

CHAPTER 85

[Engrossed House Bill No. 830]

BUSINESS SITING—FACILITATION

AN ACT Relating to business siting; adding a new section to chapter 43.63A RCW; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 43.63A RCW to read as follows:

The department shall assist local governments to facilitate the siting of businesses in the state. This shall include:

(1) Developing policy guidelines and administrative procedures and practices that may be used by local governments to facilitate the siting and expansion of businesses;

(2) Developing model local government ordinances which facilitate the siting and expansion of businesses; and

(3) Providing, when requested, assistance to local governments in implementing the department's proposals which assist businesses.

The department shall revise its proposals as it considers appropriate. The initial proposals shall be compiled by November 1, 1985. The department shall report to the legislature by January 1, 1986, outlining the department's activities, progress in assisting local governments and businesses, and recommendations on legislative action to further facilitate the development of businesses within the boundaries of local governments.

NEW SECTION. Sec. 2. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House March 18, 1985.

Passed the Senate April 8, 1985.

Approved by the Governor April 18, 1985.

Filed in Office of Secretary of State April 18, 1985.

CHAPTER 86

[House Bill No. 310]

GAMBLING FOR COIN-OPERATED MUSIC

AN ACT Relating to gambling for coin-operated music; and amending RCW 9.46.020.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 1, chapter 139, Laws of 1981 as amended by section 1, chapter 207, Laws of 1984 and RCW 9.46.020 are each amended to read as follows:

(1) "Amusement game" means a game played for entertainment in which:

- (a) The contestant actively participates;
- (b) The outcome depends in a material degree upon the skill of the contestant;
- (c) Only merchandise prizes are awarded;
- (d) The outcome is not in the control of the operator;
- (e) The wagers are placed, the winners are determined, and a distribution of prizes or property is made in the presence of all persons placing wagers at such game; and
- (f) Said game is conducted or operated by any agricultural fair, person, association, or organization in such manner and at such locations as may be authorized by rules and regulations adopted by the commission pursuant to this chapter as now or hereafter amended.

Cake walks as commonly known and fish ponds as commonly known shall be treated as amusement games for all purposes under this chapter.

The legislature hereby authorizes the wagering on the outcome of the roll of dice or the flipping of or matching of coins on the premises of an establishment engaged in the business of selling food or beverages for consumption on the premises to determine which of the participants will pay for coin-operated music on the premises or certain items of food or beverages served or sold by such establishment and therein consumed. Such establishments are hereby authorized to possess dice and dice cups on their premises, but only for use in such limited wagering. Persons engaged in such limited form of wagering shall not be subject to the criminal or civil penalties otherwise provided for in this chapter: PROVIDED, That minors shall be barred from engaging in the wagering activities allowed by this chapter.

(2) "Bingo" means a game conducted only in the county within which the organization is principally located in which prizes are awarded on the basis of designated numbers or symbols on a card conforming to numbers or symbols selected at random and in which no cards are sold except at the time and place of said game, when said game is conducted by a bona fide charitable or nonprofit organization which does not conduct or allow its premises to be used for conducting bingo on more than three occasions per week and which does not conduct bingo in any location which is used for conducting bingo on more than three occasions per week, or if an agricultural fair authorized under chapters 15.76 and 36.37 RCW, which does not conduct bingo on more than twelve consecutive days in any calendar year, and except in the case of any agricultural fair as authorized under chapters 15.76 and 36.37 RCW, no person other than a bona fide member or an employee of said organization takes any part in the management or operation of said game, and no person who takes any part in the management or operation of said game takes any part in the management or operation of any game conducted by any other organization or any other branch of the

same organization, unless approved by the commission, and no part of the proceeds thereof inure to the benefit of any person other than the organization conducting said game. For the purposes of this subsection the organization shall be deemed to be principally located in the county within which it has its primary business office. If the organization has no business office, the organization shall be deemed to be located in the county of principal residence of its chief executive officer: PROVIDED, That any organization which is conducting any licensed and established bingo game in any locale as of January 1, 1981 shall be exempt from the requirement that such game be conducted in the county in which the organization is principally located.

