



## HB 1284 – Senate Judiciary

Madam chair Larson and members of the Senate Judiciary Committee, I am Jaci Hall, Executive Director of the North Dakota Association for Justice. I am here today in support of HB 1284 but have concerns.

HB1284 increases the liability caps for charitable organizations defined in NDCC 32-03.3-01:

"Charitable organization" means a nonprofit organization whose primary purpose is for relief of poor, disabled, underprivileged, or abused persons, support of youth and youth programs, or the prevention of abuse to children and vulnerable adult.

The Charitable Organization can only be held liable for money damages for personal injury or property damage proximately caused by the negligence or wrongful act or omission of an employee acting within the employee's scope of employment.

Increasing the caps creates equivalency with current caps for political subdivisions and state agencies. However, the cap limits for political subdivisions and state agencies include more than employee negligence.

This legislation was created in 2007 when the Dakota Boys and Girls Ranch believed adding a cap on employee negligence insurance (EPLI) would reduce the premiums they pay for insurance. They cited that they paid around 62,000 at the time in insurance – with about 1/3 of it going to EPLI premiums. However, DBGR was only concerned with reducing EPLI, not other premiums.

Since then, these organizations have grown substantially – DGBR reported 22 million dollars in revenues in 2021. Why should large organizations with additional revenue streams be capped when small businesses have no cap?

HB1284 increases the EPLI, but I believe these caps need to be removed.

First, insurance agents that I met with said EPLI premiums are sold at a minimum of \$500,000 in coverage for small charitable organizations with larger charitable organizations seeking coverage of \$2-5 million dollars.

Second, the statute says, “employee’s scope of employment”. This can mean the custodian, a social worker in a group home, the cashier in a thrift store or the bingo caller and black jack dealer in a charitable organization’s gaming program. The statute can also cap organizations liability who are found guilty of unfair dismissal, discrimination, defamation, or other employment concerns. As these organizations have grown and expanded their revenue streams, these caps may have unforeseen consequences. They also seem to be unfair to organizations providing the charitable services but are not covered by the definition mentioned above.

Lastly, the state of Washington has deemed caps unconstitutional. Other states are challenging caps as well.

[Sofie v. Fibreboard Corp. :: 1989 :: Washington Supreme Court Decisions :: Washington Case Law :: Washington Law :: US Law :: Justia](#)

In this case, the Sofies were awarded over 1.3 million dollars in damages, but due to caps placed on different types of damages, they were awarded a little over \$125,000.

The court ruled caps violated the 7<sup>th</sup> Amendment and 14<sup>th</sup> Amendment. The 7<sup>th</sup> Amendment preserves the right to a trial by jury, with a jury of their peers. The 14<sup>th</sup> Amendment allows for equal protection under the law.

The court determined that juries should remain inviolate, meaning free or safe from injury or violation. They felt that a jury of one’s peers has a solemn duty to determine the full extent of an injury and caps restrict that solemn duty.

HB1284 increases caps, but when charitable organizations have 20 gaming sites and receive over 84 million dollars in revenues each year, should they be entitled to these caps?

In closing, please consider reviewing the validity of these caps and if they have merit. At minimum, please vote to increase them to be equal to those of political subdivisions and state agencies. If you believe these caps should be removed, please amend the bill accordingly.

Thank you,  
Jaclyn Hall  
Executive Director  
NDAJ