

Senate Bill No. 200

Passed the Senate July 16, 2009

Secretary of the Senate

Passed the Assembly July 13, 2009

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2009, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 320.5 of the Penal Code, relating to raffles.

LEGISLATIVE COUNSEL'S DIGEST

SB 200, Correa. Raffles: Internet advertisement.

The California Constitution prohibits the Legislature from authorizing lotteries, but allows the Legislature to authorize private, nonprofit, eligible organizations to conduct raffles, as specified. Existing statutory law generally regulates raffles conducted by eligible organizations for beneficial or charitable purposes. Existing law prohibits a raffle from being advertised over the Internet.

This bill would delete the prohibition on advertising a raffle over the Internet and would set forth specified information regarding a raffle that may be included on an Internet Web site.

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

SECTION 1. Section 320.5 of the Penal Code is amended to read:

320.5. (a) Nothing in this chapter applies to any raffle conducted by an eligible organization as defined in subdivision (c) for the purpose of directly supporting beneficial or charitable purposes or financially supporting another private, nonprofit, eligible organization that performs beneficial or charitable purposes if the raffle is conducted in accordance with this section.

(b) For purposes of this section, "raffle" means a scheme for the distribution of prizes by chance among persons who have paid money for paper tickets that provide the opportunity to win these prizes, where all of the following are true:

(1) Each ticket is sold with a detachable coupon or stub, and both the ticket and its associated coupon or stub are marked with a unique and matching identifier.

(2) Winners of the prizes are determined by draw from among the coupons or stubs described in paragraph (1) that have been detached from all tickets sold for entry in the draw.

(3) The draw is conducted in California under the supervision of a natural person who is 18 years of age or older.

(4) (A) At least 90 percent of the gross receipts generated from the sale of raffle tickets for any given draw are used by the eligible organization conducting the raffle to benefit or provide support for beneficial or charitable purposes, or it may use those revenues to benefit another private, nonprofit organization, provided that an organization receiving these funds is itself an eligible organization as defined in subdivision (c). As used in this section, “beneficial purposes” excludes purposes that are intended to benefit officers, directors, or members, as defined by Section 5056 of the Corporations Code, of the eligible organization. In no event shall funds raised by raffles conducted pursuant to this section be used to fund any beneficial, charitable, or other purpose outside of California. This section does not preclude an eligible organization from using funds from sources other than the sale of raffle tickets to pay for the administration or other costs of conducting a raffle.

(B) An employee of an eligible organization who is a direct seller of raffle tickets shall not be treated as an employee for purposes of workers’ compensation under Section 3351 of the Labor Code if the following conditions are satisfied:

(i) Substantially all of the remuneration (whether or not paid in cash) for the performance of the service of selling raffle tickets is directly related to sales rather than to the number of hours worked.

(ii) The services performed by the person are performed pursuant to a written contract between the seller and the eligible organization and the contract provides that the person will not be treated as an employee with respect to the selling of raffle tickets for workers’ compensation purposes.

(C) For purposes of this section, employees selling raffle tickets shall be deemed to be direct sellers as described in Section 650 of the Unemployment Insurance Code as long as they meet the requirements of that section.

(c) For purposes of this section, “eligible organization” means a private, nonprofit organization that has been qualified to conduct business in California for at least one year prior to conducting a raffle and is exempt from taxation pursuant to Sections 23701a, 23701b, 23701d, 23701e, 23701f, 23701g, 23701k, 23701l, 23701t, or 23701w of the Revenue and Taxation Code.

(d) Any person who receives compensation in connection with the operation of the raffle shall be an employee of the eligible organization that is conducting the raffle, and in no event may compensation be paid from revenues required to be dedicated to beneficial or charitable purposes.

(e) No raffle otherwise permitted under this section may be conducted by means of, or otherwise utilize, any gaming machine, apparatus, or device, whether or not that machine, apparatus, or device meets the definition of slot machine contained in Section 330a, 330b, or 330.1.

(f) (1) No raffle otherwise permitted under this section may be conducted, nor may tickets for a raffle be sold, within an operating satellite wagering facility or racetrack inclosure licensed pursuant to the Horse Racing Law (Chapter 4 (commencing with Section 19400) of Division 8 of the Business and Professions Code) or within a gambling establishment licensed pursuant to the Gambling Control Act (Chapter 5 (commencing with Section 19800) of Division 8 of the Business and Professions Code).

(2) A raffle may not be operated or conducted in any manner over the Internet, nor may raffle tickets be sold, traded, or redeemed over the Internet. For purposes of this paragraph, an eligible organization shall not be deemed to operate or conduct a raffle over the Internet, or sell raffle tickets over the Internet, if the eligible organization advertises its raffle on the Internet or permits others to do so. Information that may be conveyed on an Internet Web site pursuant to this paragraph includes, but is not limited to, all of the following:

(A) Lists, descriptions, photographs, or videos of the raffle prizes.

