

FINDING OF EMERGENCY

The Department of Justice (Department) finds it necessary to readopt these emergency regulations a second time 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 readopt the emergency regulation a second time will immediately eliminate the Major League Sports Raffle Program (MLSRP), which provides charitable organizations an immediate opportunity to benefit from coordinated, uninterrupted provisions authorizing raffles as funding mechanisms to support beneficial and charitable works. This would irreparably harm eligible charities throughout the State of California. This Request to Readopt the Finding of Emergency hereby incorporates by reference all documents in the original rulemaking file, which is file number 2018-1221-10E.

Notice is hereby given that the Department proposes to readopt emergency regulations a second time as necessary for the immediate preservation of the public peace, health, safety, or general welfare. The Finding of Emergency, the proposed text, and other rulemaking documents relative to this rulemaking are available for review at: www.oag.ca.gov/gambling/regulations.

Subject Matter of Proposed Regulatory Action

Bureau of Gambling Control, Major League Sports Raffle Program

Existing Regulations to Be Amended

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

Changes to the Current Regulation Text

None.

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

The Department has made substantial progress and proceeded with diligence toward compliance with Government Code section 11346.1, subdivision (e). The Certificate of Compliance to permanently adopt the emergency regulation with changes was published in the California Regulatory Notice Register on May 24, 2019 (Register 2019, Number 21-Z). The final adoption package is currently being reviewed with Department management for submission to the Office of Administrative Law within the coming weeks.

Specific Facts Demonstrating the 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

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with eligible organizations 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 2018, the Legislature enacted urgency bill AB 888, extending the sunset date to January 1, 2024.

The Department implements the MLSRP 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 MLSRP. 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 received 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 MLSRP. (Pen. Code, § 320.6, subd. (o)(1)(B)(ii) and (o)(5).) But the full costs of administering and enforcing the MLSRP have outpaced revenues generated from the program.

In 2016, the Department adopted emergency regulations implementing the MLSRP, 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 initially participating in the MLSRP 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.

By the end of 2018, the revenue received by the Department from the statutory event fee, and the regulatory registration fees did not fully offset the Department's costs to administer and enforce the MLSRP, or to repay the General Fund loan. Since its inception, the program has generated revenues of \$260,000 in fiscal year 2016-17, and \$186,000 in fiscal year 2017-18. In contrast, the Department's costs to simply administer the program were \$298,000 in fiscal year 2016-17, and \$309,000 in fiscal year 2017-18. The Department has not yet been able to fulfill its oversight and

enforcement role because the program expenditures 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 MLSRP.

Compounding the program's structural imbalance, the amendments to Penal Code 320.6 by AB 888 invalidated the fee structure codified in the program's 2017 regulations by imposing new discretionary minimum fees. While the Department has authority to set registration fees higher than the statutory minimum, it does not have authority to set registration fees lower than the new minimum fees set by AB 888. The registration fees in the 2017 regulations were 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 MLSRP. After AB 888, the Department had no ability to raise any revenue from registration fees to offset its costs, and the \$200 statutorily mandated event fee was inadequate to cover these costs. This invalidation of program fees severely limited 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. (Pen. Code § 320.6, subds. (o)(10) and (11)(A); Cal. Code Regs., tit. 11, § 2080.)

To address the problem, the Department promulgated emergency regulations effective December 31, 2018, amending sections 2084, 2086, 2088, 2089, 2090, 2092, 2095, and 2107 of article 8 to title 11, division 3, chapter 1 of the California Code of Regulations. The emergency regulations adjusted the registration fees and temporarily established a fiscally sound fee structure to ensure a relatively seamless transition in the registration process without a disruption of fundraising activities for participating eligible organizations whose associated teams were hosting home games beginning January 1, 2019.

The Department received approval to extend the finding of emergency from the Office of Administrative Law on July 1, 2019. The emergency regulations will expire on October 1, 2019. Should the proposed second readoption not be granted, the program will cease operation. These emergency regulations are necessary for the ongoing operation of the MLSRP, providing eligible nonprofit organizations an additional fundraising mechanism. Readoption of these emergency regulations will ensure that a proper regulatory and administrative framework remains in place for the implementation of the program until permanent regulations can be adopted.