(3) "Bona fide charitable or nonprofit organization" means: (a) any organization duly existing under the provisions of chapters 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 24.03 RCW for charitable, benevolent, eleemosynary, educational, civic, patriotic, political, 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 (b) 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. Such an organization must 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. It must have not less than fifteen bona fide active members each with the right to an equal vote in the election of the officers, or board members, if any, who determine the policies of the organization in order to receive a gambling license. An organization must 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.

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.

(4) "Bookmaking" means accepting bets as a business, rather than in a casual or personal fashion, upon the outcome of future contingent events.

(5) "Commercial stimulant". An activity is operated as a commercial stimulant, for the purposes of this chapter, only when it is an incidental activity operated in connection with, and incidental to, an established business, with the primary purpose of increasing the volume of sales of food or drink for consumption on that business premises. The commission may by rule establish guidelines and criteria for applying this definition to its applicants and licensees for gambling activities authorized by this chapter as commercial stimulants.

(6) "Commission" means the Washington state gambling commission created in RCW 9.46.040.

(7) "Contest of chance" means any contest, game, gaming scheme, or gaming device in which the outcome depends in a material degree upon an element of chance, notwithstanding that skill of the contestants may also be a factor therein.

(8) "Fishing derby" means a fishing contest, with or without the payment or giving of an entry fee or other consideration by some or all of the contestants wherein prizes are awarded for the species, size, weight, or quality of fish caught in a bona fide fishing or recreational event.

(9) "Gambling". A person engages in gambling if he stakes or risks something of value upon the outcome of a contest of chance or a future contingent event not under his control or influence, upon an agreement or understanding that he or someone else will receive something of value in the event of a certain outcome. Gambling does not include fishing derbies as defined by this chapter, parimutuel betting as authorized by chapter 67.16 RCW, bona fide business transactions valid under the law of contracts, including, but not limited to, contracts for the purchase or sale at a future date of securities or commodities, and agreements to compensate for loss caused by the happening of chance, including, but not limited to, contracts of indemnity or guarantee and life, health or accident insurance. In addition, a contest of chance which is specifically excluded from the definition of lottery under subsection (14) of this section shall not constitute gambling.

(10) "Gambling device" means: (a) Any device or mechanism the operation of which a right to money, credits, deposits or other things of value may be created, in return for a consideration, as the result of the operation of an element of chance; (b) any device or mechanism which, when operated for a consideration, does not return the same value or thing of value for

the same consideration upon each operation thereof; (c) any device, mechanism, furniture, fixture, construction or installation designed primarily for use in connection with professional gambling; and (d) any subassembly or essential part designed or intended for use in connection with any such device, mechanism, furniture, fixture, construction or installation. But in the application of this definition, a pinball machine or similar mechanical amusement device which confers only an immediate and unrecorded right of replay on players thereof, which does not contain any mechanism which varies the chance of winning free games or the number of free games which may be won or a mechanism or a chute for dispensing coins or a facsimile thereof, and which prohibits multiple winnings depending upon the number of coins inserted and requires the playing of five balls individually upon the insertion of a nickel or dime, as the case may be, to complete any one operation thereof, shall not be deemed a gambling device: PROVIDED FURTHER, That owning, possessing, buying, selling, renting, leasing, financing, holding a security interest in, storing, repairing and transporting such pinball machines or similar mechanical amusement devices shall not be deemed engaging in professional gambling for the purposes of this chapter and shall not be a violation of this chapter: PROVIDED FURTHER, That any fee for the purchase or rental of any such pinball machines or similar amusement devices shall have no relation to the use to which such machines are put but be based only upon the market value of any such machine, regardless of the location of or type of premises where used, and any fee for the storing, repairing and transporting thereof shall have no relation to the use to which such machines are put, but be commensurate with the cost of labor and other expenses incurred in any such storing, repairing and transporting.

(11) "Gambling information" means any wager made in the course of and any information intended to be used for professional gambling. In the application of this definition information as to wagers, betting odds and changes in betting odds shall be presumed to be intended for use in professional gambling: PROVIDED, HOWEVER, That this subsection shall not apply to newspapers of general circulation or commercial radio and television stations licensed by the federal communications commission.

(12) "Gambling premises" means any building, room, enclosure, vehicle, vessel or other place used or intended to be used for professional gambling. In the application of this definition, any place where a gambling device is found, shall be presumed to be intended to be used for professional gambling.

(13) "Gambling record" means any record, receipt, ticket, certificate, token, slip or notation given, made, used or intended to be used in connection with professional gambling.

