

2021 SENATE FINANCE AND TAXATION

SB 2296

2021 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Fort Totten Room, State Capitol

SB 2296
2/10/2021
AM

A BILL for an Act to create and enact a new section to chapter 53-06.1, a new subsection to section 53-06.1-11, and two new subsections to section 53-06.1-15.1 of the North Dakota Century Code, relating to the regulation of electronic pull tab devices; and to amend and reenact section 53-06.1-01, subsection 1 of section 53-06.1-01.1, subsection 1 of section 53-06.1-06, sections 53-06.1-08, 53-06.1-08.2, and 54-58-03 of the North Dakota Century Code, relating to charitable gaming and tribal-state gaming compacts.

Chair Bell calls the meeting to order. Chair Bell, Vice Chair Kannianen, Senators Meyer, J. Roers, Patten, Piepkorn, Weber are present. [10:20]

Discussion Topics:

- Gaming Compacts
- Employment and economics
- Tribal casino revenue
- eTab machines numbers, regulations and payouts
- Gross Proceeds
- Character References and back ground checks
- Internal controls
- IRS compliance and bank secrecy act
- Gaming commission membership

Senator Marcellais [10:20] District 9, Rolette County, introduces the bill in favor #6178.

Mark Fox [10:22] Chairman, Mandan, Hidatsa, Arikara Nation orally in favor.

Cynthia Monteau [10:36] Executive Director, United Tribes Gaming Association in favor and proposes an amendment #6255 and 6256

LaRoy Kingsley, [10:42] KK Bold representing United Tribes Gaming Association in favor #6251

Jamie Azure, [10:56] Chairman, Turtle Mountain Band of Chippewa and United Tribes Gaming Association orally in favor

Charles Walker [11:06] Council Representative, Standing Rock Sioux Tribe orally in favor.

Charles Bailey [11:16] Gaming Commission Chairman, Standing Rock in favor #6249

Collette Brown [11:26] Gaming Director, Spirit Lake Gaming Resort in favor #6254

Carol Two Eagles [11:33] orally in favor.

Ken Karls [11:39] Lobbyist, Cystic Fibrosis Association of North Dakota in opposition #6166.

Sheri Grossman [11:45] Member TAP Alliance, CEO Bismarck Mandan CVB in opposition #6172.

Don Santer [11:51] CDAND Vice President and NDAD CEO, in opposition #6169.

Additional written testimony:

Amy Krueger, Executive Director, Williston Convention & Visitor Bureau, Inc. in opposition #6171.

Janelle Mitzel, Gaming Director, Development Homes in opposition #6084.

Terri Thiel, Dickinson CVB in opposition #6154.

Mike Motschenbacher, Executive Director/Lobbyist, North Dakota Gaming Alliance in opposition #6198.

Chair Bell adjourns the meeting. [12:08]

Joel Crane, Committee Clerk



NORTH DAKOTA SENATE

#6178

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COMMITTEES:

Education
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SB 2296 Testimony

Senate Finance & Taxation Committee

Fort Totten Room 2/10/21 @ 11:00 am

Chairwomen Bell members of the Senate Finance & Taxation Committee for the record my name is Richard Marcellais Senator from Rolette County District 9.

I am here this afternoon in favor of SB 2296 – relating to charitable gaming and tribal-state gaming compacts.

Section 1: Include “or net revenue”

Definition: “Bar”

Page 2 line 14 “Electronic pull tab device” means a hand-held device

Page 2 line 15 with similar appearance and functionality or physical paper pull tabs.

Section 2: page 4 line 21-22 The state gaming commission consists of the chairman and nine other members including one member from each of the five federally recognized Indian tribes in the state.

Section 3: Page 5 line 6 insert “A bar employee may not redeem an electronic pull tab credit ticket voucher.

Section 5: Page 5, lines 25 strike “or used to purchase more pull tabs.

Page 5, line 28-30 insert “2. An electronic pull tab device must maintain a twelve percent hold. 3. An electronic pull tab only may be dispensed by a machine that tabulates machine activity for purposes of compliance with required internal controls.

Section 6: Page 6 lines 3-6 Organization operating electronic pull tab devices required to comply with applicable federal reporting requirements.

An organization authorized to operate electronic pull tab devices shall comply with all applicable federal reporting requirements.

Section 7: Page 6 lines 9-10 At least sixty percent of the net revenue from gaming activity of electronic pull tab devices must be used eligible uses outlined in subsection 2 of this section.

Section 8: Page 6 lines 13-14 Impose a regulatory inspection fee on a distributor authorized to operate an electronic pull tab device.

Section 9: Page 6 lines 17-18 Not authorize more than two thousand electronic pull tab devices to be operated in the state on an annual basis.

Section 10: Page 7 lines 18-19 The state may waive any fees associated with services performed.

