SPORTS AND AMUSEMENTS

CHAPTER 377

SENATE BILL NO. 2286

(Senators Sorvaag, Miller)
(Representative Boehning)

AN ACT to amend and reenact sections 53-01-02, 53-01-07, and 53-01-09 of the North Dakota Century Code, relating to the duties of the state commissioner of combative sports.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 53-01-02 of the North Dakota Century Code is amended and reenacted as follows:

53-01-02. Administration by secretary of state - Appointment of ~~athletic advisory board and mixed fighting style advisory board~~commission of combative sports.

The secretary of state shall act as state ~~athletic~~ commissioner of combative sports and administer this chapter. The secretary of state may appoint ~~an athletic advisory board~~a commission of combative sports to assist and advise the secretary of state in matters relating to the regulation of boxing, kickboxing, mixed fighting style competition, and sparring. ~~The secretary of state also may appoint a mixed fighting style advisory board whose members may include one or more members of the athletic advisory board.~~ The secretary of state shall define the duties of ~~each board~~the commission. ~~Board~~Commission members are not entitled to compensation, except for reimbursement for actual and necessary expenses at the same rate as allowed state employees incurred in performing their official duties.

SECTION 2. AMENDMENT. Section 53-01-07 of the North Dakota Century Code is amended and reenacted as follows:

53-01-07. Duties of state ~~athletic~~ commissioner of combative sports.

The secretary of state shall supervise all boxing, kickboxing, mixed fighting style competitions, or sparring exhibitions held in the state and may:

1. Adopt, at any time, combined rules governing the conduct of boxing, kickboxing, mixed fighting style competitions, and sparring exhibitions. In lieu of adopting combined rules the secretary of state may regulate the conduct of any boxing, kickboxing, mixed fighting style, or sparring match, competition, or exhibition through the use of the most recent uniform rules of boxing and the unified rules of mixed martial arts published by the association of boxing commissions.

2. Establish license fees for all boxers, kickboxers, mixed style fighters, boxing, kickboxing, and mixed fighting style competition promoters, managers, judges,

timekeepers, cornerpersons, knockdown counters, matchmakers, and referees or other participants.

3. Establish 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~~commission of combative sports. A fee established under this subsection may not exceed 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, but in no event may the fee be less than five hundred dollars.

SECTION 3. AMENDMENT. Section 53-01-09 of the North Dakota Century Code is amended and reenacted as follows:

53-01-09. Fees paid into special fund - Continuing appropriation.

All fees collected by the secretary of state pursuant to this chapter must be deposited in a special fund maintained in the state treasury. All money deposited in the fund is appropriated as a continuing appropriation to the secretary of state for administering this chapter and for the compensation and expenses of members of the ~~athletic advisory board and the mixed fighting style advisory board~~commission of combative sports.

Approved April 20, 2011
Filed April 20, 2011

CHAPTER 378

SENATE BILL NO. 2042

(Legislative Management)
(Judiciary Committee)

AN ACT to amend and reenact subsection 1 of section 53-06.1-01 and sections 53-06.1-11, 53-06.1-12, and 53-06.1-12.3 of the North Dakota Century Code, relating to consolidation of gaming taxes and allowable expenses; and to provide for a legislative management study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[128] **SECTION 1. AMENDMENT.** Subsection 1 of section 53-06.1-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "Adjusted gross proceeds" means gross proceeds less cash prizes, cost of merchandise prizes, ~~bingo cards excise tax, pull tab excise tax,~~gaming tax, and federal excise tax imposed under section 4401 of the Internal Revenue Code [26 U.S.C. 4401].

SECTION 2. AMENDMENT. Section 53-06.1-11 of the North Dakota Century Code is amended and reenacted as follows:

53-06.1-11. Gross proceeds - Allowable expenses - Rent limits.

