

## Finding of Emergency

The Department of Justice (Department) finds that an emergency exists and that the immediate adoption of article 8, of chapter 1, of division 3, of title 11 is necessary for the preservation of public peace, health and safety or general welfare. Failure to provide charitable organizations an immediate opportunity to benefit from the implementation of the charitable raffle program that sunsets on December 31, 2018, would irreparably harm eligible charities throughout the State of California.

Government Code section 11346.1, subdivision (a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the Department provide a notice of this proposed action to every person who has filed a request for notice of regulatory action with the agency. To this end, the Department will post the proposed emergency regulations on its website and simultaneously disseminate notice of the proposed emergency action to all persons who have filed a request for notice.

After submission of the proposed emergency to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6. To determine the Office of Administrative Law five-day comment period, please visit <http://www.oal.ca.gov/> often.

### **Specific Facts Demonstrating the Need For Immediate Action:**

- 1) The Legislature enacted and the Governor signed Senate Bill (SB) 549 (chapter 509, statutes of 2015), effective January 1, 2016. SB 549 added section 320.6 to the Penal Code, authorizing major league sports raffles at a home game conducted by an eligible organization, as defined. Subdivision (o)(7) of Penal Code section 320.6 authorizes the Department to promulgate by June 1, 2016, regulations necessary to effectuate the statute, including emergency regulations, pursuant to the Administrative Procedures Act. These proposed regulations would add article 8 to title 11, division 3, chapter 1 of the California Code of Regulations to comply with SB 549 by adopting regulations to implement the major league sports raffles, including implementing a registration program for eligible organizations, affiliated persons of eligible organizations, and manufacturers and distributors of raffle-related products or services.
- 2) Delay in the implementation of these regulations would conflict with the statutory directive found in subdivision (o)(7) of Penal Code section 320.6 that emergency regulations be adopted.
- 3) Delay in the implementation of these regulations would thwart the purpose of SB 549, as outlined by its author, Senator Isadore Hall, to “provide an opportunity for fans who attend professional sporting events to voluntarily participate in a raffle directly

benefitting charities in their local communities” in order to maximize donations to charities.

- 4) According to the 2014 report *Causes Count* commissioned by the California Association of Nonprofits, there are over 72,000 active nonprofit organizations in California and they are a large part of California’s economy with nonprofit economic activity contributing 15% of California’s Gross State Product and generating \$208 billion dollars revenue annually. California foundations make nearly \$2 billion in grants to California nonprofits annually. Nonprofits rely on fundraising and charitable contributions to support their causes.
- 5) Foundations play a key role in the support of nonprofits in California through the distribution of grants and other contributions to nonprofits. According to a recent search of data from The Foundation Center, there are nearly 10,000 foundations in the state, with 21 California-based foundations in the top 100 foundations in the United States ranked by the market value of their assets, representing over \$62 billion dollars of that list’s over \$291 billion in combined assets.
- 6) Delay in the implementation of these regulations until the June 1, 2016 date outlined in SB 549 will result in the loss of donations from raffles at home games for eligible organizations that wish to conduct these raffles, resulting in the loss of potential donations to charities benefitting from these events.
- 7) Implementation of nonemergency regulations would cut the program’s operational life by one quarter, as subdivision (r) Penal Code section 320.6 specifies the program’s sunset date of December 31, 2018.
- 8) These emergency regulations will ensure that there exists a proper regulatory and administrative framework in place for the implementation of major league sports event raffles, as mandated by SB 549.

### **Explanation of Failure to Adopt Nonemergency Regulations**

In January of 2016, the Department began to draft nonemergency regulations for the raffle program, as provided in Penal Code section 320.6. To determine the scope of the regulatory scheme necessary to implement a successful raffle program on the scale contemplated by SB 549, the Department contacted several governmental agencies in other jurisdictions, including in Canada, that have significant experience in the regulatory oversight of electronic raffle programs.

