

NORTH DAKOTA CHARITABLE GAMING LAWS - BACKGROUND MEMORANDUM

Section 22 of House Bill No. 1167 (copy attached as Appendix "A") directs the Legislative Council to study charitable gaming laws and rules to determine whether the laws and rules regarding taxation, enforcement, limitations, conduct, and play of charitable gaming are adequate and appropriate.

Under North Dakota Century Code (NDCC) Chapters 53-06.1 (Games of Chance) and 53-06.2 (Parimutuel Horse Racing), certain charitable organizations are permitted to conduct a limited array of games of chance. North Dakota Administrative Code Article 99-01 implements the games of chance chapter and North Dakota Administrative Code Title 69.5 implements the parimutuel horse racing chapter. This memorandum describes the history of gaming in North Dakota, from the beginning of statehood through the inception of charitable gaming in 1977, and changes to the charitable gaming laws in the 20 years since 1977.

EARLY HISTORY

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

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

Before 1976 attempts had been made to allow other forms of gaming in the state. In 1943 a bill was

defeated which would have allowed parimutuel horse racing by county fairs and similar organizations. In 1968 the voters rejected an initiated measure that would have amended the constitution to permit parimutuel betting. The 1972 Constitutional Convention proposed a new constitution that would have omitted the provision prohibiting lotteries. At the election on the proposed constitution, adoption of an alternative prohibiting lotteries and gift enterprises was disapproved, i.e., had the basic revised constitution passed, gaming would implicitly have been permitted.

ADVENT OF CHARITABLE GAMING

After passage of the constitutional amendment in 1976, a temporary law was passed by the 1977 Legislative Assembly (1977 S.L., ch. 473), followed by another temporary law by the 1979 Legislative Assembly (1979 S.L., ch. 531), and finally legislation in 1981 which was codified as NDCC Chapter 53-06.1. All three laws became effective without the approval of the Governor holding office at the time of passage. A bill passed by the 1987 Legislative Assembly added NDCC Chapter 53-06.2, allowing charitable organizations to conduct parimutuel horse racing.

Many changes have been made to the charitable gaming law during the 11 legislative sessions since passage of the constitutional amendment. During the first three interims after passage of the law in 1981, Legislative Council interim committees studied charitable gaming and suggested many of the changes that have since been made to the law. The most comprehensive proposal was that of the 1981-82 interim Political Subdivisions Committee. That committee suggested a bill that, when enacted, contained 23 sections changing various aspects of the charitable gaming law. Many of these changes are highlighted in this memorandum. Changes from that session and others have primarily affected the kinds of games that can be held, the kinds of organizations that can hold them, the allocation of expenses of conducting the games, administration of the charitable gaming law, enforcement of the charitable gaming law, and taxation of gaming proceeds. After discussing some important definitions, the remainder of this memorandum describes the changes made in each of these areas and the current state of the law.

CHARITABLE ORGANIZATIONS

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

All organizations must meet the first test in order to conduct charitable gaming. Some of these organizations also meet the second test and thus can use the net proceeds for the organization's own purpose. Other charities meet only the first constitutional test so cannot use the proceeds themselves. Instead they must give the proceeds to beneficiaries who meet the second test.

Under NDCC Section 53-06.1-01, "eligible organization" is used to generically describe all the kinds of organizations permitted to conduct games of chance.

Other statutory definitions are provided to describe the specific kinds of organizations enumerated in the constitution. Particular definitions are provided in NDCC Section 53-06.1-01 for civic and service, educational, fraternal, public-spirited, religious, and veterans' organizations, respectively. All of these terms have remained basically unchanged since the adoption of the first charitable gaming law in 1977. Except for the "public-spirited organizations" as defined in the statute, all kinds of organizations have always been required to be in existence in this state for at least two years. In 1983, on the recommendation of the 1981-82 interim Political Subdivisions Committee, a bill was passed extending the two-year rule to the public-spirited organizations as well. In 1989 legislation waived the requirement that organizations must have been in existence within this state for two years before conducting games of chance if the games of chance will only be conducted within the jurisdiction of the city or county and the organization is approved by the city or county.

In all versions of the law, the phrase "fraternal organization" has excluded high school and college fraternities. However, in 1979 college fraternities and sororities were first authorized to conduct raffles and bingo.

In 1991 the legal distinction between Class A and Class B licenseholding gaming organizations was changed. Under previous law, a Class A license could only be held by an organization that maintained a

building for use of its members and guests. Under 1991 legislation a Class A license is issued to an organization that is prohibited because of its nature from expending charitable gaming proceeds for the organization's own purposes or benefits. A Class B license is issued to an organization that is permitted to expend charitable gaming proceeds for its own uses. In 1995 the distinctions between Class A and Class B gaming organizations were eliminated.

PROCEEDS

An understanding of some terms commonly used in discussing charitable gaming activity may be useful. Most of these are defined by statute. North Dakota Century Code Section 53-06.1-01 defines gross proceeds as all cash and checks received by the charity from games of chance, sales tax on bingo cards, and admissions. For most games, this figure also represents the total risked by the bettors. However, in the game of twenty-one, bettors are paid in chips while at the table and may bet the same chip two or three times before finally losing it or cashing it in. Thus, for twenty-one "gross proceeds" is the amount the charity "won."

Another important term is "adjusted gross proceeds." This is defined by NDCC Section 53-06.1-01 as the gross proceeds minus the cash won by the bettors or (if prizes are awarded instead of money) the price of prizes. Adjusted gross proceeds is an important figure as it is used in determining tax rate and expense limits.

Another important term is "net proceeds." Under NDCC Section 53-06.1-01, net proceeds are adjusted gross proceeds minus allowable expenses and gaming tax. This is the amount that is used by the charity for qualified charitable purposes.

