

D R A F T

SUMMARY

Permits playing of social games and poker games in certain establishments if authorized by city or county. Establishes standard for ascertaining dominant use or purpose of establishment conducting games. Allows operator of poker game to employ persons to manage and conduct poker games, to impose certain fees on players and to recover percentage of operating expenses from each hand played.

A BILL FOR AN ACT

Relating to games; creating new provisions; and amending ORS 167.116, 167.117 and 167.121.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 167.121 is added to and made a part of ORS 167.108 to 167.164.

SECTION 2. ORS 167.121 is amended to read:

167.121. [*Counties and cities may, by ordinance, authorize the playing or conducting of a social game in a private business, private club or in a place of public accommodation. Such ordinances may provide for regulation or licensing of the social games authorized.*] **(1) Counties and cities may, by ordinance, authorize the playing or conducting of a social game or a poker game in a private business, private club or place of public accommodation. If city or county ordinances provide for regulation or licensing of social games and poker games:**

(a) The dominant use or dominant purpose, or both, of establishments in which a poker game authorized under this section is conducted may not be for gambling.

1 **(b) The determination of the dominant use or dominant purpose of**
2 **an establishment in which a social game or a poker game authorized**
3 **under this section is conducted shall be based only on equal consider-**
4 **ation of:**

5 **(A) The square footage of the portion of the establishment in which**
6 **only social games or poker games are conducted in relation to the**
7 **total square footage of the establishment;**

8 **(B) Whether the establishment offers other types of social games**
9 **including, but not limited to, pool, backgammon, chess or other games**
10 **from which the establishment does not benefit from the outcome of**
11 **any individual game;**

12 **(C) Whether the establishment has been offering goods, services**
13 **and the social games described in this paragraph for the six months**
14 **prior to applying the authorization to conduct a poker game, and if**
15 **the establishment intends to continue to offer such games, goods or**
16 **services after receiving authorization to conduct a poker game; and**

17 **(D) The total amount of operating expenses incurred solely in the**
18 **course of operating poker games in relation to the total expense in-**
19 **curring in the operation of the entire establishment.**

20 **(2) When conducting a poker game, the operator may:**

21 **(a) Recover up to 18 percent of the final amount wagered by all**
22 **players in the total prize pool for the payment of operating expenses;**

23 **(b) Charge a seat fee for each player in the poker game; and**

24 **(c) Employ persons to manage and operate the poker game.**

25 **(3) As used in this section, “operator” means the person responsible**
26 **for the operation of a private business, private club or place of public**
27 **accommodation authorized to conduct a poker game under this sec-**
28 **tion.**

29 **SECTION 3.** ORS 167.117 is amended to read:

30 167.117. As used in ORS 167.108 to 167.164 and 464.270 to 464.530, unless
31 the context requires otherwise:

1 (1) "Bingo or lotto" means a game, played with cards bearing lines of
2 numbers, in which a player covers or uncovers a number selected from a
3 container, and which is won by a player who is present during the game and
4 who first covers or uncovers the selected numbers in a designated combina-
5 tion, sequence or pattern.

6 (2) "Bookmaker" means a person who unlawfully accepts a bet from a
7 member of the public upon the outcome of a future contingent event and who
8 charges or accepts a percentage, fee or vigorish on the wager.

9 (3) "Bookmaking" means promoting gambling by unlawfully accepting
10 bets from members of the public as a business, rather than in a casual or
11 personal fashion, upon the outcomes of future contingent events.

12 (4) "Casino game" means any of the traditional gambling-based games
13 commonly known as dice, faro, monte, roulette, fan-tan, twenty-one,
14 blackjack, [*Texas hold-'em*,] seven-and-a-half, big injun, klondike, craps,
15 [*poker*,] chuck-a-luck, Chinese chuck-a-luck (dai shu), wheel of fortune,
16 chemin de fer, baccarat, pai gow, beat the banker, panquinqui, red dog,
17 acey-deucey, or any other gambling-based game similar in form or content.

