

## **FINDING OF EMERGENCY**

The Department of Justice (the “Department”) finds that an emergency exists and that immediate adoption of amendments to article 8, of chapter 1, of division 3, of title 11 is necessary for the immediate preservation of the public peace, health, safety, or general welfare, within the meaning of Government Code section 11346.1. Changes to existing regulations are necessary due to the recent enactment of Assembly Bill 888 (AB 888) (Stats. 2018, c. 575, eff. Sept. 20, 2018) AB 888 was passed as an urgency bill “to enable private, nonprofit organizations to benefit from coordinated, uninterrupted provisions authorizing raffles as funding mechanisms to support beneficial and charitable works as soon as possible.” (AB 888, § 2.) The Department is now seeking to adjust the fee structure through emergency regulation to conform the fee structure to AB 888, to create a fiscally sound program where revenues more closely align with expenditures, to fully offset the Department’s costs not just to administer the program, but to enforce the requirements of the program, and to avoid any disruption in the registration process for eligible organizations that wish to hold raffles benefitting their local communities beginning in January 2019.

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 regulation amendments 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 regulation amendments 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 regulation amendments as set forth in Government Code section 11349.6. To determine the Office of Administrative Law’s five-day comment period, interested persons are instructed to visit <http://www.oal.ca.gov/> often.

### **SUBJECT MATTER OF PROPOSED REGULATION AMENDMENTS**

Bureau of Gambling Control, Major League Sports Charitable Raffle Program

### **EXISTING REGULATIONS TO BE AMENDED**

Title 11, sections 2084, 2086, 2088, 2089, 2090, 2092, 2095, 2097 and 2107.

### **SPECIFIC FACTS DEMONSTRATING NEED FOR IMMEDIATE ACTION**

In 2015, the Legislature enacted Penal Code section 320.6, which authorizes 50/50 raffles at major league sports home games by eligible organizations. As authorized, 50 percent of the gross receipts generated from the sale of raffle tickets must be used to benefit or provide support for beneficial or charitable purposes, and the other 50 percent must be paid to the winner, which is determined by a manual draw.

Before conducting 50/50 raffles, eligible organizations and manual draw supervisors affiliated with eligible organizations must first register annually with the Department. (Pen. Code, § 320.6,

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subdivision (o)(1)(A).) In addition, before conducting business with an eligible organization, raffle vendors that manufacture or distribute raffle-related products or services must also register annually with the Department. (Pen. Code, § 320.6, subdivision (o)(2)(A).)

As first enacted, Penal Code section 320.6 had a sunset date of December 31, 2018. In September, the Legislature enacted urgency bill AB 888, extending the sunset date to January 1, 2024.

The Department implements the charitable raffle program through its Bureau of Gambling Control (Bureau). (Cal. Code Regs, tit. 11, § 2082.) The Bureau consults with the Department's Indian and Gaming Law Section to administer and enforce the program. To fund the workload costs of the Indian and Gaming Law Section related to the initial implementation of the program, the Department received a loan from the General Fund in the amount of \$1,005,000, which must be repaid. In addition to the General Fund loan, the Department receives a mandatory fee of \$100 for every individual raffle, and has discretion to impose annual registration fees to fully offset its reasonable costs to administer and enforce the program. (Penal Code, § 320.6, subd. (o)(1)(B)(ii) and (o)(5).) The full costs of administering and enforcing this program are not currently being met with the current fees charged.

In 2016, the Department adopted emergency regulations implementing the charitable raffle program, which were permanently adopted in 2017. (Cal. Code Regs., tit. 11, § 2080 et seq.) In addition to the mandatory statutory event fee, these regulations impose the following additional fees:

- a \$5,000 annual registration fee for eligible organizations (§ 2086, subd. (c)),
- a \$10 annual registration fee for manual draw supervisors (§ 2092, subd. (a)(4)), and
- a \$5,000 annual registration fee for manufacturers and distributors of raffle-related products or services (§ 2095, subd. (b)(2))

But the number of eligible organizations that have initially participated in the charitable raffle program are far fewer than the Department originally anticipated, resulting in significantly lower than expected revenue to the program. In a 2016 budget change proposal submitted to the Department of Finance, the Department identified 66 organizations that would be eligible to participate in the program, and estimated that collectively the organizations would conduct over 2,000 raffles each year. Only 20 eligible organizations currently participate in the program, conducting far less than the initial estimate of 2,000 raffles per year. In addition, only two raffle vendors are currently registered with the Department to provide raffle-related goods and services to the eligible organizations.

