

Members

Sen. Ron Alting, Chairperson
Sen. John Waterman
Sen. John Broden
Sen. James Arnold
Rep. Kathy Heuer
Rep. William Davis
Rep. Terri Austin
Rep. Phil GiaQuinta
James Case
Leo (Gene) Moncel
Matt Bell
Kris Markham
Ernest Yelton



CHARITY GAMING STUDY COMMITTEE

Legislative Services Agency
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James Landers, Fiscal Analyst for the Committee

Authority: P.L. 104-2011

MEETING MINUTES¹

Meeting Date: October 25, 2011
Meeting Time: 1:30 P.M.
Meeting Place: State House, 200 W. Washington St., Room 431
Meeting City: Indianapolis, Indiana
Meeting Number: 2

Members Present: Sen. Ron Alting, Chairperson; Sen. John Waterman; Rep. Kathy Heuer; Rep. William Davis; Rep. Terri Austin; Rep. Phil GiaQuinta; James Case; Matt Bell.

Members Absent: Sen. John Broden; Sen. James Arnold; Leo (Gene) Moncel; Kris Markham; Ernest Yelton.

Sen. Alting called the meeting to order at 1:35 p.m. The Committee studied charity gaming technology and received additional comment on the licensing and regulation of national charity organizations.

I. Charity Gaming Technology

Mr. Brian Burdick and Mr. Jason Barclay, Indianapolis attorneys, coordinated a presentation by Diamond Game, a California company seeking a supplier's license to distribute its electronic pull tab machine in Indiana.

¹ These minutes, exhibits, and other materials referenced in the minutes can be viewed electronically at <http://www.in.gov/legislative>. Hard copies can be obtained in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for hard copies may be mailed to the Legislative Information Center, Legislative Services Agency, West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for hard copies.

The following Diamond Game officers also appeared before the Committee:

- (1) Mr. Jim Breslo, President and Chief Executive Officer.
- (2) Mr. Bill Breslo, Vice President of Sales and Marketing.
- (3) Mr. Chris Robertson, Director of Business Development.

Mr. Burdick made the following statements about his client's machine:

- (1) It is an electronic pull tab dispenser.
- (2) It is not a slot machine.
- (3) It is not a simulation of a slot machine.
- (4) It is not a sweepstakes machine.

Mr. Robertson presented the machine to the Committee. Mr. Robertson described the evolution of pull tab dispensers in a brief presentation (Exhibit 1). According to Mr. Robertson, the Diamond Game machine is superior to simple dispensers in that it reads each pull tab, electronically records the result of each play, and is capable of generating numerous reports of the machine's usage. Mr. Robertson demonstrated a single pull tab play on the machine and described the process for making multiple plays and cashing out when the player is finished. Mr. Robertson stressed that the machine reads paper tickets and that the machine cannot be played if it runs out of paper tickets.

Mr. Bill Breslo said that law enforcement and gaming regulators have looked favorably upon the reporting capabilities of the machine.

Mr. Jim Breslo said that the machine was patented in 1994 and has always been about security and excitement for the player. He noted that the game was originally marketed to Indian bingo halls but is now available for charity gaming use in Maryland and to dispense state lottery tickets in Iowa. The machine will soon be available in Washington D.C. and Ontario as well. Mr. Jim Breslo noted that charity gaming organizations in Ontario hope that the machine will enable charity gaming to better compete with the casino industry in the province.

Mr. Barclay noted that the legal issues relevant to the company's application for a supplier's license are similar to issues that have occasionally arisen under federal law when the machine has been introduced in tribal gaming operations. He reviewed federal court opinions finding that the machine is not a slot machine or a facsimile of a slot machine (Exhibit 2). Mr. Barclay argued that the view of the federal courts should prevail when considering whether the machine is a prohibited electronic gaming device under the Indiana Code.

Diamond Game faced several questions from the Committee, including:

- (1) how much does the machine cost;
- (2) how will Indiana customers pay for ongoing service and supply of the machine; and
- (3) what is the machine's estimated daily adjusted gross receipts (AGR).

Mr. Bill Breslo noted that while local market factors would affect the pricing and contractual arrangements with its customers, the purchase price for the machine could range from \$5,000 to \$10,000. He also estimated that the daily AGR for a particular machine could range from \$75 to \$150, depending upon the machine's location.

Ms. Jenny Reske, Deputy Director of the Indiana Gaming Commission (IGC), introduced the following state officials:

- (1) Mr. Joby Jerrells, License Control Counsel (IGC).
- (2) Ms. Diane Freeman, Director, Charity Gaming Division (IGC).

- (3) Mr. Larry Delaney, Deputy Director, Charity Gaming Division (IGC).
- (4) Mr. Alex Huskey, Chairman, Alcohol & Tobacco Commission (ATC).

Ms. Reske noted that the IGC does not dispute the functionality of the Diamond Game machine and informed the Committee that the company's application for a license has been under consideration for a year and a half.

Ms. Reske asked the Committee: "Do you want to see these machines in more than 3,000 locations in an unlimited number?"

Ms. Reske also observed that the ATC follows the IGC's lead on licensing suppliers so that the machine could be located in all of the taverns engaged in type II gaming as well.

