

CHARITABLE GAMING BACKGROUND MEMORANDUM

Section 34 of Senate Bill No. 2015 (2019) ([appendix](#)), provides for a study of the state's charitable gaming laws. The study must include an evaluation of whether charitable gaming is being expanded properly; whether the addition of new games, such as sports betting and historic horse racing, is appropriate; and whether such expansion should be approved by the voters. The study also must include an evaluation regarding the appropriate limitations, restrictions, and oversight if new games are added; an evaluation of whether a portion of gaming proceeds should be deposited in the gambling disorder prevention and treatment fund; and a review of whether the laws regarding taxation, eligible uses for proceeds, gambling sites and locations, limitations, enforcement, conduct, and play of charitable gaming are fair, adequate, and appropriate.

The interim Judiciary Committee has been directed to study all items listed in Section 34 of Senate Bill No. 2015 with the exception of the review of whether the state's charitable gaming laws regarding taxation are fair, adequate, and appropriate. The review of the state's charitable gaming laws as the laws relate to taxation has been assigned by the Legislative Management to the interim Taxation Committee.

CHARITABLE GAMING

Early History

In the first legislative session after statehood (1889-90), an attempt was made to establish the Louisiana lottery, which was seeking a new home in light of the impending revocation of its charter in its state of origin. The operators of the lottery were willing to offer the state an initial payment of \$100,000, followed by annual payments of \$75,000, for the privilege of operating a lottery. The scandal and controversy following this attempt led to the state's first constitutional amendment. The amendment added what eventually became Section 25 of Article XI of the Constitution of North Dakota and outlawed all forms of lotteries and gift enterprises.

The constitutional prohibition was maintained until 1976 when it was amended to allow certain forms of charitable gaming. Under the provision, the Legislative Assembly is permitted to authorize bona fide nonprofit veterans', charitable, educational, religious, or fraternal organizations, civic and service clubs, or such other public-spirited organizations as it may recognize, to conduct games of chance when the entire net proceeds of the games are devoted to educational, patriotic, fraternal, religious, or other public-spirited uses.

Advent of Charitable Gaming

After passage of the constitutional amendment in 1976, a temporary law was passed by the 1977 Legislative Assembly followed by another temporary law in 1979, and finally legislation in 1981 which was codified as North Dakota Century Code Chapter 53-06.1. All three laws became effective without the approval of the Governor holding office at the time of passage. A bill passed by the Legislative Assembly in 1987 added Chapter 53-06.2, which allowed charitable organizations to conduct pari-mutuel horse racing.

Many changes have been made to the charitable gaming law since passage of the constitutional amendment. During the first three interims after passage of the law in 1981, Legislative Council interim committees studied charitable gaming and suggested many of the changes that have since been made to the law. The most comprehensive proposal was that of the 1981-82 interim Political Subdivisions Committee, which suggested a bill that, when enacted, contained 23 sections changing various aspects of the charitable gaming law. Changes from that session and others have primarily affected the kinds of games that can be held, the kinds of organizations that can hold the games, the allocation of expenses of conducting the games, administration of the charitable gaming law, enforcement of the charitable gaming law, and taxation of gaming proceeds.

Charitable Organizations

There are two critical elements specifically mentioned in the constitutional amendment allowing charitable gaming--the kinds of organizations that can conduct the games and the use of the proceeds from the games. The constitutional provision requires the charity to be a bona fide nonprofit veterans', charitable, educational, religious, or fraternal organization, a civic or service club, or a "public-spirited" organization authorized by the Legislative Assembly. The constitutional provision also requires the net proceeds be used only for "educational, charitable, patriotic, fraternal, religious, or other public-spirited uses."

All organizations must meet the first test to conduct charitable gaming. Some of these organizations also meet the second test and thus can use the net proceeds for the organization's own purpose. Organizations that meet only the first constitutional test must give the proceeds to beneficiaries that meet the second test.

Under Section 53-06.1-01, "eligible organization" is used to describe generically the types of organizations permitted to conduct games of chance. Section 53-06.1-01(8) defines "eligible organization" as follows:

8. "Eligible organization" means a veterans, charitable, educational, religious, fraternal, civic and service, public safety, or public-spirited organization domiciled in North Dakota or authorized by the secretary of state as a foreign corporation under chapter 10-33, incorporated as a nonprofit organization, and which has been regularly and actively fulfilling its primary purpose within this state during the two immediately preceding years. However, an educational organization does not need to be incorporated or be in existence for two years. An organization's primary purpose may not involve the conduct of games. The organization may be issued a license by the attorney general. For purposes of this section, a foreign corporation authorized under chapter 10-33 is not an eligible organization unless authorized to conduct a raffle under chapter 20.1-04 or 20.1-08 and may not conduct a game other than a raffle under chapter 20.1-04 or 20.1-08.

