

# House Bill 2548

Sponsored by Representative GREENLICK; Representatives FREDERICK, WILLIAMSON, Senator DEMBROW  
(Pre-session filed.)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Permits playing of social games, poker games and poker tournaments 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 or poker tournament to employ persons to manage and operate poker game or poker tournament, to impose certain fees on players and to recover percentage of operating expenses.

## A BILL FOR AN ACT

1  
2 Relating to games; creating new provisions; and amending ORS 167.116, 167.117 and 167.121.

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

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

5 **SECTION 2. ORS 167.121 is amended to read:**

6 167.121. (1) [*Counties and cities may, by ordinance, authorize the playing or conducting of a social*  
7 *game in a private business, private club or in a place of public accommodation. Such ordinances may*  
8 *provide for regulation or licensing of the social games authorized.*] **Counties and cities may, by or-**  
9 **dinance, authorize the playing or conducting of a social game, poker game or poker tourna-**  
10 **ment in a private business, private club or place of public accommodation. If city or county**  
11 **ordinances provide for regulation or licensing of social games, poker games and poker tour-**  
12 **naments:**

13 (a) **The dominant use or dominant purpose, or both, of establishments in which a poker**  
14 **game or poker tournament authorized under this section is conducted may not be for gam-**  
15 **bling.**

16 (b) **The determination of the dominant use or dominant purpose of an establishment in**  
17 **which a social game, a poker game or poker tournament authorized under this section is**  
18 **conducted shall be based on consideration of:**

19 (A) **The square footage of the portion of the establishment in which only poker games**  
20 **or poker tournaments are conducted in relation to the total square footage of the establish-**  
21 **ment;**

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

25 (C) **Whether the establishment has been offering goods, services and the social games**  
26 **described in this paragraph for the six months prior to applying the authorization to conduct**  
27 **a poker game or poker tournament, and if the establishment will continue to offer such**  
28 **games, goods or services after receiving authorization to conduct a poker game or poker**  
29 **tournament; and**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.  
New sections are in **boldfaced** type.

1       **(D) The total amount of operating expenses incurred solely in the course of operating**  
 2 **poker games in relation to the total expense incurred in the operation of the entire estab-**  
 3 **lishment.**

4       **(2) When conducting a poker game or poker tournament, the operator may:**

5       **(a) Employ persons to manage and operate the poker game or poker tournament; and**

6       **(b) For the payment of operating expenses:**

7       **(A) Recover up to 18 percent of the final prize pool of the poker tournament; and**

8       **(B) Charge a seat fee for each player in the poker game.**

9       **(3) As used in this section, “operator” and “poker tournament” have the meanings given**  
 10 **those terms in ORS 167.117.**

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

12       167.117. As used in ORS 167.108 to 167.164 and 464.270 to 464.530, unless the context requires  
 13 otherwise:

14       (1) “Bingo or lotto” means a game, played with cards bearing lines of numbers, in which a player  
 15 covers or uncovers a number selected from a container, and which is won by a player who is present  
 16 during the game and who first covers or uncovers the selected numbers in a designated combination,  
 17 sequence or pattern.

18       (2) “Bookmaker” means a person who unlawfully accepts a bet from a member of the public upon  
 19 the outcome of a future contingent event and who charges or accepts a percentage, fee or vigorish  
 20 on the wager.

21       (3) “Bookmaking” means promoting gambling by unlawfully accepting bets from members of the  
 22 public as a business, rather than in a casual or personal fashion, upon the outcomes of future con-  
 23 tingent events.

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

29       (5)(a) “Charitable, fraternal or religious organization” means any person that is:

30       (A) Organized and existing for charitable, benevolent, eleemosynary, humane, patriotic, religious,  
 31 philanthropic, recreational, social, educational, civic, fraternal or other nonprofit purposes; and

32       (B) Exempt from payment of federal income taxes because of its charitable, fraternal or religious  
 33 purposes.

34       (b) The fact that contributions to an organization profiting from a contest of chance do not  
 35 qualify for a charitable deduction for tax purposes or that the organization is not otherwise exempt  
 36 from payment of federal income taxes pursuant to the Internal Revenue Code of 1986, as amended,  
 37 constitutes prima facie evidence that the organization is not a bona fide charitable, fraternal or re-  
 38 ligious organization.

39       (6) “Contest of chance” means any contest, game, gaming scheme or gaming device in which the  
 40 outcome depends in a material degree upon an element of chance, notwithstanding that skill of the  
 41 contestants may also be a factor therein.

