

Sixty-eighth  
Legislative Assembly  
of North Dakota

ENGROSSED SENATE BILL NO. 2304

Introduced by

Senators Klein, Hogue, Luick

Representatives Karls, Kempenich, Nathe

*In response to the request from Reps. Kasper & Koppelman, I have hand-written this clear ~~and~~ articulation of the views of the Office of Attorney General. [Signature]*

1 A BILL for an Act to create and enact a new section to chapter 53-06.1 and a new subsection to  
2 section 53-06.1-15.1 of the North Dakota Century Code, relating to alcoholic beverage  
3 establishment requirements and the authority of the attorney general to impose fines for gaming  
4 violations; and to amend and reenact ~~section~~ sections 53-06.1-01 and 53-06.1-03, and  
5 subsections 2 and 5 of section 53-06.1-11 of the North Dakota Century Code, relating to gaming  
6 licenses for alcoholic beverage establishments, the maximum number of gaming sites allowed,  
7 the maximum number of pull tab devices allowed at a site, approval for a gaming site  
8 authorization and licensure, modification of allowable expense limits, and rent limits for  
9 electronic pull tab devices.

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

11 SECTION 1. AMENDMENT. Section 53-06.1-01 of the North Dakota Century Code is  
12 amended and reenacted as follows:

13 53-06.1-01. Definitions.

14 As used in this chapter:

- 15 1. "Adjusted gross proceeds" means gross proceeds less cash prizes, cost of  
16 merchandise prizes, gaming tax, and federal excise tax imposed under section 4401  
17 of the Internal Revenue Code [26 U.S.C. 4401].
- 18 2. "Alcoholic beverage establishment" means an establishment licensed under  
19 chapter 5-02 where alcoholic beverages are sold, dispensed, and consumed by  
20 guests on the premises. ThisThe term does not include an off-sale liquor store,  
21 gas station, grocery store, or convenience store licensed for off sale only.An alcoholic  
22 beverage establishment must be licensed under chapter 5-02 and be devoted to the  
23 service of alcoholic beverages for consumption by guests on the premises. The term  
24 includes a bar located within a hotel, bowling center, golf course, or restaurant.

*Oppos*  
*\*Add back our definit of be (attach*

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- 1        3. "Charitable organization" means an organization whose primary purpose is for relief of  
2        poor, distressed, underprivileged, diseased, elderly, or abused persons, prevention of  
3        cruelty to children or animals, or similar condition of public concern.
- 4        ~~3-4.~~ "Civic and service organization" means an organization whose primary purpose is to  
5        promote the common good and social welfare of a community as a sertoma, lion,  
6        rotary, jaycee, kiwanis, or similar organization.
- 7        ~~4-5.~~ "Closely related organization" means an organization that controls, is controlled by, or  
8        is under common control with another organization. Control exists when an  
9        organization has the authority or ability to elect, appoint, or remove a majority of the  
10       officers or directors of another organization or, by policy, contract, or otherwise, has  
11       the authority or ability to directly or indirectly direct or cause the direction of the  
12       management or policies of another organization.
- 13       ~~5-6.~~ "Distributor" means a person that sells, markets, or distributes equipment designed for  
14       use in the conduct of games.
- 15       ~~6-7.~~ "Educational organization" means a nonprofit public or private elementary or  
16       secondary school, two-year or four-year college, or university.
- 17       ~~7-8.~~ "Electronic pull tab device" means a device, approved by the attorney general, which  
18       electronically displays pull tabs.
- 19       ~~8-9.~~ "Eligible organization" means a veterans, charitable, educational, religious, fraternal,  
20       civic and service, public safety, or public-spirited organization domiciled in North  
21       Dakota or authorized by the secretary of state as a foreign corporation under chapter  
22       10-33, incorporated as a nonprofit organization, and which has been regularly and  
23       actively fulfilling its primary purpose within this state during the two immediately  
24       preceding years. However, an educational organization does not need to be  
25       incorporated or be in existence for two years. An organization's primary purpose may  
26       not involve the conduct of games. The organization may be issued a license by the  
27       attorney general. For purposes of this section, a foreign corporation authorized under  
28       chapter 10-33 is not an eligible organization unless authorized to conduct a raffle  
29       under chapter 20.1-04 or 20.1-08 and may not conduct a game other than a raffle  
30       under chapter 20.1-04 or 20.1-08.

