

HOUSE BILL NO. 1259

Introduced by

Representatives R. Kelsch, DeKrey, Delmore

Senators Fischer, Klein, Trenbeath

1 A BILL for an Act to create and enact chapter 53-12.1 of the North Dakota Century Code,
2 relating to a lottery; to amend and reenact subsection 5 of section 28-32-08.1 of the North
3 Dakota Century Code, relating to economic impact statements; to repeal chapter 53-12 of the
4 North Dakota Century Code, relating to a lottery; to provide a penalty; to provide a continuing
5 appropriation; and to declare an emergency.

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

7 **SECTION 1. AMENDMENT.** Subsection 5 of section 28-32-08.1 of the North Dakota
8 Century Code is amended and reenacted as follows:

9 5. This section does not apply to any agency that is an occupational or professional
10 licensing authority, nor does this section apply to the following agencies or
11 divisions of agencies:

- 12 a. Council on the arts.
- 13 b. Beef commission.
- 14 c. Dairy promotion commission.
- 15 d. Dry bean council.
- 16 e. Highway patrolmen's retirement board.
- 17 f. Indian affairs commission.
- 18 g. Board for Indian scholarships.
- 19 h. State personnel board.
- 20 i. Potato council.
- 21 j. Board of public school education.
- 22 k. Real estate trust account committee.
- 23 l. Seed commission.
- 24 m. Soil conservation committee.

- 1 n. Oilseed council.
- 2 o. Wheat commission.
- 3 p. State seed arbitration board.
- 4 q. North Dakota lottery.

5 **SECTION 2.** Chapter 53-12.1 of the North Dakota Century Code is created and
6 enacted as follows:

7 **53-12.1-01. Definitions.** As used in this chapter:

- 8 1. "Director" means the director of the lottery.
- 9 2. "Lottery" means the division of the attorney general's office created to operate a
10 lottery.
- 11 3. "Online lottery" means a game linked to a central computer via a
12 telecommunications network in which the player selects a specified group of
13 numbers or symbols out of a predetermined range of numbers or symbols.
- 14 4. "Retailer" means a person the lottery has licensed to sell or redeem a ticket.
- 15 5. "Ticket" means an original tangible evidence of play prescribed by the lottery and
16 produced by a lottery terminal or a properly and validly registered subscription play
17 to prove participation in a draw of a game for a chance to win a prize.

18 **53-12.1-02. Lottery - Administration - Line of credit.**

- 19 1. There is established a division of the attorney general's office called the North
20 Dakota lottery. Under the supervision of the attorney general, a director shall
21 administer the lottery as provided in this chapter. The director shall consider the
22 sensitive nature of the lottery, promote games, and ensure the integrity, security,
23 and fairness of the lottery's operation. The lottery is solely responsible for the
24 management and control over the operation of its games.
- 25 2. The attorney general's office may arrange a short-term line of credit with the Bank
26 of North Dakota should lottery funds on hand be insufficient to meet an immediate
27 major prize obligation. The line of credit is limited to the amount of each prize of
28 one hundred thousand dollars or more that relates to prize funds known to be due
29 and forthcoming to the lottery from other government-authorized lotteries through
30 the multistate lottery association. However, the line of credit may not exceed one
31 million dollars in the aggregate.

1 **53-12.1-03. Director - Responsibilities.**

- 2 1. The attorney general shall appoint a director who shall serve at the pleasure of the
3 attorney general.
- 4 2. Subject to policy of the attorney general, the director shall:
- 5 a. Employ those persons deemed necessary to operate the lottery and provide
6 secure facilities to house the lottery;
- 7 b. Enter a written agreement with one or more government-authorized lotteries,
8 or with an organization created and controlled by those lotteries, for
9 conducting and marketing a joint lottery game;
- 10 c. Provide for a secure computer data center and internal control system for the
11 reliable operation of the lottery;
- 12 d. Prepare and submit a budget for operating the lottery;
- 13 e. Operate the lottery so it is self-sustaining and self-funded;
- 14 f. Maintain books and records which accurately reflect each day's financial
15 transactions, including the sale of tickets, receipt of funds and fees, prize
16 payments, and expenses to ensure accountability;
- 17 g. License a retailer to sell or redeem a ticket;
- 18 h. Require a retailer to furnish proof of financial stability or post a bond in an
19 amount the director deems necessary to protect the financial interest of the
20 state;
- 21 i. Timely and efficiently transfer lottery funds due from a retailer;
- 22 j. Conduct a retailer promotion to promote the sale of a ticket;
- 23 k. As necessary, enter a contract for a promotional service, an annuity for the
24 payment of a prize, credit history report, security service, service from another
25 state agency, marketing and related service, gaming system and related
26 service, and other necessary service;
- 27 l. Based on reasonable ground or written complaint, suspend or revoke a
28 retailer's license or impose a monetary fine, or both, for a violation, by the
29 retailer or employee of the retailer, of a lottery law or rule;