To date, the revenue received by the Department from the statutory event fee, and the regulatory registration fees have not fully offset the Department's costs to administer and enforce the charitable raffle program, or to repay the General Fund loan. Under the current fee structure, the revenues generated since the inception of the program were \$260,000 in FY 2016-17, and \$186,000 in FY 2017-18. In contrast, the Department's costs to simply administer the program were \$298,000 in FY 2016-17, and \$309,000 in FY 2017-18. The Department has not yet been able to fulfill its oversight

and enforcement role because the program expenditures currently exceed program revenues, creating a budget deficit.

Recognizing that existing annual fees were insufficient to cover the Department's costs, effective September 20, 2018, the Legislature amended Penal Code section 320.6 by doubling the discretionary minimum registration fee for eligible organizations and raffle vendors from \$5,000 to \$10,000. (Pen. Code, § 320.6, subd. (o)(1)(B)(i), (o)(2)(B).) The Legislature also increased the discretionary minimum registration fee for manual draw supervisors from \$10 to \$20, and the mandatory raffle event fee from \$100 to \$200. (Pen. Code, § 320.6, subd. (o)(4)(B) and (o)(1)(B)(ii).)

Notwithstanding the increase in mandatory fees and the availability of minimum discretionary fees, the Department still does have sufficient funds to fully cover the costs to administer and enforce the charitable raffle program.

Compounding the program's structural imbalance under the current fee structure, the recent amendments to Penal Code 320.6 by AB 888 invalidate the current fee structure codified in regulation by imposing new discretionary minimum fees. Even though the statute has increased the minimum fees from \$5,000 to \$10,000, these amounts do not cover the Department's costs to administer and enforce this program. While the Department has authority to set registration fees higher than the minimum amount to fully offset its costs to administer and enforce the charitable raffle program, it does not have authority to set registration fees lower than the new minimum fees set by AB 888. The registration fees in the existing regulations are below the minimum fees set by AB 888 and are therefore invalid.

Before AB 888, the Department received insufficient revenue to fully offset its costs to administer and enforce the charitable raffle program. After AB 888, the Department has no ability to raise any revenue from registration fees to offset its costs, and the \$200 statutorily mandated event fee is woefully inadequate to cover these costs. This recent invalidation of the current fee structure severely limits the Department's ability to administer the program at all. The Department's ability to carry out the registration, auditing, oversight, and enforcement functions of the program are contingent upon the appropriation of sufficient funds. (Penal Code, § 320.6, subds. (o)(10) and (11)(a); Cal. Code Regs., tit. 11, § 2080.)

The Department must take immediate action to preserve the solvency of the charitable raffle program. Current annual registrations for all program participants are set to expire on December 31, 2018. Without the ability to collect registration fees that allow DOJ to adequately monitor the program at the time program participants submit their applications for registration, the Department will be severely limited in its ability to administer the program. Failure to provide eligible organizations an immediate opportunity to benefit from the five-year extension of the charitable raffle program will immediately and irreparably harm many charities and communities throughout the state.

Without revenue from registration fees, the Department will be unable to fund the positions necessary to administer the program by reviewing and approving registration applications. Other Bureau positions cannot perform this function because the funding source for those positions are special funds designated for other purposes (Gambling Control Fund and the Indian Gaming Special

Distribution Fund). Lack of program staff will result in an immediate and long-term delay in the registration process and cause eligible organizations and nonprofit organizations that receive funds from raffles to immediately lose out on millions of dollars in donations raised from the sale of raffle tickets. Gross ticket sales from raffle events in 2016 totaled \$6,146,507 (over a seven-month period); and in 2017 they nearly doubled to \$12,097,784.