1. All money received from games must be accounted for according to the gaming rules. Gaming activity for a quarter must be reported on a tax return form prescribed by the attorney general. Unless otherwise authorized by the attorney general, the purchase price of a merchandise prize must be paid from a gaming bank account by check. No check drawn from a gaming or trust bank account may be payable to "cash" or a fictitious payee. A cash prize that exceeds an amount set by rule must be accounted for by a receipt prescribed by the gaming rules.

2. Allowable expenses may be deducted from adjusted gross proceeds. The allowable expense limit is ~~fifty-one~~sixty percent of the ~~first two hundred thousand dollars of~~ adjusted gross proceeds per quarter ~~and forty-five percent of the adjusted gross proceeds in excess of two hundred thousand dollars per quarter. In addition, an organization may deduct as an allowable expense:~~

   ~~a. Two and one-half percent of the gross proceeds of pull tabs.~~

   ~~b. Capital expenditures for security or video surveillance equipment used for controlling games if the equipment is required by section 53-06.1-10 or authorized by rule, and it is approved by the attorney general.~~

   ~~c. If an organization's total actual expenses exceed the allowable expenses provided by this subsection, the organization may also deduct the~~

[128] Section 53-06.1-01 was also amended by section 1 of House Bill No. 1380, chapter 379.

~~expenses up to two additional percent of the first two hundred thousand dollars of adjusted gross proceeds per quarter~~.

3. Cash shorts incurred in games and interest and penalty are classified as expenses.

4. For a site where bingo is conducted:

   a. ~~Except under subdivision c, if~~If bingo is the primary game, the monthly rent must be reasonable.

   b. If bingo is not the primary game, but is conducted with twenty-one, paddlewheels, or pull tabs, no additional rent is allowed.

   ~~c. If bingo is conducted through a dispensing device and no other game is conducted, the monthly rent may not exceed two hundred seventy-five dollars.~~

5. For a site where bingo is not the primary game:

   a. If twenty-one or paddlewheels is conducted, the monthly rent may not exceed two hundred dollars multiplied by the necessary number of tables based on criteria prescribed by gaming rule. For each twenty-one table with a wager greater than five dollars, an additional amount up to one hundred dollars may be added to the monthly rent. If pull tabs is also conducted involving a jar bar or dispensing device, but not both, the monthly rent for pull tabs may not exceed an additional one hundred seventy-five dollars. If pull tabs is conducted involving both a jar bar and dispensing device, the monthly rent for pull tabs may not exceed an additional two hundred dollars.

   b. If twenty-one and paddlewheels are not conducted but pull tabs is conducted involving a jar bar or dispensing device, but not both, the monthly rent may not exceed two hundred seventy-five dollars. If pull tabs is conducted involving both a jar bar and dispensing device, the monthly rent for pull tabs may not exceed three hundred dollars.

SECTION 3. AMENDMENT. Section 53-06.1-12 of the North Dakota Century Code is amended and reenacted as follows:

53-06.1-12. Gaming ~~and excise taxes - Exception~~tax - Deposits and allocations.

1. A gaming tax is imposed on the total ~~adjusted~~ gross proceeds ~~earned~~received by a licensed organization in a quarter and it must be computed and paid to the attorney general on a quarterly basis on the tax return. This tax must be paid from adjusted gross proceeds and is not part of the allowable expenses. The tax ~~rates are:~~

   ~~a. On adjusted gross proceeds not exceeding two hundred thousand dollars, a tax of five percent.~~

   ~~b. On adjusted gross proceeds exceeding two hundred thousand dollars but not exceeding four hundred thousand dollars, a tax of ten percent.~~

~~c. On adjusted gross proceeds exceeding four hundred thousand dollars but not exceeding six hundred thousand dollars, a tax of fifteen percent.~~

~~d. On adjusted gross proceeds exceeding six hundred thousand dollars, a tax of twenty percent.~~

~~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 on a licensed organization an excise tax of three 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.~~rate for a licensed organization with gross proceeds:

a. Not exceeding five hundred thousand dollars is one percent of gross proceeds.

b. Exceeding five hundred thousand dollars but not exceeding one million dollars is one and one-half percent of gross proceeds.

c. Exceeding one million dollars but not exceeding one million five hundred thousand dollars is two percent of gross proceeds.

d. Exceeding one million five hundred thousand dollars is two and one-half percent of gross proceeds.

