

Finding of Emergency

The Department of Justice (Department or DOJ) finds it necessary to readopt these emergency regulations because the circumstances demonstrating the existence of an emergency are unchanged since the emergency regulations' initial adoption. Specifically, the emergency regulations are still necessary to avoid serious harm to the public peace, health, safety, or general welfare. The text of the emergency regulation language has not been amended. 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. This Finding of Emergency hereby incorporates by reference all documents in the original rulemaking file, which is file numbers 2016-0418-03E and 2016-1005-01EE.

Specific Facts Demonstrating the Need for Immediate Action

- 1) The Legislature enacted, and the Governor signed, Senate Bill 549 (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.
- 2) The Department promulgated emergency regulations effective April 28, 2016, adding article 8 to title 11, division 3, chapter 1 of the California Code of Regulations. The emergency regulations implement the Major League Sports Raffle Program, including a registration program for eligible organizations, affiliated persons of eligible organizations, and manufacturers and distributors of raffle-related products or services.
- 3) The emergency status of these regulations expires on January 24, 2017. Should the proposed readoption not be granted, the program will cease operation.
- 4) These emergency regulations are necessary for the implementation and ongoing operation of the Major League Sports Raffle Program, thereby providing eligible nonprofit organizations an additional funding mechanism.
- 5) These emergency regulations will ensure that a proper regulatory and administrative framework remains in place for the implementation of major league sports event raffles, as mandated by SB 549.
- 6) As required for readoption of emergency regulations (Cal. Code Regs., tit. 1, § 52, subd. (b)(2)), the emergency circumstances have not materially changed since the original emergency adoption of these regulations (Office of Administrative Law (OAL) file number 2016-0418-03 (E)).

Statement Regarding Compliance with Government Code Section 11346.1, subdivision (e)

As explained herein, the Department has made substantial progress and proceeded with diligence toward compliance with Government Code section 11346.1, subdivision (e). Specifically, the Department has proposed changes to the Major League Sports Raffle Program that will be reflected in the regulations that the Department intends to adopt through the regular rulemaking process (Certificate of Compliance). The Department is in the public comment stage of the regular rulemaking process. The proposed regulations were submitted for public comment on November 25, 2016 and the public comment period ends on January 9, 2017.

Explanation of Failure To Adopt Nonemergency Regulations

In January 2016, the Department began to draft nonemergency regulations for the Major League Sports Raffle Program, as provided in Penal Code section 320.6. To determine the scope of the regulatory scheme necessary to implement a successful 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 currently available in any other jurisdiction. Rather than take time to promulgate regulations on a nonemergency basis, the Department found 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 continue on an emergency basis the implementation of a raffle program that contains safeguards adopted by other jurisdictions. These emergency regulations provide all stakeholders practical experience with the Major League Sports Raffle Program in California and provide stakeholders insight necessary to define the contours of nonemergency regulations. The text of the regulations has been submitted for formal comment. The Initial Statement of Reasons has been drafted. Implementation of the emergency regulations will allow the Department to continue administering the Major League Sports Raffle 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.

Changes to the Current Regulation Text

None.

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 percent of the gross receipts generated from the sale of raffle tickets is used to benefit or provide support for beneficial or charitable purposes, as defined, the other 50 percent 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 maintaining a registration from the Department, as specified. Once registered, the statute requires an eligible organization to file annually 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 percent 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 Department's 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.

§ 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; Org. 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.

Notice of Intent To Readopt Emergency Regulations

Pursuant to California Code of Regulations, title 1, section 48, the email notice of intent to readopt emergency regulations contained the following substantially similar statement:

This notice is sent in accordance with Government Code section 11346.1, subdivision (a)(2), and California Code of Regulations section 52, which require State of California agencies to give five (5) working-day advance notice of intent to readopt emergency regulations with the OAL to every person who has filed a request for notice of regulatory action. As required by Government Code section 11346.1, subdivisions (a)(2) and (b)(2), this notice appends the following: (1) the specific language proposed to be readopted and (2) the Finding of Emergency.

These documents are also available for review on the Department's Web site at: <https://oag.ca.gov/gambling/regulations>. After submission of the proposed readoption to OAL, any interested person will have five (5) calendar days to submit related comments to OAL as set forth in Government Code section 11349.6. Also upon submission, OAL will have ten (10) calendar days within which to review and make a decision on the proposed readoption.

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The Department plans to file the readoption of the Major League Sports Raffle Program emergency regulation package with OAL at least five working days from the date of this notice. If you wish to comment on this proposed temporary readoption of the emergency regulations, you must submit the comment directly to OAL within five calendar days of OAL's posting of the proposed readoption on the OAL's Web site. You may submit comments on the proposed readoption to OAL at:

Office of Administrative Law
OAL Reference Attorney
300 Capitol Mall, Suite 1250
Sacramento, California 95814
E-mail: staff@oal.ca.gov

When you submit a comment to OAL, you must also submit a copy of your comment simultaneously to the Department at:

Bureau of Gambling Control
PO Box 168024
Sacramento, CA 95816
Attn: Susanne George
E-mail: Susanne.George@doj.ca.gov

OAL will confirm that the Department has received the comment before considering it. Pursuant to California Code of Regulations, title 1, section 55, subdivision (b)(1) through (4), the comment must state that it is about an emergency regulation currently under OAL review, and include the topic of the emergency regulation.

Adoption of emergency regulations does not require response to submitted comments. Any response to comments from the Department will be submitted to OAL within eight calendar days following the date of submission of the proposed emergency regulation to OAL, unless specific exceptions are applicable.

Any questions regarding this proposed emergency regulatory action may be directed to BGCSportsRaffle@doj.ca.gov or by calling Jennifer Tatge at (916) 227-7873.

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

No existing laws or regulations directly relate to the proposed rulemaking.

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

No existing regulations 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

California Constitution, article IV, section 19, subdivision (f) 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 percent 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. Currently no regulations 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.

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

Nonduplication

Pursuant to Government Code section 11349(f) and California Code of Regulations, title 1, section 12, the following is the information required by California Code of Regulations, title 1, section 12:

The proposed regulations duplicate and rephrase Penal Code section 320.6 to satisfy the clarity and consistency standards of the Administrative Procedures Act. Additionally, it would be cumbersome to wholly require a person to have to cross reference the statute and other portions of the Act. Where the statute is made specific or interpreted, an explanation regarding why the proposed rule is reasonably necessary to carry out the purpose and to address the problem for which is it proposed is provided.