

**HOUSE BILL NO. 1259**

Introduced by

Representatives R. Kelsch, DeKrey, Delmore

Senators Fischer, Klein, Trenbeath

1 A BILL for an Act to create and enact chapter 53-12.1 of the North Dakota Century Code,  
2 relating to a lottery; to amend and reenact subsection 5 of section 28-32-08.1 of the North  
3 Dakota Century Code, relating to economic impact statements; to repeal chapter 53-12 of the  
4 North Dakota Century Code, relating to a lottery; to provide a penalty; to provide a continuing  
5 appropriation; and to declare an emergency.

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

7 **SECTION 1. AMENDMENT.** Subsection 5 of section 28-32-08.1 of the North Dakota  
8 Century Code is amended and reenacted as follows:

9 5. This section does not apply to any agency that is an occupational or professional  
10 licensing authority, nor does this section apply to the following agencies or  
11 divisions of agencies:

- 12 a. Council on the arts.
- 13 b. Beef commission.
- 14 c. Dairy promotion commission.
- 15 d. Dry bean council.
- 16 e. Highway patrolmen's retirement board.
- 17 f. Indian affairs commission.
- 18 g. Board for Indian scholarships.
- 19 h. State personnel board.
- 20 i. Potato council.
- 21 j. Board of public school education.
- 22 k. Real estate trust account committee.
- 23 l. Seed commission.
- 24 m. Soil conservation committee.

- 1 n. Oilseed council.
- 2 o. Wheat commission.
- 3 p. State seed arbitration board.
- 4 q. North Dakota lottery.

5 **SECTION 2.** Chapter 53-12.1 of the North Dakota Century Code is created and  
6 enacted as follows:

7 **53-12.1-01. Definitions.** As used in this chapter:

- 8 1. "Director" means the director of the lottery.
- 9 2. "Lottery" means the division of the attorney general's office created to operate a  
10 lottery.
- 11 3. "Online lottery" means a game linked to a central computer via a  
12 telecommunications network in which the player selects a specified group of  
13 numbers or symbols out of a predetermined range of numbers or symbols.
- 14 4. "Retailer" means a person the lottery has licensed to sell or redeem a ticket.
- 15 5. "Ticket" means an original tangible evidence of play prescribed by the lottery and  
16 produced by a lottery terminal or a properly and validly registered subscription play  
17 to prove participation in a draw of a game for a chance to win a prize.

18 **53-12.1-02. Lottery - Administration - Line of credit.**

- 19 1. There is established a division of the attorney general's office called the North  
20 Dakota lottery. Under the supervision of the attorney general, a director shall  
21 administer the lottery as provided in this chapter. The director shall consider the  
22 sensitive nature of the lottery, promote games, and ensure the integrity, security,  
23 and fairness of the lottery's operation. The lottery is solely responsible for the  
24 management and control over the operation of its games.
- 25 2. The attorney general's office may arrange a short-term line of credit with the Bank  
26 of North Dakota should lottery funds on hand be insufficient to meet an immediate  
27 major prize obligation. The line of credit is limited to the amount of each prize of  
28 one hundred thousand dollars or more that relates to prize funds known to be due  
29 and forthcoming to the lottery from other government-authorized lotteries through  
30 the multistate lottery association. However, the line of credit may not exceed one  
31 million dollars in the aggregate.

1           **53-12.1-03. Director - Responsibilities.**

- 2           1. The attorney general shall appoint a director who shall serve at the pleasure of the  
3           attorney general.
- 4           2. Subject to policy of the attorney general, the director shall:
- 5           a. Employ those persons deemed necessary to operate the lottery and provide  
6           secure facilities to house the lottery;
- 7           b. Enter a written agreement with one or more government-authorized lotteries,  
8           or with an organization created and controlled by those lotteries, for  
9           conducting and marketing a joint lottery game;
- 10          c. Provide for a secure computer data center and internal control system for the  
11          reliable operation of the lottery;
- 12          d. Prepare and submit a budget for operating the lottery;
- 13          e. Operate the lottery so it is self-sustaining and self-funded;
- 14          f. Maintain books and records which accurately reflect each day's financial  
15          transactions, including the sale of tickets, receipt of funds and fees, prize  
16          payments, and expenses to ensure accountability;
- 17          g. License a retailer to sell or redeem a ticket;
- 18          h. Require a retailer to furnish proof of financial stability or post a bond in an  
19          amount the director deems necessary to protect the financial interest of the  
20          state;
- 21          i. Timely and efficiently transfer lottery funds due from a retailer;
- 22          j. Conduct a retailer promotion to promote the sale of a ticket;
- 23          k. As necessary, enter a contract for a promotional service, an annuity for the  
24          payment of a prize, credit history report, security service, service from another  
25          state agency, marketing and related service, gaming system and related  
26          service, and other necessary service;
- 27          l. Based on reasonable ground or written complaint, suspend or revoke a  
28          retailer's license or impose a monetary fine, or both, for a violation, by the  
29          retailer or employee of the retailer, of a lottery law or rule;

