

February 10, 2021  
**SB2296 Regulation of electronic pull tab devices**

Good morning, Madame Chair Bell and the members of the committee

My name is Collette Brown from Warwick, representing the Spirit Lake Tribe. My professional title in the gaming industry is, Gaming Commission Executive Director of the Gaming Regulations and Compliance Department at the Spirit Lake Casino and Resort, our casino is located seven miles south of Devils Lake. I am here to provide supporting testimony in favor of SB2296.

As some of you may know the Spirit Lake Tribe has been expressing serious concerns about the electronic pull tabs since 2019; 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.<sup>1</sup> 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. So we have finally made it here to make changes to the Century Code applicable sections.

One of the big areas that I am concentrating my testimony on is in regards to these organizations are subjected to comply with federal reporting.

What is a financial institution according to the Department of Treasury?

**Financial institution:** Each agent, agency, branch, or office within the United States of any person doing business, whether or not on a regular basis or as an organized business concern, in one or more of the capacities listed below:

- (1) A bank (except bank credit card systems);
- (2) A broker or dealer in securities;
- (3) A money services business;
- (4) A telegraph company;
- (5) Casino. A casino or gambling casino that: Is duly licensed **or authorized to do business as such in the United States, whether under the laws of a State** or of a Territory or Insular Possession of the United States, **or under the Indian Gaming Regulatory Act or other Federal, State, or tribal law or arrangement affecting Indian lands** (including, without limitation, a casino operating on the assumption or under the view that no such

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<sup>1</sup> HB 1216 legislative history.

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authorization is required for casino operation on Indian lands); **and has gross annual gaming revenue in excess of \$1 million is a financial institution.**

Now we have 995 sites in the State, with roughly 193 financial institutions that are kept by the top 20 organizations in the State that have made over one million dollars in gross annual gaming revenues derived from gaming activity.

"Bank Secrecy Act" or BSA requires retaining records of all currency transactions by customers, along with customer personal information at a minimum they should be maintaining a multiple transaction log, Currency Transaction Reports and Suspicious Activity Reports.

The Currency and Foreign Transactions Reporting Act of 1970 (which legislative framework is commonly referred to as the "Bank Secrecy Act" or "BSA") **requires U.S. financial institutions to assist U.S. government agencies to detect and prevent money laundering. Specifically, the act requires financial institutions to keep records of cash purchases of negotiable instruments, file reports of cash transactions exceeding \$10,000 (daily aggregate amount), and to report suspicious activity that might signify money laundering, tax evasion, or other criminal activities.** It was passed by the Congress of the United States in 1970. The BSA is sometimes referred to as an "anti-money laundering" law ("AML") or jointly as "BSA/AML." Several AML acts, including provisions in Title III of the USA PATRIOT Act of 2001, have been enacted up to the present to amend the BSA. (See 31 USC 5311-5330 and 31 CFR Chapter X [formerly 31 CFR Part 103]).

*Bank Secrecy Act (BSA) Statute*

- *31 U.S.C. 5311-5314*
- *5316-5330*
- *5331*
- *5332*
- *12 U.S.C. 1829*
- *12 U.S.C. 1951-1959*
- *Federal Crime of Money Laundering - Title 18, U.S. Code, Crimes and Criminal Procedure*
- *Federal Crime of Operating an Unlicensed or Unregistered Money Transmitting Business - Title 18 U.S. Code, Crimes and Criminal Procedure*

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**Financial Institutions and/or casinos are required to have written and detailed anti-money laundering programs that satisfy BSA laws as well:**

(a) Requirements for casinos. A casino shall be deemed to satisfy the requirements of 31 U.S.C. 5318(h)(1) if it implements and maintains a compliance program described in paragraph (b) of this section.

(b) Compliance programs.

(1) Each casino shall develop and implement a written program reasonably designed to assure and monitor compliance with the requirements set forth in 31 U.S.C. chapter 53, subchapter II and the regulations contained in this chapter.

(2) **At a minimum**, each compliance program shall provide for:

(i) A system of **internal controls** to assure ongoing compliance;

(ii) Internal and/or external **independent testing for compliance**. The scope and frequency of the testing shall be commensurate with the money laundering and terrorist financing risks posed by the products and services provided by the casino;

(iii) **Training of casino personnel, including training in the identification of unusual or suspicious transactions, to the extent that the reporting of such transactions is required** by this chapter, by other applicable law or regulation, or by the casino's own administrative and compliance policies;

(iv) **an individual or individuals to assure day-to-day compliance**;

(v) Procedures for using all available information to determine:

(A) When required by this chapter, the name, address, social security number, and other information, and verification of the same, of a person;

(B) The occurrence of any transactions or patterns of transactions required to be reported pursuant to § 1021.320;

(C) Whether any record as described in subpart D of part 1010 of this chapter or subpart D of this part 1021 must be made and retained; and

(vi) For casinos that have automated data processing systems, the use of automated programs to aid in assuring compliance.

The FINCEN has the ability to audit each of these organizations to audit their anti-money laundering compliance programs to ensure they are reporting, keeping records, and training their employees on their compliance programs. These audits if violations are identified could result in both criminal and civil penalties. It is comprehensive process and these new financial institutions or casinos are not exempt from these types of audits.

So as you are aware we have been in this industry with our compacts for 29 years now. And this legislative session is seeing a gaming movement with six bills and House Concurrent Resolutions for more casino game types.



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Title 31 Compliance programs are a requirement to ensure the proper integration of any new services or offerings; with all this new information on Title 31/BSA this is another layer of regulations that the Gaming Division, under the Attorney General's office, does not have the resources to keep up with.

They cannot independently test or inspect the devices upon installation to verify that the E-Tab devices comply with the state's technical standards or even to verify that the software tested and approved is the software actually being operated on site. Given that the Gaming Division lacks the resources to audit and inspect a statistically significant number of locations, this only compounds the vulnerability of the sites to allow misconduct, wrongdoing, and corruption. In the meantime, the profitability of well-regulated tribal gaming operations is being eroded by the proliferation of these virtually unregulated E-Tab devices.

Although a thorough study should have been conducted to review all the aspects of gaming and what laws, regulations, resources, and costs would be needed prior to implementing these electronic pull tab devices. But we are here now with a solution that may help with the State assuring they can offer a game of integrity. Spirit Lake Tribe urges a DO PASS on SB 2296.

Thank you for your time.