Chairwomen Bell members of the Senate Finance & Taxation Committee, I urge Do Pass on Senate Bill 2296. I will try and answer any question.



#6255

**SENATE BILL 2296
SENATE FINANCE AND TAXATION COMMITTEE
FEBRUARY 10, 2021**

TESTIMONY OF CYNTHIA C. MONTEAU, EXECUTIVE DIRECTOR

Madam Chair and members of the Committee, my name is Cynthia Monteau, I am the Executive Director of the United Tribes Gaming Association (UTGA). I come before you today as a proponent of Senate Bill 2296, a bill that amends existing law and establishes new law regarding electronic pull tabs.

The following changes are proposed in SB2296:

Section 1, line 12 we are amending the definition of "Adjusted Gross Proceeds" to also be defined as "Net Proceeds." The term "Net proceeds" is used interchangeably with "Adjusted Gross Proceeds" in the law and in administrative rule but is not defined. We also inserted the definition of "Bar" on Page 1, line 15 as this is also a term used in the law and administrative rule but it is not defined. The definition also clarifies the establishments where the electronic pull tab devices may be located, at sites limited to individuals over the age of 21. The electronic pull tab device understood to be utilized when the law allowed for these devices were "hand held" devices that simply brought the paper pull tabs up to current technology not machines that closely resemble slot machines, thus the amendments on Page 2, lines 14-16.

Section 2, lines 21-23 include 5 tribal representatives on the state gaming commission. This allows an opportunity for the tribal casinos, which are heavily impacted by the state's gaming decisions, to have a "voice at the table" so to speak and be involved in decisions that impact gaming statewide.



On Page 5, Section 3, line 6, disallows a bar employee to redeem a electronic pull tab credit voucher. Testimony today addresses the training and duties between an employee trained and required to follow specific protocol versus an untrained bar employee or volunteer without any regulatory protocol who is currently allowed to manage, control or conduct any game.

On Page 5, Section 4, lines 18-19, address the games in an electronic pull tab device that allow winnings on tiers that are not only a top tier but 4 tiers. This amendment defines that the maximum amount is five hundred dollars regardless if the win is on the top tier.

On Page 5, Section 5, line 25 require a player of electronic pull tabs to cash out their winnings and not sit at a machine and keep playing their credits. This is not how a paper pull tab works and nor should this be allowed in an electronic game either. At least cashing out after each game allows a player to pause and determine whether they will continue to put money back in the machine. Line 28 on Page 5, addresses a minimum payout commensurate with the tribal casinos to level the playing field. Lines 29-30 on Page 5 pertain to the reporting requirements for internal controls of the machines.

On Page 6, Section 6 is a new section requiring organizations authorized to operate electronic pull tabs to adhere to all applicable federal reporting requirements. Section 7 requires 60% of net revenue from a gaming activity of electronic pull tab devices to be used for eligible uses of the organization. Section 8, imposes a regulatory inspection fee on the distributor of electronic pull tab devices to ensure that they are operating properly and in accordance with prescribed operating requirements. Section 9 limits the amount of operable electronic pull tab devices to 2,000 annually.



On Page 7, lines 18-19 allows a waiver of fees associated with state services. The tribal casinos are billed automatically monthly whether a monthly review occurs or not. Instances when monthly reviews do not occur, the casinos should not be automatically billed.

Madam Chair, these are proposed changes, we urge a do pass of Senate Bill 2296.

Thank you.

Senate Bill 2296

Senate Finance and Taxation

February 9, 2021

Amendment

Page 4, line 14 insert

"24. "Site" means the establishment where the electronic pull tab device is located.

Page 5, line 1 insert

"Section 3 Amendment. Subsection 3 of section 53-06.1-03 of the North Dakota Century Code is amended and reenacted as follows:

" 3. A licensed organization or organization that has a permit shall conduct games as follows: a. Only one licensed organization or organization that has a permit may conduct games at an authorized site on a day, except that a raffle may be conducted for a special occasion by another licensed organization or organization that has a permit when one of these conditions is met: (1) When the area for the raffle is physically separated from the area where games are conducted by the regular organization. (2) Upon request of the regular organization and with the approval of the alcoholic beverage establishment, the regular organization's license or permit is suspended for that specific time of day by the attorney general. b. Except for a temporary site authorized for fourteen or fewer consecutive days for not more than two events per quarter, a licensed organization may not have more than ~~twenty-five~~ five sites unless granted a waiver by the attorney general. If the attorney general finds that there is no other licensed organization interested in conducting gaming at a site for which a waiver is being sought, the attorney general may approve the waiver for no more than five sites. c. Games of electronic quick shot bingo, pull tabs, punchboards, twenty-one, paddlewheels, poker, and sports pools may be conducted only during the hours Page No. 4 when alcoholic beverages may be dispensed according to applicable regulations of the state, county, or city. d. An organization may not permit a person under twenty-one years of age to directly or indirectly play pull tabs, punchboards, twenty-one, calcuttas, sports pools, paddlewheels, or poker. An organization may not permit an individual under eighteen years of age to directly or indirectly play electronic quick shot bingo. An organization may not permit an individual under eighteen years of age to directly or indirectly play bingo unless the individual is accompanied by an adult, bingo is conducted by an organization that has a permit, or the game's prize structure does not exceed that allowed for a permit.

