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Senate Finance & Taxation Committee
North Dakota Legislature

Re: SB 2314

Dear Senate Finance and Taxation Committee:

Please accept this letter of support for SB 2314 submitted on behalf of the Turtle Mountain Band of Chippewa Indians (TMBCI). SB 2314 delegates authority to the governor to negotiate tribal-state gaming compacts which authorize online gaming and online sports betting exclusively by federally recognized tribes.

Tribal online sports betting permits patrons located in any part of the state to place bets on sporting events on websites hosted by tribal governments on servers located on a reservation. Tribal online gaming permits patrons in any part of the state to engage in gaming activities through websites that are based on casino games, such as slot machines, craps, roulette, etc., also utilizing servers located on the reservation. In both cases tribes would utilize geofencing and identity and age verification systems, similar to some systems currently employed by the North Dakota Lottery, to make sure that online purchasers are not located outside the state.

Tribal gaming has had positive impacts on several important dimensions of reservation life, resulting in social improvements for tribal and non-tribal communities alike. Despite these improvements, North Dakota's tribes are still suffering from a disproportionate amount of poverty—some of the most extreme poverty in the United States. This poverty has a rippling effect on tribal members' health, educational attainment, and the welfare of tribal children. North Dakota tribes remain dependent on government funding and state welfare systems to fill the overwhelming needs of their citizens. In order to continue an upward economic trend and fulfill the federal policies of tribal sovereignty, self-sufficiency, and government-to-government relations, North Dakota's tribal nations must continue to expand tribal gaming.

The continued spread of non-tribal gaming in North Dakota has impacted the ability of tribal communities to attain the pronounced social and economic benefits of tribal gaming. Tribal governments use—and must use—the net income from gaming to provide social services to members, further economic development, and fund government programs. Any decrease in gaming revenue results in a subsequent decrease in support for their communities. Tribal governments are facing incredible pressure to improve gaming performance and increase access in order to counteract the competition that tribal gaming operations face from other charitable interests in the state.

SB 2314 will allow tribes to provide cutting edge gaming technology to North Dakota citizens, improving access to gaming and generating desperately-needed revenue for tribal

communities. This technology is in use in many states across the U.S. As this letter will show, SB 2314 will have a profound impact on North Dakota tribes and the State. It will level the playing field and provide the poorest North Dakotans the opportunity to rebuild and strengthen their communities, while also contributing to the greater economic strength of North Dakota. These social and economic benefits are necessary to raise North Dakota tribes out of poverty and bring them on par with the rest of North Dakota's citizenry.

Background

Modern tribal gaming dates back to the 1970s when Indian tribes established bingo operations as a means of raising revenue to fund tribal governments and to aid in self-determination. The *Supreme Court in California v. Cabazon Band of Mission Indians* affirmed tribes' right to regulate gaming on tribal lands, as long as the tribe is in a state that permits such gaming for any purpose by any person. The Supreme Court also confirmed that tribes' interests in self-determination and economic self-sufficiency—and the federal interests promoting tribes' sovereignty—preempted the state interest in regulating gaming. The Court underscored tribal governments' critical need for economic development and employment, and promoted gaming operations as a major source of income for tribes to fund government and social services.

Soon after the Court's *Cabazon* decision, Congress passed the Indian Gaming Regulatory Act (IGRA) of 1988. IGRA codified the reasoning underlying the *Cabazon* decision: tribal gaming is necessary to promote economic development, self-sufficiency, and strong tribal governments. Pursuant to IGRA, tribal gaming has assumed a vital role in supporting jobs and creating opportunity for many tribal nations.

Tribal gaming has given North Dakota's five sovereign tribal nations a means to improve the lives of their people, foster economic development, and strengthen their governments. After centuries of economic deprivation, North Dakota tribes have asserted their rights and identities, have built and rebuilt political systems in order to implement self-rule, and are beginning to overcome what once seemed to be insurmountable problems of poverty and social disarray.¹ The foundation of this resurgence is the exercise of self-government or tribal sovereignty, which has proven to be the only policy that has shown "concrete success in breaking debilitating economic dependence on federal spending programs and replenishing the social and cultural fabric that can support vibrant and healthy communities and families."²

While North Dakota's tribal economies are not built entirely on gaming successes, gaming plays in integral part in spurring self-sufficiency, reducing poverty, and improving public

¹ Kalt and Singer, *Myths and Realities of Tribal Sovereignty: The Law and Economics of Indian Self-Rule*, Native Issues Research Symposium (March 2004) (citing Cornell and Kalt (1992, 1995, 1997a, 1997b, 1998, 2000); Jorgensen (1997, 2000a, 2000b); Krepps (1992); Krepps and Caves (1994); Adams (1999); Dixon, et al. (1998); Moore, et al. (1990); Costello, et al. (2003)), available at <http://ssrn.com/abstract=529084>. (Hyperlinks provided for sources. Please note that .pdfs can be provided on request.)

² *Id.*

safety and health care delivery. It has helped tribes provide health benefits and education to members, preserve cultural resources for current and future generations, and increase social services for their communities. Tribal gaming has improved the North Dakota economy as well—in 2014, tribal casinos created 4,451 jobs in North Dakota and provided \$73,149,032 in direct payments to federal, state, and local governments.³

The following evidence illustrates the unequivocal need for tribal mobile gaming exclusivity in North Dakota.

Economic Disparities

National

The economic development that has taken place in Indian Country, including tribal gaming, has been closing the gap between living conditions for Native Americans and the general public, but the starting point of that gap was vast, and poverty remains widespread. The latest available Census data indicate that, at just over \$57,600, the income of the median American household is still 45% higher than the that of the median Native household in the U.S. (at approximately \$39,700).⁴ In 2017, more than a quarter of the native population—26.8%—was living in poverty, while the national poverty rate was 14.6%.⁵ Data from 2000 shows that the poverty levels have slightly increased in the last two decades:

³ American Gaming Association, *The Economic Impact of Tribal Gaming: A State by State Analysis* (Sept. 2017), available at <https://www.americangaming.org/sites/default/files/Economic%20Impact%20of%20Indian%20Gaming%20in%20the%20U.S.%20September%202017.pdf>.

⁴ Correspondence from Harvard Project on American Indian Economic Development to Secretary Mnuchin (Apr. 10, 2020) at 3, available at https://ash.harvard.edu/files/ash/files/hpaied_covid_letter_to_treasury_04-10-20_vsIGNEDvfinv02.pdf.

⁵ U.S. Census Bureau (2017) Table B17001C and B17001: Poverty Status in the Past 12 Months by Sex by Age, 2013-2017 American Community Survey 5-Year Estimates.

PERCENT OF FAMILIES BELOW POVERTY LEVEL⁶

	1969	1979	1989	1999
Total U.S.	10.7	9.6	10.0	9.3
White	8.6	7.0	7.0	7.3
Black	29.8	26.5	26.3	21.8
All American Indian/Alaska Native ⁷	33.3	23.7	27.0	23.4
American Indian/Alaska Native on Res	57	43	51	39

North Dakota

While on a national scale, Native American poverty rates are comparable to those of Black Americans, the North Dakota figures illustrate a significantly greater disparity. For example, 41-46% of Native American families with children under 18 years of age in North Dakota are living in poverty, depending on whether they are located in a rural or urban setting.⁸ And a shocking 49% of Native American individuals under the age of 18 living in an urban setting in North Dakota are living in poverty.⁹ That is a full 15% more than the national poverty rates for Native Americans, and nearly 30% higher than the national poverty rate for all groups. The median household income for Native American households in North Dakota is \$25,255, an amount which is about half of the median income of all households in the State.¹⁰

The reservation-specific data is consistent with the state-wide findings. On the Standing Rock Reservation, for example, the poverty rate is 43.2%, nearly triple the national poverty level

⁶ Source: Kalt and Singer, *Myths and Realities of Tribal Sovereignty: The Law and Economics of Indian Self-Rule*, supra n.1.