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- 1    ~~9-10.~~ "Fraternal organization" means an organization, except a school fraternity, which is a  
2           branch, lodge, or chapter of a national or state organization and exists for the common  
3           business, brotherhood, or other interests of its members. The organization must have  
4           qualified for exemption from federal income tax under section 501(c)(8) or 501(c)(10)  
5           of the Internal Revenue Code.
- 6    ~~40-11.~~ "Games" means games of chance.
- 7    ~~44-12.~~ "Gross proceeds" means all cash and checks received from conducting games.
- 8    ~~42-13.~~ "Licensed organization" means an eligible organization licensed by the attorney  
9           general.
- 10   ~~43-14.~~ "Manufacturer" means, for a pull tab or bingo card, a person who designs, prints,  
11           assembles, or produces the product. For a pull tab dispensing device, bingo card  
12           marking device, or a fifty-fifty raffle system, a manufacturer means the person who  
13           directly controls and manages development of and owns the rights to the proprietary  
14           software encoded on a processing chip that enables the device to operate.
- 15   ~~44-15.~~ "Net income" means gross proceeds less cash prizes, cost of merchandise prizes, and  
16           expenses to conduct the gaming activity.
- 17   ~~45-16.~~ "Net proceeds" means adjusted gross proceeds less allowable expenses and gaming  
18           tax.
- 19   ~~46-17.~~ "Off sale" means the sale of alcoholic beverages that are to be consumed off the  
20           licensed premises.
- 21   18. "On sale" means the sale of alcoholic beverages that are meant to be consumed on  
22           the licensed premises.
- 23   19. "Permit" means a local permit or restricted event permit issued by a governing body of  
24           a city or county to a nonprofit organization or group of people domiciled in North  
25           Dakota.
- 26   ~~47-18-20.~~ "Person" means any person, partnership, corporation, limited liability company,  
27           association, or organization.
- 28   ~~48-19-21.~~ "Prize board" means a board used with pull tabs to award cash or merchandise  
29           prizes.

1 | ~~19-20-22.~~ "Public safety organization" means an organization whose primary purpose is  
2 | to provide firefighting, ambulance service, crime prevention, or similar emergency  
3 | assistance.

4 | ~~20-21-23.~~ "Public-spirited organization" means an organization whose primary purpose is  
5 | for scientific research, amateur sports competition, safety, literary, arts, preservation of  
6 | cultural heritage, educational activities, educational public service, youth, economic  
7 | development, tourism, community medical care, community recreation, or similar  
8 | organization, which does not meet the definition of any other type of eligible  
9 | organization. However, a nonprofit organization or a group of people recognized as a  
10 | public-spirited organization by a governing body of a city or county for obtaining a  
11 | permit does not need to meet this definition.

12 | ~~21-22-24.~~ "Pull tab" means a folded or banded ticket or jar ticket, a pull tab card with  
13 | break-open tabs, or an electronic pull tab displaying concealed numbers or symbols or  
14 | combinations of concealed numbers and symbols which are exposed by a player to  
15 | determine the outcome. The terms "pull tab" and "jar ticket" are used interchangeably  
16 | unless otherwise stated. A winning pull tab contains certain symbols, numbers, or  
17 | combinations of symbols and numbers and may contain multiple winning symbols,  
18 | numbers, or combinations of symbols and numbers which have been previously  
19 | designated as winning symbols or numbers.

20 | ~~22-23-25.~~ "Religious organization" means a church, body of communicants, or group  
21 | gathered in common membership whose primary purpose is for advancement of  
22 | religion, mutual support and edification in piety, worship, and religious observances.

23 | ~~23-24-26.~~ "Veterans organization" means any congressionally chartered post  
24 | organization, or any branch or lodge or chapter of a nonprofit national or state  
25 | organization whose membership consists of individuals who are or were members of  
26 | the armed services or forces of the United States. The organization must have  
27 | qualified for exemption from federal income tax under section 501(c)(19) of the  
28 | Internal Revenue Code.

29 | **SECTION 2. AMENDMENT.** Section 53-06.1-03 of the North Dakota Century Code is  
30 | amended and reenacted as follows:

1       **53-06.1-03. Permits, site authorization, and licenses - Organization requirements -**  
2       **Site inspection.**