Page 6, line 1 insert

"4. An organization may not install more than 3 electronic pull tab devices in a site."

Testimony of SB 2296

Madam Chair Bell and honorable members of the committee.

My name is LaRoy Kingsley from Mandan ND. I own KK Bold a full-service advertising, marketing, and public relation firm with offices in Bismarck and Minot. I am here today representing the United Tribes Gaming Association and to ask that this committee send a DO Pass on SB 2996.

Currently my agency is entering our 32nd year in business. For 26 of those years, we have had the distinguished pleasure of being the Agency of Record for Prairie Knights Casino and Resort which is owned by the Standing Rock Sioux Tribe. My firm is also the agency of record for the ND Lottery although I am not here to speak on their behalf today. We also work with several tribal and commercial gaming entities across the US and we are considered one of the top casino marketing firms in the country.

SB 2296 is in the best interest of all gaming related entities currently in the state including tribal, charitable and the lottery.

E-tabs began in the market around August of 2018

These figures are from April 2019 thru March 2020

Total Adjusted Gross Revenues for all charitable gaming during this period was \$98,648,000

Of this total e-tabs represented Adjusted Gross revenue of \$71,092,000 or approximately 73% of all charitable gaming

Again, these figures begin approximately 8 months into their existence.

E-tabs gross proceeds grew by an average of 17.2% each qtr. during this period

There are 311 charitable, fraternal etc. groups licensed in ND

Of those, 20 groups control 193 of the 561 total licensed sites in the state. 35% of all sites.

These top 20 had Adjusted Gross Proceeds of \$44,200, 226 or 45% of the total although they only represent 7% of all licensed organizations.

35% of the population consider themselves a gambler. This number has remained consistent for the past 10 years. 49% have gambled in the past year.

What e-tabs represent is an unprecedented expansion of gaming in North Dakota and a historic shift in where gamblers are spending their money. The pie is being divided up into much smaller pieces and the tribes, because of their location disadvantage and the unfair regulations are sustaining the largest share of the loss.

Tribal gaming in the state combined has around 5000 machines. There are already 3400 e-tabs machines, and that number continues to grow. That is like adding nearly 3.5 more casinos to a limited market. Now, not only are some Tribal Casinos down as much as 40% during this period we are seeing a huge separation between the haves (top 20) and the have-nots (other 291) charitable gaming groups. Many of these smaller groups cannot afford or cannot find space for adding e-tab machines to their program so they are left with their traditional blackjack and pull-tabs for gaming revenue. Both of these games are also down significantly.

Blackjack (twenty-one) is down -\$466,952

Pull-tabs (paper only) are down -\$1,109, 397

Paper pull-tab dispensing machines are down -\$762,813

In closing, charitable gaming and tribal gaming have worked together hand in hand for over 25 years. During this time both sides were able to see consistent growth and important proceeds that hugely benefitted their people. Now with the unregulated explosion of e-tab machines the balance is gone, and some groups are realizing devastating losses while one small group, dominated by out of state interests, is reaping massive profits. SB 2296 looks to undo some of the damage and get the states gaming industry back to a fair and equitable playing field for all involved. Please vote yes.

February 10, 2021

Good Morning Chairman & Committee members

I am Charles Bailey, representing the Standing Rock Sioux Tribe in my capacity as Gaming Commission Chairman for the Standing Rock Sioux Tribe. I am here to support a do pass for Senate Bill 2296.

You have heard testimony in support of this bill and the various reasons for it. I would like to address the electronic pull tab device employees or bar employees that play a role in the conduct of the game. The comparison of a slot employee licensed as a key employee and an unlicensed bar employee redeeming credit vouchers from guests on behalf of organizations. The state has a gaming commission in place within the century code that can be utilized to conduct license eligibility determinations and adopt Internal controls to protect the integrity of the games being offered by organizations across North Dakota.

As you see these devices are very similar in appearance and functionality however there is very distinct differences in regulation of them.

