Introduction

In 1973, the legislature adopted Chapter 9.46, the Gambling Act. The legislature stated, “The public policy of the state of Washington on gambling is to keep the criminal element out of gambling and to promote the social welfare of the people by limiting the nature and scope of gambling activities and by strict regulation and control (RCW 9.46.010).” The Gambling Commission was created (RCW 9.46.040) and its powers and duties enumerated in RCW 9.46.070.

The legislature also declared that “the raising of funds for the promotion of bona fide charitable or nonprofit organizations is in the public interest as is participation in such activities and social pastimes as are hereinafter in this chapter authorized.”

RCW 9.46.070 authorizes the five-member Gambling Commission to issue annual licenses for charitable/nonprofit organizations. Specifically, RCW 9.46.070(1) authorizes the Commission to issue licenses permitting bona fide charitable or nonprofit organizations to, in relevant part, conduct raffles, bingo games, social card games, amusement games, and utilize punch boards and pull tabs.

RCW 9.46.0209(1)(a)(i) sets forth several requirements that charitable and nonprofit organizations must meet in order to be allowed to receive a gambling license and/or engage in gambling activities. These organizations must:

- Be organized under Washington State law as a: religious organization (corporation sole); grange; fraternal society; agricultural fair; or a nonprofit corporation organized for eleven purposes, including charitable, benevolent, or civic purposes;
- Have been in continuous operation for at least twelve calendar months prior to applying for a license or engaging in a gambling activity; and
- Demonstrate to the Commission that the organization has made significant progress toward the accomplishment of its charter during the previous twelve calendar months prior to application or license renewal.

The Legislature indicates that the failure for contributions to an organization to qualify as a charitable contribution deduction or that the organization is not otherwise exempt from
payment of federal income taxes is evidence that the organization is not charitable in nature and should not be considered qualified under the Gambling Act.

The eleven purposes a nonprofit can be organized for in RCW 9.46.0209(1)(a)(i) is an exclusive list and has not been changed since enactment of the Gambling Act in 1973. Although this list has not been amended since 1973, other laws regulating charitable organizations have evolved, including charitable purposes that will allow a nonprofit organization qualify for 501(c)(3) federal tax exemption status or be registered as a state charity with the Secretary of State’s Office under RCW 19.09, the Charitable Solicitations Act.

However, this section has been amended three times since 2000 to allow for credit unions, combined fund drive, and cities and counties to be considered a bona fide charitable or nonprofit organization for limited raffle opportunities.

The Gambling Commission believes the current regulatory framework prevents fraudulent organizations from engaging in gambling activities. However, it also prevents some charitable organizations or organizations who have a IRS 501(c)(3) tax exempt status from being qualified. Therefore, the Gambling Commission requests approval to modify the qualifications in RCW 9.46.0209(1)(a)(i) to ensure certain charitable and nonprofit organizations can qualify and make a change to the requirements in RCW 9.26.0209(2) to clarify the agency’s licensing authority based on recent administrative case decision made by the agency’s Commissioners.

**Statement of Need**

This request is tied to the Governor's Priorities of having Healthy and Safe Communities and Efficient, Effective, and Accountable Government. The Gambling Commission is a limited jurisdiction law enforcement agency and the only statewide agency devoted to gambling regulation, licensing and enforcement. The Gambling Commission is a non-appropriated agency and does not receive any general fund dollars. Therefore, it must meet its regulatory obligations by setting fees to generate funds necessary to cover all costs of licensing and enforcement.

In the past few years, agency staff has needed to expend significant resources on processing and defending licensing application denials for charitable or nonprofit organizations who believed they should be allowed to receive a gambling license under RCW 9.46.0209. Many of these organizations appear to meet the legislative intent of allowing charitable and nonprofit organizations to receive gambling licenses under the Gambling Act. However, their identified purposes did not meet the exclusive list of purposes identified in RCW 9.46.0209(1)(a)(i). One significant example is Seattle University who is organized for both approved purposes and non-approved purposes.

