

Introduced by Senator Hall

(Coauthors: Assembly Members Gray and Jones-Sawyer)

February 26, 2015

An act to add and repeal Section 320.6 of the Penal Code, relating to gaming.

LEGISLATIVE COUNSEL'S DIGEST

SB 549, as introduced, Hall. Charitable raffles.

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% 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 $\frac{2}{3}$ vote of each house of the Legislature. Existing statutory law implements those provisions and requires the Department of Justice to administer and enforce those provisions.

This bill would authorize a raffle conducted by an eligible organization, as defined, for the purpose of directly supporting specified beneficial or charitable purposes in California, or financially supporting another private, nonprofit, eligible organization, as defined, that performs those purposes if, among other requirements, each ticket sold contains a unique and matching identifier, 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. The bill would authorize an electronic

device to be used to sell tickets. This bill would define an eligible organization as a private, nonprofit organization established by, or affiliated with, a team from specified sports organizations 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 specified provisions of federal and California law.

The bill would require, if an eligible organization conducts a raffle for purposes of financially supporting another private, nonprofit, eligible organization, the eligible organization conducting the raffle to distribute to the other eligible organization all proceeds not paid out to the winners within 15 days of conducting the raffle. The bill would require an eligible organization to disclose to all ticket purchasers the designated private, nonprofit organization for which the raffle is being conducted.

This bill would also prohibit an eligible organization from conducting a raffle without first having obtained and thereafter maintained a registration from the Department of Justice, as specified. This bill would authorize the department to issue regulations to enforce these provisions, to assess an annual registration fee of \$10 to be deposited in the General Fund to cover the reasonable costs of establishing and operating this registration system, and would require the department to maintain a database of registrants, with specified exemptions, and conduct specified proceedings in compliance with the Administrative Procedure Act. The bill would repeal its provisions on December 31, 2020.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

- 1 SECTION 1. Section 320.6 is added to the Penal Code, to read:
- 2 320.6. (a) Notwithstanding Section 320.5, this section shall
- 3 apply to an eligible organization, as defined in subdivision (c).
- 4 (b) A raffle conducted by an eligible organization, as defined
- 5 in subdivision (c), for the purpose of directly supporting beneficial
- 6 or charitable purposes or financially supporting another private,
- 7 nonprofit eligible organization, as defined in subdivision (c) of
- 8 Section 320.5, that performs beneficial or charitable purposes may
- 9 be conducted in accordance with this section.
- 10 (c) For purposes of this section, “eligible organization” means
- 11 a private, nonprofit organization established by, or affiliated with,
- 12 a team from the Major League Baseball, National Hockey League,

1 National Basketball Association, National Football League,
2 Women’s National Basketball Association, or Major League
3 Soccer, or a private, nonprofit organization established by the
4 Professional Golfers Association, Ladies Professional Golfers
5 Association, or National Association for Stock Car Auto Racing
6 that has been qualified to conduct business in California for at least
7 one year prior to conducting a raffle, is qualified for an exemption
8 under Section 501(3)(c) of the Internal Revenue Code, and is
9 exempt from taxation pursuant to Section 23701a, 23701b, 23701d,
10 23701e, 23701f, 23701g, 23701k, 23701l, 23701t, or 23701w of
11 the Revenue and Taxation Code.

12 (d) For purposes of this section, “raffle” means a scheme for
13 the distribution of prizes by chance among persons who have paid
14 money for paper tickets that provide the opportunity to win these
15 prizes, in which all of the following are true:

16 (1) Each ticket sold contains a unique and matching identifier.

17 (2) (A) Winners of the prizes are determined by a manual draw
18 from tickets described in paragraph (1) that have been sold for
19 entry in the manual draw.

20 (B) An electronic device may be used to sell tickets. The ticket
21 receipt issued by the electronic device to the purchaser may include
22 more than one unique and matching identifier, representative of
23 and matched to the number of tickets purchased in a single
24 transaction.

25 (C) The prize paid to the winner is comprised of one-half or 50
26 percent of the gross receipts generated from the sale of raffle tickets
27 for a raffle.

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

30 (4) (A) Fifty percent of the gross receipts generated from the
31 sale of raffle tickets for any given manual draw are used by the
32 eligible organization conducting the raffle to benefit or provide
33 support for beneficial or charitable purposes, or used to benefit
34 another private, nonprofit organization, provided that an
35 organization receiving these funds is itself an eligible organization
36 as defined in subdivision (c) of Section 320.5. As used in this
37 section, “beneficial purposes” excludes purposes that are intended
38 to benefit officers, directors, or members, as defined by Section
39 5056 of the Corporations Code, of the eligible organization. Funds
40 raised by raffles conducted pursuant to this section shall not be

1 used to fund any beneficial, charitable, or other purpose outside
2 of California. This section does not preclude an eligible
3 organization from using funds from sources other than the sale of
4 raffle tickets to pay for the administration or other costs of
5 conducting a raffle.