Due to California’s population size and the number of venues where raffles will take place under SB 549, the Department immediately realized that raffle program outlined in Penal Code section 320.6 would be exponentially larger than any similar raffle program in any other jurisdiction. Rather than take time to promulgate regulations on a nonemergency basis, the Department finds that to achieve a fully operational “permanent” regulatory scheme, the charitable organizations,

their resource suppliers, the public that will be participating in the program, and the Department need some experience with this new raffle program in California. Therefore, the Department decided to adopt parallel emergency regulations.

The Department finds it necessary to first implement on an emergency basis a raffle program that contains safeguards adopted by other jurisdictions. These emergency regulations will provide all stakeholders practical experience with the raffle program in California and provide stakeholders insight necessary to define the contours of nonemergency regulations. Specifically, implementation of the emergency regulations will allow the Department to determine and define the contours of nonemergency regulations in the following areas:

- Development of a registration program to register the equipment (electronic raffle systems) required to be registered pursuant to subdivision (o)(3), Penal Code section 320.6;
- Development of technical standards in the area of surveillance of personnel and equipment associated with eligible organizations;
- Development of minimum internal control standards to be imposed on eligible organizations; and
- Development of regulatory capacity to deal with the actual scale of the program.

### **Authority and Reference Citations**

Authority: Penal Code section 320.6.

Reference: Subdivision (f) of section 19 of article IV of the California Constitution; Penal Code sections 320.5 and 320.6.

### **Information Digest/Policy Statement Overview**

SB 549 adds section 320.6 to the Penal Code, authorizing major league sports raffles at a home game conducted by an eligible organization, as defined, where 50% of the gross receipts generated from the sale of raffle tickets are used to benefit or provide support for beneficial or charitable purposes, as defined, the other 50% is paid to the winner, and the winners of the prizes are determined by a manual draw, as specified. Eligible organizations are required to register annually with the Department, and annually file information for each of the eligible organization's last three fiscal years. Authority is vested in the Department to register eligible organizations that wish to conduct a raffle authorized under this statute. The statute prohibits an eligible organization from conducting a raffle, and a manufacturer or distributor of raffle-related products or services from conducting business with an eligible organization for purposes of conducting a raffle pursuant to these provisions, without first having obtained and thereafter maintained a registration from the Department, as specified. Once registered, the statute requires an eligible organization to file annually thereafter with the Department a report that includes specified information for each of the eligible organization's last three fiscal years, and requires

the Department to make those reports available online, as provided. The statute will sunset on December 31, 2018.

The California Constitution authorizes the Legislature to permit private, nonprofit, eligible organizations to conduct traditional raffles as a funding mechanism to support beneficial and charitable works, if, among other conditions, at least 90% of the gross receipts from the raffle go directly to beneficial or charitable purposes in California. The California Constitution further authorizes the Legislature to amend the percentage of gross receipts required to be dedicated to beneficial or charitable purposes by a statute passed by a two-thirds vote of each house of the Legislature. And existing statutory law implements those provisions and requires the Department to administer and enforce those provisions. Traditional raffles pursuant to this structure are currently administered by the Attorney General's Registry of Charitable Trusts.

Although the Registry of Charitable Trusts administers the registration and oversight of traditional raffles, it was determined that the duties associated with implementation of SB 549 would be tasked to the Bureau of Gambling Control within the Division of Law Enforcement. Therefore, the Bureau of Gambling Control is initiating this emergency rulemaking.

These emergency regulations implement the provisions of SB 549. The regulation includes: definitions; eligible organization registration; duties of a fiduciary of an eligible organization; raffle registration; affiliated person registration; manufacturers and distributors of raffle-related products registration; operation of raffles; winner determination; minimum age; electronic raffle ticket sales; information to be listed on tickets; electronic raffle equipment standards; electronic accounting and reporting; house rules; records, reports, and retention; accountability and the lawful use of proceeds; advertising; and, annual financial reporting.

