

**2021 SENATE FINANCE AND TAXATION**

**SB 2309**

# 2021 SENATE STANDING COMMITTEE MINUTES

## Finance and Taxation Committee Fort Totten Room, State Capitol

SB 2309  
2/1/2021

A BILL for an Act to create and enact a new section to chapter 53-06.1 of the North Dakota Century Code, relating to the creation of a charitable gaming operating fund; to amend and reenact sections 53-06.1-08.2 and 53-06.1-12 of the North Dakota Century Code, relating to electronic pull tab device requirements and limitations and charitable gaming tax; to provide a continuing appropriation; and to provide an effective date.

**Chair Bell** calls the meeting to order. Chair Bell, Vice Chair Kannianen, Senators Meyer, J. Roers, Patten, Piepkorn, Weber are present. [09:02]

### Discussion Topics:

- Gaming taxes and pay out percentage restrictions
- Tribal charitable gaming
- Casino gaming impact
- Electronic pull tab machines

**Senator Luick** [09:02] introduces the bill orally.

**Troy Seibel**, [9:04] Chief Deputy Attorney General, Attorney General's Office explains the bill.

**Cynthia Monteau** [9:09] Executive Director of the United Tribes Gaming Association in favor and introduces an amendment #4504 and 4505.

**Janelle Mitzel**, [9:13] President, Charitable Gaming Association of ND testimony in opposition #4313.

**Don Santer**, [09:18] VP of Charitable Gaming Association of ND and CEO of NDAD testimony in opposition #4369.

**Collette Brown** [9:25] Gaming Commission Executive Director of the Gaming Regulations and Compliance Department, Spirit Lake Tribe in favor and proposes an amendment #4506.

### Additional written testimony:

**Mike Motschenbacher**, Executive Director/Lobbyist, North Dakota Gaming alliance in opposition #4397.

**Rick Stenseth**, Gaming Manager, Kelsch Law Firm – Northern Prairie Performing Arts (aka Fargo Moorhead Community Theater) in opposition #4446 & 4447

**Brook Lyter**, President, FPN Gaming in opposition #4461

Senate Finance and Taxation Committee  
SB 2309  
02/01/2021  
Page 2

**Chair Bell** adjourns the meeting. [09:28]

*Joel Crane, Committee Clerk*

Senate Bill 2309

Senate Finance and Taxation

February 1, 2021

Amendment

Page 2, line 3 insert

"c. Ten percent of the total moneys deposited in the charitable gaming operating fund to cities and counties in proportion to the taxes collected under section 53-06.1-12 from licensed organizations conducting games in the State."

Page 2, line 14 strike

"or used to purchase more pull tabs"

**SENATE BILL 2309**  
**SENATE FINANCE AND TAXATION COMMITTEE**  
**FEBRUARY 1, 2021**

**TESTIMONY OF CYNTHIA C. MONTEAU, EXECUTIVE DIRECTOR**

Mr. Chairman and members of the Committee, my name is Cynthia Monteau, I am the Executive Director of the United Tribes Gaming Association (UTGA). I come before you today as a Proponent with Amendments of Senate Bill 2309, a bill that creates a charitable gaming operating fund and continuing appropriation for gambling disorder prevention and cities and counties.

The five tribes of North Dakota formed UTGA, to promote, protect and advocate for tribal gaming and economic development. Tribal casinos are economic engines in our communities by creating jobs - jobs for both tribal members and non-Indians.

Tribal gaming provides a source of jobs for individuals who otherwise would be unemployed and it is an anchor for jobs in other sectors such as tourism, education, and healthcare which may not be available but for a tribal casino – negative impacts to tribal gaming is a negative impact throughout the State. The impacts of tribal gaming go far beyond the doors of our tribal casinos.

Tribal gaming provides essential services to our reservation communities, funds tribal operations, and promotes economic development. In addition to, building local economies in the State by purchasing goods and services from area businesses; for instance, laundry and cleaning services, meat and produce, electricians, plumbers, and heating and air conditioning services.



We understand the impact the electronic pull tab machines have on the local economies of the state and carving out a portion of 10% of an operating fund for cities and counties with licensed organizations who are conducting games within the city limits or within each county makes sense and it also makes sense to carve out a portion of 10% of the operating fund for tribes that have a state-wide impact, our casinos generate over \$300 million for our economy in the State and about 3,000 FTEs (full-time equivalents).

We also are very concerned with the regulation of the electronic pull tab machines and carving out money for the Attorney General's office to have the ability to implement regulation of the machines is sorely needed.

Finally, removing the ability for continuous play with credits from the electronic pull tab machines is comparable to how players play paper pull tabs.

It is for these reasons that we urge a DO pass with amendments to Senate Bill 2309.

Thank you, Mr. Chairman.

**SB 2309**  
**Senate Finance & Taxation Committee**  
**Submitted by Janelle Mitzel, CGAND**  
**February 1<sup>st</sup>, 2021**

The Charitable Gaming Association of ND urges a **Do Not Pass** recommendation on SB 2309. The intent of SB 2309 is to drive business away from charitable gaming across North Dakota, and to drive business to tribal operations. This is a re-distribution of dollars from local cities and counties, to tribal reservations.

