

CHAPTER 8122
DEPARTMENT OF REVENUE
LAWFUL GAMBLING; ANNUAL AUDITS

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8122.0100 SCOPE; PURPOSE.

Minnesota Statutes, section 297E.06, subdivision 4, mandates that the commissioner of revenue prescribe standards for the annual audit of certain organizations licensed to conduct lawful gambling in Minnesota. The purpose of this chapter is to set minimum standards for these annual audits.

Statutory Authority: *MS s 14.388; 270.06; 270C.06*

History: *20 SR 1482; L 2005 c 151 art 1 s 114; 45 SR 827*

Published Electronically: *March 10, 2021*

8122.0150 DEFINITIONS.

Subpart 1. **Scope.** The terms used in this chapter are defined in Minnesota Statutes, chapter 297E, unless separately defined under this part.

Subp. 2. **Accrual basis.** "Accrual basis" means the method of accounting in which revenue is recognized in the period earned and expense is recognized in the period incurred.

Subp. 3. **Audit.** "Audit" means the examination of accounting records with the expression of an opinion on whether the financial statements of the organization present fairly, in all material respects, the financial position, results of operations, and its cash flows, in conformity with the regulatory basis of accounting.

Subp. 4. **Certified public accountant; CPA.** "Certified public accountant" or "CPA" means a person who is licensed as a certified public accountant in accordance with Minnesota Statutes, chapter 326A.

Subp. 5. **Cash basis.** "Cash basis" means the method of accounting in which revenues are recognized when actually received and expenses are recognized when actually disbursed.

Subp. 6. **Ending inventory.** "Ending inventory" means the cost of unopened pull-tab and tipboard deals, paddletickets, unused bingo paper or sheets, and the cost of pull-tab, tipboard, and paddleticket games in play on the last day of the month. Sales tax is excluded from ending inventory.

Subp. 7. [Repealed, L 2010 c 191 s 14]

Subp. 8. **Material weakness.** "Material weakness" means a reportable condition in which the design or operation of the specific internal control structure elements do not reduce to a relatively low level the risk that material errors or irregularities could occur and not be detected within a timely period by employees in the normal course of performing their assigned functions.

Subp. 9. **Regulatory basis.** "Regulatory basis" means a method of accounting other than generally accepted accounting principles. All receipts, allowable expenses, and lawful purpose expenditures are determined using the cash basis method of accounting with the exception of the cost of the games and taxes imposed under Minnesota Statutes, section 297E.02, subdivisions 1 and 6 (8.5 percent gross receipts tax and combined net receipts tax), which are recognized on the accrual basis method of accounting.

Subp. 10. **Reportable condition.** "Reportable condition" means significant deficiencies in the design or operation of the internal control structure which could adversely affect the organization's ability to record, process, summarize, and report financial data consistent with the assertions of management in the financial statements.

Subp. 11. [Repealed, 45 SR 827]

Subp. 12. **Year.** "Year," when used in defining an audit period, means the organization's fiscal year used for filing federal form 990 or 990-T (Unrelated Business Income Tax).

Statutory Authority: *MS s 14.388; 270.06; 270C.06*

History: *20 SR 1482; L 2005 c 151 art 1 s 114; L 2010 c 191 s 13,14; 45 SR 827*

Published Electronically: *March 10, 2021*

8122.0200 ACCOUNTANTS QUALIFICATIONS.

Subpart 1. **License required.** An accountant must be an independent certified public accountant and licensed to practice in Minnesota.

Subp. 2. **Standards of independence.** The CPA shall maintain objectivity and be free of the appearance of conflicts of interest when discharging professional responsibilities needed to perform the audit. CPAs shall adhere to the standards of objectivity and independence as established in the American Institute of Certified Public Accountants professional standards.

In addition, for purposes of this subpart, an individual CPA who is a member of an organization, or the accounting firm the individual belongs to, must not perform the organization's annual audit if one or more of the following occurred during the fiscal year:

- A. the CPA was an employee of the organization;
- B. the CPA was an officer of the organization, such as treasurer, executive director, chief executive officer, gambling manager, or president;
- C. the CPA served on the board of directors for the organization;
- D. the CPA served on a gambling committee or other committee with oversight or decision-making authority over gambling business transactions, other than in a member's capacity to approve gambling business transactions presented at monthly membership meetings as required under Minnesota Statutes, chapter 349; or
- E. in connection with the organization general fund, gambling fund, or any other organization fund, the CPA prepared or reconstructed accounting record source documents, consummated transactions, had custody over assets, exercised authority, or unduly exercised authority on behalf of the organization by assuming the role of employee or management.

