



North Dakota Legislative Council

Prepared for the Judiciary Committee
LC# 25.9016.01000
August 2023

CHARITABLE GAMING - BACKGROUND MEMORANDUM

Section 6 of Senate Bill No. 2304 ([appendix](#)) directs the Legislative Management to study statewide charitable gaming comprehensively. The study must include an evaluation of:

- The economic impact of charitable gaming on the state in urban and rural areas;
- Gambling addiction and treatment services currently available;
- The civic benefit of charitable gaming to the communities most closely related to the gaming sites;
- How site authorization is approved and renewed, including whether charities have equitable access to sites;
- The gaming tax structure;
- Public support for charitable gaming;
- Statewide local restrictions placed on charitable gaming;
- Gaming expansion;
- Site locations where gaming is taking place;
- Charitable gaming proceeds and the eligible uses of gaming proceeds, including the percentage of proceeds that may be used for administration;
- The categories of organizations that are allowed to conduct charitable gaming, including the missions of such organizations;
- The placement of gaming activity within a gaming site, including electronic pull-tab device placement;
- The rental rate paid by organizations to alcoholic beverage establishments; and
- The authority of the Attorney General to regulate alcoholic beverage establishments.

CHARITABLE GAMING

Early History

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.

During the first 3 interims after the passage of Chapter 53-06.1 in 1981, Legislative Council interim committees studied charitable gaming and suggested many of the changes that have since been made to the law. The most comprehensive proposal was that of the 1981-82 interim Political Subdivisions Committee, which suggested a bill that, when enacted, contained 23 sections changing various aspects of the charitable gaming law. Changes from that session and others primarily have affected the kinds of games that can be held, the kinds of organizations that can hold the games, the allocation of expenses of conducting the games, administration of the charitable gaming law, enforcement of the charitable gaming law, and taxation of gaming proceeds.

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 video 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. Paddlewheels were added as a game of chance in 1991, and electronic quick shot bingo, fifty-fifty raffle systems, and electronic pull tabs were added as games of chance in 2017.

Charitable Organizations

There are two critical elements specifically mentioned in the constitutional amendment allowing charitable gaming--the kinds of organizations that can conduct the games and the use of the proceeds from the games. The constitutional provision requires the charity to be a bona fide nonprofit veterans', charitable, educational, religious, or fraternal organization, a civic or service club, or a "public-spirited" organization authorized by the Legislative Assembly. The constitutional provision also requires the net proceeds be used only for "educational, charitable, patriotic, fraternal, religious, or other public-spirited uses."

All organizations must meet the first test to conduct charitable gaming. Some of these organizations also meet the second test and thus can use the net proceeds for the organization's own purpose. Organizations that meet only the first constitutional test must give the proceeds to beneficiaries that meet the second test.

Under Section 53-06.1-01, "eligible organization" is used to describe generically the types of organizations permitted to conduct games of chance. Section 53-06.1-01(9) defines "eligible organization" as follows:

"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 20.1-04 or 20.1-08 and may not conduct a game other than a raffle under chapter 20.1-04 or 20.1-08.

Other statutory definitions are provided to describe the specific kinds of organizations enumerated in the constitution. Definitions are provided in Section 53-06.1-01 for charitable, civic and service, educational, fraternal, public safety, public-spirited, religious, and veterans' organizations, respectively.

In 1991, the legal distinction between Class A and Class B license holding gaming organizations was changed. Under previous law, a Class A license could be held only by an organization that maintained a building for use of its members and guests. Under 1991 legislation, a Class A license was issued to an organization that was prohibited because of its nature from expending charitable gaming proceeds for the organization's own purposes or benefits. A Class B license was issued to an organization that was permitted to expend charitable gaming proceeds for its own uses. In 1995, the distinctions between Class A and Class B gaming organizations were eliminated.

Taxation of Charitable Gaming Proceeds

A state tax has been imposed on the proceeds of charitable gaming since 1977. In the 1977 law, a tax of 3 percent of adjusted gross proceeds was established and allocated to the general fund of the state. The tax was part of the expense limit for the charity. The tax rate was increased to 5 percent in 1979, was payable from adjusted gross proceeds, and was not charged against the allowable expenses of the charity.

Before July 1, 2011, the gaming tax structure in Section 53-06.1-12 provided for a sliding scale tax rate that ranged from 5 to 20 percent based upon an organization's adjusted gross proceeds. The intent of the sliding scale tax structure was to discourage large-scale charitable gaming. The tax structure also provided in addition to any other tax, an excise tax of 3 percent was imposed on the gross proceeds from the sale at retail of pull tabs and bingo cards to final users. For those organizations that did not have gross proceeds of pull tabs exceeding \$4,000 per calendar quarter, no excise tax was imposed. Under this section, the Attorney General was required to deposit 3 percent of the total taxes collected under the section into a gaming and excise tax allocation fund. The money in this fund, pursuant to legislative appropriations, was to be distributed quarterly to cities and counties in proportion to the taxes collected under this section from licensed organizations within each city or county.

A significant change in the gaming tax structure was passed by the Legislative Assembly in 2011. This legislation consolidated all gaming taxes into four separate tax rates ranging from 1 to 2.5 percent, based upon an organization's quarterly gross proceeds. The gaming tax structure was simplified further in 2013 by legislation that reduced the four separate tax rates to two tax rates. The legislation imposed a tax of 1 percent of gross proceeds on organizations with gross proceeds not exceeding \$1.5 million per quarter and a tax of \$15,000 plus 2.25 percent of gross proceeds exceeding \$1.5 million on organizations with gross proceeds exceeding \$1.5 million per quarter.

