o. Wheat commission.
- p. State seed arbitration board.
- q. North Dakota lottery.

**SECTION 2. AMENDMENT.** Section 50-06-22 of the North Dakota Century Code is amended and reenacted as follows:

**50-06-22. Compulsive gambling prevention and treatment fund - Continuing appropriation.** Funds deposited in the compulsive gambling prevention and treatment fund under section ~~53-12-24~~ 53-12.1-09 are appropriated to the department on a continuing basis for the purpose of providing the services under section 50-06-21.

**SECTION 3. AMENDMENT.** Subsection 2 of section 50-09-14 of the North Dakota Century Code is amended and reenacted as follows:

2. Any person aggrieved by an action taken by the state agency or a child support agency under section 14-09-25, chapter 35-34, this chapter, or by the North Dakota lottery director under chapter ~~53-12~~ 53-12.1 to establish or enforce a child support order may seek review of the action in the court of this state which issued or considered the child support order. If an order for child support was issued by a court or administrative tribunal in another state, any person aggrieved by an action taken by the state agency or a child support agency under section 14-09-25, chapter 35-34, this chapter, or by the North Dakota lottery director under chapter ~~53-12~~ 53-12.1 to enforce that order may seek review of the action in any court of this state which has jurisdiction to enforce that order, or if no court of this state has jurisdiction to enforce that order, in any court of this state with jurisdiction over the necessary parties. Any review sought under this subsection must be commenced within thirty days after the date of action for which review is sought. A person who has a right of review under this subsection may not seek review of the actions in a proceeding under chapter 28-32.

**SECTION 4.** Chapter 53-12.1 of the North Dakota Century Code is created and enacted as follows:

**53-12.1-01. Definitions.** As used in this chapter:

1. "Director" means the director of the lottery.
2. "Lottery" means the division of the attorney general's office created to operate a lottery.
3. "Online 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.

4. "Retailer" means a person the lottery has licensed to sell or redeem a ticket.
5. "Ticket" means an original tangible evidence of play prescribed by the lottery and produced by a lottery terminal or a properly and validly registered subscription play to prove participation in a draw of a game for a chance to win a prize.

#### **53-12.1-02. Lottery - Administration - Line of credit.**

1. There is established a division of the attorney general's office called the North Dakota lottery. Under the supervision of the attorney general, a director shall administer the lottery as provided in this chapter. The director shall consider the sensitive nature of the lottery, promote games, and ensure the integrity, security, and fairness of the lottery's operation. The lottery is solely responsible for the management and control over the operation of its games.
2. The attorney general's office may arrange a short-term line of credit with the Bank of North Dakota should lottery funds on hand be insufficient to meet an immediate major prize obligation. The line of credit is limited to the amount of each prize of one hundred thousand dollars or more that relates to prize funds known to be due and forthcoming to the lottery from other government-authorized lotteries through the multistate lottery association. However, the line of credit may not exceed one million dollars in the aggregate.

#### **53-12.1-03. Director - Responsibilities.**

1. The attorney general shall appoint a director who shall serve at the pleasure of the attorney general.
2. Subject to policy of the attorney general, the director shall:
  - a. Employ those persons deemed necessary to operate the lottery and provide secure facilities to house the lottery;
  - b. Enter a written agreement with one or more government-authorized lotteries, or with an organization created and controlled by those lotteries, for conducting and marketing a joint lottery game;
  - c. Provide for a secure computer data center and internal control system for the reliable operation of the lottery;
  - d. Prepare and submit a budget for operating the lottery;
  - e. Operate the lottery so it is self-sustaining and self-funded;
  - f. Maintain books and records which accurately reflect each day's financial transactions, including the sale of tickets, receipt of funds and fees, prize payments, and expenses to ensure accountability;
  - g. License a retailer to sell or redeem a ticket;

- h. Require a retailer to furnish proof of financial stability or post a bond in an amount the director deems necessary to protect the financial interest of the state;
- i. Timely and efficiently transfer lottery funds due from a retailer;
- j. Conduct a retailer promotion to promote the sale of a ticket;
- k. As necessary, enter a contract for a promotional service, an annuity for the payment of a prize, credit history report, security service, service from another state agency, marketing and related service, gaming system and related service, and other necessary service;
- l. Based on reasonable ground or written complaint, suspend or revoke a retailer's license or impose a monetary fine, or both, for a violation, by the retailer or employee of the retailer, of a lottery law or rule;
- m. Examine, or cause to be examined by an agent designated by the director, any book or record of a retailer to ensure compliance with the lottery law and rules;
- n. Upon request, report to the legislative council regarding the operation of the lottery;
- o. Make quarterly and annual financial reports to the governor and attorney general and a biennial report to the legislative assembly;
- p. Have an annual audit, conducted by the state auditor, of the lottery. The director shall present the audit report to the governor, state treasurer, and legislative assembly;
- q. As necessary, have an independent firm conduct a study and evaluation of security; and
- r. As necessary, conduct a survey of retailers and players or a study of reactions of citizens to present and potential features of the lottery.