Statutory Authority: *MS s 14.388; 270.06; 270C.06*

History: *20 SR 1482; L 2005 c 151 art 1 s 114; L 2010 c 191 s 13; 45 SR 827*

Published Electronically: *March 10, 2021*

8122.0250 DUE DATE; EXTENSIONS.

The annual audits required are due on or before the last day of the sixth month following the organization's fiscal year end or on an extended due date.

A written request to file the annual audit after the required due date must be submitted to the Department of Revenue by the required annual audit due date. The request must be signed by the organization's chief executive officer, gambling manager, or the independent accountant performing the audit. The request must include the:

- A. organization's name;
- B. organization's license number;
- C. organization's fiscal year end;
- D. reason for the request; and
- E. expected completion date.

An automatic 30-day extension will be granted in each fiscal year. Second requests for an extension or requests for extensions exceeding 30 days will be granted only upon a showing of reasonable cause. "Reasonable cause" shall mean cases where the reasons for the filing delay are beyond the control of the organization. Acceptable reasons for granting an additional extension include, but are not limited to:

- (1) delay or failure to file was due to serious illness or death of the accountant or a key member of the accountant's staff;

(2) delay or failure to file was due to erroneous information given the organization by a Department of Revenue employee; or

(3) delay or failure to file was caused by the destruction by fire or other casualty of the organization's place of business or business records.

Statutory Authority: *MS s 14.388; 270.06; 270C.06*

History: *20 SR 1482; L 2005 c 151 art 1 s 114; 45 SR 827*

Published Electronically: *March 10, 2021*

8122.0300 COMMUNICATION OF ILLEGAL ACTS, MATERIAL ERRORS, AND IRREGULARITIES.

An organization is responsible to communicate illegal acts, material errors, and irregularities to the Department of Revenue in writing within ten days of notification from auditors that such acts, errors, or irregularities exist. The organization must include a copy of all correspondence or notes taken during meetings between the independent auditors and the licensed organization specifically detailing the illegal acts, material errors, and irregularities.

Statutory Authority: *MS s 14.388; 270.06; 270C.06*

History: *20 SR 1482; L 2005 c 151 art 1 s 114; 45 SR 827*

Published Electronically: *March 10, 2021*

8122.0350 ACCOUNTING RECORDS.

All licensed organizations are required to maintain records that account for the assets, liabilities, and fund balance of their lawful gambling operation. These records must also account for their gambling revenue, prize payouts, allowable expenses, and lawful purpose expenditures.

If, in the opinion of the independent CPA engaged to conduct the annual financial audit, the licensed organization has not maintained proper accounting records in a form that can be audited, the accountant must either:

A. notify the organization in writing of the deficiencies that exist and the corrective action required, with an estimate of the cost to generate auditable records or the reason the cost cannot be estimated; or

B. terminate the audit engagement.

Statutory Authority: *MS s 14.388; 270.06; 270C.06*

History: *20 SR 1482; L 2005 c 151 art 1 s 114; L 2010 c 191 s 13; 45 SR 827*

Published Electronically: *March 10, 2021*

8122.0400 ACCOUNTANT'S WORKPAPERS AND COMMUNICATIONS; ACCESS AND RETENTION.

Subpart 1. **Workpapers.** Workpapers are the records kept by the independent CPA of the procedures followed, tests performed, information obtained, and conclusions reached pertinent to the examination and review of the financial statements of a licensed gambling organization. Workpapers must include, but are not limited to, work programs, analyses, memoranda, letters of confirmation and representation, management letters, abstracts of organization documents, and schedules or commentaries prepared or obtained by the accountant in the course of the audit and that support the accountant's opinion or assurance.

Subp. 2. **Communications.** Communications are written documentation or notes of oral contacts between the independent CPA and an organization. The communication with the organization must include, but is not limited to, matters relating to the auditor's responsibility, significant accounting policies, the process used in obtaining management judgments, significant audit adjustments, auditor responsibilities for other information, auditor disagreements with organization's management, auditor views on auditing and accounting matters for which other auditors were contacted, major issues discussed with management prior to retention, and any difficulties encountered while performing the audit.

