



North Dakota Legislative Council

Prepared for the Judiciary Committee
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GAMBLING ADDICTION - BACKGROUND MEMORANDUM

Section 27 of House Bill No. 1003 (2021) directs the Legislative Management to study the economic and societal impacts of gambling addiction in the state. The study must include a review of the trend of gambling addiction since the expansion of electronic pull tab gambling in the state, state funding provided for gambling addiction and disorder prevention and treatment, support programs for individuals and families affected by gambling addiction, and the use of net proceeds for eligible organizations.

CHARITABLE GAMING

In the first legislative session after statehood (1889-90), an attempt was made to establish the Louisiana lottery, which was seeking a new home in light of the impending revocation of its charter in its state of origin. The operators of the lottery were willing to offer the state an initial payment of \$100,000, followed by annual payments of \$75,000, for the privilege of operating a lottery. The scandal and controversy following this attempt led to the state's first constitutional amendment. The amendment added what eventually became Section 25 of Article XI of the Constitution of North Dakota and outlawed all forms of lotteries and gift enterprises.

The constitutional prohibition was maintained until 1976 when it was amended to allow certain forms of charitable gaming. Under the provision, the Legislative Assembly is permitted to authorize bona fide nonprofit veterans', charitable, educational, religious, or fraternal organizations, civic and service clubs, or such other public-spirited organizations as it may recognize, to conduct games of chance when the entire net proceeds of the games are devoted to educational, patriotic, fraternal, religious, or other public-spirited uses.

After passage of the constitutional amendment in 1976, a temporary law was passed by the 1977 Legislative Assembly followed by another temporary law in 1979, and finally legislation in 1981 which was codified as North Dakota Century Code Chapter 53-06.1. All three laws became effective without the approval of the Governor holding office at the time of passage. Under the original 1977 law, the only games permitted were bingo, raffles, pull tabs, jars, and punchboards. A 1979 law added sports pools on professional sports. In 1981 charities were first permitted to conduct the game of twenty-one. In 1987 draw poker and stud poker were added to the list of permitted games. Also, that same year, Chapter 53-06.2 was enacted which allows most charities to conduct horse racing under the pari-mutuel system. In 1989, eligible organizations were permitted to conduct calcuttas, allow off-track pari-mutuel betting on races held at licensed racecourses inside or outside the state, and use electronic gaming devices in place of normal methods of playing otherwise allowable games of chance. However, legalization of electronic video gaming was referred and rejected at a special election on December 5, 1989. In 1991 paddlewheels were added as a game of chance. In 2017, electronic quick shot bingo, fifty-fifty raffle systems, and electronic pull tabs were added as games of chance.

Administration and Enforcement of Charitable Gaming

From the inception of charitable gaming, administration of the law has been the responsibility of the Attorney General and local officials. The phrase "licensing authority" has been used in each version of the law to refer to the Attorney General who has served as the primary licensing authority since 1977. Local government officials were the primary approving agency for what were known as Class B charities. Since 1979, local government officials have been the primary approving agencies for the issuance of a local permit or a charity local permit for conducting raffles, bingo, sports pools, paddlewheels, twenty-one, and poker. Although the Attorney General now licenses charities, local officials remain involved in charitable gaming.

In 1991, the Legislative Assembly passed legislation that provided for the State Gaming Commission to have an increased role in charitable gaming enforcement and attention has been directed both at preventing crimes and at ensuring compliance with the many requirements of the law. In 1991, the State Gaming Commission was created consisting of a chairman and four other members appointed by the Governor with the consent of the Senate. The bill provided the State Gaming Commission would share authority with the Attorney General to

impose fines on organizations, distributors, and manufacturers that violate any law or rule and to suspend or revoke a charitable gaming distributor's or manufacturer's license for violation of law or rule. In 1993; however, the sole authority to impose fines and to suspend or revoke licenses was returned to the Attorney General. The commission is given full authority for adoption of rules to implement the charitable gaming laws.