GAMES PERMITTED

Kinds of Games

Under the original 1977 law, the only games permitted were bingo, raffles, pull tabs, jars, and punchboards. The 1979 law added sports pools on professional sports. In 1981 charities were first permitted to conduct the game of twenty-one. In 1987 draw poker and stud poker were added to the list of permitted games. Also, that same year NDCC Chapter 53-06.2 was enacted which allows most charities to conduct horse racing under the parimutuel system. The parimutuel betting system is one in which bets are placed in a pool, a percentage is taken out for the race organizer (the charity) and taxes, and the remainder is divided up among the bettors who selected the horses finishing well enough. The definitions of qualifying organizations are similar to those under NDCC Chapter 53-06.1, except that educational organizations are omitted.

There were three additions made to the types of games in 1989. Eligible organizations were permitted to conduct calcuttas, allow off-track parimutuel betting on races held at licensed racecourses inside or outside the state, and use electronic video gaming devices in place of normal methods of playing otherwise allowable games of chance. However, legalization of electronic video gaming was referred and rejected at a special election on December 5, 1989.

In 1991 paddlewheels were added as a game of chance.

Description of the Games

Most of the games allowed in the law are described in rules adopted by the Gaming Commission. They are generally played the way similar games are played elsewhere.

Bingo

Bingo is a game in which a player plays some number of cards on which have been marked a number of squares (usually 25) in an array of columns and rows (usually 5 x 5). The familiar arrangement is to have the five columns labeled with the letters of the word "BINGO" in order. Numbers are printed in the squares, usually 1-15 in the B column, 16-30 in the I column, 31-45 in the N column, 46-60 in the G column, and 61-75 in the O column. Numbers are selected by the caller either by using an electronic number generator or by choosing a ball at random from a collection numbered 1 to 75. A player is permitted to mark on the player's card numbers that have been called by the caller. The winner is the player whose card has first been properly marked in a pattern announced before the game began.

Twenty-one

Twenty-one is a card game in which the object is to obtain a hand higher in count than the dealer's and not over 21. Ties go to the dealer. Face cards count for 10, number cards count for their value, and aces count, at the holder's option, 1 or 11.

Raffles

A raffle is a game in which tickets are sold to players, with the seller retaining a stub from each ticket. The winner is chosen by a random selection from among the collection of stubs retained from the tickets.

Pull Tabs and Punchboards

Pull tabs is the term used to refer collectively to the game pieces used in the games of jars and pull tabs. A pull tab game is typically based on a large

collection of tickets, a few of which have distinctive designs or legends designated in advance as winners, but concealed from the players. A player buys the privilege of selecting a ticket from those remaining unsold in each game. Specifics on the designs, number, and value of winning tickets are posted at the game site. Only cash prizes can be awarded.

A seal board is based on the same principle of hiding a winner. In the game a poster is labeled with a number of rows and columns that make up numbered squares. A player buys the privilege of choosing one of the squares. Previously, the winning square has been selected and its number covered with a seal. When the seal is removed, the winner is determined. Only merchandise prizes can be awarded.

A punchboard is also based on the principle of a concealed winner. It consists of a board with a number of holes containing pieces of paper or other token bearing a randomly assigned number. A player buys the privilege of selecting a piece of paper or token and wins if the number matches the posted winning number.

Sports Pools

Sports pools are a variation in the hidden winner theme. They consist of a card containing 10, 25, or 100 squares, arrayed 1 x 10, 5 x 5, and 10 x 10, respectively. A player buys the privilege of selecting one of the squares. Hidden numbers have been assigned to the squares. The winning number and square is determined by the score of a previously chosen professional sports event. Assignment of hidden numbers to squares and matching to the event's score varies among the three types of games to accommodate the existence of 10, 25, or 100 possibilities.

Poker

In draw poker and stud poker the maximum single bet is \$1 and not more than three raises of not more than \$1 each are permitted among all the players in each round of bets.

Calcuttas

Calcuttas are allowable for professional or amateur sporting events that occur within North Dakota but not for elementary, secondary, or postsecondary education events. No one under 21 years of age may place a wager on a calcutta and no one under 18 years of age may be a competitor in a calcutta pool.

Paddlewheels

A paddlewheel is a vertical wheel marked off into equally spaced sections that contain numbers or symbols, and which after being spun, uses a pointer or marker to indicate the winning number or symbol.

The maximum price per paddlewheel wager may not exceed \$2. A paddlewheel prize may not exceed \$100 per winning wager.

Changes in Rules of the Game

A number of statutory changes have been made in the rules applicable to most of the games. The rules of each game have been changed at least once.

Bingo

In 1989 the annual aggregate limit on prizes awarded in locally authorized bingo games or raffles was increased from \$2,000 to \$6,000 and a person under 18 years of age who is not accompanied by an adult was prohibited from participating in the game of bingo unless the bingo game is locally authorized or the game primary prize does not exceed \$1,000.

Twenty-one

When twenty-one was first established, the maximum allowable bet was \$2, but no minimum was specified. In 1983, to maintain the recreational aspect, and because some charities would not accept bets less than \$2, charities were required to accept bets of \$1. The original provision allowing a player to bet two hands simultaneously was also amended to permit the practice only if no other player wants to play the position that would be taken by the second hand. The other change that year was to allow players to double their bets on a natural 21 (hand containing an ace and a 10-count card). In 1989 an eligible gaming organization was allowed to establish minimum and maximum wagers for twenty-one in increments of \$1 up to a maximum of \$5 per play. Also in 1989 the requirement that a player give up one of the two hands being played if another player wanted to play was dropped.

Raffles

In 1983 prize limits were established for raffles. Award of any "in kind" prize except real estate was permitted and cash prizes were limited to \$500, with a daily limit of \$500. Three bills enacted in 1989 variously affected the holding of raffles. The cash prizes that could be awarded in raffles increased from \$500 to \$1,000 for a single prize and from \$500 to \$3,000 in the aggregate during any day. Local governments are authorized to grant permission to public-spirited organizations that do not have a state-wide gaming license to conduct raffles or bingo within the jurisdiction of the local government.

Pull Tabs and Jars

In 1983 the price per pull tab and jar ticket was limited to \$2. In 1987 two changes were made to the rules for these games. Dumping of jars is permitted

under rules adopted by the Gaming Commission. Reference to the game piece in the games was changed to "charitable gaming ticket" to accommodate the advent of licensing of manufacturers of charitable gaming tickets. In 1993 the term "charitable gaming ticket" was changed back to "pull tab."

