

AMENDED IN ASSEMBLY JUNE 23, 2008

AMENDED IN ASSEMBLY JUNE 18, 2008

AMENDED IN ASSEMBLY JUNE 27, 2007

AMENDED IN ASSEMBLY JUNE 18, 2007

**SENATE BILL**

**No. 864**

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**Introduced by Senator ~~Cogdill~~ Battin**

February 23, 2007

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An act to amend Section 326.5 of the Penal Code, relating to charitable bingo.

LEGISLATIVE COUNSEL'S DIGEST

SB 864, as amended, ~~Cogdill~~ *Battin*. Gaming: charitable bingo: penalties.

Existing law permits cities, counties, and cities and counties to allow bingo games to be conducted by specified organizations for charitable purposes in accordance with certain conditions, including that no minors are allowed to participate. Existing law provides that a violation of these provisions is a misdemeanor, as specified.

This bill would provide that the use of an electronic device for bingo in violation of the provisions described above, or the act of providing an electronic device to anyone if it is reasonably foreseeable that the device will be used to violate those provisions, is punishable by a civil penalty of not less than \$10,000 per machine, to be prosecuted in a civil action that may be brought by a prosecutor or a private party, as specified. The bill would permit a court to award attorney's fees and costs to prevailing private parties in these actions. The bill would require the court to order the appropriate law enforcement agency with jurisdiction to seize and destroy electronic devices that are in violation

of these provisions. By creating new duties for local enforcement agencies, this bill would create a state-mandated local program.

This bill would define “bingo” to include a game that combines the use of a paper card and an electronic aid that notifies the player of a winning card.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 326.5 of the Penal Code is amended to  
2 read:

3 326.5. (a) Neither this chapter nor Chapter 10 (commencing  
4 with Section 330) applies to any bingo game that is conducted in  
5 a city, county, or city and county pursuant to an ordinance enacted  
6 under Section 19 of Article IV of the State Constitution, if the  
7 ordinance allows games to be conducted only by organizations  
8 exempted from the payment of the bank and corporation tax by  
9 Sections 23701a, 23701b, 23701d, 23701e, 23701f, 23701g, and  
10 23701i of the Revenue and Taxation Code and by mobilehome  
11 park associations and senior citizens organizations; and if the  
12 receipts of those games are used only for charitable purposes.

13 (b) It is a misdemeanor for any person to receive or pay a profit,  
14 wage, or salary from any bingo game authorized by Section 19 of  
15 Article IV of the State Constitution. Security personnel employed  
16 by the organization conducting the bingo game may be paid from  
17 the revenues of bingo games, as provided in subdivisions (j) and  
18 (k).

19 (c) (1) A violation of subdivision (b) shall be punishable by a  
20 fine not to exceed ten thousand dollars (\$10,000), which fine is  
21 deposited in the general fund of the city, county, or city and county  
22 that enacted the ordinance authorizing the bingo game. A violation

1 of any provision of this section, other than subdivision (b), is a  
2 misdemeanor.

3 (2) In addition to the provisions of paragraph (1), the use of an  
4 electronic device that results in a violation of this section, or the  
5 act of providing an electronic device to anyone if it is reasonably  
6 foreseeable that the device will be used to violate this section, is  
7 punishable by a civil penalty of not less than ten thousand dollars  
8 (\$10,000) per device, to be prosecuted in a civil action that may  
9 be brought by a prosecutorial agency or a private party. A private  
10 party bringing the action may act for the interests of itself, its  
11 members, or the general public, and if the private party prevails,  
12 the court may, upon motion, award attorney's fees and costs. If an  
13 electronic device is found to be in violation of this section, the  
14 court shall order the appropriate law enforcement agency with  
15 jurisdiction to seize the device and provide for its destruction.

16 (d) The city, county, or city and county that enacted the  
17 ordinance authorizing the bingo game may bring an action to enjoin  
18 a violation of this section.

19 (e) No minors shall be allowed to participate in any bingo game.

20 (f) An organization authorized to conduct bingo games pursuant  
21 to subdivision (a) shall conduct a bingo game only on property  
22 owned or leased by it, or property whose use is donated to the  
23 organization, and which property is used by that organization for  
24 an office or for performance of the purposes for which the  
25 organization is organized. Nothing in this subdivision shall be  
26 construed to require that the property owned or leased by, or whose  
27 use is donated to, the organization be used or leased exclusively  
28 by, or donated exclusively to, that organization.

29 (g) All bingo games shall be open to the public, not just to the  
30 members of the authorized organization.

31 (h) A bingo game shall be operated and staffed only by members  
32 of the authorized organization that organized it. Those members  
33 shall not receive a profit, wage, or salary from any bingo game.  
34 Only the organization authorized to conduct a bingo game shall  
35 operate such a game, or participate in the promotion, supervision,  
36 or any other phase of a bingo game. This subdivision does not  
37 preclude the employment of security personnel who are not  
38 members of the authorized organization at a bingo game by the  
39 organization conducting the game.