The objective of this emergency regulation, as detailed below, is to enact a proper regulatory and administrative program for the implementation of major league sports event raffles, as mandated by SB 549, including a registration program for eligible organizations, affiliated persons of eligible organizations, and manufacturers and distributors of raffle-related products or services, identifying fees associated with registration types, and new forms related to this program.

It is anticipated that establishing and implementing these emergency regulations will lay a regulatory framework that will be adequate to ensure the registration of eligible organizations, secure the operation of productive raffles at major league sports events, and the provision of vital resources to recipient nonprofits serving the constituents of California.

## **Article 8. Major League Sports Raffle Program**

### **§ 2080 Title and Scope**

This section establishes the article's title and scope.

### **§ 2081 Definitions**

This section establishes the definitions that apply to the article.

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- § 2082 Delegation of Authority**  
This section provides that any power or authority granted to the Department and described in the applicable Penal Code section may be exercised by the Bureau of Gambling Control.
- § 2083 Eligible Organizations**  
This section identifies that the article is not applicable to entities not authorized by statute to conduct a raffle as defined.
- § 2084 Forms**  
This section identifies and incorporates by reference the forms specified in the article.
- § 2085 Retention of Program Records**  
This section requires the Bureau to maintain applications and reports it receives.
- § 2086 Eligible Organization Registration**  
This section establishes the method an eligible organization must use to register under this article.
- § 2087 Registrant Disclosure and Bureau Access to Venue**  
This section requires each registrant to make true and complete disclosures of all information, documents and other records requested by the Bureau, and provides that the Bureau shall have access to the venue, records, and equipment.
- § 2088 Fiduciary of Eligible Organization – Duties**  
This section identifies the responsibilities of a fiduciary, as defined. These responsibilities include full accountability of all raffle assets; ensuring that the raffle is conducted in accordance with pertinent laws, regulations, and established rules; ensuring records are correct, current, and maintained in accordance to regulation; ensuring training of affiliated persons, as defined; ensuring equipment used in the conduct of the raffle is maintained and fully operational; and ensuring that the raffle is conducted in the best interests of the public’s health, safety, and general welfare.
- § 2089 Raffle Registration; Registered Event**  
This section establishes the method for registration of a raffle as required by Penal Code section 320.6, subdivision (o).
- § 2090 Raffle Registration; Registered event; Post-Season Play**  
This section establishes the method used to register a raffle for post-season play.
- § 2091 Equipment Registration**  
This section establishes the method for an eligible organization to register the equipment used in the sale and distribution of raffle tickets.

**§ 2092 Affiliated Person Registration**

This section establishes the method for an affiliated person, as defined, to register under this article.

**§ 2093 Affiliated Person Training**

This section requires affiliated persons to be trained, and be familiar with the rules governing the raffle program, prior to conducting a raffle. And it requires eligible organizations to maintain a record of training provided to every affiliated person.

**§ 2094 Affiliated Person Identification**

This section requires every affiliated person working at the venue of a registered event to display on their person an identification card provided by the eligible organization conducting the raffle.

**§ 2095 Manufacturers and Distributors of Raffle-Related Products or Services; Registration**

This section establishes the method for the registration of a manufacturer or distributor of raffle-related products and services, as defined, and required by Penal Code section 320.6, subdivision (o).

**§ 2096 Registered Event; Ticket Sales**

This section establishes the method for conducting a raffle. For example, it includes, the method to be used for the sale of raffle tickets; the production and handling of counterfoils; tax withholding provisions; winner selection and verification of counterfoil; and the notification to the Bureau of any conduct, activity, or incident that occurs that may be contrary to the enabling statute, the raffle program, or may affect the integrity of any raffle.

**§ 2097 Winner Determination**

This section establishes the method by which a raffle winner is determined.

**§ 2098 Minimum Age of Raffle Players**

This section requires that raffle tickets be sold only to persons 18 years of age or older and that it is the responsibility of the eligible organization to ensure that raffle ticket sellers ask for and are provided a valid government-issued identification to ensure age verification.

