

SPORTS AND AMUSEMENTS

CHAPTER 445

HOUSE BILL NO. 1201

(Representatives Boehning, Koppelman)
(Senators Klein, Krebsbach)

BOXING, KICKBOXING, AND MIXED FIGHTING FEES

AN ACT to amend and reenact subsection 3 of section 53-01-07 of the North Dakota Century Code, relating to the gross revenue fee for boxing, kickboxing, and mixed fighting style competitions; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 53-01-07 of the North Dakota Century Code is amended and reenacted as follows:

3. Establish ~~by rule~~ a fee based on the percentage of gross revenues from any boxing, kickboxing, mixed fighting style competition, or sparring exhibition held in this state to pay for the expenses of members of the athletic advisory board or the mixed fighting style advisory board. A fee established under this subsection may not exceed ~~one~~ three percent of the gross revenues of the exhibition from any and all sources including cable television and pay-per-view telecasts of the event, exclusive of any federal tax thereon.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 5, 2007
Filed March 6, 2007

CHAPTER 446**SENATE BILL NO. 2225**

(Senators Grindberg, Bowman, Tollefson)
(Representatives S. Kesh, Svedjan, Wrangham)

BINGO CARD TAX REDUCTION

AN ACT to amend and reenact subsections 1 and 10 of section 53-06.1-01, subsection 2 of section 53-06.1-12, subsections 15, 16, and 17 of section 57-39.2-01, section 57-39.2-02.1, and subsections 5, 6, and 7 of section 57-40.2-01 of the North Dakota Century Code, relating to the excise tax upon gross proceeds of licensed gaming organizations for bingo cards and elimination of sales and use taxes for bingo cards; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 1 and 10 of section 53-06.1-01 of the North Dakota Century Code are amended and reenacted as follows:

1. "Adjusted gross proceeds" means gross proceeds less cash prizes, cost of merchandise prizes, ~~sales tax on bingo cards~~ excise tax, pull tab excise tax, and federal excise tax imposed under section 4401 of the Internal Revenue Code [26 U.S.C. 4401].
10. "Gross proceeds" means all cash and checks received from conducting games ~~and sales tax on bingo cards~~.

SECTION 2. AMENDMENT. Subsection 2 of section 53-06.1-12 of the North Dakota Century Code is amended and reenacted as follows:

2. Except as provided in subsection 3, in addition to any other tax provided by law and in place of sales or use taxes, there is imposed an excise tax of four and one-half percent on the gross proceeds from the sale at retail of pull tabs ~~and three percent on the gross proceeds from the sale at retail of bingo cards to final users~~. This includes pull tabs ~~or bingo cards~~ provided to a player in exchange for redeemed winning pull tabs or bingo cards. The tax must be paid to the attorney general when tax returns are filed.

²¹⁰ **SECTION 3. AMENDMENT.** Subsections 15, 16, and 17 of section 57-39.2-01 of the North Dakota Century Code are amended and reenacted as follows:

15. "Retail sale" or "sale at retail" means any sale, lease, or rental for any purpose other than for resale, sublease, or subrental. "Retail sale" or "sale at retail" includes the sale, including the leasing or renting, to a

²¹⁰ Section 57-39.2-01 was also amended by section 3 of Senate Bill No. 2380, chapter 528.

consumer or to any person for any purpose, other than for processing or for resale, of tangible personal property; the sale of steam, gas, and communication service to retail consumers or users; the sale of vulcanizing, recapping, and retreading services for tires; ~~the furnishing of bingo cards;~~ the ordering, selecting, or aiding a customer to select any goods, wares, or merchandise from any price list or catalog, which the customer might order, or be ordered for such customer to be shipped directly to such customer; the sale or furnishing of hotel, motel, or tourist court accommodations, tickets, or admissions to any place of amusement, athletic event, or place of entertainment, including the playing of any machine for amusement or entertainment in response to the use of a coin; and the sales of magazines and other periodicals. By the term "processing" is meant any tangible personal property including containers which it is intended, by means of fabrication, compounding, manufacturing, producing, or germination shall become an integral or an ingredient or component part of other tangible personal property intended to be sold ultimately at retail. The sale of an item of tangible personal property for the purpose of incorporating it in or attaching it to real property must be considered as a sale of tangible personal property for a purpose other than for processing; the delivery of possession within the state of North Dakota of tangible personal property by a wholesaler or distributor to an out-of-state retailer who does not hold a North Dakota retail sales tax permit or to a person who by contract incorporates such tangible personal property into, or attaches it to, real property situated in another state may not be considered a taxable sale if such delivery of possession would not be treated as a taxable sale in that state. As used in this subsection, the word "consumer" includes any hospital, infirmary, sanatorium, nursing home, home for the aged, or similar institution that furnishes services to any patient or occupant. The sale of an item of tangible personal property to a person under a finance leasing agreement over the term of which the property will be substantially consumed must be considered a retail sale if the purchaser elects to treat it as such by paying or causing the transferor to pay the sales tax thereon to the commissioner on or before the last day on which payments may be made without penalty as provided in section 57-39.2-12.