Mr. Jerrells then described the legal questions, regulatory challenges, and public policy concerns facing the IGC and the General Assembly (Exhibit 3). Mr. Jerrells agreed with Diamond Game that the key question is whether the machine is a simulation or a variation of a slot machine. Mr. Jerrells offered no conclusions of his own but noted that the Diamond Game website describes the machine and the playing experience as follows:

"Through this patented technology, we provide pull-tab dispensers and ITVMs which can look and feel like the latest electronic gaming machines, all while adhering to the legal requirements of mere dispensers. and not gambling devices. Court-tested, all the way to the U.S. Supreme Court, the basis of even our most sophisticated dispensers and ITVMs - the pre-printed game tickets - mean the device is merely a dispenser and not a Johnson Act device, slot machine, or other gambling device."²

Mr. Jerrells also explained to the Committee that the court cases cited by Diamond Game have arisen under the Indian Gaming Regulatory Act and are not binding upon an Indiana court's interpretation of the Indiana Code.

II. Regulating and Licensing National Organizations

Sen. Alting invited Mr. Mark Shublak (representing Ducks Unlimited) and Ms. Ashley Varner (Indiana State Liaison, NRA-ILA) to speak briefly on the issues discussed at the Committee's October 18 meeting.

Mr. Shublak addressed the Committee's concerns that licensing organizations headquartered outside Indiana will cause jurisdictional problems for the IGC and that shifting responsibility from local volunteers to an organization's paid staff reduces accountability (Exhibit 4).

Ms. Varner submitted proposed legislation:

- (1) modifying the definition of "bona fide civic organization" to include national organizations; and
- (2) providing that qualified organizations are not required to obtain a license to conduct a raffle (Exhibit 5).

III. Committee Discussion

Sen. Alting asked the members to speak on any of the issues studied in the Committee's meetings.

Rep. Austin is concerned about the IGC's subpoena power with respect to licensing national organizations and proposed limitations on the IGC's ability to adopt administrative rules. She also believes that accountability in charity gaming is best served at the local level.

Rep. Davis wants to see an ongoing conversation among the various interested parties rather than a committee report. He said that there are legitimate concerns about charity gaming but does not feel that there is a consensus on what to do to address them. He also raised the following concerns about the Diamond Game machine:

- (1) that it might be a move down a different road than what has been considered charity gaming in the past; and
- (2) that the potential effects on type II gaming warrant more reflection.

Mr. Case raised questions about the technology of the machine itself, wondering if winners are determined as randomly and securely as possible. Mr. Case noted that the North American Gaming Regulators Association recommends that tickets be mixed on site as well as in the manufacturing and distribution process. He presumed that the tickets in the machine are not compatible with the tickets produced by other manufacturers. He also expressed his fear that the introduction of the machine could displace other allowable events.

Mr. Bell added that he hoped that local groups would have a voice in any ongoing conversation about charity gaming. He noted that while a number of concerns have been raised about charity gaming, it continues to grow. Mr. Bell said that in the last five years the number of qualified organizations has increased by 70% and the number of allowable events has grown by 28%.

Sen. Alting asked the Committee to consider whether any changes concerning national organizations should be generally applicable rather than limited to sporting and conservation groups.

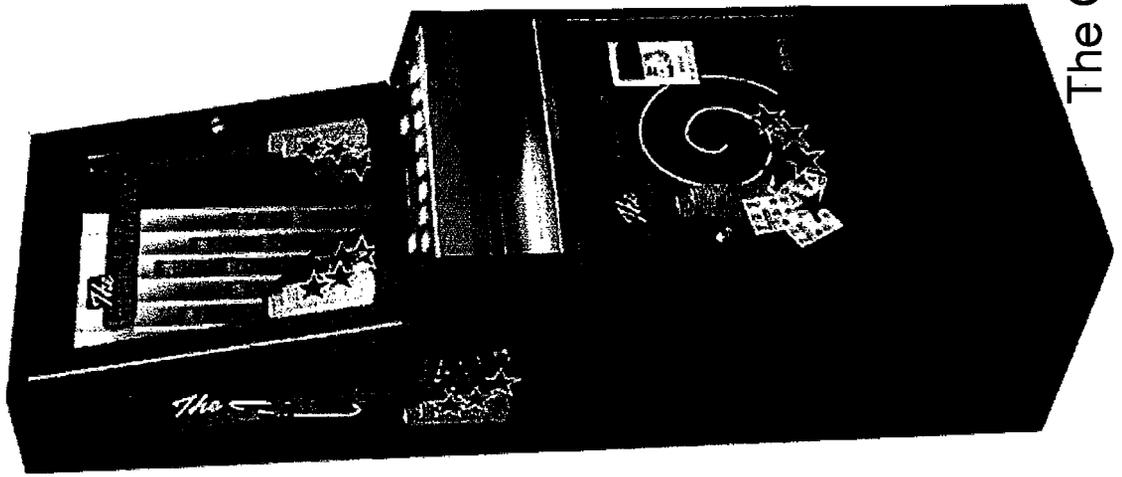
Sen. Alting adjourned the meeting at 3:25 p.m.