- 1 m. Examine, or cause to be examined by an agent designated by the director,
2 any book or record of a retailer to ensure compliance with the lottery law and
3 rules;
- 4 n. Upon request, report to the legislative council regarding the operation of the
5 lottery;
- 6 o. Make quarterly and annual financial reports to the governor and attorney
7 general and a biennial report to the legislative assembly;
- 8 p. Have an annual audit, conducted by the state auditor, of the lottery. The
9 director shall present the audit report to the governor, state treasurer, and
10 legislative assembly;
- 11 q. As necessary, have an independent firm conduct a study and evaluation of
12 security; and
- 13 r. As necessary, conduct a survey of retailers and players or a study of
14 reactions of citizens to present and potential features of the lottery.

15 **53-12.1-04. Advisory commission - Penalty.**

- 16 1. There is created the lottery advisory commission, which is composed of five
17 members, three of whom are legislators selected by the chairman of the legislative
18 council and two of whom are selected by the attorney general. The term of office is
19 three years, expiring on June thirtieth with no more than two terms expiring in any
20 one year. Of the first members appointed, one must be appointed for a term of one
21 year, two must be appointed for terms of two years, and two must be appointed for
22 terms of three years. No member may be appointed to more than two consecutive
23 terms. Each member must be a citizen of the United States and a resident of this
24 state. A chairman of the commission must be chosen annually from the
25 membership of the commission by a majority of its members at the first meeting of
26 the commission each fiscal year. A member may serve as chairman for more than
27 one year.
- 28 2. The lottery advisory commission shall meet at least once a quarter and any
29 additional meetings as the chairman deems necessary. Special meetings may be
30 called by the chairman upon the written request of the director or any three
31 members of the commission.

- 1 3. The lottery advisory commission shall advise the director and attorney general on
2 policy and general operation of the lottery and shall serve as the audit committee.
- 3 4. A member of the lottery advisory commission who is not a permanent full-time
4 state employee is to be compensated at a rate of seventy-five dollars per day and
5 entitled to mileage and expenses as provided by law for state employees. A state
6 employee who is a member of the commission must receive that employee's
7 regular salary and is entitled to mileage and expenses, to be paid by the employing
8 agency.
- 9 5. No member of the lottery advisory commission, employee of the lottery, or any
10 individual who regularly resides in the same household as either of those
11 individuals may directly or indirectly, individually, as a partner of a partnership, or a
12 stockholder, director, or officer of a corporation, have an interest in the gaming
13 system or advertising agency vendor of the lottery. A knowing violation of this
14 subsection is a class B misdemeanor.

15 **53-12.1-05. Competitive bidding - Investigation of a vendor.** Before a contract for a
16 gaming system or marketing services is awarded, the director shall:

- 17 1. Use an open and competitive bid process which reflects the best interest of the
18 state. The director shall consider all relevant factors, including security,
19 competence, experience, timely performance, and maximization of net proceeds;
20 and
- 21 2. Conduct a thorough background investigation of the lottery's gaming system and
22 advertising agency vendors, all shareholders of ten percent or more interest, and
23 all senior officers and directors of the vendors, including a parent or subsidiary
24 corporation of the vendors. The director may use information of another
25 government-authorized lottery or other source to determine the qualification and
26 background of the vendors. The vendors shall submit appropriate investigation
27 authorizations. The director may require any appropriate information from the
28 vendors to preserve the integrity and financial security of the lottery.