**Why is charitable gaming important?**

Here are just a few examples of how charitable gaming revenues have helped improve our communities in recent years:

- At **Development Homes**, these dollars have helped provide security, equipment, and specialized training to place vulnerable adolescents into community-based homes from the Life Skills and Transition Center in Grafton. We are continuing to de-institutionalize ND citizens.
- The **Lamoure Baseball Booster Club** rebuilt and maintain the local baseball fields while covering costs for the Legion Baseball program, including paying coaches and travel costs for kids play baseball. They were also able to donate additional dollars to support the local volunteer ambulance service and fire department, helping to improve public safety.
- Charitable gaming helps fund **many** volunteer fire departments across the state, including in **Verona**, where gaming helped provide grants for new fire equipment and fire vehicles, and in **Leonard**, where gaming revenue grants helped purchase life-saving equipment and maintain their fire trucks. These are clear public safety benefits that otherwise would need to be funded using state or local tax dollars.
- The Fargo **Metro Baseball Association** was able to convert a local baseball field into a state-of-the-art artificial turf field, build concession and locker room facilities, and cover all expenses, including travel, for fielding three legion baseball teams.
- The **Bowman Economic Development Corporation** uses revenue from charitable gaming to support the local nursing home, fund improvements to the local hospital, and provide economic incentives for local businesses. These dollars are helping sustain their local community and helping local businesses thrive.

Charitable gaming is about taking care of our most vulnerable, providing opportunities for youth sports and other activities in communities that otherwise wouldn't have the opportunity, funding for your veteran's groups, and funding critical public safety needs are just a few examples.

Charitable gaming promotes local control by providing funding to local community non-profits while having a positive impact on local entities.

**What does this bill do?**

- Restricts payout percentages on the electronic pull tabs to 88%. Tribal entities do not have any payout restrictions. Electronic devices at tribal casinos can pay 99.9%. This is trying to entice players away from local bars to much higher prizes at tribal casinos.
- This bill restricts electronic machines to 10 by law. This is a regulatory issue, and currently has regulatory limitations. Tribal casinos do not have any limits on the number of machines, table games or other devices they may operate.
- Re-creates a complicated multi-tiered gaming tax system that ND legislators have been getting away from. There is a tax bill in the house that CGAND supports and includes similar provisions, including gaming addiction funding and enforcement monies to local cities and counties for enforcement.

**CGAND urges a Do Not Pass recommendation on SB 2309.**

Over the past 40 years North Dakota legislators and charities have built out a responsible system for charitable gaming that puts charitable organizations first, is well-regulated, and beneficial to local communities.

Thank you for your thoughtful consideration and a **Do Not Pass recommendation on SB 2309.**



**SB 2309**  
**Senate Finance & Taxation Committee**  
**Submitted by Don Santer, CGAND**  
**February 1<sup>st</sup>, 2021**

Chairperson Bell and Committee members, thank you for the opportunity to provide information regarding the charitable gaming industry of North Dakota. I am here in opposition of Senate Bill 2309.

My name is Don Santer, I represent the Charitable Gaming Association of North Dakota (CGAND), a trade association for charities operating gaming throughout ND. I also represent the North Dakota Association for the Disabled (NDAD). NDAD is a North Dakota charity that for over 45 years has been dedicated to improving the quality of life for persons with disabilities. NDAD pays for most of its services with charitable gaming funds. For your reference, I have attached a copy of our annual report to help demonstrate how those funds are utilized.

Senate Bill 2309 is a copy of House Bill 1212, which we support and has the support of the Attorney General's office. Both bills address a new charitable gaming operating fund, a tax on Adjusted Gross proceeds, funding for cities and counties, and funding for gambling disorder prevention.

However, Senate Bill 2309 adds restrictions and changes meant to harm charitable gaming and is counterproductive. This bill will create a complicated tiered tax system the industry moved away from many years ago. A tiered tax system is designed to punish charities for doing well.

This bill also introduces unnecessary restrictions on the number of electronic pull tab machines (etabs) per site and on percent of hold for games played on etabs. There is already a limitation of ten machines set in regulation. This limit was put in place before etabs were authorized to be installed and has not changed.

This bill sets a maximum payout percentage of 88% for etabs only. There is already a 90% payout percentage set in regulation. A reduction to 88% is specifically intended to harm etab business for the charities.

- There is no need to mandate payout percentages because free market/competition is already providing these choices for gaming organizations.
  - 5 out of 6 manufacturers already offer options between 85% and 90% payout
  - According to one North Dakota distributor, there seems to be no demand for the 85% payout offered. I was told a few organizations tried it for one quarter and immediately went back to a mix of 88 and 90% because it seemed to be the breaking point for success with their etabs.
- The ability to adjust for each individual market
  - There are vast differences in player demographics in North Dakota between West, Central, or Eastern sides of the state, and rural locations compared to large cities. Each charity should evaluate what works well for their clientele and adjust. This is very similar to how paper pull tabs are evaluated. It is also important to note, paper pull tabs have no rules setting maximum or minimum

payout percentage. This allows each charity to select a range of games and pay out percentages that work best for their organization and the attractiveness to their players.

- Charities can increase demand through variety and competition.
  - Think of Coke and Pepsi or Nestle and Hershey. They make very similar products to each other but constantly change the look, add new products, or modify the price points of their line of products to gain and maintain consumer demand. Payout percentage is a way gaming charities can make adjustments to do the same.
  - It should be noted that North Dakota tribal gaming compact allows tribal games to pay out as high as 100%.
- Eliminates a charities' bargaining power with gaming providers
  - An unintended consequence of a lower payout percentage is a reduction in competition and innovation leading to a single manufacturer controlling all the business.
  - When etabs were first introduced to North Dakota there were limited options for payout percentage; they were all set to the state regulated maximum of 90%. The charities started demanding other options and got some distributors to offer different payout percentage games. Competition for market share between the distributors quickly came into play and now each quarter the charities are getting more and more options for games and payout models as the distributors compete for their business.
  - A higher payout percentage counterintuitively yields higher overall net revenue. (see attached Dimond Game study)