Punchboards

Some of the changes made in 1983 and 1987 to jar ticket games also applied to punchboards. The maximum price per ticket was limited to \$2. Likewise, the 1987 allowance of "dumping" of games and changing the name of the game piece to "charitable gaming ticket" applied to punchboards. In 1995, the maximum prize value of the top tier winning pull tab or punchboard was set at \$500.

Sports Pools

When sports pools were first authorized in 1979, prize payouts were limited to two-thirds of the total amount bet and the maximum bet was set at \$5. In an effort to lessen the occurrence of illegal sports pools, in 1985 the prize payout was increased to 90 percent of the total amount bet.

Conduct of Games

Under the first law the only people permitted to conduct the games were members of the charitable organization. This restriction was retained in the 1979 version. In 1981 the restriction was removed by allowing employees of the eligible organization to operate the games. The Gaming Commission has adopted detailed rules governing the conduct of most games allowed under the law.

In 1991 employees of licensed alcoholic beverage establishments were allowed to provide limited assistance to Class B organizations; however, the organization in question could not have adjusted gross proceeds exceeding \$60,000 per quarterly reporting period. In 1995 any organization, regardless of size, was permitted to have an employee of the alcohol beverage establishment provide gaming assistance on behalf of the organization. In 1997 the persons permitted to conduct games was expanded to include an employee of a temporary employment agency who provides services to a licensed organization.

Participation in Games

Another important issue in the context of charitable gaming is who is permitted to participate in the games--whether it is the general public or some smaller group. The first law limited participation in games to members, their spouses, and bona fide guests. As in the case of conducting the games, this restriction was retained in the 1979 law. It was not until the 1981 law that the general public was

permitted to play the games and then only those run by Class B charities. Participation in games run by Class A charities was still restricted to members only. With the elimination of the distinction between Class A and Class B organizations in 1995, participation in games is open to the general public. In 1997 legislation was passed that permits the Attorney General to prohibit a person from playing games if the person violates a gaming law or rule.

Since 1983 participation in pull tabs, jars, punchboards, twenty-one, and sports pools has been limited to people at least 21 years old. Further, those games cannot be conducted when establishments serving alcoholic beverages are required to be closed. These restrictions apply even if the game site is not such a place.

EXPENSE LIMITS

Allowable expenses are deducted from adjusted gross proceeds to get net proceeds. Allowable expenses are important to the charities because expenditures in excess of the allowable limits must be made up from other contributions the charity receives. It is important to recipients of net proceeds, as a higher expense limit means there will be less net proceeds available for distribution.

At least three issues have been addressed by the Legislative Assembly in the context of expense limits. One issue is the amount of the limit. A second issue is how often the limit is computed. For example, can a charity that exceeds the limit in one quarterly tax reporting period make up for that by coming under the limit in a different quarter? A third issue is exactly what things qualify for the expense deduction and what kind of detailed record must be maintained by the charity to account for the expenditures.

In the 1977 and 1979 laws, for all organizations, expenses were limited to one-third of adjusted gross proceeds. Expenses were based on "each such occasion." The expenses were computed on a quarterly basis, on the basis of an administrative interpretation of the statutory reference to computing expenses on the basis of "each such occasion" as meaning each quarterly tax reporting period. Various items of allowable expenses were enumerated, and a deduction could not be taken for items not on the list. Specifically excluded from eligibility were overhead, capital costs, and general maintenance. Specifically included were purchases of gaming equipment, equipment repair, operating expenses (e.g., wages of jar ticket sellers), rent of a site or equipment, janitorial expenses if the site was not rented, accountants' fees, and license fees.

In the 1981 law the limit was raised to 35 percent of adjusted gross proceeds. The reference to "each such occasion" and its concomitant administrative

interpretation as referring to calendar quarters was not changed; the list of allowable items was also left unchanged.

In 1983 two expense limits were established. For charities conducting games at more than one site, the limit was increased to 38 percent of adjusted gross proceeds. Other charities were still limited to 35 percent of adjusted gross proceeds. Also, a limit was established on rent payments for the game of twenty-one. Charities were limited to rent expenditures of \$150 per twenty-one table. This limit was established in response to escalating rents being charged to charities by the host sites.

In 1985 all elements of the expense limit issue were modified--a raise in the amount, a change in the distinctions between charities, a change in the allowable items, and a change in the computation timeframe. The 1983 distinction between charities based on the number of sites was replaced. Instead, the limit for charities using net proceeds for their own use was increased to 40 percent of adjusted gross proceeds, while the limit for charities that did not use any of the net proceeds was increased to 45 percent of adjusted gross proceeds.

Another change made in 1985 was the removal entirely, for charities that did not use net proceeds for their own use, of the limitation on the allowable types of expenses. For the other charities, the list was supplemented by allowing up to \$200 per month in other overhead expenses. Finally, the quarterly expense computation period was changed to a full year. This allowed charities to "smooth out" their expenditures over the year to try to stay within the limits.

In 1987 the 45 percent expense ceiling was extended to all charities. All restrictions on deductions--both the list of excluded items and the list of permitted items--were removed.

Also in 1987 further changes were made to the rent limits. Sites where bingo is the primary game of chance conducted are not subject to any rent limits, in effect a continuation of prior law as it was silent on the subject and contained no limits. The \$150 per table limit for twenty-one rent was retained. For the first time, rent limits were established for jar bar sites. The limit is \$150 per month if twenty-one is not conducted there. For sites where twenty-one is conducted, the limit is \$50 per month plus whatever is allowed for twenty-one.

In 1989 the expense limit was changed from 45 to 50 percent of the first \$200,000 of adjusted gross proceeds that could be deducted as an expense by an eligible organization.

In 1991 maximum monthly rent for charitable gaming ticket sites was increased from \$50 to \$125 if the game of twenty-one is conducted on the site and from \$150 to \$225 if the game of twenty-one is not

conducted on the site. The maximum per table rent for twenty-one tables increased from \$150 to \$200.