29 **53-12.1-06. Retailer application - Fees - Display of license.**

- 30 1. An applicant for a license does not have a right to a license or granting of the
31 approval sought. A license issued or approval granted is a suspendable or

- 1 revocable privilege, and the holder does not acquire any vested interest in the
2 license or approval granted.
- 3 2. An applicant for a license that has had an application denied or a license revoked
4 may not reapply until at least one year has elapsed from the date of the denial or
5 revocation unless the director determines that the reason for the denial of the
6 application or revocation of the license has been remedied. A person who has had
7 an application denied or a license revoked for a second time may not reapply until
8 at least three years have passed since the date of the second denial or revocation.
9 The decision of the director to deny an application or revoke a license is final and
10 not appealable.
- 11 3. The director may charge an application fee to a person applying to become a
12 retailer and a license fee.
- 13 4. A retailer license is:
- 14 a. Renewable annually unless it is sooner relinquished, suspended, or revoked;
15 b. Not transferable or assignable to another person; and
16 c. Required to be conspicuously displayed at the retailer's site.

17 **53-12.1-07. Selection and qualifications of a retailer.**

- 18 1. The director shall select a person that the director deems best able to serve the
19 public convenience and promote the sale of a ticket. The director shall consider
20 relevant factors, including applicant's credit history, physical security and public
21 accessibility of the applicant's site, integrity, sufficiency of existing retailers to serve
22 the public convenience, especially in a geographically remote area of the state,
23 and volume of expected sales of tickets. A person lawfully engaged in
24 nongovernmental business on state property or a person within the exterior
25 boundary of an Indian reservation or on tribal trust land may be selected as a
26 retailer.
- 27 2. A retailer may not be the lottery's gaming system or advertising agency vendor or
28 an employee or agent of the vendor.
- 29 3. To be eligible as a retailer, an individual acting as a sole proprietor must:
- 30 a. Have a satisfactory credit check;

- 1 b. Be current in payment of all taxes, interest, and penalties owed to the state
2 and be current under a payment plan, excluding an item under formal dispute
3 or appeal pursuant to law;
4 c. Be at least eighteen years of age;
5 d. Be of good character and reputation;
6 e. Not have been convicted of a felony in this or any other jurisdiction, unless at
7 least ten years have passed since satisfactory completion of the sentence or
8 probation imposed by the court in each felony;
9 f. Not have been found to have knowingly violated a lottery law or rule;
10 g. Not have been found to have a background, including a criminal record, or
11 prior activities that pose a threat to the public interests of this state or to the
12 security and integrity of the lottery, create or enhance the dangers of
13 unsuitable or illegal practices in the conduct of lottery activities, or present
14 questionable business practices and financial arrangements incidental to the
15 lottery activity;
16 h. Not be a parent, stepparent, child, stepchild, spouse, or sibling who is a
17 regular member of the same household of an employee of the lottery or
18 member of the lottery advisory commission; and
19 i. Not have knowingly made a false statement of material fact to the lottery.
20 4. To be eligible as a retailer, a partnership must meet the requirement of
21 subdivision a of subsection 3 and each partner must meet the requirements of
22 subdivisions b through i of subsection 3.
23 5. To be eligible as a retailer, an organization other than a partnership must meet the
24 requirements of subdivisions a and b of subsection 3 and each officer and director
25 who is primarily responsible for making financial decisions and each shareholder
26 who owns ten percent or more of an ownership interest in the organization must
27 meet the requirements of subdivisions c through i of subsection 3.

28 **53-12.1-08. Purchase of ticket or payment of prize to certain persons prohibited -**
29 **Price of a ticket - Sale by retailer only - Retailer second chance drawing - Prize paid to**
30 **owner of a winning ticket - Prize subject to taxation - Discharge of liability - Penalty.**