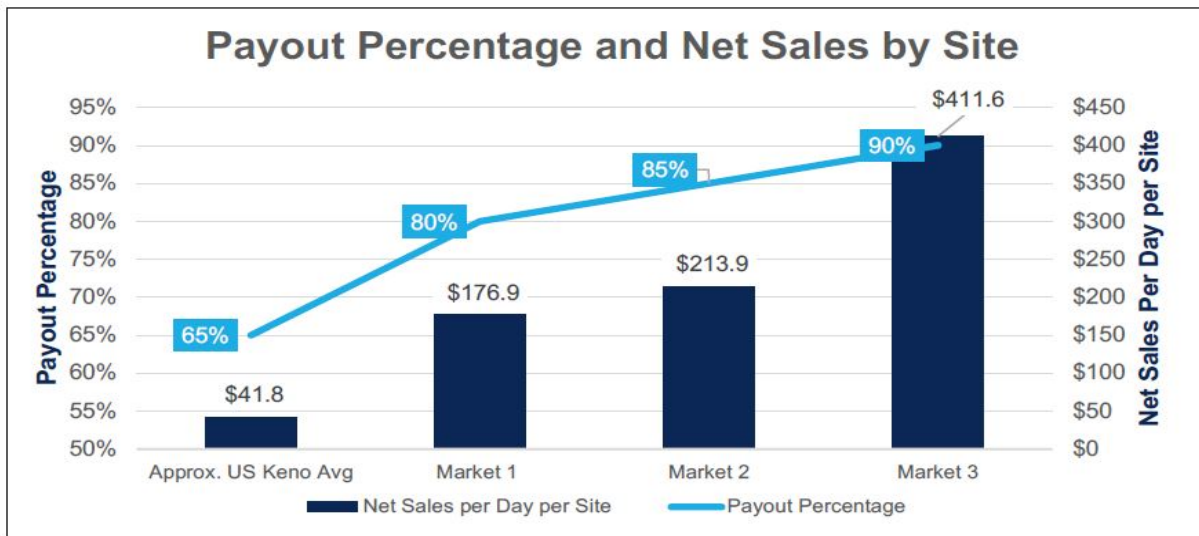
For the past 40 years North Dakota has developed a responsible and highly regulated system for charitable gaming to benefit charitable missions that serve your local communities. We ask you to consider a **Do Not Pass** recommendation on SB 2309.

Thank you, Madam Chairperson and members of the committee, for your time and thoughtful consideration I am happy to answer any additional questions you may have.

Respectfully,  
Don Santer, NDAD  
CGAND Vice President

There is strong evidence that higher payout% games lead to higher net profits. A study conducted by Diamond Games (see figure 1), of their 10 charitable gaming and lottery markets, one market operates at a payout percentage of 80%, one at 85%, and the remaining eight operate at 90% or higher. The markets with payouts at or above 90% generate upwards of 200% higher net sales than sites utilizing the 80% product.

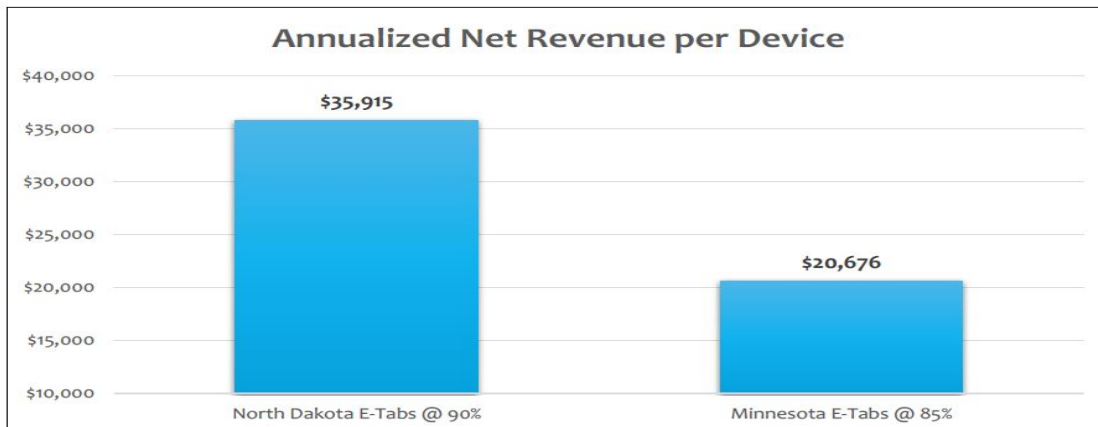
(Figure 1)



A lower percentage of payout, means fewer winning tickets, this decreases player interest, less interest - less play - lower income for the charity.

A good comparison can be seen by evaluating the Minnesota Charitable E-Tab market. Minnesota is currently regulated to payout 85% -- compared to North Dakota E-Tabs which allows for a payout up to 90%. The overall revenue per device for North Dakota E-Tabs is significantly higher than Minnesota E-Tabs. (see figure 2)

(Figure #2)



*Note: annualized figures above utilize Q2 2019 reporting data provided by the state, extrapolated across a 365 day period.*

## 2019 Annual Report

### Our Purpose

NDAD (the North Dakota Association for the Disabled) is a nonprofit, charitable organization that assists people with disabilities in North Dakota. Our mission is to enhance the quality of lives of individuals facing health challenges.

