



HB 1212 Senate Finance and Taxation- March 15, 2021

Madam Chair Bell and members of the Senate Finance and Tax Committee,

My name is Mike Motschenbacher, and I am the Executive Director of the ND Gaming Alliance. Our membership consists of Charities, Fraternal Organizations, Veterans Organizations, Hospitality Venues, Distributors, and Manufacturers. Today I am here in support of HB 1212.

To not repeat what others have said in support, I would like to add a couple points regarding precedents set by other states and to touch on the fiscal note.

I have emailed you copies of the two forms that I have here in my hand. The first is a Supreme Court of SD decision in which it was deemed to be illegal to tax "credits" or "free play". The second is a New Mexico District Court decision which deemed the same. In addition to these two court cases, I have done extensive research on this, and to my knowledge, North Dakota is the only state in the nation that taxes free play. It is simply not legal to do so, and we would urge the Senate to follow the lead of the House and pass HB 1212 in its current form.

Secondly, the fiscal note. I have spoken with many legislators regarding the size of the fiscal note. I understand it appears to be a big number, but it needs to be realized that this was never intended to be a cash windfall for the state. This money that the state "benefited" from over the past biennium should be considered a "bonus" that was able to be used over the past biennium but cannot be depended on moving forward. This is the charities money that they should be able to distribute to help the needs of the communities which they represent. This is simply not the states money.

Third, the ND Gaming Alliance has taken the position that we are opposed to any additional amendments that may be brought forth to this bill. We, along with others that are testifying in support of this bill, believe that we have accepted amendments that were made to this bill in the house and have done our due diligence in negotiating to bring an acceptable bill to the Senate. The original bill had the tax structure set at 2% under 50K net proceeds and 4% over 50K net proceeds. In negotiations, we accepted 1% under 50K and 12% over 50K net proceeds. Although this is not what we were looking for in the original bill, we believe it is acceptable at this time and would like to see it passed in this current form.

Finally, the charitable gaming industry over the past two year has felt the pinch of the over-taxation that was set in place by administrative rules. In 2019, HB 1533 would have fixed this issue, but it failed. As a result, the 1% tax on gross income was set by the Attorney General's office, not by the legislature. Here is the legislatures' chance to pass this bill you see in front of you to better serve the communities which benefit from charitable gaming.

The ND Gaming Alliance appreciates us having the opportunity to speak today and encourages a DO PASS recommendation on HB 1212. With that, I stand for any questions.

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