16. "Retailer" or "seller" includes every person engaged in the business of leasing or renting hotel, motel, or tourist court accommodations, and every person engaged in the business of selling tangible goods, wares, or merchandise at retail, or furnishing of steam, gas, and communication services, or tickets or admissions to places of amusement, entertainment, and athletic events, including the playing of any machine for amusement or entertainment in response to the use of a coin, or magazines, or other periodicals; ~~any organization licensed by the attorney general to conduct bingo games pursuant to section 53-06.1-03;~~ and includes any person as herein defined who by contract or otherwise agrees to furnish for a consideration a totally or partially finished product consisting in whole or in part of tangible personal property subject to the sales tax herein provided, and all items of tangible personal property entering into the performance of such contract as a component part of the product agreed to be furnished under said contract shall be subject to the sales tax herein provided and the sales tax thereon shall be collected by the contractor from the person for whom the contract has been performed in addition to the contract price agreed upon, and shall be remitted to the state in the

manner provided in this chapter; and shall include the state or any municipality furnishing steam, gas, or communication service to members of the public in its proprietary capacity. For the purpose of this chapter, retailer shall also include every clerk, auctioneer, agent, or factor selling tangible personal property owned by any other retailer. A retailer also includes every person who engages in regular or systematic solicitation of a consumer market in this state by the distribution of catalogs, periodicals, advertising fliers, or other advertising, or by means of print, radio or television media, by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system.

17. "Sale" means any transfer of title or possession, exchange or barter, conditional or otherwise, in any manner or by any means whatever, for a consideration, and includes the furnishing or service of steam, gas, or communication, ~~the furnishing of bingo cards,~~ the furnishing of hotel, motel, or tourist court accommodations, the furnishing of tickets or admissions to any place of amusement, athletic event, or place of entertainment, including the playing of any machine for amusement or entertainment in response to the use of a coin, and sales of magazines and other periodicals. Provided, the words "magazines and other periodicals" as used in this subsection do not include newspapers nor magazines or periodicals that are furnished free by a nonprofit corporation or organization to its members or because of payment by its members of membership fees or dues.

²¹¹ **SECTION 4. AMENDMENT.** Section 57-39.2-02.1 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-02.1. Sales tax imposed.

1. Except as otherwise expressly provided in subsection 2 for sales of mobile homes used for residential or business purposes, and except as otherwise expressly provided in this chapter, there is imposed a tax of five percent upon the gross receipts of retailers from all sales at retail including the leasing or renting of tangible personal property as provided in this section, within this state of the following to consumers or users:
- a. Tangible personal property, consisting of goods, wares, or merchandise, except mobile homes used for residential or business purposes.
 - b. The furnishing or service of communication services or steam other than steam used for processing agricultural products.
 - c. Tickets or admissions to places of amusement or entertainment or athletic events, including amounts charged for participation in an amusement, entertainment, or athletic activity; ~~and including the furnishing of bingo cards~~ and the playing of any machine for

²¹¹ Section 57-39.2-02.1 was also amended by section 1 of House Bill No. 1049, chapter 529, and section 4 of Senate Bill No. 2380, chapter 528.

amusement or entertainment in response to the use of a coin. The tax imposed by this section applies only to eighty percent of the gross receipts collected from coin-operated amusement devices.

- d. Magazines and other periodicals.
- e. The leasing or renting of a hotel or motel room or tourist court accommodations.
- f. The leasing or renting of tangible personal property the transfer of title to which has not been subjected to a retail sales tax under this chapter or a use tax under chapter 57-40.2.
- g. Coal mined in this state and used for heating buildings, except for coal used in agricultural processing or sugar beet refining plants.
- h. Sale, lease, or rental of a computer and prewritten computer software, including prewritten computer software delivered electronically or by load and leave. For purposes of this subdivision:
 - (1) "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.
 - (2) "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.
 - (3) "Delivered electronically" means delivered from the seller to the purchaser by means other than tangible storage media.
 - (4) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
 - (5) "Load and leave" means delivery to the purchaser by use of a tangible storage media when the tangible storage media is not physically transferred to the purchaser.
 - (6) "Prewritten computer software" means computer software, including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more "prewritten computer software" programs or prewritten portions thereof does not cause the combination to be other than "prewritten computer software". "Prewritten computer software" includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the purchaser. If a person modifies or enhances "computer software" of which the person is not the author or creator, the person is deemed to be the author or creator only of such person's modifications or enhancements. "Prewritten computer software" or a prewritten portion thereof that is modified or enhanced to any degree, if such modification or

enhancement is designed and developed to the specifications of a specific purchaser, remains "prewritten computer software". However, if there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for such modification or enhancement, such modification or enhancement shall not constitute "prewritten computer software".

2. There is imposed a tax of three percent upon the gross receipts of retailers from all sales at retail of mobile homes used for residential or business purposes, except as provided in subsection 35 of section 57-39.2-04.

