

February 9, 2021
HB 1448-Exclusively by Tribes

Good morning, Chairman Klemin and the members of the Committee

My name is Collette Brown from Warwick, representing the Spirit Lake Tribe (where I am a tribal member). My professional title in the gaming industry is, Gaming Commission Executive Director of the Gaming Regulations and Compliance Department, our casino is located seven miles south of Devils Lake. Today I come to support HB1448.

As some of you may know the Spirit Lake Tribe has been expressing serious concerns about the electronic pull tabs since 2019. A short timeline from August of 2018 to September 2019 we experienced up to a 43% decrease in our gross gaming revenues, then from October 2019 to March of 2020 we are now down by 65% in our gross gaming revenues. The gross gaming revenues is what My Tribe depends on, we are required to send 25% of our revenues to the Tribe. We have to submit a report annual to the AG's office to verify how we spent 10% in use of economic development.

The Etab device manufacturers testified that e-tabs are not slot machines, we have countered that the devices closely resemble slot machines and the public calls them slot machines with them visually looking like our machines it is having an unfair and detrimental impact on Indian Gaming within our State.

The legislative intent of HB 1216 was to modernize charitable pull tab gaming and increase accuracy compared to paper tickets.¹ The bill was not intended to allow a device resembling a Class III gaming device or to compete with tribal gaming revenue. A legislative change to NDCC 53-06.1 is needed to clarify the parameters of e-tab devices. They are far removed from actual pull tabs because there is no requirement to read the pull-tab, cash out prizes or actually play the game of pull-tabs.

With the large influx of etabs throughout North Dakota, reaching a billion dollars in gross gaming revenues, that has undermined Indian gaming, reducing our revenues substantially and undercutting our ability to provide jobs and generate essential government revenues.

Online gaming and online sports betting are already legal in jurisdictions with experienced, professional regulatory systems, like New Jersey. Tribes and the state would be able to use the regulatory examples set in other states to craft an effective regulatory regime in the amended tribal-state gaming compacts. With this exclusivity option for my Tribe, it will be a beneficial economic engine to regain some of the revenues we loss.

Strong Regulation of the gaming industry is important because financial institutions generally (including the gaming industry) are targets for money laundering. Beginning in 1985 under the Bank Secrecy Act, 32 U.S.C. sec. 5011 et seq., the Treasury Department's Financial Crimes Enforcement Network (FinCEN) promulgated rulesⁱ that include Casinos in Financial Reporting to prevent Bank Secrecy: Casino Definition as Financial Institution. The 1994 Anti-Money Laundering Act approved those regulations. Casinos and card clubs

¹ HB 1216 legislative history.

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that are state licensed, along with Indian gaming operations, which have gross annual gaming revenues (GAGR) in excess of \$1,000,000 are financial institutions subject to the requirements of the Bank Secrecy Act. The Treasury Department's Financial Crimes Enforcement Network (FinCEN) reports that:

With few exceptions, criminals are motivated by one thing-profit. Greed drives the criminal, and the end result is that illegally-gained money must be introduced into the nation's legitimate financial systems. Money laundering involves disguising financial assets so they can be used without detection of the illegal activity that produced them. Through money laundering, the criminal transforms the monetary proceeds derived from criminal activity into funds with an apparently legal source.

This process has devastating social consequences. For one thing, money laundering provides the fuel for drug dealers, terrorists, arms dealers, and other criminals to operate and expand their criminal enterprises. We know that criminals manipulate financial systems in the United States and abroad to further a wide range of illicit activities. Left unchecked, money laundering can erode the integrity of our nation's financial institutions.

FinCEN explains:

Casinos and card clubs must file Form 103 (Currency Transaction Report by Casinos) for each transaction involving either currency received (Cash In) or currency disbursed (Cash Out) of more than \$10,000 in a gaming day. A gaming day is the normal business day of the casino by which it keeps its books and records for business, accounting, and tax purposes. Multiple transactions must be treated as a single transaction if the casino has knowledge that: (a) they are made by or on behalf of the same person, and (b) they result in either Cash In or Cash Out by the casino totaling more than \$10,000 during any one gaming day. See 31 CFR § 1021.311.

The U.S. State Dept. explains:

Among those who seek to disguise the illegal proceeds of their crimes are drug traffickers, terrorists, corrupt public officials, and organized criminal groups. Introducing illegally obtained funds into the stream of legitimate commerce and finance allows criminals to profit from their illegal activity, taints the international financial system, and erodes public trust in the integrity of the system.