Subp. 3. **Access and retention.** Every licensed gambling organization required to file an audit shall require the accountant, through the licensed gambling organization, to make available for review by the Department of Revenue the workpapers and communications with the organization prepared in the conduct of the audit. The licensed gambling organization shall require that the accountant retain the workpapers for a period of not less than 3-1/2 years after the opinion date of the audit report.

Statutory Authority: *MS s 14.388; 270.06; 270C.06*

History: *20 SR 1482; L 2005 c 151 art 1 s 114; L 2010 c 191 s 13; 45 SR 827*

Published Electronically: *March 10, 2021*

8122.0450 TERMINATION OF AUDIT ENGAGEMENT.

If for any reason the audit engagement is terminated by either the licensed organization or the independent accountant prior to its completion and filing of the annual financial audit report, the accountant is, within ten days of termination, required to make a written report to the Department of Revenue detailing the reason or reasons for the termination.

Statutory Authority: *MS s 14.388; 270.06; 270C.06*

History: *20 SR 1482; L 2005 c 151 art 1 s 114; 45 SR 827*

Published Electronically: *March 10, 2021*

8122.0500 LESS THAN A 12-MONTH AUDIT.

An organization whose license is active, discontinued, terminated, or expired at the organization's fiscal year end, is required to complete and file an audit, if the organization's gross receipts exceed the thresholds as specified in Minnesota Statutes, section 297E.06.

In the year an organization commences gambling activity, the audit required may cover the operations of the organization for a period of less than 12 months.

In the year an organization's license expires, is discontinued, or terminated, the audit will be through the organization's fiscal year end, unless the organization's license termination plan has been approved by the Gambling Control Board prior to the fiscal year end. In this circumstance, the organization has the option of performing the required audit through the license termination plan approval date, or another date specified by the organization that is between the approval date and the last day of the fiscal year.

Statutory Authority: *MS s 14.388; 270.06; 270C.06*

History: *20 SR 1482; 26 SR 772; L 2005 c 151 art 1 s 114; 45 SR 827*

Published Electronically: *March 10, 2021*

8122.0510 MORE THAN A 12-MONTH AUDIT.

An organization that is terminating gambling activity or changing its year end date in accordance with Internal Revenue Code, section 442, may, upon specific prior approval from the Department of Revenue, have an audit prepared for periods longer than 12 months but no longer than 18 months. The audit will then be due at the end of the sixth month following the new fiscal year end or the month the organization terminated gambling activity, whichever applies. The request for an extended audit period must be submitted to the Department of Revenue in writing on or before the due date of the audit that would be prepared under the organization's actual fiscal year end.

Example: An organization with a fiscal year end of December 31, 2018, is terminating gambling activity April 30, 2019. The audit may cover the period January 1, 2018, through April 30, 2019. The request for the extended audit period must be submitted by June 30, 2019, the due date of a December 31 audit. The extended audit is due October 31, 2019.

Statutory Authority: *MS s 14.388; 270.06; 270C.06; 297E.06*

History: *24 SR 893; L 2005 c 151 art 1 s 114; 45 SR 827*

Published Electronically: *March 10, 2021*

8122.0550 AUDIT.

Subpart 1. **Minimum requirements.** The annual financial audits must be prepared on the regulatory basis of accounting and contain, at a minimum, an opinion, financial statements, supplemental schedules, a report on internal controls, a response to internal controls report, and other information as noted.

Subp. 2. **Opinion.** An audit opinion expressed in accordance with generally accepted auditing standards regarding the fairness of the presentation of the financial statements must be properly signed and dated by the CPA firm who performed the audit. The address, telephone number, and fax number of the accounting firm must be listed. For firms with more than one office, the address of the office that prepared the financial statements should be specified.

Subp. 3. **Financial statements.** The financial statements must be comparative financial statements showing the current year and previous year's financial information, unless it is a first year engagement for the accounting firm in which case the preparation of comparative statements is optional. The statements must be presented in a format prescribed by and acceptable to the commissioner of revenue. The financial statements required are as follows:

A. The statement of assets, liabilities, and fund balance must include all assets, liabilities, and the fund balance of the gambling operations as follows, if applicable:

- (1) all game starting banks;
- (2) all gambling checking accounts;
- (3) all savings accounts;
- (4) all certificates of deposit and other negotiable instruments;
- (5) inventory from paper pull-tabs, tipboards, paddletickets, nonlinked bingo, raffles, and sports-themed tipboards, in play and unused;
- (6) fund losses;
- (7) excess cash shortages to be reimbursed;
- (8) merchandise prize inventory;
- (9) other assets specifically identified;
- (10) accrued taxes imposed under Minnesota Statutes, section 297E.02, subdivision 1 (net receipts tax);
- (11) accrued taxes imposed under Minnesota Statutes, section 297E.02, subdivision 6 (combined net receipts tax);
- (12) unpaid cost of games, plus sales tax;
- (13) loans from all sources;
- (14) other liabilities specifically identified; and
- (15) fund balance (profit carryover).

