

SENATE BILL NO. 2405

Introduced by

Senators Krauter, Kroeplin, Nichols

1 A BILL for an Act to amend and reenact sections 5-02-01, 5-02-02, 5-02-07.2, 5-02-09.1,
2 5-02-10, 5-02-11, 5-02-12, 53-06.1-01, 53-06.1-03, 53-06.1-06, 53-06.1-08, 53-06.1-10,
3 53-06.1-11, 53-06.1-11.1, 53-06.1-12, 53-06.1-12.3, 53-06.1-14, 53-06.1-15.1, 53-06.1-16,
4 53-06.2-02, and 53-06.2-13, subsection 8 of section 57-39.2-01, and subsection 7 of section
5 57-40.2-01 of the North Dakota Century Code, relating to transfer of retail alcoholic beverage
6 licensing, and games of chance, and parimutuel racing administration responsibilities from the
7 attorney general to the state tax commissioner.

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

9 **SECTION 1. AMENDMENT.** Section 5-02-01 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **5-02-01. State and local retail license required - Exception.** Except as otherwise
12 provided in section 5-02-01.1, any person engaging in the sale of alcoholic beverages at retail
13 without first securing an appropriate license from the ~~attorney general~~ tax commissioner and
14 the governing body of any city, or board of county commissioners if said business is located
15 outside the corporate limits of a city, is guilty of a class A misdemeanor. This section does not
16 apply to public carriers engaged in interstate commerce.

17 **SECTION 2. AMENDMENT.** Section 5-02-02 of the 1999 Supplement to the North
18 Dakota Century Code is amended and reenacted as follows:

19 **5-02-02. Qualifications for license.** No retail license may be issued to any person
20 unless the applicant files a sworn application, accompanied by the required fee, showing the
21 following qualifications:

- 22 1. The applicant, other than an organization, must be a legal resident of the United
23 States and a resident of this state and be a person of good moral character.
24 2. If applicant is:

1 a. A corporation, then:

2 (1) The manager of the licensed premises and the officers and directors
3 must be legal residents of the United States and persons of good moral
4 character; and

5 (2) The shareholders:

6 (a) Who are individuals, must be legal residents of the United States
7 and of good moral character; and

8 (b) Which are organizations, must meet the requirements of this
9 section for applicants which are organizations.

10 Corporate applicants must first be properly registered with the secretary of
11 state.

12 b. A limited liability company, then:

13 (1) The manager of the licensed premises and the managers and
14 governors must be legal residents of the United States and of good
15 moral character.

16 (2) The members:

17 (a) Who are individuals, must be legal residents of the United States
18 and of good moral character; and

19 (b) Which are organizations, must meet the requirements of this
20 section for applicants that are organizations.

21 (3) The applicant must first be properly registered with the secretary of
22 state.

23 c. A limited partnership, then:

24 (1) The manager of the licensed premises must be a legal resident of the
25 United States and of good moral character.

26 (2) The general partners and limited partners:

27 (a) If individuals, must be legal residents of the United States and of
28 good moral character; and

29 (b) If organizations, must meet the requirements of this section for
30 applicants that are organizations.

d. A general partnership, then:

(2) The partners:

(b) Which are organizations, must meet the requirements of this section for applicants that are organizations.

e. A limited liability partnership, then:

(2) The partners:

(b) Which are organizations, must meet the requirements of this section for applicants that are organizations.

Limited liability partnership applicants must first be properly registered with the secretary of state.

3. The applicant or manager must not have been convicted of an offense determined by the ~~attorney general~~ tax commissioner to have a direct bearing upon an applicant's or manager's ability to serve the public as an alcoholic beverage retailer; or, following conviction of any offense, is determined not to be sufficiently rehabilitated under section 12.1-33-02.1.

4. The building in which business is to be conducted must meet local and state requirements regarding the sanitation and safety.

5. The applicant for a state license must have first secured a local license.

6. The ~~attorney-general~~ tax commissioner, or local governing body, may require the applicant to set forth such other information in the application as necessary to enable them to determine if a license should be granted.

- 1 7. The applicant may not have any financial interest in any wholesale alcoholic
2 beverage business.
- 3 8. As a condition precedent to a background check, the ~~attorney-general~~ tax
4 commissioner may require the applicant to pay, in advance, an estimated
5 additional fee necessary to defray the actual cost of a background check of a
6 person for whom adequate background information sources are not readily
7 available. The estimated additional fee must be placed in the ~~attorney-general's~~
8 tax commissioner's refund fund for use to defray the actual expenses of the
9 background check. The remainder of the funds must be returned to the person
10 within thirty days of the conclusion of the background check. In addition, the
11 ~~attorney-general~~ tax commissioner may require the applicant or such other person
12 subject to a background check to execute a written consent if needed by the
13 ~~attorney-general~~ tax commissioner to obtain background or criminal history
14 information.

15 **SECTION 3. AMENDMENT.** Section 5-02-07.2 of the 1999 Supplement to the North
16 Dakota Century Code is amended and reenacted as follows:

17 **5-02-07.2. Sale of beer in kegs - Registration and marking required.**

- 18 1. Any retail alcoholic beverage licensee who sells beer in a container with a liquid
19 capacity greater than six gallons [22.71 liters] must place the licensee's state retail
20 alcoholic beverage license number on the container and also must mark the
21 container with a "registration" number or letters, or both, unique to that container.
22 The paint or ink used to mark the containers or other manner of marking the
23 containers must be approved by the ~~attorney-general~~ tax commissioner.
- 24 2. Whenever a retail alcoholic beverage licensee sells beer in a container with a liquid
25 capacity greater than six gallons [22.71 liters], ~~he~~ the licensee shall record the date
26 of sale and the name, address, and driver's license number or number of other
27 official state or military identification card of the person to whom the beer is sold,
28 together with the signature, and registration number, or letters of the container, or
29 both. Such records must be retained for a period of no less than six months and
30 must be kept on the licensed premises of the retail establishment where the sales
31 are made.

3. Each retail alcoholic beverage licensee shall permit any law enforcement officer to inspect the records required to be kept pursuant to this section during times the retail establishment is normally open for business or at other reasonable times.

4. This section does not apply to the sale of beer in a container by a retail alcoholic beverage licensee if the contents of the container are consumed on the licensed premises where the sale occurred.