#### **53-12.1-04. Advisory commission - Penalty.**

1. There is created the lottery advisory commission, which 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 term of office is three years, expiring on June thirtieth 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 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 commission each fiscal year. A member may serve as chairman for more than one year.

2. The lottery advisory commission shall meet at least once a quarter and any additional meetings as the chairman deems necessary. Special meetings may be called by the chairman upon the written request of the director or any three members of the commission.
3. The lottery advisory commission shall advise the director and attorney general on policy and general operation of the lottery and shall serve as the audit committee.
4. A member of the lottery advisory commission who is not a permanent full-time state employee is to be compensated at a rate of seventy-five dollars per day and entitled to mileage and expenses as provided by law for state employees. A state employee who is a member of the commission must receive that employee's regular salary and is entitled to mileage and expenses, to be paid by the employing agency.
5. No member of the lottery advisory commission, employee of the lottery, or any individual who regularly resides in the same household as either of those individuals may directly or indirectly, individually, as a partner of a partnership, or a stockholder, director, or officer of a corporation, have an interest in the gaming system or advertising agency vendor of the lottery. A knowing violation of this subsection is a class B misdemeanor.

**53-12.1-05. Competitive bidding - Investigation of a vendor.** Before a contract for a gaming system or marketing services is awarded, the director shall:

1. Use 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 proceeds; and
2. Conduct a thorough background investigation of the lottery's gaming system and advertising agency vendors, all shareholders of ten percent or more interest, and all senior officers and directors of the vendors, including a parent or subsidiary corporation of the vendors. The director may use information of another government-authorized lottery or other source to determine the qualification and background of the vendors. The vendors shall submit appropriate investigation authorizations. The director may require any appropriate information from the vendors to preserve the integrity and financial security of the lottery.

**53-12.1-06. Retailer application - Fees - Display of license.**

1. An applicant for a license does not have a right to a license or granting of the approval sought. A license issued or approval granted is a suspendable or revocable privilege, and the holder does not acquire any vested interest in the license or approval granted.
2. An applicant for a license that has had an application denied or a license revoked may not reapply until at least one year has elapsed from the date of the denial or revocation unless the director determines that the reason for the denial of the application or revocation of the license has been remedied. A person who has had an application denied or 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 revoke a license is final and not appealable.

3. The director may charge an application fee to a person applying to become a retailer and a license fee.
4. A retailer license is:
  - a. Renewable annually unless it is sooner relinquished, suspended, or revoked;
  - b. Not transferable or assignable to another person; and
  - c. Required to be conspicuously displayed at the retailer's site.

#### **53-12.1-07. Selection and qualifications of a retailer.**

1. The director shall select a person that the director deems best able to serve the public convenience and promote the sale of a ticket. The director shall consider relevant factors, including applicant's credit history, physical security and public accessibility of the applicant's site, integrity, sufficiency of existing retailers to serve the public convenience, especially in a geographically remote area of the state, and volume of expected sales of tickets. A person lawfully engaged in nongovernmental business on state property or a person within the exterior boundary of an Indian reservation or on tribal trust land may be selected as a retailer.
2. A retailer may not be the lottery's gaming system or advertising agency vendor or an employee or agent of the vendor.
3. To be eligible as a retailer, an individual acting as a sole proprietor must:
  - a. Have a satisfactory credit check;
  - b. Be current in payment of all taxes, interest, and penalties owed to the state and be current under a payment plan, excluding an item under formal dispute or appeal pursuant to law;
  - c. Be at least eighteen years of age;
  - d. Be of good character and reputation;
  - e. Not have been convicted of a felony in this or any other jurisdiction, unless at least ten years have passed since satisfactory completion of the sentence or probation imposed by the court in each felony;
  - f. Not have been found to have knowingly violated a lottery law or rule;
  - g. Not have been found to have a background, including a criminal record, or prior activities that pose a threat to the public interests of this state or to the security and integrity of the lottery, create or enhance the dangers of unsuitable or illegal practices in the conduct of lottery activities, or present questionable business



- practices and financial arrangements incidental to the lottery activity;
- h. Not be a parent, stepparent, child, stepchild, spouse, or sibling who is a regular member of the same household of an employee of the lottery or member of the lottery advisory commission; and
  - i. Not have knowingly made a false statement of material fact to the lottery.
4. To be eligible as a retailer, a partnership must meet the requirement of subdivision a of subsection 3 and each partner must meet the requirements of subdivisions b through i of subsection 3.
  5. To be eligible as a retailer, an organization other than a partnership must meet the requirements of subdivisions a and b of subsection 3 and each officer and director who is primarily responsible for making financial decisions and each shareholder who owns ten percent or more of an ownership interest in the organization must meet the requirements of subdivisions c through i of subsection 3.

