

Sixty-eighth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2304

Introduced by

Senators Klein, Hogue, Luick

Representatives Karls, Kempenich, Nathe

1 A BILL for an Act to create and enact a new section to chapter 53-06.1 and a new subsection to
 2 section 53-06.1-15.1 of the North Dakota Century Code, relating to alcoholic beverage
 3 establishment requirements and the authority of the attorney general to impose fines for gaming
 4 violations; and to amend and reenact ~~section~~sections 53-06.1-01 and 53-06.1-03, and
 5 subsections 2 and 5 of section 53-06.1-11 of the North Dakota Century Code, relating to gaming
 6 licenses for alcoholic beverage establishments, the maximum number of gaming sites allowed,
 7 the maximum number of pull tab devices allowed at a site, approval for a gaming site
 8 authorization and licensure, modification of allowable expense limits, and rent limits for
 9 electronic pull tab devices.

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

11 **SECTION 1. AMENDMENT.** Section 53-06.1-01 of the North Dakota Century Code is
 12 amended and reenacted as follows:

13 **53-06.1-01. Definitions.**

14 As used in this chapter:

- 15 1. "Adjusted gross proceeds" means gross proceeds less cash prizes, cost of
 16 merchandise prizes, gaming tax, and federal excise tax imposed under section 4401
 17 of the Internal Revenue Code [26 U.S.C. 4401].
- 18 2. "Alcoholic beverage establishment" means an establishment licensed under
 19 chapter 5-02 where alcoholic beverages are sold, dispensed, and consumed by
 20 guests on the premises. ~~This~~The term does not include ~~an off-sale~~ liquor store,
 21 gas station, grocery store, or convenience store licensed for off sale only. ~~An alcoholic~~
 22 beverage establishment must be licensed under chapter 5-02 and be devoted to the
 23 service of alcoholic beverages for consumption by guests on the premises. The term
 24 includes a bar located within a hotel, bowling center, golf course, or restaurant.

- 1 | 3. "Charitable organization" means an organization whose primary purpose is for relief of
2 | poor, distressed, underprivileged, diseased, elderly, or abused persons, prevention of
3 | cruelty to children or animals, or similar condition of public concern.
- 4 | ~~3.4.~~ "Civic and service organization" means an organization whose primary purpose is to
5 | promote the common good and social welfare of a community as a sertoma, lion,
6 | rotary, jaycee, kiwanis, or similar organization.
- 7 | ~~4.5.~~ "Closely related organization" means an organization that controls, is controlled by, or
8 | is under common control with another organization. Control exists when an
9 | organization has the authority or ability to elect, appoint, or remove a majority of the
10 | officers or directors of another organization or, by policy, contract, or otherwise, has
11 | the authority or ability to directly or indirectly direct or cause the direction of the
12 | management or policies of another organization.
- 13 | ~~5.6.~~ "Distributor" means a person that sells, markets, or distributes equipment designed for
14 | use in the conduct of games.
- 15 | ~~6.7.~~ "Educational organization" means a nonprofit public or private elementary or
16 | secondary school, two-year or four-year college, or university.
- 17 | ~~7.8.~~ "Electronic pull tab device" means a device, approved by the attorney general, which
18 | electronically displays pull tabs.
- 19 | ~~8.9.~~ "Eligible organization" means a veterans, charitable, educational, religious, fraternal,
20 | civic and service, public safety, or public-spirited organization domiciled in North
21 | Dakota or authorized by the secretary of state as a foreign corporation under chapter
22 | 10-33, incorporated as a nonprofit organization, and which has been regularly and
23 | actively fulfilling its primary purpose within this state during the two immediately
24 | preceding years. However, an educational organization does not need to be
25 | incorporated or be in existence for two years. An organization's primary purpose may
26 | not involve the conduct of games. The organization may be issued a license by the
27 | attorney general. For purposes of this section, a foreign corporation authorized under
28 | chapter 10-33 is not an eligible organization unless authorized to conduct a raffle
29 | under chapter 20.1-04 or 20.1-08 and may not conduct a game other than a raffle
30 | under chapter 20.1-04 or 20.1-08.