B. The statement of revenue and expense must include revenues and expenses from the gambling operations and include, at a minimum:

(1) gross receipts detailed by game type, such as nonlinked bingo, linked bingo, paper pull-tabs, electronic pull-tabs, tipboards, paddletickets, raffles, and sports-themed tipboards, including ideal or actual gross receipts from games found to be missing or unreported, respectively;

(2) actual prizes paid out detailed by game type including ideal or actual prizes from games found to be missing or unreported, respectively;

(3) interest income;

(4) gross profit;

(5) allowable expenses;

(6) lawful purpose expenditures detailed by tax imposed under Minnesota Statutes, section 297E.02, subdivision 1, combined net receipts tax, unrelated business income tax, federal form 730 and form 11C tax, federal and state income taxes, real estate taxes, restricted use donations from tax savings, and donations; and

(7) board-approved expenditures.

C. The statement of changes in fund balance must include, at a minimum:

(1) beginning fund balance (profit carryover);

(2) profit or loss for the year;

(3) ending fund balance (profit carryover); and

(4) other adjustments.

D. The annual audit must include notes to the financial statements. The notes to the financial statements must include, at a minimum:

(1) nature of organization;

(2) basis of presentation of the financial statements;

(3) related party activity;

(4) restrictions on assets;

(5) subsequent events;

(6) uncertainties;

(7) commitments such as mortgages, rent, donations, or all taxes not paid or not filed, if material;

(8) contingent liabilities;

(9) board-approved expenditures;

(10) games tested and results: of the games tested, state:

- (a) if the games tested included games with unsold tickets;
- (b) if games were tested from all active sites;
- (c) the types of games tested, such as paper pull tabs and tipboards; and
- (d) the manufacturer ID, part number, and serial number of any games that could not be located; and

(11) a list of all forms of gambling conducted by the organization which must be confirmed by the chief executive officer.

Subp. 4. Supplemental schedule; reconciliations; physical inventory.

A. The annual audit must include an allowable expense comparison schedule. The schedule must include, at a minimum, allowable expenses expended, detailed by type of expenditure as listed on Form LG100A, which is the total amount of actual allowable expenses from the revenue and expense statement.

B. The annual audit must include a reconciliation of the gambling operations bank accounts to the reported profit carryover. The reconciliation must include, at a minimum:

- (1) a comparison of the audited fund balance (profit carryover) made to a confirmed Gambling Control Board fund balance (profit carryover) as of the fiscal year end;
- (2) any difference between the adjusted gambling fund balance and the fund balance (profit carryover) is a variance; and
- (3) any or all of the items that identify the variance if known.

C. The annual audit must include a reconciliation between the number of paper pull-tab, paddleticket, and tipboard games played to the number of paper pull-tab, paddleticket, and tipboard games reported on Schedule B2, Lawful Gambling Report of Barcoded Games, for the fiscal year audited. The schedule must include, at a minimum:

- (1) the cost and number of games in beginning inventory;
- (2) the cost and number of games purchased during the year audited;
- (3) the cost and number of games available during the year audited;
- (4) the cost and number of games in ending inventory as of the last day of the organization's fiscal year end;
- (5) the cost and number of games used which is determined by subtracting the ending inventory from total games available;
- (6) the number of games reported on Schedule B2, Lawful Gambling Report of Barcoded Games; and

(7) a calculation of the difference between the games determined as played and games reported on Schedule B2, Lawful Gambling Report of Barcoded Games.