Video link –<https://www.youtube.com/watch?v=cXBk5cPrqWE>

Slot/Cashier employee:

Casino employees that access sensitive areas of a slot machine are licensed by the gaming commission:

- Background investigation.
- Criminal history information- live scan fingerprint with results within 72 hrs via NIGC MOU with FBI.
- Personal character information.
- Drug screening.
- Tribal Access Portal of NIGC can be accessed to verify past licenses issued by other tribes and employment verification. TAP allows authorized tribal regulators to review and licensing actions by other tribal gaming regulatory authorities.
- Investigative Reports completed for gaming commission review.
- licensing standards - Eligibility Criteria.
- Determination -- Notification of Results to NIGC for compliance.
- Monthly inspection of licensed key positions by North Dakota Attorney General.
- Licensee may not pose a threat to public interest or to the effective regulation of the gaming, creates or enhances the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of the gaming...
- License hearing for documented violations of internal controls and licensing standards.
- Annual renewal and review of the above.

Internal controls for slot/cashier employees:

- Restricted access of sensitive areas of device by key control.
- No access to sensitive areas without a second key licensed individual present.
- Device entry Logs for every entry - written and electronic
- Separation of duties verify/payout, cannot take ticket and act as cashier.
- Conduct variance checks on devices with investigative report when complete
- Signs off on set-up of device ensuring denomination is set correctly, payout is correct, and verification of device to par sheet.
- Compliance with IRS regarding payouts and BSA training and certification of level II
- Monitoring for compliance of BSA/AML proper documentation and report of suspicious activity.

Electronic Pull tabs:

Bar employee are not charitable organization employees however they may be allowed to provide limited assistance to an organization:

- No background investigation.
- No Criminal history information.
- No Personal character information.
- No eligibility criteria – licensing standards.
- No license issued – No compliance with 53-06. 1-06 (5). A person is restricted from being involved in gaming... other than 53-06. 1-06 (1).
- No consequence for violation of license standard or internal control violation.

Internal controls for bar employees:

- No compliance with any requirements or internal controls of an organization employee, distributor, manufacturer.
- No requirement for a bar employee who provides cash transactions for the redemption of a ticket voucher. Conduct of the game simply doesn't end when you take your ticket out of the machine. As below in AR 99-01.3-02-01 definitions - Conduct of a game is in fact defining cash transactions.
- No internal controls regarding redemption of credit voucher tickets by an outside entity to complete game.

99-01.3-02-01 Definitions, at subsection 9 “Conduct of games” it is defined as means the direct operation of a game on site, including placing pull tabs in, withdrawing currency from, and buying back redeemed winning pull tabs dispensed from a dispensing device; and withdrawing currency from and buying back redeemed credit ticket vouchers dispensed from and electronic pull tab device.

This bill brings some regulatory compliance with Bank Secrecy Act (BSA) and Anti-Money laundering (AML) that is needed to combat the illegal activities that support the very things that hurt our communities across

North Dakota. It provides limits on these devices to balance the security, vitality and integrity of the gaming industry for charitable and tribal gaming. Lastly it addresses non-licensed individuals that play a role in the conduct of the game.

In closing, it is my hope that we collaborate in an effort to provide games of integrity to the people of North Dakota. I sincerely hope for a do pass on SB 2296.

Thank you for your time, I stand for any questions.



WHAT ARE ELECTRONIC PULL TABS?



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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.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. 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

¹ 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.

Testimony of Ken Karls (#268)

Cystic Fibrosis Association of North Dakota

SB 2296

Madam Chair Bell and members of the Senate Finance and Taxation Committee, my name is Ken Karls and I represent the Cystic Fibrosis Association of North Dakota (CFA).

CFA is a North Dakota charity that has been assisting North Dakota individuals and families dealing with cystic fibrosis (CF) for forty years. CF is a terminal disease. CFA assists the families with the cost of medications and nutritional support, with the extraordinary costs associated with medical appointments, with college scholarships, lung transplants and other hardship costs caused by fighting this relentless disease.

The money used for this assistance comes from traditional fundraising (Giving Hearts Day, the Turkey Trot, golf tournaments, etc.) and from charitable gaming.

CFA opposes SB 2296 because the bill would virtually rewrite charitable gaming in North Dakota, all to the detriment of charities such as CFA. The bill would change the ND Charitable Gaming Commission from 5 to 10 members giving the tribes virtual control of any rules or regulations coming out of the Commission. When combined with SB 2314, this bill would exempt the tribes from following the very rules and regulations they would create as a controlling voice over charities while on the Gaming Commission.

The bill would restrict by law the number of E-tab machines allowed in the state, change them from cabinet-style devices to hand-held devices, change the look of the game face, and mandate an 88% payout (presently 90% on many machines). It would also eliminate bar-assist redemption for E-tab credit vouchers which would mean the devices would have to be shut down at any time the charity did not have an employee present.

It would restrict the allowable expenses of E-tabs from 60% to 40% while imposing inspection fees on distributors in addition to licensing fees. These fees would ultimately be passed on to charities.

