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Minnesota Gambling Control Board

March 28, 2019

The Honorable James LaFave, Administrative Law Judge
Office of Administrative Hearings
600 North Robert Street
P.O. Box 64620
St. Paul, MN 55164-0620

Re: In the Matter of the Proposed Rules of the Minnesota Gambling Control Board Governing
Lawful Gambling Electronic Games, Sports-Themed Tipboards, and Other Changes;
OAH Docket No. 60-9017-35616; Revisor's ID 4555

Dear Judge LaFave:

The following contains the Minnesota Gambling Control Board's responses to comments made at the rules hearing on Friday, March 8, 2019.

1. The Minnesota Gambling Control Board (Board) has met the following requirements for promulgating rules:
 - a. The Board has legal authority to adopt the proposed rules by authority cited in the Statement of Need and Reasonableness and cited in Exhibit K-1.
 - b. The Board has fulfilled all of the relevant legal and procedural rulemaking requirements as shown in its exhibits presented at the March 8, 2019, hearing and in the attached affidavit.
 - c. The Board has met its burden to show that the proposed rules are needed and reasonable as shown in its Statement of Need and Reasonableness (SONAR) presented in its exhibits at the hearing and as further shown in this response. Minnesota Statutes, section 14.14, subdivision 2, requires the Board to "make an affirmative presentation of facts establishing the need for and reasonableness of the proposed rules" In making its affirmative presentation, the Board must show that its action has a rational basis. In the Matter of the Proposed Rules Of The State Pollution Control Agency Relating To Air And Water Permit Fees, Minnesota Rules, Chapter 7002, OAH Docket No. 15-2200-20477-1, 2009 WL 3031451, at *3 (Minn. Ofc. Of Admin. Hrg. Sept 11, 2009) ("The question of whether a rule has been shown to be reasonable focuses on whether it has been shown to have a rational basis, or whether it is arbitrary, based upon the rulemaking record. Minnesota case law has equated an unreasonable rule with an arbitrary rule."); see also Beck, G., and M. Konar-Steenberg, section 22.1, *Minnesota Administrative Procedure, Third Edition* <http://mitchellhamline.edu/minnesota-administrative-procedure/>. (2014) The Board states its affirmative presentation in its Statement of Need and Reasonableness and in this response, which the Board relies on to establish the need for and reasonableness of the proposed rules. The Board's evidence clearly meets the rational basis standard and compels one to conclude that the proposed rules of the Board are needed and reasonable.
2. The Board has previously responded to four comments made and issues raised during the 30-day comment period for the Notice of Intent to Adopt without a Hearing (Exhibit I-1). In addition to these four comments, a sufficient number of hearing requests were received (Exhibit G/H-2a) during the Notice of Intent to Adopt comment period which resulted in the March 8, 2019, rules hearing.

3. The subject matter of the public comments made at the rules hearing on March 8, 2019, was objections to certain lawful gambling electronic gaming provisions. To fully understand lawful gambling electronic gaming, it is important to understand the difference between an electronic device, an electronic game, and an electronic pull-tab ticket.

Electronic device. Minnesota Statutes, section 349.12, defines both an electronic bingo device and an electronic pull-tab device. Minn. Stat. § 349.12, subd. 12a (electronic bingo device), and subd. 12b (electronic pull-tab device). Both devices are required to be a handheld, portable piece of permanent electronic gambling equipment that may only play electronic linked bingo games, electronic pull-tab games, or both. Minn. Stat. § 349.12, subd. 12a (5), and subd. 12b (6). These devices do not allow the use of coin, currency, or tokens to be inserted to activate play. Minn. Stat. § 349.12, subd. 12a (3), and subd. 12b (2).

Electronic game. There are electronic linked bingo games and electronic pull-tab games. Both are played on electronic devices.

- Electronic linked bingo games are permitted under Minnesota Statutes, Section 349.17, subdivision 9, which allows for electronic linked bingo games played exclusively on electronic bingo devices. The proposed rules include a definition of an “electronic linked bingo game” which is played on a handheld, portable electronic device that permits play against other bingo players at multiple permitted premises.
- Electronic pull-tab games contain a predetermined, finite number of winning and losing tickets (7,500 maximum ticket count), and are designed to pay out up to 85% in prizes and are based on a manufacturer’s designed, price-per-chance ticket. Minn. Stat. §§ 349.12, subd. 12c (2); 349.2113.