In 1995 the monthly rent limit at a site involving a bingo card dispensing device was set at \$225. If an organization has a pull tab and a bingo card device at a site, the monthly rent limit is \$225 and no additional rent is allowed for the bingo card device. In addition, the 1995 legislation provided that no additional rent is allowed for a bingo card device at a site when the device is used with pull tabs or twenty-one. Also in 1995, a provision passed in the 1993 legislative session was deleted. The provision had reduced the allowable expense limit for organizations with sites at which pull tabs was exclusively conducted involving a dispensing device. The 1995 legislation removed the previous four-tier expense limit which was triggered by the amount of an organization's adjusted gross proceeds.

In addition to the standard allowable expense limit of 50 percent of the first \$200,000 of adjusted gross proceeds and 45 percent of the adjusted gross proceeds exceeding \$200,000, the 1995 legislation permitted organizations to deduct, as an expense, 2.5 percent of the adjusted gross proceeds of pull tabs.

ADMINISTRATION OF THE CHARITABLE GAMING LAW

Licensing Procedures

From the inception of charitable gaming, administration of the law has been the responsibility of the Attorney General and local officials. The phrase "licensing authority" has been used in each version of the law to refer to the Attorney General. The Attorney General has served as the primary licensing authority since 1977, and local jurisdictions have had varying roles over the years.

Under both the 1977 and 1979 laws, charities maintaining their own buildings for use by members and also serving meals and liquor were licensed by the Attorney General, while other charities were required to secure approval from local officials to operate their games.

The role of the Attorney General's office as the lead agency for charitable gaming was strengthened in the 1981 law by making the Attorney General the focal point for all requests to conduct charitable gaming. Local approval could still be obtained for raffle and bingo games in which the main prize did not exceed \$1,000 and for which the total of all prizes did not exceed \$2,000. Otherwise, licensing by the Attorney General was required. However, even in the case of the smaller bingo and raffle games, charities were required to obtain necessary application forms from the Attorney General.

The licensing procedure was rearranged and a two-tiered license system was established in 1981. Class A licenses were issued to charities that maintained a building for their own use and which served meals or liquor--in other words, the ones that had previously been the only ones required to obtain a license from the Attorney General. All other charities were granted Class B licenses. The Attorney General was granted authority to deny a Class B license to an applicant that also had an alcoholic beverage retail license. Class A licenses were limited to one site, although the Attorney General was permitted to issue a special permit for a single occasion at a different site. In 1983 this provision was amended to clarify that the special permit could be issued only once in a licensing year. Effective July 1, 1986, additional license classes were established. Class C licenses were issued to charities that conduct not more than two occasions per year, regardless of whether they had an alcoholic beverage license. The Attorney General was required to establish by rule not more than two additional classes of license based on frequency of gaming, types of games, and adjusted gross proceeds. The Attorney General had established by rule a Class E license for organizations desiring to conduct the game of poker. In 1993 the Gaming Commission was given the authority to adopt rules to implement additional license classes.

Under a 1995 law, the tiered licensing system was eliminated. Effective July 1, 1995, the same licensing classification applied to all organizations. The annual license fee was standardized at \$150 for all organizations. Previously, the license fee for an organization whose annual gross proceeds did not exceed \$25,000 was \$100. Other organizations paid \$150.

Regulation of Gaming Equipment

Although most of the statutes and administrative rules deal with conducting or participating in games of chance, there is some regulation of the manufacturers and distributors of equipment particularly designed for games of chance.

Since the first law in 1977, distributors of gaming equipment have been required to obtain, for an annual \$1,000 fee, a license from the Attorney General, charities have been restricted to buying gaming equipment from licensed distributors, and distributors have also been prohibited from holding alcoholic beverage licenses. Likewise, manufacturers of gaming equipment have been required to obtain licenses from the Attorney General on essentially the same conditions as distributors.

The rules applicable to manufacturers and distributors were changed in 1987 in response to problems with quality control of pull tabs and the possibility that manufacturers might be reluctant to

supply equipment in North Dakota, some of which is rarely sold, if required to pay a \$1,000 license fee. Pull tab manufacturers were the only manufacturers required to obtain a manufacturer's license and the fee was reduced to \$250. In 1989 a manufacturer of pull tabs or paper bingo cards was required to apply for an annual license, the fee for which was increased to \$2,000. In 1991 legislation was enacted that clarified the language passed in 1989 and requires a manufacturer of both gaming tickets and paper bingo cards to only pay one fee of \$2,000. Manufacturers of all kinds of gaming equipment are permitted to sell equipment in North Dakota only through licensed distributors, for whom the license fee is \$1,500. The scope of the manufacturers' licensing requirement was also narrowed by the 1987 legislation by excluding resident printers of raffle tickets from the definition. Finally, the rulemaking authority of the Attorney General was expanded to include quality standards for manufacture of pull tabs.

In 1993 the classification of "manufacturer's distributor" was added to mean a wholesaler of a manufacturer of pull tab dispensing devices who sells the devices at wholesale to a licensed distributor and who does not sell or provide the devices to an eligible organization. A manufacturer's distributor was assessed a license fee of \$500.

House Bill No. 1167 (1997) increased the annual license fee for a manufacturer of pull tabs, paper bingo cards, or pull tab dispensing devices from \$2,000 to \$4,000.

Role of Local Officials

Local government officials have had a role in charitable gaming since the first law. As mentioned, they were the primary approving agency for what were known as Class B charities. Also, they have since 1979 been the primary approving agency for raffles and bingo conducted by college fraternities and sororities. Although the Attorney General now licenses charities, local officials are still involved in charitable gaming.

When licensing authority for Class B charities was transferred to the Attorney General, local authorities were given an effective veto power over the charities they formerly approved. This was because approval by the local officials "must accompany the license application to the attorney general." This requirement was extended to all charities effective in 1986. Consequently, local officials have a pivotal role in controlling charitable gaming, including the number and types of games. Even before the change in the law requiring charities to obtain a license from the Attorney General, rules of that office granted extensive authority to local officials for the other charities. All license applications were required to obtain

acknowledgment from the local police chief and to allow local law enforcement officers to enter the site to observe the games.

