

# D. Michael Mills, *Lawyer PC*

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**Re: HB 3316**

## **House Human Services and Housing Committee**

To The Chair and Members of the Committee:

My name is Michael Mills. I am an attorney and have been in private practice in Oregon since 1972. I have been involved with the Lottery since its inception in. I served as a member of the Governors Lottery Task Force Subcommittee on crime and social gaming.

I also advise the Oregon Restaurant and Lodging association (ORLA) on OLCC and Lottery issues. I wish to thank you for this opportunity to address this committee.

My present practice is limited to advising clients on the formation of legal entities, and issues relating to OLCC licenses and Lottery contracts. I presently have over 50 such clients as diverse as small “Mom and Pop” taverns, “chain” restaurants with 40 plus units, 24 hour service restaurants, Pizza chain franchisees and fine dining restaurants.

This proposed legislation to prohibit casinos in Oregon is unnecessary because there are already robust and comprehensive Lottery rules that prohibit what a reasonable person would consider a “casino”. This bill represents a significant change in how a casino is defined in relation to present lottery rules which would place a number of lottery retailers at risk, and if passed will significantly reduce the Lottery dollars available for schools, parks, and other designated lottery recipients. It also requires termination of a Lottery contract without allowing a business the opportunity to get back into compliance, as present rules allow.

### **It is unnecessary:**

The Lottery is dedicated to prohibiting casinos in Oregon. There is a comprehensive set of Lottery rules defining what is a casino, what is not a casino and a process for eliminating those establishments that operate as casinos. I have attached a copy of those Lottery rules to my testimony.

In determining if an establishment is a casino, the rules consider the following:

**History: (Actual lottery rule in green)**

*If, for example, an establishment has a longstanding history as a neighborhood pub or a family restaurant, this factor may demonstrate that the establishment is not operating as a casino.*

**Appearance:**

*If, for example, a reasonable person, as determined by the Director, would perceive the establishment to be a place to eat, drink, socialize, and engage in a variety of activities or forms of entertainment, this factor may demonstrate that the establishment is not operating as a casino.*

**Floor space:**

*The ratio of floor space dedicated for the use of Video Lottery<sup>SM</sup> games to the total floor space of the establishment.*

**Food Service Accoutrements:**

*The availability of menus, dining tables and chairs, tableware for the consumption of food and beverages, and other accoutrements intended specifically for use by patrons for eating and drinking.*

**Meals and Menus:**

*The number and variety of meals and menu items available on a daily basis.*

**Non-Lottery Products and Entertainment:**

*The number and variety of non-Lottery products and forms of entertainment available.*

**Business Name:**

*The name of the business. For example, if the business name does not contain words, references or allusions to gambling or gambling related objects or activities, good luck or good fortune, or winning, directly or indirectly, this factor may demonstrate that the establishment does not operate as a casino.*

**Advertising:**

*Advertising and promotional activities*

**Records:**

*The retailer's financial records*

**Atmosphere:**

*The general atmosphere of the establishment and the attitude and approach of the retailer. If the retailer, and the retailer's employees encourage and promote food and beverage service; if the general environment is clean and inviting to patrons for purposes of dining or engaging in entertainment activities; if the retailer and the retailer's employees are equally courteous and accommodating to non-Lottery playing patrons as they are to those playing Lottery games;*

By definitively determining what is and what is not a casino on the basis of the relationship of gross income of lottery sales to net income to a retailer from all sources, and requiring termination of a lottery contract if gross lottery sales are 50% or more, it precludes consideration of other reasonable factors that the Lottery already has in place.

The Lottery also has in its rules a procedure for allowing an establishment which is determined to be a casino to get back into compliance over period of time so that it is not considered a casino. In contrast, this bill requires that the lottery contract be terminated if the 50% threshold is reached in the in the annual accounting period. This would place a significant burden on individual lottery retailers in proximity to the end of the accounting period who are even close to the 50% threshold to monitor daily their income and expenses so that they do not exceed 50%.

If a retailer is close to that 50% threshold, she cannot turn off the lottery machines to lower gross lottery sales, because the Lottery requires that the machines be operating during normal business hours. All she can do is try to increase sales of non lottery products, or shorten her business hours so that the lottery machines are not generating revenue for the state. This results in lost revenue, lost employee wages and probably lost customers.

Presently an establishment whose annual non-Lottery sales are at least 50%

of the establishment's total income are not casinos and establishes that income comparison as "safe harbor" for retailers. This bill changes the method of calculation to one involving "net income" to the retailer compared to total lottery sales, significantly narrowing the window a retailer can consider a safe harbor.

The bill also does not allow in the computation income to from sources that are presently allowed. The cost of complementary food or drink to lottery customers, and promotional costs to induce lottery play would not be allowed. Complementary and "reduced cost" food and drink are amenities that diminish retailers profits and increase lottery sales and revenue to the state. Off site catering sales of food and drink prepared and served by employees of the retailer are not allowed in this bill.

The only "casinos" in Oregon are those that the State has allowed pursuant to its agreements with Native American tribes. This bill is unnecessary and will reduce Lottery revenue available to the State.

Thank you for the opportunity to present this testimony.

Sincerely,

Michael Mills  
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