

Sixtieth  
Legislative Assembly  
of North Dakota

## ENGROSSED SENATE BILL NO. 2225

Introduced by

Senators Grindberg, Bowman, Tollefson

Representatives S. Kelsh, Svedjan, Wrangham

1 A BILL for an Act to amend and reenact subsection 2 of section 53-06.1-12, subsections 15,  
2 16, and 17 of section 57-39.2-01, section 57-39.2-02.1, and subsections 5, 6, and 7 of section  
3 57-40.2-01 of the North Dakota Century Code, relating to the excise tax upon gross proceeds  
4 of licensed gaming organizations for pull tabs and bingo cards and elimination of sales and use  
5 taxes for bingo cards; and to provide an effective date.

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

7 **SECTION 1. AMENDMENT.** Subsection 2 of section 53-06.1-12 of the North Dakota  
8 Century Code is amended and reenacted as follows:

9 2. Except as provided in subsection 3, in addition to any other tax provided by law  
10 and in place of sales or use taxes, there is imposed an excise tax of ~~four and~~  
11 ~~one-half~~ three percent on the gross proceeds from the sale at retail of pull tabs and  
12 bingo cards to final users. This includes pull tabs or bingo cards provided to a  
13 player in exchange for redeemed winning pull tabs or bingo cards. The tax must  
14 be paid to the attorney general when tax returns are filed.

15 **SECTION 2. AMENDMENT.** Subsections 15, 16, and 17 of section 57-39.2-01 of the  
16 North Dakota Century Code are amended and reenacted as follows:

17 15. "Retail sale" or "sale at retail" means any sale, lease, or rental for any purpose  
18 other than for resale, sublease, or subrental. "Retail sale" or "sale at retail"  
19 includes the sale, including the leasing or renting, to a consumer or to any person  
20 for any purpose, other than for processing or for resale, of tangible personal  
21 property; the sale of steam, gas, and communication service to retail consumers or  
22 users; the sale of vulcanizing, recapping, and retreading services for tires; ~~the~~  
23 ~~furnishing of bingo cards~~; the ordering, selecting, or aiding a customer to select  
24 any goods, wares, or merchandise from any price list or catalog, which the

1 customer might order, or be ordered for such customer to be shipped directly to  
2 such customer; the sale or furnishing of hotel, motel, or tourist court  
3 accommodations, tickets, or admissions to any place of amusement, athletic event,  
4 or place of entertainment, including the playing of any machine for amusement or  
5 entertainment in response to the use of a coin; and the sales of magazines and  
6 other periodicals. By the term "processing" is meant any tangible personal  
7 property including containers which it is intended, by means of fabrication,  
8 compounding, manufacturing, producing, or germination shall become an integral  
9 or an ingredient or component part of other tangible personal property intended to  
10 be sold ultimately at retail. The sale of an item of tangible personal property for the  
11 purpose of incorporating it in or attaching it to real property must be considered as  
12 a sale of tangible personal property for a purpose other than for processing; the  
13 delivery of possession within the state of North Dakota of tangible personal  
14 property by a wholesaler or distributor to an out-of-state retailer who does not hold  
15 a North Dakota retail sales tax permit or to a person who by contract incorporates  
16 such tangible personal property into, or attaches it to, real property situated in  
17 another state may not be considered a taxable sale if such delivery of possession  
18 would not be treated as a taxable sale in that state. As used in this subsection, the  
19 word "consumer" includes any hospital, infirmary, sanatorium, nursing home, home  
20 for the aged, or similar institution that furnishes services to any patient or  
21 occupant. The sale of an item of tangible personal property to a person under a  
22 finance leasing agreement over the term of which the property will be substantially  
23 consumed must be considered a retail sale if the purchaser elects to treat it as  
24 such by paying or causing the transferor to pay the sales tax thereon to the  
25 commissioner on or before the last day on which payments may be made without  
26 penalty as provided in section 57-39.2-12.