House Bill No. 1212 (2021) further amended the gaming tax structure in Section 53-06.1-12 to impose the charitable gaming tax on total adjusted gross proceeds and changed the charitable gaming tax to 1 percent of adjusted gross proceeds for a licensed organization with adjusted gross proceeds not exceeding \$50,000, and for a licensed organization with adjusted gross proceeds exceeding \$50,000, the tax is \$500 plus 12 percent of adjusted gross proceeds exceeding \$50,000.

House Bill No. 1509 from the 2021 special legislative session added as an exception to the gaming tax structure imposed by House Bill No. 1212 (2021) that for a licensed organization permitted to conduct raffles in this state with adjusted gross proceeds exceeding \$50,000, a gaming tax of 1 percent of gross proceeds is imposed on the total gross proceeds received by the licensed organization from raffles in a quarter. The tax must be computed and paid to the Attorney General on a quarterly basis on the tax return. The tax must be paid from adjusted gross proceeds and is not part of the allowable expenses.

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 creating the State Gaming Commission, which consisted of a chairman and four other members appointed by the Governor with the consent of the Senate. The legislation provided for the State Gaming Commission to have an increased role in charitable gaming enforcement, with attention directed towards preventing crimes and ensuring compliance with the many requirements of the law. 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 to adopt 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 have the authority to operate sports book gaming.

GAMBLING ADDICTION

During the 2021-22 interim, the Judiciary Committee completed a study of the economic and societal impacts of gambling addiction in the state. The committee received testimony indicating an increase in funding for gambling addiction services from charitable gaming provides an increased appropriation of \$10,000 per quarter for a total of \$40,000 each year. Roughly 1 in 20 individuals who participate in gambling have an addiction and data from a study conducted in 2016-17 indicated about 19,000 individuals in the state have a gambling addiction. Electronic pull tabs are the source of the majority of instances of gambling addiction in the state because the machines operate like a slot machine. In fiscal year 2020, 67 residents received gambling treatment services, 1,020 hours of in-person services were delivered, 441 hours of telebehavioral health services were delivered, and when filing health insurance for gambling treatment, 90 percent of claims were denied.

In addition, the committee was informed the gross proceeds for electronic pull tabs from April 1, 2021, through June 30, 2021, totaled \$418,024,151 and for the 2019-21 biennium, gross proceeds for all game types totaled an estimated \$1,880,000,000. The increased availability of pull-tab machines has increased significantly the need for a full continuum of programming across the state. Electronic pull tabs gross about \$4,000,000 each quarter and there is no statutory limit on the number of devices that can be operated 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 found in 256 cities in the state. 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 Health and Human Services also operates Gambler North Dakota, which provides 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 Health and Human Services Behavioral Health Division through the Gambler North Dakota program.

2023 GAMING-RELATED LEGISLATION

The 68th Legislative Assembly passed several bills that had a legislative impact on charitable gaming, including:

- House Bill No. 1142, which expands eligible uses for charitable gaming net proceeds to include the administrative and program management expenses of a statewide veterans' organization.

- Senate Bill No. 2126, which authorizes an organization permitted to conduct raffles to sell the squares on a raffle board at a site 30 days before the drawing and provides organizations hosting a same-day raffle an exemption from the gaming stamp requirements.
- Senate Bill No. 2154, which allows an organization to conduct a sports pool to raise charitable funds, in addition to raffle which is already allowed, even if the site is authorized for another licensed organization's gaming.
- Senate Bill No. 2186, which adds fraternal organizations to the list of approved organizations that may use charitable gaming net proceeds for costs related to real property.
- Senate Bill No. 2281, which creates the charitable gaming technology fund and requires \$25 of each eligible organization's licensure fee, \$1,500 of each electronic pull-tab manufacturer's licensure fee, \$500 of each paper pull-tab manufacturer's licensure fee, \$500 of each electronic raffle manufacturer's licensure fee, and \$500 of each distributor's licensure fee be deposited into the fund.
- Senate Bill No. 2304, which defines "alcoholic beverage establishment," provides additional guidance related to site authorization approval by a governing body, limits the number of sites a licensed organization may conduct gaming, provides electronic pull-tabs must be conducted in a designated area restricted to patrons 21 years of age or older, limits the installation of electronic pull-tab devices to 10 devices per authorized site, provides a grandfather clause for organizations conducting gaming at more than 15 sites prior to January 1, 2023, and organizations conducting gaming at an authorized site regardless of whether the site is an "alcoholic beverage establishment," authorizes monetary fines for violations by third-party businesses, and increases the rent for electronic pull-tab devices.
- Senate Bill No. 2336, which permits the use of charitable gaming net proceeds for designated office or storage space for gaming-related administration.

STUDY APPROACH

In conducting this study, the committee may wish to receive:

- Information from representatives of the Attorney General's office regarding areas of concern in the gaming industry, including concerns regarding the approval process for new games of chance, expense limits, trends in the charitable gaming industry, eligible uses for proceeds, gambling sites and locations, limitations, enforcement, conduct, and play of charitable gaming; and
- Information and recommendations from representatives of the charitable gaming industry, local political subdivisions that authorize sites, gaming equipment manufacturers and distributors, gambling addiction counselors, other industry leaders, and the public regarding areas of concern in the charitable gaming laws, rules, and practices; concerns specifically relating to the introduction of new games of chance; and eligible uses for proceeds.

ATTACH:1