D. A physical inventory observation and cash count of all sites and locations must be taken as part of the annual audit process, regardless of when the audit engagement was scheduled. A physical inventory must be taken within 30 days of the balance sheet date or engagement date, whichever is later, unless prior written approval of an alternate date is obtained from the Department of Revenue. A list of the games in inventory by manufacturer ID, part number, and serial number must be submitted to the Department of Revenue within 30 days of the date the physical inventory was taken. The physical inventory and cash count must be performed by:

(1) the CPA engaged to conduct the annual audit; or

(2) two members, officers, or employees of the organization, appointed by the organization's board, who are not involved in the gambling activity of the organization. These members, officers, or employees must certify to the CPA the correctness of their physical inventory and cash count.

Subp. 5. **Sampling and testing; closed games.** Closed games and occasions must be tested independently by the CPA based upon criteria set by the CPA within professional standards. The sampling and testing of tipboard, paper pull-tab, paddleticket, nonlinked bingo, and raffle closed games must meet the following requirements:

A. When a minimum sample size is required, the random or systematic method of sampling will be used. When a minimum sample is expanded, the expanded portion of the sample may use random, systematic, or haphazard methods. When a minimum sample is not required, the sample method may be random, systematic, or haphazard. The following chart of gross receipts will be used to determine the minimum size of a sample for closed pull-tab and tipboard games.

Gross Receipts		Minimum Sample Size	
\$0	to	\$999,999	10 games
\$1,000,000	to	\$2,499,999	20 games
\$2,500,000	to	\$4,999,999	30 games
over \$5,000,000			40 games

There is no minimum sample size requirement for testing paddletickets, nonlinked bingo, and raffles. Closed games and occasions will be sampled independently by the CPA using judgment based on professional standards.

B. Closed tipboard and paper pull-tab games selected in the sample will be tested for the following minimum criteria, and any differences or deficiencies must be noted in the results of the games tested:

(1) each game specified in the sample was available from closed-deal storage;

(2) the following items as reported on Schedule B2, Lawful Gambling Report of Barcoded Games, must be compared against test results for the same items, and differences shown:

- (a) ideal gross receipts;
- (b) ideal prizes;
- (c) total value of unsold tickets;
- (d) gross receipts;
- (e) total value of prizes paid;
- (f) net receipts;
- (g) cash in hand;
- (h) cash long or short; and
- (i) date removed from play;

(3) each deposit ticket meets the gambling receipt deposit requirements in Minnesota Statutes, section 349.19, subdivision 2;

(4) each deposit was recorded at the bank within four business days after the game was completed;

(5) each prize receipt form was properly completed for prizes awarded of \$100 or more and for last sale prizes of \$20 or more;

(6) the dates on the prize receipts fall within the date the game is put into play and the date the game is removed from play, as listed on the Schedule B2 for that game, with the exception of sports-themed tipboards whose prize receipts can be completed seven days after the last frame of the professional sporting event or when all prizes are claimed, whichever occurs first;

(7) each redeemed prize winning ticket was adequately defaced;

(8) each game flare is easily available from storage; and

(9) the serial number on the flare must be compared to the serial number on the tickets.

C. The results of closed game sampling and testing must be provided to the organization upon a request from the organization.

Subp. 6. Report on internal control structure and other matters.

A. A report about internal control structure reportable conditions observed, or evidenced by testing, during the course of an audit, that could affect the organization's ability to record, process, summarize, and report financial data must be submitted. The report shall elevate a condition to that of a material weakness when the magnitude of the condition is considered material in relation to the financial statements being audited. This report must include all the elements required by, and the department adopts and incorporates by reference, AU-C section 265, *Communicating Internal*

Control Related Matters Identified in an Audit (AICPA, *Professional Standards*, section 265, 2020). If no reportable conditions or material weaknesses are detected, a report must be submitted stating that no material weaknesses were detected. This report is required under subpart 1.

A list of the types of gambling audit reportable condition or material weakness to include in this report follows in subitems (1) to (12). This list is illustrative, and not all-inclusive:

- (1) absence of appropriate segregation of duties including a detailed explanation;
- (2) inadequate provision for safeguarding of inventory, cash, or other assets;
- (3) excessive cash shortages or overages;
- (4) material delinquent taxes due to state or federal taxing authorities;
- (5) lack of required accounting records maintained;
- (6) lack of or inaccurate preparation of bank reconciliations or gambling fund reconciliations;
- (7) material differences between games played and games reported as played;
- (8) nonuse or inaccurate use of perpetual or physical inventories for all forms of gambling engaged in;
- (9) lack of specific required identification for tracking and accountability of deposit tickets;
- (10) material underreporting or overreporting of allowable expenses, lawful purpose expenditures, or board-approved expenditures;
- (11) failure to properly account for and report fund losses, form LG250, Fund Loss Request for Profit Carryover Adjustment; and
- (12) inattention to and lack of correction to prior year reportable conditions and material weaknesses.