- 3       1. Except as authorized by the attorney general, an organization that has its license  
4       suspended or revoked, or has relinquished or not renewed its license and not  
5       disbursed its net proceeds, is ineligible for a license or permit. Only one of two or more  
6       closely related organizations may have a license or permit at one time. A college or  
7       university fraternity, sorority, or club is not closely related to an educational  
8       organization. An organization shall apply for a permit as follows:
- 9       a. An organization recognized as a public-spirited organization by the governing  
10       body of a city or county may apply for permits. A local permit may allow the  
11       organization to conduct only raffles, bingo, or sports pools. A restricted event  
12       permit may allow the organization to conduct only raffles, bingo, sports pools,  
13       paddlewheels, twenty-one, and poker. The organization or closely related  
14       organizations as a whole may only award a primary prize that does not exceed  
15       eight thousand dollars and total prizes of all games do not exceed forty thousand  
16       dollars per year. These maximum prize amounts do not apply to raffles conducted  
17       under chapter 20.1-08. The determination of what is a "public-spirited  
18       organization" is within the sole discretion of the governing body. An organization  
19       shall disclose on the application its intended use of the net income from the  
20       gaming activity. A governing body may issue a permit for games to be held at  
21       designated times and places.
- 22       b. An organization shall apply to the governing body of the city or county in which  
23       the proposed site is located. Application must be made on a form prescribed by  
24       the attorney general. Approval may be granted at the discretion of the governing  
25       body. A governing body may establish a fee not to exceed twenty-five dollars for  
26       each permit. A permit must be on a fiscal year basis from July first to June  
27       thirtieth or on a calendar-year basis.
- 28       c. An organization that has a local permit or a restricted event permit may use the  
29       net income from the gaming activity for any purpose that does not violate this  
30       chapter or gaming rules, unless the organization is a state political party or  
31       legislative district party committee, the organization may use the net income from

1 a raffle for a political purpose. For purposes of this subdivision, a public-spirited  
2 use includes a political purpose.

3 d. An organization that has a restricted event permit is restricted to one event per  
4 year and:

5 (1) May not pay remuneration to employees for personal services;  
6 (2) Shall use chips as wagers;  
7 (3) Shall redeem a player's chips for merchandise prizes or cash;  
8 (4) Shall disburse net income to eligible uses referenced in subdivision c, if  
9 applicable, and in section 53-06.1-11.1; and  
10 (5) Shall file a report prescribed by the attorney general with the governing  
11 body and attorney general.

12 2. An eligible organization shall apply for a license to conduct only bingo, electronic quick  
13 shot bingo, raffles, calcuttas, pull tabs, punchboards, twenty-one, paddlewheels,  
14 poker, or sports pools by:

15 a. First securing a lease for a gaming site location.

16 b. After securing a lease for a gaming site location, securing approval for a site  
17 authorization from the governing body of the city or county in which the proposed  
18 site is located. ~~Approval, which may be granted at the discretion of the governing~~  
19 ~~body.~~ The approved authorization must be recorded on a site authorization form  
20 that is to accompany the license application to the attorney general for final  
21 approval. A governing body ~~may~~:

22 (1) May not require an eligible organization to donate net proceeds to the city,  
23 county, or related political subdivision or for community programs or  
24 services within the city or county as a condition for receiving a site  
25 authorization from the city or county. ~~A governing body may~~.

26 (2) May limit the number of tables for the game of twenty-one per site and the  
27 number of sites upon which a licensed organization may conduct games  
28 within the city or county. ~~A governing body may~~.

29 (3) May charge a one hundred dollar fee for a site authorization; ~~and~~  
30 ~~b.~~ (4) May not require a site to enter a lease with a specific organization as a  
31 condition of receiving a site authorization;

*We oppose this, so as to avoid the obvious opportunities for corruption*

*We need this language so that political subs have appropriate discretion. This is an important protection.*

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*We strongly oppose this language as will every political sub.*

- (5) May not deny approval of a site authorization because an organization has not previously conducted gaming at that site;
- (6) May deny approval of a site authorization if an application is incomplete or if granting approval would violate a local ordinance related to a limitation on the number of site authorizations for which an organization may be approved or whether the organization is public-spirited. An ordinance that places a condition on how charitable funds may be used may not have an effect on the approval of a site authorization; and
- (7) May deny approval of a site authorization if the organization is not compliant with statute or rule.

c. Annually applying for a license from the attorney general before July first on a form prescribed by the attorney general and remitting a one hundred fifty dollar license fee for each city or county that approves a site authorization. However, the attorney general may allow an organization that only conducts a raffle or calcutta in two or more cities or counties to annually apply for a consolidated license and remit a one hundred fifty dollar license fee for each city or county in which a site is located. An organization shall document that it qualifies as an eligible organization. If an organization amends its primary purpose as stated in its articles of incorporation or materially changes its basic character, the organization shall reapply for licensure. The attorney general shall issue a license to an eligible organization that has obtained approval of site authorization under subdivision b. applied, paid the requisite fee, and demonstrated it qualifies as an eligible organization.