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- 1 ~~9-10.~~ "Fraternal organization" means an organization, except a school fraternity, which is a
2 branch, lodge, or chapter of a national or state organization and exists for the common
3 business, brotherhood, or other interests of its members. The organization must have
4 qualified for exemption from federal income tax under section 501(c)(8) or 501(c)(10)
5 of the Internal Revenue Code.
- 6 ~~40-11.~~ "Games" means games of chance.
- 7 ~~44-12.~~ "Gross proceeds" means all cash and checks received from conducting games.
- 8 ~~42-13.~~ "Licensed organization" means an eligible organization licensed by the attorney
9 general.
- 10 ~~43-14.~~ "Manufacturer" means, for a pull tab or bingo card, a person who designs, prints,
11 assembles, or produces the product. For a pull tab dispensing device, bingo card
12 marking device, or a fifty-fifty raffle system, a manufacturer means the person who
13 directly controls and manages development of and owns the rights to the proprietary
14 software encoded on a processing chip that enables the device to operate.
- 15 ~~44-15.~~ "Net income" means gross proceeds less cash prizes, cost of merchandise prizes, and
16 expenses to conduct the gaming activity.
- 17 ~~45-16.~~ "Net proceeds" means adjusted gross proceeds less allowable expenses and gaming
18 tax.
- 19 ~~46-17.~~ "Off sale" means the sale of alcoholic beverages that are to be consumed off the
20 licensed premises.
- 21 18. "On sale" means the sale of alcoholic beverages that are meant to be consumed on
22 the licensed premises.
- 23 19. "Permit" means a local permit or restricted event permit issued by a governing body of
24 a city or county to a nonprofit organization or group of people domiciled in North
25 Dakota.
- 26 ~~47-18-20.~~ "Person" means any person, partnership, corporation, limited liability company,
27 association, or organization.
- 28 ~~48-19-21.~~ "Prize board" means a board used with pull tabs to award cash or merchandise
29 prizes.

1 | ~~19-20-22.~~ "Public safety organization" means an organization whose primary purpose is
2 | to provide firefighting, ambulance service, crime prevention, or similar emergency
3 | assistance.

4 | ~~20-21-23.~~ "Public-spirited organization" means an organization whose primary purpose is
5 | for scientific research, amateur sports competition, safety, literary, arts, preservation of
6 | cultural heritage, educational activities, educational public service, youth, economic
7 | development, tourism, community medical care, community recreation, or similar
8 | organization, which does not meet the definition of any other type of eligible
9 | organization. However, a nonprofit organization or a group of people recognized as a
10 | public-spirited organization by a governing body of a city or county for obtaining a
11 | permit does not need to meet this definition.

12 | ~~21-22-24.~~ "Pull tab" means a folded or banded ticket or jar ticket, a pull tab card with
13 | break-open tabs, or an electronic pull tab displaying concealed numbers or symbols or
14 | combinations of concealed numbers and symbols which are exposed by a player to
15 | determine the outcome. The terms "pull tab" and "jar ticket" are used interchangeably
16 | unless otherwise stated. A winning pull tab contains certain symbols, numbers, or
17 | combinations of symbols and numbers and may contain multiple winning symbols,
18 | numbers, or combinations of symbols and numbers which have been previously
19 | designated as winning symbols or numbers.

20 | ~~22-23-25.~~ "Religious organization" means a church, body of communicants, or group
21 | gathered in common membership whose primary purpose is for advancement of
22 | religion, mutual support and edification in piety, worship, and religious observances.

23 | ~~23-24-26.~~ "Veterans organization" means any congressionally chartered post
24 | organization, or any branch or lodge or chapter of a nonprofit national or state
25 | organization whose membership consists of individuals who are or were members of
26 | the armed services or forces of the United States. The organization must have
27 | qualified for exemption from federal income tax under section 501(c)(19) of the
28 | Internal Revenue Code.

29 | **SECTION 2. AMENDMENT.** Section 53-06.1-03 of the North Dakota Century Code is
30 | amended and reenacted as follows:

1 **53-06.1-03. Permits, site authorization, and licenses - Organization requirements -**

2 **Site inspection.**

3 1. Except as authorized by the attorney general, an organization that has its license
4 suspended or revoked, or has relinquished or not renewed its license and not
5 disbursed its net proceeds, is ineligible for a license or permit. Only one of two or more
6 closely related organizations may have a license or permit at one time. A college or
7 university fraternity, sorority, or club is not closely related to an educational
8 organization. An organization shall apply for a permit as follows:

9 a. An organization recognized as a public-spirited organization by the governing
10 body of a city or county may apply for permits. A local permit may allow the
11 organization to conduct only raffles, bingo, or sports pools. A restricted event
12 permit may allow the organization to conduct only raffles, bingo, sports pools,
13 paddlewheels, twenty-one, and poker. The organization or closely related
14 organizations as a whole may only award a primary prize that does not exceed
15 eight thousand dollars and total prizes of all games do not exceed forty thousand
16 dollars per year. These maximum prize amounts do not apply to raffles conducted
17 under chapter 20.1-08. The determination of what is a "public-spirited
18 organization" is within the sole discretion of the governing body. An organization
19 shall disclose on the application its intended use of the net income from the
20 gaming activity. A governing body may issue a permit for games to be held at
21 designated times and places.

22 b. An organization shall apply to the governing body of the city or county in which
23 the proposed site is located. Application must be made on a form prescribed by
24 the attorney general. Approval may be granted at the discretion of the governing
25 body. A governing body may establish a fee not to exceed twenty-five dollars for
26 each permit. A permit must be on a fiscal year basis from July first to June
27 thirtieth or on a calendar-year basis.

28 c. An organization that has a local permit or a restricted event permit may use the
29 net income from the gaming activity for any purpose that does not violate this
30 chapter or gaming rules, unless the organization is a state political party or
31 legislative district party committee, the organization may use the net income from

- 1 a raffle for a political purpose. For purposes of this subdivision, a public-spirited
2 use includes a political purpose.
- 3 d. An organization that has a restricted event permit is restricted to one event per
4 year and:
- 5 (1) May not pay remuneration to employees for personal services;
6 (2) Shall use chips as wagers;
7 (3) Shall redeem a player's chips for merchandise prizes or cash;
8 (4) Shall disburse net income to eligible uses referenced in subdivision c, if
9 applicable, and in section 53-06.1-11.1; and
10 (5) Shall file a report prescribed by the attorney general with the governing
11 body and attorney general.
- 12 2. An eligible organization shall apply for a license to conduct only bingo, electronic quick
13 shot bingo, raffles, calcuttas, pull tabs, punchboards, twenty-one, paddlewheels,
14 poker, or sports pools by:
- 15 a. First securing a lease for a gaming site location.
16 b. After securing a lease for a gaming site location, securing approval for a site
17 authorization from the governing body of the city or county in which the proposed
18 site is located. ~~Approval, which may be granted at the discretion of the governing~~
19 ~~body;~~ The approved authorization must be recorded on a site authorization form
20 that is to accompany the license application to the attorney general for final
21 approval. A governing body ~~may~~;
- 22 (1) May not require an eligible organization to donate net proceeds to the city,
23 county, or related political subdivision or for community programs or
24 services within the city or county as a condition for receiving a site
25 authorization from the city or county. ~~A governing body may~~;
- 26 (2) May limit the number of tables for the game of twenty-one per site and the
27 number of sites upon which a licensed organization may conduct games
28 within the city or county. ~~A governing body may~~;
- 29 (3) May charge a one hundred dollar fee for a site authorization; ~~and~~
30 ~~b. (4)~~ May not require a site to enter a lease with a specific organization as a
31 condition of receiving a site authorization;

1 (5) May not deny approval of a site authorization because an organization has
2 not previously conducted gaming at that site;

3 (6) May deny approval of a site authorization if an application is incomplete or if
4 granting approval would violate a local ordinance related to a limitation on
5 the number of site authorizations for which an organization may be
6 approved or whether the organization is public-spirited. An ordinance that
7 places a condition on how charitable funds may be used may not have an
8 effect on the approval of a site authorization; and

9 (7) May deny approval of a site authorization if the organization is not compliant
10 with statute or rule.

11 c. Annually applying for a license from the attorney general before July first on a
12 form prescribed by the attorney general and remitting a one hundred fifty dollar
13 license fee for each city or county that approves a site authorization. However,
14 the attorney general may allow an organization that only conducts a raffle or
15 calcutta in two or more cities or counties to annually apply for a consolidated
16 license and remit a one hundred fifty dollar license fee for each city or county in
17 which a site is located. An organization shall document that it qualifies as an
18 eligible organization. If an organization amends its primary purpose as stated in
19 its articles of incorporation or materially changes its basic character, the
20 organization shall reapply for licensure. The attorney general shall issue a license
21 to an eligible organization that has obtained approval of site authorization under
22 subdivision b, applied, paid the requisite fee, and demonstrated it qualifies as an
23 eligible organization.