42       (7) “Gambling” means that a person stakes or risks something of value upon the outcome of a  
 43 contest of chance or a future contingent event not under the control or influence of the person, upon  
 44 an agreement or understanding that the person or someone else will receive something of value in  
 45 the event of a certain outcome. “Gambling” does not include:

1 (a) Bona fide business transactions valid under the law of contracts for the purchase or sale at  
 2 a future date of securities or commodities, and agreements to compensate for loss caused by the  
 3 happening of chance, including but not limited to contracts of indemnity or guaranty and life, health  
 4 or accident insurance.

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

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

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

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

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

13 (E) Except for charitable, fraternal or religious organizations, no person who conducts the con-  
 14 test as owner, agent or employee profits in any manner from operation of the contest.

15 (c) Social games.

16 (d) Bingo, lotto or raffle games or Monte Carlo events operated in compliance with ORS 167.118,  
 17 by a charitable, fraternal or religious organization licensed pursuant to ORS 167.118, 464.250 to  
 18 464.380 and 464.420 to 464.530 to operate such games.

19 **(e) Poker games or poker tournaments operated in compliance with ORS 167.121.**

20 (8) "Gambling device" means any device, machine, paraphernalia or equipment that is used or  
 21 usable in the playing phases of unlawful gambling, whether it consists of gambling between persons  
 22 or gambling by a person involving the playing of a machine. Lottery tickets, policy slips and other  
 23 items used in the playing phases of lottery and policy schemes are not gambling devices within this  
 24 definition. Amusement devices other than gray machines, that do not return to the operator or  
 25 player thereof anything but free additional games or plays, shall not be considered to be gambling  
 26 devices.

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

30 (A) Awards credits or contains or is readily adaptable to contain, a circuit, meter or switch  
 31 capable of removing or recording the removal of credits earned by a player, other than removal  
 32 during the course of continuous play; or

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

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

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

37 (A) Any device commonly known as a personal computer, including any device designed and  
 38 marketed solely for home entertainment, when used privately and not for a fee and not used to fa-  
 39 cilitate any form of gambling;

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

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

43 (D) A slot machine;

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

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

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

2 (F) Any device used to operate bingo in compliance with ORS 167.118 by a charitable, fraternal  
3 or religious organization licensed to operate bingo pursuant to ORS 167.118, 464.250 to 464.380 and  
4 464.420 to 464.530.

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

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

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

16 (a) The players pay or agree to pay something of value for chances, represented and differen-  
17 tiated by numbers or by combinations of numbers or by some other medium, one or more of which  
18 chances are to be designated the winning ones;

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

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

21 (13) "Monte Carlo event" means a gambling event at which wagers are placed with imitation  
22 money upon contests of chance in which players compete against other players or against the house.  
23 As used in this subsection, "imitation money" includes imitation currency, chips or tokens.

24 (14) "Numbers scheme or enterprise" means a form of lottery in which the winning chances or  
25 plays are not determined upon the basis of a drawing or other act on the part of persons conducting  
26 or connected with the scheme, but upon the basis of the outcome of a future contingent event oth-  
27 erwise unrelated to the particular scheme.

28 (15) "Operating expenses" means those expenses incurred in the operation of a bingo, lotto or  
29 raffle game **or a poker game or poker tournament authorized under ORS 167.121**, including only  
30 the following:

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

33 (b) Security services;

34 (c) Legal and accounting services;

35 (d) Supplies and inventory;

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

37 (f) Insurance;

38 (g) Equipment;

39 (h) Printing and promotions;

40 (i) Postage and shipping;

41 (j) Janitorial services and supplies; and

42 (k) Leasehold improvements.

43 (16) "**Operator**" means the person responsible for the operation of a private business,  
44 private club or place of public accommodation authorized to conduct a poker game or poker  
45 tournament under ORS 167.121.

1 [(16)] (17) "Player" *[means a person]*:

2 (a) **Means an individual** who engages in any form of gambling **or participates in a social**  
 3 **game, poker game or poker tournament** solely as a contestant or bettor, without receiving or  
 4 becoming entitled to receive any profit therefrom other than personal *[gambling]* winnings, and  
 5 without otherwise rendering any material assistance to the establishment, conduct or operation of  
 6 the particular gambling **or game** activity.

7 (b) *[A person who gambles at]* **Means an individual who participates in** a social game of  
 8 chance, **poker game or poker tournament authorized under ORS 167.121** on equal terms with  
 9 the other *[participants therein is]* **individuals in the game, who shall be considered** a person who  
 10 does not otherwise render material assistance to the establishment, conduct or operation thereof by  
 11 performing, without fee or remuneration, acts directed toward the arrangement or facilitation of the  
 12 game, such as inviting persons to play, permitting the use of premises therefor and supplying cards  
 13 or other equipment used therein.