1 (i) No individual, corporation, partnership, or other legal entity,  
2 except the organization authorized to conduct a bingo game, shall  
3 hold a financial interest in the conduct of a bingo game.

4 (j) With respect to organizations exempt from payment of the  
5 bank and corporation tax by Section 23701d of the Revenue and  
6 Taxation Code, all profits derived from a bingo game shall be kept  
7 in a special fund or account and shall not be commingled with any  
8 other fund or account. Those profits shall be used only for  
9 charitable purposes.

10 (k) With respect to other organizations authorized to conduct  
11 bingo games pursuant to this section, all proceeds derived from a  
12 bingo game shall be kept in a special fund or account and shall not  
13 be commingled with any other fund or account. Proceeds are the  
14 receipts of bingo games conducted by organizations not within  
15 subdivision (j). Those proceeds shall be used only for charitable  
16 purposes, except as follows:

17 (1) The proceeds may be used for prizes.

18 (2) A portion of the proceeds, not to exceed 20 percent of the  
19 proceeds before the deduction for prizes, or two thousand dollars  
20 (\$2,000) per month, whichever is less, may be used for the rental  
21 of property and for overhead, including the purchase of bingo  
22 equipment, administrative expenses, security equipment, and  
23 security personnel.

24 (3) The proceeds may be used to pay license fees.

25 (4) A city, county, or city and county that enacts an ordinance  
26 permitting bingo games may specify in the ordinance that if the  
27 monthly gross receipts from bingo games of an organization within  
28 this subdivision exceed five thousand dollars (\$5,000), a minimum  
29 percentage of the proceeds shall be used only for charitable  
30 purposes not relating to the conducting of bingo games and that  
31 the balance shall be used for prizes, rental of property, overhead,  
32 administrative expenses, and payment of license fees. The amount  
33 of proceeds used for rental of property, overhead, and  
34 administrative expenses is subject to the limitations specified in  
35 paragraph (2).

36 (l) (1) A city, county, or city and county may impose a license  
37 fee on each organization that it authorizes to conduct bingo games.  
38 The fee, whether for the initial license or renewal, shall not exceed  
39 fifty dollars (\$50) annually, except as provided in paragraph (2).

1 If an application for a license is denied, one-half of any license  
2 fee paid shall be refunded to the organization.

3 (2) In lieu of the license fee permitted under paragraph (1), a  
4 city, county, or city and county may impose a license fee of fifty  
5 dollars (\$50) paid upon application. If an application for a license  
6 is denied, one-half of the application fee shall be refunded to the  
7 organization. An additional fee for law enforcement and public  
8 safety costs incurred by the city, county, or city and county that  
9 are directly related to bingo activities may be imposed and shall  
10 be collected monthly by the city, county, or city and county issuing  
11 the license; however, the fee shall not exceed the actual costs  
12 incurred in providing the service.

13 (m) No person shall be allowed to participate in a bingo game,  
14 unless the person is physically present at the time and place where  
15 the bingo game is being conducted.

16 (n) The total value of prizes awarded during the conduct of any  
17 bingo games shall not exceed two hundred fifty dollars (\$250) in  
18 cash or kind, or both, for each separate game which is held.

19 (o) As used in this section:

20 (1) Bingo means a game of chance in which prizes are awarded  
21 on the basis of designated numbers or symbols on a card that  
22 conform to numbers or symbols selected at random. Notwithstanding  
23 Section 330c, as used in this section, the game of bingo includes  
24 cards having numbers or symbols that are concealed and preprinted  
25 in a manner providing for distribution of prizes. The winning cards  
26 shall not be known prior to the game by any person participating  
27 in the playing or operation of the bingo game. All preprinted cards  
28 shall bear the legend, "for sale or use only in a bingo game  
29 authorized under California law and pursuant to local ordinance." It  
30 is the intention of the Legislature that bingo as defined in this  
31 subdivision applies exclusively to this section and shall not be  
32 applied in the construction or enforcement of any other law. "Bingo"  
33 also includes a bingo game, in which players purchase and receive  
34 paper or cardboard bingo cards, and that combines the use of an  
35 electronic aid that notifies the player of a winning card.  
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37 (2) A bingo game does not include the use of electronic systems  
38 that store bingo cards on computers in lieu of paper or cardboard  
39 bingo cards. Electronic systems of bingo do not qualify as the  
40 game of bingo that may be offered for charitable purposes, and

1 these electronic systems therefore constitute unlawful lotteries  
2 under Section 319 of the Penal Code.

3 SEC. 2. If the Commission on State Mandates determines that  
4 this act contains costs mandated by the state, reimbursement to  
5 local agencies and school districts for those costs shall be made  
6 pursuant to Part 7 (commencing with Section 17500) of Division  
7 4 of Title 2 of the Government Code.

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