**§ 2099 Electronic Raffle System**

This section provides for the use of an electronic raffle system, provided it complies with specified standards, and requires the electronic raffle system to be operated by an affiliated person.

**§ 2100 Raffle Tickets – Limitations; Requirements; Information To Be Listed On Raffle**

## **Tickets**

This section provides that a person is not required to buy more than one raffle ticket or pay more than the raffle ticket price to enter the raffle at the registered event; that the sale of a raffle ticket must be recorded by a receipt issued to the raffle player and a corresponding counterfoil printed or detached and deposited into a counterfoil container; specifies information that shall be printed on every raffle ticket; and provides for the use of non-electronic raffle system that is a two-party, admission style raffle ticket based system

### **§ 2101 Electronic Raffle Equipment Standards**

This section specifies that an electronic raffle system must be certified by an independent gaming test lab, as defined, and provides a benchmark standard—GLI-31.

### **§ 2102 Accounting and Reporting**

This section specifies that the Bureau may audit raffle records at any time; requires an eligible organization to follow reporting requirements, as specified; and provides reports, as specified, of a registered event be provided to the Bureau within 72 hours of request.

### **§ 2103 Eligible Organization's Raffle Rules**

This section provides the minimum requirements for raffle rules, and requires raffle rules to be established and posted at specified locations.

### **§ 2104 Retention of Raffle Records and Reports**

This section requires the retention of counterfoil tickets, data, reports, and records, as specified, and requires reports and all supporting documents to be made available to the Bureau on site at the venue.

### **§ 2105 Accountability; Lawful Use of Proceeds**

This section requires the eligible organization to account for all assets generated by a raffle. It further specifies that all proceeds generated by a registered event be devoted to lawful purposes and that the financial accounts into which proceeds from the registered event are deposited or transferred as subject to review and inspection by the Bureau. This section also specifies that prize payments or distributions for lawful purposes of the eligible organization or eligible recipient organization, as defined, are the only allowable expenditures from the proceeds of a registered event.

### **§ 2106 Advertising**

This section requires raffle advertisements to contain information as specified by the regulations and the enabling statute. It includes information that will allow the consumer to make an informed decision.

### **§ 2107 Eligible Organization – Annual Financial Report**

This section requires every organization to submit an annual report to the Bureau, as

required by the enabling statute, on a specified form.

**§ 2108 Electronic Raffle System, Venue Requirements**

This section requires that computer networks and/or wireless services used to conduct a raffle are housed in a permanent, secure location, under constant surveillance, and with a stable network. This section also requires computer network or wireless equipment utilized during an outdoor event to be located in a non-public, supervised area. Further, this section requires that the fiduciary or an affiliated person designated by the fiduciary who is qualified to address technical problems must be available during times specified to provide technical support.

**§ 2109 Proper Functioning of Raffle Equipment**

This section requires the electronic raffle system to be configured, and confirmed to be functioning properly, and fully operational prior to each registered event, and requires documentation of compliance with these requirements. This section also prohibits an affiliated person from restarting a raffle sales unit, as defined, or adjust any associated network equipment for any reason without supervisory oversight. This section specifies that notice to the Bureau is required if the electronic raffle system or associated equipment is not functioning properly, prior to a registered event. In the event the electronic raffle system fails, this section allows the use of a two-part admission-style raffle ticket-based system or requires the raffle to be cancelled.

**§ 2130 Violations**

This section specifies grounds which may constitute a violation of the enabling statute or the regulations and requires registrants to comply with all applicable laws. This section imposes a duty on the eligible organization to maintain security controls over the venue to protect the public health, safety, and general welfare of the raffle players, and to protect the operations related to the raffle.

**§ 2131 Discipline**

This section provides the applicable hearing procedures for administrative actions and establishes the types of disciplinary actions the Bureau may take against a registrant for any violation of the enabling statute, the regulations or other applicable laws.