SECTION 4. AMENDMENT. Section 5-02-09.1 of the North Dakota Century Code is amended and reenacted as follows:

5-02-09.1. ~~Attorney general~~ Tax commissioner to adopt rules. The ~~attorney general~~ tax commissioner pursuant to chapter 28-32 shall adopt rules necessary to carry out the provisions of this chapter.

SECTION 5. AMENDMENT. Section 5-02-10 of the North Dakota Century Code is amended and reenacted as follows:

5-02-10. Hearing on alleged violations. Any person having information that a licensed retailer of alcoholic beverages has violated any provisions of this title may file with the ~~attorney general~~ tax commissioner, city attorney or state's attorney an affidavit specifically setting forth such violation. Upon receipt of such affidavit, the city attorney or state's attorney shall set the matter for hearing not later than the next regular meeting of the governing body or forward such affidavit to the ~~attorney general~~ tax commissioner. Upon receipt of any such affidavit the ~~attorney general~~ tax commissioner shall set the matter for hearing in the local county courthouse not less than ten days after copies of the affidavit and notice of hearing have been mailed to the licensee by registered mail. If the hearing is held by the local governing body, a copy of this affidavit and notice of hearing must be mailed the licensee by registered mail not less than five days before such hearing. A record of such hearings will be made by stenographic notes or the use of an electronic recording device.

SECTION 6. AMENDMENT. Section 5-02-11 of the North Dakota Century Code is amended and reenacted as follows:

5-02-11. Suspension or revocation of license - Appeal. If after such hearing the ~~attorney general~~ tax commissioner or local governing body finds the violation charged in the affidavit has been proved by the evidence, an order must be served on the licensee revoking or suspending ~~his~~ the person's license for a period of time. Such action may be appealed to the

district court by following the appeal procedure set forth in chapter 28-32, except that the order revoking or suspending the license is inoperative while the appeal is pending.

SECTION 7. AMENDMENT. Section 5-02-12 of the North Dakota Century Code is amended and reenacted as follows:

5-02-12. Witnesses - Subpoena - Fees. The ~~attorney general~~ tax commissioner or a member of the local governing body has the power to administer oaths and subpoena and examine witnesses. Any witness called by the prosecution, except a peace officer while on duty, shall receive the same fees and mileage as a witness in a civil case in district court.

SECTION 8. AMENDMENT. Section 53-06.1-01 of the North Dakota Century Code is amended and reenacted as follows:

53-06.1-01. Definitions. As used in this chapter:

1. "Adjusted gross proceeds" means gross proceeds less cash prizes, cost of merchandise prizes, sales tax on bingo cards, pull tab excise tax, and federal excise tax imposed under section 4401 of the Internal Revenue Code [26 U.S.C. 4401].
2. "Charitable organization" means an organization whose primary purpose is for relief of poor, distressed, underprivileged, diseased, elderly, or abused persons, prevention of cruelty to children or animals, or similar condition of public concern.
3. "Civic and service organization" means an organization whose primary purpose is to promote the common good and social welfare of a community as a sertoma, lion, rotary, jaycee, kiwanis, or similar organization.
4. "Closely related organization" means an organization that controls, is controlled by, or is under common control with another organization. Control exists when an organization has the authority or ability to elect, appoint, or remove a majority of the officers or directors of another organization or, by policy, contract, or otherwise, has the authority or ability to directly or indirectly direct or cause the direction of the management or policies of another organization.
5. "Compulsive gambler" means an individual who is chronically and progressively preoccupied with gambling and the urge to gamble and with gambling behavior that compromises, disrupts, or damages personal, family, or vocational pursuits.

6. "Distributor" means a person that sells, markets, or distributes equipment usable in the conduct of games.
7. "Educational organization" means a nonprofit public or private elementary or secondary school, two-year or four-year college, or university.
8. "Eligible organization" means veterans, charitable, educational, religious, fraternal, civic and service, public safety, or public-spirited organization domiciled in North Dakota, incorporated as a nonprofit organization, and which has been actively fulfilling its primary purpose within this state during the two immediately preceding years. However, an educational organization does not need to be incorporated. An organization's primary purpose may not involve the conduct of games. The organization may be issued a license by the ~~attorney general~~ tax commissioner.
9. "Fraternal organization" means an organization, except a school fraternity, which is a branch, lodge, or chapter of a national or state organization and exists for the common business, brotherhood, or other interests of its members. The organization must have qualified for exemption from federal income tax under section 501(c)(8) or 501(c)(10) of the Internal Revenue Code.
10. "Games" means games of chance.
11. "Gross proceeds" means all cash and checks received from conducting games, sales tax on bingo cards, and admissions.
12. "Licensed organization" means an eligible organization licensed by the ~~attorney general~~ tax commissioner.
13. "Local permit" means a permit issued to a nonprofit organization or group of people domiciled in North Dakota by a governing body of a city or county.
14. "Manufacturer" means, for a pull tab or bingo card, a person who designs, prints, assembles, or produces the product. For a pull tab or bingo card dispensing device, a manufacturer means the person who directly controls and manages development of and owns the rights to the proprietary software encoded on a processing chip that enables the device to operate.
15. "Net proceeds" means adjusted gross proceeds less allowable expenses and gaming tax.

- 1 16. "Person" means any person, partnership, corporation, limited liability company,
2 association, or organization.
- 3 17. "Public safety organization" means an organization whose primary purpose is to
4 provide firefighting, ambulance service, crime prevention, or similar emergency
5 assistance.
- 6 18. "Public-spirited organization" means an organization whose primary purpose is for
7 scientific research, amateur sports competition, safety, arts, agriculture,
8 preservation of cultural heritage, educational activities, educational public service,
9 youth, economic development, tourism, community recreation, or similar
10 organization, which does not meet the definition of any other type of eligible
11 organization. However, a nonprofit organization or a group of people recognized
12 as a public-spirited organization by a governing body of a city or county for
13 obtaining a local permit does not need to meet this definition.
- 14 19. "Qualified treatment service provider" means an entity based in North Dakota
15 which is experienced in and capable of delivering compulsive gambling education,
16 prevention, awareness, crisis intervention, rehabilitation, and financial counseling
17 and mental health treatment services as defined by the department of human
18 services.
- 19 20. "Religious organization" means a church, body of communicants, or group
20 gathered in common membership whose primary purpose is for advancement of
21 religion, mutual support and edification in piety, worship, and religious
22 observances.
- 23 21. "Veterans organization" means any congressionally chartered post organization, or
24 any branch or lodge or chapter of a nonprofit national or state organization whose
25 membership consists of individuals who are or were members of the armed
26 services or forces of the United States. The organization must have qualified for
27 exemption from federal income tax under section 501(c)(19) of the Internal
28 Revenue Code.