Ironically, none of these changes would apply to the tribes as they seek designation as “public spirited organizations” under SB 2314 while allowing them to conduct gaming without the rules and regulations they promulgated on the Gaming Commission; and do so on non-reservation and non-trust lands in North Dakota as in SB 2315.

It is hard to see this bill as anything other than an attempt to severely limit charities involved in charitable gaming and thereby injuring the people they assist. We urge a Do Not Pass on SB 2296.

Travel Alliance Partnership

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 Vern's Rental
 Williston CVB

Testimony of Sheri Grossman

Travel Alliance Partnership

In Opposition to SB 2296 & SB 2310

February 9, 2021

Chair Bell and members of the Senate Finance and Taxation Committee:

My name is Sheri Grossman, CEO of the Bismarck-Mandan Convention and Visitors Bureau, representing the North Dakota Travel Alliance Partnership (TAP). TAP is a coalition of travel industry stakeholders, including CVBs, state attractions, businesses and other interested stakeholders, in this viable and growing sector of North Dakota's economy.

The impact of COVID has not only decimated our travel industry, but also caused economic strain throughout North Dakota. Local attractions, venues, hotels, restaurants, and visitor bureaus have all suffered huge losses in revenue resulting in layoffs, and in some communities, business closures. Overall, tourism in the United States declined by 42 percent in 2020, resulting in \$492 billion in lost tax revenue.

SB 2296 and SB 2310 would cause further harm to our industry which is still reeling from the impacts of the COVID-19 pandemic.

It would place a statewide limit on the number of electronic pull tab devices (etabs) allowed to operate in North Dakota, forcing organizations to retire their current fleet of devices. This would result in lost revenue for convention and visitor bureaus (CVBs), tourism foundations, bars and restaurants, hotels, and charitable organizations. Further, by limiting the number of available etab devices in North Dakota, revenue for CVBs and charitable organizations would essentially be capped as they would be prohibited from deploying additional devices.

These bills also stipulate that only hand-held etab devices would be allowed to operate in North Dakota. This change would retire hundreds of cabinet-style machines that are currently in place at hotels, bars and other popular tourism destinations across North Dakota.

SB 2296 and SB 2310 would also eliminate bar-assist redemption for etab credit vouchers.

Currently, some organizations rely on bar staff to redeem vouchers, which allows organizations to have machines open at times when a full gaming site is not in operation. The Williston Convention and Visitors Bureau, for example, has two sites that rely on bar-assist redemption. By removing bar-assist redemption, some organizations would be forced to either remove etabs from businesses entirely or hire staff to monitor and redeem vouchers.

Convention and visitor bureaus (CVB's) play an important role in marketing communities and their businesses. They serve as cheerleaders for tourist attractions, restaurants, hotels and businesses, generating revenue in the communities in which they serve. SB 2296 and SB 2310 would jeopardize our region's CVB's and their funding, causing further harm to communities

and tourism attractions that are still contending with the negative economic impacts of the COVID-19 pandemic.

The North Dakota Travel Alliance Partnership strongly opposes SB 2296 and SB 2310 and urges the Senate Finance and Taxation Committee recommend a do not pass recommendation for both bills.

SB 2296
Senate Finance & Taxation Committee
Submitted by Don Santer for CGAND and NDAD
February 10th, 2021

Chairperson Bell and Committee members, thank you for the opportunity to provide information regarding the charitable gaming industry of North Dakota. I am here in opposition of Senate Bill 2296.

My name is Don Santer, I represent the Charitable Gaming Association of North Dakota (CGAND), a trade association for charities operating gaming throughout ND. I also represent the North Dakota Association for the Disabled (NDAD). NDAD is a North Dakota charity that for over 45 years has been dedicated to improving the quality of life for persons with disabilities. NDAD pays for most of its services with charitable gaming funds.

Senate Bill 2296 is designed by a competing gaming industry to restrict, damage, and eliminate competition.

SECTION 1. AMENDMENT. Section 53-06.1-01-Changes to Definitions:

- New definition of “Adjusted gross proceeds or net revenue”...
 - This change is inserted as an attempt to match tribal gaming compact wording.
- New definition of “Bar”
 - This would hinder current operations in rural bars and any Bar/Restaurant that allow underage patrons and is already addressed by each municipality.
 - Would potentially restrict gaming in bingo halls
- New definition of “Electronic pull tab device” means a hand-held device...
 - Hand-held devices are not authorized by regulation 99-01.3-06.1-02 #1a. *An electronic pull tab device must be a stand-alone cabinet style device. No device may be a hand-held portable device or affixed to a bar, counter, or table top.*
 - “with similar appearance and functionality of physical paper pull tabs.”
 - This wording is very vague and difficult to quantify. The AG’s office already has a list of rules pertaining to the appearance of the graphics and is required to issue approval for every new game.