2. The tax must be paid to the attorney general at the time tax returns are filed.

3. ~~For organizations whose gross proceeds of pull tabs do not exceed four thousand dollars per calendar quarter, no excise tax may be imposed on the gross proceeds from the sale at retail of pull tabs to final users.~~

~~4.~~ Except as provided in subsection ~~5~~4, the attorney general shall deposit gaming and excise taxes, monetary fines, and interest and penalties collected in the general fund in the state treasury.

~~5.~~4. The attorney general shall deposit ~~three~~six percent of the total taxes, less refunds, collected under this section into a gaming and excise tax allocation fund. Pursuant to legislative appropriation, moneys in the fund must be distributed quarterly to cities and counties in proportion to the taxes collected under this section from licensed organizations conducting games within each city, for sites within city limits, or within each county, for sites outside city limits. If a city or county allocation under this subsection is less than two hundred dollars, that city or county is not entitled to receive a payment for the quarter and the undistributed amount must be included in the total amount to be distributed to other cities and counties for the quarter.

SECTION 4. AMENDMENT. Section 53-06.1-12.3 of the North Dakota Century Code is amended and reenacted as follows:

53-06.1-12.3. Interest, penalty, and estimated tax.

1. Assessment of interest. If a licensed organization does not pay tax due by the original date of a tax return, or if additional tax is due based on an audit or math verification of the return and it is not paid by the original due date of the return, the organization shall pay interest on the tax at the rate of twelve

percent per annum computed from the original due date of the return through the date the tax is paid.

2. Assessment of penalty. If a licensed organization does not pay tax due on a tax return by the original or extended due date of the return, or if additional tax is due based on an audit or math verification of the return and it is not paid by the original or extended due date of the return, the organization shall pay a penalty of five percent of the tax, or twenty-five dollars, whichever is greater. If an organization does not file a tax return by the original or extended due date of the return, the organization shall pay a penalty of five percent of the tax, or twenty-five dollars, whichever is greater, for each month or fraction of a month during which the return is not filed, not exceeding a total of twenty-five percent.

3. The attorney general may require a licensed organization to make monthly estimated gaming ~~and excise~~ tax payments if the attorney general determines that the organization is in poor financial condition. If an organization fails to pay any tax or estimated tax, interest, or penalty by the original due date or date set by the attorney general, the attorney general may bring court action to collect it and may suspend the organization's license. The attorney general may for good cause waive all or part of any interest or penalty and may waive any minimal tax.

4. If a licensed organization has failed to file a tax return, has been notified by the attorney general of the delinquency, and refuses or neglects within thirty days after the notice to file a proper return, the attorney general shall determine the adjusted gross proceeds and gaming ~~and excise taxes~~tax due according to the best information available and assess the ~~taxes~~tax at not more than double the amount. Interest and penalty also must be assessed.

5. The attorney general may authorize a licensed organization to pay any delinquent tax, interest, or penalty on an installment plan and may set any qualifying conditions.

SECTION 5. LEGISLATIVE MANAGEMENT STUDY - CHARITABLE GAMING ORGANIZATION ELIGIBILITY. During the 2011-12 interim, the legislative management shall consider studying the eligibility requirements for the veterans', charitable, educational, religious, fraternal, civic and service, public safety, and public-spirited organizations that conduct charitable gaming. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly.