Adding RCW 19.09, the Charitable Solicitations Act and the purposes of “religious” and “scientific” better aligns the Gambling Act with our state charity laws. These changes also better aligns our Gambling Act with purposes that are approved for 501(c)(3) federal tax exemption status.

These changes will allow the Gambling Commission to be more effective and efficient with its licensing and enforcement resources and better meet its core mission of protecting the public by ensuring that gambling is legal and honest in Washington State.

Additionally, adding language that the agency can issue licenses to credit unions and combined fund drive organizations clarifies the agency’s licensing authority in response to an administrative decision made by the agency’s Commissioners in the past year.
Lastly, the primary laws and rules utilized by the Gambling Commission to prevent fraudulent organizations from engaging in gambling activities and ensure that organizations put their gambling revenues towards their stated purposes remains intact. All qualified charitable and nonprofit organizations will continue to be strictly regulated and must continue to follow all regulatory requirements under the Gambling Act and Commission rules.

Therefore, making these minor changes to align state and federal charity laws to allow some organizations to receive gambling licenses is in the best interest of the state and the Gambling Commission. Further, these changes will provide some needed clarity to the Gambling Act, allow respected local charities and nonprofits to raise money for projects and services that help Washingtonians, and allow the Gambling Commission to be more effective and efficient in regulating charitable and nonprofit organizations engaged in gambling activities.

**A summary of the major provisions of the bill and their impact on current law.**
Amending the bona fide charitable or nonprofit definition to include organizations registered under RCW 19.09, the Charitable Solicitations Act, as an additional type of organization allowed to conduct gambling activities. The amendment also adds two additional organizational purposes of religious and scientific as approved purposes for an organization to be considered a bona fide charitable or nonprofit organization. Lastly, the bill clarifies that the Gambling Commission can issue a raffle license to a credit union or combined fund drive organization.

**Names, titles, and phone numbers of subject matter experts in your agency who are available to answer policy and fiscal questions related to the proposed bill.**
Brian Considine, Managing Attorney / Legislative Liaison, (360) 486-3469, Brian.Considine@wsgc.wa.gov
David Trujillo, Director, (360) 486-3446, Dave.Trujillo@wsgc.wa.gov
Tina Griffin, Assistant Director, (360) 486-3546, Tina.Griffin@wsgc.wa.gov
Jennifer LaMont, Agent in Charge, Licensing Unit, (360) 486-3571, Jennifer.Lamont@wsgc.wa.gov
Chris Stanley, Chief Financial Officer, (360)486-3489, christopher.stanley@wsgc.wa.gov

**A complete list of all other government agencies affected by the bill, a summary of their positions, and each agency’s representative who may be contacted on the issue. If no other government agency is affected, please indicate.**

No other state agencies would be affected by this agency request legislation.

**Irrespective of whether a bill has a fiscal impact, a completed fiscal note from each of the affected state agency(s) including local government.**

Attached.
Stakeholder analysis that includes a complete list of affected stakeholders as well as tribal governments. For each, provide the entities names, contact person and any concerns and position.

The Gambling Commission sent an email to over 800 charitable and nonprofit organizations that are licensed by the agency. We received approximately twelve responses and none were opposed to this legislation.

This proposal was also presented to the agency’s Commissioners at the Gambling Commission’s August and September 2019 public meeting with stakeholders and licensees in attendance.

Lastly, the Gambling Commission sent notice, along with the proposed amendment to RCW 9.46.0209, to the following asking for a response by Tuesday, August 27, 2019:

- Seattle University, Jordan Talge, Associate University Counsel, Supports the proposal (attached);
- Washington Nonprofits, David Streeter, Director of Public Policy and Advocacy, Supports the proposal (attached). Also, suggests broader changes to the Gambling Act not under consideration at this time.
- Secretary of State’s Office, Patrick Reed, Public and Government Affairs Manager, Neutral but provided feedback on RCW 19.09 and how they regulate entities registered under this statute;
- Recreational Gaming Association, Dolores Chiechi, Executive Director; No response at this time
- Washington Indian Gaming Association, Rebecca Kaldor, Executive Director; No response at this time; and
- Washington State Bar Association, Business Section, Nonprofit Corporations Committee, Judith Andrews, Chair, No response at this time.