Charoty Gaming Study Committee
Meeting 2
October 25, 2011
Exhibit 1

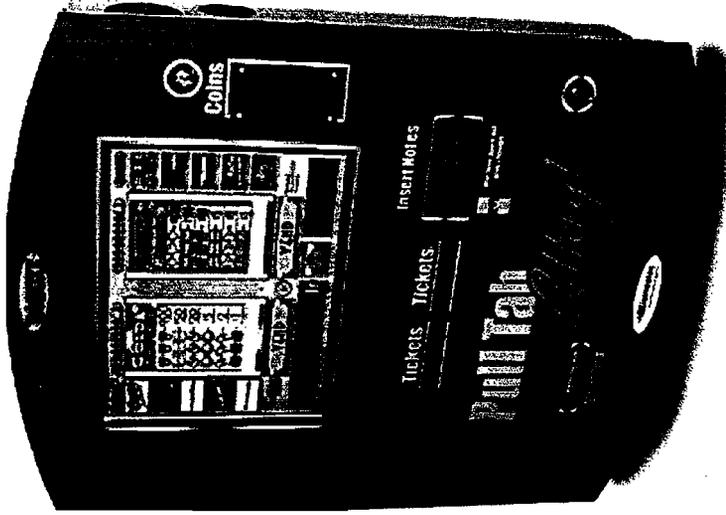


DG Diamond Game

Where Innovation Plays



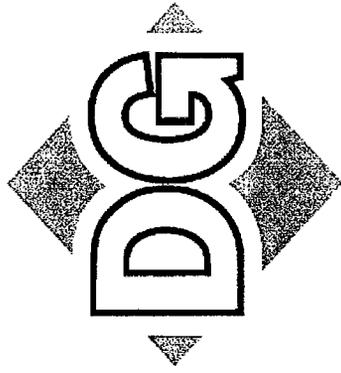
The Grand Master



TabBOXX

Receipt Printer Reports :: Audit Reports :: System Reports :: Daily/Monthly Reports

- Daily Revenue by Machine Report
- Weekly Revenue by Machine Report
- Shift/Closing Report
- Weekly Retailer Invoice
- Daily Cashier's Report
- Daily Cash Bank Report
- Voucher Liability Report
- Daily Revenue by Deal
- Daily Drop Report
- Machine Activity Report
- Hand Pay Report
- Voucher Lot Report
- System Event Report
- Machine Access Report
- Monthly Revenue by Game Report
- Hold by Denomination Report
- Weekly Revenue Share by Game Report
- Revenue by Deal Report
- Revenue by Machine Report
- Drop by Date Range Report
- Theoretical Hold Report
- Deal Inventory
- Theoretical Hold by Date Range Report
- TPP Deal Analysis
- Voucher Liability by Date Range Report
- Jackpot Report
- Winner by Amount Report
- Login Information
- Daily 4 Week Average by Machine Revenue Report
- Daily Average Machine Revenue by Week Report
- Weekly Machine Status Report



Diamond Game

Where Innovation Plays

- **“Pull tab means either of the following:**
 - A game conducted in the following manner: (A) A single folded or banded ticket or a two-ply card with perforated break-open tabs is bought by a player from a qualified organization;
 - The face of each card is initially covered or otherwise hidden from view, concealing a number, letter, symbol, or set of letters or symbols.
 - In each set of tickets or cards, a designated number of tickets or cards have been randomly designated in advance as winners.
 - Winners or potential winners, if the game includes use of a seal, are determined by revealing the faces of the tickets or cards. The player may be required to sign the player’s name on numbered lines provided if a seal is used.
 - The player with a winning pull tab ticket or numbered line receives the prize stated on the flare from the qualified organization. The prize must be fully and clearly described on the flare.
 - Any game played in a similar fashion as a game described in subdivision (1) that is approved by the commission.



- **Electronic gaming device: “[A]ny electro-mechanical device, electrical device, or machine that satisfies at least one (1) of the following requirements:**
 - It is a contrivance which for consideration affords the player an opportunity to obtain money or other items of value, the award of which is determined by chance even if accomplished by some skill, whether or not the prize is automatically paid by the contrivance.
 - It is a slot machine or any simulation or variation of a slot machine.
 - It is a matchup or lineup game machine or device operated for consideration, in which two or more numerals, symbols, letters, or icons align in a winning combination on one (1) or more lines vertically, horizontally, diagonally, or otherwise, without assistance by the player. The use of a skill stop is not considered assistance by the player.
 - It is a video game machine or device operated for consideration to play poker, blackjack, any other card game, keno, or any simulation or variation of these games, including any game in which numerals, numbers, pictures, representations, or symbols are used as an equivalent or substitute for the cards used in these games.



Diamond Game
Where Innovation Plays

**DIAMOND GAME ENTERPRISES, INC. V. JANET
RENO, 230 F.3D 365, 369-371 (D.C. CIR. 2000):**

- “We think the Lucky Tab II is quite different from the machine at issue in Cabazon. [*370] To begin with, the Lucky Tab II is not a "computerized version" of pull-tabs. Although the Lucky Tab II has a video screen, the screen merely displays the contents of a paper pull-tab. Instead of using a computer to select patterns, the Lucky Tab II actually cuts tabs from paper rolls and dispenses them to players. In other words, the game is in the paper rolls, not, as in the case of the Cabazon machine, in a computer. Indeed, players using the Lucky Tab II often play a deal simultaneously with other players in the same hall who have chosen to purchase pulltabs from clerks. For players using the Lucky Tab II, the machine functions as an aid--it "helps or supports," or "assists" the paper game of pull-tabs. WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 44 (1993). Without the paper rolls, the machine has no gaming function at all. It is, in essence, little more than a high-tech dealer. Viewed this way, the game played with the Lucky Tab II is not a facsimile of paper pull-tabs, it is paper pull-tabs.

Another difference between the Lucky Tab II and the video machine at issue in Cabazon reinforces our belief that the Lucky Tab II should be classified as a Class II aid. The Cabazon machine plays the game of pull-tabs in its entirety, dispensing receipts for players to redeem winnings. By contrast, the Lucky Tab II dispenses actual paper pull-tabs that players must peel and display to a clerk before they can obtain prizes. Although the machine's scanner apparently commits few errors when reading paper pull-tabs, the fact remains that unlike the Cabazon machine, the Lucky Tab II is technically not final. It is, in other words, an aid to the game of pull-tabs.

-
- We see no principled difference between the Tab Force and the Lucky Tab II. Both devices electronically "read" paper pull-tabs and display their contents on a screen, and neither can "change the outcome of the game." Unlike the machine involved in Cabazon, neither contains an internal computer that generates the game. Rather, both machines facilitate the playing of paper pull-tabs. They are thus Class II aids."