- 1            m. Examine, or cause to be examined by an agent designated by the director,  
2            any book or record of a retailer to ensure compliance with the lottery law and  
3            rules;
- 4            n. Upon request, report to the legislative council regarding the operation of the  
5            lottery;
- 6            o. Make quarterly and annual financial reports to the governor and attorney  
7            general and a biennial report to the legislative assembly;
- 8            p. Have an annual audit, conducted by the state auditor, of the lottery. The  
9            director shall present the audit report to the governor, state treasurer, and  
10           legislative assembly;
- 11           q. As necessary, have an independent firm conduct a study and evaluation of  
12           security; and
- 13           r. As necessary, conduct a survey of retailers and players or a study of  
14           reactions of citizens to present and potential features of the lottery.

15           **53-12.1-04. Advisory commission - Penalty.**

- 16           1. There is created the lottery advisory commission, which is composed of five  
17           members, three of whom are legislators selected by the chairman of the legislative  
18           council and two of whom are selected by the attorney general. The term of office is  
19           three years, expiring on June thirtieth with no more than two terms expiring in any  
20           one year. Of the first members appointed, one must be appointed for a term of one  
21           year, two must be appointed for terms of two years, and two must be appointed for  
22           terms of three years. No member may be appointed to more than two consecutive  
23           terms. Each member must be a citizen of the United States and a resident of this  
24           state. A chairman of the commission must be chosen annually from the  
25           membership of the commission by a majority of its members at the first meeting of  
26           the commission each fiscal year. A member may serve as chairman for more than  
27           one year.
- 28           2. The lottery advisory commission shall meet at least once a quarter and any  
29           additional meetings as the chairman deems necessary. Special meetings may be  
30           called by the chairman upon the written request of the director or any three  
31           members of the commission.

- 1           3. The lottery advisory commission shall advise the director and attorney general on  
2           policy and general operation of the lottery and shall serve as the audit committee.
- 3           4. A member of the lottery advisory commission who is not a permanent full-time  
4           state employee is to be compensated at a rate of seventy-five dollars per day and  
5           entitled to mileage and expenses as provided by law for state employees. A state  
6           employee who is a member of the commission must receive that employee's  
7           regular salary and is entitled to mileage and expenses, to be paid by the employing  
8           agency.
- 9           5. No member of the lottery advisory commission, employee of the lottery, or any  
10          individual who regularly resides in the same household as either of those  
11          individuals may directly or indirectly, individually, as a partner of a partnership, or a  
12          stockholder, director, or officer of a corporation, have an interest in the gaming  
13          system or advertising agency vendor of the lottery. A knowing violation of this  
14          subsection is a class B misdemeanor.

15           **53-12.1-05. Competitive bidding - Investigation of a vendor.** Before a contract for a  
16 gaming system or marketing services is awarded, the director shall:

- 17           1. Use an open and competitive bid process which reflects the best interest of the  
18           state. The director shall consider all relevant factors, including security,  
19           competence, experience, timely performance, and maximization of net proceeds;  
20           and
- 21           2. Conduct a thorough background investigation of the lottery's gaming system and  
22           advertising agency vendors, all shareholders of ten percent or more interest, and  
23           all senior officers and directors of the vendors, including a parent or subsidiary  
24           corporation of the vendors. The director may use information of another  
25           government-authorized lottery or other source to determine the qualification and  
26           background of the vendors. The vendors shall submit appropriate investigation  
27           authorizations. The director may require any appropriate information from the  
28           vendors to preserve the integrity and financial security of the lottery.