⁷ Data for 1999 are average of 1997-99, per U.S. Census Bureau (2000).

⁸ National Congress of American Indians Policy Research Center, Great Plains Regional Profile, p. 16, available at https://www.ncai.org/policy-research-center/research-data/prc-publications/Great_Plains_NCAI.pdf.

⁹ *Id.*

¹⁰ *Id.* at 9.

average.¹¹ Unemployment on the Turtle Mountain Reservation is estimated to be at 59.45% according to the 2016 Bureau of Indian Affairs (BIA) Labor Force Statistics. Over 40% of Turtle Mountain Tribal families were living below the poverty level in 2010, and 882 households were headed by single mothers struggling to raise 1,392 children under the age of 18.¹²

Educational Attainment

Nationally

Native Americans attend post-secondary education at a rate of 19%, in comparison to 41% among the total U.S. population.¹³ Forty-one percent of first-time, full-time Native American students attending four-year institutions beginning in 2012 graduated within six years, compared to 62% for all students. In 2019, 25% of Native Americans over the age of 25 had an associate degree or higher, compared to 42% of all those over the age of 25.

North Dakota

While 77.2% to 88.2% of Native Americans in North Dakota graduate high school (compared to 90.9% for North Dakota overall) only 9 to 19% completed a bachelor's degrees or higher, compared to 27.2 % in North Dakota.¹⁴ For 11% of the 17,185 Native American people over 25 in North Dakota, the highest level of education was a bachelor's degree; for 4 percent, a graduate or professional degree; and for 17 percent, less than a high school diploma or equivalent.¹⁵ Computer and Internet usage statistics show that 24% of Native Americans in North Dakota do not have a computer, while 61% of households had access to a computer and broadband and 15% had a computer but no internet.¹⁶

¹¹ Jens Manuel Krogstad, *One-in-four Native Americans and Alaska Natives are living in poverty* (Pew Research Center 2014), available at <https://www.pewresearch.org/fact-tank/2014/06/13/1-in-4-native-americans-and-alaska-natives-are-living-in-poverty/>.

¹² 2010 Census Bureau Dataset: ACS 5-year Estimate.

¹³ Postsecondary National Policy Institute, *Factsheets: Native American Students in Higher Education* (Nov. 2020), available at <https://pnpi.org/native-american-students/>.

¹⁴ N.D. Census Office, *Growing ND by the Numbers* (2015), available at <https://www.commerce.nd.gov/uploads/8/CensusNewsletterDec2015.pdf> (citing U.S. Census Bureau, 2009- 2013 5-Year American Community Survey, Demographic Profile DP02, DP03, Center for Economic Studies Local Employer-Household Dynamics (LEHD) 2014 3rd Quarter).

¹⁵ National Congress of American Indians Policy Research Center, Great Plains Regional Profile, *supra* n.8 at p.4.

¹⁶ *Id.* at 8.

Child Welfare

Nationally

According to the 2007 report titled “Time for Reform: A Matter of Justice for American Indian and Alaskan Native Children,” Native American children are overrepresented in the nation’s foster care system at more than 1.6 times the expected level. Native American children were reported to the state and found to be victims of child abuse and neglect at the rate of 16.5 per 1,000 children. This rate compares to 10.8 for White children. Native American children are also more likely than children of other races/ethnicities to be identified as victims of neglect (65.5%).¹⁷

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“Disproportionality is the level at which groups of children are present in the child welfare system at higher or lower percentages or rates than in the general population. The National Council of Juvenile and Family Court Judges published a ‘disproportionality index,’ a measure of the degree a given jurisdiction is disproportionate.¹⁸ The index is calculated by dividing the proportion of children in foster care for a given race by the proportion of the same group in the child population. The resulting ratios that are under 1 indicate underrepresentation, ratios of 1.0 indicate no disproportionality, and scores of 1.1 and greater indicate overrepresentation. Disproportionality scores are calculated for the number of children ‘entering’ care, ‘exiting’ care, and ‘remaining’ in care at the end of the year.”¹⁹

In 2007, North Dakota was identified as one of ten states with the greatest disproportionality of Native American children in state foster care.²⁰ Native American children

¹⁷ National Indian Child Welfare Association, Time for Reform: A Matter of Justice for American Indian and Alaskan Native Children (2007), available at https://www.pewtrusts.org/-/media/legacy/uploadedfiles/wwwpewtrustsorg/reports/foster_care_reform/nicwareportpdf.pdf.

¹⁸ National Congress of American Indians Policy Research Center, Great Plains Regional Profile, *supra* n.8 (citing National Council of Juvenile and Family Court Judges (NCJFCJ), Disproportionality Rates for Children of Color in Foster Care, 2012).

¹⁹ These calculations require (1) the child population (by race) for any given state or jurisdiction, available from the 2010 census data; and (2) the number of children in the child welfare system (by race), available from the National Data Archive on Child Abuse and Neglect’s Adoption and Foster Care Analysis and Reporting System (AFCARS).

²⁰ PEW Charitable Trusts, American Indian Children Overrepresented in Nation’s Foster Care System, New Report Finds (Nov. 19, 2007), available at <https://www.pewtrusts.org/en/about/news-room/press-releases-and-statements/2007/11/19/american-indian-children-overrepresented-in-nations-foster-care-system-new-report-finds>.

represent 8.5 percent of the child population of North Dakota, but 28.4 percent of the foster care population. This results in a 3.3 disproportionality index in 2012 (the index was calculated by 28.4/8.5).²¹

Health and Suicide

Nationally

Native Americans are also more likely to suffer from chronic illness and suicide. When compared to all other U.S. races, Native Americans have a lower life expectancy by 5.5 years. This includes higher rates of death from chronic illness, including diabetes, chronic liver disease, cirrhosis, mellitus, and suicide.²² Native Americans die of heart disease at a rate 1.3 times higher than all other races; diabetes at a rate of 3.2 times higher; chronic liver disease and cirrhosis at a rate of 4.6 times higher; and intentional self-harm and suicide at a rate of 1.7 times higher.²³ Native youth commit suicide at a rate 2.5 times higher than the rest of the country. It is the highest youth suicide rate among all other races/ethnicities in the country.²⁴ “Inadequate education, disproportionate poverty, discrimination in the delivery of health services, and cultural differences all contribute to the lower life expectancy and disproportionate disease burden Native American families face. These are broad quality of life issues rooted in economic adversity and poor social conditions.”²⁵

²¹ National Congress of American Indians Policy Research Center, Great Plains Regional Profile, *supra* n.8.

²² Indian Health Service, Disparities, available at <https://www.ihs.gov/newsroom/factsheets/disparities/>.

²³ *Id.*

²⁴ National Indian Council on Aging, *American Indian Suicide Rate Increase* (Sept. 9, 2019), available at <https://www.nicoa.org/national-american-indian-and-alaska-native-hope-for-life-day/>.

²⁵ Indian Health Service, Disparities, *supra* n. 22.

