

CHAPTER 7865
GAMBLING CONTROL BOARD
GAMBLING LICENSEES; DISCIPLINARY ACTIONS

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7865.0210 COMPLIANCE REVIEW GROUP.

Subpart 1. **Establishment of compliance review groups.** 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 of compliance review groups.** Each compliance review group:

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

B. may direct the director to initiate investigations of persons or entities 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 and require any person or entity required to appear to participate in a prehearing conference prior to the appearance. The prehearing conference may occur at the board office, or by means of a telephone conference call or other electronic method;

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

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

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

H. 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

I. must consider the following factors in negotiating the terms of a consent order, which may include the term and length of any suspension or revocation of a license or premises permit issued under Minnesota Statutes, chapter 349, the amount of a fine or civil penalty, reimbursement to the gambling account, and corrective action required to be taken by the licensee:

(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 is considered crucial to the determination of the terms of the consent order as long as the same factors are considered with regard to all violators.

This item also pertains to proposed fines issued by the director.

Subp. 3. **Definitions.** The following terms have the meanings given them in this chapter.

A. "Suspension" means that the licensee keeps its license or premises permit, even though its conduct of lawful gambling in Minnesota must stop during the time of suspension.

B. "Revocation" means that the license or premises permit is terminated on the effective date of revocation.

C. "Complete change of ownership" means that when a violation occurred a person who was the lessor or owner of a site, an immediate family member of a lessor or owner, a person residing in the same household as an owner or lessor, or who otherwise held a direct or indirect financial interest of five percent or more in the site is currently not:

- (1) a lessor or owner of the site;
- (2) an immediate family member of the new lessor or owner of the site;
- (3) a person residing in the same household as a lessor or owner of the site; or
- (4) a holder of a direct or indirect financial interest of five percent or more in the site.

An appropriately recorded contract for deed does not constitute a prohibited direct or indirect financial interest. The existence of a complete change of ownership is an affirmative defense of an organization that has, or is applying for, a premises permit for the site.

Statutory Authority: *MS s 14.055; 349.12; 349.151; 349.154; 349.155; 349.16; 349.162; 349.163; 349.1635; 349.165; 349.166; 349.167; 349.169; 349.17; 349.1711; 349.1721; 349.173; 349.19; 349.191; 349.211*

History: *31 SR 1239; 35 SR 1276*

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7865.0220 SUSPENSIONS OR REVOCATIONS OF LICENSES OR PERMITS.

Subpart 1. **Factors considered for suspension or revocation of license or premises permit.** In negotiating the terms and length of any suspension or revocation of a license or premises permit issued under Minnesota Statutes, chapter 349, the compliance review group must consider the factors in part 7865.0210, subpart 2, item I, and Minnesota Statutes, section 349.155, subdivision 4.

Any grounds for denial of a license or premises permit are also grounds for suspension or revocation of a license or premises permit.

Subp. 2. **Suspension or revocation of organization license for illegal gambling.** Under Minnesota Statutes, section 349.155, subdivision 4a, paragraph (b), the board must suspend or revoke an organization's license if the organization's chief executive officer, gambling manager, or one or more of its assistant gambling managers participated in or authorized the illegal gambling prohibited by part 7861.0260, subpart 1, item J.

Subp. 3. **Suspension or revocation of premises permit for illegal gambling.** When the board has determined that a violation of part 7861.0260, subpart 1, item J, has occurred based on Minnesota Statutes, section 349.155, subdivision 4a, paragraph (a), clauses (1) and (2), the board must suspend or revoke an organization's premises permit as follows.