18 (5)(a) "Charitable, fraternal or religious organization" means any person
19 that is:

20 (A) Organized and existing for charitable, benevolent, eleemosynary, hu-
21 mane, patriotic, religious, philanthropic, recreational, social, educational,
22 civic, fraternal or other nonprofit purposes; and

23 (B) Exempt from payment of federal income taxes because of its charita-
24 ble, fraternal or religious purposes.

25 (b) The fact that contributions to an organization profiting from a contest
26 of chance do not qualify for a charitable deduction for tax purposes or that
27 the organization is not otherwise exempt from payment of federal income
28 taxes pursuant to the Internal Revenue Code of 1986, as amended, constitutes
29 prima facie evidence that the organization is not a bona fide charitable,
30 fraternal or religious organization.

31 (6) "Contest of chance" means any contest, game, gaming scheme or

1 gaming device in which the outcome depends in a material degree upon an
2 element of chance, notwithstanding that skill of the contestants may also be
3 a factor therein.

4 (7) "Gambling" means that a person stakes or risks something of value
5 upon the outcome of a contest of chance or a future contingent event not
6 under the control or influence of the person, upon an agreement or under-
7 standing that the person or someone else will receive something of value in
8 the event of a certain outcome. "Gambling" does not include:

9 (a) Bona fide business transactions valid under the law of contracts for
10 the purchase or sale at a future date of securities or commodities, and
11 agreements to compensate for loss caused by the happening of chance, in-
12 cluding but not limited to contracts of indemnity or guaranty and life, health
13 or accident insurance.

14 (b) Engaging in contests of chance under the following conditions:

15 (A) The contest is played for some token other than money;

16 (B) An individual contestant may not purchase more than \$100 worth of
17 tokens for use in the contest during any 24-hour period;

18 (C) The tokens may be exchanged only for property other than money;

19 (D) Except when the tokens are exchanged for a beverage or merchandise
20 to be consumed on the premises, the tokens are not redeemable on the
21 premises where the contest is conducted or within 50 miles thereof; and

22 (E) Except for charitable, fraternal or religious organizations, no person
23 who conducts the contest as owner, agent or employee profits in any manner
24 from operation of the contest.

25 (c) Social games.

26 (d) Bingo, lotto or raffle games or Monte Carlo events operated in com-
27 pliance with ORS 167.118, by a charitable, fraternal or religious organization
28 licensed pursuant to ORS 167.118, 464.250 to 464.380 and 464.420 to 464.530
29 to operate such games.

30 (e) **Poker games operated in compliance with ORS 167.121.**

31 (8) "Gambling device" means any device, machine, paraphernalia or

1 equipment that is used or usable in the playing phases of unlawful gambling,
2 whether it consists of gambling between persons or gambling by a person
3 involving the playing of a machine. Lottery tickets, policy slips and other
4 items used in the playing phases of lottery and policy schemes are not gam-
5 bling devices within this definition. Amusement devices other than gray
6 machines, that do not return to the operator or player thereof anything but
7 free additional games or plays, shall not be considered to be gambling de-
8 vices.

9 (9)(a) "Gray machine" means any electrical or electromechanical device,
10 whether or not it is in working order or some act of manipulation, repair,
11 adjustment or modification is required to render it operational, that:

12 (A) Awards credits or contains or is readily adaptable to contain, a cir-
13 cuit, meter or switch capable of removing or recording the removal of credits
14 earned by a player, other than removal during the course of continuous play;
15 or

16 (B) Plays, emulates or simulates a casino game, bingo or keno.

17 (b) A device is no less a gray machine because, apart from its use or
18 adaptability as such, it may also sell or deliver something of value on the
19 basis other than chance.

20 (c) "Gray machine" does not include:

21 (A) Any device commonly known as a personal computer, including any
22 device designed and marketed solely for home entertainment, when used
23 privately and not for a fee and not used to facilitate any form of gambling;

24 (B) Any device operated under the authority of the Oregon State Lottery;

25 (C) Any device manufactured or serviced but not operated in Oregon by
26 a manufacturer who has been approved under rules adopted by the Oregon
27 State Lottery Commission;

28 (D) A slot machine;

29 (E) Any device authorized by the Oregon State Lottery Commission for:

30 (i) Display and demonstration purposes only at trade shows; or

31 (ii) Training and testing purposes by the Department of State Police; or

1 (F) Any device used to operate bingo in compliance with ORS 167.118 by
2 a charitable, fraternal or religious organization licensed to operate bingo
3 pursuant to ORS 167.118, 464.250 to 464.380 and 464.420 to 464.530.