North Dakota

According to the North Dakota Department of Health, the average age at death between 2010 and 2014 for Native Americans was 56.8 years compared to 76.6 years for the white population.²⁶ Native Americans generally have a higher incidence of cancer than the white population, and are five times as likely to die from diabetes than white North Dakotans.²⁷ Northern Plains American Indians are at a higher risk of developing certain diseases such as lung, cervical, colorectal, and liver cancers compared to white people in the same region.²⁸ American Indians living in North Dakota experience death due to cardiovascular disease at twice the rate of white people. According to the 2006-2010 BRFSS, 75.7% of Native Americans were overweight or obese, compared to 64.1 percent of total North Dakota adults. According to the BRFSS, tobacco use among Native Americans is more than twice as high as the state average, at more than 50%.²⁹

These statistics only provide a sample of the inequities facing the Native American population in North Dakota. Childhood disparities around poverty, malnutrition, welfare, and education are some of the worst in the nation. Individuals are at an increased risk for early deaths, and many women and children suffer violence at home. SB 2314 can help address these inequities, by providing tribal governments with the resources to fund government programs and social services.

SB 2314 Is Public Interest Legislation

SB 2314 is Consistent with North Dakota's Policy of Allowing Gaming Expansion When it Supports the Public Interest

North Dakota's legislative history highlights the state's policy of permitting gaming expansion when it serves the public interest. Charitable gaming, tribal gaming, and the state lottery all benefit the public. SB 2314 is no different.

Federally recognized tribes are devoted to the general welfare of their communities. Tribes that engage in self-governance or a high degree of self-determination tend to improve

²⁶ North Dakota Department of Health, Division of Vital Records (2014), <https://www.health.nd.gov/vital>.

²⁷ A Picture of Health: Chronic Disease in North Dakota (2012), available at http://www.nphic.org/Content/Awards/2013/Print/ANNR-OS-ND-2012_CD_Stat.pdf.

²⁸ A Picture of Health: Chronic Disease in North Dakota, *supra* n. 27.

²⁹ *Id.*

community employment and per capita income, and reduce poverty.³⁰ Tribal programs are the most efficacious when they are well-funded.

Tribal gaming revenue is statutorily required to go to public interest uses, and it is often used to fund tribal programs. IGRA requires that tribes use net revenues from gaming used to fund tribal government operations, provide for the general welfare of the tribe, promote tribal economic development, donate to charitable organizations, or to help fund operations of local government agencies. 25 U.S.C. § 2710(b)(2)(B). Tribes have historically used this income to:

- “Support tribal government operations;
- Develop tribal infrastructure;
- Support tribal social and economic programs and services, such as health care, education, housing assistance, public safety, vocational training, youth programs, elderly care, transportation, cultural, and environmental and natural resource services;
- Fund the development of other tribal enterprises;
- Help charitable causes; and
- Make payments to local governments and contract for government services (e.g., law enforcement, fire protection, and judicial services).”³¹

This is reflected in North Dakota’s tribal codes. For example, the Turtle Mountain Tribal Code states:

Net revenues from Class II and III gaming shall be used only for the following purposes: to fund tribal government operations and programs; provide for the general welfare of the Tribe and its members; promote tribal economic development; donate to charitable organizations; or help fund operations of local government agencies. The use of such net revenues may be further subject to the restrictions set forth in Section VII of the Tribal-State Gaming Compact.

³⁰ See, e.g., Jeff R. Keohane, the Rise of Tribal Self Determination and Economic Development (ABA 2006), available at https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/human_rights_vol33_2006/spring2006/hr_spring06_keohane/.

³¹ American Gaming Association, *The Economic Impact of Tribal Gaming: A State by State Analysis* (Sept. 2017), available at <https://www.americangaming.org/sites/default/files/Economic%20Impact%20of%20Indian%20Gaming%20in%20the%20U.S.%20September%202017.pdf> (citing Alan Meister, 2017, Casino City’s Indian Gaming Industry Report, 2017 Edition, Newton: Casino City Press. IGRA sets forth that tribes may only use gaming profits to fund tribal government operations or programs, provide for the general welfare of their members, promote tribal economic development, donate to charitable organizations, and help fund operations of local government agencies).

Turtle Mountain Tribal Code § 25.0132.

Similarly, the Spirit Lake Nation dedicates all surplus gaming funds exclusively to charitable purposes:

Surplus funds paid into the General Fund of the Tribe pursuant to §§8-3-109(5) are hereby dedicated exclusively to charitable purposes. Such funds shall be allocated to those tribal programs which are of paramount importance to tribal self-determination and the improvement of the health and welfare of tribal members. Accordingly, 50% of such funds shall be used for the Tribe's land consolidation program and an additional 10% shall be used for the Tribe's alcohol rehabilitation program. The remaining 40% shall be used as the Tribal Council shall direct in conformity with the provisions of this chapter.

Spirit Lake Nation, Law & Order Code § 8-3-110.

Tribal gaming revenue supports the public interest by funding critical tribal programs and social services, and by funding government to advance tribal sovereignty and self-governance. This is consistent with the State's policy of promoting gaming to advance the public interest.

Electronic Pull Tabs Have Caused Tribal Nations to Lose Money While Non-Native Charities Benefit

Since the 2017 state Legislature legalized Electronic Pull Tabs (ETABS), tribes have been losing money, while state charities and the state itself are benefiting. From 2015 to 2017, licensed gaming brought in \$569 million, of which \$43.7 million went to charity and \$6.8 million went to the state general fund. From 2017 to 2019, licensed gaming brought in \$852 million, of which over \$51 million went to charity and \$11 million went to the state general fund. This amounts to a revenue increase of roughly 49%.³² In fact, in the fourth quarter of 2019 alone charitable gaming in North Dakota had gross proceeds (otherwise known as gross gaming revenues) of over \$243 million, with over \$192 million of that coming from ETAB machines. This means that with even a small amount of future growth, charitable gaming in North Dakota will soon exceed \$1 billion annual gross gaming revenues.

This rise in gaming revenue for charities has significantly impacted North Dakota's tribal nations. For example, Collette Brown, the Gaming Commission Executive Director for the Spirit Lake Tribe, reported to Inforum that the Spirit Lake Casino Resort, seven miles south of Devils Lake, saw a 42% decrease on its bottom line in one year after ETABS were introduced.³³ The

³² Natasha Rausch, *E-tabs spark 'dire concern' for North Dakota tribes relying on casino revenue, jobs*, Inforum (Feb. 3, 2020), available at <https://www.inforum.com/news/government-and-politics/4898113-E-tabs-spark-dire-concern-for-North-Dakota-tribes-relying-on-casino-revenue-jobs>.

³³ *Id.*

Spirit Lake Tribe's five casinos have an \$80 million a year payroll. The money from tribal casinos goes into surrounding markets.³⁴

When the tribal casinos lose significant chunks of income, tribal programs, social services, and tribal members, especially children, suffer. SB 2314 will modernize tribal gaming and remediate some of the financial losses suffered by the tribes. By investing tribal sovereignty—the life-blood of tribal nations—and promoting self-determination through self-governance by federally recognized tribes, SB 2314 helps to protect and promote tribal citizens' interests and well-being.³⁵ Tribal self-governance is the only policy that has worked to make significant progress in reversing otherwise distressed social, cultural, and economic conditions in Native communities.³⁶ Research has shown that sovereignty is the key lever that provides Native American communities with institutions and practices that can alleviate disparities.³⁷ Sovereignty cannot exist in a vacuum—in order to participate economically and culturally in today's society, sovereign tribal nations must have the funding. Social programs, infrastructure, cultural preservation, member health and safety, and government operations all require funding to be efficacious.