Diamond Game
Where Innovation Plays

US V. SANTEE SIOUX TRIBE, 324 F.3D 607 (8TH CIR. 2003)

- “The government argues that if the Johnson Act applies, the Lucky Tab II machines are prohibited "gambling devices" under that act, and the Tribe is still operating gambling equipment in contravention of federal law. We disagree because we do not believe the Lucky Tab II machines are "gambling devices" within the meaning of the Johnson Act. Lucky Tab II machines are not slot machines . . . because they do not randomly generate patterns displayed on a screen, pay out money or otherwise determine the outcome of a game of chance. Nor do these machines fall within the strictures of sections 1171(a)(2)(A) and (B), which state, as earlier indicated, that a gambling device includes any machine:
 - designed and manufactured primarily for use in connection with gambling, and (A) which when operated may deliver, as the result of the application of an element of chance, any money or property, or (B) by the operation of which a person may become entitled to receive, as the result of the application of an element of chance, [**12] any money or property.
 - Lucky Tab II machines clearly do not fall within subsection A because the machines do not deliver any money or property. Subsection B seems a more likely candidate to ensnare these machines, but upon close examination, we find it does not. This section states that the operation of a machine designed and manufactured primarily for gambling use is a gambling device if, "as the result of the application of an element of chance" a person can be entitled to receive money or property. 15 U.S.C. § 1171(a)(2)(B) (emphasis added). The key words are highlighted, and demonstrate why the Lucky Tab II devices do not fit within this definition. As the trial testimony indicates, these machines do not generate random patterns with an element of chance. They simply distribute the pull-tab tickets and display the contents of the tickets on a screen for the user. The user of the machine does not become entitled to receive money or property as a result of the machine's application of an element of chance, which is what the statute clearly contemplates. See id. ("by the operation [**13] of [the gambling device] a person may become entitled to receive, as the result of the application of an element of chance [by the machine], any money or property").

The Johnson Act does not bar this type of machine, because it is merely a high-tech dispenser of pull-tabs.”



Diamond Game
Where Innovation Plays

**Seneca-Cayuga Tribe of Okla. v. Nat'l Indian
Gaming Comm'n, 327 F.3d 1019 (10th Cir. 2003)**

- The Court finds that the [Machine] is not a Johnson Act [gambling] device. While the game of pull-tabs itself, by its nature contains an element of chance, no additional element of chance is applied by the [Machine]. The [Machine] merely dispenses preprinted prearranged pull-tabs and contains an additional optional monitor to help make the play of the game more enjoyable. The device cannot change the outcome of the game and a participant cannot win anything without first taking it to a cashier.
-
- The Machine meets this definition. It dispenses paper pull-tabs from a roll that is part of a larger deal, and the deal contains a predetermined number of randomly distributed winning tabs. Although a pull-tabs player may opt to view the video display regarding the contents of the paper pull-tabs, players of the Machine must still manually peel back the top layer of the pull-tab to confirm victory, and it is that tab presented for visual inspection to a gaming hall clerk that entitles players to winnings. We thus reject the argument that the game played with the Machine is slots: although we acknowledge some superficial similarities between the two, pull-tabs, [*1041] even when sped up, placed under lights, and depicted with a spinning machine on the side, is still pull-tabs. We hold that the Machine is used in connection with the playing of pull-tabs.

I.C. 4-32.2-2-22

- “Pull tab means *either* of the following:
 - A game conducted in the following manner: (A) A single folded or banded ticket or a two-ply card with perforated break-open tabs is bought by a player from a qualified organization;
 - The face of each card is initially covered or otherwise hidden from view, concealing a number, letter, symbol, or set of letters or symbols.
 - In each set of tickets or cards, a designated number of tickets or cards have been randomly designated in advance as winners.
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 - The player with a winning pull tab ticket or numbered line receives the prize stated on the flare from the qualified organization. The prize must be fully and clearly described on the flare.
 - Any game played in a similar fashion as a game described in subdivision (1) that is approved by the commission.

I.C. 35-45-5-1

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 - It is a video game machine or device operated for consideration to play poker, blackjack, any other card game, keno, or any simulation or variation of these games, including any game in which numerals, numbers, pictures, representations, or symbols are used as an equivalent or substitute for the cards used in these games.

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Another difference between the Lucky Tab II and the video machine at issue in *Cabazon* reinforces our belief that the Lucky Tab II should be classified as a Class II aid. The *Cabazon* machine plays the game of pull-tabs in its entirety, dispensing receipts for players to redeem winnings. By contrast, the Lucky Tab II dispenses actual paper pull-tabs that players must peel and display to a clerk before they can obtain prizes. Although the machine's scanner apparently commits few errors when reading paper pull-tabs, the fact remains that unlike the *Cabazon* machine, the Lucky Tab II is technically not final. It is, in other words, an aid to the game of pull-tabs.