SECTION 5. AMENDMENT. Subsections 5, 6, and 7 of section 57-40.2-01 of the North Dakota Century Code are amended and reenacted as follows:

5. "Purchased at retail" includes:
 - a. The completion of the fabricating, compounding, or manufacturing of tangible personal property by a person for storage, use, or consumption by that person.
 - b. The furnishing of ~~binge cards,~~ wares, and merchandise, and gas, when furnished or delivered to consumers or users within this state, and the sale of vulcanizing, recapping, and retreading services for tires.
 - c. The leasing or renting of tangible personal property, the sale, storage, use, or consumption of which has not been previously subjected to a retail sales or use tax in this state.
 - d. The purchase of magazines or other periodicals. Provided, the words "magazines and other periodicals" as used in this subdivision do not include newspapers nor magazines or periodicals that are furnished free by a nonprofit corporation or organization to its members or because of payment by its members of membership fees or dues.
 - e. The severance of sand or gravel from the soil.
 - f. The purchase, including the leasing or renting, of tangible personal property from any bank for storage, use, or consumption.
 - g. The purchase of an item of tangible personal property by a purchaser who rents or leases it to a person under a finance leasing agreement over the term of which the property will be substantially consumed, if the purchaser elects to treat it as being purchased at retail by paying or causing the transferor to pay the use tax to the commissioner on or before the last day on which payments may be made without penalty as provided in section 57-40.2-07.
6. "Retailer" includes every person engaged in the business of selling tangible personal property for use within the meaning of this chapter, but, when in the opinion of the commissioner, it is necessary for the efficient administration of this chapter to regard any salesman,

representative, trucker, peddler, or canvasser as the agent of the dealer, distributor, supervisor, employer, or other person under whom that person operates or from whom that person obtains the tangible personal property sold by that person, whether that person is making sales in that person's own behalf or in behalf of such dealer, distributor, supervisor, employer, or other person, the commissioner may regard that person as such agent, and may regard the dealer, distributor, supervisor, employer, or other person as a retailer for the purposes of this chapter. ~~A retailer includes any organization licensed by the attorney general to conduct bingo games pursuant to section 53-06.1-03.~~ A retailer also includes every person who engages in regular or systematic solicitation of a consumer market in this state by the distribution of catalogs, periodicals, advertising fliers, or other advertising, or by means of print, radio or television media, by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system.

7. "Retailer maintaining a place of business in this state", or any like term, means any retailer having or maintaining within this state, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or other place of business, or any agent operating within this state under the authority of the retailer or its subsidiary, whether such place of business or agent is located in the state permanently or temporarily, or whether or not such retailer or subsidiary is authorized to do business within this state. ~~It includes any organization licensed by the attorney general to conduct bingo games pursuant to section 53-06.1-03.~~ It also includes every person who engages in regular or systematic solicitation of sales of tangible personal property in this state by the distribution of catalogs, periodicals, advertising fliers, or other advertising, by means of print, radio or television media, or by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system for the purpose of effecting retail sales of tangible personal property.

SECTION 6. EFFECTIVE DATE. This Act is effective for taxable events occurring after June 30, 2007.

Approved May 4, 2007
Filed May 4, 2007

CHAPTER 447**HOUSE BILL NO. 1263**

(Representatives Boehning, Delmore, Haas)

RAFFLE PRIZE LIMITS

AN ACT to amend and reenact section 53-06.1-10.1 of the North Dakota Century Code, relating to raffles.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 53-06.1-10.1 of the North Dakota Century Code is amended and reenacted as follows:

53-06.1-10.1. Raffles. A prize for a raffle may be cash or merchandise but may not be real estate. No single cash prize may exceed ~~one~~ four thousand dollars and the total cash prizes in one day may not exceed ~~three~~ four thousand dollars. However, on not more than ~~one occasion~~ two occasions per year a licensed organization may, at the request of a winning player, exchange a merchandise prize valued at not more than twenty-five thousand dollars for a cash prize.

Approved April 27, 2007
Filed April 25, 2007

CHAPTER 448**HOUSE BILL NO. 1126**

(Judiciary Committee)

(At the request of the North Dakota Racing Commission)

PARIMUTUEL WAGERING

AN ACT to create and enact a new subsection to section 53-06.2-01 and three new subsections to section 53-06.2-04 of the North Dakota Century Code, relating to the definition of the racing promotion fund and to the duties of the racing commission; and to amend and reenact subsection 4 of section 53-06.2-05, subsection 1 of section 53-06.2-07, subsection 4 of section 53-06.2-08, sections 53-06.2-10.1 and 53-06.2-11, and subsection 2 of section 53-06.2-13 of the North Dakota Century Code, relating to parimutuel wagering.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 53-06.2-01 of the North Dakota Century Code is created and enacted as follows:

"Racing promotion fund" means a fund administered by the commission established to assist in improving and upgrading racetracks in the state, promoting horse racing in the state, and developing new racetracks in the state as necessary and approved by the commission.

SECTION 2. Three new subsections to section 53-06.2-04 of the North Dakota Century Code are created and enacted as follows:

Report biennially to the legislative council regarding the operation of the commission.

Provide notice to the North Dakota horsemen's council of meetings held by the commission and permit the North Dakota horsemen's council to participate in the meetings through placement of items on the agenda.

Complete, distribute, and post on the commission's web site the minutes of each commission meeting within thirty days of that meeting or before the next meeting of the commission, whichever occurs first.

²¹² **SECTION 3. AMENDMENT.** Subsection 4 of section 53-06.2-05 of the North Dakota Century Code is amended and reenacted as follows:

4. License all participants in the racing and simulcast parimutuel wagering industry and require and obtain information the commission deems

²¹² Section 53-06.2-05 was also amended by section 19 of Senate Bill No. 2260, chapter 115.

necessary from license applicants. Licensure of service providers, totalizator companies, site operators, and organizations applying to conduct or conducting parimutuel wagering must be approved by the attorney general. The attorney general may not grant a license denied by the commission. The commission may obtain from the bureau of criminal investigation, without charge, criminal history record information as required in the licensing process.