Other statutory definitions are provided to describe the specific kinds of organizations enumerated in the constitution. Definitions are provided in Section 53-06.1-01 for charitable, civic and service, educational, fraternal, public safety, public-spirited, religious, and veterans' organizations, respectively.

In 1991, the legal distinction between Class A and Class B license holding gaming organizations was changed. Under previous law, a Class A license could be held only by an organization that maintained a building for use of its members and guests. Under 1991 legislation, a Class A license was issued to an organization that was prohibited because of its nature from expending charitable gaming proceeds for the organization's own purposes or benefits. A Class B license was issued to an organization that was permitted to expend charitable gaming proceeds for its own uses. In 1995, the distinctions between Class A and Class B gaming organizations were eliminated.

Games Permitted

Under the original 1977 law, the only games permitted were bingo, raffles, pull tabs, jars, and punchboards. The 1979 law added sports pools on professional sports. In 1981, charities were first permitted to conduct the game of twenty-one. In 1987, draw poker and stud poker were added to the list of permitted games. Also, that same year Chapter 53-06.2 was enacted which allows most charities to conduct horse racing under the pari-mutuel system. The pari-mutuel betting system is one in which bets are placed in a pool, a percentage is taken out for the race organizer (the charity) and taxes, and the remainder is divided up among the bettors who selected the horses finishing well enough. The definitions of qualifying organizations are similar to those under Chapter 53-06.1, except educational organizations are omitted.

Three additions were made to the types of games in 1989. Eligible organizations were permitted to conduct cuttass, allow off-track pari-mutuel betting on races held at licensed racecourses inside or outside the state, and use electronic video gaming devices in place of normal methods of playing otherwise allowable games of chance. However, legalization of electronic video gaming was referred and rejected at a special election on December 5, 1989. In 1991, paddlewheels were added as a game of chance. In 2017, electronic quick shot bingo, fifty-fifty raffle systems, and electronic pull tabs were added as games of chance.

Taxation of Charitable Gaming Proceeds

A state tax has been imposed on the proceeds of charitable gaming since 1977. In the 1977 law, a tax of 3 percent of adjusted gross proceeds was established and allocated to the general fund of the state. The tax was part of the expense limit for the charity. The tax rate was increased to 5 percent in 1979 and was payable from adjusted gross proceeds (and not charged against the allowable expenses of the charity).

Before July 1, 2011, the gaming tax structure in Section 53-06.1-12 provided for a sliding scale tax rate that ranged from 5 to 20 percent based upon an organization's adjusted gross proceeds. The intent of the sliding scale tax structure was to discourage large-scale charitable gaming. The tax structure also provided in addition to any other tax, an excise tax of 3 percent was imposed on the gross proceeds from the sale at retail of pull tabs and bingo cards to final users. For those organizations that did not have gross proceeds of pull tabs exceeding \$4,000 per calendar quarter, no excise tax was imposed. Under this section, the Attorney General was required to deposit 3 percent of the total taxes collected under the section into a gaming and excise tax allocation fund. The money in this fund, pursuant to legislative appropriations, was to be distributed quarterly to cities and counties in proportion to the taxes collected under this section from licensed organizations within each city or county.

A significant change in the gaming tax structure was passed by the Legislative Assembly in 2011. This legislation consolidated all gaming taxes into four separate tax rates ranging from 1 to 2.5 percent, based upon an organization's quarterly gross proceeds. The gaming tax structure was simplified further in 2013 by legislation that

reduced the four separate tax rates to two tax rates. The legislation imposed a tax of 1 percent of gross proceeds on organizations with gross proceeds not exceeding \$1.5 million per quarter and a tax of \$15,000 plus 2.25 percent of gross proceeds exceeding \$1.5 million on organizations with gross proceeds exceeding \$1.5 million per quarter.