29 **SECTION 9. AMENDMENT.** Section 53-06.1-03 of the North Dakota Century Code is
30 amended and reenacted as follows:

31 **53-06.1-03. Local permits, site authorization, and licenses.**

- 1 1. Except as authorized by the ~~attorney-general~~ tax commissioner, an organization
2 that has its license suspended or revoked, or has relinquished or not renewed its
3 license and not disbursed its net proceeds, is ineligible for a license or local permit.
4 Only one of two or more closely related organizations may have a license or local
5 permit at one time. A college or university fraternity, sorority, or club is not closely
6 related to an educational organization. An organization shall apply for a local
7 permit as follows:
 - 8 a. An organization recognized as a public-spirited organization by the governing
9 body of a city or county may apply for a local permit to conduct only raffles,
10 bingo, or sports pools. The organization or closely related organizations as a
11 whole may only award a primary prize that does not exceed one thousand
12 dollars and total prizes of all games that do not exceed six thousand dollars
13 per year. The determination of what is a "public-spirited organization" is
14 within the sole discretion of the governing body which should in its
15 determination consider the definition of a public-spirited organization under
16 subsection 18 of section 53-06.1-01 and eligible uses of net proceeds under
17 subsection 2 of section 53-06.1-11.1. A governing body may issue a local
18 permit for games to be held at designated times and places.
 - 19 b. An organization shall apply to the governing body of the city or county in
20 which the proposed site is located. Application must be made on a form
21 prescribed by the ~~attorney-general~~ tax commissioner. Approval may be
22 granted at the discretion of the governing body. A governing body may
23 establish a fee not to exceed twenty-five dollars for each local permit. A local
24 permit must be on a fiscal year basis from July first to June thirtieth or on a
25 calendar-year basis.
 - 26 c. Except for the restriction of subsection 1 of section 53-06.1-11.1, an
27 organization that has a local permit may use gaming proceeds for any
28 purpose that does not violate this chapter or gaming rules.
- 29 2. An eligible organization shall apply for a license to conduct only bingo, raffles,
30 calcuttas, pull tabs, punchboards, twenty-one, paddlewheels, poker, or sports
31 pools by:

- 1 a. First securing approval for a site authorization from the governing body of the
2 city or county in which the proposed site is located. Approval, which may be
3 granted at the discretion of the governing body, must be recorded on a site
4 authorization form that is to accompany the license application to the ~~attorney~~
5 ~~general~~ tax commissioner for final approval. A governing body may not
6 require an eligible organization to donate net proceeds to the city, county, or
7 related political subdivision or for community programs or services within the
8 city or county as a condition for receiving a site authorization from the city or
9 county. A governing body may limit the number of tables for twenty-one per
10 site and the number of sites upon which a licensed organization may conduct
11 games within the city or county. A governing body may charge a one hundred
12 dollar fee for a site authorization; and
- 13 b. Annually applying for a license from the ~~attorney-general~~ tax commissioner
14 before July first on a form prescribed by the ~~attorney-general~~ tax
15 commissioner and remitting a one hundred fifty dollar license fee. An
16 organization shall document that it qualifies as an eligible organization. If an
17 organization amends its primary purpose as stated in its articles of
18 incorporation or materially changes its basic character, the organization shall
19 reapply for licensure.
- 20 3. A licensed organization or organization that has a local permit shall conduct games
21 as follows:
 - 22 a. Only one licensed organization or organization that has a local permit may
23 conduct games at an authorized site on a day, except that a raffle may be
24 conducted for a special occasion by another licensed organization or
25 organization that has a local permit when one of these conditions is met:
 - 26 (1) When the area for the raffle is physically separated from the area where
27 games are conducted by the regular organization.
 - 28 (2) Upon request of the regular organization and with the approval of the
29 alcoholic beverage establishment, the regular organization's license or
30 local permit is suspended for that specific time of day by the ~~attorney~~
31 ~~general~~ tax commissioner.

- 1 b. Except for a temporary site authorized for fourteen or fewer consecutive days
2 for not more than two events per quarter, a licensed organization may not
3 have more than twenty-five sites unless granted a waiver by the ~~attorney~~
4 ~~general~~ tax commissioner. If the ~~attorney-general~~ tax commissioner finds that
5 there is no other licensed organization interested in conducting gaming at a
6 site for which a waiver is being sought, the ~~attorney-general~~ tax commissioner
7 may approve the waiver for no more than five sites.
- 8 c. Games of pull tabs, punchboards, twenty-one, paddlewheels, poker, and
9 sports pools may be conducted only during the hours when alcoholic
10 beverages may be dispensed according to applicable regulations of the state,
11 county, or city.
- 12 d. An organization may not permit a person under twenty-one years of age to
13 directly or indirectly play pull tabs, punchboards, twenty-one, calcuttas, sports
14 pools, paddlewheels, or poker. An organization may not permit a person
15 under eighteen years of age to directly or indirectly play bingo unless the
16 person is accompanied by an adult, bingo is conducted by an organization
17 that has a local permit, or the game's prize structure does not exceed that
18 allowed for a local permit.
- 19 4. A local permit or site authorization and license and rules relating to the conduct
20 and play of games must be displayed at a site.
- 21 5. The ~~attorney-general~~ tax commissioner may issue a conditional license to an
22 eligible organization whose regularly issued license has expired or been
23 suspended, revoked, or relinquished. The ~~attorney-general~~ tax commissioner shall
24 designate the time period for which the conditional license is valid and may impose
25 any conditions.
- 26 6. A governing body or local law enforcement official may inspect a site's gaming
27 equipment and examine or cause to be examined the books and records of a
28 licensed organization or organization that has a local permit to the extent that the
29 books and records relate to any transaction involving the direct or indirect conduct
30 of games.

