

SPORTS AND AMUSEMENTS

CHAPTER 450

SENATE BILL NO. 2215

(Senators Nething, Nelson)
(Representatives DeKrey, Wrangham)

AN ACT to amend and reenact section 53-06.1-01, subsection 2 of section 53-06.1-12, and section 53-06.1-12.3 of the North Dakota Century Code, relating to the definition of games of chance, excise tax on licensed organizations, and interest penalty and estimated taxes on licensed organizations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁶⁸ **SECTION 1. 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, bingo cards excise tax, 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.

¹⁶⁸ Section 53-06.1-01 was also amended by section 1 of House Bill No. 1194, chapter 451.

5. "Distributor" means a person that sells, markets, or distributes equipment designed for use in the conduct of games.
6. "Educational organization" means a nonprofit public or private elementary or secondary school, two-year or four-year college, or university.
7. "Eligible organization" means a 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 regularly and actively fulfilling its primary purpose within this state during the two immediately preceding years. However, an educational organization does not need to be incorporated or be in existence for two years. An organization's primary purpose may not involve the conduct of games. The organization may be issued a license by the attorney general.
8. "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.
9. "Games" means games of chance.
10. "Gross proceeds" means all cash and checks received from conducting games.
11. "Licensed organization" means an eligible organization licensed by the attorney general.
12. "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 or bingo card marking 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.
13. "Net income" means gross proceeds less cash prizes, cost of merchandise prizes, and expenses to conduct the gaming activity.
14. "Net proceeds" means adjusted gross proceeds less allowable expenses and gaming tax.
- ~~44.~~ 15. "Permit" means a local permit or charity local permit issued by a governing body of a city or county to a nonprofit organization or group of people domiciled in North Dakota.
- ~~45.~~ 16. "Person" means any person, partnership, corporation, limited liability company, association, or organization.
- ~~46.~~ 17. "Prize board" means a board used with pull tabs to award cash or merchandise prizes.

47. 18. "Public safety organization" means an organization whose primary purpose is to provide firefighting, ambulance service, crime prevention, or similar emergency assistance.
48. 19. "Public-spirited organization" means an organization whose primary purpose is for scientific research, amateur sports competition, safety, literary, arts, preservation of cultural heritage, educational activities, educational public service, youth, economic development, tourism, community medical care, community recreation, or similar organization, which does not meet the definition of any other type of eligible organization. However, a nonprofit organization or a group of people recognized as a public-spirited organization by a governing body of a city or county for obtaining a permit does not need to meet this definition.
49. 20. "Religious organization" means a church, body of communicants, or group gathered in common membership whose primary purpose is for advancement of religion, mutual support and edification in piety, worship, and religious observances.
20. 21. "Veterans organization" means any congressionally chartered post organization, or any branch or lodge or chapter of a nonprofit national or state organization whose membership consists of individuals who are or were members of the armed services or forces of the United States. The organization must have qualified for exemption from federal income tax under section 501(c)(19) of the Internal Revenue Code.

¹⁶⁹ **SECTION 2. AMENDMENT.** Subsection 2 of section 53-06.1-12 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 3. 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~~ a licensed 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.

¹⁶⁹ Section 53-06.1-12 was also amended by section 1 of House Bill No. 1317, chapter 453, and section 1 of Senate Bill No. 2091, chapter 454.

2. Assessment of penalty. If ~~an~~ a licensed 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 file a tax return 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, for each month or fraction of a month during which the return is not filed, not exceeding a total of twenty-five percent.
3. The attorney general may require a licensed organization to make monthly estimated gaming and excise tax payments if the attorney general determines that the organization is in poor financial condition. If an organization fails to pay any tax or estimated tax, interest, or penalty by the original due date or date set by the attorney general, the attorney general may bring court action to collect it and may suspend the organization's license. The attorney general may for good cause waive all or part of any interest or penalty and may waive any minimal tax.
4. If ~~an~~ a licensed organization has failed to file a tax return, has been notified by the attorney general of the delinquency, and refuses or neglects within thirty days after the notice to file a proper return, the attorney general shall determine the adjusted gross proceeds and gaming and excise taxes due according to the best information available and assess the taxes at not more than double the amount. Interest and penalty also must be assessed.
5. The attorney general may authorize ~~an~~ a licensed organization to pay any delinquent tax, interest, or penalty on an installment plan and may set any qualifying conditions.