An official Code Reviser draft of the proposed legislation containing the Z-draft number.

Attached, Z-0563.2.

AAG review.

AAG Suzanne Becker has completed a review of the proposal.

Agency’s Decision Package.

N/A
BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: Z-0563.2/19 2nd draft
ATTY/TYPIST: CL:eab
BRIEF DESCRIPTION: Concerning nonprofit organizations.
AN ACT Relating to nonprofit organizations; and amending RCW 9.46.0209.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Sec. 1. RCW 9.46.0209 and 2017 c 133 s 1 are each amended to read as follows:

(1)(a) "Bona fide charitable or nonprofit organization," as used in this chapter, means:

(i) Any organization duly existing under the provisions of chapter 24.12, 24.20, or 24.28 RCW, any agricultural fair authorized under the provisions of chapters 15.76 or 36.37 RCW, or any nonprofit corporation duly existing under the provisions of chapter 19.09 or 24.03 RCW for charitable, benevolent, eleemosynary, educational, civic, patriotic, political, religious, scientific, social, fraternal, athletic, or agricultural purposes only, or any nonprofit organization, whether incorporated or otherwise, when found by the commission to be organized and operating for one or more of the aforesaid purposes only, all of which in the opinion of the commission have been organized and are operated primarily for purposes other than the operation of gambling activities authorized under this chapter; or
(ii) Any corporation which has been incorporated under Title 36
U.S.C. and whose principal purposes are to furnish volunteer aid to
members of the armed forces of the United States and also to carry on
a system of national and international relief and to apply the same
in mitigating the sufferings caused by pestilence, famine, fire,
floods, and other national calamities and to devise and carry on
measures for preventing the same.

(b) An organization defined under (a) of this subsection must:

(i) Have been organized and continuously operating for at least
twelve calendar months immediately preceding making application for
any license to operate a gambling activity, or the operation of any
gambling activity authorized by this chapter for which no license is
required; and

(ii) Demonstrate to the commission that it has made significant
progress toward the accomplishment of the purposes of the
organization during the twelve consecutive month period preceding the
date of application for a license or license renewal. The fact that
contributions to an organization do not qualify for charitable
contribution deduction purposes or that the organization is not
otherwise exempt from payment of federal income taxes pursuant to the
internal revenue code of 1954, as amended, shall constitute prima
facie evidence that the organization is not a bona fide charitable or
nonprofit organization for the purposes of this section.

(c) Any person, association or organization which pays its
employees, including members, compensation other than is reasonable
therefor under the local prevailing wage scale shall be deemed paying
compensation based in part or whole upon receipts relating to
gambling activities authorized under this chapter and shall not be a
bona fide charitable or nonprofit organization for the purposes of
this chapter.

(2) For the purposes of RCW 9.46.0315 and 9.46.110, a bona fide
nonprofit organization (also) can be licensed by the commission and
includes:

(a) A credit union organized and operating under state or federal
law. All revenue less prizes and expenses received from raffles
conducted by credit unions must be devoted to purposes authorized
under this section for charitable and nonprofit organizations; and

(b) A group of executive branch state employees that:
(i) Has requested and received revocable approval from the agency's chief executive official, or such official's designee, to conduct one or more raffles in compliance with this section;

(ii) Conducts a raffle solely to raise funds for either the state combined fund drive, created under RCW 41.04.033; an entity approved to receive funds from the state combined fund drive; or a charitable or benevolent entity, including but not limited to a person or family in need, as determined by a majority vote of the approved group of employees. No person or other entity may receive compensation in any form from the group for services rendered in support of this purpose;

(iii) Promptly provides such information about the group's receipts, expenditures, and other activities as the agency's chief executive official or designee may periodically require, and otherwise complies with this section and RCW 9.46.0315; and

(iv) Limits the participation in the raffle such that raffle tickets are sold only to, and winners are determined only from, the employees of the agency.