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

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

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

18 (C) For purposes of this section, an employee selling raffle
19 tickets shall be deemed to be a direct seller as described in Section
20 650 of the Unemployment Insurance Code as long as he or she
21 meets the requirements of that section.

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

27 (f) A raffle ticket shall not be sold in exchange for Bitcoin or
28 any other cryptocurrency.

29 (g) A raffle otherwise permitted under this section shall not be
30 conducted by means of, or otherwise utilize, any gaming machine
31 that meets the definition of slot machine contained in Section 330a,
32 330b, or 330.1.

33 (h) (1) A raffle otherwise permitted under this section shall not
34 be conducted, nor may tickets for a raffle be sold, within an
35 operating satellite wagering facility or racetrack inclosure licensed
36 pursuant to the Horse Racing Law (Chapter 4 (commencing with
37 Section 19400) of Division 8 of the Business and Professions Code)
38 or within a gambling establishment licensed pursuant to the
39 Gambling Control Act (Chapter 5 (commencing with Section
40 19800) of Division 8 of the Business and Professions Code).

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

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

12 (B) Lists of the prize winners.

13 (C) The rules of the raffle.

14 (D) Frequently asked questions and their answers.

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

19 (F) Raffle contact information, including the eligible
20 organization's name, address, telephone number, facsimile number,
21 or email address.

22 (i) An individual, corporation, partnership, or other legal entity
23 shall not hold a financial interest in the conduct of a raffle, except
24 the eligible organization that is itself authorized to conduct that
25 raffle, and any private, nonprofit, eligible organizations receiving
26 financial support from that charitable organization pursuant to
27 subdivisions (b) and (d).

28 (j) An eligible organization shall not conduct more than one
29 major league sports raffle per home game.

30 (k) An employee shall not sell raffle tickets in any seating area
31 designated as a family section.

32 (l) An eligible organization shall disclose to all ticket purchasers
33 the designated private, nonprofit, eligible organization for which
34 the raffle is being conducted.

35 (m) An eligible organization that conducts a raffle to financially
36 support another private, nonprofit eligible organization, as defined
37 in subdivision (c) of Section 320.5, shall distribute all proceeds
38 not paid out to the winners of the prizes to the private, nonprofit
39 organization within 15 days of conducting the raffle, in accordance
40 with this section.

1 (n) Any raffle prize remaining unclaimed by a winner at the end
2 of the season for a team with an affiliated eligible organization
3 that conducted a raffle to financially support another private,
4 nonprofit eligible organization, as defined in subdivision (c) of
5 Section 320.5, shall be donated within 30 days from the end of the
6 season by the eligible organization to the designated private,
7 nonprofit organization for which the raffle was conducted.

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

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

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

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

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

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

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

39 (5) The department shall maintain an automated database of all
40 registrants. Each local law enforcement agency shall notify the

1 department of any arrests or investigation that may result in an
2 administrative or criminal action against a registrant. The
3 department may audit the records and other documents of a
4 registrant to ensure compliance with this section.

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

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

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

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

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

16 (8) The registration and reporting provisions of this section do
17 not apply to any religious corporation sole or other religious
18 corporation or organization that holds property for religious
19 purposes, to a cemetery corporation regulated under Chapter 19
20 (commencing with Section 9600) of Division 3 of the Business
21 and Professions Code, or to any committee as defined in Section
22 82013 of the Government Code that is required to and does file
23 any statement pursuant to the provisions of Article 2 (commencing
24 with Section 84200) of Chapter 4 of Title 9 of the Government
25 Code, or to a charitable corporation organized and operated
26 primarily as a religious organization, educational institution,
27 hospital, or a health care service plan licensed pursuant to Section
28 1349 of the Health and Safety Code.

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

37 (q) An action and hearing conducted to deny, revoke, or suspend
38 a registry, or other administrative action taken against a registrant,
39 shall be conducted pursuant to the Administrative Procedure Act
40 (Chapters 4.5 (commencing with Section 11400) and 5

1 (commencing with Section 11500) of Part 1 of Division 3 of Title
2 2 of the Government Code). The department may seek recovery
3 of the costs incurred in investigating or prosecuting an action
4 against a registrant or applicant in accordance with those
5 procedures specified in Section 125.3 of the Business and
6 Professions Code. A proceeding conducted under this subdivision
7 is subject to judicial review pursuant to Section 1094.5 of the Code
8 of Civil Procedure.

9 (r) This section shall remain in effect only until December 31,
10 2020, and as of that date is repealed, unless a later enacted statute,
11 that is enacted before December 31, 2020, deletes or extends that
12 date.