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Now there are a myriad of technical and operational areas that must be considered to ensure the integrity of an online wagering operation and we have to protect the public because there are so many configurations, options, and decisions that take place. Our tribe understands the importance of effective and strong regulation, and how it plays a vital role in the protection of the honesty, integrity, and public image of gaming overall in the industry.

Regulation of Tribal Gaming

In the 1970s and '80s, Indian nations and tribes turned to Indian gaming to generate essential government revenue for tribal programs and services, including education, health care, police and fire protection, elder and child care, cultural revitalization, water, sewer and sanitation services. In Indian country there is manifest social and political acceptance of gambling as an essential source of governmental revenue, which Congress acknowledged recently with the enactment of State-Local-and-Tribal Government Coronavirus Relief Funding, when our Indian nations and tribes were forced to close and restrict our Resorts, Restaurants, Hotels, and Casinos due to the National COVID-19 Public Health Emergency.

In 1987, the Supreme Court decided the *Cabazon* case and clarified that tribes had the right to regulate gambling on their reservations, provided that the states wherein they were located did not criminally prohibit that activity. At that time, large-scale casino gaming operations existed only in Nevada and New Jersey. The Indian Gaming Regulatory Act was passed in 1988 and established the framework for the regulation of tribal gaming.

IGRA mandates that tribes may conduct Class III gaming in states where such activity is permissible under state law and where the tribes enter into compacts with states relating to this activity, which require approval of the Secretary of the Interior. Tribal-State Class III Compacts include specific regulatory structures and give regulatory responsibility to the tribe and the state to regulate Class III Indian gaming.

In addition, Indian nations and tribes are assisted by the Federal Government with Indian gaming regulation. The National Indian Gaming Commission oversees Tribal Gaming Regulatory Ordinances, Background Checks, Audits, and Gaming Player Station Compliance. The IRS provides oversight of prizes and reporting of income. The Treasury Financial Crimes Enforcement Network provides oversight of financial transactions to prevent money laundering at Indian casinos. The FBI and the U.S. Attorneys investigate and prosecute theft, cheating, fraud and other crimes under the Indian Gaming Regulatory Act and other Federal laws. Indian gaming is stringently and thoroughly regulated by our Indian nations and the United States with the assistance and oversight of the North Dakota State Attorney General.

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Tribal, State & Federal Regulation of Indian Gaming in North Dakota

Our Tribal nations are ready to regulate Online Internet Gaming and Sports betting because we have an established well-built, comprehensive regulatory system in place are prepared to expand our horizon of Indian Gaming:

- Tribal Gaming Regulatory Agencies that conduct Day-to-Day Oversight;
- Management and Key Employee Criminal Background Checks, Fingerprinting through FBI;
- Comprehensive Vendor Background Checks;
- Facility Licensing, that requires approval from the national Indian gaming commission (NIGC);
- Monthly Attorney General state inspections
- Gaming Machines Independent Lab Tested;
- Detailed internal controls for all areas of gaming
- Ample IT departments that have established cyber security programs in place, along with customer data protection programs
- Know Your Customer (KYC) program
- Payment Processing regulations that will not allow for credit card payments
- A robust geo-comply program for geo fencing, and age verification
- Lastly a transparent Responsible Gambling Program

Those are a lot of regulations we must abide by and adhere too. Now I've been in Indian Gaming since 1996, I joined the regulations department in 2001. I have grown up in this industry. I am an expert and a leader in the Indian Gaming Industry. I am the Great Plains representative for the National Indian Gaming Association; I also represent the Great Plains Region on the National Tribal Gaming Commissioners and Regulator's board. I can truly assure you that our highly regulated gaming industry are prepared and market ready for our next evolution of Indian gaming. We have an opportunity to inspire change and hope the State is agreeable in joining us on our next progression in gaming. My Tribe is in full support of HB1448, we want unity and need this exclusivity. Thank you for allowing me time to speak. I do strongly encourage a do pass on HB1448.

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1. See Final Rule – Casino Regulations, 50 FR 5065 (February 6, 1985). The rulemaking defined state-licensed casinos as financial institutions. Businesses defined as financial institutions at 31 CFR § 1010.100(t) are required to report transactions in currency and maintain records on transmittals of funds. See 31 CFR §§ 1010.306 -315 and 410. The Money Laundering Suppression Act of 1994 subsequently codified the application of the BSA to gaming activities. See 31 U.S.C. 5312(a)(2)(X). Rules defining tribal casinos and card clubs as financial institutions were issued in 1996 and

1998. See Final Rule –Regulations Regarding Tribal Gaming, 61 FR 7054 (February 23, 1996) and Final Rule – Amendments to Bank Secrecy Act Regulations Regarding Reporting and Recordkeeping by Card Clubs, 63 FR 1919 (January 13, 1998).