(3) For the purposes of RCW 9.46.0277, a bona fide nonprofit organization also includes a county, city, or town, provided that all revenue less prizes and expenses from raffles conducted by the county, city, or town must be used for community activities or tourism promotion activities.

--- END ---
August 6, 2019

VIA U.S. MAIL AND EMAIL to brian.considine@wsgc.wa.gov; ashlie.laydon@wsgc.wa.gov

Mr. Brian Considine  
Legal and Legislative Manager  
Washington State Gambling Commission  
P.O. Box 42400  
Olympia, WA 98504  

Re: Washington State Gambling Commission Amendment Proposal

Dear Mr. Considine:

Seattle University supports the Washington State Gambling Commission’s proposed draft legislation amending RCW 9.46.0209. This commonsense legislation would align the Washington State Gambling Act’s qualifications for bona fide charitable organizations with the commonly used qualifications listed in Section 501(c)(3) of the Internal Revenue Code.

To qualify as a tax-exempt nonprofit organization under Section 501(c)(3) of the Internal Revenue Code, an organization must be organized for “charitable, religious, educational, [or] scientific” purposes. Tracking these explicit federal qualifications, hundreds of nonprofit corporations across Washington—including Seattle University—define their exclusive organizational purposes as “charitable, religious, educational, or scientific.”

Only two of these federal qualifications appear in the Washington State Gambling Act, however. The Washington State Gambling Act recognizes bona fide charitable or nonprofit organizations as those whose purposes include only the following: “charitable, benevolent, eleemosynary, educational, civic, patriotic, political, social, fraternal, athletic or agricultural.” Because the Washington State Gambling Act does not list “religious” or “scientific” as qualifying purposes, the statute could be read to exclude hundreds of qualified nonprofits from participating in activities such as fundraising raffles simply because those nonprofits list the federal nonprofit purposes of “charitable, religious, educational, [or] scientific” in their articles of incorporation.

The Commission’s proposed legislation would eliminate this problem by adding “religious” and “scientific” to the gambling act’s list of qualified nonprofit purposes. This is an appropriately limited change that will have a positive effect on bona fide charitable organizations across the state. Seattle University appreciates the Commission’s attention to this important issue and looks forward to the enactment of the draft legislation.

Best Regards,

[Signature]

Jordan Talge  
Associate University Counsel
August 26, 2019

Washington State Gambling Commission
ATTN: Ashlie Laydon
PO Box 42400
Olympia, WA 98504

Dear Ms. Laydon,

Thank you very much for requesting stakeholder feedback on proposed legislative amendments to RCW 9.46.0209 -- Bona fide charitable or nonprofit organization. Washington Nonprofits, our state’s association for all nonprofits, fully supports the proposed changes.

We agree that adopting charitable and nonprofit classifications from state and federal law is a necessary step that will help both license seekers and the Gambling Commission. We are pleased that the Gambling Commission expects that this change will make the licensing process easier for everyone involved.

We are also pleased that the Gambling Commission is proposing changes that would allow more organizations to conduct licensed and authorized fundraisers to support their missions. Nonprofits are working tirelessly across our state to provide services and build community. This is an important step that will help more organizations raise money to support their work.

In addition to our supportive feedback on the proposal, we would like to submit two recommendations for the determination criteria contained in Sections 1(b)(i) and (ii) regarding length of the organization’s existence and work toward mission fulfillment.

For Section 1(b)(i), we recommend that the Gambling Commission use the charities database currently hosted and maintained by the Office of the Secretary of State, since all nonprofits are required to register with the office and report annually.

