

SENATE JUDICIARY COMMITTEE  
MARCH 5, 2025

TESTIMONY OF CLAIRE NESS  
OFFICE OF ATTORNEY GENERAL  
HOUSE BILL NO. 1525

Chairman Larson and members of the Committee:

For the record, my name is Claire Ness, and I am the Chief Deputy Attorney General. The Attorney General's Office opposes House Bill 1505 and requests a do not pass recommendation from the committee.

Our office is proud of the work we have accomplished to keep charitable gaming compliant with the laws of North Dakota. The Attorney General and the dedicated employees in the Gaming Division - and the other divisions throughout the office who support the Gaming Division - work diligently to make sure the gaming laws you pass are carried out faithfully. Our guiding principle is that the Constitution of North Dakota says the Legislative Assembly can pass laws establishing how, when, and where charitable gaming occurs and can delegate rulemaking authority to a Gaming Commission. Our work is to carry out the letter and spirit of your decisions and to provide support to the Gaming Commission. At all times, our office and the Attorney General are open, transparent, and accountable to the people of North Dakota for our work.

Since the bill would remove some functions of the Gaming Division from the Office, I'd like to provide a very brief overview of that division's work, how it functions as a seamless, integrated division within our office, and why it is important to retain the current structure.

## Preventing Violations and Understanding Regulated Entities

The Attorney General's Office devotes significant time and resources to proactive compliance efforts and helping entities prevent gaming violations. Prevention is a much better outcome than enforcement. To that end, our Gaming Division provides endless amounts of training and guidance to organizations and individuals who are regulated by gaming laws and rules. During the interim, Gaming employees even traveled around the state to make sure that training was available and convenient to anyone who wanted to participate in it. They also are available to answer questions by phone or in person, and they spend many hours doing so to help people avoid problems. Similarly, the Audit Section of the Gaming Division focuses heavily on training during and after its audits and in-office compliance reviews. The Gaming Division is supported by Assistant Attorneys General who provide guidance on interpreting laws and rules. Through these efforts, Gaming Division employees have a thorough understanding of the charities, manufacturers, distributors, and other entities involved in or connected to charitable gaming.

### Audits

The Audit Section of the Gaming Division works to ensure that charities are tracking, documenting, and using gaming funds in accordance with legal requirements. To best utilize state resources and to maximize education for charities, the auditors perform many compliance reviews on small- and medium-sized charities, especially those that are new to gaming. These reviews include a lot of training. They also prepare the charities for more comprehensive audits down the road. A charity may have a compliance review about once every 5 years. Comprehensive audits are generally reserved for larger charities or charities that have been engaged in gaming for a long time, and those charities have comprehensive audits about once every 7 years. Every audit ends

with post-audit training, which varies in length and intensity depending on the results of the audit. Charities with poor audit outcomes receive more training. These audits also give Gaming Division employees a lot of familiarity with charitable gaming organizations.

The Audit Section also can perform audits in response to complaints, such as complaints from board members of charities who suspect something may be amiss with the charities accounts. Within the past few years, we received at least one complaint that led to an audit that uncovered theft by an employee of a charity. The matter was turned over to a prosecutor.

### Investigations and Violations

Due to the rapid growth of gaming in North Dakota, the Legislative Assembly appropriated investigators to the Attorney General's Office specifically to help with investigations of gaming violations. When an investigation identifies clear evidence of a violation, enforcement actions are necessary – just as they are in any other regulatory agency. The Gaming Division and, when appropriate, our Civil Litigation Division, ensure that the proper procedures as set forth in the Administrative Agencies Practices Act are followed. That Act is codified in North Dakota Century Code Chapter 28-32 and provides several layers of appeals and other due process rights for individuals and entities who are subject to enforcement actions by state agencies. The rights of regulated entities are protected and respected throughout any enforcement action.