(B) Lists of the prize winners.

(C) The rules of the raffle.

(D) Frequently asked questions and their answers.

(E) Raffle entry forms, which may be downloaded from the Internet Web site for manual completion by raffle ticket purchasers, but shall not be submitted to the eligible organization through the Internet.

(F) Raffle contact information, including the eligible organization's name, address, telephone number, facsimile number, or e-mail address.

(g) No individual, corporation, partnership, or other legal entity shall hold a financial interest in the conduct of a raffle, except the eligible organization that is itself authorized to conduct that raffle, and any private, nonprofit, eligible organizations receiving financial support from that charitable organization pursuant to subdivisions (a) and (b).

(h) (1) An eligible organization may not conduct a raffle authorized under this section, unless it registers annually with the Department of Justice. The department shall furnish a registration form via the Internet or upon request to eligible nonprofit organizations. The department shall, by regulation, collect only the information necessary to carry out the provisions of this section on this form. This information shall include, but is not limited to, the following:

(A) The name and address of the eligible organization.

(B) The federal tax identification number, the corporate number issued by the Secretary of State, the organization number issued by the Franchise Tax Board, or the California charitable trust identification number of the eligible organization.

(C) The name and title of a responsible fiduciary of the organization.

(2) The department may require an eligible organization to pay an annual registration fee of ten dollars (\$10) to cover the actual costs of the department to administer and enforce this section. The department may, by regulation, adjust the annual registration fee as needed to ensure that revenues willfully offset, but do not exceed, the actual costs incurred by the department pursuant to this section. The fee shall be deposited by the department into the General Fund.

(3) The department shall receive General Fund moneys for the costs incurred pursuant to this section subject to an appropriation by the Legislature.

(4) The department shall adopt regulations necessary to effectuate this section, including emergency regulations, pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

(5) The department shall maintain an automated database of all registrants. Each local law enforcement agency shall notify the department of any arrests or investigation that may result in an

administrative or criminal action against a registrant. The department may audit the records and other documents of a registrant to ensure compliance with this section.

(6) Once registered, an eligible organization must file annually thereafter with the department a report that includes the following:

(A) The aggregate gross receipts from the operation of raffles.

(B) The aggregate direct costs incurred by the eligible organization from the operation of raffles.

(C) The charitable or beneficial purposes for which proceeds of the raffles were used, or identify the eligible recipient organization to which proceeds were directed, and the amount of those proceeds.

(7) The department shall annually furnish to registrants a form to collect this information.

(8) The registration and reporting provisions of this section do not apply to any religious corporation sole or other religious corporation or organization that holds property for religious purposes, to a cemetery corporation regulated under Chapter 19 of Division 3 of the Business and Professions Code, or to any committee as defined in Section 82013 that is required to and does file any statement pursuant to the provisions of Article 2 (commencing with Section 84200) of Chapter 4 of Title 9, or to a charitable corporation organized and operated primarily as a religious organization, educational institution, hospital, or a health care service plan licensed pursuant to Section 1349 of the Health and Safety Code.

(i) The department may take legal action against a registrant if it determines that the registrant has violated this section or any regulation adopted pursuant to this section, or that the registrant has engaged in any conduct that is not in the best interests of the public's health, safety, or general welfare. Any action taken pursuant to this subdivision does not prohibit the commencement of an administrative or criminal action by the Attorney General, a district attorney, city attorney, or county counsel.

(j) Each action and hearing conducted to deny, revoke, or suspend a registry, or other administrative action taken against a registrant shall be conducted pursuant to the Administrative Procedure Act (Chapters 4.5 (commencing with Section 11400) and 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code). The department may seek

recovery of the costs incurred in investigating or prosecuting an action against a registrant or applicant in accordance with those procedures specified in Section 125.3 of the Business and Professions Code. A proceeding conducted under this subdivision is subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

(k) The Department of Justice shall conduct a study and report to the Legislature by December 31, 2003, on the impact of this section on raffle practices in California. Specifically, the study shall include, but not be limited to, information on whether the number of raffles has increased, the amount of money raised through raffles and whether this amount has increased, whether there are consumer complaints, and whether there is increased fraud in the operation of raffles.

(l) This section shall become operative on July 1, 2001.

(m) A raffle shall be exempt from this section if it satisfies all of the following requirements:

(1) It involves a general and indiscriminate distribution of the tickets.

(2) The tickets are offered on the same terms and conditions as the tickets for which a donation is given.

(3) The scheme does not require any of the participants to pay for a chance to win.

Approved _____, 2009

Governor