A. For the first violation of part 7861.0260, subpart 1, item J, at a site, the board must suspend each premises permit for the site for up to 90 days from the date of the board's final resolution or determination on the violation. An organization may not pay rent for the site during the term of the suspension. When suspending an organization's premises permit, the board must consider the following factors:

(1) whether the organization notified the lessor, in writing, that illegal gambling was being conducted on the premises, giving specific information regarding the conduct of the illegal gambling, and requesting that the lessor take appropriate action;

(2) whether the organization, or any of its agents, knew that the game or device that violated part 7861.0260, subpart 1, item J, was used, or was designed to be capable of being used, in a manner that causes illegal gambling or violates part 7861.0260, subpart 1, item J, or Minnesota Statutes, section 609.75;

(3) the degree to which the organization cooperated with law enforcement authorities, the Department of Public Safety Gambling Enforcement Division, or the board;

(4) whether the organization or any of its agents participated in the illegal gambling;
and

(5) the nature or severity of the violation.

B. For the second violation of part 7861.0260, subpart 1, item J, at a site, the board must suspend each premises permit for the site for two years from the date of the board's final resolution or determination on the violation. An organization may not pay rent for the site during the term of the suspension. If a complete change of ownership occurred between the first and second violations, the second violation is considered a first violation and the board must suspend each premises permit for the site for up to 90 days according to item A and must prohibit any organization from paying rent during the term of the suspension.

C. For the third violation of part 7861.0260, subpart 1, item J, at a site, the board must revoke each premises permit for the site for a minimum period of five years from the date of the board's final resolution or determination on the violation. Revocation must continue until a complete change of ownership occurs after the third violation. No organization may obtain a premises permit for the site during the term of the revocation. If a complete change of ownership occurred between the second and third violations, the third violation is considered a first violation and the board must suspend each premises permit for the site for up to 90 days according to item A and must prohibit any organization from paying rent for the site during the term of the suspension.

If the licensee does not enter into a consent order with the board according to the provisions of this subpart, and part 7865.0210, subpart 2, item I, the suspension or revocation of a premises permit is a contested case under Minnesota Statutes, chapter 14.

Statutory Authority: *MS s 14.055; 349.12; 349.151; 349.154; 349.155; 349.16; 349.162; 349.163; 349.1635; 349.165; 349.166; 349.167; 349.169; 349.17; 349.1711; 349.1721; 349.173; 349.19; 349.191; 349.211*

History: *31 SR 1239; 35 SR 1276*

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7865.0225 REIMBURSEMENTS TO GAMBLING BANK ACCOUNT.

The board may require an organization to deposit funds from a nongambling source into the organization's gambling bank account to reimburse the account as required under part 7861.0320, subpart 5. If the licensee does not enter into a consent order with the board according to this part and part 7865.0210, subpart 2, item I, the reimbursement is a contested case under Minnesota Statutes, chapter 14. In determining the reimbursement to be required after a contested case hearing, the board must consider the factors in part 7865.0210, subpart 2, item I.

Statutory Authority: *MS s 14.055; 349.12; 349.151; 349.154; 349.155; 349.16; 349.162; 349.163; 349.1635; 349.165; 349.166; 349.167; 349.169; 349.17; 349.1711; 349.1721; 349.173; 349.19; 349.191; 349.211*

History: *31 SR 1239; 35 SR 1276*

Published Electronically: *April 7, 2011*

7865.0230 FINES AND OTHER SANCTIONS.

Subpart 1. **Imposition of civil fine by board.** The board may impose a civil fine upon any licensee for violation of the following:

- A. any provision of Minnesota Statutes, sections 349.11 to 349.23;
- B. any provision of Minnesota Statutes, chapter 297E;
- C. any rule adopted by the board; or
- D. any order issued by the board.

The civil fine may not exceed any amount authorized in Minnesota Statutes, chapter 349. In determining the amount of the fine to be imposed, the board must consider the factors in part 7865.0210, subpart 2, item I.

Subp. 2. [Repealed, 35 SR 1276; 35 SR 1528]

Subp. 3. **Imposition of proposed fine by director; payment or appeal of fine by licensee required.** This subpart applies to a proposed fine issued by the director.