Electronic pull-tab ticket. An electronic pull-tab ticket is one of a maximum of 7,500 predetermined chances in an electronic pull-tab game. The result of each ticket is predetermined and based on a specific prize structure approved by the Board. Minn. Stat. § 349.12, subd. 12c.

4. The following is in response to public comments made and an exhibit (Exhibit 1) submitted at the hearing on March 8, 2019. We have summarized these comments and issues in the order of the subpart or item to which they relate.¹ The Board’s response follows each comment.
- a. Part 7861.0210, subpart 15c - definition of electronic bingo device. There was public comment that the proposed rule changes the meaning of electronic bingo device and that any proposed definition should solely reference the statutory definition in Minnesota Statutes, Section 349.12, subdivision 12a. Further comment opined that because the Board recites/highlights some statutes and not others, it lends itself to minimizing statutory provisions not included in the proposed definition of electronic bingo device. (Board’s Proposed Rules, page 2.8; Exhibit 1, page 17)

Response: This proposed rule is an effort to gather and delineate various references to electronic bingo devices. Minnesota Statutes, Section 349.12, subdivision 12a (1)(i), describes two functions of an electronic bingo device without indicating that an individual electronic bingo device may not be used for both functions. One type of electronic bingo device, commonly known as a bingo card minder, is

¹ The Board herein summarizes the public comments made at the March 8, 2019, hearing. The proposed rule sections here are organized in ascending order, as the rules were proposed, and does not follow the same order as the public comment presentation from the March 8 hearing.

used in conjunction with non-electronic linked bingo games. The other type is an electronic device on which to play electronic linked bingo. An electronic linked bingo device cannot be used as a bingo card minder and, by the same token, a bingo card minder cannot be used to play electronic linked bingo. Rule references to the statute alone can be confusing as some rules only apply to electronic bingo devices used to play electronic linked bingo games, while other rules only apply to the bingo card minder function.

The Board's intent is to have separate definitions of electronic bingo *device* and electronic linked bingo *game*. This proposed rule does not minimize statutory provisions nor does it change the meaning of an electronic bingo *device*. It also does not specifically recite a sentence from Minnesota Statutes, Section 349.12a, regarding a linked bingo *game* because the allegedly "omitted" statutory reference is contained in the proposed definition of electronic linked bingo *game* elsewhere in the proposed rules (see Part 7861.0210, subpart 15h, in Proposed Rules, page 4.10). Nothing in this proposed rule conflicts with the statute, or expands or limits the types of electronic bingo devices the Board may approve for use.

It has never been the Board's intent to minimize or weaken statute; to the contrary, the Board separated the two types of electronic bingo devices in this subpart to clarify references to electronic bingo device elsewhere in the rules and for ease of use for the rule reader.

The Board maintains its position that improved clarity and ease of use justifies this proposed definition.

- b. Part 7861.0210, subpart 15h - definition of electronic linked bingo game. There was public comment that the definition conflicts with the definition of "linked bingo game" in Minnesota Statutes, Section 349.12, subdivision 25a. (Board's Proposed Rules, page 4.10; Exhibit 1, page 20)

Response: Public comment focused solely on Minnesota Statutes, Section 349.12, subdivision 25a, which defines linked bingo game. Electronic linked bingo is a form of linked bingo. The proposed rules define electronic linked bingo game. The items that were not recited in the proposed definition of electronic bingo device (proposed subpart 15c) that pertain to an electronic linked bingo *game* are included in this definition to show the distinction between "devices" and "games".

Absent statutory definition of electronic linked bingo game, Minnesota Statutes, Section 349.17, controls the conduct of bingo in the state. Section 349.17, subdivision 8, governs the play of "linked bingo games". Section 349.17, subdivision 9, specifically provides for linked bingo games played exclusively on electronic bingo devices, independent of the linked bingo game requirements specified in subdivision 8. The rule is reasonable as subdivision 9 clearly distinguishes the method of play of linked bingo on electronic devices. By creating a definition of "electronic linked bingo game", the rule provides clarification as to where the distinction between subdivisions 8 and 9 occurs. Electronic linked bingo games are not played player against device, but player against player. Minn. Stat. § 349.12, subd. 12a (4).

