

## **CHAPTER 53-12.1 LOTTERY**

### **53-12.1-01. Definitions.**

As used in this chapter:

1. "Director" means the director of the lottery.
2. "Lottery" means the division of the attorney general's office created to operate a lottery.
3. "Online lottery" means a game linked to a central computer via a telecommunications network in which the player selects or is assigned a 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.
4. "Retailer" means a person the lottery has licensed to sell or redeem a ticket.
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 online play to prove participation in a draw of a game for a chance to win a prize.

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

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

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

1. The attorney general shall appoint a director who shall serve at the pleasure of the attorney general.
2. Subject to policy of the attorney general, the director shall:
  - a. Employ those individuals deemed necessary to operate the lottery and provide secure facilities to house the lottery;
  - b. Enter a written agreement with one or more government-authorized lotteries, or with an organization created and controlled by those lotteries, for conducting and marketing a joint lottery game;
  - c. Provide for a secure computer data center and internal control system for the reliable operation of the lottery;
  - d. Prepare and submit a budget for operating the lottery;
  - e. Operate the lottery so it is self-sustaining and self-funded;
  - f. Maintain books and records which accurately reflect each day's financial transactions, including the sale of tickets, receipt of funds and fees, prize payments, and expenses to ensure accountability;
  - g. License a retailer to sell or redeem a ticket;
  - h. Require a retailer to furnish proof of financial stability or post a bond in an amount the director deems necessary to protect the financial interest of the state;
  - i. Timely and efficiently transfer lottery funds due from a retailer;
  - j. Conduct a retailer promotion to promote the sale of a ticket;
  - k. As necessary, enter a contract for a promotional service, an annuity for the payment of a prize, credit history report, security service, service from another

state agency, marketing and related service, gaming system and related service, and other necessary service;

- I. Based on reasonable ground or written complaint, suspend or revoke a retailer's license or impose a monetary fine, or both, for a violation, by the retailer or employee of the retailer, of a lottery law or rule;
- m. Examine, or cause to be examined by an agent designated by the director, any book or record of a retailer to ensure compliance with the lottery law and rules;
- n. Upon request, report to the legislative council regarding the operation of the lottery;
- o. Make quarterly and annual financial reports to the governor and attorney general and a biennial report to the legislative assembly;
- p. Have an annual audit, conducted by the state auditor, of the lottery. The director shall present the audit report to the governor, state treasurer, and legislative assembly;
- q. As necessary, have an independent firm conduct a study and evaluation of security; and
- r. As necessary, conduct a survey of retailers and players or a study of reactions of citizens to present and potential features of the lottery.

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

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 management 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. 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.
2. The lottery advisory commission shall meet at least once a quarter and any additional meetings as the chairman deems necessary. Special meetings may be called by the chairman upon the written request of the director or any three members of the commission.
3. The lottery advisory commission shall advise the director and attorney general on policy and general operation of the lottery and shall serve as the audit committee.
4. A member of the lottery advisory commission who is not a permanent full-time state employee is to be compensated at a rate of seventy-five dollars per day and entitled to mileage and expenses as provided by law for state employees. A state employee who is a member of the commission must receive that employee's regular salary and is entitled to mileage and expenses, to be paid by the employing agency.
5. No member of the lottery advisory commission, employee of the lottery, or any individual who regularly resides in the same household as either of those individuals may directly or indirectly, individually, as a partner of a partnership, or a stockholder, director, or officer of a corporation, have an interest in the gaming system or advertising agency vendor of the lottery. A knowing violation of this subsection is a class B misdemeanor.

#### **53-12.1-05. Competitive bidding - Investigation of a vendor.**

Before a contract for a gaming system or marketing services is awarded, the director shall:

1. Use an open and competitive bid process which reflects the best interest of the state. The director shall consider all relevant factors, including security, competence, experience, timely performance, and maximization of net proceeds; and
2. Conduct a thorough background investigation of the lottery's gaming system and advertising agency vendors, all shareholders of ten percent or more interest, and all senior officers and directors of the vendors, including a parent or subsidiary corporation of the vendors. The director may use information of another government-authorized lottery or other source to determine the qualification and

background of the vendors. The vendors shall submit appropriate investigation authorizations. The director may require any appropriate information from the vendors to preserve the integrity and financial security of the lottery.

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

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

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

1. The director shall select a person that the director deems best able to serve the public convenience and promote the sale of a ticket. The director shall consider relevant factors, including the applicant's credit history, physical security and public accessibility of the applicant's site, integrity, sufficiency of existing retailers to serve the public convenience, especially in a geographically remote area of the state, and volume of expected sales of tickets. A person lawfully engaged in nongovernmental business on state property or a person within the exterior boundary of an Indian reservation or on tribal trust land may be selected as a retailer.
2. A retailer may not be the lottery's gaming system or advertising agency vendor or an employee or agent of the vendor.
3. To be eligible as a retailer, an individual acting as a sole proprietor must:
  - a. Have a satisfactory credit check;
  - b. Be current in payment of all taxes, interest, and penalties owed to the state and be current under a payment plan, excluding an item under formal dispute or appeal pursuant to law;
  - c. Be at least eighteen years of age;
  - d. Be of good character and reputation;
  - e. Not have been convicted of a felony in this or any other jurisdiction, unless at least ten years have passed since satisfactory completion of the sentence or probation imposed by the court in each felony;
  - f. Not have been found to have knowingly violated a lottery law or rule;
  - g. Not have been found to have a background, including a criminal record, or prior activities that pose a threat to the public interests of this state or to the security and integrity of the lottery, create or enhance the dangers of unsuitable or illegal practices in the conduct of lottery activities, or present questionable business practices and financial arrangements incidental to the lottery activity;
  - h. Not be a parent, stepparent, child, stepchild, spouse, or sibling who is a regular member of the same household of an employee of the lottery or member of the lottery advisory commission; and
  - i. Not have knowingly made a false statement of material fact to the lottery.
4. To be eligible as a retailer, a partnership must meet the requirement of subdivision a of subsection 3 and each partner must meet the requirements of subdivisions b through i of subsection 3.

