

CHAPTER 7865
GAMBLING CONTROL BOARD
GAMBLING LICENSEES; DISCIPLINARY ACTIONS

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7865.0010 COMPLIANCE REVIEW GROUP.

Subpart 1. **Establishment.** The chair of the board must appoint at least one panel consisting of at least three board members to serve as a compliance review group. Compliance review groups will meet as necessary to exercise the powers and duties granted to them by subpart 2.

Subp. 2. **Powers and duties.** Each compliance review group:

A. may meet as necessary to consider alleged violations of laws or rules related to lawful gambling by persons licensed under Minnesota Statutes, chapter 349;

B. may direct the director to initiate investigations of persons licensed under Minnesota Statutes, chapter 349, for the purpose of determining whether laws or rules related to lawful gambling have been violated;

C. may require any person or entity licensed under Minnesota Statutes, chapter 349, to appear before it to discuss alleged violations of laws or rules related to lawful gambling;

D. may conduct hearings according to this subpart;

E. may negotiate and enter into proposed consent orders with licensees to resolve any violations of laws or rules related to lawful gambling;

F. may enter into consent orders with licensees to resolve any violations of laws or rules related to lawful gambling;

G. may recommend to the board that it take disciplinary action against a person or entity licensed under Minnesota Statutes, chapter 349;

H. may recommend to the board that it summarily suspend a license pursuant to Minnesota Statutes, section 349.1641;

I. may require any person or entity required to appear pursuant to item D to participate in a prehearing conference prior to the appearance required in item D. The prehearing conference may occur at the board office, or by means of a telephone conference call;

J. may initiate and recommend any other proceedings necessary to ensure that violations of the laws and rules related to lawful gambling are detected and addressed appropriately; and

K. in negotiating the length of any suspension or terms of a revocation of a license or premises permit issued under Minnesota Statutes, chapter 349, the terms of a consent order, or the amount of a fine or civil penalty, must consider the following factors:

(1) the severity of the conduct as indicated by the potential harm to the integrity of lawful gambling;

(2) the culpability of the violator;

(3) the frequency of the violator's failure to comply with the laws or rules;

(4) the actual harm caused to the integrity of lawful gambling;

(5) the likelihood that the violation will occur again;

(6) the degree of the violator's cooperation during the course of the investigation into the violator's activities, including self-reporting for noncompliance of laws or rules; and

(7) any other factor related to the violation that the compliance review group considers crucial to its determination of the length of a suspension, or the terms of a license or premises permit revocation, as long as the same factors are considered with regard to all violators.

Statutory Authority: *MS s 349.151*

History: *16 SR 2116; 29 SR 443*

7865.0020 SUSPENSIONS OR REVOCATIONS.

Subpart 1. **Definitions.** For purposes of this chapter, “suspension” means that the licensee retains ownership rights in its license, even though its lawful gambling activities in Minnesota must cease during the time of license suspension; and “revocation” means that ownership of the license is terminated on the effective date of revocation.

Subp. 1a. [Repealed, 29 SR 443]

Subp. 2. **Length of suspension.** In determining the length of any suspension of a license issued under Minnesota Statutes, chapter 349, the board shall consider:

- A. the severity of the conduct as indicated by the potential harm to the integrity of lawful gambling;
- B. the culpability of the violator;
- C. the frequency of the violator’s failure to comply with laws or rules related to lawful gambling;
- D. the actual harm caused to the integrity of lawful gambling;
- E. the likelihood that the violations will occur again; and
- F. the degree of the violator’s cooperation during the course of the investigation into its activities.

Subp. 3. [Repealed, 29 SR 443]

Subp. 4. **Additional grounds.** Any grounds for denial of a license or premises permit are also grounds for suspension or revocation of a license or premises permit.

Subp. 5. **Compliance review groups.** In negotiating consent orders containing proposed suspensions or revocations, the compliance review groups shall consider the provisions of part 7865.0010, subpart 2, item K, and Minnesota Statutes, section 349.155, subdivision 4.