Increases in gaming revenues will also benefit North Dakota by stimulating the economy and promoting tribal self-sufficiency, reducing the burden on state welfare programs. The building up of North Dakota tribal economies over the last several decades has made tribes key supporters of not only their own citizens' jobs and livelihoods, but of the jobs and livelihoods of thousands of non-Native citizens as well. As stated above, in 2014 tribal casinos created 4,451 jobs in North Dakota and provided \$73,149,032 in direct payments to federal, state, and local governments.³⁸ With tribal online gaming and mobile sports betting, these numbers will rise.

³⁴ *Id.*

³⁵ Kalt and Singer, *Myths and Realities of Tribal Sovereignty: The Law and Economics of Indian Self-Rule*, *supra* n.1.

³⁶ Jeff R. Keohane, the Rise of Tribal Self Determination and Economic Development, *supra* n. 30; Cornell and Kalt, Two Approaches to Economic Development on American Indian Reservations: One Works, the Other Doesn't, JOPNA No. 2005-02 (2006), available at https://www.honigman.com/media/site_files/111_imgingjopna_2005-02_Approaches.pdf.

³⁷ *Id.*

³⁸ American Gaming Association, *The Economic Impact of Tribal Gaming: A State by State Analysis* (Sept. 2017), available at <https://www.americangaming.org/sites/default/files/Economic%20Impact%20of%20Indian%20Gaming%20in%20the%20U.S.%20September%202017.pdf>.

It is common for nearby off-reservation communities to benefit from tribal gaming’s “economic spillovers.” “Reservation economic activity requires goods and services from off-reservation communities, which incur local and state taxes on sales and income.”³⁹ Survey data from tribes in Washington state, for example, indicate that two-thirds of the 27,376 workers employed in tribal casinos, governments, and nongaming enterprises in 2010 were non-Indians. Four of those tribes provided detailed procurement information showing that at least 94 percent of all tribal goods and services in 2004 came from off-reservation suppliers.⁴⁰ “In 2016, the Fort Belknap Indian Community, home of the Gros Ventre and Assiniboine Tribes in Montana, 72 cents of every dollar that entered the reservation economy was spent off the reservation. In total, this spending meant that the community contributed \$158 million to the surrounding and broader economy.”⁴¹ The Tribes’ Island Mountain Development Group specializes in e-commerce, employs more than 200 people, and alone supports more than \$33 million in business sales in Blaine County, Montana.”⁴²

Adequate funding of tribal programs through gaming revenues will relieve the pressure on state welfare programs and federal funding, leading North Dakota’s tribes towards true independence. Gaming success has spurred self-sufficiency for tribes such as Oneida (New York) and Mille Lacs (Minnesota) to such a degree, that they have taken the step of eschewing federal funding. Self-sufficiency will improve tribal social services—as when Mississippi Choctaw plows the fruits of economic development into dramatic improvements in public safety and health care delivery—and encourage cultural preservation—Mille Lacs is able to invest in award-winning efforts to replenish Native language use.⁴³ North Dakota’s tribes can attain similar successes and independence.

³⁹ Akee, et al., *The Indian Gaming Regulatory Act and Its Effects on American Indian Economic Development* (2015), available at https://www.researchgate.net/publication/282462768_The_Indian_Gaming_Regulatory_Act_and_Its_Effects_on_American_Indian_Economic_Development/link/5b2a33b3aca27209f3753b70/download.

⁴⁰ *Id.*

⁴¹ Correspondence from Harvard Project on American Indian Economic Development to Secretary Mnuchin, *supra* n. 4 (citing Michael Shuman, “Tribal Renewal through Self-Reliance: A New Economic Development Strategy for the Fort Belknap Reservation,” Local Economy Programs for Neighborhood Associates Corporation (March 2020), p. 19).

⁴² Correspondence from Harvard Project on American Indian Economic Development to Secretary Mnuchin *supra* n. 4 (citing “The Economic Contribution of the Island Mountain Development Group,” Bureau of Business and Economic Research, University of Montana, Missoula, Montana (Oct. 2019)).

⁴³ Kalt and Singer, *Myths and Realities of Tribal Sovereignty: The Law and Economics of Indian Self-Rule*, *supra* n.1.

North Dakota Can Anticipate Significant Revenue From Sports Betting and Online Gaming

SB 2314 allows players to participate in online gaming and online sports betting activities from any location within the state. It also allows players to register for online gaming or online sports betting accounts online, eliminating a trip to a brick and mortar casino. This will eliminate any inequities from requiring players to travel to a remote casino to register. This is known as the “New Jersey” model. Pursuant to the “New Jersey” model, a fully mature internet sport betting business in North Dakota is anticipated to yield \$681,476,320 in statewide revenues, a figure that is less than the current ETAB machine gross revenue in the State of North Dakota (\$768,000,000), not even taking into account how that revenue will likely grow. Online gaming is projected to generate gross revenue twice the sports betting projections. The expected statewide gross revenue of legal online gaming is therefore \$1,362,952,640 per year, which is probably similar to the annual gross revenue that the ETAB machines will generate in a few years given the current rate of growth.

TMBCI has provided statewide revenue projections from IGT, its sports betting partner, for the Committee’s review. (See Exhibit 4 submitted with this letter). Please note that SB 2314 is consistent with “Scenario 4 (online access with remote registration).”

A Comprehensive Look at Other States With Online Gaming

Online gaming is currently available in 13 states, all offering online sports betting, four offering online casinos, and five offering online poker.⁴⁴ Another four have legalized some form of online gaming, although as of late last year, these states were not yet operational.⁴⁵ The following section provides an overview of online gaming in the 13 operational states, including the cybersecurity measures used by each state. Senate Bill No. 2314 requires that a tribal-state compact address cybersecurity, specifically: geolocation, account encryption, and age verification. It also requires that the servers that are hosting the gaming transactions be located on tribal lands. As you will see, these provisions are common in the below states’ various statutory and regulatory schemes for online gaming.

Oregon

⁴⁴ Delaware - Online Poker and Online Casino gaming

Nevada - Online Poker

New Jersey - Online Poker, Online Casinos

Pennsylvania - Online Poker, Online Casinos

West Virginia - Online Poker, Online Casinos

⁴⁵ Washington, North Carolina, Virginia, Tennessee

Oregon allows online betting on professional sports through the Oregon Lottery. In October 2019, the lottery commission authorized mobile sports betting, with the state-run lottery overseeing the launch of a new website and application.⁴⁶

Oregon's sports betting program is showing an upward trend in revenue, although the numbers are underwhelming compared to other states. Sports betting analysts attribute this to Oregon's use of a single sports betting app. In Rhode Island, a state that also has only one sports betting app, similar results have occurred. Additionally, Oregon does not allow sports betting on college sports, which could be contributing to the low revenues.⁴⁷

The Oregon Lottery uses information security safeguards. The Oregon Lottery takes reasonable precautions to protect the personally identifiable information it collects from loss, unauthorized access, illegal use, or unauthorized disclosure. The Oregon Lottery uses encryption software to protect the security of individual's personal information during transmission of such information through the Oregon Lottery's website. The Oregon Lottery stores personally identifiable information in secure locations and has policies and procedures in place to protect such information from illegal access or inadvertent disclosure. Oregon Rule 177-010-0115 (Data Privacy and Security Policy).⁴⁸

Colorado

Colorado voters legalized sports betting in November 2019 and the program launched on May 1, 2020. The state issued sports betting regulations on August 14, 2020. 1 CCR 207-2.⁴⁹

⁴⁶ Personal communication with Matt Shelby, Community & Corporate Engagement Manager, Oregon Lottery.

⁴⁷ Legal Sports Betting, *Oregon Sports Betting Revenue in August, Dominated by Scoreboard* (Sept. 21, 2020), available at <https://www.legalsportsbetting.com/news/oregon-sports-betting-revenue-for-august-dominated-by-scoreboard/>.