SECTION 4. AMENDMENT. Subsection 1 of section 53-06.2-07 of the North Dakota Century Code is amended and reenacted as follows:

1. On compliance by an applicant with this chapter and the approval of the attorney general, the commission may issue a license to conduct races. The attorney general may not grant a license denied by the commission.

SECTION 5. AMENDMENT. Subsection 4 of section 53-06.2-08 of the North Dakota Century Code is amended and reenacted as follows:

4. The commission may grant licenses to horse owners, jockeys, riders, agents, trainers, grooms, stable foremen, exercise workers, veterinarians, valets, concessionaires, service providers, employees of racing associations, and such other persons as determined by the commission. Licensure of service providers, totalizator companies, site operators, and organizations applying to conduct or conducting parimutuel wagering must be approved by the attorney general. The attorney general may not grant a license denied by the commission. License fees are as established by the commission.

SECTION 6. AMENDMENT. Section 53-06.2-10.1 of the North Dakota Century Code is amended and reenacted as follows:

53-06.2-10.1. Simulcast wagering. In addition to racing under the certificate system, as authorized by this chapter, and conducted upon the premises of a racetrack, simulcast parimutuel wagering may be conducted in accordance with this chapter ~~and interim standards that need not comply with chapter 28-32,~~ or rules adopted by the commission under this chapter in accordance with chapter 28-32. Any organization qualified under section 53-06.2-06 to conduct racing may make written application to the commission for the conduct of simulcast parimutuel wagering on races held at licensed racetracks inside the state or racetracks outside the state, or both. Licensure of service providers, totalizator companies, site operators, or organizations applying to conduct or conducting simulcast or account wagering must be approved by the attorney general. The attorney general may not grant a license denied by the commission. Notwithstanding any other provision of this chapter, the commission may authorize any licensee to participate in interstate or international combined wagering pools with one or more other racing jurisdictions. Anytime that a licensee participates in an interstate or international combined pool, the licensee, as prescribed by the commission, may adopt the take-out of the host jurisdiction or facility. The commission may permit a licensee to use one or more of its races or simulcast programs for an interstate or international combined wagering pool at locations outside its jurisdiction and may allow parimutuel pools in other states to be combined with parimutuel pools in its jurisdiction for the purpose of establishing an interstate or international combined wagering pool. The participation by a licensee in a combined interstate or international wagering pool does not cause that licensee to be considered to be doing business in any jurisdiction other than the jurisdiction in which the licensee is physically located. Parimutuel taxes or commissions may not be imposed on any amounts wagered in an interstate or

international combined wagering pool other than amounts wagered within this jurisdiction. The certificate system also permits parimutuel wagering to be conducted through account wagering. As used in this section, "account wagering" means a form of parimutuel wagering in which an individual deposits money in an account and uses the account balance to pay for parimutuel wagers. An account wager made on an account established in this state may only be made through the licensed simulcast service provider approved by the attorney general and authorized by the commission to operate the simulcast parimutuel wagering system under the certificate system. The attorney general may not grant a license denied by the commission. An account wager may be made in person, by direct telephone communication, or through other electronic communication in accordance with rules adopted by the commission. Breakage for interstate or international combined wagering pools must be calculated in accordance with the statutes or rules of the host jurisdiction and must be distributed among the participating jurisdictions in a manner agreed to among the jurisdictions.

²¹³ **SECTION 7. AMENDMENT.** Section 53-06.2-11 of the North Dakota Century Code is amended and reenacted as follows:

53-06.2-11. (Effective through June 30, 2007) Bet payoff formulas - Uses by licensee of funds in excess of expenses - Payment to general fund.

1. a. For each day of a live race meet or a simulcast day in this state on win, place, and show parimutuel pools, the licensee shall deduct up to twenty percent of the total win, place, and show pool. On the first eleven million dollars of total wagering handle in each biennium, two percent must be paid to the state treasurer to be deposited in the general fund. One-half of one percent must be paid to the North Dakota racing commission to be used for the North Dakota purse fund. One-half of one percent must be paid to the North Dakota racing commission to be used for the North Dakota breeders' fund for the respective breed of horses racing at that meet. Breakage must be paid to the North Dakota racing commission to be deposited in the promotion fund.
- b. On the wagering handle on win, place, and show wagering pools in excess of eleven million dollars in each biennium, one-sixteenth of one percent must be paid to the commission to be deposited in the purse fund; one-sixteenth of one percent must be paid to the commission to be deposited in the promotion fund; one-sixteenth of one percent must be paid to the commission to be deposited in the breeders' fund; and one-sixteenth of one percent must be paid to the state treasurer to be deposited in the general fund.

For wagering on live horse racing and simulcast wagering:

- a. In win, place, and show parimutuel pools, the licensee may deduct no more than twenty percent of the amount wagered. Of the amount wagered, the licensee shall pay:

²¹³ Section 53-06.2-11 was also amended by section 2 of House Bill No. 1324, chapter 449.