AB 888 was passed as an urgency bill “to enable private, nonprofit organizations to benefit from coordinated, uninterrupted provisions authorizing raffles as funding mechanisms to support beneficial and charitable works as soon as possible.” (Stats. 2018, c. 575, § 1, eff. Sept. 20, 2018, § 2.) Penal Code section 320.6 authorizes the Department to adopt emergency regulations to implement the program, including as extended by AB 888. (Pen. Code, § 320.6, subd. (o)(7).) Emergency regulations adjusting the registration fees and establishing a fiscally sound fee structure will ensure that there is a relatively seamless transition in the registration process without a disruption of fundraising activities for participating eligible organizations whose associated teams are currently hosting home games in California during their regular and post-seasons.

Following the non-emergency regular rulemaking process will take several months, and any delay in updating the regulation with valid registration fees to offset the costs of the program will likely disrupt the ability of eligible organizations to hold raffles during that time. In September 2018, after the passage of AB 888, the Department initially set out to update its current fee structure by drafting a Section 100 action to conform the minimum registration fees in the regulation to the minimum fees established by AB 888. After consultation with the Office of Administrative Law the Department was advised that because the Department has discretion to set registration fees higher than the statutory minimum to offset its costs to administer and enforce the charitable raffle program, it could not adjust the now-invalid minimum registration fees in the existing regulation through a Section 100 action.

The Department seeks to adjust the fee structure through emergency regulation to conform the fee structure to AB 888, to create a fiscally sound program where revenues more closely align with expenditures, to fully offset the Department’s costs not just to administer the program, but to enforce the requirements of the program, and to avoid any disruption in the registration process for eligible organizations that wish to hold raffles benefitting their local communities beginning in January 2019.

#### NECESSITY STATEMENT

The Legislature recently passed AB 888, extending the charitable raffle program for another five years. The Department currently has insufficient funds to administer and enforce the program or to repay a General Fund loan made to the Department for legal services related to initial implementation of the program. Penal Code section 320.6, subd. (o)(5)(A) authorizes the Department to adjust annual registration fees as needed to ensure that revenues will fully offset, but not exceed, the reasonable costs incurred by the Department to administer and enforce the program.

The Department estimates that it will cost \$1,334,000 per year to adequately administer and enforce the charitable raffle program and to repay the General Fund loan. The following table depicts the Department's proposed adjustments to its fee structure as follows:

New Fee Structure		
Current Participants - Number <sup>1</sup>	PROPOSED FEE	ESTIMATE REVENUE
Eligible Organizations - 20	\$14,400	\$288,000
Manufacturers/Distributors - 2	\$432,000	\$864,000
Manual Drawers – approximately 79	\$20	\$2,000
Raffle Events - 900	\$200	\$180,000
		<b>\$1,334,000</b>

When creating the new fee structure, the Department determined that approximately 65 percent of the costs of the charitable raffle program should be paid by the two participating raffle vendors that profit from the increase in demand for their products and services created by the program. Although the \$432,000 registration fee is much higher than the \$10,000 minimum fee set by statute, it is based on the low number of raffle vendors that currently participate in the program. As the number of raffle vendors participating in the program increase over time, the Department will adjust the fee as necessary to ensure that the fee does not exceed the reasonable costs to administer and enforce the program.

The Department also determined that only 22 percent of the costs of the charitable raffle program should be paid by a \$14,400 registration fee for eligible organizations, and a \$20 fee for manual draw supervisors. The Department was concerned that a significant increase in registration fees above the \$10,000 minimum fee set by statute would discourage eligible organizations from participating in the program, which already pay a mandatory \$200 registration fee for each raffle event. Higher registration fees would ultimately defeat the purpose of the program, which is to provide the ability of eligible organizations affiliated with major league professional sports teams to fundraise for local charities through raffles conducted at home games. As the number of eligible organizations participating in the program increase over time, the Department will adjust the fee as necessary to ensure that the fee does not exceed the reasonable costs to administer and enforce the program.