⁴⁸ Oregon has a state-wide consumer protection law and privacy policy that covers all interactions that a person has with a business conducting online commerce, including the Oregon lottery. This law requires businesses involved in online commerce to keep personally identifiable information and confidential data secure and notify consumers about any breaches. When a player submits personally identifiable information, participates in a promotion, uses the Oregon Lottery app, or browses the lottery website, they consent to the collection and use of the information in accordance with this privacy policy.

⁴⁹ An online sports betting operation is one in which "wagers on sports events are made through personal computers, or mobile or interactive devices, and accepted through an online gaming system approved by the Division." An "Internet Sports Betting Operator" means a person contracted by a Master License that is licensed to operate an internet Sports Betting Operation in which customers place bets within the State of Colorado on authorized sports events through a customer's personal computer, mobile or interactive device and accepted through an online

Like many states, Colorado experienced a lull in sports betting due to the coronavirus pandemic and the suspension of sports. However, now that sports are back, Colorado's revenue is beginning to pick up. For example, the state Department of Revenue reported in late August 2020 that "more than \$59 million was wagered in July, just over a 55% increase from June and more than double May's relatively modest number. After payouts to winners, operators reported more than \$2.4 million in net sports betting proceeds and almost \$242,000 in taxes due to the state."⁵⁰

Colorado has extensive system integrity, security, and licensure requirements. All online sports betting systems authorized by the Division and the rules must be designed to ensure the integrity and confidentiality of all patron communications and ensure the proper identification of the sender and receiver of all communications. If communications are performed across a public or third-party network, the system shall either encrypt the data packets or utilize a secure communications protocol to ensure the integrity and confidentiality of the transmission.

If the sports betting system allows online betting, it must employ a method for verifying geolocation systems to establish patrons' geographic locations. 1 CCR 207-2 § 7.5(20). In order to prevent unauthorized use of the internet or a mobile device to place a sports wager when a patron is not within the state of Colorado, the Sports Betting Operation must utilize a geofence system to reasonably detect the physical location of a patron attempting to access the online sports betting system and place a wager; and to monitor and block unauthorized attempts to access the online sports betting system in order to place a wager. (The geofencing system must ensure that any patron is located within the permitted boundary when placing any wager, and shall be equipped to dynamically monitor the patron's location and block unauthorized attempts to access the online sports betting system in order to place a wager throughout the duration of the sports betting patron session.)

Patron accounts must be encrypted, and the following information protected: (i) Any portion of the patron's Social Security number or equivalent identification number for a noncitizen patron, such as a passport or taxpayer identification number; (ii) The patron's passwords and PINs; and (iii) The patron's personal financial information. 1 CCR 207-2 § 7.11(4)(b). A Sports Betting Operation must have internal controls in place to identify unusual betting activity and report such activity to the Division and an Independent Integrity Monitoring Association as directed by the Division Director. 1 CCR 207-2 § 8.1(2). The rules also provide for protection of confidential information, even as it relates to unusual betting activity. Age and identity are verified through user accounts. 1 CCR 207-2 § 7.11 (2).

gaming system approved by the Division. 1 CCR 207-2 § 1.4(13). An Internet Sports Betting Operator may provide only one individually branded website, which may have an accompanying mobile application that must bear the same unique brand as the website for an internet Sports Betting Operation. 1 CCR 207-2 § 1.4(10).

⁵⁰ The Colorado Sun, *With big sports back, Colorado's betting scene exploded with \$59 million in pent-up wagers* (Aug. 27, 2020), available at <https://coloradosun.com/2020/08/27/coronavirus-colorado-sports-betting/>.

Nevada

On December 22, 2011, the Nevada Gaming Commission established a regulatory framework for state regulation of interactive gaming (which is presently limited to only internet poker). These regulations address the system of granting licenses to operators, service providers and manufacturers of “interactive gaming systems” for internet poker.⁵¹

For internet poker, the Nevada Gaming Commission’s regulations also address matters related to:

- The registration of players.
- Player accounts.
- Problem gaming.
- Player disputes.
- Suspicious and criminal wagering activity.
- The minimum standards and controls necessary to offer internet poker.

Under these regulations, the core components of an interactive gaming system (including the servers and databases running the games on the interactive gaming system and storing game and interactive gaming account information) must be located in the state of Nevada unless otherwise permitted by the Chairman of the Gaming Control Board.

Interactive gaming on television is not currently permitted in Nevada. Mobile wagering is limited to the conduct of gaming games operated solely within a licensed gaming establishment, and specifically excludes interactive gaming. *NRS 463.0176*.

“Interactive gaming” does not include the operation of a race book or sports pool that uses communications technology. Instead, these are approved by the Gaming Control Board pursuant to regulations adopted by the Nevada Gaming Commission to accept wagers originating within this state for races, or sporting events or other events. *NRS 463.016425(1)*.

⁵¹ In Nevada, “interactive gaming” means the conduct of gaming games through the use of communications technology that allows a person, utilizing money, checks, electronic checks, electronic transfers of money, credit cards, debit cards or any other instrumentality, to transmit to a computer information to assist in the placing of a bet or wager and corresponding information related to the display of the game, game outcomes or other similar information. This includes (without limitation) internet poker.

Nevada is not faring as well as other states when it comes to online gaming, possibly because they do not offer online casinos, and also possibly because the gaming industry is attached to promoting its brick and mortar dynasty. “In April and May combined, when Nevada’s casinos were closed to slow the spread of COVID-19, statewide gaming revenues totaled \$9.44 million, a more than 99 percent decline over the same two months in 2019. Gaming wins came from mobile sports wagering on Belarusian soccer, Korean baseball, Chinese table tennis, other non-traditional games and gaming on WSOP.com – Nevada’s lone online poker site.”⁵²

The Nevada Gaming Commission has established minimum internal controls required for operators of interactive gaming, including controls for:

- Administration, accounting and audit
- System security
- Player identification, verification and registration
- Confidentiality of player accounts and player information
- System testing
- Responsible gaming⁵³

New Jersey

New Jersey allows online casinos, poker rooms, and sports betting. On February 26, 2013, the New Jersey Legislature legalized online gaming within its borders through the passage of bill A2578. Sen. Ray Lesniak pushed the bill as a way to stimulate Atlantic City’s ailing economy. The bill authorized online versions of **roulette, baccarat, blackjack, craps, big six wheel, slot machines, mini baccarat, red dog, pai gow and sic bo**; any variations or composites of such games, provided that such variations or composites are found by the [DGE] suitable for use after an appropriate [test period]; and any other game which is determined ... to be compatible with the public interest. Since June 2018, online sports betting has been legal in New Jersey for all players within the borders of New Jersey who are over 21 years old.

Online gaming is going strong in New Jersey. “Online gaming sites combined to bring in **\$87.8 million** for the month of August, which is a new record. It’s only the slightest of increases over July, however, when the total was **\$87.5 million**. Meanwhile, retail revenue climbed **35%**, so in that light, stable online revenue is a victory in its own right. Adding to this, sportsbooks in the state brought in an additional **\$39.5 million**, most of this from online

⁵² The Nevada Independent, *As online gaming expands in the U.S., experts worry Nevada could be left behind* (Aug. 24, 2020), available at <https://thenevadaindependent.com/article/as-online-gaming-expands-in-the-u-s-experts-worry-nevada-could-be-left-behind>.