1 **SECTION 10. AMENDMENT.** Section 53-06.1-06 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **53-06.1-06. Persons permitted to conduct games - Equipment.**

- 4 1. No person, except a member, volunteer, an employee of a licensed organization or
5 an organization that has a local permit, or an employee of a temporary employment
6 agency who provides services to a licensed organization, may conduct any game.
7 "Member" includes a member of an auxiliary organization. In conducting pull tabs
8 or bingo through a dispensing device, the ~~attorney general~~ tax commissioner may
9 allow an employee of an alcoholic beverage establishment to provide limited
10 assistance to an organization.
- 11 2. Except when authorized by the ~~attorney general~~ tax commissioner or allowed by
12 the gaming rules, an eligible organization shall procure gaming equipment only
13 from a licensed distributor. No equipment or prizes may be purchased at an
14 excessive price.
- 15 3. An organization shall maintain complete, accurate, and legible accounting records
16 in North Dakota for all gaming activity and establish an adequate system of internal
17 control. The governing board of an eligible organization is primarily responsible
18 and may be held accountable for the proper determination and distribution of net
19 proceeds. If an organization does not renew its license or its license is denied,
20 relinquished, or revoked and it has not disbursed all of its net proceeds, the
21 organization shall file an action plan as prescribed by the gaming rules with the
22 ~~attorney general~~ tax commissioner.
- 23 4. The value of a merchandise prize awarded in a game is its retail price.
- 24 5. A person is restricted from being involved in gaming and the ~~attorney general~~ tax
25 commissioner shall conduct a criminal history record check as follows:
- 26 a. A person who has pled guilty to or been found guilty of a felony offense as
27 defined by the laws of this state, other states, or the federal government, or
28 has pled guilty to or been found guilty of a violation of this chapter, a gaming
29 rule, chapter 12.1-28 or 53-06.2, or offenses of other states or the federal
30 government equivalent to offenses defined in these chapters may not be a
31 licensed distributor, may not be employed by a licensed distributor to sell or

1 distribute gaming equipment, and may not be employed by a licensed
2 organization to conduct games on a site for five years from the date of
3 conviction, release from incarceration, or expiration of parole or probation,
4 whichever is the latest.

5 b. A person who has pled guilty to or been found guilty of a misdemeanor
6 offense in violation of section 6-08-16.1 or chapter 12.1-06, 12.1-23, or
7 12.1-24 or offenses of other states, the federal government, or a municipality
8 equivalent to these offenses may not be a licensed distributor, may not be
9 employed by a licensed distributor to sell or distribute gaming equipment, and
10 may not be employed by a licensed organization to conduct games on a site
11 for two years from the date of conviction, release from incarceration, or
12 expiration of parole or probation, whichever is the latest.

13 c. Unless an employee is exempt by the gaming rules or ~~attorney general tax~~
14 ~~commissioner~~, the ~~attorney general tax commissioner~~ shall conduct a criminal
15 history record check of each employee of a licensed organization or distributor
16 and charge a fee of twenty dollars. The fee may be waived by the ~~attorney~~
17 ~~general tax commissioner~~ if a federal agency or local law enforcement agency
18 has done a record check. The ~~attorney general tax commissioner~~ may
19 require advance payment of any additional fee necessary to pay the cost of a
20 record check of a person for whom adequate background information sources
21 are not readily available. Instead of paying the additional fee, a person may
22 cancel the record check. The advance payment must be placed in the
23 ~~attorney general's tax commissioner's~~ refund fund. The unused funds must
24 be returned to the person within thirty days of the conclusion of the record
25 check. The ~~attorney general tax commissioner~~ shall notify the organization or
26 distributor and person of the result. The ~~attorney general tax commissioner~~
27 shall keep the information confidential except in the proper administration of
28 this chapter or any gaming rule or to provide to an authorized law
29 enforcement agency.

30 6. For a site where bingo is the primary game or a site that is leased by a licensed
31 organization, the organization may not pay bingo prizes in which the total bingo

prizes exceed total bingo gross proceeds for a period prescribed by gaming rule.
However, if bingo is the primary game at the site, a bingo prize that equals or exceeds ten thousand dollars is excluded from the total of the bingo prizes.

7. A city or county may require a person conducting games to obtain a local work permit, charge a reasonable fee, and conduct a criminal history record check.

SECTION 11. AMENDMENT. Section 53-06.1-08 of the North Dakota Century Code is amended and reenacted as follows:

53-06.1-08. Punchboards and pull tabs. Unless all top tier winning pull tabs or punchboard punches of a game have been redeemed, or unless otherwise permitted by a gaming rule or the ~~attorney general~~ tax commissioner, a person or organization may not close the game after it has been placed in play. The maximum sales price per pull tab and punchboard punch is two dollars. The maximum prize value of a top tier winning pull tab or punchboard punch is five hundred dollars. The game of pull tabs may only be conducted by commingling deals.

SECTION 12. AMENDMENT. Section 53-06.1-10 of the North Dakota Century Code is amended and reenacted as follows:

53-06.1-10. Twenty-one. No money may be used as a wager. The organization shall provide playing chips of various denominations to players. The maximum limit per wager may be set by the organization at not more than five dollars and wagers in increments of one dollar must be accepted up to the maximum limit. A player may not play more than two hands at the same time. Only the player actually playing a hand may place a wager on any hand. Each player plays the player's hand against the dealer's hand. Any requirement to pool tips is within the sole discretion of each organization. Except for a site that has twenty-one gross proceeds averaging less than ten thousand dollars per quarter, an organization may not conduct twenty-one at the site with wagers exceeding two dollars unless the organization has first installed video surveillance equipment as required by rules and the equipment is approved by the ~~attorney general~~ tax commissioner.

SECTION 13. AMENDMENT. Section 53-06.1-11 of the North Dakota Century Code is amended and reenacted as follows:

53-06.1-11. Gross proceeds - Allowable expenses - Rent limits.