### Who We Help

Here are a few of the many people who shared their NDAD story with us:



**Hudson, Minot**

**His condition:**  
Trachealstenosis/  
Asthma (chronic  
respiratory issues)

**How NDAD helped:**  
Medication, medical  
travel to Fargo for  
specialist appointments



**Casey, Bismarck**

**His condition:**  
Cerebral Palsy

**How NDAD helped:**  
Accessible  
transportation  
for activities to support  
his independence



**Camille, Williston**

**Her condition:**  
Kidney transplant

**How NDAD helped:**  
Medical travel assistance for  
post-transplant checkups in  
Bismarck.



**Michael, Grand Forks**

**His condition:**  
Polyneuropathy and  
impaired mobility

**How NDAD helped:**  
Assistance for power  
scooter



**Mary, Dickinson**

**Her condition:**  
Dwarfism

**How NDAD helped:**  
Purchased wheelchair and  
provided repairs over the  
years, helping Mary gain  
independence



**Bentley, Fargo**

**His condition:**  
Spastic quadriplegia,  
static encephalopathy,  
global  
neurodevelopmental  
delay, epilepsy

**How NDAD helped:**  
Medication, medical  
travel

## Programs Provided

- Direct Financial Assistance
- Healthcare Equipment Loan Program
- Adaptive recreational events and activities
- Community fundraising projects
- Organ Transplant Fund
- Information, referral and advocacy
- Crisis residential programs
- Independent living services
- Housing for people with serious mental illness who are in need of supportive services

To read more about these programs, visit **ndad.org**.

## 2019 At a Glance

### NDAD helped thousands of people help themselves in 2019:

- 1639 prescriptions filled
- 3502 accessible rides funded
- 4366 pieces of medical equipment loaned, saving North Dakotans over \$530,000
- 2801 medical trips funded
- 202 pieces of medical equipment and supplies purchased
- 51 people with a serious mental illness assisted with independent living skills and medication monitoring
- 165 wheelchair accessible van loans to 86 individuals
- 6 grants to organizations to assist individuals with disabilities
- 7048 hours of personal care received for people to remain in their homes
- 38 people were assisted with short term crisis stabilization
- 8 people with serious mental illnesses were provided supportive services to remain independent
- Over \$130,000 raised for 11 individuals through Community Fundraisers
- 36 individuals assisted with adaptive recreation
- 27,650 interactions, such as phone calls, walk-ins, emails, and other communication

## How We Spend Our Money



- 89.0%: Program Services  
\$2,020,306
- 9.4%: Management and General  
\$213,113
- 1.7%: Fundraising  
\$37,897



Good morning, Chairman Bell and the members of the committee

My name is Collette Brown from Warwick, representing the Spirit Lake Tribe. My professional title in the gaming industry is, Gaming Commission Executive Director of the Gaming Regulations and Compliance Department, our casino is located seven miles south of Devils Lake

Today I come to you with a in neutral position on SB 2309 but with a suggested amendment.

- The sentence on line 18, states 2. A licensed organization may not install more than ten electronic pull tab devices in a site.
- The suggested amendment would read: **A licensed organization may not conduct more than ten electronic pull tab devices at a site. Electronic pull tab devices must be conducted at sites where a charitable gaming employee is on site.**
- My reason behind this amendment is because this will assist in helping local organizations, by creating jobs.
- When you play those machines at the sites you don't know who is benefiting but when you play any other charitable game like bingo they tell you who will benefit from the proceeds.
- Currently a larger organization has an economic advantage over a small town local charitable organization they can place more devices into a site without ever having conducted any type of charitable game.

With that being said I thank you for allowing me some time to give my input on this bill.

per compact 80-99% (NO limit) - Regulated monthly change to machines  
NO limit on machine + tables  
Right to Game IGRA - 1980's

SB 2309

Senate Finance and Tax

Monday, February 1<sup>st</sup>, 2021.

Good morning Senator Bell and members of Senate Finance and Tax committee. My name is Mike Motschenbacher and I'm testifying on behalf of the ND Gaming Alliance.

We are asking for a strong DO NOT PASS recommendation from your committee on Senate Bill 2309 for several reasons.

In section 2.2 it states that prizes may not exceed 88% of the gross proceeds. This is simply very bad. Our members would like to have the ability to determine their own payout percentages as to be able to compete in a free-market environment and not be forced to have the same payouts as everyone else. This is no different than "price fixing" in our minds and takes away the competitive edge that the charities otherwise could have. This is just like every gas station in North Dakota being forced to sell gasoline at the same price and is an extremely bad part of this bill.

In section 3 of this bill where the taxes are being adjusted, we believe the tax percentages are too high. When the people of ND voted to allow charitable gaming, it was to benefit charities who then in turn could use their proceeds from gaming to provide good and needed benefits in their communities. We agree that gaming needs to be regulated properly, but the amount of money that would be generated would be well over and above the amount that would be needed to properly regulate the gaming industry. It is our position that the Attorney General's office should get what they need to regulate properly, and the remaining funds should be up to the charities to distribute as they see fit in their communities.

I thank you for your time and consideration and urge you to vote NO on Senate Bill 2309.

Mike Motschenbacher  
Executive Director  
ND Gaming Alliance  
701-471-9014  
Ndgalliance@gmail.com

#4446

Page: 1  
01/26/21 10:04:39North Dakota Office of Attorney General  
Summary of Eligible Use Contributions