The Board maintains its position that the proposed definition of electronic linked bingo game is necessary to distinguish between linked bingo games and electronic linked bingo games.

- c. Part 7861.0270, subpart 3a - use of electronic bingo devices. There was public comment that electronic bingo devices are prohibited from containing interactive entertainment programs and cites Minnesota Statutes, section 349.12, subdivision 12a (5), as a prohibition, and further public comment that the electronic bingo devices may not display or simulate any other form of gambling or entertainment and cites Section 349.13 as a prohibition. (Board's Proposed Rules, page 16.13; Exhibit 1, page 14)

Response: Public comment erroneously extended the prohibition against an amusement function on the electronic bingo device to the electronic linked bingo game itself, whereas Minnesota Statutes, Section 349.12, subdivision 12a (5), prohibits amusement functions beyond lawful gambling games on an electronic device that are *in addition to* the electronic linked bingo game or an electronic pull-tab game. Nothing in statute prohibits animation or interaction related to the electronic linked bingo game. Minnesota Statutes, Section 349.13, indeed prohibits the display or simulation of any other form of gambling or entertainment, *except as otherwise allowed under Chapter 349*. Minnesota Rules, Part 7863.0270, subpart 13, requires that the electronic bingo device be incapable of displaying any function other than electronic pull-tabs. For example, the device may not be used to watch a football game, to play a bar's trivia game, to purchase food and beverages, or to view sites on the internet. The devices are only capable of being used as an electronic bingo device or an electronic pull-tab device.

The Board maintains its position that statute only prohibits entertainment functions unrelated to electronic linked bingo games or electronic pull-tab games.

- d. Part 7863.0270, subpart 18a - animated win determination. There was public comment that the term "animated win determination" is confusing and weakens statutory requirements of what may be displayed, and that animation makes an electronic game mimic a slot machine. Public comment was also made that electronic bingo games may not display or simulate any other form of gambling or entertainment under Minnesota Statutes, Section 349.13. (Board's Proposed Rules, page 47.6; Exhibit 1, page 8)

Response: Public comment erroneously extended the prohibition against an amusement function on the electronic bingo device to the electronic linked bingo game itself, whereas Minnesota Statutes, Section 349.12, subdivision 12a (5), prohibits amusement functions beyond lawful gambling games on an electronic device that are *in addition to* the electronic linked bingo game or an electronic pull-tab game. Minnesota Statutes, Section 349.12, subdivision 12b (5), prohibits an electronic pull-tab device from containing spinning reels or other representations that mimic a video slot machine. There is no corollary prohibition relating to electronic bingo devices. Minn. Stat. § 349.12, subd. 12a. Nonetheless, animation itself does not make an electronic device or game mimic a slot machine. If animation alone is considered to "mimic a slot machine" then every electronic screen with moving objects could be interpreted to be mimicking a slot machine. This interpretation is too expansive, and is unreasonable. Minnesota Statutes, Section 349.12, subdivision 12a (1)(iii), allows an electronic bingo device to identify a winning bingo pattern. The Board is proposing rules to make the restrictions on win determination of electronic linked bingo games similar to those of electronic pull-tab games.

Statute provides that electronic pull-tab games may contain amusement features and visual enhancements. Minn. Stat. § 349.12, subd. 12b (7) and (8). Animation is an integral part of an electronic game. Electronic pull-tab devices are prohibited from containing spinning reels or mimicking a video slot machine (Minn. Stat. § 349.12, subd. 12b (5)); are prohibited from any additional function as a gambling device other than as an electronic linked bingo device (Minn. Stat. § 349.12, subd. 12b (6)); and may not display or simulate any other form of gambling or entertainment except as allowed under Chapter 349 (Minn. Stat. § 349.13). With the proposed rules, the Board is implementing controls deemed necessary to ensure and maintain the integrity of electronic bingo devices and the electronic bingo games played on the devices. Minn. Stat. § 349.151, subd. 4c. In addition, because electronic pull-tab games and electronic linked bingo games can be played on the same device, it is reasonable and necessary to require similar standards for each.