- A. The director may issue to any licensee a proposed fine, determined according to the factors in part 7865.0210, subpart 2, item I, on a citation form prescribed by the board.
- B. Within 30 calendar days of receiving the citation, the licensee must:
 - (1) pay the proposed fine; or

(2) appeal the proposed fine to the board. If the licensee decides to appeal the proposed fine, the provisions of subpart 4 apply.

C. If the licensee fails to pay or appeal the proposed fine within 30 calendar days, the licensee may be subject to further disciplinary action by the board.

Subp. 4. **Appeal from licensee of proposed fine by director.** The following apply to an appeal from a licensee of a proposed fine issued by the director under subpart 3.

A. An appeal must contain the licensee's name, the date the citation was issued, the amount of the proposed fine, and the reasons why the proposed fine should not be paid.

B. Upon receipt of an appeal, the director must review any new information provided by the licensee and determine whether the proposed fine should be rescinded or revised, or the appeal should be referred to the compliance review group. If the director determines that the proposed fine should not be rescinded or revised, the appeal must be referred to the compliance review group for a hearing. Within ten days of the receipt of an appeal, the compliance review group must schedule a hearing.

C. The licensee may be represented by counsel and present documents and other evidence to support its position.

D. Within ten days of the hearing date, the compliance review group must issue an order recommending to the board whether 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.

E. The board must act on the recommendation at its next regularly scheduled meeting.

F. 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. 5. **Payment of fine from gambling gross receipts prohibited.** A licensed organization may not use gambling gross receipts to pay a fine imposed by the board or director and must pay a fine from a nongambling source of funds.

Subp. 6. **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 14.055; 349.12; 349.151; 349.154; 349.155; 349.16; 349.162; 349.163; 349.1635; 349.165; 349.166; 349.167; 349.169; 349.17; 349.1711; 349.1721; 349.173; 349.19; 349.191; 349.211*

History: *31 SR 1239; 35 SR 1276; 35 SR 1528*

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7865.0240 STAYS OF IMPOSITION FOR SUSPENSION, REVOCATION, OR CIVIL FINE.

Subpart 1. **Entitlement.** A licensee subject to a board order for a suspension or revocation or a civil fine is entitled to a stay of imposition of that sanction upon filing an appeal to the court of appeals. A licensee is not entitled to a stay of imposition if the board determines that the potential or actual harm to the public and 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.** This subpart applies to requests for stays of impositions of sanctions:

A. A licensee seeking a stay according 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 and 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 item A must be considered by the chair of the board according to subpart 1.

(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.

(2) The chair must grant or deny the stay and explain the reasons for the decision.

(3) The chair's decision represents the official board response to the request until the board is able to consider the request according to item C.

C. Any request for a stay must be considered by the board after initial consideration and response by the chair.

(1) If the chair has granted the licensee's request for the stay, the board must consider the request at its next regularly scheduled meeting.

(2) 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.

(3) When the board considers the request for a stay, it must grant or deny the stay according 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 is considered a final agency action.

Statutory Authority: *MS s 14.055; 349.151; 349.154; 349.16; 349.162; 349.163; 349.1635; 349.165; 349.167; 349.169; 349.17; 349.1711; 349.1721; 349.173; 349.19; 349.191; 349.211*

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7865.0250 VARIANCES TO BOARD RULES.

Subpart 1. **Variance request submitted to board.** A licensee may request a variance from a rule pertaining to lawful gambling.

A. The request must contain:

- (1) the information required by Minnesota Statutes, section 14.056, subdivision 1; and
- (2) the estimated fee as determined by the board in agreement with the licensee according to Minnesota Statutes, section 14.056, subdivision 2, paragraphs (a), clause (2), and (b).

B. The board may not consider a variance request that seeks:

- (1) relief from a civil fine or disciplinary action imposed under this chapter;
- (2) an ongoing variance of a rule;
- (3) relief from a requirement imposed by lawful gambling statute; or
- (4) a variance on behalf of other licensees.