(14) "Lottery" means a scheme for the distribution of money or property by chance, among persons who have paid or agreed to pay a valuable consideration for the chance.

For the purpose of this chapter, the following activities do not constitute "valuable consideration" as an element of a lottery:

(a) Listening to or watching a television or radio program or subscribing to a cable television service;

(b) Filling out and returning a coupon or entry blank or facsimile which is received through the mail or published in a bona fide newspaper or magazine, or in a program sold in conjunction with and at a regularly scheduled sporting event, or the purchase of such a newspaper, magazine or program;

(c) Sending a coupon or entry blank by United States mail to a designated address in connection with a promotion conducted in this state;

(d) Visitation to any business establishment to obtain a coupon, or entry blank;

(e) Mere registration without purchase of goods or services;

(f) Expenditure of time, thought, attention and energy in perusing promotional material;

(g) Placing or answering a telephone call in a prescribed manner or otherwise making a prescribed response or answer;

(h) Furnishing the container of any product as packaged by the manufacturer, or a particular portion thereof but only if furnishing a plain piece of paper or card with the name of the manufacturer or product handwritten on it is acceptable in lieu thereof: **PROVIDED**, That where any drawing is held by or on behalf of in-state retail outlets in connection with business promotions authorized under subsections (d) and (e) hereof, no such in-state retail outlet may conduct more than one such drawing during each calendar year and the period of the drawing and its promotion shall not extend for more than seven consecutive days: **PROVIDED FURTHER**, That if the sponsoring organization has more than one outlet in the state such drawings must be held in all such outlets at the same time except that a sponsoring organization with more than one outlet may conduct a separate drawing in connection with the initial opening of any such outlet; or

(i) The payment of an admission fee to gain admission to any agricultural fair authorized under chapters 15.76 or 36.37 RCW where (i) the scheme is conducted for promotional or advertising purposes, not including the promotion or advertisement of the scheme itself; and (ii) the person or organization conducting the scheme receives no portion of the admission fee either directly or indirectly and receives no other money for conducting the scheme either directly or indirectly, other than what might be received indirectly as a result of the success of the promotional or advertising aspect of the scheme.

For purposes of this chapter, radio and television broadcasting is hereby declared to be preempted by applicable federal statutes and the rules applicable thereto by the federal communications commission. Broadcast

programming, including advertising and promotion, that complies with said federal statutes and regulations is hereby authorized.

(15) "Member" and "bona fide member". As used in this chapter, member and bona fide member each mean a person accepted for membership in an organization eligible to be licensed by the commission under this chapter upon application, with such action being recorded in the official minutes of a regular meeting or who has held full and regular membership status in the organization for a period of not less than twelve consecutive months prior to participating in the management or operation of any gambling activity. Such membership must in no way be dependent upon, or in any way related to, the payment of consideration to participate in any gambling activity.

Member or bona fide member shall include only members of an organization's specific chapter or unit licensed by the commission or otherwise actively conducting the gambling activity: PROVIDED, That

(a) Members of chapters or local units of a state, regional or national organization may be considered members of the parent organization for the purpose of a gambling activity conducted by the parent organization, if the rules of the parent organization so permit;

(b) Members of a bona fide auxiliary to a principal organization may be considered members of the principal organization for the purpose of a gambling activity conducted by the principal organization. Members of the principal organization may also be considered members of its auxiliary for the purpose of a gambling activity conducted by the auxiliary; and

(c) Members of any chapter or local unit within the jurisdiction of the next higher level of the parent organization, and members of a bona fide auxiliary to that chapter or unit, may assist any other chapter or local unit of that same organization licensed by the commission in the conduct of gambling activities.

No person shall be a member of any organization if that person's primary purpose for membership is to become, or continue to be, a participant in, or an operator or manager of, any gambling activity or activities.

(16) "Player" means a natural person who engages, on equal terms with the other participants, and solely as a contestant or bettor, in any form of gambling in which no person may receive or become entitled to receive any profit therefrom other than personal gambling winnings, and without otherwise rendering any material assistance to the establishment, conduct or operation of a particular gambling activity. A natural person who gambles at a social game of chance on equal terms with the other participants therein does not otherwise render material assistance to the establishment, conduct or operation thereof by performing, without fee or remuneration, acts directed toward the arrangement or facilitation of the game, such as

inviting persons to play, permitting the use of premises therefor, and supplying cards or other equipment used therein. A person who engages in "bookmaking" as defined in this section is not a "player".