The Department proposes the following amendments to existing regulations to implement the new fee structure and to make the regulations consistent with AB 888:

#### **Title 11, Division 3, Chapter 1, Article 8. Major League Sports Charitable Raffle Program**

##### **§ 2084. Forms**

Existing section 2084 identifies and incorporates by reference the various forms the Department uses to implement the program. Proposed amendments to this section would incorporate updated versions

<sup>1</sup> These numbers are based on the number of current registrants and registered raffle events in 2018.

of the forms revised to implement the new fee structure and to make the forms consistent with statute as amended by AB 888.

**§ 2086. Eligible Organization Registration**

Existing section 2086 section describes how an eligible organization can register with the Department. Proposed amendments to this section would incorporate an updated version of the registration form and increase the registration fee from an invalid fee of \$5,000 to \$14,400.

**§ 2088. Fiduciary of Eligible Organization – Duties**

Existing section 2088 identifies responsibilities of fiduciaries of eligible organizations. Proposed amendments to this section would incorporate and update version of the registration form and a new requirement imposed by the passage of AB 888.

**§ 2089. Raffle Registration; Registered Event**

Existing section 2089 describes how to register a raffle event. Proposed amendments to this section would incorporate an updated version of the registration form and increase the event registration fee from an invalid fee of \$100 to the new minimum mandatory statutory fee of \$200.

**§ 2090. Raffle Registration; Registered event; Post-Season Play**

Existing section 2090 describes how to register a raffle event for post-season play. Proposed amendments to this section would incorporate an updated version of the registration form and increase the event registration fee from an invalid fee of \$100 to the new minimum mandatory statutory fee of \$200.

**§ 2092. Manual Draw Supervisor Registration**

Existing section 2092 describes how a manual draw supervisor affiliated with an eligible organization can register with the Department. Proposed amendments to this section would incorporate an updated version of the registration form and increase the registration fee from an invalid fee of \$10 to \$20.

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

Existing section 2095 describes how raffle vendors can register with the Department. Proposed amendments to this section would incorporate an updated version of the registration form and increase the registration fee from an invalid fee of \$5,000 to \$432,000.

**§ 2097. Winner Determination**

Existing section 2097 describes the method for an eligible organization to determine the winner of a manual draw and related requirements. Proposed amendments to this section would incorporate a new requirement imposed by the passage of AB 888.

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

Existing section 2107 requires every eligible organization to submit an annual report to the Department's Bureau of Gambling, as required by the enabling statute, on a specified form. Proposed amendments would incorporate an updated version of the form.



### **Forms Incorporated by Reference**

The Department also proposes to amend the following forms which are incorporated by reference in the regulations to implement the new fee structure and make the forms consistent with statute as amended by AB 888:

- Major League Sports Raffle Eligible Organization Registration Form (BGC 200; Rev. 10/2018)
- Major League Sports Raffle Manufacturer and Distributor of Products or Services Annual Registration Form (BGC 201; Rev. 10/2018)
- Major League Sports Raffle Manual Draw Supervisor Annual Registration Form (BGC 202; Rev. 10/2018)
- Major League Sports Raffle Eligible Organization Raffle Report (BGC 203; Rev. 10/2018)
- Major League Sports Raffle Eligible Organization Registered Event Registration Form (BGC 204; Rev. 10/2018)

### **LIST OF DOCUMENTS RELIED ON**

The Department relied on the forms and reports filed by participants in the charitable raffle program.

### **AUTHORITY AND REFERENCE CITATIONS**

Authority and Reference: Penal Code section 320.6.

### **INFORMATIVE DIGEST/POLICY OVERVIEW**

#### **Summary of Existing Law**

In 2015, the Legislature enacted Penal Code section 320.6, which authorizes 50/50 raffles at major league sports home games by eligible organizations. As authorized, 50 percent of the gross receipts generated from the sale of raffle tickets must be used to benefit or provide support for beneficial or charitable purposes, and the other 50 percent must be paid to the winner, which is determined by a manual draw.