For section 1(b)(ii), we recommend the Gambling Commission work with stakeholders to establish objective criteria for determining "significant progress toward the accomplishment of the purposes of the organization" if it is going to keep this clause in the RCW. We recommend this because we do not believe that the Gambling Commission's role is to determine "significant progress toward the accomplishment of the purposes of the organization," since it leads into questions outside of the Gambling Commission's expertise. One item that could fulfill this requirement is an organization's federal IRS from 990, which contains a brief summary of the organization's work for a given year. We consider this to be appropriate documentation since the IRS has the explicit power to approve and dissolve tax-exempt nonprofit organizations.
Lastly, we request that the Gambling Commission clarify the language in Section 1(b)(ii) regarding non-tax-exempt organizations, which appears in the current RCW. Many nonprofit organizations are only registered as nonprofit corporations in the eyes of Washington State but not the IRS. We are concerned that these types of organizations could be disqualified from receiving a license because they are not registered with the IRS. Is that the Gambling Commission’s intent? Are there accommodations that could be made for organizations not registered with the IRS but registered with Washington State? And if so, what process would an organization need to undertake in order to receive a license without registering with the IRS?

I am planning to attend the hearing on September 12, 2019 to learn more about the proposal and offer testimony. Please feel free to contact me in advance of the Gambling Commission Hearing if Washington Nonprofits can provide additional information to you, or if we can provide advocacy to support these changes during the legislative session.

Thank you very much,

David Streeter
Director of Public Policy and Advocacy
Individual State Agency Fiscal Note

Bill Number: Z-0563.2  Title: An Act Relating to nonprofit organizations  Agency: 117-Washington State Gambling Commission

Part I: Estimates

☐ No Fiscal Impact

Estimated Cash Receipts to:

Non-zero but indeterminate cost. Please see discussion.

Estimated Operating Expenditures from:

Non-zero but indeterminate cost. Please see discussion.

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

☐ If fiscal impact is greater than $50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.

☒ If fiscal impact is less than $50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).

☐ Capital budget impact, complete Part IV.

☐ Requires new rule making, complete Part V.

Legislative Contact:  Phone:  Date: 09/05/2019
Agency Preparation:  Christopher Stanley  Phone: 360-486-3489  Date: 09/05/2019
Agency Approval:  Christopher Stanley  Phone: 360-486-3489  Date: 09/05/2019
OFM Review:  Phone:  Date: 
Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact
Briefly describe by section number, the significant provisions of the bill, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.

Section 1 of the proposed bill expands the Gambling Act to align the definition of nonprofit organization to the federal tax code.

II. B - Cash receipts Impact
Briefly describe and quantify the cash receipts impact of the legislation on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.

It is unknown how many additional licensees would result from this legislation. Because fees are dependent on gross gambling income levels, it is also unknown how much revenue would be derived from these licensees.

II. C - Expenditures
Briefly describe the agency expenditures necessary to implement this legislation (or savings resulting from this legislation), identifying by section number the provisions of the legislation that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing functions.

It is unknown how many additional licensees would result from this legislation, therefore licensing and regulation costs are also unknown.

Part III: Expenditure Detail

Part IV: Capital Budget Impact
NONE

Part V: New Rule Making Required
Identify provisions of the measure that require the agency to adopt new administrative rules or repeal/revise existing rules.
MEMORANDUM

DATE: September 4, 2019

TO: Brian Considine, Managing Attorney
Washington State Gambling Commission

FROM: Suzanne Becker, Assistant Attorney General
Office of the Attorney General, GCE Division, MS 40100

SUBJECT: Z-0563.2 – Concerning nonprofit organizations

Thank you for providing me with the opportunity to review this proposed legislation. I understand that the purpose of the proposed legislation is to better align RCW 9.46.0209 with current state charity laws.

I did not identify any legal prohibitions with this proposed legislation.