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- “The government argues that if the Johnson Act applies, the Lucky Tab II machines are prohibited "gambling devices" under that act, and the Tribe is still operating gambling equipment in contravention of federal law. We disagree because we do not believe the Lucky Tab II machines are "gambling devices" within the meaning of the Johnson Act. **Lucky Tab II machines are not slot machines** . . . because they do not randomly generate patterns displayed on a screen, pay out money or otherwise determine the outcome of a game of chance. Nor do these machines fall within the strictures of sections 1171(a)(2)(A) and (B), which state, as earlier indicated, that a gambling device includes any machine:
 - designed and manufactured primarily for use in connection with gambling, and (A) which when operated may deliver, as the result of the application of an element of chance, any money or property, or (B) by the operation of which a person may become entitled to receive, as the result of the application of an element of chance, **[**12]** any money or property.
- Lucky Tab II machines clearly do not fall within subsection A because the machines do not deliver any money or property. Subsection B seems a more likely candidate to ensnare these machines, but upon close examination, we find it does not. This section states that the operation of a machine designed and manufactured primarily for gambling use is a gambling device if, "**as the result of the application of an element of chance**" a person can be entitled to receive money or property. 15 U.S.C. § 1171(a)(2)(B) (emphasis added). The key words are highlighted, and demonstrate why the Lucky Tab II devices do not fit within this definition. As the trial testimony indicates, these machines do not generate random patterns with an element of chance. They simply distribute the pull-tab tickets and display the contents of the tickets on a screen for the user. **The user of the machine does not become entitled to receive money or property as a result of the machine's application of an element of chance, which is what the statute clearly contemplates.** See *id.* ("by the operation **[**13]** of [the gambling device] a person may become entitled to receive, as the result of the application of an element of chance [by the machine], any money or property").

The Johnson Act does not bar this type of machine, because it is merely a high-tech dispenser of pull-tabs.”

Seneca-Cayuga Tribe of Okla. v. Nat'l Indian Gaming Comm'n, 327 F.3d

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Charity Gaming Study Committee
Meeting 2
10/25/2011
Exhibit 3

10/25/2011

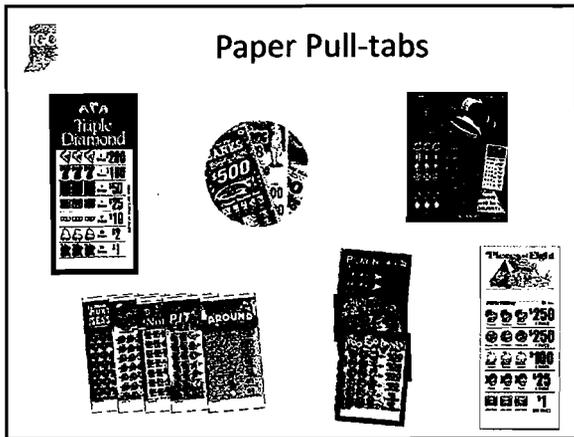


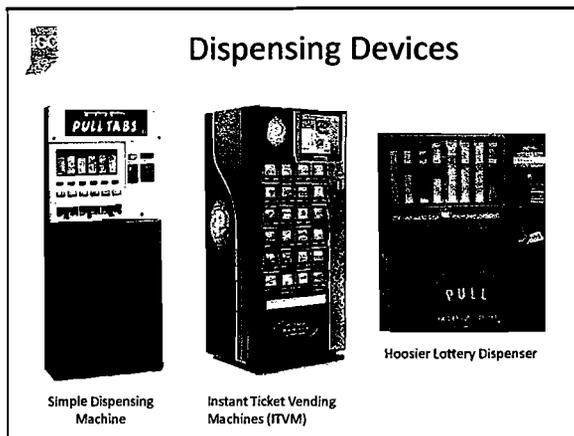
 **Charity Gaming Technology**

- Qualified Organizations may conduct an allowable event, sell pull tabs, punchboards, and tip boards. IC 4-32.2-1-2.
- Under IC 4-32.2-2-22, "pull-tab" means:
 - (1) A game conducted in the following manner:
 - (A) A single folded or banded ticket or a two-ply card with perforated break-open tabs is bought by a player from a qualified organization.
 - (B) The face of each card is initially covered or otherwise hidden from view, concealing a number, letter, symbol, or set of letters or symbols.
 - (C) In each set of tickets or cards, a designated number of tickets or cards have been randomly designated in advance as winners.
 - (D) Winners, or potential winners if the game includes the use of a seal, are determined by revealing the faces of the tickets or cards. The player may be required to sign the player's name on numbered lines provided if a seal is used.
 - (E) The player with a winning pull tab ticket or numbered line receives the prize stated on the flare from the qualified organization. The prize must be fully and clearly described on the flare.
 - (2) Any game played in a similar fashion as a game described in subdivision (1) that is approved by the commission.

 **NAGRA Standards**

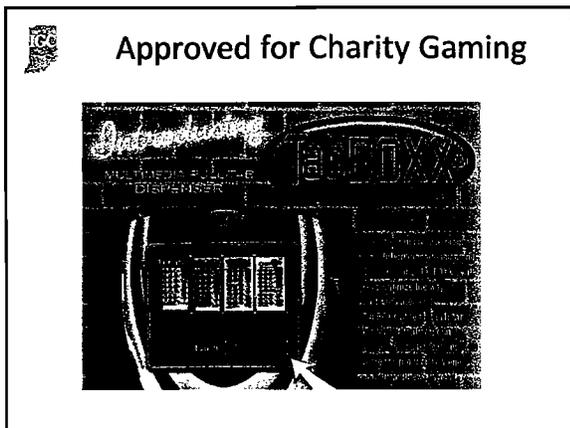
- Pull-tabs must meet North American Gaming Regulators Association (NAGRA) Standards on Pull-Tabs. 68 IAC 21-3-1.
- Game construction based on paper, not electronic entries
- NAGRA requires randomization, i.e., mixing before sales
- Tracking of each deal is required (42 mo. record retention)
- To-date, no standard for electronic pull-tabs exists
 - Bingo "card-minding" standard