SECTION 2. AMENDMENT. Subsection 1 of section 53-06.1-01.1. Changes to the state gaming commission: The state gaming commission consists of the chairman and ~~four~~ nine other members including one member from each of the five federally recognized Indian tribes in the state.

- The addition of 5 tribal gaming commissioners would essentially nullify the gaming commission or give tribal gaming interests control over the commission.
- Tribal gaming commissioners would have an extreme conflict of interest.

SECTION 3. AMENDMENT. Subsection 1 of section 53-06.1-06. Elimination of Bar assist: A bar employee may not redeem an electronic pull tab credit ticket voucher.

- This would add cost for charities and make it very difficult to operate in rural areas.
- There is no good reason to eliminate “Bar assist” except to hinder current operations and cause additional expense for charities.

SECTION 4. AMENDMENT. Section 53-06.1-08. Restrictions to top tier prize for pull tabs.

- This change only serves to reduce competition and tamper with charitable gaming success.

SECTION 5. AMENDMENT. Section 53-06.1-08.2. Electronic pull tab device requirements

- Removal of the phrase: “...or used to purchase more pull tabs.”
 - This is meant to eliminate the play of credits
 - This will create a dangerous situation on site by requiring 3-4 times more cash on-site, creating a much greater risk for robberies.
 - Would create a massive increase in paperwork and documentation
 - Is intended to destroy consumer interest in the game type
- Electronic pull tab device **must maintain** a twelve percent hold
 - This wording will create an impossible requirement. It is impossible to insure or **maintain** a twelve percent hold as the winning tickets are intended/regulated to come out randomly.
 - There is no need to mandate payout percentages because free market competition is already providing these choices for gaming organizations.
 - Restrictions on percent of hold are not in place for any other game type.
 - The intent of this wording is intended to erode consumer interest.

Section 6 - A new section to chapter 53-06.1 to century code:

- Organization operating electronic pull tab devices required to comply with applicable federal reporting requirements.
- An organization authorized to operate electronic pull tab devices shall comply with all applicable federal reporting requirements.
 - There is no rational reason for these additions
 - At best this is already addressed in Federal law and adding to ND Century code is unnecessary

Section 7 - A new section to chapter 53-06.1-11:

- At least sixty percent of the net revenue from gaming activity of electronic pull tab devices must be used for eligible uses outlined in subsection 2 of this section.
 - This is a change from current law 53-06.1-11 #2. *Allowable expenses may deducted from adjusted gross proceeds. The allowable expense limit is sixty percent of the adjusted gross proceeds per quarter.*

- The new wording is intended to create financial difficulties for charities while section 3 and section 8 amendments are intended to increase expense for a licensed organization.
- This will also lead to price fixing on etab machines

SECTION 8. A new subsection to section 53-06.1-15.1

- Impose a regulatory inspection fee on a distributor authorized to operate an electronic pull tab device.
 - This is meant to increase the cost for a distributor that will get passed on to the charities and again increase their expenses.

SECTION 9. A new subsection to section 53-06.1-15.1. Limits on etab machines: Not authorize more than two thousand electronic pull tab devices to be operated in the state on an annual basis.

- This would be a reduction of more than 37% of the machines currently licensed and operating in the state.
- There is no way to fairly or equitably distribute etab machines in the state.
- This would hurt charities, hospitality, distributors, manufacturers, and state tax revenue.
- This would produce an un-intended consequence of creating black market deals and negotiations.

For the past 40 years North Dakota has developed a responsible and highly regulated system for charitable gaming to benefit charitable missions that serve your local communities. At best this bill is an attempt to severely hinder charitable gaming fundraising efforts. That is why CGAND is asking you to consider a **Do Not Pass** recommendation on **SB 2296**.

Thank you, Madam Chairman and members of the committee, for your time and thoughtful consideration I am happy to answer any additional questions you may have.

Respectfully,
Don Santer, NDAD
CGAND Vice President



#6171

Testimony of Amy Krueger
Williston Convention & Visitor Bureau, Inc.

In Opposition to SB 2296 & SB 2310

February 9, 2021

Chair Bell and members of the Senate Finance and Taxation Committee:

My name is Amy Krueger, Executive Director of the Williston Convention and Visitors Bureau, Inc. a charitable gaming organization.

We are all aware of the economic hardships that COVID has caused to North Dakota Businesses. The travel industry has been deeply damaged, effecting local attractions, venues, hotels, restaurants/bars, and visitor bureaus resulting in layoffs, business closures, and overall loss of revenue. Many of these effected restaurants/bars are the locations for the sites our charitable gaming organizations operate, while others depend on charitable gaming revenue to function.