Subp. 2. **Procedure for variance requests.** In addition to the requirements of Minnesota Statutes, section 14.056, the board must approve or deny a variance request according to the following procedures:

A. Upon receipt of a variance request, the board must notify the requesting licensee of the time, date, and place of the board meeting at which the variance will be considered. The board will consider variance requests during its regularly scheduled monthly meeting.

B. The board may request the licensee to submit additional information regarding the variance request, or to appear before the board to provide additional information. If the board determines that the licensee must appear before the board, the board must provide advance notice to the licensee 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 licensee requesting the variance fails to follow the procedures in this part, the provisions of Minnesota Statutes, section 14.056, or fails to appear before the board when requested, the board must deny the variance request.

Subp. 3. **Criteria for approving and denying variance requests.** The board may approve a variance from any of its rules if it finds that all of the following criteria have been met:

A. strict application of the rule would cause undue and substantial hardship to the licensee applying for the variance;

B. approving the variance does not confer a benefit on the licensee which is not enjoyed by other licensees similarly situated;

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

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

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

F. the variance is for a onetime variance for the licensee, not an ongoing variance of the rule.

Statutory Authority: *MS s 14.055; 349.12; 349.151; 349.154; 349.155; 349.16; 349.162; 349.163; 349.1635; 349.165; 349.166; 349.167; 349.169; 349.17; 349.1711; 349.1721; 349.173; 349.19; 349.191; 349.211*

History: *31 SR 1239; 35 SR 1276*

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7865.0260 HEARINGS AND APPEALS OF INCOMPLETE OR DENIED LICENSE AND PERMIT APPLICATIONS.

Subpart 1. **Appeal of denial or determination; application fees.** An applicant may appeal the denial of an application pertaining to a license or permit according to the procedures in this part. All fees submitted with a license or permit application are considered earned and are not refundable.

Subp. 2. **Appeal of denial of application.** The denial of an application may be appealed by an applicant.

A. To appeal the denial, the applicant must file a written request with the board within 15 days of receiving the notice that the application has been denied. The request must contain a complete copy of the application and a statement describing the reasons the license or permit should not be denied. The appeal is not a contested case under Minnesota Statutes, chapter 14.

B. The board must refer the appeal to the executive committee. The executive committee must review the appeal within ten days of receipt and issue a written decision within ten days of its consideration of the appeal. If the committee reverses the denial, the license or permit must be issued effective the first day of the month following the committee's written decision. The executive committee's decision is a final agency decision.

Subp. 3. [Repealed, 35 SR 1276; 35 SR 1528]

Subp. 4. **Contested case hearing for denial of renewal application.** A licensed distributor, linked bingo game provider, or manufacturer may appeal the denial of a renewal application.

A. To appeal the denial, the licensee must file a written request for a contested case hearing with the board within 15 days of receiving notice that the application has been denied.

B. Upon receipt of the request, the board must schedule a contested case hearing before an administrative law judge under Minnesota Statutes, chapter 14.

C. The hearing must be held no later than 30 days after the board receives the request for the hearing unless the licensee and the board agree on a later date.

D. If the licensee fails to appear at the hearing after having been notified of it, the licensee is considered in default and the proceeding may be determined against the licensee on consideration of the written notice of denial, the allegations of which may be considered to be true.

E. The board must issue its final decision within 30 days after receipt of the administrative law judge's report and subsequent exceptions and argument under Minnesota Statutes, section 14.61. The board may enter an order making the disposition that the facts require.

F. If no hearing is requested within 30 days of the service of the notice, the denial becomes final.

Statutory Authority: *MS s 14.055; 349.12; 349.151; 349.154; 349.155; 349.16; 349.162; 349.163; 349.1635; 349.165; 349.166; 349.167; 349.169; 349.17; 349.1711; 349.1721; 349.173; 349.19; 349.191; 349.211*

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