User: PWONDRA

Fiscal Year: 2020  
Quarter: All

Eligible Code	Description	Check Amount	% of Grand Total
A-02	THE ABUSED	183,811	0.7
A-03	ALCOHOL AND DRUG ABUSE	9,044	0.0
A-04	ANIMAL PROTECTION	37,738	0.1
A-05	ALZHEIMERS	1,725	0.0
A-07	THE BLIND	33,453	0.1
A-08	CANCER	119,112	0.4
A-11	CYSTIC FIBROSIS	349,299	1.2
A-12	DIABETES	10,150	0.0
A-15	THE DISABLED	1,198,008	4.3
A-18	HEART DISEASE	7,850	0.0
A-20	LEARNING DISABILITIES	176,880	0.6
A-24	MENTAL HEALTH	254,796	0.9
A-25	MULTIPLE SCLEROSIS	1,915	0.0
A-26	MUSCULAR DYSTROPHY	4,072	0.0
A-27	THE NEEDY	359,654	1.3
A-28	PARALYSIS	6,700	0.0
A-29	DEVELOPMENTALLY DISABLED CITIZENS	1,315,312	4.7
A-30	SENIOR CITIZENS	334,748	1.2
A-32	TERMINALLY ILL	5,330	0.0
A-36	WILDLIFE	755,429	2.7
A-37	YOUTH ACTIVITIES	6,120,069	21.9
A-46	ADULT ACTIVITIES	212,605	0.8
A-47	HEAD INJURIES	2,350	0.0
A-58	HOME ON THE RANGE	52,029	0.2
A-61	MARCH OF DIMES	300	0.0
A-64	MEALS ON WHEELS	13,900	0.0
A-65	MEDICAL FACILITIES NON-PROFIT	155,524	0.6
A-67	MEMORIAL FUNDS	30,968	0.1
A-70	NURSING HOMES NON-PROFIT	81,399	0.3
A-75	DAYCARE FACILITIES NON-PROFIT	62,298	0.2
A-80	RONALD MCDONALD HOUSE	15,805	0.1
A-82	SALVATION ARMY	18,650	0.1
A-88	SPECIAL OLYMPICS	51,758	0.2
A-90	DISASTER RELIEF ORGANIZATIONS	4,450	0.0
A-91	UNITED FUND/UNITED WAY	137,900	0.5
A-94	YMCA/YWCA	9,500	0.0
A-97	VOLUNTEER SERVICES	9,200	0.0
A-98	GAMBLING ADDICTION	1,000	0.0
A-99	OTHER	228,292	0.8

Subtotal Of Contributions: \$12,373,023      Percent to Grand Total: 44.3%



User: PWONDRA

North Dakota Office of Attorney General  
Summary of Eligible Use Contributions

Page: 2  
01/26/21 10:04:39

Fiscal Year: 2020  
Quarter: All

Eligible Code	Description	Check Amount	% of Grand Total
B-10	RELIGIOUS USES	245,177	0.9
Subtotal Of Contributions:		\$245,177	Percent to Grand Total: 0.9%

Eligible Code	Description	Check Amount	% of Grand Total
C-10	AGRICULTURE	85,412	0.3
C-20	THE ARTS	1,787,549	6.4
C-25	EDUCATIONAL PUBLIC SERVICES	932,663	3.3
C-30	SAFETY	40,902	0.1
C-40	4-H ACTIVITIES	70,545	0.3
C-50	EDUCATIONAL INSTITUTIONS AND A	1,254,178	4.5
C-75	PERSERVATION OF CULTURAL HERIT	394,964	1.4
C-80	SCHOLARSHIPS	1,621,007	5.8
C-90	VOCATIONAL WORKSHOPS	5,018	0.0
C-99	OTHER	54,132	0.2
Subtotal Of Contributions:		\$6,246,370	Percent to Grand Total: 22.4%

Eligible Code	Description	Check Amount	% of Grand Total
D-10	CAMP GRASSICK	14,960	0.1
D-20	FRATERNAL FOUNDATIONS	115,802	0.4
D-30	LEGION BASEBALL	276,328	1.0
D-40	VETERAN'S CEMETARY	42,903	0.2
D-50	DISABLED OR INJURED VETERANS A	130,950	0.5
D-60	MILITARY FAMILY SUPPORT	46,823	0.2
D-70	VETERANS FACILITY IMPROVEMENTS	227,921	0.8
D-99	OTHER	67,932	0.2
Subtotal Of Contributions:		\$923,619	Percent to Grand Total: 3.3%

User: PWONDRA

North Dakota Office of Attorney General  
Summary of Eligible Use Contributions

Page: 3  
01/26/21 10:04:39

Fiscal Year: 2020

Quarter: All

Eligible Code	Description	Check Amount	% of Grand Total
E-10	SCOUTING ACTIVITIES AND BOYS O	84,443	0.3
E-30	COMMUNITY BANDS, COLOR AND HONOR GUARDS, FLAG	325,800	1.2
E-99	OTHER	30,769	0.1
Subtotal Of Contributions:		\$441,012	Percent to Grand Total: 1.6%

Eligible Code	Description	Check Amount	% of Grand Total
F-10	ERECTION OR MAINTENANCE OF PUB	661,469	2.4
Subtotal Of Contributions:		\$661,469	Percent to Grand Total: 2.4%

Eligible Code	Description	Check Amount	% of Grand Total
G-10	COMMUNITY EMERGENCY SERVICES	2,278,143	8.2
G-15	DISBURSEMENTS DIRECTLY TO A CI	431,632	1.5
G-25	IMPROVEMENT OF PUBLIC AREAS	270,049	1.0
G-50	PARKS AND RECREATION	871,594	3.1
G-60	LAW ENFORCEMENT	85,568	0.3
G-99	OTHER	4,224	0.0
Subtotal Of Contributions:		\$3,941,210	Percent to Grand Total: 14.1%

Eligible Code	Description	Check Amount	% of Grand Total
H-00	LOSS OF THE HOME VICTIMS	20,126	0.1
Subtotal Of Contributions:		\$20,126	Percent to Grand Total: 0.1%

North Dakota Office of Attorney General  
Summary of Eligible Use Contributions

Page: 4  
01/26/21 10:04:39

User: PWONDRA

Fiscal Year: 2020

Quarter: All

Eligible Code	Description	Check Amount	% of Grand Total
I-00	SUFFERERS OF SERIOUS DISABLING	774,925	2.8
Subtotal Of Contributions:		\$774,925	Percent to Grand Total: 2.8%