(17) A person is engaged in "professional gambling" when:

(a) Acting other than as a player or in the manner set forth in RCW 9.46.030 as now or hereafter amended, he knowingly engages in conduct which materially aids any other form of gambling activity; or

(b) Acting other than as a player, or in the manner set forth in RCW 9.46.030 as now or hereafter amended, he knowingly accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he participates or is to participate in the proceeds of gambling activity;

(c) He engages in bookmaking; or

(d) He conducts a lottery as defined in subsection (14) of this section.

Conduct under subparagraph (a), except as exempted under RCW 9.46.030 as now or hereafter amended, includes but is not limited to conduct directed toward the creation or establishment of the particular game, contest, scheme, device or activity involved, toward the acquisition or maintenance of premises, paraphernalia, equipment or apparatus therefor, toward the solicitation or inducement of persons to participate therein, toward the actual conduct of the playing phases thereof, toward the arrangement of any of its financial or recording phases, or toward any other phase of its operation. If a person having substantial proprietary or other authoritative control over any premises shall permit said premises to be used with the person's knowledge for the purpose of conducting gambling activity other than gambling activities as set forth in RCW 9.46.030 as now or hereafter amended, and acting other than as a player, and said person permits such to occur or continue or makes no effort to prevent its occurrence or continuation, he shall be considered as being engaged in professional gambling: PROVIDED, That the proprietor of a bowling establishment who awards prizes obtained from player contributions, to players successfully knocking down pins upon the contingency of identifiable pins being placed in a specified position or combination of positions, as designated by the posted rules of the bowling establishment, where the proprietor does not participate in the proceeds of the "prize fund" shall not be construed to be engaging in "professional gambling" within the meaning of this chapter: PROVIDED, FURTHER, That the books and records of the games shall be open to public inspection.

(18) "Punch boards" and "pull-tabs" shall be given their usual and ordinary meaning as of July 16, 1973, except that such definition may be revised by the commission pursuant to rules and regulations promulgated pursuant to this chapter.

(19) "Raffle" means a game in which tickets bearing an individual number are sold for not more than one dollar each and in which a prize or

prizes are awarded on the basis of a drawing from said tickets by the person or persons conducting the game, when said game is conducted by a bona fide charitable or nonprofit organization, no person other than a bona fide member of said organization takes any part in the management or operation of said game, and no part of the proceeds thereof inure to the benefit of any person other than the organization conducting said game.

(20) "Social card game" means a card game, including but not limited to the game commonly known as "Mah Jongg", which constitutes gambling and contains each of the following characteristics:

(a) There are two or more participants and each of them are players; and

(b) A player's success at winning money or other thing of value by overcoming chance is in the long run largely determined by the skill of the player; and

(c) No organization, corporation or person collects or obtains or charges any percentage of or collects or obtains any portion of the money or thing of value wagered or won by any of the players: PROVIDED, That this item (c) shall not preclude a player from collecting or obtaining his winnings; and

(d) No organization or corporation, or person collects or obtains any money or thing of value from, or charges or imposes any fee upon, any person which either enables him to play or results in or from his playing in excess of one dollar per half hour of playing time by that person collected in advance: PROVIDED, That a fee may also be charged for entry into a tournament for prizes, which fee shall not exceed twenty-five dollars, including all separate fees which might be paid by a player for various phases or events of the tournament: PROVIDED FURTHER, That this item (d) shall not apply to the membership fee in any bona fide charitable or nonprofit organization; and

(e) The type of card game is one specifically approved by the commission pursuant to RCW 9.46.070; and

(f) The extent of wagers, money or other thing of value which may be wagered or contributed by any player does not exceed the amount or value specified by the commission pursuant to RCW 9.46.070.

(21) "Thing of value" means any money or property, any token, object or article exchangeable for money or property, or any form of credit or promise, directly or indirectly, contemplating transfer of money or property or of any interest therein, or involving extension of a service, entertainment or a privilege of playing at a game or scheme without charge.