27 16. "Retailer" or "seller" includes every person engaged in the business of leasing or  
28 renting hotel, motel, or tourist court accommodations, and every person engaged  
29 in the business of selling tangible goods, wares, or merchandise at retail, or  
30 furnishing of steam, gas, and communication services, or tickets or admissions to  
31 places of amusement, entertainment, and athletic events, including the playing of

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

21 17. "Sale" means any transfer of title or possession, exchange or barter, conditional or  
22 otherwise, in any manner or by any means whatever, for a consideration, and  
23 includes the furnishing or service of steam, gas, or communication, ~~the furnishing~~  
24 ~~of bingo cards~~, the furnishing of hotel, motel, or tourist court accommodations, the  
25 furnishing of tickets or admissions to any place of amusement, athletic event, or  
26 place of entertainment, including the playing of any machine for amusement or  
27 entertainment in response to the use of a coin, and sales of magazines and other  
28 periodicals. Provided, the words "magazines and other periodicals" as used in this  
29 subsection do not include newspapers nor magazines or periodicals that are  
30 furnished free by a nonprofit corporation or organization to its members or because  
31 of payment by its members of membership fees or dues.

1           **SECTION 3. AMENDMENT.** Section 57-39.2-02.1 of the North Dakota Century Code  
2 is amended and reenacted as follows:

3           **57-39.2-02.1. Sales tax imposed.**

4           1. Except as otherwise expressly provided in subsection 2 for sales of mobile homes  
5 used for residential or business purposes, and except as otherwise expressly  
6 provided in this chapter, there is imposed a tax of five percent upon the gross  
7 receipts of retailers from all sales at retail including the leasing or renting of  
8 tangible personal property as provided in this section, within this state of the  
9 following to consumers or users:

10          a. Tangible personal property, consisting of goods, wares, or merchandise,  
11             except mobile homes used for residential or business purposes.

12          b. The furnishing or service of communication services or steam other than  
13             steam used for processing agricultural products.

14          c. Tickets or admissions to places of amusement or entertainment or athletic  
15             events, including amounts charged for participation in an amusement,  
16             entertainment, or athletic activity, ~~and including the furnishing of bingo cards~~  
17             and the playing of any machine for amusement or entertainment in response  
18             to the use of a coin. The tax imposed by this section applies only to eighty  
19             percent of the gross receipts collected from coin-operated amusement  
20             devices.

21          d. Magazines and other periodicals.

22          e. The leasing or renting of a hotel or motel room or tourist court  
23             accommodations.

24          f. The leasing or renting of tangible personal property the transfer of title to  
25             which has not been subjected to a retail sales tax under this chapter or a use  
26             tax under chapter 57-40.2.

27          g. Coal mined in this state and used for heating buildings, except for coal used  
28             in agricultural processing or sugar beet refining plants.

29          h. Sale, lease, or rental of a computer and prewritten computer software,  
30             including prewritten computer software delivered electronically or by load and  
31             leave. For purposes of this subdivision:

- 1 (1) "Computer" means an electronic device that accepts information in  
2 digital or similar form and manipulates it for a result based on a  
3 sequence of instructions.
- 4 (2) "Computer software" means a set of coded instructions designed to  
5 cause a computer or automatic data processing equipment to perform a  
6 task.
- 7 (3) "Delivered electronically" means delivered from the seller to the  
8 purchaser by means other than tangible storage media.
- 9 (4) "Electronic" means relating to technology having electrical, digital,  
10 magnetic, wireless, optical, electromagnetic, or similar capabilities.
- 11 (5) "Load and leave" means delivery to the purchaser by use of a tangible  
12 storage media when the tangible storage media is not physically  
13 transferred to the purchaser.
- 14 (6) "Prewritten computer software" means computer software, including  
15 prewritten upgrades, which is not designed and developed by the  
16 author or other creator to the specifications of a specific purchaser.  
17 The combining of two or more "prewritten computer software" programs  
18 or prewritten portions thereof does not cause the combination to be  
19 other than "prewritten computer software". "Prewritten computer  
20 software" includes software designed and developed by the author or  
21 other creator to the specifications of a specific purchaser when it is sold  
22 to a person other than the purchaser. If a person modifies or enhances  
23 "computer software" of which the person is not the author or creator,  
24 the person is deemed to be the author or creator only of such person's  
25 modifications or enhancements. "Prewritten computer software" or a  
26 prewritten portion thereof that is modified or enhanced to any degree, if  
27 such modification or enhancement is designed and developed to the  
28 specifications of a specific purchaser, remains "prewritten computer  
29 software". However, if there is a reasonable, separately stated charge  
30 or an invoice or other statement of the price given to the purchaser for

1                                   such modification or enhancement, such modification or enhancement  
2                                   shall not constitute "prewritten computer software".