Minnesota Rules, Parts 7863.0270, subpart 13, and 7864.0235, subpart 15, restrict electronic devices from engaging in any other function, except for electronic linked bingo games and electronic pull-tab games. For example, the device may not be used to watch a football game, to play a bar's trivia game, to purchase food and beverages, or to view sites on the internet. Nothing in statute prohibits animation or interaction related to an electronic linked bingo game or electronic pull-tab game. The devices are only capable of being used as an electronic bingo device or an electronic pull-tab device.

The Board maintains its position that the proposed rule is consistent with statute and is necessary to prohibit the spinning reels and non-straight line win determinations (for electronic linked bingo) that are already prohibited on electronic pull-tab games.

- e. Part 7864.0230, subpart 6 - manufacturing standards for electronic bingo devices. There was public comment objecting to striking reference to Minnesota Statutes, section 609.75, subdivision 8, and contending that animated game win determinations simulate slot machines. Public comment was also made offering that electronic bingo devices may not display or simulate any other form of gambling or entertainment under Minnesota Statutes, Section 349.13. (Board's Proposed Rules, page 66.21; Exhibit 1, page 11)

Response: Minnesota Statutes, section 349.13, states in part that "A pull-tab dispensing device, electronic bingo device, and electronic pull-tab device permitted under this chapter and by board rule is not a gambling device within the meaning of sections 609.75 to 609.76 and chapter 299L." Section 349.13 clearly exempts these devices, and the reference in rule to 609.75, subdivision 8, is an error. This proposed rule change is to remove the erroneous reference and specifically cite the restrictions as identified in the proposed rule.

Animation itself does not make an electronic device or game mimic a slot machine. If animation alone is considered to "mimic a slot machine" then every electronic screen with moving objects could be interpreted to be mimicking a slot machine. This interpretation is too expansive, and is unreasonable. Minnesota Statutes, Section 349.12, subdivision 12b (5), prohibits an electronic pull-tab device from containing spinning reels or other representations that mimic a video slot machine.

Statute provides that electronic pull-tab games may contain amusement features and visual enhancements. Minn. Stat. § 349.12, subd. 12b (7) and (8). Visual and auditory enhancement (animation) is an integral part of an electronic game. Electronic pull-tab devices are prohibited from containing spinning reels or mimicking a video slot machine (Minn. Stat. § 349.12, subd. 12b (5)); are prohibited from any additional function as a gambling device other than as an electronic linked bingo device (Minn. Stat. § 349.12, subd. 12b (6)); and may not display or simulate any other form of gambling or entertainment except as allowed under Chapter 349 (Minn. Stat. § 349.13). With the proposed rules, the Board is implementing controls deemed necessary to ensure and maintain the integrity of electronic bingo devices and the electronic linked bingo games played on the devices. Minn. Stat. § 349.151, subd. 4c. Because electronic pull-tab games and electronic linked bingo games can be played on the same device, it is reasonable and necessary to require similar standards for each.

Existing rules (Minn. Rules, Parts 7863.0270, subp. 13, and 7864.0235, subp. 15) require that electronic bingo devices and electronic pull-tab devices be incapable of displaying any function not permitted by lawful gambling standards. Again, the device may not be used to watch a football game, to play a bar's trivia game, to purchase food and beverages, or to view sites on the internet. Nothing in statute prohibits animation or interaction related to the electronic linked bingo game. The devices are only capable of being used as an electronic bingo device or an electronic pull-tab device.

Previously approved games may remain available for play for 180 days so that the manufacturer has time to bring the games into compliance. This is the amount of time customarily allowed for manufacturers to bring lawful gambling product into compliance after a rule change.

The Board maintains its position that the proposed rule is consistent with statute and is necessary to prohibit the spinning reels and non-straight line win determinations for electronic linked bingo that are already prohibited on electronic pull-tab games.

- f. Part 7864.0235, subpart 4 - electronic pull-tab ticket required features. There was public comment expressing opinion that extended, or bonus, play from an electronic pull-tab ticket is prohibited by Minnesota Statutes, section 349.12, subdivision 12c, (cost per ticket), and any amusement features, or audio or visual enhancement that affects the outcome of a "game" or "game" displays are contrary to statute.² Public comment was also made that electronic pull-tab games may not display or simulate any other form of gambling or entertainment under Minnesota Statutes, Section 349.13. (Board's Proposed Rules, page 71.6; Exhibit 1, page 5)