Eligible Code	Description	Check Amount	% of Grand Total
K-10	ECONOMIC DEVELOPMENT	476,685	1.7
K-30	TOURISM	1,043,163	3.7
K-65	COMMUNITY FACILITY IMPROVEMENTS	213,067	0.8
K-99	OTHER	587,899	2.1
Subtotal Of Contributions:		\$2,320,814	Percent to Grand Total: 8.3%

Eligible Code	Description	Check Amount	% of Grand Total
V-00	VOIDED CHECK	0	0.0
Subtotal Of Contributions:		\$0	Percent to Grand Total: 0.0%

Total Of All Contributions: \$27,947,745

--- End of Report ---

**Testimony in Opposition to  
SENATE BILL NO. 2309  
Senate Finance and Taxation Committee  
February 1, 2021**

Madam Chair Jessica Bell, Senate Finance and Taxation Committee members, for the record my name is Rick Stenseth. I am a Gaming Manager for two local organizations in Fargo that both conduct charitable gaming (Northern Prairie Performing Arts aka Fargo-Moorhead Community Theatre & Team Makers Club). I am submitting this testimony through our Northern Prairie Performing Arts (NPPA) lobbyist, Todd D. Kranda, an attorney with the Kelsch Ruff Kranda Nagle & Ludwig Law Firm in Mandan.

For some added background, NPPA is a North Dakota non-profit entity that has a stated mission to provide live theatrical and education opportunities which enrich and engage the greater community. Programs supported by NPPA include theatre performances and children's instruction courses in live theatre, mainstage productions, children's productions, senior adult theatre, and workshops. NPPA has been involved in charitable gaming activities since its inception. Also, NPPA relies heavily on charitable gaming as a funding source for the various services provided

My involvement in our industry goes back to 1983 and I have been involved in working with the North Dakota Legislature over many sessions and on many gaming related topics.

SB 2309 is an attempt to deal with a couple of issues that are being discussed this session. SB 2309 is not a bill that my local charitable gaming organizations nor the charitable gaming industry can support. We are asking that you give SB 2309 a **Do Not Pass** recommendation by your committee.

Briefly, the tax schedule is very complex, and it may or may not meet budget concerns of the Attorney General's office that has a gaming division that oversees and regulates charitable gaming activity throughout the state.

SB 2309 limits the number of e-tab devices per site which is already in the North Dakota Administrative Code rules. Additionally, the amount of the prizes that are paid back to players is lowered under SB 2309 from what is established in those same North Dakota Administrative Code rules from a 90% maximum to 88% maximum. It is incomprehensible as to why this committee and the North Dakota

Legislature for that matter would want to lessen and reduce the amount of payback to players.

Contributions to local entities and addiction treatment services are also addressed in SB 2309, but the same type of funding of such services are also being worked out directly with the League of Cities and based on recommendations made by a representative for addiction treatment services which is being considered as part of a separate charitable gaming tax relief bill, namely HB 1212.

It is not worth the effort to move this separate bill, SB 2309, forward for any of the items that are included and being addressed elsewhere with similar and more complete legislation for the charitable gaming industry in North Dakota. SB 2309 is basically a copy of HB 1212 with certain negative and impactful changes and other additions that would cause detriment to the various charities that are supported by charitable gaming operations in North Dakota. I have attached and included with my testimony for your reference a printout from the North Dakota Attorney General's office showing the 2020 Summary of Eligible Use Contributions.

The proposals made within SB 2309 are not good for your local charities nor the charitable gaming entities that service those worthwhile purposes and SB 2309 is simply a bad bill for charitable gaming in North Dakota.

Thank you for taking the time to review all the material coming your way and again I would respectfully request a **Do Not Pass** recommendation on **SB 2309**.

**SB 2309**  
**Senate Finance & Taxation Committee**  
**Submitted by Brook Lyter, FPN Gaming**  
**February 1<sup>st</sup>, 2021**

Chairman Bell and Committee members, thank you for the opportunity to provide insight regarding the charitable gaming industry of North Dakota. I am here in opposition of Senate Bill 2309, or any other bills for that matter, that restrict choice or limit options for charitable gaming organizations in regards to payout percentage of electronic pull tabs.

My name is Brook Lyter, I am a licensed charitable gaming distributor. I am proud to offer quality service and a variety of solutions for gaming devices to charitable gaming organizations across North Dakota.

Over the past couple years I've been able to take feedback from customers to help manufacturers tailor their products better for North Dakota. This process has led to adjustments in payout structures, customizable payout percentages by denomination, and in the case of one manufacturer, a completely different pricing model. These innovations have helped many of my customers fine tune their results and in some cases double their profit models from where they began in 2018 to where they are now. Competition in the market has led to diversification and quality options for charitable gaming organizations. To those charities who believe they are stuck with one product option, I would like to invite them to shop around. The industry has come a long way in a short period of time.

A key challenge for me is to match my customers with the products that best fit their operational needs and financial goals. In pursuit of that challenge, I have installed all six (6) manufacturer's devices and studied the results from a lot of experimentation over the past two and half years.

One of the hot topics in the industry, aside from how taxes are calculated, is payout percentage of the games. Having seen every manufacturer and pay table in action, I can definitely shed some light on this subject:

- Charities currently have choice in regards to payout options which range from 85% to 90%, with five (5) out of six (6) manufacturers offering an 88% payout option.
- A little less than thirty percent of my customer base uses 88% payouts with all others choosing the maximum 90% payouts.
- Lower payouts may be a good option for some, but do not necessarily translate to more profits. Frequency of wins definitely translates to more play and ultimately the total volume of play produces the highest net profits. Only two of my customers took the 85% payout option when it became available, and switched back to either 88% or 90% after one quarter of play after seeing overall play diminish. Currently I do not have a single customer using 85% payouts.
- My top five locations (in terms of gross proceeds and net profits) all have one thing in common, they use 90% payouts.