29           **53-12.1-06. Retailer application - Fees - Display of license.**

- 30           1. An applicant for a license does not have a right to a license or granting of the  
31           approval sought. A license issued or approval granted is a suspendable or

- 1           revocable privilege, and the holder does not acquire any vested interest in the  
2           license or approval granted.
- 3           2. An applicant for a license that has had an application denied or a license revoked  
4           may not reapply until at least one year has elapsed from the date of the denial or  
5           revocation unless the director determines that the reason for the denial of the  
6           application or revocation of the license has been remedied. A person who has had  
7           an application denied or a license revoked for a second time may not reapply until  
8           at least three years have passed since the date of the second denial or revocation.  
9           The decision of the director to deny an application or revoke a license is final and  
10          not appealable.
- 11          3. The director may charge an application fee to a person applying to become a  
12          retailer and a license fee.
- 13          4. A retailer license is:
- 14           a. Renewable annually unless it is sooner relinquished, suspended, or revoked;  
15           b. Not transferable or assignable to another person; and  
16           c. Required to be conspicuously displayed at the retailer's site.

17          **53-12.1-07. Selection and qualifications of a retailer.**

- 18          1. The director shall select a person that the director deems best able to serve the  
19          public convenience and promote the sale of a ticket. The director shall consider  
20          relevant factors, including applicant's credit history, physical security and public  
21          accessibility of the applicant's site, integrity, sufficiency of existing retailers to serve  
22          the public convenience, especially in a geographically remote area of the state,  
23          and volume of expected sales of tickets. A person lawfully engaged in  
24          nongovernmental business on state property or a person within the exterior  
25          boundary of an Indian reservation or on tribal trust land may be selected as a  
26          retailer.
- 27          2. A retailer may not be the lottery's gaming system or advertising agency vendor or  
28          an employee or agent of the vendor.
- 29          3. To be eligible as a retailer, an individual acting as a sole proprietor must:
- 30           a. Have a satisfactory credit check;

- 1           b. Be current in payment of all taxes, interest, and penalties owed to the state  
2                     and be current under a payment plan, excluding an item under formal dispute  
3                     or appeal pursuant to law;  
4           c. Be at least eighteen years of age;  
5           d. Be of good character and reputation;  
6           e. Not have been convicted of a felony in this or any other jurisdiction, unless at  
7                     least ten years have passed since satisfactory completion of the sentence or  
8                     probation imposed by the court in each felony;  
9           f. Not have been found to have knowingly violated a lottery law or rule;  
10           g. Not have been found to have a background, including a criminal record, or  
11                     prior activities that pose a threat to the public interests of this state or to the  
12                     security and integrity of the lottery, create or enhance the dangers of  
13                     unsuitable or illegal practices in the conduct of lottery activities, or present  
14                     questionable business practices and financial arrangements incidental to the  
15                     lottery activity;  
16           h. Not be a parent, stepparent, child, stepchild, spouse, or sibling who is a  
17                     regular member of the same household of an employee of the lottery or  
18                     member of the lottery advisory commission; and  
19           i. Not have knowingly made a false statement of material fact to the lottery.  
20        4. To be eligible as a retailer, a partnership must meet the requirement of  
21                     subdivision a of subsection 3 and each partner must meet the requirements of  
22                     subdivisions b through i of subsection 3.  
23        5. To be eligible as a retailer, an organization other than a partnership must meet the  
24                     requirements of subdivisions a and b of subsection 3 and each officer and director  
25                     who is primarily responsible for making financial decisions and each shareholder  
26                     who owns ten percent or more of an ownership interest in the organization must  
27                     meet the requirements of subdivisions c through i of subsection 3.

28           **53-12.1-08. Purchase of ticket or payment of prize to certain persons prohibited -**  
29           **Price of a ticket - Sale by retailer only - Retailer second chance drawing - Prize paid to**  
30           **owner of a winning ticket - Prize subject to taxation - Discharge of liability - Penalty.**

