

*From the Desk of
Ernest C. Matthews IV*

MEMORANDUM

TO: North Dakota Senate Committee on Finance and Tax
FROM: Ernest C. Matthews IV
DATE: March 14, 2021
SUBJECT: Summary of Discussion Relating to Suggested Amendments to HB 1234

Introduction: I am (i) an attorney, experienced in gaming law working on a variety of issues in different states around the US and internationally; (ii) a member of the International Masters of Gaming Law – see www.imgl.org – made of gaming sectors the top attorneys, industry leaders and regulators (the “IMGL”) (iii) a frequent speaker on a variety of domestic and international gaming issues and (iv) involved in different US jurisdictions on various sports betting operator oriented issues through both my IMGL position and that as General Counsel/Vice President of Internet Sports International, Ltd. I am appearing to testify in favor of the amendments to HB 1234. I will address the following amendments:

1. The amendment offered on Page 2 line 25. This amendment a language clarification that it is "in-state" college sports, as well as any sports event that involves participants under the age of 18. (as opposed to prohibiting betting on college sports as a whole).
2. The amendment offered is on Page 3 lines 25 and line 27 These clarifications add the ND Century Code citations that makes clear the pari-mutuel horseracing and charitable gaming are already legal and separately governed in North Dakota. It is clear on its face that the proposed bill and its amendments do not impact pari-mutuel racing or other gaming that are already provided for under ND law.
3. The next amendment is on page 6 lines 16 and 17, concerning the appointment of the proposed five member Sports Wagering Commission.

The way the current bill is written is unusual. The vast majority of gaming commissioners are selected by the Governor of each state with isolated instances where the legislature will also participate. To my knowledge, North Dakota would be the only state in the country that would have its Attorney General appointing a controlling interest in the state commission. This could cause there to be a conflict in the AG's office representing the Commission should a legal matter arise if the commission could be deemed nothing more than an extension of the AG's office. Typically, the AG provides legal support to state agencies and commissions. If the association is too close, there may be instances wherein the AG's office would have to recuse itself from representing the commission leading to the necessity (and added cost) of an appointment of outside counsel to provide adequate representation.

4. The fourth amendment is on page 9 line 5. This amendment changes the number of Retail Sports Wagering licenses from 2 to 3, making it consistent with the number of mobile licenses of 3, and

inclusive of the number of licenses a state the size of North Dakota should be able to support. Likewise, having the extra license could improve the terms offered to the retail locations as the three license holders jockey to include as many bars and taverns as possible into their respective pools.

5. The fifth amendment is on page 17 lines 7 through 10. This is a crucial amendment for the in-state bars and hospitality sites, fraternal locations, and other gaming businesses across the state and the rural towns which need the post COVID stimulation and which otherwise could not be included in this activity.

This amendment provides for a start date for these "retail sports betting locations" of August 1, 2023 (subject to the passage of HB 3032 and the vote of the ND citizens) -- these locations, which could number in the hundreds, will be North Dakota operated businesses; bars, restaurants, hotels, fraternal locations and other sites across the state -- these locations would be able to establish their businesses and support the higher costs of equipment, get new customers into their establishments, increase food and beverage sales -- and tips, while securing additional play on the existing charitable activities in those locations from the new foot traffic.

The retail sportsbooks need time to become established. I feel that the direct impact on the smaller businesses and their employees in the post Covid recovery period throughout the state will more directly benefit from this activity with dollars going into their respective pockets than would the mobile/online tax revenue which will be diffused by the time its benefits reach those same people. One additional side benefit of giving the retail locations a head start is that this activity will give them all time to generate substantial data bases in the collection of the names of those participating in sports betting. These data bases will sometime mean as much if not more to the local businesses in marketing other ancillary services they provide.

Respectfully,

Ernest C. Matthews IV