4 (10) "Handle" means the total amount of money and other things of value
5 bet on the bingo, lotto or raffle games, the value of raffle chances sold or
6 the total amount collected from the sale of imitation money during Monte
7 Carlo events.

8 (11) "Internet" means an interactive computer service or system or an
9 information service, system or access software provider that provides or en-
10 ables computer access by multiple users to a computer server and includes,
11 but is not limited to, an information service, system or access software pro-
12 vider that provides access to a network system commonly known as the
13 Internet, or any comparable system or service and also includes, but is not
14 limited to a World Wide Web page, newsgroup, message board, mailing list
15 or chat area on any interactive computer service or system or other online
16 service.

17 (12) "Lottery" or "policy" means an unlawful gambling scheme in which:

18 (a) The players pay or agree to pay something of value for chances, re-
19 presented and differentiated by numbers or by combinations of numbers or
20 by some other medium, one or more of which chances are to be designated
21 the winning ones;

22 (b) The winning chances are to be determined by a drawing or by some
23 other method; and

24 (c) The holders of the winning chances are to receive something of value.

25 (13) "Monte Carlo event" means a gambling event at which wagers are
26 placed with imitation money upon contests of chance in which players com-
27 pete against other players or against the house. As used in this subsection,
28 "imitation money" includes imitation currency, chips or tokens.

29 (14) "Numbers scheme or enterprise" means a form of lottery in which the
30 winning chances or plays are not determined upon the basis of a drawing
31 or other act on the part of persons conducting or connected with the scheme,

1 but upon the basis of the outcome of a future contingent event otherwise
2 unrelated to the particular scheme.

3 (15) "Operating expenses" means those expenses incurred in the operation
4 of a bingo, lotto, [or] raffle game **or poker game authorized under ORS**
5 **167.121**, including only the following:

6 (a) Salaries, employee benefits, workers' compensation coverage and state
7 and federal employee taxes;

8 (b) Security services;

9 (c) Legal and accounting services;

10 (d) Supplies and inventory;

11 (e) Rent, repairs, utilities, water, sewer and garbage;

12 (f) Insurance;

13 (g) Equipment;

14 (h) Printing and promotions;

15 (i) Postage and shipping;

16 (j) Janitorial services and supplies; and

17 (k) Leasehold improvements.

18 (16) "Player" [*means a person*]:

19 (a) **Means an individual** who engages in any form of gambling **or par-**
20 **ticipates in a social game or poker game** solely as a contestant or bettor,
21 without receiving or becoming entitled to receive any profit therefrom other
22 than personal [*gambling*] winnings, and without otherwise rendering any
23 material assistance to the establishment, conduct or operation of the partic-
24 ular gambling **or game** activity.

25 (b) **Means** [*a person who gambles at*] **an individual who participates**
26 **in** a social game of chance **or poker game authorized under ORS 167.121**
27 on equal terms with the other [*participants therein is*] **individuals in the**
28 **game, who shall be considered** a person who does not otherwise render
29 material assistance to the establishment, conduct or operation thereof by
30 performing, without fee or remuneration, acts directed toward the arrange-
31 ment or facilitation of the game, such as inviting persons to play, permitting

1 the use of premises therefor and supplying cards or other equipment used
2 therein.

3 **(c) Does not include:**

4 **(A) An employee of the operator of the establishment in which a**
5 **poker game is conducted who deals cards to players in the game, does**
6 **not receive or play a hand and does not receive any income or profit**
7 **from the outcome of the game; or**

8 **(B)** A person who engages in bookmaking [*is not a player*].

9 (17) "Profits from unlawful gambling" means that a person, acting other
10 than solely as a player, accepts or receives money or other property pursuant
11 to an agreement or understanding with another person whereby the person
12 participates or is to participate in the proceeds of unlawful gambling.