- (1) Two percent to the state treasurer to be deposited in the general fund.
 - (2) One-half of one percent to the commission to be deposited in the breeders' fund.
 - (3) One-half of one percent to the commission to be deposited in the purse fund.
 - (4) One-half of one percent to the commission to be deposited in the racing promotion fund.
 - b. In daily double, quinella, exacta, trifecta, or other combination parimutuel pools, the licensee may deduct no more than twenty-five percent of the amount wagered. Of the amount wagered, the licensee shall pay:
 - (1) Two and one-half percent to the state treasurer to be deposited in the general fund.
 - (2) One-half of one percent to the commission to be deposited in the breeders' fund.
 - (3) One-half of one percent to the commission to be deposited in the purse fund.
 - (4) One-half of one percent to the commission to be deposited in the racing promotion fund.
2. For each day of a live race meet or a simulcast day in this state for each daily double, quinella, exacta, trifecta, or other wager combining two or more horses for winning payoffs, the licensee shall deduct up to twenty-five percent of each wagering pool. Of each wagering dollar, the amounts to be deposited in the general fund and other funds are as follows:
- a. On the first eleven million dollars of wagering handle in each biennium, one-half of one percent must be paid to the commission to be deposited in the purse fund; one-half of one percent must be paid to the commission to be deposited in the promotion fund; one-half of one percent must be paid to the commission to be deposited in the breeders' fund; and two and one-half percent must be paid to the state treasurer to be deposited in the general fund.
 - b. On the wagering handle in excess of eleven million dollars in each biennium, one-sixteenth of one percent must be paid to the commission to be deposited in the purse fund; one-sixteenth of one percent must be paid to the commission to be deposited in the promotion fund; one-sixteenth of one percent must be paid to the commission to be deposited in the breeders' fund; and one-sixteenth of one percent must be paid to the state treasurer to be deposited in the general fund.

For account wagering:

- a. In win, place, and show parimutuel pools, the licensee may deduct no more than twenty percent of the amount wagered.
- (1) Before eleven million dollars is wagered in all parimutuel wagering in each biennium, of the amount wagered by account wagering in win, place, and show parimutuel pools, the licensee shall pay:
- (a) Two percent to the state treasurer to be deposited in the general fund.
 - (b) One-half of one percent to the commission to be deposited in the breeders' fund.
 - (c) One-half of one percent to the commission to be deposited in the purse fund.
 - (d) One-half of one percent to the commission to be deposited in the racing promotion fund.
- (2) After eleven million dollars is wagered in all parimutuel wagering in each biennium, of the amount wagered by account wagering in win, place, and show parimutuel pools, the licensee shall pay:
- (a) One-sixteenth of one percent to the state treasurer to be deposited in the general fund.
 - (b) One-sixteenth of one percent to the commission to be deposited in the breeders' fund.
 - (c) One-sixteenth of one percent to the commission to be deposited in the purse fund.
 - (d) One-sixteenth of one percent to the commission to be deposited in the racing promotion fund.
- b. In daily double, quinella, exacta, trifecta, or other combination parimutuel pools, the licensee may deduct no more than twenty-five percent of the amount wagered.
- (1) Before eleven million dollars is wagered in each biennium, of the amount wagered by account wagering in daily double, quinella, exacta, trifecta, or other combination parimutuel pools, the licensee shall pay:
- (a) Two and one-half percent to the state treasurer to be deposited in the general fund.
 - (b) One-half of one percent to the commission to be deposited in the breeders' fund.

- (c) One-half of one percent to the commission to be deposited in the purse fund.
 - (d) One-half of one percent to the commission to be deposited in the racing promotion fund.
 - (2) After eleven million dollars is wagered in all parimutuel wagering in each biennium, of the amount wagered by account wagering in daily double, quinella, exacta, trifecta, or other combination parimutuel pools, the licensee shall pay:
 - (a) One-sixteenth of one percent to the state treasurer to be deposited in the general fund.
 - (b) One-sixteenth of one percent to the commission to be deposited in the breeders' fund.
 - (c) One-sixteenth of one percent to the commission to be deposited in the purse fund.
 - (d) One-sixteenth of one percent to the commission to be deposited in the racing promotion fund.
- 3. Unclaimed tickets and breakage from each live race meet and simulcast program as defined by the commission and the percentage of the wagering pool to be paid to the racing promotion fund under subsections 1 and 2 must be retained by the commission in a special fund to assist in improving and upgrading racetracks in the state, for the promotion of horse racing within the state, and in developing new racetracks in the state as necessary and approved by the commission. Notwithstanding this section, the commission may receive no more than twenty-five percent of this fund for the purpose of payment of operating expenses of the commission. For wagering handle in excess of eleven million dollars in each biennium, breakage must be divided, one-third to the North Dakota racing commission to be deposited in the promotion fund, one-third to the charity operating the site where the wagers are placed, and one-third to the service provider. For all parimutuel wagering the licensee shall pay to the commission the amount due for all unclaimed tickets and all breakage to be deposited in the racing promotion fund.
- 4. The licensee conducting a ~~wagering on live race meet or racing, simulcast program~~ ~~wagering, or account wagering~~ shall retain all other money in the parimutuel pool and pay it to bettors holding winning tickets as provided by rules adopted by the commission.
- 5. A licensee may not use any of the portion deducted for expenses under subsections 1 and 2 for expenses not directly incurred by the licensee in conducting parimutuel racing under the certificate system. After paying qualifying expenses, the licensee shall use the remainder of the amount so withheld only for eligible uses allowed to charitable gambling organizations under ~~subsection 2 of section 53-06.1-11~~ 53-06.1-11.1.
- 6. The ~~racing~~ commission shall deposit the moneys received pursuant to subsections 1, 2, and 3 and from the North Dakota horse racing

