

**Testimony in Favor of
HOUSE BILL NO. 1387
Industry, Business and Labor Committee
January 25, 2023**

Chairman Scott Louser, House IBL Committee members, for the record my name is Rick Stenseth. I have been in charitable gaming since 1983. I am a Gaming Manager for two local organizations in Fargo that both conduct charitable gaming (Northern Prairie Performing Arts (NPPA) aka Fargo-Moorhead Community Theatre & Team Makers Club). I am submitting this testimony through our NPPA lobbyist, Todd D. Kranda, an attorney with the Kelsch Ruff Kranda Nagle & Ludwig Law Firm in Mandan.

NPPA is in favor of addressing rent for electronic pull tabs in HB 1387, but we are concerned that there should be a criteria and process included for the application of the rental obligation. We would like to see a provision that would address the concern on how a rental obligation is applied. The provision would maintain a rent consideration for bar owners (lessors) which they are certainly entitled to, but it would also provide protection to organizations from paying more rent than the level of activity provides and is sustainable. The provision would not propose any certain maximum rent as more than doubling the maximum amount is more than many organizations can absorb and any increase requires further discussion.

Currently the number of electronic pull tab devices installed is determined between a lessor and an organization. This can range from just a couple, up to ten. The first five devices have their maximum rent at \$100 per device, per month. Additional devices (six-ten) may receive up to \$50 per device. Therefore, the maximum could be \$750 per month. Currently there is no rent allowed for those lessors who assist in the conduct of this game.

This potential increase in the maximum rent is significant. It will raise that amount to \$2,000 per month for a location with ten devices. If an additional amount of rent is allowed where bar assist participation occurs, the total rent per month could go up to \$2,500. While there are certain sites that have enough activity to support that kind of increase, there are far more smaller ones which do not have the current activity to support the rent for the number of devices they have now.

Each lessor can request a certain number of devices regardless of the amount of traffic they have in their bar or how much play there is on the devices. While there are some locations that have more business than others and may require up to ten devices, numerous others have more devices in play than that location may ever require.

This can lead to situations where a lessor insists on a certain number of devices in order to allow an organization to operate in their establishment. It also allows organizations who wish to open or expand operations to promise a lessor they will deliver more devices than necessary to get the lessor more rent as an enticement to take a site away from another organization. Either way, there is no established criteria for how many devices an organization may be allowed to pay rent on in any given site. The maximum that can be installed in a location is 10, but that should not mean all ten warrant maximum rent.

This same type of rent concern was raised in the past when blackjack began to proliferate across the state. Many bar owners insisted on an organization bringing in more 21 tables than a site needed, or even could physically set up, in order to gain more rent from the organization. While the maximum amount of rent allowed was placed in statute, the determination of what rent was allowed for each site was entrusted to the Administrative Rules. This gave the Attorney General, organizations, and lessors the opportunity and flexibility to apply rental value to game activity. This is exactly the type of process that is proposed for electronic pull tabs in the additional criteria provision that should be considered.

There is data readily available that can be used in defining appropriate rent. However, trying to put such detail into statute would be somewhat difficult and any adaptations or adjustments having to be delayed until the next session would be much more cumbersome than working through the Gaming Commission and Attorney General's Office.

To summarize, the lessors who agree to have electronic pull tabs in their establishments should be able to receive a level of rent commensurate with the opportunity that is being provided to a charitable organization. If they are involved in the conduct of the game by assisting the organization, they may also deserve consideration for that participation. It is important to recognize this and provide a framework for the administrative rules to develop an equitable criterion that will work with the various circumstances between all the lessors and their gaming providers.

HB 1387 is a progressive bill in principle, with a significant increase to the maximum rent allowed and a lack of an equitable and auditable application of said rent. With the addition of a provision to address the criteria for determining the appropriate number of devices at a site we can support 1387 and would urge a YES vote on the change to include such a provision and then a DO PASS as amended on 1387.