Another area of significant local control is work permits. Since 1983 local jurisdictions have been permitted to require charitable gaming employees to obtain a local work permit. The change was suggested by the Attorney General to the 1981-82 interim Political Subdivisions Committee and eventually included in the legislation recommended by that committee.

ENFORCEMENT OF THE CHARITABLE GAMING LAW

Since the 1977 law responsibility for enforcement of the charitable gaming law has been shared by the Attorney General and local officials. In 1991 the Legislative Assembly passed legislation that provided for the Gaming Commission to have an increased role in charitable gaming enforcement. Enforcement attention has been directed both at preventing crimes and at ensuring compliance with the many requirements of the law.

Primary difficulties encountered in preventing crimes are the volume of activity and subtlety of some of the cheating methods. Likewise the subtlety of cheating has caused enforcement difficulties. The Gaming Commission has adopted extensive rules governing accounting procedure and auditing methods to increase opportunities to prevent and detect cheating by players or gaming personnel.

In 1991 a State Gaming Commission was created consisting of a chairman and four other members appointed by the Governor with the consent of the Senate. The bill provided that the Gaming Commission would share authority with the Attorney General to impose fines on organizations, distributors, and manufacturers who violate any provisions of law or rule and to suspend or revoke a charitable gaming distributor's or manufacturer's license for violation of any provision of law or rule. In 1993, however, the sole authority to impose fines and to suspend or revoke licenses was returned to the Attorney General. The commission is given full authority for adoption of rules to implement the charitable gaming laws.

In 1993, as a means of preventing and detecting cheating in the game of twenty-one, organizations with adjusted gross proceeds exceeding \$10,000 per quarter and that accepted wagers exceeding \$2 are required to install surveillance equipment.

The 1997-99 budget for the Gaming Division of the Attorney General's office includes a full-time equivalent (FTE) staff of 20 people. Total budgeted salaries and wages amount to \$1,341,984. The total funding to the Gaming Division is \$2,948,865 for the 1997-99

biennium. This amount includes \$1,014,152 in local gaming enforcement grants.

TAXATION OF CHARITABLE GAMING PROCEEDS

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

Local jurisdictions were first given a share of the tax revenue in 1983. The share amounted to two percent of adjusted gross proceeds, payable to the city in which the site was located, or to the county for sites outside city limits; use by local jurisdictions was limited to enforcing the charitable gaming law. That year also saw the advent of the graduated tax. After the first \$600,000 of adjusted gross proceeds, the tax increased to 20 percent of adjusted gross proceeds. The purpose of the higher tax was to discourage large scale charitable gaming.

In 1989 the tax structure was changed to increase from 45 to 50 percent of the first \$200,000 of adjusted gross proceeds the amount that may be deducted for expense by eligible organizations. The charitable gaming tax on adjusted gross proceeds of an organization was revised from five percent on the first \$600,000 per quarter and 20 percent of the amount in excess of \$600,000 per quarter to a tax of five percent on the first \$200,000 of adjusted gross proceeds per quarter, 10 percent on adjusted gross proceeds from \$200,000 to \$400,000 per quarter, 15 percent on adjusted gross proceeds from \$400,001 to \$600,000 per quarter, and 20 percent on adjusted gross proceeds in excess of \$600,000 per quarter. Changes were made in the allocation of games of chance tax revenue from two-fifths of taxes collected within the city or county to a total of \$170,000 per quarter to be allocated in proportion to the adjusted gross proceeds within that jurisdiction, compared to total adjusted gross proceeds in the state.

In 1993 the share of the tax proceeds given to local jurisdictions was eliminated and the entire amount was allocated to the general fund. Also in 1993, the excise tax on the adjusted gross proceeds from the sale of pull tabs was increased from two percent to four and one-half percent.

REVENUE

The Office of Management and Budget at the end of the 1997 legislative session estimated the gaming

revenues for the 1997-99 biennium to be \$22,625,000. Estimated gaming revenues for the 1995-97 biennium were \$23,262,000.

Attached as Appendix "B" is an analysis of gaming activity for the 1996 calendar year and of all gaming activity from April 1, 1977, through December 31, 1996.

LEGISLATIVE COUNCIL STUDIES

Although the first three charitable gaming enactments did not result from Legislative Council studies, there were Legislative Council studies in each of the first three interims after passage of the permanent law in 1981. Each study produced a number of changes to the law, most of which have already been described in this memorandum. On the other hand, each study also included recommendations that were not adopted in the following session and some of which have never been adopted.

1981-82 Interim

The first interim committee to tackle the topic was the 1981-82 interim Political Subdivisions Committee. The subject was assigned to the committee by the Legislative Council chairman. The study was directed to be limited to the appropriate scope of charitable gaming, the appropriate level of enforcement of the gambling statutes provisions, the appropriate level of taxation, and the appropriate portion of the proceeds to be devoted to charitable purposes.

The committee consolidated all its recommendations into a single bill. With few modifications, almost all the proposals of the interim committee were adopted. Those adopted as proposed included (1) applying the two-year rule to "other public-spirited organizations"; (2) limiting participation by people under 21 years of age; (3) the \$1 twenty-one bet; (4) local limitations on numbers of twenty-one tables and types of games; and (5) allocation to local jurisdictions of tax of two percent of the adjusted gross proceeds. Modified proposals included (1) increasing the local licensing fee from \$10 to \$150 (increased to \$100); and (2) a four-tiered graduated tax system (a two-tiered system was adopted).

The proposal that required an annual permit fee of \$20 to the siting authority for a permit for each blackjack table on each site where games of chance were conducted was not adopted.

1983-84 Interim

The next interim saw the creation of a committee just for the purpose of studying the issue, the Charitable Gambling Committee. Many of that committee's recommendations also became law. The committee recommended a 40 percent expense limit.

That was modified so that some charities were allowed 45 percent. The committee's recommendation that the accounting period for expenses be changed to a whole year was adopted.