Before conducting 50/50 raffles, eligible organizations and manual draw supervisors affiliated with the eligible organization must first register annually with the Department. (Pen. Code, § 320.6, subdivision (o)(1)(A).) In addition, before conducting business with an eligible organization, raffle vendors that manufacture or distribute raffle-related products or services must also register annually with the Department. (Pen. Code, § 320.6, subdivision (o)(2)(A).)

As first enacted, Penal Code section 320.6 had a sunset date of December 31, 2018. In September, the Legislature enacted urgency bill AB 888, extending the sunset date to January 1, 2024. AB 888 also increased minimum registration fees the Department may impose on participants in the program to fully offset reasonable costs incurred by the Department to administer and enforce the charitable raffle program.

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In 2016, the Department adopted emergency regulations implementing the charitable raffle program, which were permanently adopted in 2017. (Cal. Code Regs., tit. 11, § 2080 et seq.)

### **Benefits of the Proposed Regulation Amendments**

Existing regulations impose registration fees that are insufficient to cover the costs of administering the charitable raffle program and that have been rendered invalid by the passage of AB 888. The Department's ability to administer and enforce the program is contingent upon the appropriation of sufficient funds. The Department has no ability to generate revenue from registration fees to offset the costs of the charitable raffle program until the fee amounts in existing regulations are updated. The structural imbalance of the program has severely limited the Department's ability to conduct appropriate oversight of the participants in the program to ensure raffles are held in accordance with the statute.

The Department proposes emergency amendments to the regulations to conform the fee structure to AB 888, to create a fiscally sound program where revenues more closely align with expenditures, to adjust fee amounts to fully offset the Department's costs not just to administer the program, but to enforce the requirements of the program, and to avoid any disruption in the registration process for eligible organizations that wish to hold raffles benefitting their local communities beginning in January 2019.

### **An Evaluation of Whether the Proposed Regulation Amendments Are Inconsistent or Incompatible with Existing State Regulations**

The Department determines that the regulations amendments are neither inconsistent nor incompatible with existing state regulations.

### **MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS**

These regulation amendments do not impose a mandate upon local agencies. There are no "state mandated local costs" in these regulations which require state reimbursement under Government Code section 17500.

### **COST ESTIMATE**

**Costs or Savings to State Agencies:** The anticipated revenue from the proposed fee increase will increase the Department's revenue from \$186,000 to approximately \$1,334,000 per fiscal year to offset costs incurred to administer and enforce the charitable raffle program. No other fiscal impact exists.

**Cost to Local Agencies or School Districts Which Must Be Reimbursed:** None.

**Nondiscretionary Costs or Savings to Local Agencies:** None.

**Cost or Savings in Federal Funding to State Agencies:** None.



### **Submission of Comments**

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 OAL, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency.

The text of the proposed emergency regulation amendments, all documents incorporated by reference, and the "Finding of Emergency" are posted on the Department's website at <http://oag.ca.gov/gambling/regulations>.

The Department plans to file the emergency rulemaking package with OAL at least five working days from the date of the notice for these proposed emergency regulation amendments. After submission of the proposed emergency to the OAL, the OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulation amendments as set forth in Government Code section 11349.6. If you would like to comment on the proposed emergency regulation amendments or the Finding of Emergency, your comments must be:

1. In writing;
2. Contain a notation that the comment is for OAL consideration in connection with proposed emergency regulations;
3. Identify the topic of Major League Sports Raffle Program; and,
4. Received by both the Department and the OAL within five days of the Department's filing with OAL.

Responding to comments is strictly at the Department's discretion. Send comments simultaneously to:

Department of Justice  
Bureau of Gambling Control  
P.O. Box 168024  
Sacramento, CA 95816  
Attn: Susanne George

Office of Administrative Law  
300 Capitol Mall, Suite 1250  
Sacramento, CA 95814

or

[BGC\\_Regulations@doj.ca.gov](mailto:BGC_Regulations@doj.ca.gov)