SB 2296 and SB 2310 would cause further harm to these industry businesses which are still experiencing the impacts of the COVID-19 pandemic.

It would place a statewide limit on the number of electronic pull tab devices (etabs) allowed to operate in North Dakota, forcing organizations to retire their current fleet of devices. This would result in lost revenue for the organizations with a reduction in play. It would also result in lost revenue to the bar establishments rent of which the charitable gaming organizations pay to these businesses. Further, by limiting the number of available etab devices in North Dakota, potential growth of these charitable organizations would essentially be capped and probably decreased as someone would have to reduce the number of devices that are currently deployed throughout the state.

These bills also stipulate that only hand-held etab devices would be allowed to operate in North Dakota. This change would retire hundreds of cabinet-style machines that are currently in place at site locations across North Dakota and force them to be replaced with the hand-held devices, yet another cost to the charitable organizations and the distributors.

SB 2296 and SB 2310 would also eliminate bar-assist redemption for etab credit vouchers. Currently, organizations rely on bar staff to redeem vouches, which allows organizations to have machines open at times when a full gaming site is not in operation. They're our several organizations, including mine, that have sites that do not have full gaming sites requiring staff, so the only way these machines are operable are with the bar-assist redemption option. By eliminating the bar-assist redemption of vouchers this forces organizations to either reduce hours, close sites completely or hire additional staff to operate the machines. With the shut downs, early closures, reduced compacity and the down economy already experience in 2020 and into 2021, many of these organizations cannot absorb additional cost within their operations.

Lastly the change that this bill would make to the ND Charitable Gaming Commission would not lead to a balanced fair commission.

Charitable Gaming Organizations support services that play an integral part in our communities. Whether they are other Convention and visitor bureaus (CVB's) marketing our communities and their businesses, serving as cheerleaders for tourist attractions, restaurants, hotels and businesses, generating revenue in the communities in which they serve. Or they are organizations providing support and funding to programs supporting veterans, youth, seniors, or so many others doing great work throughout North Dakota. SB 2296 and SB 2310 would jeopardize these organizations and the funding they provide to so many services in North Dakota.

The Williston Convention and Visitor Bureau Inc. strongly opposes SB 2296 and SB 2310 and urges the Senate Finance and Taxation Committee recommend a do not pass recommendation for both bills.

SB 2296 & 2310
Senate Finance & Taxation Committee
Submitted by Janelle Mitzel, Development Homes, Inc.
February 10th, 2021

Development Homes, Inc., is a Grand Forks based charitable organization, serving persons with developmental disabilities. Development Homes, Inc. is asking for **Do Not Pass** recommendations on **SB 2296 & SB 2310**. The intent of SB 2296 & 2310 is to impair and restrict the charitable gaming industry of North Dakota.

What Do These Bills Do?

- Re-engineer the ND charitable gaming regulatory board by adding five tribal voting members. This is clearly a conflict of interest and is intended for tribal gaming to influence and control ND charitable gaming.
- Limit the number of electronic pull tab units to 2000 (SB 2296) or 2300 (SB 2310) in total. Currently there are over 3000 units statewide so this would force many charities to cease operating electronic pull tabs. Creating a cap on the number of etab units would dramatically impact small charities.
- Eliminate the play of credits on etabs. This would force charities to carry much higher amounts of cash on location. This is intended to create unnecessary paperwork for charities and destroy consumer interest in this game.
- Eliminate the “bar assist” feature to cash out etab vouchers. This would dramatically curtail rural gaming operations of electronic pull tabs. It is very difficult for rural charities to find additional employees to staff in rural areas. Bar assist options have been allowable for pull tabs since the 1990s.
- Increases the mandatory charitable use percentage to 60%, therefore, decreases allowable expenses for charities to 40% of adjusted gross proceeds. This is intended to increase expenses and create financial hardships for charitable organizations.
- Impose a regulatory inspection fee on ND distributors. Any costs to distributors are passed on to charities. This is aimed to increase costs of etabs in ND.
- Eliminate current cabinet-style etab units, and would only allow for etab devices on hand-held units. This will require a reconfiguration of the entire etab charitable market.

These are just a few highlights of the bill. Development Homes, Inc. is strongly opposed to SB 2296 & SB 2310.

Thank you for your thoughtful consideration and **Do Not Pass** recommendations on **SB 2296 & 2310**.



Gladstone Consolidated Fire District

#6154

Box 128
Gladstone, North Dakota 58630

February 9, 2021

To: Senate Finance & Taxation Committee

Re: SB 2296 – Charitable Gaming Fund

Dear Senator Bell and Senate Committee Members:

The Gladstone Consolidated Fire District urges a DO NOT PASS on SB 2296.

The proposed state gaming commission, ten members, with an increase of five from the recognized Native American tribes in the state, creates not only a commission that may have the possibility of a too large of a group and an over representation of a common entity.