The committee considered a number of possible solutions to the rent limit problem. It noted that the \$150 per table limit for twenty-one had not eliminated site pirating. The committee's recommended solution to the problem was to limit rent to the lesser of 2.5 percent of adjusted gross proceeds or \$150 per table, exempting bingo sites. Although this recommendation was not passed, a variation on it was passed in 1987. Another remedy recommended by the committee was a mandatory two-month waiting period before a host site could change charities. The rationale of this recommendation was to create a high transaction cost for sites and charities engaging in site pirating. This recommendation was defeated.

Another dilemma addressed by the committee was illegal sports pools. The committee's recommendation of increasing the payback on the pools from 67 percent to 90 percent was adopted, as was its recommendation to allow local licensing of sports pools.

That committee also gave considerable deliberation to use of the local jurisdiction's share of the gambling tax. The committee received testimony pointing out that the tax was placed in local general funds. The committee noted its disapproval of this practice but decided against recommending a bill draft that would have required the Attorney General to approve of local jurisdictions' uses of their share of the tax.

Another topic considered by the committee was whether distribution of proceeds from charitable gaming to out-of-state beneficiaries should be permitted or whether distributions should be restricted to in-state beneficiaries. The committee, however, made no recommendation regarding this issue.

1985-86 Interim

Consideration of charitable gaming was assigned to the Law Enforcement Committee in the 1985-86 interim. That committee noted the continuing difficulty in supplying the Attorney General with enough funding and personnel to enforce the law adequately. The committee recommended establishment of a Charitable Gaming Commission with general supervisory authority over charitable gaming. The committee also recommended an appropriation of \$891,360. The recommended bill was supported by the Attorney General's office but was opposed by those who felt that the existing system of enforcement and investigation was adequate but lacking in sufficient funding. This bill failed to pass the Senate.

The committee also recommended another bill that, instead of providing an independent commission, would designate the entire state share of the tax as a dedicated fund for the Attorney General's office for charitable gaming law enforcement. This bill became law.

The method of taxing was another issue considered by this committee. One reported problem with the tax based on adjusted gross proceeds was the possibility of skimming by dishonest operators and a loss of state revenue. The committee recommended a tax on adjusted gross proceeds as a step toward solving the problem. The bill was defeated.

A recurring topic of concern, rent limits, was also addressed by this committee. From it came a bill that established a rent limit of \$150 a month for jar bar and pull tab sites. With minor modifications this bill became law.

Other proposals of that committee included (1) a limit on pull tab and jar prizes to highest denomination winner of \$500; (2) a prize limit on bingo of \$5,000 or total of \$10,000 in a game; and (3) licensing of manufacturers of gaming tickets. The recommendations to limit pull tab and jar prizes and the licensing of manufacturers of gaming tickets became law, while the bingo prize limit was not enacted.

Also included in the issues recommended for study by the committee was the use of charitable gaming proceeds. The committee, however, apparently received little testimony on this issue and made no recommendations regarding the use of gaming proceeds.

1989-90 Interim

The interim Judiciary Committee was directed to study the uses to which proceeds from charitable gaming were made and to review the laws governing charitable gaming with an emphasis on gaming laws passed after 1987.

The 1989-90 interim Judiciary Committee recommended seven bills relating to charitable gaming issues. The committee recommended the following:

1. Allow charitable organizations to deduct federal gaming excise taxes from the organization's gross proceeds;
2. Develop a demonstration program for the treatment and rehabilitation of compulsive gambling;
3. Provide a descriptive list of eligible uses for the net proceeds of charitable gaming;
4. Changes to the legal distinction between Class A and Class B gaming organizations;
5. Clarify that manufacturers of both charitable gaming tickets and bingo cards were to be subject to a single \$2,000 license fee;

6. Leave it within the sole discretion of each charitable gaming licensee whether to require the pooling of tips by twenty-one dealers; and
7. Establish a State Gaming Commission.

Of the seven recommended bills, only the bill concerning compulsive gambling failed to pass.

1991-92 Interim

The interim Judiciary Committee was directed to study charitable gaming laws and rules. The committee's considerations centered upon two issues--the use of moneys by eligible organizations for investigative purposes and nonsufficient fund checks received by gaming organizations. The 1991-92 interim Judiciary Committee made no recommendations as a result of its study of charitable gaming issues.

1993-94 Interim

Consideration of laws and rules regarding charitable gaming and the effects of Indian gaming on charitable gaming was assigned to the interim Judiciary Committee during the 1993-94 interim.

The committee concentrated on six issues--the 2.5 percent increase in the pull tab excise tax passed in 1993; the wager limit for twenty-one; video surveillance of twenty-one sites; compulsive gambling; effects of charitable gaming on the private sector; and Indian gaming. The committee recommended four bills relating to charitable gaming including the following:

1. Permit an organization that conducts the game of pull tabs to deduct as an expense 2.5 percent of the adjusted gross proceeds for the game of pull tabs;
2. Provide for an increase in the wager limit to \$25 for the game of twenty-one;
3. Provide for the ratification of tribal-state gaming compacts executed before February 1993; and
4. Direct the Legislative Council to study the tribal-state gaming compact negotiation process.

Only the bill regarding the increase in the wager limit for twenty-one failed to pass during the 1995 legislative session; however, the bill relating to the ratification of the tribal-state gaming compacts was vetoed by the Governor after the session ended.

1995 LEGISLATION

This portion of the memorandum summarizes 1995 legislation that passed and which affected charitable gaming.

- **Eligible Use** (NDCC Section 53-06.1-01(6)(d)(11)) - A new eligible use enables net proceeds to be used to relieve, improve, and advance the physical and mental

conditions, care and medical treatment, health and economic interests of injured or disabled veterans.