NECESSITY STATEMENT

Last year, the Legislature passed AB 888, extending the MLSRP for another five years. At the end of 2018, the Department had 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, subdivision (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.

Of the \$1,005,000 loaned to the Raffle Fund by the General Fund, no more than \$335,000 may be provided annually to the Department. (Pen. Code, § 320.6, subd. (o)(5)(B)(i).) The Department has used the loan as follows: \$298,000, for fiscal year 2016-2017 and \$309,000 for fiscal year 2017-2018. It is anticipated that the Department will use an additional \$335,000 of the loan for the current fiscal year, and that at the end of the current fiscal year, the available loan amount will be \$63,000. Repayment of the loan to the General Fund is required as soon as there is sufficient money in the Raffle Fund to repay the loan, but no later than December 31, 2023. (Pen. Code, § 320.6, subd. (o)(5)(B)(ii).) Interest on the loan is required to be paid from the Raffle Fund at the rate accruing to moneys in the Pooled Money Investment Account. (Pen. Code, § 320.6, subd. (o)(5)(B)(iii).)

Raffle Fund Status. When the loan amount to the Department is subtracted from fees collected in the MLSRP through the end of the current fiscal year (\$590,904), it is clear that the Department has the immediate need to generate additional fees from registrants in the program to both: (1) repay the loan; and (2) operate the MLSRP. Due to the unavailability of sufficient loan proceeds, the Department has the immediate need to adjust the annual registration fees to ensure that fees will fully offset its anticipated reasonable costs (see below) to provide required oversight of the MLSRP until at least January 1, 2024.

Department's Costs. Penal Code section 320.6 requires the Department to carry out important and costly oversight functions, including investigation and prosecution of all suspected violations of section 320.6 and its implementing regulations. The MLSRP is anticipated to continue until at least January 1, 2024, the sunset date now provided in Penal Code section 320.6. The Department's minimum cost estimates are based on employing the persons provided in the table below to fulfill its statutorily mandated oversight functions for the authorized duration of the MLSRP. The following chart reflects the position and spending authority the Department believes is necessary to have a fully staffed and operational MLSRP. The Department will continue to work with other agencies and the Legislature to fully staff and fund the MLSRP. Because the MLSRP sunsets on January 1, 2024, the fiscal year 2023-2024 estimates in the table below cover only six months.

MLSRP						
Classification	2019-20	2020-21	2021-22	2022-23	2023-24	Total
Investigative Auditor 1	\$153,879	\$142,196	\$142,196	\$142,196	\$73,098	\$653,566
Investigative Auditor 2	\$153,879	\$142,196	\$142,196	\$142,196	\$73,098	\$653,566
Investigative Auditor 3	\$153,879	\$142,196	\$142,196	\$142,196	\$73,098	\$653,566

Associate Governmental Program Analyst	\$148,616	\$136,933	\$136,933	\$136,933	\$70,467	\$ 629,882
Special Agent	\$299,668	\$240,548	\$240,548	\$240,548	\$133,763	\$1,155,075
Deputy Attorney General	\$296,128	\$288,071	\$288,071	\$288,071	\$157,199	\$1,317,540
Legal Secretary	\$70,015	\$64,939	\$64,939	\$64,939	\$33,749	\$298,581
Information Technology Specialist (Overtime Only)	\$2,090	\$2,090	\$2,090	\$2,090	\$1,045	\$9,405
Total	\$1,278,155	\$1,159,170	\$1,159,170	\$1,159,170	\$615,517	\$5,371,182
Request	\$1,278,000	\$1,160,000	\$1,160,000	\$1,160,000	\$616,000	\$5,374,000
Loan Repayment (loan plus Pension/Pro Rata)	\$56,000	\$174,000	\$174,000	\$174,000	\$49,000	\$627,000
Total Fee Recovery Required	\$1,334,000	\$1,334,000	\$1,334,000	\$1,334,000	\$665,000	\$6,001,000

Penal Code section 320.6 contains three types of annual registration fees. To cover the reasonable costs of the Department to administer and enforce section 320.6, the Department may require minimum annual registration fees from: (1) an eligible organization; (2) a manufacturer or distributor of raffle-related products or services; and (3) a person affiliated with an eligible organization who conducts the manual draw. A fourth source of fees is the individual raffle event fees, which are now set at \$200 by statute. The Department will need to collect the following annual registration and raffle event fees to meet its cost estimates of generating \$1,334,000 per year, to cover total cost estimates, divided over the 4.5 years of the program.