Federal Oversight

In 1992, Congress passed the federal Professional and Amateur Sports Protection Act (PASPA) that prohibited states from legalizing sports betting operations, but allowed states already offering sports betting or related games to maintain the current operations. Although other states had the opportunity to offer sports betting at the time, most declined and Nevada was the only state to offer sports betting. In 2014, New Jersey passed a law to repeal the state's ban on sports betting, which was challenged by the National Collegiate Athletic Association and several major professional sports leagues as a violation of PASPA. The case ultimately made its way to the United States Supreme Court. In *Murphy v. National Collegiate Athletic Association* (2017), the Court held the provisions of PASPA violated the Constitution's anti-commandeering rule that prevents Congress from compelling states to adopt or enforce federal law. The decision paved the way for states to authorize gambling on sports events.

Gaming on Indian reservations is controlled by the federal Indian Gaming Regulatory Act passed by Congress in 1988. One provision of the Act requires the state to negotiate in good faith with any Indian tribe wishing to conduct gaming. The five tribal casinos in the state are operating under the Indian gaming compacts last negotiated with the state in 2013. The five compacts, which are nearly identical, contain a provision listing the kinds of gaming authorized. In Section 3.1(g), each compact provides, the tribe has the right to operate certain Class III games under the terms of the compact, including "[s]ports Book except as prohibited by the Professional and Amateur Sports Protection Act, P.L. 102-559; 28 U.S.C. Chap. 178, Pt. VI;" Based upon this compact provision and the United States Supreme Court decision, it would appear the tribes now have the authority to operate sports book gaming.

GAMBLING ADDICTION

During the 2019-20 interim, the Judiciary Committee completed a study of the state's charitable gaming laws, including whether a proportion of gaming proceeds should be deposited in the gambling disorder prevention and treatment fund. The committee received testimony indicating although the implementation of electronic pull tabs has not resulted in a significant increase in gambling addiction, electronic pull tabs are relatively new and individuals seeking services for gambling addiction are recognizing the game as an area of concern.

Also during the 2019-20 interim, the Taxation Committee completed a study of the state's charitable gaming laws, specifically whether the state's charitable gaming laws on taxation are fair, adequate, and appropriate. The committee received testimony indicating a record amount of the \$84.5 million was wagered on electronic pull tab devices in the state in May 2020 and the Gaming Division anticipated \$1.8 billion in gaming proceeds and \$26.8 million in gaming tax during the 2019-21 biennium. The committee recognized additional funds might be needed for gambling prevention and treatment considering the explosive growth of gaming in the state.

As of February 28, 2021, there were over 3,330 electronic pull tab devices being conducted by 269 charitable gaming organizations in 655 sites across North Dakota with 166 pending licensed sites requesting devices. The electronic pull tab devices are in 256 cities while 39 cities do not have any electronic pull tab devices. The total gross proceeds from August 14, 2018, through May 31, 2021, is \$2,314,228,219 with \$2,075,064,393 in prizes.

House Bill No. 1212 (2021) created the charitable gaming operating fund consisting of all gaming taxes, monetary fines, and interest and penalties and directed a quarterly allocation of \$10,000 to the gambling disorder prevention and treatment fund. Testimony on House Bill No. 1212 indicated since August 2018, electronic pull tab devices have generated the same amount of revenue that previously took the state nearly 10 years to generate.

Addiction Services

In fiscal year 2016, after the creation of the compulsive gambling prevention and treatment fund, the Department of Human Services established the Problem Gambling Advisory Council to focus on raising awareness about problem gambling, gambling addiction and treatment services, and resources. The Department of Human Services also operates Gambler North Dakota providing online resources for individuals and professionals and a help line to make an appointment with a counselor. The North Dakota Prevention and Media Center website also provides gambling addiction resources.

Before 2021, Gamblers Choice, a program offered by Lutheran Social Services of North Dakota, was the sole provider of accredited counseling services for problem gamblers and their families in the state. The program

utilized two certified problem gambling counselors on the east side of the state and two on the west side who provide outpatient individual and group counseling services. According to a 2016 survey of problem gambling services in the United States, North Dakota ranked 3rd out of the 50 states in terms of per capita public funds invested in problem gambling services. The Gamblers Choice program received funding from a variety of sources, including state funds from North Dakota and Minnesota, the Indian Gaming Association, and the United Way. Since Lutheran Social Services of North Dakota suspended all of its programs in January 2021, gambling addiction services are being provided by the Department of Human Services through the Gambler North Dakota program.

SUGGESTED STUDY APPROACH

In its study of gambling addiction, the committee may consider inviting representatives of the Gaming Division, the Department of Human Services, private providers, and other support groups from across the state.