⁵³ These are set out in Nevada Gaming Commission Regulation 5A.070.

channels. Total combined gaming revenue for the state was **\$326 million**, bringing the total for the year to date to more than **\$1.6 billion**.⁵⁴

In New Jersey, Bill A2578 outlined various security requirements for internet gaming. For example, a casino's primary equipment used by a licensee to conduct Internet gaming must be located, with the prior approval of the division, in a restricted area on the premises of the casino hotel within the territorial limits of Atlantic City, New Jersey. Any intermediate routing of electronic data in connection with a wager shall not affect the fact that the wager is placed in Atlantic City. No software, computer or other gaming equipment shall be used to conduct Internet gaming unless it has been specifically tested by the division. The division may, in its discretion, and for the purpose of expediting the approval process, refer testing to any testing laboratory with a plenary license as a casino service industry enterprise. The division shall give priority to the testing of software, computers or other gaming equipment which a casino licensee has certified it will use to conduct Internet gaming in this State.

The statute authorized the adoption of regulations to establish such technical standards for approval of software, computers, and other gaming equipment used to conduct Internet gaming, including mechanical, electrical or program reliability, security against tampering, the comprehensibility of wagering, and noise and light levels, as it may deem necessary to protect the player from fraud or deception and to insure the integrity of gaming.

The regulations contain provisions for security:

- General requirements for Internet and mobile gaming (13:69O-1.2)
- Internet or mobile gaming accounts (13:69O-1.3), including encryption of sensitive patron information (*Id.* at (b)(2))
- Internet or mobile gaming system standards and operational controls (13:69O-1.4)
- And server-based gaming systems (13:69O-1.5).

Michigan

Michigan approved both online sports betting and online casinos in 2019, although wagering has yet to commence.⁵⁵ In order for wagering to commence, Michigan must

⁵⁴ Online Poker Report, *New Jersey Beats its Online Casino Poker Revenue Record Yet Again in August* (Sept. 15, 2020), available at <https://www.onlinepokerreport.com/44451/nj-record-online-gambling-revenue/>.

⁵⁵ Michigan passed the Lawful Internet Gaming Act (Act 152) and Lawful Sports Betting Act (Act 149) (collectively, the Acts) in 2019. The Acts require licensure for persons to offer internet gaming or sports betting; impose requirements for internet gaming and sports betting; provide for the powers and duties of the Michigan gaming control board and other state and local officers and entities; imposes fees; impose tax and other payment obligations on the conduct of licensed internet gaming and sports betting; create internet gaming and sports betting funds; prohibit certain acts in relation to internet gaming and sports betting and to prescribe penalties for those violations; require the promulgation of rules; and provide remedies.

promulgate rules regarding internet gaming or sports betting. The Michigan Gaming Control Board estimates that rulemaking will be completed by early 2021. The administrative rules will address the types of games an internet gaming operator may offer. Authorized games may include, but are not limited to, poker, blackjack, cards, slots and other games typically offered at a casino. The agency has not yet determined the events that will be available for sports betting. Draft rules are available, and their relevant provisions are summarized below.

Michigan's statutes do not address cyber security or data privacy, but the draft regulations contain extensive controls and also require adherence to third party international standards.⁵⁶ In addition to the Gaming Laboratories International, LLC standards, the draft regulations also set out rules for geofence requirements (R 432.731 & R. 432.631), internet sports betting platform submissions and approvals (R 432.732 & R 432.632), location of servers, security, and cloud storage (R 432.734 & R 432.634), internet gaming data logging standards (R 432.736 & R 432.636), self-monitoring of internet gaming platform critical components (R 432.737 & R 432.637), technical security standards (R 432.739 & R 432.639), and test accounts (R 432.739a & R 432.639a). Michigan also requires internet gaming operators or internet gaming platform providers to comply with all provisions of the bank secrecy act of 1970, 31 USC 5311 to 5332, applicable to the internet gaming operator's or internet gaming platform provider's internet gaming operation.⁵⁷

⁵⁶ The board adopts and incorporates by reference, Gaming Laboratories International, LLC Standard GLI-33: Standards for Event Wagering Systems, version 1.1, released May 14, 2019, which is available at Gaming Laboratories International website at <https://gaminglabs.com> and does not include any later amendments or editions. GLI-33 standards are intended to supplement rather than supplant other technical standards and requirements under these rules. Internet gaming operators, internet gaming platform providers, and internet gaming suppliers must comply with, and the board adopts and incorporates by reference, Gaming Laboratories International, LLC Standard GLI-19: Standards for Interactive Gaming Systems, version 2.0, released February 15, 2013, which is available at the Gaming Laboratories International website at <https://gaminglabs.com> and does not include any later amendments or editions. GLI-19 standards are intended to supplement rather than supplant other technical standards and requirements under these rules.

⁵⁷ Michigan's statute specifically addresses compacts. It states that the "State, acting through the governor, at the request of any Indian tribe, is authorized to negotiate and conclude and execute any amendments to an Indian tribe's compact necessary to effectuate internet sports betting by the Indian tribe under this act and to ensure internet sports betting conducted by the Indian tribe is in compliance with this act. If the governor fails to enter into negotiations with the Indian tribe, or fails to negotiate in good faith with respect to any request, this state waives its sovereign immunity to permit the Indian tribe to initiate an action against the governor in his or her official capacity in either state court or in federal court and obtain those remedies as authorized in 25 USC 2710(d)(7)."

West Virginia

Online casinos have been legal in West Virginia since March 2019. By virtue of **House Bill 2934**, which is also known as the **West Virginia Lottery Interactive Wagering Act**, state law declared that *“the operation of West Virginia Lottery interactive wagering at racetracks...and at a historic resort hotel ... serves to protect, preserve, promote, and enhance the tourism industry of the state as well as the general fiscal wellbeing of the state and its subdivisions.”* West Virginia opened its online gaming market in mid-July when DraftKings launched the state’s first online casino. Swedish online casino games provider NetEnt is set to enter West Virginia’s recently regulated iGaming market through a partnership with BetMGM, news emerged September 18, 2020.⁵⁸

Online sports betting has been legal in West Virginia since August 2019. The code requires casinos to have controls in place to identify unusual and suspicious wagering activity and report such activity according to the integrity monitoring system procedures approved by the Commission. The integrity monitoring systems provide the Commission with remote access to provide, at a minimum, reports of unusual and suspicious activity. Sports pool operators must also have internal controls addressing user access, risk management procedures, procedures to prevent prohibited patrons from playing, compliance standards, and descriptions of all integrated third-party systems. 179CSR9 § 179-9-5. West Virginia also provides for system requirements. Prior to operating a sports pool or online sports pool pursuant to W.Va. Code §§29-22D-1 et seq., all equipment and software used in conjunction with its operation shall be submitted to an independent testing laboratory or a testing laboratory operated in an accredited jurisdiction approved by the Commission.

All wagers on sporting events authorized by W.Va. Code §§29-22D-1 et seq., shall be initiated, received, and otherwise made within this State unless otherwise permitted by the Commission in accordance with applicable federal and state laws. Consistent with the intent of the United States Congress as articulated in the Unlawful Internet Gambling Enforcement Act of 2006 (31 U.S.C. §§5361 et seq.) the intermediate routing of electronic data relating to a lawful intrastate wager authorized under this provision shall not determine the location or locations in which such wager is initiated, received, or otherwise made. A sports pool system submission to a testing laboratory shall contain a description of the risk management framework, maintain transactional wagering data, and record wager information. §179-9-6.