Administration of Charitable Gaming Law

From the inception of charitable gaming, administration of the law has been the responsibility of the Attorney General and local officials. The phrase "licensing authority" has been used in each version of the law to refer to the Attorney General who has served as the primary licensing authority since 1977. Local government officials were the primary approving agency for what were known as Class B charities. Since 1979, local government officials have been the primary approving agency for the issuance of a local permit or a charity local permit for conducting raffles, bingo, sports pools, paddlewheels, twenty-one, and poker. Although the Attorney General now licenses charities, local officials remain involved in charitable gaming.

Enforcement of the Charitable Gaming Laws

Since the 1977 law, responsibility for enforcement of the charitable gaming law has been shared by the Attorney General and local officials. In 1991, the Legislative Assembly passed legislation that provided for the State Gaming Commission to have an increased role in charitable gaming enforcement and attention has been directed both at preventing crimes and at ensuring compliance with the many requirements of the law. Primary difficulties encountered in preventing crimes are the volume of activity and subtlety of some of the cheating methods. Likewise, the subtlety of cheating has caused enforcement difficulties. The State Gaming Commission has adopted extensive rules governing accounting procedures and auditing methods to increase opportunities to prevent and detect cheating by players or gaming personnel.

In 1991, the State Gaming Commission was created consisting of a chairman and four other members appointed by the Governor with the consent of the Senate. The bill provided the State Gaming Commission would share authority with the Attorney General to impose fines on organizations, distributors, and manufacturers that violate any law or rule and to suspend or revoke a charitable gaming distributor's or manufacturer's license for violation of law or rule. In 1993, however, the sole authority to impose fines and to suspend or revoke licenses was returned to the Attorney General. The commission is given full authority for adoption of rules to implement the charitable gaming laws.

FEDERAL OVERSIGHT

In 1992, Congress passed the Professional and Amateur Sports Protection Act (PASPA) that prohibited states from legalizing sports betting operations, but allowed states already offering sports betting or related games to maintain the current operations. Although other states had the opportunity to offer sports betting at the time, most declined and Nevada was the only state to offer sports betting. In 2014, New Jersey passed a law to repeal the state's ban on sports betting, which was challenged by the National Collegiate Athletic Association and several major professional sports leagues as a violation of PASPA. The case ultimately made its way to United States Supreme Court. In *Murphy v. National Collegiate Athletic Association* (2017), the Court held the provisions of PASPA violated the Constitution's anti-commandeering rule that prevents Congress from compelling states to adopt or enforce federal law. The decision paved the way for states to authorize gambling on sports events.

The following table provides information on the states and territories that have legalized onsite or mobile sports betting and the rate of tax applied to sports betting activities. The table includes states in which sports betting has been legalized but not yet implemented.

State/Territory	Legalized Onsite Sports Betting	Legalized Online or Mobile Sports Betting	Rate of Tax
Arkansas	X ¹		13 percent tax on the first \$150 million of net casino gaming receipts 20 percent tax on net receipts exceeding \$150 million
Delaware	X	X	Revenue-sharing agreement provides the Delaware lottery with 50 percent of the total sports betting revenue
District of Columbia	X	X	10 percent tax on revenue
Illinois	X	X	17 percent tax on a licensee's adjusted gross sports wagering receipts (with 2 percent of this tax allocated to qualifying home rule counties)
Indiana	X	X	9.5 percent tax on adjusted gross revenue

State/Territory	Legalized Onsite Sports Betting	Legalized Online or Mobile Sports Betting	Rate of Tax
Iowa	X	X	6.75 percent tax on revenue
Mississippi	X		12 percent tax on revenue (consisting of an 8 percent state tax and a 4 percent local tax)
Montana	X	X ²	All gross revenue is deposited in the state lottery fund
Nevada	X	X	6.75 percent tax on gross gaming revenue
New Hampshire	X	X	Revenue-sharing percentage is negotiated in individual contracts entered by the lottery commission and the party authorized to conduct a sports book
New Jersey	X	X	8.5 percent tax on onsite gross sports pool revenue 13 percent tax on casino-based online sports betting revenue 14.25 percent tax on racetrack-based online sports betting revenue
New Mexico	X ³		
New York	X		8.5 percent tax on revenue
North Carolina	X ⁴		
Oregon	X ⁵	X ⁶	Online sports betting revenue will be deposited with the Oregon Lottery and used to fund the state's Public Employees Retirement System
Pennsylvania	X	X	36 percent tax on revenue (consisting of a 34 percent state tax and a 2 percent local tax)
Rhode Island	X	X	Revenue sharing agreement provides the Rhode Island lottery with 51 percent of the sports betting revenue
Tennessee		X ⁷	20 percent tax on the adjusted gross income of a licensee
West Virginia	X	X	10 percent tax on adjusted gross sports wagering receipts