**§ 2132 Penalties**

This section provides for penalties the Bureau may seek from a registrant in any disciplinary action for violation of the enabling statute, the regulation or other applicable law.

**Forms and Standards Incorporated by Reference**

The following forms are hereby incorporated by reference. Their specific application is indicated in the pertinent sections of the regulation text.

- Major League Sports Raffle Eligible Organization Registration Form (BGC 200; Orig. 01/2016)
- Major League Sports Raffle Unpaid Volunteer or Single Employee – Affiliated Person Annual Registration Form (BGC 201; Orig. 01/2016)
- Major League Sports Raffle Manufacturer and Distributor of Products or Services Annual Registration Form (BGC 202; Orig. 01/2016)
- Major League Sports Raffle Affiliated Person Annual Registration Form (BGC 203; Orig. 01/2016)
- Major League Sports Raffle Eligible Organization Annual Report (BGC 204; Orig. 01/2016)
- Major League Sports Raffle Eligible Organization Registered Event Registration Form (BGC 205; Orig. 01/2016)
- Major League Sports Raffle Eligible Organization – Equipment Registration Form (BGC 206; Orig. 01/2016)
- Major League Sports Raffle Electronic Raffle System and Equipment Checklist and Test Draw (BGC 207; Orig. 01/2016)

The following industry standard is hereby incorporated by reference:

- GLI-31, Electronic Raffle Systems, Version 1.1; Release Date: July 24, 2015

The Bureau selected this technical standard in lieu of adopting its own technical standards because Gaming Laboratories International is recognized as a trusted industry leader for gaming test services and standards developed for testing purposes. The GLI-31 is intended to be a guideline for compliance and testing standards to be used by eligible organizations for testing certification purposes for equipment used in the sale and distribution of raffle tickets and for report content requirements, as indicated in the regulation.

#### **Summary of Existing Laws and Regulations Related Directly to the Proposed Rulemaking**

There are no existing laws or regulations that directly relate to the proposed rulemaking.

#### **Evaluation of the Proposed Regulation for Consistency and Compatibility with Existing Regulations**

There are no existing regulations that directly relate to the proposed rulemaking; thus, the issues of consistency and compatibility are not relevant.

#### **Other Matters Prescribed by Statute Applicable to the Agency or to Any Specific Regulation or Class of Regulations**

Subdivision (f) of section 19 of article IV of the California Constitution, authorizes the Legislature to permit private, nonprofit, eligible organizations to conduct raffles as a funding mechanism to support beneficial and charitable works, if, among other conditions, at least 90%

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of the gross receipts from the raffle go directly to beneficial or charitable purposes in California. The California Constitution further authorizes the Legislature to amend the percentage of gross receipts required to be dedicated to beneficial or charitable purposes by a statute passed by a two-thirds vote of each house. Existing law in Penal Code section 320.5 implements those provisions and requires the Department to administer and enforce those provisions. There are currently no regulations that address the type of raffles authorized by Penal Code section 320.6.

### **Mandate on Local Agencies or School Districts**

The Department has determined the proposed emergency regulations do not impose a mandate or a mandate requiring reimbursement by the State pursuant to part 7 (commencing with section 17500) of division 4 of the Government Code. They will not require local agencies or school districts to incur additional costs in order to comply with the proposed emergency regulations.

### **Technical, Theoretical, and Empirical Study, Report, or Similar Document, if any, Upon Which the Department Relied**

None.

### **Cost Estimates/Impact of Regulatory Action**

Agencies or Costs/Savings in Federal Funding to the State:

When considered through the legislative process, funding of \$700,000 for Fiscal Year 15-16 was identified. Additional funding for subsequent fiscal years, although identified during the legislative process is not discussed here.

The Department has assessed the potential for significant statewide adverse impact that might result from the proposed emergency action and has determined:

- There will be no non-discretionary costs or savings to local agencies
- There will be no costs to school districts
- There will be no costs or savings in federal funding to the State
- There will be no effect on housing costs