Statutory Authority: *MS s 349.151*

History: *16 SR 2116; 19 SR 156; 19 SR 1854; L 1997 c 129 art 2 s 15; 29 SR 443*

7865.0025 REIMBURSEMENT.

The board may require an organization to deposit funds from a nongambling source in the organization’s gambling bank account to reimburse the account for unlawful expenditures or expenses, to otherwise bring the organization into compliance with Minnesota Statutes, section 349.15, or to reimburse the account for gambling receipts that the organization failed to deposit in the account. Reimbursement is a contested case under Minnesota Statutes, chapter 14. In determining the extent of the reimbursement to be required after a contested case hearing, the board must consider:

- A. the severity of the conduct as indicated by the potential harm to the integrity of lawful gambling;
- B. the culpability of the violator;
- C. the frequency of the violator’s failure to comply with laws or rules relating to the deposit and expenditure of gambling receipts;
- D. the actual harm caused to the integrity of lawful gambling;
- E. the likelihood that the violation will occur again;
- F. the degree of the violator’s cooperation during the course of the investigation into the violator’s activities, including self-reporting for noncompliance of laws or rules; and

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G. any other factor related to the violation that the board considers crucial to its determination of the extent of the reimbursement as long as the same factors are considered with regard to all violators.

Statutory Authority: *MS s 349.151*

History: *17 SR 2712; 29 SR 443*

7865.0030 FINES.

Subpart 1. **Imposition.** Pursuant to Minnesota Statutes, section 349.151, subdivision 4, paragraph (b), the board may impose a civil fine upon any licensed organization, gambling manager, bingo hall lessor, distributor, distributor salesperson, linked bingo game provider, or manufacturer for violation of any provision of Minnesota Statutes, sections 349.12 to 349.23, or a violation of the board's rules. The civil penalty may not exceed \$500 per violation.

In determining the amount of the fine to be imposed for a violation of law or rule, the board must consider:

- A. the severity of the conduct as indicated by the potential harm to the integrity of lawful gambling;
- B. the culpability of the violator;
- C. the frequency of the violator's failure to comply with the law or rules;
- D. the actual harm caused to the integrity of lawful gambling;
- E. the likelihood that the violation will occur again;
- F. the degree of the violator's cooperation during the course of the investigation into the violator's activities, including self-reporting for noncompliance of laws or rules; and

G. any other factor related to the violation that the board considers crucial to its determination of the amount of the fine as long as the same factors are considered with regard to all violators.

Subp. 2. **Citation form.** The director may issue to any licensee a proposed fine on a citation form prescribed by the board. The amount of the proposed fine must be determined according to the factors listed in subpart 1. The proposed fine must be paid or appealed to the board within 30 calendar days of the date on which the citation is received. Failure to pay or appeal the proposed fine within 30 calendar days may subject the licensee to further disciplinary action by the board unless the licensee appeals the citation and the proposed fine to the board within the 30-calendar-day period.

Subp. 3. **Appeals.** An appeal of the proposed fine must contain the name of the person or organization that received the citation, the date on which the citation was issued, the amount of the proposed fine as stated on the citation, and the specific reasons why the proposed fine should not be paid.

Appeals of proposed fines must be referred to the compliance review group for purposes of a hearing. Within ten days of the receipt of an appeal, the compliance review group must schedule a hearing. The licensee may be represented by counsel and may present documents and other relevant evidence to support its position. The compliance review group must issue an order within ten days of the date of the hearing, recommending to the board whether or not a civil fine should be imposed.

If the compliance review group determines that a civil fine should be imposed, the order must contain a recommendation for the amount of the fine. The board must act on the recommendation of the compliance review group at its next regularly scheduled meeting. Within ten days of acting on the matter, the board must issue an order, including findings of fact and conclusions of law. The order is a final agency decision.

Subp. 4. **Payment from gross receipts prohibited.** Money used to pay a fine imposed by the board must be paid from a nongambling source of funds.

Subp. 5. **Consequences of failure to correct violations.** Failure to correct the violation for which the fine was imposed is grounds for the suspension or revocation of a license.

Statutory Authority: *MS s 349.151*

History: *16 SR 2116; 29 SR 443*

7865.0040 STAYS.

Subpart 1. **Entitlement.** A licensee subjected to a board order suspending or revoking its license or imposing a civil fine upon it is entitled to a stay of imposition of that sanction upon filing an appeal to the court of appeals unless the board determines that the potential or actual harm to the public and/or the integrity of lawful gambling resulting from the grant of such a stay would exceed the harm to the licensee from the denial of such a stay.