- **License Fee** (NDCC Section 53-06.1-03(2)(b)) - The annual license fee is standardized at \$150 for all organizations. Previously, the license fee for an organization whose annual gross proceeds did not exceed \$25,000 was \$100. Other organizations paid \$150.
- **Deletion of Class A and Class B License Classifications** (NDCC Section 53-06.1-03(3)) - The two provisions that treat Class A and Class B organizations differently were deleted in the 1995 session.
- **Organizations Limited to 25 Sites** (NDCC Section 53-06.1-03(4)(b)) - Effective July 1, 1995, an organization is limited to 25 sites. However, the Attorney General may waive the law and allow an organization five additional sites if no other organization desires to conduct games at the sites for which a waiver is being sought.
- **Rent Limit for a Bingo Card Dispensing Device** (NDCC Section 53-06.1-03.1) - If bingo is conducted at a site involving a bingo card dispensing device and no other game is conducted, the monthly rent limit is \$225. This is the same rent limit as a pull tab device. If an organization has a pull tab and a bingo card device at a site, the monthly rent limit for the pull tab device is \$225 and no additional rent is allowed for the bingo card device. No additional rent is allowed for a bingo card device at a site when the device is used with pull tabs and/or twenty-one.
- **Deletion of \$80,000 Adjusted Gross Proceeds Limit on Class B Organizations' Use of Dispensing Devices** (NDCC Section 53-06.1-06(1)) - The legislation enables any organization, regardless of size, to conduct pull tabs and bingo involving a dispensing device and have an employee of an alcoholic beverage establishment redeem winning pull tabs and bingo cards on behalf of the organization. Previous law prohibited a Class B organization that has adjusted gross proceeds exceeding \$80,000 per quarter from having employees of an alcoholic beverage establishment provide assistance to the organization.
- **Replacement of the Work Permit System** (NDCC Section 53-06.1-06(7)) - The legislation shifts the burden of screening employees from the Attorney General's office to distributors and organizations. Under a new procedure, the Attorney General would conduct a criminal history background check of all potential new

employees and transmit the information to the distributor or organization.

- **Deletion of a Four-Tier Expense Limit** (NDCC Section 53-06.1-11(3)) - The legislation deleted a provision passed in the 1993 legislative session that reduced the allowable expense limit for organizations with sites at which pull tabs was exclusively conducted involving a dispensing device. The previous four-tier expense limit, which was triggered by the amount of an organization's quarterly adjusted gross proceeds, was 50 percent, 45 percent, 40 percent, and 35 percent.
- **Increase in Allowable Expenses** (NDCC Section 53-06.1-11(4)) - In addition to the standard allowable expense limit of 50 percent of the first \$200,000 of adjusted gross proceeds and 45 percent of adjusted gross proceeds exceeding \$200,000, organizations are permitted to deduct, as an expense, 2.5 percent of the gross proceeds of pull tabs.
- **Class C Felony Offense** (NDCC Section 53-06.1-16.1(4)) - The legislation made it a Class C felony offense if a person uses a fraudulent scheme or technique to cheat or skim involving pull tabs, regardless of the amount gained. Previously, a Class C felony offense only applied to twenty-one and bingo.

1997 LEGISLATION

Passed 1997 Legislation

A study of charitable gaming was not conducted during the 1995-96 interim; however, the interim Judiciary Committee did study Indian gaming and the tribal-state compact negotiation process. This portion of the memorandum summarizes the 1997 legislation that passed and which affects charitable gaming.

House Bill No. 1003 increases the annual license fee from \$2,000 to \$4,000 for a manufacturer of pull tabs, paper bingo cards, and pull tab dispensing devices.

House Bill No. 1167 contains numerous provisions that affect charitable gaming including the following:

- **Conditional Site Authorization** - This new provision prohibits a city or county from issuing a certain type of conditional site authorization. A city or county can no longer require an organization, as a condition for being authorized to conduct games at a site within that city or county, to donate a certain percent or amount of the net proceeds earned from that site to that city's or county's programs or services.

- **Exception to the Limit of 25 Sites** - This provision provides a condition exception to the limit

of 25 gaming sites per organization. An organization may not have more than 25 sites provided that each additional site is temporarily authorized for 14 or fewer consecutive days for not more than two events per quarter.

- **Temporary Employment Agency** - Under this provision, an organization may use an employee of a temporary employment agency to conduct games at a site.
- **Limit on Bingo Prizes** - This new provision limits the amount of bingo prizes that an organization may award at a site where bingo is not the primary game. An organization may not pay bingo prizes in which the total bingo prizes exceed total bingo gross proceeds for a period prescribed by rule.
- **Age of Calcutta Competitor** - This provision clarifies the law that a player cannot place a wager on a competitor in a calcutta sporting event unless the competitor is age 18 or older.
- **Paddlewheel Tickets Not Required** - Under this provision, an organization is no longer required to use paddlewheel tickets if the prize is a variable multiple of a player's wager.
- **Allowable Expense Limit** - This provision enables the Gaming Commission to authorize by rule an increase in the allowable expense limit for capital expenditures for security or video surveillance equipment.
- **Use of Net Proceeds for Tourism by a Chamber of Commerce** - This provision enables a chamber of commerce to use net proceeds to promote tourism. Under current law, other organizations may use net proceeds to promote tourism.
- **Authority of Attorney General** - This provision authorizes the Attorney General to require a representative of a licensed organization or distributor to participate in training or for good cause prohibit a person from being involved in gaming as an employee or volunteer.
- **Manufacturer's Distributor** - A provision that referenced a "manufacturer's distributor" of pull tab dispensing devices was deleted. The term was adopted by the 1993 Legislative Assembly for one company that discontinued operating in North Dakota.
- **Liquor License May Be Suspended, Revoked, or Denied** - A provision that prohibited an organization from having its liquor license suspended, revoked, or denied as a result of violating a gaming law or rule was repealed because of a conflict with the law and rules

governing licensing of alcoholic beverage establishments.

House Bill No. 1282 authorizes live beef or dairy cattle as a raffle prize and became effective April 1, 1997.

Senate Bill No. 2318 appropriated \$150,000 to the Department of Human Services to contract with qualified treatment service providers for compulsive gaming prevention, awareness, crisis intervention, rehabilitation, and treatment services.

Defeated 1997 Legislation

The bills regarding gaming that were introduced during the 1997 legislative session but which were defeated are as follows:

House Bill No. 1080 would have provided that gaming does not include lawful contests in which the entrant makes decisions based on the entrant's knowledge of the skill, speed, strength, or endurance of others in which awards are made only to entrants or to owners of entries.