foundation pursuant to subsection 5 of section 53-06.2-05 in three special funds in the state treasury. These funds must be known as the breeders' fund, the purse fund, and the racing promotion fund. Moneys, and any earnings on the moneys, in the breeders' fund, purse fund, and racing promotion fund are appropriated to the commission on a continuing basis to carry out the purposes of those funds under this chapter and must be administered and disbursed in accordance with rules adopted by the commission. The commission, upon approval of the emergency commission, may receive no more than twenty-five percent of the racing promotion fund for the payment of the commission's operating expenses.

(Effective after June 30, 2007) Bet payoff formulas - Uses by licensee of funds in excess of expenses - Payment to general fund.

1. For each day of a live race meet or a simulcast day in this state on win, place, and show parimutuel pools, the licensee shall deduct up to twenty percent of the total win, place, and show pool. One-half of one percent must be paid to the North Dakota racing commission to be used for the North Dakota purse fund. One-half of one percent must be paid to the North Dakota racing commission to be used for the North Dakota breeders' fund for the respective breed of horses racing at that meet. On the first thirty-five million five hundred thousand dollars of total wagering handle in each biennium, two percent must be paid to the state treasurer to be deposited in the general fund. On the total wagering handle in excess of thirty-five million five hundred thousand dollars in each biennium, one-half of one percent must be paid to the state treasurer to be deposited in the general fund.
2. For each day of a live race meet or a simulcast day in this state for each daily double, quinella, exacta, trifecta, or other wager combining two or more horses for winning payoffs, the licensee shall deduct up to twenty-five percent of each wagering pool. Of each wagering dollar, the amounts to be deposited in the general fund and other funds are as follows:
 - a. On the first one hundred two million four hundred thousand dollars of wagering handle in each biennium, one-half of one percent must be paid to the commission to be deposited in the purse fund; one-half of one percent must be paid to the commission to be deposited in the promotion fund; one-half of one percent must be paid to the commission to be deposited in the breeders' fund; and two and one-half percent must be paid to the state treasurer to be deposited in the general fund.
 - b. On the wagering handle in excess of one hundred two million four hundred thousand dollars in each biennium, one-half of one percent must be paid to the commission to be deposited in the purse fund; one-half of one percent must be paid to the commission to be deposited in the promotion fund; one-half of one percent must be paid to the commission to be deposited in the breeders' fund; and one-fourth of one percent must be paid to the state treasurer to be deposited in the general fund.
3. Unclaimed tickets and breakage from each live race meet and simulcast program as defined by the commission and the percentage of the

wagering pool to be paid to the racing promotion fund under subsections 1 and 2 must be retained by the commission in a special fund to assist in improving and upgrading racetracks in the state, for the promotion of horse racing within the state, and in developing new racetracks in the state as necessary and approved by the commission. Notwithstanding this section, the commission may receive no more than twenty-five percent of this fund for the purpose of payment of operating expenses of the commission.

4. The licensee conducting a live race meet or simulcast program shall retain all other money in the parimutuel pool and pay it to bettors holding winning tickets as provided by rules adopted by the commission.
5. A licensee may not use any of the portion deducted for expenses under subsections 1 and 2 for expenses not directly incurred by the licensee in conducting parimutuel racing under the certificate system. After paying qualifying expenses, the licensee shall use the remainder of the amount so withheld only for eligible uses allowed to charitable gambling organizations under subsection 2 of section 53-06.1-11.
6. The racing commission shall deposit the moneys received pursuant to subsections 1, 2, and 3 and from the North Dakota horse racing foundation pursuant to subsection 5 of section 53-06.2-05 in three special funds in the state treasury. These funds must be known as the breeders' fund, the purse fund, and the racing promotion fund. Moneys, and any earnings on the moneys, in the breeders' fund, purse fund, and racing promotion fund are appropriated to the commission on a continuing basis to carry out the purposes of these funds under this chapter and must be administered and disbursed in accordance with rules adopted by the commission.

SECTION 8. AMENDMENT. Subsection 2 of section 53-06.2-13 of the North Dakota Century Code is amended and reenacted as follows:

2.
 - a. The attorney general may audit and investigate licensed service providers and affiliated companies authorized by the commission to operate the simulcast parimutuel wagering system, totalizator companies, site operators, or organizations applying to conduct or conducting parimutuel wagering. The attorney general may:
 - (1) Inspect all sites in which parimutuel wagering is conducted.
 - (2) Inspect all parimutuel wagering equipment and supplies.
 - (3) Seize, remove, or impound any parimutuel equipment, supplies, or books and records for the purpose of examination and inspection.
 - (4) Inspect, examine, photocopy, and audit all books and records.

- b. The commission shall reimburse the attorney general for ~~all services rendered to the racing commission auditing and investigation~~. Payment for the services auditing and investigation must be deposited in the attorney general's operating fund.