Approved April 8, 2009
Filed April 9, 2009

CHAPTER 451

HOUSE BILL NO. 1194

(Representatives Keiser, DeKrey)
(Senator Lyson)

AN ACT to amend and reenact subsection 7 of section 53-06.1-01 and subsection 1 of section 53-06.1-03 of the North Dakota Century Code, relating to raffles conducted by certain organizations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁷⁰ **SECTION 1. AMENDMENT.** Subsection 7 of section 53-06.1-01 of the North Dakota Century Code is amended and reenacted as follows:

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

¹⁷¹ **SECTION 2. AMENDMENT.** Subsection 1 of section 53-06.1-03 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as authorized by the attorney general, an organization that has its license suspended or revoked, or has relinquished or not renewed its license and not disbursed its net proceeds, is ineligible for a license or permit. Only one of two or more closely related organizations may have a license or permit at one time. A college or university fraternity, sorority, or club is not closely related to an educational organization. An organization shall apply for a permit as follows:
 - a. An organization recognized as a public-spirited organization by the governing body of a city or county may apply for a local permit to conduct only raffles, bingo, or sports pools, or a charity local permit to conduct only raffles, bingo, sports pools, paddlewheels,

¹⁷⁰ Section 53-06.1-01 was also amended by section 1 of Senate Bill No. 2215, chapter 450.

¹⁷¹ Section 53-06.1-03 was also amended by section 1 of House Bill No. 1367, chapter 452.

twenty-one, and poker. The organization or closely related organizations as a whole may only award a primary prize that does not exceed two thousand five hundred dollars and total prizes of all games that do not exceed twelve thousand dollars per year. These maximum prize amounts do not apply to raffles conducted under chapter 20.1-08. The determination of what is a "public-spirited organization" is within the sole discretion of the governing body. An organization shall disclose on the application its intended use of the net income from the gaming activity. A governing body may issue a permit for games to be held at designated times and places.

- b. An organization shall apply to the governing body of the city or county in which the proposed site is located. Application must be made on a form prescribed by the attorney general. Approval may be granted at the discretion of the governing body. A governing body may establish a fee not to exceed twenty-five dollars for each permit. A permit must be on a fiscal year basis from July first to June thirtieth or on a calendar-year basis.
- c. Except for the restriction of subsection 1 of section 53-06.1-11.1, an organization that has a local permit may use the net income from the gaming activity for any purpose that does not violate this chapter or gaming rules.
- d. An organization that has a charity local permit is restricted to one event per year and:
 - (1) May not pay remuneration to employees for personal services;
 - (2) Shall use chips as wagers;
 - (3) Shall redeem a player's chips for merchandise prizes or cash;
 - (4) Shall disburse net income to eligible uses referenced by subsection 2 of section 53-06.1-11.1; and
 - (5) Shall file a report prescribed by the attorney general with the governing body and attorney general.

Approved April 28, 2009
Filed May 1, 2009

CHAPTER 452**HOUSE BILL NO. 1367**

(Representative Wrangham)
(Senator Triplett)

AN ACT to amend and reenact subsection 1 of section 53-06.1-03 of the North Dakota Century Code, relating to local permits and charity local permits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁷² **SECTION 1. AMENDMENT.** Subsection 1 of section 53-06.1-03 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as authorized by the attorney general, an organization that has its license suspended or revoked, or has relinquished or not renewed its license and not disbursed its net proceeds, is ineligible for a license or permit. Only one of two or more closely related organizations may have a license or permit at one time. A college or university fraternity, sorority, or club is not closely related to an educational organization. An organization shall apply for a permit as follows:
 - a. An organization recognized as a public-spirited organization by the governing body of a city or county may apply for a local permit to conduct only raffles, bingo, or sports pools, or a charity local permit to conduct only raffles, bingo, sports pools, paddlewheels, twenty-one, and poker. The organization or closely related organizations as a whole may only award a primary prize that does not exceed ~~two~~ six thousand ~~five hundred~~ dollars, except that a raffle cash prize may not exceed the limits of section 53-06.1-10.1, and total prizes of all games ~~that~~ do not exceed twelve thousand dollars per year. The determination of what is a "public-spirited organization" is within the sole discretion of the governing body. An organization shall disclose on the application its intended use of the net income from the gaming activity. A governing body may issue a permit for games to be held at designated times and places.
 - b. An organization shall apply to the governing body of the city or county in which the proposed site is located. Application must be made on a form prescribed by the attorney general. Approval may be granted at the discretion of the governing body. A governing body may establish a fee not to exceed twenty-five dollars for each permit. A permit must be on a fiscal year basis from July first to June thirtieth or on a calendar-year basis.

¹⁷² Section 53-06.1-03 was also amended by section 2 of House Bill No. 1194, chapter 451.