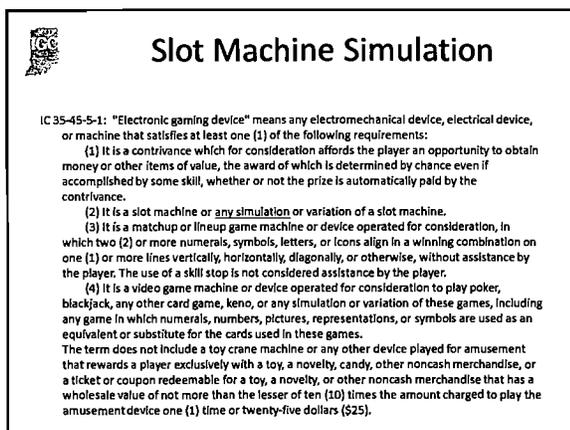


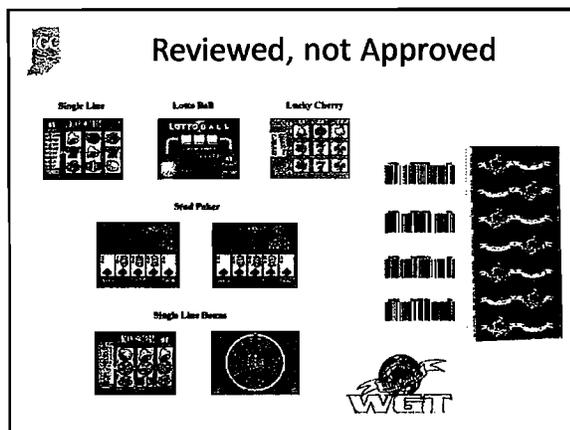


Current Rule

- **“Dispensing Device” means a mechanical or electromechanical device with one or more stacking columns that dispenses a pull tab only after a player inserts an appropriate amount of coin or currency. This does not include any device that electronically generates a pull tab. Emergency Rule, Section 8 (eff. July 1, 2011).**







Under Review

Pull-Tab

Diamond Game



Diamond Game has long been known as a pioneer of Instant-Tickets and a developer of a unique electro-mechanical Dispenser. Through the use of our patented technology, our Video-Instant Ticket Vending Machines (or "Lucky-Tab 11") allow for a pre-printed set of tickets to be scanned by the device, displayed in an entertaining format on the dispenser's video screen and dispensed to the player. The "element of chance" is contained entirely in the pre-printed set of tickets. Video graphics and sounds are for entertainment purposes only and have no effect on the outcome of the game. The open ticket governs in the event of any difference between the display and the ticket. We offer customized display options, depending on the customer's needs, from traditional real-time formats to match & win formats to many others.

Through this patented technology, we provide pull-tab dispensers and ITVMs which can look and feel like the most electronic gaming machines, all while adhering to the legal requirements of every Dispenser, and non-gambling devices. Court-tested, all the way to the U.S. Supreme Court, the basis of even our most sophisticated dispensers and ITVMs - the pre-printed game tickets - mean the device is merely a dispenser and not a Johnson Act device, slot machine, or other gambling device. Because of this, our dispensers can fill the gaming needs of nearly any jurisdiction that allows the sale of instant game tickets from dispensers or vending machines. Please contact us to discuss the opportunities in your area.

Video Ticket Dispenser

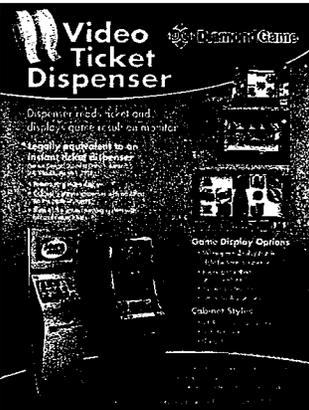
Diamond Game

Dispenser feeds, scans and displays game results on monitor

Legally equivalent to an instant ticket dispenser

Game Display Options

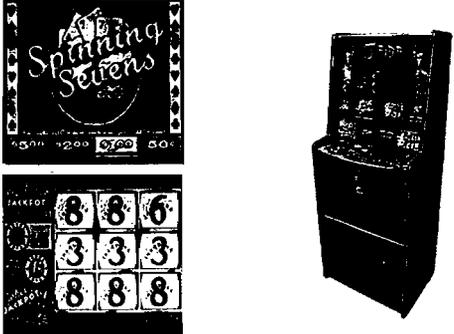
Cabinet Styles




Seneca-Cayuga v. Nat'l Indian Gaming Comm'n

- Certiorari denied by SCOTUS
- Not a Johnson Act gambling device
- A permissible electronic aid under the Indian Gaming Regulatory Act (IGRA)
- Holding applies only to IGRA under federal law
- Case is not binding on Indiana's interpretation of its own statute, i.e., a *simulation* of a slot machine under IC 35-45-5-1

 **Electronic/video/virtual pull tabs**



 **Regulatory Challenges**

- Statutory definition of EGD prohibits electronic pull tab machines which simulate slot machines
- No electronic pull tab standard exists
- Charities must rely on supplier for integrity and audit ability for internal purposes
- No third-party testing or audit procedures in place
- Licensing/investigation of suppliers more burdensome
- Enforcement is more complex
 - If permitted in Charity Gaming, ATC will likely allow in bars pursuant to IC 4-36-2-20.

 **Public Policy Considerations**

- What effect will electronic pull-tab machines have on charitable fundraising?
- What effect will electronic pull-tab machines have on the casino revenue stream?
- How will electronic pull-tab machines impact other licensed suppliers?
- What effect will electronic pull-tab machines have on enforcement?
- **No mechanism to address problem gambling**
 - Problem gamblers can play slot-like machines anywhere, defeating the work done to date to address problem gaming

Charity Gaming Study Committee
Meeting 2
10/25/2011
Exhibit 4

CHARITY GAMING TALKING POINTS

Jurisdiction – The proposed change in legislation would allow a National Organization to file for an annually renewable license which would allow the local chapters to hold fundraising events upon filing a Notice of the event with the Charitable Gaming Division of the Indiana Gaming Commission.