**53-12.1-08. Purchase of ticket or payment of prize to certain persons prohibited - Price of a ticket - Sale by retailer only - Retailer second chance drawing - Prize paid to owner of a winning ticket - Prize subject to taxation - Discharge of liability - Penalty.**

1. A ticket may not be bought by or otherwise provided to, and a prize may not be paid to, the following individuals or to a parent, stepparent, child, stepchild, spouse, or sibling who is a regular member of the same household of the following individuals:
  - a. A member of the lottery advisory commission or employee of the lottery, unless authorized in writing by the director; or
  - b. An officer or employee of the lottery's gaming system vendor.

A person who knowingly violates this subsection is guilty of a class B misdemeanor on the first offense and a class A misdemeanor on a subsequent offense.
2. A retailer or employee of a retailer may buy a ticket and be paid a prize for a winning ticket.
3. Only a retailer may sell a ticket. A retailer may sell a ticket only at the site stated on the license. A retailer may not sell a ticket at a price greater than the price set by the lottery rules. A person convicted of violating this subsection is guilty of a class A misdemeanor on the first offense and a class C felony on a subsequent offense.
4. A retailer may conduct a second chance drawing of entry forms or nonwinning tickets to promote the sale of a ticket at that site.
5. No ticket may be sold or given to a minor. A retailer, employee of a retailer, or any other person who knowingly violates this subsection is guilty of a class B misdemeanor on the first offense and a class A misdemeanor on a subsequent offense.

6. The prize to be paid or awarded for a winning ticket must be paid to the person who the director determines is the owner of the ticket. However, the prize of a deceased winning player must be paid to the lawful representative of the estate.
7. If an individual steals a ticket from a retailer, the individual is guilty of a class A misdemeanor. However, if the total value of the tickets stolen exceeds five hundred dollars, the offense is a class C felony.
8. A prize awarded is subject to state and federal income tax laws and rules.
9. A person who, with intent to defraud, falsely makes, alters, forges, passes, or counterfeits a ticket or gift certificate issued by the lottery, regardless of the amount gained, is guilty of a class C felony.
10. The state, members of the lottery advisory commission, and employees of the lottery are discharged of all further liability upon payment of a prize.

**53-12.1-09. Operating fund - Continuing appropriation - Authorization of disbursements - Report - Net proceeds.** There is established within the state treasury the lottery operating fund into which must be deposited all revenue from the sale of tickets, interest received on money in the fund, and all other fees and moneys collected, less a prize on a winning ticket or lottery promotion paid by a retailer and the retailer's commission. Except for moneys in the lottery operating fund appropriated by the legislative assembly for administrative and operating costs of the lottery under section 53-12.1-10, all other money in the fund is continuously appropriated for the purposes specified in this section. During each regular session, the attorney general shall present a report to the appropriations committee of each house of the legislative assembly on the actual and estimated expenditures for the current biennium and projected expenditures for the subsequent biennium authorized by this section. A payment of a prize or expense or transfer of net proceeds by the lottery may be made only against the fund or money collected from a retailer on the sale of a ticket. A disbursement from the fund must be for the following purposes:

1. Payment of a prize as the director deems appropriate to the owner of a valid, winning ticket;
2. Payment of a gaming system or related service expense, game group dues, and retailer commissions; and
3. Transfer of net proceeds:
  - a. Starting July 1, 2005, fifty thousand dollars must be transferred to the state treasurer each quarter for deposit in the compulsive gambling prevention and treatment fund;
  - b. An amount for the lottery's share of a game's prize reserve pool must be transferred to the multistate lottery association; and
  - c. The balance of the net proceeds, less holdback of any reserve funds the director may need for continuing operations, must be transferred to the state treasurer on at least an annual basis for deposit in the state general fund.

**53-12.1-10. Administrative and other operating costs of the lottery - Lottery operating fund.** Money in the lottery operating fund may be spent pursuant to legislative appropriation for costs of administering and operating the lottery, including costs relating to employees, supplies, surveys, advertising and marketing, printing, promotion, premium incentive items, a facility, and services provided by another state agency.