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

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

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

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

20 (a) **Players pool money to create a prize pool that the players compete against each other**  
 21 **to win;**

22 (b) **A player bets that the value of the player's hand is greater than the values of the**  
 23 **hands held by other players, the hand with the greatest value remaining alive after betting**  
 24 **is completed being the winner; and**

25 (c) **The operator of the facility in which the poker game is conducted or an employee of**  
 26 **the operator is not a player and does not receive any income from the outcome of each hand**  
 27 **played, and the only role of the operator in the game is to manage and conduct the contest.**

28 (19) **"Poker tournament" means a contest in which:**

29 (a) **Players pay an entry fee into an overall prize pool;**

30 (b) **Players are provided with an equal number of playing tokens; and**

31 (c) **Players continue to play until only one player remains or until the remaining players**  
 32 **all agree to divide the prize pool equally.**

33 [(17)] (20) "Profits from unlawful gambling" means that a person, acting other than solely as a  
 34 player, accepts or receives money or other property pursuant to an agreement or understanding with  
 35 another person whereby the person participates or is to participate in the proceeds of unlawful  
 36 gambling.

37 [(18)] (21) "Promotes unlawful gambling" means that a person, acting other than solely as a  
 38 player, engages in conduct that materially aids any form of unlawful gambling. Conduct of this na-  
 39 ture includes, but is not limited to, conduct directed toward the creation or establishment of the  
 40 particular game, contest, scheme, device or activity involved, toward the acquisition or maintenance  
 41 of premises, paraphernalia, equipment or apparatus therefor, toward the solicitation or inducement  
 42 of persons to participate therein, toward the conduct of the playing phases thereof, toward the ar-  
 43 rangement of any of its financial or recording phases or toward any other phase of its operation.  
 44 A person promotes unlawful gambling if, having control or right of control over premises being used  
 45 with the knowledge of the person for purposes of unlawful gambling, the person permits the unlawful

1 gambling to occur or continue or makes no effort to prevent its occurrence or continuation.

2 [(19)] **(22)** “Raffle” means a lottery operated by a charitable, fraternal or religious organization  
 3 wherein the players pay something of value for chances, represented by numbers or combinations  
 4 thereof or by some other medium, one or more of which chances are to be designated the winning  
 5 ones or determined by a drawing and the player holding the winning chance is to receive something  
 6 of value.

7 [(20)(a)] **(23)(a)** “Slot machine” means a gambling device that as a result of the insertion of a  
 8 coin or other object operates, either completely automatically, or with the aid of some physical act  
 9 by the player, in such a manner that, depending upon elements of chance, it may eject something  
 10 of value or otherwise entitle the player to something of value. A device so constructed or readily  
 11 adaptable or convertible to such use is no less a slot machine because it is not in working order  
 12 or because some mechanical act of manipulation or repair is required to accomplish its adaptation,  
 13 conversion or workability. Nor is it any less a slot machine because apart from its use or adapt-  
 14 ability as such it may also sell or deliver something of value on the basis other than chance.

15 (b) “Slot machine” does not include any device authorized by the Oregon State Lottery Com-  
 16 mission for:

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

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

19 [(21)] **(24)** “Social game” means:

20 (a) A game, other than a lottery, between players in a private home where no house player,  
 21 house bank or house odds exist and there is no house income from the operation of the social game;  
 22 and

23 (b) If authorized pursuant to ORS 167.121, a game, other than a lottery, between players in a  
 24 private business, private club or place of public accommodation where no house player, house bank  
 25 or house odds exist and there is no house income from the operation of the social game.

26 [(22)] **(25)** “Something of value” means any money or property, any token, object or article  
 27 exchangeable for money or property, or any form of credit or promise directly or indirectly con-  
 28 templating transfer of money or property or of any interest therein.

29 [(23)] **(26)** “Trade show” means an exhibit of products and services that is:

30 (a) Not open to the public; and

31 (b) Of limited duration.

32 [(24)] **(27)** “Unlawful” means not specifically authorized by law.

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

34 167.116. (1) The Oregon State Lottery Commission shall adopt rules to carry out the provisions  
 35 of ORS 167.117 (9)(c)(E) and [(20)(b)] **(23)(b)**.

36 (2) Devices authorized by the Oregon State Lottery Commission for the purposes described in  
 37 ORS 167.117 (9)(c)(E) and [(20)(b)] **(23)(b)** are exempted from the provisions of 15 U.S.C. 1172.

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