Response: We direct your attention to Minnesota Statutes, Section 349.1721. This provision clearly allows pull-tab games to be multiple seal games, cumulative games, event games, and multiple chance games (Minn. Stat. § 349.1721, subds. 1, 2, and 5) where additional predetermined chances or outcomes are allowed at no additional cost. The statute also provides the Board authority to promulgate rules to similarly apply to electronics, which was done in a previous rules promulgation. Multiple seal game play is parallel to extended/bonus play in electronic games. This feature provides an additional extended play based on the predetermined outcome at no additional cost. Multiple seal games allow for a next level/bonus play whereby a ticket allows additional actions at no additional cost. Statute does not distinguish between paper and electronic pull-tab games, and the rules apply to both. The rules for extended/bonus play parallel how multiple seal games work in a paper medium. Seal/bonus prizes are listed on the game information flares separate from the base game prizes for both paper and electronics. Additionally, certain paper pull-tab games allow players to make choices that can affect the outcome of the game, a feature currently unavailable in electronic games because all electronic pull-tab ticket and game results are predetermined.

Minnesota Statutes, section 349.12, subdivision 12b (7), allows an amusement game feature that does not require additional consideration. Extended/bonus play is continuous play of a single pull-tab ticket which has previously been paid for (no additional consideration) and has no effect on the outcome of a ticket (which is already predetermined) or on the overall pull-tab game. Electronic pull-tab games contain a predetermined, finite number of tickets not to exceed 7,500 tickets. Minn. Stat. § 349.12, subd. 12c (2). In other words, when the game is created by the game manufacturer, every ticket in the deal is either a winner or a loser and the prize amount for each ticket is predetermined. Any extended/bonus play, whether interactive or not, that occurs after a ticket is purchased has no effect on the prize amount or the number of remaining tickets. Minn. Stat. § 349.12, subd. 12b (7). In addition, electronic pull-tabs may contain visual enhancements to promote or provide information about the game being played, provided the component (visual display of a predetermined result) does not affect the outcome of a game or display the overall results of a game. Minn. Stat. § 349.12, subd. 12b (8). The visual display of a ticket win applies to a single pull-tab ticket and not to the overall game results. The

² Public comment referred to pull-tab "games" when they were actually referencing the play of individual tickets. As noted above, there is a significant difference between a pull-tab game (the collection of up to 7,500 tickets) and the pull-tab ticket that a player purchases and plays on the electronic pull-tab device. This distinction is explained further below.

extended/bonus plays or displays of game ticket results in no way affect the prize payout for an individual ticket, the total prize payout for the game, or the organization's profit for that game. A player cannot alter the results of the predetermined ticket.

Minnesota Statutes, Section 349.13, specifically refers to electronic game devices, and prohibits those *devices* from displaying "other forms of gambling or entertainment". Displaying or simulating any form of gambling or entertainment *other than* an electronic pull-tab game or an electronic linked bingo game is prohibited. Electronic pull-tab games may contain other amusement features and visual enhancements. Minn. Stat. § 349.12, subd. 12b (7) and (8).

The Board maintains its position that the proposed rule is consistent with statute.

- g. Part 7864.0235, subpart 18 - electronic pull-tab game information. There was public comment that electronic devices and games may not mimic slot machines, may have no additional function as a gambling device other than for electronic linked bingo, and that electronic pull-tab games may not display or simulate any other form of gambling or entertainment under Minnesota Statutes, Section 349.13. (Board's Proposed Rules, page 76.5; Exhibit 1, page 1)

Response: Public comment erroneously extended the prohibition against an amusement function on the electronic pull-tab device to the electronic pull-tab game itself, whereas Minnesota Statutes, Section 349.12, subdivision 12b(6), prohibits functions beyond lawful gambling games on an electronic pull-tab device that are *in addition to* the electronic pull-tab game or an electronic linked bingo game. Minnesota Rules, part 7864.0235, subpart 15, restricts an electronic pull-tab device from engaging in any other function, except for electronic linked bingo. For example, the device may not be used to watch a football game, to play a bar's trivia game, to purchase food and beverages, or to view sites on the internet. Nothing in statute prohibits animation or interaction related to the electronic pull-tab game. The devices are only capable of being used as an electronic bingo device or an electronic pull-tab device.