(22) "Whoever" and "person" include natural persons, corporations and partnerships and associations of persons; and when any corporate officer, director or stockholder or any partner authorizes, participates in, or knowingly accepts benefits from any violation of this chapter committed by

his corporation or partnership, he shall be punishable for such violation as if it had been directly committed by him.

(23) "Fund raising event" means a fund raising event conducted during any seventy-two consecutive hours but exceeding twenty-four consecutive hours and not more than once in any calendar year or a fund raising event conducted not more than twice each calendar year for not more than twenty-four consecutive hours each time by a bona fide charitable or nonprofit organization as defined in subsection (3) of this section other than any agricultural fair referred to thereunder, upon authorization therefor by the commission, which the legislature hereby authorizes to issue a license therefor, with or without fee, permitting the following activities, or any of them, during such event: Bingo, amusement games, contests of chance, lotteries and raffles: PROVIDED, That (a) gross wagers and bets received by the organization less the amount of money paid by the organization as winnings and for the purchase cost of prizes given as winnings do not exceed ten thousand dollars during the total calendar days of such fund raising event in the calendar year; (b) such activities shall not include any mechanical gambling or lottery device activated by the insertion of a coin or by the insertion of any object purchased by any person taking a chance by gambling in respect to the device; (c) only bona fide members of the organization who are not paid for such service shall participate in the management or operation of the activities, and all income therefrom, after deducting the cost of prizes and other expenses, shall be devoted solely to the lawful purposes of the organization; and (d) such organization shall notify the appropriate local law enforcement agency of the time and place where such activities shall be conducted. The commission shall require an annual information report setting forth in detail the expenses incurred and the revenue received relative to the activities permitted.

Bona fide charitable or nonprofit organizations holding a license to conduct a fund raising event may joint [join] together to jointly conduct a fund raising event if:

(i) Approval to do so is received from the commission; and

(ii) The method of dividing the income and expenditures and the method of recording and handling of funds are disclosed to the commission in the application for approval of the joint fund raising event and are approved by the commission.

The gross wagers and bets received by the organizations less the amount of money paid by the organizations as winnings and for the purchase costs of prizes given as winnings may not exceed ten thousand dollars during the total calendar days of such event. The net receipts each organization receives shall count against the organization's annual limit stated in this subsection.

A joint fund raising event shall count against only the lead organization or organizations receiving fifty percent or more of the net receipts for

the purposes of the number of such events an organization may conduct each year.

The commission may issue a joint license for a joint fund raising event and charge a license fee for such license according to a schedule of fees adopted by the commission which reflects the added cost to the commission of licensing more than one licensee for the event.

Passed the House February 27, 1985.

Passed the Senate April 8, 1985.

Approved by the Governor April 18, 1985.

Filed in Office of Secretary of State April 18, 1985.

CHAPTER 87

[Substitute Senate Bill No. 3001]

PORT COMMISSIONER VACANCIES

AN ACT Relating to port commissioner vacancies; and amending RCW 53.12.150.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 8, chapter 17, Laws of 1959 as last amended by section 1, chapter 11, Laws of 1983 and RCW 53.12.150 are each amended to read as follows:

A vacancy in the office of port commissioner created by death, resignation, or otherwise, shall be filled as follows:

(1) If there are simultaneously such number of vacancies that less than a majority of the full number of commissioners fixed by law remain in office, the legislative authority of the county shall within ~~((fifteen))~~ thirty days of such vacancies appoint the number of commissioners necessary to provide a majority. The commissioners thus appointed, together with any remaining commissioners, shall then, within ~~((fifteen))~~ sixty days of their appointment, meet and appoint the number of commissioners needed to complete the board of commissioners. However, if they fail to fill the remaining vacancies within this ~~((fifteen))~~ sixty-day period, the legislative authority of the county shall make the necessary appointments.

(2) If a majority of the full number of commissioners fixed by law remains on the board, the remaining commissioners shall fill any vacancies. However, if they fail to fill any vacancy within ~~((fifteen))~~ sixty days of its occurrence, ~~((or within fifteen days after March 10, 1983;))~~ the legislative authority of the county shall make the necessary appointment.

(3) ~~((Appointments made pursuant to this section shall be ad-interim to the next general election:))~~ A person appointed to fill a vacancy in the office of port commissioner shall serve until a successor is elected and qualified at the next district general election occurring sixty or more days after