**53-12.1-11. Confidentiality of records.**

1. The following information and records of the lottery are confidential:
  - a. Sales and income tax information, financial statements, and a credit report of a retailer applicant or person seeking or doing business with the lottery, and retailer application information other than the applicant's name and location;
  - b. Information related to a person owing a debt to the state or having a debt collected through a state agency that is made confidential by another state law or rule;
  - c. Internal control and security procedures, security information on a winning ticket, and information on a bid or contractual data, the disclosure of which is harmful to the efforts of the lottery to contract for goods and services on favorable terms;
  - d. Personal information on a winning player unless the player authorizes, in writing, release of the information; and
  - e. Lottery sales data, the disclosure of which is harmful to the competitive position of the lottery, retailer, or person seeking or doing business with the lottery. However, a retailer may authorize the lottery to release the retailer's lottery sales data.
2. To be confidential, information must relate to the security and integrity of the lottery. Information and records may be disclosed within the attorney general's office or to an authorized person in the proper administration of the lottery law and rules or in accordance with a judicial order. Criminal history record check information on an individual seeking or doing business with the lottery may be released only according to chapter 12-60.

**53-12.1-12. Setoff of prize.**

1. A claimant agency and the director shall cooperate on the setoff of a lottery prize against a delinquent debt. A claimant agency is an agency of the state of North Dakota that a person owes money to or that collects money on behalf of another party to satisfy a debt. The claimant agency and director shall share necessary information, including the person's full name, social security number, and amount and type of debt, through a mutually convenient method to timely achieve a setoff of a prize.
2. The director shall establish a debt setoff process in which a lottery prize claim of an amount equal to or greater than six hundred dollars must be used to setoff a delinquent debt owed to or collected through a claimant agency.

3. If the director determines that a winning player owes a delinquent debt to or has a delinquent debt collected through a claimant agency, the director shall set off the amount of the debt from the prize due and notify the player, in writing, of the setoff. If the setoff accounts for only a portion of the prize due, the remainder of the prize must be paid to the player. The director shall transfer the setoff amount to the claimant agency unless the player notifies the director, in writing, within thirty days of the date of the notice of the setoff, that the player disputes all or part of the debt owed to or collected through the claimant agency. If the director receives a notification that the player disputes the setoff amount or claim upon which the setoff is based, the director shall grant a hearing to the player to determine whether the setoff is proper or the claim is valid, unless a review by a court is authorized under section 50-09-14. At a hearing, no issue may be reconsidered that the player has or could have previously litigated in a court or administrative proceeding.
4. The lottery is discharged of all further liability for the amount of any debt setoff paid to a claimant agency.
5. If two or more claimant agencies have delinquent accounts for the same player, 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.
6. If the prize is insufficient to satisfy the entire debt, the remainder of the debt may be collected by a claimant agency as provided by law or rule and resubmitted for setoff against any other prize awarded.
7. If two or more claimant agencies make adverse claims to all or a part of a prize payment, upon receipt of written notice from the claimant agencies setting forth their claims, the director may deposit, in accordance with section 32-11-02, the contested amount of the prize payment with the clerk of court in the district in which an action pertaining to the contested amount is pending or with a court-authorized depository. If one of the claims is for child support, the director shall transfer the setoff amount to the state disbursement unit before depositing any remaining prize payment or award. Any review of this transfer to the state disbursement unit must be done pursuant to section 50-09-14. Upon making the deposit or transfer, the state and its officials and employees are discharged and relieved from further liability to any person or claimant agency related to the prize payment.

**53-12.1-13. Rules.** The attorney general shall adopt rules governing the operation of the lottery. The attorney general may adopt emergency rules as necessary without the grounds otherwise required under section 28-32-03. The attorney general shall adopt rules to address any matters necessary for the efficient operation of the lottery or convenience of the public, including:

1. Type of retailer where a ticket may be sold;
2. Qualification for selecting a retailer and amount of application and license fees;
3. Licensing procedure;

4. Method used to sell a ticket, including a gift certificate and subscription;
5. Financial responsibility of a retailer;
6. Retailer promotions;
7. Amount and method of commission to be paid to a retailer, including a special bonus or incentive;
8. Deadline for claiming a prize by the owner of a winning ticket, however, the deadline may not exceed one year;
9. Manner of paying a prize to the owner of a winning ticket; and
10. Setoff of a prize.