3           2.   There is imposed a tax of three percent upon the gross receipts of retailers from all  
4                   sales at retail of mobile homes used for residential or business purposes, except  
5                   as provided in subsection 35 of section 57-39.2-04.

6           **SECTION 4. AMENDMENT.** Subsections 5, 6, and 7 of section 57-40.2-01 of the  
7 North Dakota Century Code are amended and reenacted as follows:

8           5.   "Purchased at retail" includes:

9                   a.   The completion of the fabricating, compounding, or manufacturing of tangible  
10                   personal property by a person for storage, use, or consumption by that  
11                   person.

12                   b.   The furnishing of ~~binge cards~~, wares, and merchandise, and gas, when  
13                   furnished or delivered to consumers or users within this state, and the sale of  
14                   vulcanizing, recapping, and retreading services for tires.

15                   c.   The leasing or renting of tangible personal property, the sale, storage, use, or  
16                   consumption of which has not been previously subjected to a retail sales or  
17                   use tax in this state.

18                   d.   The purchase of magazines or other periodicals. Provided, the words  
19                   "magazines and other periodicals" as used in this subdivision do not include  
20                   newspapers nor magazines or periodicals that are furnished free by a  
21                   nonprofit corporation or organization to its members or because of payment  
22                   by its members of membership fees or dues.

23                   e.   The severance of sand or gravel from the soil.

24                   f.   The purchase, including the leasing or renting, of tangible personal property  
25                   from any bank for storage, use, or consumption.

26                   g.   The purchase of an item of tangible personal property by a purchaser who  
27                   rents or leases it to a person under a finance leasing agreement over the term  
28                   of which the property will be substantially consumed, if the purchaser elects to  
29                   treat it as being purchased at retail by paying or causing the transferor to pay  
30                   the use tax to the commissioner on or before the last day on which payments  
31                   may be made without penalty as provided in section 57-40.2-07.

- 1           6. "Retailer" includes every person engaged in the business of selling tangible  
2           personal property for use within the meaning of this chapter, but, when in the  
3           opinion of the commissioner, it is necessary for the efficient administration of this  
4           chapter to regard any salesman, representative, trucker, peddler, or canvasser as  
5           the agent of the dealer, distributor, supervisor, employer, or other person under  
6           whom that person operates or from whom that person obtains the tangible  
7           personal property sold by that person, whether that person is making sales in that  
8           person's own behalf or in behalf of such dealer, distributor, supervisor, employer,  
9           or other person, the commissioner may regard that person as such agent, and may  
10          regard the dealer, distributor, supervisor, employer, or other person as a retailer for  
11          the purposes of this chapter. ~~A retailer includes any organization licensed by the~~  
12          ~~attorney general to conduct bingo games pursuant to section 53-06.1-03.~~ A  
13          retailer also includes every person who engages in regular or systematic  
14          solicitation of a consumer market in this state by the distribution of catalogs,  
15          periodicals, advertising fliers, or other advertising, or by means of print, radio or  
16          television media, by mail, telegraphy, telephone, computer data base, cable, optic,  
17          microwave, or other communication system.
- 18          7. "Retailer maintaining a place of business in this state", or any like term, means any  
19          retailer having or maintaining within this state, directly or by a subsidiary, an office,  
20          distribution house, sales house, warehouse, or other place of business, or any  
21          agent operating within this state under the authority of the retailer or its subsidiary,  
22          whether such place of business or agent is located in the state permanently or  
23          temporarily, or whether or not such retailer or subsidiary is authorized to do  
24          business within this state. ~~It includes any organization licensed by the attorney~~  
25          ~~general to conduct bingo games pursuant to section 53-06.1-03.~~ It also includes  
26          every person who engages in regular or systematic solicitation of sales of tangible  
27          personal property in this state by the distribution of catalogs, periodicals,  
28          advertising fliers, or other advertising, by means of print, radio or television media,  
29          or by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or  
30          other communication system for the purpose of effecting retail sales of tangible  
31          personal property.

1           **SECTION 5. EFFECTIVE DATE.** This Act is effective for taxable events occurring  
2 after June 30, 2007.