- 1           1. A ticket may not be bought by or otherwise provided to, and a prize may not be  
2           paid to, the following individuals or to a parent, stepparent, child, stepchild, spouse,  
3           or sibling who is a regular member of the same household of the following  
4           individuals:
  - 5           a. A member of the lottery advisory commission or employee of the lottery,  
6           unless authorized in writing by the director; or
  - 7           b. An officer or employee of the lottery's gaming system vendor.
- 8           A person who knowingly violates this subsection is guilty of a class B misdemeanor  
9           on the first offense and a class A misdemeanor on a subsequent offense.
- 10          2. A retailer or employee of a retailer may buy a ticket and be paid a prize for a  
11          winning ticket.
- 12          3. Only a retailer may sell a ticket. A retailer may sell a ticket only at the site stated  
13          on the license. A retailer may not sell a ticket at a price greater than the price set  
14          by the lottery rules. A person convicted of violating this subsection is guilty of a  
15          class A misdemeanor on the first offense and a class C felony on a subsequent  
16          offense.
- 17          4. A retailer may conduct a second chance drawing of entry forms or nonwinning  
18          tickets to promote the sale of a ticket at that site.
- 19          5. No ticket may be sold or given to a minor. A retailer, employee of a retailer, or any  
20          other person who knowingly violates this subsection is guilty of a class B  
21          misdemeanor on the first offense and a class A misdemeanor on a subsequent  
22          offense.
- 23          6. The prize to be paid or awarded for a winning ticket must be paid to the person  
24          who the director determines is the owner of the ticket. However, the prize of a  
25          deceased winning player must be paid to the lawful representative of the estate.
- 26          7. If an individual steals a ticket from a retailer, the individual is guilty of a class A  
27          misdemeanor. However, if the total value of the tickets stolen exceeds five  
28          hundred dollars, the offense is a class C felony.
- 29          8. A prize awarded is subject to state and federal income tax laws and rules.

1           9. A person who, with intent to defraud, falsely makes, alters, forges, passes, or  
2           counterfeits a ticket or gift certificate issued by the lottery, regardless of the amount  
3           gained, is guilty of a class C felony.

4           10. The state, members of the lottery advisory commission, and employees of the  
5           lottery are discharged of all further liability upon payment of a prize.

6           **53-12.1-09. Operating fund - Continuing appropriation - Authorization of**

7 **disbursements - Net proceeds.** There is established within the state treasury the lottery  
8 operating fund into which must be deposited all revenue from the sale of tickets, interest  
9 received on money in the fund, and all other fees and moneys collected, less a prize on a  
10 winning ticket or lottery promotion paid by a retailer and the retailer's commission. All money in  
11 the fund is continuously appropriated for the purposes specified in this section. A payment of a  
12 prize or expense or transfer of net proceeds by the lottery may be made only against the fund  
13 or money collected from a retailer on the sale of a ticket. A disbursement from the fund must be  
14 for the following purposes:

15           1. Payment of a prize as the director deems appropriate to the owner of a valid,  
16           winning ticket;

17           2. Payment of an expense, including a gaming system or related service, supplies,  
18           survey, advertising and marketing, printing, promotion, premium incentive item,  
19           and reimbursement of the cost of a facility or service provided by another state  
20           agency; and

21           3. Transfer of net proceeds:

22           a. Fifty thousand dollars must be transferred to the state treasurer each quarter  
23           for deposit in the compulsive gambling prevention and treatment fund;

24           b. An amount for the lottery's share of a game's prize reserve pool must be  
25           transferred to the multistate lottery association; and

26           c. The balance of the net proceeds, less holdback of any reserve funds the  
27           director may need for continuing operations, must be transferred to the state  
28           treasurer on at least an annual basis for deposit in the state general fund.

29           **53-12.1-10. Confidentiality of records.**

30           1. The following information and records of the lottery are confidential:

- 1           a. Sales and income tax information, financial statements, and a credit report of  
2                    a retailer applicant or person seeking or doing business with the lottery, and  
3                    retailer application information other than the applicant's name and location;
- 4           b. Information related to a person owing a debt to the state or having a debt  
5                    collected through a state agency that is made confidential by another state  
6                    law or rule;
- 7           c. Internal control and security procedures, security information on a winning  
8                    ticket, and information on a bid or contractual data, the disclosure of which is  
9                    harmful to the efforts of the lottery to contract for goods and services on  
10                  favorable terms;
- 11          d. Personal information on a winning player unless the player authorizes, in  
12                    writing, release of the information. However, if the amount of a prize is more  
13                    than one hundred thousand dollars, the lottery may release the amount won  
14                    and player's name, city, and state of residence; and
- 15          e. Lottery sales data, the disclosure of which is harmful to the competitive  
16                    position of the lottery, retailer, or person seeking or doing business with the  
17                    lottery. However, a retailer may authorize the lottery to release the retailer's  
18                    lottery sales data.
- 19          2. To be confidential, information must relate to the security and integrity of the  
20                    lottery. Information and records may be disclosed within the attorney general's  
21                    office or to an authorized person in the proper administration of the lottery law and  
22                    rules or in accordance with a judicial order. Criminal history record check  
23                    information on an individual seeking or doing business with the lottery may be  
24                    released only according to chapter 12-60.