5. To be eligible as a retailer, an organization other than a partnership must meet the requirements of subdivisions a and b of subsection 3 and each officer and director who is primarily responsible for making financial decisions and each shareholder who owns ten percent or more of an ownership interest in the organization must meet the requirements of subdivisions c through i of subsection 3.

**53-12.1-08. Purchase of ticket or payment of prize to certain individuals prohibited - Price of a ticket - Sale by retailer only - Second chance 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.
2. An individual who knowingly violates subsection 1 is guilty of a class B misdemeanor on the first offense and a class A misdemeanor on a subsequent offense.
3. A retailer or employee of a retailer may buy a ticket and be paid a prize for a winning ticket.
4. 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.
5. A retailer may conduct a second chance drawing of entry forms or tickets to promote the sale of a ticket at that site provided that an individual is not required to purchase a ticket to participate.
6. 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.
7. The prize to be paid or awarded for a winning ticket must be paid to the individual 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. A prize may not be paid on a winning ticket that has been purchased by use of a stolen lottery gift certificate or acquired illegally.
8. 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.
9. A prize awarded is subject to state and federal income tax laws and rules.
10. An individual 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.
11. The state, members of the lottery advisory commission, and employees of the lottery are discharged of all further liability upon payment of a prize.

**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 paid by a retailer, and 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
4. Transfer of net proceeds:
  - a. Eighty thousand dollars must be transferred to the state treasurer each quarter for deposit in the gambling disorder 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;
  - c. Starting July 1, 2019, two hundred thousand dollars must be transferred to the state treasurer each quarter for deposit in the attorney general multijurisdictional drug task force grant fund; and
  - d. 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.

**53-12.1-10. Administrative and other operating costs of the lottery - Lottery operating fund.**

Money in the lottery operating fund may be spent pursuant to legislative appropriation for costs of administering and operating the lottery, including costs relating to employees, supplies, surveys, advertising and marketing, printing, promotion, premium incentive items, a facility, and services provided by another state agency.

**53-12.1-11. Confidentiality of records.**

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 player who purchases an online play 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.
2. To be confidential, information must relate to the security and integrity of the lottery. Information and records may be disclosed within the attorney general's office or to an authorized person in the proper administration of the lottery law and rules or in accordance with a judicial order. Criminal history record check information on an individual seeking or doing business with the lottery may be released only according to chapter 12-60.

### **53-12.1-12. Setoff of prize.**

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 an individual 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 individual'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.
2. The director shall establish a debt setoff process in which a lottery prize claim of an amount equal to or greater than six hundred dollars must be used to set off a delinquent debt owed to or collected through a claimant agency. If the lottery prize claim is paid through an annuitized payment option, each prize payment must be used to set off a delinquent debt owed to or collected through a claimant agency.
3. If the director determines that a winning player owes a delinquent debt to or has a delinquent debt collected through a claimant agency, the director shall set off the amount of the debt from the prize payment due and notify the player, in writing, of the setoff. If the setoff accounts for only a portion of the prize payment due, the remainder of the prize payment must be paid to the player. The director shall transfer the setoff amount to the claimant agency unless the player notifies the director, in writing, within thirty days of the date of the notice of the setoff, that the player disputes all or part of the debt owed to or collected through the claimant agency. If the director receives a notification that the player disputes the setoff amount or claim upon which the setoff is based, the director shall grant a hearing to the player to determine whether the setoff is proper or the claim is valid, unless a review by a court is authorized under section 50-09-14. At a hearing, no issue may be reconsidered that the player has or could have previously litigated in a court or administrative proceeding.
4. The lottery is discharged of all further liability for the amount of any debt setoff paid to a claimant agency.
5. If two or more claimant agencies have delinquent accounts for the same player, the director shall apportion the prize payment equally among them. However, a setoff to the department of health and human services for child support payments has priority over all other setoffs.
6. If the prize payment is insufficient to satisfy the entire debt, the remainder of the debt may be collected by a claimant agency as provided by law or rule and resubmitted for setoff against any other prize payment awarded.
7. If two or more claimant agencies make adverse claims to all or a part of a prize payment, upon receipt of written notice from the claimant agencies setting forth their claims, the director may deposit, in accordance with section 32-11-02, the contested amount of the prize payment with the clerk of court in the district in which an action pertaining to the contested amount is pending or with a court-authorized depository. If one of the claims is for child support, the director shall transfer the setoff amount to the state disbursement unit before depositing any remaining prize payment or award. Any review of this transfer to the state disbursement unit must be done pursuant to section 50-09-14. Upon making the deposit or transfer, the state and its officials and employees are discharged and relieved from further liability to any individual or claimant agency related to the prize payment.

### **53-12.1-13. Rules.**

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

1. Type of retailer where a ticket may be sold;
2. Qualification for selecting a retailer and amount of application and license fees;
3. Licensing procedure;
4. Method used to sell a ticket, including a gift certificate and online play;

5. Financial responsibility of a retailer;
6. Retailer promotions;
7. Amount and method of commission to be paid to a retailer, including a special bonus or incentive;
8. Deadline for claiming a prize by the owner of a winning ticket, however, the deadline may not exceed one year;
9. Manner of paying a prize to the owner of a winning ticket; and
10. Setoff of a prize.