13 (18) "Promotes unlawful gambling" means that a person, acting other than
14 solely as a player, engages in conduct that materially aids any form of un-
15 lawful gambling. Conduct of this nature includes, but is not limited to, con-
16 duct directed toward the creation or establishment of the particular game,
17 contest, scheme, device or activity involved, toward the acquisition or
18 maintenance of premises, paraphernalia, equipment or apparatus therefor,
19 toward the solicitation or inducement of persons to participate therein, to-
20 ward the conduct of the playing phases thereof, toward the arrangement of
21 any of its financial or recording phases or toward any other phase of its
22 operation. A person promotes unlawful gambling if, having control or right
23 of control over premises being used with the knowledge of the person for
24 purposes of unlawful gambling, the person permits the unlawful gambling to
25 occur or continue or makes no effort to prevent its occurrence or continua-
26 tion.

27 **(19) "Poker game" means a contest in which:**

28 **(a) Players pool money to create a prize pool that the players com-**
29 **pete against each other to win;**

30 **(b) A player bets that the value of the player's hand is greater than**
31 **the values of the hands held by other players, the hand with the**

1 **greatest value remaining alive after betting is completed being the**
2 **winner; and**

3 **(c) The operator of the facility in which the poker game is con-**
4 **ducted or an employee of the operator is not a player and does not**
5 **receive any income from the outcome of each hand played, and the**
6 **only role of the operator in the game is to manage and conduct the**
7 **contest.**

8 [(19)] (20) "Raffle" means a lottery operated by a charitable, fraternal or
9 religious organization wherein the players pay something of value for
10 chances, represented by numbers or combinations thereof or by some other
11 medium, one or more of which chances are to be designated the winning ones
12 or determined by a drawing and the player holding the winning chance is to
13 receive something of value.

14 [(20)(a)] (21)(a) "Slot machine" means a gambling device that as a result
15 of the insertion of a coin or other object operates, either completely auto-
16 matically, or with the aid of some physical act by the player, in such a
17 manner that, depending upon elements of chance, it may eject something of
18 value or otherwise entitle the player to something of value. A device so
19 constructed or readily adaptable or convertible to such use is no less a slot
20 machine because it is not in working order or because some mechanical act
21 of manipulation or repair is required to accomplish its adaptation, conver-
22 sion or workability. Nor is it any less a slot machine because apart from its
23 use or adaptability as such it may also sell or deliver something of value on
24 the basis other than chance.

25 (b) "Slot machine" does not include any device authorized by the Oregon
26 State Lottery Commission for:

27 (A) Display and demonstration purposes only at trade shows; or

28 (B) Training and testing purposes by the Department of State Police.

29 [(21)] (22) "Social game" means:

30 (a) A game, other than a lottery, between players in a private home where
31 no house player, house bank or house odds exist and there is no house in-

1 come from the operation of the social game; and

2 (b) If authorized pursuant to ORS 167.121, a game, other than a lottery,
3 between players in a private business, private club or place of public ac-
4 commodation where no house player, house bank or house odds exist and
5 there is no house income from the operation of the social game.

6 [(22)] **(23)** “Something of value” means any money or property, any token,
7 object or article exchangeable for money or property, or any form of credit
8 or promise directly or indirectly contemplating transfer of money or property
9 or of any interest therein.

10 [(23)] **(24)** “Trade show” means an exhibit of products and services that
11 is:

12 (a) Not open to the public; and

13 (b) Of limited duration.

14 [(24)] **(25)** “Unlawful” means not specifically authorized by law.

15 **SECTION 4.** ORS 167.116 is amended to read:

16 167.116. (1) The Oregon State Lottery Commission shall adopt rules to
17 carry out the provisions of ORS 167.117 (9)(c)(E) and [(20)(b)] **(21)(b)**.

18 (2) Devices authorized by the Oregon State Lottery Commission for the
19 purposes described in ORS 167.117 (9)(c)(E) and [(20)(b)] **(21)(b)** are exempted
20 from the provisions of 15 U.S.C. 1172.

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