25          **53-12.1-11. Setoff of prize.**

- 26          1. A claimant agency and the director shall cooperate on the setoff of a lottery prize  
27                    against a delinquent debt. A claimant agency is an agency of the state of North  
28                    Dakota that a person owes money to or that collects money on behalf of another  
29                    party to satisfy a debt. The claimant agency and director shall share necessary  
30                    information, including the person's full name, social security number, and amount

- 1           and type of debt, through a mutually convenient method to timely achieve a setoff  
2           of a prize.
- 3           2. The director shall establish a debt setoff process in which a lottery prize claim of an  
4           amount equal to or greater than six hundred dollars must be used to setoff a  
5           delinquent debt owed to or collected through a claimant agency.
- 6           3. If the director determines that a winning player owes a delinquent debt to or has a  
7           delinquent debt collected through a claimant agency, the director shall set off the  
8           amount of the debt from the prize due and notify the player, in writing, of the setoff.  
9           If the setoff accounts for only a portion of the prize due, the remainder of the prize  
10           must be paid to the player. The director shall transfer the setoff amount to the  
11           claimant agency unless the player notifies the director, in writing, within thirty days  
12           of the date of the notice of the setoff, that the player disputes all or part of the debt  
13           owed to or collected through the claimant agency. If the director receives a  
14           notification that the player disputes the setoff amount or claim upon which the  
15           setoff is based, the director shall grant a hearing to the player to determine whether  
16           the setoff is proper or the claim is valid. At a hearing, no issue may be  
17           reconsidered that the player has or could have previously litigated in a court or  
18           administrative proceeding.
- 19           4. The lottery is discharged of all further liability for the amount of any debt setoff paid  
20           to a claimant agency.
- 21           5. If two or more claimant agencies have delinquent accounts for the same player, the  
22           director shall apportion the prize equally among them. However, a setoff to the  
23           department of human services for child support payments has priority over all other  
24           setoffs.
- 25           6. If the prize is insufficient to satisfy the entire debt, the remainder of the debt may  
26           be collected by a claimant agency as provided by law or rule and resubmitted for  
27           setoff against any other prize awarded.
- 28           7. If two or more claimant agencies make adverse claims to all or a part of a prize  
29           payment, upon receipt of written notice from the claimant agencies setting forth  
30           their claims, the director may deposit, in accordance with section 32-11-02, the  
31           contested amount of the prize payment with the clerk of court in the district in which

1           an action pertaining to the contested amount is pending or with a court-authorized  
2           depository. If one of the claims is for child support, the director shall transfer the  
3           setoff amount to the state disbursement unit before depositing any remaining prize  
4           payment or award. Any review of this transfer to the state disbursement unit must  
5           be done pursuant to section 50-09-14. Upon making the deposit or transfer, the  
6           state and its officials and employees are discharged and relieved from further  
7           liability to any person or claimant agency related to the prize payment.

8           **53-12.1-12. Rules.** The attorney general shall adopt rules governing the operation of  
9 the lottery. The attorney general may adopt emergency rules as necessary without the grounds  
10 otherwise required under section 28-32-03. The attorney general shall adopt rules to address  
11 any matters necessary for the efficient operation of the lottery or convenience of the public,  
12 including:

- 13           1. Type of retailer where a ticket may be sold;
- 14           2. Qualification for selecting a retailer and amount of application and license fees;
- 15           3. Licensing procedure;
- 16           4. Method used to sell a ticket, including a gift certificate and subscription;
- 17           5. Financial responsibility of a retailer;
- 18           6. Retailer promotions;
- 19           7. Amount and method of commission to be paid to a retailer, including a special  
20           bonus or incentive;
- 21           8. Deadline for claiming a prize by the owner of a winning ticket, however, the  
22           deadline may not exceed one year;
- 23           9. Manner of paying a prize to the owner of a winning ticket; and
- 24           10. Setoff of a prize.

25           **SECTION 3. REPEAL.** Chapter 53-12 of the North Dakota Century Code is repealed.

26           **SECTION 4. EMERGENCY.** This Act is declared to be an emergency measure.