24 3. A licensed organization or organization that has a permit shall conduct games as
25 follows:

26 a. Only one licensed organization or organization that has a permit may conduct
27 games at an authorized site on a day, except that a raffle may be conducted for a
28 special occasion by another licensed organization or organization that has a
29 permit when one of these conditions is met:

30 (1) When the area for the raffle is physically separated from the area where
31 games are conducted by the regular organization.

1 (2) Upon request of the regular organization and with the approval of the
2 alcoholic beverage establishment, the regular organization's license or
3 permit is suspended for that specific time of day by the attorney general.

4 b. Except for a temporary site authorized for fourteen or fewer consecutive days for
5 not more than two events per quarter or a licensed organization authorized on or
6 before January 1, 2023, to conduct gaming at more than fifteen sites, a licensed
7 organization may not have more than ~~twenty-five~~fifteen sites ~~unless granted a~~
8 ~~waiver by the attorney general. If the attorney general finds that there is no other~~
9 ~~licensed organization interested in conducting gaming at a site for which a waiver~~
10 ~~is being sought, the attorney general may approve the waiver for no more than~~
11 ~~five sites.~~

12 c. Games of electronic quick shot bingo, pull tabs, punchboards, twenty-one,
13 paddlewheels, poker, and sports pools may be conducted only during the hours
14 when alcoholic beverages may be dispensed according to applicable regulations
15 of the state, county, or city.

16 d. An organization may not permit a person under twenty-one years of age to
17 directly or indirectly play pull tabs, punchboards, twenty-one, calcuttas, sports
18 pools, paddlewheels, or poker. An organization may not permit an individual
19 under eighteen years of age to directly or indirectly play electronic quick shot
20 bingo. An organization may not permit an individual under eighteen years of age
21 to directly or indirectly play bingo unless the individual is accompanied by an
22 adult, bingo is conducted by an organization that has a permit, or the game's
23 prize structure does not exceed that allowed for a permit.

24 e. An organization may not install more than ten electronic pull tab devices at a site.

25 f. An organization with more than fifteen licensed sites under subdivision b may not
26 increase its number of sites beyond the number of sites licensed as of January 1,
27 2023.

28 4. A permit, or site authorization and license, must be displayed at a site.

29 5. The attorney general may issue a conditional license to an eligible organization whose
30 regularly issued license has expired or been suspended, revoked, or relinquished. The

1 attorney general shall designate the time period for which the conditional license is
2 valid and may impose any conditions.

- 3 6. A governing body or local law enforcement official may inspect a site's gaming
4 equipment and examine or cause to be examined any gaming-related books and
5 records of a licensed organization or organization that has a permit.

6 **SECTION 3.** A new section to chapter 53-06.1 of the North Dakota Century Code is created
7 and enacted as follows:

8 **Alcoholic beverage establishment - Requirements.**

9 **1. An alcoholic beverage establishment:**

- 10 a. May not interfere with the organization's operation of gaming;
11 b. May not limit the gaming hours of operation, except to limit gaming to the
12 alcoholic beverage establishment's hours of operation;
13 c. May not receive any compensation from gaming proceeds other than rent under
14 this chapter. Compensation includes any financial benefit, direct or indirect, from
15 gaming proceeds;
16 d. May not require an organization to donate net proceeds to any organization or for
17 any purpose as a condition of conducting gaming on the premises;
18 e. May not directly conduct gaming as part of the alcoholic beverage
19 establishment's business;
20 f. May donate a gift certificate, cash, or merchandise intended to be used as a prize
21 to an organization;
22 g. May not give a free or discounted game piece, chip, or play of a game, except for
23 discounts allowed for bingo and raffle activity;
24 h. May offer free or discounted food or beverages in the normal course of business;
25 i. At its own expense, may advertise gaming on promotional drink tickets; and
26 j. If advertising charitable gaming conducted on the premises, shall include the
27 gaming organization's name. An abbreviation of the organization's name may be
28 used.