Incorporating bar-assisted redemption for electronic pull tab credit tickets, could potentially eliminate rural bar locations that provide needed income to the local charities, such as rural firefighters.

Restricting the number of device limits to 2,000 constricts the market potential that could benefit the Gladstone Consolidated Fire District. Free market incentives benefit the local charities who in turn give back to their communities.

Our Fire District is very dependent on local gaming proceeds. The volunteers on the Gladstone Consolidated Fire District work very hard at the local gaming site, with the end goal of keeping our local firefighters equipped with the best equipment that we are able to purchase. Local gaming is that source of funding - **The Gladstone Consolidated Fire District urges a DO NOT PASS on SB 2296.**

Sincerely,

Joe Wanner – Fire Chief

Gladstone Consolidated Fire District

#6198

SB 2296 and SB 2310

Hearing 11am 2/10/21

Senate Finance and Tax

Good morning Madam Chair Bell and members of the Senate Finance and Tax Committee. My name is Mike Motschenbacher and I am testifying on behalf of the ND Gaming Alliance

We are urging a DO NOT PASS recommendation for both SB 2296 and 2310.

Both bills are an obvious attempt to highly discourage or eliminate E-Tab machines in the state. We agree with the sentiments that the other organization that have also submitted testimony in regard to the numbers of machines, additional regulations, additional members added to the gaming commission and so on. There are two other points I'd like to add to their testimonies.

Hospitality. I have spent the past 30 years in the hospitality industry while managing one of the local hotels here in Bismarck. It is highly likely that no other industry has been hit harder from COVID 19 than the hospitality industry. I've seen it first-hand. The mandatory shutdowns and limitations have crippled bars and restaurants. Restrictions on number of people that can attend events and limitations on travel have decimated hotels. Senate Bill 2296 and SB 2310 will require that somewhere between 900-1200 machines be eliminated from the state. Many of these hotels, bars, and restaurants need the additional income they receive from the machine rentals. It would be detrimental to throw this onto the hospitality industry in a time when they are struggling to recover and hopefully survive this pandemic. Not only do they benefit from the machine rent, the customers that will be playing the E-Tab machines will also be ordering food and beverages while they are at these establishments. The E-Tab machines NEED to be allowed to remain in the bars, hotels, and restaurants. There is no reason to kick these businesses while they are down. We need to do everything we can to allow these businesses to survive and not pose any further restrictions on them.

Secondly, the payouts. requiring an 88% payout will simply provide an unfair advantage to tribal casinos who can pay out higher percentages, thus making their machines more attractive. Studies have proved that the "magic number" that provides the most play and benefit is around that 92%. Our group believes in fairness for all involved in charitable gaming, including the tribes. We believe we should live under the same laws and restrictions when it comes to this type of gaming and the charities should be able to determine their own payouts as to what would benefit them and their communities which they support.

Once again, we urge a DO NOT PASS recommendation and certainly feel free to contact me with any questions. Thank you so much for your time.

Mike Motschenbacher

ND Gaming Alliance

Executive Director

701-471-9014

Ndgalliance@gmail.com

2021 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Fort Totten Room, State Capitol

SB 2296
2/10/2021
PM

A BILL for an Act to create and enact a new section to chapter 53-06.1, a new subsection to section 53-06.1-11, and two new subsections to section 53-06.1-15.1 of the North Dakota Century Code, relating to the regulation of electronic pull tab devices; and to amend and reenact section 53-06.1-01, subsection 1 of section 53-06.1-01.1, subsection 1 of section 53-06.1-06, sections 53-06.1-08, 53-06.1-08.2, and 54-58-03 of the North Dakota Century Code, relating to charitable gaming and tribal-state gaming compacts.

Chair Bell calls the meeting to order. Chair Bell, Vice Chair Kannianen, Senators Meyer, J. Roers, Patten, Piepkorn, Weber are present. [3:06]

Discussion Topics:

- Machine and site limitations
- Gaming Counsel
- Tribal and charity collaboration
- Customer base

Senator Meyer [3:11] moved DO NOT PASS
Senator Piepkorn second

Senators	Vote
Senator Jessica Bell	Y
Senator Jordan Kannianen	Y
Senator Scott Meyer	Y
Senator Dale Patten	Y
Senator Merrill Piepkorn	Y
Senator Jim Roers	Y
Senator Mark Weber	Y

Motion passed 7-0-0

Senator Meyer carries

Chair Bell adjourns the meeting. [3:13]

Joel Crane, Committee Clerk

REPORT OF STANDING COMMITTEE

SB 2296: Finance and Taxation Committee (Sen. Bell, Chairman) recommends **DO NOT PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2296 was placed on the Eleventh order on the calendar.