

**Testimony in Favor of
HOUSE BILL NO. 1387
(With An Amendment Attached)
Senate Judiciary Committee
March 27, 2023**

Madam Chair Diane Larson, Senate Judiciary 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 (#58), 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. The rent level for electronic pull tabs has not been discussed in the last two sessions since electronic pull tabs were approved in 2017. But while we can support additional rent for some bar owners, we cannot support the proposed increases in this bill. The across the board increase to electronic machines will be detrimental to many organizations and catastrophic for others.

This potential increase in the maximum rent is significant. It will more than double the current rent amount up to \$2,000 per month for a location with ten (10) devices (currently \$750 max). If the additional amount of rent allowed where bar assist participation occurs, the total rent per month could go up another \$500 per month, to \$2,500 monthly. While there are certain sites that do have enough activity to support that kind of increase, there are far more smaller ones which do not have the activity to support that 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. This has led 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.

I have experienced this firsthand. We were operating two (2) machines in a smaller bar. We had been there for a couple of years. Out of the blue the bar owner decided he wanted to go another way. The organization that replaced us put ten (10) devices in that location. There was never any need for that many. It is obvious to me why the change took place.

Regardless, 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 ten (10), but that does not mean that ten (10) machines are warranted based on activity.

The same thought should be applied to bars where their staff assists in the conduct. Some locations assist all day every day, some cover from open until five p.m. (when the charity staffs the location) and some use a combination of both. Again, a blanket increase is not appropriate.

This type of rent concern has happened in the past when blackjack began to proliferate across the state. Many bar owners insisted on an organization bringing in more twenty-one 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 AG, organizations, and lessors the opportunity and flexibility to apply rental value to game activity. This is exactly what is proposed for electronic pull tabs in the amendment presented for HB 1387.

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

We offer an amendment to HB 1387 that would address concerns on how any rent for electronic pull tabs (with or without any change to the maximum) is applied. The proposed amendment maintains rent consideration for bar owners (lessors) but is also intended to provide protection to organizations (charities) from paying more rent than the level of activity at each site provides.

The amendment to HB 1387 does not offer any change to the maximum rent proposed. It simply adds protection for charitable organizations while maintaining the bar owner's opportunity to receive an amount of rent commensurate with how much activity takes place in each establishment. It is important to recognize this and provide a framework within 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 in the maximum rent allowed. It does lack any assurance of equitable and auditable application of said rent. That is at least as important, if not more so, than the maximum rent number adopted. With the proposed amendment we can support HB 1387. We urge a **YES vote on the amendment for HB 1387**, and then a **DO PASS recommendation on HB 1387 as amended**.