Jurisdiction: By statute and by the terms of the license itself, all organizations would be agreeing and recognizing the jurisdiction of the Indiana Gaming Commission (IGC) for operational and compliance oversight of the organization being licensed and the event being noticed.

- Would be consistent with the oversight presently within the jurisdiction of the IGC over owners and operators of casino operations in the state;
- Consistent with the oversight presently within the jurisdiction of the Indiana Horse Racing Commission (IHRC);
- Would extend to the local chapter by the terms of the licensing and notice requirements;
- Would allow for judicial action in Indiana for events held in the state and licensed by a state agency

Annual License: Allowing for an annual license issued to a National Organization is consistent with the current laws applicable to riverboat gaming, horse racing, gambling games at race tracks and operating agent contracts.

- The licenses for riverboat gaming, gambling games at racetracks and operating agent contract are renewable annually, generally from the date of the initial issuance of the license. Every three (3) years, the licensee is required to undergo a re-investigation although it may be sooner if, in the discretion of the of the IGC, a re-investigation is warranted.
- Permits issued to horse racing tracks are renewable annually and must be filed with the IHRC by November 1 of the year preceding the year of the horse racing meeting.
- Would make charitable gaming consistent with the other forms of legal gambling and alleviate regulatory congestion caused by the constant processing of licenses on a specific event basis thus allowing more time for the regulatory oversight of the events as opposed to the review of numerous and continuing applications for charitable gaming events.
- Would be more consistent with the single license for multiple weekly events licensing which presently exists.

Responsibility – The proposed legislation would put responsibility for the charitable gaming event in National Organization, but still allow regulatory and criminal oversight of the individuals involved at the local event.

Volunteerism: Charitable gaming operating as a fund raising event for a National Organization is overwhelming organized, overseen and operated by local volunteers. A national permit would shift the primary responsibility to the National Organization.

- There is a strong Public Policy interest in getting people to volunteer for worthy causes – when the procedure to hold the event is cumbersome, complex and holds the possibility that the volunteer or the local chapter will be disciplined for failure to properly follow the rules when trying to comply, it has a negative impact on volunteerism and is counterproductive to good public policy.
- The National Organizations generally have paid personnel who have the time to properly learn and execute the requirements for an annual license and local chapter notices and would accept the responsibility for the same.
- Willful refusals to follow known rules by local volunteers can best be handled by the National Organization but would still be within the Compliance jurisdiction of the IGC at the National, local and volunteer level when needed.
- Criminal violations are always within the jurisdiction of the prosecutor in whose county the event is held and would focus on the entity that performed the criminal act, be it a volunteer or paid national personnel.

Respondeat Superior – is a legal doctrine or maxim which, simply stated, means that a master is liable in certain cases for the wrongful acts of his servant. The proposed legislation is designed to have the National Organization in the position of Master with the Local Chapter and its volunteers being the Servant.

- Holding the National Organization responsible for the negligent acts of the Local Chapter and its Volunteers is consistent with the present disciplinary oversight in all aspects of gambling games and horse racing where the holder of the riverboat or gambling games at the race track license, the operating agent contract or the horse racing permit is, in most instances, held responsible for the acts of the employees that occur in contravention of the statutes and rules of the governing body.
- While the first line of action for negligent action is between the National Organization and the Local Chapter/Volunteer for corrective measures, the ability to discipline the Volunteer or Local Chapter remains in the powers of the governing body, although it would be exercised in only the most intentional and grievous actions.
- Criminal action is always within the purview of the prosecutor for events and actions within the county.
- **Of paramount importance in reviewing this principle:** it should be noted that the individuals involved with charity gaming are primarily volunteers whereas the individuals involved with "for profit gaming" are generally paid employees of the licensee/holder of the permit who, in almost all instances, are also licensed by the gaming authority and trained in the proper procedures to be utilized to perform their respective tasks. It makes no sense, and is contrary to good public policy, to make a volunteer or a volunteer organization more responsible for the non-intentional failure to comply with the Charitable Gaming requirements than are the paid employees of a "for profit" licensee/permit holder.

Charity Gaming Study Committee
Meeting 2
10/25/2011 Exhibit 5

NATIONAL RIFLE ASSOCIATION OF AMERICA
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11250 WAPLES MILL ROAD
FAIRFAX, VIRGINIA 22030

(703) 267-1250
(703) 267-3985 fax



NRA

October 21, 2011

Members of the Charity Gaming Study Committee
200 West Washington St.
Indianapolis, IN 46204

Dear Committee Members:

Although Indiana law currently allows various non-profit organizations to conduct raffles, the law treats all such non-profits the same. Many states limit charitable gaming to *bona fide* charities, i.e., 501(c)(3) organizations such as the Red Cross, the Salvation Army, the Boy Scouts, the VFW, and the like. As donations to such organizations are tax-deductible, the Internal Revenue Service requires greater scrutiny and a different and more complex application and approval procedure before a non-profit is granted 501(c)(3) status. In addition, IRS rules severely restrict how a 501(c)(3) may spend its money, requiring that such an organization be organized and operated exclusively for charitable or educational or other 501(c)(3) purposes.

Many such 501(c)(3) charitable organizations, including those just listed, are national in scope. Indiana requires any non-profit that wishes to conduct raffles, whether or not a *bona fide* charity, to be local in scope.