1. All money received from games must be accounted for according to the gaming rules. Gaming activity for a quarter must be reported on a tax return form prescribed by the ~~attorney general~~ tax commissioner. Unless otherwise authorized by the ~~attorney general~~ tax commissioner, the purchase price of a merchandise prize must be paid from a gaming bank account by check. No check drawn from a gaming or trust bank account may be payable to "cash" or a fictitious payee. A cash prize that exceeds an amount set by rule must be accounted for by a receipt prescribed by the gaming rules.
2. Allowable expenses may be deducted from adjusted gross proceeds. The allowable expense limit is fifty percent of the first two hundred thousand dollars of adjusted gross proceeds per quarter and forty-five percent of the adjusted gross proceeds in excess of two hundred thousand dollars per quarter. In addition, an organization may deduct as an allowable expense:
 - a. Two and one-half percent of the gross proceeds of pull tabs.
 - b. Capital expenditures for security or video surveillance equipment used for controlling games if the equipment is required by section 53-06.1-10 or authorized by rule, and it is approved by the ~~attorney general~~ tax commissioner.
3. Cash shorts incurred in games and interest and penalty are classified as expenses.
4. For a site where bingo is conducted:
 - a. Except under subdivision c, if bingo is the primary game, the monthly rent must be reasonable.
 - b. If bingo is not the primary game, but is conducted with twenty-one, paddlewheels, or pull tabs, no additional rent is allowed.
 - c. If bingo is conducted through a dispensing device and no other game is conducted, the monthly rent may not exceed two hundred seventy-five dollars.
5. For a site where bingo is not the primary game:
 - a. If twenty-one or paddlewheels is conducted, the monthly rent may not exceed two hundred dollars multiplied by the necessary number of tables based on criteria prescribed by gaming rule. If pull tabs is also conducted involving a jar bar or dispensing device, but not both, the monthly rent for pull tabs may not

1 exceed an additional one hundred seventy-five dollars. If pull tabs is
2 conducted involving both a jar bar and dispensing device, the monthly rent for
3 pull tabs may not exceed an additional two hundred dollars.

- 4 b. If twenty-one and paddlewheels are not conducted but pull tabs is conducted
5 involving a jar bar or dispensing device, but not both, the monthly rent may
6 not exceed two hundred seventy-five dollars. If pull tabs is conducted
7 involving both a jar bar and dispensing device, the monthly rent for pull tabs
8 may not exceed three hundred dollars.

9 **SECTION 14. AMENDMENT.** Section 53-06.1-11.1 of the North Dakota Century Code
10 is amended and reenacted as follows:

11 **53-06.1-11.1. Restricted use of money in certain political activities - Eligible uses**
12 **of net proceeds.**

- 13 1. A licensed organization or an organization that has a local permit may not use
14 money from any source for placing an initiated or referred measure on a ballot or
15 for a political campaign to promote or oppose a person for public office. Except for
16 a use related to an organization's primary purpose, a licensed organization or
17 organization that has a local permit may not use net proceeds to influence
18 legislation or promote or oppose referendums or initiatives. Any funds expended
19 by a licensed organization or an organization that has a local permit to promote or
20 oppose an initiated or referred measure that is on the ballot or for any activities of a
21 lobbyist under section 54-05.1-02, that are not compensation or expenses paid to a
22 lobbyist, and that are not required to be reported under section 54-05.1-03 must be
23 reported to the ~~attorney general~~ tax commissioner as prescribed by the ~~attorney~~
24 ~~general~~ tax commissioner. A violation of this subsection subjects an organization
25 to a suspension of its license or local permit for up to one year.
- 26 2. A licensed organization shall disburse net proceeds within the period prescribed by
27 rule and for only these educational, charitable, patriotic, fraternal, religious, or
28 public-spirited uses:
- 29 a. Uses for stimulating and promoting state and community-based economic
30 development programs within the state which improve the quality of life of
31 community residents.

- 1 b. Uses for developing, promoting, and supporting tourism within a city, county,
2 or the state.
- 3 c. Uses benefiting an indefinite number of persons by bringing them under the
4 influence of education, cultural programs, or religion which include
5 disbursements to provide:
 - 6 (1) Scholarships for students, if the disbursement is deposited in a
7 scholarship fund for defraying the cost of education to students and the
8 scholarships are awarded through an open and fair selection process.
 - 9 (2) Supplementary assistance to a public or private nonprofit educational
10 institution registered with or accredited by any state.
 - 11 (3) Assistance to libraries and museums.
 - 12 (4) Assistance for the performing arts and humanities.
 - 13 (5) Preservation of cultural heritage.
 - 14 (6) Youth community, social welfare, and athletic activities.
 - 15 (7) Adult amateur athletic activities within the state, including uniforms and
16 equipment.
 - 17 (8) Maintenance of places of public worship or support of a body of
18 communicants, gathered in common membership for mutual support
19 and edification in piety, worship, or religious observances.
 - 20 (9) Scientific research.
- 21 d. Uses benefiting an indefinite number of persons by relieving them of disease,
22 suffering, or constraint which include disbursements to provide:
 - 23 (1) Assistance to an individual or family suffering from poverty or
24 homelessness.
 - 25 (2) Encouragement and enhancement of the active participation of the
26 elderly in our society.
 - 27 (3) Services to the abused.
 - 28 (4) Services to persons with an addicted behavior toward alcohol,
29 gambling, or drugs.
 - 30 (5) Funds to combat juvenile delinquency and rehabilitate ex-offenders.

- 1 (6) Relief for the sick, diseased, and terminally ill and their physical
- 2 well-being.
- 3 (7) Funds for emergency relief and volunteer services.
- 4 (8) Funds to nonprofit nursing homes, nonprofit day care centers, and
- 5 nonprofit medical facilities.
- 6 (9) Social services and education programs aimed at aiding emotionally
- 7 and physically distressed, handicapped, elderly, and underprivileged
- 8 persons.
- 9 (10) Funds for crime prevention, fire protection and prevention, and public
- 10 safety.
- 11 (11) Funds to relieve, improve, and advance the physical and mental
- 12 conditions, care and medical treatment, and health and welfare of
- 13 injured or disabled veterans.
- 14 e. Uses that perpetuate the memory and history of the dead.
- 15 f. Uses increasing comprehension of and devotion to the principles upon which
- 16 the nation was founded, not of direct benefit to the eligible organization or any
- 17 member thereof which include disbursements to aid in teaching the principles
- 18 of liberty, truth, justice, and equality. However, beauty pageants do not
- 19 qualify.
- 20 g. The erection or maintenance of public buildings, utilities, or waterworks.
- 21 h. Uses lessening the burden of government which include disbursements to an
- 22 entity that is normally funded by a city, county, state, or United States
- 23 government and disbursements directly to a government entity or its agency.
- 24 i. Uses benefiting a definite number of persons who are the victims of loss of
- 25 home or household possessions through explosion, fire, flood, or storm and
- 26 the loss is not covered by insurance.
- 27 j. Uses benefiting a definite number of persons suffering from a seriously
- 28 disabling disease or injury causing severe loss of income or incurring
- 29 extraordinary medical expense which is not covered by insurance.
- 30 k. Uses, for community service projects, by chambers of commerce exempt from
- 31 federal income tax under section 501(c)(6) of the Internal Revenue Code. A

project qualifies if it develops or promotes public services, including education, housing, transportation, recreation, crime prevention, fire protection and prevention, safety, tourism, and health. Uses that directly benefit a chamber of commerce do not qualify.