For my customers, the decision on which payouts to use is based on the dynamics of individual locations, demographics, competition, and sometimes the overall business model or philosophy of the charity. A trending configuration is a blend of 88% on dollar plays and 90% on two dollar plays, for example.

My point is that charities currently have a lot of options when it comes to selecting games & payout percentages, so it is confusing to me why SB2309 and other bills are seeking to reduce the maximum payout from 90% to 88% when charities clearly have plenty of options to choose from that best suits their needs.

My question to the committee is, what is the motivation behind reducing the maximum allowed payouts from 90% to 88%?

### ***Save charities money?***

While there is a valid case to be made that 90% payouts provide the best net results long term, others argue that 88% works better for them, and that's fine.

Charitable gaming organizations that want 88% payouts have five (5) manufacturers to choose from and organizations that complain they don't have options are simply not informed.

***Force the lone manufacturer to offer an 88% payout?***

The one manufacturer that does not offer an 88% payout option happens to be the market leader with more than 50% market share. The creators of this product did however recently create another manufacturer/device which offers additional payout options. There is no question in my mind that if and when the market demands more options on their original devices they will deliver. In the meantime, many of the competing manufacturers have built their business around filling these kinds of gaps. There is a potential unforeseen consequence of reducing competition by mandating all manufacturers provide all the same options.

***Or is the motivation behind reducing payouts to simply make electronic pull tabs in North Dakota less successful?***

The only other reason I can think of for motivation behind limiting payouts is to intentionally limit the success of charitable gaming.

For these reasons and on behalf of my clients, I urge you to reject SB2309.

I would also like to point out I support the Charitable Gaming Association of North Dakota (CGAND) and House Bill 1212 which addresses important issues related to charitable gaming.

Thank you for your time.

Respectfully,

Brook Lyter  
FPN Gaming/President



# 2021 SENATE STANDING COMMITTEE MINUTES

## Finance and Taxation Committee Fort Totten Room, State Capitol

SB 2309  
2/8/2021  
AM

A BILL for an Act to create and enact a new section to chapter 53-06.1 of the North Dakota Century Code, relating to the creation of a charitable gaming operating fund; to amend and reenact sections 53-06.1-08.2 and 53-06.1-12 of the North Dakota Century Code, relating to electronic pull tab device requirements and limitations and charitable gaming tax; to provide a continuing appropriation; and to provide an effective date.

**Chair Bell** calls the meeting to order. Chair Bell, Vice Chair Kannianen, Senators Meyer, J. Roers, Patten, Piepkorn, Weber are present. [12:24]

### **Discussion Topics:**

- Intent of the tax

**Senator bell** [12:28] proposed an amendment [LC 21.1022.01001] #5912 & 5913

**Chair Bell** adjourns the meeting. [12:29]

*Joel Crane, Committee Clerk*

PROPOSED AMENDMENTS TO SENATE BILL NO. 2309

Page 1, line 3, replace "sections 53-06.1-08.2 and" with "section"

Page 1, line 4, replace "electronic pull tab device requirements and limitations and" with "the"

Page 1, line 4, after the semicolon insert "and"

Page 1, line 5, remove "; and to provide an effective date"

Page 2, remove lines 10 through 19

Page 2, line 23, remove "adjusted"

Page 2, line 27, remove "adjusted"

Page 2, line 28, remove the overstrike over "~~million five~~"

Page 2, line 28, remove "per quarter."

Page 2, line 29, remove the overstrike over "~~one~~"

Page 2, line 29, remove "three and three-fourths"

Page 2, line 29, remove "the adjusted"

Page 2, line 30, remove the overstrike over "~~Exceeding~~"

Page 2, line 30, remove "In excess of"

Page 2, line 30, remove the overstrike over "~~million five~~"

Page 2, line 30, remove "per quarter, but"

Page 2, line 31, remove "not in excess of three hundred thousand dollars per quarter."

Page 2, line 31, remove the overstrike over "~~fifteen~~"

Page 3, line 1, remove the overstrike over "~~thousand dollars plus two and twenty-five-hundredths~~"

Page 3, line 1, remove "five"

Page 3, line 1, remove "the adjusted"

Page 3, line 2, remove the overstrike over "~~exceeding one million five hundred thousand dollars~~"

Page 3, remove lines 3 through 7

Page 3, remove lines 21 and 22

Renumber accordingly

Sixty-seventh  
Legislative Assembly  
of North Dakota

**SENATE BILL NO. 2309**

Introduced by

Senator Luick

1 A BILL for an Act to create and enact a new section to chapter 53-06.1 of the North Dakota  
2 Century Code, relating to the creation of a charitable gaming operating fund; to amend and  
3 reenact ~~sections 53-06.1-08.2 and~~ section 53-06.1-12 of the North Dakota Century Code,  
4 relating to ~~electronic pull tab device requirements and limitations and the~~ charitable gaming tax;  
5 and to provide a continuing appropriation; ~~and to provide an effective date.~~

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

7 **SECTION 1.** A new section to chapter 53-06.1 of the North Dakota Century Code is created  
8 and enacted as follows:

9 **Charitable gaming operating fund - Attorney general - State treasurer - Continuing**  
10 **appropriation - Allocations - Transfer to the general fund.**