29 **2. Upon the request of the organization, an alcoholic beverage establishment:**

- 30 a. May sell a gift certificate or merchandise to be used as a gaming prize for no
31 more than fair market value; and

1 b. May assist in redeeming winning pull tabs, credit ticket vouchers, or paying prize
2 board cash prizes involving a dispensing device. If the organization provides the
3 alcoholic beverage establishment temporary loan funds for this purpose, a written
4 agreement must:

5 (1) Be signed by the organization and the alcoholic beverage establishment;

6 (2) Provide for the immediate repayment of the loan if the organization
7 discontinues using a device at the site; and

8 (3) Provide the alcoholic beverage establishment is liable for a loss or theft of
9 the loaned funds.

10 3. An owner of the alcoholic beverage establishment or a member of the owner's
11 household or an individual who is an officer or board member or involved in the
12 management of the establishment may not:

13 a. Loan money or provide gaming equipment to the organization;

14 b. Interfere or attempt to influence an organization's selection of games,
15 determination of prizes, disbursement of net proceeds, selection of a gaming
16 equipment distributor, or the method for which games are conducted;

17 c. Require an organization's employee to assist, with or without compensation, in an
18 alcoholic beverage establishment's business at the site. However, the
19 organization's employee may voluntarily order beverages for customers; or

20 d. Count drop box cash.

21 4. An owner or employee of the alcoholic beverage establishment may not play pull tabs
22 or prize boards, which involve a dispensing device, or electronic pull tabs while on
23 duty or for three hours after ending duty.

24 5. An employee of a licensed organization may patronize the alcoholic beverage
25 establishment.

26 **SECTION 4. AMENDMENT.** Subsection 2 of section 53-06.1-11 of the North Dakota
27 Century Code is amended and reenacted as follows:

28 2. Allowable expenses may be deducted from adjusted gross proceeds. The allowable
29 expense limit is ~~sixty~~:

30 a. Sixty percent of the adjusted gross proceeds per quarter if the total adjusted
31 gross proceeds for the quarter are more than one hundred thousand dollars; and

- 1 b. Sixty-three percent of the adjusted gross proceeds per quarter if the total
2 adjusted gross proceeds for the quarter are equal to or less than one hundred
3 thousand dollars.

4 **SECTION 5. AMENDMENT.** Subsection 5 of section 53-06.1-11 of the North Dakota
5 Century Code is amended and reenacted as follows:

- 6 5. For a site where bingo is not the primary game:
- 7 a. If twenty-one or paddlewheels is conducted, the monthly rent may not exceed
8 two hundred dollars multiplied by the necessary number of tables based on
9 criteria prescribed by gaming rule. For each twenty-one table with a wager
10 greater than five dollars, an additional amount up to one hundred dollars may be
11 added to the monthly rent. If pull tabs is also conducted involving only a jar bar,
12 the monthly rent for pull tabs may not exceed an additional one hundred
13 seventy-five dollars. If pull tabs is conducted involving only a dispensing device
14 or a jar bar and dispensing device, the monthly rent for pull tabs may not exceed
15 an additional three hundred twenty-five dollars.
- 16 b. If twenty-one and paddlewheels are not conducted but pull tabs is conducted
17 involving either a jar bar or dispensing device, the monthly rent may not exceed
18 four hundred dollars.
- 19 c. If pull tabs is conducted using one or more electronic pull tab devices, the
20 monthly rent may not exceed ~~an additional~~ one hundred fifty dollars per machine
21 for the first five machines in the same venue. For each additional machine in the
22 same venue beyond five, the monthly rent may not exceed ~~an additional fiftyone~~
23 hundred dollars per machine up to a maximum of one thousand ~~onetwo~~ hundred
24 ~~twenty-five~~fifty dollars per month for all electronic pull tab devices in a single
25 venue. Notwithstanding the foregoing maximum rent amount, if a gaming
26 employee is not onsite to administer the proceeds, the rent may include an
27 additional fifty dollars per machine for alcoholic beverage establishment
28 employee assistance for up to five machines, resulting in a maximum of one
29 thousand five hundred dollars per month.

30 **SECTION 6.** A new subsection to section 53-06.1-15.1 of the North Dakota Century Code is
31 created and enacted as follows:

1 Impose a monetary fine on an owner of an authorized alcoholic beverage
2 establishment where a licensed gaming activity is conducted or has been conducted
3 for failure to comply with section 3 of this Act or administrative rules that relate to
4 subdivision b of subsection 2 of section 3 of this Act. The monetary fine for each
5 violation by an authorized site owner may not exceed five thousand dollars. An
6 authorized alcoholic beverage establishment subject to a monetary fine under this
7 section may appeal under chapter 28-32.