Subp. 2. **Procedure.** The following items apply to the procedure for requests for stays of impositions of sanctions:

A. A licensee seeking a stay pursuant to subpart 1 must file a written request with the board. The request must contain:

(1) a copy of the licensee's appeal to the court of appeals and proof that the appeal has been filed with the court of appeals;

(2) a brief statement describing why the harm the licensee would suffer from the denial of a stay exceeds the potential or actual harm to the public or the integrity of lawful gambling that would result from the grant of a stay; and

(3) a copy of the order issued by the board imposing the sanction the licensee seeks to have stayed.

B. Any request for a stay complying with the provisions of item A must be considered by the chair of the board pursuant to subpart 1. The chair must respond to the applicant in writing within five days, excluding Saturdays, Sundays, and holidays, of the date the application is received by the board. The response must grant or deny the stay and explain the reasons for the decision. The chair's decision regarding the stay represents the official board response to the request until the board is able to consider the request pursuant to item C.

C. All requests for stays must be considered by the board after initial consideration and response by the chair. If the chair has granted the licensee's request for the stay, the board must consider the request at its next regularly scheduled meeting. If the chair has denied the request, the chair must call a special board meeting to consider the licensee's request for a stay. The special meeting must be held no later than ten days after the chair has issued a written response to the request. When the board considers the request for a stay, it must grant or deny the stay pursuant to subpart 1 and issue a written order containing its decision and the reasons for the decision within five days of the date it considers the request. The board's decision constitutes a final agency action.

Statutory Authority: *MS s 349.151*

History: *16 SR 2116; 29 SR 443*

7865.0050 VARIANCES TO BOARD RULES.

Subpart 1. **Procedures and standards.** The procedures and requirements in this subpart govern the consideration and disposition of all requests for variances to rules governing lawful gambling. No variance requests seeking relief from the imposition of a civil fine or disciplinary action pursuant to this chapter may be submitted to the board.

Subp. 2. **Requests for variance.** A person or entity who wishes to obtain a variance from the application of one or more of the board's rules must initiate the variance process by submitting a request to the board. The request must contain, at a minimum, the following information and documents:

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A. a statement setting forth the precise nature and extent of the proposed variance, and the reasons the variance is being requested;

B. any supporting documentation necessary to provide a complete description of the proposed variance; and

C. a statement addressing each of the variance criteria in subpart 5. The statement must explain how the variance request is in conformance with the criteria in subpart 5.

Subp. 3. **Filing fee.** The person or entity seeking the variance must include a filing fee of \$50 for each variance request, made payable to the state of Minnesota. The filing fee is not refundable or transferable.

Subp. 4. **Disposition of variance requests.** The board must grant or deny a variance pursuant to the following procedures:

A. Upon receipt of a variance request, the board must send a written notice of the time, date, and place of the variance hearing to all persons who have registered their names with the board for that purpose. The board must not act on the variance request until at least ten days after it has received the notice. Variance requests will be considered by the board during its regularly scheduled monthly meeting.

B. If the board determines that additional information is needed from the petitioner, it may direct the petitioner to submit additional data regarding the variance request to the board, or to appear before the board to provide additional information on the request. If the board determines that the petitioner needs to appear before the board, the board shall provide notice to the petitioner at least seven calendar days before the board meeting at which the variance request is considered. This procedure is not a contested case hearing as defined in Minnesota Statutes, chapter 14.

C. If the person or entity requesting the variance fails to follow the procedures in this part, or fails to appear before the board after being requested to do so, the variance request will be denied.

D. The board must set forth in writing and submit to the petitioner requesting the variance, and other persons who have submitted written comments in support of or in opposition to the request, the reasons why it has granted or denied the variance request, within 30 days after the board meeting at which the request was considered.

Subp. 5. **Criteria for granting and denying variance requests.** The board may grant a variance to the application of any of its rules only if it finds that all of the following criteria have been met:

A. strict application of the rule to which a variance is being requested would cause undue and substantial hardship to the person or licensee applying for the variance;

B. the granting of the variance does not confer a benefit on the person requesting the variance which is not enjoyed by other persons similarly situated;

C. the granting of the variance does not substantially impair the intent and purposes of the board's rules;

D. the variance can be granted without impacting the integrity of lawful gambling, or the public health, safety, or welfare; and

E. granting the variance does not allow violation of Minnesota Statutes, chapter 297E, 299L, or 349.

Statutory Authority: *MS s 14.055; 349.151*

History: *29 SR 443*