Pennsylvania

The Expanded Gaming Act (H.B. 271, 2017 Pa. Gen. Assemb. Reg. Sessions (Pa. 2017) (1) legalizes online poker, slots, and table games; (2) provides for the regulation of land based and online sports betting; (3) expressly legalizes and provides for the regulation of daily fantasy

⁵⁸ Casino News Daily, *NetEnt to Enter West Virginia Online Casino Space with BetMGM* (Sept. 18, 2020), available at <https://www.casinonewsdaily.com/2020/09/18/netent-to-enter-west-virginia-online-casino-space-with-betmgm/>.

sports; (4) authorizes video gaming at truck stops and table gaming at airports; (5) authorizes ten “satellite” casinos around the state; and (6) legalizes the online lottery.

The “satellite” casinos are a new Category 4 license under the Act. Category 4 licensed “facilities” cannot be located within 25 miles of any licensee in Category 1 to 3, nor can they be located in a municipality that has voted to bar satellite casinos from their jurisdiction. Category 4 licensees are allowed to have between 300 and 750 slot machines and 30 table games. In 2019, five satellite casinos bid on and received Category 4 licenses, these casinos were still in the development phase in late 2019. Online casino gaming as well as online sports betting began to operate in Pennsylvania in 2019. Recently, due to the pandemic, online gaming has been doing very well in Pennsylvania. “In July, the Pennsylvania Gaming Control Board reported a gross revenue of \$54 million in Internet gaming during that month at 10 Pennsylvania casinos, resulting in generated tax revenue of \$23.6 million. In that same period, Harrah’s Philadelphia, which had just started its online gaming endeavor four months earlier at the site which despite the name is actually in Chester, reported \$831,865 of total Internet games revenue.”⁵⁹

In Pennsylvania, the Expanded Gaming Act generally directs the Pennsylvania Gaming Control Board to put in place GPS and IP tracking controls to ensure only players physically located in an authorized location (i.e. within Pennsylvania or a state with which Pennsylvania has entered into an online gaming agreement) can play. The Pennsylvania Gaming Control Board has adopted regulations specific to online gaming dealing with system requirements such as geolocation and IP tracking controls, terms and conditions, and account security. These regulations are set forth in Title 58, Part VII Chapter 8.09.

Specifically, Chapter 8.09.6(a) requires that an online gaming system must be designed with a methodology approved by the Board to ensure secure communications between a player’s device and the online gaming system, and provides a list of considerations that the Board will use when reviewing a system’s methodology. Section 8.09(c) sets forth specific requirements for data logging. Chapter 8.07 provides specific geolocation requirements to ensure that players are engaging in online gaming activities within an authorized area.

To engage in online gaming, a player must establish an interactive gaming account. Chapter 812.2. Once a player creates an interactive gaming account, the operating platform must create an electronic player file. The Operating platform must ensure that the electronic player file is encrypted. The Operating platform must also ensure that the provided information is accurate and that the player is over the age of 21. Chapter 812.2. The Board requires an interactive gaming system to have specific security requirements (e.g. username, option for strong authentication login protection, password of sufficient length) in order to ensure player access is appropriately limited to the registered account holder. Chapter 812.3. The Board also requires

⁵⁹ Delaware County Daily Times, *Delaware County Sets Up Authority to Oversee Internet Gaming Funds* (Sept. 6, 2020), available at https://www.delcotimes.com/news/delaware-county-sets-up-authority-to-oversee-internet-gaming-funds/article_9f65d4c8-ef95-11ea-adaf-334c0bf37f4e.html.

that an interactive gaming system have specific security requirements to ensure that third-party access to player accounts is limited.

Delaware

The Delaware Gaming Competitiveness Act of 2012 legalizes online table games and video lottery offerings, including online poker and sports betting. All online gaming must be operated by the Delaware lottery. Delaware also launched online real money play in 2013 and online sports betting in 2018.

Currently, there is no mobile sports betting in Delaware, even though it is legal in the state. Sports betting has to take place in the three brick-and-mortar casinos — Delaware Park, Dover Downs and Harrington.⁶⁰ On the other hand, online gaming seems to be doing well. “Online gambling revenue in the state of Delaware totaled \$808,623 in August, up 263.4% year-on-year and also an improvement on July’s figures. Data from the Delaware Lottery showed igaming revenue was significantly up from \$222,504 in August 2019, while the total represented a 15.1% increase on the \$702,533 posted in July. Consumers wagered a total of \$19.8m on igaming with the state’s three licensed operators in August, up 58.4% on last year, but the lowest monthly amount since March. Online video lottery remained the most popular product vertical, with players spending \$11.4m and operators generating revenue of \$572,539. Table games revenue came to \$181,500 from \$8.4m in bets, while operators generated an additional \$54,584 in poker rake and fees.”⁶¹

The Delaware Gaming Competitiveness Act requires the Lottery Director to provide for the security and effective administration of internet gaming, including procedures for verifying the location and identify of players, mechanisms for maintaining account security, procedures to exclude minors or other excluded persons, limits on the amount which can be wagered, and advertisements for services for compulsive gamblers. Internet lottery games are offered solely to persons within the State of Delaware at the current time. These regulations can be found in Title 10: 206 - Internet Rules and Regulations. Section 13.9 requires a gaming platform to have an age verification system in place for those registering an account on the platform. Section 13.22 provides that an operator must have a geolocation system in place that verifies player’s location using the player’s computer or mobile device and blocks players who are in unauthorized locations.

New Hampshire

⁶⁰ Gambling.com, *Delaware July Sports Betting Hurt by Sports Book Being Closed* (Aug. 27, 2020), available at <https://www.gambling.com/news/us/delaware-july-sports-betting-hurt-by-sportsbooks-being-closed-2297200>.

⁶¹ iGamingbusiness.com, *Delaware igaming growth continues into August* (Sept. 17, 2020), available at <https://www.igamingbusiness.com/news/delaware-igaming-growth-continues-august>.

New Hampshire recently authorized online sports betting with HB 480, which was signed into law on December 30, 2019. HB 480 authorizes up to five online sports betting platforms to operate at a time, the state has since selected DraftKings to be the sole land based and online sports betting operator in the state. New Hampshire also allows online lottery games such as scratch offs and online horse race betting.

New Hampshire requires that an operator have mechanisms in place to verify the age of patrons, to ensure that wagers are initiated and received within the geographic borders of the state, and to maintain the security of confidential patron information. Section 287-I:7. Prior to beginning sports betting operations in the state, an operator must submit a security and internal control report that addresses all aspects of security (physical, personal, computer system) to the division of sports wagering for review and approval. Section 287-I:8.I-II.

Rhode Island

Rhode Island legalized online sports betting through authorized hosting facilities in 2019 by passing RI S 0037, which amends Chapter 42-61.2 of the State Code to include online sports wagering. Recently, the state authorized online registration for online sports betting, instead of requiring registration to be done in person at an authorized hosting facility. RI SB2919 and HB8097. There is no other legal online gaming activity in Rhode Island. Since Rhode Island lifted the in-person registration restriction, there has been a surge in online sports betting. In July Rhode Island sports betting generated \$351,425 in revenue, which represents a 246.8% increase in revenue from the \$101.328 generated in June.⁶² As of September 22, Rhode Island had 25,372 fully active online sports betting accounts.⁶³

Rhode Island requires that all online sports betting take place within the State of Rhode Island. Chapter 42-61.1-16(a). Additionally, Rhode Island's State Code specifically requires that the "server-based gaming system shall employ a mechanism to detect the physical location of a player when the player logs onto the system and as frequently as specified in any regulations promulgated by the state, through the division. If the system detects that the physical location of the patron is in an area outside the state of Rhode Island, the system shall not accept that patron's wagers until such time as the patron is in the state of Rhode Island." Chapter 42-61.1-16(b).