¹A constitutional amendment allows sports betting at four casinos in the state.
²Mobile applications only are available within a short range of an approved kiosk.
³Sports betting only is available at tribal casinos under existing Class III gaming compacts.
⁴Sports betting only is allowed at tribal casinos.
⁵Sports betting is available at tribal casinos.
⁶The Oregon Lottery will be offering mobile sports betting.
⁷A sports book operator only may operate after receiving approval at the local level.

Sports betting is not legal in North Dakota outside the boundaries of tribal lands. Two ways sports betting could become legal in the state are through:

1. A constitutional amendment to legalize sports betting as a legal form of gambling in the state (as was done to legalize the lottery and charitable gaming); or
2. The passage of legislation authorizing sports betting as a permitted game of chance under the state's charitable gaming laws, in which case the net proceeds are devoted to the charitable organizations.

Gaming on Indian reservations is controlled by the Indian Gaming Regulatory Act passed by Congress in 1988. One provision of the Act requires the state to negotiate in good faith with any Indian tribe wishing to enter into gaming. The five tribal casinos in the state are operating under the Indian gaming compacts last negotiated with the state in 2013. The five compacts, which are nearly identical, each contain a provision listing the kinds of gaming authorized. In Section 3.1(g), each compact provides, the tribe has the right to operate certain Class III games under the terms of the compact, including "Sports Book except as prohibited by the Professional and Amateur Sports Protection Act, P.L. 102-559; 28 U.S.C. Chap. 178, Pt. VI;." Based upon this compact provision and the United States Supreme Court decision, it would appear the tribes now have the authority to operate sports book gaming.

2019 GAMING-RELATED LEGISLATION

The 66th Legislative Assembly considered several bills that would have expanded the authorized games of chance or modified the gaming tax structure including:

- House Bill No. 1443, would have allowed betting on historic horse races that were previously conducted by a licensed pari-mutuel facility, concluded with official results, and concluded without scratches, disqualifications, and dead-heat finishes. The bill failed to pass the Senate.
- House Bill Nos. 1254 and 1295, would have authorized sports betting. House Bill No. 1254 would have defined "sport or athletic event" as an event at which two or more individuals participate in a sport or athletic competition whereas House Bill No. 1295 would have defined "professional sport or athletic event" as an event at which two or more individuals participate in a sport or athletic competition and receive compensation in excess of actual expenses for the individual's participation in the event. House Bill No. 1254 failed to pass the Senate. House Bill No. 1295 failed to pass the House.
- House Bill No. 1532, would have authorized the use of hand-held, portable electronic devices for electronic pull tabs and increased the maximum sales price per pull tab to \$5. The bill failed to pass the Senate.
- House Bill No. 1245, would have excluded credits won on an electronic pull tab device from the definition of gross proceeds. The bill was withdrawn from consideration.
- House Bill No. 1533, would have reduced the tax on electronic pull tabs and limited a licensed organization to installing no more than 10 electronic pull tab devices per site. The bill failed to pass the Senate.
- Senate Bill No. 2301, would have changed the two-tiered gaming tax to a four-tiered tax on adjusted gross proceeds and allocated revenue for the purchase of equipment and software for a charitable gaming technology system. The bill failed to pass the Senate.

SUGGESTED STUDY APPROACH

The committee may wish to approach this study as follows:

- Request the Attorney General to present information on areas of concern in the gaming industry, including concerns regarding the approval process for new games of chance, expense limits, trends in the charitable gaming industry, eligible uses for proceeds, gambling sites and locations, limitations, enforcement, conduct, and play of charitable gaming;
- Request information and recommendations from representatives of the charitable gaming industry and the public regarding areas of concern in the charitable gaming laws and rules, concerns specifically relating to the introduction of new games of chance, and eligible uses for proceeds;
- Request information and recommendations from the Racing Commission, the Attorney General, the Agriculture Commissioner, and representatives of the racing industry regarding the administration of racing in the state; and
- Develop recommendations and prepare legislation necessary to implement the recommendations.

ATTACH:1