**SECTION 5. AMENDMENT.** Subsection 2 of section 54-10-01 of the North Dakota Century Code is amended and reenacted as follows:

2. Perform or provide for the audit of the general purpose financial statements and a review of the material included in the comprehensive annual financial report of the state and perform or provide for the audits and reviews of state agencies. Except for the annual audit of the North Dakota lottery required by section ~~53-12-07~~ 53-12.1-03, the state auditor shall audit or review each state agency once every two years. The state auditor shall determine the contents of the audits and reviews of state agencies. The state auditor may conduct any work required by the federal government. The state auditor shall charge an amount equal to the cost of the audit and other services rendered by the state auditor to all agencies that receive and expend moneys from other than the general fund. This charge may be reduced for any agency that receives and expends both general fund and non-general fund moneys. Audits and reviews may be conducted at more frequent intervals if requested by the governor or legislative audit and fiscal review committee.

**SECTION 6. AMENDMENT.** Subsection 7 of section 57-38-57 of the North Dakota Century Code is amended and reenacted as follows:

7. The tax commissioner, upon written request from the director of the North Dakota lottery, may provide a written statement to the director, employees, or agents of the North Dakota lottery, in which the tax commissioner is limited to stating that the lottery retailer applicant has complied or not complied with the requirements of this chapter. The information obtained under this subsection is confidential and may be used for the sole purpose of determining whether the applicant meets the requirements of ~~subdivision d of subsection 4 subsections 3, 4, and 5 of section 53-12-13 and subdivision d of subsection 4 of section 53-12-44~~ 53-12.1-07.

<sup>231</sup> **SECTION 7. AMENDMENT.** Subsection 47 of section 57-39.2-04 of the North Dakota Century Code is amended and reenacted as follows:

47. Gross receipts from the sale of lottery tickets under chapter ~~53-12~~ 53-12.1.

**SECTION 8. AMENDMENT.** Subsection 7 of section 57-39.2-23 of the North Dakota Century Code is amended and reenacted as follows:

7. The tax commissioner, upon written request from the director of the North Dakota lottery, may provide a written statement to the director, employees, or agents of the North Dakota lottery, in which the tax commissioner is limited to stating that the lottery retailer applicant has complied or not complied with the requirements of this chapter. The information obtained under this subsection is confidential and may be used for the sole purpose of determining whether the applicant meets the requirements of ~~subdivision d of subsection 4~~ subsections 3, 4, and 5 of section 53-12-13 and subdivision d of subsection 4 of section 53-12-14 53-12.1-07.

**SECTION 9. REPEAL.** Chapter 53-12 of the North Dakota Century Code is repealed.

**SECTION 10. APPROPRIATION - ATTORNEY GENERAL - LOTTERY.** There is appropriated out of any moneys in the lottery operating fund in the state treasury, not otherwise appropriated, the sum of \$3,620,171, or so much of the sum as may be necessary, to the attorney general for the purpose of defraying the administrative and other operating costs of the North Dakota lottery, for the biennium beginning July 1, 2005, and ending June 30, 2007. The attorney general is authorized nine full-time equivalent positions for administering the lottery.

**SECTION 11. CONTINGENT APPROPRIATION - ADDITIONAL LOTTERY FUNDING - BUDGET SECTION REPORT.** There is appropriated out of any moneys in the lottery operating fund in the state treasury, not otherwise appropriated, the sum of \$279,020, or so much of the sum as may be necessary, to the attorney general for the purpose of defraying additional administrative and other operating costs of the North Dakota lottery if these costs exceed the funding appropriated in section 10 of this Act, for the biennium beginning July 1, 2005, and ending June 30, 2007. The attorney general is authorized to hire up to two additional full-time equivalent positions under this section. The attorney general shall report any expenditures made or employees hired pursuant to this section to the budget section. If the additional funding and full-time equivalent authorization provided by this section is not adequate, the attorney general may seek emergency commission approval for additional spending or full-time equivalent authority.

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<sup>231</sup> Section 57-39.2-04 was also amended by section 7 of House Bill No. 1043, chapter 580, section 19 of House Bill No. 1043, chapter 580, section 1 of House Bill No. 1179, chapter 571, section 2 of House Bill No. 1179, chapter 571, section 1 of House Bill No. 1368, chapter 572, section 1 of House Bill No. 1496, chapter 575, section 2 of Senate Bill No. 2050, chapter 582, section 3 of Senate Bill No. 2170, chapter 574, section 1 of Senate Bill No. 2176, chapter 573, and section 5 of Senate Bill No. 2217, chapter 94.

**SECTION 12. EMERGENCY.** This Act is declared to be an emergency measure.

Approved May 4, 2005  
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