l. Uses for or of benefit to efforts in support of the health, comfort, or well-being of the community which include disbursements to provide:

- (1) Funds for adult bands, including drum and bugle corps.
- (2) Funds for trade shows and conventions conducted in this state.
- (3) Funds for nonprofit organizations that operate a humane society, zoo, or fish or wildlife reproduction and habitat enhancement program.
- (4) Funds for public transportation, community celebration, and recreation.
- (5) Funds for preservation and cleanup of the environment.

m. To the extent net proceeds are used toward the primary purpose of a charitable, educational, religious, public safety, or public-spirited organization, or are used for a veterans cemetery by a veterans organization, that has obtained a final determination from the internal revenue service as qualifying for exemption from federal income tax under section 501(c)(3) or 501(c)(19) of the Internal Revenue Code, the organization may establish a special trust fund as a contingency for funding or maintaining the organization's future program services should the organization discontinue conducting games or dissolve.

3. The uses in subsection 2 do not include the erection, acquisition, improvement, maintenance, or repair of real or personal property owned or leased by an organization unless it is used exclusively for an eligible use. A licensed organization or recipient of net proceeds may not use net proceeds for administrative or operating expenses involving the conduct of games.

SECTION 15. AMENDMENT. Section 53-06.1-12 of the North Dakota Century Code is amended and reenacted as follows:

53-06.1-12. Gaming and excise taxes - Deposits.

1. A gaming tax is imposed on the total adjusted gross proceeds earned by a licensed organization in a quarter and it must be computed and paid to the ~~attorney general~~

tax commissioner 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. The tax rates are:

- a. On adjusted gross proceeds not exceeding two hundred thousand dollars, a tax of five percent.
- b. On adjusted gross proceeds exceeding two hundred thousand dollars but not exceeding four hundred thousand dollars, a tax of ten percent.
- c. On adjusted gross proceeds exceeding four hundred thousand dollars but not exceeding six hundred thousand dollars, a tax of fifteen percent.
- d. On adjusted gross proceeds exceeding six hundred thousand dollars, a tax of twenty percent.

2. In addition to any other tax provided by law and in place of sales or use taxes, there is imposed an excise tax of four and one-half percent on the gross proceeds from the sale at retail of pull tabs to a final user. This includes pull tabs provided to a player in exchange for redeemed winning pull tabs. The tax must be paid to the ~~attorney general~~ tax commissioner when tax returns are filed.
3. The state treasurer shall deposit gaming and excise taxes, monetary fines, and interest and penalties collected in the general fund in the state treasury.

SECTION 16. AMENDMENT. Section 53-06.1-12.3 of the North Dakota Century Code is amended and reenacted as follows:

53-06.1-12.3. Interest, penalty, and estimated tax.

1. Assessment of interest. If an organization does not pay tax due by the original date of a tax return, or if additional tax is due based on an audit or math verification of the return and it is not paid by the original due date of the return, the organization shall pay interest on the tax at the rate of twelve percent per annum computed from the original due date of the return through the date the tax is paid.
2. Assessment of penalty. If an organization does not pay tax due on a tax return by the original or extended due date of the return, or if additional tax is due based on an audit or math verification of the return and it is not paid by the original or extended due date of the return, the organization shall pay a penalty of five percent of the tax, or twenty-five dollars, whichever is greater. If an organization does not

1 file a tax return by the original or extended due date of the return, the organization
2 shall pay a penalty of five percent of the tax, or twenty-five dollars, whichever is
3 greater, for each month or fraction of a month during which the return is not filed,
4 not exceeding a total of twenty-five percent.

5 3. The ~~attorney general~~ tax commissioner may require a licensed organization to
6 make monthly estimated gaming and excise tax payments if the ~~attorney general~~
7 tax commissioner determines that the organization is in poor financial condition. If
8 an organization fails to pay any tax or estimated tax, interest, or penalty by the
9 original due date or date set by the ~~attorney general~~ tax commissioner, the
10 ~~attorney general~~ tax commissioner may bring court action to collect it and may
11 suspend the organization's license. The ~~attorney general~~ tax commissioner may
12 for good cause waive all or part of any interest or penalty and may waive any
13 minimal tax.

14 4. If an organization has failed to file a tax return, has been notified by the ~~attorney~~
15 ~~general~~ tax commissioner of the delinquency, and refuses or neglects within thirty
16 days after the notice to file a proper return, the ~~attorney general~~ tax commissioner
17 shall determine the adjusted gross proceeds and gaming and excise taxes due
18 according to the best information available and assess the taxes at not more than
19 double the amount. Interest and penalty also must be assessed.

20 **SECTION 17. AMENDMENT.** Section 53-06.1-14 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **53-06.1-14. Distributors and manufacturers.**

23 1. A manufacturer of pull tabs, bingo cards, or pull tab dispensing devices and a
24 distributor shall apply annually for a license upon a form prescribed by the ~~attorney~~
25 ~~general~~ tax commissioner before the first day of April in each year. The license fee
26 for a distributor is one thousand five hundred dollars. The license fee for a
27 manufacturer is four thousand dollars.

28 2. A licensed distributor may not sell, market, or distribute gaming equipment except
29 to a licensed distributor, licensed organization, organization that has a local permit,
30 or other person authorized by gaming rule or the ~~attorney general~~ tax
31 commissioner. A manufacturer of a pull tab dispensing device, pull tab, or bingo

card may only sell, market, or distribute the manufacturer's pull tab dispensing device and processing chip encoded with proprietary software, pull tab, or bingo card to a licensed distributor. A licensed distributor may purchase or acquire a pull tab dispensing device and processing chip encoded with proprietary software, pull tab, or bingo card only from a licensed manufacturer or licensed distributor. However, a distributor may purchase or acquire a used pull tab dispensing device from a licensed organization. A distributor may not duplicate a manufacturer's processing chip encoded with proprietary software. No gaming equipment or prizes may be sold at an excessive price.