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- c. Except for the restriction of subsection 1 of section 53-06.1-11.1, an organization that has a local permit may use the net income from the gaming activity for any purpose that does not violate this chapter or gaming rules.
 - d. An organization that has a charity local permit is restricted to one event per year and:
 - (1) May not pay remuneration to employees for personal services;
 - (2) Shall use chips as wagers;
 - (3) Shall redeem a player's chips for merchandise prizes or cash;
 - (4) Shall disburse net income to eligible uses referenced by subsection 2 of section 53-06.1-11.1; and
 - (5) Shall file a report prescribed by the attorney general with the governing body and attorney general.

Approved April 8, 2009
Filed April 9, 2009

CHAPTER 453**HOUSE BILL NO. 1317**

(Representatives Kretschmar, Delmore, Hawken)
(Senators Bowman, Grindberg, Potter)

AN ACT to amend and reenact subsection 2 of section 53-06.1-12 of the North Dakota Century Code, relating to gaming and excise taxes; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁷³ **SECTION 1. AMENDMENT.** Subsection 2 of section 53-06.1-12 of the North Dakota Century Code is amended and reenacted as follows:

2. Except as provided in subsection 3, 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~~ three percent on the gross proceeds from the sale at retail of pull tabs and three percent on the gross proceeds from the sale at retail of bingo cards to final users. This includes pull tabs or bingo cards provided to a player in exchange for redeemed winning pull tabs or bingo cards. The tax must be paid to the attorney general ~~when~~ at the time tax returns are filed.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable events occurring after June 30, 2009.

Approved April 21, 2009
Filed April 22, 2009

¹⁷³ Section 53-06.1-12 was also amended by section 1 of Senate Bill No. 2091, chapter 454, and section 2 of Senate Bill No. 2215, chapter 450.

CHAPTER 454**SENATE BILL NO. 2091**
(Finance and Taxation Committee)
(At the request of the State Treasurer)

AN ACT to amend and reenact subsections 4 and 5 of section 53-06.1-12 of the North Dakota Century Code, relating to gaming and excise taxes deposits and allocations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁷⁴ **SECTION 1. AMENDMENT.** Subsections 4 and 5 of section 53-06.1-12 of the North Dakota Century Code are amended and reenacted as follows:

4. Except as provided in subsection 5, the ~~state treasurer~~ attorney general shall deposit gaming and excise taxes, monetary fines, and interest and penalties collected in the general fund in the state treasury.
5. The ~~state treasurer~~ attorney general shall deposit three percent of the total taxes, less refunds, collected under this section into a gaming and excise tax allocation fund. Pursuant to legislative appropriation, moneys in the fund must be distributed quarterly to cities and counties in proportion to the taxes collected under this section from licensed organizations conducting games within each city, for sites within city limits, or within each county, for sites outside city limits. If a city or county allocation under this subsection is less than two hundred dollars, that city or county is not entitled to receive a payment for the quarter and the undistributed amount must be included in the total amount to be distributed to other cities and counties for the quarter.

Approved April 8, 2009
Filed April 9, 2009

¹⁷⁴ Section 53-06.1-12 was also amended by section 1 of House Bill No. 1317, chapter 453, and section 2 of Senate Bill No. 2215, chapter 450.

CHAPTER 455**HOUSE BILL NO. 1551**

(Representative Boucher)

AN ACT to amend and reenact section 53-06.2-11 of the North Dakota Century Code, relating to taxes on pari-mutuel wagering; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 53-06.2-11 of the North Dakota Century Code is amended and reenacted as follows:

53-06.2-11. Bet payoff formulas - Uses by licensee of funds in excess of expenses - Payment to general fund.

1. For wagering on live horse racing and simulcast wagering:
 - a. In win, place, and show pari-mutuel pools, the licensee may deduct no more than twenty percent of the amount wagered. Of the amount wagered, the licensee shall pay:
 - (1) ~~Two~~ One-half of one percent to the state treasurer to be deposited in the general fund.
 - (2) One-half of one percent to the commission to be deposited in the breeders' fund.
 - (3) One-half of one percent to the commission to be deposited in the purse fund.
 - (4) One-half of one percent to the commission to be deposited in the racing promotion fund.
 - b. In daily double, quinella, exacta, trifecta, or other combination pari-mutuel pools, the licensee may deduct no more than twenty-five percent of the amount wagered. Of the amount wagered, the licensee shall pay:
 - (1) ~~Two and one-half~~ One-half of one percent to the state treasurer to be deposited in the general fund.
 - (2) One-half of one percent to the commission to be deposited in the breeders' fund.
 - (3) One-half of one percent to the commission to be deposited in the purse fund.
 - (4) One-half of one percent to the commission to be deposited in the racing promotion fund.
2. For account wagering:

- a. In win, place, and show pari-mutuel pools, the licensee may deduct no more than twenty percent of the amount wagered.
- (1) Before eleven million dollars is wagered in all pari-mutuel wagering in each biennium, of the amount wagered by account wagering in win, place, and show pari-mutuel pools, the licensee shall pay:
 - (a) Two percent to the state treasurer to be deposited in the general fund.
 - (b) One-half of one percent to the commission to be deposited in the breeders' fund.
 - (c) One-half of one percent to the commission to be deposited in the purse fund.
 - (d) One-half of one percent to the commission to be deposited in the racing promotion fund.
 - (2) After eleven million dollars is wagered in all pari-mutuel wagering in each biennium, of Of the amount wagered by account wagering in win, place, and show pari-mutuel pools, the licensee shall pay:
 - (a) (1) One-sixteenth of one percent to the state treasurer to be deposited in the general fund.
 - (b) (2) One-sixteenth of one percent to the commission to be deposited in the breeders' fund.
 - (c) (3) One-sixteenth of one percent to the commission to be deposited in the purse fund.
 - (d) (4) One-sixteenth of one percent to the commission to be deposited in the racing promotion fund.
- b. In daily double, quinella, exacta, trifecta, or other combination pari-mutuel pools, the licensee may deduct no more than twenty-five percent of the amount wagered.
- (1) Before eleven million dollars is wagered in each biennium, of the amount wagered by account wagering in daily double, quinella, exacta, trifecta, or other combination pari-mutuel pools, the licensee shall pay:
 - (a) Two and one-half percent to the state treasurer to be deposited in the general fund.
 - (b) One-half of one percent to the commission to be deposited in the breeders' fund.
 - (c) One-half of one percent to the commission to be deposited in the purse fund.

- (d) ~~One-half of one percent to the commission to be deposited in the racing promotion fund.~~
- (2) ~~After eleven million dollars is wagered in all pari-mutuel wagering in each biennium,~~ Of the amount wagered by account wagering in daily double, quinella, exacta, trifecta, or other combination pari-mutuel pools, the licensee shall pay:
- (a) (1) One-sixteenth of one percent to the state treasurer to be deposited in the general fund.
- (b) (2) One-sixteenth of one percent to the commission to be deposited in the breeders' fund.
- (c) (3) One-sixteenth of one percent to the commission to be deposited in the purse fund.
- (d) (4) One-sixteenth of one percent to the commission to be deposited in the racing promotion fund.
3. For all pari-mutuel wagering the licensee shall pay to the commission the amount due for all unclaimed tickets and all breakage of which twenty percent is to be deposited in the racing promotion fund, thirty percent is to be deposited in the breeders' fund, and fifty percent is to be deposited in the purse fund.
4. The licensee conducting wagering on live racing, simulcast wagering, or account wagering shall retain all other money in the pari-mutuel pool and pay it to bettors holding winning tickets as provided by rules adopted by the commission.
5. A licensee may not use any of the portion deducted for expenses under subsections 1 and 2 for expenses not directly incurred by the licensee in conducting pari-mutuel racing under the certificate system. After paying qualifying expenses, the licensee shall use the remainder of the amount so withheld only for eligible uses allowed to charitable gambling organizations under section 53-06.1-11.1.
6. The commission shall deposit the moneys received pursuant to subsections 1, 2, and 3 and from the North Dakota horse racing foundation pursuant to subsection 5 of section 53-06.2-05 in the breeders' fund, the purse fund, and the racing promotion fund. Moneys, and any earnings on the moneys, in the breeders' fund, purse fund, and racing promotion fund are appropriated to the commission on a continuing basis to carry out the purposes of those funds under this chapter and must be administered and disbursed in accordance with rules adopted by the commission. The commission may not transfer money among the funds. The commission shall distribute awards and payment supplements from the breeders' fund in the same calendar year the money was earned by the recipient. The commission shall distribute payments awarded to qualified owners and breeders from the breeders' fund without requiring owners and breeders to apply for the payments. The commission, upon approval of the emergency commission, may receive no more than twenty-five percent of the racing

promotion fund for the payment of the commission's operating expenses.

SECTION 2. EFFECTIVE DATE - EXPIRATION DATE. This Act is effective for taxable events occurring after June 30, 2009, and before July 1, 2013, and is thereafter ineffective.

Approved May 7, 2009

Filed May 19, 2009