Approved April 26, 2007
Filed April 27, 2007

CHAPTER 449**HOUSE BILL NO. 1324**

(Representatives S. Meyer, Boe, Kretschmar)
(Senators Marcellais, Taylor)

BREED REGISTRY AND RACING COMMISSION FUNDS

AN ACT to create and enact a new section to chapter 53-06.2 of the North Dakota Century Code, relating to the breed registry of the North Dakota racing commission; and to amend and reenact subsection 6 of section 53-06.2-11 of the North Dakota Century Code, relating to the purse, breeders', and racing promotion funds of the racing commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 53-06.2 of the North Dakota Century Code is created and enacted as follows:

North Dakota-bred registry - Contract requirements. The commission shall provide for registration of a North Dakota-bred horse for qualification for breeders' fund awards or purse supplements. The commission shall contract with a private person to maintain the registry. Through a competitive bidding process, the commission shall award the contract to the lowest responsible bidder. The cost of the contract must be paid from the breeders' fund.

²¹⁴ **SECTION 2. AMENDMENT.** Subsection 6 of section 53-06.2-11 of the North Dakota Century Code is amended and reenacted as follows:

6. The racing commission shall deposit the moneys received pursuant to subsections 1, 2, and 3 and from the North Dakota horse racing foundation pursuant to subsection 5 of section 53-06.2-05 in three special funds in the state treasury. These funds must be known as the breeders' fund, the purse fund, and the racing promotion fund. Moneys, and any earnings on the moneys, in the breeders' fund, purse fund, and racing promotion fund are appropriated to the commission on a continuing basis to carry out the purposes of those funds under this chapter and must be administered and disbursed in accordance with rules adopted by the commission. The commission may not transfer money among the funds. The commission shall distribute awards and payment supplements from the breeders' fund in the same calendar year the money was earned by the recipient. The commission shall distribute payments awarded to qualified owners and breeders from the breeders' fund without requiring owners and breeders to apply for the payments.

Approved March 21, 2007
Filed March 21, 2007

²¹⁴ Section 53-06.2-11 was also amended by section 7 of House Bill No. 1126, chapter 448.

CHAPTER 450**SENATE BILL NO. 2101**

(Judiciary Committee)

(At the request of the Attorney General)

LOTTERY TICKETS AND MOTOR VEHICLES AS PRIZES

AN ACT to amend and reenact subsections 3 and 5 of section 53-12.1-01, subsection 1 of section 53-12.1-04, sections 53-12.1-08 and 53-12.1-09, subsection 1 of section 53-12.1-11, subsection 1 of section 53-12.1-12, and subsection 2 of section 57-40.3-04 of the North Dakota Century Code, relating to the North Dakota lottery and a motor vehicle excise tax exemption for a motor vehicle to be awarded as a prize by the lottery; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 3 and 5 of section 53-12.1-01 of the North Dakota Century Code are amended and reenacted as follows:

3. "Online lottery" means a game linked to a central computer via a telecommunications network in which the player selects or is assigned a specified number or symbol or group of numbers or symbols out of a predetermined range of numbers or symbols and a winning ticket is determined by chance.
5. "Ticket" means an original and acceptable tangible evidence of play prescribed by the lottery and produced by a lottery terminal or a properly and validly registered subscription play to prove participation in a draw of a game for a chance to win a prize.

SECTION 2. AMENDMENT. Subsection 1 of section 53-12.1-04 of the North Dakota Century Code is amended and reenacted as follows:

1. There is created the lottery advisory commission, which is composed of five members, three of whom are legislators selected by the chairman of the legislative council and two of whom are selected by the attorney general. The term of office is three years, expiring on June thirtieth with no more than two terms expiring in any one year. ~~Of the first members appointed, one must be appointed for a term of one year, two must be appointed for terms of two years, and two must be appointed for terms of three years.~~ No member may be appointed to more than two consecutive terms. Each member must be a citizen of the United States and a resident of this state. A chairman of the commission must be chosen annually from the membership of the commission by a majority of its members at the first meeting of the commission each fiscal year. A member may serve as chairman for more than one year.

SECTION 3. AMENDMENT. Section 53-12.1-08 of the North Dakota Century Code is amended and reenacted as follows:

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

1. A North Dakota lottery ticket may not be bought by or otherwise provided to, and a prize may not be paid to, the following individuals or to a parent, stepparent, child, stepchild, spouse, or sibling who is a regular member of the same household of the following individuals:
 - a. A member of the lottery advisory commission or employee of the lottery, unless authorized in writing by the director; or
 - b. An officer or employee of the lottery's gaming system vendor.

A person who knowingly violates this subsection is guilty of a class B misdemeanor on the first offense and a class A misdemeanor on a subsequent offense.