Electronic pull-tab games and devices are distinct and separate. Electronic pull-tab devices may contain other amusement features and visual enhancements as part of electronic pull-tab games but are prohibited from displaying spinning reels or other representations that mimic a slot machine. Minn. Stat. § 349.12, subd. 12b (5), (7), and (8). Electronic pull-tab devices are prohibited from any additional function as a gambling device other than as an electronic linked bingo device (Minn. Stat. § 349.12, subd. 12b (6)), and may not display or simulate any other form of gambling or entertainment except as allowed under Chapter 349 (Minn. Stat. § 349.13). Electronic pull-tab games are prohibited from containing spinning reels or mimicking a video slot machine (Minn. Stat. § 349.12, subd. 12c (9)).

The Board is further restricting games by requiring that any games approved prior to the effective date of the rules that do not meet the standards contained in the proposed rules must come into compliance within 180 days of the effective date of the rules. These previously approved games may remain available for play for 180 days so that the manufacturer has time to bring the games into compliance. This is the amount of time customarily allowed for manufacturers to bring lawful gambling product into compliance after a rule change.

Minnesota Statutes, Section 349.13, specifically refers to electronic game devices. Displaying or simulating any other form of gambling or entertainment *other than* an electronic pull-tab game or an electronic linked bingo game is prohibited. Electronic pull-tab games may contain other amusement features and visual enhancements. Minn. Stat. § 349.12, subd. 12b (7) and (8).

Minnesota Rules, part 7864.0235, subpart 15, restricts an electronic pull-tab device from engaging in any other function except for electronic linked bingo. For example, the device may not be used to watch a football game, to play a bar's trivia game, to purchase food and beverages, or to view sites on the internet. The devices are only capable of being used as an electronic bingo device or an electronic pull-tab device.

The Board maintains its position that the proposed rule is consistent with statute.

The Board has addressed the concerns raised during the comment period from the Notice of Intent to Adopt without a Hearing and from the rules hearing. An affidavit is attached hereto. The Board has shown that the rules are needed and reasonable. We respectfully submit that the Administrative Law Judge should recommend adoption of these rules.

Respectfully submitted,

A handwritten signature in black ink that reads "Tom Barrett". The signature is written in a cursive, flowing style with a long horizontal stroke extending to the left.

Tom Barrett, Executive Director
Minnesota Gambling Control Board

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Proposed Rules of the Minnesota Gambling Control Board Governing Lawful Gambling Electronic Games, Sports-Themed Tipboards, and Other Changes	AFFIDAVIT OF TOM BARRETT
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STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

TOM BARRETT being first duly sworn, deposes and states that:

1. I have been privileged to be the Executive Director of the Minnesota Gambling Control Board since 2000. During my tenure with the Board there have been numerous changes to laws and rules pertaining to charitable gambling.
2. The Minnesota Gambling Control Board (Board) follows statutory and rule requirements to provide the public with opportunity to participate in every rules process and on Public Advisory Committees (PAC). Each of those requirements have been met, starting with State Register publication of the Request for Comments the State Register on October 3, 2016. Since that date, the Board has continuously posted notice on its website, published several notices in its quarterly newsletter, and continuously announced notice at the Board's official monthly meetings. No specific party was solicited or requested to be on the PAC; invitations are not extended to participate in a rules promulgation process. The Board also used an Additional Notice Plan in place, identical to notice plans used in the previous two rules promulgation processes, casting a wide net and welcoming meeting attendance and comments every step of the way—from the October 3, 2016, publication of the Request for Comments through the publication two years later of the Notice of Intent to Adopt without a Hearing, published October 22, 2018. The subject matter of the proposed rules was solely selected by the Board. No other party establishes or picks out an agenda with regard to its rulemaking responsibilities. The Board's intentions with the rules have always been to address ambiguities, clarify issues, and provide guidance since electronic game implementation in 2012.
3. The allowance of electronic devices and electronic games for charitable gambling in Minnesota has been one of the most impactful of all operational changes in terms of establishing equipment standards and rules pertaining to the conduct of the electronic games.
4. When the law was created in 2012 allowing for electronic gaming devices for charitable gambling, no other state had any similar form of charitable gaming in terms of the design (handheld, portable devices) or format in terms of animation to display chances or win determination.
5. The legislature and individuals representing many jurisdictions, including charitable organizations, tribal governments, problem gambling advocates, and gaming regulators, all provided input with

regard to the provisions found in law that serve as the Board's basis for rule development. I was also present in discussions in the original formation of the 2012 legislation that provided for this new format of charitable gambling.