- 1 1. A ticket may not be bought by or otherwise provided to, and a prize may not be
2 paid to, the following individuals or to a parent, stepparent, child, stepchild, spouse,
3 or sibling who is a regular member of the same household of the following
4 individuals:
 - 5 a. A member of the lottery advisory commission or employee of the lottery,
6 unless authorized in writing by the director; or
 - 7 b. An officer or employee of the lottery's gaming system vendor.
- 8 A person who knowingly violates this subsection is guilty of a class B misdemeanor
9 on the first offense and a class A misdemeanor on a subsequent offense.
- 10 2. A retailer or employee of a retailer may buy a ticket and be paid a prize for a
11 winning ticket.
- 12 3. Only a retailer may sell a ticket. A retailer may sell a ticket only at the site stated
13 on the license. A retailer may not sell a ticket at a price greater than the price set
14 by the lottery rules. A person convicted of violating this subsection is guilty of a
15 class A misdemeanor on the first offense and a class C felony on a subsequent
16 offense.
- 17 4. A retailer may conduct a second chance drawing of entry forms or nonwinning
18 tickets to promote the sale of a ticket at that site.
- 19 5. No ticket may be sold or given to a minor. A retailer, employee of a retailer, or any
20 other person who knowingly violates this subsection is guilty of a class B
21 misdemeanor on the first offense and a class A misdemeanor on a subsequent
22 offense.
- 23 6. The prize to be paid or awarded for a winning ticket must be paid to the person
24 who the director determines is the owner of the ticket. However, the prize of a
25 deceased winning player must be paid to the lawful representative of the estate.
- 26 7. If an individual steals a ticket from a retailer, the individual is guilty of a class A
27 misdemeanor. However, if the total value of the tickets stolen exceeds five
28 hundred dollars, the offense is a class C felony.
- 29 8. A prize awarded is subject to state and federal income tax laws and rules.

1 9. A person who, with intent to defraud, falsely makes, alters, forges, passes, or
2 counterfeits a ticket or gift certificate issued by the lottery, regardless of the amount
3 gained, is guilty of a class C felony.

4 10. The state, members of the lottery advisory commission, and employees of the
5 lottery are discharged of all further liability upon payment of a prize.

6 **53-12.1-09. Operating fund - Continuing appropriation - Authorization of**

7 **disbursements - Net proceeds.** There is established within the state treasury the lottery
8 operating fund into which must be deposited all revenue from the sale of tickets, interest
9 received on money in the fund, and all other fees and moneys collected, less a prize on a
10 winning ticket or lottery promotion paid by a retailer and the retailer's commission. All money in
11 the fund is continuously appropriated for the purposes specified in this section. A payment of a
12 prize or expense or transfer of net proceeds by the lottery may be made only against the fund
13 or money collected from a retailer on the sale of a ticket. A disbursement from the fund must be
14 for the following purposes:

15 1. Payment of a prize as the director deems appropriate to the owner of a valid,
16 winning ticket;

17 2. Payment of an expense, including a gaming system or related service, supplies,
18 survey, advertising and marketing, printing, promotion, premium incentive item,
19 and reimbursement of the cost of a facility or service provided by another state
20 agency; and

21 3. Transfer of net proceeds:

22 a. Fifty thousand dollars must be transferred to the state treasurer each quarter
23 for deposit in the compulsive gambling prevention and treatment fund;

24 b. An amount for the lottery's share of a game's prize reserve pool must be
25 transferred to the multistate lottery association; and

26 c. The balance of the net proceeds, less holdback of any reserve funds the
27 director may need for continuing operations, must be transferred to the state
28 treasurer on at least an annual basis for deposit in the state general fund.

29 **53-12.1-10. Confidentiality of records.**

30 1. The following information and records of the lottery are confidential:

- 1 a. Sales and income tax information, financial statements, and a credit report of
2 a retailer applicant or person seeking or doing business with the lottery, and
3 retailer application information other than the applicant's name and location;
- 4 b. Information related to a person owing a debt to the state or having a debt
5 collected through a state agency that is made confidential by another state
6 law or rule;
- 7 c. Internal control and security procedures, security information on a winning
8 ticket, and information on a bid or contractual data, the disclosure of which is
9 harmful to the efforts of the lottery to contract for goods and services on
10 favorable terms;
- 11 d. Personal information on a winning player unless the player authorizes, in
12 writing, release of the information. However, if the amount of a prize is more
13 than one hundred thousand dollars, the lottery may release the amount won
14 and player's name, city, and state of residence; and
- 15 e. Lottery sales data, the disclosure of which is harmful to the competitive
16 position of the lottery, retailer, or person seeking or doing business with the
17 lottery. However, a retailer may authorize the lottery to release the retailer's
18 lottery sales data.
- 19 2. To be confidential, information must relate to the security and integrity of the
20 lottery. Information and records may be disclosed within the attorney general's
21 office or to an authorized person in the proper administration of the lottery law and
22 rules or in accordance with a judicial order. Criminal history record check
23 information on an individual seeking or doing business with the lottery may be
24 released only according to chapter 12-60.