New Fee Schedule		
2018 Participants - number¹	FEE	EST. REV
Eligible Organizations - 20	\$14,400	\$288,000
Manufacturers/Distributors - 2	\$432,000	\$864,000
Manual Drawers – approximately 100	\$20	\$2,000 ²
Raffle Events - 900	\$200	\$180,000
		\$1,334,000

Once the Department determined what its costs for the administration of the MLSRP as well as repayment of the General Fund loan would be, it had to resolve how to apportion fees required of participants. When considering the total number of participating organizations, manufacturers and distributors of raffle-related products and services, the Department first deducted from the amount needed the fees anticipated for event registrations and manual draw supervisors, leaving a balance of \$1,152,000. Next, the Department contemplated charging a fee in equal amounts to all eligible organizations and manufacturers and distributors of raffle-related products and services, which would be \$52,364 per entity. This amount would have most certainly priced a great majority of the eligible organizations out of participating in the MLSRP. The next percentage split contemplated was 75% of

¹ These numbers are based on the number of registrants and registered raffle events in 2018.

\$1,152,000 split evenly between the two existing manufacturers and distributors of raffle-related products and services, and 25% of \$1,152,000 split evenly between the 20 eligible organizations. This is how the Department determined the fee amount of \$432,000 for each manufacturer and distributor of raffle-related products and services and the fee amount of \$14,400 for each eligible organization. The percentages themselves adjust to approximately 65% and 22%, when coupled with the anticipated fees generated by event registrations and manual draw registrations, which is 13%. Since the costs related to the administration, audit, enforcement, and compliance of the MLSRP are in no way absorbable by the Department, the fee amounts could not be rounded down or adjusted without an even greater resulting deficit.

The majority of registrants in the MLSRP are eligible nonprofit organizations established by or affiliated with major league sports teams or associations and manual draw supervisors, as provided in Penal Code section 320.6. The eligible organizations are nonprofit entities conducting fundraising activities to the benefit of the constituents of the State of California. The manual draw supervisors are either volunteers or mostly part-time employees of the nonprofit organizations who conduct the raffles. The eligible organizations are prohibited by Penal Code section 320.6 from using any proceeds from the sale of raffle tickets to cover costs related to the conduct or operation of raffles, leaving at their disposal other revenues from the organization to cover the registration fees required to participate in the MLSRP.

The other registrants are vendors who sell raffle-related products and services to eligible organizations. There are currently no California-based entities registered to participate as manufacturers or distributors of raffle-related products or services in the MLSRP. The two registrants in this category are both foreign, for-profit corporations providing goods and services to eligible organizations in the MLSRP.

Because eligible organizations and persons affiliated with those organizations may not be in a position to immediately pay significantly higher costs to participate in the MLSRP, the Department has determined that approximately 65 percent of the initial costs of the MLSRP should be paid by the two manufacturers or distributors of raffle-related products or services that currently participate in the program and 22 percent of the costs should be paid by the eligible organizations, and the remaining 13 percent from other fees imposed on manual draw supervisors and event registrations. The Department used this distribution apportioning a higher percentage of the fee to the vendors to allow the teams that generated less revenue to continue to participate in the MLSRP. The data from posted raffle sales totals for 2018 shows that five of the 20 eligible organizations registered posted annual sales totals below \$100,000 for 2018; 12 generated sales between \$100,000 and \$926,000; and three eligible organizations generated raffle sales between \$1.08 million to \$3.8 million. It should be noted that the five eligible organizations with the lowest grossing raffle sales are eligible organizations from minor league affiliates of major league teams.