- 11 1. There is created in the state treasury the charitable gaming operating fund. The fund  
12 consists of all gaming taxes, monetary fines, and interest and penalties collected  
13 under this chapter.
- 14 2. Excluding moneys in the charitable gaming operating fund appropriated by the  
15 legislative assembly for administrative and operating costs associated with charitable  
16 gaming, all other moneys in the charitable gaming operating fund are appropriated to  
17 the attorney general on a continuing basis for quarterly allocations as follows:
- 18 a. Eighty thousand dollars to the gambling disorder prevention and treatment fund.
- 19 b. Ten percent of the total moneys deposited in the charitable gaming operating  
20 fund to cities and counties in proportion to the taxes collected under section  
21 53-06.1-12 from licensed organizations conducting games within each city, for  
22 sites within city limits, or within each county, for sites outside city limits. If a city or  
23 county allocation is less than two hundred dollars, that city or county is not  
24 entitled to receive a payment for the quarter and the undistributed amount must

be included in the total amount to be distributed to other cities and counties for the quarter.

c. On or before June thirtieth of each odd-numbered year, the attorney general shall certify to the state treasurer the amount of accumulated funds in the charitable gaming operating fund which exceed the amount appropriated by the legislative assembly for administrative and operating costs associated with charitable gaming for the subsequent biennium. The state treasurer shall transfer the certified amount from the charitable gaming operating fund to the general fund before the end of each biennium.

~~SECTION 2. AMENDMENT. Section 53-06.1-08.2 of the North Dakota Century Code is amended and reenacted as follows:~~

~~53-06.1-08.2. Electronic pull tab device requirements - Limitations.~~

~~1. An electronic pull tab device must display an electronic pull tab in which the player may win credits that can be redeemed for cash or used to purchase more pull tabs. The device may not directly dispense coins, cash, tokens, or anything else of value other than a credit ticket voucher. The amount of prizes may not exceed eighty-eight percent of the gross proceeds for each deal.~~

~~2. A licensed organization may not install more than ten electronic pull tab devices in a site.~~

**SECTION 2. AMENDMENT.** Section 53-06.1-12 of the North Dakota Century Code is amended and reenacted as follows:

**53-06.1-12. Gaming tax - Deposits and allocations.**

1. A gaming tax is imposed on the total adjusted gross proceeds received by a licensed organization in a quarter and it must be computed and paid to the attorney general on a quarterly basis on the tax return. This tax must be paid from adjusted gross proceeds and is not part of the allowable expenses. For a licensed organization with adjusted gross proceeds:
  - a. Not exceeding one million five hundred thousand dollars per quarter, the tax is one three and three-fourths percent of the adjusted gross proceeds.
  - b. Exceeding in excess of one million five hundred thousand dollars per quarter, but not in excess of three hundred thousand dollars per quarter, the tax is fifteen

1                   thousand dollars plus two and twenty-five hundredths~~five~~ percent of ~~the adjusted~~  
2                   gross proceeds ~~exceeding one million five hundred thousand dollars.~~

3                   ~~c. In excess of three hundred thousand dollars per quarter, but not in excess of one~~  
4                   ~~million dollars per quarter, the tax is eight and three-fourths percent of the~~  
5                   ~~adjusted gross proceeds.~~

6                   ~~d. In excess of one million dollars per quarter, the tax is ten and three-fourths~~  
7                   ~~percent of the adjusted gross proceeds.~~

8                   2. The tax must be paid to the attorney general at the time tax returns are filed.

9                   3. ~~Except as provided in subsection 4, the~~The attorney general shall deposit gaming  
10                   taxes, monetary fines, and interest and penalties collected in the ~~general~~charitable  
11                   gaming operating fund in the state treasury.

12                   4. ~~The attorney general shall deposit seven percent of the total taxes, less refunds,~~  
13                   ~~collected under this section into a gaming tax allocation fund. Pursuant to legislative~~  
14                   ~~appropriation, moneys in the fund must be distributed quarterly to cities and counties~~  
15                   ~~in proportion to the taxes collected under this section from licensed organizations~~  
16                   ~~conducting games within each city, for sites within city limits, or within each county, for~~  
17                   ~~sites outside city limits. If a city or county allocation under this subsection is less than~~  
18                   ~~two hundred dollars, that city or county is not entitled to receive a payment for the~~  
19                   ~~quarter and the undistributed amount must be included in the total amount to be~~  
20                   ~~distributed to other cities and counties for the quarter.~~

21                   ~~SECTION 4. EFFECTIVE DATE. Section 3 of this Act is effective for taxable events~~  
22                   ~~occurring after June 30, 2021.~~

# 2021 SENATE STANDING COMMITTEE MINUTES

## Finance and Taxation Committee Fort Totten Room, State Capitol

SB 2309  
2/8/2021  
PM

A BILL for an Act to create and enact a new section to chapter 53-06.1 of the North Dakota Century Code, relating to the creation of a charitable gaming operating fund; to amend and reenact sections 53-06.1-08.2 and 53-06.1-12 of the North Dakota Century Code, relating to electronic pull tab device requirements and limitations and charitable gaming tax; to provide a continuing appropriation; and to provide an effective date.

**Chair Bell** calls the meeting to order. Chair Bell, Vice Chair Kannianen, Senators Meyer, J. Roers, Patten, Piepkorn, Weber are present. [2:33]

### Discussion Topics:

- No discussion

**Senator Meyer** [2:33] moved DO NOT PASS

**Senator J. Roers** second

Senators	Vote
Senator Jessica Bell	Y
Senator Jordan Kannianen	Y
Senator Scott Meyer	Y
Senator Dale Patten	Y
Senator Merrill Piepkorn	Y
Senator Jim Roers	Y
Senator Mark Weber	Y

Motion carries 7-0-0

**Senator Meyer** carries

**Chair Bell** adjourns the meeting. [2:34]

*Joel Crane, Committee Clerk*

**REPORT OF STANDING COMMITTEE**

**SB 2309: Finance and Taxation Committee (Sen. Bell, Chairman)** recommends **DO NOT PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2309 was placed on the Eleventh order on the calendar.