B. A regulatory checklist questionnaire must be included with the report from item A, on a form prescribed by the commissioner. Responses to questions on this checklist must be based on findings and information collected during the course of the audit.

Subp. 7. **Organization's response to report on internal control structure.** The licensed organization shall file with the Department of Revenue a response to the reportable conditions item by item, including any remedial action taken or proposed by the organization. This response may be submitted with the annual audit or be filed separately within 60 days after the due date of the annual audit. The response must include the following items:

A. Any profit carryover variance as shown on the reconciliation of profit carryover supplemental schedule must be identified. All identified variances which require amendments to tax returns must be amended and submitted to the Department of Revenue along with supporting documentation. The auditor must, upon agreement with the organization, assist in preparing an

amended return or returns for the organization. The response must indicate if such amendments have been submitted to the Department of Revenue.

Variances which require adjustments instead of amendments should be adjusted by sending a letter to the Department of Revenue requesting an adjustment along with supporting documentation. Requests for an approved adjustment cannot be substituted for filing amended tax returns that correct the condition that resulted in the variance. If the variance is identified, an amended tax return or returns must be filed.

Unidentified variances must be investigated by the organization and identified. If after investigation an organization is unable to resolve the variance, the organization shall contact the Department of Revenue. The Department of Revenue will then assist the organization in resolving the variance. Final resolution will be based upon an organization's individual situation and can include: amended tax returns, an approved adjustment, required reimbursement from nongambling sources, or a combination of all three.

B. If the comparison of games played to games reported on Schedule B2, Lawful Gambling Report of Barcoded Games, shows a difference, the organization must respond to the reportable conditions item by identifying and stating if the game difference was due to the games being:

- (1) missing or lost;
- (2) destroyed, with state approval;
- (3) played and unreported; or
- (4) reported in following month.

C. Specific items as noted on the internal control structure report must be responded to.

If no response is received from the organization, the organization must submit to the Department of Revenue a copy of the audit management letter upon request.

Subp. 8. **Other.** The front page of the annual audit report must contain the following items:

- A. the organization's legal name and licensed name, if different;
- B. the organization's license number;
- C. the Minnesota ID number; and
- D. the federal ID number.

Statutory Authority: *MS s 14.388; 270.06; 270C.06; 297E.06*

History: *20 SR 1482; 24 SR 893; L 2005 c 151 art 1 s 114; L 2010 c 191 s 13; 45 SR 827*

Published Electronically: *March 10, 2021*

8122.0600 [Repealed, L 2010 c 191 s 14]

Published Electronically: *August 2, 2010*

8122.0650 FAILURE TO FILE OR FAILURE TO MEET REQUIREMENTS.

Subpart 1. **Failure to file.** If an organization fails to file the required annual audit, the Department of Revenue will request the delinquent items. If the organization fails to respond to the request and correct the delinquency, the Gambling Control Board will be informed and a suspension of the organization's gambling activity will be requested. An organization may also be ineligible for relicensing until the delinquent reports are submitted. The Gambling Control Board may also issue fines for noncompliance with the annual audit requirements. See Minnesota Statutes, sections 349.151, subdivision 4, paragraph (a), clause (9), and 349.155, subdivision 4.

Subp. 2. **Failure to meet requirements.** If the audit fails to comply with all or part of the audit requirements, the audit will be deemed deficient and not satisfying the annual audit requirements. If an organization fails to file the required annual audit or fails to comply with any part of the requirements for the annual audit, the Department of Revenue will request the delinquent items. If the organization fails to respond to the request and correct the delinquency, the Gambling Control Board will be informed and a suspension of the organization's gambling activity will be requested. An organization may also be ineligible for relicensing until the delinquent reports are submitted. The Gambling Control Board may also issue fines for noncompliance with the annual audit requirements. See Minnesota Statutes, sections 349.151, subdivision 4, paragraph (a), clause (9), and 349.155, subdivision 4.

Statutory Authority: *MS s 14.388; 270.06; 270C.06*

History: *20 SR 1482; L 2005 c 151 art 1 s 114; 45 SR 827*

Published Electronically: *March 10, 2021*