The Department finds it reasonable to collect annual registration fees totaling \$432,000 from manufacturers or distributors of raffle-related products or services because unlike the eligible organizations, the vendors of raffle-related products or services are in a position to pass on a portion of the costs of the fee increase in the form of higher prices to eligible organizations that generate a

much higher revenue from the MLSRP. Also, the vendors are in the best position to encourage non-participating yet eligible organizations to register for the MLSRP through marketing efforts which will further offset costs of the fee increase. In addition, the Department finds it reasonable to collect annual registration fees in the amount of \$14,400 from each eligible organization. As discussed above, this increase above the minimum amount identified in statute will likely not cost smaller eligible organizations with lower grossing raffle sales from participating in the MLSRP yet the anticipated amounts from these fees will still help offset the costs incurred by the Department. Last, the Department has also determined that increasing fees for persons who conduct the manual draws, from \$10 to \$20, the minimum amount specified in Penal Code section 320.6, is reasonable and will further assist to offset the Department's costs to administer and oversee the program.

The Department recognizes that the fee amounts are higher than the minimum amounts provided in statute; however, the costs related to the administration, compliance, audit, and enforcement activities are not absorbable into existing funding, nor is the workload in existing programs. The Department implements the MLSRP through its Bureau of Gambling Control (Bureau). 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, continued, 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.

The Department proposes the readoption of the following regulation sections to continue the new fee structure and to make the regulations consistent with AB 888:

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§ 2084. Forms

Section 2084 identifies and incorporates by reference the various forms the Department uses to implement the program. Readoption of amendments to this section would continue to incorporate updated versions 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

Section 2086 section describes how an eligible organization can register with the Department. Readoption of amendments to this section would continue to 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

Section 2088 identifies responsibilities of fiduciaries of eligible organizations. Readoption of amendments to this section would continue to incorporate an updated version of the registration form and a new requirement imposed by AB 888.

§ 2089. Raffle Registration; Registered Event

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

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

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

§ 2092. Manual Draw Supervisor Registration

Section 2092 describes how a manual draw supervisor affiliated with an eligible organization can register with the Department. Readoption of amendments to this section would continue to 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

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

§ 2107 Eligible Organization – Annual Financial Report

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. Readoption of amendments to this section would continue to incorporate an updated version of the form.

Forms Incorporated by Reference

The Bureau requests readoption of following forms which were amended and incorporated in the emergency regulation to implement the new fee structure and make the forms consistent with statute as amended by AB 888:

- Major League Sports Raffle Eligible Organization Annual 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

None.

AUTHORITY AND REFERENCE CITATIONS

Authority and Reference: Penal Code section 320.6.

Benefits of the Proposed Second Readoption of Emergency Regulations

Pre-emergency regulations impose registration fees that are insufficient to cover the costs of administering the MLSRP and 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 under the pre-emergency regulations to generate revenue from registration fees to offset the costs of the. 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.

Readoption of the emergency regulations will continue a fiscally sound program where revenues more closely align with expenditures, will keep in place fee amounts that will fully offset the Department's costs not just to administer the program, but to enforce the requirements of the program, and will continue to avoid any disruption in the registration process for eligible organizations that wish to continue holding raffles benefitting their local communities.

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

The Department performed a search of existing state regulations and determines that the regulations amendments are neither inconsistent nor incompatible with existing state regulations.

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 MLSRP. 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.

Notice of Intent to Readopt Emergency Regulations

This notice is sent in accordance with Government Code section 11346.1, subdivision (a)(2), and California Code of Regulations section 48, which require State of California agencies to give five (5) working-day advance notice of intent to readopt emergency regulations a second time 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

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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>.

Public Comment

After submission of the proposed second request 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.

The Department plans to file the second request for readoption of the MLSRP 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: BGC_Regulations@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.

Readoption 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 administrative action may be directed to BGCSportsRaffle@doj.ca.gov or by calling Susanne George at (916)830-9032. The backup contact person for these inquiries is Riann Kopchak at (916)830-9049 or e-mail Riann.Kopchak@doj.ca.gov.