*We strongly oppose this language as it makes the oversight into merely a rubber stamp.*

A licensed organization or organization that has a permit shall conduct games as follows:

- a. Only one licensed organization or organization that has a permit may conduct games at an authorized site on a day, except that a raffle may be conducted for a special occasion by another licensed organization or organization that has a permit when one of these conditions is met:
  - (1) When the area for the raffle is physically separated from the area where games are conducted by the regular organization.

We oppose this entire page as it guts what this legislature already agreed to in HB1497!

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(2) Upon request of the regular organization and with the approval of the alcoholic beverage establishment, the regular organization's license or permit is suspended for that specific time of day by the attorney general.

b. Except for a temporary site authorized for fourteen or fewer consecutive days for not more than two events per quarter or a licensed organization authorized on or before January 1, 2023, to conduct gaming at more than fifteen sites, a licensed organization may not have more than ~~twenty-five~~fifteen sites ~~unless granted a waiver by the attorney general. If the attorney general finds that there is no other licensed organization interested in conducting gaming at a site for which a waiver is being sought, the attorney general may approve the waiver for no more than five sites.~~

c. Games of electronic quick shot bingo, pull tabs, punchboards, twenty-one, paddlewheels, poker, and sports pools may be conducted only during the hours when alcoholic beverages may be dispensed according to applicable regulations of the state, county, or city.

d. An organization may not permit a person under twenty-one years of age to directly or indirectly play pull tabs, punchboards, twenty-one, calcuttas, sports pools, paddlewheels, or poker. An organization may not permit an individual under eighteen years of age to directly or indirectly play electronic quick shot bingo. An organization may not permit an individual under eighteen years of age to directly or indirectly play bingo unless the individual is accompanied by an adult, bingo is conducted by an organization that has a permit, or the game's prize structure does not exceed that allowed for a permit.

e. An organization may not install more than ten electronic pull tab devices at a site.

f. An organization with more than fifteen licensed sites under subdivision b may not increase its number of sites beyond the number of sites licensed as of January 1, 2023.

4. A permit, or site authorization and license, must be displayed at a site.

5. The attorney general may issue a conditional license to an eligible organization whose regularly issued license has expired or been suspended, revoked, or relinquished. The

1 attorney general shall designate the time period for which the conditional license is  
2 valid and may impose any conditions.

3 6. A governing body or local law enforcement official may inspect a site's gaming  
4 equipment and examine or cause to be examined any gaming-related books and  
5 records of a licensed organization or organization that has a permit.

6 **SECTION 3.** A new section to chapter 53-06.1 of the North Dakota Century Code is created  
7 and enacted as follows:

8 Alcoholic beverage establishment - Requirements.

9 1. An alcoholic beverage establishment:

- 10 a. May not interfere with the organization's operation of gaming;  
11 b. May not limit the gaming hours of operation, except to limit gaming to the  
12 alcoholic beverage establishment's hours of operation;  
13 c. May not receive any compensation from gaming proceeds other than rent under  
14 this chapter. Compensation includes any financial benefit, direct or indirect, from  
15 gaming proceeds;  
16 d. May not require an organization to donate net proceeds to any organization or for  
17 any purpose as condition of conducting gaming on the premises;  
18 e. May not directly conduct gaming as part of the alcoholic beverage  
19 establishment's business;  
20 f. May donate a gift certificate, cash, or merchandise intended to be used as a prize  
21 to an organization;  
22 g. May not give a free or discounted game piece, chip, or play of a game, except for  
23 discounts allowed for bingo and raffle activity;  
24 h. May offer free or discounted food or beverages in the normal course of business;  
25 i. May, at its own expense, advertise gaming on promotional drink tickets; and  
26 j. If advertising charitable gaming conducted on the premises, shall include the  
27 gaming organization's name. An abbreviation of the organization's name may be  
28 used.

29 2. Upon the request of the organization, an alcoholic beverage establishment:

- a. May sell a gift certificate or merchandise to be used as a gaming prize for no  
more than fair market value; and

*This is actually a change to permit currently illegal activity for which I recently sanctioned two West Fargo establishments and charities.*

*All of this is already required. It provides no additional clarity or benefit.*

Through line 25,  
This is already in admin rules,  
except line 21.  
Whole page is unnecessary

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b. May assist in redeeming winning pull tabs, credit ticket vouchers, or paying prize board cash prizes involving a dispensing device. If the organization provides the alcoholic beverage establishment temporary loan funds for this purpose, a written agreement must:

(1) Be signed by the organization and the alcoholic beverage establishment;

(2) Provide for the immediate repayment of the loan if the organization discontinues using a device at the site; and

(3) Provide the alcoholic beverage establishment is liable for a loss or theft of the loaned funds.