3. A licensed distributor shall affix a North Dakota gaming stamp to each deal of pull tabs and bingo cards, punchboard, sports pool board, calcutta board, and series of paddlewheel ticket cards sold and shall purchase the stamps from the ~~attorney general~~ tax commissioner for thirty-five cents each. Ten cents of each stamp sold, up to thirty-six thousand dollars per biennium, must be credited to the ~~attorney general's~~ tax commissioner's operating fund to defray the costs of issuing the gaming stamps.
4. A licensed organization, organization that has a local permit, licensed manufacturer, or North Dakota wholesaler of liquor or alcoholic beverages may not be a distributor or stockholder of a distributor. A distributor may not be a stockholder of a manufacturer.
5. In addition to the license fee, the ~~attorney general~~ tax commissioner may require advance payment of any fee necessary to pay the cost of a record check of an applicant according to subdivision c of subsection 5 of section 53-06.1-06.

SECTION 18. AMENDMENT. Section 53-06.1-15.1 of the North Dakota Century Code is amended and reenacted as follows:

53-06.1-15.1. Authority of the ~~attorney general~~ tax commissioner. The ~~attorney general~~ tax commissioner may:

1. Inspect all sites in which gaming is conducted or inspect all premises where gaming equipment is manufactured or distributed. The ~~attorney general~~ tax commissioner may require a licensed manufacturer to reimburse the ~~attorney~~

- 1 ~~general~~ tax commissioner for the reasonable actual cost of transportation, lodging,
2 meals, and incidental expenses incurred in inspecting the manufacturer's facility.
- 3 2. Inspect all gaming equipment and supplies on a site or premises.
- 4 3. Seize and remove from a site or premises and impound any gaming equipment,
5 supplies, games, or books and records for the purpose of examination and
6 inspection. When books or records are seized, the ~~attorney-general~~ tax
7 commissioner shall provide copies of those records or books within seventy-two
8 hours of a specific request by the organization for a copy of the books or records
9 seized.
- 10 4. Demand access to and inspect, examine, photocopy, and audit all books and
11 records of applicants, organizations, lessors, manufacturers, distributors, and
12 affiliated companies on their premises concerning any income or expense resulting
13 from any gaming activity, determine compliance with this chapter or gaming rules,
14 and require verification of income, expense, or use of net proceeds, and all other
15 matters affecting this chapter.
- 16 5. Permit the commissioner or proper representative of the internal revenue service of
17 the United States to inspect a tax return or furnish a copy of the tax return, or
18 information concerning any item contained in the return, or disclosed by any audit
19 or investigation report of the gaming activity of any organization or player, or
20 recordkeeping information. However, information cannot be disclosed to the extent
21 that the ~~attorney-general~~ tax commissioner determines that the disclosure would
22 identify a confidential informant or seriously impair any civil or criminal
23 investigation. Except when directed by judicial order, or for pursuing civil or
24 criminal charges regarding a violation of this chapter or a gaming rule, or as is
25 provided by law, the ~~attorney-general~~ tax commissioner may not divulge nor make
26 known, to any person, any income or expense item contained in any tax return or
27 disclosed by an audit or investigative report of any taxpayer provided to the
28 ~~attorney-general~~ tax commissioner by the internal revenue service.
- 29 6. Require a representative of a licensed organization or distributor to participate in
30 training or for good cause prohibit the person from being involved in gaming as an
31 employee or volunteer. The ~~attorney-general~~ tax commissioner may for good

1 cause prohibit a person from providing personal or business services to an
2 organization or distributor.

3 7. Prohibit a person from playing games if the person violates this chapter, chapter
4 12.1-28 or 53-06.2, or a gaming rule.

5 8. Require a licensed organization to pay a bingo or raffle prize to a player based on
6 a factual determination or a hearing by the ~~attorney general~~ tax commissioner.

7 9. Based on reasonable ground or written complaint, suspend, deny, or revoke an
8 organization's local permit or an organization's, distributor's, or manufacturer's
9 application or license for violation, by the organization, distributor, or manufacturer
10 or any officer, director, agent, member, or employee of the organization, distributor,
11 or manufacturer, of this chapter or any gaming rule.

12 10. Impose a monetary fine on a licensed organization, organization that has a local
13 permit, distributor, or manufacturer for failure to comply with this chapter or any
14 gaming rule. The monetary fine for each violation by an organization is a minimum
15 of twenty-five dollars and may not exceed two percent of the organization's
16 average quarterly gross proceeds, or five thousand dollars, whichever is greater.
17 The monetary fine for each violation by a distributor is a minimum of one hundred
18 dollars and may not exceed five thousand dollars. The monetary fine for each
19 violation by a manufacturer is a minimum of five hundred dollars and may not
20 exceed two hundred fifty thousand dollars. This fine may be in addition to or in
21 place of a license suspension or revocation.

22 11. At any time within three years after any amount of fees, monetary fine, interest,
23 penalty, or tax required to be paid pursuant to this chapter becomes due, bring a
24 civil action to collect the amount due. However, if for any reason there is a change
25 in adjusted gross income or tax liability by an amount which is in excess of
26 twenty-five percent of the amount of adjusted gross income or tax liability originally
27 reported on the tax return, any additional tax determined to be due may be
28 assessed within six years after the due date of the tax return, or six years after the
29 tax return was filed, whichever period expires later. An action may be brought
30 although the person owing the fees or tax is not presently licensed.

12. Institute an action in any district court for declaratory or injunctive relief against a person, whether or not the person is a gaming licensee, as the ~~attorney general~~ tax commissioner deems necessary to prevent noncompliance with this chapter or gaming rules.

13. For good cause, require a licensed organization to use the ~~attorney general's~~ tax commissioner's recordkeeping system for any or all games.

SECTION 19. AMENDMENT. Section 53-06.1-16 of the North Dakota Century Code is amended and reenacted as follows:

53-06.1-16. Violation of law or rule - Fraudulent scheme or technique to cheat or skim unlawful - Penalty.

1. Except as otherwise provided by this chapter, a person who knowingly makes a false statement on a request for record check form or in any application for a local permit, or license, or in any accompanying statement, knowingly signs a false record or report, or who fails to maintain sufficient books and records or adequate internal control to substantiate gross proceeds, prizes, cash profits, expenses, or disbursement of net proceeds, or who falsifies any books or records relating to any transaction involving the direct or indirect conduct of games, or who violates this chapter, any gaming rule, or of any term of a local permit or license is guilty of a class A misdemeanor. If convicted, the person forfeits any gaming license or local permit issued to it and is ineligible to reapply for a gaming license or local permit for a period of time determined by the ~~attorney general~~ tax commissioner.