Approved May 17, 2011
Filed May 17, 2011

CHAPTER 379

HOUSE BILL NO. 1380

(Representative Keiser)

AN ACT to amend and reenact subsection 7 of section 53-06.1-01 of the North Dakota Century Code, relating to the definition of eligible organization for charitable gaming purposes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[129] **SECTION 1. AMENDMENT.** Subsection 7 of section 53-06.1-01 of the North Dakota Century Code is amended and reenacted as follows:

7. "Eligible organization" means a veterans, charitable, educational, religious, fraternal, civic and service, public safety, or public-spirited organization domiciled in North Dakota or authorized by the secretary of state as a foreign corporation under chapter 10-33, incorporated as a nonprofit organization, and which has been regularly and actively fulfilling its primary purpose within this state during the two immediately preceding years. However, an educational organization does not need to be incorporated or be in existence for two years. An organization's primary purpose may not involve the conduct of games. The organization may be issued a license by the attorney general. For purposes of this section, a foreign corporation authorized under chapter 10-33 is not an eligible organization unless authorized to conduct a raffle under chapter 20.1-04 or 20.1-08 and may not conduct a game other than a raffle under chapter 20.1-04 or 20.1-08.

Approved April 4, 2011
Filed April 4, 2011

[129] Section 53-06.1-01 was also amended by section 1 of Senate Bill No. 2042, chapter 378.

CHAPTER 380

HOUSE BILL NO. 1093

(Judiciary Committee)
(At the request of the North Dakota Racing Commission)

AN ACT to amend and reenact subsections 3 and 6 of section 53-06.2-11 of the North Dakota Century Code, relating to payment of breakage to and operating expenses of the racing commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 3 and 6 of section 53-06.2-11 of the North Dakota Century Code are amended and reenacted as follows:

3. For all pari-mutuel wagering the licensee shall pay to the commission the amount due for all unclaimed tickets and all breakage on the first twenty million dollars wagered with each service provider, of which twenty percent is to be deposited in the racing promotion fund, thirty percent is to be deposited in the breeders' fund, and fifty percent is to be deposited in the purse fund.

6. The 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 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. The commission~~, upon approval of the emergency commission,~~ may receive ~~no more than~~twenty-five thousand dollars per year or twenty-five percent ~~of~~per year, whichever is greater, from the racing promotion fund for the payment of the commission's operating expenses.

Approved April 26, 2011
Filed April 26, 2011

CHAPTER 381

SENATE BILL NO. 2295

(Senators Olafson, Cook)
(Representatives Frantsvog, Keiser, Porter)

AN ACT to amend and reenact sections 53-08-01 and 53-08-02 and subsection 2 of section 53-08-03 of the North Dakota Century Code, relating to recreational immunity.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 53-08-01 of the North Dakota Century Code is amended and reenacted as follows:

53-08-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Charge" means the amount of money asked in return for an invitation to enter or go upon the land. "Charge" does not include vehicle, parking, shelter, or other similar fees required by any public entity.

2. "Commercial purpose" means a deliberative decision of an owner to invite or permit the use of the owner's property for normal business transactions, including the buying and selling of goods and services. The term includes any decision of an owner to invite members of the public onto the premises for recreational purposes as a means of encouraging business transactions or directly improving the owner's commercial activities other than through good will. "Commercial purpose" does not include the operation of public lands by a public entity except any direct activity for which there is a charge for goods or services.

3. "Land" includes all public and private land, roads, water, watercourses, and ways and buildings, structures, and machinery or equipment thereon.

~~3.~~4. "Owner" includes tenant, lessee, occupant, or person in control of the premises.

~~4.~~5. "Recreational purposes" includes any activity engaged in for the purpose of exercise, relaxation, pleasure, or education.

SECTION 2. AMENDMENT. Section 53-08-02 of the North Dakota Century Code is amended and reenacted as follows:

53-08-02. Duty of care of ~~landowner~~owner.

1. Subject to the provisions of section 53-08-05, an owner of land owes no duty of care to keep the premises safe for entry or use by others for recreational purposes, regardless of the location and nature of the recreational purposes and whether the entry or use by others is for their own recreational purposes or is directly derived from the recreational purposes of other persons, or to

give any warning of a dangerous condition, use, structure, or activity on such premises to persons entering for such purposes.