6. It is important to delineate the difference between the devices on which the games are played and the actual bingo or pull-tab games themselves. When this new gaming format was discussed, it was clear that the devices could not operate like a "slot machine". Lacking any definition of slot machine, certain provisions were included in law which provided some guidance. Example: No coin, currency, or tokens could be inserted into the devices to activate play.
7. The provision restricting the devices to be handheld and portable also indicated that there could be no console or stationary setup for the devices similar to a slot machine console.
8. Additionally, the devices were to be limited to only operate electronic pull-tab games and electronic linked bingo games. Any "other" form of gambling not authorized under Minnesota Statutes, Chapter 349, or other entertainment was restricted. This was the intent of the restriction found in Minnesota Statutes, Section 349.13.
9. Given the nature of the proposed devices to be used (such as an Apple iPad device) and the potential for additional software features/applications that could be added beyond the games allowed under Chapter 349, this provision in law restricted that allowance for any "other" form of gambling or entertainment.
10. Public comments presented at the hearing on March 8, 2019, implied that there is no separation between electronic gaming device and the authorized games that are played on the device. The Board does not share this conclusion. Electronic pull-tab games and electronic linked bingo games are authorized under Minnesota Statutes, Chapter 349, and are described separately from electronic gaming devices.
11. With regard to the games, specifically the pull-tab games, it is important to acknowledge that there are historic similarities of a pull-tab ticket and a slot machine display. Both formats utilize symbols to signify a pattern which, if the symbols align properly, could result in a winning combination. Common symbols are found in both types of games (cherries, bars, etc.) but pull-tab games were legalized in Minnesota in 1981 and slot machines in tribal areas came later.
12. Beyond those commonalities, the games become very different. Pull-tabs have a finite number of predetermined chances in each game. Slot machines on the other hand have an infinite amount of chances.
13. Pull-tab games have a defined prize limit based on each individual game as designed by the manufacturer. Slot machines utilize an average prize payout per machine based on a random number generating each chance over a period of time. To address these limits and differences, other provisions in law were added to protect the electronic pull-tab games from mimicking a slot machine, specifically prohibiting the electronic pull-tabs from having a spinning reel to indicate a winning prize or pattern.
14. By the very nature of including this visual (animation) restriction of no spinning reels (Minnesota Statutes, Section 349.12, subd. 12c (9)), it is the Board's position that this specific restriction would indicate that other visual enhancements (animations), as provided in law, are allowed.

15. The Board did take into account a particular win animation involving “non-straight lines”. Recognizing that historically pull-tab games by design reflect winning patterns involving only a straight line, the proposed rules restrict non-straight line win patterns for the reason of not mimicking a slot machine, which contains non-straight-line wins.
16. Minnesota Statutes, Section 349.12a, allows an electronic bingo device to “identify a winning bingo pattern or game requirement”, but because electronic linked bingo games are also played on the same device as electronic pull-tab games, similar restrictions for prohibiting spinning reels and non-straight line win patterns are being proposed for electronic linked bingo games as well (Minnesota Rules, Part 7863.0270, subpart 18a).
17. Finally, the Board’s proposed edit of Minnesota Rules, Part 7864.0230, subpart 6 G, corrects an error from a previous rule process. Previously, the Board included an incorrect reference in this subpart to Minnesota Statutes, Section 609.75, subdivision 8. After passage of the previous rules, it was pointed out that Minnesota Statutes, Section 349.13, exempts the charitable gambling electronic devices from the restrictions in Minnesota Statutes, Sections 609.75 to 609.76. The proposed edit of that rule removes the incorrect reference but also establishes the specific restrictions of no spinning reels and non-straight line wins.

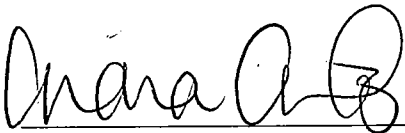
FURTHER YOUR AFFIANT SAYETH NOT.



TOM BARRETT
Executive Director
Minnesota Gambling Control Board

Subscribed and sworn to before me

this 28 day of March, 2019.



NOTARY PUBLIC



My commission expires: Jan. 31, 2020