

HOUSE RULES COMMITTEE TESTIMONY ON
HOUSE BILL 3518

Chairman Garrett, members of the committee, my name is Tom Rask. I'm here to testify in favor of House Bill 3518. I represent MT&M Gaming, Inc., who operates a gaming facility in LaCenter, Washington. Like charities that operate Bingo, we support legal businesses that operate legal games. We do not support illegal poker rooms, and this bill is drafted to address the problem of illegal poker rooms that have basically sprung up in the last 18 months primarily around Portland, but are also starting to pop up in other jurisdictions as well.

To understand the need for House Bill 3518 a review of the legislative history of social gaming is helpful. It is a felony in the State of Oregon to promote or profit from unauthorized gambling. ORS 167.127. It is a misdemeanor to participate in unauthorized gambling. ORS 167.122. There is a statutory exception to gambling, however, for social games in private homes "where no house player, house bank, or house odds exist, and there is no house income from the operation of the social game." ORS 167.117(7)(c), (21)(a).

The social game exception first appeared in 1971 as an exception to the definition of "player," rather than the definition of "gambling." Or Laws 1971, ch 743, §§263–65. At the time, the exception for social games was confined to games played in private homes. *Id.* "The social game exception did not allow social games in public places like card rooms." *Id.*

At the next legislative session in 1973, representatives from hotels, restaurants, and private clubs lobbied the legislature to amend the law to allow social games to be played in business establishments. Minutes, Senate and Federal Affairs Committee (SB 803), May 10, 1973, at 5–6. The legislature obliged and amended the statute to allow social games to be played in businesses and places of public accommodation as long as "the gross income from the operation of the social game does not exceed 25 percent of the gross income of the private business, private

club, or public accommodation.” Or Laws, ch 788, § 1. The reason for limiting the amount of income a business could receive as a result of the operation of a social game was to ensure that businesses only received a small percentage of their income from social games and “to prevent professional gambling in Oregon.” *Id.*

The 1973 legislation failed to achieve that purpose, however, as it proved to be near impossible to enforce the limitation on house income because of the multitude of devices and schemes by which the sponsors were able to generate income. As a result, existing law “allowed large stakes professional gambling to take place in Oregon.” Minutes, House Rules Committee (LC 283), February 7, 1974, at 7; Minutes, House Rules Committee (LC 283), February 11, 1974, at 5; Minutes, House Committee on Judiciary Special Session (LC 283), February 11, 1974, at 2.

In response to requests for corrective legislation, the legislature amended the law in 1974. In amending the legislation, the legislature sought to ensure that organized, professional gambling was not permitted in Oregon, but also to allow for cities and counties to authorize social games in businesses and places of public accommodation “for the limited purpose of allowing people to play a social game of cards in a warm place where food was served.” House Judiciary Committee Minutes HB 3327 Hearing (HB 3327), February 18, 1974, at 3. The legislature achieved this purpose “by amending the social games exception to prohibit the ‘house’ from receiving *any* income from operation of a social game.” Or Laws 1974 (spec sess), ch 7, § 1 (now codified as ORS 167.117(21)). The amended version of the statute enacted in 1974 remains in force today.

With this background in mind, the Office of the Attorney General has opined that “the legislature intended the prohibition on ‘house income’ to prevent professional gambling and to

make the gambling laws easier to enforce.” The Office of the Attorney General then found that “the plain language, context, and legislative history” of the social games exception compelled the conclusion that, “since *anyone* who attempts to operate a social game for profit is the ‘house,’ the prohibition on house income effectively prevents *anyone at any place* from making any income from the operation of a social game.” Any income to a business that operates a social game must merely be incidental to the existence of the game, such as income through food and drink sales to the players.

With this legislative history in mind, once we became aware of the massive violations of law that were occurring, we reached out to the City of Portland Department of Revenue, which licensed the social poker rooms and pointed out the obvious violations of law that were occurring. Ms. Anne Holm, the person at the Department of Revenue who is responsible for issuing the licenses, has acknowledged publicly that there are problems and corrective legislation is necessary. These illegal poker rooms have moved rather quickly without any oversight or enforcement of the law and now advertise over \$50,000 guaranteed tournaments, pay-outs and high limit cash games described as hourly tournaments. Last year, one of these poker rooms was actually for sale on Craig’s list. All of this in the face of the law that says you cannot make any house income. I pose the question to all of you “How can you be selling a business that you cannot legally make any money from unless illegal money is being made”? Because these clubs are operating illegally, there are also violating wage and hour laws by failing to pay employees, because remember, they cannot make any money. Illegal tipping is going on; no workers’ compensation is being taken care of; and no taxes are being withheld from winnings or for payments to dealers.

Compare this to my client, who operates a gaming facility in LaCenter, Washington, who employees many peoples who live in Oregon and pay Oregon taxes. If these employees lose their job in Oregon because of illegal competition, then Oregon will actually lose revenue.

House Bill 3518 does not stop poker playing in Oregon. Rather, it takes a balanced approach by eliminating what is causing the problem – the goal to make a profit is what’s causing the problem because making a profit is illegal under the statute, and we experimented in 1973 with profit and the legislature realized it was a mistake even trying to do a small percentage of profit and ended up choosing to go with absolutely no profit to avoid high stakes gambling and poker in Oregon, which is exactly what we have today. By amending the law to allow f or only charities and fraternal and religious organizations to operate the facilities, these entities still cannot make any profit and are much more likely to follow the law because they risk losing their tax exempt status or violating their religious or fraternal charters. It’s the profit in this business that’s driving the problem and that was never intended when the statute was passed in 1971 and amended again in 1974.

Some of the opponents to this legislation have argued that this is about jobs and small business. Nothing could be further from the truth. This is not about a legitimate business, because the business cannot make any money. There are lots of illegal things somebody can do for revenue and claim it is a small business, but we don’t allow it because it’s illegal. Would you allow a convenience store or deli to violate the law, not paying employees, avoid paying workers compensation, or tax withholdings-of course not. This situation is no different. The law is clear that there cannot be any profit from the operations of social gambling – indirect or direct profit – so this is not about jobs or about small business. These dealers aren’t even employees. They are “volunteers.”

Thank you for your time and consideration of this important legislation.