2. It is unlawful for a person playing or conducting a game, or otherwise:

- a. To use bogus or counterfeit chips or pull tabs or to substitute or use any game, cards, pull tabs, or game piece that have been marked or tampered with.
- b. To employ or have on one's person any cheating device to facilitate cheating in any game, or to attempt to commit or commit a theft, or to assist in committing any other fraudulent scheme.
- c. To willfully use any fraudulent scheme or technique, including when a person directly or indirectly solicits, provides, or receives inside information of the status of a game of pull tabs for the benefit of any person.

d. To alter or counterfeit a site authorization, license, or North Dakota gaming stamp.

e. To knowingly cause, aid, abet, or conspire with another person or to cause any person to violate this chapter or a gaming rule.

A person violating this subsection is guilty of a class A misdemeanor unless the total amount gained through the use of these items, schemes, or techniques resulted in a person obtaining over five hundred dollars, then the offense is a class C felony. However, if a person uses a fraudulent scheme regarding soliciting, providing, or receiving inside information involving the game of pull tabs or uses a fraudulent scheme or technique to cheat or skim involving pull tabs, twenty-one, or bingo, regardless of the amount gained, the offense is a class C felony.

SECTION 20. AMENDMENT. Section 53-06.2-02 of the North Dakota Century Code is amended and reenacted as follows:

53-06.2-02. Racing commission - Members - Appointment - Term - Qualifications - Compensation.

1. A North Dakota racing commission is established in the office of the ~~attorney general~~ tax commissioner. The commission consists of the chairman and four other members appointed by the governor. Of the members appointed by the governor, one must be appointed from a list of four nominees, one of whom is nominated by the state chapter or affiliate of the American quarter horse racing association, one of whom is nominated by the state chapter or affiliate of the United States trotting association, one of whom is nominated by the state chapter or affiliate of the international Arabian horse association, and one of whom is nominated by the state chapter or affiliate of the North Dakota thoroughbred association. The members serve five-year terms and until a successor is appointed and qualified. A member appointed to fill a vacancy arising from other than the natural expiration of a term serves only for the unexpired portion of the term. The terms of the commissioners must be staggered so that one term expires each July first. At the expiration of the five-year term of each incumbent member of the commission, the governor shall appoint a new member to the commission.

2. A person is ineligible for appointment to the commission if that person has not been a resident of this state for at least two years before the date of appointment. A person is also ineligible if that person is not of such character and reputation as to promote public confidence in the administration of racing in this state. A person who has a financial interest in racing 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. For purposes of this section, a person has a financial interest in racing if that person has an ownership interest in horses running at live or simulcast meets conducted or shown in this state subject to this chapter or rules of the commission, is required to be licensed under this chapter or the rules of the commission, or who derives any direct financial benefit from racing, individually or by or through an entity or other person, as regulated by this chapter or the rules of the commission.
3. Commission members are entitled to forty dollars per day for compensation, and mileage and expense reimbursement as allowed to other state employees.

SECTION 21. AMENDMENT. Section 53-06.2-13 of the North Dakota Century Code is amended and reenacted as follows:

53-06.2-13. Duty of ~~attorney general~~ tax commissioner to participate in certain hearings - Employment of private counsel by commission. The ~~attorney general~~ tax commissioner shall represent the state in all hearings before the commission and shall prosecute all criminal proceedings arising from violations of this chapter. The commission may employ private counsel for adoption of rules and to ensure that its hearings are conducted fairly.

SECTION 22. AMENDMENT. Subsection 8 of section 57-39.2-01 of the North Dakota Century Code is amended and reenacted as follows:

8. "Retailer" includes every person engaged in the business of leasing or renting hotel, motel, or tourist court accommodations, and every person engaged in the business of selling tangible goods, wares, or merchandise at retail, or furnishing of steam, gas, and communication services, or tickets or admissions to places of amusement, entertainment, and athletic events including the playing of any machine for amusement or entertainment in response to the use of a coin, or

magazines, or other periodicals; any organization licensed by the ~~attorney general~~
tax commissioner to conduct bingo games pursuant to section 53-06.1-03; and
includes any person as herein defined who by contract or otherwise agrees to
furnish for a consideration a totally or partially finished product consisting in whole
or in part of tangible personal property subject to the sales tax herein provided, and
all items of tangible personal property entering into the performance of such
contract as a component part of the product agreed to be furnished under said
contract shall be subject to the sales tax herein provided and the sales tax thereon
shall be collected by the contractor from the person for whom the contract has
been performed in addition to the contract price agreed upon, and shall be remitted
to the state in the manner provided in this chapter; and shall include the state or
any municipality furnishing steam, gas, or communication service to members of
the public in its proprietary capacity. For the purpose of this chapter, retailer shall
also include every clerk, auctioneer, agent, or factor selling tangible personal
property owned by any other retailer. A retailer also includes every person who
engages in regular or systematic solicitation of a consumer market in this state by
the distribution of catalogs, periodicals, advertising flyers, or other advertising, or
by means of print, radio or television media, by mail, telegraphy, telephone,
computer data base, cable, optic, microwave, or other communication system.

SECTION 23. AMENDMENT. Subsection 7 of section 57-40.2-01 of the North Dakota
Century Code is amended and reenacted as follows:

7. "Retailer maintaining a place of business in this state", or any like term, means any
retailer having or maintaining within this state, directly or by a subsidiary, an office,
distribution house, sales house, warehouse, or other place of business, or any
agent operating within this state under the authority of the retailer or its subsidiary,
whether such place of business or agent is located in the state permanently or
temporarily, or whether or not such retailer or subsidiary is authorized to do
business within this state. It includes any organization licensed by the ~~attorney~~
~~general~~ tax commissioner to conduct bingo games pursuant to section 53-06.1-03.
It also includes every person who engages in regular or systematic solicitation of
sales of tangible personal property in this state by the distribution of catalogs,

- 1 periodicals, advertising flyers, or other advertising, by means of print, radio or
- 2 television media, or by mail, telegraphy, telephone, computer data base, cable,
- 3 optic, microwave, or other communication system for the purpose of effecting retail
- 4 sales of tangible personal property.