Due to their in-depth, comprehensive knowledge of regulated entities and gaming laws, the Gaming Division ensures enforcement actions are proportionate to the violations at issue. Most enforcement actions are not large. The Gaming Division issues a notice of violation, and the regulated entity pays a fine or works out an informal resolution with our office. There have been many of these actions. There also have been 3 large matters where the regulated entity requested

a hearing after receiving a notice of violation. In these 3 matters, the Gaming Division worked with our Civil Litigation Division. All 3 matters settled. **None of our enforcement actions has been appealed. These results – both large and small – are a notable achievement reflecting the comprehensive knowledge of our Gaming Division employees, thorough investigations, fair enforcement actions, solid legal work, and efficiently integrated divisions.** This work – and the cost-effective, legally compliant way in which it is carried out – would be drastically different and more bureaucratic under House Bill 1525, as I’ll discuss below.

#### House Bill 1525’s Changes to the Current, Successful Structure

House Bill 1525 would make several concerning changes to upend the current, successful model of gaming regulation.

- It would allow members of the Gaming Commission to have financial conflicts of interest (page 2, lines 25-29). Since the Gaming Commission was established in 1991<sup>1</sup>, members have been prohibited from having financial interests in gaming or being employees (or members of gaming committees) of licensed gaming organization or distributors of gaming equipment. House Bill 1525 removes that restriction. This change in law may conflict with Article XIV of the Constitution, other conflict of interest laws, or rules of the Ethics Commission (N.D.A.C. ch. 115-04-01).
- House Bill 1525 would remove enforcement authority from the agency with the subject matter expertise and create another layer of bureaucracy. Under the bill, the Gaming Division would not have any decision-making authority over whether to issue a notice of violation to a

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<sup>1</sup> 1991 North Dakota Session Laws Ch. 28. (“A person who has a financial interest in gaming cannot be a member of the commission and cannot be employed by the commission. Failure to maintain compliance with this subsection is grounds for removal from the commission or from employment with the commission.”)

regulated entity. The impartial employees in those divisions who have many years of subject matter expertise and knowledge of the regulated entities would have to refer matters to a commission comprised of members with financial ties to those regulated entities. The commission would then have to gather a quorum and meet to make determinations about whether to initiate enforcement actions. In addition to the conflicts of interest – real or perceived – this process would be less efficient, more bureaucratic, less flexible, and slower.

- House Bill 1525 would have the Gaming Commission “administer and control” games of chance (page 1, line 8). It is unclear what that means. Generally, state commissions “regulate.” The Commission presumably would not have the type of direct interaction with games that the phrase “administer and control” implies.
- House Bill 1525 conflicts with the Administrative Agencies Practices Act (page 6, line 1-5). The provision at the top of page 6 makes one state entity an appellate court for another state entity. When the Attorney General’s Office (or another state agency) has authority to act as a regulatory agency, the appropriate avenue to appeal the agency’s decision is in district court. That is longstanding law under the Administrative Agencies Practices Act. The bill language conflicts with that law, making the Gaming Commission an appellate court for the gaming decisions that would be left to the Attorney General’s Office, such as licensing. (Presumably it does not mean that the Gaming Commission would be the appellate court for any criminal prosecutions by the Attorney General’s Office, but the bill language does not make that distinction.) This is like making the Department of Public Instruction the appellate court for a decision by the Agriculture Commissioner just because they both may deal with school lunches.

- House Bill 1525 would require the Gaming Commission to operate under conditions that differ from other state regulatory entities (page 3, line 16). The Gaming Commission would have to broadcast all of its hearings, live. What is the reason for this requirement? If it were simply a transparency measure, then why aren't all state and local agencies, commissions, boards, and courts required to broadcast their hearings live?

The Gaming Commission is not a Licensing Board.

It has been said by a sponsor of the bill that the Gaming Commission should be comprised of members who have financial stakes in gaming organizations, bars that rent space to gaming organizations, and gaming equipment distributors because it is akin to a professional licensing board. But professional licensing boards are very dissimilar to the Gaming Commission as it currently exists and, even more so, as it would exist under this bill. The Gaming Commission under House Bill 1525 would not make licensing decisions; it would have vast authority to enforce – or not enforce – substantive charitable gaming laws and serve as an appellate court for any gaming decisions made by the Attorney General of North Dakota. This vast authority far exceeds any licensing board.

Thank you for your time. Again, the Attorney General's Office requests a Do Not Pass recommendation from the committee.