Senate Bill No. 2274 would have permitted the site owner to contract with the charitable organization regarding site rental for certain games of chance.

Senate Bill No. 2363 would have changed the amount of racing proceeds that could be used to promote racing in the state.

SUGGESTED STUDY APPROACH

As Section 22 of House Bill No. 1167 directs the interim Judiciary Committee to examine the laws and rules regarding the taxation, enforcement, limitations, conduct, and play of charitable gaming, the committee may request the Attorney General, representatives of the gaming industry, and the public to present their views on the charitable gaming industry.

The Attorney General could be requested to present information on areas of concern in the gaming industry including:

- Types of enforcement actions;
- Investigations and prosecutions;
- Concerns regarding the conduct and play of the games;
- Concerns regarding taxation and expense limits; and
- Trends in the charitable gaming industry.

Representatives of the gaming industry and the public could be given the opportunity to describe areas of concern in the charitable gaming laws and rules.

ATTACH:2

term of a local permit or license is guilty of a class A misdemeanor. If convicted, the person forfeits any gaming license or local permit issued to it pursuant to this chapter and is ineligible to reapply for a gaming license or local permit for a period of time determined by the attorney general. ~~Notwithstanding section 5-02-02, an eligible organization that possesses a license issued under chapter 5-02 may not have that license suspended, revoked, or denied in consequence of action taken under this section.~~

2. It is unlawful for a person playing or conducting a game:
- a. To use bogus or counterfeit chips or pull tabs, or to substitute or use any game, cards, pull tabs, or game piece that have been marked or tampered with.
 - b. To employ or have on one's person any cheating device to facilitate cheating in any game, or to attempt to commit or commit a theft, or to assist in committing any other fraudulent scheme.
 - c. To willfully use any fraudulent scheme or technique, including when a person directly or indirectly solicits, provides, or receives inside information of the status of a game of pull tabs for the benefit of any person.
 - d. To alter or counterfeit a site authorization, license, or North Dakota gaming stamp.
 - e. To knowingly cause, aid, abet, or conspire with another person or to cause any person to violate this chapter or a gaming rule.

A person violating this subsection is guilty of a class A misdemeanor unless the total amount gained through the use of these items, schemes, or techniques resulted in a person obtaining over five hundred dollars, then the offense is a class C felony. However, if a person uses a fraudulent scheme regarding soliciting, providing, or receiving inside information involving the game of pull tabs or uses a fraudulent scheme or technique to cheat or skim involving pull tabs, twenty-one, or bingo, regardless of the amount gained, the offense is a class C felony.

SECTION 21. REPEAL. Section 53-06.1-15.3 of the North Dakota Century Code and sections 53-06.1-01.2, 53-06.1-02, 53-06.1-03.1, 53-06.1-03.2, 53-06.1-03.3, 53-06.1-05.1, 53-06.1-06.1, 53-06.1-07, 53-06.1-07.1, 53-06.1-12.1, 53-06.1-12.2, 53-06.1-13, 53-06.1-13.1, 53-06.1-15, 53-06.1-15.2, 53-06.1-15.4, 53-06.1-16.1, 53-06.1-16.2, and 53-06.1-17 of the 1995 Supplement to the North Dakota Century Code are repealed.

SECTION 22. CHARITABLE GAMING INDUSTRY STUDY. The legislative council shall study the charitable gaming laws and rules to determine whether the laws and rules regarding taxation, enforcement, limitations, conduct, and play of charitable gaming are adequate and appropriate. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-sixth legislative assembly.

NORTH DAKOTA GAMES OF CHANCE

APPENDIX "B"

Analysis of Gaming Activity
For the Calendar Year Ended December 31, 1996

	<u>Gross Proceeds</u>	<u>Prizes</u>	<u>Adjusted Gross Proceeds</u>
Bingo	\$54,823,399	\$45,654,389	\$9,169,010
Bingo (Dispensing Devices)	110,490	98,439	12,051
Raffles	1,806,083	726,604	1,079,479
Pull Tabs (Jar Bar)	133,598,388	105,930,401	27,667,987
Pull Tabs (Dispensing Devices)	57,993,705	45,436,987	12,556,718
Punchboards	39,388	26,674	12,714
Sports Pools	138,895	110,354	28,541
Twenty-one	38,837,057	31,282,875	7,554,182
Calcuttas	99,854	85,426	14,428
Paddlewheel	639,522	532,833	106,689
Poker	1,004	0	1,004
	<hr/>	<hr/>	<hr/>
Totals	\$288,087,785	\$229,884,982	\$58,202,803
Plus:			
Interest Earned			77,594
Cash Long			12,005
			<hr/>
			\$89,599
Less:			
ND Excise Tax			8,257,656
Federal Excise Tax			160,266
Bingo Sales Tax			1,559,809
Uncollected Checks			27,722
			<hr/>
			\$10,005,453
			Total Adjusted Gross Proceeds
			\$48,286,949
Less:			
ND Gaming Tax			3,189,368
Allowable Expenses			28,332,697
			<hr/>
			Total Deductible Expenses
			\$31,522,065
			Net Proceeds Earned
			\$16,764,884
			Eligible Use Contributions
			\$18,661,205

SUMMARY OF GAMING ACTIVITY
April 1, 1977, through December 31, 1996

Gross Proceeds		\$3,345,400,163
Prizes		2,715,018,778
Adjusted Gross Proceeds		<hr/>
		\$630,381,385
Plus: Interest Earned	1,272,709	
Less: Cash Short	2,554,417	
ND Excise Tax	39,674,033	
Federal Excise Tax	928,858	
Bingo Sales Tax	1,559,809	
Uncollected Checks	27,722	
	<hr/>	
Total Adjusted Gross Proceeds		\$586,909,255
Less:		
ND Gaming Tax	36,427,423	
Allowable Expenses	272,194,492	
	<hr/>	
Total Deductible Expenses		\$308,621,915
Net Proceeds Earned		\$278,287,340
Eligible Use Contributions		\$277,594,631