3. An owner of the alcoholic beverage establishment or a member of the owner's household or an individual who is an officer or board member or involved in the management of the establishment may not:

a. Loan money or provide gaming equipment to the organization;

b. Interfere or attempt to influence an organization's selection of games, determination of prizes, disbursement of net proceeds, selection of a gaming equipment distributor, or the method for which games are conducted;

c. Require an organization's employee to assist, with or without compensation, in an alcoholic beverage establishment's business at the site. However, the organization's employee may voluntarily order beverages for customers; or

d. Count drop box cash.

4. An owner or employee of the alcoholic beverage establishment may not play pull tabs or prize boards, which involve a dispensing device, or electronic pull tabs while on duty or for three hours after ending duty.

5. An employee of a licensed organization may patronize the alcoholic beverage establishment.

**SECTION 4. AMENDMENT.** Subsection 2 of section 53-06.1-11 of the North Dakota Century Code is amended and reenacted as follows:

2. Allowable expenses may be deducted from adjusted gross proceeds. The allowable expense limit is ~~sixty~~:

a. Sixty percent of the adjusted gross proceeds per quarter if the total adjusted gross proceeds for the quarter are more than one hundred thousand dollars; and

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Impose a monetary fine on an owner of an authorized alcoholic beverage establishment where a licensed gaming activity is conducted or has been conducted for failure to comply with section 3 of this Act or administrative rules that relate to subdivision b of subsection 2 of section 3 of this Act. The monetary fine for each violation by an authorized site owner may not exceed five thousand dollars. An authorized alcoholic beverage establishment subject to a monetary fine under this section may appeal under chapter 28-32.

*This is much too narrow and guts oversight. Instead, we support SB2271 in the form it passed the Senate.*

*This will provide an unfair  
advantage to some charities over others, and  
will reduce amount going to charitable  
purposes. We  
oppose.*

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b. Sixty-three percent of the adjusted gross proceeds per quarter if the total adjusted gross proceeds for the quarter are equal to or less than one hundred thousand dollars.

**SECTION 5. AMENDMENT.** Subsection 5 of section 53-06.1-11 of the North Dakota Century Code is amended and reenacted as follows:

- 5. For a site where bingo is not the primary game:
  - a. If twenty-one or paddlewheels is conducted, the monthly rent may not exceed two hundred dollars multiplied by the necessary number of tables based on criteria prescribed by gaming rule. For each twenty-one table with a wager greater than five dollars, an additional amount up to one hundred dollars may be added to the monthly rent. If pull tabs is also conducted involving only a jar bar, the monthly rent for pull tabs may not exceed an additional one hundred seventy-five dollars. If pull tabs is conducted involving only a dispensing device or a jar bar and dispensing device, the monthly rent for pull tabs may not exceed an additional three hundred twenty-five dollars.
  - b. If twenty-one and paddlewheels are not conducted but pull tabs is conducted involving either a jar bar or dispensing device, the monthly rent may not exceed four hundred dollars.
  - c. If pull tabs is conducted using one or more electronic pull tab devices, the monthly rent may not exceed an additional one hundred fifty dollars per machine for the first five machines in the same venue. For each additional machine in the same venue beyond five, the monthly rent may not exceed an additional fiftyone hundred dollars per machine up to a maximum of one thousand onetwo hundred twenty-fivefifty dollars per month for all electronic pull tab devices in a single venue. Notwithstanding the foregoing maximum rent amount, if a gaming employee is not onsite to administer the proceeds, the rent may include an additional fifty dollars per machine for alcoholic beverage establishment employee assistance for up to five machines, resulting in a maximum of one thousand five hundred dollars per month.

**SECTION 6.** A new subsection to section 53-06.1-15.1 of the North Dakota Century Code is created and enacted as follows:

“Alcoholic beverage establishment” means an establishment where alcoholic beverages are sold, dispensed, and consumed and which is not owned or operated by a charitable gaming organization. The establishment must be licensed under chapter 5-02 and serve alcoholic beverages for consumption by guests on the premises. The term does not include a gas station, grocery store, convenience store, off-sale liquor store, or any establishment that does not have a separate area in which patrons must be twenty-one years of age or older to participate in lawful charitable game types excluding bingo or raffles. The term includes an alcoholic beverage establishment located within a hotel, bowling center, golf course, or restaurant. An alcoholic beverage establishment may not be located in the same structure as a gas station, grocery store, or convenience store and may not be entered through a gas station, grocery store, or convenience store.