25 **53-12.1-11. Setoff of prize.**

- 26 1. A claimant agency and the director shall cooperate on the setoff of a lottery prize
27 against a delinquent debt. A claimant agency is an agency of the state of North
28 Dakota that a person owes money to or that collects money on behalf of another
29 party to satisfy a debt. The claimant agency and director shall share necessary
30 information, including the person's full name, social security number, and amount

- 1 and type of debt, through a mutually convenient method to timely achieve a setoff
2 of a prize.
- 3 2. The director shall establish a debt setoff process in which a lottery prize claim of an
4 amount equal to or greater than six hundred dollars must be used to setoff a
5 delinquent debt owed to or collected through a claimant agency.
- 6 3. If the director determines that a winning player owes a delinquent debt to or has a
7 delinquent debt collected through a claimant agency, the director shall set off the
8 amount of the debt from the prize due and notify the player, in writing, of the setoff.
9 If the setoff accounts for only a portion of the prize due, the remainder of the prize
10 must be paid to the player. The director shall transfer the setoff amount to the
11 claimant agency unless the player notifies the director, in writing, within thirty days
12 of the date of the notice of the setoff, that the player disputes all or part of the debt
13 owed to or collected through the claimant agency. If the director receives a
14 notification that the player disputes the setoff amount or claim upon which the
15 setoff is based, the director shall grant a hearing to the player to determine whether
16 the setoff is proper or the claim is valid. At a hearing, no issue may be
17 reconsidered that the player has or could have previously litigated in a court or
18 administrative proceeding.
- 19 4. The lottery is discharged of all further liability for the amount of any debt setoff paid
20 to a claimant agency.
- 21 5. If two or more claimant agencies have delinquent accounts for the same player, the
22 director shall apportion the prize equally among them. However, a setoff to the
23 department of human services for child support payments has priority over all other
24 setoffs.
- 25 6. If the prize is insufficient to satisfy the entire debt, the remainder of the debt may
26 be collected by a claimant agency as provided by law or rule and resubmitted for
27 setoff against any other prize awarded.
- 28 7. If two or more claimant agencies make adverse claims to all or a part of a prize
29 payment, upon receipt of written notice from the claimant agencies setting forth
30 their claims, the director may deposit, in accordance with section 32-11-02, the
31 contested amount of the prize payment with the clerk of court in the district in which

1 an action pertaining to the contested amount is pending or with a court-authorized
2 depository. If one of the claims is for child support, the director shall transfer the
3 setoff amount to the state disbursement unit before depositing any remaining prize
4 payment or award. Any review of this transfer to the state disbursement unit must
5 be done pursuant to section 50-09-14. Upon making the deposit or transfer, the
6 state and its officials and employees are discharged and relieved from further
7 liability to any person or claimant agency related to the prize payment.

8 **53-12.1-12. Rules.** The attorney general shall adopt rules governing the operation of
9 the lottery. The attorney general may adopt emergency rules as necessary without the grounds
10 otherwise required under section 28-32-03. The attorney general shall adopt rules to address
11 any matters necessary for the efficient operation of the lottery or convenience of the public,
12 including:

- 13 1. Type of retailer where a ticket may be sold;
- 14 2. Qualification for selecting a retailer and amount of application and license fees;
- 15 3. Licensing procedure;
- 16 4. Method used to sell a ticket, including a gift certificate and subscription;
- 17 5. Financial responsibility of a retailer;
- 18 6. Retailer promotions;
- 19 7. Amount and method of commission to be paid to a retailer, including a special
20 bonus or incentive;
- 21 8. Deadline for claiming a prize by the owner of a winning ticket, however, the
22 deadline may not exceed one year;
- 23 9. Manner of paying a prize to the owner of a winning ticket; and
- 24 10. Setoff of a prize.

25 **SECTION 3. REPEAL.** Chapter 53-12 of the North Dakota Century Code is repealed.

26 **SECTION 4. EMERGENCY.** This Act is declared to be an emergency measure.