Rhode Island requires that an operator have mechanisms in place to verify the age of patrons, to ensure that wagers are initiated and received within the geographic borders of the state, and to maintain the security of confidential patron information. Prior to beginning sports betting operations in the state, a licensed operator must have all such mechanisms approved by

⁶² Compare.bet, *Rhode Island Sports Betting Revenue Continues to Grow in July* (Sept. 2, 2020), available at: <https://www.compare.bet/news/rhode-island-sports-betting-revenue-continues-to-grow-in-july>

⁶³ Legalsportsreport.com, *RI Sports Betting Data Shows its Never Too Late to Fix a Mistake*, (Sept. 25, 2020), available at (<https://www.legalsportsreport.com/44506/ri-sports-betting-remote-registration/>)

the Department of Lottery. Rhode Island Lottery Rules and Regulations, 20.20; RI Lottery Rules and Regs, 20.32 (geolocation requirements).

Washington D.C.

Washington D.C. passed the Sports Wagering Lottery Amendment Act of 2018 legalizing online sports betting, “provided, that any systems used for mobile or online transactions include age and location verification technology designed to prevent unauthorized access by individuals whose age and current location have not been verified.” D.C. Law 22-312, Sec. 311(a)(1). Online sports betting is regulated by the state Office of Lottery and Gaming. There are two types of sports betting licenses, Class A and Class B. A Class A Licensee may conduct online sports betting either within the confines of the licensed facility and/or within two blocks of the facility so long as the mobile app will not work within another licensed facility. A Class B Licensee may conduct online sports betting within the confines of the licensed facility. Title 30, Chapter 20, Sec. 2120. The Office must approve all online sports wagering systems. Section 2199.

The Washington D.C. Lottery regulations require a license applicant to provide a security plan as part of the application process. A Licensee that will offer online sports betting, must provide information on geolocation technology and age verification for players utilizing the online platform. Title 30, Chapter 20, Sec. 2120.

Iowa

Iowa has legalized online fantasy sports betting in August 2019. It took a bit of a hit from the pandemic, but is doing well now that sports have reopened.⁶⁴ In August online sports betting generated a majority of the state’s revenue in August, generating \$1.6 million.⁶⁵

Iowa does not have robust cybersecurity provisions for online fantasy sports betting. Iowa Code requires a licensed fantasy sports provider to use reasonable methods to verify the age of players. IAC Chapter 99.E.5(2)(b). Regulations require gaming commission to test and approve all sports betting systems, including online gaming platforms. IAC 491 Chapter 14.8(4). A Licensee must perform an annual security risk assessment. IAC 491 Chapter 14.8(4).

Illinois

⁶⁴ The Gazette, *Iowa Sports Betting Gains Yards, but Not Touchdown* (Aug.31, 2020), available at <https://www.thegazette.com/subject/news/government/first-year-of-iowa-sports-betting-gains-yards-but-not-touchdown-20200831>

⁶⁵ Compare.bet, *Iowa Sports Betting Revenue and Handle Continues to Grow in August* (Sept. 11, 2020), available at <https://www.compare.bet/news/iowa-sports-betting-revenue-and-handle-continues-to-grow-in-august3>

The Illinois Sports Wagering Act of 2019 legalized online sports betting. No other online gaming is allowed in Illinois. The Act allows the Illinois Gaming Board to issue up to three licenses to accept wagers by internet or mobile application only. 230 ILCS 45/25-45(a). An online only sports wagering licensee must pay a one-time fee of \$20 million. *Id.* The IGB may accept licenses for online only providers within 18 months within the issuance of the first sports wagering license and shall announce the winning bidders within 21 months of the issuance of the first sports wagering license. Sports wagers must be conducted in person until the IGB issues the first online sports wagering license. *Id.* at (b).

The Commission may issue up to seven master sports wagering licenses. A master sports wagering licensee may accept wagers online or through mobile app within a five block radius of their facility. 25-40 (f). A master licensee may offer internet gaming, so long as the online platforms is offered under the same brand of the holding company or the same brand as a holding company that owns at least an 80% interest in the organizational licensee. 230 ILCS 45/25-40(h). An individual must create a sports wagering account in person, until the IGC issues the first online only sports wagering license. 25-40(i).

Sports betting generated \$52.5 million in wagers during July, its first full month of activity, with 92% of all sports betting taking place online. This leads to about \$3.6 million in revenue for the sports book, and \$544,000 in state revenue (the state gets 15% of revenue generated by sportsbook in taxes). The beginning of football season and the recent launch of several online sports book expects to increase revenues.⁶⁶

Illinois regulations state “a master sports wagering licensee shall implement methods or systems in the internet wagering system to detect unauthorized access to sports wagering accounts, fraud, theft, suspicious wagering activity, or other prohibited activity. Those methods shall be documented in the internal control system.” 1900.1210 (c). A player must create a sports wagering account to participate in online gaming, all player account information must be held in an encrypted file. 1900.1220(2). Licensee must either verify the patron’s identity in person or through remote multi-sourced methodology. 1900.1220(3)(A)(ii).

The regulations have specific Internet wagering system requirements. 1900.1430. These requirements include: mechanisms to detect the physical location of the patron periodically through a play period; mechanisms to detect or prevent efforts to defeat or circumvent the location and detection mechanisms; data collection requirements and limitations to only use data collection for compliance with the act. 1900.1430(b)-(h). The regulations also require “[e]ach master sports wagering licensee shall maintain modern best practices to ensure the security and integrity of the internet wagering system, including but not limited to: network security; patron identity authentication; location detection; error detection; and data security. 1900.1430(i). Regulations have specific sports wagering system requirements, requirements to share real-time information with the Board, and information storage requirements. 1900.1450.

⁶⁶ Chicago Tribune, *Illinois sports bets top \$52 million in July; online wagering gains traction as NFL season kicks off* (Sept.15, 2020), available at: <https://www.chicagotribune.com/business/ct-biz-sports-betting-illinois-online-nfl-20200915-6izlxlwjlxdel5vovgvgciu-story.html>

As can be seen, these thirteen states have varying levels of regulation and control over online gaming activities. SB 2314 will allow North Dakota and tribal governments to use regulatory examples from other states to provide effective and professional regulatory oversight of online gaming and online sports betting through the tribal-state gaming compacts. The federal courts have found that legalizing specific kinds of gaming within the state just for tribes is a legal mechanism for carrying out the intentions of the Indian Gaming Regulatory Act.⁶⁷ SB 2314, which allows mobile sports betting and online gaming to be legalized in North Dakota for tribes only, will help the North Dakota tribes offset the dramatic increase in ETAB machine revenue while allowing them to provide much needed social services to their members.

Conclusion

Tribal gaming is no longer in its infancy, and North Dakota's tribes are facing competition from ETAB revenues as gaming in the state continues to spread. Revenues from tribal gaming are declining, impacting tribal governments' ability to provide adequate social services to their members. SB 2314 will enhance gaming revenues, supporting the federal policies of tribal self-determination and government-to-government relations. Stronger tribal governments means less burden on the state social welfare safety net, and a better economy for all of North Dakota.

The Turtle Mountain Band of Chippewa Indians appreciates the government-to-government relationship with the State of North Dakota, and this opportunity to work together for the betterment of all our citizens. Thank you for the opportunity to provide this written testimony on SB 2314.

Sincerely,



Jamie Azure, Tribal Chairman
Turtle Mountain Band of Chippewa

⁶⁷ *Artichoke Joe's California Grand Casino v. Norton*, 353 F.3d 712 (9th Cir. 2003).