

AMENDED IN ASSEMBLY MARCH 20, 2018

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

**ASSEMBLY BILL**

**No. 3199**

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**Introduced by Assembly Member Holden**

February 16, 2018

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An act to amend Section 320.5 of the Penal Code, relating to ~~CalWORKs~~: charitable raffles.

LEGISLATIVE COUNSEL'S DIGEST

AB 3199, as amended, Holden. ~~CalWORKs: sanctions~~. *Charitable raffles: firearms.*

*Existing law requires the transfer of a firearm to be conducted through a licensed dealer. Existing law also requires a licensed dealer processing the transfer of a firearm to conduct a background check of the recipient, to hold the firearm for a designated waiting period before releasing the firearm, and to require the recipient to possess a safety certificate and demonstrate safe handling of the firearm.*

*Existing law prohibits any lottery, as defined, including a raffle, except as specified. A violation of this prohibition is a misdemeanor.*

*The California Constitution authorizes the Legislature to permit private, nonprofit 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.*

*Existing statutory law authorizes raffles conducted by eligible organizations for beneficial or charitable purposes, if they are conducted in accordance with certain requirements.*

*This bill would prohibit an authorized raffle from having a firearm, as defined, as a prize. A violation of this prohibition would render such*

*a raffle nonexempt and therefore violate the prohibition on lotteries, the violation of which is a misdemeanor.*

*By narrowing the exemption to prohibited lotteries and expanding the scope of an existing crime, this bill would impose a state-mandated local program.*

*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 no reimbursement is required by this act for a specified reason.*

~~Existing law provides for the California Work Opportunity and Responsibility to Kids (CalWORKs) program, under which each county provides cash assistance and other benefits to qualified low-income families and individuals. Existing law generally requires a recipient of CalWORKs benefits to participate in welfare-to-work activities as a condition of eligibility for aid. Under existing law, when an individual fails or refuses to comply with specified components of the CalWORKs program without good cause, the individual is subject to prescribed financial sanctions.~~

~~This bill would express the intent of the Legislature to enact legislation to assist sanctioned CalWORKs recipients to return to compliance through the use of an incentive program.~~

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

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

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

3     320.5. (a) Nothing in this chapter applies to any raffle  
4     conducted by an eligible organization as defined in subdivision  
5     (c) for the purpose of directly supporting beneficial or charitable  
6     purposes or financially supporting another private, nonprofit,  
7     eligible organization that performs beneficial or charitable purposes  
8     if the raffle is conducted in accordance with this section.

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

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

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

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

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

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

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

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

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

1 (c) For purposes of this section, “eligible organization” means  
 2 a private, nonprofit organization that has been qualified to conduct  
 3 business in California for at least one year prior to conducting a  
 4 raffle and is exempt from taxation pursuant to Sections 23701a,  
 5 23701b, 23701d, 23701e, 23701f, 23701g, 23701k, 23701l, 23701t,  
 6 or 23701w of the Revenue and Taxation Code.

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

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

17 (f) (1) ~~No~~A raffle otherwise permitted under this section ~~may~~  
 18 *shall not* be conducted, nor ~~may~~ *shall* tickets for a raffle be sold,  
 19 within an operating satellite wagering facility or racetrack inclosure  
 20 licensed pursuant to the Horse Racing Law (Chapter 4  
 21 (commencing with Section 19400) of Division 8 of the Business  
 22 and Professions Code) or within a gambling establishment licensed  
 23 pursuant to the Gambling Control Act (Chapter 5 (commencing  
 24 with Section 19800) of Division 8 of the Business and Professions  
 25 Code).

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

- 35 (A) Lists, descriptions, photographs, or videos of the raffle  
 36 prizes.
- 37 (B) Lists of the prize winners.
- 38 (C) The rules of the raffle.
- 39 (D) Frequently asked questions and their answers.

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

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

8 (g) *A raffle otherwise permitted under this section shall not*  
9 *have any firearm, as defined in Section 16520, except an antique*  
10 *firearm, as defined in subdivision (c) of Section 16170, as a prize.*

11 ~~(g) No~~

12 (h) *An individual, corporation, partnership, or other legal entity*  
13 *shall not hold a financial interest in the conduct of a raffle, except*  
14 *the eligible organization that is itself authorized to conduct that*  
15 *raffle, and any private, nonprofit, eligible organizations receiving*  
16 *financial support from that charitable organization pursuant to*  
17 *subdivisions (a) and (b).*

18 ~~(h)~~

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

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

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

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

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

1 this section. The fee shall be deposited by the department into the  
2 General Fund.

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

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

11 (5) The department shall maintain an automated database of all  
12 registrants. Each local law enforcement agency shall notify the  
13 department of any arrests or investigation that may result in an  
14 administrative or criminal action against a registrant. The  
15 department may audit the records and other documents of a  
16 registrant to ensure compliance with this section.

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

- 19 (A) The aggregate gross receipts from the operation of raffles.
- 20 (B) The aggregate direct costs incurred by the eligible  
21 organization from the operation of raffles.
- 22 (C) The charitable or beneficial purposes for which proceeds  
23 of the raffles were used, or identify the eligible recipient  
24 organization to which proceeds were directed, and the amount of  
25 those proceeds.

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

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

40 (i)

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

9 ~~(j)~~

10 (k) Each action and hearing conducted to deny, revoke, or  
11 suspend a registry, or other administrative action taken against a  
12 registrant shall be conducted pursuant to the Administrative  
13 Procedure Act (Chapters 4.5 (commencing with Section 11400)  
14 and 5 (commencing with Section 11500) of Part 1 of Division 3  
15 of Title 2 of the Government Code). The department may seek  
16 recovery of the costs incurred in investigating or prosecuting an  
17 action against a registrant or applicant in accordance with those  
18 procedures specified in Section 125.3 of the Business and  
19 Professions Code. A proceeding conducted under this subdivision  
20 is subject to judicial review pursuant to Section 1094.5 of the Code  
21 of Civil Procedure.

22 ~~(k)~~

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

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

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

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

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

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

1     *SEC. 2. No reimbursement is required by this act pursuant to*  
2     *Section 6 of Article XIII B of the California Constitution because*  
3     *the only costs that may be incurred by a local agency or school*  
4     *district will be incurred because this act creates a new crime or*  
5     *infraction, eliminates a crime or infraction, or changes the penalty*  
6     *for a crime or infraction, within the meaning of Section 17556 of*  
7     *the Government Code, or changes the definition of a crime within*  
8     *the meaning of Section 6 of Article XIII B of the California*  
9     *Constitution.*

10    ~~SECTION 1. It is the intent of the Legislature to enact~~  
11    ~~legislation to assist sanctioned CalWORKs recipients to return to~~  
12    ~~compliance through the use of an incentive program.~~