2. A retailer or employee of a retailer may buy a ticket and be paid a prize for a winning ticket.
3. Only a retailer may sell a ticket. A retailer may sell a ticket only at the site stated on the license or at a temporary site for a special event authorized by the lottery. A retailer may not sell a ticket at a price greater than the price set by the lottery rules. A person convicted of violating this subsection is guilty of a class A misdemeanor on the first offense and a class C felony on a subsequent offense.
4. A retailer may conduct a second chance drawing of entry forms or ~~nonwinning~~ tickets to promote the sale of a ticket at that site provided that a person is not required to purchase a ticket to participate.
5. No ticket may be sold or given to a minor. A retailer, employee of a retailer, or any other person who knowingly violates this subsection is guilty of a class B misdemeanor on the first offense and a class A misdemeanor on a subsequent offense.
6. The prize to be paid or awarded for a winning ticket must be paid to the person who the director determines is the owner of the ticket. However, the prize of a deceased winning player must be paid to the lawful representative of the estate. No prize may be paid on a winning ticket that has been purchased by use of a stolen lottery gift certificate or acquired illegally.
7. If an individual steals a ticket or lottery gift certificate from a retailer, the individual is guilty of a class A misdemeanor. However, if the total value of the tickets or gift certificates stolen exceeds five hundred dollars, the offense is a class C felony.
8. A prize awarded is subject to state and federal income tax laws and rules.
9. A person who, with intent to defraud, falsely makes, alters, forges, passes, or counterfeits a ticket or gift certificate issued by the lottery, regardless of the amount gained, is guilty of a class C felony.

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

²¹⁵ **SECTION 4. AMENDMENT.** Section 53-12.1-09 of the North Dakota Century Code is amended and reenacted as follows:

53-12.1-09. Operating fund - Continuing appropriation - Authorization of disbursements - Report - Net proceeds. There is established within the state treasury the lottery operating fund into which must be deposited all revenue from the sale of tickets, interest received on money in the fund, and all other fees and moneys collected, less a prize on a lottery promotion, prize on a winning ticket or lottery promotion paid by a retailer, and ~~the a~~ retailer's commission. Except for moneys in the lottery operating fund appropriated by the legislative assembly for administrative and operating costs of the lottery under section 53-12.1-10, all other money in the fund is continuously appropriated for the purposes specified in this section. During each regular session, the attorney general shall present a report to the appropriations committee of each house of the legislative assembly on the actual and estimated operating revenue and expenditures for the current biennium and projected operating revenue and expenditures for the subsequent biennium authorized by this section. A payment of a prize or expense or transfer of net proceeds by the lottery may be made only against the fund or money collected from a retailer on the sale of a ticket. A disbursement from the fund must be for the following purposes:

1. Payment of a prize as the director deems appropriate to the owner of a valid, winning ticket;
2. Notwithstanding section 53-12.1-10, payment of a marketing expense that is directly offset by cosponsorship funds collected;
3. Payment of a gaming system or related service expense, retailer record and credit check fees, game group dues, and retailer commissions; and
- 3- 4. Transfer of net proceeds:
 - a. ~~Starting July 4, 2005, fifty~~ Fifty thousand dollars must be transferred to the state treasurer each quarter for deposit in the compulsive gambling prevention and treatment fund;
 - b. An amount for the lottery's share of a game's prize reserve pool must be transferred to the multistate lottery association; and
 - c. The balance of the net proceeds, less holdback of any reserve funds the director may need for continuing operations, must be transferred to the state treasurer on at least an annual basis for deposit in the state general fund.

SECTION 5. AMENDMENT. Subsection 1 of section 53-12.1-11 of the North Dakota Century Code is amended and reenacted as follows:

²¹⁵ Section 53-12.1-09 was also amended by section 1 of House Bill No. 1330, chapter 459.

1. The following information and records of the lottery are confidential:
 - a. Sales and income tax information, financial statements, and a credit report of a retailer applicant or person seeking or doing business with the lottery, and retailer application information other than the applicant's name and location;
 - b. Information related to a person owing a debt to the state or having a debt collected through a state agency that is made confidential by another state law or rule;
 - c. Internal control and security procedures, security information on a winning ticket, and information on a bid or contractual data, the disclosure of which is harmful to the efforts of the lottery to contract for goods and services on favorable terms;
 - d. Personal information on a winning player who purchases a subscription or a player who wins a prize on a winning ticket unless the player authorizes, in writing, release of the information; and
 - e. Lottery sales data, the disclosure of which is harmful to the competitive position of the lottery, retailer, or person seeking or doing business with the lottery. However, a retailer may authorize the lottery to release the retailer's lottery sales data.

SECTION 6. AMENDMENT. Subsection 1 of section 53-12.1-12 of the North Dakota Century Code is amended and reenacted as follows:

1. A claimant agency and the director shall cooperate on the setoff of a winning lottery ticket or promotional cash prize against a delinquent debt. A claimant agency is an agency of the state of North Dakota that a person owes money to or that collects money on behalf of another party to satisfy a debt. The claimant agency and director shall share necessary information, including the person's full name, social security number, and amount and type of debt, through a mutually convenient method to timely achieve a setoff of a prize.

²¹⁶ **SECTION 7. AMENDMENT.** Subsection 2 of section 57-40.3-04 of the North Dakota Century Code is amended and reenacted as follows:

2. Any motor vehicle owned by or in possession of the federal or state government or a political subdivision thereof or a motor vehicle procured by or on behalf of the North Dakota lottery that is to be awarded as a prize in a game or promotion.

Approved April 5, 2007
Filed April 5, 2007

²¹⁶ Section 57-40.3-04 was also amended by section 1 of House Bill No. 1160, chapter 534, section 4 of House Bill No. 1393, chapter 513, and section 3 of Senate Bill No. 2113, chapter 337.