2. This section does not apply to:

   a. A person that enters land to provide goods or services at the request of, and at the direction or under the control of, an owner; or

   b. An owner engaged in a for-profit business venture that directly or indirectly invites members of the public onto the premises for commercial purposes or during normal periods of commercial activity in which members of the public are invited.

SECTION 3. AMENDMENT. Subsection 2 of section 53-08-03 of the North Dakota Century Code is amended and reenacted as follows:

2. Confer upon such persons, or any other person whose presence on the premises is directly derived from those recreational purposes, the legal status of an invitee or licensee to whom a duty of care is owed other than a person that enters land to provide goods or services at the request of, and at the direction or under the control of, the owner; or

Approved April 26, 2011
Filed April 26, 2011

CHAPTER 382

HOUSE BILL NO. 1142

(Representatives DeKrey, Drovdal, Kaldor)
(Senators Klein, Uglem, O'Connell)

AN ACT to create and enact a new chapter to title 53 of the North Dakota Century Code, relating to registered agritourism activity liability.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Definitions.

In this chapter, unless the context otherwise requires:

1. "Agritourism activity" means any activity, including farming and ranching activities, or any historic, cultural, or natural attraction, that is viewed or enjoyed by members of the general public, for educational, recreational, or entertainment purposes, regardless of whether the member of the general public pays to participate in the activity or to view or enjoy the attraction.

2. "Inherent risk" means:

   a. Any condition or danger that is an integral part of agritourism, including:

      (1) Surface and subsurface conditions of the land;

      (2) Surface and subsurface conditions of the water;

      (3) Natural conditions of land, vegetation, and water;

      (4) The behavior of wild or domestic animals; and

      (5) Structures and equipment ordinarily used in farming or ranching; and

   b. The potential of a participant to act in a negligent manner, including failing to follow instructions or failing to exercise reasonable caution while engaging in an agritourism activity.

3. "Participant" means a member of the general public who engages in a registered agritourism activity.

4. "Registered agritourism activity" means an agritourism activity that is registered with the division of tourism.

5. "Registered agritourism operator" means a person that is registered with the division of tourism and that is engaged in the provision of a registered agritourism activity.

Registration - Requirements.

1. A person may become a registered agritourism operator by registering with the division of tourism.

2. The registration must include a description of the agritourism activity that the person provides or intends to provide.

3. The division of tourism may not impose any fees or other charges to register agritourism operators.

4. A registration under this section is effective for five years.

Registered agritourism operators - Maintenance of list.

The division of tourism shall:

1, Maintain a list of all registered agritourism operators; and

2. Maintain a list of all registered agritourism activities.

Notice regarding liability - Requirements.

A registered agritourism operator shall post in a conspicuous location on the premises and include in each written contract pertaining to an individual's participation in agritourism a notice indicating that under the laws of this state, the registered agritourism operator is not liable for any injury to or for the death of a participant if the injury or death results from an inherent risk.

Participant in agritourism activity - Assumption of risk.

Except as otherwise provided, a participant assumes all inherent risks of agritourism. In any action for damages arising from an individual's participation in agritourism, a registered agritourism operator may plead assumption of risk by the participant as an affirmative defense.

Liability of registered agritourism operator.

This chapter does not prevent or limit the liability of a registered agritourism operator if the operator:

1. Injures a participant willfully or through conduct that amounts to gross negligence; or

2. a. Has actual knowledge of or should have known of:

   (1) A dangerous condition on property, including in a facility, at which a registered agritourism activity occurs;

   (2) A dangerous condition with respect to equipment used in the registered agritourism activity; or

   (3) The dangerous propensity of a particular animal used in the registered agritourism activity;

b. Does not exercise ordinary care to remedy the danger or to warn a participant of the danger; and

c. The danger causes injury to the participant or contributes to the injury of the participant.

Division of tourism - Copy of law - Provision to registered agritourism operator.

The division of tourism shall provide a copy of the applicable law to each person that registers or reregisters as an agritourism operator.

Approved April 27, 2011
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