The language I drafted would allow *bona fide* 501(c)(3) organizations, including those that are national in scope, to raise funds in Indiana through charitable raffles. In addition, as such organizations are tightly controlled under federal law in their operation and organization, the language would loosen some of the current gaming restrictions, but only for 501(c)(3) organizations. The language only applies to raffles while other gaming requirements and restrictions (with bingo, for example), would remain.

Essentially, this language:

1. Redefines an "allowable event" to specify events conducted by licensed qualified organizations.
2. Redefines a "bona fide civic organization" to include national organizations. ("Civic," as used in Ind. Code § 4-32.2-2-6, includes "charitable.")
3. Provides that "A qualified organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code is not required to obtain a license from the commission to conduct a raffle. Any raffle conducted by a qualified organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code may be conducted and shall be allowed, but shall not be considered an 'allowable event' as used in this Article."

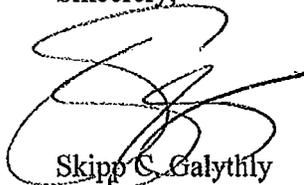
The burdensome or objectionable provisions in the charitable gaming law apply to “allowable events.” By changing the definition of an “allowable event” to exclude raffles conducted by *bona fide* 501(c)(3) organizations, but still allowing such raffles to be conducted, these charities will not, for example: have to apply for a license; be limited in the number of events (including and especially per week, per license); file reports; and be subject to the membership requirements.

As 501(c)(3) organizations, charities are still severely restricted in their use of revenue, whether raised by a raffle or not. These restrictions apply exclusive of any Indiana raffle restrictions. The more time and money a charity in Indiana must spend complying with a raffle law that applies to all non-profits, the less time and money a charity has to spend on its charitable mission. The theory behind 501(c)(3) organizations, and the tax-deductibility of donations to such organizations, is that they undertake activities and services that government otherwise would carry out. I would note, however, that money paid for raffle tickets, even to a 501(c)(3), are *not* tax-deductible. Therefore, when a charity raises money through raffles, the government receives more money (as no tax-deduction is allowed and, therefore, more taxes are paid), while government services and burdens are lessened through the charitable and educational activities of the charity, which are increased by the revenue raised through raffles.

Simply put, this is a loosening of restrictions on *bona fide* charities that are already subject to restrictions far more severe than those placed on other types of non-profits. Indiana should not have to worry as much about actual charities as charities are heavily restricted by federal law and the IRS. The other entities that can get licensed in Indiana, including political organizations and other 501(c) groups, like the NRA itself, that are not so restricted in how their funds are used, would continue to operate under the current law.

I hope this information proved helpful.

Sincerely,

A handwritten signature in black ink, appearing to read "Skipp C. Galythly", written over a circular stamp or seal.

Skipp C. Galythly
Assistant General Counsel

Draft language for an Indiana bill concerning charitable gaming. This language edits three current sections of the Indiana Code: IC 4-32.2-2-2, IC 4-32.2-2-6, and IC 4-32.2-4-3. Additions are underlined with deletions to existing language ~~crossed out~~.

IC 4-32.2-2-2

Sec. 2. "Allowable event" means:

- (1) a bingo event;
- (2) a charity game night;
- (3) a raffle;
- (4) a door prize drawing;
- (5) a festival;
- (6) a sale of pull tabs, punchboards, or tip boards; or
- (7) any other gambling event approved by the commission under this article;

conducted by a qualified organization licensed in accordance with this article and rules adopted by the commission under this article.

IC 4-32.2-2-6

4-32.2-2-6 "Bona fide civic organization"

Sec. 6. "Bona fide civic organization" means a branch, lodge, or chapter of a national or state organization that is not for pecuniary profit or a national or state organization that is not for pecuniary profit or a local organization that is not for pecuniary profit and not affiliated with a state or national organization whose written constitution, charter, articles of incorporation, or bylaws provide the following:

- (1) That the organization is organized primarily for civic, fraternal, or charitable purposes.
- (2) That upon dissolution of the organization all remaining assets of the organization revert to nonprofit civic or charitable purposes.

IC 4-32.2-4-3

4-32.2-4-3 Exceptions; annual written notice; financial records

Sec. 3. (a) A qualified organization is not required to obtain a license from the commission if the value of all prizes awarded at the bingo event, charity game night, raffle event, door prize event, festival

event, or other event licensed under section 16 of this chapter, including prizes from pull tabs, punchboards, and tip boards, does not exceed one thousand dollars (\$1,000) for a single event and not more than three thousand dollars (\$3,000) during a calendar year. Any such event conducted by a qualified organization may be conducted and shall be allowed, but shall not be considered an “allowable event” as used in this Article.

(b) A qualified organization that plans to hold an ~~allowable~~ event described in subsection (a) more than one (1) time a year shall send an annual written notice to the commission informing the commission of the following:

(1) The estimated frequency of the planned ~~allowable~~ events.

(2) The location or locations where the qualified organization plans to hold the ~~allowable~~ events.

(3) The estimated value of all prizes awarded at each ~~allowable~~ event.

(c) The notice required under subsection (b) must be filed before the earlier of the following:

(1) March 1 of each year.

(2) One (1) week before the qualified organization holds the first ~~allowable~~ event of the year.

(d) A qualified organization that conducts an ~~allowable~~ event described in subsection (a) shall maintain accurate records of all financial transactions of the event. The commission may inspect records kept in compliance with this section.

(e) A qualified organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code is not required to obtain a license from the commission to conduct a raffle. Any raffle conducted by a qualified organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code may be conducted and shall be allowed, but shall not be considered an “allowable event” as used in this Article.